

The Concept of White-Collar Crime: Nature, Causes, Political and Legal Aspects in Accountability and Way Forward

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Abstract

This is admitted fact that the accountability mechanism and legal framework is based on Political will, role of civil society, presence of clean political and democratic governments and corruption free society. However, these elements have never been remained essential in our political and legal systems. In this regard, in third world countries, especially in Pakistan the political leadership and society have surrendered their pivotal role and responsibility being leaders and citizens. The institutions are weak and the society is submissive to elite political power, status and influenced legal framework. In Pakistan the power and authority is not exercised by the institutions but by the individuals. The emergence and advent of the idea of white-collar crime is quite novel in the field of criminology. White collar crime in itself is not new but the generalization of such phenomena and the incorporation of facts concerning attitude, response and unlawful behavior of the upper classes into theories of crime causation is a product of recent efforts (Newman, 1958). The term “white-collar crime” was given by well-known sociologist, Edwin Sutherland during his presentation in 1939 in front of the American Sociological Association. Some critics opined that white-collar crime was imprecisely and lightly defined by Sutherland (Robin, 1974).

Keywords: Political will, Criminology, Conventional Crimes, Accountability Agencies, Willful Default and Public Sector

The Concept of White-Collar Crime

Sutherland in 1949, published his well renowned classic book named “White-Collar Crime”, in which he defined this concept as, “crime committed by a person of respectability and high social status in the course of his occupation” (Sutherland: 1949). Through this definition Sutherland described this peculiar aspect that white collar crimes are committed by individuals/ segments of all social and economic classes/ tiers.

Herbert Edelhertz has given another definition of white-collar crime. His definition of white-collar crime was as “an illegal act or series of illegal acts committed by non-physical means and by concealment or astuteness, to obtain money or property, to avoid the payment or loss of money or property, or to obtain business or personal advantage” (Edelhertz, 1970). Through the examination of definitions of white-collar crime it can be easily differentiated from conventional or ordinary crimes. The white-collar crime can also be differentiated through exploring the characteristics which are related to such a comparison (Croall, 2001). The white-collar criminal’s occupational role is also the distinctive characteristic of this term of white-collar crime (Newman, 1958).

This definition in itself provides for two unique features of white-collar crimes, firstly, white-collar crimes are committed by people of high social status and secondly, these crimes are a result of occupational roles. This definition also differentiates white-collar crimes from other ordinary crimes which we are called conventional crimes. White-collar crime is categorized into four main forms, namely: fraud, corruption, manipulation and theft (Gottschalk, 2010).

Nature and Causes of White-Collar Crime

The motives behind the commission of white-collar crimes primarily are the wish for control in society, fear and anxiety of dwindling from the social status, lack of social consciousness and integrity, weak and ineffective internal controls of organizations and departments, greed and hunger of wealth, monetary and financial gains and ineffective and ineffectual corporate culture in economy (Bucy et al., 2008). The costs of White-collar crimes are both financial costs as well as social costs. When we analyzed the financial costs faced as a consequence of white-collar crimes, same are run in billions per year due to which economies and political systems of developing countries like Pakistan suffer. In addition to economic burden on economy, these crimes also result in a sharp decline in the quality of life, a weaker political/ social order and inflation. Financial cost and impacts of white-collar crimes are much more than the cost suffered due to all the street crimes (Camerer, 1996).

Lack of accountability, opportunity to commit crime, peer support, greed, and loopholes in legal structures, lack of reporting and staying in competition are some of the factors with which most of the experts agreed to be the causes of white-collar crimes except for corporate culture. Some preventive measures are regularly reviewing policies and designing audit and fraud-detection activities in an efficient and effective manner. One of the preventive measures to curb white-collar crimes is the reduction of opportunities of crime by changing organizational structures. Preventive measures to control white-collar crimes include reviewing policies regularly, reducing opportunities to commit crime, observing ethics, enforcement of current laws etc.

Looking at the economic, political and social costs of white-collar crimes in Pakistan, these should be seriously considered by the criminal justice system of Pakistan, which unfortunately is not the case. Somehow, those in power, almost always evade the law by pre-arrest bails and delayed trials. There's hardly any harm to the white-collar criminal's reputation let alone any strict penalties. White-collar crime offenders have influenced the fabric of the society in such a way that have affected the ethics and values which people normally try to maintain in a society.

