

## TENTATIVE THEORY OF CRIME

**P**rof. *Edwin H. Sutherland* has propounded that no single theory can offer a satisfactory explanation for crime-causation. Therefore, in absence of a single theory of crime-causation, criminologists have offered different explanations to justify their own theory to explain delinquent behaviour. Many writers have preferred a multiple approach to criminal behaviour which suggests that crime generates not as a result of one solitary factor, but as a result of combination of variety of factors.

The exponents of classical school explained crime in terms of *free will* and laid greater emphasis on 'crime' rather than the 'criminal'. The neo-classists, on the other hand, attributed criminality to mental depravity of the offender which incapacitates him to distinguish between rightful or wrongful conduct. There is yet another view supported by positivists which lays greater stress on the personality of the offender and the processes which operate in making him behave criminally.

### **Criminality as a part of social behaviour :**

As stated earlier, criminality is essentially a part of social behaviour which emanates out of the relationship of individuals in society. The life experience of the individual, his different associations, environment and legal provisions in force, all cumulatively affect his behaviour. Therefore, *Donald Taft* rightly observed that men react to social structure and values and institutions derived therefrom. As such, the behaviour whether criminal or non-criminal, can be regarded as a combined effect of culture and environment.

The tentative theory of criminal behaviour seeks to evaluate the impact of social culture and values on criminality. History reveals that in every society certain social values are greatly appreciated while there are others which are condemned or disapproved. In other words, the values which are cherished bring satisfaction to the members of the community while those which are disapproved bring them discontent. Society, through its law enforcement agencies tries to encourage the approved patterns and discourage disapproved behaviours. The basis of these legal sanctions lies in customs, religious precepts, public opinion, conventions and traditions of the society.<sup>1</sup> Thus, the accepted social norms which are otherwise called as lawful conduct and disapproved norms which are unlawful conducts in a given society are reflected in its legal system. It can, therefore, be inferred that the laws enforced in a particular society serve as a mirror reflecting the socio-cultural values of a community. To quote *Donald Taft* again,

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1. R. Deb : Principle of Criminology, Criminal Law and Investigation (Vol. 1), 2nd Ed., p. 2.

"criminology is, strictly speaking, concerned only with acts which are made punishable under the criminal law". It is significant to note that laws only define the prohibited conducts which are punishable, and whatever is not specifically punishable, shall be permissible as lawful behaviour. Since culture and social values differ according to time and place, the laws are a variable content changing from society to society depending on their accepted norms.

It is needless to stress that criminality is greatly influenced by the existing law and its sanctions. There are, however, certain values, which in spite of their unlawful nature, command respect in society. Thus, in India the caste system and untouchability stand abolished,<sup>1</sup> yet frankly speaking, the society is still reluctant to shed it off completely. It is common knowledge that in India the elections are fought, won and lost on caste considerations. So also although the daughters have acquired a right to equal share with sons under the Hindu Succession Act, 1956, yet it still remains questionable as to how many women actually assert their claim to equal share in property with their brothers. The obvious reason for this apathy lies in the fact that the values accepted and continued from times immemorial in Hindu society cannot be thrown off by handful of legislative measures unless the members of society are voluntarily willing to accept them whole-heartedly. The post-independence era in India has created new situations particularly on the political plane. Today public welfare is sacrificed for personal gains. What would otherwise be punishable for an ordinary citizen is excusable if done by politically influential persons under one or the other pretext. Scant regard for payment of huge arrears of income-tax by political leaders (and also noted film stars) and their involvement in corrupt practices, scams, bunglings, etc., and links with the underworld criminals sufficiently reflect upon the vitiated political climate of the country. The abuse of political power by showing favours to chums and favourites has become common with the politicians. The politicians seem to have imbibed these traits from the past traditions of British rule in India when the administrators could use their authority and power for their personal gains. Thus the past Indian social structure and culture has a direct bearing on the present law violations by politicians and administrators. The only difference is that the people today can at least voice their feelings of discontent which they could not otherwise do during the British Colonial rule in India.

The social values in a given society command equal respect from criminals as well as non-criminals. But at times, a handful of persons are placed in such situation that they ignore these accepted values altogether and follow prohibited norms which are commonly termed as crime. Thus, a person who is without any source of income may, out of frustration and disgust be forced to commit theft or similar crime if he fails in his legitimate efforts to secure a livelihood, although he is fully aware that what he is doing is prohibited by law and against the accepted norms of society. Likewise, gambling though illegal and disapproved by society is resorted to by many persons out of temptation to gain money quickly without any labour. Again, persons belonging to high social status indulge in white collar crimes because it entails no loss of status in society. Thus briefly speaking,

1. The Protection of Civil Rights Act, 1955.

crimes generate out of the delinquent behaviour followed by a minority group of persons in society although there is a social disapprobation for them.

### **Socio-cultural patterns and Criminal behaviour :**

The general accountability of the cultural structure of society to criminal behaviour can be summarised in the following paragraphs :—

1. The socio-cultural disparities prevailing in society between rich and poor or high or low castes, compel the underprivileged to resort to criminality either to escape miseries and disgrace or to satisfy their basic needs. Thus, crimes in slums, broken homes, prostitution houses, gambling dens and violation of prohibition or drug laws are the natural consequences of such structural differences in society. Crimes relating to property are generally committed by persons who are in quest of earning money without much labour or work. It is, therefore, obvious that lesser the disparity between different classes of society, lesser will be incidence of crime in that society. The impact of the twentieth century materialism is so great on human society that there has been an overall increase in the number of property crimes throughout the world. The under-privileged who do not have much appreciation for accepted social norms on account of their bitter experiences, prefer to organise themselves into different anti-social groups and thus lend themselves into criminality.

2. Pattern setting by the privileged and influential groups of society such as the politicians, industrialists, lawyers, engineers, doctors, bankers, businessmen, etc., play an important role in appraisal of criminal behaviour by the persons belonging to under-privileged class. It is common knowledge that Indian society is fairly tolerant about the exploitative tendencies of top ranking businessmen and industrialist who quite often resort to white collar crimes and other illegal methods for their personal gain. Bribery, corruption, tax evasion, black-mailing and speculation are common among the persons of high social status. It is well known that there is a great divergence between the prescribed codes of ethics for the professional lawyers and their practise. The success and reputation of a lawyer depends largely on the number of cases won by him. This obviously requires great skill in arguing cases and defending the interests of clients by all possible means. This often involves resort to unethical practices such as toutism, unfair bargaining with colleagues and other unfair tactics. These methods adopted by this prestiged class of society indirectly set pattern for the normal tune of the society. Since the criminals often remain in close contact with their counsel, the former are often influenced by the latter's behavioural pattern and thus tend to learn unethical practices.

3. As regards the politicians who claim themselves to be custodians of society, less said the better. They do not even hesitate to make use of their political influence and contacts with high officials for their personal gain and are at times tempted to indulge in nefarious activities which are offensive and even anti-social in nature. More often than not, they resort to corrupt practices for their personal advantage. At times they also seek the help of notorious offenders and anti-social elements to accomplish their political ends. Politicians very often violate the codes and ethics of their party,

particularly at the time of polls. They indulge in all sorts of tactics and malpractices which are prohibited under the election laws. Obviously, such conduct on the part of political leaders has an adverse effect on youngsters who tend to follow the same course of conduct to achieve success in their pursuits. This trend is well illustrated by the tension that prevails among the rival groups of students who contest elections for any office of the college or university unions. All sorts of unworthy means and foul tactics are adopted in fighting these elections. After the results are announced, there is face to face fight and the winning candidate is subjected to threats and assault by the defeated group. It needs no mention that these tactics are followed by the students because they observe the political leaders also resorting to similar tactics at the time of general elections. That apart, it is common knowledge, that political leaders themselves are patronising the students to fight elections in educational institutions on party lines.

It would be pertinent to refer to the historic case of former Prime Minister of India Shri P.V. Narasimha Rao,<sup>1</sup> to show how politicians use (misuse) their political position and power for their personal advantage by flouting law with impunity. He, with the help of his comrades successfully maneuvered to purchase the right to remain in power to rule the country by bribing the Members of Parliament at the time of 10th Lok Sabha elections held in 1993. The Congress (I) party was short by 4 members for simple majority.

In February 1996, a complaint was filed with the CBI alleging that Shri Narasimha Rao along with three others hatched a criminal conspiracy to muster support of four Jharkhand Mukti Morcha (JMM) MPs, namely Suraj Mandal, Shibu Soren, Simon Marandi and Shalender Mehto and some others by bribing them to the tune of over three crores (thirty million) rupees.

The Special Judge designate on the basis of records came to the conclusion that there was sufficient evidence to justify framing of charges and to initiate prosecution of all the above named persons under section 120B of I.P.C. read with Section 7 and Section 12 or 11 and Section 13 of the Prevention of Corruption Act, 1988.

The accused pleaded privilege and immunity under Article 105(2) as they alleged that the act was related to voting in Parliament. The Special Judge rejected the plea of the accused on the ground that the alleged charges were for giving and taking bribe outside Parliament and voting was not under adjudication at all. The revision petition filed by the appellants against the said order of the Special Judge having been dismissed by the Delhi High Court, the accused moved the Supreme Court Constitution Bench of five Judges.

The Supreme Court by majority of 3 : 2 allowed protection against criminal prosecution under Article 105(2) of the Constitution conferring privileges to MPs and held that they are not answerable to Court of Law for alleged conspiracy and bribe giving and taking. However, Justice Dr. Anand and Justice Aggarwal delivering a dissenting judgment upheld the High

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1. *P.V. Narasimha Rao v. State (CBI)*, AIR 1998, SC 2001. Finally Shri P.V. Narasimha Rao and four JMM MPs' were acquitted by Delhi High Court on March 15, 2002.

Court's finding that there was no justification in making a distinction between 'takers' and 'givers' of bribe. The Court observed that clauses (2) and (3) of Article 105 confer privileges on MP to secure full freedom to member while participating in Parliament's proceedings in House but it certainly does not extend to case of bribery or corruption by a MP.

It is submitted that the judgment in *Shri Narasimha Rao's* case nullifies the very basis of anti-corruption law and there seems no moral, ethical or legal basis to allow MPs immunity for such illegal acts which if committed by a common man would make him liable to be punished severally.

The case of *A.R. Antuley v. Union of India*,<sup>1</sup> may also be cited to show how corruption got bogged down in appeals, cross appeals, petitions and reviews. The entire case lingered on for eight long years from 9th June 1980 to 29th April 1988 wherein the resourceful and manipulative litigant resorted to the strategy of delay and petition applications to court raising hyper-technical issues. Commenting on the findings of the case Professor Upendra Baxi wrote, although he did not intend to "attribute any improper motive to the Supreme Court Judges", he would surmise that the "political complexion of the case could not have been distant from the judicial mind". The case amply demonstrates how resourceful litigant can frustrate a litigation for corruption against him and how he can benefit from rigid technicalities of the court procedure.

It would also be pertinent to refer to the impeachment motion brought against Justice Ramaswamy on 10th May 1993 to show how precepts of morality and ethical values were thrown to winds by the Parliamentarians in power despite the fact that the Supreme Court had approved the charges against Mr. Justice Ramaswamy. The Congress Party in power, by sheer political strategy of abstention from voting on impeachment motion, saved him from being condemned. It is rather unfortunate that for the first time in the history of Indian Judiciary a Judge of the Apex Court was put in the dock accused of corruption and abuse of power and the Parliament unheeded by public opinion, got him scot-free. It is, however, a different matter that subsequently he decided to resign on 13th May, 1993.

4. On the industrial front, better bargaining capacity of labour unions against their employers often leads to violence and clashes. These trade unions use all kinds of pressure tactics to compel the employers to concede to their demands. Such tensions generally lead to offences such as assault, battery, intimidation, looting, arson, blockades, gheraos and destruction of property.

5. It is significant to note that in modern complex society there are certain circumstances which though not looked with favour, are nevertheless allowed to persist and which finally help in creating background congenial to criminal behaviour. Thus, in the context of Indian society, free-intermingling of women with men was not looked with favour till late forties of this century. But the impact of modernisation, westernisation, women education, financial handicaps of the family and matrimonial problems of girls have virtually forced Indian women to take up outdoor jobs shoulder to shoulder

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1. (1988) 2 SCC 602.

with men and at times they are compelled to submit to the lustful wishes of their male counter-parts and bosses much against their wishes. This eventually has led to multiplicity of sex crimes. Despite distinct guidelines having been laid down by the Supreme Court for the protection of working women against sexual harassment by their male bosses or colleagues at the working place in the historic *Vishaka v. State of Rajasthan*,<sup>1</sup> case, most of such incidents still remain unreported or undetected due to the honour and dignity of woman victim involved therein.

The foregoing discussion brings us to the conclusion that on account of interacting group relations in society, these prestiged groups set both types of patterns, namely, social as well as anti-social, which eventually provide a general moral tune for the society. It, therefore, follows that social culture emanates from the patterns and behaviours which persons learn by their association with different social institutions such as family, school, religion, neighbourhood, playmates, friends and colleagues. It is for the criminologist to devote proper attention to the influences of these social groups and sub-groups which ultimately determine the cultural status of a given society.

### **Tribals Norms and Criminality :**

The crimes committed by tribals and Adivasis living in tribal areas in India further illustrate the point that socio-cultural values have a direct bearing on criminality. Many of the crimes among these tribes are due to the socio-cultural practices deep rooted in their age-old customs. The socio-cultural ethos of tribals such as superstitions, belief in witch-craft, petty quarrels, sexual indulgence and intoxication due to excessive consumption of liquor, especially in festive seasons, lead to crimes such as homicides, rapes, arson, kidnappings, dacoities, etc.<sup>2</sup> For instance, marriage by elopement is customarily in vogue among the Bhil and Bhilala tribals of Jhabua district in Madhya Pradesh. The tribals meet together in *Bhagoria hat* which coincides with the Holi festival wherein young boys and girls dance together and the boy elopes with the girl of his choice provided she also approves him and when they return, the parents of both the spouses arrange their marriage. Thus, the elopement which is an offence punishable under the Indian Penal Code, constitutes one of the accepted norms of this tribal society and is never looked as an offence. Likewise the pre-marital sex, which is a legally prohibited conduct under the penal law of India, is widely in practice in the *Gotuls* i.e., youth dormitories of Gond tribals<sup>3</sup> of Bastar and Chotanagpur region of Bihar. In fact, it is regarded as an important socio-cultural institution by the tribals for providing adequate training to their youth for future marital life. Again, serving liquor on the occasion of child birth, betrothal, marriage, religious and agricultural festivals and even to mourners attending the last rites of the deceased, is considered as an indespensable part of tribal custom prevalent in almost all parts of India. Thus the real cause of approbation for these prohibited conducts which are crimes lies in the peculiar sentiments of the tribal society because of their behavioural settings. Thus, tribal criminality is

1. AIR 1997 SC 3011.

2. 26 JILI (1983) p. 617.

3. Verrier Elwin : The Muria And Their Ghotul (Oxford 1991), p. 381.

basically a problem posed by lack of education and socio-economic backwardness due to ignorance and lack of adequate knowledge. Therefore, there is need to create socio-economic awakening among the tribals without interfering with their folklore and cultural heritage.

### **Crime as a product of social disorganisation :**

It must further be stated that every society has a culturally determined goal. May it be socialism, communism or any other form of social order. The members of society tend to follow the norms prescribed for attainment of the particular goal. In this effort, some persons succeed in exploiting their fellowmen while others deviate from the normal course of conduct and lend into criminality which is both harmful and offensive to society. Thus the influence of general culture in some categories of crime is most direct and conspicuous.

*Sutherland* founded his theory of differential association of criminal behaviour on social disorganisation. He believed that crime and social disorganisation is an outcome of the accepted values of society. Another criminologist *Healy* attributed emotional imbalances to crime causation thus accepting the influence of association on criminals. He pointed out that non-fulfilment of desires among children causes frustration and consequently they are psychologically disturbed. Thus, in an endeavour to escape from these emotional imbalances, they are prone to become criminals. *Sheldon* also asserts that the innate tendencies of men such as short temperedness, delayed maturity, etc., are a source of crime-causation. *W.A. Bonger* however, locates criminality in poor and deplorable economic conditions and capitalistic order of society. According to Marxist theory, all human behaviour is determined by economic factors. *Frederick Engels* corroborated this fact and attributed the increase in the incidence of crime in England during the first half of the nineteenth century to the abject condition proletariat due to class exploitation. The concept that crime occurs due to the exploitation of the poor by the rich finally led to the evolution of the theory of Radical Criminology in the West.

