3.1 Introduction

There is no society that is not confronted with problem of criminality. Crime is eternal-as society itself is. It is best to face the fact that crime cannot be totally abolished except in a Utopia. Criminal law is essential in a society for maintaining law and order. The question of the efficacy of the criminal justice system and protection of rights of the people are interrelated and need constant scrutiny. When the rule of law collapses, it is replaced by matsya nyaya, which means the law of jungle.\(^1\) Criminal law is a reflection of contemporary social consciousness and faithful mirror of a given civilization, reflecting the fundamental values on which the latter rests. Criminal law is concerned with the right to life and personal freedom and the restrictions placed on those rights. Ultimate goal of criminal law is crime-free society.

3.2 Basic Principles of Traditional Criminal Justice System

Liberty is the eager maintenance of that atmosphere in which men have the opportunity to be their best selves.\(^2\) However, unrestrained freedom will result in conflict of interests and destroy peace for no man stands alone; he lives with others and in others. This necessitates subjecting of individual liberty to the authority of state to impose limitations that is also limited. Arbitrary limitations on liberty are not tolerated. Due Process of Law guards the individuals against such arbitrariness. The best description of the expression "Due Process of Law" would be to say that it means in each particular case such an exercise of power of government as the settled maxims of law permit and under

---

such safeguards for the protection of the individuals’ rights as those maxims prescribe. “Due” means, “what is just and proper”. In the field of criminal law the due process model is grounded on the idea of a confrontation between an individual and a state whose interest are irreconcilable.\(^3\) The Due Process model is highly formal in structure. One may be found guilty only if the facts are established according to fixed rules before a competent tribunal. The presumption of innocence plays a decisive role. Certain of the evidence is not admissible, the burden of proof is on the state, the accused at trial is guaranteed certain rights.

These are the only few aspects of the Due Process model. These protections serve two overlapping and sometimes conflicting goals: truth determination and protection of the individuals’ rights from encroachment by the state.\(^4\) That is protection of the innocent and punishing the guilty. Procedural law is intended to facilitate and not obstruct the course of justice. These basic principles of traditional Criminal Law were based upon old \emph{laissez faire} notions of individualism and theory of natural rights and were tilted in favor of the individual.\(^5\) The well being, liberty and security of the individual were the cornerstone of these principles. “Law is a human institution created by human agents to serve human ends.”\(^6\) “Rule of law must run close to the rule of life.”\(^7\) Indian traditional administration of criminal justice system derived from the Anglo-Saxon Common rules

\(^7\) Ibid.
neither serves human ends nor is close to rule of life. Following are the principles that constitute main structure of traditional criminal justice system.

1. Doctrine of *nelli mum crimen sine lege*. (No act or omission is crime unless statute prohibits it.)

2. Doctrine of *nulla poena sine lege*, (Doctrines of Strict Construction).

3. Doctrine of *et actus non facit resum nisi mens sit rea*. (Mens rea and Actus reus both must concur to constitute crime.)

4. Doctrine of *praesumptiones juris sed non de jure*. (Accused is presumed to be innocent until his guilt is proved)

5. Doctrine of *nemo tenebatur prodere seipsum*. (Rights against self-incrimination).

### 3.2.1 Doctrine of Nellum Crimen Sine Lege

*Nullum crimen sine lege* means no conduct shall be held criminal unless the statute prohibits it.\(^8\) Statue is only source of creation of crime and custom does not enjoy this privilege.\(^9\) The Roman jurisprudence strictly adhered to norm that crimes both offences and penalty be exactly described in the statute.\(^10\) The various crimes should be clearly defined, so that persons know what crime is and what is not. Vague laws may trap innocent by not providing fair warning. Such laws impermissibly delegate basic policy matters to police officer and judges for resolution on ad hoc and subjective basis, with the attendant danger of arbitrary and discriminatory application. More uncertain and undefined words deployed inevitably lead citizen to “steer far wider of the unlawful zone.

---


… than if the boundaries of the forbidden areas were clearly marked”. An act, howsoever reprehensible it may be is not a crime unless prohibited by law.

3.2.2 Doctrine of Nulla Poena Sine Lege

Nulla poena sine lege has several meanings. In narrow connotation, no person shall be punished except in pursuance of a statute. In addition, nulla poena sine lege has been understood to include the rule that penal statutes must be strictly construed. The principle of legality (nullum crimen sine lege), is the rule of construing criminal statute in favor of the subject. The Origin of nulla poena sine lege can be found in 39th clause of Magna Carta which latter developed into the concept of “Due Process”. The V and XIV amendments of U.S. Constitution give constitutional recognition to Due Process. This doctrine along with nullum crimen sine lege provide basic constitutional safeguards of the individual against the oppressive government but also act as cardinal principles of criminal law. According to the principles of interpretation of statutes, a remedial statute receives a liberal construction, whereas a penal statute is strictly construed. It is well settled that statute which imposes a term of imprisonment for what is a criminal offence under the law must be construed strictly. Any doubt in the penal statute is resolved in favor of the accused. If criminal statute is ambiguous, the construction that prefers the liberty of the subject must be given effect. Pollock, C.B. has said, “I should say that in criminal statute you must be quite sure the offence charged is within the letter of the

---

12 Supra note 8.
14 Supra note 8.
15 V Amendment of US Constitution states … “No person shall … be deprived of life, liberty, or property, without due process of law…” And XIV Amendment, “… nor shall any State deprive any person of life, liberty, or property, without due process of law.”
16 Jerome Hall, op. cit., p.26
Supreme Court’s five judges’ bench in Kartar Singh v. State of Punjab while upholding the validity of Section 3 of Terrorists and Disruptive Activities(Prevention) Act, 1987 (herein after referred as TADA, 87) cautioned that since provision of TADA 87 tend to be very harsh and drastic containing stringent provisions they must be strictly construed. Therefore when law visits a person with serious penal consequences extra care must be taken to ensure that those whom the legislature did not intend to be covered by the express language of the statue are not roped by the stretching the language of the law. Five judges Constitution Bench in Sanjay Dutt’s case under TADA 87 observed that:

“…if there is a reasonable interpretation which will avoid the penalty in any particular case, we must adopt that construction and if there are two reasonable constructions, we must give the more lenient one, and if two possible and reasonable constructions can be put upon a penal provision, the court must lean towards that construction which exempts the subjects from the penalty rather than the one which imposes penalty.”

Lord Esher observed, “If there is a reasonable interpretation which will avoid the penalty in any particular case we must adopt that construction. If there are two reasonable constructions we must give the more lenient one.” Supreme Court has said, “If two possible and reasonable constructions can be put upon a penal provision, the court must lean towards that construction which exempts the subject from penalty rather than one which imposes penalty. It is not competent to the court to stretch the meaning of an...
expression used by the Legislature in order to carry out the intentions of Legislature”.  

“Acts of Parliament,” said Coke C.J., “are to be so construed as no man that is innocent, or free from injury or wrong, be by a literal construction punished or endangered”.  

Section 5 of the TADA 87 provides: ‘where any person is in possession of any arms and ammunition specified in columns 2 and 3 of the category I or category III (a) of schedule 1 to the Arms Rules, 1962 or bombs, dynamite or other explosive substance unauthorized in a notified area, shall notwithstanding any thing contained in any other law for the time being in force, be punished with imprisonment for a term which shall not be less than five years which may be extended to life imprisonment and shall also be liable to fine’. Section 5 requires three ingredients. First, possession of any specified arms and ammunition etc. Second, unauthorized. Third, in a notified area. The Section does not in terms provide that the accused can in any way escape punishment if the aforesaid three ingredients are established. However the Apex Court held that possession of unauthorized arms in notified area raised the presumption the arms etc were meant to be used for a terrorist or disruptive act which was in effect the third ingredient. Therefore Court by way of construction of Section 5 facilitated the accused to disprove that presumption by proving his unauthorized possession of arms was not related to terrorist and disruptive activities and escape the punishment.  

There was possibility of interpreting Section 5 in accordance with letters of words used therein and enlarging its scope. However the Supreme Court decided in other way by adding qualification that possession of unauthorized arms must be for terrorist and disruptive activity which had restricted its scope. Obviously that interpretation was in

favor of the accused. *The Defense General Regulations, 1939*, prohibited the carrying out of certain work ‘except in so far as there is in force in respect thereof a license granted by the minister’, and provided that in case of contravention of the regulation ‘the person at whose expense the work is executed’, and the person undertaking the execution, shall each be guilty of an offence. The Court of Appeal construed these regulations strictly and held that the regulation was not contravened if the work executed was covered by a license although not in the name of the person at whose expense the work was executed.  

The effect of the rule of strict construction might be summed up by saying that, where an equivocal word or ambiguous sentences leaves a reasonable doubt of its meaning which canons of interpretation fail to solve, the benefit of the doubt should be given to the subject and against the legislature which has failed to explain itself. The Supreme Court said there is more reason to construe strictly a drastic penal statute which deals crimes of aggravated nature which could not be effectively controlled under ordinary criminal law. Court observed that TADA 87 provisions cannot be restored to ordinary crimes which can be checked under ordinary criminal law because those provisions are very stringent. Hence TADA 87 was strictly construed.

### 3.2.2.1 New Trends of Interpretation

Bentham was firm believer in the efficacy of rational construction of laws which was to a considerable extent responsible for new approach to the tackling of menace of

---


new crimes. Courts also started making frequent use of their judicial power of interpretation to tackle these new crimes. According to Supreme Court, 30

“Any narrow and pedantic, literal or lexical construction likely to have loopholes for dangerous criminal tribe to sneak out of the meshes of the law should be discouraged. For the new criminal jurisprudence must depart from the old cannons, which made indulgent presumptions and favored constructions benefitting accused persons and defeating criminal statues calculated to protect the public health and the nation’s wealth.”

