CHAPTER 6

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JUDICIAL ATTITUDE TOWARDS SOCIO-ECONOMIC OFFENCES
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Law and justice are two distinct concepts, no doubt they are inter-related but each has a distinct sphere of its own. The concept of justice is even older than that of law. Justice is the legitimate end of law. It must, therefore, necessarily precede law because people thought of law as they wanted justice. The Arthashastra of Kautilya gives a vivid description of the king's courts of justice.

During the Smriti period there was remarkable progress in and unification of law both substantive and adjectival. This is noticeable in many texts of Manu and Yajnavalkya but we get a much better idea of the adjectival law including judicature from the smritis of Narada, Brihaspati and Katyayana. Manu speaks of the royal court in the form of saba staffed by experienced councilors and directs the king to administer justice in the Saba and to decide cases which fall under the eighteen titles of law according to principles drawn from local usages and from the Institutes of the sacred law\(^1\). There are some texts of the smritikars which go to suggest that the court ought not to be bound and tied by too many rules of procedure and that every court is the master of its own practice. The provisions contained in these ancient treatises do not give any comprehensive code of procedure and there are a number of rules which must seem defective when judged by modern concepts.

However, one can say that the aims of every judicial administration since the days of ancient India have been to be just, honest and make available speedy remedy to the aggrieved persons who as a last resort seek the assistance of the courts. The same was the case with the ancient judicial system existing in our country. The entire judicial administration functioned under the supervision of the king and the courts derived their authority from him. The central idea in criminal jurisprudence from the very beginning was that punishment for wrong doing was to be meted out by the king

\(^1\) Manusmriti VIII. 1, 3-8: Also see VIII, 9-11
for the preservation of social order. The entire conception of crime was to preserve the king’s peace and those who disturbed it by causing alarm to the subjects were to be adequately punished. Gradually with the change of social structure and advance in social consciousness, the concept of crime underwent a great change.

The concept of justice is elastic and a dynamic concept which varies from people to people, from time to time, according to the prevailing conditions, customs, traditions, religious beliefs, and above all philosophy of life which determines the moral sense of the community. But underlying this variation we would find a set of principles which are respected by all civilized people and are dear to every one. As observed by Salmond justice demands that, unless there is a good reason to the contrary man’s rational expectations should be fulfilled rather than frustrated\(^2\). These expectations depend on various factors including existing laws and customs and go to determine the common man’s sense of justice, according to the doctrine of utility, as propounded by Bentham, goodness of the laws depends upon their conformity to general expectations. Thus the doctrine furnishes an important criterion of justice that the law should fulfill the rational and legitimate expectations of the people. If laws are rooted in common expectations it would facilitate willing compliance and foster respect for the laws and the lawmakers. Justice is rooted and grounded in the fundamental instincts of humanity. Opinions may differ as to what is just in a particular set of circumstances but a patent injustice offends every one. It is a part of human nature that it cannot tolerate injustice.

With the growth of industrialization, advancement of civilization and awakening among the masses, the concept of justice widened to bring within its scope political, economic and social justice. Political justice means the absence of any arbitrary distinction between man and man in the political sphere. Socio economic justice, on the other hand, means equality of reward for equal work and includes a fair

\(^2\) Salmond, Jurisprudence, p. 192 (12 th Ed.)
deal to the working class by ensuring just dues for labour and healthy working conditions irrespective of caste, creed, sex, etc. It also means the abolition of economic conditions which result in the concentration of wealth and the means of production in the hands of a few. Socio-economic-justice demands abolition of all sorts of inequities which result from inequalities of wealth and opportunity race, caste, religion and title and the harmonization of the rival claims and the interests of different groups and sections. In the important case of Mysore v. The Workers of Gold Mines\(^3\) Gajendragadkar, J observed in Para 10 that the concept of social and economic justice is a living concept of revolutionary import; it gives sustenance to the rule of law, meaning and significance to the ideal of a welfare state. There has been a quest for justice from the earliest days of civilization and it is still continuing. The concept of justice is not a fixed concept for all people and all times. Religious beliefs, customs, traditions, level of civilization, the prevailing moral sense of the community and philosophy of the people all go to shape this concept and various ideologies have appeared from time to time in different parts of the country.

(i) **Socio economic courts**:

Criminal law is an instrument of social control exercised by penal sanctions expressed and incorporated in various penal statutes. Penal sanctions are the essence of these statutes. However the law of criminal procedure regulates the modes of apprehending, charging, and trying suspected offenders; the imposition of penalties on convicted offenders; and the methods of challenging the legality of conviction after judgment are entered. The law in this area is called upon to advance and reconcile interests of the greatest importance. It must, on the one hand, contribute effectively to the attainment of public peace and good order; at the same time it must afford realistic protection to the rights of persons proceeded against by the system of criminal justice\(^4\).

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\(^3\) AIR (1958) SC p. 923.

Infact the concept of socio-economic courts is not new and the general principles of criminal liability have largely been engineered by the courts all over the world. To discover the philosophy of judges various factors have be taken into consideration such as the socio-economic changes, industrial revolution, and the role of State in the spheres of social health, social welfare and the most important national security. All these factors largely contributed or rather compelled the judges to respond. The nineteenth century in particular was an era of changing beliefs about the relation of law morality, the relation of the courts to Parliament, and the purpose of punishment. In order to relate the principles of liability to the function of the law, it may be useful to examine the changing and often conflicting attitudes of the judges themselves to the aims of the law which they were functioning. Lawyers and legal theorists were by no means agreed to these aims. According to Francis G. Jacobs there appears to have been three principal theories which have evolved over the past one hundred years as to the role of the courts in the administration of the criminal law, and which still have their adherents today. One view is “moralism”; for this view is based on the idea that the underlying purpose of the criminal law is to punish the morally guilty and to acquit the morally innocent. No doubt, the belief that this should be the object of the administration of the criminal law have always been very widely accepted; but moralism would appear to go further in that it would seem to justify the extension of criminal law by the courts to punish immorality even where this is not expressly covered by the wording of an existing rule. The moralist approach was illustrated by the case of Shaw v. D.P.P. where Viscount Simond said:

“In the sphere of Criminal law I entertain no doubt that there remains in the Courts of law a residual power to enforce the supreme and fundamental purpose of the law to conserve not only the safety and order but also the moral welfare of the State, and that it is their duty to guard it against attacks which may be more insidious because they are novel and unprepared for”.

The House of Lords appeared to affirm that ‘the fundamental purpose’ of the

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6 (1962) AC, 265-66.
criminal law includes the conversation of "the moral welfare of the State; and that to achieve this purpose it is the task of the courts to apply the law to cases where not previously envisaged as being within its scope. But moralism may also justify restricting the ostensible scope of the criminal law; for it would justify reading mens rea into a statute which does not expressly require it. Here the effort is to equate moral and legal guilt by restricting the apparent ambit of the law rather than extending it; for moralism is based on the belief that moral guilt is necessary as well as a sufficient condition of legal liability.

A second view holds, contrary to the first, that the criminal law should never be extended beyond the terms of the rule as laid down by the legislature. To extend the law, adherents to the second view maintain, that it would be contrary to the principles of the legality. They also criticize the ruling in Shaw's case on the ground that it infringes one aspect of the principles of legality, the rule nulla poena sine lege. The legalists, on the other hand deny that there is a necessary connection between legal and moral guilt. Since the principles of legality themselves are based on moral considerations, they do not deny that certain moral principles may and should be invoked then the courts are required to interpret the wording of a statutory offence. They sometimes also argue that wherever possible the words should be so interpreted as to include the requirement of mens rea. They, like the moralists, regard it as wrong because it would involve punishing the innocent. (since it has already been observed that there is for them no necessary connection between legal and moral innocence). It would be wrong because this would contravene another, related aspect of the principles of legality it would involve convicting a person for an act which he did not realize at the time was a criminal offence. The legalists would argue that mens rea is a necessary condition of legal liability because it would be contrary to legality as well as to moral justice to deny it. But they would deny that moral guilt is sufficient

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7 See Hall, Jerome: Principles of Criminal Law.
because to admit this, though in accords with moral justice, would be contrary to the principles of legality. The principles of legality in effect require, not that the morally guilty be punished and the morally innocent acquitted, but that no one be found guilty without due process of law.

A third legal theory differs from both the others. Holders of the theory would not interfere with a statute either to extend or to limit its prima facie applications. Like the legalists they deny that there is a necessary connection between moral and legal guilt, but, unlike them, they would not make use of any moral principle to interpret the will of the legislature. They would apply the words which the legislature has adopted. They might regret any resulting injustice, for they may, without inconsistency, recognize the possibility of injustice, but they can be described as positivists, not because they believe the law to be immune from moral criticism, but in the sense that they believe with Austin that the question of what the law is, is one thing the question of its rightness and wrongness, another. If they are judges that may excuse their decisions by saying that if the law is unjust it is for Parliament to remedy it. Again, this theory may be connected with a particular doctrine of Parliamentary Sovereignty and with certain assumptions about the intention of the legislature.

All the theories, of course, pay lip-service to the principles that the existence and extent of the requirement of mens rea depend upon the interpretation of the Statute and the legislative intention. But because they start from different assumptions, they lead to different results, and to anomalies and the contradictions in the cases. But in a case of Lim Chin Aik v. The Queen⁸ the privy council observed:

“Where the subject matter of the statute in the regulation for the public welfare of a particular activity --statute regulating the sale of food and drink are to be found among the earliest examples-- it can be and frequently, has been inferred that the legislature intended that such activities should be carried out under the conditions of strict liability. The presumption is that the statute or the statutory instrument can be effectively enforced only if those in charge of the relevant activities are made responsible for seeing that they are complied with. When such a presumption is to be inferred, it displaces the ordinary presumption of mens rea”.

The concept of special court is not a new phenomenon in the Indian criminal jurisprudence. The British Government set up several special courts under different enactments but they were mainly aimed at suppressing the freedom movement of the Country9. Those laws were draconian in nature and were characterized by a denial of the substance of a fair trial, provided a truncated procedure without any right of appeal to the High Court. After independence different State Government in our country also set up special courts and passed different acts to deal with grave situation that arose immediately after partition and the Supreme Court held in several cases that the legislature is competent to create special courts, provide a shorter procedure but it should not violate Article 14 of our Constitution10. The Criminal Law Amendment Act 1908, did contemplate setting up of special courts for dealing with terrorist crimes. Special courts were also created under the Criminal Law Amendment Act, 1952 for trying offences of bribery and corruption, under sections 161-165 and 165A of the Indian Penal Code.

All these special courts so far set up and traditional courts are not adequate because the socio-economic offences fall in a different category as they challenge the economic integrity and well being of the society. The existing courts work in a traditional manner, follow the old rules of procedures and evidence, award inadequate sentences and do not fully appreciate the gravity of these crimes. A judge entrusted with the trial of offences generally finds it difficult to see those offences in the proper perspective of their impact on national life. The Judges are mostly preoccupied with the thinking that the economic offences are just technical or quasi-criminal offences. The harm to the society is not visible immediately. The special courts envisaged by the Law Commission in its 47th report, (titled the Trial and Punishment of Social and

9See the Rowlatt Act 1919, the Bengal Province Law (Amendment) Act 1924, the Sholapur Marshal Law Ordinance 1930 and 1932, the Bihar Maintenance of Public Safety Order Act, the Bombay Public Safety Measures Act 1947, the C.P. Berar Public Safety Act, the U.P. Maintenance of Public Order Act.

Economic offences) will enable judges, who will try such offences, to develop a sense of perspective and expertise. It will also enable judiciary to develop a new perception, a new and appropriate attitude of concern for such offences. Above all if properly armed with an expeditious procedure these special courts will be able to create a suitable social climate in which reprehensible antisocial character of these offences will be more adequately brought home to both the general public and the offenders themselves. Public opinion is also in favor of setting up special courts for trying these socio-economic offences. Their inadequacy is amply demonstrated by an unaccountable leniency shown to the accused of these offences where they are let off with minor penalties on judicially invalid grounds.

It is common knowledge that currently in our country criminal courts excel in slow motion. The procedure is dilatory, the dockets are heavy, even the service of process is delayed and, still more exasperating, there are appeals upon appeals, and revisions and supervisory jurisdictions, baffling and baulking speedy termination of prosecutions, not to speak of the contribution to delay by the administration itself by neglect of the basic necessaries of the judicial process. Parliamentary and pre-legislative exercises spread over several years hardly did anything for radical simplification and streamlining of criminal procedure and virtually re-enacted, with minor mutations, the vintage Code making forensic flow too slow and liable to holdups built into the law. Courts are less to blame than the Code made by Parliament for dawdling and Governments are guilty of denying or delaying basic amenities for judiciary to function smoothly. Therefore, we should be creative in innovating procedures compelled by special situations.

The special courts proposed by the Law Commission are courts of exclusive jurisdiction and they have developed perception and expertise in trial of these offences only. In order to be effective, its judgments should be subject to not more than one
appeal to the High Court both on a question of fact and law. The court must have power not only to convict and punish an accused person of the offence specifically charged, but also for an offence under an act dealing with similar offences for which he have not yet been specifically charged, provided that the rules of natural justice have been duly complied with and he is afforded a fair opportunity to defend himself in respect of such charge. It should have power to impose any punishment prescribed by law for the offences of which the accused before it is found guilty.

Such special courts must be manned by judicial officers, senior and experienced and of the rank of District Judge. And above all must follow speedy procedure for the trial of these offences. The procedure must no doubt be reasonable fair and just. Subject to this it should be specifically devised to cut down delays and various ingenious forensic stratagems to escape the clutches of law and delay, if not frustrate the administration of justice.

First of all the special court should take cognizance of offences directly without any committal proceedings and should follow procedure of warrant trial cases, as followed by Magistrates. There should be a provision for transfer of cases from one special court to another and the transferee court should not be required to start denovo proceedings. If witnesses are requested to be summoned for vexatious or delay it should have power to disallow them. Non-availability of legal practitioner will not be a ground for adjournment and no adjournment will be granted except when necessary in the interest of justice. They should have power to deal with refractory accused and to proceed with the trial in the absence of the accused, who by his voluntary act renders himself in capable of appearing before the court or resists his production before it or behaves before it in a persistently disorderly manner. They should have powers to summon an accused not charged before it if a prima-facie case is made out against him. These provisions are not novel and many of them are found
in the Criminal Law Amendment Act 1952 passed for the trial of offences relating to bribery and corruption. This procedure has been applied by different states under special Acts and has been upheld by the Supreme Court.

The special courts set up under different enactments aim at achieving the objects of that Act. Some courts aim at being harsher and rigorous in approach, some aim at harmonization and reconciliation and some aim at rehabilitation and reformation. In some Acts the powers to try offences under the Act have been vested in the ordinary criminal court, following the ordinary procedure while in some Acts though the courts are ordinary criminal courts, the procedure and the rule of evidence are different and lastly in a few Acts the procedure as well as forum are different from ordinary criminal courts. Some Acts have gone so far as to confer powers of Judicial Magistrates on the Executive Magistrates for trying offences there under while in some Acts powers have been vested in the executive itself to act like a court. The provisions of the different acts in this context are discussed below as to the growing importance for such kind of offences. Acts conferring powers on ordinary criminal courts for trying offences there under are:

(i) Section 138 of the Customs Act, 1962 this section corresponds to section 187 of the Sea Customs Act, 1878.

(ii) Under Section 15, 32 and 33M of Drugs and Cosmetics Act, 1940 the court has special power. In Public Prosecutor v. Hatam Bhai\(^{11}\) case where the complaint was lodged by inspector under section 32 (1) but the investigation was made by unauthorized inspector, it was held that cognizance of the offence could be taken by the court. The mere fact that the drugs inspector attached his complaint with a charge sheet by the police would not render the prosecution as not instituted by the drugs inspector himself\(^{12}\). Where the drugs inspector reported to the police station and the station officer after investigation submitted a report for prosecution, along with a

\(^{11}\) AIR 1969 Andh. Pra. 414.

\(^{12}\) Chunilal v. State AIR 1959 Bom. 554.
complaint by the drugs inspector addressed to the Magistrate and the Magistrate adopted the procedure for trial of warrant cases instituted otherwise than on a police report, it was held that it could not be said that cognizance was not taken on the complaint of the drugs inspector and the police report could be regarded as superfluous. 

(iii) Central Excise and Salt Act 1944: through its section 29, provides for the trial of offences under the Act by ordinary Courts of Criminal Jurisdiction under the ordinary procedure.

(iv) Essential Commodities Act 1955 Under Sections 12 A, 12 AA, the court have special power.

(v) Foreign Exchange Regulation Act, 1973 section 61 provides for special court and section 54 is related to the appeal provisions which are discussed below. Under this section a party aggrieved by the decision or order of the Appellate Board under sub-section (3) and (4) of section 52, can prefer an appeal to the High Court. An appeal lies to the High Court only on question of law. Exercise of discretion in imposing penalty involves question of law. However, in the under noted case of S. Kumar v. Addl. Director of Enforcement, it has been held that where penalty is based only on findings of facts, appeal under section 54 is not maintainable. If a finding of fact is arrived at by the Appellate Board after improperly rejecting evidence, a question of law arises. Decision of the Board in dismissing an appeal on a question of limitation would not be appealable. Where appeal against such an order is dismissed, a writ under Article 226 challenging the impugned order will not be maintainable as the matter was already concluded by appellate decision of High Court. In Customs Collector Bombay v. Shanti Lal & Co., repelling the contention that as the remedy of appeal was available, the High Court should not

16 Omar Salay Mohammed Sait v. CIT (1959) 51 ITR 151 (SC).
17 Simon F Pinto v. Asstt. Director, Enforcement AIR 1979 Kant. 181.
18 Ibid AIR 1979 Kant. 181.
19 AIR 1966 SC 197 at p. 202
exercise its jurisdiction under Article 226, the Supreme Court observed that the
existence of an effective remedy does not oust the jurisdiction of the High Court and
where circumstances exist for exercising such jurisdiction the High Court would be
justified in invoking the power. The court further observed that the remedy of appeal
would not be effective where the aggrieved person cannot file it without depositing as
a condition precedent the large amount of penalty imposed on him.

(vi) Prevention of Food Adulteration Act, 1954, under section 16 A and 20
provisions of special court are given. This section lays down that all offence under
sub-section (1) of section 16 shall be tried summarily. The object is that cases
involving food adulteration should be tried speedily so that the offenders are punished
as quickly as possible. However, where in the course of summary trial the Magistrate
feels that it would be undesirable to try the case summarily or that sentence for a term
exceeding one year may have to be passed, he shall record an order to that effect and
thereafter proceed to hear or rehear the case in the manner provided by the Code of

As per sub-section (1) of section 20 no prosecution for an offence under this
Act except an offence under section 14 or 14A can be instituted except by, or with the
consent of (1) the Central Government, or the State Government, or (2) a person
authorized in this behalf by general or special order, by the Central or the State
Government. These two conditions are in the alternative and if either of them is
satisfied, it is sufficient compliance with the section\textsuperscript{20}. The provisions of sub-section
(1) of this section are mandatory and their noncompliance would render the
prosecution null and void\textsuperscript{21}, though a fresh complaint on the same facts can be filed
subsequently on obtaining valid consent.\textsuperscript{22} The “consent” referred to in the section
need not be in any particular form. What is required is that (a) it should be in writing,
(b) it should be by an authorized person, and (c) it should precede the institution of the

\textsuperscript{20} Corporation of Calcutta v. Md. Omer All AIR 1977 LSC 912.
\textsuperscript{22} Girdraj Kishore v. State AIR 1957 All 192: 1957 Cri. L.J. 352.
Where consent is given by the Central Government there is no need for the State Government to give consent in duplication. However, the consent has to be for a specific prosecution and has to be filed in each such case, though it is not necessary to specifically name the complainant in the consent, or to mention the particular offence committed by a particular person. There can be no general consent for the prosecution of all the offenders.

(vii) Standards of Weights and Measures Act, 1976, sections 50 to 67 of the Act provide penalty for offences under the Act. In some cases penalty includes imprisonment as well as fine. In case of offences by company, the company as well as officers responsible can be prosecuted (section 74). The case has to be lodged in court of Metropolitan Magistrate or Judicial Magistrate of first class. Some minor offences can be compounded by director or other officer authorized for the purpose. Compounding means the defaulting person agrees to pay a sum to credit of Government and Government agrees not to institute prosecution or to withdraw the prosecution. The sum specified by director cannot exceed the maximum amount of fine imposable under the Act, compounding is permitted for first offence. Such compounding is not permitted if second offence is committed within three years from date on which first offence was compounded. If second offence is after three years from the date when first offence was compounded, it is treated as ‘first offence’ for compounding purposes (section 73).

(viii) Narcotic Drugs and psychotropic substances Act 1985, the provisions are provided in section 36, 36B, 36C, and 36D of the Act.


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23 State v. Prem Kumar AIR 1966 All. 501 
(x) The Terrorist and Disruptive Activities (Prevention) Act, 1987, under the Act section 9, 10, 11, 12, 14, makes provisions for special courts.

(xi) The Prevention of Terrorism (Second) Ordinance 2001 (new Act 2002) Chapter IV of the Act deals with the provisions of special courts under section 23, 24, 25, 26, 29, 31, 33 and 35 the appeal provisions are governed by section 34 of the Act.

