

UNDERSTANDING CORRUPTION AS WHITE COLLAR CRIME:
BANGLADESH PERSPECTIVE

By

Md. Rezaul Karim

ID: 03005856

A dissertation submitted in partial fulfillment of the requirements for the degree of

LL.B. (Honours)

Stamford University Bangladesh

2010

Supervised by

Farhana Reza

Assistant Professor

Department of Law

Stamford University Bangladesh



Stamford University Bangladesh

DECLARATION

I hereby do solemnly declare that the work presented in this dissertation paper has been carried out by me and has not been previously submitted to any other institution. The work I have presented does not breach any copyright. I further undertake to indemnify the University against any loss or damage arising from breach of the foregoing obligations.

.....
Md. Rezaul Karim

ID: LL.B. 03005856

Department of Law

Stamford University Bangladesh.

CERTIFICATION

This is to certify that the dissertation “Understanding Corruption as White Collar Crime: *Bangladesh perspective*” is done by Rezaul Karim in partial fulfillment of the requirement for the degree of LL.B. (Honours) from Stamford University Bangladesh. The dissertation has been carried out under my guidance and is a record of the bona fide work carried out successfully.

.....
Farhana Reza
Assistant Professor
Department of Law
Stamford University Bangladesh.

TABLE OF CONTENTS

	Page
<i>Acknowledgements</i>	v
<i>Abstract</i>	vi
Chapter 1	
INTRODUCTION	
1.1 Historical Background of White Collar Crime	1
1.2 Nature and of White Collar Crime	3
1.3 Whether White Collar Crime is a crime in real sense	6
Chapter 2	
CORRUPTION AS WHITE COLLAR CRIME	
2.1 Definition of Corruption	9
2.2 Various modes of Corruption	11
2.3 Causes of corruption	15
2.4 Consequences of Corruption	16
Chapter 3	
EXTENT OF CORRUPTION IN INTERNATIONAL ARENA	19
Chapter 4	
EXTENT OF WHITE COLLAR CRIME IN BANGLADESH	
4.1 Administrative Corruption	25
4.2 Violation of taxation laws	26
4.3 Hording and Black Marketing	27
4.4 Corruption of politicians	27
4.5 Corruption of Government Officials	29
4.6 Corruption of Doctors	30
4.7 Corruption of Engineers	31
Chapter 5	
OBSTACLES IN IDENTIFYING CORRUPTION AND MEASURES TO CONTROL IT	
5.1 Obstacles in Identifying the Corrupt	32
5. Remedial measures	38
5.3 Anti-white collar crimes Legislation	39
5.4 Judicial Attitude	41
5.5 Use of Electronic Surveillance	43

Chapter 6	
CONCLUSION	44
References	47

ACKNOWLEDGEMENTS

At first, I would like to thank Almighty Allah for his kindness on me in accomplishing the report. I would like to express my deep sense of gratitude to my honorable and distinguished supervisor Mrs. Farhana Reza, Assistant Professor, Department of Law, Stamford University Bangladesh for her individual suggestions, valuable time, important information and guidance during the study period that has greatly inspired me in preparing this report successfully.

It could not possible to think all those people who have contributed for the preparation of this report. Of course there are some very special names that cannot be forgotten. I am also grateful to the Department of Law, Stamford University Bangladesh for providing me such an opportunity to come closer to real situation.

Finally, I want to express my deep gratitude to my family members and all well wishers whose enormous helps assisted me to complete this report.

ABSTRACT

This article addresses the problems of data interpretation and behavioral explanation in the study of corruption, especially in light of scholars' focus on it as a white-collar offense. Corruption is an increasingly important clandestine driving force in Bangladesh, and it is beginning to seriously undermine our citizen's faith in the very foundations of our society. Corruption has become fairly common practice, affecting many sectors of activity in our society. This dissertation tries to focus on those sectors of activity where corruption has become serious problem. This dissertation also tries to give analytical view why this type of crime is not properly addressed and also tries to give preventive measures to eradicate the crime from the society.

Chapter 1

INTRODUCTION

It is common that certain professions offer lucrative opportunities for criminal acts & unethical practices which hardly attracted public attention. There have been unethical persons in business, various professions & even in public life. They tend to become unscrupulous because of their neglect at school, home & other social institutions where people get training for citizenship & character building. These deviants have sent regard for honesty & other ethical values. Therefore, they carry on their illegal activities with impunity without the fear of loss of prestige or status. There have been tendency to picture lower class people are more likely to commit criminal acts, giving a misleading idea that upper class people are free from criminal activities. But the practice of crime & corruption by people of upper echelon of the society is not uncommon & pointed from time to time. The crimes of this nature are called 'white collar crimes' & they essentially an outcome of competitive economy.

1.1 Historical Background of White Collar Crime

The concept of white collar crime has been in frequent use in the literature of American criminology since December 1939 to indicate the practice of chicanery & corruption of highly placed persons. The term white collar crime is associated with E.H Sutherland whose penetrating work in this area focused the attention of criminologists on its demoralizing effect on the total crime image. Sutherland pointed out that besides the traditional crimes such as assault, robbery, dacoit, murder, rape, kidnapping & others acts involving violence, there are certain anti-social activities which the person's 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 & unpunished.

Sutherland was preceded by other writers who focused attention on the dangers to society from the upper socio-economic group who exploited the economic system to the detriment of common masses. Albert Morris refers to a paper entitled 'Criminal Capitalists' which was read by Edwin C. Hill before the International Congress on the Prevention & Repression of crime at London in 1872. This paper shows the growing incidence of crime as an organized business & its evil effects on society. In 1934, Morris drew attention to the necessary 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 & should be made punishable. 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'. He observed that is not a white collar crime, but if he violates the law & is convicted in connection with his business, he is a white collar criminal.

White collar crimes differ from the crimes committed by criminal syndicates. This distinction could be based on the extent of presumed respectability. If a person who belongs to a respectable class of society & possesses some degree of good reputation, sells shoddy goods, he is committing a white collar crime. But if a group of persons unknown to their victims, sell the same type of shoddy goods that would not be a white collar crime.

Sutherland noted that in his time, "less than two percent of the persons committed to prisons in a year belong to the upper-class." His goal was to prove a relation between money; social status and likelihood of going to jail are poor, "Blue collar" criminals, despite efforts to crack down on corporate crime. Other fiscal laws were passed in the years prior to Sutherland's studies including antitrust laws in the 1920's and social welfare laws in the 1930's.

After Depression, people went to great lengths to rebuild their financial security and it is theorized that this led many hard workers who felt they were underpaid to take advantage of their positions. Despite the great lengths Sutherland went to describe exactly what he categorized as white-collar crime, the clarity of the subject was, and is still rather broad and ambiguous.

1.2 Nature and of White Collar Crime

Sutherland argued that, from the point of view of the individual, white collar crime as well as lower-class crime could be explained by the theory of differential association and, from the point of view of society, both could be explained by anomie and culture conflict theories. He offered case histories to demonstrate that white collar criminality was learned in a process of association with employers and coworkers who defined such behavior favorable. He also demonstrated that illegal practices devised by an individual or a firm soon diffuse through out the industry as the competition adopts the practices in what is clearly a learning situation, Finally, he argued that white collar criminals act in isolation from significant unfavorable definition of their behaviors. Media representatives and governmental officials who define other behaviors as crimes (that is those of the lower class) do not so define these white collar behaviors, both because they are often intimately connected in profitable web of alliances with the “criminals”. Any isolated individual who unfavorably defines these behaviors maybe discounted by being labeled “socialist” or “communist”.¹

Although differential association theory was used to explain how the individual become involved in white collar criminality, Sutherland used anomic and culture conflict theories to explain the presence of that criminality

¹ Edwin H. Sutherland, *Criminology*, (Philadelphia: Lippincott, 1974), pp.102.

in society. Anomie theory described a lack of standards for regulating business practices that had been caused by the rapid economic changes associated with the decline of the free competition system and the rise of governmental regulation. A period of uncertain resulted in which neither the business community nor the general public was certain of the forms they wished that regulation to take, and the resulting a “normlessness” was the source of much criminality. Culture conflict resulted because the set of standards and norms for acceptable business practices that had evolved in the business community was quit different from that held in the political community. In a formulation directly comparable to his differential association citation theory, Sutherland argued that crime resulted when the organization that favored violation of law was more powerful than the organization against it. The business community was strongly united in favor of white collar criminality, but the political community was weak and uncommitted in their organization against it. The obvious implication was that illegal business practices would continence until the political community was effectively organized against it.²

There has always been crime among businessman. There have always been instances of violation of trust. Most of us have read of chicanery & plunder in the history books & such acts have often constituted the central theme of the fiction of earlier times. But the American people seemed to believe that anyone who betrayed a trust or who mulcted the widow’s mite in a shady but legal deal would eventually suffer. White collar crime lies in its demonstration that a pattern of crime can be found exist outside the focus of both popular preoccupation with crime & scientific investigation of crime & criminality.³

² *Ibid*, pp.102-12.

