

# LEGALFOXES LAW TIMES

## WHITE COLLAR CRIME – CAUSE AND PREVENTION

**By: Utkarsh Dwivedi**

### **I. INTRODUCTION**

Edwin Sutherland, the pioneer of criminology defined White Collar Crime as “a crime committed by a person of respectability and high social status in the course of his occupation”. The Federal Bureau of Investigation (FBI), in its one of the articles, expressed that, "these crimes are characterised by way of deceit, concealment, or violation of trust." The main motivation behind these crimes as observed by them is either a personal financial gain or averting a financial loss, in either way the reason is financial.

White-collar crimes are non-violent wrongdoings that generally financially enrich the ones who commit it. Misrepresentation, in order to deceive the regulators and other stakeholders, is included in such crimes.

A group of offenses also contain fraudulent funding possibilities in which the earned returns are inflated and risks are showed to be very less. There are many kinds of white-collar crimes such as – Antitrust, fraud, computer and internet fraud, tax evasion, money laundering, public corruption, bribery, embezzlement, and many more.

These crimes have been associated with skilled and prosperous. The view of that time period was first coined in 1949 through sociologist Edwin Sutherland, who later added more precision to the definition by stating it as "a person of the upper socioeconomic class who violates the criminal law in the course of his occupational or professional activities".<sup>1</sup>

The commission of white-collar crimes has increased rapidly in the recent decades. The introduction in the new financial policies and rapid change in technology has made it easier to commit new monetary offences. There have been many high profiled people whose names have been flashed in the recent decade associated with such offences such as Vijay Mallya, Chanda Kochar, Ivan Boesky, Bernie Madoff and many other big names. There also has been a new trend of crimes with the help of internet, in which phishing emails are sent and then the same are used to acquire a huge sum of money. These are also called Nigerian scams.<sup>2</sup>

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<sup>1</sup> Law Commission Report, No. 29 (1966) 6.

<sup>2</sup> Chen, J. (2020, February 5). White-Collar Crime. Retrieved May 4, 2020, from <https://www.investopedia.com/terms/w/white-collar-crime.asp>.

The need of the hour is to identify the various causes and motivations that lead an individual to commit such crimes and take the requisite steps in order to recover or stop the financial loss being caused to various government and non-government organisations globally.

## II. IDENTIFYING THE CAUSE

FBI has stated that the annual cost incurred in white-collar crimes i.e. approximately 500 billion dollars even exceeds the cost from the private property crimes which amounts to only 15 billion dollars annually. Individuals have a number of levels of tolerance toward conscientious and moral behaviour. Academic lookup suggests that environmental alerts and cues can nudge people to behave in another way when confronted with moral choices. Most of such offences occur due to ambiguity in the surrounding signals and cues. Work atmosphere can be perceived as a reason behind a good or bad influence on an individual. Ambiguous cues subtly nudge persons toward the slippery direction of compounding moral transgressions, main to crooked acts. Many people get attracted to the temptations and end up compromising their ethical values in this dilemmatic situation.<sup>3</sup>

In an article published by Forbes<sup>4</sup>, it recognised some essential reasons behind the motivation in an individual towards such deviant behaviour displayed. This was based on the research conducted in the USA and after the analysis of previous cases in the history, which took the attention of people of the alarmingly rising nature of the White-Collar Crimes. They are -

- **IMPROPER JOB INCENTIVES**: In finance-related jobs, people are rewarded based on short term superlative profits. Now in such jobs, to maximise the incentive/commission rewarded, some people try to bend the laws to enhance their personal gain. In a famous case, Enron Scandal, an Executive Stock Option Plan based in Texas was aimed at wrongful enhancement of the shareholder's capital which drove the workers to do a huge accounting fraud.
- **MANAGEMENT NON-CHALANCE IN THE DIRECTION OF ETHICS**: In many companies and firms' expert networks are used to legitimize using inside data for the trading of stocks, which is popularly known as insider trading. Such offences lead to the breach of security laws at the firms by the analysts. In the MCI-WorldCom scandal it came to light that management directed its accountants to "make the debt go away", and in such directions, the employees manipulated the records. Also, another unethical practice was recognised at the Volkswagen wherein the knowledge of the management a device was created and installed in the cars which for many years helped them to evade the emission standards test.

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<sup>3</sup> & <sup>4</sup> Khan, R. (2018, February 22). White-Collar Crimes -- Motivations and Triggers. Retrieved May 4, 2020, from <https://www.forbes.com/sites/roomykhan/2018/02/22/white-collar-crimes-motivations-and-triggers/#794578d21219>.