(ii) Procedure under socio-economic courts:

The Code of Criminal Procedure 1973 was amended in the year 1978 by the Code of Criminal Procedure (Amendment) Act 1978 to whereby a proviso was added to section 11 in the following words enabling the State Government to set up special courts of the Judicial Magistrates to try a particular case or class of cases of exclusive jurisdiction. Section 11 – Proviso:

"Provided that the State Government may after consultation with the High Court establish for any local area one or more special courts of Judicial Magistrates of the First Class or Ind Class for trying a particular case or class of cases and when any such special court is established no other court of the Magistrate in the local area shall have jurisdiction to try any case or class of cases for the trial of which such special courts of Judicial Magistrates has been established."

In this regard as far as Article 264(2) of our Constitution is concerned, Parliament by law is empowered to set up special courts and to provide special procedure for the trial of certain ‘offences’ or ‘classes of offences’. Such a law will not be violative of Article 14, if it lays down proper guidelines for classifying ‘offences’, ‘classes of offences’ or ‘classes’ of cases to be tried by special court. But the special procedure prescribed by such a law should not be substantially different from the procedure prescribed under an ordinary law.

In so far as an Act makes provision for the setting up of special courts and of special judges, and in so far as the act itself, selects classes of offences which can be tried by them, the Act will be valid when it is based on the principle of reasonable classification. But when the Act confers on the Government the power of allotting cases for trial by special courts the question arises whether the entrustment of such a

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29 Ins. By Act 45 of 1978 s. 3, w.e.f. 18.12.1978.
power to the executive does not make the Act discriminatory. The law is settled on the point that entrustment of such a power is not per se discriminatory. However, general principles as to reasonable classification having regarded to the object of the legislature will apply\(^{31}\) whether special procedure is also discriminatory will depend on facts of each case and no hard and fast rules can be laid down. Subject to this reservation, it may be stated that if the impugned legislation indicates the policy which inspired it and the object it seeks to attain, the mere fact that the legislation does not itself make a complete and precise classification of the persons or things to which it applied, but leaves the selective application of the law to be made by executive authority in accordance with standard indicated or the under lying policy or object disclosed is not a sufficient ground for condemning it an arbitrary and obnoxious of Article 14\(^{32}\).

In the case of such a statute it would make no difference in principle whether the discretion which is entrusted to the executive authority is to make a selection of individual cases or of offences or whether it is to select classes of offences or classes of cases. For in either case the discretion to make the selection is guided and controlled discretion and not an absolute or unfettered one, and is equally liable to be abused. But if it is shown in a given case that the discretion has been exercised in disregard of the standard or contrary to declared policy or object of legislation, such exercise could be challenged and annulled under Article 14\(^{33}\). But where no standard is laid down and no principle or policy is disclosed in the impugned legislation, to guide the exercise of the discretion by the executive in selecting a case for reference to special court, provided in the Act the act will be contravening Article 14\(^{34}\).

**In Re the Special Courts Bill**\(^{35}\), 1978, the question referred to the Supreme Court under Article 143 for its advisory opinion was whether the Special Courts Bill,

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\(^{31}\) Kedarnath v. State of West Bengal, AIR 1953 SC 404.

\(^{32}\) See Supra note 10.

\(^{33}\) See Supra note 31.

\(^{34}\) See Supra note 10.

\(^{35}\) See Supra note 30.
1978 proposing to set up special courts for the speedy trial of offences committed by the holders of high public offices during the emergency of 1975-1977 is Constitutionally valid. The Supreme Court held that Parliament had legislative competence to enact the law under Entries II-A of list III and Entry 77 of List I. It also ruled that the classification made by the Bill was valid and it did not infringe Article 14 as it classified both “offences” and class of offenders, the former in relation to the period, and in relation to objective that it was imperative to decide such cases speedily and the latter in relation to their status i.e., holders of high public offices. It was only when both these conditions existed the prosecution could be instituted in the special courts. The court held that the offences alleged to have been committed during the period of emergency constitute a ‘class’ by themselves and so do the persons who have utilized the high public offices by them as a cover or opportunity for the purpose of committing those “offences” Thus there was a close relationship between the basis of classification and the object of (speedier trial) of the Bill.

The court also held that apart from the requirement of Article 14 the law must also satisfy the requirement of Article 21 which requires that the procedure provided for the trial of such offenders must be fair, just and reasonable. The court found three procedural defects in the Bill. Firstly, there was no provision in the Bill for the transfer of cases from one special court to another, secondly, the Bill empowered the Government to appoint retired High Court Judges to preside over a special court. Thirdly, the judges were appointed by the Government only with the “consultation” of the Chief Justice of India and by “concurrence”. Since all the three procedural amendments were acceptable to the Government the court held that the Bill was Constitutional. Later the Special Courts (Repeal) Act, 1982 (Act No 34 of 1982 ) repealed the Special Courts Act, 1979 (Act 22 of 1979).

So far as right to appeal is concerned in socio economic offences we know
right of appeal is not a natural right. Appeal to the Supreme Court also does not lie except with the leave of the court under Article 136 of Constitution of India. In England before 1908 there was no appeal in criminal cases and provisions for appeal were made only in 1908. The main reason for not providing the right of appeal was that the trial took place with the help of jury which left little scope for error. In the Constituent Assembly debates also Article 111-A was proposed to be added in the Constitution for dealing with the criminal appeals to the Supreme Court which read as follows: “Article 111-A: Parliament may by law confer on the Supreme Court any further powers to entertain or hear appeal from any judgment final order, or sentence in a criminal proceeding of a High Court in the territory of India subject to such conditions and limitations as will be specified in such law”.

But this Article was not inserted and matter was left to be governed by Code of Criminal Procedure. Section 374 of the Code provides for an appeal to the Supreme Court against a sentence by the High Court passed in exercise of its extraordinary criminal jurisdiction. An appeal under section 379 of the Code also lies to the Supreme Court when the High Court have for the first time passed a sentence of death or imprisonment for life or imprisonment for ten years or more after reversing an acquittal. The appeal also lies to the Supreme Court on a certificate of fitness by the High Court as laid down in the Constitution. Thus the right of appeal is a creature of statute and the accused has no inherent right to appeal to a particular tribunal.

The appeal to the Supreme Court in criminal matters lies under Article 132 if the High Court certified under Article 134A that the matter involve a substantial question of law. The Supreme Court itself can grant leave to appeal to it under Article 136. The jurisdiction of the Supreme Court can be enlarged by Parliament. Appeal lies to Supreme Court under the Code of Criminal Procedure in the following cases: (i) section 374(1) reads that if the High Court convicts an accused in a trial held by it in

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36 Constituent Assembly Debates, Vol. 8 p. 592 and 600.
37 Ibid., Vol. 8 p. 600.
its extra ordinary criminal jurisdiction as contained in section 474 of the Code. (ii) section 379 says that when the High Court has an appeal, reversed an order of acquittal of an accused person and convicted him and sentenced him to death, or to imprisonment for life or to imprisonment for a term of ten year or more.

The Parliament can also enlarge the original criminal jurisdiction of the High Court notwithstanding the provisions of the court. The Parliament can extend the jurisdiction of the Supreme Court in exercise of powers under article 138 and 246 of Constitution of India. It is also competent to deal with organization of court as per powers contained in Entry 11A list III of Constitution of India. The above analysis shown that Parliament can even make the judge of a High court as a special court and provide for appeal to Supreme Court against its every order or judgment. It can also curtail the right of appeal by providing only one appeal to the High Court.

As far as exclusion of the provision of section 360 of the Code and Probation of offenders Act, 1958 is concerned, it is a known fact that socio-economic offences are mostly committed by people who are well to do and educated. They are executed in a planned and secret manner for the sake of material gain and the mode of crime is mis-representation, mis-appropriation, deceit and fraud. They are a result of deliberate preparation or design and not a result of some mental, psychological or environmental deformity or sudden impulse or temptation. Therefore, there is no scope of reformation for such offenders and prolonged confinement is considered necessary in such cases. For this reason the Law Commission in its 47th Report\(^\text{38}\) recommended that the provisions of Section 360 of the Code of Criminal Procedure or the Probation of Offenders Act, 1958 should not apply to the offences under these Acts. These recommendations have been implemented by the legislature in several enactments.

Section 313 of the Code of Criminal Procedure provides for examination of the accused after the prosecution evidences have been recorded. This provision applies

\(^{38}\) Law Commission of India, 47th Report, Para 3.27.
equally to summons trial and warrant trial cases. Under Section 239 and 240 of the Code of Criminal Procedure code which correspond to section 251A of old Code, the Court is empowered to examine the accused at a stage previous to Section 313 and such statement by the accused is admissible in evidence. These provisions as they stand do not make it obligatory for the accused to disclose defence during his examination and he is left at liberty to take any defence at any stage. He is not even obliged to file the list of his defence witnesses till the prosecution evidence is closed. The Law Commission examined the provision in its 47th Report[39] and found that in the trial of socio-economic offences these offenders have to be treated on a different footings because considerable amount of time, money and energy are usually spent in the investigation and prosecution of these offences. It recommended that it is but proper that the prosecution should know the essential of the case of the accused so that, if necessary, the prosecution can prepare itself to meet the pleas raised by the accused. Fair deal presupposes that both parties should be aware of the case which they have to meet. The State no doubt has a balance of advantage over the accused in a criminal case and there is a Constitutionally guaranteed privilege against self incrimination but the provision calling upon the accused to make a statement of his case, after charge is framed and documents supplied, would not be repugnant to either of these two considerations. There will neither be compulsion or pressure towards self incrimination. There will merely be an opportunity to the accused to make a disclosure of his defence at a stage earlier than that contemplated by section 313 of the Code of Criminal Procedure[40]. The Law Commission recommended a provision to be added for the purpose in the Code of Criminal Procedure[41]. The Law Commission was of the view that after in section of this provision then will be no need of examination of the accused under section 313 Code of Criminal Procedure. But the examination of the accused at the close of prosecution evidence is a very important

[40] Law Commission of India, 47th Report, para 9.11.
[41] Ibid. page 76, para 9.20

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part of the trial and non examination at that stage will certainly prejudice the accused in his defence.

The criminal court under Section 369 of the old Code, 1898 which corresponds to section 362 of the new Code of 1973 can only correct clerical errors but sometimes mistake do occur about the interpretation of provisions which need rectification. In England the court have powers to alter a sentence so long as it is in session\textsuperscript{42}. The Supreme Court have also powers to review its judgment under article 137 of the Constitution and it had framed rules wherein order 40 rule 1 deals with this review. A similar provision is contained in order 47 rule 1 of the Code of Civil Procedure. There is no provision for review as those referred above in the Code of Criminal Procedure. The Law Commission suggested an insertion of a provision for review of orders and judgments\textsuperscript{43}.

As far as limitation in prosecution, bail, sanction and complaint are concerned the Law Commission in its 47\textsuperscript{th} report also suggested a limitation for filling appeals and prosecution and that aspect of the matter has been taken care of chapter XXXVI of the new Code of Criminal Procedure. It also suggested that the offences be made non-bailable and this recommendation has been adopted in several enactments. For example if we study the terrorist and Disruptive Activities (Prevention) Act we find that being a special Act, must prevail in respect of the jurisdiction and power of the High Court to entertain an application for bail under section 439 of the Code of Criminal Procedure or by recourse to its inherent powers under section 482\textsuperscript{44}. Yet another example of bail is under Narcotic Drugs and Psychotropic Substances Act, 1985. In this regard the powers of the High Court to grant bail under section 439 are subject to the limitations contained in section 37 of the Narcotic Drugs and Psychotropic Substances Act, 1985 and the restrictions placed on the powers of the court under the said section are applicable to the High Court also in the matter of

\textsuperscript{42} Archbold (1973) para 641, Pleading, Evidence & Practice in Criminal cases.
\textsuperscript{43} Supra note 41, p 76, para 9.27.

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granting bail\textsuperscript{45}. As regards cognizance, the commission was of the view that sanction and report or complaint of a particular authority is a pre-condition under the Acts. During trial the court may have to summon accused persons not mentioned in the report or complaint. In that situation in the absence of sanction against the accused, whose cognizance is taken during trial, there is difficulty in prosecution. To obviate this procedural difficulty, it favored the vesting of the court with powers to direct investigation against a person who is not originally challenged or to implicate him and sanction in such case will not be material. It recommended the insertion of a provision for that purposes\textsuperscript{46}. The Law Commission also suggested that the provision of different Acts requiring report by a particular officer or sanction for prosecution should be treated as a regulatory nature and not mandatory as so far done in many cases except where the court finds that a failure of justice has occurred. The provision of sanction for prosecution is inserted in those Acts so that the authority competent to sanction prosecution should come to a finding that the prosecution is in public interest. In England apart from the provision for sanction, there is a safeguard that if the provision is mis-used, the private citizen has a right to set the criminal law in motion. It suggested insertion of a provision on the above lines in all the Acts\textsuperscript{47}.

The Law Commission also recommended that in session trial cases under these Acts, the cognizance should be taken by the sessions court directly. Section 209 of the new code meets this recommendation in material respect. There is a provision of cognizance directly by the Sessions Court in Criminal Law (Amendment) Act 1951. The recommendation of the Law Commission to deal with refractory accused is also met in material respect in section 317 of the new code and a Magistrate or Judge can go on with the trial in the absence of the accused, if he had persistently disturbed the proceedings. The new code now contains a provision for imposition of cost on either side if adjournment is sought on insufficient grounds. Under section 233 and 243 it


\textsuperscript{46} Supra note 43, Chapter XI.

\textsuperscript{47} (1951) 211, Law Times 71-72.
can disallow the summoning of witnesses which in its view are not material. The provision of costs have made the adjournment difficult. The offences under the special Acts are mostly triable as complaint cases and the complaints are filed by public servants. They act as an investigating agency, therefore, there report can be safely treated as a report equal to police report under section 173 of the code. It will avoid the examination of the witnesses before framing of the charge.

By the amending acts of 1948 and 1956, the original criminal jurisdiction except in Presidency Towns mentioned above was abolished. The Law Commission of India was against the retention of this remaining jurisdiction also and observed:

"However, we agree that the administration of criminal justice in large cities requires a measure of special treatment. The Magistrate ought to be better qualified and more competent to deal expeditiously with sophisticated crimes particularly in the socio-economic field which are more common to cities."  

In Re Special Court bill 1979 SC 497, the Supreme Court favored the idea of vesting the High Court with original criminal jurisdiction for trying offences committed by holders of high public and political office. The provisions of different Acts referred above do not provide themselves for creation of special court though a majority of them provide for special procedure and special rule of evidence in such socio economic matters.

Now we will take up the cases under Narcotic Drugs and Psychotropic Substances Act 1985, it is one of the important statutes creating strict liability against one of the most important anti social Act. In *Radhakishan Parashar v. State* it was observed by the court that the prosecution was not bound to call all the witnesses for proving that possession of the prohibited substance under the Act was illegal. The expression "unless and until the contrary is proved" under the Narcotic Drugs Act clearly imposed the burden of disproving the possession of the dreaded substances was on the accused himself. Further, in *Gupta v. State Delhi Administration* it

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48 Law Commission of India 41st Report, Chapter 3, paras 3.1 to 3.3.
49 1988 (1) FAC 36.
50 Drug cases 1989, p. 166.
was said that the narcotic drugs defined under the Act were meant to be sold and mere possession of the prohibited drugs is not an offence.

In Deepak Ghanshyam Naik v. State of Maharashtra\textsuperscript{51}, the Supreme Court held that, in case where four packets were found in the shirt pocket of the accused (appellant) which showed that the pockets were not for the personal consumption as section 27 of the Act provided punishment for illegal possession in only small quantity for personal use of any narcotic drugs or psychotropic substances. Therefore, in such a situation it would be reasonable to presume that the packets were for sale. And once it was established that the accused was found in possession of a narcotic drug for sale or otherwise he would be liable for the minimum sentence of 10 years imprisonment and fine of rupees one lakh under section 27 of the Act. This principle has been further reiterated in a case, Durand Didier v. State, (1989) 3 SCJ 401.

In Gaunter Edmin Kircher v. State of Goa\textsuperscript{52}, the accused was a German national and tried under section 20(b)(ii) of the Narcotic Drugs and Psychotropic Substances Act. It was alleged that he was holding 12 gms of charas at Calangute beach near Pan Jim (Goa). In defence it was stated that he had only a pouch containing tobacco; even then he was taken to Calangute police station and was falsely implicated. The trial court convicted the accused and sentenced him to undergo rigorous imprisonment for 10 years and to pay a fine of rupees one lakh; in default of payment to further undergo six months rigorous imprisonment. The appeal filed by the accused was rejected by the High Court. Hence the appellant went to the Supreme Court through the special leave petition. The apex court. Relying on (i) the chemical analysis report of the substance charas weighting 4.570 gms found it in the smoking substance and (ii) the statement recorded before the trial court by the appellant that the seized substance was not for sale and for his personal use, pointed out that this was a case to be tried under section 27 of the Act and not under section 20(b) (ii) Because

\textsuperscript{51} Ibid. p. 452.
\textsuperscript{52} Cr. Appeal No. 642 of 1991, decided by the Supreme Court of India on 16 March 1993.
the seized substance was for the personal consumption. Thus, the court held that the accused was guilty under section 27 and sentenced him to undergo six months rigorous imprisonment and to pay a fine of rupees one lakh and in default of payment of which to further undergo six months rigorous imprisonment.

In Abdul Hamid Khan Pathan v. State of Gujarat\textsuperscript{53}, the apex court observed while considering the appeal for bail, that the seriousness of the offence had to be considered and should not be forgotten that whereas the accused committed the murder of one or two persons, those persons were indulging in narcotics substances or intoxicant drugs causing the death of a number of persons in the society and/or ruining their lives. These types of offences affected the society at large: therefore, the law should not lose its importance to serve the society. Thus, law should be interpreted in such a manner that it gave protection from the anti-social elements. Thus, it is clear from the preceding judicial pronouncements that the courts are concerned for such kind of anti-social acts.

Strict liability and the adulteration cases are clearly interrelated. The social purpose of the Prevention of Food Adulteration Act is ought to be achieved through the elimination or the modification of the requirement of mens rea, which is otherwise the cornerstone of all the penal statutes. The elimination of the mental element for the purposes of imposing liability strictly in terms of the act done, has been a technique used for quite sometime to lend efficacy to the measure aimed at fighting the wrongs endangering public welfare\textsuperscript{54}. In Urman Ali Khan v. State\textsuperscript{55}, which was a case under section 2(13) read with section 7 of the said Act, the court held, that after a transaction has been held to be a sale, the question of any other intention of the accused, who has actually sold an adulterated article of food does not matter at all. The requisite of mens rea in such a case are satisfied if there is an intention to sell irrespective of the purpose for which the milk may be really intended.

\textsuperscript{54} Supra note 8.
\textsuperscript{55} 1965(1) Cr. L.J. 3; AIR 1965 All. 39.
Again in *Mithunlal v. State*\(^{56}\), under Prevention of Food Adulteration Act, 1954, the court observed that the provisions of the Act clearly and by necessary implication have ruled out mens rea as a constituent part of a crime and an act done in contravention of prohibition contained in the Act, how innocently is liable to be visited with penalty. Regarding the question of mens rea in offences under the above mentioned Act a full Bench of the Delhi High Court\(^{57}\) while dealing with the question of joint trial of the vender the distributor and the manufacturer, observed:

"Can it be said that there was unity of purpose and design in respect of the sale by the vendor of an adulterated article of food the sale of the said article by the distributor to the vendor and the sale of the said article by the manufacturer to the distributor? We are of the view that the answer should be in the affirmative. The common purpose of the all concerned is the sale of the article of food to the consumer. It is not necessary that they should have the common intention of selling an adulterated article of food or even that they should have knowledge that it was adulterated. Mens rea is not necessary ingredient in offences under the Act and the Act creates an absolute liability against the vendor, the distributor and the manufacturer for the sale of adulterated article of food".

In *P.K. Tejani v. M.R. Dange*\(^{58}\), the Supreme Court has quite vividly stated that section 7 of the Prevention of Food Adulteration Act 1954 casts an absolute obligation regardless of scienter, bad faith and mens rea. If you have sold an article of food contrary to any of the sub-section of section 7, you are guilty. There is no more argument about it. As in the Food Adulteration cases, the strict liability has also been created by the statutes under the Drugs and Cosmetic Act, 1940. Yet in another case of *S.K. Amir v. State of Maharashtra*\(^{59}\), under section 18(a) and (c) read with section 27(a) of the said Act the Supreme Court observed that these sections do not use the word ‘stock’ in any technical sense. The plain meaning of the word stock in those provisions is no more than this that no person shall keep for sale a misbranded drug or a drug in respect of which no valid licence is found in possession of the

\(^{56}\) 1971 Cr.L.J. 1949 (Orissa).
\(^{57}\) Municipal Corporation of Delhi v. Laxmi Narain, 1973 Cr.L.J. 690 Delhi (F.B.)
\(^{58}\) AIR 1974 SC 228.
\(^{59}\) AIR 1974 SC 469.
appellant makes it crystal clear that the intention was to stock or keep the drug for sale.

Similarly, in another case of Swanraj v. State of Maharashtra\(^6\), which is again a case falling u/s 18\(©\) and 27(b) of the Drugs and Cosmetics Act, 1940, the Court held that storage without a licence even though for a short spell and on adhoc basis and without intent to sell at that place but as a part of the sales business, comes within the scope of ‘storage for sale’ in section 18(c). Even though there was no intention to sell the goods at that place but the storage comes within the purview of the said provisions and so the liability under the Act.

