## CHAPTER - I

**INTRODUCTION**

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CHAPTER I

INTRODUCTION

I. THE AREA OF RESEARCH:

The thesis presented herein on "A CRITICAL STUDY OF THE SOCIAL AND ECONOMIC OFFENCES IN INDIA" is a study of that part of the Criminal Law of our country which deals with the new types of offences known as the Social and Economic Offences. It is a study of the general law of crimes as well as the special law of crimes in regard to the substantive as well as the procedural matters. It also covers a study of the rules and regulations made by the Executive for the enforcement of the law, and the judicial decisions on important aspects of the law.

The legal system of our country has been witnessing changes of far reaching importance since the time we have attained Independence and have adopted a Constitution for ourselves to establish a Welfare State. In almost every branch of the Municipal Law, there is a change of far reaching consequence. This is particularly so in the sphere of the socio-economic laws. So much so the Criminal Law of our country is not the same as it was during the British regime. Every aspect of this law is receiving new dimensions and every aspect of it is involving the State authorities in serious litigation.
Under the Doctrine of *Laissez Faire* the primary function of a State was considered as maintenance of law and order. A State then was merely a Police State, but such a concept no longer survives anywhere in the world. A State in the modern state of things is not merely a Police State but also a Welfare State. Almost all the States in the world subscribe to the view that besides maintaining law and order they should engage themselves in welfare activities. They consider it their bounden duty to advance the safety, happiness and prosperity of their people and to provide for their general welfare by any and every act of legislation which they deem to be conducive to these ends. These are the functions which are expected to be discharged by the State under our Constitution too. When we look to the Preamble and the provisions of Part III and Part IV of the Constitution, we find that the State has been directed to promote the welfare of the people by effectively securing a social order in which justice; social, economic and political, shall inform all the institutions of national life. Further, the State has been directed to formulate its policy towards securing that
the citizens, men and women, have a right to adequate means of livelihood, that the ownership and control of the material resources of the community are so distributed as best to subserve the common good and that the operation of the economic system does not result in concentration of wealth. The State has been put under an obligation to endeavour to secure by suitable legislation to all workers, industrial or otherwise, a living wage and conditions of work ensuring a decent standard of life. The underlying idea in this as well as in several other provisions of the Constitution is to establish a Welfare State.

The Constitution confers authority on the various institutions of national life to deal with problems which arise before them in the context of enforcing the socio-economic programme of the State. It endows them with authority to punish the wrongs which affect the social and economic interests of the people and cause injury to the general good of the community. This is the basis of our criminal law.

Criminal Law is a part of the system of social control. It defines conduct which constitutes a crime and prescribes punishment for it. The basic nature of Criminal Law is that it is punitive and the object of this law is to check
the deviant behaviour of the individuals and establish a normative pattern for the smooth running of the society so that every individual may enjoy his rights in the most peaceful atmosphere and the State itself may discharge its functions towards the society in the most appropriate manner.

When we trace the position of Criminal Law we find that this law has been formulated on the basis of the local conditions, and that the three departments of government, namely, the Legislature, the Executive and the Judiciary contribute at one stage or the other to the development of this law. The sources of Criminal Law are classified according to the branch of government from which the law emanates.

In England, the Criminal Law has its sources in Common Law, Equity and Statute. The Judges of the Common Law Courts contributed greatly to the emergence of the legal system of their country. They evolved rules to punish various offences on the basis of customs and conventions common to the whole of England. Thus, in the initial stages of the legal system, they built up a coherent body of doctrines and formulated a system of penal law. At a later stage, a new institution known as the Star Chamber introduced principles of Natural Justice
in the interpretation of the penal law of the time and thus modified most of the existing rules. But owing to the prejudices which the Common Law Judges had towards the Principles of Equity, the Star Chamber could not make much of a contribution to the English Criminal Law. At present, the Criminal Law is in the form of Statutes passed by the British Parliament. The Parliament has enacted new Statutes on certain offenses but in regard to most of the offenses the Common Law is still the rule. It retains and enjoys a unique position in the realm of English Criminal Jurisprudence. The next important source of English Criminal Law is the Delegated Legislation. The rules framed by the Executive in the exercise of its statutory authority constitute one of the important sources of Criminal Law. Yet another important source of English Criminal Law is the body of judicial decisions, which directly or indirectly evolve a new rule in the process of interpreting the existing rules.

