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## **I. INTRODUCTION:**

*“The phrase ‘white collar crimes’ refers to that class of crime which is committed by businessmen or any official on a high social status for which the ultimate motivation is financial gains. White Collar crimes are any financially motivated nonviolent crimes committed by any businessman or government official. White collar crime is a serious problem in our society. With the changing society the involvement of women in such crimes is also increasing about which far too little is known. Such crimes are constantly evolving, encompassing a broad variety of crimes, and possessing unique characteristics that distinguish it from violent and traditional property crimes. Women appear as white-collar offenders with far less frequency than do men, despite a contemporary workplace that offers more opportunities for female crime. High-level corporate positions for women that are conducive to elite deviance, however, remain relatively rare. Research on whether women are committing more white-collar crimes is inconclusive. On the victimization side of the equation, evidence is less equivocal. Both women and men are victimized by white-collar crime, but the nature of victimization is gendered. For some types of fraud, particularly reproductive medicine, women are more likely to be targets for illegal or unethical behavior. Occupational segregation increases the relative victimization risks for men and women in unique ways”.*

## **II. HISTORICAL BACKGROUND:**

The term “white collar crime” echoes a radical transformation in the very definition of crime. It was coined by sociologist and criminologist, Edwin Sutherland, in the year 1939. Though he is considered to be the pioneer of this study pertinent to criminology and criminal justice, other academic works helped laying the foundation of this theory. The growth of the idea can be traced back in the wake of the nineteenth century. In the year 1848, Marx and Engels opined that the powerful and privileged commit crimes as a direct consequence of the capitalist economic system.<sup>1</sup> It was in the beginning of the twentieth century that capitalism was being described as ‘criminogenic’ by Bonger, Dutch Criminologist. The term “white

<sup>1</sup> Andrea Mayr and David Machin, *The Language of Crime and Deviance: An Introduction to Critical Linguistic Analysis in Media and Popular Culture*, 201(A&C Black, 2012).

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collar criminaloid” was used by Sutherland in locus to the concept of criminaloid mentioned by E. A. Ross in the book Sin and Society.

**The conception of criminaloid by Ross is as under:**

*“The immunity enjoyed by the perpetrator of new sins has brought into being a class for which we may coin the term criminaloid. By this we designate such as prosper by flagitious practices which have not yet come under the effective ban of public opinion. Often, indeed, they are guilty in the eyes of the law; but since they are not culpable in the eyes of the public and in their own eyes, their spiritual attitude is not that of the criminal. The lawmaker may make their misdeeds crimes, but, so long as morality stands stock-still in the old tracks, they escape both punishment and ignominy”.*<sup>2</sup>

**III. TYPES OF WHITE COLLAR CRIMES:**

White Collar Crime is pervasive in almost all the professions and occupations in the society. These crimes are common to the business world and Indian trade and violation of Foreign Exchange Regulation Act and export and import laws are resorted to make huge profits. Since white-collar crimes are non-violent, it is possible that it procures other forms. There are different types of white collar crimes including frauds, anti-trust violations, tax evasion, public corruption, etc. As per the NCFC, there are approximately 25 listed white collar crimes.<sup>3</sup>

- **Fraud:** Fraud is considered to be one of the most common type of white collar crime. It is a deception practiced in order to obtain unfair or unlawful gain. Fraud is a felonious crime. It usually takes place when an individual pays for a good but he does not receive what he has paid for.
- **Bank Fraud:** Bank Fraud means to engage in such activities in order to defraud a bank or using illegal means to obtain assets held by financial institutions. The most prominent one being identity theft, where one person uses another person’s private identifying

<sup>2</sup> Edward Ross, Sin and Society: An Analysis of Latter-day Iniquity, 48 (Boston, Houghton, Mifflin 1907).

<sup>3</sup> Available at: <http://www.ckfraud.org/whitecollar.html> , Accessed on 28.01.2018 (3:50 p.m.)

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information to obtain money usually in the form of loan or credit. The largest case on Identity theft was seen in the case of *U.S v. Cummings*<sup>4</sup> where a help desk worker from a software firm helped steal credit reports on around 30,000 consumers around the country resulting in false charges on credit cards and theft. He was convicted with an imprisonment of fourteen years. Another common bank fraud is fraud involving cheques. Cheque fraud occurs when it has been forged or has been signed on them. This is quite similar to another fraud known as cheque kiting.