Again in the case of Thakurdas v. State of Madhya Pradesh\(^6\) it has been held by the Supreme Court that the forfeiture of property relating to the contravention of order issued under section 3 and punishable under section 7 of the Essential Commodities Act,1955 is done compulsorily. If the collector has not confiscated the same under section 6A, it should be confiscated immediately. In another case of Satpal v. State of Haryana\(^6\), the apex court observed that the court can use its discretion to consider that in the case of essential commodities seized under the Act whether it is desirable or not to forfeit the seized property. In case of Surendranath v. State\(^6\) the apex court observed that in case where a person is acquitted of some of the allegations, he cannot be punished again in the same case under the same clause under section 7 of the Act.

In relating to the incorporated bodies the court observed Harish Chandra v. State of Madhya Pradesh\(^6\) that the chairman (Adhyaksha) and its associate or an incorporated body like dealers association prosecuted under section 10 and found guilty they shall be liable for punishment if convicted. Though in State of Madras v. C.V. Parekh\(^6\) it has been held by the apex court that whereas the consent or

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\(^6\) AIR 1973 SC 28.
\(^6\) AIR 1978 SC1
\(^6\) AIR 1979 SC 1767.
\(^6\) (1977) Cr. LJ SC 1120 (SC)
\(^6\) AIR 1965 SC 832.
\(^6\) AIR 1971 SC 447

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connivance or negligence of the manager, managing director etc. was not proved, then they are not held guilty under section 10. In another case of State of Kerala v. Navinchandra M. Soni\textsuperscript{66}, it has been observed that only acting partners in charge of and doing the business are liable for an offence. Indeed, the partner or partners who were not in charge and not responsible to the management or work or business of the firm or company are not liable for the prosecution. Presumption alone that the accused had the knowledge of the wrongful act is not allowed. In Krishna Trading Company v. State of Bihar\textsuperscript{67} the apex court had held that where the allegations of contravention of the provisions of the Act in the charge sheet remain defective and could not be proved against the company, than the person in charged of the company can neither be prosecuted nor be held responsible for contravention. In one important case, it has been held that if the law provides, the prosecution need not necessarily prove mens rea\textsuperscript{68}.

In one important case State of Maharashtra v. Major Hans George\textsuperscript{69} the Supreme Court, while holding that mens rea is not an essential ingredient of an offence u/s 23(1A) read with section 8(1) of the Foreign Exchange Regulation Act, 1973, observed: “The very purpose and object of the Act and its effectiveness as an instrument for the prevention of smuggling would be entirely frustrated in condition were to be read into section 8(1) or section 23(1A) of the Act, qualifying the plain words of the enactment, that the accused should be proved to have knowledge that he was contravening the law before he could be held to have contravened the provision\textsuperscript{70}.

The Prevention of Corruption Act, 1947 and the new Act 1988 impose strict liability under their section 4 on the persons who misuse their powers by receiving illegal gratification. In State of Assam v. Krishan Rao\textsuperscript{71}, the Supreme Court while construing sec. 4 of the said Act observed that where it is proved that the gratification

\textsuperscript{66}(1978) Cri. LJ 105 (SC)
\textsuperscript{67}(1979) Cri. LJ 760 (SC)
\textsuperscript{69}AIR 1965 SC 722.
\textsuperscript{70}N. Rajagopala Ayyangar, J. (For himself and Mudholkar, J.).
\textsuperscript{71}AIR 1973 SC 28.
has been accepted, there can be no further question of showing that the money has been consciously received by them. The receipt of money with guilty intention is not necessary. It is the mere factum of receipt which raise such a presumption. Thus Indian judiciary have always favored the literal interpretation of the statutes. If a statute has expressly excluded mens rea, the courts did not hesitate to enforce the policy of the legislature. The question whether the liability under the statute is absolute, is ultimately one of the constructions of the particular statute. The mechanism evolved by the courts in imposing strict liability is that they take into consideration the object of the statute, the policy behind it, the social danger and the nature of the offence. In State v. Raghunath Vamanrao\textsuperscript{72}, plea of an accused, that he was an income tax officer and hence be awarded less than the minimum sentence was rejected by the Supreme Court saying that it was not a case of petty clerk or peon, accepting a small amount as a bribe for doing a small favor. Therefore, a lenient view cannot be taken of the conduct of income tax officer who was convicted for accepting a large amount as a bribe for causing loss to public revenue. In another case of Mulkraj v. State\textsuperscript{73}, the court observed that it cannot be said that a severe punishment was not called for as the accused was trapped into the commission of the offence. Indeed, the cases of bribery are difficult to establish but where they are so established substantial sentence of imprisonment must be passed in order to check corruption in an effective manner. In Kamini Kumar Deb Barman v. State\textsuperscript{74}, the gravity of offence and the decree of punishment are also considerable where the accused an assistant tehsildar had accepted a bribe of 50 paise only. The court in view of the very pretty amount involved and thinking that conviction would necessarily cost the accused his service as also possible the pension that he might have earned and that the offence was committed about seven and a half years age awarded a sentence of fine of

\textsuperscript{72} (1985) Cri. LJ 1357 (SC)
\textsuperscript{73} (1985) Cri. LJ 1585 (SC).
\textsuperscript{74} (1971) Cri. LJ 786 (Tripura)
Rs. 100 and imprisonment till rising of the court. It was held that sufficient to meet the ends of justice. In *State of Uttar Pradesh v. G.K. Ghosh*\(^{75}\), it was observed that to make out corruption case against the accused the following two ingredients of the offence are required to be proved by the prosecution: (i) The accused was a public servant; and (ii) the nature and extent of the pecuniary resources of property found in his possession are disproportionate to his known sources of income. When the ingredients of offences are not proved conviction is liable to be set aside. From what has been said in above paragraphs one can infer that judges have played a role of great significance in the elimination or retention of fundamental principle of mens rea. The creation of strict liability mainly depends on the judge who is deciding the case. Even same statutes have been differently interpreted. It is a matter of great satisfaction that judicial opinion in our country does not seem to have favored the exclusion of mens rea. The courts would look into the object of the Act to find out if the ingredient of mens rea is required to foster liability or not; but even if the express exclusion of mental element is based on slippery ground of achieving a welfare measure the court will be reluctant to depart from the settled doctrinal approach of imparting mens rea into a penal statute.

**(iii) Burden of proof in strict liability offences:**

One important principle of criminal law is that in English and Indian law burden of proving the guilt of the accused is always upon the prosecution, and until so proved, the accused is presumed to be innocent\(^{76}\). This rule has always been considered to be sacrosanct and any effort to temper with it or undermine it has met with staunch opposition and abhorred. It has been reiterated every now and then that it was not for the accused to prove his innocence, since his innocence is presumed and the prosecution must be obliged to prove his guilt and to prove it beyond all reasonable doubt further that prosecution could not succeed merely on the balance of

\(^{75}\) 1984 SCC (Cri.) 46.

probabilities The benefit of even little doubt was to the accused and even in the matter of construing statutes, the maxim *nullem crimen since lege* (*construing penal statutes in favor of citizen*) was more acceptable with the result that it came to be recognized that no man could be put to the peril on ambiguity. The prosecution cannot derive any benefit from the weakness of the defence theory and suspicion, however, grave, cannot take place of proof, these rules and principles were adopted to ensure the protection of the liberty and life of individual.

Fitzgerald has observed in this behalf that "no rule of criminal law is more important than that which requires the prosecution to prove the defendant’s guilt beyond reasonable doubt" 77. In the first place this means that it is for the prosecution to prove the defendant’s guilt and not for the latter to establish his innocence; he is presumed innocent until the contrary is proved. If there is a reasonable doubt whether the accused is guilty, he must be acquitted". According to Lord Sankay, as already discussed in the Woolmington case, the principle that the accused must be presumed to be innocent unless proved to be guilty is the golden thread which runs through the fabric of English criminal law. It seems therefore, to have a rule for strict liability offences that if prosecution establishes a prima facie case, by proving the facts constituting *actus reus* of the offence charged, accused should be convicted unless he affirmatively establishes that the situation proved occurred without fault on his part 78. To establish absence of fault it should be necessary for accused to prove that he was not negligent in relation to the legal duty proved by prosecution.

In our country majority of the statutes providing strict liability make provisions for the shifting of burden of proof. The Law Commission of India also in its 47th Report recommended for shifting of burden of proof in socio-economic offences in our country. The commission observed:

"Although the actual facts of a particular case relating to an economic offence, may appear to possess only a minor significance, there is, behind the

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77 Criminal Law and Punishment, p. 192 (1962)
78 Colin Howard, Strict Responsibility, p. 41.
curtain, a ring of associates engaged in committing a number of crimes. In these crime it is difficult to prove before the court in conformity with the traditional standard of proof.

The moral conviction of responsible enforcement officers is difficult to be translated into legal conviction of the minds of the judicial agencies operating in the traditional manner. The mental element undoubtedly exists. But it is difficult to prove it. The act that has caused damage has been unearthed; the mind behind it remains unproved. Such a situation, we think, is productive of grave harm. It is for these reasons, that we have thought of a solution which, while preserving the requirement of mens rea a requirement which we would be loath to dispense with in any act carrying serious punishment throws the burden of proof on the accused. Petty cases causing minor injuries are not worth the trouble of creating a special rule as to burden of proof. But acts causing substantial damage justify a departure to the extent. The effect of this provision is that, in the special offence, the prosecution are required to prove that the accused committed the actus reus of the particular offence. It is then for the accused to prove that he committed the actus reus innocently.  

Under section 138-A, which was inserted in the Customs Act, 1962, by the Customs, Gold (Control) and Central Excise and Salt (Amendment) Act, 1973(36 of 1973) with effect from 3.9.1973, enacts important provision. It makes far reaching changes in the concept of the provisions relating to mens rea, it also makes a radical departure from the concept of the traditional criminal jurisprudence. According to the provisions of this section wherever mens rea is a necessary ingredient in an offence under the Customs Act, the court shall presume its existence though this presumption is a rebuttable one. The explanation to the section provides for an inclusive definition of “culpable mental state”, which is wide, in its field, so as to include intention, motive, knowledge of a fact and belief in, or reason to believe, a fact. The presumption, arising under sub-section(1), may be rebutted by the accused but the burden, that is cast upon the accused to displace the presumption, is very heavy. The accused has to prove absence of culpable mental state, not by preponderance of probability. The accused is required to prove that he did not possess the requisite mental state to the hilt, that is, beyond reasonable doubt. The burden, thus casts on the accused, is the same that is cast upon the prosecution in an ordinary criminal

79 Supra note 46, pp. 46-47 1972.
He has to prove, beyond reasonable doubt, that he had no knowledge of the contraband goods. In the absence of such a rebuttal, section 138-A imposes a duty on the court to raise a presumption that he had such knowledge.

The culpable mental state, which is contemplated by the section is 'knowledge'. A person who consciously acquires, deposits, sells, keeps, purchases, or, in any, other manner, deals with any goods, which he knows or has reason to believe that are liable to confiscation under section 111 can be held guilty under section 135 of the Act. The accused must have knowledge of goods being smuggled goods in order that he may be held guilty under section 135 of the Act. The manner in which the accused carry on the business, is no doubt the most relevant factor. The question whether the presumption under section 138-A of the Customs Act is rebutted or not, is a question of fact. In spite of the manner in which the business is carried on by an accused, there may be circumstances in a case which may lead the court to conclude that the presumption, under Section 138-A of the Act, has not been rebutted beyond a reasonable doubt. Therefore, the mere manner in which the business is carried on by a carrier, will not, in all the cases be sufficient to rebut the presumption of knowledge, which the Court is required to raise under section 138-A of the Act.

Under section 14 of the Essential Commodities Act, if it is found that a person has a violated the regulation or order made u/s 3 which prohibits him from doing any act without lawful authority, i.e., permit or licence, then the burden is on the accused to prove that he had a lawful authority for doing the act prohibited u/s 3 of the Act. U/S 17 of the Prevention of Food Adulteration Act if a person happened to be in charge of and responsible for the conduct of the business of company while the offence is committed, he shall be deemed to be guilty of that offence, and the burden is on him (accused) to prove that he had no knowledge or has exercised due diligence to prevent the commission of that offence. Section 123(1) of Customs Act provides

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82 Ibid. (1977) 18 Guj. L.R. 289, 294
that where any goods to which this section applies are seized under this Act in the reasonable belief that they are smuggled goods, the burden of proving that they are not smuggled goods shall be on the person from whose possession the goods are seized.

Similarly, section 71 of the Foreign Exchange Regulation Act provides that (i) If any person is prosecuted for the contravention of any provisions of the Act or regulations made there under, then the burden is on the accused to prove the legitimacy of the act done by him. (ii) If a prosecution is launched against any person for the contravention of sub-section 3 of section 8 of the Act, then the burden is on him to prove that the foreign exchange acquired by him is in accordance with the requisite permission obtained. (iii) If any person is found in an excessive possession of foreign exchange and is charged for the same, then the burden is on him to prove that he had acquired it lawfully. In the same manner section 4(1) of the Prevention of Corruption Act, 1947 (1988 Act also makes a similar provision) provides that if it is proved that the accused has taken a bribe under sections 161 and 165, Indian Penal Code or section 5(1) of this Act, which is punishable u/s 5(2), then the statutory presumption shall be drawn against the accused that he had taken the bribe. Once that presumption is drawn then the burden is on the accused to prove that he has not taken illegal gratification.86

In Man Singh v. Delhi Administration87, The Supreme Court observed that the accused is not required to prove his defence by the strict standard of proof beyond reasonable doubt, but it is sufficient if he offers an explanation or defence which is probable and once this is done, the presumption u/s 4 is rebutted. In the same way in Narcotic Drugs and Psychotropic substance Act, 1985 presumption of culpable mental state is governed by section 35 which is reproduced below : Under section 35 presumption of culpable mental state –

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87 AIR 1979 SC 1455.
(1) In any prosecution for an offence under this Act, which requires a culpable mental state of the accused, the court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution. Explanation – In this section “culpable mental state” includes intention, motive, knowledge of a fact and belief in, or reason to believe a fact. Sub section (2) For the purpose of this section, a fact is said to be proved only when the court believes it to exist beyond a reasonable doubt and not merely when its existence is established by a preponderance of probability.

(iv) Judicial activism in socio-economic offences:

In the recent developments regarding socio-economic offences at the national level, there is change in law relating to punitive measures against persons holding public office, and this development led the Law commission to take up the subject of “Conferment of the Statutory Statutes on the Central Vigilance Commission in its 161st Report”. Later another subject of public importance was taken up by the Commission on “The Corrupt Public Servants (Forfeiture of Property) Bill in its 166th Report”. It is important to mention here that all these developments were taking

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88 161st Report Law Commission of India, 1998 the background of the problems which led the Hon’ble Supreme Court to issue directions in Vineet Narain’s case (reported in 1997 (7) SCALE 656) quoted in para 1.2 of the report disclose the disturbing state of affairs on account of failure of the Government agencies like the CBI and the revenue authorities to allegedly perform their duties and legal obligations of properly investigating matters arising out of the seizure of the so called “Jain Dairies” in raids conducted by the CBI. It was also brought out in the case that financial support to certain terrorist was extended through clandestine and illegal means, by use of tainted funds obtained through ‘havala’ transactions, a nexus between several important politicians, bureaucrats and criminals who are all recipients of money from unlawful sources given for unlawful considerations; lack of appropriate investigation, inertia to prosecute influential persons. Such state of affairs poses a serious threat to the integrity, security and economy of the nation. In order to combat the evil, the Supreme Court gave directions in Vineet. Narain’s case (supra) as quoted under para 3.2 of the report. In this report the Commission has examined the ramifications of the various directions of the Supreme Court in the said case and has recommended, inter-alia, to confer statutory status to the Central Vigilance Commission, contemplating it to be a multi-member body and has annexed a Bill entitled “Central Vigilance Commission Bill”, 1998 to the report, bringing out its recommendations in the form of the Bill.

89 The subject was taken up by the commission suomoto. In view of the fact that corruption in public life has struck deep roots in our society including its administrative apparatus, which is causing immense loss to administrative apparatus, which is causing immense loss to the State, to the Nation and the public interest, there is a crying necessity for a Law providing for forfeiture of properties acquired by holders of “Public Office”. It is undeniable that the existing law viz., the Prevention of Corruption Act, 1988 which provides for confiscation of assets of public servants in excess of his known sources of income is inadequate since such forfeiture follows conviction for the relevant offences. The proposed approach is recognised by Parliament in (contd...)
place, due to the decisions of the Supreme Court of India. In the recent years many cases relating to misuse of power by public functionaries have drawn kind attention of the Apex Court, to name few of the scams like hawala, urea, and fodder petrol pumps etc.

The Court held in Common Cause (a registered society) v. Union of India⁹⁰, that even in the matter of grant of largesse’s including award of jobs, contracts, quotas and licenses, the Central Government must act in fair and just manner and any arbitrary distribution of wealth would violate the law of the land. It held that a Minister in the Central Government is in a position of a trustee in respect of the public property under his charge and discretion. The petrol pumps/gas agencies are a kind of wealth which the Central Government must distribute in a bona fide manner and in conformity with law. The court observed as follows:

“‘It is high time that the public servants should be held personally responsible for their malafide acts in the discharge of their functions as public servants. This Court in Lucknow Development Authority v. M.K. Gupta⁹¹, approved “Misfeasance in public office” as a part of the Law of Tort. Public servants may be liable in damages for malicious, deliberate or injurious wrongdoing. According to wade: There is, thus a tort which has been called misfeasance in public office and which includes malicious abuse of power, deliberate maladministration, and perhaps also other unlawful acts causing injury. With the change in socio-economic outlook, the public servants are being entrusted with more and more discretionary powers even in the field of distribution of government wealth in various forms. We take it to be perfectly clear, that if a public servant abuses his office either by an act of omission or commission, and the consequence of that is injury to an individual or loss of public property, an action may be maintained such public servant. No public servant can say “you may set aside an order on the ground of malafide but you cannot hold me personally liable.” No public servant can arrogate to himself the power to act in a manner which is arbitrary.

(contd...) the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1997 (SAFEMA). In order to give shape to the recommendations of the Commission, a Bill entitled “The Corrupt Public Servants (forfeiture of Property) Bill” is also enclosed with the report. The Commission was of the opinion that the recommendations made by it will arm the State with an effective and powerful weapon to fight corruption which is posing a serious threat to our economy and to the security and integrity of our state.

⁹⁰ (1996) 6 SCC 530, 555
While referring to the observations of *Thermas Ringham M.R in Broome v. Cassell & Co. Ltd*\(^2\) the Supreme Court in the same case of *Common Cause, a Regd. Society v. Union of India* observed:

"that in the first category there had been what he variously described as an 'arbitrary and outrageous use of executive power.' And 'oppressive, arbitrary or unconstitutional action by the servants of the government'. Minute textual analysis of these expressions is inappropriate. This was a judgment, not a statute. But there can be no doubt what Lord Devlin was speaking out. It was gross misuse of power, involving tortuous conduct, by agents of government. According to the traditional classification of the law of tort, such misuse of power could give rise to any one of a number of causes of action, which Lord Devlin was not at pains to identify. The Court of Appeal also relied upon the judgment of the House of Lords in *Broome v. Cases 11 & Co. Ltd*. The court was of the view that the legal position that exemplary damages can be awarded in a case where the action of a public servant is oppressive, arbitrary or unconstitutional is unexceptionable"\(^3\).

The court directed the Minister to pay a sum of Rs. 50 lakhs as exemplary damages to the Government Exchequer holding "since the property which Capt. Sharma was dealing was public property, the Government which is "by the people" has to be compensated". Penal action also attracted for abuse of official position: In the matter of a housing scam the Supreme Court in the *Shiv Sagar Tiwari v. Union of India*\(^4\) referred to the relevant part of its order dated 19.7.96, quoted below: "Mr. N.N. Singh, Superintendent of Police, CBI, New Delhi has placed on record Interim Report No. 3 dated 17.6.1996 and Interim Report No. 4 dated 16.7.1996. Interim Report No. 3 indicates that a separate preliminary enquiry was registered against Smt. Sheila Kaul and others in the matters of allotment of shops/stalls made by her on 7.6.1995 and 3.7.1995 in favor of her close relatives/friends of her personal staff as well as those of the officials of Directorate or Estates. According to the report, the preliminary enquiry, prima facts, establishes that Smt. Sheila Kaul had abused her official position as the Minister for urban Development and she had entered into a criminal conspiracy with some of the acquaintances and her personal staff, pursuant to which she in abuse of her official position, made these allotments and caused

\(^2\) 1972 AC 1027 = (1972) 1 All ER 801,
\(^3\) (1996) 6 SCC 593, 598.
\(^4\) (1996) 6 SCC 599.
wrongful loss to the Government by effecting allotments on economical licence fees basis without inviting any tender or by issuing public notice for inviting the response from the general public from the point of view of earning maximum revenue for the Government. A regular case under Section 120-B, 420, 468/471 IPC and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988, has been registered against Shiela Kaul and her Additional Private Secretary Rajan S. Lala and others.”

Thus it was held that when a public functionary had abused her official position and caused wrongful loss to the government, she was liable for prosecution under the relevant provisions of the Prevention of Corruption Act, 1988 and Indian Penal Code.

**Conclusions:**

The appointment of special courts for the trial of these offences will not only enable the judges who try these offences to develop a sense of perspective and expertise but will also have several additional advantages. The very appointment of such courts will highlight the social importance of such prosecutions. It will also enable the judiciary to develop a new perception and a new and appropriate attitude of concern for such offences. And, above all, if properly armed with an expeditious procedure, these special courts will be able to create the suitable social climate in which the reprehensible antisocial character of these offences will be more adequately brought home to both the general public and the offenders themselves.

