CHAPTER 2

CONCLUSIONS AND SUGGESTIONS
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Socio-economic offences as already discussed have a tendency to erode character, economy and national health and sometimes have the International roots. Economic offence has three features that make it of special interest. First, the economic criminal adopts methods of operation that are difficult to distinguish from normal commercial behavior. Second, economic crime may involve the participation of economically successful individuals of otherwise upright community standing. Third, many economic crimes present special challenges to prosecutors, criminal justice system, and to civil liberties.

Ministry of Home Affairs, Government of India appointed a Committee known Santhanam Committee on Prevention of Corruption in the country which submitted its Report on 31st March, 1964. The Committee observed that some of the offences had been made punishable by special penal legislation. It further observed that it was desirable to add a new chapter to the Indian Penal Code 1860, bringing together all the offences in such special enactments and supplementing them with new provisions so that all the social and economic offences would find a prominent place in the general criminal law of the country. The government of India in view of the Committee’s recommendations decided to refer the matter to the Law Commission of India which submitted its report in 1966 on Proposal to include certain social and economic offences in Indian Penal Code and in 1972 on trial and punishment of socio-economic offences.

The persons making hindrances in the way of getting these long felt necessity of prevention and control of these serious socio-economic offences should be strictly dealt with. Liability in fact is the plight, condition, or the state of the person who has acted, forborne or omitted contrary to law. It may also be
described as the state of the person who has violated a right or acted contrary to duty. A man’s liability consists in those things, which he must do or suffer, because he has already failed in doing what he ought to do.

In socio-economic laws efforts have been made to exclude the doctrine of *mens rea* in statutory offences. The socio-economic legislation has expanded its domain of the doctrine of strict liability. The doctrine of strict liability used in certain statutory measures of penal nature had primarily been to promote welfare activities or to eradicate grave social evils like black marketing and smuggling. For example the Essential Commodities Act, 1955, the Foreign Exchange Regulation Act, 1973, Prevention of Food Adulteration Act, 1954, the Drugs and Cosmetics Act, 1940, Weights and Measures Act, 1976 and offences against national security are in terms of absolute prohibition and the offender is liable without proof of guilty knowledge. These Acts are designed to promote economic interests of the country and are instrumental in the prevention of black marketing and smuggling respectively.

With regard to the socio-economic legislation the Supreme Court has carefully framed the guidelines that the mere fact that the object of the statute is to advance welfare activities or to eliminate a grave social evil is by itself not decisive of the question whether the element of the guilty mind is excluded from the ingredient of an offence. *Mens rea* by necessary implication must be excluded from the statute only where it is absolute that the implementation of the object would otherwise be defeated. The nature of *mens rea* would be employed in a statute creating an offence depends on the object of the act and the provisions of the act thereof.

Till the day no coordinated efforts have been done by Jurists, Sociologists, Criminologists and Scholars for settling down the specific liability for socio-
economic crimes. Apart from the above mentioned Reports, and discussions, the theme of the thesis is that the concept of socialism should not be allowed to be broken down, the concept of socio-economic justice enshrined in the Preamble and the Directive principles of State Policy contains the aspiration of the people of India.

Indian society can be described as a soft society in which we do not have the political will to implement the laws, even when made, and where there is no discipline. In fact, if there is no discipline in the society, no real or meaningful development or progress is possible. It is the lack of discipline in the society which includes the administration of governance at all levels that are contributing to socio-economic offences. One way of instilling the discipline among the society may be to reduce the chances of such kind of socio-economic offences and to deal with it sternly and mercilessly wherever it is found. For this purpose, the inadequacies in the criminal judicial system have to be redressed.

II In the early stages of the march of civilization it was the individuals and segments of society who took cognizance of a criminal act and punished it. However, a stage reached during this process when the state came into existence in the modern sense of the term and declared various deviant behaviors as crimes. Better termed as offences and punished them adequately in view of the prevailing notions of crime and punishment.

In ancient and medieval period the concept of Dharma was regarded as law. Dharma is an expression of wide import and means the aggregate of duties and obligations religious, moral, social and legal. After the Vedic period when we move to Sutra period we find that in Gautama Dharma sutra much importance is attached to legal and religious matters. Socio-economic crimes in public life in India remained a visible and nagging feature of the middle ages. The change in the nature and scale of corruption during this period can be gauged from the fact that the many of the rulers
during this period were of foreign origin.

From the medieval times and till the advent of the British, the Mohammedan notions of crime and punishment prevailed in different parts of the country. The British, however gradually altered the Mohammedan law of crimes which was applied to most parts of the country and ultimately replaced it by the British criminal law as is evident from the Indian Penal Code 1860. But in spite of all these measures the socio-economic offences were growing, the State was then the police state whose primary concern was the maintenance of law and order. Many acts and omissions were designated by law as offences and adequate punishments were prescribed for isolating the offenders from the rest of the society and deterring people from resorting to behaviors condemned as offence.

During second world war the entire country and its resources for production and supply were geared in furtherance of the war effort and it was in this context that some measures to control and regulate the essential supplies were needed to be enacted in the form of Defence of India Act, 1939. The rules promulgated there under made extensive provisions in this behalf. The Drugs Act, 1940, the Drugs and Cosmetics Act, 1940, the Central Excise Act, 1944 and the Central Excise and Salt Act, 1944, were enacted accordingly. The need was also felt for some special laws to combat the new situation as already discussed.

After a long freedom struggle the country attained freedom from Britishers on the midnight of 14-15 August 1947. Thus, the country, in addition to discharging traditional police functions was also mandated to embark on projects, social and economical for the welfare of the people. In order to achieve the objective of its just social and economic order the state started coming out with a series of laws with a view to ensure purity in public life, and equilibrium and harmony in social and economic life. A large amount of legislation, which have come to be known as socio-
economic legislation contains penal provisions to punish violators of the norms set in the legislation and deter people from behaving against these norms.

The process of liberalization is going on in the country, and now there is sea-change in our economic policies, which resulted in number of economic legislation in our country. It is very important to mention here that in our Constitution, the basic scheme is of distribution of powers, which is highly beneficial to the economic legislation in our country as already mentioned. In regard to national security also number of legislation were passed.

The country needs good governance, accountability, and transparency. Socio economic offences have adverse impact not only to growth and development including social justice but also they violate the rule of law, cause erosion of faith in the institutions and processes of democratic governance, which results in the decline of moral legitimacy of political authority. Socio economic offences are also anti-poor. Take, for example, the public distribution system and the welfare schemes for the poor including scheduled castes and scheduled tribes. It is well-known that a substantial portion of grain, sugar and kerosene oil meant for PDS goes into black-market and that hardly 16% of the funds meant for STs and SCs reach them all the rest is misappropriated by some of the members of the political and official class and unscrupulous dealers and businessmen.

III No doubt the Directive Principles have played an important role in the implementation of socio-economic justice but to make them more meaningful, purposeful and useful still a lot is to be done. We have seen that the Directive Principles of State policy in the Constitution of India constitute a system or a complex of values and continue to influence social action and determine not only the quality of leadership but also its efficacy in the context of Indian conditions. But it is disheartening to note that the Constitutional scholarship have been either to content
with reiteration of time-worm truism about the directives that they are inherently non-justiciable, though they have been subjected to judicial cognizance in the context of assessment of reasonableness of restrictions on the fundamental rights, or that their value has been merely inspirational.

In the Annual Report of the National Human Rights Commission 1997-98, this is what is stated about the country:

"It is said that one third of the world’s poor are Indians, who lacked clean drinking water, basic sanitation and minimum standards of health care, food and nutrition....Persistence of such a situation constitutes a failure of governance which had urgently to be remedied for it is on the pillars of good governance that promotion of human rights in the final analysis rests."

The Economic offences have adverse impact not only on the growth and development including social justice of the nation but also they violate the rule of law. Parliament enacted the Bonded Labour (Abolition) Act, 1976 with a view to prevent economic and physical exploitation of weaker section. But in spite of this, the Act has failed to achieve its object. Apart from this right against exploitation, beggar and other similar forms of forced labour has been secured in article 23 and 24 as a fundamental right. But in spite of all this the workers and labourers are exploited and deprived of their rights. Fortunately, the judicial response in this regard has been in the positive direction. The reason for this is that there is no proper identification of the existence of bonded labourers.

