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Ombudsman over white collar criminality

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Abstract

White-collar crime has been defined recently because the use of a big position of power for illegal gain that leads to damage or harm to victims as measured by loss, physical harm, and damage to the community moral climate. Most experts agree that the economic impact of white-collar crime is much more costly than ordinary crime. White-collar crime prevalence in India, the laws regarding the white collar crime depends on the precise nature of crime committed. As per the research, robbery, extortion, tax fraud are the crimes committed within the territory of India and there are other such banking related crimes like trading, concealment as these are the simplest opportunities and ways for the powerful white collar criminals to earn in huge amounts during a short period of your time. Though, banking being an industry a well-defined and functional mechanism to make sure fairness and satisfaction to the bank users is vital, RBI has undertaken an outsized number of initiatives on ensuring fair treatment to customers. The Banking Ombudsman Scheme (BOS) attempts to treating the bank customers fairly with the awakening of consumers on the problems of investor/consumer protection. This paper signifies the difference between White collar crimes and Blue Collar Crimes and significant improvements within the banking sector through effective implementation of the Banking Ombudsman scheme.

Keywords: Ombudsman, criminality, illegal, fairness

Introduction

The white collar crime or we will say the “white collar criminality” are often described as the crime committed by an individual of respectability and high social station, within the course of his occupation, consistent with the American Sociologist Edwin Sutherland.

In 1934 Elbert Moris drew attention of world to the need of a change in emphasis regarding the crimes of upper society. He approve that anti-social activities of person of high status committed in course of their profession must be brought with the category of crime and will be made punishable, in any case this Edwin Sutherland, through his extraordinary work emphasised that these “upper class crimes which are committed by the people of upper class or upper socio economic groups in course of their occupation, violating the trust of subordinate class or group of individuals should be termed as “white collar crime” Soon be distinguished from traditional crime which is understood as blue collar crime, after this theory the concept white collar crime found its place in criminology for the primary time in 1941.

So now it defines in a way that, white collar crime is an illegal act or illegal acts or doing of legal act for achieving an illegal objective committed by a person by non-physical and non-violent means to become financially powerful on to avoid payment of legal dues or retain money or property, wrongfully to get wrongful business of private advantage.

As per above definition of white collar crimes contains following attributes- it is a crime, committed by a person of higher class, in the course of his profession or occupation, it is usually a violation of trust, with non-physical means.

Situation in India

India is the seventh largest country of the world, the home of several world leaders and number of industrialist, multi-millionaires, business men and financially powerful people. So, India is also vulnerable for white collar crimes.

In India there has been prevalence of white collar crimes over a period of time, they are spreading like a rapid fire in every sphere of society. Through corruption, one of the species of white collar crime, has been the most talked about issue in all sphere social, economic and political mostly in its two forms including *patronage* and *favouritism*, not much strict action have been taken to eradicate this evil. The Indian Penal Code 1860, is the earliest comprehensive and codified criminal law of India. It specifically does not the mention the word, “white collar crime.” But deals with many offences which are closely linked to white collar crimes, such as bribery and other forms of corruption and many others. No

The reason for enormous increase in white collar crimes in recent decades is to be found in the fast developing economy industrial growth of this developing country. The Santhanam committee report in its findings gave a clear picture of white collar crime committed by persons belonging to higher social strata. It includes business, industrialists, Contractors, suppliers as well as corrupt public officials. The report of the Vivin Bose commission of inquiry which looked into the affairs of Dalmia Jain group of companies 1963, Highlighted that how industrialists indulge themselves in white collar crime such as forgery, fraud, falsification of accounts, tempering with record for personal

Gains and tax, evasions etc. Similar observations were made by Mr. Justice M.C Chagla while dealing with the case of business tycoon Haridas Mundhra, an industrialist and stock speculator sold fictitious shares to Life Insurance Corporation (LIC) and thereby defrauding LIC by 125 crores. Mr. JawaharLal Nehru, (the then Prime Minister), set up a one-man commission headed by Justice Chagla to Investigate. Justice Chagla concluded the matter and Haridas was found guilty and was sentenced to imprisonment of 22 years and T.T. Krishnamachari, the then Finance Minister, resigned from his position.

Satyam Scam, 2009: Satyam was the biggest scam in the history of India. The Satyam scam of 2009 has shattered the peace and tranquility of investors in the share market. The chairman RamalingaRaju has manipulated the financial statement and the books of accounts. Satyam's books of account shows:

- Over stated Assets of Rs. 490 crores.
- Fake cash balance over Rs. 5000 crores in the balance sheet.
- Interest component of Rs. 376 crores which never flowed into the company's coffers.
- Understated Liabilities of Rs. 1,230 crores.

He has also inflated with revenues and net profit figures of the company, with which he was charged with heavy penalty.

Sahara vs. SEBI ^[11]: It was a case of issuing misleading information and clause in prospectus of company.

Here the question raised that whether the private placement of shares can be treated as offer?