In order to be effective, the special court must not take up any other work, and must develop perception and expertise in the trial of these offences only. In order to be effective, its judgments should be subject to not more than one appeal only, to the High Court, both on questions of fact and on questions of law. The court must have power not only to convict and punish an accused person of the offence specifically charged, but also for an offence under an Act dealing with similar offences for which he has not been specifically charged, provided that the rules of natural justice have
been duly observed, and he is afforded a fair opportunity to defend himself in respect of such charge. It should have power to impose any punishments prescribed by law for the offences of which the accused before it is found guilty.

Crimes which may be committed by an accused who acts without intention, recklessness or negligence are referred to as crimes of strict liability. In fact statutes said to create crimes of strict liability are usually public policy oriented, and the justifications for imposing strict liability are thus to be found in principles of interpretation based on considerations of public policy accepted by the courts. Strict liability is most often imposed in respect of commonly recurring and what are usually regarded as less serious offences (illegal sales of liquor, sales of impure or adulterated food or drugs, violation of traffic regulations, violation of regulations designed to protect public health or safety etc.). This is, however, not always so. On occasion quite serious offences are interpreted as involving strict liability.

The reasons offered in support of a conclusion that a statute imposes strict responsibility reduce themselves to two (1) the absence of any reference to knowledge or intention in the statute; and (2) the needs of public policy. The first of these two reasons is that of the Mikado, referred to by Dixon J in a famous case of Thomas v R\textsuperscript{95}, that one may be permitted to wonder why the courts ever embarked on this line of reasoning; and it may be that the answer lies in the failure of the judges ever to develop an adequate theory of statutory interpretation. However that may be, it is plain, is it not, that on occasion the judges have pushed the application of the literal rule of interpretation to the point of absurdity? “The statute does not say anything about not knowing, or not intending”. One may rather ask why the judges should ever have supposed that the statute should make such references. If a judge drives his or her car along a road and comes to an intersection marked with the sigh “STOP”, it may be assumed that as a law abiding citizen the car is brought to a halt. But the judge does not either stay in the same spot forever, or turn back, merely because the sign

\textsuperscript{95} (1937) 59 CLR 279.
fails to say when to go on. (Of course, the judge will know that the Road Traffic regulations direct a driver to proceed when he or she can do so with safety; but it is hoped that the judge would do this, even if driving in a jurisdiction other than in which he or she sits and was unaware of the terms of the relevant legislation). What the judge does is to use his or her common sense: to spell the matter out, he or she reads into the notice words which are actually not there. Why should the judge abandon common sense when acting as a judge?

Two answer to the latter question which from time to time been given. One is that modern statutes are so precisely drafted that it would be improper for the judge to suppose that Parliament have failed to say fully and precisely what it intended. This answer, it may be observed, is given only when the occasion is suitable; on other occasions judges are not hesitant in criticizing Parliamentary drafting. It might also be added that this answer would have been more appropriate in a much earlier age, when many statutes were lengthy and prolix. The second answer is that many statutes contain references to knowledge or intent, so that when such references are omitted, the omission should be regarded as significant. This is a variant of the old maxim *expressio unius est exclusio alterius* – a maxim which in other contexts have found little favour with the courts. It is strange that it should have been invoked in this context. For it makes an unwise assumption about a complete consistency of drafting. Many statutes are merely consolidations of a series of provisions enacted at varying intervals; and it cannot be assumed that there has been consistency of drafting in such statutes. When the argument is made that references to intent or knowledge appear in other statutes, but not in this one, and that therefore the omission is significant, the situation is even worse. For this argument assumes consistency over the whole or a large part of the statute book. It would thus seem that the only case in which the omission of “intent-words” is significant is that which arises in regard to a statute drafted as a single whole, and containing some sections including such words and
other sections omitting them. Even in such a case, the inference is but a slender one, and it would seem unsafe to rely on it without some further indication of what Parliament actually intended.

Apart from relying on the theory of the significant omission of words, the courts, in imposing strict liability, have tended to invoke public policy. It is said that the object of the legislature could not be achieved if the defence of mistake of fact, and similar defences, were permitted, and that therefore the legislature has excluded them. To some extent the argument appears to be circular. But putting this on one side, are judges making assessments of public policy accurately? They do now consult the Parliamentary debates and sources outside the statute itself. Statutes do now set out their objects, though usually these are encapsulated in one or two sentences, and seem little more than modern versions of the preambles which always heralded statutes in earlier periods. The judges have differed among themselves as to the conclusions which public policy requires, even in dealing with the same subject matter.

In this context, it may be noted that there are two aspects of public policy which are not usually considered by judges who take this line of argument. The first is that if the innocent and the guilty are punished alike, the result may well be that a person may refrain from taking as much care to avoid transgressing as he or she otherwise might; there is an old saying that one may as well be hung for a sheep as for a lamb. This point is developed at some length by Professor Gerhard OW Mueller. The second is that it is questionable public policy to attribute to the legislature the intention to act with deliberate harshness. Can public policy truly justify the conviction of an accused who did not intend to commit a forbidden act, was not reckless as to its possibility and case not even negligent?

It is unwise to conclude too hastily that the development of strict criminal responsibility is entirely without merit. It have had eminent defenders among the text

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96 “How to Increase Traffic Fatalities” (1960) 60 Columbia L Rev, 944.
writers, Professor FB Sayre is perhaps the best known of those who have regarded the doctrine without distaste. His views are set out in a classic article, “Public Welfare Offences” (1933) 33 Columbia L Rev 55, which is well worth attention. In this article Sayre traces the history, development, and modern status of the doctrine. He classifies the cases in which it has been applied under the following heads: 1. Illegal sales of intoxicating liquor 2. Sales of impure or adulterated food or drugs; 2. Sales of misbranded articles; 4. Violations of anti-narcotic Acts (and this at a time when today’s US drugs scene was outside the imagination of most people); 5. Criminal nuisances; 6. Violations of traffic regulations; 7. Violations of motor-vehicle laws; 8. Violations of general police regulations, passed for the safety, health or well-being of the community. Sayre noted that the doctrine had also been applied to sex offences committed against girls below a statutory age. He observed that this was anomalous, but regarded it as necessary, since in his view the protection which the law wishes to afford to young girls could not be otherwise achieved. As regards to public welfare offences, Sayre thought that the doctrine of strict responsibility could not be avoided if the law were to be effectively enforced. It may be noted, however, that questions relating to the accused’s culpability are not avoided by the imposition of strict liability. Such matters must still be investigated after conviction for the purposes of sentencing.

Today in our country, we need more awareness on the part of legislature and judiciary regarding interpretation of socio-economic statutes in the same way, as explained by Prof. Sayre, because these statutes are directly related to public policy and public welfare in a socio-welfare State. In regard to the procedure in socio-economic matters in our country, it is not a happy situation many reforms are due on this side, may scientific theories are required, the arrears in large number cause delay in the disposal of cases, and special judges are also busy due to this reason.

There are several other quasi judicial forums like MRTP commission,

\[97\] F. Sayre 'Public Welfare Offences' (1933) 33 Columbia L. Rev. 55.
consumer forums, company law board, administrative tribunals and the various
taxation tribunals where the pendency is also very large. Considering the enormity of
the problem, merely appointing a few additional judges will not address the problem
in its entirety. In fact, a series of measures is required over a period of years to resolve
the issue. First of all, our court procedures have to be simplified.

There have been long standing suggestions that “plea bargaining” be introduced
in criminal law. The admission of guilt accompanied by adequate punishment will
also save judicial time. Some states have experimented by setting up courts in prisons.
If defence counsel can be made available in jails, prison magistrates will be able to
give a priority of audience to under-trials. Secondly, we have identified several laws
related to which lakhs of cases are pending before the courts. There are also cases
which require priority. The constitution of expert tribunals and regulators also
provides an effective forum for judicial adjudication. Tribunals are relatively
inexpensive and specialized. The Income Tax Appellate Tribunal, the oldest among
the tribunals have, for the year 2000-2001, witnessed a filing of 2091 cases and a
disposal of 4700 cases. With this speed it is radically bringing down the arrears from
the peak figure of 300,597 for the year 1998-99. This figure has already come down
by 54,000.

A person who is deprived of his liberty have the first right of audience before
the courts. Cases which are more than two years old at the level of the sessions or
district courts should be transferred to these courts. In fact it would be a welcome
phenomenon if the judiciary formulated a scheme where cases over two years old are
transferred to these courts for a day to day adjudication. The number of cases that are
transferred from a judge to a fast track court could be entered in his service record.
There have to be an incentive for efficiency and a disincentive for slackness. It
reflects up the due process of law. In order to succeed it requires an active cooperation
particularly of the judges and the lawyers. Facilities made available by information
technology have to be fully utilized in judicial administration. The Supreme Court and most High Courts are already reaping the benefits of information technology in the system of justice delivery. A judicial system is essential to maintain the rule of law in a civilized society. The system must be independent, fair and efficient. The independence of the Indian judicial system have never been in question. It is fairness which is at stake.

From different tables i.e. table I, II and III, it appears that Police agencies did their job well in disposing of the reported incidences and tried to implement the intention of the legislature. Further analysis of socio-economic offences shows that the percentage of acquittal is more as compared to convictions. This may be due to long trail procedures. From Table III it is evident that in Punjab and Rajas than the percentage of cases convicted to trails completed was poor. In Bihar and Uttar Pradesh the trial procedure is very slow. The State of Maharashtra had high number of pending cases. It also seems that the pendency of these cases is day to day increasing.

It also appears that during 1997-99 (average) in 1997 52, 533 economic crimes constituting 3.05 percent of the total cognizable crimes were reported in the country, showing an increase of 1.1 percent in the incidence level compared to the previous year (1996). The share of these crimes towards total IPC crimes increased from 3.0 in 1996 to 3.1 in the year. The rate of such crimes at the national level decreased in this year from 5 in 1996 to 5.5 in 1997. During the decade 1987-97, these crimes have recorded a substantial increase of 26.2 percent.

On the other hand 58, 204 economic crimes constituting 3.3 percent of the total cognizable crimes under the IPC were reported in the country, showing an increase of 4.3 percent in the incidence level, compared to the previous year (1998). The share of these crimes towards total IPC crimes also, increased marginally. The rate of such crimes at the national level, however, remained constant at 5.8.
TABLE – 1
Annual Statement of Socio - Economic Offences Registered Under the
Prevention of Corruption Act,1988 and related sections of Indian Penal Code during
1997 - 1999 by Central Bureau of Investigation, Police & Co-Ordination Division,
North Block, New Delhi

<table>
<thead>
<tr>
<th>S. No</th>
<th>Year</th>
<th>No. of cases convicted during the year</th>
<th>No. of cases acquitted or discharged during the year</th>
<th>No of cases pending trial at the end of the year</th>
<th>Percentage of cases convicted to cases in which trials were completed during the year</th>
</tr>
</thead>
<tbody>
<tr>
<td>1-</td>
<td>1997</td>
<td>250</td>
<td>74</td>
<td>10824</td>
<td>41%</td>
</tr>
<tr>
<td>2-</td>
<td>1998</td>
<td>321</td>
<td>97</td>
<td>11382</td>
<td>49%</td>
</tr>
<tr>
<td>3-</td>
<td>1999</td>
<td>142</td>
<td>90</td>
<td>4179</td>
<td>51%</td>
</tr>
</tbody>
</table>

TABLE -2
Enforcement Directorate, Foreign Exchange Regulation Act, 1973 table
showing Trial in such kind of Socio - Economic Offences.

<table>
<thead>
<tr>
<th>S. No.</th>
<th>Year</th>
<th>No of cases pending for trial from the previous year U/S 56+57 of FERA,73</th>
<th>No. of cases sent up for trial during the year</th>
<th>Total cases for trial during the year</th>
<th>No of cases ended in conviction</th>
<th>No of cases ended in acquittal</th>
<th>No of cases other wise disposed of</th>
<th>No of cases pending trial at the end of the year</th>
</tr>
</thead>
<tbody>
<tr>
<td>1-</td>
<td>1997</td>
<td>2030</td>
<td>92</td>
<td>2132</td>
<td>31</td>
<td>3</td>
<td>15</td>
<td>2073</td>
</tr>
<tr>
<td>2-</td>
<td>1998</td>
<td>2073</td>
<td>92</td>
<td>2165</td>
<td>42</td>
<td>18</td>
<td>21</td>
<td>2084</td>
</tr>
<tr>
<td>3-</td>
<td>1999</td>
<td>2084</td>
<td>314</td>
<td>2398</td>
<td>38</td>
<td>40</td>
<td>352</td>
<td>1968</td>
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TABLE – 3
Statement of Cognizable Crimes Registered and Their Disposal By Anti-Corruption and Vigilance Departments of States and UTs under Prevention of Corruption Act and related sections of Indian Penal Code during 1997 - 1999

<table>
<thead>
<tr>
<th>S. N.</th>
<th>Year</th>
<th>State</th>
<th>Trails completed during the year</th>
<th>Cases convicted</th>
<th>Cases Acquitted or discharged</th>
<th>Pending Trial at the end of the year</th>
<th>Percentage of cases convicted to trials completed</th>
<th>Total Amount of fine imposed during the year (in Rs. '000)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>1997</td>
<td>Bihar</td>
<td>2</td>
<td>1</td>
<td>1</td>
<td>348</td>
<td>50.0</td>
<td>.5</td>
</tr>
<tr>
<td></td>
<td>1998</td>
<td>Bihar</td>
<td>2</td>
<td>1</td>
<td>1</td>
<td>364</td>
<td>50</td>
<td>.5</td>
</tr>
<tr>
<td></td>
<td>1999</td>
<td>Bihar</td>
<td>7</td>
<td>4</td>
<td>3</td>
<td>365</td>
<td>57.1</td>
<td>125.5</td>
</tr>
<tr>
<td>2.</td>
<td>1997</td>
<td>M. P.</td>
<td>177</td>
<td>68</td>
<td>109</td>
<td>712</td>
<td>38.4</td>
<td>1635</td>
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<tr>
<td></td>
<td>1998</td>
<td>M. P.</td>
<td>185</td>
<td>81</td>
<td>104</td>
<td>660</td>
<td>43.8</td>
<td>1952</td>
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<td>1999</td>
<td>M. P.</td>
<td>206</td>
<td>80</td>
<td>118</td>
<td>580</td>
<td>38.8</td>
<td>1839.0</td>
</tr>
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<td>3.</td>
<td>1997</td>
<td>Maharashtra</td>
<td>66</td>
<td>32</td>
<td>34</td>
<td>1468</td>
<td>48.5</td>
<td>243</td>
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<tr>
<td></td>
<td>1998</td>
<td>Maharashtra</td>
<td>117</td>
<td>32</td>
<td>66</td>
<td>1725</td>
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<td>1999</td>
<td>Maharashtra</td>
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<td>37</td>
<td>97</td>
<td>2000</td>
<td>27.6</td>
<td>76.1</td>
</tr>
<tr>
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<td>1997</td>
<td>Punjab</td>
<td>49</td>
<td>9</td>
<td>40</td>
<td>564</td>
<td>18.4</td>
<td>13</td>
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<tr>
<td></td>
<td>1998</td>
<td>Punjab</td>
<td>69</td>
<td>14</td>
<td>55</td>
<td>674</td>
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<td></td>
<td>1999</td>
<td>Punjab</td>
<td>174</td>
<td>16</td>
<td>158</td>
<td>816</td>
<td>9.2</td>
<td>24.2</td>
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<tr>
<td>5.</td>
<td>1997</td>
<td>Rajasthan</td>
<td>48</td>
<td>9</td>
<td>34</td>
<td>843</td>
<td>18.8</td>
<td>40</td>
</tr>
<tr>
<td></td>
<td>1998</td>
<td>Rajasthan</td>
<td>142</td>
<td>23</td>
<td>119</td>
<td>826</td>
<td>16.2</td>
<td>82</td>
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<tr>
<td></td>
<td>1999</td>
<td>Rajasthan</td>
<td>215</td>
<td>61</td>
<td>190</td>
<td>696</td>
<td>24.3</td>
<td>1148.7</td>
</tr>
<tr>
<td>6.</td>
<td>1997</td>
<td>Tamilnadu</td>
<td>6</td>
<td>4</td>
<td>2</td>
<td>133</td>
<td>66.7</td>
<td>29</td>
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<tr>
<td></td>
<td>1998</td>
<td>Tamilnadu</td>
<td>2</td>
<td>2</td>
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<td>134</td>
<td>100.0</td>
<td>7</td>
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<tr>
<td></td>
<td>1999</td>
<td>Tamilnadu</td>
<td>5</td>
<td>4</td>
<td>1</td>
<td>138</td>
<td>80.0</td>
<td>135.0</td>
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<td>7.</td>
<td>1997</td>
<td>U. P.</td>
<td>6</td>
<td>3</td>
<td>3</td>
<td>102</td>
<td>50.0</td>
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<td>1998</td>
<td>U. P.</td>
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<td>14.3</td>
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<td>121</td>
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CHAPTER 7

Introduction

(i) Prevention of corruption
(ii) Socio-economic offences under Indian Penal Code
(iii) Tax evasion and avoidance
(iv) Trial and punishment of socio-economic offences
(v) Narcotic drugs and psychotropic substances
(vi) Central vigilance commission
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Conclusions

PREVENTION AND CONTROL OF SOCIO-ECONOMIC OFFENCES IN INDIA
CHAPTER 7
PREVENTION AND CONTROL OF SOCIO-ECOOMIC OFFENCES IN INDIA

Criminal law in a broad sense is the body of laws that defines criminal offences, regulates the apprehension, charging, and trial of suspected persons and fixes penalties and modes of treatment applicable to convicted offenders. Criminal law is only one of the devices by which organized societies protect the security of individual interests and assure the survival of the group. There are, in addition, the standards of conduct instilled by family, school, university, and religion; the rules of the office and factory; the regulations of civil life enforced by ordinary police powers; and the sanctions available through tort actions brought by private person.

The traditional approach to criminal law has been that crime is an act that is morally wrong. The purpose of criminal sanctions has been to make the offender given retribution for harm done and expiate his moral guilt; punishment has been to be meted out in proportion to the guilt of the accused. In modern times more rationalistic and pragmatic views have predominated. Writers of the Enlightenment such as Cesare Beccaria in Italy, Montesquieu and Voltaire in France, and P.J.A. von Feuerbach in Germany have considered the main purpose of criminal law to be the prevention of crime1.

The social state of highest perfection of a society totally free from socio-economic crimes is mere wishful thinking and is impossible to achieve. This, however, should not imply that there should be no efforts to prevent and check the occurrence of these crimes; rather these efforts would to activate the ideals of socio-welfare state. The method may consist of modifications, the recommendations of the Law Commission and amendment of the existing provisions of laws dealing with socio-economic crimes including law of evidence and procedure. It may equally call or enactment of new laws and new provisions to deal with new situations in the new millennium. Experience of working of various laws dealing with socio-economic

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crimes have brought out certain lacunae and defects in the legal provisions which create difficulties in the detection, enforcement, investigation or prosecution and therefore it is necessary to modify and amend specific provisions so that these crimes are easily and more efficaciously detected and punished. New provisions may have to be enacted where legislative provisions for the punishment of a particular criminal conduct do not exist. The new invention of these criminals is too well known and this call for and necessitates constant updating of the laws dealing with socio-economic crimes in our country.

The defects may be in the existing provisions resulting in faulty investigation and delay in procedure for investigation. Any defect in investigation reflects upon and has repercussions on the prosecution and progress of the trial, apart from faulty, defective investigation, there may be found to exist certain other lacunae in the prosecution.

Keeping in view these considerations the Government of India referred the entire question to the Law Commission of India, and also to Ministry of Home affairs, in number of Reports submitted to the Government, the Commission has done a commendable job\(^2\). Quite a few of the recommendations of the Law Commission have already been accepted in this behalf and new laws and amending laws have been enacted but much still remains to be done.

To achieve the objectives of socio welfare state, and to create a society in which ethical values and morals are praised, still much more is to be done. Only high ethical conduct is the real insurance against socio-economic crimes. But as long as material wealth is looked up to as the measure of one’s success and respectability,

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the lure for money would be constantly present. The defective and improper enforcement, investigation and prosecution of socio-economic crimes have resulted not only on account of inefficiency or inexperience of the enforcement, investigating and prosecuting staff, but sometimes also from the poor service conditions of these agencies. An ill-paid and insecure staff can hardly discharge its functions properly and therefore it would also be needed that service conditions of these cadres are improved so as to ensure proper and efficient discharge of their duties. As long as want and insecurity loom large upon these agencies, it is unlikely that there can be any proper enforcement, investigation or prosecution of socio-economic crimes, particularly keeping in view the money potential of these upper class criminals. To study the various recommendations, in this chapter the above mentioned reports have been taken for brief discussion.

(i) Prevention of corruption:

Industrial revolution lead to plenty, but one of its side effect is this new type of criminality i.e. crimes committed by upper-middle class people in the course of their occupation, trade, commerce and industry, for the sake of greed, avarice and rapacity. Industrialization also leads to materialism which resulted in non-religion and slackening of morals. For the sake of money people started committing all sorts of frauds, misrepresentations, misappropriation, forgery, corruption, exploitation and adulteration. The country after independence was faced with the problem of refugee rehabilitation, maintenance of essential services and supplies, scarcity of goods, inflation and the government embarked upon planned development as the basis of entire state activity which gave phillip to industrialization and over spending by state. It resulted in extreme business competitiveness and decline in moral and ethical standards of businessmen, professionals and public servants. Imbalanced economy unsettled population, deficient administrative machinery inflation, scarcity backed by industrialization became the breeding grounds of these socio-economic crimes, and corruption became a way of life. These crimes have put the health and material
welfare of the entire community at stake. Defective investigation and protracted prosecutions also contributed to an increase in this criminality.

