CHAPTER V

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THE CONCEPT OF SOCIAL AND ECONOMIC OFFENCES

Crime in the traditional sense consists of theft, extortion, robbery, murder, dacoity and rape, and similar forms of misconduct, and is punishable under the general law of crimes. A new type of criminality which is assuming great importance in criminal jurisprudence involves injury to public health, public morals and public economy. It is punishable in some cases under the general law of crimes, and in many others under the special law of crimes. Crimes of this new variety have been given different names by different writers. Professor Sutherland calls them 'White Collar Crimes'. Professor Sayer, the well-known criminologist calls them 'Public Welfare Offences'. Certain other writers call them 'Regulatory Offences or 'Crimes of Strict Liability'. Mahesh Chandra in his book prefers to call these offences 'Socio-Economic Crimes'. Whatever be the name, Socio-Economic criminality has spread all over the world and has afflicted almost all the countries in the world. The development of law on this type of crimes is also faster than on any of the crimes falling within the traditional sense of crimes.

1. Sutherland, 'White Collar Criminality' (1940) American Sociological Review.
I. THE CONCEPT OF WHITE COLLAR CRIME:

The term White Collar Crime is associated with that type of Socio Economic Crimes which are committed by persons of upper socio-economic classes. The incidence of this crime is found not only in business community but also among men in profession.

Prof. Sutherland had conducted a detailed study of the nature, extent and significance of Socio-Economic Crimes and had coined the term 'White Collar Crime' to cover such of the economic offences as were committed by persons of upper-socio-economic classes. He had coined the term 'White Collar Crime' on the analogy of a book entitled "An Autobiography of a White Collar Worker", written by the President of the General Motors. A White Collar Worker is a Business Manager or an Executive as distinct from an industrial worker who is known as a blue collar worker.

In the year 1939, Prof. Sutherland published two of his research articles in the journal of the 'American Sociological Review' and thus introduced into the books of criminology the term 'White Collar Crime'.

The term 'White Collar Crime' was thus first introduced in criminology by Prof. Sutherland and it was primarily intended to cover such acts as promulgating false or misleading
advertisements, illegal exploitation of employees, mis-labelling of goods, violation of weights and measures statutes, conspire to fix prices, selling adulterated food-stuffs and evading corporate tax, etc. But this new type of Socio-Economic Crime, at present, also includes bribery and corruption, black marketing, profiteering, hoarding, smuggling, violation of foreign exchange regulation and many other violations of laws by men in profession.

At first Prof. Sutherland defined 'White Collar Crime' as a crime committed by a person of respectability and high social status in the course of his occupation. But later he modified the definition by defining a 'White Collar Crime' as a person of the upper socio-economic classes who violates the criminal law in the course of his occupational or professional activities.

The persons of upper socio-economic classes are more powerful politically and financially. They escape arrest and conviction to a greater extent than persons who lack much power. Wealthy persons can employ skilled attorneys and in this way influence the administration of justice in their favour more effectively than persons of lower socio-economic class.

In India as well as in other countries, the general feeling is that the implementation of criminal law has become difficult because of the social status of the criminals.
The White Collar Criminals are more powerful than the traditional criminals. The victims of the White Collar Crimes lack technical knowledge and cannot protect themselves and hence, they fall a prey to the caprice of the White Collar Criminals. Because of their powerful social status, these criminals manage to escape punishment. On no other subject is law growing so fast as on the subject of White Collar Crime in our own country and in other parts of the world.

In view of the growing importance of the subject and the tremendous legislative activity going on everywhere, a detailed study is called for of the various aspects of this type of crime. Let us, therefore, look at the jurisprudential aspect of this crime before we study the position of law on this subject in our own country.

II. THE GENESIS OF WHITE COLLAR CRIME:

The genesis of White Collar Crime has been almost the same throughout the world. Socio-Economic Criminality is the product of industrialisation, urbanisation and changes in the economic structure of society.

(a) White Collar Crimes in England.

Towards the end of Middle Ages, many important changes had started appearing in Europe and England. The age of reason had begun and it had ushered in a new era known as
the Renaissance. A new movement challenging the authority of the Roman Church had raised its head and this movement came to be known as the Reformation. The Industrial Revolution which followed had brought about many changes in the technique and organisation of production and created a new economy known as the industrial economy.

The Renaissance, Reformation and the Industrial Revolution created a society in which reason rather than faith, competition rather than co-operation, and Science rather than religion were accepted as the foundation stone for all human transactions.

These changes brought about changes in the economic structure of Society and they proved to be the breeding ground of many malpractices and irregularities in the commercial world. Men started pursuing their trade and commerce with such an enthusiasm that they adopted every lucrative idea that came to their mind. In the pursuit of happiness they abandoned the ethical Code and cast behind their back the moral values. All sorts of frauds, misrepresentations and misappropriations were indulged in by them during trade commerce and industry. Such activities could not be controlled by the State because of the limited role it had to perform under the doctrine of Laissez Faire, with the result that socio-economic criminality went unchecked and unpunished.
Socio-Economic Criminality in England was thus the product of Industrial Revolution, although Renaissance and Reformation had contributed to its emergence in no small a measure. In the absence of enactments by the Stats, it had fallen to the shoulders of the Courts and the Judges to reshape the criminal jurisprudence in the sphere of Socio-Economic Crimes. Hence, we find that the Common Law Judges are the first to build a jurisprudence of great significance in the realm of Socio-Economic Offences and later on the lead is taken by the legislature.