An appraisal of divergent views on crime and criminals brings us to the conclusion that each one of these theories explains only a few types of crime while it does not have answer for certain other kinds of crime. Thus, *Healy* and *Sheldon's* views give no explanation for the incidence of white collar crimes which are otherwise satisfactorily answered by *W.A. Bonger's* economic theory and the theory of differential association propounded by *Sutherland*. It would, therefore, be proper to infer that the cultural theory of crime being tentative and founded on social value considerations, can answer every behaviour whether criminal or non-criminal, and thus offers a satisfactory explanation for all crimes.

It has now been generally accepted that every criminal is a product of his own personality as also his peculiar social experiences of the general culture. This implies the acceptance of laws of 'cause and effect' in human behaviour and denial of the *free will* theory of the classical school. The view that crime is a result of the interaction of multiple factors seems to be more logical to explain the crime-causation. It must, however, be noted that if reliance is placed on '*free will*' concept of criminality, it would mean that

every individual is free to act as he likes and under these circumstances, prevention of crime will be rather impossible. Conversely, if the conditions which extenuate crimes can be known, they can help in eliminating crimes or at least minimising them to a considerable extent. Moreover, the background of crime has a direct bearing on penal policy inasmuch as the penal programme is aimed at rehabilitation of offenders through adequate means. It must be stated that criminals as a class comprise a large variety of persons who may be adult or child, male or female, shrewd or ignorant, mentally sound or emotionally disturbed, white collar criminals or those committing predatory crimes, prostitutes, pimps and many other types of offenders. Each of these categories of criminals are a product of peculiar circumstances and, therefore, punishing them may not serve the desired purpose. It would, therefore, be prudent to re-shape the penal policy on sound principles of reformation of offenders so that the object of punishment is fully accomplished. This approach will perhaps be the most fitting contribution to the cause of penal justice.<sup>1</sup>

*Robert K. Merton*, in his interesting study on social theory and social structure observes that social structure strains the cultural values considerably and when cultural regulation of behaviour weakens, it furnishes a breeding ground for criminality.<sup>2</sup> Referring to the problem of criminality in United States, *Donald Taft* aptly observed that criminal patterns are products of general culture and are vitalised by historical and social processes.<sup>3</sup>

*Austin T. Turk* has asserted that social conflict and social disorganisation was an inevitable and unescapable part of social life. If there was no social disorganisation, it would be indicative of the fact that the individuals are being excessively controlled or coerced by those who are in power. On the contrary, too much conflict and extreme disorganisation would also not be healthy for the progress of society.

While talking about social disorganisation, *Turk* distinguishes between cultural norms and social norms. According to him, cultural norms set out what behaviour is or is not expected while the social norms represent what the actual behaviour in society is. For the authorities in power, the cultural norms are usually reflected in laws framed for the society and social norms are the enforcement of those laws. These social norms represent the actual behavioural patterns of the subjects.<sup>4</sup>

The disjuncture between cultural and social norms not only induces conflict, but also leads to social disorganisation which eventually provides ground for law breaking and criminalisation of individuals.<sup>5</sup>

In the context of India, the impact of socio-cultural taboos of Indian society on criminality is more or less direct and conspicuous. The Indian society being complex and competitive, there is considerable conflict which often takes the form of crime. Besides the criminals, exploitative tendencies are rampant among non-criminals as well which reflect criminogenic

1. P.K. Sen : Penology Old and New (1943 Ed.) p. 11.

2. Robert K. Merton : Social Theory and Social Structure, p. 131.

3. Donald Taft : Criminology (4th Ed.) p. 275.

4. Turk Austin T. : Criminality & Legal Order (1969) p. 92.

5. *Ibid.*

elements in their general culture. This accounts for considerable increase in crime and at the same time ineffectiveness of punitive agencies to combat crime. The only remedy that seems in sight is need for public awakening through sound education particularly in rural areas. An integrated educational programme with emphasis on legal literacy may perhaps be useful to inculcate respect for law and rightful conduct among the people in general and the rural masses in particular. Thus, greater emphasis should be on prevention rather than punitive measures. As *Thomas Fuller* rightly observed, "to punish and not to prevent is to labour at the pump and leave open the leak". It must be borne in mind that criminality is a curable deviance because every man is born good and it is only because of the stresses and strains of modern age that may lend him into criminality.

The criminal is not only a mentally depraved or emotionally disturbed person but also a victim of unfavourable circumstances. Diverse factors, such as physiological, psychological, social, cultural, environmental and economic, are responsible for his anti-social behaviour. He, therefore, needs individualised treatment just like a sick person. With a view to ensuring effective reformation of criminals, their categorisation according to the gravity and nature of the offence is utmost necessary. *Dr. M.J. Sethna* has suggested classification of criminals into four broad categories from the point of view of their treatment and correction<sup>1</sup> as follows :—

1. Psychotic and neurotic offenders need treatment without the necessity of any punishment ;
2. Hardened and habitual offenders need to be reformed while being punished ;
3. White collar criminals need to be punished without any treatment ; and
4. The first offenders, traffic law-violators etc. need neither punishment nor treatment, but simply admonition or release on probation.

The above categorisation of offenders, besides being most scientific and logical, is based on sociological analysis of crime and provides a sound basis for working out strategies for crime prevention and reformation of criminals. It is based on the sound assumption that human nature is complex and it is not possible to comprehend it fully. It has, however, been realised that all human beings do not respond similarly to a given situation. Thus two individuals may commit the same crime, but each act differs from the other in its social, economic, psychological and environmental ramifications. This basic understanding has led to the innovation of individualised treatment methods of offenders for their resocialisation and rehabilitation in the community. Treatment reaction to criminals should be commensurate with the societal reaction to crime.

To sum up, as rightly pointed out by *Durkheim Emile* that criminality persists in all societies and it is impossible to have a society totally devoid of crime. Therefore, all societies generate some rules and provide penal sanctions for their breach. He further argued that crime originates in society and is a fundamental condition of social organisation. The changes and

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1. Jehangir M.J. Sethna : *Sethna's Society & The Criminal* (5th Ed. 1989) pp. 186-191.

progressive shift in societal norms and economic standards necessitate simultaneous change in laws and rules. But when there is sudden change in power, wealth or factors of control, the societal norms are often overthrown resulting into lawlessness and multiplicity of crimes. Thus, state of lawlessness existing at the time of abrupt social change disrupts normalcy and people's behaviour is more likely to move in the direction of crime and criminality.<sup>1</sup>

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1. Katherine S. Williams : A Text Book on Criminology (1st Indian Reprint 2001) p. 345.

## CRIME AND ECONOMIC CONDITIONS

The proposition that economic life is fundamental and, therefore, has the determining influence upon the social and cultural values is as old as the human civilisation itself. This connotes that economic factors influence the nature and form of all social patterns and control all other aspects of human life. Thus, criminologists have tried to explain crime in terms of economic conditions through what they called as economic determinism.<sup>1</sup> In the words of *Carl Marx* (1818-83) economic conditions determine the general character of the social, political and spiritual processes of life and with the change of economic foundations, the entire superstructure is also rapidly transformed. Those who support this view concentrate on the economic aspect of crime and analyse the impact of economic conditions on criminality.<sup>2</sup> Their assertion that economic forces have been interacting right from the inception of the human society has a historical background. It is well known that in early societies when economic resources were limited, struggle for existence and survival of the fittest was supposed to be the law of nature. Thereafter, as the society advanced, increase in production yielded surplus as a result of which the system of barter and exchange originated. Gradually, money gained importance in human life so much so that it has now become the sole determining factor of a person's social status in modern society.

Legal philosophers of all ages have accepted that economic conditions have a direct bearing on crime.<sup>1</sup> Aristotle, the Greek philosopher commented that poverty endangers revolution and crimes originate from poverty. He asserted that crimes are committed not merely for the sake of meeting the necessities of life but also for acquiring superfluous things. He believed that crimes are mostly committed because of the acquisitive tendency of man and his greed for acquiring surplus wealth.<sup>2</sup> The critics of this view argue that poverty undoubtedly is one of the contributing factors for crime-causation but it is not true that necessity always motivates a person to commit crime. In fact it is the materialistic tendency of man that generates criminality within him. Thus, the desire to possess articles of luxury prompts him to commit criminal acts if he cannot procure them by legitimate means. It has been rightly observed by *Elbert Hubbard* that, "criminal is a man who does by illegal means what all the rest of us do legally. In fact it is the lust for materialistic gain rather than poverty which makes a man criminal". Commenting on this point, *Donald Taft* observed that crime has been a mere phenomenon of prosperity rather than adversity.<sup>2</sup>

Another Greek philosopher, *Plato* also believed that human 'greed' was the potential cause of crime. In subsequent years, thinkers like *Voltaire*

1. Goswami P. : 'Criminology' (1964), p. 163.  
2. Donald Taft : 'Criminology' (4th Ed) p. 125.

Rousseau, Beccaria and Bentham also expressed similar views and agreed that economic structure is one of the important causes of criminality. Poverty gives rise to hunger, misfortune, disease and anger, which destroys the personality of an individual and makes him irresponsible to do undesirable acts. Under the circumstances, he is forced to lend himself into criminality. Therefore, according to these philosophers economic factor has a close bearing on criminality and crime-rate rises when poverty increases in times of economic depression.

#### **Relationship between economic structure and crimes :**

During eighteenth century, intensive researches were conducted by criminologists in Europe on the impact of economic conditions on criminality. But unfortunately their findings differed radically and it was difficult to reach any positive conclusion in this regard. The relationship between economic conditions and crime is founded broadly on two main conflicting views, namely :

- (1) The relationship between economy and crime is inverse; that is when economic conditions are favourable, the incidence of crime is comparatively low but in times of economic depression criminality records an upward trend. This assumption finds support in all Marxist doctrines and leftist policies. William Aldrian Bonger, the noted Dutch social scientist strongly supported this contention.
- (2) The relationship between economic structure and crime is direct or positive ; that is to say, criminality being an extension of normal economic activity, increases or decreases with the rise or fall in economy. Thus, according to this presumption, the crime-rate shows an increase in periods of prosperity and decreases during periods of economic depression. This view has been most explicitly developed by Phillips Polett as a supplement to the original research of Enrico Ferri and his famous work '*Law of Criminal Saturation*'. Thorsten Sellin, however, concluded that unemployment which is necessarily an off shoot of depression, did not have an adverse effect on crime-rate perhaps because of governmental relief measures.

Russel emphatically stated that there is a direct inter-relation between the food prices and the crime-rate. As the prices shoot up, the crime-rate records a corresponding increase. He attributed increase in crime-rate in England during 1815-1842 mainly to the general distress and deterioration in commercial manufacturing and agricultural yield. Another writer R.H. Walsh suggests that crimes multiply during the period of depression and unfavourable economic conditions. Frederick Engels also adopted the same approach and attributed the increase in crime to the abject condition of people due to class exploitation.

John Clay asserts that summary convictions are more common in periods of prosperity than in periods of economic depression. He opines that during the periods of hard times, "the young and thoughtless who, when thrown into idleness, are liable to lapse into dishonesty".

*Miss Mary Carpenter*, a well known social worker with women and children and a long time Superintendent of the Red Lodge Reformatory for women at Bristol, however, did not agree with the view that poverty and bad economic conditions are responsible for increase in crimes. She did not totally rule out the influence of poverty on crime but refused to give it undue importance. This view has been further supported by *Charles Booth* who stated that 56% of the crimes are due to poverty and deteriorated economic conditions. *Cyril Burt* concurred with the findings of *Charles Booth* and attributed criminal behaviour to adverse economic conditions.

Most Italian criminologists also subscribe to the view that there is direct relationship between criminality and poor economy. However, *Albert C. Wanger* in his Philadelphian studies on "Crime and Economic Change" found no significant correlation between economic depression and crime-rate. But *David Bogen* in his study in "Juvenile Delinquency and Economic Trend" expressed a contrary view and observed that delinquency decreased during depression and increased in periods of prosperity.

While attributing poverty as a potential cause of criminality it must not be forgotten that it is rather a subjective concept. What one man considers poverty, another may view as a level of satisfactory comfort, if not of abundance. Unemployment too is a subjective factor depending on the "willingness to work" and to the degree of fastidiousness exercised by the worker as to the kind of work he will do. Though poverty and unemployment are genuine matters of human experience, they are nevertheless not capable of being subjected to accurate or uniform statistics.

*Charles Goring* also drew conclusions about the proximate relationship between the crime committed by each of the criminals and his occupation after a careful study of the occupations of about three thousand criminals. According to *Gabriel Tarde* crimes are the result of man's craze for luxurious life. If a person who is used to a luxurious way of life becomes poor for certain reason, he is likely to resort to crime in order to satisfy his urge for easy life. *Goring* further argued that this egoistic tendency of men can be satisfied only through 'money'. Therefore, if people cannot meet their ends by legitimate means, they are likely to resort to unlawful acts which we term as 'crime'.

### Marxists Theory :

Marxists have propagated a view that crimes emerge solely out of capitalist domination of society. Under such society the upper class can exploit the weak, put them in physical danger, and transgress their human rights either with impunity or with only lighter punishment. The Marxists believe that unfair division of labour and capital would eventually lead to a conflict between rich and the poor and finally to the overthrow of capitalist ideals. In result, communism would replace capitalism. *Richard Quinney*, supporting the Marxist ideology alleged that capitalist State was creating a criminalogenic society and there was need to replace it by socialist society in which people's socio-economic rights would be more safe and secure and this would surely lead to reduction in crime. According to him, criminal law in a capitalist regime is an instrument of the State and ruling class to perpetuate the capitalist social and economic order and it is meant for the protection of

their interests. Under these circumstances, the poorer sections of society remain oppressed through the coercion of legal system and their discontentment generates crimes.<sup>1</sup> It is only with the collapse of capitalist society that the problem of criminality can be solved.

The Marxists, however, differ in their view regarding the effect of economic conditions on criminality. In their opinion the two vary in inverse proportion. This view has, however, been refuted on the ground that despite constant economic progress throughout the world during the past 150 years the crimes are constantly recording an upward trend. The real cause for rise in crime-rate with economic prosperity is perhaps the capacity of people to spend more in manipulating escape from arrest and detection. That apart, quite a large number of crimes go undetected and unreported for want of lack of initiative on the part of victim in getting the offender prosecuted or due to the manipulative tactics of the criminal. White collar crimes such as bribery, corruption, fraud, misappropriation, embezzlement, counterfeiting, racketeering, etc. often go undetected on the strength of money and wealth. Thus, present conditions have created a peculiar situation wherein crimes are rampant whether the economic conditions are favourable or unfavourable.

Pointing out the interaction of economic conditions on delinquency, *Hermann Mannheim* observed that excluding the traffic offences, the criminal law administrators have to devote almost three-fourth of their time and attention in dealing with economic crimes. This amply demonstrates that economic factors contribute to delinquent behaviour directly or indirectly.<sup>2</sup>

*Dr. Morrison*, made a comprehensive study on the relationship between economic conditions and crime in India. He observed that there was a peculiar undercurrent of economic soundness in Indian caste system where every member of the caste could find himself completely safe and secure from the economic standpoint.

### Bonger's Economic Theory of Criminality :

*William A. Bonger*'s contribution to criminology in explaining the inter-relation of crime and economic conditions deserves a particular mention.<sup>3</sup> He derived his conclusions after an intensive research study of economic conditions prevailing in different socialistic countries in the first half of twentieth century. He stated that the modern age is a period of capitalistic economy. *Bonger* concluded that capitalism was one of the potential causes of criminality because the system created an atmosphere for promoting selfish tendencies in men. Even the socialist countries such as erstwhile Soviet Russia and China have experienced that the theories of economic equalisation have failed in their practical application. This is evident from the fact that only a few decades ago former Russian Prime Minister Khurschev had to launch several incentive programmes like permitting money-loans etc. for promoting social interests. Going a step

1. Quinney Richard : *The Social Reality of Crime* (1970, Boston) p. 131.

2. Mannheim H. : *Criminal Justice and Social Reconstruction*, p. 82.

3. Bonger, W.A. : *Criminality And Economic Conditions*, translated by Henry P. Horton (Boston, Little Brown & Co., 1916), p. 107.

further, the former Soviet Union President Mr. Mikhail Gorbachev introduced *glasnost* (economic freedom) and *perestroika* (restructuring socialism) in 1987 for ensuring materially better and richer life and greater democratisation of Russian society.

