



## WHITE-COLLAR CRIMES: A NON-TRADITIONAL THREAT TO GLOBAL FINANCIAL ORDER

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### ABSTRACT

*The study efforts to holistically and critically examine the financially high-handed nature of neo-criminal activities, in particular of white-collar crimes. Shedding ample light on the historical perspective of the upperworld crimes, involving the climacteric study of contributing factors in their recent emergence. Investigating the contentious questions associated with white-collar crimes and carrying out an in dept analytical examination of the possible havocs, it could cause to both national and international financial order. Another aim is to undertake extensive exploration of the theoretical and practical underpinnings of the concept in the modern age.*

**Keywords:** Deviance, Social Control, Plea bargain.

### INTRODUCTION

Since human origination, the parallel existence of good and bad is undeniable and therefore, existence of crime an irreversible fact. Humans have always pursued falsity with similar intensity and fervor as



for goodness. This has formally inhered in humans the capacity to commit crime. Eons ago, when mankind neither knew how to eat nor how to defend them, they still knew how to best secure their interests. This attribute ignited a fierce competition among unbridled individual pursuits over limited social resources. This competition led to disputes which ultimately manifested itself in a criminal activity. As time receded, criminal involvements became more matured leading to sophistication in their commission, but to this day rationale behind criminal tendencies remain the same olden one. As long as, humanity endures this inhumane characteristic of naked self-seeking and it continues to desecrate collective social solidarity for individual gains, crime shall exist.

### **White collar crime**

During the course of time, with changing social realities, fast emerging economic constructs and transforming politico-legal nuances crime also underwent swift modifications. Not only it became brutal, nasty and modernized but also unidentifiably suspicious and sophisticated. This quick progression of crime led us to the era of crime in suits from crime in streets.

Dawn of twentieth century has made the world increasingly de-territorialized and connected with national conventional control mechanisms weakened to make pace with the universal character and neo- technical features of crime like, insider trading, crypto-dealings, duplicities, frauds, breach of trust, money laundering and so on. Such kind of crimes is categorized as White- Collar Crimes – topic of modern-day criminological debates.

While defining white collar crimes, it is difficult to produce an all-encompassing and definitive explanation of its characteristics. However, Edwin Sunderland who is the father of the term 'White Collar Crime' has attempted to define it as,

“A crime committed by a person of high social status and respectability in the course of his occupation”

Another prevalent perspective suggests that white collar crime is not necessarily a criminal act and consequently violators are not criminals. White collar offenders generally don't identify themselves as criminals, because they think that their intellectual faculties and technical competence has not only differentiated but trained them to operate a system in their interest. Moreover, society doesn't criticize them with the similar intensity as they do for ordinary criminal behavior. In contrast to this, in order to determine the criminality of such activities, 547 adverse decisions by American courts and commissions were considered and all of them were of the opinion that given the intensity and effect of such activities, the acts are ipso facto criminal.<sup>1</sup>

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<sup>1</sup> Sutherland, E. H. (1945). Is "white collar crime" crime?. *American sociological review*, 10(2), 132-139.



Certain properties of white collar crimes are enumerated, as under;

- ☐ It is a financially motivated endeavor.
- ☐ It is a non-violent crime, which does not necessarily involve physical harm during criminal transaction rather it only involves financial damage.
- ☐ It is an occupational crime i.e. committed in pursuit of a respectable professional.

### **Causes and Effects**

Not a single cause is to be blamed for the commission of a white collar crime rather plethora of causes together instigates such deviant tendencies. The causes behind such criminal actions are primarily varied and diverse, depending upon the personal encounters but still some common features can be visibly identified. A few philosophical and logical explanations for the commission off such crimes are explained hereunder;

#### **1. Greed**

Greed is a permanent instinct and ever-present feature of human psychology. It drives our motivations and disinclinations. Many celebrated sociological paradigms have reinforced the significance of greed in delinquent activities and daily life calculations. Most white collar crimes are associated with the rapacious impulse of violators. People whose needs are least satisfied find it difficult to resist the temptation of financial crimes. Also, punishment remains a non-credible threat for people with nothing to lose.<sup>2</sup> Another novel research has added a vital perspective to the existing debate, that greed is never associated with dearth of resources but it is an instinct that pushes for accumulation of wealth in large proportions despite having abundant material resources.