White-collar crimes are remained subject to criminal laws and criminal justice of the state. But they are not considered as offence in a similar manner as other street offences. Criminologists and criminology dealt with the activities of the lower class offenders in the early days of criminology. They populated courts and prisons. They

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were mostly involved in burglary, assault, theft and murder etc. Many of the criminologists and researchers were of the view that these causes arose from the pathological factors of the offenders, from poverty and from deprivation. This idea was challenged in 1939 by the famous US criminologist Edwin Sutherland. He proposed an alternative idea: “persons of the upper socio-economic class engage in much criminal behavior; this criminal behavior differs from the criminal behavior of the lower socio-economic class principally in the administrative procedures which are used in dealing with the offenders and that variations in administrative procedures are not significant from the point of view of causation of crime”.

By its nature, white-collar crime is non-physical, covert and immediate in impact (Edelhertz, 1970). These crimes are more complex and require more planning and organizing. Therefore, the violators are also different than the criminals who are involved in ordinary crimes. White-collar crimes victimize organization rather than individuals and white-collar criminals are more likely to be employed, they have high education and have almost non-existent prior criminal justice record (Wheeler et al., 1988).

Different forms of white-Collar crimes as narrated in Section 9 of National Accountability Ordinance, 1999 under the definition of the offence of corruption and corrupt practices- (i) receiving of gratification by a public office holder (ii) acceptance of any valuable thing without consideration (iii) if the public office holder dishonestly or fraudulently misappropriates any property entrusted to him (iv) unlawfully obtaining of any property/ valuable thing (v) getting of pecuniary advantage and pecuniary resources disproportionate to his known sources of income being a public office holder (vi) accused under National Accountability Ordinance, 1999, if he misused his authority to gain any illegal benefit (vii) issuance of SRO (Statutory Regulatory Order) to grant concession or benefit in any taxation matter etc. (viii) offence of willful default (ix) offence of cheating and dishonestly inducement to the members of public (x) offence of criminal breach of trust against the members of public at large (xi) offence of criminal breach of trust by a banker, merchant, factor, broker and attorney or agent (NAO, 1999).

White-collar crimes affect all aspects of our lives i.e. public sector, financial sector, political system etc. The criminal activities of the most talented and highly educated individuals harm the entire fabric of the society (Croall, 2001). Greed, opportunity, a sense of entitlement, arrogance, competitiveness, loopholes in corporate and legal structures, and justifications are also some of the motivating factors for white-collar crimes (Bucy, 2012; Shuan, 2008; Liew et al., 2011). The major causes of prevalence of white collar crimes are peer support, corporate culture, lack of accountability, fragile political system and lack of reporting (Bashir et al., 2011).

Generally, white-collar crime is caused by greed, economic difficulty, opportunity to commit crime and situational pressure. The inherent characteristic to get more than

others is one of the major causes of white-collar crime (White-collar crimes in Bangladesh, 2015). One school of thought in criminology is of the view that personality disorders can also shape criminal tendencies in human beings. It takes personality disorders like narcissism and anti-social personality disorders to commit white-collar crimes (McNarma & Barlyn, 2008).

White-collar crimes are protected by professionals. These crimes are on the rise due to the advent of technology and growth of education. These professionals find weaknesses in judicial system and find direct or indirect political support and involvement from the government authorities to facilitate white-collar criminals (Sheriff, 2012). Inadequate supervision and lack of internal auditing lead to white-collar crimes (Hong-Puah et al., 2008).

The “fraud triangle” specifies three motives for employees to commit crime. They are opportunity, pressure and excuses (Wells, 1997). Some preventive measures are regularly reviewing policies and designing audit and fraud-detection activities in an efficient and effective manner. One of the preventive measures recommended to curb white-collar crimes is the reduction of opportunities of crime by changing organizational structures. If the managers and executives observe ethics, white-collar crimes can be reduced.

In past Ehtasab Commission and Ehtasab Bureau were set up in quick succession in 1996 and 1997 respectively by the then political governments. Both the organizations faced much criticism on account of weak and selective accountability. These organizations were later on abolished because of allegations of political victimization by political opponents.

Finally, the National Accountability Bureau (NAB) was established in 1999 by the then military government for curbing the overwhelming rise of corruption in every public sector department during the tenure of the political governments in the preceding decades. NAB had vested with wide range of powers in the matters of arrest, investigation and prosecution. Establishment of NAB started a new era in anti-corruption mechanism through a three pronged strategy; awareness, prevention and enforcement were introduced as totally opposite to the past practice merely relying on enforcement oriented measures (NAB, 1999).