³ Gary S. Green, ‘White-Collar Crime and the Study of Embezzlement’, *The ANNALS of the American Academy of Political and Social Science*, vol. 525, no. 1, (1993), pp. 95-106.

Sutherland defined white collar crime as ‘crime committed by a person of respectability & high social status in the course of his occupation.’ Then he again define 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 activities.’⁴ White collar crime was more dangerous to society than ordinary crimes, firstly, because the financial losses were higher, and, secondly, because of the damage inflicted on public morale. 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. A white collar criminal belongs to upper socio-economic class who violates the criminal law while conducting his professional activities.⁵

The white collar crimes may be summarized as follows:

1. Frauds in business in relation to sale of bonds & investments;
2. Adulteration of foods and drugs and misleading advertisements ;
3. Malpractices in the medical professions, such as illegal sale of alcohol and narcotics, abortion, illegal services to underworld criminals, fraudulent reports and testimony in accident cases, extreme cases of unnecessary treatment, fake specialists, restriction of competition and fee splitting;
4. Crimes by lawyers, such as guiding criminal or quasi-criminal activities of corporations, twisting of testimony to give a false picture, fake claims; Trusts, cartels, combines, syndicates, etc. formed to combat competition, or to raise prices or otherwise to interfere with the freedom of trade to the detriment of honest businessman or the consuming public. This has now become a branch of law by itself and is usually deal with under the topic of ‘anti-trust legislation’; Bribery and graft by public officers.

⁴ Clive Coleman, *Understanding Criminal Data, Hunted by the Dark Figure*, (Philadelphia : Open University Press, 1996), pp. 8-10

⁵ Edwin H. Sutherland, *ibid*, p.112.

1.3 Whether white collar crime is a crime in real sense

The concept of white collar crime as propounded by Sutherland has evoked criticism from certain quarters. Most of the white collar crimes, such as violations of penal law are not handled by ordinary criminal courts but by commissions, administrative tribunals and boards. It is argued therefore, that the administrative handling of white collar offences cannot result in the conviction of the offender in the legislative sense and the white collar offender, therefore, cannot be said to have acquired the status of a criminal.

Coleman and Moynihan pointed out that the lack of definite criteria for determining who are 'persons of respectability and status' has made Sutherland's definition of white collar crime most controversial. It seems likely that Sutherland mean by this is absence from convictions for crimes other than white collar crimes. The element of 'high school status' also leads to confusion. Sutherland himself did not stick to this meaning and included thefts and frauds committed by middle or even lower middle class workers in case of their employment or work.

Paul W. Tappan observes that treating persons committing white collar crime as personal value considerations of the administrator would gain primary in place of precision and clarity of legal provisions in deciding such cases.⁶

The inclusion of white collar offences has also been objected to on the basis of the sociological argument that the perpetrators of such offences do not regard themselves as criminals. Sutherland used the term 'white collar crime' in the sense of legal violation but subsequently the expression has been extended beyond the legal frontiers. Unethical but lawful acts like tax avoidance as distinct from tax evasion and undertaking the prices of goods are instances on the point. This has evoked criticism

⁶ Paul W. Tappan, 'Who is Criminal', *American Sociological Review*, vol-12, (February 1947), pp. 96-102.

from those who insist that the definition of crime must be kept within the limit prescribed by law.

One objection regarding white collar crimes is based on the concept of *mens rea* or guilty mind in criminal law. The traditional concept in criminal law is that no crime can be committed without a guilty mind. Many statutes dealing with white collar crimes do not require any *mens rea* and writers like Jerome Hall do not, therefore, recognize them as real crimes but only as regulatory offences.

It has however, been held in many cases in England, India and some other countries the doctrine of *mens rea* based on common law has no applicability in statutory crimes where the requirement of guilty mind may be excluded either expressly or by necessary implication.

Criminologists are reluctant to consider the activities of upper class people as crimes, usual theories of criminal behavior shed light on the poverty. Sutherland, therefore, argued that conventional theories of crime were invalid and a theory was needed which could explain both white collar criminality and lower class criminality.⁷ Sutherland argued that from the individualistic point of view both the white collar criminal and lower class crime can be explained by the theory of differential association and from the point of view of society, both can be explained with the aid of the theories of anomie and culture conflict.⁸

Professor E. W. Burgess also pointed to the failure to distinguish between civil and criminal law and he added the offhand sociological definition "A criminal is a person who regards himself as a criminal and so regarded by the society." He declared that this definition does not cover white collar crime. Another criticism quite often advanced against Sutherland's definition of white collar crime is that it includes even those violations of law which are not committed in course of occupation or

⁷ *Ibid*, p.12

⁸ *Ibid*, p.13.

profession and these violations do not necessarily belong to upper strata of society or the so called prestigious groups.

However, many criticisms have been made by the critics against the definition of Sutherland. The entire critics have many reasons for criticism on their point of view. But the main truth is his definition is accepted by the all class of people like upper class to middle class, when some are criticize the definition Sutherland, at the same time some of people agreed with the definition of Sutherland.

Geis supported the definition of Sutherland. He said the criminal responsibility of the corporations or of their executives but he does not accept the proposition that a corporation is criminally liable for the acts of executives.

Donald J. Newman has, also supported Sutherland for including white collar offences in the category of crimes for the purposes of criminological studies. According to him, there is no basic difference between the nature of ordinary and white collar crimes. White collar crimes as well as traditional offences have their roots in common law and are adoptions of principles of theft, fraud and the like to modern socio-economic institutions. The only peculiarity of white collar offences is the relatively high status of the offenders, but the criminal content in both the types is equally present. According to Newman, the white collar regulations are intended to remedy rather than to punish, but they are at least partially penal and trible in criminal courts.

Chapter 2

CORRUPTION AS WHITE COLLAR CRIME

There is nothing new about corruption, it has been around for a long time. As far as back 300 BC, Katilya, the then Prime Minister and Emperor Chandragupta of India, identified forty ways of embezzlement of funds by employees in the private sector and he had this to say about Government servants:

"Just as it is impossible not to taste the honey or the poison that finds itself at the tip of the tongue, so it is impossible for a Government servant not to eat up at least a bit of the King's revenue".

2.1 Definition of Corruption

The word corruption comes from the Latin verb “corruptus” which means a broken object. Conceptually, corruption is a form of behaviour, which departs from ethics, morality, tradition, law and civic virtue.⁹ Some individuals define corruption very narrowly. Others want to use a broader definition, even a very broad one. Individual respondents participating in a major research project in Australia differed, for example, sharply in their views as to what was a corrupt behaviour¹⁰ and according to survey conducted in Hungary in 2000 gratuities to physicians were considered as corruption only by just over one quarter of the population, while tips were considered corruption by one fifth.¹¹

⁹ UNODC: “Corruption”, [<http://www.unodc.org/unodc/en/corruption.html#what>, accessed on 23 January 2010].

¹⁰ J. Pope, *TI source Book*, (Berlin: Transparency International, 2000), p.13-4.

¹¹ UNODC: “The Global Programme against Corruption. UN Anti-Corruption Toolkit”, p.500 [http://www.unodc.org/unodc/en/corruption_toolkit.html., accessed on 23 January 2010].

It can also differ considerably between societies and cultures if certain behaviour is considered to be corrupt or not in many countries, for example, it is not necessarily considered corrupt if the recipient of a passport or other documents pays a “tip” for the good service. In some other countries people would without doubt define this as an obvious example of corruption. Definition of acceptable behaviour may also change once people are informed of the costs of the payments. Corrupt behaviour varies considerably from country to country, culture to culture and individual to individual it is hardly surprising that there is no single, comprehensive, universally accepted definition of corruption. Possible definition has been discussed for a number of years but the international community has not been able to agree on a common definition.¹²

The traditional definition of corruption is *the misuse of public power for private profit*. Abuse of power for personal gain, however, can occur in both the public and private domains. There are three elements i) a misuse of power ii) power that is entrusted and iii) a private benefit. The United Nation’s Global Programme against corruption also includes both the public and the private sector in its definition of corruption as *the abuse of power for private gain*.¹³ The World Bank on the other hand has defined corruption as *the abuse of public officer for private gain*. This definition is narrow but arguably sufficient broad to cover most of the corruption the Bank encounters, since the Bank lends primarily to governments and supports governments’ policies, programs and projects.¹⁴

¹² Coe, “Explanatory Report on the Criminal Law Convention on Corruption”, [http://convention.coe.int/treaty/en/Reports/Html/173.htm., accessed on 24 January 2010].