#### **2. Need**

The employees committing white collar crimes have many reasons for it but inadequate remuneration plays a central role. It is a common practice of organizational firms that they pay very less in exchanged for the required labor The resultant disproportionality of compensation defines motivates his behavioral tendencies to engage in white collar violations. This phenomenon is also illustrated by drawing comparison between private sector and government sector employees. Comparatively, private sector is far better in terms of service security, improved work conditions, professional prospects and compensation. Resultantly, white collar crimes are lesser detected and reported in private organizations and firms. By sociological standpoint, rationalized decision making is an inherent in human beings. They make rational choices, which could potentially be more favorable for them. Once a famous

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<sup>2</sup> Braithwaite, J. (1991). Poverty, power, white-collar crime and the paradoxes of criminological theory. *Australian & New Zealand Journal of Criminology*, 24(1), 40-58.



Manhattan street embezzler, Donald Cressey while explaining the primary causes of embezzlement, shared a vital principle that,

“Embezzlement is caused by Non-shareable financial problems”

Therefore, people commit white collar crimes out of sheer need to better their living conditions and sustain a prosperous future for the family. Moreover, years spent in deprivation and old scars of poverty also play a significant role in alluring people to commit white collar crimes.

### 3. Neutralization view

According to some people, the commission of white collar crime is not per se a criminal undertaking; rather it is at best the negative and evil use of one's intellectual and technical faculties. In criminology, the process involves the 'rationalization of deviance' by labeling misappropriation a negligible action. White collar offenders themselves deny the presence of guilty mind while committing such other. Their psychological makeup neutralizes the moral bind of law.<sup>3</sup> This justification of criminal behavior is often subjected to rigorous criticism, because it lacks definitive and practical reason for it. The philosophical perspective highlights the general social conception i.e. white collar crimes are not criminals but low-key transgressors. Crimes are merely utilization of their special skills and thereby rational. There are three commonly quoted arguments advanced to paint an unacceptable financial crime as a rationalized activity;

1. Everyone else does it
2. My intellectual capacity differentiates me from the rest
3. No one is hurt.

### 4. Cultural view

Cultural cause of white collar crime accuses the environment of employee deviance. It asserts that culture and surroundings of a firm regulates the deviant tendencies of employees. Those firms which are more tolerant to the deviance and teach their employees impermissible techniques are more prone to fall as a victim to white collar crimes. Moreover, firms expecting a great deal of their employees along with a permissive environment allure them to abuse their governance structure by committing white collar violations. Cultural view considers crime as learnt.

Enron collapse – Enron's collapse can be traced to the formation of deviant friendly culture. The environment was aimed to be created in disregard to the principles of regulatory oversight, financial disclosure and the governance process.<sup>4</sup> The firm had its new chief executive officer, who was very

<sup>3</sup> Stadler, W. A., & Benson, M. L. (2012). Revisiting the guilty mind: The neutralization of white-collar crime. *Criminal Justice Review*, 37(4), 494-511.

<sup>4</sup> Appel, R., Fratzl, J., McKay, R. B., & Stevens, C. (2014). Enron and the 12 steps of white-collar crime. *International Journal of Business Governance and Ethics*, 9(4), 381-405.



ambitious and wanted to integrate his firm and make a part of 'new economy', based on internet economy of information era. To undertake the process of revitalization of company, he brought in new work force, eliminating the previous loyal ones. Now, many outsiders became the part of Enron via new inclusive policy. Many financial incentives were offered to top performers. Company's management also introduced the policy of 'decisional autonomy', which gave the powers to young managers of disbursing 5 million dollars for development projects, without approval of high ups. Seminars were being held to teach executives on how to hide profits and evade tax. These factors collectively created an environment which resulted in the company's downfall.