In India, the substantive Criminal Law is in the form of a Statute, namely, the Indian Penal Code (1860) is the general law of crimes. The Penal Code was enacted during the British regime for the British States and was later on extended to the Indian States and is now in force in the whole of India except the State of Jammu
& Kashmir. The Penal Code has been undergoing changes from time to time. It has borrowed traditions from the British who had developed the major part of their criminal law through the Common Law. The influence of the local laws and the traditions that prevailed in the country in the earlier days under the Hindu and Muslim Rulers is also found in this legislation. Along with the substantive Criminal Law, the Britishers had also enacted for the British States the procedural law of crimes. The Code of Criminal Procedure was enacted by them for the first time in 1888. It underwent changes since the time it was first enacted and was extended to the native States and is now in force throughout India except the State of Jammu & Kashmir. The Code was thoroughly revised in 1973 with a view to secure quick disposal of cases and to provide more and more opportunities to the accused for his proper defence and to make the law conform to the changed conditions.

The second important source of the Criminal Law of our country is 'Delegated Legislation'. The rules framed by the Executive in the exercise of its statutory authority prescribe punishment for certain wrongs. For example, the Defence of India Rules, the Gold Control Order, the Drug Control Order, the Sugar Dealers Order etc., These rules
provide punishment for certain wrongs, set up a new machinery for the enforcement of the rules and lay down a new procedure for the trial of the cases. These rules constitute a very important source of the law of crimes.

Yet another important source of Criminal Law is the body of judicial decisions through which the existing rules have either been given a wider meaning or their scope has been narrowed down in the process of interpreting the rules.

Crime as an anti-social behaviour originally consisted only of certain serious types of wrongs affecting the Human Body, Property or Public Peace; for example, Murder, Assault, Rape, Robbery, Theft, Extortion etc. These crimes were committed most of the time by persons of the lower and middle class status and guilty mind (Mens Rea) was one of the most essential elements of those crimes. These crimes are known in almost every legal system as conventional crimes or traditional crimes.

Owing to the transition of society from an undeveloped society to a developing society, and from a rural society to an urban society, new types of crimes have appeared on the social scene. These crimes are known by different names at different places. In India they are known as the Social and Economic Offences. Almost
everywhere in the world, the emergence of social and economic offences is due to the same factors.

In India, the social and economic offences are of a comparatively recent origin. After the First World War when industrial activity rapidly started in the country the legal system witnessed changes of far-reaching consequences. The Industrial progress accelerated an extreme business competition and business activity. Men in business and profession resorted to corrupt and unfair practices with the result that there appeared on the Indian social scene the demon of socio-economic offences. After India attained Independence certain factors contributed to the further growth of socio-economic criminality in the country. The problem of refugee rehabilitation, maintenance of essential services, scarcity of essential commodities, smuggling, breach of foreign exchange regulations and the integration of the Native States created a situation in which a variety of new crimes were witnessed by the people. The increase in the new type of criminality owing to the socio-economic changes in the society was quite unprecedented.

In most of the legal systems the traditional crimes which are of permanent character are the subject matter of the general law of crimes and the new types of crimes, the Social and Economic Offences, which are of temporary
character are the subject matter of the Special and Local Laws. Moreover, a greater part of the law on this type of new crimes is in the form of rules and regulations adopted by the Executive under the rule of Delegated Legislation.

In India, only a limited number of Social and Economic Offences are covered by the general law of crimes, and a large number of them are covered by the Special Law of Crimes. Both with regard to the substantive as well as the procedural matters of these offences the special law lays down the rule. Besides, there are quite a good number of orders, rules and regulations etc., issued by the Government from time to time in the exercise of its rule-making power.