Our Parliament has passed number of statutory enactments to end the socio-economic exploitation of women and children and to secure them socio-economic justice. The judiciary, by following the course of positive interpretation of the various provisions of law, has responded well to provide socio-economic justice to women and children. The Parliament enacted Equal Remuneration Act in the year 1976. To check the social evil of dowry and Sati Parliament enacted the Commission of Sati (Prevention) Act, 1987.

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The Dowry Prohibition Act has twice been amended in 1984 and 1986 and two new sections, 498A and 304B have also been inserted in Indian Penal Code 1860 to save the bride from cruelty of her-in-laws. Substantial changes have been made in the Indian Evidence Act, 1872 by inserting new sections 113A (presumption as to abetment of suicide by a married woman and 113B (presumption as to dowry death). Thus, the onus of proof has been shifted on the accused. The Parliament also passed the Suppression of Immoral Traffic in Women and Girls Act, 1956. (now the Immoral Traffic (Prevention) Act 1956.

Children also require protection from employment in hazardous employments. The Parliament have also responded well by enacting Child Labour (Protection and Regulation) Act, 1986 which regulates the employment conditions of the children. The enhanced penalty for the violation of this Act would definitely operate as deterrent in future. In view of Article 39 the employment of children within the match factories directly connected with the manufacturing process of matches and fireworks cannot be allowed as it is hazardous. Children can, however, be employed in the process of packing but it should be done in area away from the place of manufacturing to avoid exposure to accidents. In recent developments now the beginning is being made to honor the mandate in Articles 24, 39(e) & (f), 41, 45 and 47 of the Constitution.

The Vienna World Conference on Human Rights, 1993 the European Social Charter 1961 (revised charter 1996) and Protocols: the American Convention on Human Rights, 1969 (effective from 1978) the African Charter of Human Rights and Peoples’ Rights, 1981 (effective from 1986) and finally the Human Rights Act, 1998 (UK) (which incorporates several provisions of the European Convention) and the South African Convention, 1996 deals with civil, political, economic, social and cultural rights have reaffirmed that the civil, political, economic, social and cultural
rights are 'universal, interdependent and indivisible.'

The National Commission to Review the Working of the Constitution have recommended that the heading of Part IV of the Constitution should be amended to read as "Directive Principle of State Policy and Action." The rights to health have been treated by the Supreme Court as part of the right to 'life' in Article 21. But, the right to health is not a right to be 'healthy'. It means a right both to certain 'freedoms' and 'entitlements'. The State has to "respect, protect and fulfill" its obligations in these areas for children, adults and those in old age. As of today, free medical treatment in government hospitals is totally inadequate. Nor is it available always in close neighborhood. It is not possible to deal extensively with the pathetic conditions of medical care provided by government hospitals in our country. It is a fact of life that the poorer and weaker sections of society are unable to afford the extraordinary expense involved in the medical care provided by private hospitals. There is, therefore, an urgent need to see that, progressively, the State allocates adequate funds in this behalf.

The Commission also recommended that the Article 47A should be inserted as after article 47 of the Constitution. The State shall endeavour to secure control of population by means of education and implementation of small family norms. In the view of the Commission, there must be a body of high status which first reviews the state of the level of implementation of the Directive Principles and economic, social and cultural rights and in particular (i) the right to work, (ii) the right to health, (iii) the right to food, clothing and shelter, (iv) right to education up to and beyond the 14th year, and (v) the right to culture.

The Commission have proposed a Constitutional obligation on the State to provide to the citizens "Rural Wage Labour" as a means of livelihood for a minimum of 80 days in a year as a Fundamental Right and has proposed the introduction of a
new article namely, Article 21B, in the Constitution.

The explanation given by the Commission is that it proposes to introduce the idea of Constitutional guarantee for Rural Wage Employment. As Article 41 provides that the State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in case of unemployment, old age, sickness and disablement, and in other cases of undeserved want. Article 41, though not justiciable is nevertheless fundamental in the governance of the country. The performance of the State in discharge of this Constitutional duty has not been commensurate with the needs of society. Between 1950 to 1973, population below the poverty line remained consistently at 53%. With the explosion of population, the levels of poverty in terms of numbers reached unacceptable levels. It is only between 1973 and 1988 and thereafter, in the 1990s that there was a significant reduction in the percentage of population below the poverty line. That figure at present is estimated at 26%.

IV The growing concern for socio economic offences all over the country and for the purpose of this endeavour chapter IV has already stated was divided into nine heads namely:

1. Offences against obstruction in economic development of the nation and endangering its economic health.
3. Adulteration and misbranding of food stuffs and drugs, and narcotics.
5. Profiteering, hoarding and black marketing.
6. Prevention and control of malpractices in weights and measures.
7. Evasion and avoidance of taxes
8. Trafficking in licences

For providing and maintaining security and integrity of the nation Maintenance
of Internal Security Act, 1971 was passed but further to combat the like offences such as tax evasion and smuggling the Parliament enacted the Foreign Exchange Regulation Act, 1973 and another Act Conservation of Foreign Exchange and Smuggling Activities 1974 was passed. However to remove certain defects and lacuna Foreign Exchange Regulation Act, 1973 was repealed and new legislation the Foreign Exchange Management Act, 1999 was brought to the book. It is still to be seen that how far the new Act is effective enough to prevent and control such socio-economic offences.

Further, the misuse of position by public servants in making contracts, disposal of public property and issue of licences are other serious kinds of socio-economic offences. Parliament in 1947 passed the Prevention of corruption Act, 1947. Chapter IX of Indian Penal Code and sections 161 to 165 A alongwith sections 168, 169 217 to 222 and 225A deals with offences by or relating to public servants, but the provisions of the Code were almost found to be inadequate for bringing to book the ever expanding number of corrupt public servants. To root out corruption the Government have launched an uncompromising war and sections 161 to 165A have now been omitted from the code of 1860 by the Prevention of Corruption Act, 1988. A distinctive feature of this new Act is the well defined term “Public Servant.” Unfortunately this Act for over a decade now has not shown the desired results and the cases decided so far themselves show, that the conviction rates have been negligible.

The Act of 1988 further requires some amendments and strict compliance of the provisions. It is good that within the meaning of the term ‘Public servants’ the Act in its section 2 (c) has widen the scope by including categories of public servants defined under section 21 of the Indian Penal Code 1860. The growing concern for socio-economic offences all over the country and also to punish the offenders,
perhaps it may be safer to have a separate and exhaustive law relating to public servants. Such an Act must be comprehensive in nature and must also deal with acquisition of assets of public servants. The law must provide the manner in which properties can be held by the wife, minor children, near relatives of a public servant and should stipulate that if circumstances show that they are benamidars of the public servants (which expression should be defined in the same manner as in section 2(c) of the Prevention of Corruption Act, 1988 and section 21 of the Indian Penal Code), the same should warrant a special provision which would declare the effects of holding of such assets. The statute may also provide that if proper statutory procedures of reporting and verification are not followed, the burden of proof may be placed on the holder of the property to show that the same was not acquired by him benami. It is also suggested that amendments to the Transfer of Property Act, 1882 and the Registration Act, 1908 should be made by which acquisition or transfer of property in favour of or by a public servant would only be through registered instruments warranting prior scrutiny or post-transaction scrutiny. This may be made applicable even in relation to transactions by which even though a final conveyance may not be executed, yet interest in property may be sought to be passed \textit{de facto}. The provisions may cover not only the public servants but also all those within the family of the public servant. There must exist a clear definition of the family of the public servants. The Companies Act, 1961, which has enabled the near and dear ones of the corrupt to float fabulously rich companies through complex cyclical money in poring, also needs to be amended. The status financial and property matters of a public servant needs to be brought under the proposed comprehensive law relating to public servants. It is suggested that in the law, there should be a monitoring mechanism not composed of officials of the executive government (since the executive government can misuse such provisions to retaliate against unwilling civil servants) but an independent
Ombudsman who will regulate the civil service. It is needless to add that in addition to stringent provisions relating to public servants, public opinion should encourage concurrent inward digestion of the principles.

Now there is a need for enforcing section 5 of the Benami Transactions (Prohibition) Act, 1988 which was passed by the Parliament about fourteen years ago. It conferred the rule-making power upon the Central Government for the purpose *inter alia* to make rules prescribing the requisite matter contemplated by section 5. This Act, enacted as far back as 1988 by Parliament, contains a very salutary and much desired provision in section 5 which reads thus:

"Property held benami liable to acquisition:- (1) All properties held benami shall be subject to acquisition by such authority, in such manner and after following such procedures, as may be prescribed. (2) For the removal of doubts, it is hereby declared that no amount shall be payable for the acquisition of any property under sub-section (1)."