## 5. Self-control view

White collar crimes are generally committed by people who have weakened self-control and so are more prone to becoming criminals. They can be easily trapped by quick benefits through minimal effort. Contrastingly, companies hire such people who are morally strong and accept a robust normative code.

### Effects

Corporate crimes can be highly disadvantageous if not identified and caught in the beginning. Furthermore, these crimes are highly paying and difficult to eliminate, which adds up to the problems. Delayed identification leads to a delayed action which brings irreversible damage as a secondary result. Some major effects of white-collar violations are;

1. People lose faith in corporate dealings.
2. Massive financial loss to an enterprise.
3. Fait accompli – sometimes loss is highly difficult to retrieve.
4. During the investigation term, company ceases to exist.
5. When a company suffers from any fraud, it causes inflation.
6. Consumers are the first-hand sufferers.
7. Employees are paid less.
8. Employability net is reduced.

### Typology

There are many types of white-collar crimes. It is difficult to touch upon every type. Therefore, a few of them are defined hereunder,

#### 1. Money laundering

It is a process by which money earned from illegitimate sources or techniques is made to appear to be earned from legitimate and permissible means. It generally involves three steps;<sup>5</sup>

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<sup>5</sup> Schneider, F., & Windischbauer, U. (2008). Money laundering: some facts. *European Journal of Law and Economics*, 26(3), 387-404.



1. Placement – Process to flush illegal money into legitimate financial institutions
2. Layering – Confounding the sources of earned money through series of transactions and bookkeeping tricks.
3. Integration – After the illegal sources have been concealed, dirty money is withdrawn as legitimate or laundered money.

There are many commonly employed methods to launder money; like,

1. Cash smuggling – Transporting wealth to unknown foreign accounts
2. Cash smurfing – Deposition of money through multiple individual accounts
3. Over-invoicing – Producing counterfeit invoices in a legitimate cash-based business.
4. Wire transfers - Cash transfers from one entity to another.
5. Shell companies – Non-existent Company i.e. fake enterprises, only existing on paper.

## 2. Ponzi Scheme

Ponzi scheme is a fraudulent investment strategy based on hierarchical business networking. Older investors are paid through incoming investment made by new investors. Continuous flow of investment keeps the business alive and running, but as soon as the investment dries up, fraud unravels.<sup>6</sup> During uninterrupted flow of investment, investors are confident of reliability of investment when they get rapid returns with little or no risk.

Instance - In 2008, Bernard Madoff was convicted of running a Ponzi scheme that falsified trading reports to show a client was earning a profit on investments that didn't have virtual existence. In 2009, he was sentenced to 150 years of imprisonment for multinational Ponzi fraud of 64.8 billion dollars.<sup>7</sup>

## 3. Insider Trading

Insider trading is a process of transacting company's stocks through an unauthorized entity based on illegal disclosure of material and non-public information. The release of such confidential information with malicious intent makes this activity inherently criminal. This may also incur huge financial loss to the effected company.

Instance – Amazon's former financial analyst Brett Kennedy released confidential information of company's first quarter earnings before official release to a friend named Maziar Rezakhani for \$10,000. However, Maziar is estimated to have made \$115,997 relying on the information divulged by Kennedy.

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<sup>6</sup> Wilkins, A. M., Acuff, W. W., & Hermanson, D. R. (2012). Understanding a ponzi scheme: Victims' perspectives. *Journal of Forensic & Investigative Accounting*, 4(1), 1-19.

<sup>7</sup> Smith, F. (2010). Madoff ponzi scheme exposes the myth of the sophisticated investor. *U. Balt. L. Rev.*, 40, 215.



#### **4. Viatical settlement**

It is a life-insurance scam which involves selling of premature policy to someone at a reduced rate. Usually, people suffering through terminal ailment sell their policies out of economic desperation. Buyer shall wait for the policy to get matured meanwhile paying premiums on it and then earn huge profits by selling it at original rate. Furthermore, life settlements may lead to heinous crimes as the buyer's monetary return is intertwined with the original owner's death.<sup>8</sup>

#### **5. Tax evasion**

Tax evasion means non-payment or under-payment of original tax liability. It is an intentional act to commit fraud on financial institution either by concealing reportable income or misleading techniques. Tax avoidance – Contrastingly, tax avoidance is purely a legal way to reduce one's tax obligations by remedying possible loopholes in income-value or by deliberate readjustment of income spending.