In this cases, Sahara India Real Estate Corporation Limited (SIRECL) and Sahara Housing Investment Corporation Limited (SHICL) floated an issue of option of fully convertible debenture (OFCD's) to more than million investors and termed their issued debenture as private placement, with a defense that the company did not intend to get their OFCD's listed because the security which have been issued is a Hybrid Security.

During this period, the company had total collection of over Rs. 17,656 crore. This amount was collected from 30 million of investors.

The Hon'ble Supreme Court on 31st august, 2012 in one of the most anticipated judgment of recent times has directed the Sahara Group and its two group companies SIRECL and SHICL to refund around Rs. 17,400 crore to their investors within 3 months. Supreme Court also ruled that SEBI has myriad powers to invest listed and unlisted companies functioning regarding the issue of securities in order to secure the interest of investors. This was the landmark judgment in the field of Indian corporate Law.

The PNB bank Case: NiravModi and MehulChoksi, in conspiracy with several senior as well as junior officials, defrauded Punjab national bank of several thousand crore of rupees. These PNB officials fraudulently issued LoUs and LoCs on behalf of several companies belonging to the duo for availing buyers' credit from overseas branches of Indian banks. None of the transactions were routed through the Core Banking Solution system, thus avoiding early detection of clear picture fraudulent activity, which was going on since 2011.

Several other cases such as 2g spectrum scam, Adarsh housing society scam, CwG fraud, various land scams etc. Have negatively impacted India's reputation internationally. The infringements are of various kinds with bribery and corruption making 83% of cases. A large part of the frauds also relate to cybercrimes 71%, and diversion of assets 65%. The sector most

affected are financial services 33% and information and entertainment 17%, according to the survey.

Difference between white collar crime and blue collar crime.

White collar crime

- White collar crimes are the crimes committed by people of elite, respectability and high social status, in course of their profession.
- White collar crimes covers criminal activities which are committed by people in the regular course of their business including bribery, extortion, fraud, and embezzlement.
- White collar crimes are performed by people in the course of business committed to become financially powerful. These crimes are committed out of greed and most of the people who commits these crimes are financially stable. The enhancement of technology, growing businesses, and political pressures have created a wide scope for these white collar crimes.
- There are various forms of white collar crime including internet fraud, Stock fraud, Bribery, Income tax evasion, Bank Fraud, Cellular phone fraud, credit card fraud, health care fraud, insurance fraud, etc.

Blue Collar Crime

- Blue collar crime are also known as traditional crimes and it has no official classification. These crimes are generally small scale crimes which are committed by the common people for the immediate benefit or gain to the individual or group involved.
- The term blue collar crime is specifically define those crimes which are committed by someone from the working or lower class of society. Blue collar crime causes injury to people or property, such as burglary, theft, murder, rape, extortion assault and other violent crimes. Robbery and drug crimes are considered to be blue collar crimes.
- Blue collar crime usually used to identify crime, generally of a small scale nature in comparison to white collar crime. It is generally associated to people of the lower section of society. It is to be noted that blue collar crime does not wholly means less earning class, but also includes the unemployed who are also members of the lower classes.
- The strict nature work of blue collar workers, they don't have the access or opportunity to commit crimes within the work organization, such as fraud or embezzlement. These type crimes requires a high status and power within the organization can be done only with help of white collar workers in the organizations.
- But still you cannot say that these white collar workers do not commit blue collar crimes. White collar criminality has a close empathy to the attitudes and values of the culture in their society. This can be clearly identifiable from the fact that white collar criminals are smart, knowledgeable, financially stable, and successful and men of high social status as compared with the common criminal.

How White Collar Crime are more harmful than Blue Collar Crime

The consequences of white collar crimes are particularly different from the blue collar crimes. The damages sustained by white collar crime, like financial fraud is usually reflected in its

negative effects on the economic welfare of people and institutions. While the damages sustained by blue collar crime like robbery, are usually felt by the individuals that the crimes were committed against or within the communities where the crimes happened. the doubtless costly consequences of white collar crime are often grouped in three categories, the primary one is, individual economic loss, the other is, social economic loss, and therefore the third one is emotional repercussions. In terms of individual economic losses, in comparison to blue collar crimes, the typical cost of fraudulent white collar crimes, like embezzlement is far larger than the typical individual cost of blue collar crime like the robbing of any immovable property.

According to Edwin Sutherland, the white collar crimes incurred costs several times above blue collar crimes. The emotional repercussion of white collar crimes are usually bases on a violation of trust. Consistent with E H Sutherland the violation of charitable trust may be a general feature of white collar crime. those that are victims of blue collar crimes on the opposite hand didn't trust the blue collar criminals who robbed them, within the first place as there was very likely no established relationship or connection. With regard to public disillusionment, violation of trust have both social and economic repercussions and Sutherland summarize this by saying "The loss from white collar crime is great because it is, is lesser important than the damage to social relations, white collar crime violates trust and thus creates distrust, and this lowers social morale and produces disorganization.

