



ORIGINAL RESEARCH PAPER

Law

HISTORICAL BACKGROUND OF WHITE-COLLAR CRIMES

KEY WORDS: White-collar, white-collar crime, financial motive, financial fraud, social status, crimes, blue-collar, non-violent.

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ABSTRACT

White collar crime refers to non-violent offenses carried out by individuals or organizations in a professional or business setting. These crimes are characteristically committed by people in positions of power or trust, and engross in financial fraud or other unethical activities. Examples of white collar crimes in India include banking frauds, bribery, corruption, money laundering, insider trading, securities fraud, tax evasion, cybercrime, and embezzlement. In this article, we shall discuss about historical background of white collar crimes.

In This Chapter

- Brief introduction of historical aspect
- 2.1 -Sutherland's Approach
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- 2.3 THE FIRST CASE- Carriers Case
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Crime is generally associated with violence, aggression, and savagery. The society plays an undeniably crucial role in defining the term 'society'. General perception is that an act will not be considered a crime until the society deems it to be, and if said act is not considered to be in opposition of their group sentiments, then the act is not a crime at all.

The history of white-collar crime can be traced back to the late 19th century when businesses started to expand, and new technologies and business practices emerged. As corporations grew, they started to control more economic power, which led to increased corruption and criminal activities. The Carrier's Case, which took place in 1905, is an essential milestone in the history of white-collar crime.

White collar crime became higher-flying in the 20th century with the augmentation of corporate capitalism and the growth of large, complex organizations. As businesses became more multifaceted, it became easier for executives to engage in fraud, embezzlement, and other forms of white collar crime.

One of the most famous white collar crime cases in American history is the Enron scandal of the early 2000s. Enron, a large energy company, engaged in a variety of fraudulent accounting practices that ultimately led to the company's collapse and the imprisonment of several top executives. In the Enron scandal in order to deliver the speculated earnings figures, there was an escalating use of accounting devices such as mark to market. This was accompanied by a reluctance to accept necessary write downs, and the use of aggressive tax avoidance schemes. Sadly, pushing forward losses simply aggravated the problem, given that most of Enron's businesses were not vitally very profitable, and not enough future profits were being generated to absorb the losses secretly carried forward.

In recent years, white collar crime has become even more prevalent with the rise of digital technology. Cybercrime and identity theft are two examples of white collar crime that have become more common in the internet age.

Despite its prominence, white collar crime remains difficult to prosecute, in part because of the complexity of modern business practices and the resources that wealthy defendants can bring to bear in their defense. As a result, many white collar criminals are never brought to justice, and many others receive relatively lenient sentences compared to street criminals who commit similar offenses.

Sutherland's Approach

In contradiction to the general discernment and perceptivity, crime can be of various shapes and forms. One such classification is a financially motivated, non-violent crime committed by reputed classes of our society, prominently known as the 'White Collar Crimes'.

In this chapter, we shall discuss the historical background and evolution of the concept of White-Collar Crimes in our society.

The given concept was first defined by an **American sociologist, Edwin Sutherland**, popularly known as the Father of American Criminology. He was considered to be one of the most influential and distinguished criminologists of 20th century.

Sutherland described it as crime committed by the persons of high social status and respectability, as compared to those who commit ordinary crimes during their course of employment.

Criticisms

White-Collar theory of Edwin Sutherland has been criticized by various jurists. Clive Coleman and Jenny Moynihan made observations in this theory and discerned the following ambiguity in Sutherland's definition.

The said theory has been criticized stating that there are no precise and clear-cut demarcation of criteria for determining persons who can be specified as 'person of respectability and status'.

It was also asserted that term 'person of high social status' lacks clarity and precision. It is perplexing as the meaning of the phrase in law could be significantly different from its generally understood definition.

It was further alleged Sutherland's definition did not take the socio-economic surroundings of the person into consideration. Despite the fact that this theory majorly focuses on the dependency of white-collar crimes on its type and the circumstances in which it was committed.