Thus while establishing a co-relationship between economic conditions and crime, W.A. *Bonger* drew the following conclusions :

(1) He prepared a statistical data and demonstrated that almost 79 per cent of the criminals belong to non-profitable class. Thus, he tried to establish a co-relationship between poverty and delinquency. In his doctoral thesis entitled *Criminality and Economic Conditions*, Dr. *Bonger* made a detailed study of the economic literature of whole Europe and concluded that crimes relating to property such as theft, stealing, robbery, dacoity, house-breaking etc. record an abnormal increase during the periods of depression when the prices are high.

(2) *Bonger* further observed that the influence of economic conditions on delinquency is essentially due to the capitalistic economy which breeds disparity and leads to unequal distribution of wealth. The capitalist resort to hoarding and monopolistic trends thus creating artificial scarcity and consequent rise in prices. This in turn stops production which ultimately leads to unemployment of labour, as a result of which offences such as alcoholism, vagrancy, beggary, assault, violence, etc. record an upward trend.

(3) In an economic system based on capitalism, economic cycles of inflation and deflation are frequent. Inflation gives rise to bankruptcy and insolvency with the result the persons affected thereby are forced to lead an anti-social life and some of them may even resort to criminality.

(4) Another peculiar feature of capitalistic economy is the competitive tendency among entrepreneurs. Efficiency, low-production cost and better quality of products are some of the admirable results of competitive economy. But when these efforts fail to meet the competition, unlawful devices such as violation of laws relating to trade marks, copyright, patents etc., are committed by the manufacturers. This gives rise to increase in crime-rate.

(5) There is yet another danger of the capitalistic economy which contributes to enormous increase in crimes. The employment of children and women furnishes soothing ground for criminality despite effective legislative restriction<sup>1</sup> banning their improper utilisation in industrial establishments. It has been rightly observed that employment of children as labour is in itself a potential cause for crimes because a child who earns his wages does not know how to spend it usefully. Consequently, he is apt to spend his money on undesirable items such as smoking, gambling, drinking, staking, womanising and so on, which ultimately drag him into the criminal world.

The issue relating to right of children to be protected from economic exploitation and their utilisation in hazardous work has engaged the attention of world community during the preceding decade. The International Labour Organisation has vehemently opposed child labour in view of the provisions of Article 18 of the United Nations Convention on the Rights of the Child, 1989 which prohibits employment of children for works

1. Child Labour (Prohibition & Regulation) Act, 1986; See also Art. 24 of the Constitution of India.

which are harmful to their health or physical, mental, spiritual moral or social development. The Government of India, however, perceives child labour as a necessary evil, a concomitant of poverty which cannot be done away with unless poverty itself is eradicated from society.<sup>1</sup> The Child Labour (Prohibition & Regulation) Act, 1986, prohibits engagement of children in certain hazardous employment. Thus, it does not completely ban child labour but only seeks to 'protect' working children from exploitation.<sup>2</sup> Section 14(1) and (2) of the Act provides for penalty for contravention of the provisions of the Act. The implementation and enforcement of the provisions of the Act, is, however, far from satisfactory. The reason being that child labour is rooted in the socio-economic conditions of the people and it cannot be wiped off unless poverty itself is completely eradicated.

The employment of women also has a demoralising effect on children. With the outdoor occupational activities of mothers, the children are not properly looked after. The lack of parental care and control over children in homes may detract them from righteous path and they are likely to fall into bad company of delinquents out of sheer frustration and want of proper attention towards them. That apart, greed for money often induces women to agree to immoral acts. Particularly, in the context of Indian society, the condition of working women is deplorable because of the lack of adequate protection to her from social dangers while she is at work. Commenting on this point *Prof. Gillin* rightly observed that while lack of employment seems to be hazardous for adult males the employment of women and children is associated with an increase in criminality.<sup>3</sup>

### Criticism of Bonger's Theory :

In spite of *Bonger's* generalisation regarding the effect of economic conditions on crime as enunciated in his "*Economic Theory of Crime*", many critics have opposed his views on different grounds. *Prof. Cohen* criticised *Bonger's* economic theory of criminality on the following grounds :

(1) *The research conducted by Charles Goring on three thousand criminals to establish a relationship between their respective occupations and frequency of committing crime has shown that poverty has no correlation with the frequency of convictions.* He further suggested that relative economic prosperity is no ground to explain decline in crime-rate. He opined that offences such as arson, wilful damage to property and sex crimes were frequent among labour class, agriculturists, seamen and soldiers while persons with commercial occupations commit less of these crimes but more of the offences of acquisitive nature. Commenting on this point *Cohen* observed that *honesty is not the monopoly of only the rich persons, many people lead an honest and upright life despite their poor financial condition.*

(2) *Gabriel Tarde*, the eminent French criminologist in his '*Penal Philosophy*' also subscribes to the view that a large number of crimes occur not due to commercial or industrial progress but because of inequitable distribution of wealth and man's lust for luxurious life. *The acquisitive*

1. 36 JILI (1994) p. 215.

2. Sec. 3 of Part II of the Act.

3. *Gillin J.L. : Criminology and Penology* (3rd Ed.), p. 57.

tendency in man often tempts him to commit illegal acts.

(3) *Dr. Bonger's* assertion that poverty is an essential condition of crime because a person is always prepared to do anything to get relief from his miserable economic condition, seems untenable in the light of the fact that even the wealthiest persons who are usually big industrialists, businessmen, financiers or monopolists often resort to dishonest means such as falsification of accounts, black-marketing, tax-evasion, hoarding, infringement of trade marks and copyright, etc., despite their huge earnings. This obviously does not support *Dr. Bonger's* theory of criminality founded on poverty-delinquency relationship. One can understand a poor man committing a theft to meet his bare necessities of life but why does an industrialist or monopolist evade tax or maintain a false account ? This is a question which really has no satisfactory answer. It may, therefore, be concluded that *Bonger's* theory of economic factor as a sole cause of criminality is not wholly correct. There are many other indirect factors which affect crimes differently.

The above observation can be further illustrated by the recent stock market scam at the behest of India's biggest stock-broker Ketan Parikh which involved irregularities and manipulations in the stock market in all their ramifications and transactions including insider trading relating to shares and other financial institutions. The Government has appointed a Joint Parliamentary Committee (JPC) in April 2001 consisting of thirty members including 20 from Lok Sabha and 10 from Rajya Sabha to probe into the role of banks, brokers or promoters or Stock Exchanges, financial institutions, corporate entities and regulatory authorities and fix responsibility of persons or institutions or authority in these illegal transactions. This amply demonstrates that it is not necessarily the need but greed and craze for amassing wealth which motivates even the wealthiest persons to indulge into criminal activities.

That apart, instances are not wanting when persons living in extreme poverty exhibit high sense of regard for honesty. They even decline to accept any kind of reward for their honest act since they consider it as a part of their duty to be honest and truthful to others. In doing so, they are obviously guided by value considerations and ethical standards of life rather than their economic condition. This clearly shows that poverty alone does not always lull the virtues of benevolence, honesty and justice in men. In fact, these are

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1. In the Indian context, the Bofors deal and the Fairfax Penal Findings of 1987 ...d FERA inquiries against the Delhi Firm Jyotsna Holdings Pvt. Ltd., for receiving 6.5 crores as commission from ONGC for some contracts of pipes in 1988 raised considerable furore in the Parliament. The Action Taken Report (ATR) of the Joint Parliamentary Committee on Harshed Mehta Bank Security Scam tabled by the Government in the Parliament on July 27, 1994 created uproarious furore in the House and the Ministry of Finance was alleged to have been negligent in unearthing the scam. Again, the Gyan Prakash Committee Report on Sugar Scam tabled in Parliament on 2nd February 1995 indicted State Trading Corporation along with the Civil Supplies Minister for the sugar crisis. The multi-crore Bihar Fodder Scam (1996) involving two former Chief Ministers Laloo Prasad Yadav and Dr. Jagannath Mishra, seven treasury officers and five IAS officers is being probed into by CBI in a Jharkhand Court in May 2001. The US-64 Scheme Scam of Unit Trust of India involving misuse of Public Funds is yet another illustration on the point (July 2001).

the qualities which have nothing to do with poverty or abundance.

(4) Dr. Bonger's view that capitalistic trend of society is responsible for criminality is also not wholly true. The socialistic policies launched with a view to eliminating excessive profits and other evils of capitalistic economy have equally failed to yield favourable results. The nationalisation of industries and State control over production have hardly been successful so far prevention of crime is concerned. Nationalisation essentially involves taking over control of private management by the State while the other factors of production and distribution remain unchanged. Thus, in State controlled undertakings, the management and control is entrusted to some public officials who are again the *individuals*. Therefore, how can it be said with certainty that these public officials shall not be tempted to personal gains so long as acquisitive tendency which is a part of human nature, persists in them. Moreover, State control presupposes absence of profit motives. Consequently, there shall be no incentive for production hence there would be scarcity and crisis which in turn will give rise to crimes relating to property such as theft, extortion, stealing, hoarding and black-marketing. It must, therefore, be accepted that undoubtedly there are certain crimes which result out of capitalistic society but there are others which necessarily generate in a socialistic pattern of society. For example, in socialist countries such as Russia and China, the crimes arising out of capitalistic economy are rare but the other types of crimes notably, political or religious offences have abnormally increased. The political instability and general discontentment among the people in these countries often leads to offences such as treason, sedition, and revolt against the Government in power. Therefore, socialisation as a solution to eliminate economic factors of crime has proved a breeding ground for the crimes of political nature.<sup>1</sup>

From the foregoing analysis, it may be inferred that crimes are committed by persons because of their subjective tendency therefore, economic changes through State control and nationalisation cannot inject a change in this human tendency. Socialistic policies can limit crimes only to an extent that the chances of profit motives by private persons would be considerably eliminated and there will be no occasion for violations of commercial laws for selfish motives. But it is fallacious to think that crimes shall be completely wiped off by switching over to socialistic pattern of society. This, in other words, means that it is not the poverty alone that generates crime but it is the poverty in relation to other factors such as acquisitive tendency in man and his craze for gaining more and more wealth that tends to make him a criminal. Considered from this standpoint the crimes committed by the poor as well as the rich can be satisfactorily explained.

It must, however, be reiterated that crime and poverty are endemic to any society, whatever be its form—whether it is capitalistic or socialistic and whatever may be the extent of its material development. Just as poverty cannot be wiped out so also crimes cannot be wiped off though they can be reduced with all out effort towards material development and prosperity of a country.

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1. Taft : Criminology (4th Ed.) p. 133.

The relevancy of poverty to crime is sufficiently highlighted though some of the judicial decisions wherein the accused were compelled to commit gruesome murder under pressure of extreme poverty. Thus, in *In re Maragatham*,<sup>1</sup> the accused were husband and wife who were starving for about ten days without any food or work for their subsistence. Therefore, they decided to put an end to their lives along with their one and a half month old female infant. They tied themselves together with a rope and jumped into a well. They were, however, rescued but unfortunately the infant was drowned. They were convicted of attempt to murder of their infant child and committing suicide under Section 307 read with Sections 34 and 309 of the Indian Penal Code.

In yet another case of *Shreerangyee v. State of Madras*,<sup>2</sup> the accused was a hardworking but unfortunate woman who was deserted by her husband. She had five children but was unable to support them for want of adequate earning. Her financial position further worsened due to her youngest child's severe illness and doctor's demand for money for the treatment. Shreerangyee tried in vain to raise the sum. Having exhausted all the legitimate means to earn a living, she, in exasperation, killed all her five children by drowning them and finally jumped into the well. She was, however, rescued and convicted, under Section 302 IPC for killing her children. The Court in this case ruled out poverty as an excuse for the murder of innocent children and attempt to suicide.

The cases referred to above, clearly indicate that social perspective of justice had been completely lost sight of in the rigidity of legal process. Though in some of the subsequent cases,<sup>3</sup> the courts have evinced deeper concern for the poorer sections of the society, but there is urgent need for restructuring of the existing judicial mechanism so as to make it more humane and re-assuring that the poor and weak are not forced to resort to criminal acts out of sheer disgust and desperation.

Judiciary's deeper concern for the poorer sections of the society who suffer more within our legal system than others, was once again reflected in the case of *Bavadas Bowri v. State of Assam*,<sup>4</sup> In this case, the appellant, who was an indigent and disabled man belonging to a backward class was convicted of murder under Section 302 of I.P.C. and was sentenced to imprisonment for life. In the exercise of his right of private defence, he used a pen-knife against strong adversary who was assaulting him with a bamboo stick. It was for this reason that the appellant was forced to fight for his life and the thrust given in these circumstances had caused the death of the assailant.

The High Court of Gauhati accepted the right of private defence of the appellant and observed that the entire case had been conducted sluggishly. "Poor quality of justice dispensed to the poor is a common feature of the judicial administration. Justice Lahiri, *inter alia*, observed, "a public prosecutor should have the strength not to disown the poor...he must

1. AIR 1961 Mad 498.

2. (1973) 1 MLJ 205.

3. *Hussainara v. State of Bihar*, AIR 1979 SC 1369 ; *Bandhua Mukti Morcha v. Union of India*, AIR 1984 SC 802.

4. (1982) Cr. L.J. 213 (Gau.).

exercise power of withdrawal under Section 321 of Cr.P.C. if he finds that the charges are not genuine. The primary duty and conduct of judiciary is to do justice within the four corners of law..."

In *Jgannathan v. State*,<sup>1</sup> the involvement of the appellant (a small farmer of Perambur) entangled in a village quarrel landed him in a police case. Police took over a year to frame a charge-sheet during which the appellant's life became a hell as he had to part with his two acres of land and milk business in order to meet frequent visits to Magistrate's Court and also to support his wife and three helpless children. It was only after the revision petition was filed by the brother of the appellant in High Court of Madras, that his revision was allowed. Moved by the plight of the poor appellant, the High Court ordered to quash all the criminal cases where the police had kept the FIR's unduly pending over six months.

### **Limitations of economic explanation of crime**

Despite divergent views about relationship between economic conditions and criminality, no serious attempt has ever been made to harmonise these differences and work out an acceptable solution to the problem of crime. Therefore, it may be stated that the correlation between economic conditions and criminality is so uncertain that no definite conclusion can be drawn. As such, there is a tendency to accept the position that economic conditions represent only a large number of environmental circumstances and it is nothing but a part of multiple factor approach to crime-causation. Criminality cannot be attributed to any one particular area of influence, namely, economic, biological, psychological, social etc., but each of them constitutes a part of a total whole.

It may further be pointed out that adverse economic conditions do influence certain types of crimes such as the sex crimes, pathological crimes, political crimes but the entire criminality in the society cannot be attributed solely to economic phenomenon. Economic values certainly have a dominant role to play in human society but they depend on a variety of socio-cultural factors and, therefore, have only a relative significance. Legal control on economic activities would also exert its influence on crime—economy relationship to a considerable extent. It is thus evident that neither poverty nor wealth has a major determining influence on crime and delinquency in modern society.

*Bonger's* theory of economic explanation of crime fails to answer as to why people with sufficient means and resources such as millionaires, business tycoons, high officials, ministers and political leaders indulge in criminal activities such as bribery and corruption when they already possess much more than what they actually need. In fact, it is the lust for money and craze for amassing more and more wealth which tempts them to misuse their position and power. It will not be an exaggeration to say that corruption in India has become a nation-wide problem and it is being generally resorted to in a routine manner to get the work done easily and quickly. The corruption in government, semi-government and public or even private enterprises at ministerial level is no secret. It is being openly practised despite the fact that both the giver and the taker knows that it is

1. (1983) Cr. L.J. 1748 (T.N.).

an illegal act punishable under the law. The stringent penal provisions provided in the Prevention of Corruption Act, 1988 have failed to prevent, if not eradicate, this menace probably because of its peculiar nature that it is mutually beneficial to the parties involved in it. It is therefore, evident that crimes of this kind have hardly anything to do with the economic or financial conditions. It basically emanates from greed and temptation for money which is inherent in human nature.

