

CHAPTER-1

INTRODUCTION

SOCIO-ECONOMIC OFFENCES are usually considered to be synonymous with white collar crimes but a deep study into the concept reveals that although there is an intersection between socio economic offences and white collar crimes, but the latter is narrower in scope. White Collar crimes are those which are committed by upper class of the society in the course of their occupation, for e.g., a big multinational corporation guilty of tax evasion. A pensioner submitting false return may not be committing a white collar crime but interestingly, both are socio economic offences. Social crimes are those which affect the health and material of the community and economic crimes are those which affect the country's economy and not merely the victim. Hence it can be safely assumed that socio economic offences are those which affects the country's economy as well the health and material of the society.

Before discussing the concept of socio economic offences elaborately, first it is needed to be stated that in India the Government had appointed certain committees to work on some specific offences, which offences are actually falling under the category of socio economic offences. In India, the Government of India for the purpose of reviewing the problem of corruption and for making suggestions regarding it had appointed a committee namely Santhanam Committee in the year of 1962,¹ which has suggested changes in the legal framework for the purpose of ensuring the speedy trial of the cases relating to bribery, corruption or the cases of criminal misconduct which can help in making the law more effective; the committee has suggested the changes after going through numerous cases in the light of the present social context and the social changes and the economic objectives, which actually helped in the growth of these types of offences. This Santhanam Committee while providing suggestions regarding the change in the legal framework, which is needed for the purpose of curbing the problem of corruption, has also dealt with the concept of the white collar crime and had attached a great importance towards it and accordingly the report had stated the scenario in which these evils evolved.

Later the 47th Law Commission Report laid down a new composite category of socio-economic crimes. The three basic forms include illegal economic activities,² illegal way of performing commercial and allied transactions³ and evasion of public taxes or monetary liabilities.⁴

¹ <http://lawcommissionofindia.nic.in/1-50/Report29.pdf> . (last visited on 10TH May 2018).

² Black marketing, food and drug adulteration, smuggling, bootlegging, gambling and Prostitution.

³ Illegal gain from real estate deals. Bribery, kickbacks/cuts, violation of foreign exchange regulations.

⁴ Income tax, excise, sales and customs evasion.

CHAPTER-2

WHITE COLLAR CRIME VIS A VIS SOCIO ECONOMIC OFFENCES

While discussing Socio economic offences it is necessary to discuss the concept of white collar crime in the beginning, as it is necessary to understand the concept of white collar crime before going to the details of socio economic offences. The occurrence of white collar crime is very common now-a-days. If men or women is asked that whether they have heard about white collar crime, most of them will say that they have heard about this term and by this term they think about the stealing of money by persons of high status, who despite their stealing do not go to the jail. Though, the concept of white collar crime is not that simple. It actually involves many social, economic and legal issues, the issues having great impact in the society.⁵

If the history can be traced back thoroughly then in the earlier portion of twentieth century, it can be found that, one of the eminent American sociologist, namely E. A. Ross had raised his voice against business duplicities and had mentioned that there are some powerful business owners and also some members of executive who have a tendency to exploit people and they do it and they also manipulate marketplace to fulfil their uninhibited desire regarding maximization of their profits, but while doing so, they pretend that they are pious and respectable.

The term “white collar crime” came into the picture when eminent criminologist Edwin H. Sutherland first coined it, it can be said that Sutherland had worked upon the concept of white collar crime thorough out his career, but it is also a fact that from his works it can be found that he has not given only one definition of white collar crime, rather he had used several definitions of white collar crime in his works, but the definition which is there in his book namely “White collar Crime” is one of the most famous one, where he has defined the concept of white collar crime as being a crime which is committed by such a person who is having a high social status and also having respectability which is acquired by him in the course of the occupation, in this definition he also has noted that under this definition many of the crimes which are committed by the upper class is excluded, such as, murder, intoxication and adultery are excluded though

⁵ BENSON & SIMPSON, “WHITE COLLAR CRIME, AN OPPORTUNITY PERSPECTIVE”, 1, (2009).