Evils of manufacture of duplicate substandard and adulterated goods, evasion of custom, excise duties and other taxes, smuggling, black marketing bring easy money. The Government of India has adopted socialist pattern of society as basic policy of governance. The country is lead from darkness to knowledge and from feudalism to democracy but in its wake there came competition, trade unionism, development of trade and commerce and industry, modern amenities of life urbanization, development of means of transportation and communication.

The evil of corruption continued to grow and therefore in June, 1962 a Committee known as Santhanam Committee\(^3\), was constituted by the Central Government inter alia to suggest changes in law which would ensure speedy trials in cases of bribery, corruption and criminal misconduct and make the law otherwise more effective, to suggest measures calculated to produce a social climate both amongst public servants and in general public in which bribery and corruption may not prosper, and to secure public support for anti-corruption measures and to consider special measures that may be necessary in corporate public undertakings to secure honesty and integrity amongst their employees. This Committee studied the problems of corruption in relation to public undertakings, import/export controls, income tax, excise and customs in particular and availed this opportunity to consider the matter in wider perspective. In its report it observed that ‘the Indian Penal Code was enacted in 1860, and though it has been amended here and there, its main structure has continued intact during the last 100 years or more. It is an admirable compilation of substantive criminal law, and most of its provisions are as suitable today as they were when they were formulated.

But the social and economic structure of India has changed to such large extent, that in many respects the Code does not truly reflect the needs of the present day. It is

\(^3\) Government of India Ministry of Home Affairs “Report of the Committee on prevention of corruption” submitted its report on 31st March 1964 known as Santhanam Committee.
dominated by the notion that almost all major crimes consist of offences against person, property or State. However, 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 become a dominant feature of certain powerful sections of modern society. The Santhanam committee divided such offences into eight categories as already mentioned in chapter IV of this thesis.

Even though the experience of western developed countries had not been altogether lost upon our Government, the menace of socio-economic offences in India was further highlighted by the report of this Committee and more concerted efforts to control and check this menace were made thereafter in our country. The Committee had submitted its final report in March, 1964. It inter alia recommended amendment of certain service regulations and enactments. In pursuance of its interim report a Central Vigilance Commission had already been set up. Several amending Acts with an accent on strengthening the legal machinery to fight corruption, tax evasion, food adulteration, improper use of essential commodities, and of foreign exchange etc., were also passed. The amending Acts had sought to increase the powers of the investigating officers and magistrates, by providing for summary trials and disallowing the normal right of appeal in certain cases, by creating presumptions against accused persons under certain circumstances and by making punishments have a greater deterrent effect. In the process the Anti Corruption Laws (Amendment) Act, 1964 (amending the Indian Penal Code 1860, the Criminal Procedure Code, 1898, the Criminal Law Amendment ordinance, 1944, the Delhi Special Police Establishment Act, 1946, the Prevention of Corruption Act, 1947 and the Criminal Law Amendment Act, 1952), the Foreign Exchange Regulation (Amendment) Act, 1964, the Prevention of Food Adulteration (Amendment) Act, 1964, the Essential Commodities (Amendment) Act, 1964 and the Wealth Tax (Amendment) Act. 1964, were passed by the Parliament. From time to time, thereafter, the Central Government have been setting up Committees and Commissions to get the matter examined periodically
followed by certain amending Acts. The legislative activity have ever since continued unaltered and the Standard 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 its effort to further contain these crimes. Lure for money has been the main cause for increase in the incidence of socio-economic criminality, be it through evasion and avoidance of taxes or through black market, be it smuggling and evasion of customs laws or be it through production and manufacture and sale of spurious drugs and adulterated and substandard consumer goods, the malady of socio-economic offences is on the increase because these activities multiply money more easily. The most unfortunate thing is that these activities multiply black money so as to generate a parallel economy in the country which in itself is a very dangerous phenomenon. This money is called black money not merely because it is tainted or earned through illegal measures but also because it is unaccounted money.

(ii) Socio-economic offences under Indian Penal Code:

The offences noticed by Santhanam Committee, mentioned above were examined by the Law Commission in its 29 report⁴ and the commission also found that offences of corruption in administrative services, evasion and avoidance of taxes, smuggling of goods, foreign exchange violations, are a part of public life in India and such crimes are attributable to an acquisitive, urbanized and affluent society. While analyzing the antisocial offences it came to the conclusion that these offences are committed by upper classes of society who themselves set the standards of morals and thus prevent the society from taking a serious view. The Law Commission did not agree with the recommendations of Santhanam Committee to transfer these offences as a chapter in the Indian Penal Code. It gave following reasons:

(1) If the provisions are transferred from the special Acts in the Indian Penal Code they will remain in complete as they are to be read with reference to the main provisions of special Act.

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(2) It will increase the number of sections of the Code which will make it voluminous and mar its structure.

(3) The Indian Penal Code is a permanent law based on criminal law of all civilized societies. It deals mainly with offences against person and property. These fundamentals are of a permanent character and have different nature and content from the socio-economic offences.

(4) The Code as such leaves the local and special Act intact. The special Acts deal with offences of a special type which are made punishable in certain circumstances, provide with different rules of evidence and procedure. In certain cases sanction is necessary before prosecution and imposition of minimum imprisonment is obligatory. The Indian Penal Code gives its own general explanations, definitions and exceptions under different heads which are continuing since long. Offences under special Act often change and sometimes become very complete and have to dealt with differently. Social conditions make them change and the legislature has to pay repeated attention to control them and therefore it is not feasible to make them a part of the code.

(5) Some offences under the special Acts are a result of temporary dislocation of the economic structure. They are meant to contract passing phenomenon on and after sometime the need of some such provisions may not be left, e.g. provisions of guest control order.

(6) Standard of morality of offences under the code and special Acts is different.

The Commission observed that for the present report, it is not necessary to analyze in detail the various special Acts in order to show how the mens rea, i.e. "some blameworthy conditions of mind" has been modified. But some broad points may be indicated. While dealing with mens rea, it would be convenient to group the various crimes into four classes (i) Crimes in which the mens rea\(^5\) is found in an intention to commit an illegal act. (General intention). (ii) Crimes in which a

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particular intention\(^7\) is required (e.g. in English law, burglary is house-breaking by night with intent to commit a felony\(^8\)). (iii) Crimes in which negligence\(^9\) will suffice (e.g. management of vehicles in public streets) (iv) Crimes in which the requirement of mens rea is reduced to a minimum (i.e. abducting a girl under 16 from her parents though the girl is believed to be above 16\(^{10}\)).

But, beyond these examples\(^{11}\), lie the cases where the legislature has absolutely forbidden the commission of certain acts under penalty of fine ( or imprisonment in default of payment of fine), apart, altogether from the question of mens rea\(^{12}\). That the liability so created is of a quality different from that attaching to ordinary offences requiring mens rea is now well-recognized by the case-law and extensive literature that has grown around these offences. Further the Commission added that it is not necessary to deal with these offences of “strict liability” at length. As has been said, strict responsibility “has been with us so long that it has become accepted as a necessary evil\(^{13}\)”.


\(^{9}\) For the present purpose, it is assumed that negligence is a type of mens rea. For a contrary view, see, Glanville Williams, Criminal Law- The General Part, (1961) pages 102 and 262. For a comprehensive discussion, see P.J. Fitzgerald, Crime, Sin and Negligence” (1963) 79 L.Q.R. 351, 361 quoting from the. Law Commission of India, Ministry of Law report entitled “proposal to include certain Social and Economic Offences in Indian Penal Code submitted its report on February 1966. p. 28.


\(^{11}\) Para 51, quoting from the Law Commission of India, Ministry of Law report entitled “proposal to include certain Social and Economic Offences in Indian Penal Code submitted its report on February 1966. p. 28.


\(^{13}\) P. J. Fitzgerald in Block Review of Colin Howard, strict Responsibility, (1964) 7 lawyer 41. quoting from the Law Commission of India, Ministry of Law report entitled “proposal to include certain Social and Economic Offences in Indian Penal Code submitted its report on February 1966, para 52 p. 28.
In this connection, the Commission quoted the following observations of the Privy Council in Lim Chin Aik v. The Queen\textsuperscript{14} which has already been discussed in the relevant chapters of this thesis.

"Where the subject-matter of the statute is the regulation for the public welfare of a particular activity -- statutes regulating the sale of food and drink are to be found among the earliest examples -- it can be and frequently has been inferred that the legislature intended that such activities should be carried out under the conditions of strict liability. The presumption is that the statute or statutory instrument can be effectively enforced only if those in charge of the relevant activities are made responsible for seeing that they are complied with. When such a presumption is to be inferred it displaces the ordinary presumption of mens rea. Thus sellers of meat may be made responsible for seeing that the meat is fit for human consumption and it is no answer for them to say that they were not aware that it was polluted. If that were a satisfactory answer, then as Kennedy, L.J., pointed out in one famous case Hobbs v. Winchester Corporation\textsuperscript{15} that the distribution of bad meat (and its far-reaching consequences) would not be effectively prevented. So a publican may be made responsible for observing the condition of his customers\textsuperscript{16}.

In other words, these are cases in which "Intention to commit a breach of the statute need not be shown. The breach in fact is enough\textsuperscript{17}.

The passages quoted above have been discussed at length in a decision of the Supreme Court of India in State of Maharashtra v. M.H. George\textsuperscript{18} which also deals with the question, how far mens rea in the sense of actual knowledge that the act done by the accused was contrary to the law, may be requisite. It was pointed out there, that "starting with an initial presumption in favour of the need for mens rea, we have to

\textsuperscript{14} (1963) A.C. 160; (1963) I All E.R. 223, 228 (P.C.) quoting from the Law Commission of India, Ministry of Law report entitled "Proposal to include certain Social and Economic Offences in Indian Penal Code submitted its report on February 1966, para 53 p. 28.
\textsuperscript{15} (1910), 2 K.B. 471. quoting from the Law Commission of India, Ministry of Law report entitled "Proposal to include certain Social and Economic Offences in Indian Penal Code submitted its report on February 1966, para 53 p. 29.
\textsuperscript{17} Cf. Lord Wright in Mcleod v. Buchanan, (1940) 2 All. England Reports 179, 186 (H.L.) (Case under s. 35, Road Traffic Act, 1930, requiring insurance against third party risks) quoting from the Law Commission of India, Ministry of Law report entitled "Proposal to include certain Social and Economic Offences in Indian Penal Code submitted its report on February 1966, para 54 p. 29.
ascertain whether the presumption is overborne by the language of the enactment, read in the light of the objects and purposes of the Act, and particularly whether the enforcement of the law and the attainment of its purpose would not be rendered futile in the event of such an ingredient being considered necessary”. On the other hand, where it cannot be said that the object of the Act would be defeated if mens rea is read as an ingredient, courts would be slow to dispense with it19.

Examples of reduction or elimination of mens rea are abundant in the case law in England regarding the Food and Drugs Act20, and the Weights and Measures Acts21 Judicial construction in England of certain enactments passed for protection of the revenue also furnishes similar examples22. In India, a striking example of modification of the ordinary rule regarding mens rea is the Prevention of Food Adulteration Act23 1954, section 19(1) of which provides, that (subject to certain qualifications), it shall be no defense in a prosecution for an offence pertaining to the sale of any adulterated or misbranded Article of food, to allege merely that the vendor was ignorant of the nature, substance or quality of the food sold by him, or that the purchaser, having purchased any Article for analysis, was not prejudiced by the sale.24


It has been held\(^{25}\), that under this Act even the sale of any Article to a particular customer on the understanding that the customer is to use it only for animals, is punishable. In England also, provisions of the corresponding statutes are given a wide interpretation\(^{26}\).

Another example of a provision dispensing with *mens rea* is section 167(12A) read with section 52A of the (old) Sea Customs Act\(^{27}\) 1878. The net result of these two provisions was, that if a vessel constructed, adapted, etc., for the purpose of concealing goods, under section 52A, entered, etc., within the limits of India, the vessel would be liable to confiscation. The master of the ship was also liable to a penalty not exceeding rupees 1,000. It has been held\(^{28}\), that having regard to the fact that this sub-section as contrasted with other sub-sections, did not use the word “knowingly” etc. and having regard to the fact that importation of the requirement of *mens rea* would nullify the object of section 52A (to put an end to illegal smuggling), the prohibition must be regarded as absolute. The guilty mind could rarely be established against the owners of vessels which are traveling on the high seas, and it may be difficult to prove the guilty knowledge even of the master of the ship. If absence of such knowledge was allowed to be pleaded as a defence the owners and the master could very well plead that the alleged alteration, etc. was made without their knowledge, and it will be almost impossible to establish *mens rea* in such cases.

In a decision the **Supreme Court in State v. M.H. George**\(^{29}\) also observed, that virtually it establishes the same position in respect of offences under the Foreign


\(^{26}\) The English cases are cited in Kenny, Outlines of Criminal Law (1962), page 42. quoting from the Law Commission of India, Ministry of Law report entitled “proposal to include certain Social and Economic Offences in Indian Penal Code submitted its report on February 1966, para 56 p. 30.


Exchange Regulation Act, 1947\textsuperscript{30}. Of course, the question whether the liability under a statute is absolute, is ultimately one of construction of the particular statute, and the answer will depend on the language employed in the statute\textsuperscript{31}, the policy behind it\textsuperscript{32}, and how far enforcement of the statute would suffer by adherence to the doctrine of \textit{mens rea}\textsuperscript{33}.

The examples cited above are merely intended to show that in relation to some of the enactments relating to the offences in question, it would be proper to say that they fix their attention on the acts themselves, irrespective of the knowledge or intention\textsuperscript{34}. The above discussion\textsuperscript{35} will show, that it cannot be asserted that all the eight classes of offences with which the Commission was concerned in 29 Report\textsuperscript{36} stand on the same footing with reference to \textit{mens rea}. In fact, the offences seem to belong to four different categories. First, there are offences in respect of which \textit{mens rea} is undoubtedly required (such as theft of public property). Secondly, there are offences which though requiring \textit{mens rea}, possess a special character of their own (e.g. many offences falling under the category of black-marketing). Thirdly, there are offences which can with a fair measure of accuracy, be described as offences of strict liability (such as, some offences regarding food and drugs)\textsuperscript{37} And, fourthly, there are

\textsuperscript{30} The Foreign Exchange Regulation Act, 1947 (7 of 1947), quoting from the Law Commission of India, Ministry of Law report entitled "proposal to include certain Social and Economic Offences in Indian Penal Code submitted its report on February 1966, para 58 p. 31.


\textsuperscript{34} See para 53 p. 28 the Law Commission of India, Ministry of Law report entitled "proposal to include certain Social and Economic Offences in Indian Penal Code submitted its report on February 1966.

\textsuperscript{35} See para 50 to 59 pp. 27-31 the Law Commission of India, Ministry of Law report entitled "proposal to include certain Social and Economic Offences in Indian Penal Code submitted its report on February 1966.

\textsuperscript{36} See para 2 of the report the Law Commission of India, Ministry of Law report entitled "proposal to include certain Social and Economic Offences in Indian Penal Code submitted its report on February 1966.

\textsuperscript{37} See para 73 pp. 37-38 the Law Commission of India, Ministry of Law report entitled "proposal to include certain Social and Economic Offences in Indian Penal Code submitted its report on February 1966.
acts in respect of which their moral culpability is a matter of controversy (e.g. tax avoidance)\(^\text{38}\).

In the conclusion of the Report the Commission observed that in the end, we should emphasize that the problem of checking crime in general, and of white-collar crimes in particular\(^\text{39}\), is a complex one. It is much wider than the form and content of the penal law, or the placing of its provisions. The inhibitions which prevent a person from committing crime generally may have their origin in various factors which contribute to the emergence of conscience and the creation of a sense of guilt\(^\text{40}\). The sanctions imposed by the penal law constitute only one species of those inhibitions.

Crime is not a legal problem; it is a social and economic one. The sanctions which can effectively operate to check crime are not legal only. As has been observed\(^\text{41}\) "Among the basic elements in any culture are social values. These have been developed out of the historical experience of each society. Experiences and behavior patterns which have brought the group satisfaction are positively valued. Experiences which have brought dissatisfaction are negatively valued. Sanctions are set by the society designed to "encourage approved behaviour and discourage disapproved behaviour. These sanctions are embodied in the folkways, mores, conventions, religious ideals and taboos, public opinion, and laws of a society, and may be promoted through education. Every society has to decide what kinds of behaviour shall be discouraged through law, and what kinds by appeal to other sanctions. We have seen in our society a great reliance on law and yet a considerable

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\(^{38}\) See paras 100-111 pp. 51-57 the Law Commission of India, Ministry of Law report entitled “proposal to include certain Social and Economic Offences in Indian Penal Code submitted its report on February 1966.

\(^{39}\) See para 7 Law Commission of India, Ministry of Law report entitled “proposal to include certain Social and Economic Offences in Indian Penal Code submitted its report on February 1966.


\(^{41}\) Taft and England, Criminology, (1964) page 275 quoting from the Law Commission of India, Ministry of Law report entitled “proposal to include certain Social and Economic Offences in Indian Penal Code submitted its report on February 1966, para 170 p. 76.
disrespect for many laws. Criminology is strictly speaking, concerned only with acts which are made punishable under the criminal law.”

When we consider the question of preventing the commission of a particular class of crimes, the matter becomes still more complex, because then one have to consider not only the criminal instinct in general, but the more detailed question as to why the desire to commit the crimes of that particular class crises. __

(iii) **Tax evasion and avoidance:**

Over five decades down the road since independence and after 52 years of ‘planned economic development’, the dream of economic development with equitable distribution of income have eluded India. Aside from other anomalies, corruptions have played a major role in negating the impact of planned economic development. Indeed ‘corrupt activities make it less likely that government objectives will further the public policy of improving the distribution of income and increasing the equitability of the economic system’. Since corruption tends to raise the cost of running the government while reducing government revenue, it also tends to raise the fiscal deficit. An inflationary cycle is the natural consequence, which is part of the vicious circle of corruption.

Black economy in India is both the central cause and one of the principal consequences of corruption. It is a result of bribery, pilferage of public funds, illicit trade, tax evasion, criminal activities such as smuggling and havala illegal monetary transaction and several other related factors. However, once the black economy attracts a large part of the national income to its fold and gets strengthened due to its self-perpetuating tendency, it strives to appropriate a large part of the economy. The transformations of a substantive, or even a large, part of economy into ‘black economy’ have serious consequences for development and growth. Black economy, consisting of black income, black money and black wealth, forms part of the vicious circle of corruption in India. It has grown much more complex than defined by the Direct Taxation Enquiry Committee appointed in 1970 by the Government of India to investigate the problems of black money and tax evasion in India.
To study and to recommend concrete and effective measures to unearth black money and prevent its proliferation through further evasion and for some other allied matters the Government of India appointed a Direct Taxes Inquiry Committee42 under the Chairmanship of Shri Wanchoo, retired Chief Justice of India, on the 2nd March, 1970, which submitted its report on 24th December, 1971 to the Government. This Committee had examined the question and made recommendations of far-reaching consequence. The observations are on the malady of black money inasmuch as black money has not only multiplied tax evasion, foreign exchange violations, black marketing and hoarding but has also affected the moral fabric of our society and thus multiplied anti-social activities. The Wanchoo Committee had observed:

"Black money is an elusive term. It is, as its name suggests, tainted money-money which is not clean or which has a stigma attached to it... It not only stands for money earned by violating legal provisions-even social conscience- but also suggests such money is kept secret and not accounted for."43"

To control this malady the government had to resort to not only the periodical amendment of the Income Tax Act, 1961, and the Companies Act, 1956, Wealth Tax Act, 1957, Customs Act, 1962 but also enact the Foreign Exchange Regulations Act, 1973, the Criminal Procedure Code, 1973, the Control of Foreign Exchange and Prevention of Smuggling Act, 1974, the Economic Offences (Inapplicability of Limitation) Act, 1974, the Smuggling and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 and the Foreign Contribution (Regulation) Act, 1976. Furthermore, ours is the biggest democracy in the world, and a devout follower, supporter and practitioner of fundamental human rights of life. There for every effort should be made to prevent and control this evil.

(iv) **Trial and punishment of socio-economic offences:**

The Law Commission in its 47th report considered the ways and means how effectively to deal with such offences. It termed the offences i.e. evasion and

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43 Ibid., the second chapter of report.
avoidance of tax laws, violations of food drug, import-export and foreign exchange rules and the like as “public welfare offences” or “regulatory offences” or “civil offences”. It defined them separately. Sayre also called them “public welfare offences”.44

These offences are materially different from traditional crimes. In traditional crimes the intent and act must both concur to constitute the offence, the onus to prove the guilt on the prosecution and that too beyond any reasonable doubt, the offender is presumed to be innocent unless proved guilty and benefit of doubt always goes to the accused. If two interpretations are possible, the one favorable to the offender is adopted. Thus method of proof and rules of evidence for traditional crimes are more pro accused. The victim of these crimes is always the individual. But socio-economic offences cause deeper harm to the economy. So there is an apparent need to arm the state with more powers, give extra weapons and devise better instruments to effectively investigate, prosecute and punish these crimes. These offences are peculiar to big cities. Social offences like corruption, casteism, trafficking in women and children dowry, bride burning atrocities on harijans, and communal riots, are eating in to moral, social values and peaceful environment of society. They also need be checked effectively and differently.