The effect of modernisation and excessive materialism has changed the very concept of crime. Therefore, there is greater influx of socio-economic crimes these days. They include tax evasion, hoarding, black-marketing, violation of FERA,<sup>1</sup> MRTP Act, financial scams,<sup>2</sup> adulteration, etc. The Cyber crimes have added new dimensions to white collar criminality in the computer age of 21st Century. The reformative measures have failed to tackle these non-traditional offences effectively and social legislations have not been able to prevent these crimes due to their ineffective enforcement. It is, therefore, necessary that with the changing patterns of criminal behaviour, more stringent laws should be enacted to bring socio-economic crimes under control. Despite COFEPOSA<sup>3</sup> and FERA regulations in force for several years in India, there has not been any significant change in the crime index relating to smuggling and foreign exchange violations which are adversely affecting the Indian economy. The criminal law enforcement agencies should therefore initiate drastic measures to curb this menace. More recently, the Central Bureau of Investigation (CBI) has busted a money laundering racket involving several public sector banks spread over Calcutta, Port Blair and Chennai. It was found that public funds were being siphoned off and slashed away as fixed deposits which were created in fictitious names including Indian Cricket Captain Saurav Ganguli, noted model Milind Soman, Rhea Pillai and film-maker David Azad. So far Rs. 7.75 crores have been traced laundered between February and July, 1997. This would well be the tip of the iceberg as per the CBI report handed down on May 7, 2001.

1. Some of the personalities against whom complaints of Income Tax and/or FERA violations have been received during (1998-2001) are noted film superstars Amitabh Bachchan, Shahrukh Khan, Cricketers Sunil Gavaskar, Mohd. Azaharuddin, Kapil Dev, Ajay Jadeja. Outstanding Income Tax demand on Amitabh Bachchan and his wife Jaya Bachchan together was 15.10 crore rupees as told by Minister of State for Finance Shri G.N. Ramchandran in a written reply in Lok Sabha on April 29, 2001.
2. For example, the following :—
  1. Bofors Scam January, 1990;
  2. Kansi Land Scam, 1992 in which Tamil Nadu Chief Minister was implicated and acquitted by the Court in September, 2004;
  3. Harshad Mehta Scam 1992;
  4. Fodder Scam, 1997 in which Shri Laloo Prasad Yadav is allegedly involved;
  5. Urea Scam, 1997;
  6. Telgi Stamp Paper Scam, 2001;
  7. Tahelka Defence Deal Scam, 2001;
  8. Petrol Pump Illegal Allotment Scam, 2002;
  9. Taj Corridor Scam 2003 in which Ex-Chief Minister of U.P., Mayawati is allegedly involved.
3. Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1973.

## ORGANISED CRIMES

Criminality is a global phenomenon. With the advancement of time and development of knowledge and technology the complexities of life have multiplied with the result many anti-social elements think it profitable to embrace criminality as a profession to earn their livelihood. This has provided opportunities to criminals to organise themselves into criminal gangs. In the modern age of science and technology, new techniques of crime are used by the gangsters to accomplish criminal designs.

### Definition

Generally speaking, an organised crime is an act which is committed by two or more criminals as a joint venture in an organised manner. It is an illegal act which the members of an unlawful association commit with their mutual co-operation and adventure.

Dr. Walter Reckless defines organised crime as an unlawful misadventure which is carried on by a boss, his lieutenants and operators who form a hierarchical structure for a specific period.

According to Sellin, "organised crime resembles those economic adventures or enterprises which are organised to carry on illegal activities". He further observed that organised crime is "synonymous with economic enterprises organised for the purpose of conducting illegal activities and which, when they operate legitimate ventures, do so by illegal means". The purpose of such activities is to amass huge profits through illegal means. The largest share of the profits, however, goes to the manager and kingpin of the entire iniquitous enterprise, e.g., prostitution, smuggling, bootlegging, gambling, racketeering etc.

Organised crimes have been in existence for decades in almost every society. Criminals organise themselves into formal or informal groups to carry on their illegal activities violating the law ruthlessly. Like any other business organisation, the professional criminals organise themselves into criminal gangs to carry on their anti-social activities with skill and efficiency for profit making. Commenting on this point Donald Taft observed, "the organisation of criminals introduced in the field of crime those factors of leadership, group-discipline, obedience, loyalty, division of labour, fellowship, sacrifice, co-operation and group planning which spell efficiency in the normal economic, political and social life."<sup>2</sup> Most criminals organise themselves into criminal groups with a view to specialising in their traits and accept a particular crime as their occupation. The gang of criminals practising one particular criminal activity does not generally

1. Walter Reckless : The Crime Problem, p. 319.

2. Donald Taft : Criminology (4th Ed.) p. 183.

interfere with the criminal organisations practising other crimes. However, on account of inter-connection between the criminal activities carried on by two or more organised groups of criminals, one group may at times be seen to carry on its activities in close liaison with that of another. Thus organised gambling, liquor trade and prostitution may go on hand in hand because of the peculiar nature of these crimes. The professional criminals who organise themselves into criminal gangs are often the habitual and hardened offenders who have embraced criminality as a regular profession in their life.

At times organisation of criminals may be formed informally because of similarity or reciprocity of interests and attitudes. A group of persons which may have been formed for some legitimate purpose might subsequently change into organised criminal association to carry on some legitimate purposes.<sup>1</sup>

*Edwin Sutherland* rightly observes that there is at least one thing common among these criminal organisations. That is, they are bound together by a common hostility towards law and, therefore, the members assist and protect each other from law enforcing authorities. Since protection against arrest and detection is a necessary part of organised crimes, gangsters too often adopt the technique of "fixing crimes" which is far more important than executing them. For this purpose they try to win over police officials by underhand tactics or use of threat, undue influence or coercion against the victim in order to refrain him from making a complaint to the police. That apart, organised criminals have also to seek co-operation and support from some parallel legitimate business organisations for disposing of their illegally earned money, property or commodity. Thus, organised crimes involve a number of accessory activities for the smooth conduct of their underworld profession.

**W** Different types of criminal organisations that may operate in the criminal world may be categorised into the following heads :

- (1) organised predatory crime ;
- (2) crime syndicate ;
- (3) criminal racket ;
- (4) political graft.

### **W (1) Organised predatory crime**

Crimes which do not involve any kind of service to the affected person or persons are called predatory crimes. It is therefore essentially a one-way transaction inasmuch as the gangsters by committing such crime enjoy the entire benefit themselves without any apparent or actual service to the victim. There is no repentance among the gangsters although they are conscious of the opposition of law-abiding society. Juvenile delinquents and occasional offenders generally turn into professional gangsters in course of time. Commenting on this tendency, *John Landesco* observed that "in some delinquency areas the choice of professional career in crime is as natural to the criminal as the choice of a legitimate career may be elsewhere."<sup>2</sup> Noted

1. Sutherland : Principles of Criminology (6th Ed.) p. 227.  
2. Taft and England : Criminology (4th Ed.), p. 185.

criminologist *Sutherland* opines that members of the professional criminal gangs require greater skill and planning than the occasional criminals. Their professionalisation involves not only the execution of crime but prior location of "spots" and preparation for escape from punishment in case of detection.<sup>1</sup>

Some of the predatory crimes which commonly occur are theft, dacoity, extortion, kidnapping, pick-pocketing. The peculiar characteristic of a predatory crime is that the victim of this crime is a total loser without any material gain or advantage or service from the offender. Thus, in a predatory crime the exploitation of the victim is so conspicuous that entire society reacts to it. A few criminals join together to organise into a 'gang' and carry on criminal activities as a joint venture. The gangs of dacoits,<sup>2</sup> kidnappers and smugglers and pickpockets operate almost everywhere carrying out their organised criminal activities as professionalised ventures.

Of late, the emergence of terrorism as an organised form of predatory crime has endangered peace and security. It is to be found in different forms such as political terrorism, religious terrorism narco-terrorism etc. It basically involves violence and killing thus posing a serious law and order problem for the State administration.<sup>3</sup> The dissemination of new technology and weapons has facilitated the growth of terrorism. Though the roots of terrorism or extremism lie in ethnic or religious fundamentalism, it has proved a boon for professional criminals to carry on their criminal activities in a planned manner for dubious goals.

The Government of India introduced a new Act called the Unlawful Activities (Prevention) Act,<sup>4</sup> 1967 to ban any association or group of persons which carries on unlawful activities threatening national integrity and security of India. Exercising its power under the Act, the Government of India, by its notification, S.O. 190(E) dated 18th February 1994 has declared JKLF (Jammu & Kashmir Liberation Front) as an unlawful association because of violent secessionist militant activities which has resulted into the killing of a large number of civilians and security force personnel, sabotage, abduction and destruction of property. Their main object being to create chaos and insecurity among the people and to erase the authority of Government of India or destabilise it.

## (2) Crime Syndicate

[The term crime syndicate refers to a gang of criminals engaged in the business of providing some forbidden or illegal service to the customers who are desirous of having it and are willing to pay handsomely for that service. Crime syndicates operate because of the availability of market for certain

1. Sutherland and Cressy : Principles of Criminology (6th Ed.), p. 233.
2. When five or more persons conjointly commit or attempt to commit a robbery, they are said to have committed 'dacoity', Sec. 392, I.P.C.
3. The massacre of 61 innocent *dalits* in Laxmanpur Bathe village of Jahanabad district in Bihar in the early hours of 2nd December, 1997 by the Ranvir Sena, a well organised army of the wealthy landlords and upper castes in order to re-assert its supremacy over Naxalites of Bihar sufficiently illustrates as to how extremists are operating as an organised armed army in that State posing a threat to the life of the villagers living in Naxalite affected areas.
4. The Unlawful Activities (Prevention) Act, 1967 as amended in 1969 (Act No. 24 of 1969). For full Text See Appendix I.

ଓ. ক্রিমিনোলজি /  
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illegal prohibited services. Thus gambling, bootlegging, commercialised prostitution, supply of narcotic drugs and other intoxicants, etc., are mostly carried on by the syndicates of criminals. Obviously, these crime syndicates exist because of the illegitimate public demands which cannot otherwise be legally met due to legal prohibitions. The possibility of enormous profits involved in the fulfilment of these illegal demands is perhaps the main consideration involved in the organisation of criminal syndicates. Criminal syndicates make huge profits and it is primarily due to these organised criminals that many profiteers secure monopolies in illegal operation of service crimes. These monopolies are procured by persuasion, intimidation, violence and even murder. More often than not, these gangsters are extended protection and shelter by law-abiding persons in carrying on their criminal activities for soliciting an illegal service.

(Crime-syndicates are master-minded by highly skilled and professionalised gang-leaders.) Commenting on the working of crime-syndicates David Dressler observed that despite known arrest records and well-documented criminal statistics, the leading gangsters remain for the most part of their career immune from prosecution and punishment although underlinks of their gangs may at times be prosecuted and punished. The quasi-immunity of top-level mobsters can be ascribed to what is popularly known as 'fix'. The 'fix' is not always direct payment of money to law enforcement officials but may also come about through the acquisition of political power by contributions to political organisations or by creating economic ties with apparently respectable businessmen and lawyers and by buying public goodwill through charities, contributions and press relations.<sup>1</sup>

### (3) Criminal Racket

Racketeering in criminal world is the practice of systematic extortion under some kind of threat usually of personal injury or property.<sup>2</sup> Donald Taft defines racketeering as "an organised crime in which the criminal elements perform a service to such members of society who are normally engaged in some legitimate business activity". Thus, racketeering differs from an organised predatory crime inasmuch as some kind of service is essentially involved in it and, therefore, it is not completely exploitative. It also differs from a criminal syndicate as the service involved in a racket is rendered to those who are normally engaged in legitimate activities while in case of syndicate the service is altogether illegal and prohibited. It is thus evident that opportunities for racketeering increase when business is not within the legal limits or is marginally within limits and legitimate recourse to police help for its protection is not possible. Persons who are exploited by the racketeers are sometimes convinced of the value of services taken by them even at the cost of their own exploitation. Thus, it can be safely adduced that organised racketeering is nothing but an illegal exploitation for some legitimate or illegitimate demand.

 (In the present competitive economy the individual business organisers as well as the labour-unions frequently depend on criminal rackets for

1. David Dressler : Readings In Criminology and Penology (Second Print, 1956) pp. 48-49.

2. Vold, G.B. : Theoretical Criminology, (1958) p. 228.

improving their bargaining capacity. At times, this involves use of force and compulsion which ultimately leads to threats of violence and coercion. Some of the major rackets which commonly operate may be mentioned here :

**Business Labour Racket.**—Within the area of legitimate enterprise the law courts, police and the Government are acting as supervisors to restrain and guide the competitive processes. The employers always try to make huge profits whereas the labour wants high wages. Thus the interests of these two classes often lead to a conflict in pursuit of their desired ends. The employers resort to illegitimate means by utilising unorganised workers and racketeers to jeopardise the bargaining capacity of the labour thus grabbing huge profits for themselves. For example, there are cases when organisers of even most reputed industrial establishments muster many non-existent and fictitious names on their payrolls as labourers and thus draw huge sums in their name for months through an organised racket. Such rackets frequently operate in the Engineering Department of the Railways and Public Works Department of the States which employ a large number of workers as work-charge labour.

In yet another type of labour-racket, salary by the racketeers is drawn in the name of certain fictitious persons who do not actually come for work but their attendance at work is marked by the interested parties who are participating in the racket. Thus, racketeers make the deal profitable to themselves in liaison with the employers and in return offer protection to the latter against the workers's strike and possible labour unrest. They are vigilant to make sure that they always remain indispensable to the employer and for this purpose they sometimes manipulate their election to the unions of the labour organisation by whatever means.

(Labour rackets are also frequently found to operate in dockyards where speedy commercial transactions are involved.) The cargoes arriving at the dockyard have to be unloaded in shortest possible time because delay in unloading would mean loss of profit to importers and shipping companies. Therefore, in order to eliminate any possibility of delay in transhipment of goods on account of workers' strikes, labour-unrest or pressure tactics of the workers, the employers often take the top leaders of the labour-union into confidence and employ a large number of professional criminals and habitual offenders to organise themselves into labour racket and retaliate threats from the dockyard workers. These racketeers keep the labour situation well under control and in return extract huge sums of money from the employers. One such Racket operated in America in the name of the New York Water Front Racket. Similar rackets are operative in various dockyards in India. In essence, it can be stated that the problem of racketeering as an organised crime is effected by the circumstances and guided by the principle of demand and supply. The ultimate object is to keep up with the time taking the advantage of favourable situations in business world.

**Gambling Racket.**—There is yet another type of racket operating as 'gambling racket' in shape of organised crime. Tendency of the people to take chance and try their luck coupled with the hope of gaining something out of nothing is perhaps the main consideration which underlies the gambling rackets. (Horse races, animal-combats and ball games are some of the

1. Barnes and Teeters : 'New Horizon's of Criminology' (3rd Ed.), p. 35.

common forms of gambling in which organised racketeering often flourishes. Unfortunately, anti-gambling laws have totally failed to suppress this menace because of the inherent tendency of men to speculate and try their fortune. Moreover, in recent years the State lotteries run by State Governments sufficiently suggest that even the government accepts gambling as a potential source for raising revenue and improving the financial resources. Certain States have gone a step further and withdrawn all restrictions on speculation (*satta*) which can now be freely practised by the residents within those States. Probably, it is felt that these vices which are deep rooted in the society cannot be stopped merely by legislative measures unless public opinion mobilises in favour of uprooting them from the society.

In United States, cyber casinos and internet gambling permitting non-sporting bets have been operating as an off-shore internet wagering racket for quite some time. The United States Government has set up the regulatory framework to allow casinos to extend their reach into the internet only after the Gaming Control Board's clearance. Illegal bettors are making huge profits through this cyber space gambling racket operating on internet.

### **Other Criminal Rackets :**

Rackets are found in abundance in the commercial world and business organisations. In many cases racketeering is carried on as a regular occupation. A racket of the fake recruiting personnel was unearthed by the Superintendent of Police, Meerut on March 5, 1975. It was led by one Ravilal Sharma<sup>1</sup> who allegedly recruited youngmen to the army with bogus certificates of education and age and fictitious addresses. In return he charged huge sums from his victims. Several employees of the Meerut Recruiting Office were also involved in this racket.

The Central Bureau of Investigation busted a transport department racket in Delhi on August 22, 1995 wherein six Motor Vehicle Inspectors along with four touts were caught redhanded dividing the day's bribe amount of Rs. 1.27 lakh at the Burari office in North Delhi. In subsequent search of the Inspector's houses, the Anti-corruption Branch Delhi seized assets worth 1.5 crore. The bribe was collected for issuing licences and certificates regarding road worthiness of vehicles etc. The case sufficiently highlights the magnitude of criminality which persists in certain public offices in the form of organised rackets.

The racket carrying on illegal sale of alcohol and narcotics, abortion, illegal service to the underworld criminals, fraudulent reports and testimony in accident cases and similar such activities work in close liaison with persons engaged in medical profession with the motive of earning huge profits. Likewise, rackets selling fake degrees and mark-sheets to needy persons are operating in several parts of India. Obviously, they carry on their illegal activities in liaison with some of the University employees who assist them in procuring necessary information and material for the purpose. In 1990 two such rackets were unearthed in Madhya Pradesh, one at Rajpur

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1. More than 250 bogus High School Examination certificates, Intermediate Examination certificates and seals of several Principals and Colleges and other documents were recovered from the culprit.

and the other at Ujjain. Several forged mark-sheets, seals, and other incriminating material was recovered from them. Some of the University employees were allegedly involved in these rackets who are facing legal action.