- **Blackmail:** Blackmail means demand for money by threatening some person to cause physical injury or exposing his secrets.
- **Bribery:** Bribery means offering money, goods or any gift to someone in order to have control over his actions. It is a crime whether someone offers or accepts a bribe.
- **Computer Fraud:** Computer frauds are such frauds which involve hacking or stealing information of some other person. The people most vulnerable to this fraud are bank users whose information may be used for credit card cramming or for creating fake credit cards. Another type of internet fraud is when the author wants to add is the intentional distribution of dangerous computer viruses. The intention is to misinterpret the computer virus as useful program which can destroy software systems.
- **Bankruptcy Fraud:** There are three major forms of a bankruptcy fraud. The first one takes place when debtors conceal assets to avoid forfeiture. Maximum of the bankruptcy fraud cases take place because of this form. Secondly, when an individual debtor files an incorrect or incomplete form, the debtor can also be liable for concealing some information about properties up for liquidation. Bankruptcy fraud often includes other white collar crimes such as money laundering, mortgage fraud, public corruption, etc. It also has criminal charges depending on its jurisdiction.
- **Embezzlement:** When someone entrusted with money or property uses it for his own use, it is embezzlement.
- **Extortion:** When a person illegally obtains someone’s property by actual or threatened force.

<sup>4</sup> U.S v. Cummings, 03-2660, 03-2707, 03-3010.

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- **Insider-Trading:** When someone uses the confidential information to trade in shares of publicly held corporations.
- **Money-Laundering:** Money Laundering means the concealment of origin of illegally obtained money.
- **Tax fraud:** Tax fraud means evading tax by providing wrong information in tax forms or illegally transferring property in order to avoid tax.

#### **IV. CAUSES OF WHITE COLLAR CRIME:**

The general perception is that the white collar crimes are committed because of greed or economic instability. But these crimes are also committed because of situational pressure or the inherent characteristic of getting more than others. **However, there are various reasons for white collar crimes.**

**Not really a crime:** Some offenders convince themselves that the actions performed by them are not crimes as the acts involved does not resemble street crimes.

**Not realizable:** Some people justify themselves in committing crimes as they feel that the government regulations do not understand the practical problems of competing in the free enterprise system.

**Lack of awareness:** One of the main reason of white collar crime is the lack of awareness of people. The nature of the crime is different from the traditional crimes and people rarely understand it though they are the worst victims of crime.

**Greed:** Greed is another motivation of the commission of crime. Some people think that others are also violating the laws and so it is not bad if they will do the same.

**Necessity:** Necessity is another factor of committing crimes. People commit white collar crimes in order to satisfy their ego or support their family.

#### **V. THE EVOLUTION OF WOMEN AND WHITE COLLAR CRIME:**

Historically, notions of both traditional and white-collar crime were synonymous with male criminality. Consequently, there was little cause to explore the nature of female crime. In the case of white-collar crime, depending on one’s accepted definition, it can easily be argued

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that only a handful of women are involved. If white-collar crime, as described by Sutherland, is limited to a high-status person in a position of trust during the course of one’s occupation (*e.g., corporate executives, bank owners, doctors, lawyers*), then women are likely to be excluded as they continue to view for high-level careers. Traditionally, women have held lower-status jobs that limited their participation in crimes such as insider trading, antitrust violations, and Ponzi schemes.

In contrast, if white-collar criminality were viewed from a broader perspective, then all women who are employed in positions that allow access to financial frauds would be included in the definitions and discussions (*e.g., real estate agents, bank tellers, bookkeepers, office managers*). The scenario then changes to include a high number of female white-collar offenders. Whether or not a position of power and authority is an essential element of corporate and professional offending is arguable, and many scholars include middle-class and working-class persons as white-collar crime offenders.