In 47th report also Law Commission did not agree with Santhanam Committee to make these offences a part of Indian penal code because mens rea is essential requirement of traditional crimes while it has been dispensed with in economic crimes. The extent and scope of these offences keeps on changing and it is practically not possible to amend the code every time. It found their treatment under different acts as enough for the purpose except that these Acts were to be provided with better teeth. For a speedy determination of such offences it favored the enactment of a

44 Public Welfare Offences (33) Columbia Law Review, Sayre, F.B.
separate Act for the trial and punishment of these criminals. The government have not yet favoured this recommendation.


To sum up the Law Commission in its 47th Report suggested radical departures in the methods of investigation, prosecution, trial and punishment of these offenders. Some of the departures suggested and acted upon are-elimination or modification of requirement of mens rea, provision of minimum and mandatory imprisonment, extension of the principle of vicarious liability and strict liability in case of offences by companies, shifting of onus of proof on the accused and exclusion of the application of the provisions of section 360 of the Code and Probation of Offenders Act 1958. Some of these recommendations have been incorporated in the code of 1973. Special Acts were also amended on the suggested lines. After the amendment these special acts provide for different types of special courts namely. (a) special court presided by a senior judicial officer as set up under the Criminal Law Amendment, 1952. (b) Specially empowered ‘Judicial Magistrates to deal with offences under the food and drug laws. (c) Executive Magistrates having powers of Judicial Magistrates under the Bonded Labour System (Abolition) Act 1976. (d) Children’s Court under the Children’s Act 1960. (e) special courts under the special courts Act 1979. The latest amendment of the Code in 1978, further empowers the Government to set up special courts of Judicial Magistrates.
(v) Narcotic Drugs and Psychotropic Substances:

Drug abuse have become one of the curses of the society. There is a need to control this complaint strongly. This is a danger which threatens public life and leads to destructions not only of the family but also of our society. It has been felt that the Narcotic Drugs and Psychotropic Substances Act, 1985, despite amendment therein in 1988, have not yielded the desired results. The Law Commission therefore, considered it necessary to undertake a review of the Narcotic Drugs and Psychotropic Substances Act, 1985\(^{45}\).

The Commission observed that the menace of drug trafficking and drug abuse is on the increase all over the country and the conviction rate in cases under this Act is extremely low. From this it appears that either the innocent persons are being sent to the courts or there is some procedural defect or deficiency which benefits the accused to get acquittal from the courts. In view of the deep concern at the growing incidence of drug abuse occurring in different parts of the country and to plug the loopholes in the law and procedure for combating illicit trafficking and, among others, to effectively deal with drug offenders the Law Commission has *suo motu* taken up the study\(^{46}\).

The law relating to narcotic drugs was being administered in India by three Central Acts, namely; (a) Opium Act, 1857, (b) Opium Act, 1878 and (c) Dangerous Drugs Act, 1930, besides the State Legislation, which provided for punishment for the offences but not commensurating with the increasing menace of drug addiction. It was felt that drug addiction and illicit trafficking in drugs have taken such an alarming proportion that it had not only affected the health of the individual citizen but had shaken the entire nation. As per the Preamble of the Narcotic Drugs and Psychotropic substances Act 1985 the aim of the Act is (a) to consolidate and amend the law relating to narcotic drugs; (b) to make stringent provisions for the control and


\(^{46}\) Ibid. Para 1.5 pp. 8-9.
regulation of operations relating to narcotic drugs and psychotropic substances; and for matters connected therewith.

The Commission observed that the law on the subject was enacted as the penalties under the previous Acts were not sufficiently deterrent to meet the challenge of well organized gangs of smugglers. For example, Dangerous Drugs Act, 1930 provided for maximum term of imprisonment of three years with or without fine and four years imprisonment with or without fine with respect to the subsequent offences and no minimum punishment was prescribed as a result of which drug traffickers have been very often let off by the courts with nominal punishment. With the passage of time a vast body of international law on narcotic drugs and psychotropic substances have emerged through various international treaties and protocol to which India was a party which entailed several obligations, which were not either fully or partly covered by the Narcotic Drugs and Psychotropic substances Act 1985. Therefore, it was felt that the Act of 1985 required further amendment to make it more stringent to curb the menace of drug abuse and drug trafficking. Accordingly, the Narcotic Drugs and Psychotropic substances (Amendment) Act (No. 2 of 1989) was passed and the salient features thereof are reproduced below for ready reference.\[47\]

\[47\] (a) Insertion of new section 31A providing for death penalty on second conviction in respect of specified offences involving specified quantities of certain drugs.
(b) "No sentence awarded under this Act, (other than section 27) should be suspended remitted or commuted."
(c) Offences punishable under the Act shall be tried by a court of Sessions until a Special Court is constituted under the new section 36A.
(d) Insertion of new section 36A providing for Constitution of special courts.
(e) Insertion of new section 37 which replaced the old section 37 of the principal Act providing that every offence punishable under the Act shall be cognizable and non-bailable.
(f) Empowering officers authorized under section 42 of the Principal Act to order attachment/destruction of illicit crop.
(g) Insertion of new section 52A to provide for disposal of seized Narcotic Drugs and Psychotropic Substances.
(h) Insertion of new section 53A to provide that a statement made and signed by a person before any officer authorized under section 53 for the investigation of offences shall be relevant for the purpose of providing an offence under the Act.
(i) An officer on whom any duty has been imposed under the Act or any person who has been given the custody of any addict or any other person charged with an offence under the Act, and who willfully aids in or connives at the contravention of any provision of the Act shall be punishable with the same punishment as that awardable to drug trafficking offenders.
(j) Immunity from prosecution to an addict volunteering for treatment for de-addiction or de-toxification once in his life time. The immunity may be withdrawn if the addict does not undergo the complete treatment for the purpose.

\[contd...\]
As to the drug Trafficking and illicit use of narcotic drugs and Psychotropic Substances, the commission observed that the genesis and development of the Indian drug trafficking scenario are closely connected with the strategic and geographical location of India which has massive inflow of heroin and hashish from across the Indo-Pak border originating from "Golden Crescent" comprising of Iran, Afghanistan and Pakistan which is one of the major illicit drug supplying areas of the world. On the North Eastern side of the country is the "Gold Triangle" comprising of Burma, Laos and Thailand which is again one of the largest sources of illicit opium in the world. Nepal also is a traditional source of cannabis, both herbal and resinous. Cannabis is also of wide growth in some states of India. As far as illicit drug trafficking from and through India is concerned, these three sources of supply have been instrumental in drug trafficking.

The Preamble to the Narcotic Drugs and Psychotropic Substances Act, 1985 is reproduced below for ready reference. The statement of objects and Reasons for the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act) is reproduced in note below for ready reference.

(k) Addition of new chapter to cover all aspects relating to forfeiture of property derived from, or used in, illicit traffic. This Chapter inter alia, prohibits holding of illegally acquired property which has been defined as property acquired from illicit traffic in Narcotic Drugs or Psychotropic Substances. It also provides for identifying, seizure or freezing of illegally acquired property. It further provides for setting up of Offices of Competent Authority to deal with all aspects relating to forfeiture; to appoint officers as Administrators for the management of properties seized or forfeited and an Appellate Tribunal for such properties.


48 "An Act to consolidate and amend the law relating to narcotic drugs, to make stringent provisions for the control and regulation of operations relating to narcotic drugs and psychotropic substances, to provide for the forfeiture of property derived from, or used in, illicit traffic in narcotic drugs and psychotropic substances, to implement the provisions of the International Conventions on Narcotic Drugs and Psychotropic Substances and for matters connected therewith."

49 "The statutory control over narcotic drugs is exercised in India through a number of Central and State enactments. The Principal Central Acts, namely, the opium Act, 1857, The Opium Act, 1878 and the Dangerous Drugs Act, 1930 were enacted a long time ago. With the passage of time and the developments in the field of illicit drug traffic and drug abuse at national and international level many deficiencies in the existing laws have come to notice, some of which are indicated below; (i) The scheme of penalties under the present Acts is not sufficiently deterrent to meet the challenge of well organized gangs of smugglers. The Dangerous Drugs Act, 1930 provides for a maximum term of imprisonment of three years with or without fine and four years imprisonments with or without fine with repeat offences. Further, no minimum punishment is prescribed in the present laws, as a result of which drug traffickers have been sometimes let off by the courts with nominal punishment. The country has for the last few years been
In view of what have been stated above, an urgent need is felt for the enactment of a comprehensive legislation on narcotic drugs and psychotropic substances, which, inter-alia, should consolidate and amend the existing laws relating to narcotic drugs, strengthen the existing controls over drug abuses, considerably enhance the penalties particularly for trafficking offences, make provisions for exercising effective control over psychotropic substances and make provisions for the implementation of international conventions relating to narcotic drugs and psychotropic substances, to which India is a party.

The illicit trafficking in Narcotic Drugs and Psychotropic substances has led to drug addiction. The anguish of the Supreme Court of India was expressed in Durand Didier v. Chief Secretary, Union Territory of Goa\(^{50}\) in the following words:-

"With deep concern, we may point out that the organized activities of the underworld and the clandestine smuggling of Narcotic Drugs and Psychotropic substances into this country and illegal trafficking in such drugs and substances have led to drug addiction among a sizeable section of the public, particularly the adolescents and students of both sexes and the menace has assumed serious and alarming proportions in the recent years. Therefore, in order to effectively control and eradicate the proliferating and booming devastating menace, causing deleterious effects and deadly impact on the society as a whole, the Parliament in its wisdom, has made effective provision by introducing this Act, 81 of 1985 specifying mandatory minimum imprisonment and fine. The sentence of ten years rigorous imprisonment and the fine offRs.1,00,000/- with the default clause, as modified by the High Court, does not call for interference\(^{51}\)."

(contd...)
The main conclusions and recommendations of the Law Commission in 155th Report are that there are many infirmities in Narcotic Drugs and Psychotropic substances Act 1985, the drug traffickers are fighting guerilla war against humanity and, therefore, deterrent punishment has been provided under the Narcotic Drugs and Psychotropic substances Act (as amended by Amendment Act No. 2 of 1989). The Act has provided for death penalty for specified offences by the previous convict and for forfeiture of property derived from, or use in illicit trafficking. However, even these provisions have not yielded fruitful results in curbing and controlling illicit trafficking and use of narcotic drugs. Some of the infirmities found in the implementation of Narcotic Drugs and Psychotropic substances Act 1985 may be summarized as (a) lack of social awareness against offences of illicit trafficking and illicit use of narcotic drugs and psychotropic substances (b) the severe punishment for small quantity under section 27 of the Act if it is not for personal consumption; (c) non establishment of Special Courts for trial of the offences under the Narcotic Drugs and Psychotropic substances Act by some States in spite of specific directions in section 36 thereof (d) wild growth of cannabis plant, coca plant or opium poppy and chances of cultivation of such plants in the guise of wild growth by unscrupulous smugglers (e) The inherent problems in the implementation of section 50 of the Narcotic Drugs and Psychotropic substances Act to make the search effective and meaningful (f) frequent changes in officers investigating the offences and (g) Non establishment of the centers for identification, treatment, education and after care of the addicts by the Government52.

After discussing the concern of the world community against illicit trafficking and use of narcotic Drugs and Psychotropic substances as borne out from the proceedings of the International conventions, the procedural and other weaknesses of the present law on the subject to deal effectively to overcome the menace of drug abuse and trafficking therein and after taking into consideration the landmark judgment of the Supreme Court of India, especially in State of Punjab v Balbir

52 Supra note 51 Para 6.1 pp. 85-86.
Singh\textsuperscript{53} and after considering the valuable suggestion, the Commission observed that the Narcotic Drugs and Psychotropic substances Act 1985 requires further amendments to make it more effective.

The Commission therefore recommended the following amendments in the Narcotic Drugs and Psychotropic substances Act, 1985 namely:-

Amendment in section 4 of the Act – In clause (2) of section 4 of the Narcotic Drugs and Psychotropic substances Act, sub-clause (d) be substituted as follows:- “(d)Identification, treatment, education, aftercare, rehabilitation, social re-integration of addicts, creation of social awareness qua dangers of drug abuse through education, publicity, training programmes and seminars with wide publicity to the deliberations and the reports thereof in the media\textsuperscript{54}.”

Amendment in section 27 of the Act- In section 27, the following new sub-section 3 be inserted to provide for a lesser punishment for small quantities if not proved to be for personal consumption:- “(3)Where a person who is shown to have been in possession of a small quantity of Narcotic Drugs or Psychotropic substances fails to prove that it was intended for the personal consumption of such person and not for sale or distribution, such person shall, notwithstanding anything contained in this Chapter, be punishable- (a) Where the narcotic drug or psychotropic substances possessed or consumed is cocaine, morphine, diacetyl-morphine or any other narcotic drug or any psychotropic substance as may be specified in this behalf by the Central Government, by notification in the official gazette, with imprisonment for a term which may extend to two years or with fine or with both; and (b) Where the Narcotic Drugs or Psychotropic substances possessed or consumed is other than those specified in or under clause (a), with imprisonment for a term which may extend to one year or with fine or with both\textsuperscript{55}.”

Amendment in section 36 of the Act— After clause (1) of section 36 of the Principal Act, the following proviso shall be inserted, namely “Provided that at least one special court shall be constituted by the Government as soon as the number of pending cases under the Act exceeds one hundred and fifty\textsuperscript{56}.”

Insertion of new section 47-A in the Act, after Section 47 of the Narcotic Drugs and Psychotropic substances Act, the following section shall be inserted, namely – “47A. Duty of the Forest officer and Revenue officer to take action- Every Forest Officer and revenue officer shall give immediate information

\textsuperscript{54} Supra note 52 Chapter IV, Para 4.5(a) p. 87.
\textsuperscript{55} Ibid.Chapter IV, Para 4.5(f) p. 88.
\textsuperscript{56} Ibid Chapter IV, Para 4.5(e) p. 88.
of the wild growth of coca plant, opium poppy or cannabis plant on the forest land or government land within his jurisdiction, as the case may be, when it may come or brought to his knowledge at any stage, to the Metropolitan Magistrate, Judicial Magistrate of the First Class or any Magistrate specially empowered in this behalf by the State Government or any officer of a gazetted rank empowered under section 42 who, upon receipt of such information, may pass such appropriate order including order to destroy the plants as he thinks fit, and every such forest officer or revenue officer who knowingly neglects to give such information, shall be liable to punishment."

Amendment in section 50 of the Act in section 50 of the Narcotic Drugs and Psychotropic substances Act, (a) In sub-section (1), after the words ‘he shall’ and before the words ‘if such person’, the following words shall be inserted, namely--“inform such person that he has a right to be searched in the presence of a gazetted officer or the magistrate referred to in section 41 and” (b) In sub-section (1), for the words “or to the nearest magistrate”, the following words shall be substituted, namely -“or to the nearest magistrate referred to in section 41 of the Act, as the empowered officer may deem fit.”

Insertion of new section to give effect to Article 11 of the convention against illicit trafficking in Narcotic Drugs and Psychotropic substances, 1988 regarding “Controlled Delivery”. In order to give effect to the aforesaid provisions contained in Article 11 of the aforesaid convention, the Commission observed that the NDPS Act be suitably amended by incorporating a new section there under to trace the onward movement of the consignment and to apprehend, arrest, prosecute the persons including the ultimate persons taking delivery of the consignment.

Insertion of new section 67 A in the Act after section 67 of the Narcotic Drugs and Psychotropic substances Act, the following new section shall be inserted, namely –“67A. Completion of the investigation by an empowered officer- Every empowered officer who is making investigation of a case under the provisions of this Act or who takes any step under Chapter V thereof shall be in charge of the investigation till it is completed, unless there are compelling circumstances requiring a change and it shall be his duty to take such step under the law for speedy investigation and submit the case to the competent court without any unnecessary delay.”

Effective Implementation of section 71 of the Narcotic Drugs and Psychotropic substances Act the Commission felt that there is a need for the Government be see that the object underlying the section

57 Supra note 52 Chapter IV,, Para 4.5(b) p. 89.
58 Supra note 54 Chapter V, Para 5.6 p. 90.
59 Ibid Chapter III, Para 3.7 p. 91.
60 Ibid Chapter IV, Para 4.5(d) p. 91.
be achieved by utilizing the services of Non-governmental organizations and if necessary by establishing a wing in Government hospitals\textsuperscript{61}.

To Control and regulate the supply of opium and other narcotic drugs, the following International conventions\textsuperscript{62} were entered into between (1912 - 1988)

Which are mentioned with date/year/ and place of conventions for ready reference here in footnotes.\textsuperscript{63}

\textsuperscript{61}Supra note 54 Chapter V, Para 4.5(g) p. 92.
\textsuperscript{62}Law Commission of India 155\textsuperscript{th} Report on NDPS Act 1985.
\textsuperscript{63}2\textsuperscript{nd} March 1912, Hague-International Opium Convention. 13\textsuperscript{th} July 1925, Geneva-Agreement Re Manufacture, international trade and use of prepared opium.27\textsuperscript{th} November 1931 Bangkok- Convention manufacturae and distribution of narcotic drugs (Geneva 13\textsuperscript{th} July 1931) Agreement Re Opium smoking in the Far East.26\textsuperscript{th} June 1936 Geneva- Convention for the suppression of illicit traffic in dangerous drugs 11\textsuperscript{th} December 1946 Lake Success Protocol Amending the 1912, 1925, 1931, and 1936 instruments.19\textsuperscript{th} November 1948 Paris- Protocol extending the 1931 convention to synthetic narcotic drugs.23\textsuperscript{rd} June 1953 New York- Protocol re cultivation of the opium poppy and production Trade and use of Opium.1961- India is a party to the single convention on Narcotic Drugs 1961. In the second half of 20\textsuperscript{th} century, the white collar crimes assumed alarming proportions. Under white collar crimes also the ‘drug addiction’ and the ‘illicit traffic in narcotic drugs and psychotropic substances’ became such a threat that the dangers following illicit traffic in narcotic drugs affected the world community and the same became the subject of International conventions the Preamble of which briefly outlined the importance of effective measures against abuse of narcotic drugs. 1961- The convention after laying down in Article 33 that the party was not permitted the possession of drugs except under legal authority provided for action against the illicit traffic in Article 35 and for penal provision in Article 36 of the convention. 1971-Thereafter the convention of Psychotropic Substances 1971 was adopted to which India is a party. 1971- After providing for special provision regarding the control of preparations psychotropic substances, the convention provide for measures against the abuse of psychotropic substances in Article 20, action against the illicit traffic in Article 21 and the penal provision in Article 22. 25\textsuperscript{th} March 1972- The protocol of 1972 amending the single convention on narcotic drugs. With the passage of time, it was found that the illicit trafficking and illicit use of narcotic drugs is on the increase at the international level and, therefore, resolutions were adopted by United International Conference to consider the amendment of Single Convention on narcotic drugs. 1961, had passed the following resolutions II and III: Resolution II - Assistance in Narcotic Control. The conference Recalling that assistance to developing countries is a concrete manifestation of the will of the international community to honour the commitment contained in the United Nations Charter to promote the social and economic progress of all people; Recalling the special arrangements made by the United Nations General Assembly under its resolution 1295 (XIV) with a view to the provision of technical assistance for drug abuse control; Welcoming the establishment pursuant to United Nations General Assembly resolution 2719 (XXV), of a United Nations Fund for Drug Abuse control; Noting that the Conference has adopted a new Article 14 viz. concerning technical and financial assistance to promote more effective execution of the provisions of the Single Convention on Narcotic Drugs, 1961: Resolution III - Social Conditions and protection against drug addiction. The Conference; Recalling that the Preamble to the single convention on Narcotic Drugs, 1961, states that the parties to the convention are “concerned with the health and welfare of mankind” and are “conscious of their duty to prevent and combat” the evil of drug addiction, Considering that, while drug addiction leads to personal degradation and social disruption, it happens very often that the deplorable social and economic conditions in which certain individuals and certain groups are living predispose them to drug addiction. 1984- The 1984 Declaration on the Control of Drug Trafficking and Drug abuse viewed drug trafficking and drug abuse as “an international criminal activity” a grave threat to the security and development of many countries and peoples which should be combated by all moral, legal and institutional means, at the national, regional and international levels. It identified the eradication of this evil as the collective responsibility of all States and affirmed the willingness of member States to intensify efforts and co-ordinate their strategies in that area.1984- Further the commission on Narcotics was called in 1984 to begin preparing a new International Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances to address areas that seemed to be inadequately covered by existing instruments.20\textsuperscript{th} Dec. 1988 Vienna- The Convention Against illicit traffic in Narcotic Drugs and (contd...)
(vi) Central vigilance commission:

In pursuance of the directions of the Hon’ble Supreme Court of India in famous case of Vineet Narain vs. Union of India\textsuperscript{64} given to the Union of India and all concerned, the Government of India has assigned to the Law Commission of India the task “to examine the issue regarding conferment of the statutory status on the Central Vigilance Commission (CVC) and give its report along with draft legislation”. Accompanying the said reference the Government also forwarded the report of the Committee (referred to in the judgment of the Supreme Court as Independent Review Committee- ‘IRC’) set up to examine the structure and functioning of the Central Bureau of Investigation and the Enforcement Directorate, submitted in November, 1997 and the draft bill entitled “the Central Vigilance commission Bill” prepared by the Central Vigilance Commission, for the perusal of the Law Commission. The Law Commission prepared the 161\textsuperscript{st} Report\textsuperscript{65}.

