
White Collar Crimes in Bangladesh Perspective

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Abstract

The concept of white collar crime is usually associated with Professor E.H. Sutherland whose penetrating work in this area focused the attention of criminologists on its demoralizing effect on the total crime picture. Professor Sutherland pointed out that besides the traditional crime such as assault, robbery, dacoity, murder, rape; kidnapping and other acts involving violence, there are certain anti-social activities which the persons of upper strata carry on in course of their occupation or business. These activities for a long time were accepted as a part of usual business tactics necessary for a shrewd professional man for his success in profession or business. Thus any complaint against such tactics often went unheeded and unpunished. A white collar criminal belongs to upper socio-economic class who violates the criminal law while conducting his professional qualities. Thus misrepresentation through fraudulent advertisements, infringement of patents, copyrights and trademarks, are frequently resorted to by manufacturers, industrialists and other persons of repute in course of their occupation with a view to earning huge profits. Of all the factors, the economic and industrial growth throughout the world has perhaps been the most potential cause of increase in white collar crimes in recent years including in Bangladesh also.

Keywords: White Collar Crime, Corruption, Upper socio-economic class, Shares, Trademarks.

1.1 Introduction

It is common knowledge that certain professions offer lucrative opportunities for criminal acts and unethical persons in business, various professions and even in public life. They tend to become unscrupulous because of their neglect at school, home and other social institutions where people get training for citizenship and character building. These deviants have scant regard for honesty and other ethical values. Therefore they carry on their illegal activities with impunity without the fear of loss of

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prestige or status. The crimes of this nature are called white collar crimes and they are essentially an outcome of competitive economy. It should not, however, be concluded that there was no such problem or awareness of it until Sutherland focused his attention on this variety of crime about forty years ago. Sutherland started a systematic research into the criminal practice of the elites usual reports had a tendency, he argued, to give an impression that criminality largely has been concentrated in the lower class and economically underprivileged people. The reports gave a misleading idea that respected people including highly placed business persons and political persons are righteous and free from criminality. The rise of white collar criminality in many countries (including Bangladesh) has coincided with the progress made in those countries in the economic and industrial fields.

It is hardly surprising that the two processes should go together considering the most of the white collar crimes are directly or indirectly connected with production and distribution of wealth. The industrial revolution had initiated the great social changes in the economic and social structure of property, comprising the transformation of an increasing proportion of wealth from property is tangible, visible and mainly immovable goods into ownership in intangible and invisible powers and rights such as shares, trademarks, patents, copy-rights etc coincided with the growth of the large-sized corporations replacing individual entrepreneurs. This development *inter alia* led to concentration of economic and consequent political power in a few hands, absentee ownership and impersonal monopoly, emphasis on money and credit and decline in the sense of social responsibility on the part of owners of large property. The advance of technological and scientific development is contributing to the emergence of mass society with a large rank and file and small controlling elite, encouraging the growth of monopolies, the rise of a managerial class and intricate institutional mechanisms. Strict adherence to a high standard of ethical behavior is necessary for the event and honest functioning to the new social, political and economic processes.

1.2 Objectives of the Study

This research topic deals with the crime which relates to white color crimes. The objectives of this research are as followings.

- a) Whether White Collar Crime Negative Impact in Corporate sector?
- b) The remedy in case of White Collar Crime.
- c) To evaluate the statutorily provision & other legal context relating to

research topic.

- d) To identify the problems of the White Collar Crime in case of such crime.
- e) To accumulate the wide ranging & reliable information about the White Collar Crime.

1.3 Research Methodology

This research is conducted on the basis of data collection of primary and secondary sources. The methodology followed throughout the research paper has been point out below:

- a) Dividing the research paper into different sections.
- b) Collection of study materials with the help of the concerning teachers' researches friends and others regarding the person and institutions.
- c) Study and discussion with the concern persons.
- d) Concentrated study through many books, journals, national and international newspapers.

1.4 Importance of the Study

The white collar criminal always has the initiative to commit their crimes. They have no respect for society and their victims. White collar criminals consider your humanity as a weakness to be exploited in the execution of their crimes. By the humanity, I mean ethics, morals, and our great laws that create the presumption of innocence until proven guilty. Our trust, morality, ethics, and our great legal system limit your behavior, while giving white collar criminals freedom to commit their crimes and obstruct justice. The researcher tried to describe the future conditions and consequence of this matter on practical scenario. There is no complete research on this topic. So this research will contain great importance for the government of our country.