¹³ UNOC: “Corruption”, [http://www.unodc.org/unodc/en/corruption.html#what, accessed on 24 January 2010].

¹⁴ WB: “Helping Countries Combat Corruption. The Role of the World Bank”, [http://www.worldbank.org/publicsector/anticorrupt/corruptn/corruptn.pdf, accessed on 24 January 2010].

There are two separate categories of corruption in the public sector, corruption according to rule, i.e. when a public official is receiving private gain illegally for doing something which he or she is required to do by law and corruption against the rule, i.e. when a public official is receiving private gain illegally for doing something which he or she is prohibited from doing.¹⁵ It is petty corruption when the public office is used for private benefit in the actual course of public service delivery, such as tax collection, customs, licensing and inspections. Petty corruption can involve the exchange of very small amounts of money, e.g. the bribing of custom border officials or the employment of friends and relatives in minor positions.¹⁶ Sometimes a difference is made between isolated and systemic corruption. Where corruption is isolated non-corrupt behaviour is the norm. Where corruption is systemic, formal rules against corruption remain in place, but they are superseded by informal rules. The law is not enforced or is applied in a partisan way, and informal rules prevail.¹⁷

2.2 Various modes of corruption

Corruption can take many forms and prevalence of the various forms may differ from country to country and even if no common definition has yet been found by the international community to describe corruption as such, everyone seems at least to agree that certain political, social or commercial practices are corrupt. Corruption tends to include several of the following elements:

¹⁵ J. Pope, *ibid*, p. 3.

¹⁶ UNODC: “The Global Programme against Corruption. UN Anti-Corruption Toolkit”, p. 10 [http://www.unodc.org/unodc/en/corruption_toolkit.html., accessed on 25 January 2010].

¹⁷ WB: “Helping Countries Combat Corruption. The Role of the World Bank”, p. 10-11, [http://www.worldbank.org/publicsector/anticorrupt/corruptn/corruptn.pdf, accessed on 21 January 2010].

2.2.1 Bribery

Bribery is the bestowing of a benefit in order to unduly influence an action or decision. It can be initiated by a person who seeks bribes or by a person who offers and pays bribes. Active bribery refers to the offering or paying of the bribe, while passive bribery refers to the receiving of the bribe. The “benefit” can be virtually any inducement, such as money, company shares, inside information, sexual favours, entertainment, employment or the mere promise of incentives.¹⁸ The benefits gained can be direct or indirect. It can be described as indirect gains when the benefits flow e.g. to a friend, family, private business, campaign funds or political parties.¹⁹

2.2.2 Embezzlement and Frauds

These offences involve the taking or conversion of money, property or valuable items by an individual who is not entitled to them but by virtue of his or her position or employment, has access to them. Employment related equipment, such as motor vehicles may be used for private purposes. Those offences do not include “theft” per se but only situations involving a public official or where the public interest is crucially affected.²⁰

2.2.3 Extortion

Extortion relies on coercion, such as the use or threat of violence or the exposure of damaging information, to induce cooperation. Extortion can be committed by government officials but they can also be victims of it. An example of extortion is when police officers threaten to arrest people to extract money from them.

¹⁸ UNODC: “The Global Programme against Corruption. UN Anti-Corruption Toolkit”, p. 11-12 [http://www.unodc.org/unodc/en/corruption_toolkit.html., accessed on 25 January 2010].

¹⁹ UN: “United Nations Manual on Anti-Corruption Policy”, [http://www.unodc.org/pdf/crime/gpacpublications/manual.pdf, accessed on 21 January 2010].

²⁰ UNODC: “The Global Programme against Corruption. UN Anti-Corruption Toolkit”, p. 13-14 [http://www.unodc.org/unodc/en/corruption_toolkit.html, accessed on 25 January 2010].

2.2.4 Political Corruption

Political corruption is the abuse of entrusted power by political leaders for private gain with the objective of increasing power or private wealth. It need not involve money changing hands; it may take the form of granting favours that “poison politics and threaten democracy”.²¹ An example of political corruption is when political parties or candidate receive money in exchange for the good will towards the entity or group making the contribution.

Corruption may be seen at various levels, in the corporate sector and amongst the bureaucracy, and may also be responsible for the criminalization of politics. For most political parties, winning the elections become a sole obsession and increasing election expenses are often stated as a major cause for political corruption.²² The business politics nexus is found to be implicit in the very nature of things, as it works to mutual advantage of both parties.²³ Corruption in the excise and customs department means a great loss to the central revenues. Smuggling of gold, drug trafficking, under valuation and evasion of excise duties are the common modes of corruption in this sphere.²⁴

2.2.5 Grand and Petty Corruption

Grand corruption is corruption that pervades the highest levels of a national government, leading to a broad erosion of confidence in good governance, the rule of law and economic stability. On the other hand, petty corruption can involve the exchange of very small amounts of money, the granting of minor favours by those

²¹ R . Hodess, “Introduction” in TI: Global Corruption Report 2004, p. 11, [http://www.globalcorruptionreport.org, accessed on January 2010].

²² Deepa Mehta, “Corruption: Threats and Trends in the Twenty-First Century”, *Prosperity without Crime*. Enamul Haque ed. (Dhaka: Asia Crime Prevention Foundation, 2006), p.48

²³ *Ibid.*

²⁴ *Ibid.*

seeking preferential treatment or the employment of friends and relatives in minor positions. The most critical difference between grand corruption and petty corruption is that the former involves the distortion or corruption of the central functions of government, whilst the latter develops and exists within the context of established governance and social frameworks.

2.2.6 Active and Passive Corruption

In discussions of transactional offences such as bribery, ‘active bribery’ usually refers to the offering or paying of the bribe, while ‘passive bribery’ refers to the receiving of the bribe. In criminal law terminology, the terms may be used to distinguish between a particular corrupt action and an attempted or incomplete offence. For example, ‘active corruption’ would include all cases where payment or acceptance of a bribe (or both) had taken place. It would not include cases where a bribe was offered but not accepted, or solicited but not paid.

2.2.7 Abuse of discretion

In some cases, corruption can involve the abuse of discretion, vested in an individual, for personal gain. For example, an official responsible for government contracting may exercise the discretion to purchase goods or services from a company in which he or she holds a personal interest. Such abuse is often associated with bureaucracies where there is broad individual discretion and few oversight or accountability structures, or where decision-making rules are so complex that they neutralize the effectiveness of any accountability structures that do exist.

2.2.8 Favouritism, Nepotism and Clientelism

Generally, favouritism, nepotism and clientelism involve abuses of discretion. Such abuses, however, are governed not by the self-interest of an official but the interests of someone linked to him or her through membership of a family, political party, tribe, religious or other group. If an individual bribes an official to hire him or her, the

official acts in self-interest. If a corrupt official hires a relative, he or she acts in exchange for the less tangible benefit of advancing the interests of family or the specific relative involved (nepotism). The favouring of, or discriminating against, individuals can be based on a wide range of group characteristics: ethnicity, religion, geographical factors, political or other affiliation, as well as personal or organizational relationships, such as friendship or membership of clubs or associations.

2.3 Causes of corruption

Amongst the major causes of corruption, the important one are, greed, circumstances, opportunities and other temptations that include party funds, money for patronage, apprehension of loss of office, need for extra money to maintain standards etc.

Why corruption develops varies from one country to the next and there is seldom a single identifiable cause. Also some of the causes which have been suggested are; poverty; poor administrative structures; weak judicial, legislative and regulatory frameworks; inadequate education; and cultural and social value systems that condone corrupt practices. Other possible causes are inadequate civil servants' remuneration; too broad discretionary powers of civil servants and a lack of accountability, monitoring and transparency. It has also been argued that planned economics, where many prices are below market clearing levels provide incentives to payoffs²⁵ and so does the presence of organized crime.