When the Penal Code was enacted the framers of the Code included in it offences which were universally considered as offences of permanent character and also certain offences of socio-economic character as they existed in those days. It was not possible for the framers of the Code to include in it all offences of temporary character which arose because of a particular situation existing in the country, such as, shortage of food, shortage of commodities, economic stringency etc., These offences of peculiar character could be covered by the Special
and Local Laws. The framers of the Code, therefore, decided to leave the special and local laws unaffected. As a result of this policy of the framers of the Penal Code, the Code covered only a few of the Social and Economic Offences but not all those offences which are prevailing now. Consequently, the two important sources of the Criminal Law of our country on the Social and Economic Offences from the time of the Britishers are the Special and Local Laws besides the general Penal Code and the Code of Criminal Procedure.

The special law deals with specified categories of new offences and has been fast developing in our country. Certain offences which were originally covered by the general law of crimes have been brought within the purview of the special law of crimes. Likewise, certain categories of offences which were not covered by the general law of crimes are now covered by the new special laws. Further, what is most significant about the special law of crimes is that it has made a departure in certain cases from the traditional rule of liability. It has modified the rules of procedure which the courts used to follow in the case of ordinary crimes, and it has made punishable conduct which is not in the traditional sense a crime.
II. THE SIGNIFICANCE OF THE SUBJECT:

The new concept of 'Social and Economic Offences' which is the result of Industrial urbanisation and technological advancement of society is achieving more and more importance in the legal system of our country.

Social and economic offences are offences which have their impact on the economy of the State and affect public health or public morality. These offences are also known as public welfare offences. These offences have been variously defined by different authorities, a gist of their definition may be given thus;

i) Social Offences are offences that affect the health and material welfare of the country.

ii) Economic Offences are offences that affect the country's economy and not that of an individual only,

which means that the Social and Economic Offences generally go against the interests of the society.

Criminal law being a concurrent subject under the Constitution of India, the Union Legislature as well as the State Legislatures are competent to legislate upon it. Duality in the system of legislation in this sphere has most of the time resulted in different rules for different States on one and the same subjects. In order to bring about uniformity in the system of laws, the Union
Government is trying to legislate as far as possible, on matters of national importance. The Prevention of Food Adulteration Act, 1956, the Dowry Prohibition Act, 1961, the Essential Commodities Act, 1958, the Suppression of Immoral Traffic in Women and Girls Act, 1956, etc., are instances of the recent trends in legislation. Unfortunately till today, there is no comprehensive and concise legislation in our country on the subject of Social and Economic Offences. Nor is there authority vested in a single body like the Union Parliament to make a law in respect of all Social and Economic Offences. The Constitution deals only with specified categories of wrongs and endows the Union Parliament with power to prescribe punishment for them.

But, then, proceeding on the federal principle of legislation the Constitution authorises the Union as well as the State legislatures to make laws on certain matters. Further, the Union as well the State Legislatures have to observe certain Constitutional restraints in making laws on socio-economic matters as in others. They cannot pass a law contravening the provisions of Part III of the Constitution which guarantees Fundamental Rights to the people, nor can they contravene the provisions of Article 246 of the Constitution under which there is distribution of legislative power.

Right from the time the Constitution has come into force the legal system of our country has been witnessing
changes of far reaching importance in almost every branch of the law. This is particularly so in the sphere of Socio-Economic Laws. So much so, the Criminal Law today is not the same as it was during the British regime. Every aspect of this law is receiving new dimensions and every aspect of it is involving the State authorities in serious litigation. Violation of fundamental rights and encroachment on the authority of the other entity are the main grounds on which the victims have disputed the validity of the Socio-Economic Laws.

Further, the new types of enforcement agencies set-up by the Central and the State Governments, the new procedures designed to deal with the offences, the new punishments provided for them have also been a subject of considerable discussion in the legal as well as the public forums.

