FINANCIAL AND WHITE COLLAR CRIMES

By Sushmita Bharti
From Sai Nath University

Introduction

A crime is an unlawful act punishable by a state or other Authority. An action or omission which constitutes an offence charge with or find guilty of an action against an individual that requires compensation. Criminal offence is normally prosecuted by the state or the commonwealth.

Criminal law was brought in India because crime was to be stopped.

In Ancient India there was no criminal law. At that time people believed only on one thing a life for a life. Time had get changed and the people made law based upon their religion. That law accordingly to their Holy Book and their culture.

In the primitive Hindu law, it was the obligation of the ruler to repercussion the guilty party. The Hindu law providers didn’t distinctly recognize common wrong doing, still the distinction in punishment and strategy which they have the criminal part of a contrasted from its common regard. After the triumph of the nation by Muslim Mohammedan criminal law wad presented in our nation and the Indian Courts applied Mohammedan criminal law in the organization of equity.

When the East India company assumed control over the domain of Indian Territory, Mohammedan criminal law was in power. The primary law commission was selected in 1834 with Lord Macleod Anderson and Millet were different individuals from the commission.

Types of Law:

1) Substantive Law:- It regulates the rights, duties and power of parties. Substantive law includes for example criminal law. The Substantive aspect of criminal law is found in the Indian Penal Code which spelt out what offence is and what punishment should be given for each offence.

The part of law that creates and defines rights is:

a) Indian Penal Code: Purpose is to set down that what is right and wrong, and to enforce the penalty for making such as error.

There are Five stages of committing the crime:

i) Motive
ii) Intention
iii) Preparation
iv) Attempt
v) Commission

The Indian Penal Code which was introduced in 1860 is enforced in part of Indian Territory. The Indian Penal code is that it follows the country’s general code of criminal law. The people from accidents were linked to the human body, Property and Reputation.

Some of the other state-related offences pursuant to section 121, Government pursuant to section 121A, public tranquillity and public disturbance pursuant to section 149 and 268 respectively.
The Indian Penal Code also has extra territorial authority in the sense that it applies only outside of Indian Territory to Indian nationals.

The Indian Penal Code is incredibly bright in terms of regulating any person’s crime and crimes, whether in the Indian territories or elsewhere in the world.

2) **Procedural Law**: It lays down the mechanism or procedure through which the rights granted by substantive law may be enforced. Laws that govern the investigation, arrest and trial of the wrongdoer.

The mode of form of conducting judicial proceedings

a) **Criminal Procedure Code**: when the code of Criminal Procedure came into effect in 1973, the 1898 code of Criminal Procedure was in effect. Several changes were introduced in the new code, the main objective of which was to isolate the judiciary from the Executive. There are 37 chapters, 484 sections and two schedules in the Criminal Procedure code, 1973. Code of Criminal Procedure, 1973 applies to India as a whole.

3) **Evidence Law**: It is the branch of the law concerned with the rules and methods by which evidence is admitted and used in a legal trial. It also concerns the type of objections that can be raised to certain evidence being admitted such as, hearsay, illegally obtained evidence from being admissible at trial. Evidence Law deals with the law and procedures by which proof is accepted and includes the form of challenges that may be posed to the inclusion of such facts, such as hearsay, evidence collected unlawfully or a right that prohibits the proof in question from being admissible at court.

**Financial Crime**

Financial Crime threatens the safety and soundness of financial system worldwide. In some cases, these crimes threatens the
security and safety of the nation. These crimes range from fairly simple operations carried out by individuals or small groups to highly sophisticated ring, seeking funding for criminal enterprises. Although financial criminals are often well organised, and president, bankers and citizens can take these steps to thwart their attempts. A financial crime is any non-violent offence that is committed by or against an individual or corporations and results in a financial loss.

When a financial institution is involved, the crime is referred to as a financials sector crime. Tax evasion, embezzlement of company funds and the scale of frictions in insurance plans are just a few examples of financial crimes, while money laundering, credit card fraud and check frauds are all instances of financial sector crime. Most white-collar crimes are classified as financial or financial sector crimes. Although most of financial crimes are felonies that carry harsh sentence, such crimes are becoming increasing common: In 1998 alone more than 300,000 people were arrested for financial fraud, while in 1998, roughly one third of Americans fell victim to some type of financial or financial sector crime.

Financial crimes over the last 30 years has increasingly become of concern to governments throughout the world. This arises from a different type of issues Because the impact of financial crimes varies in different contexts. It is nowadays widely recognised that the prevalence of economically motivated crime in many societies is a substantial threat to the development of economies and their stability.

It is possible to divide financial crime into two essentially different although closely related types of conduct

i. There are those activities that honestly generate wealth for those engaged in the conduct in questions. For example, the exploitation of insider information or the acquisition of another person's property by deceit will invariably be done with the intention of securing material benefits.

ii. There are also financial crimes that do not involve the dishonest taking of a benefit, that has already been obtained or to facilitate the taking of such benefit.

Who commits Financial Crime?

There are essentially seven groups of people who commits various types of financial crime.

i. Organised crimes, including terrorist groups are increasingly perpetraring large scale frauds to fund their operations.

ii. Corrupt heads of state may use their positive and powers to loot the coffers of their countries.

iii. Business leaders or senior executives manipulate or misreport financial data in order to misrepresent a company's true financial positions.

iv. Employ from the most senior to the most junior steal company funds and other assets.

v. From outside the company's flow can be perpetrated by customers supplier contractor or by a person with no connection to the organisation.

vi. Increasingly the external fraudsters is colluding with an employee to achieve Bigger and better results more easily.

vii. The Successful Individuals criminal, serial or opportunist fraudsters in possession of their proceeds are a further group of people who have committed financial crime.