It is often claimed that poverty is a very important factor in the development of corruption and that can be true. It is for example, obvious that the risk of corruption in the public sector increases if the civil service wages are so low that they do not allow public workers to support their families. If poverty was, however, the only cause of corruption it would be hard to explain the fact that corruption is a serious problem in many rich countries and also the fact that most of those involved in "grand

²⁵ J. Pope, *ibid*, p. 19.

corruption” have much more than they and their families will ever need. It can therefore be argued that corruption “can emerge from wealth and abundance, or it can emerge from the lack of it”.²⁶

Other factors that may not be causes of corruption but can certainly encourage it are a low educational level which keeps the population passive and ignorant of its rights and the lack of political will to fight corruption. The motivation to remain honest may be further weakened if senior officials and political leaders use public office for private gain or if those who resist corruption lack protection.²⁷ The main areas of corruption in the developing countries are: public procurement, land administration, revenue collection, energy sector, public appointments, international contracts, infrastructure development, and communication sector and law enforcement.²⁸

From the above, it is clear that most of the analysis of corruption focuses on the corruption in the public or governmental sphere which implies activities of public officials often at the expense of government policy and public welfare.

2.4 Consequences of Corruption

Corruption adversely affects economic performance, undermines employment opportunities and poverty reduction. Petty corruption raises the cost of engaging in productive activities. Its burden falls disproportionately on poor people. For those without money or connections, petty corruption in public health or police services can have serious consequences. Corruption affects the lives of poor people through many

²⁶ *Ibid*, p. 7.

²⁷ WB: “Helping Countries Combat Corruption. The Role of the World Bank”, p. 12, [<http://www.worldbank.org/publicsector/anticorrupt/corruptn/corruptn.pdf>, accessed on 12 February 2010].

²⁸ Abdullah Al Faruque, , ‘Instrumentalities of Good Governance, Human Rights in Combating Corruption: Perspective of Developing Countries in Human Rights and Good Governance’, Mizanur Rahman ed., *Human Rights and Corruption*, (Dhaka: ELCOP, 2004), p. 84.

other channels as well. It diverts public resources away from socially valuable areas such as education and infrastructure investments that could benefit poor people like health clinics, roads etc. It lowers the quality of infrastructure, since kickbacks are more lucrative on equipment purchases. The way funds are allocated gets distorted, foreign aid gets reduced and productive capacity gets further weakened. Where corruption involves the transfer of funds outside the country, it seriously undermines economic development. Corruption also undermines delivery of public services.²⁹

Corruptions flourish because there are people in power who benefit from the present system. Unfortunately those who benefit from power are also those who have to initiate changes to check corruption. It is, therefore, important for people to play an active role in this regard. The public interest litigation and electronic and print media can be used effectively in shaping public opinion. Children in schools may be mobilized to create a social climate for making corruption unacceptable. Schools can reach large numbers of children and through them, their parents and the community at large.³⁰

Corruption is socially unjust. In legal sense it is abuse of power and in economic sense, it implies plundering of state resources. Corruption violates trust and confidence bestowed upon public bodies by the public. Corruption has two main impacts on the society: firstly, it has distributional impact as it promotes inequality in society by the unjust enrichment of some of the people at the expense of well being of vast majority of people. In most cases, poor and most vulnerable people are the direct victims of corruption. Secondly, it undermines the credibility and legitimacy in the public institutions and governments. Corruption diminishes the legitimacy of the governmental institutions by shaking public confidence in dealing with the government. Corruption lowers the flow of foreign investment by increasing the cost of doing business. Corruption creates societal instability by sowing the seeds of social

²⁹ Deepa, Mehta, *ibid*, p. 49

³⁰ *Ibid*, p.50.

and political tensions. It deepens social inequalities causes unequal distribution of resources, erodes popular confidence in the public institutions, and creates a climate of secrecy. Corruption contributes to the inefficiency to the public administration since main motivation behind corruption is illegal enrichment through abuse of power rather than serving public interest. In this way, corruption impoverishes and degrades the quality of life of mass people. Apart from economic impact of corruption, corruption threatens social value.³¹

³¹ Abdullah Al Faruque, *ibid*, p. 84-5.

Chapter 3

EXTENT OF CORRUPTION IN INTERNATIONAL ARENA

Literature is scant that directly establishes the relationship between corruption and human rights. However, a number of authors mention the serious economic, social and political adversity it causes to a nation and its population, which directly results in violation of fundamental rights and freedoms.³² In adopting this approach in her research paper, Pearson established the link between corruption and human rights on the basis that international human rights law rests upon the International Bill of Rights as the cornerstone of the human rights system.³³

Corruption has widespread consequences for human rights and produces human rights violations, both directly and indirectly. When people have to pay bribes to access food, health-care, housing, property, education and jobs basic human rights are clearly violated. In many developing countries ordinary citizens have to routinely bribe unscrupulous government workers, such as personnel at schools, hospitals and municipal offices in order to access to such basic rights or other public services already paid for in taxes and governmental fees.³⁴ It has also been shown that corruption tends to steer public expenditure towards areas that will facilitate corrupt

³² SJ Wei 'Policy Research Working Paper' in World Bank (ed) *Corruption in economic development: Beneficial grease, minor annoyance, or major obstacle* (1999) 1 – 30, quoted in Action Professionals' Association for the People (APAP) *An Overview of Corruption in relation to the Ethiopian Legal System*, t [<http://www.telecom.net.et/~apap/pdf/An%20Overview%20of%20Corruption.pdf>, accessed 11 September 2005].

³³ These comprise of the *Universal Declaration of Human Rights*, the *International Covenant on Civil and Political Rights* and the *International Covenant on Economic, Social and Cultural Rights*.

³⁴ M Buckley, "Anti Corruption Initiatives and Human Rights: the Potentials", G. Alfredsson, and H. O. Sano eds., *Human Rights and Good Governance*, (Hague: NMartinus Nijhoff Publishers, 2002), p.11.

transactions therefore corrupt officials rather want to spend public resources on defence than education or other basic civic services. Corruption does not, however, only produce violations of economic, social and cultural rights. In many cases it also threatens civil and political human rights and leads to all kinds of violations of those rights. Corrupt governments, for example, often try to cling to power to protect their privileges and the grand corruption opportunities that their governing positions give them.³⁵

Much of the industrialized world, however, claimed until recently that corruption was primarily a problem for developing countries and international financial institutions were unwilling to confront corruption.³⁶ United States made bribery of foreign officials a crime in 1977, but no other country took similar action. Several possible explanations of this dramatic change of attitude worldwide have been put forward, such as the important transformations that have taken place in the world: the end of the cold War, the rise of a new values and realities, technology and communication advancement and changes in the states' role and the role of civil society in issues of common interest. During the Cold War when the west and the east fought for the support of states corruption as well as human rights violations were frequently tolerated.³⁷ After the Cold War reformers found themselves much less

³⁵ In this connection it could be mentioned that a new report made for the United States Senate claims that Augusto Pinochet, the former dictator of Chile, who has been accused of various human rights violations, including murder and torture, has been trying to hide 30 million US \$ on secret bank accounts in the US.

³⁶ When the Vienna Convention on the Law of the Treaties was adopted in 1969 it was, however, agreed to have an article in the Convention providing for that corruption could be invoked as a basis to claim invalidity of international conventions. Article 50 of the Convention provides: "If the expression of a State's consent to be bound by a treaty has been procured through the corruption of its representative directly or indirectly by another negotiating State, the State may invoke such corruption as invalidating its consent to be bound by the treaty". The Convention entered into force in 1980 and has been ratified by the majority of states in the world.

³⁷ A Muna, "The African Union Convention against Corruption" in TI: Global Corruption Report 2004, [<http://www.globalcorruptionreport.org/>and Rose-Ackerman, accessed on 13 January 2010].

constrained by the limiting debate of West-East politics and were able to raise the profile of corruption issues.³⁸ It is now widely recognized that corruption is a problem in every country of the world and developed countries have no cause to claim the moral ground. Corruption cases in international organizations, such as the World Bank and UN also show corruption can occur in any society and organization. Corruption in one country can affect other countries with which the problem state has significant economic, social, political, immigration or other links. Efforts by developing countries to enhance their development, for example, are impeded by corruption, as are the efforts of other countries to assist them in their efforts. As an effect of the globalization of trade individual cases of corruption very frequently have transnational elements.³⁹ The international community has gradually realized that corruption is a very harmful international problem that requires international solutions. It has also gradually broadened its definition of what conduct constitutes corruption. The UN convention against corruption is a proof of those facts. It is wider in scope than previous international anti-corruption instruments and in its preamble it is stated that States Parties to the Convention are “convicted that corruption is no longer a local matter but a transnational phenomenon that affects all societies and economics, making international cooperation to prevent and control it essential”.