Criminal rackets involved in flesh-trade and sale of women and girls for the purpose of prostitution are common news-items in newspapers to be read almost everyday.) Despite stringent legal measures such as the Immoral Traffic (Prevention) Act,<sup>1</sup> 1956 and the provisions of the Indian Penal Code,<sup>2</sup> the repression of prostitution has not been possible. The problem being more of a social and economic nature, needs to be tackled through better social and economic planning rather than social legislation alone. The recent developments in information technology and Internet services have opened new vistas for these rackets to operate nationwide.

The Supreme Court, in its decision in *Gaurav Jain v. Union of India & others*<sup>3</sup> issued direction to the Social Welfare Department of the Government of India and the States to initiate adequate measures for prevention of induction of women in various forms of prostitution and rescue them from the vile flesh-trade and to provide them dignity of person, means of livelihood and socio-economic empowerment.

#### (4) Political Graft

There is a general belief that persons of high status carrying on some legitimate business and professional criminals are inter-connected through political grafts. In order to assume political power and party's victory at polls, the politicians generally seek the support of notorious offenders and utilise them for illegal practices to accomplish their political ends. This utilisation of notorious criminals by the politicians for political gains is commonly known as 'political graft'. These grafts resort to all kinds of legitimate or illegitimate methods to bring success to their employer at polls. At times, these hired professional offenders do not even hesitate to resort to violence and threats to make voters cast their votes in favour of the candidate for whom they are working. Instances are not wanting when some professional voters have been found to vote at more than one place for different electorates. Thus, 'vote buying' is a common example of political graft.<sup>4</sup>

The issue of links between crime syndicates and politicians as also the bureaucrats, has been sufficiently highlighted in what purports to be the N.N. Vohra Committee Report<sup>5</sup> which was tabled before the House of Parliament on 3rd August, 1995. It has been alleged in the report that criminal gangs enjoy patronage of 'local level politicians' and the criminal deeds of political high ups are conveniently hushed up or ignored. This has

1. The Act was earlier called The Suppression of Immoral Traffic in Women & Girls Act, 1956. For full text See Appendix III.
2. Sections 361, 362, 372, 373 and 498, IPC.
3. AIR 1997 SC 3021.
4. Vold. G.B. : Theoretical Criminology (1958), p. 231.
5. The Government of India appointed a five-men committee under the chairmanship of Shri N.N. Vohra on 9-7-1993 to probe into the nexus between politicians, government high officials and industrialists with the mafia gangs. The Committee submitted its Report in 1995.

resulted into criminalisation of India's politics and making criminal actions respectable. The name of Iqbal 'Mirchi' one of the prime accused in the Bombay Blast case of January, 1993 also finds place in the Vora Report as an example of the growth of a small functionary into a major syndicate.

The Report refers to the proposals put forth by the Central Bureau of Investigation (CBI) for enhancement in the power of preventive detention, to award punishment, tap telephones, carry out surveillance, establish monitoring mechanism at State and Central levels, and simplification of trial procedures including review and amendments of existing laws, etc., so that the guilty be punished irrespective of their class or cadre. Acting on this report, the Government of India has appointed a high level committee under the Chairmanship of the Home Secretary Shri Padmanabhaiya for this purpose. Despite these measures, the nexus between politicians, government officials and criminals continues unabated as evident from the Tahelka dot com episode<sup>1</sup> and the Bihar Panchayat Poll violence.<sup>2</sup>

Of late, there has been a general tendency on the part of political parties in power to set up commissions of inquiry, specially if big-wigs are involved, to save them rather than to punish the guilty. The inquiry drags on for years and finally the guilty escapes scot-free due to their political links. Thus, the Commission to probe into the Tahelka Tape story on corruption in defence deals was appointed in January, 2003 but withdrawn on October 31st, 2004 and its proceedings were quashed. Similarly the multi-crore fake stamp paper scam master minded by Abul Karim Telgi allegedly involving 3 or 4 top politicians is being probed since 2003 but with no substantial results.

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#### **Main characteristics of organised criminals :**

Some of the characteristic features of organised criminals who are associated with various types of organised crimes deserve particular mention. The sense of unity and solidarity among these criminals is perhaps the root cause of their success in their criminal ventures. It is primarily for this reason that detection of organised crimes has always been a difficult problem for the police and other law enforcement agencies. The organised criminals have their own leaders and the members of the gang work in perfect harmony and understanding. They have their own codes of ethics. There are instances when participants to such organisations have preferred death rather than divulging the secret of their associates. That apart, a perfect division of labour is to be found in the gangs of organised criminals and the members are assigned specific duties in furtherance of a particular organised activity. Thus, the criminals, associated with liquor-syndicate have a variety of activities to perform in their illegal business. Some of them are entrusted with the job of procuring liquor while others are to manipulate its transmission to the customers. A few of the criminals in the syndicate are to

1. Editor in Chief of Tahelka Dot Com, Tarun Tejpal appeared before the Army Court of Inquiry probing into conduct of Army Officers as highlighted by video tapes and deposed under oath on 20th March 2001. He handed over the entire transcript to the court of inquiry.
2. According to a report at least 100 people have been killed in the six-phase Panchayat Poll violence in Bihar in April 2001 due to nexus between politicians and criminals. This number was 500 in 1978 elections.

act as watch-dogs and keep their fellow-criminals alert from the dangers of police or other detective agencies so as to escape arrest and punishment. Besides this, one or two members from the group assume the role of leaders to supervise the smooth working of the syndicate and keep these participants well under control. The task of distribution of booty or earnings to different members of the organisation is generally performed by the ring leader of the gang.

Besides perfect unity and division of labour, organised criminal gangs have to act in close liaison with other organised criminal groups. They cannot afford to be hostile or indifferent to other gangs which are carrying on some other criminal activity. Thus, those indulging in gambling dens are essentially to be in touch with the illicit liquor suppliers and perhaps also with the gang dealing with prostitution. At times two or more organised criminal gangs carry on their respective criminal activities side by side in perfect harmony and mutual understanding without interfering with the business activities of the other. The obvious reason for this mutual trust and co-operation among the criminal gangs carrying on different activites is their consciousness that slightest confrontation with other gang might lead to their detection by the police which would mean destruction, ruin and disbanding of the gang.

With the developing economy, industrial growth and modernisation, the scope of activities for different types of criminal organisations has considerably widened. Today, criminality in an organised form is known to exist on national as well as international plane. Smuggling, illicit sale of wine and women, pick-pocketing, dacoity and gambling are operating throughout India despite intensive police check. There are inter-State gangs carrying on these organised crimes as a regular business. The case of notorious American Swindler Walcott who was convicted in India is a glaring illustration indicating the operation of organised crimes on international level.<sup>1</sup> The gangs of organised criminals operating all over the globe and carrying out their criminal activities undeterred by repressive measures of the law enforcement agencies amply reflect upon their organisational skill, spirit of mutual trust and cooperation and loyalty to their fellowmen. At the same time, it casts aspersions on the efficacy of the police and detective agencies to tackle these organised offenders effectively. It further makes it clear that even the professional criminals do have regard for the virtues of devotion, honesty, loyalty and fellowship and if these noble qualities in them are properly channelised, there is no reason why they cannot be turned into law abiding members of the society.

More recently, it is being increasingly felt that the incidence of organised crime must be repressed by the government machinery through certain concrete legislative measures. Particularly, the service-crimes which are rampant in the form of syndicates and rackets can be repressed by legalising these services under heavy taxation. Gambling rackets and illicit liquor rackets can effectively be controlled in this manner. Legalising prostitution in a restricted form through heavy licensing may also control commercialised prostitution to a considerable extent. It could also help

1. Other notorious smugglers are Haji Mastan and Sukhar Narain Bakhia who were engaged in smuggling activities in an organised manner.

eliminate the middlemen who are at the root of most of the evils in the prostitution business. Besides, it would greatly reduce the racketeering and the forcing of minors into this clandestine trade.<sup>1</sup> These are few measures which are worthy of being taken note of in context with the liquidation of organised criminals. The role of media and need for public participation in liquidating organised criminal gangs need hardly be emphasised. Law enforcement agencies find it difficult to bring the gangsters to books without active co-operation of the public and other social services agencies. Therefore, a regular exchange in intelligence between different agencies including the public representatives is of vital importance to suppress organised crimes. The media, namely, the press, platform and propaganda can play a significant role in mobilising public opinion against these crimes which are a positive danger to the community as also the nation. It hardly needs to be stated that active participation of public in helping the police in apprehending gangsters and unearthing criminal rackets and syndicates is utmost necessary for launching a crusade against organised crimes.

It must further be suggested that a high level secret cell be established in the Home Ministry of the Government of India to break the links between politicians, bureaucrats and the criminal gangs and rackets as they pose a direct threat to the internal as well as external security of the country. While discussing this issue, the Director of the Central Bureau of Investigation has admitted before the Vohra Committee that criminal mafia gangs are receiving patronage of almost all the political parties, particularly in the State of Bihar,<sup>2</sup> Uttar Pradesh and Haryana. Some political leaders are found to even lead these armed gangs and criminal forces and manipulate their election to State Legislature or the Parliament so that they can exert their political influence in accomplishing their anti-social designs. These criminal rackets have become so powerful that they have succeeded in corrupting every wing of the governmental mechanism. These rackets are synonymous with economic enterprises and are organised for the purpose of conducting illegal activities operating as legitimate ventures by illegal means. It is, therefore, imperative that stringent legal measures be launched for combating this intricate national problem. It needs no mention that the ultimate goal of organised crimes being amassing huge profits through illegal means, it results into ruthless exploitation of the poor and at the same time also affects the national economy adversely.

### **Terrorism & Related Organised International Crimes**

Yet another form of organised crime operating not only within the country but in every corner of the world is terrorism which has become increasingly transactional in nature. The forms of terrorism are manifold ranging from peasant revolt to resistance against the government in power for self-determination or internal autonomy. The commonly accepted definition of terrorism is—"it is a form of exercising power by systematically provoking alarm, fright or horror." It includes four main characteristics—

1. Smt. Suman Krishan Kant, President of the Mahila Dakshita Samiti, is, however, opposed to legalisation of prostitution as it would be the worse form of human commodification and mean legitimising human depravity and degradation.
2. Particularly, in Bihar the Naxalite mafias are allegedly running a parallel government.

(1) it is exercised by organised groups; (2) it is inspired by political motive; (3) Systematic and indiscriminate use of violence and breach of law; and (4) use of violence is intended to arouse fright or alarm.

In order to achieve their aims terrorists commit offences such as homicide, hijacking, hostage taking, robbery, extortion and their victims are usually leading politicians, VIP's, high military personnel etc. The terrorists often argue that they are fighting for a noble cause of combating an unfair system or regime which is operating on principles of injustice and intend to re-establish a legal order.<sup>1</sup> Whatever be the motive behind these organised law-violators in the form of terrorists, the fact remains that their activities result in mass destruction of men and material and they pose a positive danger to the community or nation as a whole. When the terrorism operates internationally, it poses a threat to international peace and security.<sup>2</sup>

At the international level, hijacking, piracy, illegal transaction of firearms, explosives, contraband goods etc. are some criminal activities which are carried on in the form of organised crime. War-crimes against any civil population before or during war are also covered under the category of international organised crime.

The existence of terrorism and other international crimes warrants setting up of an International Criminal Court which should have jurisdiction over all such crimes. The establishment of the U.N. International Criminal Tribunal in Hague on 28th June, 2001 is a welcome step in this direction.

Before concluding the chapter, it must be stated that modernised tele-communication services and information technology have proved a boon for criminal conspiracies and just as legitimate organisations in the private and public sectors rely upon information systems for communication and record keeping, so too are activities of criminal organisations enhanced by technology. There is evidence of telecommunication and on-line internet equipments being used to facilitate organised drug-trafficking, gambling, prostitution, money laundering, child pornography and illegal arms deal.<sup>3</sup>

The use of encryption technology may place criminal communications beyond the reach of law enforcement agencies. The use of computer networks to produce and distribute pornographic material has become a serious subject of attention as these materials can be imported across national borders in the shortest possible time.

Again, digital technology permits reproduction and easy dissemination of print, graphics, sound and multi-media combinations. The temptation to reproduce copyrighted material for personal use, for sale at a lower price, or for free distribution, has caused considerable concern to owners of copyrighted material. Organised criminal gangs are involved in such crimes at national and international level.

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1. Examples of terrorist groups are Peoples' War Group in Andhra Pradesh, Bodos in Assam, Maoists in Nepal, Chechen Rebels in Russia, German Red Army Fache (RAF) is the biggest and most powerful terrorist group having its links with more than a dozen European countries.
  2. All-Qaeda under Osama-bin-Laden; Abu Musab-al-Zarqawi, which is U.S.A.'s number one enemy in Iraq, His-bul-Mujahideen in J. & K. are some examples.
  3. Paper presented by Adam Graycor, Director, Australian Institute of Criminology at the Centre of Criminology in University of Hong Kong on 19th February, 2000.

In the ultimate analysis, it may be stated that with the widespread use of electronic communication and rise of internet to handle things such as shopping, banking etc. the security and reliability of these networks needs to be assured for the well being of trade, commerce and industry. The emerging trend of cyber-crimes which are committed in an organised fashion necessitates adequate legal measures to be initiated to ensure that perpetrators of such crime are held accountable for their illegal activities. The International Chamber of Commerce has established an Anti-Cyber Crime Unit which will work in cooperation with INTERPOL (International Police Organisation) to combat organised cyber-crimes.<sup>1</sup>

In the wake of these new developments in modern science and technology, there has been unprecedented increase in opportunities and resources for organised crimes all over the world. The age-old methods of crime detection and investigation have, therefore, been rendered inadequate to meet the new challenges. Computerisation of the working of police and use of video-conferencing technology for administrative and investigation work along with electronic filing of documents and access through website etc. are some of the measures which would enhance the efficiency of police to exercise effective control on organised crimes. Although a beginning has already been made in this direction, but further steps should be taken to convert all the existing police stations into electronically flexible stations having internet link and integration of audio, video and data communications and information facilities.

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1. Times of India News Service, dated Sept. 28, 1998.

## WHITE COLLAR CRIME

It is common knowledge that certain professions offer lucrative opportunities for criminal acts and unethical practices which hardly attract public attention. There have been crooks and unethical persons in business, various professions and even in public life. They tend to become unscrupulous because of their neglect at school, home and other social institutions where people get training for citizenship and character building. These deviants have scant regard for honesty and other ethical values. Therefore they carry on their illegal activities with impunity without the fear of loss of prestige or status. The crimes of this nature are called 'white-collar crimes' and they are essentially an outcome of competitive economy.

### **Historical Background :**

The concept of white collar crime is usually associated with *E.H. Sutherland* whose penetrating work in this area focused the attention of criminologists on its demoralising effect on the total crime picture. *Sutherland* pointed out that besides the traditional crimes such as assault, robbery, dacoity, murder, rape, kidnapping and other acts involving violence, there are certain anti-social activities which the persons of upper strata carry on in course of their occupation or business. These activities for a long time were accepted as a part of usual business tactics necessary for a shrewd professional man for his success in profession or business. Thus any complaint against such tactics often went unheeded and unpunished.

It must, however, be stated that *Sutherland* was preceded by other writers who focused attention on the dangers to society from the upper socio-economic group who exploited the accepted economic system to the detriment of common masses. Thus *Albert Morris* refers to a paper entitled '*Criminal Capitalists*' which was read by *Edwin C. Hill* before the International Congress on the Prevention And Repression of Crime at London in 1872. In this paper the learned writer underlined the growing incidence of crime as an organised business and its evil effects on society. In 1934, *Morris* drew attention to the necessity of a change in emphasis regarding crime. He asserted that anti-social activities of persons of high status committed in course of their profession must be brought within the category of crime and should be made punishable. Finally *E.H. Sutherland* through his pioneering work emphasised that these 'upper world' crimes which are committed by the persons of upper socio-economic groups in course of their occupation violating the trust, should be termed "*White Collar Crime*" so as to be distinguished from traditional crime which he called, "*Blue Collar Crime*". Thus, he observed that if a broker shoots his wife's lover, that is not a white collar crime, but if he violates the law and is convicted in

connection with his business, he is a white collar criminal.