Mens rea, i.e., guilty mind and actus reus, i.e., wrongful conduct are two essential elements to constitute a crime. However, Sutherland's definition implies that according to him white-collar crimes do not necessarily require mens rea.

And therefore, Sutherland's work fails to provide a clear-cut and unambiguous portrayal of white-collar crime. Even some critics have also recommended that such offences shall be referred to as occupational crimes rather than white-collar crimes since the element in the definition of white-collar crime is the type of crime and the state of affairs under which it is committed but not socio-economic status of individuals.

Morris' Interpretation

In 1934, Albert Morris shifted the attention towards necessity of a change in emphasis regarding crime.

He asserted that the persons of high status and prestige involved in objectionable and distasteful activities during the course of their employment should be defined under a category of crime and should be penalized.

In 1934, Albert Morris put forth his ideology that the people of high social status involved in illegal activities during the course of their occupation, must be brought within the categorization of crime under which said illegal activity falls. He also advocated that it should be made punishable offence.

Later, Sutherland re-entered into the picture to clarify that the crimes or illegal activities committed by people who belong to high socio-economic groups, in the course of their employment, were to be termed as 'White Collar Crimes'. Moreover, he also stated that traditional crime was to be signified as 'Blue Collar Crimes' Conclusively, E.H. Sutherland through his ground breaking work accentuated that these 'Upper Worked' crimes which are committed by the persons of upper Socio-economic groups in course of their employment, breaching the trust, should be termed as "White Collar Crime". So as to be distinguished from traditional crime which he called "Blue Collar Crime".

The notion of White-Collar Crimes found its place in criminology for the first time in 1941. So he drew a distinction between white collar crimes, i.e., corruption, bribery, fraud, and blue-collar crimes, i.e., traditional crimes like robbery, theft, etc. After this, criminology in the year 1941 finally recognized the concept of 'white collar crimes'.

The First Case

Generally known as the *Carrier's case*, it was the first case related to white-collar crimes that was acknowledged as a crime in the year 1473 in England. In this case, the agent was assigned with the obligation of the principal to ship wool from one place to another. The agent was established to be guilty of thieving some of this wool. After this case, the English Court took on the doctrine of '*breaking the bulk*' which may be interpreted as - the bailee who was given the custody of goods attempted to break it open and siphon off the contents.

Conversely, the growth of industrial capitalism has taken delinquency to the next level. The conformist institution is motivated into committing such crimes out of greed and wretchedness to have and to be able to get more. In 1890 America passed the *Sherman Antitrust Act* with the aim to promote healthy competition and make monopolistic practices illegal, thereby discouraging them. The penalties imposed upon debauchees of white collar crimes in Great Britain and the implementation of competition or antitrust laws by other countries were not as all-comprising as the Sherman Act.

Opinion in the mass seeking transformations was raised by a dignified group of journalists in the late 18th and early 19th century. By 1914, Congress was seen making great efforts in solidifying the sentiments laid down by the Sherman Act. This Act proved out to be more rigid in comparison to the Sherman Act in dealing with the monopolistic illegal practices.

The Carrier's Case involved Frederick A. Carrier, a cashier at the First National Bank of Chicago, who embezzled \$607,000 from the bank. Carrier manipulated the bank's books to cover up his misdeeds, and the embezzlement was only revealed when an audit revealed the discrepancies. Carrier was detained and put on trial, and he ultimately pleaded guilty to the charges.

The Carrier's Case was noteworthy because it was the first high-profile white-collar crime in the United States. Carrier's embezzlement shocked the public and exposed the susceptibility of the banking system to fraud and corruption. The case also brought attention to the need for regulatory measures to prevent white-collar crime and protect the public interest.

