Chapter – II

CONCEPTUAL & THEORETICAL FRAMEWORK
OF SOCIO-ECONOMIC OFFENCES

[A] THE GENESIS OF SOCIO-ECONOMIC OFFENCES

(i) Emergence of Socio-Economic Offences

The Socio-Economic Offences have been incepted since times immemorial, but remained dormant until the beginning of World War II. However, according to Prof. Albert Morris the first paper entitled "Criminal Capitalists" on the subject was presented by Edwin C.Hill before the International Congress on the Prevention and Repression of Crime at London in 1872. Prof, A.Morris himself had drawn the attention of criminologists towards this newer form of criminality in 1934. Nevertheless, the statue of this newer form of criminality was for the first time shaped by a well known criminologist Prof. Edwin H. Sutherland in 1939. Sutherland described these newer crimes as White Collar Crimes.

The two world wars badly affected the whole set-up of our community at large, resulting in the sudden upsurge of many problems. One of the major problems was the scarcity of the essential things and a mounting demand, for them. The people occupied in trade (i.e. businessmen) started to take advantage of the war situation; thereby avarice and rapacity developed among them, which accelerated the growth of the newer form of criminality in a substantial way. For instance, the big business corporations of America — as noticed by Sutherland indulged in the commission of various white collar crimes, which are as follows:
“Promulgating false or misleading advertising, illegal exploitation of employees, mislabelling of goods, violation of weights and measures statutes, conspiring to fix prices, selling adulterated food stuffs and evading corporate taxes etc.”

The present century is well known for the remarkable development in the field of science and technology; simultaneously industry and commerce have also spreaded the wings of revolution all over the world. This Industrial Revolution abruptly changed the entire social, economical and political structure of our society throughout the world, such that people have abandoned the high cultural goals and socially approved techniques of achieving them, because an overwhelming emphasis is made on achieving certain objectives, e.g. political powers, monopolistic control over business and high economic status without due regard to the question of whether they can be achieved by legally approved means or not. Therefore, high ethical standards and moral values were discarded in favour of power, money and material things. Such circumstances have made the environment more conducive for the monstrous growth of the newer form of criminality, particularly in developing countries like India. Thus all sorts of anti-social activities, i.e. frauds, corruption, adulteration of food stuffs, misappropriation and misrepresentations are now carried on a large scale by the persons of upper and middle socio-economic class in the course of their trade, commerce, industry and other professions as well.

The policy of Laissez-faire or non-interference of the State in the material pursuits of the individuals and associations created an atmosphere of extreme business competitiveness for monopolistic advantages; which resulted in the multiplicity of the socio-economic
offences beyond recognition, specially in the industrial countries. Thus unbridled capitalism posed a serious threat to the social welfare.

However, the State in its turn did no longer remain a silent spectator to the victimization and sufferings of the general masses. It began to realize the dangers inherent in unrestricted capitalism, so the governments in different countries decided to come out with welfare schemes for improving the living standards of the common masses and bringing about social and economic justice in the society by putting an effective check on the nefarious activities (socio-economic offences) of many categories of anti-social elements so as to preserve the morality, and protect the public health, and material welfare of the community as a whole.

Today, the State being a Welfare State tends to control a vast number of means of production and distribution of goods and material services, etc. Therefore the activities of the State multiplied to a greater extent. But unfortunately the heavy responsibility of the State over burdened its administration, which led to the inefficient functioning of the governmental machinery. In addition to the above, some incompetent, dishonest and inscrupulous persons made their way into various public services. Both the aforesaid factors became fertile grounds for the expansion of socio-economic offences, e.g. bribery, corruption, favouritism and nepotism in public services and among persons in high authority, Trafficking in licences, permits and quotas, embezzlement, misappropriation and frauds relating to public property, and violation of specifications in public contracts, etc.

Besides the fields of socio-economic offences mentioned above, there are many other areas where new offences are emerging in menacing
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proportions such as smuggling and violations of foreign exchange regulation, under-invoicing, over-invoicing, black marketing and hoarding, profiteering, racketeering, share pushing, tax evasion, adulteration of drugs and cosmetics, narcotic drugs peddling, and many other violations by men in legal profession.

The Medical Profession is well known for the service of mankind. And perhaps till recently, the criminality in this profession was either little or negligible. But today the newer form of criminality has taken roots in this profession too, such as:

“Illegal sale of alcohol and narcotics, abortions (illegal), illegal services to under world criminals, fraudulent reports and testimony in accident cases, fraud in income tax returns, extreme cases of unnecessary treatment and surgical operations, fake specialists, restriction of competition, and fee splitting.”

Thus slowly and gradually, the socio-economic criminality has spreaded its wings all over the world and has become today a large phenomenon of anti-social activities, which endanger the morality, public health and material welfare of the community at large.

(ii) Emergence of Socio-Economic Offences in India

By turning the pages of History, it is learnt that India was the land of believers, where trust, honesty, truth and benevolence were prevailing in the processes of life, and decision making policy. But after the British emerged victorious in the war of succession to the Mughal rule, adverse changes began to appear in the social and economic structure of this country. In 1717 the Mughal Emperor issued a ‘Royal’ farman, which granted the freedom to East India Company to import and export its
goods in Bengal without paying taxes. That farman also gave a right to
the company for issuing dastaks (passes) for the movement of its goods.
This farman provided conducive circumstances for the servants of the
British company to commit economic offences. Bipan Chandra observes:

“...the power to issue dastaks(Passes) for the company's
goods was misused by the company's servants to evade taxes
on their private trade.”

In this way the newer form of criminality emerged in India, and the
socio-economic offences gradually started to develop. It is more evident
from the statement made by Lord Clive:

“I shall only say that such a sense of anarchy, confusion,
bribery, corruption and extortion was never seen or heard of
in any country but Bengal; nor such and so many fortunes
acquired in so unjust and rapacious a manner...”

With the passage of time the East India Company in the pretext of
business establishment, acquired political powers, and greater the power
acquired, higher the degree of greed and rapacity in the area of "business
developed, and a time came when the emperors had no powers to fight
against the newer form of criminality committed by the company and its
servants in this country. Ultimately the high moral standards of Indian
social and economic setup degenerated absolutely.

The second phase of socio-economic offences started with the
freedom and partition of India. At the time, when India won freedom, it
was suffering from the scarcity of everything including an administrative
machinery, because when the Britishers left India it was too difficult to
setup immediately an efficient and honest administrative machinery.
Further because of partition the crowd of Hindu refugees reached India
from Pakistan. It created economic problem and social disorganization. In this way the commerce and social structure of India was hit badly. All these causes paved a fertile ground for the wide spread of Socio-Economic Offences in India. The third phase came through rapid industrial development and urbanization, where socio-economic offences got much more chance for their growth and development. Thus for knowing the extent of the emergence of socio-economic offences in this country, it is required to make a reference to the list prepared for socio-economic offences by the Santhanam Committee though the list is not comprehensive. The categories of socio-economic offences noted by that committee are as follows:

...Such offences may broadly be classified into: (1) offences calculated to prevent or obstruct the economic development of the country and endanger its economic health; (2) Evasion and avoidance of taxes lawfully imposed; (3) Misuse of their position by public servants in making of contracts and disposal of public property, issue of licenses and permits and similar other matters; (4) Delivery by individuals and industrial and commercial undertakings of goods not in accordance with agreed specifications in fulfilment of contracts entered into with public authorities; (5) Profiteering, black marketing and hoarding; (6) Adulteration of food stuffe and drugs; (7) Theft and misappropriation of public property and funds; and (8) Trafficking in licenses and permits etc.  

Besides the above offences there are many others e.g. smuggling, violation of foreign exchange regulation, bank frauds, offences in medical and legal profession and corruption in politics, etc.
The legal history of India has many ups and down. During the time of Mughal Emperors Muslim law was implemented in India, which was administered by Kazis courts. The Holy Quran was the primary source of both civil and criminal law. However, there was no uniform system of law even after Britishers came to India, until 1862.

Sometime after 1840, the first Law Commission of India was appointed under the stewardship of Lord Macaulay, who submitted a piecemeal report, which was finally passed by the Legislative Council on October 6, 1860. Thereby Indian Penal Code XLV of 1860 came into operation on the 1st day of January, 1862. And Cr. P.C. was passed in 1898.