*Sutherland* further pointed out that white collar crimes differ from the crimes committed by criminal syndicates. This distinction could be based on the extent of presumed respectability. Thus, if a person who belongs to a respectable class of society and possesses some degree of good reputation, sells shoddy goods, he is committing a white collar crime. But if a group of persons unknown to their victims, sell the same type of shoddy goods, that would not be a white collar crime.

*Sutherland* carefully examined the depredations of about seventy large corporations involved in white collar crimes and found that the charges against them included contracts, combinations or conspiracies in restraint of trade, misrepresentation in advertising, infringements against copyrights, financial frauds and violations of trust, breach of war-regulations and other miscellaneous offences. But people knew very little about the trickery of these big business criminals and even if they knew, they were apathetic towards the problem because of the fact that "the legal battles involved therein are dragged out for years in the courts, with the result that the charges are forgotten long before they are settled."

### Definition of White Collar Crime

The concept of "white collar crime" found its place in criminology for the first time in 1941 when *Sutherland* published his research paper on white collar criminality in the American Sociological Review. He defined white collar crime as a "crime committed by persons of respectability and high social status in course of their occupation". A white-collar criminal belongs to upper socio-economic class who violates the criminal law while conducting his professional qualities. Thus misrepresentation through fraudulent advertisements, infringement of patents, copyrights and trade-marks etc., are frequently resorted to by manufacturers, industrialists and other persons of repute in course of their occupation with a view to earning huge profits. Other illustrations of white collar criminality include publication of fabricated balance sheets and profit and loss account of business, passing of goods, concealment of defects in the commodity for sale etc.

*Sutherland* further pointed out that a white-collar crime is more dangerous to society than ordinary crimes because the financial loss to society from white-collar crimes is far greater than the financial loss from burglaries, robberies larcenies etc. The most dismal aspect of white-collar crimes is that there is no effective programme for the enforcement of criminal law against them and the influential persons involved in these crimes are able to resist enforcement of law against themselves.

These white collar crimes by their very nature are such that the injury or damage caused as a result of them is so widely diffused in the large body of society that their gravity in regard to individual victim is almost negligible. It is probably for this reason that till late these crimes did not attract much attention as they do not carry with them any loss of social status of the offender even if he is caught or detected. There is yet another reason for white collar criminals escaping prosecution. In cases of misrepresentation, concealment or fraud etc., the courts usually place

reliance on the principle of *caveat-emptor*, which signifies that the purchaser must enter into a deal with open eyes and guard himself against ordinary dishonesty of the vendor. As a result of this attitude of the courts there was enormous increase in white collar crime during the period of depression in 1930's in United States. Perhaps it is for this reason that American President Roosevelt in 1933 insisted on withdrawal of the doctrine of *caveat-emptor* from adjudication of cases involving white collar crime.

~~Sir Walter Reckless, an eminent American criminologist suggests that white collar crime represents the offences of businessmen who are in a position to determine the policies and activities of business.) Some authorities suggest that white collar crimes are committed by persons of status not for need but for greed.<sup>2</sup>~~

Referring to this variety of the upper world of crime, Barnes and Teeters quoted Lord Acton who said, "power tends to corrupt and absolute power tends to corrupt absolutely". Wherever citizens of a particular community become apathetic to the working of their Government, grafts, corruption and alliance between public servants and the criminal world are common phenomenon resulting into breach of trust, fraud and other malpractices.

During the Truman administration in U.S.A. the well known "Fine percenters" and "Friendship Racket" operated between the high ups close to President and contractors who procured war contracts. Bruce Catton's "The War Lords of Washington", best reveals the story of the callousness of some businessmen during World War II. It indicates the indifference, greed, inaptness and arrogance of many of those responsible for conducting a war and how they shelved off the democratic ideals for their personal gain while performing their official duties. The reason for such deals remaining undetected as pointed out by Sutherland was that "the fine line between criminal activity and immorality either in business or in government is often difficult to discern".

It must be emphatically stated that white collar criminality thrives because of public apathy to it. The reason for this public insensibility is that firstly such criminals operate within the strict letter of the law and exploit the credibility of their victims ; and secondly, the legal battles involved are dragged out for years in the courts, with the result the gravity of the offence is completely lost in the oblivion. That apart, the impact of white collar crime is so much diffused in the community that the individual victims are only marginally affected by it, and, therefore, they conveniently forget all about it.

There is yet another important point in context of white collar crime. At times, the members of the community themselves contribute to the commission of various white collar crimes willingly or unwillingly. For instance, illegal gratification to public servants to get the work done quickly, black-marketing in times of scarcity, evasive price violations, rent-ceiling violations etc. are some of the common examples where 'victims' of the crime are themselves to be blamed for involvement in white collar criminality. In

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1. Walter Reckless : The Crime Problem, p. 345.  
2. Goswami P. : Criminology (1964 Ed.), p 249.

fact, such crimes cannot be committed unless there is a demand for illegal favour from consumers and they are actively involved in the deal.

### Criticism of Sutherland's views on White Collar Crime

Sutherland's definition of white collar crime has evoked criticism from certain quarters. Coleman and Moynihan<sup>1</sup> pointed out that the lack of definite criteria for determining who are 'persons of respectability and status' has made Sutherland's definition of white collar crime most controversial. It seems likely that what Sutherland meant by this is absence from convictions for crimes other than white collar crimes. The element of 'high social status' as used in the definition also leads to confusion : Clearly it has far narrower meaning than is given to that term in everyday usage. Sutherland himself did not stick to this meaning and included thefts and frauds committed by middle or even lower middle-class workers in course of their employment or work. Some critics have suggested that such crimes should have been called as 'occupational crimes' instead of being termed as 'white collar crime'. It is further argued that in fact the important element in the definition of white collar crime is not the socio-economic status of the individual, but rather the type of crime and the circumstances of its commission. These usually include pilfering, false accounting, bribery, embezzlement etc. Tax-evasion is not an authentic white collar crime, at least in terms of Sutherland's definition because although associated with work, it is not committed in the course of an occupation. Some critics further allege that such violations come within the purview of the Special Commissions, Tribunals and Boards instead of normal criminal justice administrators. Therefore, strictly speaking, they cannot result into conviction of the offender and hence he cannot be called 'criminal' in real sense of the term. Commenting on this aspect of the issue, Tappan observes that treating persons committing white collar crime as criminals would mean deviating from legal definition of crime inasmuch as personal value considerations of the administrator would gain primary place of precision and clarity of legal provisions in deciding such cases.<sup>2</sup> Sutherland, however, justifies the special procedure of trial for white collar criminals by administrative agencies on the ground that it would protect the offender from the stigma of criminal prosecution.

Another criticism quite often advanced against Sutherland's definition of white collar crime is that it includes even those violations of law which are not committed in course of occupation or profession and these violations do not necessarily belong to upper strata of society or the so-called 'prestigious groups. For example, tax evasion is not committed only by persons of high status but it can be committed by persons belonging to middle or even lower strata of society.'

Yet another objection against the definition of white collar crime is that it does not necessarily require *mens rea* which is an essential ingredient of a crime. The doctrine of *mens rea* based on common law has no application to statutory offences in India and the requirement of guilty mind may be excluded either expressly or by implication in such cases.

1. Coleman & Moynihan : Understanding Criminal Data (1996) pp. 8-10.

2. P.W. Tappan : Who is Criminal : American Sociological Review 12, pp. 96-102.

## Contributing Factors

Of all the factors, the economic and industrial growth<sup>1</sup> throughout the world has perhaps been the most potential cause of increase in white collar crimes in recent years. The changing socio-economic scenario of the society coupled with increase in wealth and prosperity has furnished opportunities for such crimes. Commenting on the growing incidence of white collar crime in India, the Law Commission in its Twenty-ninth Report<sup>1</sup> observed that modern scientific and technological developments and monopolistic trends in business world have led to enormous increase in white collar crimes.

The post-independence period in India ushered an era of welfare activities which necessitated regulatory measure<sup>2</sup> on the part of government to control means of production and distribution so as to subserve the common good.<sup>3</sup> The contravention of such regulatory measures generally gives rise to white collar criminality.

*Marshal B. Clinard* asserted that the problem of white-collar criminality has its root in competitive business community which tries to oust their rival competitors in order to earn huge profits. Sometimes such crimes may also be committed merely for the sake of retaining existence in the competitive business. To illustrate, though there is a prescribed code of ethics for the practising lawyers but since the very nature of their profession involves the spirit of combat and competition, they often resort unlawful tactics such as concealment or misrepresentation of facts, which if detected, is punishable under the law. To take another example, the private educational institutions in India which receive public-aid or grants furnish false accounts simply for the sake of retaining their existence. Likewise, the members of industrial and business class who enjoy high status in the society have a tendency to suppress their real profits by furnishing false and fabricated accounts of their income and property in order to claim tax-exemptions or avoid payment of heavy taxes.

One more reason for the multiplicity of white collar crime is relatively high socio-economic status of white collar criminals. They belong to an influential group which is powerful enough to handle their occupation tactfully and persons affected thereby hardly know that they are being victimised. Moreover, the public in general is also somewhat apathetic to such crimes thus causing obstruction in prosecution and punishment of white collar criminals.

It is often alleged that criminal law administrators and Judges being members of upper strata of the society, are generally sympathetic towards white collar criminals while dealing with them. But there seems no justification in this assertion. If this allegation is based on the large number of acquittals of white collar criminals, it may be pointed out that it is not because of the sympathy of Judges for those criminals but because of the thin line of demarcation between criminality and immorality involved in

1. Law Commission of India, 29th Report (1966) p. 3.

2. Examples are Essential Commodities (Amendment) Act, 1993; the Prevention of Food Adulteration Act, 1954; the Prevention of Corruption Act, 1988; Foreign Exchange Regulation Act, 1974; Monopolies and Trade Restrictive Practices (Regulation) Act, 1969; Consumer's Protection Act, 1986 etc.

3. Art. 39(b) and (c) of the Constitution of India.

white collar crimes.

The recent developments in information technology, particularly during the closing years of the twentieth century, have added new dimensions to white collar criminality. There has been unprecedented growth of a new variety of computer dominated white collar crimes which are commonly called as cyber crimes. These crimes have become a matter of global concern and a challenge for the law enforcement agencies in the new millennium. Because of the specific nature of these crimes, they can be committed anonymously and far away from the victim without physical presence. Further, cyber-criminals have a major advantage : they can use computer technology to inflict damage without the risk of being apprehended or caught. It has been predicted that there would be simultaneous increase in cyber-crimes with the increase in new internet web sites. The areas affected by cyber crimes are banking and financial institutions, energy and telecommunication services, transportation, business, industries etc.

### **White Collar Crime in India**

White collar criminality has become a global phenomenon with the advance of commerce and technology. Like any other country, India is equally in the grip of white collar criminality. The reason for enormous increase in white collar crime in recent decades is to be found in the fast developing economy and industrial growth of this developing country. The *Santhanam Committee Report* in its findings gave a vivid picture of white collar crimes committed by persons of respectability such as businessmen, industrialists, contractors and suppliers as also the corrupt public officials.<sup>1</sup> Highlighting the magnitude of white collar crime in India, the Commission on 'Prevention of Corruption' in its report observed :

"the advance of technological and scientific development is contributing to the emergence of 'mass society' with a large rank of file and a small controlling elite, encouraging the growth of monopolies, the rise of a managerial class and intricate institutional mechanisms. Strict adherence to high standard of ethical behaviour is necessary for the even and honest functioning of the new social, political and economic processes. The inability of all sections of society to appreciate this need in full results in the emergence and growth of white collar and economic crimes, renders enforcement of the laws, themselves not sufficiently deterrent, more-difficult. Tax evasion and avoidance, share-pushing, malpractices in the share market and administration of companies, monopolistic control, usury, under-invoicing or over-invoicing, hoarding, profiteering, substandard performance of contracts of constructions and supply, evasion of economic laws, bribery and corruption, election offences and malpractices are some examples of white collar crime."<sup>2</sup>

The Commission broadly classified white collar and socio-economic

1. Santhanam Committee Report, pp. 251-53.

2. Government of India Report of the Commission on Prevention of Corruption (1964) para 2.13, p 11.

crimes into eight categories and suggested insertion of a new chapter on white collar crimes in the Indian Penal Code.

The matter was referred by the Government to the Law Commission of India for consideration. The Law Commission, however, disagreed with the proposal and observed that "such offences are better left to be dealt with by special and self-contained enactments which supplement the basic criminal law."

Interestingly, the Report of the *Vivin Bose Commission of Inquiry* into the affairs of Dalmia-Jain group of companies in 1963 highlights how these big industries indulge in white collar crimes such as fraud,<sup>1</sup> falsification of accounts, tampering with records for personal gains and tax-evasion<sup>2</sup> etc. Similar observations were made by *Mr. Justice M.C. Chagla* about the big business magnate *Mundhra* who wanted to "build up an industrial empire of dubious means." There were as many as 124 prosecutions against this business tycoon and companies owned or controlled by him between 1958 to 1960 and as many as 113 of them resulted into conviction.<sup>3</sup>

## **Hoarding, Black Marketing and Adulteration**

The white collar crimes which are common to Indian trade and business world are hoarding, profiteering and black marketing. Violation of foreign exchange regulations<sup>4</sup> and import and export laws are frequently resorted to for the sake of huge profits. That apart, adulteration of foodstuffs, edibles and drugs which causes irreparable danger to public health is yet another white collar crime common in India.<sup>5</sup> The Law Commission of India has suggested drastic measures against such offenders. In the Commission's observation the tedious prosecution process involved in the trial of such cases frustrates the cause of justice and often results into unjustified acquittal due to defective report of the analyst or delay in

1. The CBI probe against Win Chaddha and Hindujas in the famous Bofors Scandal and FERA enquiries against Delhi firm Jyotsna Holdings Pvt. Ltd. involving 6.5 crores illegal commission for a contract of pipes with ONGC in 1988 are glaring illustrations on the point. The ever biggest Multi-thousand crore security scam by Harshad Mehta during 1991-92 involving persons holding high positions in certain banks including the prestigious and leading bank, the State Bank of India further evinces the massive corruption, fraud and mismanagement in Indian Banks and the nexus between bankers and brokers of underworld gangs. The stock market shares scam in March, 2001, master-minded by Ketan Parikh, India's biggest share broker is yet another illustration of manipulations in the stock market.
2. Tax of several crores of rupees is evaded annually by assessees in higher income groups which results into circulation of black money. Wanchoo Committee appointed by Government of India in 1970 made certain important recommendations to unearth black money. The Government of India introduced VDIS (Voluntary Disclosure of Income) Scheme, 1997 to unearth black money.
3. Fourth Annual Report on the Working of Indian Companies Act, 1956 Government of India (1960).
4. The Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 as amended in 1993 (Act No. 52 of 1993) w.e.f. 25-6-1993. See also The Smugglers & Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 See Appendix II.
5. The Consumers Protection Act, 1986; the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS). Monopolies & Trade Restrictive Practices (Amendment) Act, 1992 are enacted to prevent these offences which affect the public health.

examination of samples or lack of legal expertise etc.<sup>1</sup>

### Tax-evasion

The complexity of tax laws in India has provided sufficient scope for the tax-payers to evade taxes. The evasion is more common with influential categories of persons such as traders, businessmen, lawyers, doctors, engineers, contractors etc. The main difficulty posed before the Income Tax Department is to know the real and exact income of these professionals. It is often alleged that the actual tax paid by these persons is only a fraction of their income and rest of the money goes into circulation as 'black money'. Despite frequent modifications in the tax-laws of the country the menace of tax-evasion continues unabated and it is causing considerable loss to government revenue.

The Supreme Court in its majority decision in *R.K. Garg v. Union of India*<sup>2</sup> upholding the validity of the Special Bearer Bonds (Immunities and Exemption) Act, 1981, observed that the Act was not intended to encourage tax evasion in future and condone such evasion committed in past but the real object of the Act was to launch a nation-wide search to unearth undisclosed wealth by encouraging small incentive to those who declare their undisclosed cash. The main intention was to unearth 'black money' so as to prevent further loss of government revenues.

