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Navigating the Complexities of White-Collar Crimes: A Legal Perspective

NAVREET KAMAL KAUR[1]

ABSTRACT

White-collar crimes, though rarely the focus of public discourse, are pervasive in society and often encountered through media or people in our immediate vicinity. These offenses are committed by persons of trust and confidence against an organization, violating established standards of business conduct, practices, or regulations. As American criminologist Edwin Sutherland said in 1939 in his book White Collar Crime, this form of criminal activity is not typically compared to the street crimes in terms of methodical complexity, tactics ingenuity, or degree of sophistication. While these crimes may not be particularly violent in nature, they do have consequences that victimize individuals and organizations alike. White-collar crimes can undermine the integrity of an organization's structure and make a company or an institution a victim. They have the power to bankrupt an organization, deplete individual life savings as well as cost investors significant amounts of money while completely eroding public confidence in systems. This paper will examine the different categories of white-collar crime and analyze the elaborate legal frameworks and regulatory agencies that have been established to counter and prevent such offences.

Keywords*: White-collar crimes, Business Conduct violation, Corporate Crimes, Economic Offenses, Legal Frameworks.*

I. INTRODUCTION

The phrase "white-collar crime" is ascribed to American criminologist Edwin Sutherland, who first used it on December 27, 1939, while addressing the American Sociological Society in Philadelphia. He opined that, crimes committed by "business and professional men", or what he called "merchant princes and captains of finance and industry," tended to receive less attention from the police than those committed by members of the "lower class." He noted that although white-collar criminals, the "robber barons" of the late nineteenth century, were not as suave and deceptive" as those of the Great Depression, they still managed to evade significant scrutiny. Since then, legislation pertaining to financial and white-collar crime has been shaped by Sutherland's theories. The Federal Bureau of Investigation (FBI) provides a condensed

[1] Author is a student at University Institute of Legal Studies, Punjab University, Chandigarh, India.

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definition of white-collar crime as "lying, cheating, and stealing." Although many opponents argue that far too few prosecutions have occurred, the Wall Street crises that began in 2008 resulted in charges for fraud and other financial violations. Prior to that numerous white-collar crimes were prosecuted in connection with financial upheavals such as the savings and loan crises of the early 1980s and the Enron Scandal of the early 2000s.[2]

II. SCHOLARLY PERSPECTIVES: DEFINITIONS OF WHITE-COLLAR AND CORPORATE CRIMES

1. Benson and Simpson, defined white collar crime as "illegal or unethical acts that violate fiduciary responsibility, are committed by an individual or organization in a legitimate occupational role, and are motivated by financial gain[3]."
2. Friedrichs, defines corporate crimes as illegal or unethical acts committed by a corporation, or by individuals acting on behalf of a corporation, in pursuit of corporate interests[4].

Here's how with a few examples we may go on to explain white-collar crimes:

1. Imagine a bank manager named "A" who works at XYZ Bank which is considered highly reputable by the public. A secretly shifts small amounts of money from various customers' accounts into his own, over some time. In this way, he is stealing money from the bank in his capacity; this is also known as embezzlement.
2. Consider another scenario where ABC Solutions is a well-established and prospective technological firm. For instance, Josh working as one of the senior managers has access to private financial data. Just before the company declares that it is about to announce a significant advancement that will increase its stock price significantly. Josh decides to buy the stocks of ABC Solutions. Following the announcement of the company Josh sells his stocks at a huge profit. This type of crime falls under white-collar crimes and refers to insider trading.

III. TYPOLOGY OF WHITE- COLLAR CRIMES

(A) Corporate Fraud:

