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White-Collar Criminality Nexus with Environment

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ABSTRACT

Why people with high standing in the society do not think that they can be criminals too. The illegal acts that they perform to get profit in their businesses or to fulfill their undue purposes makes them criminal under the eyes of law. But what can be the situation where, there is no specific legislation in our country with respect to it. Yes, in our country we don't have any specific legislation for such people. We do call that act as white-collar crimes but, hardly few people have any clue with respect to it. In this paper, the researcher will be talking about white collar crime with respect to environment which can also be called as green collar crime with respect to Maradu Flat Case of Kerala.

I. INTRODUCTION

“Man did not weave the web of life. He is merely a strand in it. What he does to the web he does to himself.”

- Chief Seattle²

The above statement clearly portrays the interconnection between various components of our planet as also between the living and non-living beings and the need to protect and conserve our environment. Just as a pebble tossed in the pond creates ripples, man's action affects the surroundings. This is something that is slowly being comprehended by the human race. Yet, the irony is so perceptible in today's world is that one hand man prides himself on a rapidly progressing world while, on the contrary he is digging a grave by inducing irreparable harm to the environment and society at large.

At the end of the day the sad part of the story is that the poor sections of the society are the ones who pay the highest price for the sins of humanity. The high and the mighty reap the benefits of industrialization and advancement without absolute apathy towards the hard fact that their unfortunate and underprivileged brothers and sisters are compelled to live in an unhealthy environment with contaminated water to drink, infertile soil to grow his food on and

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² Chief Seattle's 1854 Speech on the Environment

polluted air to breathe. Isn't this gross injustice committed towards the environment and society at large?

It is thus, the need of the hour to ensure that there is a minimization if not complete riddance of the subjugation of the certain segments of the society to the consequences of man's reckless pursuit for the so-called advancement. This is what justice is all about to secure the justice to the voiceless and marginalized sections of the society. Edwin Sutherland defines white collar crime as "*a crime committed by a person of respectability and high social status in the course of their occupation*".³

Thus, the researcher in her research will try answering certain questions like how environmental harm is a kind of white collar crime with the help of cases, is white collar crime actually a crime and to what extent it can harm individual or society at large and what measures needs to be taken to curb the menace of white collar harm done to the environment.

According to the definition of white collar crime that Sutherland proposed one can agree with the fact that environmental crime is more or less kind of white-collar crime as, white collar crime is a crime which is done by people of high stature and, in India it is the businessman, governmental officials as well as other professionals like doctors that commit unlawful act in the course of their occupation which in itself justifies the fact that environmental harm constitutes a white collar crime. The researcher would like to further justify this fact by citing two examples.

Talking about the recent saga of demolition of flats in *Maradu*⁴ in Kerala wherein, the flats were built on the banks of backwaters in Kochi's bustling Maradu suburbs. The complex had 357 flats and around 1500 people who moved in there. The case came up in the year 2007 when vigilance wing of the state's local self-government body had directed Maradu panchayat to cancel 31 building permits for numerous violations including Coastal Regulation Zone regulations. But, the High Court of Kerala stayed its order and the construction continued.

In the year 2006 the Maradu Gram Panchayat issued notices to the builders for cancellation of the building permits, citing, among other things, CRZ violations. The builders approach the High Court challenging the notices. The High Court stays the notice and, the construction activities proceeded. In the year 2012 the single bench of the High Court Justice K Surendra Mohan allowed the writ petitions of builders, holding that government had no power to issue instructions to the panchayat. In June 2015, the Division bench of High Court affirmed the

³ Sutherland, Edwin Hardin (1949), *White Collar Crime*. New York: Dryden Press (Page no.9)

⁴ Alpha Ventures Pvt. Ltd. Vs. The Kerala Coastal Zone Management Authority & Ors. Civil Appeal No. 4784-4785 of 2019

single bench decision holding that permit holders cannot be taken to task for the failure of Panchayat in complying with the requirement of seeking CZMA's permission for issuing permits. In November, 2015 the same bench later dismisses the review petitions filed by the KCZMA. In the year 2016, the Kerala Coastal Zone Management Authority files special leave petitions in the Supreme Court. On November, 2018 the Supreme Court constituted of three-member committee to examine whether the area fall within the CRZ III as per 1991 notification. In May, 2019 the Supreme Court bench ordered demolition of the buildings within one month based on the findings of the committee that the buildings fall under CRZ III. In June, 2019 the vacation bench of the apex court stayed the demolition for six weeks on petitions filed by the residents complaining that they were not heard before the demolition order. In July, 2019 a bench headed by Justice Arun Mishra dismisses the plea of residents. Criticizes the parties for indulging in bench hunting to secure stay on demolition. In July, 2019 review petitions filed by the builders were dismissed. In September, 2019 the Supreme Court took suo moto notice of the non-compliance of the demolition orders. And sets the deadline of September 20 for demolition and directs the appearance of Chief Secretary on non-compliance. In September 23rd, 2019 the Chief Secretary appeared before the bench. And, the court directed to file an affidavit detailing the demolition plan. On 25th September, 2019 the Apex Court dismisses the plea by a local resident against the demolition orders citing collateral damage. On 27th September, 2019 the Supreme Courts ordered interim compensation of Rs 25 lakhs along with the properties of builders to be attached and, on November 25th, 2019 the Supreme Court directed the builders to deposit RS 61.50 crores with the Kerala government for disbursing compensation to residents. At last, the flats were demolished on 11th and 12th January, 2020. The flats were demolished with the sole objective of protecting the environment. As, according to CRZ III regulations, if an area under it is notified it should be relatively undisturbed and untouched. Discussing the case above one gets the glimpse how sometimes people in power are unable to identify and measure the harm being done to the environment and also its direct impact that people will suffer out of it.