- LACK OF ETHICS CONSIDERED HARMLESS: A false perception has been created among the stock traders involved in insider trading that it is a victimless crime which is completely wrong. A trader involved in such practice does not realize that someone is being cheated. They assume that bribing the clients and putting the deal together is a part of their job and no one is being harmed in the way which is not so true. Some accounting frauds start with an excuse that “it is just a one-time event”.
- AGGRESSIVE DESIRES EXCEPT GOALPOSTS: Aggressive goals and desires are the essentials to a merit-based culture. However, the notion of doing whatever it takes to achieve such goals creates a path towards the use of unethical means to get the work done. The company sometimes delegates such task to the subordinates and then turning blind eye upon them towards their unethical and questionable steps taken to get the tasks done.
- MORAL HAZARD: Sometimes when others suffer, the others due to whom people came in such position, get incentives to put other people at risk. Such as in health insurance some doctors overprescribe the medical procedures to file false claims and gain wrongfully. To this, the authorities bailout the economic establishments and therefore motivate such immoral risk-takings.
- WHAT EVERYBODY DOES ISN'T COUNTED AS CRIME: Some professionals disagree with the laws that exist. Such as the bribery laws, or doping prohibition laws, etc. Some coaches or professionals actively support doping and such training environments. This collective thinking that the thing everyone does can't be wrong mitigates the harsh consequences.
- HUBRIS DUE TO SUCCESS: Hubris in one's mind can sometimes result in wrong decisions or choices and create a sort of bias in one's mind. Gradually, people start to think that laws don't apply which often lead to uncertainty, even sometimes criminal behaviour, which causes “tolerance for breaking the law” among the people.
- MOTIVATED BLINDNESS: Sometimes people fail to the wrong or the violation of ethics to avoid the “self-harm”. Paid and retained accounting companies sometimes overlook the accounting transgressions of their client companies. Even some paid rating companies to give biased ratings to gain more incentives.
- PILFERING PUBLIC OR NON-PUBLIC ENTITIES: Sometimes it is considered that wrongful gain from government or big companies is acceptable, due to the mentality of stealing from a big pile and therefore no one is harmed “personally”. Some of the cases of fraud related to bills services, over-prescription, and collusions are perfect examples for such instances.

### III. WHAT NEXT? PREVENTION or PUNISHMENT?<sup>5</sup>

Different countries have different cultures, therefore giving birth to different social acceptance and different laws. International trade sometimes put people in obstinate situations. In Western Africa,

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<sup>5</sup> McGrath, J. (2008, December 10). How White-collar Crime Works. Retrieved May 4, 2020, from

<https://money.howstuffworks.com/white-collar-crime6.htm>.

it was customary for people involving government officials to take tips. It was considered a legal source of income there. It was called the Dash System. Therefore, there were bribes given to conduct business there. It was legal there. But in countries like India, it is something which is considered as a root problem towards hindering the progress of the country. In India, about \$5 billion is paid to the truck drivers every year as part of their daily business.

Many laws have been made in approach towards the elimination of white-collar crimes. Western and Eastern Europe have instituted laws to prevent corruption. Moving towards the same path, Poland passed very strict anti-money laundering laws in 2000. All in the path of preventing and its allied crimes.

Due to the recent on-going developments in information and communication technology, disparities due to communication are more apparent. Increasing corruption has made it very difficult for other companies to conduct business in some countries. There has been the formation of Transparency International to look into such issues to mitigate the event of corruption and make such instances come to the knowledge of the public. This organisation believes that making such things appear for public awareness, the more business comes to establishment and follows the rules of business conduct and there will be compulsions on the government and allied organisations to put restrictions and bring into force the anti-corruption policies.

The different countries and their legislations are continuously making efforts to figure out an apt way to tackle and punish such offences. Since Sutherland, in his arguments told about the bias that these people get from other offenders just because being a member of the elite class has made people suspicious to the law that it treats such people with more leniency and bias. Keeping these notions in mind countries like the USA have made the punishment to White Collar Crimes much more stringent than other crimes with longer sentences and the lesser opportunities of early release. To this, some people also have the contradictory belief of such punishments being too harsh on the criminals as they tend to be first time offenders.

#### **IV. CONCLUSION** "OUR MISSION YOUR SUCCESS"

To conclude, it would be relevant to say that it might be a little difficult to define White Collar crime. But, it isn't difficult to commit it. Therefore, the individual beings must recognize this deviant behaviour in them and try to avoid such situations to build a healthy and prosperous society. The victims of white-collar crimes may not be in direct touch or in contact with the offenders because mostly such victims are never been talked of or concerned with. Hence, the human intuition of "visceral guilt" which guards in opposition to inflicting damage to others in no way kicks in. The loss caused by such crimes can devastate a whole economy of the country internally. Such offenders are smart enough and powerful financially and economically which they use to keep the authorities away from them and don't get caught. These criminals are motivated with sheer greed and an inherent desire to win at all costs.

Many would in no way suppose of shoplifting or enticing in petty crimes. An intriguing question arises that if a worthwhile opportunity to commit fraud comes along, should the morals be ignored

then? Especially, when there are no little chances of being caught. But one should understand that there continually is a price to what we do!

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