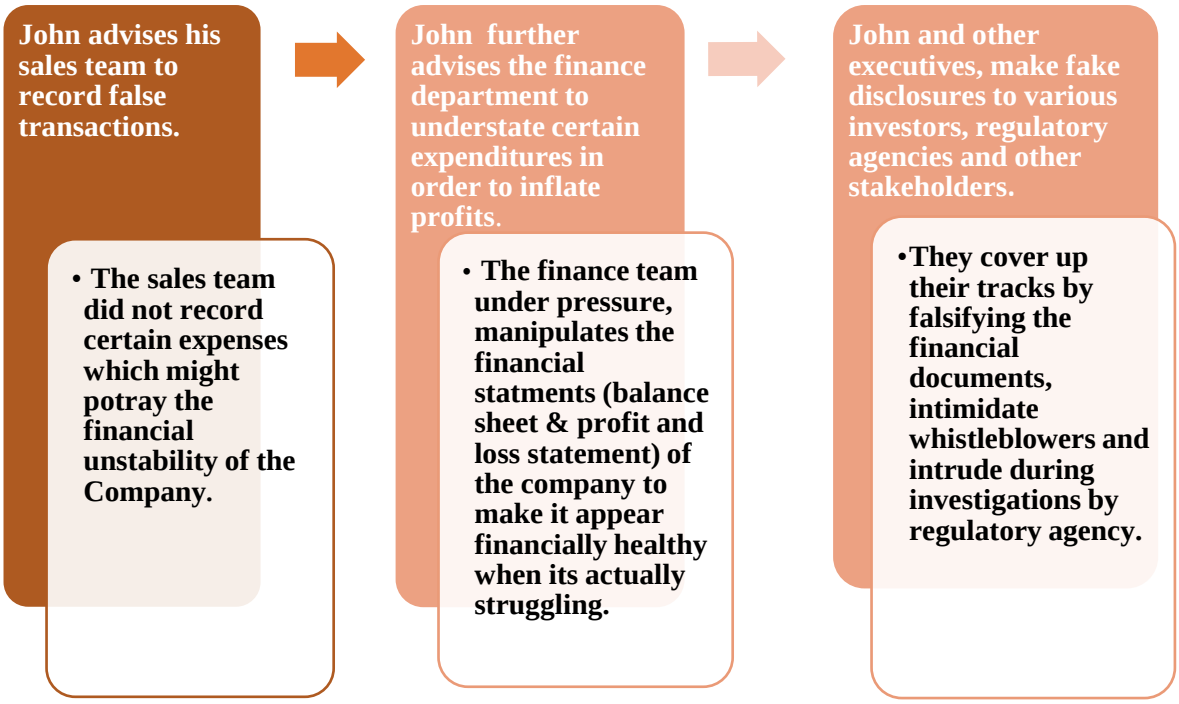
Corporate fraud refers to illegal activities undertaken by an individual or company that are done

[2] JUSTIA, https://www.justia.com/criminal/offenses/white-collar-crimes/ (last visited on June 8, 2024).
[3] MICHAEL L. BENSON, SALLY S. SIMPSON, MELISSA RORIE, JAY P. KENNEDY, WHITE-COLLAR CRIME: AN OPPORTUNITY PERSPECTIVE (Routledge, 2024).
[4] DAVID O. FRIEDRICHS, TRUSTED CRIMINALS: WHITE COLLAR CRIME IN CONTEMPORARY SOCIETY (Cengage Leaning, 2009).

in a dishonest or unethical manner. Corporate fraud is the term for illegal acts or conduct carried out by a company or its executives with the goal of misleading investors, employees, customers, suppliers, business partners, the general public and even the regulatory agencies, about the company's financial situation or other important facets of its operation. These deceptive activities associated with corporate fraud manifests in various forms such as, financial fraud, Asset Theft, Corruption and Bribery, Fraudulent vendors and wage or salary fraud etc.[5].

Fictional Company ABC Corporation To Illustrate Corporate Fraud:

ABC Corporation is a publicly traded corporation that manufactures electronics. John the CEO of ABC Corporation, intends to increase the company's stock price in order to make it seem more lucrative and draw in more investors. To attain his goal, John develops a fraud plan for his corporation.



IV. LEGISLATIONS AND REGULATORY BODIES

The Companies Act of 2013, The SEBI Act of 1992 read with the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulation of 2003, The Benami Transactions (Prohibition) Act of 1988, The Money Laundering Act of 2002, The Conservation of Foreign and Prevention of Smuggling Activities Act of 1974, and The Indian Penal Code (IPC), 1860 are some of the Acts that contain the pertinent provisions regarding

[5] ROMANO LAW, https://www.romanolaw.com/what-is-corporate-fraud/ (last visited on June 3, 2024).

corporate frauds. and the regulatory bodies that keep an eye on corporate frauds are SEBI, SFIO, and various cells established under the Ministry of Corporate Affairs, including the Investor Protection and Grievance-Redressal Cell, the National Financial Reporting Authority (NFRA), the National Foundation for Corporate Governance (NFCG), and the Coordination, Monitoring Committee (CMC) for disappearing companies. Additionally, the Ministry of Finance established various cells, such as CBDT, DRI, ED, and so on.