The South Bubble Act, 1720 may be cited as an example of the effort made by the legislature to deal with fraud on a big scale perpetrated by unscrupulous persons. Certain species of White Collar Crimes have received special attention in England. Legislation has been passed penalising share pushing (victimisation of the public by fraudulent dealings in stocks and shares. Under the Prices of Goods Act, 1939, it was made unlawful to sell any goods the price of which was regulated at a price exceeding the authorised price.

The legislature has added more and more stringent provisions to deal with tax evasion and tax avoidance. Other type of activity on which attention has been focussed in England in recent times is the restrictive trade practices.
(b) **White Collar Crime in U.S.A.**

The main crimes that have attracted attention in the United States of America are the following:

(a) Frauds in business, in relation to sale of bonds and investments.

(b) Adulteration of food and drugs and misleading advertisements.

(c) Malpractices in the Medical profession, such as the 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 free splitting.

(d) Crimes by lawyers such as guiding the criminal or quasi-criminal activities of Corporations, twisting of testimony to give a false picture, fake claims, bogus liability in accidents, etc.

(e) Trusts, Cartels, Combines and Syndicates, etc., formed to combat competition or to raise prices or otherwise to interfere with the freedom of trade to the detriment of honest businessmen or the consumer public.

(f) Bribery and Graft by public officers.

Adulteration of food and drugs has received extensive consideration in the United States of America along with the question of drug addiction and sale of Norcotics, Opium, etc. The latest of the Acts, the Federal Norcotics Control Act, 1956, besides penalising the addicts also punishes those who handle Norcotics for profits and exploitation.
Another topic which has received special attention in the United States of America is 'Organised Crime' that is crime wherein the traditional criminals join hands with big business for securing ends harmful to the community.

(c) Economic Crimes in Soviet Russia.

In Soviet Russia and other countries of Eastern Europe Socio-Economic Offences have received special attention. In Soviet Russia particularly, there is an enormous body of law to deal with counter-revolutionary crimes (which are of political character) and crimes of social and economic character. Under the head of 'Economic Crimes', punishment is prescribed for such of the crimes which are known as White Collar Crimes in other countries and cover wrongs, such as acts of inefficient management, poor work, neglect of duties by employees, non-performance of contracts and inefficient use of one's property. Legislation has been increasing day by day and for certain offences death penalty is being prescribed. Crimes of economic character which are at present punishable under the Soviet Law of Crimes are the following:

1) Manufacturing Prohibited Products.

The prohibition against manufacture of clothes, underwear, knit goods, hats, leather footwear goods and articles made of non-ferrus metals, etc., being an essential feature of the economic policy provisions are enacted to penalise the manufacture, etc., or sale of such prohibited products.
ii) Speculation.

Purchase and sale of goods and other objects with the intention of making a profit is punished.

iii) Contracts with the Government.

Dissipation by a lease holder or trustee of legal entity (Corporation) of Government or Public Property given to him under a Contract is punishable. So is failure to perform an obligation arising from a Contract made with Government or Public Office or Enterprise, if during a civil trial, the malicious character of the failure to perform the contract.

iv) Private Transactions relating to Land.

Violation of laws on nationalisation of land committed in the form of covert or concealed purchase, sale, gift, etc., of plots or lands not allowed by law and other transactions in violation of such laws.

v) Private Business under the Disguise of a Co-operative.

Pseudo Co-operative activities, that is, founding or directing activities of Pseudo Co-operatives (Organisations) which are disguised under the form of a Co-operative in order to secure privileges guaranteed to Co-operatives but which are in fact private enterprises, is punished.

vi) Poor Management.

Mismanagement by a person placed at the Head of a Governmental and Public Office and Enterprise or of those entrusted by them, based upon a careless or dishonest attitude to the affairs entrusted, resulting in dissipation or irreparable damage to property, of the office of enterprise, are punishable.

vii) Weights and Measures.

Giving faulty weights or measures to customers using wrong scales or measurements, devices or weights, is punishable.
viii) **Selling Goods of Poor Quality.**

Selling goods of inferior quality at the price for those of superior quality is punishable as theft from the customer and fraud of the Soviet State.

ix) **Excessive Prices.**

Violating established retail prices for goods of mass consumption in shops, stores, stands, eating places, etc., and concealing from customers the prices of goods indicated in the price list are punishable as theft from the consumer and fraud of the Soviet State.

x) **Theft of Public Property.**

Theft of Public Property is dealt with elaborately in Soviet Criminal Law. Broadly speaking, theft of Government property is punishable more severely than theft of public property (property of collective forms, Co-operatives, etc.,) and theft of public property is punishable more severely than theft of private property. Recently even death penalty has been introduced for large scale theft of State property or social property committed by dangerous persons serving sentences for special crimes.

d) **Socio-Economic Offences in India.**

Socio-Economic Offences in India are of comparatively recent origin. Until First World War, Industry and Trade in India had all along been carried on under a domestic system. The hold of religion on the lives of the people both under the Hindu as well as the Muslim Rulers was quite strong and all pervading. It was only after the British emerged victorious in the War of Succession to the Mughal Rulers that changes began to appear in the social and economic structure of the country. The economic policy of the British made the Indian economy subservient to the British economy and this change
disrupted the traditional pattern and structure of the Indian economy. The rural artisan industry collapsed and India came to be looked upon as a source of raw material for the British Industries or as the best market for the consumption of goods. The British assumed control over India in 1858 and ruled the country in the image of their own political system without extending, however, the democratic institutions of their country.