The situation in Pakistan and numerous other developing countries has led to the popularity of concept of Social and political accountability where it is the civil society and media that demands transparent governments and improved service delivery. An important effort in this regard was taken in 2000 when the “Devolution Plan” (DP, 2000) was initiated for launching of local governments. A new local government system was evolved with the design to delegate the financial, administrative and political authority and decision-making capacity to the local level communities through their own elected Nazims, Mayors, and Councilors etc. The aim was to decentralize the administrative powers from provinces to the district level to improve

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accountability and public participation in the administration of public service functions. The need to devolve powers to the grass root level was felt due to an over centralised bureaucratic system which was hampering service delivery and providing rent seeking opportunities through an overly bureaucratic process with no accountability to the community. Local governments were established twice as a result of local government elections in 2001 and then in 2005. This system envisaged certain forms of Accountability and participatory mechanisms in the form of Village and Neighborhood Councils, Citizens' Community Boards, Zila Mohtisib etc. A program for Social Audit at district level was also implemented by UNDP with the help of other international donors (Fayyaz, 2013). This approach allowed greater room for civil society intervention. However, this local government was replaced with new local system.

It is observed that sometime the national interest is comprised in order to gain political benefits. One such example is the National Reconciliation Ordinance (NRO) which was introduced by the then Government to pave the way for the mainstream political parties to join the government. The controversial ordinance was promulgated in order to grant amnesty to all those against whom so called 'politically-motivated' cases were registered between Jan 1, 1986 and Oct 12, 1999. As a result, many people (Geo, 2009) benefited from this law and cases against a number of politicians who had been disqualified earlier were withdrawn. The beneficiaries included politicians, bureaucrats, industrialists and capitalists and the cases withdrawn included murder and corruption cases. This law was repealed by the Hon'able Supreme Court of Pakistan on 16th December 2009.

Political interference is a constant irritant in the working of agencies. To avoid this problem, the Chairman NAB in 2005 delegated certain powers to the Regional Director Generals. This has transferred crucial decision making, like ordering of investigations, arrests, filing of references etc, from individual domain to collective domain. Accordingly, this delegation has made better and prompt decision making. However, it remains a fact that political interference remains a big challenge for all government agencies likewise NAB (NAB SOP, 2015).

The history is witness with examples when Judges were required to take fresh oaths under dictatorial regimes. Such factor is a reason to the judiciary's independence limiting its ability to objectively challenge government actions through constitutional powers. There have been political appointments based on favoritism and political considerations (Jessica, 2007).

During 1985 to 1999, five consecutive elected governments of the two mainstream political parties were dissolved, on the pretext, among others, for being corrupt. The judiciary validated these dissolutions to the extent of even legitimizing take over in 1999.

Transparency International's publications of corruption perception index and corruption barometer provide a global view on corruption in various government departments, political parties and other state organs as well as media and private sector. A majority of people surveyed across globe think that their governments are ineffective in fighting corruption (TI, 2013). It is alleged that uneconomical projects being selected and designed for the purpose of financial kickbacks and political sponsorship.

Political Parties are the platform for the Civil Society to participate in the governance process. Presently there are many political parties enlisted with the Election Commission of Pakistan (ECP, 2014). The major political parties are personality oriented characterized by founder chairpersons or their offspring or dynastic descendants. The financing of political parties and internal democracy remain elusive. Parties' central organizations have little institutional links with the local organizations and there is centralized control over decision making (Wasim, 2012). Ironically, according to a recent survey of Transparency International, the political parties are considered corrupt institution in Pakistan (TI, 2013).

The Political elite along with civil bureaucracy have been juggling the governance function amongst themselves. The elected representatives are not truly representing the Pakistani population as they predominantly originate from wealthy or land owning families (EC, 2002-6. The leadership has never really come up to the mark to set the role models for others to follow. Political leadership is handicapped to hold others accountable due to political exigencies. Fragile political alliances and coalition civilian governments are neither equipped nor willing to either present themselves for accountability or hold others accountable. The democratically elected governments are under constant threat and fear of losing their own positions of power.

The institutions responsible for preventing and controlling corruption do not enjoy credibility. The agencies formed to control and eradicate corruption are generally believed to be victims of corruption themselves and tools of victimization in the hands of the political masters (Amjad , 2007).

The challenge to corruption has to be multi-dimensional. We need to think beyond. We need to make use of a revived judiciary, a vibrant media, politically aware and charged masses, strengthened civil society, and receptive political parties to revive the old culture with old values which glorified honesty and scorned corruption.