Finally, with the globalization of the economic and financial structures of the world market, decisions taken on capital movements or investments in one country very often have effects in others. Some countries also consider that they would penalize their national companies if they entered into international commitments against corruption without other countries having assumed similar obligations. Therefore, an important reason for dealing with corruption as an international

³⁸ Tom Delare, “A Sea Change in Anti-corruption Efforts: No Longer Business as Usual. Fighting Bribery and Corruption” Paper presented in OECD:, p. 95

³⁹ UNODC: “The Global Programme against Corruption. UN Anti-Corruption Toolkit”, [http://www.unodc.org/unodc/en/corruption_toolkit.html, accessed on 13 January 2010].

problem is that in a global economy “common rules of the game must prevail” if corruption is not to distort trade and investment.⁴⁰

⁴⁰*Ibid.*

Chapter 4

EXTENT 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 politics has taken stronghold. Transparency International, a German based non-governmental organization, has identified Bangladesh as the most corrupt country in the world for consecutive five years. 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 corruptions 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 volume which is equivalent to one third of gross national economic. Their crimes are insufficiently focused, most of the time undated and remain beyond the domain of legal process. They are very influential in terms of power and money.⁴¹

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. 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

⁴¹ Sheikh Hafizur Rahman Karzon, *Theoretical and Applied Criminology*, 1st ed. (Dhaka: Palal Prakasoni and Empowerment through Law of the Common People, 2008), p123.

economy. The latest size of black money in 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. In identifying and discussing white collar crime in Bangladesh, all pervasive corruption has taken the foremost priority

If any person willfully abuses his power for personal or parochial gain, he is said to have committed an act of corruption. 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 willfully corrupt act of a public official in the discharge of his or her public duties.⁴² In Bangladesh, corruption stands for the misuse of public power for private profit.⁴³ 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, economics and social, need to be identified both in its origin and impact on the good governance and true development of Bangladesh.

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

⁴² Almas Zakiuddin, *Corruption in Bangladesh: An Analytical and Sociological Study*, [http://www.ti-bangladesh.org/index.php?page_id=377, accessed on 21 December 2009].

⁴³ *Ibid.*

sufficient social control, seem to contribute to corruption and its voluminous increase. Anomie and 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 endeavor 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. 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.⁴⁴

4.1 Administrative Corruption

Corruption has been and continues to be an integral part of culture. The level of corruption varies depending on how influential a position the particular civil servant holds. The civil servants have by and large become accustomed to live a life style far beyond their legal income. The citizens have accepted the stark reality that nothing moves without adequately satisfying the concerned civil servant.

An opinion survey conducted in 1992 of household heads in Dhaka City found that 68.25% of respondents paid bribes to concerned officials to get services. The findings of the survey indicated that members of law enforcing agencies, customs and

⁴⁴ *Ibid*, p.18

income tax departments were involved in administrative corruption. Another finding of the survey reaffirmed the commonly held belief that the higher the level of bureaucracy the lower the frequency but higher the amount of bribe; and the lower the level of bureaucracy the higher the frequency but less the amount of bribe.

The Bangladesh Unnayan Parishad (BUP) only recently conducted an opinion survey of 2197 individuals selected randomly from sixty districts. This survey indicated that 95% of respondents felt that the police department was most corrupt while 82% opined that the secretariat (where most ministries/divisions are located) and the judicial system were most corrupt. In the corruption indicator the customs department came second with 91% of respondents considering its officials extremely corrupt. The officials of the Taxation Department were placed in third position as 90% of the respondents felt they were extremely corrupt.

Both the surveys reaffirm the ever-widening horizon of administrative corruption. Another survey of people's opinions at two upazilas in Northern Bangladesh indicated that the then upazila structure was not only controlled by centrally-deputed civil servants posted there but they were involved in misappropriating public funds for their own use. Villagers had to bribe civil servants on a routine basis either to bypass certain access encounters or to speed up the process of service delivery. The surveys as part of three case studies indicated that civil servants' control over massive financial resources without proper accountability and the self-seeking nature of civil servants were major contributing factors to the growth and sustenance of administrative corruption at the local level.

4.2 Violation of taxation laws

Some of the more important and frequent tax violations which occur in Bangladesh are in the areas of income tax, wealth tax, estate duty and sales tax. The loss resulting from the violations to the state exchequer is tremendous. Apart from the financial implications of the problem, there are other dimensions of the evil such as the

corrupting influence of the tainted money on governmental machinery and the consequent contempt, disrespect and cynicism toward law in general.

It may be also pointed out that the problem of generation of black money and its proliferation is not new. The government has formulated voluntary disclosure schemes to unearth the black money specially to be used for certain social objectives. But the results of these schemes have not been very encouraging. The main reason for unsatisfactory response to these schemes seems to be that tax payers do not want to be identified as having evaded the tax in the past and the fear of re-opening of their past assessments and facing roving enquiries also dissuade them from resorting to these schemes. There are many Acts which are amended from time to time, the breach of which results in white collar criminality.

4.3 Hording and Black Marketing

The white collar crimes which are common to trade and business world are hording, profiteering and black marketing. Violation of foreign exchange regulations and import and export laws are frequently resorted to for the sake of huge profits.

4.4 Corruption of politicians

Corruption among ministers and other political personages is more dangerous than corruption in governmental machinery in terms of the enormity of the stakes involved in public life. Corruption and indecency in political life informs all the sections of society since violations are committed by those very persons who are expected to set the norms of social and political conduct. It is common knowledge that many politicians in power and their kith and kin have reaped a good harvest in terms of money and good positions through the abuse of governmental machinery at their disposal. The more usual forms of political corruption in Bangladesh are grafts, violation of election laws and the abuse of official and political machinery because of the liaison of political forces with big business.

Politicians are the elected representatives of the people, repository of public confidence. As policy makers of the country, they are supposed to lead the nation towards a positive direction, to equip for twenty first century. They should ensure good governance and true development of Bangladesh. Instead of dispensing their proper role, they are alleged to be involved in corrupt practices. Politicians have been identified as the most corrupt section in many countries; Bangladesh is not an exception to this. In 2005 to 2007, among the people involved in corruption, 8.1 percent were elected representatives. Among them 43.5 percent were UP (Union Parishad) chairman, 27.1 percent were UP members, 11.8 percent were municipality chairman, 8.2 percent were members of parliament, 4.7 percent were ministers, 1.8 percent was Ward Commissioners, and 1.2 percent was city mayors.⁴⁵

Though politicians constitute very little portion (8.1%) of the total of corrupt people. Magnitude of their corruption and the loss they caused to national economy is great. Transparency International mentioned that politics has been commercialized and criminalized and politicians are involved in corruption.⁴⁶ Moreover, politicians are the most corrupt section of the society. Transparency International has identified political parties as the most corrupt organizations of the world. It has conducted a survey on the people of 62 countries of the world. The people of 36 countries opined that political organizations are the most corrupt among all the institutions.⁴⁷

Government of Bangladesh is involved in huge corruption, manipulation and abuse of power. Reports of newspaper have revealed series of corruption of the ministers of successive governments. Major two political parties, Awami League and Bangladesh National Party, constitute the largest class of white collar criminals. Bangladesh Nationalist Party accused the ministers of Awami League government to have involved in corruption. For instance, the four-party coalition government

⁴⁵ Corruption Database 2005, Transparency International, Bangladesh, July 5, 2006.

⁴⁶ *The Daily Inqilab* (23 April 2004), p.1.

⁴⁷ *The Daily Ittefaq* (14 December 2004), p.1.

published the third volume of ‘white paper’ on May 3, 2002. It highlighted 20 cases of corruption, irregularities and misuse of power allegedly committed during the Awami League regime. 10 out of 20 cases revealed financial irregularities, which involved an approximate amount of 2 thousand 7 hundred 10 crore and 54 lakh taka.

The remaining 10 cases revealed abuse of power and administrative irregularities.⁴⁸ An anticorruption case was filed against former finance minister and minister for state and telecommunications affairs on March 27, 2002. Sheikh Hasina, Present Prime Minister and president of Awami League, accused the alliance government for their involvement in graft. At least a dozen ministers of the BNP-Jamat coalition government were accused of their involvement in corruption as early as 2004. Many cases filed against the parliament members, MP and many others of major two political parties and other parties when the caretaker governments utilize their power.

4.5 Corruption of Government Officials

Various factors have been responsible for the widespread corruption among government servants. While some factors are the same as in the case of white collar crimes in general, there are some factors which have a special bearing on the problem of corruption among government and other public servants. The two world wars gave vast powers to government servants in matters relating to the grant of licenses, permits and quotas. This was a potentially dangerous situation in view of the acute shortage of essential commodities and many government employees made good use of the opportunities to make quick money. After the Second World War, the newly-acquired independence brought many more opportunities to corrupt officials. The governmental participation in the various economic activities created better opportunities for corrupt person, they also benefited by the general fall in discipline

⁴⁸ *The Bangladesh Observer* (4 May 2002), p.1.

and efficiency in public services it is not frequent that politicians come to the rescue of guilty persons provided they have the right connections.

