



ASIAN PERSPECTIVE ON WHITE COLLAR CRIME AND THE LEGAL REGIME

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Abstract: In recent years due to the onset of globalization and consequent economic prosperity, there is an increase in the commission of white collar crimes. One reason attributed for increase in white collar crimes is the growth of corporate sector. Despite their being legal measures to control white collar crimes, we find that in recent times the Asian region particularly in India big corporate names have managed to escape the clutches of law, partly this could be attributed to the growth of countries as important economic players. Sociologists observe this phenomenon as social deviance; however criminologists consider this as an act of violation of the law with the criminal intent. The SAARC nation's agenda for the welfare of the people of South Asia plays an important role in preventing such crimes. The Prevention of Corruption Amendment Act (2018) of India tries to tackle the problem of white collar crimes. Further the Central Vigilance Commission Act, the Lokpal and Lokayuktha act all have an important role in investigating white collar crimes. The Governance model in South Asia has to take note of the developments around the globe to check the commission of white collar crimes. The Co-operation of International Agencies assisted by local police networks will go a long way in controlling such crimes. Non regulation of white collar crimes may not only negate the economic achievements that the countries are making but also may eat up the social welfare fund of the government. This paper is an attempt to analyse the socio legal problems of white collar crimes in the context of governance model in South Asia.

I. INTRODUCTION

WHITE COLLAR CRIMES THOUGH A PHENOMENON IDENTIFIED BY THE FAMOUS CRIMINOLOGIST EDWIN H SUTHERLAND, ITS DIMENSIONS IN TERMS OF MONITORING LAWS INVOLVED IS A TREND IDENTIFIED POST GLOBALIZATION. THE THRUST OF GLOBALIZATION HAS BEEN TO INCREASE ECONOMIC GAINS TO CORPORATES WORLD OVER INFAC T GLOBALLY THE LEGAL REGIME WAS TUNED TO BENEFIT LENDING OF MONEY BY BIG FINANCIAL INSTITUTIONS INFAVOUR OF CORPORATE JOINTS. MOST OF THE DEVELOPING AND DEVELOPED NATIONS ARE FACING THE PROBLEM OF CORRUPTION IN INTERNATIONAL BUSINESS DEALS.

The U.N. considers white collar crimes as part of transnational organized crime and works with specialized agencies to address the problem. The convention on Illicit traffic in narcotic drugs and psychotropic substances 1998 provides for strategies against transnational crime including money laundering, drug trafficking etc. Since the white collar criminals embezel public funds in one country and fly to another country, the problems of investigation and prosecution are complicated. International extradition agreements and mutual legal assistance treaties remains an effective tool overcome the extra territorial problems of white collar crimes.

Asian region among the different countries in the world presents a unique environment for economic prosperity. Asia is dominated by different political setup, climatic conditions and avenues for growth. China and India are the dominating players in terms of economic progress.

In India in recent times liquor Barron Vijay Malya has been accused by the government of India for having committed fraud worth rupees nine thousand crore. Presently the process of extraditing Vijay Malya is being tried in the United Kingdom court. Similarly, another Indian business man Nirav Deepak Modi is wanted by the Interpol for corruption, money laundering, fraud and embezzlement etc, and is being investigated for a 2 billion US fraud case. Similarly is the case Mehul Choksi. All these cases indicate the SAARC nation adopt strategies to prevent the occurrence of white collar crimes and also assist each other in detecting and arresting criminals.