Political will against corruption must be openly displayed and propagated by the highest echelons of government and state through regular engagement with public, personal attendance at workshops, seminars and appearance at other public events. Political leadership must set up examples of high morals and ethics for others to follow. Bending the law, beating the system or escaping punishment – and getting away with it – define impunity for corrupt" (TI, 2013) such impunity must end.

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In Pakistan after the promulgation of National Accountability Ordinance, 1999, different mega scams and public fraud are emerged. The most common examples of such scams and organized corruption by white-collar criminals are found when institutions and Regulatory bodies indulge in corruption by way of illegal and poor decision making and not enforcing rules which is detrimental to the national as well as to the institutional interests, especially the poor general public. Such illegal and poor decision making and failure on the part of public institutions can be seen and traced in the scandals like the National Insurance Corporation Limited (NICL) scam, the Rental Power Projects (RPPs), Independent Power Producers (IPPs), Forex scam, Double Shah scam, Land and Property scams some time on behest of political elite and political patronizes, Modarba Scams, etc. where the top decision making apparatus allegedly took decisions resulting in billions of rupees worth loss to these organizations, the general public and the national exchequer. The National Accountability Bureau has claimed that since its inception had recovered more than Rs. 300 Billion approx. through direct and indirect recoveries (NAB Report, 2019).

Way Forward

The curbing of white-collar crimes and accountability of the criminals, efforts are being made through an elaborate set of laws/ rules and institutions, both at the Federal and Provincial levels. The Federal Investigation Agency (FIA) and the National Accountability Bureau (NAB) are dealing with white-collar crimes at Federal level and in the provinces the Anti-corruption Establishments are functioning to investigate and prosecute the white-collar criminals. The main anti-corruption laws include the National Accountability Ordinance (NAO) 1999, the Federal Investigation Agency Act (FIA) 1975, Anti-corruption Establishment Act 1961, the Anti-corruption Establishment Act 1961, the Prevention of Corruption Act (PCA) 1947 and the Pakistan Penal Code (PPC) 1860. The latest law i-e NAO 1999, established the National Accountability Bureau, with wide powers. Additionally, special courts were also established under the NAO 1999 with the prime motive to provide speedy justice in corruption/ white-collar crimes cases which are operating under the respective High Courts.

The main preventive measures as a way forward that can be taken by organizations, public institutions, regulatory bodies and the agencies of state to curb, control and minimize the white-collar crimes: first, banks and credit card issuers should review their policies from time to time in order to prevent credit card frauds and credit cards should not be issued to “faceless” people. Second, as it is deduced from above discussion that one of the major causes of committing white-collar crimes is the opportunity to commit these crimes, therefore, a preventive measure should be taken in reducing the opportunity to commit frauds and design audit and fraud detection systems more effective and efficient. Third, organizational structures and processes should be designed in such a way to reduce opportunity for violations against the

regulations. Fourth, a number of offences are happened to be committed by political persons, officers, executives and managers posted at higher levels of the organizations, so this trend must be stopped and controlled. Fifth, different steps can be taken to re-assure public that fraud, bribery, embezzlement etc. will not be tolerated. Some of these steps are structural reforms, managerial actions, enforcement of current laws and publicized punishments for the white-collar criminals. Sixth, the particular opportunity structure that allows an offence to occur in an organization must be identified first and in this way that crime can be prevented. Seventh, we need a definite change in corporate structures and attitudes, intervention and will of political government to introduce corporate changes and legal improvements in legal system to punish the white-collar criminals and to control corporate as well as white-collar crimes. Eighth, the governments of this country should curb the white-collar crimes and take necessary measures and actions to improve the performance and functioning of the anti-corruption agencies, i.e. the Federal Investigation Agency (FIA), the National Accountability Bureau (NAB) and the Anti-corruption Establishments, so that these agencies must take strict action against the white-collar offenders to recover the looted money.

On the other side the political leadership must openly come out to show commitment for anti-corruption measures to be taken to control the menace of corruption from political system, Govt. departments and society as a whole. Anti-corruption should be the top most agenda item on the political manifestos and the political leadership must make it a regular feature to take the nation into confidence on this important issue. The political leadership, other than observing merit, honesty and integrity in their own dealings must also appear on media regularly to share with the nation the efforts taken by them to control the menace of corruption.

Political leadership by taking the lead in openly demonstrating their dislike against corruption, implementation of rule of law through improved and well equipped legal and political frame work, meritocracy, mobilize social upheaval against corruption, improving coordination among pillars of state and strengthening social accountability mechanisms.

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