The Britishers enacted laws for India in civil as well as criminal matters. There was no vacuum of legislation to regulate socio-economic conditions of the time. The Indian Penal Code was enacted by the Britishers in 1860, the Evidence Act and the Code of Criminal Procedure in 1872 and 1898 respectively. These Codes were enacted by them in the image of the Common Law. Punishments were prescribed in the Penal Code for offences such as fraud, misappropriation, cheating, embezzlement, fabrication of documents, forgery, conspiracy, mischief, bribery, corruption, and other substantive offences.

Bribery and Corruption were provided for in Section 161 to 165 of the Indian Penal Code and Section 168, 169, 217 to 222 and 225-A provided for the misuse of position by Public Servants. Sections 230 to 264 laid down the law regarding counterfeiting of coins and Governmental stamps, and Sections 264 to 267 provided for offences relating to weights and measures. Adulteration of food stuff and drugs were looked
after by Sections 272 to 276, while Sections 379, 380, 381, 389, 405, 407, 408 and 409 laid down the law regarding theft and misappropriation of public property and funds. Cheating and dishonesty including delivery of property was punishable under Sections 415 to 420 of the Indian Penal Code. Forgery and offences relating to documents had been made punishable under Sections 463 to 489 and above all Indian Penal Code Sections 107 to 120 read with Section 40 there-of declared abetment of any such offences as are made punishable by the Code to be as much offences as the principle offence.

The Indian Penal Code was re-enforced from time to time with special and local laws dealing with specific matters of importance. Rapid industrial activity started in India only with the First World War, (1914 to 1919). This development was of an important social consequence, since it saw the birth and growth of two social classes in the Indian society, the Industrial Capitalists and the Modern Working Classes. New social relations, new social ideas and new system of economy emerged from this time onwards. It accelerated extreme business activity and business competition. Men in business and profession resorted to corrupt and unfair practices. Thus, appeared on the social scene the demon of socio-economic crimes. In spite of the vast provisions of the Indian Penal Code, the new criminal trend could not be arrested.
Even after the World War, no attention was given by Government to the incidence of socio-economic crimes and no effort was made to contain them. The industrial activity in India received impetus after the Second World War, because England, United States, Japan, Germany and all other western countries were busy with producing war equipment and could not produce the consumer goods. It was during and after the Second World War that India started tapping all its resources of production and it was during this period that Industrial Revolution settled in some measure upon the country. Although this industrial revolution was a boon, it brought in its way several problems of socio-economic character. It was in this context that certain measures were taken to regulate the essential supplies and to deal with the problem of corruption.

After India attained Independence certain other factors contributed to the growth of socio-economic criminal activity in the country. The problem of refugee rehabilitation, maintenance of essential services and essential supplies, scarcity, inflation, smuggling and the integration of native States created a situation in which there was an unprecedented increase of criminal activity. The existing laws could hardly meet the new problems.

The problem of corruption had become very acute in India during the World War period and its high water-mark
was reached after Inde пендence. Government was busy with certain urgent problems which had arisen in the wake of the Partition of the country. Despite these problems Government adopted certain executive measures to deal with the evil of corruption. It was in these circumstances only that the Delhi Police Establishment was put on a permanent footing.

(e) *Tek Chand Committee.*

A Committee was set-up under the Chairmanship of Bakshi Tek Chand to review the working of the Prevention of Corruption Act, 1947, to make recommendations with regard to any improvement that might be necessary in the laws as well as in regard to the machinery for enforcing them, to assess the extent of success achieved by the Special Police Establishment in combating corruption and to make recommendations regarding the continuance, strengthening, etc., of the Delhi Police Establishment. Some Ministries in Rajasthan and Vindhya Pradesh were prosecuted in 1949-1950. Several Enquiry Committees were appointed to enquire into the conduct of Ministers.

The Vivian Bose Committee was appointed in 1956 and some leading industrialists were prosecuted.

Yet the various other factors nullified the measures of Government. Owing to the expansion in the economic
activity of the State, the Executive got the opportunity of indulging in various types of criminal activities. The procedure and practice in the working of Government Offices were cumbersome and dilatory. The anxiety of the people to avoid delay and get their things done early encouraged the growth of dishonest practices like the system of 'Speed Money'. This type of accepting Speed Money had become a fairly common type of corrupt practice, practically in all matters relating to the granting of licence and permits, etc. Corruption had become so rampant that people had started losing faith in the integrity of the Public Administration.

(vi) Santhanam Committee.

