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ANALYSING THE CONCEPT OF DEVIANCE IN LEGAL PROFESSION; “ONE OF THE FACET OF WHITE COLLAR CRIME”

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ABSTRACT

During the early barbaric society there was no existence of criminal law system, back then it was “A tooth for a tooth, an eye for an eye and a life for a life”. In the light of the controversies which took place back in the day by the legal professionals, this paper is a meek effort to study this endemic. The paper inspects the ambiguity under the present apparatus. i.e., the Statutes, Articles of the Constitution of India which are formulated to discipline the errant practices by the lawyers and judges. Where some lawyers, out of many, who get caught, are punished, where the judicial attitude towards White Collar Crimes deals with attitude of Judiciary towards the crimes numerous judgments delivered by Judges in favour and safeguarding the culprits.; the provisions related to impeachment of judges quaff in Article 124(4) & (5) of Constitution of India as well as the Judges(Inquiry) Act, 1968, is pining on effective and fortunate application.

Keywords - White Collar Crimes, Judicial, Legal Officials, Legal profession, lawyers, judges, errant practices, Constitution of India.

INTRODUCTION

“White Collar Crime is a crime committed by a person of high social status and respectability in the course of his occupation”- Edwin Sutherland

White Collar Crime is a crime initiated or committed by individuals with the sole motive to achieve illegal monetary gain. American Sociologist, Sutherland was first defined White Collar Crimes. These crimes are non-violent in nature and mostly do not contain any life threats. These crimes are committed by high class people in course of their employment. WCC is a crime committed for financial gain which has a direct impact on the society.

In India, WCC is so much prevalent that, every profession contains it in today's date. From being present in educational institutions to being in business, white collar crime has become so much deep rooted that it does not even leave the two most noble profession i.e. medical profession and legal profession. We get to hear about so many cases like "Harshad Mehta Fraud case", "Punjab National Bank Fraud case", "Sarada Chit Fund case" and many more. Sadly enough, this crime didn't even leave the legal profession. Only for this reason, legal profession is losing its prestige. Practices like producing of forged certificate and threatening the witnesses of the opposite party are very frequently done. There is a huge breach of ethical values of the legal profession to obtain money. In this paper, we shall go deep into the roots as to how White Collar Crime affects the legal profession.

HISTORY

E.H. Sutherland was the first who coined the term White Collar Crime, he was an American Sociologist. During the year 1941 this concept was first time described by E.H. Sutherland. This concept was related to the antisocial activities of the persons of higher class of society in their profession. Carrier's case was the earliest case in England which is related to WCC during 15th century.

The idea of WCC is certainly not another wonder. In the sense we attempted to understand how WCC arose in India, history comes before us first. Crime as well as the WCC is due to the same influence of the behavior in a human being and necessarily the dynamic change only differentiates the old and new form of crime. For this purpose crime of historical development may be divided into two category i.e. early concept and Modern concept.

The early concept of this kind of crimes was the Vedic period and medieval literature. Manu is one of the oldest literatures which are known as India's great law giver. In the ancient period Dharma prevailed in perfection but through the changing of the society Adharma increased gradually which gave the wrong doing such as robbery, fraud. According to Manu there is no act of man which is free from any desire, whatever a man does is the result of an impulse or desire. The sources of all evil acts of human beings are his desire for material pleasure.

In modern concept, The Indian Penal Code 1860 is a reference of such crimes which is related to WCC but the term WCC isn't directly mentioned here. Like bribery, fraud, forgery, cheating etc.

HOW DOES DEVIANCE TAKE PLACE IN LAW

We all know that White collar criminality in the legal field is considered to be widespread in India. The lawyers and advocates advise the criminals and play a considerable role to promote and facilitate these crimes. There cannot be a pinch of doubt that even lawyers of highest standard who are specialized in constitution and big corporate fields go to the extent of influencing and guiding the criminals for some petty financial gain and for their greed which was held in the case of M.V. Dhabolkar v State of Maharashtra.