Thus Indian Penal Code, is the first law containing some provisions for curbing socio-economic offences. However, the Santhanam Committee declared that IPC in day-to-day context of socio-economic offences cannot operate in any satisfactory manner.8

After the first quarter of nineteenth century other statutes for combating with Socio-Economic Offences were made in India, particularly after independence many statutes were passed and amendments were made. The Government of India after the appointment of the Santhanam Committee had appointed the Wanchoo Committee on 2nd of March, 1970. The duty of this committee was to focus its attention on the problem of black money which is accumulated through violation of foreign exchange regulation, blackmarketing and hoarding etc. That committee made valuable suggestions for certain amendments in statutes dealing with Socio-Economic Offences. The suggestions of those committees led the Indian legislature to enact more laws, e.g. The Foreign Exchange Regulation Act 1973; The Smuggling and Foreign Exchange
Manipulators Act 1976; The Control of Foreign Exchange and Prevention of Smuggling Act 1974; and Criminal Procedure Code 1973 etc. Similarly Law Commission of India had suggested many changes in the statutes dealing with socio-economic offences, so as to make the punishments more stringent for punishing the socio-economic offenders. Besides the above mentioned Acts, some main enactments which deal with socio-economic offences are as follows:

- The Prevention of Food Adulteration Act.
- The Drugs and Cosmetics Act.
- The Essential Commodities (Amendment) Act.
- The Dowry Prohibition Act.
- The Standard of Weights and Measures Act.
- The Customs Act.
- The Drug (Control) Act.
- The Income Tax Act,
- The Anti-Corruption Laws (Amendment) Act,
- The Indian Penal Code, etc.
[B] WHITE-COLLAR CRIMES

Ross's Typology

The earliest major statement regarding the kinds of behaviour which later came to be classified as white-collar crime was made by an American sociologist, Edward A. Ross (1866-1951)\(^{10}\). However, the initial public use of the term itself was made by his contemporary Edwin H. Sutherland (1883-1950) in his presidential address to the American Sociological Society in 1939\(^{11}\).

Lambroso, the father of criminology believed that, criminals were different physically from normal persons and they had physical characteristics of savage and inferior nature, which gives them atavistic qualities. Criminals in whom atavistic qualities manifested were categorized as "born criminals" the other group known to him were “insane criminals” and the third are "those" Criminaloids, who are persons who commit criminal acts or vicious acts under certain circumstances. There is no physical stigma, nor is there mental aberration. Otherwise than their malicious act, they are quite normal persons\(^{12}\).

It is this third category which was utilized to characterize the class of offenders known as white-collar criminals. He identified the following typical characteristics of criminaloid\(^{26}\).

(1) The key to the criminaloid is not evil impulse, but moral insensibility. They want nothing more than what we all want i.e. money, power, consideration, in a word success. But they are in hurry and they careless as to the means. More often they are consumers of customer - made crime. They are buyers than practitioners of the sin.
Criminaloids are not anti-social by nature. Nonetheless, they are adulterators, rebaters, free booters, and fraud promoters. They receive from the community the credit for the good they did, but not shame of the evil deed they have worked for relentlessly.

The Criminaloids practice a protective mimicry of the good-honest man. They are often to be found in the assemblies of the faithful. They counterfeit good citizen. They are patriotic and party supporters.

The criminaloids play with-the support of his local people as his party members, congregation, against the larger group. Their victim is the weak, consumers, for instance. Their ally is the strongman the politician the official, the paster.

In all criminaloids flourish until such time the growth of morality and law co-jointly overtakes the growth of opportunity. It is of less use to bring law abreast of time if morality lags far behind. Ross concluded by saying "the prophet message, the sage's lesson, the scholar's quest and the poets dream would be sacrificed to the God of Things".

**Sutherland Theme**

Even before Edward A. Ross, Professor Albert Moris has called on people of sense to take note of the danger posed by what he called criminal capitalists. The muckrakers' movement has followed suit since then. What makes Sutherland's contribution unique in this regard is that he was the first criminologist who sought to extend the frontiers of criminologist. Prior to him criminologist were confined themselves to what we now know as traditional crimes.

Demonstrating the fact that crime can be found to exist beyond the focus of popular preconception, Sutherland defined white-collar crime as
"crime committed by a person of respectability and high social status in the course of his occupation\textsuperscript{15}. Later on, however, he seemed to have refined his conceptualization of the white-collar criminal by defining it as "person of the upper socio-economic class who violates the criminal law in the course of his occupational or professional activities\textsuperscript{16}."

Sutherland's definition of white-collar crime, is therefore built upon three overlapping types of, misbehaviours (crimes).

(1) Any crime committed by a person of high status (whether or not it is done in the course of their occupational activities) is represented by the 1\textsuperscript{st} circle.

(2) Those crimes committed on behalf of organizations (by people of any status) is shown in the 2\textsuperscript{nd} circle.

(3) Those crimes committed against organizations (whether or not these are carried out by people working in the same organization, another organization, or none at all) is referred to in the 3\textsuperscript{rd} circle\textsuperscript{17}.

Diagram I

a. *Crimes by high status people*

b. *Crimes for organizations*

c. *Crimes against organizations*

One observes from the diagram (I) that Sutherland's focal point is the intersection of the three circles, which means that his subject matter covers only those people of high status who use organizations to commit crimes for their organizations against worker's, consumers, or other organizations including competitors or even governments. Although he had not represent his findings in this manner, his friends and contenders have both now agreed this is exactly what his typology actually looks like.

Aside from this there can be many other types of typologies sharing one or more the types of behaviours mentioned above or one may introduce new elements from without or drop some factors from within, all the same none of them should be permitted to disturb either the tenet nor the scope of white-collar crimes, as envisaged by Sutherland. This presentation would, therefore, take care of much of the criticism labeled against him.\(^{18}\)

The other point of contention with regard to white-collar crime relates to the question of unit of analysis i.e. the diverse catalogue of behaviours that are subsumed under white-collar crime. This is quite understandable, for this particular category of crime includes truly many different groups and kinds of behaviours and as such the different types of behaviours are not likely to have a common explanation. Nor could they be attributed to certain and definite cause and effect relationship. The criticism, although valid, should not be and is not geared towards annihilating the entire conceptual framework of white-collar crime. Instead it should rather be taken as a suggestion for further research.

Related to this, but some how different criticism is that which pertains to classification of behaviours that are accepted as falling within
the ambit of white-collar crime. Bloch and Geis, for instance have suggested that white-collar crimes committed by (1) individuals (e.g. a lawyer, a doctor etc; (2) employees against their employers (like embezzlers); and (3) by policy makers should not be treated separately. Definitely, the concept of white-collar crime cover wide range of categories of behaviours, but the problems associated with modes of classification, although to a degree attributable to the originator, Sutherland himself, again they point more to lack of adequate research and writings towards further clarifying the concept and other concomitant issues than to weakness. To date, it remains uncertain as to (i) the significance and nature of the social status of the offender, (2) the precise delineation of the term "occupation", and (3) the risk of including some deviant behaviours which have not yet been contemplated as falling in the bracket of white-collar crime.

With respect to social status of the offender, Sutherland conceptually limited white-collar crime to violation of the criminal laws regulating occupations by persons who are "respectable" or of the "upper socio-economic class". The significance of emphasizing the social or economic status of the offender can be nothing other than to make the distinction clear vis-a-vis traditional crimes, which, more often than not, is associated with those classes or section of society, which are found at the lawyer stratum of the socio-economic ladder. There are, however, criminologists who, by introducing solely crimes of occupational nature would like to change the entire subject matter to occupational crime\(^\text{19}\), which is entirely another matter.

The other significant point in Sutherland's definition of white-collar crime is that which makes reference to occupational and professional activities. Offences such as embezzlement, price-fixing,
misrepresentation, fee splitting and the like may always involve behaviour that occur directly in the course of one's occupational activity. However, activities such as tax evasion may not necessarily involve the existence of occupation. None the less, the important point to take note of, in this respect is that the behaviour in question must be substantially related to the violator's occupational activities, if it is to be treated within the scope of the subject matter of white-collar crime. Such precision will, necessarily, reduce the risk of creating or advancing an amorphous conceptual framework.

**Re-Oriented White-Collar Crime**

In relation to occupational activity that needs critical understanding is the question of making the distinction clear with respect to the relationship that exists between and among occupational behaviours, occupational deviations and occupational crimes.

For that matter, all types of professions, occupations and trade have norms, mores, practices, ethics and laws that govern or regulate their activities within and their relationship from without. Out of the many agglomeration of activities only those behaviours which are enforced under pain of penalty should come within the scope of white-collar crime. Other than this, focusing on all forms of deviant behaviours may be of use for purposes of developing theories or explanations of same, identification of causes and even for understanding the entire sociological aspect of white-collar crime within the frame-work of sociology of law or jurisprudence, but no further.