(A) The Satyam Scandal:

The "Creative Accounting" controversy at Satyam Computer Services, often referred to as the Indian equivalent of Enron, placed India's corporate governance system under Intense Scrutiny. The scandal centered on dishonest auditing methods and corporate governance practices, involving collusion with chartered accountants and auditors. The company's financial statement misled its board, stock exchange regulators. The Satam crises underscored the importance of securities regulations and corporate governance in developing markets. In response to the scandal, the Government of India tightened corporate governance norms to prevent the recurrence of similar frauds in India[6].

(B) Insider Trading:

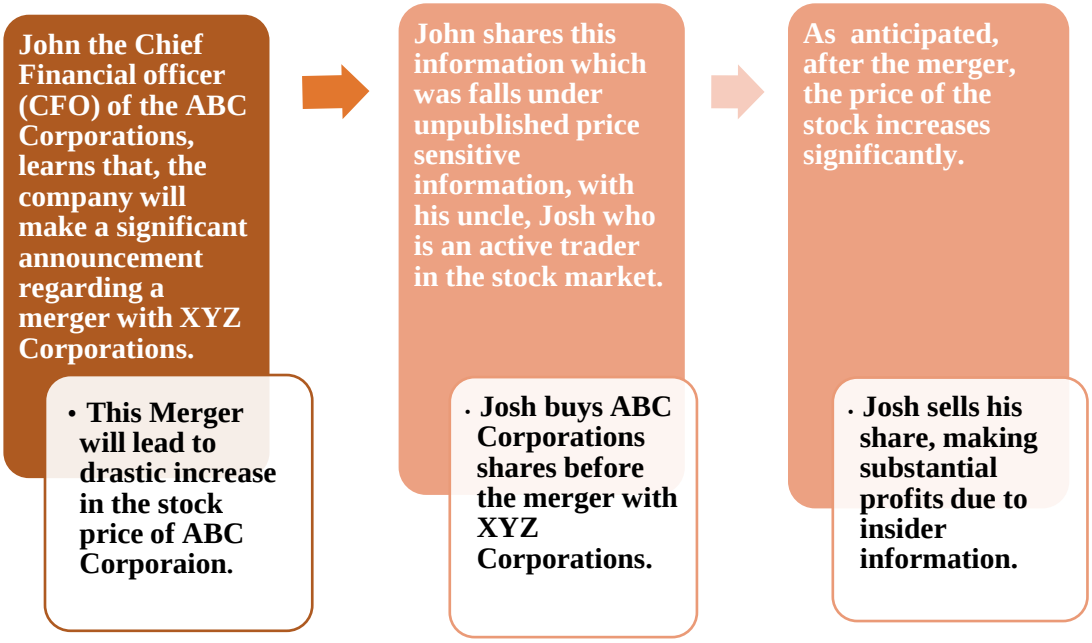
Insider Trading is prohibited by Section 12A clause (d) of The Securities and Exchange Board of India Act, 1992, wherein it provides that for the prohibition of manipulative and deceptive devices, no person shall directly or indirectly engage in insider trading[7]. Similarly, insider trading is also prohibited by various sections and regulations of the SEBI (Prohibition of Insider Trading) regulation, 2015. The term "insider" means any person who is in any way connected with the company, and is also in possession of or has access to unpublished price-sensitive information, regardless of how that individual came in possession of or had access to such information. In generic terms, the act of trading in a company's securities while in possession of confidential or unpublished price-sensitive information is known as insider trading[8].

Illustration: Let's take a hypothetical situation involving a company to illustrate insider trading.

[6] Dr. Madan Bhasin, "*CORPORATE ACCOUNTING SCANDAL AT SATYAM: A CASE STUDY OF INDIA'S ENRON*" 1 EJBSS 25 (2013).
[7] SECURITIES AND EXCHANGE BOARD OF INDIA, https://www.sebi.gov.in/legal/acts/jan-1992/securities-and-exchange-board-of-india-act-1992-as-amended-by-the-finance-act-2021-13-of-2021-w-e-f-april-1-2021-_3.html (last visited on June 4, 2024).
[8] SECURITIES AND EXCHANGE BOARD OF INDIA, https://www.sebi.gov.in/legal/regulations/aug-2021/securities-and-exchange-board-of-india-prohibition-of-insider-trading-regulations-2015-last-amended-on-august-05-2021-_41717.html (last visited on June 4, 2024).