committed by the persons of upper class as these crimes are not customarily becomes a part of the occupational procedures of these persons belonging to the upper class and in the footnote he had also mentioned that the term white collar crime has been used for the purpose of referring principally to the managers of business and to the members of the executive.⁶ Besides, Sutherland had not only defined the term white collar crime, he had also given his opinion that the criminals who are committing these white collar crimes should be differentiated as there are differences between the persons belonging to the lower socio-economic status who are committing crimes by violating the regular penal code or violating the special trade regulations which are applicable to them or the persons who are belonging to high social economic status and violating the provisions of the regular penal code in such ways which are not connected with their occupation and the persons who are committing white collar crimes. 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). (2) Those crimes committed on behalf of organizations (by people of any status). (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).

After discussing the concept of white collar crime, the concept of socio economic offences is needed to be discussed. In this context first, the concept of socio economic offences given by the 47th Law Commission Report in India is very important and needed to be discussed as in this report the salient features of these social and economic offences are discussed in a detailed manner. 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 others⁷, but is also of wider import.

According to the above mentioned Law Commission Report, there are salient features of social and economic offences,⁸ firstly, in these type of offences the particular motive of the criminal is not lust or hate rather the motive is avarice, secondly, if the background of these types of offences can be seen then it can be understood that the background is non-emotional which is not the same in cases of murder, rape etc. if compared with these types of offences, as in the cases of

⁶ SUTHERLAND, "*WHITE-COLLAR CRIME*", 9, (1949).

⁷ HAZEL CROAK, "*UNDERSTANDING WHITE COLLAR CRIME*", 11-12(2001)

⁸ Law Commission Report, 47, 2

social and economic offences, generally there is no existence of any emotional reaction between the offender and victim, thirdly, usually in these types of offences the victim is a large portion of the public, especially the consuming public and though even if there is no harm to any particular person, but the harm is caused to the society which have a very large impact upon the society, fourthly, the mode of these type of offences is fraud generally and not force, fifthly, the act which results in commission of these type of offences is generally a deliberate and wilful act, sixthly, the interest which needed to be protected if there is commission of these type of offences are two-fold, as social interest is protected while preserving the property or health or the wealth of the individual members and while preserving the whole economic system of a country and also protecting the social interest which is in the augmentation of wealth of the whole country.

If the historical development of these socio economic offences in India can be traced, it can be found that after the World War, there is scarcity of essential things and which resulted in increasing demand of such things and avarice was breeding among the businessmen, and there was a development regarding these types of offences, then after the freedom and Partition of India, for lack of good legal and administration control this problem increased and after the urbanization took place, these offences became rampant in India and the Govt. started to recognize these problems and appointed different committees to investigate the matter and tried to control the situation by implementing some measures as can be found from the reports of these committees. It is clear from the above discussion that these offences are different if compared to the other offences. The two distinguishing features of these offences are the gravity of these offences having a strong adverse impact in the society and thereby causing a great harm to the society as a whole, and the nature of these offences are also peculiar if compared to the other offences as these offences are done in a planned way and it is done in secrecy in a sophisticated manner by some shrewd persons only for the purpose of their profit.

So, from the above discussion it is clear that this particular type of offences actually not only cause harm to the public welfare, but also harms the nation's welfare as a whole.

2.1 Different **Types of Socio Economic Offences**

In 29th Law Commission report, some categories are mentioned which are dealt with in the report. They are discussed in a brief manner here under for the sake of understanding the concepts of different types of social and economic offences in India.