In view of the public criticism that was going on against the administration, the matter was considered by the Government and a Committee was appointed in June, 1962 under the Chairmanship of Shri K. Santhanam, M.P. to review the problem of corruption. The terms of reference of this Committee were:

i) To examine the organisation, set-up, functions and responsibilities of the vigilance units in the Ministries and Departments of the Government of India and to suggest measures to make them more effective.

ii) To examine the organisation, strength, procedure and methods of work of the special Police Establishments and the difficulties experienced by it and to suggest measures to further improve its working.

iii) To consider and suggest steps to be taken to emphasise the responsibilities of each Department for checking corruption.
iv) To suggest changes in law which would ensure speedy trial of cases of bribery, corruption and criminal misconduct and make the law otherwise more effective.

v) To examine the rules relating to disciplinary proceedings and to consider what changes are necessary in order to expedite these proceedings and to make them more effective.

vi) To suggest measures calculated to produce a social climate both among Public Servants and in the general public in which bribery and corruption may not flourish.

vii) To examine the Government Servants Conduct Rules and to recommend changes necessary for ensuring maintenance of absolute integrity in the public services.

viii) To suggest steps for securing public support for anti-corruption measures, and

ix) To consider special measures that may be necessary in corporate public undertakings to secure honesty and integrity among their employees.

The Santhanam Committee found that the scope for corruption is greater and the incentive to corrupt stronger at those points of organisation where substantive decisions are taken in matters like assessment and collection of taxes, determination of eligibility for obtaining licences, grant of licences, ensuring fair utilisation of licences and goods obtained thereunder, giving of contract, approval of works and acceptance of supplies. The Committee observed that in all Contracts of Construction, purchases and sales and other regular business on behalf of Government, a regular percentage is paid by the parties to the transaction and this is shared in agreed proportions among the various officials concerned. In the Public Works Department itself
7 to 11% was paid and in this way share was enjoyed by persons of the rank of Executive Engineer down to the rank of Maistry. In the Railway similar practice in connection with the allotment of wagon and packing of parcels was in vogue. The Committee in its report observed that the major contributory factors for the growth of corruption are; firstly, the partial acknowledged unwillingness to deal drastically with corrupt and inefficient public servants, and secondly the protection given to the services in India which is greater than that available in more Advanced Countries.¹

The Committee further observed that the advance of technological and scientific development had contributed to the emergence of 'Mass Society' with a large rank and file and a small controlling elite, encouraging the growth of monopolies, the rise of a managerial class and intricate institutional mechanism. Strict adherence to a high standard of ethical behaviour is necessary for the even and honest functioning of the new social political and economic processes. The inability of all Sections of Society appreciate in full this need results in the emergence and growth of White Collar and economic crimes, renders, the enforcement of laws themselves not sufficiently deterrent, more difficult. This type of crimes is more dangerous not only because the financial stages are higher but also because they cause

irreparable damage to public morals.

The Committee pointed out that tax evasion, tax avoidance, share pushing, malpractices in the share market and administration of companies, monopolistic controls, usury, under-invoicing or over-invoicing hoarding, profiteering sub-standard performance of contracts of construction and supply, the evasion of economic laws, bribery and corruption, election laws and malpractices are some of the examples of White Collar Crimes in India.

While offering its suggestions to the Government in the matter of dealing with the problem of corruption at the Government level, the Committee observed that the Indian Penal Code does not deal in any satisfactory manner with acts which may be described as social offences having regard to the special circumstances under which they are committed and which have now become a dominant feature of certain powerful sections of the Society. The Committee categorised the economic offences as follows:-

i) Offences calculated to prevent or obstruct the economic development of the country and endanger its economic health.

ii) Evasion and avoidance of taxes lawfully imposed.

iii) Misuse of their position by public servants in making of contracts and disposal of public property, issue of licences, permits and similar other matters.
iv) Delivery by individuals and industrial and commercial undertaking of goods not in accordance with agreed specifications in fulfilment of contracts entered into with Public Authorities.

v) Profiteering, black marketing and hoarding.

vi) Adulteration of Food Stuffs and Drugs.

vii) Theft and misappropriation of public property and funds.

viii) Trafficking in licences, permits, etc.,

The Committee observed that some of these offences have been made punishable by special enactments. It is desirable to add a new chapter to the Indian Penal Code, bringing together all the offences in such special enactments and supplementing them with new provisions so that all social offences will find a prominent place in the general criminal law of the country. The Committee suggested to the Government that it may entrust this work either to a special Legal Committee or refer the matter to the Law Commission for a detailed examination.¹

The main suggestion of the Santhanam Committee that a new Chapter be added to the Indian Penal Code was considered by the Government and it was decided that the matter be referred to the Law Commission for detailed examination.


The Law Commission under the Chairmanship of Mr. J. L. Kapoor, went into the several aspects of the socio-economic offences. The Commission noted that one of the reasons for the differential implementation of the law in the area of White Collar Crimes, was relatively unorganised resentment of the public towards such crime. 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 organised moral sentiment of the community, partly because the crimes are complicated and cannot be easily presented as new, 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 the relatively new and specified part of the Statutes.

The main point to be considered by the Law Commission was the proposal of Santhanam Committee to add a new Chapter to the Indian Penal Code bringing together all the offences in such special enactments, (i.e., enactments relating to the offences, in question) and supplementing them with new provisions. This suggestion contemplated two classes of changes, i.e.,:-
i) Transferring to the Indian Penal Code the existing provisions relating to the offences in question contained in other special enactments, and

ii) Adding to the Indian Penal Code new provision as to social and economic offences.

The Law Commission with regard to this proposal stated that such a measure was not necessary and could not be carried out. The reasons given by the Law Commission for this were the following:

"In the first place the penal provisions contained in the various special enactments are in many cases linked up with the general structure of these enactments and take their colour from them. Their transfer to the Penal Code may not be convenient, for such transfer has the effect of disturbing the whole scheme of the enactments and making them unintelligible or incomplete. Conversely if transferred to the Indian Penal Code, these provisions themselves would become incomplete as they would have to be read without reference to the main provisions of the special enactments. Further, their transfer will not only increase the number of Sections in the Indian Penal Code and add to its bulk but also its structure."