It is important to mention here that benami transaction is defined in clause (a) of section 2 of the said Act. The said clause reads as under:-

(a) "benami transaction" means any transaction in which property is transferred to one person for a consideration paid or provided by another person.

The Government has singularly failed in discharging the duty placed upon it by Parliament. It is true that Parliament have not prescribed any time limit for the purpose, but this is no answer. It is never done. In any event, the Central Government must have made the rules within a reasonable time. A period of fourteen years is too long. Central Government cannot frustrate the intent and object of the Parliament by its inaction. Indeed, it is under a statutory obligation to take measures to effectuate the said provision, if the same have not yet been done.

In other words, wherever a public servant is found to have screened the illegally acquired assets in the name of a benamidar, action should be taken under this Act and the Rules framed there under, and those assets acquired by State without any
compensation, as indeed provided for expressly by the Act. For this purpose, the appropriate authority (like the one specified under section 5 of Prevention of Corruption Act, 1988) should be clothed with the necessary powers of investigation, verification, enquiry and the power to gather and receive information from any source, authority, institution or organization. So far as the public servants are concerned, different authorities may be specified in the States and at the Centre. So far as Union and State Ministers are concerned, appropriate authorities have to be created. For non-public servants, appropriate authorities may also have to be specified. The only obligation of such authorities should be to observe the principles of natural justice. It would not be a case of conviction by criminal courts it would be a purely civil remedy against corruption. The burden of proving that the property is not held ‘benami’ should be placed upon the holder of such property/asset.

A comprehensive law needs to be enacted to provide that where public servants cause loss to the State by their mala fide actions or omissions of a palpable character to be defined, they should be made liable to make good the loss caused by him to the State and, in addition, would be open to the imposition of exemplary damages. The principles must include cases of misuse of official position and acts outside authority. The expression ‘public servant’ must be extended to ‘all public servants as defined in the Indian Penal Code and in the Prevention of Corruption Act, 1988, which expression has been interpreted to include Members of Parliament, Members of State Legislatures and Councils and Ministers.

Such a law would have the merit of obviating several questions like whether Government can be asked to pay damages to itself, whether the power to grant or allot some benefit can be called ‘property’, whether such action of the public servant constitutes a ‘tortuous action’, whether damages/ exemplary damages can be awarded for such acts, and if so, on what basis and to what extent, whether public office is a
trust and questions of 'locus standi' and so on. It would also contribute to avoidance of multiplicity of proceedings and would be more effective than a mere criminal prosecution, whether under Indian Penal Code or Prevention of Corruption Act, 1988. The law must, however, provide that proceedings there under can be taken on the basis of information received including an audit report or a report of any commission, committee or body competent to examine the relevant facts. Different authorities may be prescribed for different classes of public servants. They should be made aware that a mala fide act or action on their part carries the liability for damages/compensation. Creating personal liability of this kind would contribute greatly to good governance and would emphasize the need for transparent, fair and honest exercise of power.

It is, therefore, quite appropriate that even in the proposed legislation to forfeit the properties of corrupt public servants, the burden of proof should be placed upon the holders of the property. This indeed is the principle of section 106 of the Indian Evidence Act, 1872. The section illustrates thus: Burden of proving fact especially within knowledge: When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him and the Illustrations: (a) When a person does an act with some intention other than that which the character and circumstances of the act suggest, the burden of proving that intention is upon him. (b) A is charged with traveling on a railway without a ticket. The burden of proving that he had a ticket is on him.

It is on this principle that in prevention of corruption statutes, the burden of proof is very often laid upon the accused. It has been held by the Supreme Court in C.S.D. Swami v. State (AIR 1960 SC 7)

"... the Legislature has, thus, deliberately cast a burden on the accused not only to offer a plausible explanation as to how he came by his large wealth, but also to satisfy the Court that his explanation was worthy of acceptance". This case was decided with reference to section 5(3) of Prevention of Corruption Act, 1947. The Court observed further "... section 5(3) of the Act does not create a new offence but only lays down a rule of evidence, enabling the Court to raise a presumption of guilt
in certain circumstances"—and thus an exception to the general rule of burden of proof in criminal cases. To the same effect is the decision in State of Maharashtra v. Wasudeo (1981 SC 1186) construing section 5, the Court held:

"When section 5(1)(e) uses the words "for which the public servant is unable to satisfactorily account", it is implied that the burden is on such public servant to account for the sources for the acquisition of disproportionate assets", and that if he fails to satisfactorily account for his assets, he is liable to be convicted.

However where the property has been acquired several years ago, the person called upon to prove the sources of such acquisition may be under a severe handicap, inasmuch as he may not have kept or preserved the records relating to sources of such acquisition. This is however an aspect which the Court or Tribunal would certainly keep in mind while determining whether the person has discharged the burden that lay upon him.

In a social welfare state one of the main responsibilities of the State is to maintain and protect public health. This finds its validity by Article 47 of our Constitution. Prohibitory laws regarding adulteration of foodstuffs, drugs and cosmetics are inhuman crime, which plays with the lives of people and endangers nation's public health. In laws relating to the Prevention of Food Adulteration, drug adulteration, misbranding and like offences we find that strict liability is the rule as also held by Supreme Court. Regarding the interpretation of the statute the judiciary has been of the view that the purpose of law should not be defeated. Any interpretation which results in defeating the purpose of the statute has to be avoided.

Under the Narcotic Drugs and Psychotropic Substances Act, 1985 the minimum term of imprisonment is 10 years; in some cases the minimum term goes to 20 years rigorous imprisonment and also death penalty under section 31A of the Act. In spite of these stringent provisions the commission rate of such offences is increasing. The courts are still following the complicated trial procedures and disposal of such court
cases is very poor. The percentage of conviction is fairly less. Some serious efforts are to be made by the Government, the enforcement agencies and the citizens. Special vigil has to kept on persons going abroad and coming into India frequently. Apart from this presently, under the Drugs and Cosmetics Act 1940 for certain offences the minimum term is six year’s imprisonment with fine of Rs. 10,000 is also prescribed.

Sections 415 and 420 of the Indian Penal Code 1860 provides for cheating and dishonestly inducing delivery of property while sections 381, 405, 407, 408, and 409 lay down the law relating to theft and misappropriation of public property and funds. Forgery and offences relating to documents had been made punishable under sections 463 to 489. The offences for misappropriation, theft, cheating, forgery and criminal breach of trust should be dealt with strictly, because such offences are against the society as a whole. As we have already seen they are committed for tax evasion, smuggling, trafficking in licences and adulteration. Profiteering, hoarding and black-marketing are other serious kind of socio economic offences. These practices effect the economic health and welfare of the country. They are over all detrimental to the progress and development in society at large. Essential commodities as termed by different Acts and statutes are all within its purview.

Problem is made acute also because of most of the cases of economic violations by black-market offenders are dealt with by administrative bodies. The perpetrators of these offences enjoy considerable prestige and social status. They exert their influence and flourish in business unimpeded. On the other hand, victims are week, unorganized and unable to combat. Merely licence suspension, licence cancellation or nominal fines are the administrative actions, which have little deterrent effect.

A detail study of these features would indicate that if honest efforts are made black-marketing may be checked to a great extent. The principle of vicarious liability is also not effective. Mostly black-market operations are in third party name or
fictitious names. To establish master and servant relations is very difficult. The black-marketers even forge the goods confiscated.

Unsatisfactory public distribution system for bare necessities of life is also a cause for failure. Present system is quite inadequate and ineffective to meet the requirements. Distribution through Government fair price shops and co-operative societies is all-disappointing. Limited number of shops in urban areas fail to supply the demand requirements. In villages where most of the population of India is inhibited there are no such facilities. Further malpractices by fair price dealers and bungling of co-operative societies also result in failure. The process of black-marketing involves accessories, associates and confederates. If arrested for violations their intermediaries are arrested actual culprits are rarely detected and trapped. Thus, they persist in the behaviour with immunity. Law fails to bring the offender to book.

It is important to mention here that section 50 to 67 of the Standards of Weights and Measures Act, 1976 also 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 under section 74. The case has to be lodged in court of Metropolitan Magistrate or Judicial Magistrate of first class.