1.5 Definition of white collar crime

The concept of white collar crime found its place in criminology for the first time in 1941 when Sutherland published his research paper on white collar criminality in the American sociological review. He defined white collar crime as a crime committed by persons of respectability and high

social status in course of their occupation. A white collar criminal belong to upper socio-economic class who violates the criminal law while conduction his professional qualities. Thus misrepresentation through fraudulent advertisements, infringement of patents, copyrights and trademarks, are frequently resorted to by manufacturers, industrialists and other persons of repute in course of their occupation with a view to earning huge profits. Other illustrations of white collar criminality include publication of fabricated balance sheets and profit and loss account of business, passing of goods, concealment of defects in the commodity for sale etc. Professor Southerland further pointed not that a white collar crime is more dangerous to society than ordinary crimes because the financial loss to society from white collar crimes is far greater than the financial loss from burglaries, robberies larcenies etc.

Sir water Reckless, an eminent American criminologist suggests that white collar crime represents the offences of businessmen who are in a position to determine the policies and activities of business.

Referring to this variety of the upper would of crime, Barnes and Testers quoted Lord Acton who said, power tends to corrupt and absolute power tends to corrupt absolutely. Whenever citizens of a particular community become apathetic to the working of the in government, grafts, corruption and alliance between public servants and the criminal world are common phenomenon resulting into breach of trust, fraud and other malpractices.

2.1 Historical Background

The concept of white collar crime is usually associated with *E.H. Sutherland* whose penetrating work in this area focused the attention of criminologists on its demoralizing effect on the total crime picture. Sutherland pointed out that besides the traditional crime such as assault, robbery, dacoity, murder, rape; kidnapping and other acts involving violence, there are certain anti-social activities which the persons of upper strata carry on in course of their occupation or business. These activities for a long time were accepted as a part of usual business tactics necessary for a shrewd professional man for his success in profession or business. Thus any complaint against such tactics often went unheeded and unpunished. It must, however, be stated that Sutherland was preceded by other writers who focused attention on the dangers to society from the upper socio-economic group who exploited the accepted economic system to the detriment of common masses.

Thus Albert Morris refers to a paper entitled ‘Criminal Capitalists’ which

was read by Edwin C. Hill before the International Congress on the Prevention and Repression of Crime at London in 1872. In this paper the learned writer underlined the growing incidence of crime as an organized business and its evil effects on society.

In 1934, Morris drew attention to the necessity of a change in emphasis regarding crime. He asserted that anti-social activities of persons of high status committed in course of their profession must be brought within the category of crime and should be made punishable. Finally E.H. Sutherland through his pioneering work emphasized that these 'upper world' crimes which are committed by the persons of upper socio-economic groups in course of their occupation violating the trust, should be termed "White Collar Crime" so as to be distinguished from traditional crime which he called, "Blue Collar Crime". Thus, he observed that if a border shoots his wife's lover, that is not a white collar crime, but if he violates the law and is convicted in connection with his business, he is a white collar criminal.

2.2 Nature of white collar crime

Professor Sutherland presented his concept of white collar crime in his address to the American sociological society in 1949. Sutherland defined white collar crime as crime committed by a person of respectability and high social status in the course of his occupation. Later, he seems to have added a refinement to the definition by defining a white collar criminal as a person of the upper socio-economic class who violates the criminal law in the course of his occupational or professional is more dangerous to society than ordinary crimes, firstly, because of the were higher and, secondly, because of the damage inflicted on public moral. Comparing the financial losses resulting from white collar crimes with those from ordinary crimes, he observes.

The financial loss to society from white collar crime is probably greater than the financial loss from burglaries, robberies and larcenies committed by persons of the lower socio-economic class. The average loss per burglary is less than one hundred dollars, a burglary which yields as much as fifty thousand dollars is exceedingly rare, and a million dollar burglary is practically unknown. On the other hand, there may be several million dollar embezzlements reported in one year. Embezzlement, however, are peccadilloes compared with the large scale crimes committed by corporations, investment trusts and public utilities holding companies, reports of fifty million dollar losses from such criminal behavior are by no means uncommon.

Regarding the damage to morale and institutions, Sutherland expresses the view that the financial loss is less important than the damage to social relations since it creates distrust, lowers morale and produces disorganization on a large scale. On the other hand, the social damage from ordinary crime is said to have relatively little effect on our institutions and social organizations. How legal institutions and laws are brought into contempt and disrepute is illustrated by Marshall B. Clinard. He points out that the wartime black market crimes set an example of disobedience of law by presumably reputable businessmen for more flagrant than in the case of most robberies burglaries and larcenies.