Tax haven – Places where administrative authorities require little or no tax payment from investors. They introduce such policy measures in order to attract maximum investment. Moreover, these geographical territories don't share investor's assets or transactional information to any international financial authority. It is dual exchange of benefits in which the investor gets his/her taxes lowered or eliminated and the tax havens getting adequate economic flow.

#### **6. Identity theft**

Identity theft means illegally obtaining someone's personal or financial information for unauthorized transactions. It can unwittingly tarnish a person's social position, especially in this age of information. Typically, electronic devices are oft-employed tools to extract confidential information without user's prior permission. There are four kinds of identity thefts;

- a. Criminal identity theft - Misrepresentation to avoid court summons, apprehension and subsequent penal proceedings.

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<sup>8</sup> Kosiewicz, J. D. (1997). Death for sale: A call to regulate the viatical settlement industry. *Case W. Res. L. Rev.*, 48, 701.





- b. Medical identity theft: To benefit from someone else's free medical care.
- c. Financial identity theft: Obtaining goods, services, benefits and credit by illegally acquiring someone's financial details.
- d. Child identity theft: Legal systems around the world usually don't impose strict penalties on juveniles. Therefore, their identity is exploited to get loans, employment, and residence and above all avoid police seizures.

## 7. Price fixing

Price fixing crimes may include; misrepresentation, less-representation, unjust representation and opaque representation of price on products for sale. These marketing strategies are employed to lure customers into buying more products. There are a few strategies of price-maneuvering;

- a. Deceptive pricing: When original price is not clearly mentioned or there are two prices (offline and online) causing misunderstanding to customers.
- b. Bait and switch tactics: Attracting customers by making tall claims about product quality and low pricing in order to augment sale of particular product at higher prices.
- c. Free claim offers: When one product (free) is offered for sale along with another one (original item), whereas the price of the combined product is higher than the product originally intended for sale.
- d. New claims: When the product tag mentioning 'New' actually contains re- modified, re-manufactured, rebuild and reconditioned parts.

## Case Studies

Few case studies regarding white-collar crimes are explained hereunder;

### 1. Mississippi Scheme (1716-20)

In 1705 a Scottish economist, John Law, introduced an economic formula to curb recession in France. His theory posited that by switching to fiat currency from commodity exchange of gold or silver, we can manage financial dysfunction. In pursuance of his idea, he established a national bank in France, which was responsible for exchanging gold for paper currency and exclusively administering country's colonial trade to the French controlled territories in the Mississippi River Valley. He advertised a scheme called "Mississippi Scheme" with purchasable shares.<sup>9</sup> Then, he artificially exaggerated the price of shares beyond popular reach. This led to wild speculation, raising concerns about investment security. French government responded by printing more money but it couldn't make pace with the development and it led to widespread inflation and currency devaluation. France faced another

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<sup>9</sup> Marietta, M. (1996). The historical continuum of financial illusion. *The American Economist*, 40(1), 79-91.





recession, meanwhile the architect of this criminal enterprise fled to Venice where he died years later in utter poverty.

## **2. Black Friday Gold Scandal (1869)**

Nineteenth century United States had unregulated market system with limited government control. Powerful industrialists and financiers would invest in shady practices and engage in unethical business competition to earn huge fortunes. In 1869, James Fisk and Jay Gould (financiers) tried to significantly possess the control over market forces by secretly stockpiling vast amounts of gold. They were planning to exaggerate the price of gold and earn huge profits.<sup>10</sup> They suffered backlash when government issued banknotes without gold reserves backing them up. However, President Grant's government pegged dollar with gold reserves which led the treasury to set the value of gold. Fisk and Gould prevented government's gold entering the market and bought up gold in large proportions, resultantly the price of gold soared high. Grant was aware of the devil's plot and invested 4 million US dollar worth of gold in the market. The price was artificially plunged and market crashed. Fisk and Gould sold their gold reserves before recession.