The definition and range of white-collar offenses and offenders remain controversial. Many scholars adhere, at least in part, to Sutherland’s definition that requires the elements of high status, trust, and occupational power that focused on offenders in large corporations or professional positions such as politicians. White-collar crime encompasses many areas of economic wrongdoing and by some standards might be limited, for example, to large corporate financial schemes, bribery, corruption, insider trading, securities fraud, and price fixing.<sup>5</sup> White-collar crime in a broader definitional sense may include what are seen as less profitable endeavors such as embezzlement, asset misappropriation, or consumer fraud (*although billions of dollars are lost annually in these simple and complex larceny schemes*). Acceptance of a broad definition of white-collar crime includes high-status and middle-class offenders (and in some cases juveniles) who are not in prestigious corporate positions but still commit fiduciary crimes outside the realm of traditional street crime.

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<sup>5</sup> Darrell J. Steffensmeier, Jennifer Schwartz, Michael Roche, Gender and Twenty-First Century Corporate Crime: Female Involvement and the Gender Gap in Enron-Era Corporate Frauds, Available at, <http://users.soc.umn.edu/>, last visited 02.02.2018, (04:45 p.m.)

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## **VI. WOMEN AS VICTIMS OF WHITE COLLAR CRIME:**

Victims of white-collar crime seldom receive much attention, although the financial, physical, and mental harms caused by these offenses are widespread. Victimization can result from a wide array of activities by corporations and professionals that have a negative impact on the lives of people across the demographic spectrum (*e.g., socioeconomic standing, race, ethnicity, age*). Corporate crimes, such as price fixing, unsafe products, and poor work environments, result in costs to individuals, taxpayers, consumers, and vulnerable populations.

Professional crimes, committed by doctors, lawyers, politicians, or law enforcement officers, undermine public trust and often result in financial or physical injury and sometimes death. Financial *frauds (e.g., insider trading, junk bonds, embezzlement, Ponzi schemes)* result in *an estimated \$1 trillion to \$3.5 trillion in losses annually (Barak 2010)*. Past US Supreme Court decisions restricted the number of hours women are able to work<sup>6</sup> limited women’s voting rights and participation on juries, and prohibited certain professional achievements<sup>7</sup>. These decisions often were made not out of fairness but rather to protect women from themselves and maintain their positions as wives and mothers.

## **VII. WHITE COLLAR CRIMES IN INDIA:**

The advancements in science, technology and commerce have made white collar criminality a global phenomenon. The tremendous changes in the structure of the Indian society have effectuated a shift in the core values and philosophies of people. This in turn has revolutionized the nature of crimes in India. White collar crimes have taken India in its stride and are feeding upon the nation at an appalling rate. The Santhanam Committee report on the Prevention of Corruption shows the position of these crimes in India.

***It says:*** “*The advance of technological and scientific development is contributing to the emergence of “mass society” with a large rank and file and a small controlling elite,*

<sup>6</sup> Muller v. Oregon, 208 U.S. 412 [1908]

<sup>7</sup> Bradwell v. Illinois, 130 U.S. 141 [1873]

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*encouraging the growth of monopolies, the rise of a managerial class and intricate institutional mechanisms. Strict adherence to high standard of ethical behaviour is necessary for the event and honest functioning of the new social, political and economic processes. The inability of all sections of society to appreciate in full this need results in the emergence and growth of white collar and economic crimes, renders enforcement of the laws, themselves not sufficiently deterrent, more difficult. Tax evasion and avoidance, share pushing, malpractices in the share market and administration of companies, monopolistic controls, usury, under invoicing or over-invoicing, hoarding, profiteering, sub-standard performance of contracts of constructions and supply, evasion of economic laws, bribery and corruption, election offences and malpractices are some examples of white collar crime.”<sup>8</sup>*

The Commission broadly classified these crimes into eight subdivisions and recommended the Government of India to incorporate a new chapter in the Indian Penal Code to specifically deal with these offences and supplement them with new provisions, so that these offences might find a prominent place in the general criminal law of the country. The issue was dealt by the 29th Report of the Law Commission of India, 1966. It was considered by the Law Commission and further the proposal was rejected. The Commission observed that: “Such offences are better left to be dealt with by special and self-contained enactments which supplement the basic criminal Law.” India does not devote a specific statutory provision to white collar crimes. The Law Commission of India in its 47th report on ‘*The Trial and Punishment of Social and Economic Offences*’ defines white collar crimes as “a crime committed in the course of one’s occupation by a member of the upper class of the society.”<sup>9</sup>

The Supreme Court, in the case of *State of Gujarat vs. Mohanlal Jitamalji Porwal and Anr*<sup>10</sup>, brought out the differences between the general crimes and white collar crimes. It was of the view that “the offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the community. A disregard for the

<sup>8</sup> Government of India, Report of the Commission on the Prevention of Corruption, 1964.