The Supreme Court had gone even to the extent of observing that ‘the rule of strict interpretation of penal statute in favor of the accused is not of universal application, and must be considered along with other well-established rules of construction. Courts in India have adopted new approach while interpreting statues dealing with socio-economic offences with view to further the objects and purposes of those statues.

3.2.3 Principle of Et Actus non facit reum nisi mens sit rea

*Et actus non facit reum nisi mens sit rea* means the intent and the act must both concur to constitute crime. 31 This is a maxim which has been accepted by courts for centuries, recognizes that there are two necessary elements in crime, a physical element and mental element. *Actus non facit reum nisi mens sit rea* is principle of Common Law which is cardinal doctrine of Criminal Law also. 32 The court should not find man guilt of an offence against the criminal law unless he has guilty mind. 33 In order to make a person criminally accountable for an act, it must be proved that the act is done with guilty mind. Since the requirement of *mens era* was, in the words of Cockburn C.J., “the foundation of

all criminal justice”. Thus, there are two components called *actus reus* and *mens rea*. The world *actus* connotes a ‘deed’, a physical result of human conduct. The world *reus* means ‘forbidden by law’. The world *actus reus* may be defined as ‘such result of human conduct as the law seeks to prevent’. *Mens rea* is a technical term, generally taken to mean some blameworthy mental condition, whether constituted by intention or knowledge or otherwise, the absence of which on any particular occasions negatives the contention of crime. Its meaning has changed considerably with the development of various ideas and principles like insanity, necessity, coercion, mistake, accident, negligence, etc. Thus, *mens rea* meant the intentional doing of a wrong act.

**3.2.3.1 Mens rea in Statutory Offences**

Where an offence created by a statute however comprehensive and unqualified the language of the statute, it is usually understood as silently requiring that the element of *mens rea* should be imported into the definition of the crime unless a contrary intention is expressed or implied. Nevertheless, that *mens rea* should be presumed to be implied in crime unless contrary expressed was on decline trend. In 1990 Kennedy L.J., said that “there is a clear balance of authority that in construing a modern statute this presumption as to *mens rea* does not exist”. Later the judges became bolder, and placed their decisions not on the language of the statue but on broad social ground, saying that the purpose of the legislation would be defeated if it were held necessary for the prosecution to prove *mens rea*. Conduct so made punishable by statute is often classified as “public-

---

34 Glanville Williams, *op. cit.*, p.929.
35 *Supra* note 31., at 17.
37 *Supra* note 33.
welfare offences” or “regulatory offences” or “offences of strict liability”.40 There are, it is true, some of cases though they are few, where proof of negligence would in practice be impossible, even though negligence is very likely.41 Mens rea may be abandoned in respect of some element where it would be difficult to prove.42 Strict liability prevents people getting away with dishonest defenses. Strict liability exempts the prosecution from having to prove fault, but not from having to prove the act is done in breach of statute.43 Once strict liability supported by raison d’état, it could readily be extended to penal legislation in general. The Supreme Court in Kartar Singh v. State of Punjab, observed that:

“[i]n a criminal action, the general conditions of penal liabilities are indicated in old maxim ‘actus non facit reum, nisi mens sit rea’ i.e. the act alone does not amount to guilt, it must be accompanied by a guilty mind. But there are exceptions to this rule and the reason for this is that the legislature, under certain situations and circumstances, in its wisdom may think it so important, in order to prevent a particular act from being committed, to forbid or rule out the element of mens rea as constituent part of a crime”.

### 3.2.3.2 Difficult of Procuring Mens rea

Organized crimes and socio-economic crimes are most prevalent in areas which guarantee of large profits for criminals and, at the same time, lower risk of discovery due to two reasons. One, there are no direct victims. Second, the victims are unwilling to testify in court.45 Social status of offenders of socio-economic offence is high. They are more powerful than traditional criminals, consumers, investors, and stockholders are

41 Supra note 39., at 928.
42 Ibid., at 930.
43 Ibid., at 932.
unorganized; lack technical knowledge and cannot protect themselves. These offences are planned and executed in secrecy by shrewd and dexterous persons with sophisticated means. The gravity of harm is not easily apparent, but is undeniable. The public welfare is gravely affected, but detection is usually difficult. A punishment can be justified on the ground that separating the sheep from the goats would be impossible. Enforcing agencies of socio-economic offences argue that where offences are very numerous a requirement that the prosecutor should prove fault would impose a burden upon the resources of law-enforcement, out of proportion to the end to be achieved. In 1986 a new offence known as “Dowry Death” was inserted in the Indian Penal Code (herein after referred as IPC) by the Dowry Prohibition (Amendment), Act, 1986. Dowry offences are invariably committed within the safe precincts of home and the culprits are mostly close relatives. The family ties are so strong that truth will never come out and there would be no eye witness to testify against the guilty in court of law. The circumstances are hostile to an early or easy discovery of the truth. Punitive measures may be adequate in their formal content, but their successful enforcement is matter of great difficulty. Therefore burden of proof is shifted on the husband and his relative to prove that they have not committed the offence of dowry death. Therefore, special provisions facilitating easier proof of such special class of offences on establishing certain facts must be provided for by appropriate legislation.

---

48 Ibid.
49 Glanville Williams, op. cit., p.928.
50 Act No 45 of 1860.
51 Act No 24 of 1986.
52 Section 113-B of Indian Evidence Act, 1872.
3.2.4 Presumption of Innocence of Accused

Whenever a court is called upon to decide any question of fact, it may do either by obtaining actual evidence or by prior presumptions. The doctrine *praesumptiones juris sed non de jure* means inferences of facts hold good until evidence has been given which contradicts them.\(^{53}\) Accused is presumed to be innocent until his guilt is proved. So strong is this presumption that, in order to rebut it, the prosecution must prove accused guilty beyond reasonable doubt and the graver the crime the greater will be the degree of doubt that is reasonable.\(^{54}\) The golden rule of evidence has emerged from the case of *Woolmington v. D.P.P.*,\(^{55}\) wherein the House of Lords asserted that accused presumed to be innocent is fundamental doctrine of criminal cases. Lord Chancellor Viscount Sankey said, “If the jury is left in reasonable doubt whether act was unintentional or provoked, the prisoner is entitled to be acquitted”.\(^{56}\) Further, the following general statement of Lord Chancellor has affected the entire criminal jurisprudence.

> “Throughout the web of English criminal law, one golden thread is always to be seen that it is the duty of the prosecution to prove the prisoner’s guilt, subject to the defense of insanity and any statutory exception. If at the end of the whole case there is a reasonable doubt, as to whether the prisoner killed the deceased with malicious intention, the prosecution has not made out a case and the defendant is entitled to acquittal”.\(^{57}\)

The burden of proof so placed upon the prosecution remains with them throughout the trial. Obviously, it does not shift to the defendant merely because the prosecution makes out a *prima facie* case.\(^{58}\) The burden of proof in criminal cases is heavier because in civil cases it is balance of probabilities.

---

\(^{53}\) *Supra* note 31., at 455

\(^{54}\) *Ibid.*, at 456.

\(^{55}\) (1935) AC 462 (HL).

\(^{56}\) *Ibid.*

\(^{57}\) *Ibid.*

\(^{58}\) Glanville Williams, *op. cit.* p.43.
There are several reasons for placing the burden of proof on the prosecution, which is a universal rule. Firstly, the State has huge resources, network and work force to collect the evidence compared to the position of accused. Secondly, criminal proceedings are initiated and structured by the prosecutor before the court. Naturally, it is the duty of prosecutor to answer the charges. Thirdly, proving the positive act of human being is easier than the negative act. Fourthly, placing the burden of proof on accused results in serious injustice, that is unfair, and unjust. Failure of the accused to convince the court of his innocence simply results in his conviction. It is believed that this would give scope for negligence and abuse of State power.

3.2.5 Right Against Compulsory Testimony

Another basic doctrine of criminal law is Nemo tenebatur prodere seipsum. It means the fault of the accused is not to be proved out of himself, but rather to be discovered by other means and other men. According to the rule, neither the judge nor the prosecution is entitled at any stage to question the accused unless he chooses to give evidence. This rule may be called the accused’s right not be questioned which is a Universal Human Right and Constitutional right in India. History of humankind is replete with instances where under every type of regime the accused in custody was tortured within the four corners of the cell for forcing him to confess or disclose information, when there is none to hear his cries or to come to his rescue. That is why the accused is given the privilege against self-incrimination. Prosecution cannot coerce

60 Section 101 of the Indian Evidence Act, 1872.
61 Supra note 58., at 37.
63 Article 20(3) of the Indian Constitution.
64 Supra note 45, at 40.
the accused to produce evidence against him. As long as the presumption of innocence remains as one of the fundamental cannons of criminal jurisprudence, evidence against the accused should come from the sources other than the accused.

3.3 New Kinds of Socio-Economic Offences

It is true there have always been criminals in society. Nevertheless, at present, society is confronted not only with the conventional criminal but new type of criminal who is clever and apparently harmless. Glanville Williams writes:

“The methods of the criminal courts are hundreds of years old and their conceptions a thousand years older than that. The whole material world has been made over, but the law and its administration have stood defying time and all the intellectual changes of our day and age.”

The Committee on Reforms of Criminal Justice System, headed by Justice V.S. Malimath, has described the existing criminal justice system in the following words:

The system devised more than a century back has become ineffective; a large number of guilty go unpunished in a large number of cases; the system takes years to bring the guilty to justice and has ceased to deter criminals. Crime is increasing rapidly everyday and types of crimes are proliferating. The citizens live in constant fear.