In a fast changing economy consequent to liberalization, globalization and vast inroads of information technologies in all walks of life including trade, commerce, business and service sector, firm and well thought out tax policies are necessary. The main purpose of taxes is to raise revenue for financing the Government’s expenditure. But taxes are now not imposed merely for raising revenue. Many other objectives are sought to be achieved through tax laws. The history of taxes mirrors the history of a nation. The volume and character of expenditure of the Government is determined by the events of the particular period, the character of the people, cries of war, droughts,
depressions in economy, expansion of Governmental activity to meet ever growing social and economic problems, the extent of a nation’s role in world affairs, need for scientific and cultural advancement control of inflation and augmentation of savings and many other such factors.

The provisions relating to tax laws, which provide for deterrent effect to curb and control this social evil of direct and Indirect tax evasion it can be said that the the court is empowered to presume the existence of culpable mental state in any prosecution for an offence, in Central Excises and Salt Act 1944, the Wealth Tax Act, 1957 the Income Tax Act, 1961 and the Customs Act, 1962. Thus, burden of proof is rested with the accused person.

The provisions of the section 360 Criminal Procedure Code and the Probation of Offenders Act, 1958 shall not apply to a person convicted of offence under the Central Excises and Salt Act. 1944 unless such convicted person is under 18 years of age, the same provision is also provided in the Wealth Tax Act, 1957 the Income Tax Act, 1961 and the Customs Act, 1962.

The court is empowered to order the forfeiture to government of any goods in respect of which the courts are satisfied that an offence has been committed under the Central Excises and Salt Act 1944 and any conveyance or vessels used for the offence, the same provision is also provided in the Customs Act, 1962. The Wealth Tax Act 1957 and the Income Tax Act 1961 provides that offences punishable shall be deemed to be non-cognizable within the meaning of Criminal Procedure Code.

The court has power to cause the name, place etc. of a person convicted under the Central Excises and Salt Act, 1944 at the expenses of such person (as a fine) in news paper(s) or in such manner as the court may direct. The same provision is also provided under the Customs Act, 1962. The Central Government is empowered to publish the names any other prosecution of any assesses under the Wealth Tax
Act, 1957. The same provision is also provided under the Income Tax Act, 1961.

The vicarious liability under the Central Excises and Salt Act, 1944 has been extended by section 2 of the amended Act 79 of 1985. The new inserted section 9AA provides the criminal liability of companies for the Act or omission in contravention of the Act. Criminal liability for the offences committed will be on the person in charge or the office bearer of the company subject to his knowledge or diligence exercised to prevent the commission of such offence. The company's director, manager, secretary or other officer shall also be deemed to be guilty of such offence and be liable to be proceeded and punished according to the penalty provisions if it is proved that the offence was committed with the consent or connivance of or is attributable to any neglect on the part of the director, manager, secretary or other office bearer. The same provision is also provided in section 35HA of the Wealth Tax Act, 1957, section 278B of the Income Tax Act, 1961 and section 140 of the Customs Act, 1962.

Trafficking in licences, permits and quotas is another dimension of socio-economic offences, and has been named as eighth category of the offences in its 29th Report. Mahatma Gandhi, after Independence, denounced controls which had been imposed during the Second World War and were continued by the Government even after the war. It is suggested that all licences, quotas and permits must be granted by an impartial body.

In regard to national security offences in the nature of economic offences there is a serious concern as we know the shocking breach of national security which enabled gunmen to assault the ultimate bastion of the Indian democracy the Parliament shows that despite strict measures India remains a woefully vulnerable polity. Recently the Home Ministry have asked the country's intelligence agencies to make a detailed report on the ways adopted by the terrorist groups and the underworld
dons to collect and distribute money through their network. Intelligence Bureau investigations into the December 13 attack on Parliament, have revealed that the terrorists groups first make a financial base in the area where they plan an attack. The investigation in to the Parliament attack clearly shows that a group was sent by the top leaders of the Jaish-e-Mohammad (banned Organization under new Prevention of Terrorism Act, 2002) only a few days before the attack, but the planning and the network which was used during the attack was being prepared for months. The success of their planning is only due to the utmost secrecy they maintain and the lakhs of rupees they spend on their people based in our country. The terrorist groups use the networks of the underworld dons, especially for their hawala dealings.

V  For criminal liability in general terms it can be said that it is not absolute or strict rather it is related to the intention. As it is known to all that the act and intention must concur, was the generally accepted concept by the maxim *actus non facit reum, nisi mens sit rea*. Traditional criminal jurisprudence has only very rarely recognized that there can be any crime without guilty mind. Accordingly it was thought that before a crime is committed, it exists in a mental state of the doer. Traditional criminal jurisprudence recognizes that there are generally four stages in the commission of a crime, viz. thought, preparation, attempt and the act. It may be that the concept of the mental element is somewhat vague so far as its range and ambit is concerned, but broad features thereof are fairly established in the mind.

In fact it can be said that the strict liability grows up as a result of two pronounced movements which mark twentieth-century criminal administration that is first the shift of emphasis from the protection of individual interests which marked nineteenth-century administration of public and social interests; and secondly the growing utilization of the criminal law machinery to enforce, not only true crimes of the classical law, but also a new type of twentieth-century regulatory measure
involving no moral delinquency.

Now we come to another aspect of liability known as vicarious liability. Since the socio-economic offences are committed by person of status, they employ servants, agents, managers and employees who help them in getting things done, the employees do play an important part in the commission of these crimes. It is true that the principal *qui-facit, per-alium facit perse* is a principle of civil law but it has been extended to these offences in the interest of preservation, protection of the health and material welfare of the community as a whole. The only legal requirement is that the Act must so provide in clear terms for making the master liable for the acts of his servants. Prima-facie master is not made criminally liable for the acts of his servants to which master is not a party but legislature can provide otherwise.

This liability is justified for the simple reason that the company’s act through its officials reaps the advantages of their acts. Shifting of onus of proof in certain cases on the accused is essential to save the society from the untold misery and retain their faith in the efficacy of law and courts. These offences are very grave and may result in bankruptcy and political insecurity. If the guilty go is scot free, it will amount to miscarriage of justice. The dangers of exaggerated devotion to the rule of benefit of doubt at the expense of the social defence and to the soothing sentiment that all acquittals are always good regardless of justice to the victim and the community, demand special emphasis in the contemporary context of escalating crime and escape. Recently the courts have recognized the need for modification of its approach on liability of a company for acts of its directors and servants.

In certain offences relating to the public welfare which covers a wide area of social medical and economic aspects of human life punishment is meted out irrespective of the doer’s state of mind as in case of liability under Food Adulteration Act, 1954 and Drugs & Cosmetics Act, 1940 these offences are known as offences of
strict liability. Prof. Sayre has mentioned eight categories of a public-welfare offences. As already mentioned the sale of impure or adulterated food or drugs and misbranded articles form the second and third items in above mentioned list. These offences require stern and absolute liability to be imposed on the dealers irrespective of whether the offence has been committed within or beyond their knowledge in the business they are carrying on.

As the theme of this thesis goes and as said earlier, the Indian Penal Code 1860 have become quite outdated, ineffective and unsuitable in relation to the prevention of business frauds such as the adulteration of articles of food. In this endeavour an attempt has been made to discuss the term liability in relation to Essential Commodities Act, 1955, in Central Excise and Salt Act, 1944, the Wealth Tax Act, 1957, the Income Tax Act, 1961, and the Customs Act 1962, which provide for deterrent effect to curb and control this social evil.

As far as mens rea guilty intention is concerned it is not necessary for purposes of imposing penalty under Foreign Exchange Management Act, 1999, mere establishing blameworthy conduct is enough to attract penalty. The liability under Foreign Exchange Regulation Act, 1973, the Prevention of Corruption Act, 1947, Prevention of Corruption Act, 1988, The Prevention of Terrorism (Second) ordinance 2001. (Now Prevention of Terrorism Act 2002) have also been discussed in detail.

In fact 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. 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.
Many arguments have been given for strict liability offences often, the judges implicitly acknowledge the critics contention that the imposition of strict liability is obviously unjust, but they stress that the legislature is centrally interested in eradicating harms caused and had chosen to err on the side of injustice to the individual. A better argument made by judges is that the imposition of strict liability is justified on the ground that proof of state of mind is administratively burdensome. Secondly, now we will discuss some other alternative arguments given for such kind of strict liability offences.