Some other factors which make public servants corrupt are connect with the economic conditions of most of the government employees. In Bangladesh, to the employees, by and large, are quite low. This factor in combination with some other factors like inflation contributes a great deal towards corruption. Corruption, bribery and abuse of power are not related to any specific government of Bangladesh. The major two political party's governments cannot only be blamed for that, rather they have become inevitable part of the corrupt state mechanism and political culture. The amount of bribery and misappropriation of 24 ministries were 15 thousands crore taka during the last seven years. In one of the report of Transparency International they 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 fifth.⁴⁹

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. 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. Abuse of power and bribery were highly used corrupt practices. In the police department, Thana police and traffic police were the most corrupt. Among the methods of corruption, bribery, extortion and abuse of power were most prominent. In a survey report of Transparency International, lower judiciary was identified as the most corrupt service organizations.

⁴⁹ *The Daily Inqilab* (23 April 2004), p.1.

4.6 Corruption of Doctors

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 sufficient 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. Health sector, among others, was identified as one of the most corrupt sectors. Health complex, Medical College Hospital, office of Family Planning, office of Civil Surgeon, specialized hospitals, private clinic or private doctors were the sub sectors to be involved in corruption. Among different types of corruption in health sector, the most prevalent were misappropriation, negligence of duty, abuse of power, bribery and cheating. 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 refereeing patients to diagnostic centers, from where they get regular commission.

4.7 Corruption of Engineers

Engineers have lot of opportunities to do corrupt practices, which they are alleged to do by underhand dealing with construction of infrastructure, including road, building, bridge, culvert etc. The transaction of public procurement contracts creates ample opportunities of corruption for the engineers. The scope for exchange of money remains because normally there are ways in which the lowest bidder may be eliminated on technical or procedural grounds. 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. The tender committee members gain at the cost of the bidding firm, not the state. The state is 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.⁵⁰

⁵⁰ *Ibid*, p.4

Chapter 5

OBSTACLES IN IDENTIFYING CORRUPTION AND MEASURES TO CONTROL IT

5.1 Obstacles in Identifying the Corrupt

It has already been noted that white – collar criminals are much more dangerous to society than ordinary or blue – collar Criminals. The question then arises as to why many white – collar Criminals go unpunished? According to Sutherland, the preferential treatment of white-Collar offenders could be explained in terms of their high socio-economic status the remedial philosophy of the laws in question and the relatively unorganized resentment of the public against white – collar crimes. The reasons for the absence of such resentment were stated to be as follows.

- a) The violations of law in such cases are complex, and can be appreciated only by experts.
- b) The public agencies of communication (like the press) do not express the organized moral sentiments of the community, partly because the crimes are complicated and cannot be easily presented as news, but probably in a greater degree because these agencies of communication are themselves controlled by businessmen involved in the violations of many of these laws.
- c) The laws for the regulation of business belong to a relatively new and specialized part of the statutes.

As to why such crimes went unpunished, Sutherland argued that “White Collar-Criminals are relatively immune (from Criminal conviction) because of the class bias of the courts and the power of their class to influence the implementation and administration of the law. This class bias affects not merely present-day courts, but also, to a much greater degree, affected the earlier courts which established the

precedent and rules of procedure of the present day courts (E. H. Sutherland, “White-Collar Criminality, *American sociological Review*, February, 1940 P. 7).⁵¹

The usual consequence of this class bias is that crimes of upper class are dealt with differently than the crimes of lower class people that is why, the crimes of the lower class are handled by policemen, prosecutors, and judges with penal sanctions in the form of fines, imprisonment, and death. The crimes of the upper class either result in no official action at all, or result in suits for damages in civil courts, or are handled by inspectors and by administrative boards or commissions with Penal sanctions in the form of warnings, orders to cease and desist, occasionally the loss of a license, and only in extreme cases by fines or prison sentences thus the white – collar criminals are segregated administratively from other criminals and, largely as a consequence of this are not regarded as real criminals by them selves, the general public, or the criminologists.⁵²

Sutherland argued that if one collects statistics of hearings before regulatory commissions, civil suits for damages, and other procedures outside of criminal prosecution in addition to the date of official convictions, he will get numerous evidence of white collar criminality. Decisions of commissions and civil courts against a person or corporation are sufficient proof, Sutherland insisted, of violation of law and thus fall into the category of white collar crime. Sutherland considered procedural findings of “unfair labour practices” “infringement on patents” and discrimination between buyers as pertaining to white – collar crime.⁵³

Another obstruction in the prosecution and punishment of white -collar criminals apart from the fact that the public is not only indifferent and apathetic towards such violations of law is that quite often the members of the community themselves

⁵¹ Edwin H. Sutherland, ‘White Collar Criminality’, *American Sociological Review*, vol-5 (February 1940), p.7.

⁵² *Ibid*, pp.7-8.

⁵³ *Ibid*.

contribute to the commission of various white collar crimes. In other words, the ‘victims’ of the crimes are also to blame for white collar criminality. In fact many such crimes cannot be committed unless there is a demand for illegal goods and services in a community. Black marketing and illegal gratifications to public servants are some of the common examples.

One more factor is believed to be responsible for the failure to punish or for inadequate punishments so far as White –collar crimes are concerned judges of the courts ordinarily belong to the upper strata of society and this factor may determine their attitude, consciously or other wise, towards the White –collar offenders who also come from the same social strata. White –collar crimes being different in their nature and execution from ordinary crimes present peculiar problems in terms of detection, investigation, prosecution and trail relating to such offence. It is evident that for as effective enforcement of the laws, specially-trained personnel are needed to detect and investigate such crimes. It is because of the different kind of challenge that the trend now is to separate the investigating and prosecuting agencies for such crimes; a deviation from the traditional practice of vesting the two functions in the same agency. This may, however, give the desired advantages only if there is proper coordination between the two agencies.⁵⁴

The proceeding analysis should be regarded neither as an assertion that all affords to influence legislation and its administrations are responsible nor as a particularistic interpretation of the criminal law. It means only the upper class has greater influence in molding the criminal law and its administration to its own interests then does the lower class. The privileged position of white–collar criminals before the law results to a slight extent from bribery and political pressures, principally from the respect in which they are held and without special effort on their part. The most powerful group

⁵⁴ Ahmad Siddique, *Criminology*, 4th ed. (Lucknow, Eastern Book Company, 1997), p.372.

in medical society secured relative immunity by “benefit of clergy” and now our most powerful groups secure relative immunity by “benefit of business or profession”..⁵⁵

The crimes of the upper class either result in no official action at all or result in suits for damages in civil courts, or are handled by inspectors, and by administrative boards or commissions, with Penal Sanction in the form of warnings, orders to cease and desist, occasionally the loss of license, and only in extreme cases by Fines or prison sentences thus, the white – collar criminals are segregated administratively from other criminals, and largely as a consequence of this are not regarded as real criminals by them selves the general public, or the criminologists.⁵⁶

Behavior should be defined as criminal if conviction is avoided merely because of pressure which is brought to bear on the court or substitute agency. Gangsters and racketeers have been relatively immune in many cities because of their pressure on prospective witness and public officials, and professional thieves, such as pick-pockets and confidence men who do not has strong arm methods, are even more frequently immune. Similarly, white –collar criminals are relatively immune because of the class bias of the courts and the power of their class to influence the implementation and administration of the law. The class bias affects not merely present day courts but to a much greater degree affected the earlier courts which established the precedents and rules of procedure of the present-day court. Consequently it is justifiable to interpret the actual on potential failures of conviction in the light of known facts regarding the pressures brought to bear on the agencies which deal with offenders.⁵⁷

Because of their social status they have a loud voice in determining what goes into the statutes and how the criminal law as it affects themselves is implemented and administered. When an amendment to this law which would bring within the scope of

⁵⁵ Edwin H. Sutherland, ‘White-collar Criminality’, *Ibid.* p.11.