2.3 Contributing factors of white collar crime

Of all the factors, the economic and industrial growth throughout the world has perhaps been the most potential cause of increase in white collar crimes in recent years. The changing socio-economic scenario of the society coupled with increase in wealth and prosperity has furnished opportunities for such crimes. Commenting on the growing incidence of white collar crime in India, the law commission in its twenty ninth report observed that modern scientific and technological developments and monopolistic trends in business world have led to enormous increase in white collar crimes.

The post-independence period in India ushered an era of welfare activities which necessitated regulatory measure on the part of government of control means production and distribution so as to sub-serve the common good. The contravention of such regulatory measures generally gives rise to white collar criminality.

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2.4 Classification of white collar crime

White collar crimes are as difficult to detect as they are easy to commit. The detection mechanisms on which police and government traditionally

rely seem singularly inadequate for this vast new body of crimes. White Collar Crimes may be divided into Occupational Crime and Organizational Crime but in common parlance there exist 10 popular types of White Collar Crimes as:

Bank Fraud: to engage in an act or pattern of activity where the purpose is to defraud a bank of funds.

Blackmail: A demand for money under threat to do bodily harm, to injure property or to expose secrets.

Bribery: when money, goods, services or any information is offered with intent to influence the actions, opinions and decisions of the taker, constitutes bribery.

Cellular Phone Fraud: unauthorized use or tampering or manipulating cellular phone services.

Embezzlement: when a person who has been entrusted with the money or property, appropriates it for his or her own purpose.

Counterfeiting: Copies or imitates an item without having been authorized to do so.

Forgery: when a person passes false or worthless instruments such as cheque or counterfeit security with intent to defraud.

Tax-Evasion: frequently used by the middle — class to have extra-unaccounted money.

Adulteration: Adulteration of foods and drugs.

Professional crime: Crimes committed by medical practitioners, lawyers in course of their Occupation

2.5 White collar crime in certain professions

Some of the professions involving technical expertise and skill provide sufficient opportunities for white collar criminality. They include medical profession, engineering, legal practice, private educational institutions etc.

2.5.1 Medical Profession

White collar crimes which are commonly committed by persons belonging to medical profession include issuance of false medical certificate, helping illegal abortions, secret service to dacoits by giving expert opinion leading to their acquitted and selling sample drugs and medicines to patients or chemists. Bribery, corruption and abuse of power have become inevitable part of all types of institutions of Bangladesh; health sector is not an exception to this. Patients of different government hospitals do not get medicine, which they are supposed to get. Rather some officials of the hospitals sold the medicine at a lower price to the surrounding medicine shops. Through this process lac taka's medicine of Dhaka Medical college Hospital are trafficked and sold.

In 2005, health sector, among others, was identified as one of the most corrupt sectors. Health Complex (61.9%), Medical College Hospital (17.06%), Office of Family Planning (5.95%), Office of Civil Surgeon (1.98%), specialized-hospital (1.59%), private clinic doctor (4.37%) were the sub-sectors to be involved in corruption. Among different types of corruption in health sector, the most prevalent were misappropriation (43.7%), negligence of duty (31.1%), abuse of power (11.1%), bribery (8.7%), and cheating (2.4%). In this sector, the first class officers were mostly involved in corruption, which constituted 62.4 percent.

Doctors are said to have involved in money-making malpractices, such as prolonging treatment, issuing false medical certificates, helping in illegal abortion, giving simulated expert opinion, and referring patients to diagnostic centers, from where they get regular commission. Some medical officers prepare annual budget of government hospitals, showing cost, many times more than the actual one, of various medicines and other medical instruments, which account for 100 crore taka loss of the national treasury

2.5.2 Engineering

In the engineering profession underhand dealing with contractors and suppliers, passing of sub-standard works charged labor are some of the common examples of white collar crime. Scandals of this kind are reported in newspapers and magazines almost every day. Engineers have lot of opportunities to do corrupt practices, which they are alleged to do by underhand dealing with contractors, letting perfunctory construction of infrastructure, including road, building, bridge, culvert etc. The transaction of public procurement contracts creates ample opportunities of corruption

for the engineers. Public procurement contracts are supposed to go to the lowest bidder, but in many of the cases they do not, as appropriate authority is bribed. “Even an award in favor of the lowest bidder may involve corruption, if the firm has paid the highest bribe to bring this about. The scope for exchange of money remains because normally there are ways in which the lowest bidder may be eliminated on technical (e.g. specifications, quality) or procedural (e.g. the ways the documents have been drawn up) grounds. In this latter case, the tender committee member’s gain the cost of the bidding firm, not the state, at least in the short runs. In the long run, the state is the likely loser because the contracting firm may try to recover the bribe to the tender committee by again bribing the supervisors to take a sleepy attitude toward the quality of work done, services rendered, or materials supplied.”