Day by day the standard of legal education is deteriorating and it is appalling to think that LAW which is one of the most important pillars of our Indian Democracy is losing its chastity in a massive amount. The unethical practices resorted by some legal professionals is unforgivable and they are themselves falling prey to such miserable activities and crimes. For instance, taking resort to certain common professionals and breaking the basic code of the legal profession are some of the common practices resorted by the legal professionals. It is often found that the white collar criminals and the professional culprits who arrange their legal practitioners to manage their bail bond at any given time.

The main difference between a criminal being a lawyer and a lawyer being a criminal may be highlighted as follows -

- a) A criminal lawyer deals with his defence on behalf of his client having a legal and ethical manner. On the other hand, a lawyer criminal deals in a case for his client as a defence counsel to some extent exceeding the ethical and professional manner.
- b) The criminal lawyer moves his case in order to protect his client within the judicial phenomenon in a bona fide intention. But a lawyer criminal moves his case certainly to protect his client exceeding to some extent the judicial and professional mind.

We can definitely opine that all lawyers cannot be treated as corrupt practitioner and always follow the mala fide intention. We still have a considerable amount of sincere and honest legal practitioners who go against the illegal practices and prevent it for further damage. There are pros and cons in every profession but we must look at the brighter side and encourage in substantial learning of law to keep this profession the noblest of all professions.

EMERGENCE OF WHITE COLLAR CRIME IN LEGAL PROFESSION

“The practitioners of evil, hoarders, the profiteers, the black marketers, and speculators are the worst enemy of our society. They have to be dealt with sternly. However well placed important and influential they maybe, if we acquiesce in wrongdoing, people will lose faith in us.”

-Dr. S. Radhakrishnan

White Collar Crime is an illegal and non-violent activity performed by individuals, high class community, government organization which aims to procure extra personal financial gain. Even though the impact of such activity is non-violent in nature, the blow of such impact is fatal.

Unlike the fact that White Collar Crimes are grievance to any individual it has its existence in legal profession. Legal Profession is a profession filled with honor and authority, it is a pursuit which safeguards every citizen has a right and feeds equal justice to all individuals. Sadly, in the present era the occurrence of WCC are carryout by lawyers, magistrate and judges, who in the name of interpreting the laws turns out to protect the goons or the bad people intermittently. This method of protecting is devastating and morally wrong as the crimes are committed by

those dignified officials who under oath has been given the responsibility by the state to ensure justice to every individual without any biasness.

The survey done by Indian National Bar Association proved that due to the active cases of WCC in India, since 2004 - 2014 the Central Bureau of Investigation established 6,533 corruption cases among which 517 cases was noted between 2012 and 2013. In the year 2014, India ranked 85th, in 2015 76th as various precaution was maintained. In the year 2018, India ranked 78th, with a view of improvement of three points since 2017, within a no. of 180 countries.

The rate of WCC has tremendously increased within India with every revolution of technologies. Thus, the field of legal profession is indeed under the preview of White Collar Crime, with new ideas and techniques' coming up within the society it has given birth to cyber- crime. The crime committed in cyber space is also a very certain phenomenon in the legal profession where the culprits one way or the other are protected or shield by the lawyers causing an emotional heartbreak to an individual i.e. a victim of White Collar Crime.

Lastly, the soul duty of any legal official is to ensure justice who seeks it, if the legal fraternity gets corrupt by the bad people, the society will lose complete faith upon the legal system. Legal profession is a profession which is to ensure every individual their right to get justice. Despite of all the wrongdoings it is the duty and morality of every legal official to abide with their oath.

PROFESSIONAL MALFEASANCE BY LAWYERS

“So long a lawyer handles his defense in a legal and ethical manner; he is only dispatching his duty as an attorney. It is when he carries his defense beyond the law and the ethical standards of his profession that he may be 10 labeled a lawyer-criminal”¹

Crime committed by the lawyers is called 'Professional Misconduct' under the Advocates Act, 1961. The sections 35 and 36 of the Act empowers the State Bar Council and the Bar Council of India needs to take disciplinary action against the lawyers who are guilty of professional malfeasance as well as any other kind of misconducts. The term “Professional Misconduct” was defined in the case of *George Frier Grahame v. Attorney General Fizi*² as an act of deceiving the clients and defraud the Court and the opposite party or the counsel. The malpractice which brings incongruity on the legal profession and favors the unfavorable voice which the public should focus pondering over it.