As per the report,

1. the offences **which actually prevent the economic development of the country** and thereby consequently creates danger for the economic health of a country comes under the first category,
2. in second category there are **offences of evasion of tax,**
3. in third category there are the offences related to **misuse of the position by the public servants,**
4. under **fourth category the offences which is similar to the nature of breaches of the contracts which consequently results in delivery of such goods which are not accordingly falling under the specifications are included,**
5. in the fifth category **the offences relating to hoarding as well as black marketing comes,**
6. the sixth category mentions about **the offences relating to adulteration of foods as well as drugs,**
7. in the seventh category the offences of **theft and the misappropriation in relation to public property and funds** are included,
8. in the eighth and the last category comes **the offences related to trafficking in the sector of licenses as well as permits etc.**

CHAPTER-3

LEGAL CONTROL MECHANISM IN INDIA TO COMBAT SOCIO ECONOMIC OFFENCES

The survey includes an analysis of the case-laws having socio-economic ramifications. The cases pertain to offences under socio-economic legislations in India, namely, Essential Commodities Act 1955, Prevention of Black-marketing and Maintenance of supplies of essential commodities Act 1980, Food Safety and Standards Act 2006, Prevention of corruption Act 1988, Narcotic and Psychotropic substances Act 1985, Foreign Exchange Regulation Act, 1973 and Foreign Exchange Management Act, 1999, Income-Tax Act, 1961, Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (COFEPOSA), Drugs and Cosmetics Act 1940, Dowry Prohibition Act, 1961, and Immoral Traffic Prevention Act, 1956. Some of them are discussed below:

3.1 ESSENTIAL COMMODITIES ACT AND PREVENTION OF BLACK MARKETING AND MAINTENANCE OF SUPPLIES OF ESSENTIAL COMMODITIES

The Essential Commodities Act, 1955 entails to an era of food scarcity and when secured food supply was considered to be a government responsibility. The main aim of the Act is to provide food supply to the consumers and to protect them from the exploitation of unscrupulous traders. One of the major problems with regard to essential commodities was its hoarding and black marketing. In order to curb it, the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (hereinafter PBMSEC Act, 1980) was enacted to provide for detention in certain cases or the purpose of prevention of black marketing and maintenance of supplies of commodities essential to the community.

PUBLIC DISTRIBUTION SCHEME

In *PUCL (PDS Matters) v. Union of India*,⁹ a writ petition was filed in the Supreme Court primarily aiming at the reforms of the PDS (Public Distribution Scheme). The main contention of the petitioners was that in spite of large availability of food grains in the country and in spite of subsidies meant for food grains distribution among poorer section of the society, there is large scale misappropriation and wastage of food grains. The court in this case focused on Wadhwa J CVC report. The report mentioned that PDS which is the largest food distribution network in the world suffers due to corruption. The Supreme Court called upon CVC to sum up its final recommendations at the national as well as the state level and directed it to give short/immediate measures and long term objectives to be taken up by state/central government. The long term objectives were primarily to set up civil supplies corporation and for computerisation of PDS operations. The report held that it becomes important that a civil supplies corporation in the state is constituted to work as an independent body to distribute PDS food grains at Fair Price Shop (FPS) level and take over existing FPS. The report also held that computerisation is the only way to prevent diversion of PDS food grains.

The short term recommendations included identification of beneficiaries inclusion and exclusion errors; proper infrastructure development by Food Corporation of India (FCI) and states for storage of food grains; as far as possible there should be no intermediate storage by corporations after lifting of the stock from the FCI godown. The civil supplies corporation or the department where corporation is not formed should lift the stock from FCI godown. The other short term recommendations include increasing viability of FPS; accountability and monitoring should be increased by developing a 'transparency portal'; allocation of PDS on unit basis and constitution of vigilant committees to monitor the distribution of food grains. The report also contained several other recommendations but the most important was to have an effective complaint mechanism and enforcement system. It is mentioned that there should be zero tolerance towards matters of enforcement of provisions of EC Act, 1955 and PBMSEC Act, 1980. There are certain areas in the country where residents depend entirely on PDS food grains and hence proper supply is needed. Hence PBMSEC Act, 1980 should be invoked when there is a threat to disrupt the

⁹ (2013) 2 SCC 663.

supply of PDS food grains. In another case *Ranjit Kr v. State of Bihar*,¹⁰ the petitioner was accused of violating section 6A10 of the EC Act, 1955 as his tractor-trailer contained rice and wheat in sacks having the FCI marks and the driver on being asked about papers ran away. It was held that merely because the food grains were found in sacks bearing FCI marks cannot be a ground of violating any statutory order. Usually, once the food grains are sold by the PDS dealers they sell the sacks to the agriculturists and in the absence of any finding on violation of any statutory order, the court held the confiscation cannot be sustained. It was thoughtful of the court as innocent people could have been wrongly incriminated in such matters.