The background of the problems which led the Hon’ble Supreme Court to issue directions in Vineet Narain’s case (reported in 1997 (7) Scale 656) quoted in Para 1.2 of the report discloses the disturbing state of affairs on account of failure of the Government agencies like the Central Bureau of Investigation and the revenue authorities to allegedly perform their duties and legal obligations of properly investigating matters arising out of the seizure of the so called “jain dairies” in raids

\textsuperscript{64} Dated December 18, 1997 in W.P. (Gr1) No. 340-343 of 1993, also reported in 1997(7) Scale 656, quoting from Law Commission of India 161\textsuperscript{st} Report on CVC and Allied Bodies.

\textsuperscript{65} Law Commission of India 161\textsuperscript{st} Report on CVC and Allied Bodies Report submitted to the Government in 1998.
conducted by the Central Bureau of Investigation. It was also brought out in the case that financial support to certain terrorist is extended through clandestine and illegal means, by use of tainted funds obtained through 'havala' transactions, a nexus between several important politicians, bureaucrats and criminals who are all recipients of money from unlawful sources given for unlawful considerations: lack of appropriate investigation, inertia to prosecute influential persons. Such state of affairs poses a serious threat to the integrity, security and economy of the nation.

In order to combat the evil, the Supreme Court gave directions in Vineet Narain's case as quoted under Para 3.2 of the report. In this 161st report, the commission have examined the ramifications of the various directions of the Supreme Court in the said case and have recommended, inter-alia, to confer statutory status to the Central Vigilance Commission, contemplating it to be a multi-member body and have annexed a Bill entitled "Central Vigilance Commission Bill", 1998 to the 161st report, bringing out its recommendations in the form of the Bill.

The Commission referred an extract from the order dated 30th January, 1998 (quoted under paragraphs 10 of the decision in Vineet Narain case), as follows:

"The gist of the allegations in the writ petition are that Government agencies, like the Central Bureau of Investigation and the revenue authorities have failed to perform their duties and legal obligations inasmuch as they have failed to properly investigate matters arising out of the seizure of the so called "Jain Dairies" in certain raids conducted by the Central Bureau of Investigation. It is alleged that the apprehending of certain terrorists led to the discovery of financial support to them by clandestine and illegal means, by use of tainted funds obtained through 'havala' transactions: that this also disclosed a nexus between several important politicians, bureaucrats and criminals, who are all recipients of money from unlawful sources given for unlawful considerations; that the Central Bureau of Investigation and other Government agencies have failed to fully investigate into the matter and take it to the logical and point of the trail and to prosecute all persons who have committed any crime; that this is being done with a view to protect the persons involved, who are very influential and powerful in the present set up; that the matter discloses a definite nexus between crime and corruption in public life at high places in the country which poses a serious threat to the integrity, security and economy of the nation; that probity in public life, to prevent erosion of the rule of law and the preservation of democracy in the country, requires that the Government agencies be compelled to duly perform their legal obligations and to proceed in accordance with law against each and every person involved, irrespective of the height at which he is placed in the power set up. The facts and circumstances
of the present case do indicate that it is of utmost public importance that this matter is examined thoroughly by this court to ensure that all Government agencies, entrusted with the duty to discharge their functions and obligations in accordance with law, do so, bearing in mind constantly the concept of equality enshrined in the Constitution and the basic tenet of rule of law; "Be you ever so high, the law is above you". Investigation into every accusation made against each and every person on a reasonable basis, irrespective of the position and status of that person, must be conducted and completed expeditiously. This is imperative to retain public confidence in the impartial working of the Government agencies. In this proceeding we are not concerned with the merits of the accusations or the individuals alleged to be involved, but only with the performance of the legal duty by the Government agencies to fairly, properly and fully investigate into every such accusation against every person, and to take the logical final action in accordance with law."

The Commission observed that the facts of the said case disclosed to the Supreme Court a disturbing state of affairs. The court found that inertia on the part of investigating agencies was the common rule whenever the alleged offender was powerful person. Indeed, the very Constitution and working of the investigating agencies, the court found, was at the root of their inability to perform whenever powerful persons are involved. In the words of the Supreme Court thus observed:

"3 This experience revealed to us the need for the insulation of these agencies from any extraneous influence to ensure the continuance of the good work they have commenced. It is this need which has impelled us to examine the structure of these agencies and to consider the necessary steps which would provide permanent insulation to the agencies against extraneous influence to enable them to discharge their duties in the manner required for proper implementation of the rule of law. Permanent measures are necessary to avoid the need of every matter being brought to the court for taking ad hoc measures to achieve the desired results. This is no occasion for us to deal with the structure, constitution and the permanent measures necessary for having a fair and impartial agency. The faith and commitment to the rule of law exhibited by all concerned in these proceedings is the surest guarantee of the survival of democracy of which rule of law is the bedrock. The basic postulate of the concept of equality; ‘Be you ever so high, the law is above you’, has governed all steps taken by us in these proceedings."

"15 Inertia was the common rule whenever the alleged offender was a powerful person. Thus, it became necessary to take measures to ensure permanency in the remedial effect to prevent reversion to inertia of the agencies in such matters."

"16 Everyone against whom there is reasonable suspicion of committing a crime has to be treated equally and similarly under the law and probity in public life is of great significance. The constitution and working of the investigating agencies revealed the lacuna of its inability to perform whenever powerful persons

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66 Supra note 65 Para 1.2 pp 2-4.
were involved. For this reason, a close examination of the constitution of these agencies and their control assumes significance. No doubt, the overall control of the agencies and responsibility of their functioning has to be in the executive, but then a scheme giving the needed insulation from extraneous influences even of the controlling executive, is imperative. It is this exercise which became necessary in these proceedings for the future. This is the surviving scope of these writ petitions.\textsuperscript{67}

The Supreme Court also referred to and relied upon the report of the committee known as Vohra Committee which was constituted by the Government of India by their order dated July 9, 1993\textsuperscript{68}. The Supreme Court also referred to and strongly relied upon the report of yet another committee called the Independent Review Committee (IRC) constituted by the government under its order dated September 8, 1997 comprising Shri B. G. Deshmukh, former Cabinet Secretary, Shri N. N. Vohra Principal Secretary to the Prime Minister and Shri S. V. Giri, Central Vigilance Commissioner.

As to the History and for functioning of the Central Vigilance Commission in short it can be stated that it was established in 1964 pursuant to the recommendations of the Santhanam Committee to advise the government in respect of all matters pertaining to maintenance of integrity in administration. The Central Vigilance Commissions jurisdiction extends to all public servants and employees of central public sector undertakings, nationalized banks and autonomous organizations. It is for the purpose of rendering the Central Vigilance Commission an effective, fair and competent organ that the court had taken the trouble of giving the aforementioned specific directions. One of the main objectives behind giving a statutory basis to Central Vigilance Commission is to free it from administrative or other control of any ministry or any other person or body\textsuperscript{69}.

The second in the line is Central Bureau of Investigation, which furnishes to the

\textsuperscript{67} Para 1.2.1, quoting extract from the order dated 30 January 1996 quoted under Paragraphs 10 of the decision in Vineet Narain vs. Union of India dated December 18, 1997 in W.P. (Gr1) No. 340-343 of 1993, also reported in 1997(7) Scale 656, quoting from 161\textsuperscript{th} Report on CVC and Allied Bodies.
\textsuperscript{68} Supra note 66 Para 1.22 p. 6.
\textsuperscript{69} Supra note 68 Para 4.1 pp 43-44.
Government monthly reports indicating the number of cases taken up for investigation; number in which charge sheets have been filed in courts; number of cases where sanction for prosecution is awaited from competent authorities etc. The Committee found that, based on the aforesaid reports, Government has not been exercising the nature of control over Central Bureau of Investigation functioning which has compelled the Supreme Court and certain High Courts to take over monitoring of individual cases.

The directions given by the Supreme Court in the matter of supervision of the functioning and working of the Central Bureau of Investigation must be understood in the above context. It is obvious that for implementing the directions of the Supreme Court, the relevant provisions of the Delhi Special Police Establishment Act, 1946 have also got to be amended.\(^{70}\)

The third in line is the enforcement directorate section 3 of the Foreign Exchange Regulation Act, 1973 provides for appointment of directors of enforcement, additional directors of enforcement, deputy directors of enforcement and assistant directors of enforcement. Section 4, inter alia, deals with appointment of the aforesaid officers. According to section 4, the Central Government is the appointing authority for the aforesaid four class of officers, while other officers of enforcement can be appointed by any of the above four category of officers as may be authorized by the Central Government. The enforcement directorate implements the Foreign Exchange Regulation Act, 1973, which is an Act to consolidate and amend the law relating to certain payments and dealings in foreign exchange and securities, transactions indirectly affecting foreign exchange and the import and export of currency for the conservation of foreign exchange resources of the country and the proper utilization thereof in the interest of the economic development of the country. The IRC Report further states that with the introduction of policy of economic liberalization, the

\(^{70}\) Supra note 68 Para 4.1 pp54-56.
functions of enforcement directorate have undergone a qualitative change. It is now concentrating on cases pertaining to large illegal cash flows in the nature of money-laundering where the funds have been generated either through evasion of income-tax, sales-tax, excise or gains from illicit narcotics apart from organized financial crimes involving over-invoicing, under-invoicing for routing such illegally generated money either for laundering or retention abroad. Indeed the recent events show that even some politicians and bureaucrats have received money, whether knowingly or unknowingly, which are proceeds of money laundering activities. It is important to note here that recently many changes have taken place as to the working of the enforcement directorate, in view of the new Act, the Foreign Exchange Management Act 1999 (FEMA) which have replaced the present law, the Foreign Exchange Regulation Act, 1973. The IRC was also informed that the Government is contemplating a money laundering law which would create a new offence in relation to the gains of crime for certain serious offences like trafficking in drugs and psychotropic substances, narco-terrorism, heinous offences under Indian Penal Code and certain offences under the prevention of Corruption laws, which also may be placed within the jurisdiction of the enforcement directorate.

To sum up the main recommendations of the commission in the 161st report it can be said that as per judgment of the Hon’ble Supreme Court in Vineet Narayan’s case and other relevant decision in this regard the directions given by the Supreme Court are not confined to the Central Vigilance Commission but extend to Central Bureau of Investigation and enforcement directorate as well. Indeed the functions and duties of the Central Vigilance Commission indicated by the court cannot be divorced and disassociated from the functioning of the Central Bureau of Investigation and enforcement directorate. The Commission observed that giving a statutory basis to Central Vigilance Commission is the first step in implementation of the said directions and that the government will be taking up simultaneously the issue of
implementation of the directions of the Supreme Court with respect to the Central Bureau of Investigation and enforcement directorate. The Central Government may also consider taking immediate steps to create the nodal agency and the prosecution agency in accordance with the directions contained in section III and IV of Para 62 of the judgment.

Accordingly, the Law Commission submitted a draft of the proposed bill called the Central Vigilance Commission Bill, 1998 and two consequential amending bills, namely, the Delhi Special Police Establishment (Amendment) bill, 1998 and the Foreign Exchange Regulation (Amendment) Bill, 199871.

The Commission observed that the Supreme Court has indicated for taking measures for improvement of infrastructure, methods of investigation etc, and emphasized that in order to strengthen Central Bureau of Investigation in-house, machinery, professionals from the revenue, banking and security sectors should be inducted into the CBI (see pr. 62 I (11) of the decision). Similarly it has stressed that in-house legal advice mechanism shall be strengthened by appointment of competent legal advisors in, the CBI/directorate of enforcement (see pr. 62 (II) (11) of the decision)72.

Further it observed that as far as the directions concerning the improvement of infrastructure and methods of investigation are concerned, it is relevant to refer to the organizational set up for investigation of offences by the serious fraud office (“SFO”) in U.K73. In 1983 the Lord Chancellor and the Home Secretary appointed fraud trials committee under the chairmanship of Lord Roskill to address concerns which have been expressed as to the difficulties of investigating and prosecuting complex fraud. The serious fraud office became fully operational in April, 1998. Thereafter the Graham and Davie reports also recommended for changes in the working practices of the serious fraud office.

71 Supra note 69 Para 6.2 pp. 64-65.
Thus the multi-disciplinary approach to investigations is the innovative hallmark of the serious fraud office. Besides the case team may also work closely with other experts for example bankers, stockbrokers and computer specialists, seconded to the serious fraud office as required by the needs of a particular investigation. The Commission was of the opinion that in sensitive cases and also cases involving complex issues, it is better and appropriate to have a multi-disciplinary investigative team which may work closely with experts in other fields according to the needs of a particular investigation.\(^74\)

In regard to providing separate trained police force with ultra modern weapons to Central Bureau of Investigation and enforcement directorate the Supreme Court have also directed in Vineet Narain's case, supra that officers of the enforcement directorate handling sensitive assignments shall be provided adequate security to enable them to discharge their functions fearlessly (see Para 62 (II) (5) of the decision).

Further it is emphasized that not only the enforcement directorate but the Central Bureau of Investigation is empowered to carry out search and seizure during investigation of cases and instances have been noticed in recent past in which crores and crores of rupees are recovered from the high level politicians during the searches and seizures in States other than the capital of the country. Such politicians are obviously having strong holds in the States to which they belong and obtaining local police assistance by the officials of Central Bureau of Investigation and enforcement directorate to conduct raids for such searching and seizure of property becomes very difficult. Without adequate police force, the officials of CBI/ED, may not be able to carry on such searches and seizures fearlessly. There may be chances of stiff resistance by local supporters of such politicians. In order to meet such unwarranted situations, in which the evidence of the crime may disappear, the Law Commission was of considered opinion that in order to strengthen the Central Bureau of

\(^{74}\) Para 6.4 p. 69 quoting 16\(^{1\text{st}}\) Report on CVC and Allied Bodies

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Investigation and Enforcement Directorate with separate central armed police force and to let their officials work fearlessly, as well as to provide security to the officers of the Enforcement Directorate and Central Bureau of Investigation handling sensitive assignments, the Enforcement Directorate and the Central Bureau of Investigation may be provided with separate adequate central armed police force equipped with modern weapons. Such contingent of police force can be trained for giving protection during searches and made mobile through air/road and available to their officials at a short notice. The search team should be equipped with latest technological machines e.g. money counting machine, wireless etc. to calculate the amount recovered during searches.\(^{75}\)

The officers of the Central Bureau of Investigation and the enforcement directorate should also be entitled to call upon the officers and agencies of Central and State Government to assist them in conducting their operations including searches and seizures. The officers and agencies of Central and State Governments shall render full and proper assistance when so called upon by the Central Bureau of Investigation and the enforcement directorate.

How ever, in order to complete trials involving high level politicians/public men, with utmost expedition some measures should be taken as also observed by the Supreme Court in Vineet Narain v. Union of India\(^{76}\) in its order dated 7.10.96 (reported in 1996 (6) See 354) and also referred to in Vineet Narain's case, 1997 (7) Scale 656 (667) that:

"the concerned court dealing with the above matters has to bear in mind that utmost expedition in the trial and its early conclusion is necessary for the ends of justice and credibility of the judicial process. Unless prevented by any dilatory tactics of the accused, all trials of this kind involving public men should be concluded most expeditiously, preferably within three months of commencement of the trial. This is also the requirement of speedy trial read into Article 21."\(^{77}\)

\(^{75}\) Para 6.5 p. 70 quoting 161\(^{st}\) Report on CVC and Allied Bodies

\(^{76}\) order dated 7.10.96 (reported in 1996 (6) See 354) and also referred to in Vineet Narain’s case, 1997 (7) Scale 656 (667) para 6.6 p 71 quoting 161\(^{st}\) Report on CVC and Allied Bodies.

\(^{77}\) Vineet Narain v. Union of India order dated 7.10.96 (reported in 1996 (6) See 354) and also referred to in Vineet Narain’s case, 1997 (7) Scale 656 (667) para 6.6 p 71 quoting from Law Commission of India 161\(^{st}\) Report on CVC and Allied Bodies.
It is relevant to state that in Common Cause A Registered Society Through its Director v. Union of India & Ors\(^78\), also it was emphasized to try such offences on priority basis. Thus, it was held:

“4. Directions (1) and (2) hereinabove shall not apply to cases of offences involving of corruption, misappropriation of public funds, whether under the Indian Penal Code, Prevention of Corruption Act or any other statute, (b) smuggling, foreign exchange violation... offences relating to public servants...”

“5. The criminal courts shall try the offences mentioned in Para (4) above on a priority basis. The High Courts are requested to issue necessary directions in this behalf to all the criminal courts under their control and supervision.”\(^79\)

Further the Commission added that in order to maintain the integrity of the investigation and also to avoid any prejudice to the accused, it is essential that no premature media/publicity by the CBI/ enforcement directorate should be allowed as desired by Hon’ble Supreme Court in Vineet Narain’s case, supra (see pr. 62 (II) (6) of the decision). Such premature publicity may also tarnish the image of public functionary/accused even if he is acquitted ultimately. In order to implement it, it is essential to provide a clause in the Bill or CVC/DSPE (Amendment) Bill to the following effect:-

“Secrecy of Information:- Any information obtained by the Central Vigilance Commission or any of the Vigilance Commission or officers or employees in the course of or for the purposes of any inquiry or proceeding or investigation, and any evidence recorded or collected in connection therewith shall be treated as confidential during the course of enquiry, proceeding or investigation.”\(^80\)

(vii) Forfeiture of property of corrupt public servants:

The background of the 166\(^{th}\) report can be said that in a judgment delivered on May 6, 1996\(^82\) (reported in the Delhi Development Authority v. Skipper

\(^78\) 1996 (4) Scale 127, paras 3,4 quoting from Law Commission of India 161\(^{st}\) Report on CVC and Allied Bodies para 6.6 p. 72.

\(^79\) Common Cause A Registered Society Through its Director v. Union of India & Ors 1996 (4) Scale 127, paras 3,4 quoting from Law Commission of India 161\(^{st}\) Report

\(^80\) Para 6.7 p72. Law Commission of India 161\(^{st}\) Report

\(^81\) 166\(^{th}\) Report Law Commission of India on Corrupt Public Servants (Forfeiture of Property) Bill, 1999.

\(^82\) Judgment delivered on May 6, 1996 (reported in the Delhi Development Authority v. Skipper Construction Co. (P) Ltd. AIR 1996 Supreme Court 2005), quoting from para. 1.1 pp 1-2 166\(^{th}\) Report.
Construction Co. (P) Ltd. AIR 1996 Supreme Court 2005), the Supreme Court of our country had made the following observations —

"... a law providing for forfeiture of properties acquired by holders of 'public office' (including the offices/posts in the public sector corporations) by inducing in corrupt and illegal acts and deals, is a crying necessity in the present state of our society. The law must extend not only to as does The Smugglers and Foreign Exchange manipulator (forfeiture of property) Act, 1976, properties acquired in the name of the holder of such property but also to properties held in the names of his spouse, children or other relatives and associates. Once it is proved that the holder of such office has indulged in corrupt acts, all such properties should be attached forthwith. The law should place the burden of proving that the attached properties were not acquired with the aid of monies/properties received in the course of corrupt deals upon the holder of that property as does The Smugglers and Foreign Exchange manipulator (forfeiture of property) Act, 1976. whose validity has already been upheld by this court in the aforesaid decision of the larger Constitution Bench. Such a law has become an absolute necessity, if the canker of corruption is not to prove the death-knell of this nation. According to several perceptive observers, indeed, it has already reached near-fatal dimensions. It is for the Parliament to act in this matter, if they really mean business."^83

As already mentioned the background of the report is based upon the observations made in and the law, declared in the said judgment, the Law Commission prepared a working paper and had circulated it to all political parties, to media, bar and other organizations and bodies interested in public good.

Law Commission observed that one of the essential requirements of good governance is the absence of corruption. But unfortunately, corruption has struck deep-roots in our society, including its administrative apparatus. It is not so much the amount of the bribe but the quantum of loss to the people and the moral degradation it involves, that is more relevant. On account of corruption, many of the welfare schemes including schemes for advancement of scheduled tribes and other weaker sections are not able to achieve the intended results. A stage has arrived where the corruption is threatening the very security and safety of the State. There is corruption in execution of projects, in awarding contracts, in making purchases, in issuance of licences and permits, in appointments, in elections and so on and so forth.

^83 Delhi Development Authority v. Skipper Construction Co. (P) Ltd. AIR 1996 Supreme Court 2005, 412
There are numerous foreign forces out to destabilize our country and undermine our economy and the corrupt elements in our governing structure are too willing to play their game for their personal gain. Thus corruption in our country today is not only immoral and shameful, it have also become anti-national and anti-social and therefore requires to be dealt with an iron hand. The Prevention of Corruption Act, 1988 have totally failed in checking the corruption. In spite of the fact that India is rated as one of the most corrupt countries in the world, the number of prosecutions- and more so the number of convictions under the said Act- is ridiculously low. A corrupt minister or a corrupt top public servant is hardly ever prosecuted under the Act and even in the rare event of his being prosecuted, the prosecution hardly ever reaches conclusion. At every stage, there will be revisions and writs to stall and defeat the prosecution. Some or other point is raised and the litigation goes on endlessly, thus defeating the true objective of the criminal prosecution. Unfortunately, the courts too have come to attach more sanctity to procedure forgetting the principle underlying sections 460 to 465 of the Code of Criminal Procedure, 1973, viz., any and every infraction of procedural provision does not vitiate the final order passed and that only that violation which causes prejudice may constitute a ground for disturbing the final order passed. Indeed it must be said that criminal judicial system in our country have proved totally ineffective particularly against the rich, the influential and the powerful.\(^{84}\)

It is true that the Prevention of Corruption Act, 1988 provides for confiscation of assets of public servant which are in excess of his known sources of income but such forfeiture can come about only after the public servant is convicted for the relevant offence under section 13(1)(e) of the Act\(^{85}\) and is reproduced in the note

\(^{84}\) Supra note 81 Para 1.2 pp. 2-5.