Speaking about the harm to the environment was not just limited to the violation of CRZ regulations but, even the demolition of such buildings will have an adverse impact on the environment in the form of air pollution and severe dust formation, though short lived, could be severe. The demolition will also cause serious vibrations that may affect nearby heritage structures and buildings. The falling debris in nearby water surfaces like canals and lakes will lead to increase in hardness, alkalinity, heavy metal concentration, turbidity and slight variations in pH level of water. Not just limited to this, the stagnation of contaminants could

also harm the aquatic life to a great extent. Isn't a crime? Though not recognized completely in our country. But, isn't a crime an act with an intent to create profits,

In 2018 Kerala was over whelmed by an unprecedented natural event. Flooding combined with landslides caused many deaths. Though, floods were not new to the state that received high rainfall. What actually was new compared to the times of high rainfall was flooding due to inept damn management and the vulnerability of the terrain induced by the pattern of land use which clearly portrays that the model of Kerala is unsustainable.

The case studies discussed above is not merely an environmental crime but, it also portrays the white-collar crime how it is prevalent in India. White collar crimes do affect the criminals but, can also have large effect on society. When such a crime is committed there occurs huge losses to businesses which in turn have a direct impact on society and consumers even the environment sometimes which is quite evident from maradu flat's case.⁵ The main reasons behind committing such crimes is that there is greed for which high class people use illegal ways to have economic gain, competition as, it is said "survival of the fittest" so, some people for their greed and in order to get ahead of their peers commits crime. And, the last is no deterrence as, after committing the crimes most of the offenders get away without getting any punishment because there are not laws to deal with such offences.

II. THE WHITE-COLLAR THEORY

The researcher would like to co-relate the instances of environmental injustice with that of behavioral theory of white-collar crime as, it constitutes five important perspective which are competence, position holding, personal standards, morals and values and expectation level. Such people, despite knowing the fact that Maradu flats is in one way against the norms of CRZ and still working upon the project reflects the individual's narcissist behavior.

With the motive of quickly climbing the corporate ladder to demonstrate the understanding of the company's way and willingness to support the company at any cost reflects one's narcist behavior.

Narcissism is defined as "self-admiration that is characterized by tendencies toward grandiose ideas, fantasized talents, exhibitionism, and defensiveness in response to criticism; interpersonal relationships are characterized by feelings of entitlement, exploitativeness, and a lack of empathy"⁶(Raskin & Terry, 1988, p. 896).

⁵ *Supra* note 1

⁶ Connie O'Brien, Research Paper on Behavioural Characteristics of White-Collar Crime and the Pre-Employment Hiring Process (Page no. 46-49) by Georgia State University

“When Narcissistic levels are elevated, an individual’s sense of importance and belief in his abilities increase, as well as the need for constant reinforcement from others (Johnson et al, 2012; Perri & Brody, 2011). Maccoby (2000) argued that many effective corporate leaders exhibit Narcissistic traits. For example, they take risks other executives might avoid, lack empathy, or cannot handle criticism (Maccoby, 2000). At the same time, high levels of Narcissistic traits have been associated with low levels of Integrity and have been found to lead to unethical behaviour (Johnson et al, 2012)”⁷.

III. LEGISLATIONS AND THE HISTORY

The environmental problem and white-collar crime in India are one of its kinds in the world. Keeping aside the factors that it is a developing country that lacks minimal infrastructural facilities the situation is appalling. What the researcher precisely means is that the situation could have been much better if people would have given that extra bit of care for things which are not classified as private property. People must realize that it is not for the government alone that public property be looked after and nurtured. No doubt that resources like rivers, seashores, forests and the air are held by government in trusteeship for free and unimpeded use of the general public as was established by the Apex Court in one its landmark judgements in *M.C Mehta vs. Kamal Nath & Ors.*⁸ but, the general public must owe its duties towards the environment that it inhabits, both morally and legally as enshrined under Part IV of the Indian Constitution under Article 51 A (g)⁹ and also under Part III of the Indian Constitution as Article 21¹⁰.