## **3. Teapot-Dome Scandal (1921-22)**

In twentieth century American navy shifted from coal to fuel oil. To satisfy this massive need of fuel in future, President Taft placed several federal oil fields under the control of navy including one field at Wyoming named 'Teapot Dome'. Taft was succeeded by Harding, who filled his cabinet with cronies and associates. Albert Bacon Fall being one of them was made the secretary of interior ministry. Harding in connivance with Bacon Fall placed Teapot Dome and two other oil fields of California under the supervision of American Navy. Fall then negotiated a lopsided deal with Mammoth Oil Company, covertly granting them exclusive rights of Teapot Dome. A similar deal was struck with Pan American Petroleum and Transport Company for the Elk Hills reserve in California's San Joaquin Valley. Fall received humungous interest-free loans against these illicit favors. Senate initiated an inquiry and convicted Bacon Fall of embezzlement and was fined 100,000 dollars. After nine months, he was released on account of poor health.

## **4. Volkswagen Emission Scandal (2015)**

In 2015, US environment protection agency accused Volkswagen of installing "defeat device" software in diesel-powered vehicles to easily qualify emission test without being caught. Once on the road, cars can emit 40 times higher nitrogen oxide than during the test. Federal investigation was initiated against the car-manufacturing company and during the inquiry proceedings, Robert Liang (mastermind of defeat device), confessed the charge to legal authorities and was fined up to 250,000 US dollars. As far as the company was concerned, it was charged with 15 billion US dollars to settle

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<sup>10</sup> MacDonald, S. B., & Hughes, J. E. (2017). *Separating Fools from Their Money: A History of American Financial Scandals*. Routledge.



the claim.<sup>11</sup>

### 5. Bhopal Disaster (1984)

In 1960's an American multinational company (Union Carbide Corporation) opened its subsidiary factory plant in Bhopal to produce Sevin (pesticide). Bhopal was the city with ideal features for pesticide production i.e. geographical contiguity to markets, efficient transportation network and least potential for industrial potential. However, in the beginning many flaws were encountered, like it was established only for light commercial use and raw materials were being produced along with industrial manufacturing, which was completely antithetical to environment safety guidelines and industrial accidents preparedness. In 1984, out of sheer negligence 1-ton water was mixed with 49 tons of methyl isocyanate, it precipitated in a chemical reaction, choking large number of people to death. Afterwards, internal investigations and inquiries were set up to probe in the negligence of employees and consequently the parent company at USA was made liable to pay 470 million dollars as damages along with 7 million dollars compensation to the effecters. This disaster is remembered as an example of 'poor planning and corporate negligence'.

### 6. London bond theft (1990)

One fine morning, Mr. John Goddard was carrying a briefcase which contained 301 bearer bonds, 170 Treasury bills and 131 certificates of deposit from banks and building societies, mostly worth £1 million each. It all was worth whooping £292 million. Mr. John was intercepted by a young man who threatened him and make off with the briefcase. It is the biggest mugging ever in the history. London police in collaboration with FBI launched a sting operation to catch the mugger. Two months later, Mark Lee Osborne, the owner of big businesses in Texas, had tried to flow £10 million of the stolen bonds to a narcotics dealer in New York. Fortunately, the potential buyer was an undercover FBI Agent, planted by the federal agency. Osborne became an informant to police, who gave complete information about the activity and secret hideout of his fellow accomplice Keith Cheeseman. For this, Osborne was brutally assassinated by his group-mates. Later on, after untiring efforts of federal agency the criminal has been shot before being caught by police. In this connection, two discoveries were made; one at Heathrow airport and the other at Cyprus. At both places, a bag full of bonds was seized by policy department and later on reported.