Abuse of tender of the road development projects of LGED has become usual incident. The cadres of government party are forcibly taking the tender before opening the tender box.

They get construction works by underhand dealing with the authority, namely, engineers. For cadres, it is a profitable business, as they make huge amount of money out of the construction works, but they are not at all committed to their work. An investigating Committee has revealed financial irregularities of 8 crore taka by three officials of Chittagong WASA, including Chief Engineer, who were later on suspended. In a project 1 thousand 2 hundred 25 metric ton wheat was allotted, of which 9 hundred 10 metric ton was sold out in black market by the engineers of the Water Development Board.

2.5.3 Legal profession

In Bangladesh the lawyer’s profession is not looked with much respect these days. There are two obvious reasons for this. The deteriorating standards of legal education and unethical practices resorted to by the members of legal profession to procure clientage are mainly responsible for the degradation of this profession which was one considered to be one of the noblest vocations.

2.5.4 Educational Institutions

Yet another field where white collar criminals operate with impunity are the privately run educational institutions in this country. The government bodies of these institutions manage to secure large sums by way of

government grants or financial aid by submitting fictitious and take details about their institutions. The teachers and other staff working in these institutions receive a meagre salary for less than what they actually sign for, thus allowing a big margin for the management to grab huge amount in this illegal manner. Yet another field where white collar criminals operate with immunity are the privately run educational institutions in this country. The governing bodies of these institutions manage to secure large sums by way of government grants of financial aid by submitting fictitious and fake details about their institutions. The teachers and other staff working in these institutions receive a meagre salary far less than what they actually sign for, thus allowing a big margin for the management to grab huge amount in this illegal manner. The victimized teachers can hardly afford to complain about this exploitation to high ups because of the fear of being thrown out of job. They are, therefore, compelled to compromise with the situation. Although the Government has introduced the scheme of treasury-payments for teachers of private institutions, but the problem still persists in one form or the other. That apart, fake and bogus enrolment of students who are residing far away from the place of location of these institutions is yet another source of illegal earning for them. They charge huge amounts by way of donations or capitation fees from such needy students to appear in different examinations on the basis of manipulated eligibility certificates or domicile certificates in return for huge sums. These dishonest and unscrupulous practices have damaged the standard of education in Bangladesh to such an extent that it is causing an irreparable loss to the younger generation.

More often than not, these privately managed educational institutions as also those imparting some professional education enjoy the patronage of some influential politicians and many of them are even owned by them. Many such institutions are virtually non-existent and are functioning as commercial shops, enabling the students to get degrees on payment of huge sums in beaten violation the government rules, regulations and norms. The magnitude of this white collar criminality has adversely affected the standard of education in most States, and, therefore, the problem needs to be tackled through stringent statutory measures.

2.5.6 Corruption of Judges

Judges were punished for their proved involvement in corruption. Out of them 4 judges were given forced retirement, 4 were recommended to be sacked. Permission of the High Court Division was sought to file departmental cases against 7 judges. Among the judges 2 held posts equivalent to District and Sessions Judge, 4 were Additional district and

Sessions Judges, 7 were Joint District Judges and 2 were Senior Assistant Judges. The Bureau of Anti-Corruption and Intelligence Branch had received allegations against 8 judges about their involvement in taking bribery and corruption. All of them are owners of crores of money. They have industries, factories, luxurious abode and a number of flats in their name or names of their family members.