Cognizance of matter under section 11 EC Act, 1955 only on report written by public servant

In the case of *Abdul Rashid v. State of Haryana*,¹¹ the accused were found in illegal possession of kerosene. In order to attract the provision of section 712 of the EC Act, 1955 it has to be proved that the appellant was a dealer appointed under PDS, or was dealing with business of kerosene as a dealer. The petitioner and the person driving (deceased) were found with kerosene drums but it could not be revealed whether they were dealers or when as how they were planning to sell them. **It was also held that if an offence was put under section 11 of the Act, the court shall take cognizance only when the report is written by a public servant.**

3.2 FOOD SAFETY AND STANDARDS ACT, 2006

The objective of the food law is **to make available safe, pure, wholesome and nutritious food to the public**. The said Act consolidates all the previously existing laws relating to food and establishes the Food Safety and Standards Authority of India (**FSSAI**) for laying down science based standards for articles of food and to regulate their manufacture, storage, distribution, sale and import, to ensure availability of safe and wholesome food for human consumption.¹⁴ **It also provides for penalty in case the food standards are not in conformity with the provisions of the Act** and also brings within its penal ambit any act which deceives the consumer with regard to food items.

¹⁰ AIR 2014 Pat 14.

¹¹ 2014 Cri LJ 1588.

Adulteration in milk and soft-drinks

In *Swami Achyutanand Tirth v. Union of India*,¹² a group of citizens led by Swami Achyutanand Tirth of Uttarakhand filed a writ petition against preparation of synthetic and adulterated milk and milk products using urea, detergent, refined oil, caustic soda, white paint etc., which according to studies are hazardous to health and can even lead to cancer. The PIL sought framing of a comprehensive policy on the production, supply and safety of healthy, hygienic and natural milk. The Supreme Court in the judgment dated 05.12.2013 showed concern about adulteration of milk and its hazardous effect on public health. The court held that in cases of this kind, even though prosecution has been launched, **the maximum punishment is six months imprisonment. States like Uttar Pradesh, West Bengal and Odisha taking note of the seriousness of the offence has increased the penalty under section 272 IPC, 1860 wherein adulteration of food is treated to imprisonment for life and also fine.** The court in the order also directed various states to file affidavit of the number of cases they have booked wherein synthetic material have been added to milk. They were also asked to give details of inspection results, especially during festival season like Diwali and Dussehra.

3.3 PREVENTION OF CORRUPTION ACT, 1988

Corruption is considered to be one of the worst socio economic crimes and is the greatest impediments on the way towards progress for developing country like India. **Prevention of Corruption Act, 1988 was enacted to combat corruption in government agencies and public sector businesses in India.** One of the important step in this regard was the enlarging scope of the definition of the expression 'Public Servant'.

Approval from Central Government is not necessary to investigate senior government officers/public servants when enquiry/investigation is monitored by constitutional courts

In the case of *Manohar Lal Sharma v. Principal Secy*,¹³ the Central Bureau of Investigation (CBI) has registered preliminary enquiries (PEs) against **unknown public servants**, inter alia, of the offences under the Prevention of Corruption Act, 1988 (PC Act,1988) **relating to allocation of coal blocks for the period from 1993 to 2005 and 2006 to 2009.** One of the important

¹² 2013(5) SCALE 23.

¹³ 2013 (15) SCALE 305.

question which was considered in this impugned order was whether the approval of the Central Government is necessary under section 6A of the **Delhi Special Police Establishment Act, 1946** (DSPE Act) in a matter where the inquiry/investigation into the crime under the PC Act, 1988 is being monitored by the court. There is no doubt that the objective behind the enactment of section 6A is to ensure that those, who are in decision making positions, are not subjected to frivolous complaints and make available some screening mechanism for frivolous complaints. In this case the court held the filtration mechanism is achieved as the constitutional court that monitors the inquiry/investigation by CBI acts as guardian and protector of the rights of the individual and, if necessary, can always prevent any improper act by the CBI against senior officers in the Central Government when brought before it. The court per curiam held that approval under section 6A from Central Government is not necessary to investigate senior government officers/public servants when enquiry/investigation is monitored by constitutional courts.