More recently with the far-reaching changes in technology and the emergence and change in the institutions and in the organization of the economic system, the economic crimes are on the rise. However, the public tendency has been always been to focus on conventional crimes, especially violent ones. Occasionally cases such as of Harshad Mehta, Ketan Parekh and the Indian Bank scam, come to the attention of public; otherwise, most economic crimes go insufficiently noticed, though their impact in terms of financial loss to society and in terms of eroding the creditability is significant. There have been others such as the forged Kisan Vikas Patras, Indira Vikas Patras and National

---

65 Glanville Williams, op. cit. p.37.
66 Supra note 45, at 265.
67 Ibid., at 233.
Savings Certificates, the Gold Scam case of Ahmadabad, and Cyberspace case of Unit Trust of India Stocks. There is also the case of improper handling of Non-Banking Financial Companies. The list is illustrative and is not exhaustive. The Courts have been somewhat conservative in nature; they have stuck to the Constitutional guarantees of rights extensively. This, combined with the delay inherent in the judicial process, has assisted economic criminals immeasurably.\textsuperscript{68} Public perception is that in the economic sphere the enforcement of the laws is lax. In spite of several agencies, there is an impression that the State and its agencies are incompetent to deal with those who commit major economic crimes. Following are the new kinds of crimes that have surfaced in the societies.

### 3.3.1 Crimes in the areas of Business, Trade and Commerce

A class of white-collar criminals that presents serious problems is that of those anti-social elements who operate in smuggling and sale of narcotics, adulteration of food, drugs, building materials and other consumables. Adulteration, hoarding, profiteering and black-marketing of essential commodities by traders in India has become a chronic problem.\textsuperscript{69} Another white-collar crime prevalent among business class is the violation of foreign exchange, tax, and import and export provisions.

### 3.3.2 Bank and Financial Frauds

With growth of online banking, traditional methods of embezzlements of funds have fallen by the wayside. Funds can now be embezzled through wire transfers or by taking over the accounts. Loans can be taken with fraudulent applications online, and one could hack into a bank payment system and take out money. This is often combined with

\textsuperscript{68} Ibid.

bank fraud and includes stock manipulations, fraudulent offerings. The problem of insider trading, price rigging, floating companies by fly-by-night operators with false prospectus, etc., are also yet to be seriously tackled. With the Internet the matter becomes somewhat more complicated. The Mitra Committee in its report admitted the fact that criminal jurisprudence in the country based on “proof beyond doubt” was too weak an instrument to control bank fraud. The Committee recommended a punitive approach by defining “Scams” as serious offences with burden of proof shifting on the accused and with a separate investigating authority for serious frauds and the special courts and prosecutors for trying such cases along with increased powers to the investigating agency of search, seizure and attachment of illegally obtained funds and properties.

3.3.3 Technology and Crime

With the e-commerce, the system is speedy and efficient; its very speed and efficiency are creating problems. The internet has made all borders and legal jurisdiction obsolete. Criminals can remain in one jurisdiction, commit crimes elsewhere, and avoid prosecution. Therefore, a high degree of coordination to prevent crime and cooperation to prosecute and punish crime becomes essential especially as the proceeds of these crimes go into further crimes including drugs and arms.

3.3.4 Money Laundering

Money laundering is another major problem which breeds terrorism, organized crime, havala transactions and evades taxes. This has affected the nation significantly. Given the close nexus between drug trafficking, organized crimes and terrorism, the prevention of money laundering is essential for safeguarding internal security. Punitive

---

70 Supra note 45, at 236.
71 Ibid.
legislations are of little use to curb money-laundering offence unless preventive arrangements are put in place because filing charge sheet and prosecution takes time; by that time it is difficult to trace the property.

3.3.5 Insurance Crimes

Insurance frauds that run to billions of dollars the word over can be expected to be a growth sector and these can be committed internally by computer officials and externally by applicants, policy holders, false claimants, etc.

3.3.6 Computer Crimes

Computer crime is another new type of offence which covers illegal access to information contained in a computer - whether privately or publicly owned - in which either fraud is committed using computers or used for sending threatening messages. These could be used for activates threatening a country’s security.

3.3.7 Terrorism

Terrorism - both internal and cross border - has taken the central stage in the last few years. The links between terrorism and certain types of economic crimes gradually emerged while at the same time unconnected swindles and frauds also occurred.

Therefore, there is craving need to deal with economic offences (including some cyber offences) as a special category of offences and they have to be dealt with not only in manner different from other crimes but would also require a group of highly trained experts with sufficient powers and recourses to handle them. Clearly the existing laws and procedures are not equal to the task of handling the more complex economic crimes, hence the need for the newly suggested approach.

72 Ibid., at 239.
It is very difficult to prosecute offenders of these offences under the ordinary criminal laws. Authorities find it hard to collect evidence to prove the guilt of the accused beyond reasonable doubt which is bedrock of criminal justice system. Terrorists use highly sophisticated devices to commit offences which do not leave any mark of evidences like ordinary crimes. The communication between the offenders is made through fake email ids or simcards of mobile phone. Therefore tracing or identification of offender becomes remote unless authorities have extraordinary power of surveillance of phone calls. In case of havala, the money is rooted from abroad through various channels by various people without any thing on the record. Under such circumstance the proof beyond reasonable doubt is an impossible task. Stock scams and bank frauds are committed by the insiders of the organizations by manipulating the records which are in their possession that some times are untraceable. Computer and internet are the most common devises used by the offenders to commit these kinds of offences. Generally the modus operandi is to create fake email id, communicate with others in code manner and thereafter delete the email id. All these activities of offenders indicate that they are exploiting the loopholes existing in the mode of investigation by the authority and in the law. Authorities are not getting the level playing field in combating the crimes. The criminal is ahead and law is outdated. As it stands, the Criminal Justice System is ineffective in handling major economic crimes. UK set up a Serious Frauds Office under the Criminal Justice Act, 1987 to deal with investigation and prosecutions of serious economic offences with extensive powers including search and seizure. Similar arrangements have been made in the European Union and in the US. In India too, there is
need to put in place better legislation, improved Criminal Justice System and a regulatory enforcement system to prevent, investigate and prosecute major economic crimes.\textsuperscript{73}

In the light of this background, the criminal jurisprudence has itself undergone change to tackle these challenging new crimes. The criminal law has reversed the conventional principles, which are not the product of scientific observation, but embody a system of values.\textsuperscript{74} Old doctrines were more leaning towards the concept of liberty. The exercise of liberty however is only possible if some limitations are placed on it. Absolute liberty only leads to anarchy and lawlessness. It is where society has to strike the balance, which is the matter of great importance. Liberty, which is branch of security, ought to yield to a consideration of the general security, since laws cannot be made except at the expenses of liberty.\textsuperscript{75} The Criminal Law breaks down in its primary purposes of social protection when there is no general obedience to the legal norms by number of people and they get away with it because of the ineffectiveness of the law. According to Prof. Hart this may be called the pathology of a legal system and craniologist must investigate and remedy the defect.\textsuperscript{76} Now it is noticed that in large criminal areas, unlaw emerging more openly and hopefully. The pendulum of legal principles must swing back to arrive at new norm.

3.4 New Criminal Jurisprudence

The transition from rural and simple society to industrialized and complex one entails regulation by or under law of activities having an economic import. The same process of transfer from simple to complex and a rural to urban society also necessities an

\textsuperscript{73} Ibid.
\textsuperscript{74} Glanville Williams, \textit{op. cit.}, p.37.
\textsuperscript{76} Krishna Iyer, \textit{op. cit.}, p.71.
increasing attack on malpractices which were previously unknown. The process gives rise to a two-fold increase in such malpractice - increase in the number of socio-economic malpractice and increase in their variety.\textsuperscript{77} Socio-economic offences are constantly on the rise. 1990s and 2000s are the decades of high profile scandals. Corruption in Telecom 2G license, Delhi Common Wealth Games of 2011, and Pune’s Hasan Ali tax evasion runs into cores of Rupees. Top Business professionals are also not lagging behind in these kinds of activities. Satyam Promoter Ramling Reddy manipulation of Satyam Computers accounts, UTI’s Unit-64, liquidation of Global Trust Bank, Stockbroker Harshad Mehta and Ketan Parikh exploitation of the system of share market, fodder scam in Bihar, mines Mafia in Bellary, etc. have proved that socio and economic offences are more serious threat to the existence of society than blue-collar crimes. Social offences are offences which affect the health or material welfare of the community as a whole and not merely of the individual victim. Similarly, economic offences are those that affect the country’s economy and not merely the wealth of an individual victim.\textsuperscript{78} Socio-economic offences and white-collar crimes could be intersecting circles. Again, socio-economic offences and crimes of strict liability also could be represented by intersecting circle.\textsuperscript{79} These cases do not fit neatly in the accepted categories of crimes. They represent harm of greater magnitude than the traditional crimes. They are not in the shape of positive aggression or invasion.\textsuperscript{80} Two very important aspects of social and economic offences have to be emphasized in the context of gravity of the harm caused to society and the nature of the offences themselves. The damage caused by socio-economic offences to a

\textsuperscript{77} Supra note 47., at p.4.  
\textsuperscript{78} Ibid.  
\textsuperscript{79} Ibid., at 12.  
\textsuperscript{80} Ibid.
developing society could be treated on a level different from ordinary crimes. They may not result in direct or immediate injury. Whatever the intent of violator, the injury is same. Hence if legislation applicable to such offences, as a matter of policy departs from legislation applicable to ordinary crimes in respect of traditional requirement as to mens rea and other substantive matters as well as points of procedure, the departure would be justifiable. Some of acts punishable under special laws may be regarded as “Public welfare offences”, or “regulatory offences”. The legislation armory for fighting socio-economic crimes therefore should be furnished with weapons that may not be needed for fighting ordinary crimes.