Judiciary while acting responsibly and prudently came up with remarkable judgments penalizing the lawyers of such a nature and also given a supervisory measures to the lawyers specifically and to the legal fraternity in general to bring back the respect and trust which is deemed by the public from the legal operations of the country.

¹H.E. Barnes & N.K. Teeters, *New Horizons in Criminology* 49 (3d ed. 1959).

² AIR 1936 P.C. 224.

Some well-known and landmark judgments by judiciary and the instances in combating the menace in the legal practice of the lawyers are discussed below:

- ***Cap Harish Uppal v. Union of India and Anr*³-**

The case revolves around the issue to whether the lawyer had the right to strike or give a call for boycotts in the daily functioning of the courts. The phenomenon of going on a strike was on an increase at the slightest provocation. The functioning of the courts was almost paralyzed by strikes and call for boycotts.

In the cases of *Legal Aid and Advice v. Bar Council of India*⁴, the apex court decided the organs of the legal profession certainly have social obligations. The obligations concerning are to monitor administration of justice along with the courts. Lawyers should not involve themselves in any activity which lowers the dignity of legal profession and strictly abide by the Code of Conduct.

- ***Vikas Deshpande v. Bae Council of India and Ors*⁵ :**

The issue involved here was misappropriation of the clients' land. The client was facing death penalty and the advocate obtained the signatures of the clients on some stamp papers through misrepresentation. The right over the land was taken fraudulently by the advocate by making the client sign on the power of attorney in his favour which was unknowing to the clients. The advocate took the plea of charging his fee towards fighting the case for the client.

The court while deciding the issue expressed its distress and showed the importance of building of trust between the advocate and the client. Once built, shouldn't be breached. In order to withhold the pillars of the legal profession firmly the practice of forming trust and mutual understanding should not collapse or fall in the eyes of the public.

The court straight away criticized this malpractice by the concerned advocate and decided to perpetually and permanently stop him from further practicing litigation. He was imposed a fine of twenty-five thousand rupees.

- ***R.K Anad v. Registrar, Delhi High Court*⁶:**

Case was popularly known as "BMW Hit and Run Case". The case was wondering endlessly for eight years. On May 30, 2007- a news channel through its programme [NDTV News Channel] clearly exposed the defense counsel influencing the eye witness in collusion with the public prosecutor to save the accused.

While deciding the case, Supreme Court denied all the facts of the case as it was realization of immoral values depicted by the lawyers. The Supreme Court cited "Leaving aside the many kinds of unethical practices indulged

³ (2003) 2 SCC 45.

⁴ AIR 1995 SC 691

⁵ AIR 2003 SC 308.

⁶ 2009 (10) SCALE 164.

in by a section of lawyers we find that even some highly successful lawyers seemed to live by their own rule of conduct.”

The court pressed on the point that this trend followed by the lawyers needs to be arrested and reversed or else the administration of justice in the country would face deleterious consequences.

Misbehavior by the Judges

Under Article 124 (4) of the Constitution of India states the following:

“A Judge of the Supreme Court shall not be removed from his office except by an order of the President passed after an address by each House of Parliament supported by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting has been presented to the President in the same session for such removal on the ground of proved misbehavior or incapacity”.

Certain instances are mentioned below where the Judges have favored high social class people:

Justice V.Ramaswamy-The first case to come up with the issue to impeach a judge was this one. The reason behind initiating this motion was severe irregularities in financial matters committed by Punjab and Haryana High Court judge. Expectedly, the impeachment was unsuccessful and incomplete because it was not supported by Congress MPs.

Justice Y.K Sabharwal- The judge misused his official position to promote his sons' business which was involves in a scam. The judge was then charged by the Central Vigilance Commission in 2008. The sons of the judge were involved in Ghaziabad Provident Fund Scam. The impeachment proceeding was aborted yet again in fructuously.