The Law Commission had consulted many of the High Court Judges on the possibility of implementing this proposal. In the opinion of their Lordships, the proposal to include these anti-social offences in the Penal Code did not appear to be practicable and would create innumerable difficulties apart from marring the structure of the Penal Code. Their Lordships
were further of the opinion that the Penal Code deals with such acts against person and property as are universally accepted as injurious in all civilised society and with acts which offend against the fundamental principles on which the existence of human beings as a Society rests. These fundamentals are more or less of a permanent nature and will endure for a long time to come. The offences dealt with in the Penal Code are of a different nature and have a different content from social offences and it would not be proper to include anti-social offences in the Penal Code.

The Law Commission further observed that the Preamble of the Indian Penal Code also shows that it was intended to be a general Penal Code for India. It was never intended as Section 5 of the Act shows to affect any special or local law by the enactment of the Penal Code. The Opium Act, the Gambling Act and a number of special and local laws were and are in force which not only constitute but also punish some types of acts under circumstances mentioned therein and that method of dealing with offending acts of a special nature or acts which require to be specially considered and dealt with has been found to be working satisfactorily. Some times while dealing with particular offences, the Commission said, it has been found necessary to provide for particular procedure or special rules of evidence also. Provisions for special sanction before starting investigation and
prosecution, for raising presumption of guilt, for awarding minimum sentences, etc. have been made in some special enactments, for example, Prevention of Corruption Act, Prohibition Laws, etc. The Penal Code besides giving its own general explanations, definitions and general exceptions divides into and deals with categories of acts constituting offences on their basic nature. For example, offences against the State, against Public tranquility, offences relating to public servants, affecting public health and morals, affecting the human body, offences against properties, etc. Most of the principal offences defined and made punishable under the Penal Code have unfortunately continued to be committed and punished, but except in a few cases, the occasion to delete any of them as absolute, has so far not arisen. On the other hand, offences of new and complex types have come to the forefront, the nature and the number of offences constituting the basic structure of the Penal Code remaining unaffected. These offences have now assumed such proportions that it has become necessary to deal with them on a more scientific basis and to incorporate them into the penal law of the land. But as stated before, such offences require special treatment and procedure in their trial and in their outer form are short-lived, though they reappear in different and perhaps more complicated guise later on. The offences being the outcome of changed and changing social conditions would require repeated legislative attention and therefore, it would be appropriate if they are
made the subject matter of special legislation, while the Penal Law of the land, i.e., the Indian Penal Code should be left substantially in its present form.

One of the points urged in support of the idea of including the social and economic offences in the Indian Penal Code was that the Courts attached more importance to the offences mentioned in the Penal Code. The Law Commission did not appreciate this argument at all. Rejecting the contention, it observed that the offence of, say, entertaining more than 100 guests in violation of the Guest Control Order cannot be looked upon by anybody as an offence as heinous as a rape.

The Law Commission in its report observed that there are some offences which are considered as permanent offences and there are others which are temporary malpractices. Permanent offences are offences which go against the fundamental structure of the Society. On the other hand there are some offences which are regarded as temporary offences because of a temporary dislocation of the economy. Statutory offences mainly belong to the second category. They are intended to counter-act the passing phenomenon. For example, the Gold Control Order or any other Control Order, whereas offences against human life are permanent offences for human life is always considered to be of value and there can never be a change in this idea.
The Law Commission in its report analysed the common characteristics of the social and economic offences as follows:

1) The offences are committed by the upper classes of society.

2) These upper classes themselves set the moral standards of society and hence a serious view is not taken of these offences.

3) The victims of these offences are unascertainable persons (usually the State or the Community), as contrasted with the majority of the offences under the Indian Penal Code wherein most cases the victim is an ascertained individual.

The Law Commission also pointed out that the special enactments dealing with the social and economic offences possess certain special features.

The Law Commission also referred to the practical aspect of the proposal of adding new provisions to the Penal Code and said that with the passage of time new and fresh offences under the head of anti-social offences come into existence and these new offences in the light of practical needs necessitate their own special rules of evidence and procedure as well as special provisions as to maximum and minimum punishment. The manifestation of human ingenuity cannot be predicted and special provisions may become necessary to tackle them. In view of these considerations it would be more practicable to keep the provisions relating to such offences in special enactments as they are at present.
The Law Commission considered in detail the various categories of offences which were mentioned in the report of the Santhanam Committee as "Social and Economic Offences" in our country and the Commission suggested changes in the relevant Statutes on these specified categories of offences.

(h) Wanchoo Committee.

Despite all efforts made by the Government through the legislative as well executive measures, there was increase in the incidence of economic crimes. The evasion of tax, the production and manufacturing of adulterated food and spurious drugs were greatly practised. Black money which had sprung up as a result of several types of such economic crimes, generated a parallel economy in the country. The proliferation of black money created a serious problem for the Government. It had not only multiplied tax evasion, foreign exchange, violation, black marketing, but also affected the moral fabric of our society. Government, therefore, appointed a Committee under the Chairmanship of Justice K.N. Wanchoo in March, 1970 to study the causes of the malady and to recommend concrete and effective measures of controlling the black money.