### NAB Ordinance, 1999

To counter reckless repercussions of trans-border white-collar crimes and equitably regulate monetary flows for the maintenance of financial uniformity, a comprehensive national legal regime has been devised to arrest the possibility of economic malfunctioning and fiscal disequilibrium. It is fundamentally concerned with ensuring the creation of integrated, homogenous and stable economic

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<sup>11</sup> Schiermeier, Q. (2015). The science behind the Volkswagen emissions scandal. *Nature*, 9, 24.



system by stemming the tide of corrupt practices. It also serves to nurture democratic culture of accountability and further strengthening its foundations.

The accountability mechanism in Pakistan has been carefully and comprehensively structured under a national legal instrument (NAB Ordinance) in 1999. In order to achieve the purposes of the legislation, National Accountability Bureau along with other secondary institutions have been duly created. Its operation extends throughout Pakistan and specifically to two classes of persons;

- a. All persons within or outside Pakistan, irrespective of their being public office holder, who are accused of committing an offence under this ordinance. The manifest phraseology of 'all persons including' and 'any other person' mentioned in Section 4 and 9(a) respectively empowers NAB to proceed against a private person, if other necessary conditions are satisfied.<sup>12</sup>
- b. Persons who are or have been in the service of Pakistan. However, members of judiciary and serving members of Armed forces have been intentionally excluded from the definition<sup>13</sup>. Because, both the institutions have well-ingrained systems of internal accountability.

This national anti-graft watchdog in close association with other authorities is fully competent to stem the tide of corrupt practices in the country, including but not limited to;

1. Corruption
2. Corrupt practices
3. Misuse/abuse of power
4. Misappropriation of property
5. Kickbacks

However, following recent amendment certain actions and practices have been excluded from the operation and scope of this institution;

- a. Matters pertaining to federal, provincial or local taxation. All such matters pending before NAB shall stand transferred to relevant forums.
- b. Decisions of federal or provincial cabinet and their sub-committees
- c. Procedural lapses in governmental works or projects
- d. Advice or report rendered by the holder of public office in the course of duty
- e. Matters falling under the jurisdiction of federal and provincial regulatory bodies

Exceptions - National Accountability Bureau may take cognizance of these practices, if;

- a. Holder of public office has gained material or monetary benefit from these decisions.
- b. It is directly or indirectly connected with the holder of public office, in the course of his employment.

Burden of Proof – Longstanding jurisprudential anomaly i.e. onus of proof lies on accused, has been completely omitted from the statute, for the restoration of original jurisprudence i.e. burden of proof

<sup>12</sup> 2013 PLD 594 SUPREME-COURT, Abdul Aziz Menon v State

<sup>13</sup> Section 5(n)(vii) of NAB Act, 2022



lies on prosecution. Prosecution is required by law to prove all ingredients of offence under section 9 beyond reasonable doubt<sup>14</sup>, namely;

- a. Declared source of income of accused at relevant time
- b. Assets are disproportionate to known source of income
- c. Establish nexus between misuse of authority and accumulation of wealth<sup>15</sup>.

After establishing presumption of guilt, onus of proof is shifted to accused<sup>16</sup>.

Cognizance of Offence - Accountability court created under this ordinance shall consist of a serving district and session judge who shall be appointed and removed after consensus-oriented and participatory consultation with the Chief Justice of concerned High Court. Such a judge shall be appointed for a term of 3 years. It not only ensures security of tenure but also makes process of appointment an exclusive domain of judiciary guarantying Independence and Separation of Judiciary from Executive<sup>17</sup>. Moreover, retired judges shall no longer be eligible for appointment as judge of accountability court.

Accountability court cannot directly assume jurisdiction of the matter. It can only proceed on a reference made by the Chairman NAB or a person duly authorized by him. A reference can be generated in following ways;

1. Reference received from the chief executive of an appropriate government.
2. Receipt of a complaint
3. On chairman NAB's own accord.

After completion of inquiry and investigation, the case referred to accountability court shall be disposed of within one year.

Appeal - Appeal shall be preferred against the decision the accountability court within 30 days to the high court of the province. High court shall decide upon appeal within the time period of 30 days.