In fact strict liability refers to statutes that permit the conviction of a person who is blamelessly ignorant of one of the factual elements required for conviction. A crime is therefore defined as one of strict liability if there is no requirement of knowledge, negligence, or any other type of culpability with respect to any one of the factual elements required for conviction. By traditional crimes are meant those that involve personal conduct considered to be morally culpable, in contrast to those that involve business activity regulated in a morally neutral way. Traditional criminal liability as a rule requires *mens rea*, but there are a number of exceptions. There is ancient authority for the proposition that a man may be convicted of bigamy although he believed his first wife to be dead, or of adultery although he did not know that his paramour was married. Such cases do not clearly distinguish between negligence and intent, however, and in any event they are not reliable authorities in this more permissive age.

When courts and scholars refer to strict liability in the criminal law, they ordinarily have in mind not the exceptional examples just discussed, but a category of so-called regulatory offenses where strict liability is the rule rather than the exception. This category refers to a body of offences that have emerged since the industrial revolution, offences that typically involve commercial activities such as the selling of
unsafe or unhealthy products or environmental pollution. It may seem remarkable that an era usually thought to be dominated by the business classes should give birth to a doctrine of strict criminal liability applicable mainly to business persons. On the other hand, a Marxist critic could explain this paradox by arguing that the law has imposed strict liability so that it can pretend to be severe toward the crimes of the capitalists, whereas in fact prosecutions are infrequent and penalties light. In any event, the existence of such a category of regulatory crimes is well established, although the rationale remains controversial.

The objection to strict liability is not that it punishes people who are literally helpless to avoid committing the act, because it is obvious that they could have avoided any possibility of liability by not going into business in the first place. The point is that selling meat or managing a factory is a productive activity which the law means to encourage, not discourage, and we should not punish people who have taken all reasonable steps to comply with the law. Unless we regard business activity as similarly inherently wrongful, holding business managers up to strict liability is unjustifiable even though they have voluntarily assumed their positions of employment.

To sum up it can now safely be said that the legislature can always create an offence of strict liability where *mens rea* is ruled out because such a measure is public policy oriented and also absolute prohibitions are provided by the legislature in three categories of such cases: First, the acts which are not criminal in any real sense but, in view of the public interest are prohibitable under a penalty for instance under the revenue and adulteration statutes. Secondly, the acts which comprehend some and perhaps all public nuisances. Thirdly, the acts for which the proceedings may be criminal in form and yet they are unreal because only a summary mode of enforcing civil rights the instances of which are sections 125 and 145 of the Code of Criminal
Generally in criminal law the burden of proof lies on prosecution but there are certain provisions for example section 283 and section 290 of the Indian Penal Code 1860 in which if the prosecution proves of actus reus the ingredient then mens rea is out of question. Infact with the advent of complexity of our lives, unabated growth of certain crimes, practical problems in booking the culprits, the expansion of trade and commerce, the paramount considerations of the public wealth, health and safety of the people the legislative trend have been in excluding the concept of mens rea in quite number of offences. However, in various statutory offences creating strict liability, mens rea is wholly or partly excluded.

Such provisions are introduced to shift the proof of absence of guilty intent to the accused and to award sentence in cases of absence of guilty mind. It is suggested that apart from social offences in which the acts are against the public interest and acts against the enforcement of a civil rights there no place for mens rea in economic offences. How ever it does not mean that in such cases of absolute liability the accused cannot prove that his act was bonafide or that he cannot take up such defence as may be sustainable in law.

Some Special Acts have been enacted to deal with problems which arose temporarily but survived longer than expected or with problems that were confined to a particular trade or industry or particular kind of public properties or otherwise to deal with particular species of acts regarded as harmful. These laws are thus properly described as special. Though some of the acts proposed to be penalized by them were already punishable under the traditional law yet special laws were enacted to deal with them in a more effective manner by holding the offenders strictly liable.

VI In the procedural side, there are many problems as to the criminal remedy, first there are complexities of proof so it is suggested that the criminal remedy for economic crime must be administered with high precaution because the traditional
procedural rules of the criminal law, require high burden of proof. Economic crime cases present special problems of proof because they often involve many transactions and involve complex dealings.

The prosecutors face special problems in economic-crime cases, because they have to prove complex allegations against a defendant who may be well financed and capable of hiring skilled counsel. Prosecutors offices, with heavy work loads and limited budgets, may be unable to dedicate sufficient legal talent to a case to analyze and explain effectively to the trial court the significance of mass of facts. These forces may cause a prosecutor eager for a good conviction record to choose not to pursue economic crime cases vigorously.

The convicted economic criminal presents the court with a serious problem of sentencing policy. He may appear before the court as a man of culture and means who has threatened no one with physical harm. He will profess regret and offer to use his means and talent for the benefit of the community. On the other hand, the potential profits of his criminal activity may have been so high, and the difficulties of detection and successful prosecution so great, that no one would be deterred from pursuing similar opportunities in the future unless very large and severe punishments are imposed. Yet, it may be obvious to the sentencing judge that the man before him is, in a fundamental sense, far less evil than the killer whom the judge has just sent to prison. In the academic literature, the debates over sentencing have focused on whether a fine or imprisonment offers the best approach to deterrence.

It is suggested that because many economic criminals have property, their cases present a particularly favourable area for the imposing of a fine. Simply by making the fine large enough to offset the potential gains from the criminal activity, the crime can be deterred. A fine avoids all the deadweight loss of imprisonment: the direct costs of imprisonment itself and the loss of the defendant's own productive potential.

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As to the minimum and mandatory imprisonment policy it have been said that in traditional law as well as in special acts, the practice has been till recently, to prescribe the maximum sentence and leave it to the discretion of the judge as to what sentence should be awarded in a given case. The sentence was to fit the offenders. Only a very few sections of the Indian Penal Code provides for minimum punishment and they are sections 121, 302, 303, 397 and 398.

The Law Commission also considered the problem in the report titled reform of judicial administration and observed the question of adequacy of sentences and came to the conclusion that awarding of sentence depends upon the facts of each case and is a matter of judicial discretion. It maintained the same view in its another report, except to go in appeal against the adequacy of sentence but very often in order to indicate its emphatic disapproval of a particular anti-social conduct legislature has to prescribe mandatory imprisonment to avoid the possibility of the accused being let off with a sentence of mere fine. This feeling appears to have arisen because of courts seldom awarding sentences which would have deterrent affect in cases where stern sentences are necessary so that it may have deterrent effect on the offenders and the society may be benefited or saved from the activities of such criminals by prolonged confinement.

Further the Commission in its 47th report favored the rationalization of sentences. It devised the test of monetary harm caused to society to determine the gravity of sentence. The more serious harm the higher should be the punishment. It favoured minimum punishment for a second or subsequent conviction. Realisation is now growing that these social economic offences are more harmful to the society and they deserve deterrent sentence. In traditional law the emphasis is on probation and reformation of the individual.

Benthem has found justification for awarding extra ordinary punishment in the
following cases. (1) Any extra ordinary mischievousness on the part of the offender when it is so great as may make it necessary and worthwhile to hazard an extra ordinary expense in point of punishment for the sake of purchasing the better chance of combating it with effect. (2) Deficiency of punishment in point of certainty as resulting from the difficulty of detection: which difficulty depends in great measure, as is evident upon the nature of the offence (3) The presumption which the offence may afford of the offenders having already been guilty of other offences of the like nature (4) The accidental advantage in point of quality of punishment not strictly meted in point of quantity (5) The use of a punishment of a particular quality in the character of moral lesson (6) An extraordinary want of sensibility on the part of the offender to the force of such protecting motives as are opposed to the offence whether on the part of the law itself, or on the part of the other auxiliary sanction.

Keeping in view these variables, there cannot be a mathematical sentencing policy and a judicial discretion cannot be abolished completely to award less than minimum sentence. At the same time awarding of mild punishment on flimsy ground is not a proper approach. In socio-economic offences, first offence is no ground for a lenient view. Detection is particularly difficult and gathering information leading to prosecution is equally difficult and conviction is much more so. Graver the harm, graver should be the punishment.

The purpose of punishment is deterrence, prevention, retribution and reformation. These offences since effect the health and wealth of the whole nation, the evil of punishment must be made to exceed the advantage of the offence. Fine can hardly have any impact on criminals as any amount of fine is too small for big businessmen etc. Mere fine attaches no stigma from the point of view of the society. So to bring home the effect of punishment, mandatory imprisonment is necessary.

The traditional crimes are treated differently because these crimes are
committed due to environmental pressures, distorted state of mind or other similar reasons. But socio-economic offences contain no such factor. These offences are well planned, executed in secrecy, by white collar criminals for the sake easy money, so prolonged confinement is necessary to protect the society. These anti-social offenders need no rehabilitation. Their sentence should be examples for others. The sentencing policy has to be such that a person who is a habitual offender and not susceptible to reformation should suffer prolonged imprisonment and at the same time sentence should act as deterrent to others.