For our purpose, it is enough to take cognizance of the fact that occupational deviations represent departures from expectations that are shared and recognized as legitimate within an occupation i.e.
institutionalized occupations norms. This is one thing, but it is quite a different thing to indulge into speculation as to the criminal or harmful nature of this or that deviation, so long as it is not made crime by express words of the law. Some norms, which were only occupational deviant behaviour at one time, may become occupational crime, at an other. This again may be relevant for understanding the process of law making, disuse, causes of law breaking, but by no means would it be a ground for extending or challenging the nature of scope of the subject matter of white collar crime.

A graphic representation of the relationship between the violation of legal norms and deviations from occupational norms within the larger framework of occupational behaviour may take the following shape.

Diagram II

a. General framework of occupational behaviour.
c. Occupational deviation.
d. White-Collar Crime

The intersection point of "b" and "c" represents these occupational deviations which have been defined as crime, which may more specifically, be called "criminal occupational deviation. This and only this is the subject matter of white-collar crime. The remaining variants of deviations are matter's of sociological interest or at best area of inquiry.
for future legislation. This again would render clear much of the cloud that has been hovering over the concept of white-collar crime.

One other thing which may evoke inquire into is how differently some norms or practices are viewed from the points of view of people in the occupation and how the same is looked at by those outsiders. To the incumbents, certain practice or practices may be quite legitimate, whereas for those outside of the occupation, they may constitute deviant behaviour. Despite their difference, what matters in the legal profession is whether or not acts that constitutes the particular behaviour has been condemned as a crime by the law. Certainly there are illegitimate or illegal occupations, which are organized essentially around criminal activity, wherein criminal activities are institutionalized, in which case there will be consensus developed within and without the occupation concerned. There may be also instances of patterned transgression of the law or on and off deviations. All these variants show nothing more or nothing less than that occupations are, like any other phenomena, in constant process of change, and occupational deviation, as well as occupational crime are a necessary concomitants facts of occupational change.

Hence, the study of occupational deviation may sound an interesting area of study, yet at the same time, the legal status of the specific deviation should not, by any conceivable logic, be lost sight of.

Even as regards the legal definition, criminologist like Paul, Tappan express their fear as to the inclusion of administrative decision, for the quantum of burden of proof against the accused differs from regular courts to those of administrative tribunals. The point of departure should not be the forum or the machinery of justice, but the fact of being
legally prescribed as social harm. The rendition of punishment by criminal court should not also be held as a decisive elements, instead the quality of punishability of the behaviour is sufficient to legally qualify an act as crime. Thus, the allegation against Sutherland for extending the concept of crime" has been countered by pointing out that Sutherland made it amply clear that there was only one definition of crime, the legal one, i.e. an act or omission made punishable by law. His analysis is focussed on four types of legal violations by big corporations\textsuperscript{21}.

(i) Law regarding restraint of trade.
(ii) Misrepresentation in advertising.
(iii) Infringement of patent and analogous rights
(iv) Laws regarding labour relations.

Although none of these categories fall within the ambit of criminal law, in \textit{stricto sensio}, Sutherland has used them as instances wherein white-collar crimes are admirably demonstrated.

In the process of identifying the unit of analysis of white-collar crime one may come across to reference made to public welfare offences which evoke such question as to their inclusive, exclusive or overlapping nature \textit{vis-a-vis} white-coiar crime. As to public welfare offences, as envisaged by Sayre, they present no theoretical sophistication, for they are either the rudimentary aspect of or an infant stage of socio-economic offences.
[C] WHITE-COLLAR CRIMES AND SOCIO-ECONOMIC OFFENCES

The Law Commission of India in its 47th Report has meticulously articulated the inter-relationship between white-collar crime and socio-economic offences in the following words:

"White-collar crime, one may, describe it as committed in the course of one's occupation by a member of the upper class of society, A manufacturer of drugs who deliberately supplies substandard drugs is, for example, a white collar criminal. So is if a big corporation guilty of fraudulent evasion of tax. A person who illegally smuggles (for his personal use) costly television sets, is not a white-collar criminal in the above sense, there being no connection between his occupation and the crime committed by him. Nor is the pensioner who submits a false return of income. But all of them are guilty of socio-economic offences which affect the health or material welfare of the community as a whole, and not merely the individual victim. Similarly, economic offences are those which affect the countries economy and not merely the wealth of an individual victim 22.

Hence, unlike white-collar crime socio-economic offences shouldn't necessarily be committed in connection of one's occupation. In white collar crime nexus between the offending act and occupation should be established, whereas in socio-economic offences there is no such requirement. What is required is that the offence should be
committed against either or both the health or material welfare of the community or against the economic interest of the country in question and in both cases the individual victim is not in issue, but that of the community or society at large. Nor is the status of the tort-feassor. It could therefore, be submitted that socio-economic offences does not only extend the scope of the subject matter of white-collar crime, as conceived by Sutherland and as appreciated by others, but is also of wider import.

Diagram III

In the diagram just referred to, \(mens rea\) is represented by (ii) signifying the intersectional point, where the three circles i.e. white collar crime, socio-economic offences and offences of absolute liability find their common denominator.

To state that \(mens rea\) plays a central role is to say the obvious, but for reason of placing the concept of \(mens rea\) within the framework of socio-economic offences, definitely something has to be said about it.

**Mens Rea**

Next to actus rea, the second essential ingredient in crime is mens rea. Legal "mens rea" has been defined by Glanville Williams in the following manner.
"It refers to the mental element necessary for the particular crime and this mental element may be either intention to do the immediate act or bring about the consequence or (in some crimes) recklessness as to such act or consequences. These two concepts hold the key to the understanding of a large part of criminal law some crimes require intention and nothing else will do, but committed either intentionally or recklessly. Some crimes require particular kinds of intention or knowledge."²⁶

As a result the maxim *actus non facit reum nis mens sit rea*²⁷ is rightly regarded as one of the most important common law principles of criminal liability. Yet *mens rea* presents a highly abstract and subjective principle. Nonetheless, it has attained a high degree of moral authority, since it enjoys support from the soundest theoreticians. In addition to this, it also has historical authority due to the mass of case laws built over the past centuries. Inquiries made over the last two centuries made it possible to identify four in-built principles deeply integrated in the concept of mens rea. For vivid exposition, they are described briefly as follows²⁸:

1. *"The malice principle:* the essence of malicious conduct is conduct wrongfully directed at a particular interest (personal, say, or proprietary)", whether or not that one foresaw that harm to interest suffered by the victim would result.

2. *"The proportionality principle:* Where [one] acts maliciously towards [another] and causes worse harm than anticipated, the greater the injury intentionally done to [the victim], the greater the crime for which [the offender], may be criminally liable respecting
the harm done must not be disproportionate to the harm intended, if
criminal liability for the harm done is to be justified.

(3) "**The labeling principle:** when a particular kind of criminal wrong
    can also be reflected in morally significant label, such as"murder",
it may be right to recognize circumstances in which the wrong has
been committed, but the label is not deserved. Conversely, there
may" be circumstances in which one wishes to use a more
stigmatic label for a more serious manifestation of an identical
wrong.

(4) **The indirect malice principle**\(^{29}\): where [an offender] wrongfully
aims his conduct at one kind of interest, and., invades another kind
of interest, his conduct in invading that other interest is not to be
regarded as malicious unless he foresaw the invasion as possible
outcome of his conduct".

As the saying has it "The stone belongs to the devil when it leaves
the hand that threw it", for an action may have multiple consequences and
these consequences belong to the original action as an integral part of it.
As regards the state of .mind, malice principle is not just a principle of
culpability that competes with the correspondence principle in the minds
of criminologist when thinking about criminal culpability, as indeed, it is
and true.

While dealing with *mens rea*, it would be convenient to group the
various crimes into four classes;\(^{30}\) Crimes in which,

(1) the *mens rea* is found on an intention to commit an illegal act
    (general intention).

(2) a particular intention is required (e.g. burglary is under English
    Law house breaking by night with intent to commit felony.
negligence will suffice (e.g. management of vehicles in public streets).

the requirement of *mens rea* is abandoned (i.e. abducting a girl under 16 from her parents, though the girl is believed to be above 16).  

It is the last category, which is a matter of interest for our purpose. Under certain circumstances a state may prohibit by statutes the doing of certain acts, irrespective of considerations of *mens rea*.