It came to be increasingly realized and recognized that these anti-social acts of industry, trade, commerce, and professionals did greater damage than the traditional crimes and its victim was the entire community rather than an individual. Thus, a new beginning was made in the form of enacting special laws to checkmate these activities. It is recognized that old and out of dated laws are no less a tyranny and to be effective instrument of social will, laws in general, and criminal laws in particular must keep pace with the changing society. The legal ghosts of the past have been clanking their medieval chains too long and the time has come to invest the courts and the books with contemporary relevance and social purpose particularly in the field of criminal law.

What are the principles of criminal jurisprudence that requires re-statement? Criminal law with its entire built-in-safe guarantee to protect the innocent hesitates to bite and is reluctant even to bark. Criminal law breaks down in its primary purpose of social

---

81 Ibid., at 11.
82 Ibid., at 4.
83 Ibid., at 11.
84 Mahesh Chandra, op. cit., p.36.
85 Supra note 76., at 67.
protection when there is no general obedience to legal norms by people. Inefficient laws are worse than no law because it undermines the faith of the community in the rule of law. P.M. Mukerjea, J., glances at this problem and observes that criminal jurisprudence has become too backward to meet the challenges of the modern age. The re-statement of principle and revision of procedures must deal with those weaknesses that new criminals exploit. For instances *mens rea*, the burden of proof, and the mode of proof, the sentencing practices, and other traditional notions deserve re-examination. Social change must mould the law if the rule of the law is to regain. These new legislations have new principles to properly deal with new forms of criminality. These principles can be called as the new dimensions of criminal jurisprudence. They are, enacting of special laws, constituting special courts, prescribing special procedure, imposing strict liability, presumption of guilt, extra power to the authority for investigation, shifting of burden of proof to the accused, mandatory minimum punishment and deterrent punishment, and classifying more offences as cognizable and non-bailable offences.

### 3.4.1 Special Laws

In 1962, the Central Government constituted Santhanam Committee to look into prevention of crimes. The Commission broadly classified white collar, social and economic offences into eight categories. The Commission recommended to the government of India to add a new chapter to IPC, incorporating all such offences and supplement them with new provisions so that these offences might find a permanent place in the general criminal law of the country. The government referred the matter to the Law Commission of India. The Law Commission disagreed with the proposal and

---


observed, “Such offences are better to be dealt with special and self-contained enactments which supplement the basic criminal law.”\(^{88}\) It is ideal step to enact special legislations to deal with the socio-economic offences by considering its special features. Deviation to certain extent from the substantive and procedural requirements of traditional criminal jurisprudence makes these legislations special. They have incorporated new devices like special courts, mandatory punishments, enhanced punishments, additional modes of punishment like forfeiture of property, extended power of search and seizer, presumption of \textit{mens rea}, presumption of deed, shifting of burden of proof, summary proceedings, \textit{in camera} proceedings, confidentiality of witness identity, denial of anticipatory bail and stringent bail provisions, admissibility of confession made before police authorities, restrictions on number of appeals, priority of trial proceedings, and overriding effects over other legislations. Hence, if legislation applicable to such offences, as a matter of policy departs from legislation applicable to ordinary crimes in respect of traditional requirement as to \textit{mens rea} and other substantive matters as well as points of procedure, the departure would be justifiable.\(^{89}\) A number of special legislations have been passed to deal with special offences.

\textbf{3.4.1.1 The Narcotic Drugs and Psychotropic Substances Act, 1985}

The \textit{Narcotic Drugs and Psychotropic Substances Act, 1985}\(^{90}\) (herein after referred as NDPS) was passed to consolidate law relating to narcotic drugs to make stringent provisions for the control and regulation of operations relating to narcotic drugs and matter connected therewith. This is a special law because all the offences are

---

\(^{88}\) \textit{Supra} note 46., at 21.

\(^{89}\) \textit{Supra} note 47, at 4.

\(^{90}\) Act No 61 of 1985.
cognizable;\textsuperscript{91} it constitutes special officers to regulate the drugs\textsuperscript{92} which are having the exclusive powers of adjudication of offences;\textsuperscript{93} they have the powers to search conveyance and buildings without search warrant,\textsuperscript{94} authorities have the power to impose the minimum,\textsuperscript{95} and enhanced punishments.\textsuperscript{96} Further, Act has made the presumption of \textit{mens rea},\textsuperscript{97} and burden of proof is shifted on accused to prove his innocence beyond reasonable doubt.\textsuperscript{98} Authorities have power to try certain offence summarily.\textsuperscript{99} Further the Act says privileges of Section of 360 of \textit{Code of Criminal Procedure, 1973}\textsuperscript{100} (herein after referred as Cr.P.C.) and the \textit{Probation of Offenders Act, 1958} shall not be applicable unless such person is under 18 years.\textsuperscript{101} Unless the person fails to account satisfactorily the possession of illicit articles he is presumed to be committed the offences.\textsuperscript{102} The Authorities have power to grant immunity from prosecution to such person who makes truthful and full disclosure of commission of offence.\textsuperscript{103}

\textbf{3.4.1.2 \textit{Maharashtra Control of Organized Crime Act, 1999}\textsuperscript{104}}

The existing legal framework i.e. the penal and procedural laws and the adjudicatory system were found to be rather inadequate to curb or control the menace of organized crime. Government of Maharashtra, therefore, decided to enact a special law, \textit{Maharashtra Control of Organized Crime Act, 1999} (Herein after referred as MCOCA)

\textsuperscript{91} Section 37 of \textit{The Narcotic Drugs and Psychotropic Substances Act, 1985}.
\textsuperscript{92} Sections 4 to 9., \textit{Ibid.}.
\textsuperscript{93} Section 73., \textit{Ibid.}.
\textsuperscript{94} Sections 42 and 49., \textit{Ibid.}.
\textsuperscript{95} Sections 15 to 25., \textit{Ibid.}.
\textsuperscript{96} Section 31., \textit{Ibid.}.
\textsuperscript{97} Section 35., \textit{Ibid.}.
\textsuperscript{98} Section 35(2), \textit{Ibid.}.
\textsuperscript{99} Section 36., \textit{Ibid.}.
\textsuperscript{100} Act no II of 1974.
\textsuperscript{101} Section 33 of \textit{the Narcotic Drugs and Psychotropic Substances Act, 1985}.
\textsuperscript{102} Section 54., \textit{Ibid.}.
\textsuperscript{103} Section 64., \textit{Ibid.}.
\textsuperscript{104} Maharashtra Act No 30 of 1999.
with stringent and deterrent provisions including in certain circumstances power to intercept wire, electronic or oral communication to control the menace of the organized crime. The Act has defined the “continuing unlawful activity”, “organized crime” and “organized syndicate crime,”\textsuperscript{105} and has prescribed minimum mandatory punishments.\textsuperscript{106} The Act has provided for a special court that has power to try other offences connected with organized offence in the same trial, further it is empowered to punish for other offences committed by the accused in the same trial.\textsuperscript{107} The special court has authority to try the offences summarily.\textsuperscript{108} Trials by special court shall have precedence over the trial of accused under any other law.\textsuperscript{109} Police officer not the below the rank of Superintendent of Police who is supervising the investigation, has the power of interception of wire, electronic, and oral communication.\textsuperscript{110} Confessions before police are made admissible.\textsuperscript{111} The Act has provided protection to the witness.\textsuperscript{112} The Act has denied the anticipatory bail to accused and grant of regular bail is subjected to stringent conditions.\textsuperscript{113} The Act has special rule of evidence of taking note of accused’s previous convictions under this Act and detention under any other law.\textsuperscript{114} Accused’s property would be forfeited on his conviction.\textsuperscript{115} The Act provides for detention of accused for 30 and 90 days in police and

\textsuperscript{105} Section 2(d), (e), and (f) of the Maharashtra Control of Organized Crime Act, 1999.
\textsuperscript{106} Sections 3 and 4., Ibid.
\textsuperscript{107} Section 7., Ibid.
\textsuperscript{108} Section 9(2)., Ibid.
\textsuperscript{109} Section 10., Ibid.
\textsuperscript{110} Section 14., Ibid.
\textsuperscript{111} Section 18., Ibid.
\textsuperscript{112} Section 19., Ibid.
\textsuperscript{113} Sections 21(3), (4), (5)., Ibid.
\textsuperscript{114} Section 18., Ibid.
\textsuperscript{115} Section 20., Ibid.
judicial custody respectively. The Act has overriding effect over other legislations in case of conflict.\textsuperscript{116}

### 3.4.1.3 The Karnataka Control of Organized Crimes Act, 2000 \textsuperscript{117}

The object of the \textit{Karnataka Control of Organized Crimes Act, 2000} (herein after referred as KCOCA) is to make special provisions for prevention and control of criminal activities carried by organized crime syndicates or gangs. The legal frame of KCOCA is similar to MCOCA. The Act has defined “organized crime”, “organized crime syndicate”, and “continuing unlawful activity”.\textsuperscript{118} It has prescribed the minimum mandatory punishments for the offences committed by organized syndicate. It has constituted special courts which have exclusive power to try the offences and any other offences committed by the accused under any other law.\textsuperscript{119} Trial of such offences has precedence over the trial of other offences of the accused.\textsuperscript{120} Police has the power to intercept communications of the gangs which are involved in organized crimes subjected to conditions.\textsuperscript{121}

The Act has special rule of evidence of taking note of accused’s previous convictions under this Act and detention under any other law.\textsuperscript{122} Confession made by the accused before police authority is admissible.\textsuperscript{123} A witness who deposes before the special court would be given protection.\textsuperscript{124} Accused’s property would be forfeited on his