The main types of Financial Crime
Financial crime is commonly considered as covering the following offences:

- Electronic Crime
- Bribery and corruption
- Fraud
- Money laundering
- Information security
- Market abuse and inside dealing
- Terrorist financing

**Financial crime linked to terrorist financing**

Terrorist require financial support in order to achieve their aims and a successful terrorist group, like any criminal organisation.

It is generally believed that terrorist organisation raise funds by the following means:

- State sponsors
- Criminal activity
- Self-financing
- Legitimate

**Firm react to a suspected fraud**

A financial institution should take appropriate action where a corporate customer, a member of its senior management of the customer is the subject of an investigation by a law enforcement agency.

Consideration should also be afforded to obtaining appropriate legal advice to reduce the risk that:

- Customers transfer fraudulent funds.
- Transfer of assets, including money or other negotiable instruments.
- Constructive trust claims are made against the bank by third parties.

- Assets under management are not negotiated without proper authority in law.

**Financial Sector vulnerable to fraud**

Due to the often complex nature of financial services, detecting and preventing fraud within the financial sector poses an almost pathless challenge. The threats are both domestic and international. Internal and external fraudsters combine to commit significant fraudulent acts.

The victims may be the financial sector firms themselves in the customers of these firms. The proceeds of fraud are rarely generated in cash.

**White Collar Crime**

White collar crime is a non-violent crime where the primary motive is typically financial in nature. White collar criminals usually occupy a professional position of power and one that commands well above average compensation.

The term “White collar crime” was coined in the 1930s by sociologist and criminologist Edwin Sutherland. He used the phrase to describe the type of crime commonly committed by “persons of respectability”- people who are recognized as possessing a high social status.

Prior to Sutherland introduction of the concept of white collar crime, the upper classes of society were thought to be largely incapable of society were thought to be largely incapable of engaging in such criminal activity.

**Blue Collar Vs White Collar Crimes**

The difference between white collar crime and blue collar crime stuns from the different
types of criminal activity that the criminal has access to engage in.

Blue-collar crime, because of the move limited means of the people committing it tends to be more straight on-robbery, burglary, etc. In contract, white-collar criminals are more often in a position such as being a loan officer in a bank-to commit widespread and complex fraud schemes.

Types of White-Collar crime

White-Collar crime encompasses a wide range of offenses, including the following:

I. Fraud:- It is a board term that encompasses several different schemes used to defraud people of their money. One of the most common and simplest is the offer to send someone a lot of money if they will simply send the fraudster a little money. The fraudster gets the money that is sent to him but never sends out the money he promised to send.

II. Inside Trading:- It is trading done with the benefit of the trader having material non-public information that gives him an advantage in the financial markets. For example, a person working for a company may know that company A is preparing to acquire company B. The employee can purchase shares in company B with the expectation that the company’s share will rise significantly when the acquisition becomes public.

III. Bribery:-It is a common for white collar employees to use bribe or facilitate payments to achieve business goals, resulting in reputational loss and severe penalties for companies. A of 2018, corruption costs the global economy $3.6 trillion each year, according to the world economic forum. At the end of the 20th century, bribery scandals gradually increased, loading some states to regulate these crimes by border laws.

IV. Money Laundering:- Money obtained from illegal activities is considered dirty, and the process is laundered to make money look clean. It is a necessary service, especially for those dealing with large cash. In money laundering cases, the investigation usually covers the laundering itself, and the criminal activity from which the money laundered was obtained. The most common is precious metals, real estate, international trade, and virtual currency such as Bitcoin.

Criminals use several money laundering methods. Criminals dealing with money laundering earn their income in many ways, such as healthcare fraud, human and drug trafficking, terrorism and public corruption.

V. Embezzlement:-Embezzlement is a theft or theft crime ranging from an employee taking a few dollars from a cash drawer to a complex scheme to transfer millions from a company's account to the embezzler’s accounts. Here a White-Collar person can slowly smuggle money from the company's income to his own embezzlement, and he can turn all kinds of financial games to prevent this from being understood.

VI. Espionage:- Espionage is typically a white-collar crime for example, a company wants to buy shares from company B and to facilitate this process or A can make a deal with an employee of company A to understand the weakness of the company and cheat the price accordingly and in return for this agreement he can make a payment to the employee.
Penalties of White-Collar Crime

According to the FBI, white collar crime is known to cause damage to the United States, amounting to $300 billion a year. Penalties for white collar offences include fines, community arrest, home detention, paying the cost, restitution, controlled release, and imprisonment. The Federal penalty Directive recommend longer prison terms when at least one victim suffers serious material damage. Both state and federal laws list activities that constitute white collar criminal offences. The U.S constitution of the Trade Clause gives the Federal government the power to regulate white collar crimes. Federal agencies such as the FBI, the Securities and Exchange Commission (SEC), the Internal Revenue Service enforce white-collar criminal law.

Risk Management of White Collar Crime

White collar crimes are generally detected through internal monitoring, audits or reporting system. Informants in corporate and international companies report internal irregularities via email and telephone and initiate an internal investigation process. For example in some companies, high status profession are often self-regulated, and covering up and protecting criminals instead of punishing criminals may be a company's primary concern.

Penalties imposed on disciplinary board member may include suspension, reprimand, temporary or permanent termination of licenses and membership. They may offer annoying employee the chance to leave by agreement to avoid any scandal. But it is fact that white-collar crimes damaging the sense of justice in an institution, affecting other company employee and society.

An ethical culture can be developed within the framework of an effective compliance program and continuous improvement methods.

As a results, it is important to implement control systems specially prepared for risk management, detecting and preventing crime opportunities and protecting a company and its stake-holders from white-collar crime losses.