The Committee examined the question in its entirety and made recommendation of far-reaching importance. It made a number of observations on the impact of Black Money on offences such as tax-evasion, foreign exchange regulation violation, etc., It pointed out that while tax-evasion leads
to creation of Black Money, the Black Money utilised secretively in business for earning more income leads to tax evasion. The Wanchoo Committee explains how one economic offence is the breeding point of another economic offence, and how they contribute to each other for their proliferation.

(i) **Forty Seventh Report of the Law Commission.**

After the Wanchoo Committee, the next body of national importance to consider the problem of socio-economic offences was the Law Commission of India under the Chairmanship of Justice Gajendragadkar. The question referred to the Commission in October, 1971 was regarding the desirability of dealing adequately and swiftly with anti-social and economic offences. The question to be considered was how drastically and swiftly penal action can be taken under the various existing laws to prove a deterrent against commission of such offences. Government was of the view that the trend of legislation and the judicial approach to such offences was that these offences were treated lightly and the punishment was not adequate having regard to the gravity of such offences.

So the short question that was referred to the Law Commission this time was about dealing adequately and swiftly with those offences. The Commission widened its scope of inquiry by including within its purview questions
about investigation, prosecution, trial and punishment in respect of proceedings taken under the various special enactments.

The Law Commission in its report has explained some of the features of the Socio-Economic Offences to be the following:

1) **Nature** of the criminal is avarice or repaciousness (not lust or hate).

2) **Background** of the crime is non-emotional (unlike murder, rape, defamation, etc.,) There is no emotional reaction as between the victim and the offender.

3) The **victim** is usually the State or a Section of the public, particularly the consuming public (i.e., that portion which consumes goods or services, buys shares or securities or other intangibles). Even where there is an individual victim, the most important element of the offence is harm to society.

4) **Mode of operation** of the offender is fraud not force.

5) Usually, the act is deliberate and willful.

6) The interest protected is two-fold:

   a) Social interest in the preservation of--

   i) the property or wealth of health of its individual members, and national resources, and

   ii) the general economic system as a whole from:

       a) exploitation, or

       b) waste by individuals or groups.
b) Social interest in the augmentation of the wealth of the country by enforcing the laws relating to taxes and duties, foreign exchange, foreign commerce, industries and the like.

The most important feature of these offences is the fact that ordinarily they do not involve an individual direct victim but are punished because they harm the whole society. This constitutes the primary reasons why special efforts have to be made to enforce them. If a man or woman is robbed, assaulted or cheated, there is some person who is interested in getting the offence prosecuted, and because the act is a physical one having an immediate and direct impact, both individual and social vengeance are likely to be aroused. This element is, however, absent, when for example essential commodities are hoarded or foreign exchange is illegally taken out of the country or prohibited goods are imported. No doubt, some social offences do involve a victim. For example, when adulterated good is sold, the immediate consumer is harmed. But the criminal act is potentially capable of harming a large number of persons and that is the principal object behind punishing it.

The Law Commission further pointed out that many, but not all, of the social-economic offences are White Collar Crimes. The Commission described a White Collar Crime to be a Crime which is committed in the course of one's occupation by a member of the upper class of society. While explaining this the features of the social offences and the white collar
crime the Commission explained some of the points of distinction. It said, "A manufacturer of drugs who deliberately supplies substandard drugs is a White Collar Criminal. So is a big corporation guilty of fraudulent evasion of tax. But a person who illegally smuggles (for his personal use) costly television sets, is not a White Collar Criminal in the above sense, there being no connection between his occupation and the crime committed by him. Nor is a pensioner who submits a false return of income. But all of them are guilty of social or economic offences. In short, social offences are offences which affect the health or material welfare of the community as a whole, and not merely of the individual victim. Similarly, economic offences are those which affect the country's economy and not merely the wealth of an individual".

Socio-Economic Offences and White Collar Crimes could thus be intersecting circles. Again, socio-economic offences and crimes of strict liability could be reported by intersecting circles.

In view of the serious threat these offences have to the social health and wealth, the Law Commission recommended an increase in punishment for the principal offences under most of the Acts. The next recommendation of the Law Commission this time was to provide for the trial of these
offences by Special Judges of a senior cadre and that such cases should be assigned to one particular Judge in an area so that he may develop the expertise necessary for the purpose. Appeals for these Courts should lie to the High Courts. The object of these recommendations was to secure speedy disposal of the cases and to ensure uniformity in the interpretation of the relevant laws. With regard to Preventive Detention as a measure of dealing with these offences, the Law Commission was of the view that Preventive Detention can be used as a weapon against large scale evasion of the Customs Act or the Foreign Exchange Act.

Adhering to the above general observations, the Law Commission made recommendations for amendment of the following special enactments so that there is an effective enforcement of the Law on Socio-Economic Offences:-

1) The Central Excise & Salt Act, 1944.
2) The Foreign Exchange Regulation Act.

IV Development of Law on the Social and Economic Offences in India.