<sup>9</sup> State of Gujarat v. Mohanlan Jitamalji Porwal and Anr, AIR1987 SC 1321.

<sup>10</sup> Id.

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interest of the community can be manifested only at the cost of forfeiting the trust and faith of the community in the system to administer justice in an even handed manner without fear of criticism from the quarters which view white collar crimes with a permissive eye, unmindful of the damage; done to the national economy and national interest.” In the case of **Ram Narain Poply vs. CBI<sup>11</sup>**, the Supreme Court held that white collar crimes are simply cases of private profits at the expense of the public which ultimately leads to economic adversities.

### **VIII. LAWS RELATING TO WHITE COLLAR CRIMES:**

The white-collar crimes which are common to Indian trade and business world are hoardings profiteering and black marketing. Violation of foreign exchange regulations (i.e., FERA) and import and export laws are frequently resorted to for the sake of huge profits. Further, adulteration of food-stuffs, edibles and drugs which causes irreparable damage to public health is yet another white-collar crime common in India. White Collar Crimes are difficult to prosecute because they often involve sophisticated systems and even many different people. The government of India has introduced various regulatory legislations, the breach of which will amount to white-collar criminality.

Some of these legislations are *Essential Commodities Act 1955, the Industrial (Development and Regulation) Act, 1951.,The Import and Exports (Control) Act, 1947, the Foreign Exchange (Regulation) Act, 1974, Companies Act, 1956, Prevention of Money Laundering Act, 2002.*

The Indian Penal Code contains provisions to check crimes such as Bank Fraud, Insurance fraud, credit card fraud etc. In case of money laundering several steps have been taken by the government of India to tackle this problem. The Reserve Bank of India has issued directions to be strictly followed by the banks under *KYC (Know Your Customer) guidelines*. The banks and financial institutions are required to maintain the records of transactions for a period of ten years. In order to tackle with computer-related crimes, Information Technology

<sup>11</sup> Ram Narain Poply v. CBI, (2003) Indlaw SC 51.

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Act, 2000 has been enacted to provide legal recognition to the authentication of information exchanged in respect of commercial transactions.

***Sections 43 and 44 of Information Technology Act prescribes the penalty for the following offences:***

- Unauthorised copying of an extract from any data.
- Unauthorised access and downloading files.
- Introduction of viruses or malicious programmes.
- Damage to computer system or computer network.
- Denial of access to an authorised person to a computer system.
- Providing assistance to any person to facilitate unauthorised access to a computer.
- Though the focus of Information Technology Act is not on cybercrime as such, this Act has certain provisions that deal with white collar crimes. Chapter XI deals with the offence of cyber crime and chapter IX deals with penalties and adjudication of crime. Apart from this, many issues are unresolved due to lack of focus. Some of them are:
- Inapplicability
- Qualification for appointment as adjudicating officer not prescribed
- Definition of hacking
- No steps to curb internet piracy
- Lack of international cooperation
- Power of police to enter and search limited to public places
- Absence of guidelines for investigation of cyber crime

There are some measures to deal with white-collar crimes. Some of them are, creating public awareness of crimes through media or press and other audio-visual aids and legal literacy programmes. Special tribunals should be constituted with power to sentence the offenders for at least 5 years and conviction should result in heavy fines rather than arrest and detention of criminals. Unless the people will strongly detest such crimes, it is not possible to control this growing menace.

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## **IX. REASONS FOR GROWTH OF WHITE COLLAR CRIMES IN INDIA:**

In a country like India where large scale starvation, mass illiteracy and ignorance affect the life of the people, white collar crimes are bound to multiply in large proportion. Control of these crimes is a crucial problem for the criminal justice administration in this country.