**Strict Liability**

The underlying principle or justification of such an approach may be found in what Ruscoe Pound has said:

"*The good sense of courts has introduced a doctrine of acting at one's peril with respect to statutory crimes which express the needs of society. Such statues are not means to punish the vicious will, but to put pressure upon the thoughtless and inefficient to do their whole duty, in the interest of public health or safety or morals.***"\(^{32}\).

The liability created is qualitatively different form that attached to ordinary offences requiring the element of *mens rea*. Strict liability is now well recognized by case-law and extensive literature. So much so that it has been said that strict liability has been with us "so long that it has become accepted as a necessary evil". The observation of the Privy Council made in this respect would bring home the entire conceptual framework:

'Where the subject matter of the statute is the regulation for the public welfare of a particular
activity statutes regulating the sale of food and drink are to be found among the earliest examples. It can be and frequently has been inferred that the legislature intended that such activities should be carried out under the conditions of strict liability. The presumption is that the statute or statutory instrument can be effectively enforced only if those in charge of the relevant activities are made responsible for seeing that they are complied with when such a presumption is to be inferred, it displaces the ordinary presumption of mens rea. Thus seller’s of meat may be made responsible for seeing that the meat is fit for human consumption and it is no answer for them, to say that they were not aware that it was polluted” (emphasis added).

In short, there are cases wherein intention to commit a breach of the statute need not be shown. The breach in fact is enough.

The entire argument relating to the displacement of mens rea has been beautifully recapitulated in the Supreme Court of India in its decision of State of Maharashtra vs M.H. George.

In this case, the accused was prosecuted for bringing into India prohibited quantity of gold in violation of the prohibition i.e., the Foreign Exchange Regulation Act 1947 which lays an absolute embargo upon persons who, without permission of the Reserve Bank, bring or send to India any gold. As a matter of fact the accused, Mr. M.H. George was a passenger from Zurich to Manila in Swiss plane. Upon landing in
Bombay Twenty-four kilos bars of gold was found on his person, which he had not declared.

The holding of the majority was that "mens rea in the sense of actual knowledge that the act done is contrary to law is not an essential element under Sec.8 (1) read with Sec.23 (1A) of the Foreign Exchange Regulation Act, 1947". There was an agreement on the point that unless the statute in question, either clearly or by necessary implication rules out mens rea as a constituent part of a crime an accused should not be found guilty of an offence, unless he has got a guilt mind. They declared that "(A) absolute liability is not to be lightly presumed, but has to be clearly established". However, in the case at hand, "the language of the statute and relevant notifications", their Lordship held that "there is no scope for the invocations of the rule that besides the mere act of voluntarily bringing gold into India any further mental condition is postulated as necessary to constitute an offence of the contravention referred to in Sec.23 (1A)".

It is further asserted that:

"The Act is designed for safeguarding and conserving foreign exchange which is essential to the economic life of a developing country. The very object and purpose of the Act and its effectiveness as an instrument for the prevention of smuggling would be entirely frustrated, if a condition were to be read into Sec. 8 (1) or Sec.23 (1A) of the Act qualifying the plain words of the enactment that the accused should be proved to have knowledge that he was contravening
the law before he could be held to have, contravened the provisions."

However, in the subsequent decision of the Supreme Court, it was held that the accused, who was apprehended storing excess quantity of food grains in the belief that his application for license will be granted, was found not guilty on the ground that storage of grain under a bonafide belief could not be said to be international contravention.

A number of decisions of the Supreme Court of India, however, point to the fact that there is an initial presumption in favour of the need to read mens rea in all penal statutes, but it has to be ascertained whether the presumption is overborne by the language of the enactment read in the light of the objects and purposes of the said statute. Whether the enforcement of the law and the attainment of its purpose would not be rendered futile is one other consideration that has to be taken a fortiori. Conversely, where it cannot be said that the object of the Act would be defeated, if mens rea is read into it, as an ingredient, courts should indeed be slow to dispense with it.

Striking illustration of modification of the ordinary rule regarding mens rea is to be found under the prevention of food Adulteration Act, wherein it is provided that:

"It shall be no defense in a prosecution for offence pertaining to the sale of any adulterated or misbranded article of food to allege merely that the vendor was ignorant of the nature, substance or quality of the food sold by him or that the purchaser having purchased any article for analysis was not prejudiced by the sale".

Having said this about strict liability, the train of logic requires, at least the treatment of the main features of vicarious liability. First and
foremost, vicarious liability is an aspect of strict liability in the sense that such a person ought not to have been held answerable to what he himself has not done.

**Vicarious Liability**

Unlike in the law of tort, in criminal law, a master is not held vicariously liable for the act of his servants or agent on the principle of respondent superior\(^37\). This doctrine or maxim holds that a master is liable in certain case for the wrongful acts of his servants and a principal for those of his agents. Where the legislature has found it to lay down an absolute prohibition to hold liable the employer for the employee and the principal for his agent for the acts of the latter, so long as such act is done in the course of employment or in discharge of the delegated responsibility, respectively, then the maxim *qui facit per alium, facit per se* applies. Under this doctrine the employer may be convicted, although he is not in any way morally culpable. It is in pursuance to this principle that Indian Penal code under section 154 and 155 holds a master criminally liable for acts committed by his agents or servants.

The doctrine of vicarious liability is often times invoked under special enactments. The peculiar characteristics and the rationale, which prompted the enactment of vicarious liability, have been nicely enunciated by Lord Devlin in the following manner:

"The first distinguishing mark of quasi-criminal law then is that a breach of it does not mean that the offender has done anything morally wrong. The second distinguishing mark is that the law frequently does not care whether it catches the actual offender or not. Owners of goods made liable for the acts of their
agents even if they have expressly forbidden the act, which caused the offence. This sort of measure can be justified by the argument that it induces persons in charge of an organization to take steps to see that the law is enforced in respect of things under their control"  

Exactly the same doctrine applies to companies, which are found in and around the same circumstances.

**Corporate Vicarious Liability**

A corporation is a legal entity incorporated by law for preserving perpetual succession of certain rights. A corporation is, in other words, a group of human beings authorized by law to act as legal unit. It is endowed with legal personality and it has a name and seal of its own. Nonetheless, a corporation is not, owning to its peculiarity, put on the same level as a natural person with respect of criminal liability for its deeds.

At one time in the past, it was believed that penal liability could not be fasten onto a corporation, principally because it does not act in and for its own self i.e. it has no mind and body of its own, so as to form the necessary guilty mind to commit a crime. "A corporation has neither a body to be killed, nor a spirit to be dammed". Secondarily, since a corporation can only act through its resolution at a meeting, and since any resolution for doing a criminal act should necessarily be Ultra Vires, consequently then there could not be a situation where a corporation would be subjected to criminal liability.

Owing largely to increase in the rate of industrialization, the immunity a corporate entity has enjoyed so far from criminal liability is
waning. Partly, it was to bring such legal entities as companies within the ambit of criminal law that attempt was made to make distinction between offences of nonfeasance and offences of misfeasance. Accordingly, in case of the latter, the individual tort-feasor was to be held liable.

Further development has recently taken place, whereby the rule that makes the acts of directors are treated as those of the company. Conversely, the acts of the company are also being treated now-a-days as those of all its directors, Hence, every director or officer shall thus be guilty of that offence, unless he proves that it was committed without his consent or that he has exercised all due diligent towards preventing the commission of such offences.

The principle thus highlighted by the law commission of India has been vividly reflected in section 179(I) of The Prevention of Food Adulteration Act, 1954.

"Where an offence under this Act has been committed by a company":

(a). (i) the person, if any, who had been nominated under-section (2) to be in charge of, and responsible to, the company for the conduct of the business of the company (the persons responsible), or

(ii) where no person has been so nominated, every person who at the time the offence was committed was in charge of, and was responsible to the company for the conduct of the business of the company; and.

(b). The company;
shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Provided that nothing contained in this sub-section shall render any said person liable to any punishment provided in this Act if he proves that the offence was committed without his knowledge and that he exercised all due diligence to prevent the commission of such offences "

Although, stipulation by way a Proviso (which is uncommon) to the effect that such offender would not be held liable, if he proves that the offence was committed without his knowledge and that he exercised all due diligence to prevent the commission of such offence would have the actual effect of allowing entrance through the backdoor what you have ousted in broad day light from the living room.

From the scheme of section (17) of the Act, one learns that the person in charge of the company must be prosecuted along with the company under this section.

To wind up our discussion made so far, it would be well in point to recapitulate the following essential points around which our argument has been spinning.