The Penal Code of India which was enacted by the
Britishers during their regime did retain provisions regarding Social and Economic Offences. It was a general law and was reinforced from time to time with special and local laws dealing with matters of importance such as the Bengal Gambling Act, 1867, the Bombay Prevention of Gambling Act, 1877, the Bombay Wagering Act, 1865, the Opium Act, 1878; the Explosives Act, 1884, the Excise Act, 1876; the Gambling Act, 1867, the Public Gambling Act, 1877; the Sea Customs Act, 1878; the Arms Act, 1878; the Merchandise Mark Act, 1898; and the Weights and Measures Act, 1878.

The Penal Code continues to be the general law and its main structure is intact for the last 100 years and more. Most of its provisions today are as suitable as they were when the Code was enacted in 1860. But the difficulty is that the Code is deficient in certain respects and cannot meet the challenges of the new economic structure. The Penal Code mostly consists of provisions which deal with offences against the person, property or the State. It does not deal with offences which may be described, as social and economic offences having regard to the special circumstances in which they are committed. Hence, special enactments have been passed to deal with the changed conditions.

When industrial activity started in India after the First World War a new system of economy emerged and with
it the demon of Socio-Economic Crimes raised its head in the country. But Government did not adopt any serious measures to contain the criminality then.

Industrial activity in India received impetus after the Second World War and it brought in its wake several problems of Socio-Economic character. It was now that serious steps were taken to deal with the new situation. Steps were taken to regulate the essential supplies. The first enactment passed for the purpose was the Defence of India Act, 1939, the Drugs Act, 1940. The Drugs and Cosmetics Act, 1940; the Excise Act, 1944; and the Central Excise and Salt Act, 1944; were enacted according as the need was felt. Further, the Delhi Special Public Establishment Act, 1946 was enacted thereby creating a special agency for the investigation and prosecution of certain specified offences.

After India attained Independence certain new factors contributed to the growth of socio-economic criminality in India. The problem of refugee rehabilitation; the maintenance of essential services and essential supplies; scarcity, inflation; smuggling and the problem of integrating the new States in Indian Union created a situation in which there was unprecedented increase of criminal activity.
Further, Industry and Commerce had changed hands due to departure of the Britishers and there was an unusual ambition on the part of the local industrialists to gull the money and become rich overnight. They were too prepared to throw overboard all moral values and ethical codes. Thus arose a situation in which acute commercial and industrial activity and monopolistic trends began to appear on the social scene.

Thus industrialisation, technical progress and scientific advancement gave a fillip to the new form of criminal activity. Within a short time Socio-Economic Crimes assumed gigantic proportions.

Governments' desire to deal with the new type of offences found expression in several Statutes. Special laws were enacted to deal with particular species of acts which were regarded as harmful. Eventhough some of the acts penalised by these special laws were already punishable under the Indian Penal Code, yet a special law had to be passed. For example, notwithstanding the existence in the Indian Penal Code of certain Sections punishing Adulteration (Sections 272-276 of the Penal Code) the enactment of a separate law was resorted to because that was considered the only way of dealing with the problem. The Prevention of Food Adulteration Bill was introduced in the Legislature for
the reason that the adulteration of food was so rampant and the evil had become so widespread that nothing short of a drastic remedy provided in the Bill could be expected to change the situation. Only a concerted and determined onslaught on this most anti-social behaviour could be expected to bring relief to the nation.

Similarly the Prevention of Corruption Act was passed in 1947 because the opportunities for bribery and corruption had been enormously increased by the war conditions and because it was anticipated that post-war reconstruction would involve disbursement of very large sums of Government money. The enactment of a special provision whereunder, the possession of a sudden accretion of wealth constituted an offence and was an innovation introduced by the Act.

Similarly, the Railway Stores Act was passed in 1955 to replace the Stores (unlawful possession) Ordinance and to extend its provisions to Part-B States. The Ordinance itself was promulgated with a view to preventing persons from having unlawful possession of articles of Railway Stores, a thing of frequent occurrence towards the end of the last war. They created a new offence of 'unlawful possession of railway stores'.

The Telegraph Wires Act was enacted, because the
Theft of copper wires used in telegraph lines had been so rampant that tele-communications in several parts of the country were considerably dislocated during the two years preceding the passing of the Act. Many offenders had escaped only due to the failure to prove in Court that the wires found in their possession had been stolen from the Posts and Telegraph Department. Since copper wires used in Telegraph Lines were of distinctive gauges it was felt that it would not be unreasonable to presume that any person found in possession of wires of these gauges came into their possession unlawfully. Similarly the Imports Act was enacted because it was considered that the measures of control imposed under Rule 84 of the Defence of India Rules and subsequently extended under the Emergency Provisions Ordinance, 1946 would have to be continued for some time longer in order to avoid any disturbance to the economy of the country during the transaction from war time to peace time condition. At the same time, penalties had been considerably reduced to suit peace conditions.

With a view to strengthen the Government machinery to fight the evil of corruption the Santhanam Committee had recommended in April, 1964 amendment of certain rules of service, the provisions of the Indian Penal Code, the Code of Criminal Procedure and the Constitution of India.
In pursuance of these recommendations several amending Acts were passed and by these Amending Acts the powers of the investigating officers, and the Magistrates were enhanced, the rules of evidence were altered and the quantum of punishment was raised.

The Anti-Corruption Laws (Amendment) Act, 1954, the Delhi Special Police Establishment Act, 1946, the Criminal Law (Amendment) Act, 1954; the Prevention of Food Adulteration (Amendment) Act, 1964, the Essential Commodities (Amendment) Act, 1964; and the Wealth Tax (Amendment) Act, 1964 were the legislative measures which were adopted by the Government to combat the evil of corruption.