CONCLUSION

White Collar Criminality among lawyers is nowadays widely rolled out. The lawyers at large are advising organized criminals, playing a prime role in encouraging and assisting white collar criminality. Some lawyers of the highest standards very often have put forward or recommended the criminal or quasi-criminal activities of companies, who specialize in corporation and constitutional law in the past. 'M.V Dhabolkar vs state of Maharashtra'⁷

But for the fact that not all lawyers are corrupted and unethical, many of the lawyers are honest and very sincere who have earned respect from the society, perhaps its the peculiar nature of the profession that advocates feels necessary to use unconventional ways to get their work done to survive in this profession which is getting competitive with each and every passing day.

REMEDIAL MEASURES

White collar crimes are increasing in large proportion in India is due to the mass illiteracy and ignorance of the people. There are some ways to control the growth of white collar crimes. Awareness camps should be set up where the masses can attain some legal education through media and various audio visual platforms. Legal literacy programme might help in decreasing white collar crimes up to an extent. Special tribunals must be constituted which can sentence white collar criminals up to 10 years of imprisonment. Some amendment must be done in the Indian Penal Code, so that the white collar criminals will not be able to escape their punishment due to their high social status. The white collar criminals must be dealt with a more serious manner, by giving them harder punishments evaluating the gravity of the injury caused.

⁷(1975) 2 SCC 702

SUGGESTIONS

1. Harsh punishment should be needed for white collar criminals whether he will be a judge or renowned lawyer.
2. The citizens of India are not aware about the White Collar Crimes. Therefore, there is an urgent need of public awareness.
3. Lawyers and legal practitioners must be given proper legal knowledge from the beginning so that there is no professional misconduct committed by them. The quantum of punishment must also be more rigid in order to combat the malpractices committed by them.
4. Government should take special measures by creating Special Courts and Tribunals and they should be given the power to imprisonment.

REFERENCES

1. Satpathy, Pradeep. *Professional Deviance*. Retrieved from <https://www.scribd.com/doc/11531903/Professional-Deviance>.
2. (2020, January 17). *White Collar Crime: Accused of Money Laundering*. Retrieved from <https://www.otto.law/blog/2020/01/white-collar-crime-accused-of-money-laundering/>.
3. Chen, James. (2020, May 10). *White Collar Crime*. Retrieved from <https://www.investopedia.com/terms/w/white-collar-crime.asp>.
4. More, Hemant. (2020, March 30). *White Collar Crime in Different Profession*. Retrieved from thefactfactor.com/facts/law/legal_concepts/criminology/white-collar-crimes-in-different-professions/10899/.
5. Asthana, Subodh. (2019, July 31). *White Collar Crime in India*. Retrieved from blog.ipleaders.in/white-collar-crimes/.
6. Pt. Hargovind Shastri; Manusmriti; (The Kashi Sanskrit Series 114) IIIrd ed, 1982 p.36
7. Bakshi, Ishan. (2016, October 22). *The Changing Dynamics of White Collar Crimes in India*. Retrieved from https://www.business-standard.com/article/markets/the-changing-dynamics-of-white-collar-crimes-in-india116102200032_1.html#:~:text=The%20report%20titled%20'The%20changing,in%20the%20past%20two%20years.
8. Bar Council of India. (2019). *White Collar Crime Survey*. Retrieved from <https://www.indianbarassociation.org/wp-content/uploads/2020/01/White-Collar-Crime-Survey-2019.pdf>

9. Singh, Deepa.& Gopalan, Prakash. (2018, January – June). *An Analysis of White Collar Crime in India: A Study*. Retrieved from https://sgsrjournals.co.in/paperdownload/11_Deepa%20Singh.pdf
10. Khan, A. (2013). *White Collar Crime Study of Emerging India*. Retrieved from <http://www.legalserviceindia.com/legal/article-530-white-collar-crime-detail-study.html>
11. Bhushan, Prashant. *Securing Judicial Accountability Freedom of Speech v. Contempt towards an Independent Judicial Commission*. Retrieved from http://judicialreforms.org/files/securing_judicial_acc_pbhushan.pdf
12. Satpathy, Pradeep. *Professional Deviance*. Retrieved from <https://www.scribd.com/doc/11531903/Professional-Deviance>.