Yet another problem is of prison administration regarding such kind of socio economic offences. The economic criminal who is imprisoned may present special problems for the prison administration. Without a taste or talent for violence, he is unlikely to attempt escape. With abilities and possibly wealth, he has strong incentives to return to society. Because of the difference between the economic criminal and the rest of the prison population, imprisonment may actually threaten his safety and health. These factors create pressures on prison administrators to provide alternative confinement facilities for their "model" prisoners both because such facilities can be provided more cheaply and because they avoid the problems involved in mixing the different populations. It is suggested that the country club prisons in U.S.A. are the common abode of convicted economic criminals. The model mentioned above can be applied for prison reforms in our country and this is one of the main suggestions in this thesis.

The docket explosion at almost all levels of judicial hierarchy has not come about overnight. It is a product of persistent and prolonged neglect of the judicial institutions for the last about 50 years. During these 50 years, litigation increased manifold on account of population growth, new laws, legal awareness, industrial and commercial growth, urbanization, materialism and so on but there is no proportionate
growth in the judge strength and judicial infrastructure. It is rather unfortunate that in the last fifty years, no scientific study has been undertaken to assess the needs of the judge-strength more particularly in the subordinate judiciary. A proper study is needed to be undertaken to work out proper requirement of the infrastructure and number of judges in the country on the basis of the pendency, rate of inflow of legal matters into the courts and the estimated growth of litigation in the future. The ratio of judges per million population in our country is the lowest in the world. The Law Commission in its 120th July 1987 titled “Manpower Planning in Judiciary: A Blueprint Report” observed:

“India had 10.5 judges per million of population, the corresponding figure in England was 50.9, Australia 41.6, Canada 75.2 and the U.S.A. 107. The position in India remains without any significant improvement even today. The Law Commission in 1987 had recommended 50 judges per million of population instead of only 10.5. The recommendation has remained buried in the Report with no follow up action. This inadequate judge strength is a major cause for the delay in disposal of cases.”

To some extent delay in the disposal of cases is also “judge made”. Lack of punctuality, laxity and lack of control over the case file and the court proceedings contributes in no small measure to the delay in disposal of cases. Unless the Judges have a complete control over the file, they cannot control the proceedings resulting in loss of time. The “Inspection” of subordinate courts by District Judges and the High Court Judges should be real and not “routine”. The grants of unnecessary adjournments on the mere asking or on account of “strike call” add to the problem.

The administration of criminal justice in our country appears to be at cross roads. Large-scale acquittals are eroding people’s confidence in the effectiveness of criminal justice system. However, it is pointed out that most of the acquittals are on account of the fact that the witnesses produced by the prosecuting agencies do not support the prosecution cases. A very large number of acquittals are also on account of faulty, non-scientific and dis-oriented investigation. The courts have to decide
cases on the basis of the evidence produced before it and not on the basis of the evidence which ought to have been produced. When a crime goes unpunished, the criminal is encouraged, the victim of crime is discouraged and the society in the ultimate analysis suffers, which has an adverse impact on the law and order situation in the country. The situation needs remedial measures at once so that Rule of law and effectiveness of criminal justice delivery system is maintained. There is an acceptance of the fact that socio-economic offences in public life have grown in India since independence in intensity, viciousness and pervasiveness. However, neither the nature and extent of its pervasiveness can be precisely quantified, nor a precise date for the change can be given.

On the other hand economic offences, may be either cognizable or non-cognizable in nature. Regular police deal with a considerable number of economic offences falling under the broad category. A number of special laws regulating customs, excise, taxes, foreign exchange, narcotics drugs, banking, insurance, trade and commerce relating to export and import have been enacted in the country, as already discussed. These laws are enforced by their respective departmental enforcement agencies created under the statutory provisions. Legal powers for investigation, adjudication, imposing of fines, penalties and under special circumstances arrest and detention of the persons are derived from the same law. The officers of the enforcement agencies are also vested with powers to summon witnesses, search and seize goods, documents and confiscate the proceeds. Some of the existing legislation of the country provide for scope for confiscation of the proceeds of crime and forfeiture of assets, such provisions are governed by (i) Criminal Law (Amendment) Ordinance, 1944 (ii) Customs Act, 1962 (section 119 to 122) (iii) Code of Criminal Procedure Code 1973 (section 452) (iv) Foreign Exchange Regulation Act, 1973 (section 63) (v) Smugglers and Foreign exchange Manipulators
(Forfeiture of Property) Act, 1976 (vi) Narcotic Drugs and Psychotropic Substances Act, 1985 (section A to section 68 Y) (vii) Terrorist and Disruptive Activities (Prevention) Act, 1987 (section 8 to section 21 relating to presumption) (ceased to have effect since 1995).

It is suggested that in this respect new legislation may be called for to plug the existing loopholes and to bring into force a comprehensive legislation to make confiscation of properties and forfeiture of assets more effective, to fight this evil. The Acts falling under the category of ‘economic offences’ against which special laws have been enacted also indicates the different enforcement authorities empowered to act on getting information of commission of such offences are (i) Central Bureau of Investigation. (ii) Directorate of Enforcement (iii) Central Board of Direct Taxes (iv) Directorate of Revenue Intelligence. (v) Directorate of Preventive Operations (vi) Narcotics Control Bureau (vii) Directorate General of Foreign Trade (viii) Directorate of Income Tax (ix) Directorate of Vigilance (in States) (x) Directorate of Enforcement (in States) all these agencies need efficient and responsible officers to deal with such kind of offences.

VII To deal with the problems of corruption, the Santhanam Committee submitted its report in 1964 to the Government of India. This report *inter alia* recommended amendment of certain service regulations and enactments. In pursuance of its interim report a Central Vigilance Commission have 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 have 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.

It may be recalled that the Santhanam Committee have also recommended a statutory status to the Central Vigilance Commission through a Parliamentary enactment, which was obviously ignored when the Commission was created through an executive order. An attempt to accord statutory status to it in 1999 did not succeed. It continued to function as such but without much effect until the Supreme Court directed in Vineet Narain v. Union of India (1997 (7) SCALE 656) AIR 1998 SC 889, on 18th December, 1997, to give a statutory shape to the Central Vigilance Commission and to endow it with wider powers including supervision over Central Bureau of Investigation and the enforcement directorate. The directions of the Supreme Court are quite elaborate and they extend to the appointment, powers and functioning of Central Vigilance Commission, Central Bureau of Investigation and the enforcement directorate, all designed to insulate the said institutions from political control and to invest them with good amount of independence coupled with accountability. Pursuant to the said directions, the Central Government has drafted a Bill, being Bill No. 137 of 1999, called the Central Vigilance Commission Bill, 1999 and have introduced the same in Lok Sabha on 20th December, 1999. It appears that it is still pending before the Parliament. Meanwhile, the Central Vigilance Commission is acting under the authority of the decision of the Supreme Court referred to above. It is imperative that the if Parliament passes the said bill as early as possible, socio economic offences can be controlled to a large extent.

The second step in this direction was 29th Report of the “Law Commission of India” submitted in February 1966. In the Report the Commission observed that the problem of checking crime in general, and white-collar crimes in particular, 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. The sanctions imposed by the penal law constitute only one species of those inhibitions.

Later the Direct Taxes Inquiry Committee, appointed by Government of India, under the Chairmanship of Shri K. N. Wanchoo retired C.J. India, submitted its report on 24 December, 1971 which gave far-reaching recommendations to the government. The observations are on the malady of black money 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 47th Report on trial and punishment of social and economic offences 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 of Criminal Procedure 1973 and Probation of Offenders Act 1958. Some of these recommendations have been incorporated in the Code of Criminal Procedure 1973. Special Acts were also amended on the suggested lines. After the amendment these special Acts provide for different types of special courts.

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. The Law Commission in its 155th Report therefore recommended the following amendments in the Narcotic Drugs and Psychotropic substances Act, 1985 namely in Section 4, Section 27, section 36, Insertion of New Section 47A in the Act after Section 47, Section 50, and Insertion of New Section 67A in the Act.

All these amendments if made by the Parliament will be helpful for identification treatment, education, after care, rehabilitation and creation of social awareness. In section 27 new sub-section (3) be inserted to provide for lesser punishment for small quantity if not proved to be for personal consumption. Special courts shall be constituted by the Central Government when the number of pending cases exceeds one hundred and fifty. In fact by these suggested amendments more responsibility is placed on the shoulders of forest and revenue officers to take action and also every empowered officer who is making investigation of a case shall be in charge of the investigation till it is completed.