Further, the Legislative process was continued for dealing more effectively with the new problems of Socio-Economic Offences. The Standards of Weights and Measures Act, 1966, the Passport Act, 1967, the Gold Control Act, 1968, the Maintenance of Internal Security Act, 1971, were passed by the Parliament, in order to contain these crimes.

Santhanam Committee had suggested that a new chapter be added to the Indian Penal Code incorporating the several provisions of law on Socio-Economic Offences which were scattered. The matter was examined by the Law Commission of India, which in its Twenty Ninth Report
negativied the idea. The Commission was of the opinion that
the Socio-Economic Offences have assumed such proportions
that it is desirable to deal with them on a more scientific
basis. These offences require special treatment and procedure
in their trial and require special legislation.

Not only that a new Statute was passed but changes were
introduced in the existing law also to make it more useful.
The Legislature devoted its attention to introduce necessary
measures in the existing laws to make the law more effective
and thus fulfil the need for proper enforcement of the
law. For example, in the Foreign Exchange Act the
Legislature introduced changes from time to time dealing
with the topics referred to below.

For contravention of certain Sections of the Act,
departmental penalty was authorised by Section 23(1A) of
the Act.

Confiscation was provided for by Section 23(1B) of
the Act.

High Powers were conferred on Magistrates in relation
to fine by Section 23(2) of the Act.

Various powers of enforcement officers for search, etc.,
were provided by Section 19A to Section 19F.
By Section 24(2) of the Act it was provided that where foreign exchange is acquired by a person for a particular purpose under permission granted under the Act, the burden of proving that it was used for the purpose for which permission to acquire it was granted, was thrown on that person.

In the Prevention of Food Adulteration Act also amendments were made to make it more effective.

As regards punishment extensive amendments were made in the Act which included an amendment of Section 16(1) which constituted the main penal provision in the Act. The minimum punishment was fixed at six months, and the maximum punishment was increased from one to six years.

Again in the Essential Commodities Act, 1955 amendments have been made from time to time to deal effectively with the various offences under the Act.

Section 7(1) was amended so as to bring in absolute Liability.

By an amendment of Section 7(1)(b) of the Act, the maximum term of imprisonment was increased from three years to five years.

By an amendment of Section 6 and Section 7 confiscation and stoppage of business were provided for.
The Central Government was given powers by Section 12A to direct by notification that contravention of the specified orders shall be tried summarily. In a summary trial so authorised the Competent Magistrate was empowered to pass a sentence of imprisonment for a term not exceeding one year.

By inserting a new Section in the Act, (Section 10A), all offences under the Act were made cognizable and Bailable.

In the Income Tax Act, 1961, the offence of making a false statement in any verification under the Act or delivering a false statement or account was subjected to a punishment.

In the Customs Act elaborate provisions were inserted in 1962 conferring powers of search and seizure of the enforcement agents.

(IV) Certain Important aspects of the Socio-Economic Offences.

Two very important aspects of the Social and Economic Offences are, the gravity of the harm caused to society and the nature of the offences themselves. The gravity of the harm is not easily apparent, but is nevertheless undesirable. The nature of the offences is peculiar in the sense that they are planned and executed in secrecy by shrewd and dexterious
persons with sophisticated means. The public welfare is gravely affected, and the detection of the wrong is unusually difficult.

These offences do not fit neatly in the accepted categories of Crimes. They represent harm of greater magnitude than the traditional crimes and of a nature different from them. Unlike the traditional crimes they are not in the shape of positive aggressions or invasions. They may not result in direct or immediate injury; nevertheless they create a danger which, or the probability of which the law must seek to minimise. Whatever be the intent of the violator, the injury is the same. The Legislation applicable to ordinary crimes in respect of the traditional requirements as to Mens Rea and the other substantive matters as well as on points of procedure makes a departure in so far as the new Socio-Economic Offences are concerned.

(1) **The Impact of Socio-Economic Offences.**

One of the very important aspects of the Socio-Economic Offences is the impact they have on the Society. Each offence has got its peculiar impact. The damage caused by them to the developing Society is greater than that caused by the ordinary crimes. These anti-social activities can be described as extra-hazardous activities. The casualty of
these offences is the health and wealth of the country, and in a word the welfare of the nation. Every new type of offence brings a volume and variety of harm unheard of earlier, and extends the dimensions of harm to the development of the nation, and results in vital damage to public welfare. In the field of health, for example, the wide distribution of goods has become an instrument of wide distribution of harm. In so far as adulteration of drugs is concerned, the extract from the survey report of the Consumer Council of India shows great peril to which innocent public is exposed to the unscrupulous and utterly inhuman activities of antisocial elements in this field. The Council in its report says:

"There are some drugs sold in the market which are more dangerous than the disease itself. Unscrupulous elements buy used tins and fill them up with adulterated drugs. These are then packed in original cartons and sold at reduced rates to the retailer. Little does the innocent retailer realise that these people are making easy money at the cost of human life".

When those who disperse food, drink and drugs do not comply with the prescribed standard of quality, integrity, disclosure and care, public welfare receives a vital blow. In the economic field, again, freshly discovered sources of harm require the imposition of a higher type of precaution without which there would be vital damage to the public of the country and even to its very survival.

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