\(^{85}\) Section 13(1)(e) of Prevention of Corruption Act, 1988 “(1) A public servant is said to commit the offence of criminal misconduct, - (e) if he or any person on his behalf, is in possession or has, at any time during the period of his office, been in possession for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income. Explanation :- For the purposes of this section, “known sources of income” means income received from any lawful source and such receipt has been intimated in accordance with the provisions of any law, rules or orders for the time being applicable to a public
below for ready reference. There is also in vogue a pre-independence law i.e., Criminal Law Amendment Ordinance 38 of 1944 which provides for attachment of properties of a public servant who is accused of corruption. But, here again, the confiscation can come about only pursuant to and on the basis of conviction for corruption. Similar is the position under the prevention of the Money Laundering Bill, 1998 introduced in the Parliament recently. The bill defines the expression “money-laundering” to mean owning, possessing or otherwise dealing in the “proceeds of the crime”, and confiscation of proceeds of crime is possible only after a person is convicted of one or the other offence mentioned in the Schedule to the bill. Part V of the Schedule mentions some of the offences created/recognized by the Prevention of Corruption Act, 1988 but quite significantly the offence of possession of disproportionate assets (dealt with under clause (e) of sub-section (1) of section 13) is not one of the offences mentioned in the Schedule. Perhaps, the said offence did not fit into the scheme of the Bill. Be that as it may, the fact remains that there is no law in force in our country is provides for forfeiture/confiscation of the ill-gotten assets/properties of the holders of public office similar to the Smugglers and Foreign Exchange manipulator (forfeiture of property) Act, 1976. Moreover merely sending the corrupt holders of public office to jail is no remedy; it is no solution. It doesn’t really hurt them unless their ill-gotten assets are forfeited to the State, the canker of corruption cannot be really tackled. Hence, there is necessity for such proposals.86

The proposed approach recognized in the Smugglers and Foreign Exchange manipulator (forfeiture of property) Act, 1976, was recognized by Parliament more than twenty years ago in the case of smugglers and violators of foreign exchange laws, when it enacted the Smugglers and Foreign Exchange Manipulators (Forfeiture

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86 Para 1.4 pp.5-6 quoting from 166th Report Law Commission of India on Corrupt Public Servants (Forfeiture of Property) Bill, 1999.
of Property) Act 1976, the Preamble of the Act\(^\text{87}\) is reproduced below for ready reference.

In fact the Smugglers and Foreign Exchange manipulator (forfeiture of property) Act, 1976,( Constitutionality upheld by the Supreme Court) provides that where any person is believed to be in possession of illegally acquired property, the appropriate authority shall give him a notice calling upon him to show cause why the said property be not forfeited to the State (section 6). Unless the person concerned establishes that the said properties have been acquired by lawful means, the properties will be forfeited to the State (section 7). In other words, the burden of proving the lawful acquisition of such properties is placed upon him i.e., the holder of such properties, evidently for the reason that he alone should know how has he come to hold or possess the said properties (section 8). It is equally relevant to notice that the Act extends not only to the persons convicted under specified crimes and those detained under Conservation of Foreign Exchange and Prevention of Smuggling Activities Act 1974, who are found in possession of illegally acquired properties but extends to their relatives and associates as well. The expression “relative” takes in not only wife but all near relatives (section 2). When the Constitutionality of the said enactment was challenged on the grounds of being unjust, excessive and harsh, a Nine-Judge Constitution Bench of the Supreme Court unanimously rejected the challenge in a famous case of Attorney General of India v. Amratlal Prajivandas\(^\text{88}\) it was explained by the Supreme Court that the idea underlying the Act is:

\(^{87}\) "An Act to provide for the forfeiture of illegally acquired properties of smugglers and foreign exchange manipulators and for matters connected therewith or incidental thereto. Whereas for the effective prevention of smuggling activities and foreign exchange manipulations which are having a deleterious effect on the national economy it is necessary to deprive persons engaged in such activities and manipulations of their ill-gotten gains; And whereas such persons have been augmenting such gains by violations of wealth-tax, income-tax or other laws or by other means and have thereby been increasing their resources for operating in a clandestine manner; And whereas such persons have in many cases been holding the properties acquired by them through such gains in the names of their relatives, associates and confidants; be it enacted by Parliament in the Twenty-sixth year of the Republic of India as follows;” (It may be mentioned that all the factors- and many more mentioned in the said Preamble are present to a much greater degree in the case of corrupt holders of public office.) para. 1.5 pp. 6-8 quoting from 166th Report Law Commission of India on Corrupt Public Servants (Forfeiture of Property) Bill, 1999.

\(^{88}\) [1994 (5) SCC 54], quoting from 166th Report Law Commission of India on Corrupt Public Servants (Forfeiture of Property) Bill, 1999. para 1.6 p. 11.
“to forfeit the illegally acquired properties of the convict/detenue irrespective of the fact that such properties are held by or kept in the name of or screened in the name of any relative or associate as defined in the said two Explanations. The idea is not to forfeit the independent properties of such relatives or associates which they may have acquired independently but only to reach the properties of the Convict/detenue or properties traceable to him, wherever they are, ignoring all the transactions with respect to those properties. It was held by the Supreme Court that the definition of the expression “illegally acquired property” is not arbitrary or over-inclusive and that having regard to the seriousness of the evil sought to be curbed, the law had to be made strict. In other words, the law must be equal to the mischief sought to be remedied. An insufficient and inadequate law is no law at all.”

It is important to mention that the Constitution Bench evolved the concept of ‘implied trust’ and ‘breach of trust’ on the part of bribe-takers. The following observations bring out the said concept:

“... After all, all these illegally acquired properties are earned and acquired in ways illegal and corrupt at the cost of the people and the State. The State is deprived of its legitimate revenue to that extent. These properties must justly go back where they belong to the State. What we are saying is nothing new or heretical. The Supreme Court heavily relied on the recent decision of the Privy Council which is important to mention here and the court noted that witness the facts and ratio of a recent decision of the Privy Council.”

The aforesaid idea was reiterated by the Supreme Court in a later decision rendered in 1996, referred to above. It is only after extensively referring to the decision in the Attorney General v. Amratlal Prajivandas referred to above that the Court made the observations.

In short, all provisions necessary for an effective and unhindered functioning of the competent authority have been provided for. The accompanying bill also bars the court from granting any injunction against the competent authority. It is true that such a provision cannot bar the High Court from interfering under Article 226 of the Constitution of India- or, for that matter, the Supreme Court under Articles

89 Ibid. where Constitutionality of the Smugglers and Foreign Exchange manipulator (forfeiture of property) Act, 1976.
32 or 136 but as held by a nine-Judge Constitution Bench of the Supreme Court in Mafatlal Industries Ltd. V. Union of India\(^2\) dealing with a similar provision in the Central Excise Act and Customs Act:

"By virtue of sub-section (3) to section 11-B of the Central Excises and Salt Act, as amended by the aforesaid Amendment Act, and by virtue of the provisions contained in sub-section (3) of section 27 of the Customs Act, 1962 as amended by the said Amendment Act, all claims for refund (excepting those which arise as a result of declaration of unconstitutionality of a provision where under the levy was created) have to be preferred and adjudicated only under the provisions of the respective enactments. No suit for refund of duty is maintainable in that behalf. So far as the jurisdiction of the High Courts under Article 226 of the Constitution – or of this Court under Article 32 – is concerned, it remains unaffected by the provisions of the Act. Even so, the Court would, while exercising the jurisdiction under the said Articles, have due regard to the legislative intent manifested by the provisions of the Act. The writ petition would naturally be considered and disposed of in the light of and in accordance with the provisions of section 11-B. This is for the reason that the power under Article 226 has to be exercised to effectuate the regime of law and not for abrogating it. Even while acting in exercise of the said Constitutional power, the High Court cannot ignore the law nor can it override it. The power under Article 226 is conceived to serve the ends of law and not to transgress them.\(^3\)

The Law commission further observed that so far as the definition of "relatives" and "associates" is concerned, they have been bodily lifted from the Smugglers and Foreign Exchange manipulator (forfeiture of property) Act, 1976. Even the definition of "illegally acquired property" is substantially bases upon the definition in the said Act. Indeed, the very bill accompanying the 166\(^{th}\) report is patterned on the Smugglers and Foreign Exchange manipulator (forfeiture of property) Act, 1976 already discussed. The idea has been to avoid time consuming litigation in courts on the question of Constitutionality of the measure.

(viii) **Criminals under political shelter**

Since the days of emergency (1975-77), there has been a growing tendency in India to politicize crime and the police system for political gains. The Shah Commission (1977-79), which inquired into the excesses committed during the


\(^3\) Mafatlal Industries Ltd. V. Union of India (1997 (5) SCC 536) quoting from 166\(^{th}\) Report
emergency, had observed that “the police was used and allowed themselves to be used for purposes some of which were, to say the least, questionable”. The rule of law in modern India have been underlined by the rule of politics. The most disturbing trend has been that a large number of police officers are getting politicized. There is a growing nexus between the politicians, criminals, bureaucrats, and politicians, which, as mentioned in the Vohra report (1993) “is virtually running a parallel government, pushing the State apparatus into irrelevance.”

The report says “that there have been a rapid spread and growth of criminal gangs, armed men, drug mafias, smuggling gangs, drug pedlars and economic lobbies in the country, which have over the years, developed an extensive network of contracts with the bureaucrats/Government functionaries at local levels, politicians, media persons, and strategically located individuals in the non-State sector. Some of these syndicates have also international linkages including the foreign intelligence agencies.”

The report points out that in certain States like Bihar, Haryana and Uttar Pradesh, these gangs enjoy the patronage of local level politicians, cutting across party lines, and the protection of Government functionaries. Some political leaders became the leaders of these gangs, armed senas and over the years, got themselves elected to local bodies, State Assemblies, and the national Parliament. As a result, such elements have acquired considerable political clout seriously jeopardizing the smooth functioning of the administration and the safety and property of the common man, causing a sense of despair and alienation among the people.

The report gives a sketch of how the mafia starts its operation from petty crime at the local level and graduates from illicit distil room / gambling / matka / prostitution to include smuggling in the port cities and real estate operations in towns and cities. further the money power thus acquired is used for building contacts with

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94 Government had (through its Order No. S/937/SS(ISP?93 dated 9th July '93) established a Committee, to take stock of all available information about the activities of crime syndicates/mafia organizations which had developed links with and were being protected by Government functionaries and political personalities.
bureaucrats and politicians and expansion of activities with impunity. The money
power is used to develop a network of muscle power which is also used by politicians
during elections.

Concluding the analysis the Vohra Committee observed that to bring under
control the activities of the criminal syndicates, the following points of importance
should be kept in mind. (i) Identification of offences and award of deterrent
punishments, including preventive detention. (ii) Trial procedures should be
simplified and hastened. (iii) Surveillance should be carried out through finger
printing, photographs and dossiers. (iv) Monitoring mechanisms should be established
at the State and Central levels. (v) Establishment of special cells in the States CID's
and CBI. (vi) Suitable amendments should be introduced in the existing laws to more
effectively deal with the activities of mafia organizations, etc.; this would also include
review of the existing laws; (vii) A detailed case study of 10-15 cases would provide
useful information regarding the administrative level measures which would be
required to be taken to effectively tackle the functioning of mafia organizations.

The Committee further added the following points (i) Identification of the
nexus between the criminals/mafias and antinational elements on the one hand and
bureaucrats, politicians and other sensitively located individuals on the other. (ii)
Identification of the nature and dimensions of these linkages and the modus operandi
of their operations. (iii) Assessment of the impact of these linkages on the various
institutions, viz., the electoral, political, economic, law and order and the
administrative apparatus. (iv) Nexus, if any, between the domestic linkages with
foreign intelligence. (v) Necessary action to show effective action to
counteract/neutralize the mafia activities. (vi) Political and legal constraints in dealing
with the covert-illegal functioning of the linkages.
Conclusions:

In Kautilya’s Arthashastra, there are forty ways of embezzlement and it is impossible for a Government servant not to eat up, at least, a bit of the king’s revenue. During the Second World War (1939-45), the problem of corruption in the administration and the public suddenly touched new heights. Rationing of essential commodities of daily use, massive war supplies and contracts running into lakhs of rupees and war-time shortages provided unprecedented opportunities to scrupulous contractors and traders to make quick money, during the Second World War. This prompted a large number of Government servants to accept bribe by granting speedy approvals and payments for the completion of work and supplies of even low quality and sub-standard goods. This resulted in the enactment of the Delhi Special Police Establishment Act, in 1946. The Central Bureau of Investigation was created in 1963 and the Delhi Special Police Establishment became part of the Central Bureau of Investigation, socio economic offences during the pre-Independence period were, however, generally confined to lower or middle level functionaries of few departments like the public works department, the police, the excise, the revenue and the civil supplies.

In the post-Independence period socio - economic offences, have acquired a new dimension particularly with the start of the five-year plans from 1951 onwards. License, quota and permits came into existence and started controlling the economic development of the country. A number of private sector units were set up. This suddenly made the Government machinery very powerful and provided large opportunities for making illegal gains by corrupt public servants at all levels and Ministers also started abusing their offices and power. More and more laws were enacted to deal with various situations resulting in amassing more wealth by corrupt politicians and high officials.
The Indian Penal Code was enacted on 6 October 1860 and though it has been amended here and there, its main structure have continued to be intact for more than one hundred and forty two years. It is an admirable compilation of substantive criminal law and most of its provisions are as suitable even today as they were when formulated. But the social and economic structure of our country have changed to such an extent, especially during the last fifty two years, that in many respects the Code does not truly reflect the needs of present day. It is dominated by the notion that almost all crimes consist of offences against person, property or State. It does not deal with socio-economic offences in a satisfactory manner. These crimes are of a recent origin and are committed in different circumstances. They have now become a dominant feature of certain powerful section of modern society.\textsuperscript{95} The Santhanam Committee\textsuperscript{96} which was appointed by government of India identified different category of offences which have already been discussed.

The Committee on Direct Taxes Inquiry (1971) also known as Wanchoo Committee, recommended the addition of a new chapter in the Penal Code, bringing together all the offences in such special enactments and supplement them with new provisions so that all socio-economic offences may find a prominent place in the general criminal law of the country.\textsuperscript{97} These type of crime is more dangerous not only because the financial stakes are high but also because they cause irreparable damage to public morals. Tax evasion and avoidance, share pushing, malpractices in share market and administration of companies, monopolistic control, under invoicing and over-invoicing, hoarding, profiteering, substandard performance of contracts of works and supplies, evasion of economic laws, bribery and corruption,
election offences and malpractices there in, are some examples of ‘white collar crime’.98

The Commission took strict note of the fact as to how the industrial and commercial classes, the corrupt public servant, gets unearned profit, indulge in evasion and avoidance of taxes, speculation, trafficking in licenses, obtain licenses and permit in the name of non-existent bodies and individuals. The contractors get business by under cutting and making good the loss by passing substandard goods and supplies. They spend a lot of money in getting a favorable atmosphere and thus impure public life. These scrupulous agencies of corruption must be fought if corruption in public service is to removed.99 To sum up the Law Commission in its 47th Report suggested radical departures in the methods of investigation, prosecution, trial and punishment of these offenders. Some of the departures suggested and acted upon are-elimination or modification of requirement of mens rea, provision of minimum and mandatory imprisonment, extension of the principle of vicarious liability and strict liability in case of offences by companies, shifting of onus of proof on the accused etc.

The Santhanam Committee also recommended the setting up of an independent Central Vigilance Commission, keeping Ministers out of its purview, but including all public servants of the Central Government.

Following the Supreme Court landmark judgment in December 1997, the matter was assigned to the Law Commission of India and the Commission gave its report along with draft legislation as already discussed. Now as the matter stand at present the Government of India promulgated the Central Vigilance Commission (Amendment) Ordinance, 1998 on August 25, 1998 and also brought another amendment on October 27, 1998 called the Central Vigilance Commission

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98 29th Report, Law Commission of India paras 2.13 & 2.14 p. 11.
99 Supra note 98 paras 2.14 p. 11.
(Amendment) Ordinance, 1998. The Central Vigilance Commission would exercise superintendence over the functioning of the Delhi Special Police Establishment relating to the investigation of offences alleged to have been committee under the Prevention of Corruption Act, 1988. Every proceeding before the Commission shall be deemed to be a judicial proceeding.

In fact the main reasons responsible for socio-economic offences in our country are first the root cause of corruption is black money which constitutes 40 per cent of the GDP. We can get rid of this evil by implementing certain laws which are already on the anvil like the Benami Transactions Prohibition Act 1988, Prevention of Money Laundering Bill, Corrupt Public Servants (Forfeiture of Property) Act with due modifications to strengthen them. Secondly criminalisation of politics must be stopped by amending the Representation of Peoples Act, 1951 so that any candidate against whom criminal charges have been framed in a court of law is prevented from contesting in the election. Thirdly there is need to break the nexus between the corrupt politician and the corrupt bureaucrat. It has now become common for political parties to demand lucrative Ministries. To prevent this, the system which have been imposed, after the Supreme Court judgment in the Vineet Narain case, in filling up the post of Director, CBI, should be adopted. This means that all lucrative posts or sensitive posts should be filled up by the government on the basis of panels prepared by neutral objective committees. Once a person is posted in a sensitive post, he should not be transferred for three years.

If we study the Directive Principles of State Policy enshrined in the Constitution of India and the other International Conventions, we find that there is an urgent need to incorporate necessary amendment in the law dealing with control and regulations of narcotic drugs in India because the Directive Principles of State policy enshrined in the Constitution of India must guide the Government to frame suitable law in consonance with Article 47 of the Constitution of India and International
conventions, to which India is a party, and its provisions should duly find place at the time of amendment of the domestic law.

The use of narcotic drugs and psychotropic substances for scientific and medicinal purpose is indispensable. For the preparation of a number of life saving drugs like morphine, pethadine and tranquillizers, these drugs and substances are required. India is one of the leading producers of opium in the world for medicinal and scientific purpose. Drug addiction have become one of the curses of our times a menace which threatens public health and results in the dissolution of human personality, promoting conditions for various forms of human degradation, whose consequences spread to crime and lawlessness. The dangers following illicit traffic in narcotic drugs have been recognized worldwide, and so agitated is the conscience of the world community that they are now the subjects of International convention.

For the effective implementation of legal and social measures to tackle the problem of drug addiction, it is necessary to ascertain the causes of drug addiction which are, (a) Drug War (b) Organized gangs of the smugglers (c) Personal or family reasons.\textsuperscript{100}

The trafficking in illegal drugs means to amass illegal wealth in a short time, which is an act of perfidy which no society can condone. Traffickers in illicit drugs have been described as merchants of death and destruction. A murderer may kill one or two persons, but a drug trafficker destroys the lives of thousands of boys and girls at the same time, to whom he supplies the drugs, by pushing them to a stage from where there is no return and thereby not only ruining them and their families but also the nation.

The menaces of drug abuse have become more serious in recent times due to spread of HIV virus in India. Now 80% of victims of AIDS can be linked with drug abuse. HIV can be acquired in three ways (a) through sex, (b) through blood and (c)
by birth from parents suffering from HIV. As far as acquiring of HIV through sex is concerned, the drug addicts are more exposed to the same because a drug addicted boy or girl can pay any price and unmindfully can go to the extent of eve in indulging in sex abuse. HIV can also be acquired by the drug addicts through blood while sharing of the needles. A stage comes when drug addicts require intravenous injections of drug to get kick and quick effect and such an addict is not mentally sound at that stage and can use any needle timely available and thereby prone to acquire HIV if the needle was previously used by any person infected with HIV. Therefore it is imperative to take stringent measures by bringing about suitable amendments in the NDPS Act, 1985 by making it more effective to combat this menace.

Many governments for examples Brazil, Indonesia, Italy, Pakistan and Zaire have fallen at least partly on account of corruption of politicians. There are several pitfalls of socio economic offences one can say more red tape, less investment in education, less direct foreign investment and bad governance. The United States of America enacted Foreign Corrupt Practices Act several years back. Under the Jimmy Carter Administration in 1977. US companies which break the law are liable to fines up to $2 million per violation and individuals up to $1 million and imprisonment for up to five years. It is said that the Act have significantly changed the behaviour but not stopped foreign bribery.

In Britain, a legislation exists following Lord Nolan’s inquiry into standards in public life, after the so-called ‘cash for questions’ scandal, which mentioned that some MPs were in the pay of businessmen who wanted vital information elicited from the floor of the House of Commons. Recently, international financial institutions such as the World Bank and IMF have increasingly started linking aid to the developing

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100 Para 2.1 & 2.2 pp. 11-12 quoting from the 155th Report Law Commission of India.
countries on the condition of providing good governance. A few multinational companies are understood to be strictly enforcing their ethics code not to bribe officials. It is important that the Indian business people evolve their codes of ethics to discourage corrupt practices.

So to conclude there is urgent need for implementing special laws more effectively which are already on the anvil. The amendments suggested by the Law Commission in its 155th report should be implemented by the Central Government immediately. Also there is a need for more social awareness regarding illegal use of drugs by boys & girls so that the society can become more strong and the nation attains new heights of achievements. An independent and fearless judiciary in India can go a long way in playing an important role in ensuring that the socio-economic offences are not spared at any cost. Let war on such offences not remains a mere slogan.