Further, the legislation adopted by the Centre as well as the States on certain matters has proved to be ineffective. In certain matters it was harsh and caused immense harm to the accused. In certain others it was hardly adequately to do justice to the victims. The procedure formulated for the trial of offences, for the investigation of the wrong and for the search and seizure of things acted to the prejudice of the general public. Further, a criticism has been made that the enforcement machinery set-up under the different Statutes is hardly
sufficient to deal with the task. In most of the cases, the crime is not prosecuted properly. The result of this is that the criminals go scotfree and the evil continues to be rampant in the society.

The litigation which has been going on with regard to social and economic offences ever since the Constitution has come into force and the new legislation which has been initiated on the subject by the Centre and the State Legislature and the problems which have arisen in the matter of enforcing the laws have attracted the attention of every one connected with the legal profession. These developments have prompted the author to undertake a comprehensive study of the law on social and economic offences in India.

In view of the growing importance of the subject and the tremendous legislative activity going on everywhere, the author has felt that a detailed study of the various aspects of this type of crime is the need of the hour. It is necessary to enquire how the legislative activity has sought to grapple with the social and economic evils, what changes have been introduced in our national jurisprudence, and how the basic concepts of crime and liability therefor have undergone a change.
III. THE OBJECTIVES:

The objectives of our study are:

1) to find out what practices are there which in the view of the State are detrimental to the wellbeing of the people or harmful to the economy of the State or dangerous to the public morals;

ii) to make a study of the statutes which have been passed by the legislature, Central as well as State, from time to time to combat the evils aforesaid;

iii) to examine the principles upon which legislation for the above purpose has proceeded, whether it is based on a foreign principle or is the result of the local conditions, traditions, wisdom and expediency.

iv) to make a comprehensive study of the powers which have been conferred upon the law enforcement officers and various institutions including the judiciary to deal with the offences.

and  v) to study the judicial decisions as and when controversies on the subject have arisen before the courts and the problems that have been raised before the courts about the legality or constitutionality of the measure adopted by the State to deal with the social and economic evils of the country.
Under the scheme of our Constitution the programme of Social Welfare has to be pursued by the State through all the three branches of government. The enormous powers conferred on the Legislature to enact laws for this purpose, the vast powers conferred on the Executive to enforce them and the respect which the general community has to give to the decisions of the judiciary, all evidence the fact that the programme of social welfare has to be jointly undertaken by the Legislature, the Executive and the Judiciary. Each of these three branches of government is at one stage or the other responsible for achieving the goal of social welfare and none is free from the responsibility of helping the State in realising the high ideals of the Constitution.

Of the three branches of government it is Executive branch which has vast resources at its command and is best in the know of what legislation is required for the country and what difficulties are faced by it in enforcing the laws. The responsibility of the Executive in the matter of social legislation is two-fold. First, it has the responsibility to enforce the laws and then to apprise the legislature if any difficulty is faced by it in their enforcement. In a parliamentary form of government the Executive can count on the support of the legislature at all times because members of the Executive come from the Legislature.
Next in importance is the role of the Legislature. As and when difficulties are brought to its notice it has to accord its approval to the changes proposed. The role of the Judiciary has its own importance no doubt, but it is only when a controversy arises or a certain matter is contested before it that the judiciary figures in. The major burden of dealing with the social and economic problems of the country falls on the shoulders of the Executive.

Keeping in view the responsibility of the three branches of government in this regard, the study of Social and Economic Offences has been planned here in such a way as to cover the following matters:-

i) What has the legislature done when a certain evil has crept in in our society? What laws have been passed by it to deal with the evil?

ii) What powers have been given to the Executive to enforce the Laws?

iii) How has the Judiciary interpreted the laws as and when cases have appeared before it in regard to these matters?

As it is not possible to cover all matters pertaining to the social and economic offences in this work of limited scope, the study has been mainly confined only to certain
important aspects of the subject, namely, the concept of crime in general, the concept of social and economic offences, the constitutional principle and the social and economic offences, the specific social and economic offences and the procedural law on social and economic offences.

IV. BRIEF DESCRIPTION OF THE THESIS, CHAPTERWISE:

- The Thesis has been divided into Nine Chapters:

  **CHAPTER NO. I, "INTRODUCTION"** deals with the significance of the subject, describes the reason which prompted the author to undertake research on this subject and explains the scope and object of the research undertaken, the method adopted to accomplish the task and the utility of the Thesis presented.