2.5.7 Corruption of Government Officials

Corrupting, bribery, and abuse of power are not related to any specific government of Bangladesh. In one of their report in 2002, Transparency International identified police department of Bangladesh as the most corrupt among all the departments. Lower judiciary placed the second position, public health sector third, education sector fourth and electricity sector fifth. In 2005, among the people involved in corruption, 64.1 percent were government officers and staffs. Absolute and discretionary powers, lack of accountability and weak administrative system are the causes of high level of corruption among the government officials. In 38.1 percent corruption cases, no action was taken, in 18.1 percent cases administrative action was taken, in 19.1 percent cases incident of corruption was informed to the authority, in 16.3 percent cases it was not known whether any action was taken. By scanning newspaper reports, Transparency International has found that almost all the government sectors are involved in corruption. Among these education, police, health and family welfare, and local government were the most corrupt sectors. In education sector most of the corruptions took place in high schools (33.55%), and college (15.31%). Abuse of power (59.61%) and bribery (30.95%) were highly used corrupt practices. In the police department, Thana police (77.26%) and traffic police (11.37%) were the most corrupt. Among the methods of corruption, bribery (31.76%), extortion (33.3%), and abuse of power (25.88%) were most prominent. In local government sector, Union Parishad (32.67%), Bureau of local Government Engineering (16.73%), DC office (5.58%), Municipality (9.56%), and UNO office (11.16%) were involved in corruption.

3.1 Growth of White Collar Crimes

The rise of white collar criminality in many countries has coincided with the progress made in those countries in the economic and industrial fields. It is hardly surprising that the two processes should go together considering the most of the white collar crimes are directly or indirectly connected with production and distribution of wealth. The industrial

revolution had initiated the great social changes in the economic and social structure of property, comprising the transformation of an increasing proportion of wealth from property is tangible, visible and mainly immoveable goods into ownership in intangible and invisible powers and rights such as shares, trademarks, patents, copy-rights etc coincided with the growth of the large-sized corporations replacing individual entrepreneurs. This development *inter alia* led to concentration of economic and consequent political power in a few hands, absentee ownership and impersonal monopoly, emphasis on money and credit and decline in the sense of social responsibility on the part of owners of large property.

The advance of technological and scientific development is contributing to the emergence of mass society with a large rank and file and small controlling elite, encouraging the growth of monopolies, the rise of a managerial class and intricate institutional mechanisms. Strict adherence to a high standard of ethical behavior is necessary for the event and honest functioning to 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 economical crimes. The two world wars also contributed towards white collar crimes in a substantial way. The traditional mores and ethical restraints were vitally affected due to the scarcity of things and mounting demands. Since 1947 till the War of Liberation in 1971, our country had faced a tremendous biasness of the government to the West Pakistani people. That discrimination deprived the people of Bangladesh a lot and after the independence many of the people started committing different types of crimes to meet their need, especially white collar crimes. During the last forty years Bangladesh has seen the execution of various five-year plans involving the huge expenditure of the government for various nation building activities. Corrupt officers, businessmen and contractors never had it so good. No doubt the country did make some progress but a big chunk of money earmarked for developmental projects has been pocketed by white collar criminals.

3.2 Present situation of White Collar Crime in Bangladesh

In Bangladesh white collar crimes, in contrast to blue collar crimes, are on the rise. Here politics has criminalized and corruption has taken strong hold. Transparency International, a German based non-governmental organization, has identified Bangladesh as the most corrupt country in the world for consecutive five years. But in this year it increased and positioned after ten People of upper socio-economic class, ruling elites and people of different groups are committing white collar crimes. They are

making huge amount of money by corruption, manipulation and abuse of power causing severe detriment to national economy. The latest size of black money in the country stands at least taka 60,000 crores, a volume which is equivalent to one-third of the gross national income. Their crimes are insufficiently focused, most of the time undetected and remain beyond the domain of legal process. They are very influential in terms of power and money.

In Bangladesh, not only the people of upper socio economic class are involved in white collar crime, the people from top to bottom are practicing this vice, so far corruption, bribery and other malpractices are concerned. All the categories of white collar crimes are present here, but corruption occupies the most prominent place. In identifying and discussing white collar crime in Bangladesh, all pervasive corruption has taken the foremost priority. A person (acting individually or as a member of a group) is said to be engaged in corruption if he

- (i) enjoy any power or position which has been acquired through explicit contract or through solemn promise (stated or implied) in order that by virtue of them he can best protect or advance the goals of those persons or institutions on whose behalf he is required to act, but
- (ii) deliberately abuses his power or position to advance his personal or parochial interest.

If any person wilfully abuses his power for personal or parochial gain, he is said to have committed an act of corruption. Though the term ‘corruption’ has many meanings, but usually it refers to a particular type of exchange, activity or behavior. “For instance, corruption could mean a process of physical decay or degeneration; the loss of innocence; a state of moral impurity or moral deterioration; perversion in taste or language; and also the wrongful, negligent or wilfully corrupt act of a public official in the discharge of his or her public duties. In Bangladesh, corruption stands for ‘the misuse of public power for private profit.’ Corruption, in the reality of Bangladesh, refers to the exchange, activity, process or behavior which takes place when the public domain comes into contact with private domain.