V. LEGISLATION AND REGULATORY BODIES

The Securities and Exchange Board of India (SEBI) was established by the Government of India on April 12, 1988, as the first regulatory agency to oversee the securities markets following the 1991 reforms, based on recommendations from various committees. Initially, SEBI was set up as a temporary administrative agency operating under the general supervision of the Ministry of Finance. However, there was soon a demand for specific enabling and empowering legislation to provide SEBI with official legal authority. Consequently, the Securities and Exchange Board of India Act, 1992, was enacted. As insider trading incidents increased in India's rapidly developing securities market, there was a need for more comprehensive laws to regulate insider trading. Section 30 of the SEBI Act, 1992, empowers SEBI to issue regulations by notification, which are published in the Indian Official Gazette, in line with the Act and any rules made under it to achieve the Act's objectives. Using this authority, SEBI formulated the SEBI (Prohibition of Insider Trading) Regulations, 1992, which are divided into 15 Regulations, 4 Chapters, and 3 Schedules[9].



Case: In the case of Rakesh Agrawal v. SEBI[10], UPSI drove the appellant's transaction. Rakesh Agrawal informed his brother-in-law about UPSI regarding a foreign joint venture that his company was negotiating and requested that he purchase stock in the business. By guaranteeing that the foreign joint venture partner would get at least 51% of the company's shares following an open offer in accordance with SEBI's former SEBI (Substantial Acquisition of Shares and

[9] Roopanshi Sachar & Dr. M. Afzal Wani, "*REGULATION OF INSIDER TRADING IN INDIA: DISSECTING THE DIFFICULTIES AND SOLUTIONS AHEAD*" 2 JCIL 3 (2016).
[10] Rakesh Agrawal v. SEBI, [2004] 49 SCL 351 (SAT).

Takeovers) Regulations, 1997, this was necessary to secure the deal's success. Despite the fact that it was predicated on the UPSI in relation to the joint venture, this was seen as a valid corporate objective. The only motivation for Rakesh Agrawal's brother-in-law to trade was to make sure the joint business was successful[11].

VI. TAX INVASION

The majority of people in India do not file their taxes or they try to circumvent them by employing illegal means or by exploiting Tax law advantages. The illegal means by which people, businesses trusts and other entities evade paying taxes is referred to as "tax invasion". In order to reduce or avoid paying taxes, it entails deliberately lying to tax authorities about the true nature of their business by understating their expenses or declaring lower incomes, profits, or gains. Money that could have been used for social and economic development is instead being spent on antisocial activities[12]. When a tax payer uses any of the following strategies, it is considered as tax evasion[13].

(A) Recent frameworks and regulatory bodies:

Recent major initiatives in this regard include[14]:

1. The establishment of the Special Investigation Team (SIT) on Black Money, which is led by two former Supreme Court judges,
2. Establishing the Multiagency Group (MAG) to investigate new disclosures from the Panama Papers, comprising personnel from the Reserve Bank of India (RBI), Enforcement Directorate (ED), Central Board of Direct Taxes (CBDT), and Financial Intelligence Unit (FIU),
3. Actively collaborating with other countries to support and improve information sharing under Double Taxation Avoidance Agreements (DTAAs), Tax Information Exchange Agreements (TIEAs), and Multilateral Conventions. This includes joining the Multilateral Competent Authority Agreement regarding the Automatic Exchange of Information (AEOI) and having an information sharing agreement with the United States under its Foreign Account Tax Compliance Act.
4. The Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax

[11] SCC TIMES, https://www.scconline.com/blog/post/2023/05/11/treatment-of-bona-fide-trades-under-sebi-insider-trading-regulations/ (last visited on June 8, 2024).
[12] Ishwarya.S, "*Tax Evasion and Tax Avoidance- Impact on Indian Economy*", 11 IJCRT a542 (2023).
[13] Dr. Mohmmad Iqbal Darzi, "*Tax invasion in India: A Study of Its Impact on Economy*", 08 IJREISS 247 (2018).
[14] Karan Singh, Dr. Vivek Agrawal, "*Tax evasion & black money generation in India: A conceptual analysis with reference to income tax law*" 3 IJARnD 951 (2018).

Act, 2015 was passed in order to address the problem of black money hidden overseas more precisely and successfully. After the Neerav Modi case, this Act was changed, and the new law includes provisions for a high 120% tax and penalty on concealed foreign assets. By revising the Prevention of Money Laundering Act, 2002 by the Finance Act, 2015, it is now possible to attach and confiscate property equal in value held inside the nation in cases where the property or profits of crime are stolen or stored outside the nation.