1. White-collar crime is endemic to industrial society and as such Sutherland's definition which state that white-collar crime is "a crime committed by a person of respectability and high social status, in the course of his occupation" is very much true to this date. The fact that these crimes are characteristically violations of trust, either by duplicities or misrepresentation placed in a person by virtue of this occupational norms and high position in the society is the crucial point of departure.
2. White-collar crime differs from conventional criminal in five ways: (a) in origin (b) in determination of responsibility, or intent, (c) in criminology and penal philosophy (d) in enforcement, trial procedure and sanction applied.

Of these attributes of white-collar crime it is the last one that would require a degree of appreciation in order to have a picture of the overall nature of white-collar crimes.

[D] APPLICATION OF MENS REA IN STATUTORY OFFENCES

The question whether the common law requirement or mens rea must be imported into every crime defined in the statute even where it is not expressly mentioned as an ingredient has been discussed in a number of cases both English and Indian. R. vs Prince\textsuperscript{41} and Queen vs Tolson\textsuperscript{42} are the two landmark decisions on the subject. The conception of mens rea was introduced into the statutory offences by the judges by means of ‘Construction’ without any Parliamentary sanction. There are two schools of thought. One embodied in the judgment of Wright J., in Sherras v. De Rutzen\textsuperscript{43} that “in every statute mens rea is to be implied unless the contrary is shown; and the second is that of Kennedy, L.J., in Hobbs v. Winchester corporation\textsuperscript{44} that you ought to construe the statute literally unless there is something to show that mens rea is required. On either view mens rea is implied in certain statutes and not in others, although there are on words in the statute itself to show a recognition of mens rea and judges provide for it on their own authority.\textsuperscript{45}

For a better illucidation of the subject it would be useful to discuss some of the cases in detail. The first of such cases is R vs Prince.\textsuperscript{46} Henry Prince the prisoner was charged under section 55 of the Offence Against
the Persons Act, 1861 for having taken one Annie Philips, an unmarried girl, being under the age of 16 year, out of the possession and against the will of her father or mother or any person having the lawful care and charge of her.’ It was prove that the prisoner did take the girl out of the possession an against the will of her father and also that she was under 16 years. All the facts necessary to support for conviction existed except that the girl, though proved by her father to be fourteen years old looked very much older than that and the jury found upon reasonable evidence that before the defendant took her away she has told him that she was of eighteen years and that the defendant bona fide believed that statement, and that such belief was reasonable.

It was contended that although section 55 of the statute under which this offence was created did not insist on the knowledge, on the part of the prisoner that the girl was under sixteen, as necessary to constitute the offences, the common law doctrine of mens rea should nevertheless be applied and that there could be no conviction in the absence of a criminal intent.

It was held that the prisoner’s belief that the girl was eighteen years old is no defence. The following judgment was delivered by Blackburn, J.

“ In this case we must take it as found by jury that the prisoner took an unmarried girl out of the possession and against the will of her father, and that the girl was in fact under the age of sixteen, but that the prisoner bona fide, and on reasonable grounds, believed that she was above sixteen, viz, eighteen year old. No question arises as to what constitutes a taking out of the possession of her father; nor as to what circumstance might justify such taking as not being unlawful; nor as to how far an honest though mistaken belief, that such circumstance as would justify the taking existed, might form an excuse; for, as the case is reserved, we
must take it as roved that the girl was in the possession of her father and that he took her, knowing that he trespassed on the father’s rights and had no colour of excuse for so doing.”

The question, therefore, is reduced to this: whether the words in section 55, that ‘whosoever shall take any unmarried girl, being under the age of sixteen, out of the possession of her father’, are to be read as if they were being under the age of sixteen, and knowing she was under that “age”. No such words are contained in the stature, nor is there the word ‘maliciously’, ‘knowingly’, or any other word used that can be said to involve a similar meaning.

The argument in favour of the prisoner must, therefore entirely proceed on the ground that, in general, a guilty mind is an essential ingredient in a crime, and that a statute creates a crime, the intention of legislature should be presumed to be to include knowingly, in the definition of the crime, and the statute should be read as if that word were inserted, unless the contrary intention appears. We need not inquire at present whether the canon of construction goes quite so far as above stated, for we are of opinion that the intention of the legislature sufficiently appears to have been to punish the abduction, unless the girl, in fact, was of such an age as to make her consent an excuse, irrespective of whether he knew her to be too young to give an effectual consent and to fix that age at sixteen.

But what the statute contemplates, and what I say is wrong is, the taking of a female of such tender year that she is properly called a girl, and can be said to be in another’s possession, in that other’s care or charge. No argument is necessary to prove this; it is enough to state the case. The legislature enacted that if anyone does this wrong act, he does it at the risk of her tuning out to be under sixteen. This opinion gives full
scope to the doctrine of mens rea. If the taker believed he had the father’s consent, though wrongly, he would have no mens rea. So if he did not know she was in anyone’s possession, nor in the care or charge of anyone, in those cases he would not know he was doing the act forbidden by the statute – an act which, if he knew she is in possession and in care or charge of anyone, he would know was a crime or not, according as she was under sixteen or not. He would not know he was doing an act wrong in itself, whatever was his intention, if done without lawful cause.

In this case a distinction was drawn between acts that were in themselves innocent but made punishable by statute (\textit{malum prohibitum}) and acts that were intrinsically wrong immoral (\textit{malum in se}). In the former a belief, a reasonable belief, in the existence of facts which, if true, would be a good defence; but in the latter case such a belief was immaterial unless of course the law made it otherwise. The man who acted under such erroneous belief took the risk and should suffer the consequence.

The same principal applies in other cases. A man was held liable for assaulting a police officer in the execution of his duty. Though he did not know he was a police officer. Why? Because the act was wrong in itself. So also in the case of a burglary, could a person charge claim an acquittal on the ground that he believed it was past six when he entered?

It seems to me impossible, where a person takes a girl out of her father’s possession, not knowing whether she is or is not under sixteen, to say that he is not guilty; and equally impossible when he believes, but erroneously, that she is old enough for him to do a wrong act with safety. I think the conviction should be affirmed.

The Queen v. Tolson\textsuperscript{47}, is another important case on the subject. In this case the prisoner was married to Mr. Tolson on September 11, 1880.
Mr. Tolson deserted her on December 19, 1881. The prisoner and her father made inquiries about Tolson and learnt from his elder brother and from general report that he had been lost in a vessel bound for America, which went down with all hands on board. On January 10, 1887, the prisoner supposing herself to be a widow, went through the ceremony of marriage with another man. The circumstances were all known to the second husband and the marriage ceremony was in no way concealed. In December, 1887, Tolson returned from America thereafter, the prisoner was charged for offence of bigamy under section 57 of the Offence Against the Person Act, 1861, for having gone through the ceremony of marriage within seven years after she had been deserted by her husband. The jury found that at the time of the second marriage she in good faith and reasonable ground believed her husband to be dead.

Section 57 provides: Whoever, being married, shall marry any other person during the life of the former husband or wife shall be guilty of felony.” Proviso to the same section lays down: “nothing in this Act shall extend to any person marrying a second time whose husband or wife shall have been continually absent from such person for the space of seven years past, and shall not have been known by such person to be living within that time.”

It was held that a bona fide reasonable grounds in the death of the husband at the time of the second marriage afforded a good defence of the indictment, and that the conviction was wrong.

In this case the following principles were laid down:

(i) Although Prima facie and as a general rule there must be a mind at fault before there can be a crime, it is not an inflexible rule, and a statute may relate to such a subject matter and may be so framed as to make an act criminal whether there has been any intention to break the
law or otherwise to do wrong or not. There is a large body of municipal law in the present day which is o conceived.

(ii) Prima facie the statute was satisfied when the case was brought within its terms, and it then lay upon the defendant to prove that the violation of the law which had taken place, had been committed accidentally or innocently so far as he was concerned. Suppose a man had taken up by mistake one of two baskets alike and of similar weight, one of which contained innocent articles belonging to himself and the other marked government stores, and was caught with the wrong basket in his hand. He would by his own act have brought himself within the very word of the statute who would think of convicting him.

(iii) At common law an honest and reasonable belief in the existence of circumstances, which, if true would make the act for which a prisoner is indicted an innocent act has always been held to be a good defence. This doctrine is embodied in the maxim “actus non facit reum nisi mens sit rea”. Honest of the reasonable mistake stands in fact of the same footing as absence of the reasoning faculty, as in infancy; perversion of that faculty, as in lunacy. These exceptions apple equally in case of statutory offences unless they are excluded expressly or by necessary implication.