There is no legislation in India that deals with the issue of white-collar environmental justice. Though, the environment laws can be construed to deal with the same. To name few of the important environment legislations which are the Environment Protection Act, 1986, The National Green Tribunal Act, 2010, The Air (Prevention and Control of Pollution) Act, 1981, The Water (Prevention and Control of Pollution) Act, 1974, The Environment Protection Act, 1986, The Hazardous Waste Management Regulations, etc. which depicts that there is no dearth of legislations in India with respect to environment.¹¹ But, the when it comes to dealing

⁷ *Supra* Note 3

⁸ (1997)1 SCC 388

⁹ Fundamental duties It shall be the duty of every citizen of India (a) to abide by the Constitution and respect its ideals and institutions, the national Flag and the National Anthem;

(g) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;

¹⁰ Protection of life and personal liberty: No person shall be deprived of his life or personal liberty except according to procedure established by law

¹¹ P Leelakrishnan, *Environmental Law Case Book*, 366-368 (Lexis Nexis A division of Reed Elsevier India Pvt Ltd, 6th edn., 2006)

with white-collar it has been limited to one provision of the Indian Penal Code, 1860 in the name of socio-economic offences. The question then arises, why the situation remains so deplorable? The answer to the question is simple that these legislations find no implementation. Lack of staff, adequate facilities and corruption is the easiest way to reason their way out of trouble. Not that this is not true but if an effort is made in the right direction the situation can be arrested giving it a complete turnaround. Therefore, if set standards and procedures as laid down by the law makers are followed in correct combination positive results can be obtained. Likewise, if standards and procedures as prescribed by various laws and authorities who overlook the functioning of these laws are followed in strict sense and with honesty people will live in a better, healthier and safer environment.

The Santhanam Committee Report¹² showed people of India the picture of white-collar crimes committed by persons having high stature in the society. The report of the committee stated that industrialists, businessmen, government officers are the one who are held responsible for committing such crimes.

After independence, the very first white collar crime was *Mundhra's* case¹³. India's first Prime Minister Jawahar Lal Nehru set up a commission headed by Justice M.C Chagla to investigate the matter. The Justice concluded that Mundhra sold imaginary share of Life Insurance Corporation by defrauding the insurance company of rupees 1.26 Crores. And, as result of which Mundhra was sentenced to twenty-two years of imprisonment.

Isn't after this case, government should have taken the white-collar crime on a serious note while making a separate statute to deal with issues that constitute white-collar crime. As, white collar crime includes many aspects and areas within its ambit.

The current scenario with respect to environmental justice and white-collar crime is poignant. Apart from the lack of qualified authorities to adjudicate environmental issues and white-collar crimes and the indifference between the people. There exists the unholy nexus between the politicians and the bureaucracy. As, in our country they are a hand in glove and many times collude when it comes to development plans, schemes and projects. This implies large budgets for projects leading to larger profits for small group of people. And, the interests of the public are thrown to the winds. And, why listen to the voiceless?

IV. CONCLUSION

We live in a world where hopes for a safer and healthier environment seems like a distant

¹² The Socio-Economic Offences in India: The Santhanam Committee Report, 1964

¹³ The Exponential Rise of Corruption: The Mundhra Scandal, Published at The Hindu: Business Line on 20th January, 2018

dream. Yet, the efforts of the few value driven individuals and people's movements give us a glimmer of hope. Our framers of the Constitution in their wisdom did the country a good turn by adopting various safeguards to ensure that its citizens were assured the promises of the Constitution. It is time that we, the citizens of India remember our fundamental duty and strive to protect our environment and prevent corruption that exists in every corner of the country. We must be ready to walk the extra mile to protect every fellow citizen from environmental risks and hazards. Knowing that mere legislations will not give us desired results. There must be an effective implementation agency and an effective watch dog agency. And, that watch-dog role can be effectively be performed by the courts of the country and the people that can help the citizens realize their dreams are the noble lawyers spread across the length and breadth of the country.

Though, there is no particular definition of white-collar crimes in India but, it is high time that government should realize that such socio-economic crimes should be taken seriously. Even, the punishment with respect to such crimes should be made stricter extending up to life imprisonment to create a deterrent effect in the minds of the people so that they should think twice before committing such a crime. People should be made aware about such crimes as they exist in day today's life of the people but since, they are not aware of such crimes so they don't take initiatives regarding it. More seminars and conferences should be conducted to discuss such crimes further, print media platforms and other audio-visual aids should be used to create awareness. And, strict regulations should be imposed regarding economic thefts occurring in the country by the government. Special tribunals should be set up for handling cases specific to white collar crimes. A separate chapter on white collar crimes should be incorporated both in Indian Penal Code and Code of Criminal Procedure so that people do not have a single recourse left to get away with the crime. Above all, public vigilance will be required to have a positive impact in long run.