Conditions on grant of bail in economic offences

In *Y.S. Jagan Mohan Reddy v. CBI*,¹⁴ the petitioner adopted several ingenious ways to amass illegal wealth which resulted in great public injury. The only question posed for consideration is whether the appellant-herein made out a case for bail. The Supreme Court held that economic offences constitute a class apart and hence a different approach has to be taken in matters of bail. The economic offence having deep rooted conspiracies and involving huge loss of public funds needs to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing a **serious threat to the financial health of the country**. **The court held that while granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused**, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/state and other similar considerations. **The court rejected the bail as it felt that it may hamper the investigation.**

¹⁴ (2013) 7 SCC 439.

3.4 Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS)

Although Narcotic Drugs and Psychotropic Substances have several medical and scientific uses, they can also be abused and trafficked. The Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985 was framed taking into account India's obligations under the **UN drug Conventions** as well as **Article 47 of the Constitution** which mandates that the '**State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health**'. This Act prohibits, except for medical or scientific purposes, the manufacture, production, trade, use, etc. of narcotic drugs and psychotropic substances.

In *Ashok Kumar Sharma v. State of Rajasthan*¹⁵, the appellant was charged under section 15 of the NDPS Act, 1985 and was convicted. **The important question** before the court is that whether officer acting under section 50 of the NDPS Act is legally obliged to apprise the accused of his rights to be searched before a gazetted officer or magistrate. **The court very reasonable held that although ignorance of law is** not an excuse but it cannot be imputed to every person, eg., a rustic villager, a poor man in the street. **It is the duty of the officer to inform the suspects of his right under section 50 of the NDPS Act, 1985. The court set aside the conviction.**

The accused was held guilty under section 8 and section 18 of NDPS Act, 1985 in *State of Rajasthan v. Bheru Lal*.¹⁶ The accused on the date of the incident was found carrying three kilograms of opium by one police-officer who was temporary in charge, SHO, of the local police station. He was later convicted at the trial court. At the high court, he was acquitted because the police officer who conducted the search, seizure and arrest was not the SHO. The Supreme Court held that although he was not the SHO but was given temporary charge as SHO. He relied on reliable sources and complied with necessary requirements and proceeded to the spot to trap the accused. Any delay would have allowed the accused to escape, and hence there is no justification to place unnecessary importance on the term 'posted'. The Supreme Court set aside the high court decision and the judgment of the trial court was restored.

¹⁵ (2013) 2 SCC 67.

¹⁶ (2013) 11 SCC 730.

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CONCLUSION

There are some problems relating to these types of offences, which are generally found while dealing with these types of problems. One of the problem is in these types of offences sometimes it is difficult to decide that who will be responsible while the offence is done at the decision making level of the firms, because in many cases it can be seen that decision making is fragmented and not there in the hands of a single person, besides, the persons who are making the decision can practice some concerted ignorance so that they can shield themselves from the criminal liability. Besides, as it can be found from the legislations which are trying to deal with these types of offences in India, they are regulatory in nature in many cases and therefore, it is for control and for monitoring regarding the behaviour of different institutions and as they are regulatory in nature in most of the situations, the control has a tendency to become more persuasive in nature rather than becoming more punitive in nature, which is needed to control the situation for example, the provision of recall of products as existing in the legislations dealing with the food adulteration.

While concluding it can be stated that in India, there are several problems of poverty, ill nourishment as well as exploitation which are coming in the way of economic development of this country, apart from these, if these offences continue to harm the economic development of the country, then India will not be able to develop as a whole. So, by some stringent action in the part of the Govt. and by initiative of the people of India these problems of socio economic offences can be cured to a great extent.