\textsuperscript{116} Section 25., \textit{Ibid.}
\textsuperscript{117} Karnataka Act No 1 of 2002.
\textsuperscript{118} Section 2 of the \textit{Karnataka Control of Organized Crimes Act, 2002}.
\textsuperscript{119} Sections 5, 6, and 7., \textit{Ibid.}
\textsuperscript{120} Section 10., \textit{Ibid.}
\textsuperscript{121} Section 14., \textit{Ibid.}
\textsuperscript{122} Section 18., \textit{Ibid.}
\textsuperscript{123} Section 19., \textit{Ibid.}
\textsuperscript{124} Section 20., \textit{Ibid.}
convection.\textsuperscript{125} Pre-charge detention period for police and judicial custody would be 30 and 90 days respectively.\textsuperscript{126} The accused is denied of the privilege of anticipatory bail and grant of regular bail is made subjected to stringent conditions.\textsuperscript{127} The Act has made the presumption of offence where the public prosecutor proves that unlawful arms and other material seized from the accused has been used for the commission offence or finger prints of the accused are found at the site of offence or on the material used for the commission of offences.\textsuperscript{128}

\textbf{3.4.1.4 The Andhra Pradesh Control of Organized Crime Act, 2001} \textsuperscript{129}

The object of the Andhra Pradesh Control of Organized Crime Act, 2001 (herein after referred as ACOCA) is to make special provisions for prevention and control of criminal activity carried by organized crime syndicates or gangs. The legal frame of ACOCA is similar to MCOCA. The Act has defined the “organized crime”, “organized crime syndicate”, and “continuing unlawful activity”.\textsuperscript{130} It has prescribed the minimum mandatory punishments for the offences committed by organized syndicates.\textsuperscript{131} It has constituted special courts which have exclusive powers to try the offences and any other offences committed by the accused under any other law.\textsuperscript{132} Trial of such offences has precedence over the trial of other offences of the accused.\textsuperscript{133} Police has the power to intercept the communication of the gangs which are involved in the organized crimes.

\begin{footnotes}
\footnotetext{125}{Section 21., \textit{Ibid}.}
\footnotetext{126}{Section 22(2) (b), \textit{Ibid}.}
\footnotetext{127}{Sections 22 (4), (5), and (6), \textit{Ibid}.}
\footnotetext{128}{Section 23., \textit{Ibid}.}
\footnotetext{129}{Andhra Pradesh Act No 42 of 2001.}
\footnotetext{130}{Section 2 of the Andhra Pradesh Control of Organized Crime Act, 2001.}
\footnotetext{131}{Section 3., \textit{Ibid}.}
\footnotetext{132}{Section 5., \textit{Ibid}.}
\footnotetext{133}{Section 10., \textit{Ibid}.}
\end{footnotes}
subjected to conditions. 134 Act has special rule of evidence of taking note of accused’s previous convictions under this Act and detention under any other law. 135 Confession made before police authority is admissible. 136 Witnesses who depose before the special court would be given protection. 137 The accused’s property would be forfeited on his conviction. 138 The accused’s pre-charge detention period for police and judicial custody would be 30 and 90 days respectively. 139 The accused is denied of privilege of anticipatory bail and grant of regular bail is made subjected to stringent conditions. 140 Act has provided for presumption of offence where the public prosecutor proves that unlawful arms and other material seized from the accused have been used for the commission offence or finger prints of the accused are found at the site of offence or on the material used for the commission of offences. 141

3.4.2 Special Courts

When the common person is anxiously concerned about expedient justice, mounting arrears of cases in the courts come as stumbling block. Docket explosion is the biggest crises of Indian Judiciary. Therefore, establishment of special courts to try the socio-economic offences is imperative. Another object of creation of special courts is that they would facilitate the judges to acquire expertise and knowledge of special feature of socio-economic offences. Such cases should be assigned only to one particular judge in an area, so that he may develop the expertise necessary for the purpose, also acquires

134 Section 14., Ibid.
135 Section 17., Ibid.
136 Section 18., Ibid.
137 Section 19., Ibid.
138 Section 20., Ibid.
139 Section 21 (2) (a)., Ibid.
140 Sections 21 (3), (4), (5), (6)., Ibid.
141 Section 22., Ibid.
familiarity with the special features of these offences.\textsuperscript{142} The administration and enforcement of these offences requires much more than knowledge of general criminal law and its procedure. It pre-supposes an acquaintance with some of nuisance, a grasp in depth of the under current of the world of racketeers and other special features of organized crimes. Some of the special enactments have made provision for establishment of special courts to try the offences.\textsuperscript{143}

3.4.3 Presumption of \textit{Mens rea}

Existence of guilty mind is an essential ingredient of crime at Common Law and the principle is expressed in the maximum “\textit{Actus non facit reum nisi mens sit rea}.”\textsuperscript{144} Criminal laws are to be so constructed as no man that is innocent or free from injury or wrong, be by a literal construction punished or undamaged.\textsuperscript{145} The legislation may, however create an offence of strict liability where \textit{mens rea} is dispensed with. Strict liability is the act for which a man is responsible irrespective of the existence of either wrongful intent or negligence. Strict liability implies legal responsibility despite the lack of \textit{mens rea}.\textsuperscript{146} It is plain that if guilty knowledge is not necessary, no care on the part of the defendant could save him from sanction.\textsuperscript{147}

Two arguments are advanced predominantly in justification of strict liability in public welfare offences. Firstly, it is argued that protection of social interest requires a

\begin{itemize}
\item \textsuperscript{142} \textit{Supra} note 46., at 15.
\item \textsuperscript{144} \textit{Director of Public Prosecution v. Majewski}, (1976) 2 All ER 142.
\item \textsuperscript{145} Glanville Williams, \textit{op. cit.}, p.929.
\item \textsuperscript{146} Jerome Hall, \textit{op. cit.}, p.280.
\item \textsuperscript{147} \textit{Sherras v. Derutzen}, (1895) 1 Q.B. 918.
\end{itemize}
high standard of care and attention on the part of those who follow certain pursuits and such persons are more likely to be stimulated to maintain those standards if they know that ignorance or mistake will not excuse them.\textsuperscript{148} This encourages greater safety and improved standards of prevention, thereby offering the public better protection from the risks inherent in particular activities. Secondly, it relieves the prosecution of the difficult task of proving \textit{mens rea} and thus improves the administrative efficiency. It is contended that it is an efficient way of ensuring compliance with regulatory legislation when the social ends to be achieved are of such importance as to override the unfortunate by product of punishing those who may be free of moral turpitude.\textsuperscript{149}

Strict liability has expanded so considerably in recent years and in such various forms that it is impossible to define it. Quite apart from the diverse major crimes that have been brought within this sphere. Strict liability is the product of modern legislative policy and not of traditional morality. In other words, it is a matter of \textit{malum prohibitum} rather than \textit{malum in se}. \textit{Mala in se} are universally recognized as wrongs of ethics.\textsuperscript{150} \textit{Malum prohibitum} are sometime called “quasi-criminal offences” - offences that are regarded as “not criminal in any real sense, but acts which in the public interest are prohibited under penalty.”\textsuperscript{151} It is sometimes argued that strict liability offences are instances of petty offences and are not immoral. They are merely conventional wrongs because they are prohibited by the positive law. Another justification for strict liability is, it increases care and efficiency, even by those who are already careful and efficient. Knowing about strict liability, they will take precautionary measures beyond what they

\textsuperscript{149} Ibid.
\textsuperscript{150} Supra note 146., at 296.
\textsuperscript{151} Supra note 145., at.936.
would otherwise employ. The objective is unassailable, the sanctions are not too harsh in many wrongs, and there is no actual occasion for concern even though the innocent persons are occasionally convicted, hence criticism of strict liability from the viewpoint of the fundamental principles of penal law is merely academic.\textsuperscript{152}

The defendant is presumed to be innocent and so the onus of proving every part of the case is on the prosecution. Therefore, the prisoner in the dock may remain silent and has the right not be questioned to fill the gaps in the prosecution evidence.\textsuperscript{153} The so called strict liability existed solely on practical grounds. An important clue to what is actually the principal support for strict liability is provided by the fact that, from the very beginning of the public welfare offences to the present time, there has been an unvarying insistence on the difficulty of proving \textit{mens rea}.\textsuperscript{154} Therefore, the strict liability in criminal law remains open to serious objection that innocent person is likely to be convicted. The difficulty of proving intention or negligence could be met simply by allowing the defendant to shoulder the burden of proving his innocence. The defendant need not be convicted if he positively proves that he is not at fault.\textsuperscript{155} In this event, it would be neither for him to show that he acted intentionally nor through negligence.

The device of rebuttable presumption that harm was done intentionally or negligently would mitigate the hardship and facilitate the adoption of necessary reformation in the strict liability.\textsuperscript{156} The Supreme Court has held that the presumption of innocence being human right cannot be thrown aside, but it has to be applied subject to exceptions. In reverse presumptions, initial burden exists upon the prosecution and only

\begin{itemize}
\item\textsuperscript{152} Jerome Hall, \textit{op. cit.}, p 300.
\item\textsuperscript{153} Krishna Iyer, V.R. \textit{op. cit.}, p.72.
\item\textsuperscript{154} Jerome Hall, \textit{op. cit.}, p. 305.
\item\textsuperscript{155} Glanville Williams, \textit{op. cit.}, p.936.
\item\textsuperscript{156} Jerome Hall, \textit{op. cit.}, p.310.
\end{itemize}
when it stands satisfied, the legal burden would shift and standard of proof required to be proved is not as high as of prosecution, therefore principle of reverse presumption is not violation of Article 21 of Indian Constitution.\textsuperscript{157} The Law Commission of India has recommended that the burden of proof of disproving \textit{mens rea} should be shifted on the accused.\textsuperscript{158} It has observed:

"After very careful considerations we have come to conclusion that the social interest in the prosecution and conviction of those guilty of anti-social acts would be protected by the amendment which we propose. At the same time the substantive provision would not in its formulation be so unreasonable as to attract the culpability (and consequently to impose punishments) where there is no intention to evade its provision and no want of reasonable care".\textsuperscript{159}

Chief Justice Cooley of U.S. has said:

"I agree that as rule there can be no crime without a criminal intent: but this is not by any means a universal rule.... Many statutes which are in the nature of police regulation, as this, impose criminal penalties irrespective of any intent of violate them: the purpose being to require a of degree of diligence for the protection of the public which shall render violation impossible".\textsuperscript{160}

Even House of Lords supported the doctrine and noticed that “the duty of prosecution to prove the prisoner’s guilt is subject to the defense of insanity and statutory exceptions”.\textsuperscript{161} Naturally, this useful logical device is incorporated in various socio-economic legislations. Followings are the enactments, which have made the presumption of \textit{mens rea}.