Following the Carrier's Case, several laws were enacted to regulate business practices and prevent white-collar crime. The Federal Bureau of Investigation (FBI) was created in 1908 to investigate white-collar crime, and the Securities and Exchange Commission (SEC) was established in 1934 to regulate the securities industry and protect investors from fraudulent activities.

Today, white-collar crime remains a significant problem in India and around the world. The Carrier's Case is a reminder of the need for constant vigilance and regulatory measures to prevent fraud and corruption in our society.

Reasons For Growth Of White-collar Crime:

There are several reasons for the growth of white-collar crime in India:

I. Competition:

The term 'survival of the fittest' is an apt explanation to effect of competition on the rise of white-collar crime in India. It implies that in this world there will always be competition and the one who distinguishes himself from others shall rise atop. White-collar crimes typically transpire out of the same purpose.

II. Rapid Economic Growth:

As India's economy has grown rapidly in recent years, there has been a corresponding increase in white-collar crime, including fraud, embezzlement, and money laundering.

III. Lack Of Effective Law Enforcement:

White-collar criminals often go unpunished in India due to a lack of effective law enforcement. Cases of corruption and financial fraud frequently go unprosecuted, leading to a culture of impunity. Digitalization of crime has severely impacted investigation and tracking of crimes committed using internet or other digital methods. The fact that such crimes are more often than not are committed within the walls of a home or an office, thereby allowing no possibility of a witness.

IV. Poor Regulation And Oversight:

In many industries, government regulations and oversight are weak or non-existent, allowing white-collar criminals to carry out fraudulent activities with little fear of detection or punishment.

V. Inadequate Punishment And Deterrence:

Even when white-collar criminals are caught and prosecuted, the punishment they receive is often inadequate, failing to deter others from committing similar crimes.

VI. Cultural factors:

India's cultural values and attitudes towards wealth and power can sometimes encourage unethical or illegal behavior among businesspeople and other professionals.

VII. Technological Advancements:

The digital revolution has made it easier for white-collar criminals to use technology to perpetrate their crimes. The mushrooming of smart phones and personal computer has further exasperated this problem. Cybercrime, phishing, and other scams are becoming increasingly common. Numerous people fall prey to credit card frauds, scamming on a regular basis and to make it worse, the perpetrators could be from anywhere in the world.

VIII. Regulatory Arbitrage:

In some cases, white-collar criminals may take advantage of discrepancies in regulations across different jurisdictions to carry out illegal activities. This can include exploiting loopholes in tax laws, corporate governance rules, or financial regulations.

IX. Rationalization:

Rationalization of crime is done by would-be criminals by logically weighing the expected costs and benefits of committing the offences. When it comes to white-collar crime, the criminals convince themselves that the offence committed, i.e. fraud, insider trading, etc are a victimless crime thereby making a non criminal activity. Additionally, the probability of being held accountable being really low encourages the would-be offenders to commit said crime.

X. Work Environment:

Work environment significantly impacts how employees behave. It can draw out both – good and bad behavior by individuals. Negative or nonchalant management with poor incentives can push the employees over the edge, fudging the lines of ethics and instigating them to commit offences against the organization.

CONCLUSION

White collar crime contributes to the erosion of trust in institutions and can harm the country's reputation globally.

To address the problem, there is a need for a comprehensive approach that involves the active participation of various stakeholders, including the government, regulatory bodies, law enforcement agencies, private sector, and civil society organizations. This approach must focus on improving the effectiveness of the justice system, implementing stringent regulations, and promoting ethical business practices.

Overall, combating white collar crime in India requires a sustained effort and a commitment from all stakeholders. By working together, it is possible to reduce the incidence of financial fraud and corruption, which will contribute to the country's economic growth and social development.

Suggestions

1. Strengthen enforcement
2. Increase transparency
3. Promote ethical business practices
4. Strengthen the justice system
5. Create awareness

By implementing these suggestions and working together, it is possible to reduce the incidence of financial fraud and corruption, which will contribute to the country's economic growth and social development.

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