It may be pointed out that the problem of generation of black money (unaccounted money) and its proliferation is not new. The Government of India has formulated voluntary disclosure Schemes to unearth the black money specially to be used for certain social objectives. But the results of these schemes have not been very encouraging. The main reason for unsatisfactory response to these schemes seems to be that tax payers do not want to be identified as having evaded the tax in the past and the fear of re-opening of their past assessments and facing roving enquiries also dissuade them from resorting to these schemes.<sup>3</sup>

It is significant to note in this context that what constitutes crime is 'tax evasion' and not the 'tax avoidance'. Though both these terms appear to be synonymous, there is a fine distinction between the two. While the former implies non-payment of tax due to be paid, the latter signifies arranging the spread over of one's income in such a way that it does not incur tax liability legally and lawfully.<sup>4</sup>

It may be stated that the Government has introduced various regulatory legislations such as the Essential Commodities Act, 1955, the Industrial (Development and Regulation) Act, 1951, the Imports and Exports (Control) Act, 1947, the Foreign Exchange (Regulation) Act, 1974, Companies Act, 1956 as amended from time to time, the breach of which results in white collar criminality. A large majority of white collar crimes are, however, operating within the letter and spirit of the law and, therefore, do not call for legal action.

1. Law Commission of India. 47th Report, p. 83.

2. (1981) 133 ITR 239.

3. The VDIS-1997 which ended on 31st Dec., 1997, launched by the Government of India, has also not yielded the desired results.

4. *Provident Investment Company v. Income Tax Commissioner*, AIR 1954 Bom. 95.

## **White Collar Crime in certain Professions**

Some of the professions involving technical expertise and skill provide sufficient opportunities for white collar criminality. They include medical profession, engineering, legal practise, private educational institutions etc.

### **Medical Profession**

White collar crimes which are commonly committed by persons belonging to medical profession include issuance of false medical certificates, helping illegal abortions, secret service to dacoits by giving expert opinion leading to their acquittal and selling sample-drugs and medicines to patients or chemists. Dialatory tactics adopted by the members of this profession in treatment of their patients with a view to extracting huge sums from them has become an accepted norm, particularly with those medical men who do not have a good practice or have only a marginal earning.

The persons employed in essential services of the government or other undertakings are often confronted with the problem of getting leave due to shortage of staff. They, therefore, procure medical certificate regarding their false sickness and produce it to the department to justify their absence from duty. In return, they have to pay certain amount to the concerned medical staff. Thus, though a white collar crime, this tactics has proved a boon and a workable alternative to employees who have difficulty in obtaining leave from the employers.

Fake and misleading advertising is yet another area in which the white collar criminals operate. They make illegal and misleading claims of medical cure through advertisements in newspapers, magazines, radio and television thus adding to human misery. Many patent medicines are not only worthless but harmful. Similar advertisements for cosmetics and adulterated food are also widespread in practice which are injurious to public health. These persons may not break the letter of the law but, by violating its spirit, they commit crimes which are not only anti-social, but also injurious to public health.

### **Engineering**

In the engineering profession underhand dealings with contractors and suppliers, passing of sub-standard works and materials and maintenance of bogus records of work-charged labour are some of the common examples of white collar crime. Scandals of this kind are reported in newspapers and magazines almost every day. Construction of buildings, roads, canals, dams and bridges with sub-standard material not only endangers public safety but also results into huge loss to public exchequer.

### **Legal Profession**

In India the lawyer's profession is not looked with much respect these days. There are two obvious reasons for this. The deteriorating standards of legal education and unethical practices resorted to by the members of legal profession to procure clientage are mainly responsible for the degradation of this profession which was once considered to be one of the noblest vocations. The instances of fabricating false evidence, engaging professional witnesses, violating ethical standards of legal profession and dialatory tactics in

collusion with the ministerial staff of the courts are some of the common practices which are, truly speaking, the white collar crimes quite often practised by the legal practitioners.

Generally, the professional crooks and criminal gangs have their own trusted lawyer who can be depended upon to arrange things and keep himself ready with bail bond or *habeas corpus* writ to avoid arrest of the gangster. If the members of the gang are arrested, the lawyer has to find out ways and means to arrange or 'fix' their release. There are criminal lawyers who arrange professional *alibies*, cooked witnesses in close liaison with the police for defending the gangsters.

Though there is a definite code of conduct for legal profession but it is only an ornamental document. However, this is not to say that all lawyers are corrupt and unethical. Quite a large number of them are most sincere and honest in their profession commanding great respect from all sections of society. Perhaps, it is because of the peculiar nature of their profession that the lawyers and advocates have to resort to these tactics in order to survive in the profession which is becoming more and more competitive with the passage of time.

### Educational Institutions

Yet another field where white collar criminals operate with impunity are the privately run educational institutions in this country. The governing bodies of these institutions manage to secure large sums by way of government grants or financial aid by submitting fictitious and fake details about their institutions. The teachers and other staff working in these institutions receive a meagre salary far less than what they actually sign for, thus allowing a big margin for the management to grab huge amount in this illegal manner. The victimised teachers can hardly afford to complain about this exploitation to high ups because of the fear of being thrown out of job. They are, therefore, compelled to compromise with the situation. Although the Government has introduced the scheme of treasury-payments for teachers of private institutions, but the problem still persists in one form or the other. That apart, fake and bogus enrolments of students who are residing far away from the place of location of these institutions is yet another source of illegal earning for them. They charge huge amounts by way of donations or capitation fees from such needy students. Even rackets operate in these institutions for procuring students to appear in different examinations on the basis of manipulated eligibility certificates or domicile certificates in return for huge sums. These dishonest and unscrupulous practices have damaged the standard of education in India to such an extent that it is causing an irreparable loss to the younger generation.<sup>1</sup>

More often than not, these privately managed educational institutions as also those imparting some professional education, enjoy the patronage of some influential politicians and many of them are even owned by them. Many such institutions are virtually non-existent and are functioning as commercial shops, enabling the students to get degrees on payment of huge

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1. This is not to say that all the privately run educational institutions are corrupt. Indeed there are several private schools and colleges which have a reputation of being the ideal institutions.

sums in blatant violation of the government rules, regulations and norms. The magnitude of this white collar criminality has adversely affected the standard of education in most States, and, therefore, the problem needs to be tackled through stringent statutory measures.

### **White collar crime in business deals**

White collar crimes are also rampant in business world. There have always been instances of violation of trust. *Sutherland* made a careful study of a number of large corporations and business houses in United States and found that they were involved in illegal contracts, combinations or conspiracies in restraint of trade, misrepresentation in advertising, infringements against copyrights and trade marks, unfair labour practices, bribing public officials and so on. The public hardly knows the trickery of business criminals as they treat it as not too important for their purpose.

*Sutherland* attributed the highest degree of criminality to business world which includes traders, businessmen and industrialists. It has been held that "business communities in India of large and small merchants are basically dishonest bunch of crooks.....nowhere in the world do businessmen get rich so quickly as they do in India".<sup>1</sup>

The Report of the Monopolies Inquiry Commission expressed great concern about the chronic problem of hoarding, profiteering and blackmarketing of essential commodities by traders in India. In times of shortage and scarcity of consumer commodities, the traders withdraw the stock and subsequently dispose it off at exorbitant prices.<sup>2</sup>

The Santhanam Committee Report on Prevention of Corruption, observed that Indian businessmen build up secret hoards of foreign exchange abroad through under-invoicing of exports and over-invoicing of imports violating the Imports & Exports Laws and Foreign Exchange Regulations.<sup>3</sup>

Although bribery is an offence under the Prevention of Corruption Act, 1988 and both, bribe-taker as well as the bribe-giver are equally punishable, but commercial agents and public officials indulge in illegal gratification for their personal gain and the legal restraints provided for the purpose are hardly adequate to cure this menace.<sup>4</sup> It may, however, be pointed out that all bribery cases are not necessarily white collar crimes because white collar criminality is confined to only those illegal activities which the persons of prestigious group, high social status commit in course of their legitimate business or occupation for financial gain.

Adulteration of edible foodstuffs is also frequently committed by businessmen which is injurious to public health. The sale and production of spurious drugs and sub-standard medicines by manufacturers is yet another white collar crime which enables businessmen to earn huge illegal profits.<sup>5</sup> The evil has become so widespread and persistent that it is difficult to get

1. N.R.M. Menon's unpublished dissertation entitled, 'A Socio-legal Study of White Collar Crime in India,' 1968.
2. Report of the Monopolies Inquiry Commission 1965, p. 162.
3. Santhanam Committee Report, p. 253.
4. See *R.S. Nayak v. A.R. Antuley*, AIR 1984 SC 684; *P.V. Narasimla Rao v. State*, AIR 1998 SC 2001 etc.
5. Pharmaceutical Inquiry Committee Report, 1954, p. 146.

even air, water and light unpolluted. The constant rise in price and cost of living has made the consumers cost-conscious. The unscrupulous traders take undue advantage of the situation and provide adulterated articles of food, drinks or drugs etc. at a cheaper rate and earn huge profits.<sup>1</sup> They even do not hesitate to add poisonous constituents to articles of food and drinks which are injurious to health. A number of deaths are reported every year due to consumption of spurious liquor or food poisoning.<sup>2</sup>

Some of the common adulterants used in various edibles and articles of foodstuffs are :—

- (i) injurious colours such as sacrol, succarin etc. in preparation of ice-cream and kulfi;
- (ii) addition of blotting paper or soapstone in *panir*;
- (iii) *geru*, *ratanjot* and powdered husk of rice or bran in powdered chillies and spices;
- (iv) coal-tar in *batasha* and other sweets;
- (v) horse-dung, powdered bran etc. in *dhania*.

These are only a few examples of adulteration in food and drinks. Despite stringent provisions in IPC, Adulteration Act, Drugs Act and Opium Act, the menace of adulteration still subsists and laws have failed to eradicate this evil.

White collar crimes also operate in insurance business where both the insured as well as insurer earn considerable profit by making false and fabricated claims. Instances are not wanting when intentional house-burning, automobile destruction and even murders are planned by the persons of respectable community in order to make good fortunes from the manipulated insurance claims.

### **Computer related White Collar Crimes :**

The latest developments in information technology and electronic media especially during 1990's have given rise to a new variety of computer related white collar crime which are commonly called cyber-crimes. The widespread growth of these crimes has become a matter of global concern and a challenge for the law enforcement agencies in the new millennium. Because of the peculiar nature of these crimes, they can be committed anonymously and far away from the victim without being physically present there. Further, cyber criminals have a major advantage; they can use computer technology to inflict damage without the risk of being caught. The cyber crimes cover a wide range of illegal computer-related activities which include offences such as theft of communication services, industrial espionage,<sup>3</sup> dissemination of pornographic and sexy offensive material in cyber-space, electronic money laundering and tax evasion, electronic vandalism, terrorism and extortion, tele-marketing frauds, illegal interception of telecommunication, etc.<sup>4</sup>

1. K.D. Gaur (Ed.) : Criminal Law and Criminology (2003) p. 285.

2. *Ibid.*

3. Industrial espionage can even kill the entire business.

4. 'Nine Types of Cyber Crimes'—A paper presented by Adam Grayer, Director Australian Institute of Criminology at the Centre of Criminology, University of Hong Kong on February 19, 2000.

In fact, there is a cyber-crime wave in the 21st century. Presently, viruses<sup>1</sup> are the most common problems which are causing serious damage to computer systems. Most viruses just replicate themselves, but many also cause damage. There are now more than 5000 different strains of viruses across the globe. For instance, 'Love Bug' virus of May 2000 caused severe damage to working internet sites. So also the virus recently developed by Pakistan has defaced the Indian web-site.

Besides virus, there are some common cyber offences which are directed against computer systems, networks or data. Notable among them are :—

- (1) **Pheaking** :—It is a way to circumvent the billing mechanism of telephones allowing anyone to call anywhere in the world literally without any cost.
- (2) **Internet frauds** :—Cyber space now provides a wide variety of investment opportunities opening new areas for deceit or fraud. Electronic funds transfer systems have begun to proliferate, hence there is risk of transactions being intercepted or diverted. Now-a-days valid credit card numbers can be intercepted electronically as well as physically and the digital information stored on a card can be counterfeited. Section 74 of the Copyright Act makes the offence punishable with imprisonment upto two years or with fine which may extend to one lakh rupees.
- (3) **Hackers** :—Hacker is one who enjoys exploiting the details of programmable systems and knows how to stretch their capacity, computer hackers may affect the commercial web-sites or e-mail systems thus paralysing the entire business. Hacking with computer system is punishable with imprisonment upto three years and fine which may extend to two lakh rupees as per Section 66 of the Copyright Act.
- (4) **Stalking** :—In stalking, persistent messages are sent to unwilling recipients thus causing them annoyance, worry and mental torture. Sending of unsolicited e-mails or spamming is an infringement of right of privacy.
- (5) **E-mail security invasion** :—It means to encrypt the e-mail and make it private and non-viewable to others. Section 72 provides punishment for this offence.
- (6) **Money Laundering** : It is a kind of cyber crime in which money is illegally downloaded in transit. The magnitude of the offence is indicated by the table given below :

1. Virus is a program or code that replicates and infects another program, sector or document by inserting itself or attaching itself to that medium. The effect of virus is that it destroys or alters the data files and other program. Except in rare cases, the virus does not damage the computer hardware.

**Money Laundering (1998-2002) (Cases under FERA)**

Year	No. of		Currency Seized (In Indian Rs. in crore)		Currency confiscated (In Indian Rs. in crore)		Fines (In Indian Rs. in crore)
	Searches/ Raids	Searches/ Recovers	Indian	Foreign	Indian	Foreign	
1998	544	361	7.1	2.3	4.6	1.8	170
1999	387	299	4.9	0.8	4.2	5.8	194
2000	330	262	3.6	2.2	5.7	4.8	318
2001	295	207	1.2	2.7	2.7	4.2	491

**(7) Data Diddling** :—It means changing or erasing of data in subtle ways which makes it difficult to put the data back or be certain of its accuracy.

It may be stated that just as the legitimate organisations in the private or public sector rely upon information systems for communication or record keeping so too the cyber criminal organisations carry on their illegal activities by enhanced cyber space technology. Commenting on this *Eric Ellen*, one of the officials of the International Chamber of Commerce (ICC) has predicted that information technology is not only reshaping the mode of corporate functioning and emerging new business strategies but it is dramatically increasing the number of potential cyber criminals. According to him, there is bound to be simultaneous increase in the incidence of cyber-crimes with the new internet sites and users which currently totals around 35 million worldwide.<sup>1</sup>

In order to protect computer database under the intellectual property law in India, the Copyright Act, 1957 has been amended by two amending Acts, namely, Act No. 38 of 1994 w.e.f. 10th May 1995 and Act No. 49 of 1999 which came into force on 13th January 2000. By these amendments some new sub-sections to Section 2 relating to interpretation clause were added. Section 2(o) of the Act was amended to change the definition of the word 'literary work' which now includes computer program as well as computer data base. Thus both computer program (source code as well as object code) and data base are protected under the Copyright Act. Section 14 which defines 'copyright' is also amended giving exclusive rights to the owners to do or authorise the doing among the other thing to reproduce or rent a computer database or a computer program.

Infringement of copyright is defined in Section 51 of the Copyright Act. It not only gives rise to civil remedy but also imposes criminal liability. Civil remedies are provided under Chapter XII of the Act whereas penal consequences of infringement of copyright are contained in Chapter XIII of the Act.

Section 63 provides that a person infringing or abetting the

1. International Chambers of Commerce (ICC), the World's leading private business grouping has established an Anti-Cyber Crime Unit on September 30, 1998 which seeks the co-operation of INTERPOL in combating cyber crimes.

infringement is liable to imprisonment upto, three years and fine, which may extend to rupees two lakh. There is enhanced penalty for second or subsequent conviction (Section 63-A).

Knowingly making use of an infringing copy of computer software on a computer is a separate offence under section 63-B of the Copyright Act. It is punishable with imprisonment for not less than seven days and may extend to three years and with a fine which shall not be less than rupees fifty thousand and may extend to rupees two lakh.

Many areas where information technology had impact have been rendered justiciable by the Information Technology Act, 2000. They include e-commerce, jurisdictional issues, security measures, evidence, freedom of expression, cyber space etc.

Since cyber criminals pose a major threat to computer networks all around the world, efforts are being made to workout a Model Anti-cyber Criminal Law to arrest cyber crimes at global level. A special expert Working Group meeting was convened in October, 1998 in Tokyo under the auspices of the United Nations to sort out legal problems involved in combating trans-border cyber criminality.

The European Committee of Experts on Crime in Cyber-space prepared two Draft Conventions on Cyber crimes in April 2001 to work out strategies and fostering international co-operation for tackling the problem of security against cyber crimes.

Experience has shown that the real problem for every organisation that investigates cyber crime is the lack of uniformity in laws against States and countries. There is also general lack of protection in this area of crime. Most of the cases of illegal access or damages remain unreported due to victim's fear of exposure or loss of public faith and confidence.