(iv) It is a general rule that an alleged offender is deemed to have acted under that state of fact which he in good faith and on reasonable ground believed to exist, when it did the act alleged to be an offence. In this case accused acted in good faith upon reasonable and probable cause of belief without rashness or negligence, therefore she is not to be considered as guilty as she was found to be mistaken. In case of an offence of bigamy the accused can make a defence by proving a continuous absence for seven years. And
that even such an absence will not be a defence if the prosecution can prove knowledge on the part of the accused, within seven years of the first marriage, that the first wife or husband, as the case may be, was still alive.

In R v/s Prince the prisoner knew that in taking the girl away from her father he was, altogether apart from the question of her age, doing an improper and immoral act, while in the present case there was nothing wrong in the remarriage of the prisoner, who reasonably supposed herself to be a widow.

Rex v. Thomas wheat and Rex v. Marion stocks⁴⁸ is another important case on bigamy. In this case wheat’s wife had committed adultery. In May, 1919 Wheat instructed his solicitor to obtain a decree of divorce from his wife. On April 23, 1920 the solicitors wrote: “We can now proceed with the matter, and will lose no time over your petition,” and in reply to a telegram sent by Wheat, the terms of which were not in evidence, the solicitors wrote to him on July 1, 1920: “We have your telegram and hope to send your papers for signature in the course of a day or two.” Wheat was a divorced. Wheat was charged with having on July 21, 1920, married the prisoner Marion Stocks, his wife being then alive, and the prisoner Stocks was charged with abetting Wheat by aiding in the commission of that offence. The Jury found that the prisoner in good faith and on reasonable ground believed that Wheat had been divorced at the time he went through the form of marriage with Stocks.

It was held that: “It is no defence in law to an indictment for bigamy that the prisoner, at the time of the alleged bigamous marriage, believed, in good faith and on reasonable grounds, that he had been divorced from the bond of his first marriage, if in fact he had not been divorced.”
Of course, it may afford a good reason for the infliction of a nominal punishment. This decision is not a conflict with the decision in R. v/s Tolson. In Tolson’s case the accused believed on reasonable ground that her husband was dead, therefore she did not intend at the time of second marriage to do the act forbidden by the statute – namely to marry during his life. Justice Stephen in that case mainly relied upon the proviso which showed that mere separation for seven years has the effect which reasonable belief of death caused by other evidence would have at any other time. The judgment in Tolson, though influenced to a great extent by the proviso, proceeded mainly on the application of the maxim “Actus non facit reum nisi mens sit rea.”

*In comm. v/s presby*, the doctrine of mens rea has been recognised and read into an American Statute, although the definition of the offence did not imply a question of evil intent. In this case, Presby, the defendant, a police officer had arrested one Harford, for being found intoxicated in a public place. Later on it was found that the person so arrested was not intoxicated. The statute gave power of arrest in respect of intoxicated persons only. The defendant was therefore, indicted for wrongful arrest. It was argued that if the man arrested was not intoxicated, a mere belief, however well founded, that the man was intoxicated could not be pleaded as a defence to the indictment. Hoar, J, after stating the general rule that ‘there can be no transgression of law in absence of a will to commit an offence’ disallowed the contention and observed as follows: “Now the fact of intoxication, though usually easy to ascertain is, not in most cases a fact capable of demonstrations with absolute certainly. Suppose a watchman to find a man in the gutter stupefied and smelling very strongly of spirituous liquors. The man may have fallen in a fit and some person may have tried to find a man in the
gutter stupefied and smelling very strongly of spirituous liquors. The man may have fallen in a fit and some person may have tried to relieve him by the application of stimulant, and then have left in search of assistance. Or, in another case, the person arrested may, for purposes of amusement or mischief, have been stimulation the appearance and conduct of drunkenness. Is the officer to be held criminal, if using his best judgment and discretion and all the means of information in his power, in a case where he is called upon to act, he makes a mistake of fact and comes to a wrong conclusion? It would be singular, indeed, if a man, deficient in reason should be protected from criminal responsibility, but another, who has obliged to decide upon the evidence before him, and used in good faith all the reasons, and faculties which he had, should be held guilty. We therefore feel bound to decide that if the defendant acted in good faith upon reasonable and probable cause of belief, without rashness or negligence, he is not to be regarded as a criminal because he is found to have been mistaken.”

In state of Maharashtra v. M.H. George, the supreme court considered M.H. George was a passenger from Zurich to Manila in a Swiss plane. When search that the respondent carried 34 kilos of gold bars on his person and that he had not declared it in the year 1948 the bringing of gold into India was prohibited except with the permission of Reserve Bank. But by a notification of the Reserve Bank, gold, in through transit from place outside India to places similarly situated, which was not removed from the aircraft except for the purpose of transshipment was exempted from the operation of the motivation of the Central Government. The Reserve Bank of India on Nov.8, 1962 by another notification modified its earlier exemption and it was necessary that, the gold must be declared in the ‘Manifests’ of the aircraft. The respondent
was prosecuted for bringing gold into India in contravention of section 8(1) of the Foreign Exchange. Regulation Act. 1947 read with the notifications issued hereunder and was convicted under section 23(IA) of the Act.

The presidency Magistrate found him guilty but the Bombay High Court held that he was not guilty on the ground that mens rea being a necessary ingredient of the offence, the respondent who brought gold into India for transit to Manila did not know that during the crucial period such a condition had been imposed which brought the case within the terms of the statute. On appeal by the state the Supreme Court allowed the appeal and found the accused guilty for contravention of the provisions of section 8(1) read with Notifications issued thereunder.

The following principle were laid down by the Supreme Court in this case:

(i) The Act is designed to safeguarding and conserving foreign exchange which is essential to economic life of a developing country. The provisions have, therefore, to be stringent and so framed as to prevent unregulated transaction which might upset the scheme underlying the controls; and in a larger context, the penal provisions are aimed at eliminating smuggling which is a concomitant of controls over the free movements of goods or currencies. If a condition were to be read into section 8(1) or section 23(IA) of the Act qualifying the plain words of the enactment, that the accused should be proved to have knowledge that he was contravening the law before he could be held to have contravened the provision.

(ii) The very concept of ‘bringing’ or ‘sending’ would exclude and involuntary bringing or voluntary sending. But if the bringing into India was a conscious act and was done with the intention of bringing it
into India, the mere “bringing” constitutes the offence and there is no other ingredient that is necessary in order to constitute a contravention of section 8(1) than that conscious physical act of bringing. If then under section 8(1) the conscious physical act of “bringing” constitutes the offence, section 23(IA) does not import any further condition for the imposition of liability than what is provided for in section 8(1).

(iii) Unless the statute either clearly or by necessary implication rules out mens rea as a constituent part of a crime a defendant should not be found guilty of an offence against the criminal law unless he has got a guilty mind. Absolute liability is not to be lightly presumed but has to be clearly established.

(iv) Section 8 and the notifications do not contain an absolute prohibition against bringing or sending into India any gold. They do not expressly mens rea. So far as the question of exclusion of mens rea implication is concerned, the law does to become nugatory if element of mens rea was read into India gold with the knowledge that they would be breaking the law. In such circumstances no question of exclusion of mens rea by necessary implication can arise.

(v) Mens rea in the sense of actual knowledge that act done is contrary to law is not essential ingredient of the offence under section 8(1) read with section 23(IA) of the Foreign Exchange Regulation Act, 1947. Thus mere voluntary act of bringing gold into India without permission of the Reserve Bank constitute the offence.

(vi) Nathu Lal v. State of M.P., another important case on the point. In this case the appellant had in stock 885 maunds and 2-1/4 seers of wheat for the purposes of sale without licence. He contended that he had stored the foodgrains after applying for the licence and was in the belief that it would be issued to him. He had also deposited the requisite
licence fee. He was purchasing foodgrains from time to time and sending returns to the Licensing Authority showing the grains purchased by him. He was prosecuted for committing an offence under section 7 of the Essential Commodities Act, 1955 for contravening an order made under section 3 of the same Act. It was held that: “Mens rea is an essential ingredient of a criminal offence. Doubtless a statute may exclude the element of mens rea but it is a sound rule of construction adopted in England and also accepted in India to construe a statutory provision ”creating an offence in conformity with the common law rather than against it unless the statute expressly or by necessary implication exclude mens rea. The mere fact that the object of that statute expressly or by necessary implication excluded mens rea, or the mere fact that the object of the statute is to promote welfare activities or to eradicate a grave social evil is by itself not decisive of the question whether the element of guilty mind is excluded from the ingredients of an offence. Mens rea by necessary implication may be excluded from a statue only where it is absolutely clear that the implementation of the object of the statute would otherwise be defeated. The nature of mens rea that would be implied in a statute creating an offence depends on the act of the provisions thereof.”