1. Section 30 of \textit{the Protection of Children from Sexual Offences Act, 2012}.\textsuperscript{162}

2. Section 20 of \textit{the Prevention of Terrorism Act, 2002}.\textsuperscript{163}

\textsuperscript{158} \textit{Supra} note 47., at 13.
\textsuperscript{159} \textit{Ibid}.
\textsuperscript{161} \textit{Woolmington v. D.P.P.}, (1935) AC 462 (HL).
\textsuperscript{162} Act No 32 of 2012.
\textsuperscript{163} Act No 15 of 2002.
3. Section 68 of the Standard of Weight and Measurement Act, 1976.\textsuperscript{164}

4. Section 10(C) of the Essential Commodities Act, 1955.\textsuperscript{165}

5. Section 138-A (1) of the Custom Act, 1962.\textsuperscript{166}

6. Section 35(1) of the NDPS Act.\textsuperscript{167}

7. Section 9-C (1) of the Central Exercise and Salt Act, 1944.\textsuperscript{168}

\subsection*{3.4.4 Presumption of Commission of Offence}

The effect of a presumption is that a party in whose favor a fact is presumed is relieved of the initial burden of proof. Presumptions are the result of human experience and reason as applied to the course of nature and the ordinary flow of life. If a man and woman are found alone in suspicious circumstances the law presumes that they were not there to say their prayers and the divorce laws would take this as evidence of adultery. They are the result of legal reasoning, in its application to particular subjects. Presumptions are aids to the reasoning and argumentation, which assume the truth of certain matters for the purpose of some given enquiry. Presumptions are based on the general experience or probability of any kind or merely on policy or convenience.\textsuperscript{169}

Presumptions are of either law or fact. Presumptions of law are arbitrary consequences expressly annexed by law to particular facts. In some cases, it is difficult for authority to find or discover the evidence against the act of the accused because it might happen behind the closed doors. The people who have seen the act may not depose before the authority because the accused happened to be close relative, this is more true

\begin{footnotesize}
\begin{enumerate}
\item Act No 60 of 1976.
\item Act No 10 of 1955.
\item Act No 52 of 1962.
\item Act No 61 of 1985.
\item Act No 1 of 1944.
\end{enumerate}
\end{footnotesize}
in case of socio-economic offences. These things make hard for the authority to prove the act of the accused beyond reasonable doubt, which would result in the acquittal of the accused. There are certain provisions in law, which presume that the deed is committed by the accused unless contrary is proved. Under such circumstances, the burden of proof shifts to the accused to prove that the alleged act is not done by him. The following laws provide for such presumptions:


2. Section, 12, *Protection of Civil Rights Act*, 1955.\(^\text{171}\)

3. Sections, 3(2-A) and 6(3), *the Immoral Traffic (Prevention) Act*, 1956.\(^\text{172}\)

4. Sections, 59 and 72, *the Foreign Exchange Regulation Act*, 1973.\(^\text{173}\)

5. Sections, 8(a) and (b), *the Scheduled Castes and Scheduled Tribes (Preventions of Atrocities) Act*, 1989.\(^\text{174}\)

6. Section, 9-C, *the Central Exercise and Salt Act*, 1944.\(^\text{175}\)

7. Section 20(i) and (ii), *the Prevention of Corruption Act*, 1988.\(^\text{176}\)

8. Sections 68(i) and (2), *the Standards of Weights and Measures Act*, 1976.\(^\text{177}\)

9. Section 4, *the Drugs and Cosmetic Act*, 1940.\(^\text{178}\)

10. Sections, 9 and 10, *the Opium Act*, 1878.\(^\text{179}\)

11. Section 20, *Terrorist Affected Areas (Special Courts) Act*, 1984.\(^\text{180}\)

\(^{170}\) Act No 1 of 1872. \\
\(^{171}\) Act No 22 of 1957. \\
\(^{172}\) Act No 104 of 1956. \\
\(^{173}\) Act No 46 of 1973. \\
\(^{174}\) Act No 33 of 1989. \\
\(^{175}\) Act No 1 of 1944. \\
\(^{176}\) Act No 49 of 1988. \\
\(^{177}\) Act No 60 of 1976. \\
\(^{178}\) Act No 23 of 1940. \\
\(^{179}\) Act No 1 of 1878. \\
\(^{180}\) Act No 51 of 1988.

13. Section 21, the *Terrorist and Disruptive Activities (Prevention) Act*, 1987.182

14. Section 53, the *Prevention of Terrorism Act*, 2002.183

15. Section 24, the *Prevention of Money-Laundering Act*, 2002.184


Obviously the next question what is standard or degree of proof required by the defendant to prove his innocence. The view is that there is no rule of general application and it is question of policy and fairness.186 Another golden thread, which runs through the web of the administration of justice in criminal law, is that in case the court entertains reasonable doubt regarding the guilt of the accused, the accused must have the benefit of that doubt.187 Therefore, the burden of proof on the accused is expected to be not beyond the degree of preponderance of probabilities.188 However, the Supreme Court in *Gautham Kundu v. State of West Bengal*189 held that “this presumption can only be displaced by a strong preponderance of evidence and not only by a mere balance of preponderance. Certain legislations have gone one-step further in this matter, and require that the burden of proof on defendant to disprove his guilt is also beyond reasonable doubt and not

---

181 Act No 32 of 2012.
182 Act No 28 of 1987.
183 Act No 15 of 2002.
185 Act No 14 of 2003.
189 (1993) 1 SCC 418.
merely preponderance of probability that is equivalent with burden of proof of prosecutor.  

3.4.5 Provision of Adverse Inferences on Exercise of Right to Silence

Right of silence given to accused coupled with the burden of proof on the prosecution to prove guilt of the accused makes the task of prosecution an onerous one. The guilty man can play hide-and seek with prosecution and practice what has been described as the romance of defense. It cannot be disputed that the accused is good source of information about the commission of the offence. However, unfortunately this source is not fully tapped, probably for the fear of infringing on the accuser’s right to silence. Bentham, a great critic of this rule has said, “[I]t is one of the most pernicious and most irrational notions that ever found its way into the human mind.” Further, he said this rule tended to prevent the enforcement of good laws equally with bad, and thus acted as debilitating upon the whole body of the penal laws. Fali Nariman has said, “It is time that we recognize the right to silence during trial is not really a right, but privilege and although every accused has a right to be presumed innocent till he is proved guilty, in terrorist related and other grave crimes the accused has an obligation to assist the discovery of truth”. Former Chief Justice of India, Ahmadi J., is in favour of drawing an adverse inference on the silence of the accused only in relation to matters, which are within the special knowledge and not in other cases. No one opposes the authorization of prosecution to question the accused in the witness box that does not amount to ill

---

190 Section 10 C (2) of the Essential Commodities Act, 1955, Section 138-A (1) of the Custom Act, 1962, Section 35(2) of the Narcotic Drugs and Psychotropic Substances Act, 1985, Section 9-C(2) of the Central Exercise and Salt Act, 1944, and Section 30(2) of the Protection of Children From Sexual Offences Act, 2012.
191 Glanville Williams, op. cit., p.49.
192 Ibid., at .50.
193 Supra note 45., at 45.
194 Ibid.
treatment of him, moreover he has still the privilege to remain silent and in that case the adverse inference is made out. If this improvement is not made in the criminal law, the risk is that the police would resort to illegal questioning and brutal third degree methods in order to obtain the convictions. Adverse inference should be drawn only where an answer is reasonably expected from the accused and not mechanically in every case. Drawing of adverse inference against the accused on his silence or refusing to answer will not offend the fundamental right guaranteed by Article 20(3) of the Constitution as it does not involve any testimonial compulsion.

3.4.6 Special Powers and Procedures.

Effective prosecution requires effective investigation and effective investigation in its turn requires an array of powers. These powers are dealt with below.

3.4.6.1 Confiscations

Offences involving fraudulent economic gain obviously justify for confiscation of the property so gained. The offenders should not be allowed to retain the profit of criminality. The Section 6(A) of the Essential Commodities Act, 1955 empowers the authorities to confiscate the essential commodities. There are some Acts enacted with specific provisions for confiscation of property.  

3.4.6.2 Search and Seizure

The general powers for search and seizure contained in the Cr.P.C. are restrictive nature. The most compressive perhaps in the group of provisions relating to search and seizure is in the Foreign Exchange Regulation Act, 1947 which confers powers to call for

---

information, to search premises and custody of documents in connected matters.\textsuperscript{196} The NDPS Act also gives power to the authority to search and seize the premises and conveyance used for committing offence without search warrant.\textsuperscript{197} Even the \textit{Prevention of Money-Laundering Act}, 2002 empowers authority to search and seize the places and person without the search warrant.\textsuperscript{198}

3.4.6.3 Shifting the Burden of Proof

Certain special legislations have made special rule of evidence for convictions of offenders. These rules of evidence make the provision for presumption of genuineness of the documents which are seized from accused’s possession.\textsuperscript{199} Section 23 of \textit{The Prevention of Money-Laundering Act}, 2002 makes the presumption that where one transaction of money laundering is true; other connected transactions are presumed to be genuine. Obliviously the burden of proof is on the accused to prove that the documents are not genuine. This facilitates conviction of more offenders.