Chairman NAB – Chairman is appointed after effective, meaningful and purposive consultation between Leader of the House and Leader of the Opposition, the want of which shall render the process of appointment of unlawful<sup>18</sup>. However, in case of disagreement proposed names shall be referred to a 12-member parliamentary committee constituted by one-third members of Senate and remaining members of National Assembly. Furthermore, to avoid prolonged vacancy in office of Chairman, the process of appointment is designed in the following way;

<sup>14</sup> 2019 PCrLJN 1 KARACHI-HIGH-COURT-SINDH, Abdul Sattar Dero v State

<sup>15</sup> 2011 PLD 1144 SUPREME-COURT, Ghani-ur-Rahman v National Accountability Bureau

<sup>16</sup> 2022 PCrLJ 65 KARACHI-HIGH-COURT-SINDH, Anwar Ali v State

<sup>17</sup> 2021 PLD 45 PEHSAWAR-HIGH-COURT, Zarak Arif Shah v Government of KPK

<sup>18</sup> 2013 PLD 568 SUPREME-COURT, Ch. Nisar Ali Khan v Federation of Pakistan



- a. Process of appointment is required to be initiated two months prior to the retirement of incumbent Chairman and shall continue no longer than 45 days.
- b. In case of vacancy or inability to act, deputy chairman is fully authorized to exercise the powers and discharge the duties of chairman<sup>19</sup> by automatic operation of law<sup>20</sup>.  
In the recent amendment, tenure of Chairman has been made non-extendable and reduced to three years for the purpose of avoiding permanent affiliation of interest and upholding the integrity and impartiality of office<sup>21</sup>.

**Inquiry and Investigation** – Before referring a case to an accountability court, chairman NAB may initiate an inquiry against the accused for collection of evidence. If material evidence substantiates the factual assertions, inquiry is converted into an investigation. The inquiry shall be concluded within six months. Despite inquiry or investigation if the case still requires judicial examination, a reference may be filed in the court of law.

**Arrest** – An accused can only be arrested for the purposes of conducting expeditious inquiry or investigation, where sufficient incriminating material has been found to be indicating the prima facie involvement of accused in the commission of offence, otherwise arbitrary incarceration amounts to violation of right to human dignity<sup>22</sup>. A person cannot be arrested merely because an FIR has been registered or a bad allegation has been leveled against him, unless sufficient justification existed on record for him to be arrested<sup>23</sup>. However, following recent amendments the power of arrest has been further restricted to certain structured instances;

- a. If the accused is not cooperating during investigation despite repeated notices
- b. If the accused is attempting to abscond
- c. If the accused is likely to interfere with prosecution evidence
- d. If the accused is a repeated offender or continuing the violation.

Remand of accused has also been reduced to 14 days from 90 days.

**Punishment** – Private person or holder of public office committing corrupt practices may be sentenced to rigorous imprisonment up to 14 years along with fine. Also, offender shall return the disproportionate share of wealth acquired through corrupt practices to the government.

<sup>19</sup> 2012 MLD 273 KARACHI-HIGH-COURT-SINDH, Khan Muhammad Mehar v State

<sup>20</sup> 2010 YLR 2977 KARACHI-HIGH-COURT-SINDH, Gulraiz Ahmad Raza v Chairman NAB

<sup>21</sup> 2011 PLD 365 SUPREME-COURT, Shahid Orakzai v Pakistan

<sup>22</sup> 2021 PLD 266 ISLAMABAD, Amjad Mustafa Malik v DG NAB

<sup>23</sup> 2018 PLD 595 SUPREME-COURT, Sughran Bibi v State



Disqualification of Public office holder - After the charges are proved and a person is convicted by the accountability court; he will stand disqualified to participate in any political enterprise for 10 long years. Nor, he shall be availed any financial benefit i.e. loan from any financial institution for 10 year.