- a) White collar crimes are committed out of greed. The people who usually commit these crimes are financially secured.
- b) Financial or physical duress.
- c) White collar crimes are estimated to cost society many times more than crimes such as robbery and burglary. The amount of death caused by corporate mishap, such as inadequate pharmaceutical testing, far outnumbers those caused by murder.
- d) The emergence of cutting edge technology, growing businesses, and political pressures has opened up new avenues for these criminal organizations to prosper.
- e) This increase is due to a booming economy and technological advancement such as the Internet and fast money transfer systems. Law enforcement is sometimes reluctant to pursue these cases because they are so hard to track and investigate.
- f) Naturally a question arises that if we have specific legislations to trace out White Collar Criminality then why these offenders go unpunished.

### **Main reasons for which these White Collar Criminals or occupational criminals go unpunished are:**

- i. Legislators and the law implementers belong to the same group or class to which these occupational criminals belong;
- ii. Less police effort;
- iii. Favorable laws;
- iv. Less impact on individuals.

It is for the criminal law administrators to contain the tendency by stringent legislative measures. It is rather disappointing to note that though white collar crimes such as black market activities, evasive price -violations, rent-ceiling violations, rationing-law violations, illegal financial manoeuvres etc. by the businessmen are widespread in society, no effective

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program for repressing them so far been launched by the law enforcement agencies. Perhaps the reason for white collar crimes being carried on unabated is that these crimes are committed generally by influential persons who are shrewd enough to resist the efforts of law, enforcement against them.

### **X. CONCLUSION AND FUTURE PERSPECTIVE:**

As women move into positions of power, they face greater pressure in a male-dominated environment to take risks and possibly engage in illegal or unethical behavior given the opportunity. Crimes of profit, often prompted by greed, are human offenses that transcend the boundaries of gender. The amount of white-collar crime committed by women is difficult to detect because of the secretive nature of the offenses and lack of prosecution, yet it is reasonable to assume that official statistics fail to capture many of these incidents. Extrapolation from the high number of women involved in embezzlement suggests that given the right circumstances, increases in price fixing, insider trading, Ponzi schemes, and antitrust violations by females will occur. Some research suggests that women may become involved in white-collar crime for humanitarian reasons (*to assist and care for family and friends*) or they may act out of greed-similar to the reasons given by male offenders challenges us to look more closely at the reasons behind white-collar crime by women and further investigate the possibility that females commit crime as “greedy entrepreneurs”.

Women and white-collar crime, although discussed for many years, continues to be a fruitful area of exploration. The primary obstacles are obtaining data and moving away from frameworks of male-versus-female stereotypical dichotomies, much like early policing research. A great deal may be accomplished in the future by leaving behind the stereotypes of pink- versus white-collar crime. Explanations of gender gaps are instrumental in understanding criminal behavior, but perhaps future research should consider that crime is neither male nor female, but just human behavior. While research from the United States, Norway, Germany, and Australia on women as offenders and victims of white-collar crime is growing more plentiful, the plight of women in Third World countries remains a largely unexplored area. Unsafe working conditions, inadequate medical care, and reproductive

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issues are huge problems for women in many countries. With some frequency, unsafe drugs and baby formula are sent to other countries by US corporations—an unfathomable act. The number of women killed or injured in countries engaged in the active suppression of women’s rights is a topic too extensive to discuss in detail in this essay, but future research and exposure may save millions of lives. White collar crimes are strikingly different from other traditional crimes.

This difference does not render them any less in terms of impact and damages caused as compared to others. This criminality is now of a global concern. It is increasing at an alarming rate because of the environment conducive to its growth. Though it cannot be eradicated, it can certainly be reduced. This requires the active efforts of governments, public, legal entities and others. It has been acknowledged that criminal activity is a sensible choice. Before committing an offence, the criminals conduct what is called a ‘*cost-benefit analysis*’. Certainly, there has been a spurt in these offences. This implies that as a generality, the benefits outweigh the costs involved. Thus, in order to do away with the same, stringent framework should be adopted and severe penalties should be imposed to deter the criminals.

It is high time that the gravity of the matter was considered. It is the responsibility of everyone involved to take steps to curb this criminality. It is an issue which should attract the immediate attention of international communities. If white collar crimes are not checked, it would act to the detriment of the economic progress of the country and ultimately its over-all development. Even the countries should come up and pool in resources as required creating a strong facade against these crimes.