The Law Commission in its 166th Report had 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. Some more strict actions are needed. In our country there is a need for a similar legislation compared to the Smugglers and Foreign Exchange manipulator (forfeiture of property) Act, 1976. Hence, there is necessity for such proposals. The Commission has proposed a bill named the corrupt public servants (forfeiture of property) to the Government.

The Vohra Committee which was appointed in 1993 by Government of India, observed that trial procedures should be simplified and hastened. Surveillance should be carried out through finger printing, photographs and dossiers. Monitoring
mechanisms should be established at the State and Central levels. Establishment of special cells in the States CID's and CBI. 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.

Suggestions:

After the establishment of special courts, deterrent and many reforms the socio-economic offences are growing, some legal and non-legal methods should be adopted to control such kind of offences. Apart from this some specific reasons are also responsible for the failure of criminal justice system in our country. The reasons are many first of all it is pertinent to point out that these cases end in acquittal which encourages many more prospective anti-social elements. Secondly the judicial scrutiny of evidence in cases, where harsh punishments are demanded becomes very strict which increases the sphere of “benefit of doubt” to its maximum. The offender makes all possible efforts to win over prosecution witnesses and they get hostile, in the court of law. In economic offences witnesses readily available to prosecution are mostly not men of sound financial status while the offenders are mostly persons of affluence. The reasons for such kind of offences are many and due to this reason an attempt have been made by way of some specific suggestions in the end so that the problem can be solved.

(i) Perhaps substantial improvement in criminal justice delivery system is the need in the new millennium and it can come about if investigators are properly qualified and well trained and if the investigating agencies are separated from the law and order wings of the police.

(ii) Unimpeachable integrity, merit and suitability with due regard to seniority are the qualities which should be looked for while appointing judges at all levels.

(iii) To create a deterrent effect on those who are bent upon accumulating
wealth at the cost of the society there is a need to reintroduce the repealed sections 61 [Sentence of forfeiture of property (Rep. by the Indian Penal Code (Amendment) Act, 1921 (16 of 1921), section 4]. And 62 [Forfeiture of property, in respect of offenders punishable with death, transportation or imprisonment Rep. by the Indian Penal Code (Amendment) Act, 1921 (16 of 1921), section 4] of the Indian Penal Code.

(iv) Prosecution should be made tighter, strict and free from corruption, the implementation of the provisions of deterrent legislation should be made proper.

(v) Speedy trial should be ensured probably within the prescribed limit.

(vi) Economic offenders should be penalized with heavier penalties. The minimum term of imprisonment should be seven years in serious cases.

(vii) Some of the legal methods are the procedural content of the socio-economic legislation should be changed to save innocent persons from punishment.

(viii) The victim should be awarded compensation and the property which the offender has earned illegally should be forfeited.

(ix) The execution of the legal provisions be done in true sense and promptly and one should not be too technical.

(x) There is need of harder legislation to make the investigating agencies more efficient.

(xi) Benefit of doubt may not be given to the culprit.

(xii) The provisions of Indian Penal Code and Criminal Procedure Code should scrupulously be followed by the judiciary.

(xiii) All the scattered provision of socio-economic offences should come under one statute.

(xiv) Legal remedies which exist should be adhered to and the special laws should be suitably amended to incorporate provisions of publishing the details of offenders if convicted.
(xv) In case of economic offences by recidivists, the licence to run the business should be cancelled forever, heavy penalty be imposed and all earned profits be forfeited.

(xvi) Deprivation of usual privileges, concessions and other benefits available to the citizens is necessary in the case of offenders.

(xviii) Parents of young offenders and the executive authorities should be made accountable.

(xix) The punishment in all socio-economic offences should be equated with the punishments as prescribed for the offences of robbery and dacoity i.e. minimum seven years.

(xx) A uniform sales tax structure throughout India is required to curb the business offences.

(xxi) Establishment of large number of legally recognized protected and aided consumer forums through suitable legislation should be created and the ambit of such forums should also be enhanced so as to cover all statutes.

(xxii) Deterrent legislation provides good number of procedural safeguards to save innocent persons from harassment and the prosecuting agency, not being well versed with law often commits mistakes in that sphere. Therefore, a modest penalty with better chances of punishments to offenders will be more fruitful in curbing socio-economic offences.

(xxiii) Only the deterrent punishment and the rapid socio-economic transformation are the answer to the problem.

(xxiv) The investigation should be made more scientific and prosecution should be more strict and free from corruption.

(xxv) The system needs to be overhauled to achieve faithful implementation of laws.

(xxvi) There should be wide publicity of deterrent punishments.

(xxvii) Ethical standards in politics, community leadership, should be raised.
(xxviii) Score of unenforceable laws and multi-window clearing required for the smallest things create and perpetuate a system of bribery and gratification, this needs simplification of procedures.

(xxx) Low salary of public servants particularly at the lower level is one of the main causes for socio economic offences.

(XXX) Strong measures should be taken to reduce the factors of poverty, illiteracy, and alarming inequality, the high cost of electoral campaigns as these are the causes for socio economic offences.

(XXXI) Competitive business offering allurements to bureaucrats and politicians, contempt for rule of law in certain sections of society, are responsible for such kind of offences. All this should be reduced.

(XXXII) Absence of the institution of ombudsman to tackle cases of corruption in high places. As it is known to all that the new Lokpal Bill, 2001 introduced in the Lok Sabha should be passed.

(XXXIII) Excessive bureaucratic presence in India’s welfare state model and consequent red tapism, complex and difficult to comprehend web of laws and secrecy clause in some of the laws, rules and regulations giving an opportunity to unscrupulous and dishonest officials to harass the public. This should be checked properly.

(XXXIV) The salaries need to be supplemented by appropriate rewards, particularly cash money rewards in appropriate cases of detection and prevention of these crimes.

(XXXV) Some system of insurance and of compensation for injuries arising out of and in the course of their duties on the pattern of Workmen’s Compensation Act, 1923, needs to be evolved to keep the morale of the enforcement staff high. Much improvement is called for on yet another front so that enforcement agencies can discharge their functions properly.

(XXXVI) In crimes involving adulteration of foodstuffs, spurious drugs and substandard foodstuffs and drugs, these agencies need the facility for proper examination of the samples of such foodstuffs and drugs.
(xxxvii) Many violations of customs, foreign exchange and import-export trade regulations and anti national acts, travel beyond national boundaries so there is a need for better understanding between the nations.

(***viii*** Much of the smuggling activities such as violation of customs, foreign exchange and import export regulation , trafficking in narcotics and drugs, thrives because of rigid international boundaries and barriers of national borders are in great measure responsible for the multiplication of activities there is a need to keep special check on international border of our country.

†(xxxix) The national penal codes obviously do not have any extra territorial jurisdiction, validity or enforceability. It is high time that an International Criminal Code, declaring socio-economic crimes at trans-national level as ‘crimes against humanity’, is adopted.

(xli) The Indian Parliament have enacted the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976, which provides for forfeiture of the properties of smugglers and foreign exchange manipulators held in their names or in the names of their relatives or associates, under certain specified circumstances. But this measure it is felt is not adequate and now as suggested by the Law Commission in the 166th Report is a right step, in which the Commission has proposed a Bill named “Corrupt Public Servants (Forfeiture of Property) Bill” to be enacted by the Indian Parliament.

(xlii) There should be change in the law so that Central Bureau of Investigation will have power to seize not only the movable but also the immovable properties of criminals who fall into its net. There are hundreds of cases with the Central Bureau of Investigation where it claims to know that criminals dealing in narco-terrorism or organized crime have properties worth crores, but is unable to seize them. These properties are said to give these criminals tremendous financial strength in carrying out heir illegal activities.

(xliii) The Prevention of Corruption Act 1988, which covers public servants, must be amended with a view to enlarge the definition of corruption. It is no more limited to receiving or giving money, corruption must include any form of allurement offered to clinch a deal. It’s no more a case of “pecuniary benefit” or “amassing wealth beyond known source of income”. Corruption must include terms such as acting beyond the scope of official brief.

(xliii) The growing concern for socio economic offences all over the country
and also to punish the offenders there is a need for enforcing section 5 of the Benami Transactions (Prohibition) Act, 1988.