In the instant case the storage of foodgrains was under a bona fide belief that he could legally do so. He did not, therefore, intentionally contravene the provisions of S. 7 of the Act or those of the order made under S. 3 of the Act. Therefore he was not liable.

State of Gujarat v. D. pandey,\textsuperscript{52} is a case on the Bombay Public Trust Act, 1950 wherein certain trustees were prosecuted for misusing trust money in violation of section 35(1) of the Act. It was held that section 35(1) is a regulatory provisions enacted with a view to safeguard the interest of the public regarding trust money. It creates a quasi criminal
offences and is an absolute offence. The court cannot read into it the requirement of mens rea. It was observed that:

Unless a statute either clearly or by necessary implication rules out mens rea as a constituent part of the crime, a person should not be found guilty of an offence against the criminal law unless he has got a guilty mind. But the language of a provision either plainly or by necessary implication can rule out the application of that presumption. The court may decline to draw that presumption taking into consideration the purpose intended to be served by that provision.

In Sweet v. parsley,\textsuperscript{53} it was observed that where an offence is created by some statute, the language of the statute should be read with this rebuttable presumption that the common law doctrine that there can be no crime without mens rea, has not been dispensed with by the statute concerned.

In R.S. Joshi v. Ajhit Mills Ltd.,\textsuperscript{54} the supreme Court observed that a person may be liable for the penal consequences for the acts done by him whether he has done it with guilty mind or not, it is matter of common knowledge that for proper enforcement of statutory provisions, the rule of strict liability is created and the acts falling in this category are punished even in the absence of guilty mind.

In Union of India v. J. Ahmad,\textsuperscript{55} the question was whether in case of disciplinary proceedings relating to services the misconduct of the employee in question in negative the Supreme Court observed that grave or habitual negligence in the course of performance of duty cannot be said to be accompanied with guilty mind but it can be a misconduct with reference to disciplinary proceedings.
[E] COUNTERFEIT/ FAKE/ SPURIOUS DRUGS ORGANIZED CRIME:

Drugs play a crucial role in saving lives, restoring health, and preventing diseases and epidemics, but they need to be safe, efficacious, good quality and used rationally. Their production, import/export, storage, supply, and distribution should be subject to government control though prescribed norms and standards of an effective regulatory system. But substandard and counterfeit drugs proliferate primarily in the environment where the drug regulation has proved ineffective.

According to the WHO, India accounts for nearly 35 percent of world’s spurious drugs market. It is estimated that 40 percent of the pharma market in our country, i.e. Rs. 8000 crore is under the grip of spurious and black marketed drugs. Not only is the people’s health at stake but also there is a serious loss to the exchequer of both central and state governments as they are deprived of huge amounts on account of sales tax and excise duty.

The Indian pharma industry has a domestic turnover of more than Rs. 20,000 crore and exports over Rs. 10,000 crore. The industry is growing at the rate of over 10 percent for the past one decade and is said to be the fourth in the world in terms of volume. However, a consumer has good reasons to be concerned about the lack of availability of safe and genuine medicines. The problem of spurious and substandard drugs in the country is quite rampant, as is evident from periodic reports in the media on seizures and confiscation of fake drugs from large consignments or godowns. These, however, would constitute only a small fraction of the real extent of the illegal activity, which perhaps everyday people die because of counterfeit drugs. But how many? We will never know because a patient is always presumed to have died from a disease,
rather than the drugs. And the mastermind is never caught. Moreover, people keep buying these drugs because they are cheaper. Is it ignorance on their part or lack of awareness.

According to the WHO, counterfeit in relation to medicinal products means the deliberate and fraudulent mislabeling with respect to the identity, composition and /or source of a finished medicinal product, or ingredient for the preparation of a medicinal product. Counterfeiting can be applicable to both generic and branded products as well as traditional remedies. Counterfeit products may include products with correct ingredients (containing insufficient quantities of active ingredients, or expired active ingredients); wrong ingredients (possibly toxic and therefore directly harmful to patients); without active ingredients (harmful if patients do not get their disease treated correctly); or with false or misleading packaging.

Counterfeiting is attractive because relatively small quantities of counterfeit medicines can provide huge profits to the counterfeiter, and training them is seen to carry less risk than trafficking addictive drugs. These profits are on the rise. Counterfeiting began with super specialty medicines, which is used to treat cancer and diabetes. The menace of spurious drugs has now spread to Ayurvedic, Unani and Homoepathic medicines too. The deadly combination of demand for cheap drugs and high profit margins makes counterfeit drugs irresistibly attractive to a counterfeiter. Furthermore, counterfeiting techniques are more sophisticated today, making counterfeit drugs difficult to detect.
In some countries, there is a limited access to affordable medicines, which creates an environment for the distribution of counterfeit products. Counterfeiting of medicinal products is a global problem and fighting the menace puts an additional burden on health systems that are often overstretched. No country, including India, is immune from threat of the problem but those with weakly regulated pharma markets suffer the most. World wide counterfeiting of drugs is believed to be a more common problem. According to the WHO, about 7-8 per cent of the drugs worldwide of counterfeit medicines is unknown, even through estimates derived from country studies are widely cited. Since 1982, the WHO has been collecting data on counterfeit medicines. However, there is a shortage of validated information and thus the acquisition of accurate data is a priority.
According to WHO statistics, India accounts for 35 per cent of the counterfeit products, Nigeria produces about 23 per cent and Pakistan accounts for 15 per cent. The scourge of counterfeit is particularly bad in Asia. India is fast becoming capital of counterfeit drugs, accounting for one-third of the counterfeit drugs produced worldwide.

The pharma industry, including those manufacturing spurious drugs, is growing at the rate of 20 percent annually, which means that every year the chances of buying a medicine that can do more harm than good is also rising proportionately. Despite the use of a hologram by large pharmacy companies to protect their products, spurious drugs business continues to flourish in Punjab, Haryana, Himachal Pradesh, Delhi, Uttar Pradesh, Gujarat, Maharashtra, and Karnataka.

Many pharma industries are adopting highly pressurised marketing practices like unrecorded discounts, dumping goods, and raising fake invoices in the name of hospitals and institutions. These goods never reach the hospitals and are sold in the open market without proper bills. Manufacturers of spurious drugs are taking advantage of this situation and selling their spurious drugs in major drug mandis like Patna, Agra, Kanpur, Satna, Coimbatore, Bangalore, Mumbai, Kolkata and Delhi. Nearly 60 per cent of the total spurious drugs and black marketing in the country are sold under the very nose of the Central Government -at Bhagirath Place in Delhi. This menace is resulting in thousands of sales promotion employees' losing their jobs. "Everyone knows where counterfeit drugs are sold in Delhi," says a scientist from the Delhi Science Forum, a non-governmental organization. 'Anyone can go to Bhagirath Place and buy any medicine one wants including empty capsules at a fraction of their actual price and no action has ever been taken," he points out. "The authorities just don't want to address the
problem. The reason is widespread corruption in the drugs control system in the country.

Sources also add that spurious medicines worth lakhs of rupees are bought and sold openly in Ludhiana and Jalandhar in Punjab by the drugs mafia after every two-three days as the cities are considered to be the biggest market of fake medicines in that part of the region. These medicines are brought to the city through the border areas of Delhi, Haryana and Ghaziabad.

[F] REPORTS

(i) VOHRA COMMITTEE REPORT, 1993:

In 1993, Government of India appointed a Committee under the Union Home Secretary, which reported on the activities of organized crime and the links between organized crime and politics. The report revealed – not that it was unknown – the powerful nexus between those who broke the laws especially in the police, customs and direct and indirect taxes, all of which resulted in protection of large scale economic crime and in those cases which became public, nominal action was taken against the offenders which bore no relationship to the benefits from crime.

(ii) THE MITRA COMMITTEE REPORT, 2001:

The Report given to the Reserve Bank of India prefaced its report by admitting the fact that criminal jurisprudence in the country based on “proof beyond doubt” was too weak an instrument to control bank frauds. The committee contended that “Financial fraud is not an offence inspite of the fact that the banks and financial institutions suffer heavily in frauds committed by the borrowers, more often than not, in collusion with the employees of the banks and financial institutions … the situation is
becoming explosive and can lead to anarchy at any time unless the scams are legally contained”.