  **CHAPTER II, "THE CONCEPT OF CRIME"** first discusses the object of Criminal Law and the various forms in which it is found today. Then it gives the meaning and definition of Crime and explains the distinction between Crime and others Civil Wrongs, and the elements which are necessary to constitute the Crime both under the English as well as the Indian Law and the classification of Crimes under both the systems of law.
CHAPTER - III "GENERAL PRINCIPLES OF CRIMINAL LIABILITY" describes the meaning and definition of liability; the various kinds of liability known to our laws and the rules under which liability is imposed for damages (civil liability); liability that is imposed for the Actus Reus and the Mens Rea (criminal liability), liability that is imposed for the fault of another person (vicarious liability), liability that is imposed without fault (strict liability) and liability that is imposed on a group of persons for their concerted action (group liability). The focus of this Chapter is on the evolution of the principles of liability. One of the most important aspects of our investigation is to find out whether the rule of liability in a certain kind of wrong is based on the principle of Common Law or it is the result of a Statutory enactment. It is from a study of these principles that we come to know what principles of liability are there which our legal system has borrowed from Common Law and what principles are there which our legal system has refused to borrow from the English Legal system.

CHAPTER - IV "THE CONSTITUTION & SOCIAL ECONOMIC OFFENCES" is a study of that part of the Constitution of India which has a certain philosophy of its own for the good of the people and endows the State with power to make laws
in respect of the socio-economic matters. The
distribution of legislative power between the Centre
and the State is an important aspect of the Constitutional
system of our country and it is from this rule of
distribution of legislative power that the criminal law
of our country takes its form and shape. The Centre as
well as the State legislature have been empowered to
create offences. The laws passed by the Centre as well
as the State legislatures add to the body of Criminal Law
and thus contribute to the growth and development of our
criminal jurisprudence.

CHAPTER - V "THE CONCEPT OF SOCIAL & ECONOMIC OFFENCES"
gives the meaning and definition of social and economic
offences and describes the genesis of White Collar Crime
in the United States of America, Soviet Russia, England and
India. The special features of the social-economic crimes
which distinguish them from the ordinary crimes have been
pointed out.

CHAPTER - VI "SPECIFIC SOCIAL & ECONOMIC OFFENCES"
is the main body of the thesis. In this chapter are
discussed matters such as the origin and development of
the law, the various offences punishable under the law,
the powers given to the enforcement officers and the
decisions rendered by the judiciary in respect of the
following specified categories of offences:

1. Food Adulteration Offences.

2. Offences relating to Essential Commodities, including Hoarding, Profiteering and Black-Marketing.

3. Offences relating to Customs and Excise including Smuggling and breach of Foreign Exchange Regulations.

4. Offences under Taxation Laws.

5. Offences by Companies.

6. Offences against Election Laws.

7. Offences relating to Dowry.

8. Untouchability.


10. Bribery and Corruption,

11. Gambling,

and


As it is not possible to deal with all the offences which come under the caption of Social and Economic Offences the above twelve offences only, which are of much public importance, have been taken up for our study.
CHAPTER - VII "SOCIAL & ECONOMIC OFFENCES AND THE RULES OF EVIDENCE" deals with the general rule of evidence which is followed by the Courts in dealing with the offences under the ordinary rule of criminal procedure, how the burden of proof is shifted from the prosecution to the accused in certain Statutory Offences. Proceeding further, it studies the developments which have taken place in the recent years with regard to the rule of evidence on the basis of the reports of the Law Commission and the demand from the general public to combat the evils.

CHAPTER- VIII "SOCIAL & ECONOMIC OFFENCES AND THE PROCEDURAL LAWS" deals with that aspect of the procedural law of our country which is pressed into service for prosecuting the cases of social and economic offences. Starting from the concept of complaint as to who is competent to make it and when an authority may deal with the investigation, enquiry and trial, the sanctions which the State authorities may adopt to suppress, punish and eradicate the evil are described in details.