⁵⁶ *Ibid.*

⁵⁷ *Ibid.*

its agents fraudulent statement made over the radio or in the press was presented to parliament the publishers and advertisers organized support and sent a lobby which successfully fought the amendment principally under the slogans of “Freedom of the press” and “dangers of bureaucracy” This proposed amendment also, would not have created a new crime, for the state laws already prohibited fraudulent statements over the radio or the press ; it would have implemented the law so it could have been enforced. Finally, the administration has not been able to enforce the law as it has desired because of the pressures by the offenders against the law. Sometimes brought to bear through the head of the department of agriculture, some times through Member of Parliament who threaten cuts in the appropriation, and sometimes by others. The statement of Daniel Drew, a pious old fraud, describes the criminal law with some accuracy “Law is like cowbells, it’s made for this and the smaller kinds of insects, so to speak, but lets the big bumblebees break through. When technicalities of the law stood in my way. I have always been able to brush them aside easy as anything.”⁵⁸

In contrast with the power of the white – collar criminals in the weakness of their victims: Consumers investors and stockholders are unorganized, lack technical knowledge and cannot protect them selves. Denial drew. after taking a large sum of money by sharp practice from van derbi It in the Erie deal, concluded that it was a mistake to take money from a powerful man on the same level as himself and declared that in the future he would confine his efforts to outsiders, scattered all over the country, who wouldn’t be able to organize and fight back. White – collar criminality flourishes at points where powerful business and professional men come in contact with persons who are weak. In this respect, it is similar to stealing candy from a baby. Many of the crimes of the lower class, on the other hand, are committed against persons of wealth and power in the form of burglary and robbery. Because of

⁵⁸ *Ibid.*

this difference in the comparative power of the victims. The white collar criminals enjoy relative immunity.⁵⁹

The next problem relates to the forum of trial and the substantive and procedural aspects of the law governing it. The issue regarding the forum has generated some controversy. It has been argued that to secure greater efficiency and effectiveness socio-economic crimes must be handled by tribunals or quasi-judicial bodies which may not be fettered by some of the unnecessary, archaic and disabling features of ordinary criminal law. Apprehensions have been expressed on the other hand that such forums may not be immune from the influence of the executive branch of the government and they, therefore, may not command the confidence of the general public.

One possible approach is to retain the jurisdiction of ordinary criminal courts but to do away with some of the over indulgent provision of criminal law in the context of white – collar crimes. In India as a result of the recommendations of the Lanthanum committee some of the relevant laws were amended on those lines. By these amendments greater powers have been conferred on the investigating officers and on the magistracy and summary trials are also possible for some of the offences.⁶⁰

The law has also been made slightly less benevolent to the accused persons by incorporating certain presumptions against them under certain circumstances. Under the prevention of corruption Act of India there is a presumption for instance, that money received other than legal remuneration by a public servant is an illegal gratification.⁶¹

Paul W. Tappan objected to the term “white –Collar crime” on this ground of ambiguity and he argued that meaningful research required definitive terminology.

⁵⁹ *Ibid.*

⁶⁰ Ahmad Siddique, *ibid*, p.374.

⁶¹ *Ibid*, p. 377.

Many interpretation of white – collar crime are obstacles in conducting meaningful research regarding white –collar crimes.⁶²

As discussed above courts generally have been giving differential treatment to white – collar criminals. The trial Courts sometime fail to realize the gravity of white – collar criminality and therefore tend to be contented by awarding light on even token punishments to white – collar criminals. Some times instead of punishing the guilty, the courts have needed care and desist orders in case of white – collar criminals a technique which is not resorted to for ordinary criminals. White – Collar crimes are different from ordinary crimes, so white –Collar crimes in no way should be confused with ordinary crimes it upper-class people commit murder robbery or theft they will be prosecuted by criminal courts as ordinary criminals. They will not be prosecuted as white – collar criminal merely because they happened to be upper class persons.

A final point to be noted is the important one that regulations concerning illegal business activities have generally not been regarded by the community as of the same kind, to be handled in the same way as those involving lower class crimes. In that case, the persons who argue in favour of the term white –collar crime are really as kind for a change in the cultural attitudes and conceptions of the community as a whole so that such behavior will be viewed as criminal rather than as a kind of misconduct to be handled by non criminal procedures.

5. 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 for combating white collar criminality may be stated as follows-

⁶² Paul Tappan, *ibid.*

1. Creating public awareness against these crimes through the media of press, platform and other audio-visual aids. Intensive legal literacy programmers may perhaps help in reducing the incidence of white collar criminality to a considerable extent.
2. Special tribunals should be constituted with power to award sentence of imprisonment up to ten years for white collar criminals.
3. Stringent regulatory laws and drastic punishment for white collar criminals may help in reducing these crimes. Even legislations with retrospective operation may be justified for this purpose.
4. A separate chapter on white collar crimes and socio-economic crimes 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.
5. 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.
6. Above all, public vigilance seems to be the cornerstone of anti-white collar crimes become abhorrent to public mind, it will not be possible to contain this objective, there is need for strengthening of morals particularly in the higher strata and among the public services.

5.3 Anti-white collar crimes Legislation

It has already been noted that white collar criminals are much more dangerous to society than ordinary or blue collar criminals. According to Sutherland, the preferential treatment of white collar offenders could be explained in terms of their high socio-economic status, the remedial philosophy of the laws in question and the relatively unorganized resentment of the public against white collar crimes. The reasons for the absence of such resentment were stated to be as follows:

1. The violations of law in such cases are complex, and can be appreciated only by experts.
2. The public agencies of communication do not express the organized moral sentiments of the community, partly because the crimes are complicated and cannot be easily presented as news but probably in a greater degree because these agencies of communication are themselves controlled by businessmen involved in violations of many of these laws.
3. The laws for the regulations of businessmen belong to a relatively new and specialized part of the statutes.

Because of their social status, implementation of the criminal law in relation to white collar criminals becomes difficult. They are more powerful than the traditional criminals. White collar crime goes undetected because it transcends the visibility of ordinary cheating practices of small merchants..

One more factors are believed to be responsible for the failure to punish or for inadequate punishments so far as white collar crimes are concerned. White collar criminality increasing day by day to all over the world because white collar criminals are socially and economically more powerful than others criminals. This is the main reason behind the growth of the white collar criminality. The Industrial Revolution had initiated great social changes of far reaching consequences. The changes in the economic and social structure of property, comprising the transformation of an increasing proportion of wealth from property in tangible, visible and mainly immovable goods into ownership in intangible and invisible powers and rights such as shares, trademarks, patent and copyrights.

The advance of technological and scientific development is contributing to the emergence of 'mass society', with small controlling elite, encouraging the growth of monopolies, the rise of a managerial class and intricate institutional mechanisms. White collar crimes being different in their nature and execution from ordinary crimes present peculiar problems in terms of detection, investigation, prosecution and trial relating to such offences. It is evident that for an effective enforcement of the laws,

specially trained personnel are needed to detect and investigate such crimes. It is because of the trend now is to separate the investigating and prosecuting agencies for such crimes; a deviation from the traditional practice of vesting the two functions in the same agency. This may, however, give the desired advantages only if there is proper coordination between the two agencies. The next problem relates to the forum of trial and the substantive and aspects of the law governing it. The issue regarding the forum has generated some controversy. It has been argued that to secure greater efficiency and effectiveness socio-economic crimes are handled by tribunals or quasi-judicial bodies which may not be fettered by some of the unnecessary, archaic and disabling features of ordinary criminal law. Apprehensions have been expressed on the other hand that such forums may not be immune from the influence of the executive branch of the government and they, therefore, may not command the confidence of the general public.

5.4 Judicial Attitude

Courts generally 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, a technique which is not resorted to for ordinary criminals. There, however, seems to have occurred stiffening 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 1961. Trial courts in Bangladesh sometimes fail to realize the gravity of white collar criminality and therefore, tend to be contented by awarding light or even token punishments to white collar criminals. The Law Commission has been fully aware of the judicial smugness vis-a-vis white collar crimes and the dangerous inherent in it. The case of M.H. Haskat vs. State of Maharashtra illustrates the attitude of the lower judiciary towards white collar criminals. Haskat, a reader in Saurashtra University, was found guilty of an attempt to concoct degree certificates of the Karnataka University. The Sessions court awarded him a single day's imprisonment.

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. They are an outcome of industrial and commercial developments and progress of science and new technology. With the growing materialism all around the world, acquisition of more and more wealth has become the final end of human activity. Consequently, moral values have either changed or thrown to winds and frauds, misappropriation, misrepresentation, corruption, adulteration, evasion of tax etc. have become the techniques of trades, commerce and profession. It is for the criminal law administrators to contain this tendency by stringent legislative measures. It is rather disappointing that white collar crime such as black market activities, evasive price violations, rent-ceiling violations, rationing law violations, illegal financial maneuvering etc. by businessman are widespread in society. The economic offences which are often referred as white collar crimes are master minded and carried out in a planned manner by technocrats, highly qualified persons, well to do businessman, corporate officials in the form of scams, frauds etc. facilitated by technological advancements. In these offences, not only individuals get victimized with pecuniary loss but also, such offences often damage the economy and the national defense. The offences such as smuggling of narcotic substances, counterfeiting of currency etc. are some of concern and impact on national security and governance.