(A) Embezzlement:

The theft of funds or property entrusted to someone is called embezzlement. It is classified as a white-collar crime, which means that it usually includes a breach of trust and is not hostile. Conduct can be considered embezzlement if the person committing it, has access to the stolen or misappropriated assets.[15] In simple terms, the misappropriation of another person's money or property or both, for some kind of personal benefit is known as embezzlement. It is a type of financial fraud, which usually occurs when someone has access to money or property because of their position of trust and responsibility or certain obligation, such as in the case of an employee, accountant, bank manager, accountant, or financial advisor. Betrayal of trust is a crucial element of embezzlement, wherein the individual who is tasked with protecting the funds instead ends up utilizing them for personal or illegal gains[16].

(B) **Money Laundering**

Money laundering is the act of hiding the source of funds acquired through unethical methods. It is the practice of creating an appearance that significant amounts of money earned through violent activities, including drug trafficking or acts of terrorism, came from a legitimate source. Through the ability to conceal and justify earnings from illicit activity, money laundering enables crime to continue[17].

Section 3 of the Prevention of Money Laundering Act, 2002 provides for the offense of money laundering, according to this provision, any individual who directly or indirectly engages in or knowingly assists in activities related to the proceeds of crime, such as concealing, possessing, acquiring, using, or projecting these proceeds as untainted property, is guilty of money laundering. The provision emphasizes that money laundering is not limited to a single action but includes a range of activities intended to obscure the illegal origins of the funds. The

[15] FORBES ADVISOR, *https://www.forbes.com/advisor/legal/criminal-defense/embezzlement/* (last visited on June 4, 2024).
[16] *Id.* at 14.
[17] SSRN, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3860797 (last visited on June 15, 2021).

explanation clarifies that the offense of money laundering is ongoing and persists as long as the person is involved in any activity connected with the proceeds of the crime. This means that the criminal liability continues as long as the individual enjoys or benefits from the proceeds through concealment, possession, acquisition, use, or by falsely presenting or claiming them as legitimate property[18].

For Example: Using money obtained from illicit activities, criminals frequently purchase real estate, sell it swiftly, and transfer the gains into a normal bank account. They could purchase the property through a third party or by using front businesses. It is harder to track down the source of the purchase money once they have sold the property.

VII. LEGAL FRAMEWORK

The global watchdog on money laundering and terrorism funding is the Financial Action Task Force, or FATF. The FATF guidelines are acknowledged as the international standard for combating money laundering and financing of terrorism. India has been a FATF member since 2010. In order to combat money laundering and uphold integrity and governance standards, the Indian government has passed a number of laws, rules, and regulations that are mostly based on the FATF's guidelines. This primer offers a summary of the anti-money laundering legislation in India, even though there are additional anti-corruption laws as well, such as the Prevention of Corruption Act, 1988, and the Foreign Contribution Regulation Act, 2010[19].

VIII. SUGGESTIONS AND CONCLUSION

India's evolving IT and technological landscape, along with shifting societal factors, make it even more imperative to control white-collar crime. To counteract these crimes, various corrective actions should be used. To assist lower the frequency of these crimes, these actions might involve educating the public and implementing several rigorous legal initiatives. The necessity of the hour is to establish special courts, enact strict rules and procedures, and impose severe penalties for these violations. The fact that white-collar criminals are typically powerful and prominent individuals who turn into our nation's deadliest adversaries makes it more imperative that those who commit these crimes face harsh penalties. Many of the biggest white-collar crimes are extremely complex, taking thousands of man-hours and millions of dollars to

[18] ENFORCEMENT DIRECTORATE, https://enforcementdirectorate.gov.in/sites/default/files/Act%26rules/THE%20PREVENTION%20OF%20MONEY%20LAUNDERING%20ACT%2C%202002.pdf (last visited June 4, 2024).

[19] LEXOLOGY, https://www.lexology.com/library/detail.aspx?g=802277f4-aae7-414b-afa7-6d4c58491664#:~:text=The%20Prevention%20of%20Money%20Laundering%20Act%2C%202002%20%28%E2%80%9C,anti-money%20laundering%20standards%20based%20on%20PMLA%20and%20Rules. (last visited on June 8, 2024).

investigate. Because of this, it is challenging to draw comparisons between them and street crime in terms of their ease of detection, tabulation, and reporting. The only ways that professional crimes differ from regular street crimes are in those in a position to do them; for example, bank employees in positions of trust can only commit bank embezzlement, and physicians are often the only ones who can commit Medicaid fraud. Both street and professional criminals have the same objective: to get advantages quickly and with the least amount of effort.

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