The committee recommended a two-fold approach to tackle bank and financial frauds. It suggested a preventive strategy by system reform through strict implementation of Regulator’s Guidelines and insisting on obtaining compliance certificates. Secondly, a punitive approach by defining “Scams” (financial frauds) as a serious offence with burden of proof shifting to the accused and with a separate investigating authority for serious frauds, and special courts and prosecutors for typing such cases and with increased powers to the investigating agency of search, seizure and attachment of illegally obtained funds and properties. The committee suggested a Statutory Fraud Committee under the Reserve Bank of India.

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 prosecution of serious economic crimes with extensive powers including search and seizure. Similar arrangements have been made in the European Union and in the U.S. In our country too, we need to put in place better legislation, improved Criminal Justice System and a strong Regulatory enforcement system to prevent, investigate and prosecute major economic crimes.

It will be useful to have a quick look at the various types of major economic crimes (including cyber crimes), that have to be tackled so that we can appreciate the extent and complexity of these crimes. This does not include the conventional and organized crimes, which have been dealt with in the Penal Code.
(iii) THE MASHELKAR COMMITTEE REPORT ON SPURIOUS DRUGS:

The Committee endorsed the views expressed by the DGHS Committee and also the views that emerged as outcome of discussion at the meeting of State Health Ministers, The members re-emphasised several of these suggestions as remedial measures to eliminate/reduce the menace of spurious drugs in the country. In summary, the gist of the recommendations is:

- Effective interaction between the stakeholders i.e. industry and regulators, industry and consumers, trade and regulators and medical professional and regulators.
- Creation of intelligence cum legal cells in State and Central offices.
- Discouraging proliferation of drug distribution outlets.
- Changes in law to provide enhanced penalties, making the offences cognisable and non-bailable in the light of similar provisions in Narcotic Drugs and Psychotropic Substances Act.
- Designation of special courts to try the cases of spurious drugs,
- Preparation of dossiers of suspected dealers and manufacturers.
- Provision of secret funds and incentives to informers.
- Effective networking system between States.
- Check on drug supplies to practitioners who buy and supply drugs to their patients.
- Industry to have its counterfeit drug strategies, better surveillance and efficient complaint handling system,
- Trade associations to have better surveillance on defaulting members and to take strict action against them.
• Creation of better awareness amongst consumers.

The Committee recommends that each State should have a designated officer trained in investigation of spurious counterfeit drugs and there should be a central nodal officer to establish a countrywide network. The Central Government should assist in providing training to all the State intelligence cum legal officers.

The Committee observed that there is a considerable apprehension that many of the registered medical practitioners, who dispense drugs to their patients, do not always purchase their supplies from authorized sources. They are, thus, likely to be supplied with spurious/counterfeit and substandard drugs. This is corroborated by the fact that there are reports of manufacture and sale of drugs without proper documents. It is necessary to have a better control and monitoring of these supplies to practitioners.

In this regard the Committee noted that the present Schedule ‘K’ provides exemption to registered medical practitioners, who supply drugs to their own patients from the provisions of the Act and Rules in that they do not have to take any sales license but this exemption is subject to certain conditions. These conditions include that the drugs should be purchased only from a licensed dealer or a manufacturer and records of such purchases showing the names and quantities of such drugs, together with batch numbers and the names and addresses of the source shall be maintained. The Drugs Inspectors are authorized to inspect the records, make enquiries and if necessary, take samples for test etc. There are no data to indicate as to whether drugs inspectors routinely go and check the records of purchase of these practitioners or not. The Committee recommended that the state authorities should implement this provision
more stringently in order to ensure that the drugs purchased by these practitioners for dispensing to their patients are supported by proper purchase records and are of standard quality.

The Committee also felt that there should be some restriction for issuing retail and wholesale licenses, since agglomeration of chemist shops results in cutthroat competition and indulgence in possible purchase of drugs from unauthorized sources for economic reasons. The feasibility of this suggestion needs to be examined.

If a spurious drug is detected in one State, the source of its origin is usually from another State. By the time the concerned State drug authorities are contacted, the evidence normally is destroyed at the source. The real offender escapes detection and may keep on indulging in this trade. The actual supply of spurious drug remains untraceable and recoveries are not affected. It is, therefore, necessary that there should be a speedy information exchange mechanism. This will enable a functional coordination with all States in the count.

The Committee felt that there was a strong need for an effective communication system by means of computer networking in all States that would help in rapid investigation of spurious drugs. In this regard the Committee noted that the Central Government has already initiated a major project to provide state-wide computer interlinking. \(^{56}\)

The Committee recommends the following measures for quality assurance and testing laboratories:

(a) Drugs and Cosmetics Rules should be amended to include GLP norms as statutory requirement for approved testing labs and also the in house testing labs of manufacturers;

(b) Accreditation with NABL should be made mandatory for all testing laboratories including the Government laboratories;
(c) The Central Government should initiate a programme to have coded samples of the same product tested at different central and State labs from time to time and have the results assessed by experts for their proficiency testing;

(d) The State testing labs should be frequently audited by a team of experts to ensure their proper functioning; and

(e) A separate Division needs to be established under CDA to oversee the overall working of drug testing laboratories in the country.

(f) Upgrading the Central Drug Standards Control organization (CDSCO) to monitor the menace should form a central Drug Administration (CDA).

(g) The penalty for manufacture and sale of spurious drugs causing grievous hurt or death should be enhanced from life imprisonment to death.

(h) A provision should be made in the Drug and cosmetics Act declaring all offences related to spurious drugs as cognizable and non-boilable.

(i) A fine or Rs. One lakh or up to three times the worth of the spurious drugs held by a seller should be charged (12).

(j) Police authorities and drugs inspector should be authorized to file prosecutions under the Drugs and Cosmetics Act

(k) A separate provision should be made for speedy trials of such offences.

(l) No court lower than a Sessions court should try these offences.

(m) State governments should strengthen and support their drug control organizations.

(n) Industry and trade associations should play an active role to arrest the menace.
References:

2. Quoted by: Mahesh Chandra: Socio-Economic Crimes, N.M. Tripathi, Bombay, 1979, p. 68.
7. Santhanam Committee Report, (That Committee was appointed by Central Government, in 1962), pp. 53-54, Government of India.
9. Law commission of India (47th Report) on Socio-Economic Offences.
11. It shows how recently developed, discipline white-collar crime is indeed.
13. Id., P. 37.
16. Ibid.
18. M. Clarke’s comments for instance, seems to have emanated from extending the definition to business crime.
20. Ibid
21. Other combinations might be of theoretical interest, as for instance, BUG represents all types of behaviours which are in violation of criminal law and occupational deviations taken together; B - (B∩C) are types of behaviour which are in violation of the law, but do not deviate from on occupational norms whereas C- (B∩C) constitute deviations from occupational norms which have not been defined as crime. Such combinations could continue until the various possibilities are exhausted.
23. Ibid.
24. Donald L Newman, Marshall B. Clinard, Gilbert Geis, Wihelm Aubert, Richard Quenney, Paul W. Tappan are, but the few.
25. Again multiple combination could be made out of this, supra note 36.
27. Which may be translated as "an act does not make a man guilty of a crime unless his mind is also guilt" (6th Block's Law Dictionary).
29. Id., p. 116.
31. Ibid
32. P.S.A. Pillai, Supra note 41.
33. R.S.A. Pillai, Supra note 41 at 44-45.
34. Subha Rao. J. in his dissenting opinion stated means rea is an essential ingredient of a offence, but his may be rebutted by express word or by necessary implication. But the mere fact that the object of a statute is to promote welfare or to eradicate grave social evil in itself is not enough.
35. Law Commission, supra, note 30.
38. Devlin, as quoted by Law commission, supra, note 30, at 36 and 37.
40. Non-fessance means that the total omission or failure of an agent to act upon the performance of some district duty or undertaking which he has agreed with this principal; misfeasance means the improper doing of an act which the agent might lawfully do; malfeasance is the doing of an Act which ought not to do at all.
41. (1875) L.R. 2 C.C.R. 154
42. (1889) 23 Q.B.D. 168
43. (1895) 1 Q. B. 918
44. (1910) 2 K.B. 471
46. Supra note 10 at p. 154
47. Supra note 11 at p. 168
48. (1921) 2 K.B. 119.
49. 14 Gray, 65.
51. AIR 1966 S.C. 43.
52. 1971 Cr. L.J. 760 (S.C.)
53. (1969) 2 W LR 470 (H.L.)
54. (1977) 4 SCC 94
55. (1979) 2 SCC 286
56. Report of the expert committee on comprehensive examination of drug regulatory issue including the problem of spurious drugs (ministry of health and family welfare government of India), November 2003.