Corruption has gained much currency –in discussion, newspaper reports, columns, rhetoric, but there is dearth of in-depth analysis, article, and empirical study to understand the problem. The causes of corruption, political, economic, and social, need to be identified, both in its origin and impact on the good governance and true development of Bangladesh.

Some researchers try to explain corruption of Bangladesh in terms of 'modernization' theory. According to them, Bangladesh has not reached 'modern' state of policy, still it exists in primitive stage of development, hence showing signs of 'traditional' forms of organization, among which corruption occupies prominent place. Some authors hold that capitalism and search for 'modernity' give rise to corruption. Politicians, bureaucrats, the state apparatus, regulatory policies, political upheaval, tradition, culture and western influence have been also identified for high rate of corruption in Bangladesh.

In addition to the above, some other causes seem to be plausible. Situation may compel to do corrupt practices in the context of gap between legitimate salary and real expenditure. Greed and unlimited desires, in the absence of sufficient social control, seem to contribute to corruption and its voluminous increase. Anomie and social control theorists suggest that when social control is either absent or weakens, it will lead to deregulation in the society, where many problems arise. Bangladesh is passing a transition—from its Endeavour to reach 'modernity' from 'primitive' stage, from rural to urbanization, from agriculture to industrialization. This transition is conditioned by various maladies, including corruption.

Corruption is not a typical feature of less advanced developing societies; it is also present in developed societies. In those societies, corruption is less visible and confined within the people of upper socio-economic class. There the rich, wealthy and senior members of government, bureaucracy and civil society are involved in corrupt practices. Corruption in the developing societies is not restricted within an elite network, rather extends to various levels of socio-economic and political activity. "Corruption in these societies prevails at virtually every point of contact between the state and the market, or the public with the private. In Bangladesh, for instance, as has already been stated, there is ample evidence to show that corruption is not the exception to the rule. It is found at virtually every level of activity in which the state plays a role—from the national, political level to the far-flung rural level. Corruption permeates not only the relatively higher, politically sensitive, and sensitive aspects of state activity, but also its routine functions and structures.

4.1 Are all White Collar Criminals Rich and Powerful?

Most white-collar offenders are ordinary people who got into financial difficulty and who saw their way out of it through illegal and fraudulent measures. Business fraud is "as familiar in their business context as are street crimes in poor communities. It is the "small fish" who gets caught,

while the big fish get away because the "big fish" are more capable of insulating themselves from prosecution scrutiny. When it comes to conviction, the higher socioeconomic status of the offender, the stiffer the sentence juries vote for. Thus, the cards are not always stacked against the small fish. Goals must be achieved, but often this can be accomplished only by cutting corners. Top management does not have to "get their hands dirty" by directly ordering subordinates to break the law. "It is not difficult" to structure their affairs so that all of the pressure to break the law surface at a lower level of their organization or a subordinate organization. There are more people occupying small time white-collar positions. So, it would be remarkable if there were many "big fish" arrested, since they are so rare to begin with.

4.2 Why don't White Collar Criminals go to Jail?

Clearly a double standard exists between white-collar crimes and street crimes. The following are some reasons that explain why white-collar criminals are not more rigorously pursued.

The Best Lawyers

White-collar criminals have money and can therefore afford the best legal advice.

Favorable Laws

Laws are generally written in favor of the white-collar criminal. People who commit white-collar crimes are sometimes the same people who are in a position to see to it that their crimes are not defined too negatively.

Individual Perception

Whereas the impact of white-collar criminals on the nation is great, the cost to each individual is small. White-collar crimes do not impact individuals with the same intensity as when one individual is victimized by a petty criminal.

Little Police Effort

Virtually no police effort goes into fighting white-collar crime. Enforcement is many times put in the hands of government agencies (like the Environmental Protection Agency - EPA). Often these agencies can act only as watchdogs and point the finger when an abuse is discovered.

Difficult to Assign Blame

Assigning blame in white-collar crime cases can be difficult. For example, pollution may be the result of corporate neglect, but corporation cannot be sent to jail. Corporations could be heavily fined (a viable option), but the social impact of severely punishing an institution that may provide jobs to hundreds of people, as well as supply social necessities, may be more detrimental than the initial violation of the law.