3.4.6.4 Special Rules of Evidence

Besides the provisions of the presumption of \textit{mens rea}, there are special rules of evidence in respect of many offences. In \textit{Custom Act}, 1962 where the authorities have seized the goods on the reasonable belief that they are smuggled goods, the burden of proof is on the person to prove that they are not smuggled goods. Section 14 of the \textit{Essential Commodities Act}, 1955 provides that where a person has been prosecuted for doing act without license or permit, the burden of proving that he has such license or permit shall be on such person.

\textsuperscript{196} Sections 19 to 19G of the \textit{Foreign Exchange Regulation Act}, 1947.

\textsuperscript{197} Section 42 and 49 of \textit{the Narcotic Drugs and Psychotropic Substances Act}, 1985.

\textsuperscript{198} Section 16, 17, and 18 of \textit{the Prevention of Money-Laundering Act}, 2002.

3.4.6.5 Confession

The term ‘confession’ in the earlier usage, is a plea of guilty. A confession is an acknowledgement in express words, by the accused in a criminal case, of the truth of the guilty fact charged or of some essential part of it.\(^{200}\) A confession may occur in any form, either judicial or extra-judicial confession. Confession is highest order of evidence; no innocent man can be supposed ordinarily to be willing to risk life, liberty, or property by a false confession.\(^{201}\) However, the *Indian Evidence Act*, 1872 makes the confession of the accused before the police authority unacceptable even though it is voluntary because police are unworthy to be believed by considering their nature of brutality.\(^{202}\) Time has changed, there is demand that the accused is having primary source of information of commission of offences because it is he who committed the offences that needs to be explored. Recently enacted legislations have made provisions for admissibility of voluntary confession made by the accused before higher authority.\(^{203}\) This has to a great extent helped the authority to secure more information from accused and lessens their burden of proving facts before the courts and provided a better means to secure the higher convictions of accused.

3.4.6.6 Bail Provisions Are Stringently Regulated

The object of arrest and detention of the accused person is primarily to secure his appearance at the time of trial and to ensure that in case he is found guilty, he is available to receive the sentences. If his presence at the trial could be reasonably ensured otherwise

\(^{201}\) Ibid., at 826.
\(^{202}\) Section 25 and 26 of the *Indian Evidence Act*, 1872.
than by his arrest and detention, it would be unjust and unfair to deprive accused person’s liberty during trial period. The basic rule may perhaps be tersely put as bail, not jail, except where there are circumstances suggestive of fleeing from justice or thwarting the course of justice of creating other troubles in the shape of repeating offences or intimidating witnesses. Most of the accused abuse the provisions of bail, come out of jail and peruse their illegal activity without much hindrance and threaten the prosecution witness to become hostile. This makes mockery of the criminal justice system. Courts must take into consideration the gravity of offence committed by accused which is likely to induce the petitioner to avoid the course of justice, so also the heinousness of the crime, and history of the accused when he was on the bail while considering the bail application. The list is not exhaustive but only illustrative.

The legislations dealing with heinous crimes put stringent conditions on accused to get bail, in additions to the general conditions under the Cr.P.C. Certain special legislations refuse to grant anticipatory bail to accused by considering the nature of offence in which they involved. The bail would not be given without public prosecutor being heard and unless the court is satisfied that there are no reasonable grounds to believe that the accused is not guilty of such offence and he is not likely to commit offence while on the bail. The burden of proof is on the accused to prove that he is not guilty of the offence and would not commit an offence while on the bail. It becomes very difficult for

---

205 Section 15(4) of the Terrorist Affected Areas (Special Courts) Act, 1984, Section 17(4) of Terrorist and Disruptive Activities (Prevention) Act, 1985, Section 20 (7) of the Terrorist and Disruptive Activities (Prevention) Act, 1987, Section 49(5) of the Prevention of Terrorism Act, 2002, Section 21(3) of Maharashtra Control of Organized Crime Act, 1999.
hardcore criminals to prove these factors. Obviously accused would be behind the bar till the completion of trial which in turn directly or indirectly helps authority to carry the investigation without much hindrance and assures protection to witnesses who are likely to depose against such accused. Further, the MCOCA imposes another condition that the accused would not be given bail if he has committed any offence while he is on bail under this or any other law.207

3.4.6.7 Extension of Detention Period

Where investigation of offence cannot be completed in 24 hours, the detention of accused can go up to 15 days for police custody as per Cr.P.C. Thereafter if the Magistrate is satisfied that there exist adequate grounds for extension of detention period, he may extend period for ninety days where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term not less than ten year, in other cases sixty days.208 These detention periods may be adequate for completion of investigation for ordinary crimes but equally inadequate for offences like organized crimes and terrorist acts. These are the offences committed by highly trained professionals, by using latest technology, weapons and communications, and does not have limitation of borders of any nation. Naturally multi-disciplinary investigation approach is imperative for these offences to collect the evidence to prosecute the offenders which requires more time to complete the investigations. Indeed special legislations related to organized crime and terrorist provide more time to complete the investigation.209

207 Section 21(5) of the Maharashtra Control of Organized Crime Act, 1999.
208 Section 167(2) (a) of the Code of Criminal Procedure 1973.
209 Section 21(2) (a) of Maharashtra Control of Organized Crime Act, 1999 states that fifteen days and sixty days under section 167(2) (a) of the Code of Criminal Procedure, 1973 is replaced by 30 and 90 days
3.4.7 Special Authorities and Proceedings

The socio-economic offences, organized crimes and terrorism crime are too complex and technical. They need special knowledge on the part of investigating authorities. In case of food adulteration, drug adulteration, evasion of income tax and other taxes, investigating authority must have the special skill, knowledge and experience of about that subject and transactions. Generally, every special enactment of socio-economic offences makes the provision of special enforcement authority.

The socio-economic offences outnumber the conventional crimes. In the beginning of 2010, 91,51,280 (including arrears) cases of socio-economic offences were pending before various courts across the nation, where as the pendency of traditional crimes was 85, 49,655. These special offences require speedy trial. Therefore, these cases are tried by different proceedings like; offences are cognizable, non-bailable, summary trial, finality of the tribunal decision, and restricting the right to make appeal. Further, the trial of the accused is given priority under the special law than the trial under other laws. The provisions of special laws have overriding effect on other legislations in case of conflict. That means, offences of more serious nature need to be dealt with speedily, stringently and any inconsistency with other legislations should be ignored.

---

respectively. Section 15 of the Terrorist Affected Areas (Special Courts) Act, 1984 replaces the word with “thirty days”, “one year”, and “one year” respectively, Section 17(2) (b) of the Terrorist and Disruptive Activities (Prevention) Act, 1985 replaces the word “ sixty day”, “one year” and “one year” respectively. Section 20(4) (b) of Terrorist and Disruptive Activities (Prevention) Act, 1987 incorporates the same period, Section 49 (2) (a) of the Prevention of Terrorism Act, 2002, uses the words “thirty days”, “ninety days”, and “ninety days” respectively but detention period can be extended with permission of court up to one hundred eighty days.


Section14 of the Terrorist and Disruptive Activities (Prevention) Act, 1985, Section 17 of the Terrorist and Disruptive Activities (Prevention) Act, 198, and Section 31 of the Prevention of Terrorism Act, 2002.

Section 16 of the Terrorist Affected Areas (Special Courts) Act, 1984, Section 22 of Terrorist and Disruptive Activities (Prevention) Act, 1985, Section 2 of Terrorist and Disruptive Activities (Prevention) Act, 1987, Section 56 of the Prevention of Terrorism Act, 2002, Section 20 of The Schedule Caste and the
the end of 2010, out of 91,51,280 cases of socio-economic offences, 44,35,733 cases were disposed of and disposal percentage was around 50. In case of traditional crimes, out of 85, 49,655 only 11,41,031 cases were disposed off and disposal percentage is mere 13. This data’s virtually proves that special means adopted in handling the socio-economic offences have paid rich dividends and justify themselves.

**3.4.8 Minimum Mandatory Punishment**

“Punishment should be inflicted on those who violate any rule of conduct. If any offender goes unpunished, the guilt falls upon the King and the priest who are enjoined to practice some penances”. Utilitarian believes, the punishment is a means to an end but not an end itself. Deterrent punishment seeks to punish offenders to discourage or deter future wrongdoing. The whole object of punishment is to send message to the accused as well as to the society that crime does not pay. Punishment must be severe enough to act as a deterrent but not too severe to be brutal. Similarly punishments should be moderate enough to be human but cannot be too moderate to be ineffective. The role of legislation in Indian sentencing law is thus essentially one providing powers and laying down the outer limits of their use.