Preventive measure

The important banking acts such that Reserve Bank of India act, 1934. Banking Regulation Act, 1949. State Bank of India Act, 1955, Banking Ombudsman. While overviewing the acts, Banking Ombudsman is adequately dealing the bank customers for resolution of complaints relating to certain services rendered by banks.

The institution of banking offers opportunity for investors and channelizes the resources available for the expansion and sustenance of trade, commerce and industry, and, hence, an efficient banking system is indispensable for growth of the national economy. It is necessary that in such a system checks and balances be introduced to reduce inefficiency and administration. Banking being public utility services and in view of the declining services rendered to the public and also having regard to the fact that services so rendered by banks in irresponsible manner, which are not only inefficient but deficient in character and in the said stress and strain, the public/customer is put pillar to post without having any remedy, it was felt necessary to have a separate forum to receive and resolve such grievances.

Origin and Concept

The term "Ombudsman" is a Swedish term which means a person having an ear to hear the people. The Ombudsman is appointed by the state for redressal of grievances of common people against the state. The term is used for impartial, confidential and independent institution to receive inquiries and work for solutions. When we use this term in banking it means, he is appointed and controlled by the regulators of the banks i.e. Reserve bank of India to decide the matters against any bank. In India, at the first time, it was introduced in 1995 by the Reserve Bank of India. On the recommendations of the informal group constituted by

Reserve Bank of India to improve upon the effectiveness of the scheme, the Banking Ombudsman Scheme 1995. Accordingly, the revised Banking Ombudsman Scheme 2002 came into effect on 14th June 2002. Presently, Banking Ombudsman is established under the provisions of the Banking Ombudsman Scheme 2006. The Banking Ombudsman makes an onus through Section 35A of the Banking Regulation Act, 1949 to delegate a banking ombudsman, who is a senior authority not beneath the position of Chief General Manager or General Manager selected by the Reserve Bank of India. The plan became effective from the year 1995 and directly the current operational plan is Banking Ombudsman Scheme (revised up to July 1, 2017). The primary point of the plan is to have a goal conspire identified with the administrations delivered by the banks in the event that the client isn't happy with the equivalent and in situations where there is no arrangement given by the banks to settlement of such protests and debates. The Banking Ombudsman Scheme stretches out to the entire nation and spreads the matter of banking industry in the nation that implies all planned business banks, provincial banks, agreeable banks will go under the domain of the plan.

Jurisdiction of Banking Ombudsman

The Reserve Bank of India will determine the ward or the regional furthest reaches of the chose ombudsman. The ombudsman will be liable for accepting and considering the grumbings documented by the bothered gatherings independent of the measure of cash engaged with the protest. He will be liable for the settlement of the contest between the bank and the distressed party either by the cycle of intervention or placation or if essential by giving an honor to the concerned party if the conditions require so. The delegated ombudsman needs to present a report to the legislative head of the Reserve Bank on 30th June of each money related year with respect to the exercises led through his office during the first budgetary year and furthermore some other subtleties as asked by the Reserve Bank.

Can Banking Ombudsman Award Compensation for Harassment

Yes, the Banking Ombudsman is empowered in this respect. In a case, person started to get recovery calls from the bank and police though he had not any relation with the bank. When this fact was known by the bank, the bank apologized for the discomfort undergone by him and regretted the recovery calls made erroneously to him for a credit card which was not his. Taking note of bank gross deficiency, the banking Ombudsman directed the bank to compensate the complainant by paying rs. 10, 000 and also ensure that his CIBIL records are updated suitably.

Suggestions

From the overall study of this research, it can be found that there is no proper regulatory body and guidance to tackle this issue, the socio – economic crimes by the white collar criminals should not be taken leniently by the state, for that the punishment regarding white collar crimes should be stricter as harsh punishment can prevent these crimes to a great extent, if the crime is heinous the punishment might also be extended to life imprisonment, government should impose strict regulations regarding economic thefts of the country and making people aware about these crimes through communication medium is also necessary, as most of the customers do not have any knowledge About the benefits of

Banking Ombudsman in the rural population. So, it is crucial to spread awareness through organizing seminars, conferences. By distributing pamphlets and majority customer access through social media. Every bank should do branding of their banks for creating awareness among customers.

Conclusion

Like the courts, Banking Ombudsman resolve individual disputes. Unlike the courts they can also deal with the consumer enquires and provide feedback on the lessons from their work to help government, regulators, banks and financial institutions and consumer improve things for the future. Banking Ombudsman help to support improvements and reduce disputes, help banks themselves to resolve with consumers, resolve any consumer disputes that banks fail to resolve themselves and reduce the burden of courts. The Indian experience of implementing Banking Ombudsman Scheme for the last 17 years has helped reserve Bank of India and banking industry to move forwards credible grievances redressal mechanism in the banking industry. The role of Banking Ombudsman is very vital for restoring the trust of bank customers in their banks. As per the pecuniary Jurisdiction of banking ombudsman opening of new offices of Banking Ombudsman, introduction of fresh grounds of complaints, appointment of additional Ombudsman in offices with high volume of complaints and increasing public awareness about the scheme.

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