4.3 Judicial attitude

Generally courts have been giving differential treatment to white collar criminals. Sometimes instead of punishing the guilty courts have used cease and desist orders in case of white collar criminals. It is a technique which is not resorted to for ordinary criminals. As pertinently observed by Taft and England, “We do not warn the burglar to desist, we arrest him forthwith There, however, seems to have occurred lacunas of the judicial attitude in the USA of late as manifested in the famous *General Electric case* of electrical equipment companies decided in the year of 1961. In the words of Taft and England,

“The plea of *nolo contendere* by a person formally accused of a crime is a backhanded plea of guilt. For decades businessmen accused of violating the anti-trust laws have pleaded *nolo contendere* when the evidence against them was clearly overwhelming. Never until 1959 did imprisonment follow such a plea in that year to their astonishment four Ohio businessmen were sentenced to jail for anti-trust law violations.”

Trial courts in Bangladesh so far sometimes fail to realize the gravity of the white collar criminality and, therefore, tend to be contended by awarding light or even token punishments to white collar criminals. The law commission is aware of the judicial smugness which is occurred by the white collar criminals and the dangers inherent in them. In the case of *M. H. Hoskot v. State of Maharashtra, (1954) AIR* the Supreme Court of India has made its approach to white collar crimes absolutely clear. The court observes the economic crimes committed by the upper berth ‘Mafia’ ill serve social justice so that soft sentencing against them is a sort of gross injustice. In Bangladesh, courts have given strict interpretation to the socio-economic statutes which do not require any *mens rea* either in the form of intention or knowledge for committing an offence. This is how it should be thought it may be pointed out that courts have been somewhat reluctant in finding *mens rea* excluded from statutes dealing with more

traditional crimes. It can obviously be deemed as a change in the judicial attitude regarding white collar criminality in Bangladesh.

4.4 Constitutional provisions

Bangladesh constitution is one of the richest constitutions of the world. Hopes and aspirations of the people have been reflected here. As the solemn expression of the will of the people it is the supreme law of the country. The highest law is pledged to ensure exploitation free society. So establishing corruption society is the prime concern of this constitution. The constitution tells equal opportunity of its citizens and invites the state to create the scope of work for the people removing social and economic inequality. Simultaneously, the constitution has the responsibility to the state for ensuring such conditions that prevents the people to earn unearned income. Side by side the constitution has imposed the following duties to the citizens as well as the public servants:

- (i) to observe the constitution and the laws,
- (ii) to maintain discipline,
- (iii) to perform public duties and to protect public property,
- (iv) to strive at all times to serve the people.

4.5 The Anti-Corruption Commission

There has been a major change brought about the Anti-corruption regime in Bangladesh pursuant to the enactment of the Anti-Corruption Commission Act, 2004 which has come into force on 9th May, 2004 vide SRO No. 126- Law/2004 dated 9.5.2004 published in the official Gazette. An independent commission has been established there under for the purpose of effective detection, enquiry, investigation and conduct of corruption cases before the court. On the commencement of this Act, the Anti-Corruption Act, 1957 has been repealed and the Bureau of Anti-Corruption (BAC) has been abolished with all the powers there under hitherto before exercised by BAC and the government has been vested in the Anti-Corruption Commission. As provided under section 20 of the Anti-Corruption Commission Act, 2004 the Commission has the exclusive power to investigate into the offences specified in the Schedule of the Act and the investigating officer duly authorized by the commission shall have the power of the Officer-in-Charge of a Police Station so far the investigation of the offences are concerned. Under this Act the two offences in respect of failure of a person to furnish property statement within the specified time or furnishing false statements and the acquisition

of property disproportionate to declared sources of income have been made punishable under section 26 and 27 respectively.

The Anti-Corruption Commission framed the Anti-Corruption Commission Rules, 2007 dated 29 March 2007 published in an official Gazette. These rules appeared to be somewhat deficient and confusing with regard to the enquiry and investigation of the Anti-Corruption cases. Rule 20 defines that enquiry into the allegations of corruption on preliminary matters with a view to finding the *prima facie* truth or falsehood thereof. This stage is simply a fact finding stage. Under rule 10 the time limit for completion of investigation has been fixed 45 working days from the date of receipt of the order of investigation. In the event the investigation is not completed within the period as aforesaid the investigating officer on obtaining extension of time from the Officer-in-Charge shall complete the investigation within next 15 working days. Section 32 of the Anti-Corruption Commission Act, 2004 contains mandatory provisions of prior sanction of the commission for each and every case of corruption as pre-condition. It puts a bar that no court shall take cognizance of the offence for trial under the Act without the sanction of the commission.⁴⁵ The country just passed an emergency declared by the President on 11 January, 2007. Under the Emergency Powers Ordinance, 2007, The Emergency Power Rules, 2007 had also been framed in respect of speedy investigation and trial certain cases including corruption cases. On the commencement of the Anti-Corruption Commission Act, 2004, the Anti-Corruption Commission has been substituted in place of the government in respect of the investigation, sanction, appeal, revision and withdrawal from the prosecution. Thus during the regime of the caretaker government many political leaders, high officials of the republic as well as the famous businessmen were arrested and prosecuted although very few of them faced punishment regarding their wrong-done due to the faulty legislation and enforcement mechanism in Bangladesh.