Plea-bargain<sup>24</sup> – Plea bargain includes voluntary return of illegally acquired wealth/assets in exchange of release from liability. However, plea bargain doesn't exonerate the accused and the person shall be deemed to have been convicted under NAB ordinance, thereby attracting the application of disqualification clause. Plea bargain only results in the disposal of case and release from custody<sup>25</sup>. It is a three-step process;

- a. An offer is made by accused before the formal initiation of investigation
- b. Return of material wealth must be voluntary and uninfluenced
- c. Offer shall be related to the return of wealth acquired in consequence of any offence committed under NAB ordinance<sup>26</sup>.

After satisfaction of afore-mentioned conditions, Chairman NAB in his discretion may accept the voluntary return and refer the matter to court for approval. Court of law has no power to fix liability and direct chairman to accept the same<sup>27</sup>. Moreover, failure to disclose full and complete information may lead to inaccurate determination of liability and consequently shall vitiate the process of plea bargain. NAB reserves the right to inquire into the amount involved and may also conduct an investigation for the same<sup>28</sup>.

Voluntariness is a significant factor in determining the validity of plea bargain. Elements like coercion, duress, misrepresentation and undue influence can vitiate the bargain along with the legal effects emanating therefrom. Non-objection to the bargain and non-filing of retraction of statement within reasonable time shall be construed as acquiescence and voluntary exchange<sup>29</sup>. Moreover, agitating the matter of validity of plea bargain after 13 years from the date of conviction was held to be frivolous litigation as the applicant failed to justify the delay<sup>30</sup>.

Plea bargain is an alternative mode of dispute resolution, which is primarily purposed to avoid excruciatingly prolonged trial process. Therefore, court at one instance shunned down the plea of conditional bargain i.e. keeping money with court as trust, returnable in case of acquittal, because it destroys the object of bargain<sup>31</sup>. Criminal defendants also accept plea bargain, in order to;

<sup>24</sup> Section 25 of NAB Ordinance, 1999

<sup>25</sup> 2022 PLC(CS) 486 SUPREME-COURT, Provincial Selection Board v Hidayat Ullah Khan Gandapur

<sup>26</sup> PLD 2019 ISLAMABAD 566, Dan Gunnar Bjarne Anderson v Federation of Pakistan

<sup>27</sup> 2018 PLD 724 KARACHI-HIGH-COURT-SINDH, Muhammad Asif v Chairman NAB

<sup>28</sup> Ibid

<sup>29</sup> 2021 PCrLJ 1250 PESHAWAR-HIGH-COURT, Iftikhar Hussain v National Accountability Bureau

<sup>30</sup> 2020 MLD 207 KARACHI-HIGH-COURT-SINDH, Waseem Hayder Memon v State

<sup>31</sup> 2020 PLD 1 KARACHI-HIGH-COURT-SINDH, Gulzar Ali v National Accountability Bureau



- a. Avoid serious charge
- b. Avoid uncertainty of trial
- c. Avoid time lapse

Over the years, plea bargain has attracted vigorous criticism because of its unconventional legal character;

- 1. It differentiates among offenders by precluding physical punishment to white-collar transgressors.
- 2. It doesn't deter the offender and their criminal tendencies.
- 3. It bypasses the traditional process of trial.
- 4. It takes away the right of appeal. Therefore, violates the due process of law under Article 10A of our constitution.
- 5. There are greater chances of criminal recidivism among those who are acquitted out of plea-bargain.

### **Conclusion**

By the above-made discussion it becomes sufficiently clear that White collar crimes are a non-traditional and novel menace to global financial order. It is an enhanced threat which with its sneaky operability and unwitting hampering, aims to weaken international resolve to regulate existing deteriorated politico-legal arrangement. Affluent people because of their naturally-prized berth in society finds no impediment in swindling exorbitant amount of money and embezzling sacred public trust, whereas blue collar criminals can never have the required ability, technical competence and natural stead to make benefits of this magnitude and multitude. By the same token, pink-collar crimes prove to be ineffective in striking this quantum of harm because of women's perpetually downtrodden social status. Only biggest reverberating threat is that of white-collar crime. Determined, concerted and faithful efforts are needed to be employed in order to produce desirable results; otherwise a significantly delayed response could be fatal.





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