India has enacted several legal controls to prevent and detect white collar crimes in the year 2016. The government enacted Lokayukta Act for effective control and investigation of Corruption by bureaucrats, ministers etc, similarly, The Prevention and Corruption Act 1988 as amended in the year 2018 tries to prevent corruption in government departments and prosecute public servants involved in corrupt practices. White collar crimes are mentioned likely : 1:Bank Fraud 2:Blackmail 3:Bribery 4:Cellular Phone Fraud 5:Computer Fraud 6:Counterfeiting 7:Credit card Fraud 8:Currency Schemes 9:Embezzlement 10:Environmental Schemes 11:Extortion 12:Forgery 13:Health care Fraud 14:Insider trading 15:Insurance fraud 16:Investment Schemes 17:Kickback 18:Larceny/Theft 19:Money Laundering 20:Racketeering 21:Securities Fraud 22:Tax Evasion 23:Tele Marketing fraud 24:Welfare fraud 25:Weights and Measures. Further the central vigilance commission (CVC) is a body constituted by central government to prevent and check white collar crimes. In 1962, a Committee on Prevention of Corruption known as Santhanam Committee was appointed. This Committee recommended for the establishment of the Central Vigilance Commission as the highest target authority of anti-corruption organization. The recommendations of the committee were accepted and the Central Vigilance Commission was established in 1964.

The Commission is attached with the Ministry of Home Affairs –Government of India, but it functions independently of the Government, and the Ministry cannot issue instructions to interfere with its independent functioning.

The Head of the Commission is designated as Central Vigilance Commissioner and he is appointed by the President for a term of 6 years, or till he attains the age of 65 years.

Corporate fraud will always occur when there is a clear opportunity and when the likelihood of detection appears remote, or where the prevailing corporate culture is insufficiently robust and where there is a general belief the worst that can possibly happen is a simple dismissal.

The Asian region witnessed white collar and corporate crimes during the world economic depression triggered by the wall street financial crisis. However in some Asian countries there is no transparency as far as detection and identification of corporate crimes. Nevertheless research in the area indicates China, Japan, Sri Lanka, Pakistan and Bangladesh including India have witnessed the commission of white collar crimes.

The socio legal dimension in the commission of white collar crime is related to the governance model at least in south Asia. The democratically elected governments in the Asian region have a mandated duty to use governance for eradication of poverty. The budget allocation in these governments has funds reserved for service welfare and alleviation of poverty. While the fruits of economic globalization is benefiting the corporate and hitting the common man. The white collar crimes eat up the funds reserved for the welfare of the poor people.

The Asian region to the guard itself against the western model of economic development which benefits only the process of capitalization, as a consequence, rich become richer and poor become poorer. The United Nations has to adopt the convention or a treaty preventing the commission of corporate crimes and ensure prosecution of the criminals in any country that they are found.

One reason for the lower rate of prosecution and conviction in white collar crime is the difficulty in defining, detecting and investigating it. For some types of white collar crime, such as fraud or embezzlement, the criminal intent is unambiguous. In other instances, the intent is less straightforward, and the persons under investigation may argue that they believed their actions were legal and they have been guilty, at worst, of misinterpreting complex accounting regulations or having made poor business decisions.

IV. RESULTS AND DISCUSSION

II. Asia is one of the most economically dynamic regions in the world but the challenge, in designing and implementing a compliance and anti-corruption program for the region, is that it is made up of a hotchpotch of countries with very different regulatory regimes and business cultures, and vastly different levels of anti-corruption enforcement. Therefore, not only will a compliance program have to be broad enough to encompass all applicable legal and regulatory requirements whether these originate from overseas or from local laws, but the program will need to be sufficiently flexible so that it can be adapted for practical use in each local jurisdiction.

III. Although it is widely accepted that the harmful effects of white collar crime have contributed to the current economic crisis, a spike in this kind of illicit activity does not necessarily have to occur as a result of financial decay. White collar crimes schemes are not simply gains oriented. Among other motivations, white collar crime perpetrators, as respectful individuals who are successfully integrated in society, may operate out of covet, a competitive personality, or merely corporate obedience.

IV. The forgoing discussion makes it amply clear that crime under one name or another has existed from the very beginning of mankind. In fact there is no society in this world that has not confronted with the problem of criminality. As the society developed crime has also increased. Due to the advancement of science and technology newer form of criminality known as white collar crimes was introduced in the field of criminology.

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