4.6 Role of an Ombudsman

Generally an ombudsman acts as the defender of the citizens' right. In this way he may uphold the dignity and image of the public functionaries, which can be deemed as very important criteria in preventing white collar criminality. According to *the Ombudsman Act, 1980*, some powers are conferred to the ombudsmen who are as follows:

- (i) The ombudsman may require any public officer or any person to furnish information or produce any document.

- (ii) The ombudsman shall have all powers of a civil court under the *Code of Civil Procedure, 1908* namely: summoning and enforcing the attendance of a person before him, requiring the discovery and production of documents, requiring evidence of affidavit, requisitioning of public document from any court or office etc.

4.7 Alternative Remedial Measures

In a country like Bangladesh 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. However, some of the remedial measures for combating white collar criminality may be stated as follows:

- (i) Create public awareness against these crimes through the press and other ways.
- (ii) Intensive legal literacy programmes may perhaps help in reducing the incidence of white collar criminality to a considerable extent.
- (iii) Special tribunals should be constituted with power to award sentence of imprisonment up to ten years for white collar criminals.
- (iv) Stringent regulatory laws and drastic punishment for white collar criminals may help in reducing these crimes. Even legislation with retrospective operation may be justified for this purpose.
- (v) A separate chapter on white collar crimes and socio-economic crime should be incorporated in the Bangladesh Penal Code by amending the Code so that white collar criminals who are convicted by the court do not escape punishment because of their high social status.
- (vi) White collar offenders should be dealt with sternly by prescribing stiffer punishments keeping in view the gravity of injury caused to society because of these crimes.

5.1 Recommendations

The following recommendations should be followed to prevent the white collar crimes from the society.

- (i) The existing law does not sufficiently provide compensation to victims of the White Collar crime for injuries caused or loss suffered by them due to the offender's White Collar act. The payment of compensation may be made from the money recovered by the State from the offender by way of fine.
- (ii) White Collar Crime reporting in Bangladesh continues to be faulty even to this day. As a result of this, crimes are either Suppressed, minimized or not reported. The reporting procedure, therefore, needs to be improved.
- (iii) The government may develop a separate authority to monitor the abuse of White Collar.
- (iv) White Collar crime related cases could be adjudicated under the under the special Tribunal.
- (v) Regular training campaigning should be arranged for the skill development of experts who are going to chase this White Collar criminal.
- (vi) The modern western trend favors deletion of all such offences from the White Collar Act which are solely dependent on morality.

7.3 Conclusion

Above discussion clearly shows that the present condition of white collar crimes in Bangladesh is not satisfactory. However, the proposed measures for overcoming the shortcomings of white collar crimes are alarming to all. Independent and particular policy for white collar criminals, they are involving some types of criminals. To avoid these types of criminalities, we should not be shaky about initial problems. We must work hard with all of our sincere efforts determination to prove that the White Collar criminals which once made are not the main problems in our country. Above all, public vigilance seems to be the cornerstone of anti-collar crime strategy. Unless white collar crimes become abhorrent to public mind, it will not be possible to contain this growing menace. In order to attain this objective, there is need for strengthening of morals particularly, in the

higher strata and among the public services. It is further necessary to evolve sound group-norms and service ethics based on the twin concepts of absolute honesty and integrity for the sake of national welfare. This is possible through character building at grass-root level and inculcating a sense of real concern for the nation among youngsters so that they are prepared and trained for an upright living when they enter the public life. Finally, it must be stated that a developing country like Bangladesh where population is fast escalating, economic offences are increasing by leaps and bound besides the traditional crimes. These are mostly associated with middle and upper class of society and have added new chapter to criminal jurisprudence. To a great extent, they are an outcome of industrial and commercial developments and progress of science and new technology.

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