While drafting the *Indian Penal Code*, Lord Macaulay in his own wisdom, preferred the gradation or the fixation of maximum sentences in a number of offences, so that judges while scrutinizing particular facts and circumstances in a given case would be in a position to award appropriate sentence to the guilty person. It would seem to indicate

---


214 Vasishta, Ch-XIX, p. 40-43.


217 *Supra* note 45., at.169.
that the policy of the law generally is to fix a maximum penalty, which is intended only for the extreme cases. The determination of appropriate punishment in a particular case has always been left to the court for the weighty reason that no two cases would ever be like, and the circumstances under which the offence was committed and the moral turpitude attaching to it would be matters within the special knowledge.\textsuperscript{218} Nevertheless, there are no guidelines to the judges about selecting the most appropriate sentences. Each judge exercises discretion according to his own judgment. Some times courts are unduly harsh while at other times they are liberal. Therefore there is lack of uniformity in the quantum of punishment given by different courts for similar offences.\textsuperscript{219}

The present day sentencing scenario unveils, quite conspicuously, the relentless efforts of the legislature, to interfere with sentencing discretion of the courts, particularly, by introducing minimum mandatory sentences. The sentencing judges are left with no discretion, except to award the mandatory sentences that induces them to indulge in a mechanical process. The minimum mandatory punishment provisions curb the adjudicating authority the maximum freedom to impose sentences based upon the gravity of the crime and the personality of the accused person. The introduction of minimum sentence in the ambit of penology jurisprudence is relatively of much recent origin. Of late, there is an increasing tendency shown by the legislature towards prescribing a minimum sentence. This tendency appears to be not only confined to socio-economic offences but also to other traditional offences. The principal reason for the shift in the policy appears to be that courts seldom award sentences which would have a deterrent


\textsuperscript{219} In \textit{Rameshwar Dayal v. State of U.P.}, (1971) 3 SCC 924. The Supreme Court noticed that two different cases where on identical facts the punishment in one case was four year’s imprisonment and in the other three months.
effect, particularly in certain types of offences that are necessarily to be dealt with sternly in the interest of the society. If a minimum sentence were to be prescribed for certain offence or class of offences, the award of nearly needed deterrent punishment would be assured in these cases.

In cases where the statute prescribes mandatory minimum sentence, the court is left no discretion except to impose the minimum sentence prescribed. The following are some of the statutory provisions that provide for mandatory minimum punishments.

1. Section 3 to 6, the Dowry Prohibition Act, 1961.\(^\text{220}\)
2. Section 3 to 7, 7(1-A), 7(2), 7-A and 11, the Protection of Civil Rights Act, 1955.
3. Sections 3-9, the Immoral Traffic (Prevention) Act, 1956.
5. Sections 3(1) and (2), 4 and 5, the Schedule Castes and Schedule Tribes (Prevention of Atrocities) Act, 1989.
7. Section 3(2) and 4(1), the Terrorist and Disruptive Activities (Prevention) Act, 1985.
8. Section 121, 302, 303, 397, and 398 of the Indian Penal Code.

Handing down lenient sentences to guilty individuals has been a problem facing the courts and criminal justice system for very long time. There is complaint that the courts are not awarding adequate punishments for the socio-economic offences, even though imprisonment is awarded the term awarded is not appropriate to the gravity of crime and discretion to award imprisonment below the minimum sentence is improperly

\(^{220}\) Act No 28 of 1961.
exercised. In America, there is an extremely powerful and influential lobby that believes in harsher sentencing policy, since they feel that criminals are getting away too lightly. It is no doubt true that inadequate sentences can do harm to the system. Law must meet the challenges that criminalization offers for, after all, misconceived liberalism cannot be countenanced. “The mood and temper of the public in regard to the treatment of crimes and criminals is one of the most unfailing tests of the civilization of any country” observed Sir Winston Churchill addressing the House of Commons. H.L.A. Hart had admitted that the concept of punishment is problematic to define with degree of accuracy. The Supreme Court of India however, in Ram Narayan’s case stated object of punishment as under:

“The broad object of punishment of an accused found guilty in progressive civilized societies is to impress on the guilty party that commission of crimes does not pay and that is both against his individual interest and also against the larger interest of the society to which he belongs”.

3.5 Conclusion

The adversarial system of Common law is heavily loaded in favour of the accused and is insensitive to the rights of victims and society. Over the years taking advantage of several lacunae in the adversarial system, a large number of criminals are escaping conviction. Unmerited acquittals tend to disregard law, and this in turn leads to a public demand for more severe punishment of those found guilty. An acquittal of dangerous criminal naturally finds new victim. Prof Williams observed, “A miscarriage of justice may arise from the acquittal of the guilty no less than from the conviction of the

221 Supra note 47., at 14.
innocent.” 224 A rule giving excessive protection to an accused person becomes even less defensible as the Criminal Law turns to remedial treatment instead of punishment.

When the very principles evolved for protecting liberty become convenient tools in the hands of the perpetrators of crime; the concept of due process has to undergo changes to respond to the changed crime scenario. What is accepted to be the process due to an accused during one time may seem to be a luxury accorded to him in a different time. It is therefore necessary to strengthen the adversarial system by adopting suitable modification. Mahesh Chandra quotes Sayre’s observation that “all Criminal Law is a compromise between two fundamentally conflicting interests -that of the public which demands restraints of all who injure or menace the social wellbeing and that of the individual which demands maximum liberty and freedom from interference”. 225 The history of criminal law shows a constant swinging of the pendulum to favor now the one, now the other of the opposing interests. Presently there is a constantly enlarging corpus of rules in favor of protection of the rights of the accused in the criminal justice system and growing burden on the police. No one can question the fact that human rights of the accused are to be respected. At the same time, the existing criminal legal regime is to be suitably amended, incorporating the elements of new criminal jurisprudence to curb the criminal elements in the interest of the well-being of the society.

Society has to reverse the common law notion of criminal justice that “it is better that a hundred of the guilty should escape than that one innocent person should perish.” 226 The security of innocence may be complete without favoring the impunity of

---

224 Glanville Williams, op. cit., p.189.
225 Mahesh Chandra, op. cit., p.110.
226 Jeremy Bentham, op. cit., p.258.
crime. Every escape of such culprit threatens the public security and exposes the innocence to become the victim of a new offence. Every precaution, which is not absolutely for the protection of innocence, affords a dangerous lurking-place to crime. It is an accepted principle of the accusatorial system that the prosecution should substantiate the charges against the defendant beyond reasonable doubt. The penal law makes intent, knowledge, and degree of negligence an ingredient of the offence. Nevertheless, wherever the social necessity demands, from the angle of public welfare or because of difficulty of proof of the accused’s mental state, it may permit the dispensing with or displacing of the onus of proof of mens rea. The policy of penal law, even as it decides the degree of mens rea required in specific cases, also chooses to exclude mens rea altogether or to put the burden of proof of innocent mind on the accused. It is a policy, not principle. In case of right to silence, the straightforward system would oblige the accused to speak, and towards that end, modify the law without deprivation of immunity from self-incrimination. There is much to commend the continental practice in certain categories of crime where the nature of the criminal episode strongly suggests the need for the accused to disclose his story if he is not to be held guilty. The crux of the matter is that immunity from being questioned as a rule from its nature can protect the guilty only. Innocence never takes advantage of it; innocence claims the right of speaking, as guilt invokes the privilege of silence. Bentham said “if it is wished to protect the accused against punishment, it can be done at once, and with perfect efficacy,

\[227\] Ibid.
\[228\] Ibid.
\[229\] Krishna Iyer, V.R., op. cit., p.83.
\[230\] Supra note 224., at 53.
by not allowing any investigation."  

The individual versus society dilemma has to be resolved in a more balanced way; for, no longer will the community accept being left in the cold to keep some criminals warm, therefore adverse inference from the silence of accused is justifiable. Presumptions, which are based on logic, rational and experience, would certainly help in reducing procedural hassles of adjudication of the litigation because these things need not be proved. Thus, it helps in disposing the cases in short time-farmed schedule. Mandatory minimum punishments and deterrent punishments are justified relying on doctrines of Betham who observed that ‘evil of punishment must be made to exceed the advantage of the offence, and “an insufficient punishment is a greater evil than an excess of rigour”’.  

To prevent an offence it is necessary that the repressive motive should be stronger than the seductive motive. Therefore, every aspect of new criminal jurisprudence is justified. 

As discussed, these elements have been already pressed into action under the various laws in India and they have produced the desired results. The National Crime Record Bureau of Home Affairs of India revealed the data for the year 2010.  

The courts have tried 44,35,733 cases of socio-economic offences, out of which 40,70,071, and 3,65,662 resulted into conviction and into acquittals respectively. The conviction rate is 91.8% and acquittal rate merely 8.2%. In case of conventional crimes in 2010, the courts have tried 11,41,031 cases, out of which 4,64,128, and 6,76,093 resulted into conviction and acquittal respectively. The conviction rate is merely 40.7% and acquittal 51.3%. Further, pending rate of cases before various courts of socio-economic offence in

---

231 Ibid.
232 Jeremy Bentham, op. cit., p.200
2010 was 51.4% and in case of conventional crimes it was 84.9%. This leads to the inference that adoption of new criminal jurisprudence is working satisfactorily compared to the situation of earlier period. It is interesting to note that the Justice V.S. Malimath Report on Reforms of Criminal Justice System submitted to the Union Government in March 2003, emphasizes a change in the criminal jurisprudence. The committee has *inter alia* made the following recommendations:

Quest for truth shall be the fundamental duty of every court.

1. Adversarial System should be suitably modified with some good and useful feature of the Inquisitorial System.
2. Draw adverse inference against the accused on his silence or refusal to answer the question put to him.
3. The standard of proof in criminal cases should be higher than ‘preponderance of probabilities and lower than the ‘beyond reasonable doubt’ and i.e. ‘clear’ and ‘convincing’ standard should be followed.
4. Summary proceedings should be made applicable to more categories of criminal cases.
5. Power to seize and confiscate under Criminal Procedure Code be brought on par with Special Laws to deal with the organized crimes.
6. The quantum of fine imposed in the provisions of punishments should be suitable amended to enhance by more than 50 times.

No doubt, it is very difficult to accept changes in the fundamental principles followed over a long period of times. But the justice demands that those changes are to be adopted.