A number of special laws regulating customs, excise, taxes, foreign exchange, narcotic drugs, banking, insurance, trade and commerce relating to export and import have been enacted in the country. These laws are enforced by the respective departmental enforcement agencies created under the statutory provisions. Legal powers for investigation, adjudication, imposing of fines, penalties and under special circumstances arrest and detention of persons are derived from the same legislation. The officers of the enforcement agencies are also vested with powers to summon witnesses, search and seize goods, documents and confiscate the proceeds. Despite

special laws and independent enforcement agencies for handling these crimes there is no constantly rising, which is a serious cause of concern for all those who are associated with the administration of criminal justice.

5.5 Use of electronic surveillance

The use of electronic surveillance is specifically encouraged by some international instruments against corruption such as by UN Convention against corruption.⁶³ The importance of finding the right balance in the fight against corruption has been realized by Transparency International which insists that efforts to combat corruption must always respect fundamental human rights.⁶⁴

⁶³ UNODC: “The Global Programme against Corruption. UN Anti-Corruption Toolkit”, [http://www.unodc.org/unodc/en/corruption_toolkit.html, accessed on 14 January 2010].

⁶⁴ J Pope, *ibid*, p.12.

Chapter 6

CONCLUSION

Corruption is become serious problems in many democratic countries. Political corruption is, in many cases, a serious threat to the meaningful enjoyment of political human rights and favouritism and discrimination in recruitment to the civil service usually involves some kind of discrimination and can, for example, be in contravention of the human right to access on general terms of equality to the public service. If human rights are threatened and violated by corruption, respect for human rights can be a powerful tool in fighting corruption. Human rights standards, such as those requiring equal access to public service, the independence and impartiality of the judiciary and fair trial are clearly relevant to accountability and anti-corruption efforts.⁶⁵

Corruption curtails development through scaring off investors, causing international marginalization, curtailing growth, heightening economic transaction costs, misallocating public resources, undermining public policies and weakening governance. It also argued that developing societies are not inevitably more corrupt. Corruption is, instead, a global phenomenon that cuts across national, sector, class and other boundaries, even though different interests might have different incentives for and means to engage in corrupt practice.

There is no universally applicable strategy to fight corruption. Strategies need to be contextual, taking local conditions into account. Both economic liberalization and greater political and institutional transparency can liberate political resources and opportunities for combating corruption. They can liberate power monopolies in

⁶⁵ G. Alfredsson, *ibid*, p.25.

society and reduce the feasibility of corrupt behaviour through greater openness and competition. The extent to which these opportunities can be seized and exploited depends on the mobilization of wider political constituencies in civil society, both at the national and global levels. Corruption will not simply disappear, regardless of more development, liberalization or democratization.

A person closing his eyes, think that he is not being seen by anybody. That does not mean, he is not really being seen by anybody? The thing which is exist it will not be disappeared or extinct merely for the reason that it is not been recognized. At the same way a white collar criminal may not be exempted from criminal liability merely for the reason that he is not been convicted under the criminal law i.e., *Code of Criminal Procedure, Penal Code, Nari-O-Shishu Nirjaton Damon Ain* etc. To some extent, white collar criminals are more serious, dangerous criminal than any other ordinary criminal convicted under the ordinary criminal laws. White collar criminals are the machine of creating the ordinary criminal. The white collar criminal cause the ordinary criminal to commit crime for the benefit of the white collar criminals. Their crime instigates other to commit crime. They render the ordinary criminal. Therefore, now it is very clear that, in order to reduce the crime from the world, it should be the foremost duty to declare the white collar crimes as the crime and then to take necessary steps to prevent and control the white collar criminal.

However, the problem is as to the implementation of the measurement against the white collar criminal. As I have already mentioned in my earlier chapters that all polices, judges, courts and the entire law enforcing agency, directly or indirectly, work to save the white collar criminal. Therefore, the question is who shall stop the culprits?

Still we can argue that the number of white collar criminal is very little. They are minor in the country or in the world. So it is very easy for us to control them or to eliminate them. We all have to be cautious, mass awaking is needed to defeat the white collar criminal. We all have to be aware of our rights and we have to learn to ensure our rights. It is the duty of the common people to compel the legislature to

make such law which will be sufficient and proper to punish the white collar criminal. It is our duty; it is my duty; it is your duty; it is the duty of every ordinary people. We should keep the police, judges, businessman under such pressure so that they dare not to confine in the vicious circle of nepotism and corruption.

REFERENCES

Books

1. Edwin H. Sutherland, *Criminology*, (Philadelphia: Lippincott, 1974).
2. Clive Coleman, *Understanding Criminal Data, hunted by the dark figure*, (Philadelphia : Open University Press, 1996).
3. Deepa Mehta, “Corruption: Threats and Trends in the Twenty-First Century”, *Prosperity without Crime*. Enamul Haque ed. (Dhaka: Asia Crime Prevention Foundation, 2006).
4. Abdullah Al Faruque, , ‘Instrumentalities of Good Governance, Human Rights in Combating Corruption: Perspective of Developing Countries in Human Rights and Good Governance’,. Mizanur Rahman ed. *Human Rights and Corruption*, (Dhaka: ELCOP, 2004).
5. Sheikh Hafizur Rahman Karzon, *Theoretical and Applied Criminology*, 1st ed. (Dhaka: Palal Prakasoni and Empowerment through Law of the Common People, 2008).
6. Ahmad Siddique, *Criminology*, 4th ed. (Lucknow, Eastern Book Company,1997).

Journals

1. Edwin H. Sutherland, ‘White Collar Criminality’,*American Sociological Review*, vol-5 (February1940).
2. Gary S. Green, ‘White-Collar Crime and the Study of Embezzlement’, *The ANNALS of the American Academy of Political and Social Science*, vol. 525, no. 1, (1993).
3. Paul W. Tappan, ‘Who is Criminal’, *American Sociological Review*, vol-12, (February 1947).

4. M Buckley, “Anti Corruption Initiatives and Human Rights: the Potentials”, G. Alfredsson, and H. O. Sano eds., *Human Rights and Good Governance*, (Hague: NMartinus Nijhoff Publishers, 2002)

Web pages

1. UNODC: “Corruption”, [http://www.unodc.org/unodc/en/corruption.html#what, accessed on 23 January 2010].
2. UNODC: “The Global Programme against Corruption. UN Anti-Corruption Toolkit”, p.500 [http://www.unodc.org/unodc/en/corruption_toolkit.html., accessed on 23 January 2010].
3. Coe, “Explanatory Report on the Criminal Law Convention on Corruption”, [http://convention.coe.int/treaty/en/Reports/Html/173.htm., accessed on 24 January 2010].
4. UNOC: “Corruption”, [http://www.unodc.org/unodc/en/corruption.html#what, accessed on 24 January 2010].
5. WB: “Helping Countries Combat Corruption. The Role of the World Bank”, [http://www.worldbank.org/publicsector/anticorrupt/corruptn/corruptn.pdf, accessed on 24 January 2010].
6. UN: “United Nations Manual on Anti-Corruption Policy”, [http://www.unodc.org/pdf/crime/gpacpublications/manual.pdf, accessed on 21 January 2010].
7. R . Hodess, “Introduction” in TI: Global Corruption Report 2004, p. 11, [http://www.globalcorruptionreport.org, accessed on January 2010].
8. SJ Wei ‘Policy Research Working Paper’ in World Bank (ed) *Corruption in economic development: Beneficial grease, minor annoyance, or major obstacle* (1999) 1 – 30, quoted in Action Professionals’ Association for the People (APAP) *An Overview of Corruption in relation to the Ethiopian Legal*

System[<http://www.telecom.net.et/~apap/pdf/An%20Overview%20of%20Corruption.pdf>, accessed 11 September 2005].

9. A Muna, “The African Union Convention against Corruption” in TI: Global Corruption Report 2004, [[http://www.globalcorruptionreport.org/and Rose-Ackerman](http://www.globalcorruptionreport.org/and-Rose-Ackerman), accessed on 13 January 2010].
10. Almas Zakiuddin, *Corruption in Bangladesh: An Analytical and Sociological Study*, [http://www.ti-bangladesh.org/index.php?page_id=377, accessed on 21 December 2009].

Newspaper

1. *The Daily Inqilab* (23 April 2004).
2. *The Daily Ittefaq* (14 December 2004).
3. *The Bangladesh Observer* (4 May 2002).
4. *The Daily Inqilab* (23 April 2004).