(xliii) There is an urgent need to undertake a more through survey of State and national legislation initiated in pursuit of the Directives.

(xl) A statistical checklist of the national and State Government documents such as Five Year Plans, which contain specific references to the directives needs to be prepared as a continuous process in future too.

(xliii) Election manifests of various political parties and their various programmes should be likewise scrutinized. Out of these surveys will emerge some raw data which will enable us to roughly assess the extent of honour paid to the Directives by the leadership. We would be able to have a fair idea of the under-implemented or unimplemented directives.

(xlvii) The State should make every effort to ensure free education by providing adequate facilities more particularly to the economically weaker sections of our society.

(xlviii) The social security in its widest sense is to make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want. In the present situation, it continues to be a major challenge for social and economic policy.

(xlix) Safety nets like the public distribution system (PDS), the integrated rural development programmes, and the targeted programmes for women and children have also not had the measure of success, it is clear that a many-sided approach have to be developed to increase growth rates, to structure labour intensive projects spread through the length and breadth of the country and to help the vulnerable sections of the people to take advantage of government programmes intended for their welfare.

(l) There should be a strategic plan of action to create a large number of employment opportunities in five years to realize and exploit the enormous potential in creating such employment opportunities. The components of this plan may include:

(a) Improvement of productivity in agriculture that will activate a chain of activities towards increased income and employment opportunities.
(b) Integrated horticulture that will include production of fruits, vegetables and flowers, cut-flowers for export and medicinal plants as well as establishment of bio-processing industries aimed primarily at value-addition of agricultural products.
(c) Intensification of animal husbandry programs and production of quality dairy products.
(d) Integrated Program of Intensive Aquaculture including use of common property resources like village ponds and lakes.
(e) A forestation and Wasteland Development to bring an additional 12 million hectares under forest plantation and contribute to rural asset building activity.
(f) Soil and Water Conservation to support a forestation and Natural Resource Conservation towards eco-friendly agriculture.
(g) Water Conservation and Tank Rehabilitation.
(h) Production and use of organic manures through vermiculture and other improved techniques and production of organic health foods from them.

(ii) The State should provide opportunity to every person to gain his living by work which he freely chooses or accepts which shall include the technical and vocational guidance and training programmes, polices and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedom to the individual.

(iii) The State must recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing and to the continuous improvement of living conditions; the State shall also have to recognize the right of everyone to be free from hunger.

(iiii) The State shall then have to initiate programmes to improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian system in such a way as to achieve the most efficient development and utilization of natural resources; and to take into account, the problem of both food-importing and food-exporting countries and to ensure an equitable distribution of world food supplies in relation to need.

(iv) It is well-known that while the go downs of the food corporation of India are overflowing and even rotting with excess food grains, there are reports of starvation deaths across the country. Further, quite a good percentage of food
grains are lost due to inadequate conservation and also during distribution. This must be avoided by introducing proper systems.

(Iv) The State must ensure right to housing or shelter. The Government of India formulated the National Housing Policy 1988, 1994, and the National Housing and Habitat Policy, 1998. There are various schemes for weaker sections, slum developments, etc. As already stated, this right has been recognized by the Supreme Court of India as part of the right to life under article 21. There is a need to prepare long range and short range plans for proper allocation of necessary funds.

(Ivi) The national goal of universalisation of elementary education has still not been reached. Education for all remains an objective with the target date being pushed forward after every review.

(Ivii) Increases in literacy rates to 72 per cent by 2007 and to 80 per cent by 2012, and universal access to primary education by 2007, have been set as goals in the approach paper to the Tenth Plan to achieve this goal plans and allocation of necessary funds should be made.

(Iviii) The educational system should impart moral and ethical values essential for good citizenship.

(Ix) Independent national education commission should be set up every five years to report to Parliament on the progress of the Constitutional directive regarding compulsory education.

(Ix) The time has come for the Central Government to arrest the Big don of Bombay Dawood Ibrahim who now runs an international drug and extortion racket worth more than Rs. 1,000 crore annually. The prime accused in the Mumbai serial blasts case of 1993, he is responsible for smuggling of counterfeit notes, gold and narcotic smuggling, into India to destabilize the economy.

(Ixi) The other most-wanted gangster in our country are Rajendra Nikhalje (Chhota Rajan), Chhota Shakeel, Abdul Qayyum Ansari (Abu Salem), Muthappa Rai Rashid Khan Kolkata’s Dawood Ibrahim, Rashid Alam (Gabbar), Brij Bhushan Saran Singh, Brijesh Singh, Mukhtar Ansari, Babloo Srivastava the illegal activities include trans-Nepal smuggling, illegal real estate dealings, kidnapping, drugs, excise, silk and gold smuggling, coal field contracts, railway
contracts, running arms racket, kidnappings and Hawala rackets.

(Ixii) The model of “country club” prisons is the common abode of convicted economic criminals in United States located at Allentown, Pennsylvania this model can be applied for prison reforms in our country.

(Ixiii) Further in socio-economic offences strict liability rule should be followed as in US and UK and mens rea can be excluded from those offences in which the intention or knowledge are most vital ingredient of offences, and on the other hand mens rea be excluded in socio-economic and white-collar offences.

(Ixiv) The socio-economic offences are committed in pursuance of an action plan and as these offences are mainly connected with the life, public morality, and health of the masses, it should be tackled with strict liability.

(Ixv) Socio-economic offences in India have emerged as a pervasive phenomenon and it has also become a major hurdle against economic development so it becomes imperative that our country launches a major campaign against such kind of offences which are a terror to national security.

(Ixvi) Given the nature and dimensions of socio economic offences only a comprehensive approach would be successful. The effort in this thesis all along had been therefore to outline a comprehensive strategy to reduce such kind of offences in our country.

(Ixvii) The socio economic courts should be manned by senior and experienced judicial officers of the rank of Sessions judge for the trail of such offences.

(Ixviii) The Parliament should enact a comprehensive legislation so that all the scattered provisions of socio economic offences should come under one statute.

(Ixix) Introduction of public information and assistance counters in departments and places of public dealing.

(Lxx) Systematic and surprise inspections by senior officers.

(Lxxi) Monitoring disposal of cases with a view to checking delays.

(Lxxii) Curbing outside interference in the administration and personnel
management.

(Ixxiii) Greater surveillance and intelligence in corruption-prone areas, particularly at public contact points by strengthening the vigilance machinery, where necessary.

(Ixxiv) Closer watch on officials of doubtful integrity by vigilance.

(Ixxv) On a selective basis, moveable/immovable assets of persons of doubtful integrity to be checked and verified periodically.

(Ixxvi) Investigation of cases to be speeded up according to a time bound schedule.

(Ixxvii) Procedure for disciplinary action be improved for speedier finalisation of cases and deterrent punishment awarded.

(Ixxviii) Provision for summary trial by courts in cases of economic offences and provision for deterrent punishment.

(Ixxix) Provision for premature retirement of persons of doubtful integrity to be enforced more rigorously to weed out corrupt elements.

(Ixxx) Wide publicity of punishment awarded to guilty persons.

(Ixxxi) Freedom of Information Act to be passed to bring greater openness in Government functioning.

(Ixxxii) Make all income taxable-eliminate internal tax havens like agriculture.

(Ixxxiii) Tax all ostentatious and extravagant expenditure.

(Ixxxiv) Publish tax returns of all assesses beyond a cut-off limit

(Ixxxv) Impose heavy penalty for tax evasion and for economic offences like foreign deposits. Do not legalise black money (except when utilized for social investment).

(Ixxxvi) Restore the ethos of the bureaucracy by placing postings, transfers and promotions beyond the reach of the political executive. Introduce
computerization to eliminate the subjective elements in decision making.

(Ixxxvii) Make the recruitment procedure transparent and verifiable.

(Ixxxviii) Make the Judicial-appointment, transfer and cadre management independent of the political executive at all levels.

(Ixxxix) Simplify and shorten the judicial procedure and jurisdiction to restore people’s confidence in access to justice.

(xc) Recently the hallmarks of maintenance of standards in public life have been stressed by the Supreme Court quoted in Vineet Narayan’s case are:
(a) Holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.
(b) Holders of public office should not place themselves under any financial or other obligation to outside individuals or organizations that might influence them in the performance of their official duties.
(c) In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.
(d) Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.
(e) Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.
(f) Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.
(g) Holders of public office should promote and support these principles by leadership and example.”

समानी व आकृति समाना हदयानि वः ।
समानलमस्तु वो मनो यथा वः सुसहासितः ।।

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