CHAPTER - IX "CONCLUSION AND EVALUATION" gives the conclusions arrived at after studying the various aspects of the law on the subject of Social and Economic Offences and the measures which are called for to deal with the offences. Reliance has been placed in this connection
on the reports of the Statutory Bodies. The recommendation of the academic bodies, statutory commissions etc., and the reforms that are needed have been suggested and emphasised. The general trend in the legislative process has been pointed out and the inadequacy, arbitrariness and the harshness of the law on this subject has been explained and pinpointed.

V. METHODOLOGY:

The method adopted for the study of the law on this subject is the Historical and Analytical Method. The origin and development of law with regard to each of the above offences called for a historical method of approach. The aims and objects of legislation, the principles upon which the legislation proceeded, the social reaction to the measures adopted by the State, and the problems raised by the litigants before the courts of law called for an analytical method of approach.

Data for the Thesis has been collected from sources such as the Statutes passed by the Central and the State Legislatures, the Case Books, the Law Reports, the Law Journals, Commentaries and Digests published in India and abroad. The literature available in the Libraries in the form of Government Notifications,
Government Gazettes etc., has been tapped.

Every possible effort was made to collect the data on the essential aspects of the subject. For the purpose of collecting the data the author personally visited all Libraries of Aurangabad, the Library of the High Court Bench at Aurangabad and the Libraries of the subordinate courts function in Aurangabad. The author also visited all law libraries of Bombay, special mention may be made of the Tata Institute of Social Sciences, Government Law College, Bombay University Library, the Poona University Library, Dharwar University Library, Madras High Court Library, the Supreme Court Library, the ICSSR Central Library, New Delhi, Bar Council Library, New Delhi, Delhi University Library, Aligarh University Library, Central Detective Training School Library. Mention may be made in this connection of the Judges Library in the High Court of Andhra Pradesh, the State Archives Library at Hyderabad, the Sardar Vallabhbhai Patel National Police Academy at Shivrupally, A.P., the Osmania University Library, the Library of the Southern Regional Centre of Indian Council of Social Science Research in Osmania University campus, the Library of the Indian Law Institute, the Library of the National Institute of Criminology and Forensic Science at New Delhi.
The author has also visited the Special Court for Socio-Economic Offences and other Courts functioning at Hyderabad which is a landmark in the judicial system of the State of Andhra Pradesh and is an example for the other States to follow for quick and expeditious disposal of cases of socio-economic crimes.

The author has interviewed legal luminaries in and outside the State of Maharashtra, such as Justice V.R. Krishna Iyer, of the Supreme Court, Professor G.C.V. Subba Rao of the Osmania University, Professor Madhava Menon of the Bar Council of India, Mr. Venugopal, IFS, (Retired), Mr. Y.G. Rama Murty, I.R.S. (Retired), many others and judges of the subordinate courts, prosecuting officers, etc.,

X. UTILITY OF THE THESIS:

The thesis covers the legal and constitutional developments in the sphere of social and economic offences in our country. While there are a large number of books on the general law of crimes, there is dearth of literature on the new type of criminality which is covered by the special statutes and Delegated Legislation. The paucity of studies in this branch of criminal law has always been
felt by both the professional and the academic lawyers. The author desires to emphasise that this is the first work of its kind in the sphere of Criminal Law with a critical approach on various aspects of social and economic offences.

It is hoped that the thesis presented herein would be of much help and guidance to all those who are connected with the legal profession. As things stand now, there is no comprehensive and concise legislation in our country on the subject of Social and Economic Offences, nor is there any likelihood of such a legislation emanating in the near future from a single body like the Union Parliament because technically it has no power under the Constitution to make such a law. In the absence of a common code, lawyers and litigants have to depend on literature scattered in various statutes, case books, law reports, digests, etc., and lot of difficulty is faced by them in pursuing their interests. A presentation of matters in this form would go a long way in guiding the lawyers who are dealing with the social and economic offences. It is hoped that the thesis presented herein with a critical assessment of the existing law would also meet the requirements of the reformers who wish to improve the law on this important aspect of our social life.