In view of the expanding dimensions of cyber crimes, there is urgent need for a model legislation<sup>1</sup> to tackle the growing incidence of these crimes. It hardly needs to be stated that the criminal law must continue to evolve if it is to adequately address to new developments in technology. It is true that the World Intellectual Property Organisation (WIPO) finalised two treaties in 1996 which are commonly known as 'Internet treaties' for countering the challenges posed by internet but these treaties talk only about the *right of communication* and do not contain provision on the *right of reproduction*. Moreover, the treaties are neutral on the subject of liability of Internet Service Producers (ISP's)<sup>2</sup> and the issue was left to be decided by the member nations through their legislative mechanism. In these circumstances, the treaties are of little use to resolve the liability of ISP's which is a controversial legal issue emerging from cyber space which is the result of the very nature of digital networks.

### **White collar crime distinguished from traditional crime**

It must be noted that white collar criminality has a close affinity to the attitudes and values of culture in a particular society. This is evident from the fact that white collar criminals are intelligent, stable, successful and

1. The Cyber Crimes Law of Nations, January 17, 2001.

2. In India ISP's are called Network Service Producers.

men of high social status as compared with the ordinary criminals. They are foresighted persons belonging to the prestigious group of society. White collar crimes which are committed in commercial world are indirect, anonymous, impersonal and difficult to detect. As against this, ordinary criminals commit crimes which are direct and involve physical action such as beating, removal of property or use of force, etc. which can be easily identified and detected. It is often said that ordinary crimes which are otherwise called 'blue collar crimes' are more common with the under-privileged class while the white collar crimes are committed by the members of privileged group who belong to upper strata of society. *Edwin Sutherland*, however, suggests that status alone is not determinant of white collar or blue collar crime. This is evident from the fact that even the most privileged and prestiged persons may commit heinous crime such as assault, murder, rape or kidnapping for which they can be severely punished, while, on the other hand, most under-privileged persons may be involved in a white collar crime like tax evasion, corruption or misrepresentation which may not be looked as serious offence. This however, does not mean that white collar crimes are petty offences because they do not carry major punishment. Undoubtedly, the penologist hitherto confined their attention to prevention of ordinary predatory crimes but the recent penal programmes sufficiently indicate that emphasis has now shifted to suppression of white collar criminality with equal vigour and strength. The amendments introduced in the Indian Companies Act in 2000, Monopolies And Restrictive Trade Practices Act, in 1992, Insurance and Banking laws, the appointment of Lokpal, Lokayukta and tightening of governmental control over private business groups sufficiently reflect upon the Government's determination to suppress white collar criminality in India.

There is much resemblance between white collar and the blue-collar crime. Both owe their origin to common law and are adaptations of principles of theft, fraud etc. to modern socio-economic institutions and in fact there is no basic difference between the two. The only peculiarity of white collar crime is that it is committed by the persons of relatively high status of society. The criminal content in both the types is more or less common.<sup>1</sup> It must, however, be noted that *mens rea* or guilty mind is an essential ingredient of every blue collar crime but many statutes dealing with white collar crime do not require *mens rea* in strict sense of the term. The doctrine of constructive *mens rea*<sup>2</sup> applies in such cases.

It must be stated that besides being a social problem, white collar crime is also a legal problem. As *E. H. Sutherland* rightly puts it, no distinction in terms of social status, occupational activity, attitude or gravity of consequences can separate white collar crime from those of traditional crime.<sup>3</sup> The only distinguishing feature of this type of crime is the temptation for considerable material gain with little or no loss of status.

1. (Aug. 1982) Cr. L.J. p. 45.
2. Relevant cases are *C.S. Bansal v. Delhi Administration* (1963) 2 Cr LJ 439 (SC) as distinguished from *Dr. Vimla v. Delhi Administration*, AIR 1962 SC 1572 ; and the Madras High Court decision in *Walcott's Case i.e. Daniel Hailey Walcott v. State*, (1968) 1 MLJ 229 involving offences of cheating and forgery.
3. Edwin Sutherland—"Is White Collar Crime a Crime ?" (American Sociological Review April 1945), pp. 132-137.

This again, gives a misleading impression that the executive and judicial authorities who are concerned with the prevention of crime react favourably to the upper and middle class society and dispose of white collar criminals with mere censure or admonition while other criminals are subjected to severe penal sanctions under the law without being given any pre-warning. But that the reason for this soft attitude of law-makers and prosecutors towards white collar criminals is perhaps the latter's closer contacts with agencies of social control on account of their social status and privileged position. More often than not, these criminals are friendly with the top ranking public officials. That apart, the impact of white collar crime is so widely diffused in a large number of people that it does not aggravate the feelings of one single individual.<sup>1</sup> Therefore, the public cry against white collar criminality is far less than for the predatory crimes.

Commenting on the preponderance of white collar crime in the modern time *Edwin Sutherland* rightly comments that, "social disorganisation on account of individualistic policies and competitive economy are the root causes for this type of criminality". It is rather a reflection on society's attitude towards different types of crimes and the accepted values of its culture.

The financial cost of white collar crime is probably several times greater than that of all the crimes taken together. In a recent study it has been concluded that the financial loss to society from white collar crime is far greater than the financial loss from the predatory crimes committed by persons of lower socio-economic status. It has been further concluded that the average loss per burglary is less than ten thousand rupees and a burglary which yields as much as one lakh of rupees is exceedingly rare. On the other hand, there may be several crores rupees embezzlements reported in one year. Notably, these embezzlements are nothing as compared with the large scale crimes committed by corporations, investment trusts and public utility concerns. It can, therefore, be inferred that white collar criminals violate trust and create distrust which lowers social morale and results into social disorganisation to a large extent while other crimes produce relatively little effect on social institutions.

By way of generalisation it may be stated that like other criminal behaviour, white collar criminality can best be explained through the process of differential association. It is a generic explanation for both white collar as also the blue collar criminality. Those who become white collar criminals generally start their career in good neighbourhoods and good homes, well educated with some idealism and get into peculiar business situations in which criminality is practically a routine way of life. Another explanation for white collar criminality is to be found in the process of social disorganisation in the community.<sup>2</sup>

### **Remedial Measures**

In a country like India where large scale starvation, mass illiteracy and

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1. R. Deb : Principles of Criminology, Criminal Law and Investigation, Vol. I (2nd Ed.) p. 11.
  2. David Dressler : Readings in Criminology and Penology, (Second Reprint 1966), p. 91.

ignorance affect the life of the people, white collar crimes are bound to multiply in large proportion. Control of these crimes is a crucial problem for the criminal justice administration in this country. However, some of the remedial measures for combating white collar criminality may be stated as follows :—

1. Creating public awareness against these crimes through the media of press, platform and other audio-visual aids. Intensive legal literacy programmes may perhaps help in reducing the incidence of white collar criminality to a considerable extent.
  2. Special tribunals should be constituted with power to award sentence of imprisonment upto ten years for white collar criminals. *include in penal code*
  3. Stringent regulatory laws and drastic punishment for white collar criminals may help in reducing these crimes. Even legislations with retrospective operation may be justified for this purpose. Dr. Radhakrishnan, the Second President of India, in this context once observed :
- "the practitioner of this evil (i.e. white collar and socio-economic crimes) the hoarders, the profiteers, the black marketeers, and speculators are the worst enemies of our country. They have to be dealt with sternly, however well placed, important and influential they may be, if we acquiesce in wrong-doing, people will lose faith in us."

The penalty for white collar crime which are a potential risk to human lives may even be extended to the imprisonment for life or even to death if the circumstances so demand.

4. A separate chapter on white collar crimes and socio-economic crimes should be incorporated in the Indian Penal Code by amending the Code so that white collar criminals who are convicted by the court do not escape punishment because of their high social status.
5. White collar offenders should be dealt with sternly by prescribing stiffer punishments keeping in view the gravity of injury caused to society because of these crimes. The Supreme Court, in *M. H. Haskot v. State of Maharashtra*,<sup>1</sup> in this context observed, "soft sentencing justice is gross injustice where many innocents are the potential victims".
6. There is an urgent need for a National Crime Commission which may squarely tackle the problem of crime and criminality in all its facets.
7. Above all, public vigilance seems to be the cornerstone of anti-white collar crime strategy. Unless white collar crimes become abhorrent to public mind, it will not be possible to contain this growing menace. In order to attain this objective, there is need for strengthening of morals particularly, in the

1. *M. H. Haskot v. State of Maharashtra*, (1978) 3 SCC 544. It must, however, be noted that this being a case of forgery punishable under I.P.C. is not covered under white collar criminality.

higher strata and among the public services. It is further necessary to evolve sound group-norms and service ethics based on the twin concepts of absolute honesty and integrity for the sake of national welfare. This is possible through character building at grass-root level and inculcating a sense of real concern for the nation among youngsters so that they are prepared and trained for an upright living when they enter the public life.

Finally, it must be stated that a developing country like India where population is fast escalating, economic offences are increasing by leaps and bound besides the traditional crimes. These are mostly associated with middle and upper class of society and have added new chapter to criminal jurisprudence. To a great extent, they are an outcome of industrial and commercial developments and progress of science and new technology. With the growing materialism all around the world, acquisition of more and more wealth has become the final end of human activity. Consequently, moral values have either changed or thrown to winds and frauds, misappropriation, misrepresentation, corruption, adulteration, evasion of tax etc. have become the techniques of trade, commerce and profession. It is for the criminal law administrators to contain this tendency by stringent legislative measures. It is rather disappointing to note that though white collar crimes such as black market activities, evasive price violations, rent-ceiling violations, rationing-law violations, illegal financial manoeuvring etc. by businessmen are widespread in society, no effective programme for repressing them has so far been launched by the law enforcement agencies. Perhaps the reason for white collar crimes being carried on unabated is that these crimes are committed generally by influential persons who are shrewd enough to resist the efforts of law enforcement against them.

The economic offences which are often referred as white collar crimes are master-minded and carried out in a planned manner by technocrats, highly qualified persons, well to do businessmen, corporate officials in the form of scams, frauds etc. facilitated by technological advancements. In these offences, not only individuals get victimised with pecuniary loss but also, such offences often damage the economy and the national defence. The offences such as smuggling of narcotic substances, counterfeiting of currency, financial scams, frauds etc. are some of the white collar crimes which evoke serious concern and impact on national security and governance. A Table listing the various economic offences, the relevant legislation and the enforcing authorities is laid below to give an bird's-eye view about the wide range over which these offences are spread over.

Economic Crimes	Acts of Legislation	Enforcement Authorities
Tax-evasion	Income Tax Act	Central Board of Direct Taxes
Illegal Trafficking in contraband goods and smuggling	Customs Act, 1962 COFEPOSA, 1974	Collectors of Customs

Evasion of Excise Duty	Central Excise and Salt Act, 1944	Collectors of Central Excise
Cultural Object's Theft	Antiquity and Art Treasures Act, 1972	Police/CBI
Money Laundering	Foreign Exchange Regulations Act, 1973	Directorate of Enforcement
Foreign contribution manipulations	Foreign Contribution (Regulation Act, 1976	Police/CBI
Trafficking in Human body parts	Transplantation of Human Organs Act, 1994	Police/CBI
Illegal Drug Trafficking	Narcotic Drugs and Psychotropic Substances Act, 1985	Police/CBI
Fraudulent Bankruptcy	Banking Regulation Act, 1949	NCB/Police/CBI
Corruption and Bribery of Public Servants	Prevention of Corruption Act, 1988	CBI
Frauds	IPC	
Financial Frauds	IPC	State/Anti-Corruption Bureau/Vigilance Bureau/CBI
Foreign Trade	Import & Export (Control) Act, 1947	Police/CBI
Dealing in false Travel Documents and Identity Cards Fraud	Passport Act, 1920/IPC	Directorate General of Foreign Trade/CBI
Terrorist Activities	POTA-2002	Police/CBI
Illegal Trafficking in Arms	Arms Act, 1959	Police/CBI
Illegal Trafficking in Explosives	Explosives Act, 1884 & Explosive Substances Act, 1908	Police/CBI
Theft of Intellectual Property	Copyright Act, 1957 (Amendments of 1994 & 1999)	Police/CBI
Computer Crime/ Software piracy/ Cyber Law	Copyright (Amendment) Act, 1999/ Information Technology Act, 2000	Police/CBI
Stock Market Manipulations	Companies Act, 1956/ IPC	Police/CBI
Company Frauds (Contraband)	MRTP Act, 1968	Police/CBI

These economic offences may either be cognizable or non-cognizable in nature. Local police deals with a considerable number of economic offences

falling under the broad category of 'Cheating', 'Counterfeiting' and 'Criminal Breach of Trust'.

A number of special laws regulating customs, excise, taxes, foreign exchange, narcotic drugs, banking, insurance, trade and commerce relating to export and import have been enacted in the country. These laws are enforced by the respective departmental enforcement agencies created under the statutory provisions. Legal powers for investigation, adjudication, imposing of fines, penalties and under special circumstances arrest and detention of persons are derived from the same legislation. The officers of the enforcement agencies are also vested with powers to summon witnesses, search and seize goods, documents and confiscate the proceeds.

Despite special laws and independent enforcement agencies for handling these crimes there is no decline in the crime rate, on the contrary it is constantly rising, which is a serious cause of concern for all those who are associated with the administration of criminal justice.

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## SEXUAL OFFENCES

**C**esare Beccaria was perhaps the first criminologist who comprehended crime as a symptom of social disease. This concept of crime led penologists to believe that struggle against crimes was above all a struggle against poverty, sickness, alcoholism and prostitution. This, in other words, means that if these social evils could be eliminated, the problem of crime prevention would be considerably eased. There are, however, certain peculiar categories of crime which do not respond to this hypothesis favourably because of the pervasive tendency of human nature. (Sex crime is obviously one among such crimes which prevails in almost all societies from ages.)

With the advance of science, civilization and culture, the complexities of life have enormously multiplied. (Modern mechanisation and urbanisation has brought about total disintegration of the 'family' institution which has created serious problems in human life.) The control of parents over their wards has weakened considerably. In fact it is this parental negligence which is mainly responsible for growing indiscipline, rowdyism and vagrancy among youngsters. Uncontrollable hooliganism among youths has become a serious problem for law enforcement agencies throughout the world. It has rather become a social disease. (As a result of this unhappy development, the incidence of sex delinquency in the form of unmarried motherhood, abortion, rape, kidnapping, enticement, abduction, adultery, incest, indecent assault etc. has become too common.)

A study of sexual offences in one of the American States reveals that almost 88 per cent of the school-going girls between the age of fourteen and eighteen had sex-experience before attaining puberty. Another survey in U.S.A. concluded that in one out of every five or ten marriages today the bride is already pregnant. Depicting the picture of modern sexy-civilization in United States, the Life International of October 23, 1961 rightly observed that "a couple goes for a date and wake up to find they have been married although they cannot remember why and where....."<sup>1</sup>

Looking to the psychological aspect of sex indulgences, Dr. Albert Ellis has expressed a view that he is against putting any ban on any type of sexual behaviour, not even open prostitution by males or females. He observes that discouragement of sex pleasures and dispensation of cohabitation as disgusting and revolting may lead to neurotic loss of feeling and enjoyment in normal sex<sup>2</sup> which may result into fatal consequences. However, it would not be correct to subscribe to this view of Dr. Ellis in the Indian setting.

Like any other western country, the sex delinquency in India has also

1. Quoted in Parpurnanand Varma's : Crime, Criminal and Convict, p. 107.  
2. Albert Ellis : Sexual Beliefs And Customs, p. 278.

recorded an upward trend in recent decades.) Despite repressive socio-legal measures to control sex-crime, the 'permissive' trend of the modern Indian society is causing obstruction for prosecution and punishment of sexual-offenders. These offences, therefore, have thrown a great challenge before the criminal justice administration.

### Indian Perspective

Prior to the codification of Hindu Law polygamy was in vogue for a long time. Perhaps, the justification for the acceptance of this practice was that it provided legitimate outlet for persons to pacify their sex urge within the family itself. But the post-independence legislations on divorce, immoral traffic in women and children, marriage and other enactments relating to personal laws have narrowed down the scope of legitimate sex activities to such an extent that there has been an enormous increase in sex crime in recent times. Considered from this standpoint, the codification of Hindu personal law in 1956 can be treated as a retrograde step so far sex-offences are concerned. It condemns all forms of sex indulgences excepting the marital union of spouses as husband and wife. In result, there may be occasions when a man might not be in a position to pacify the sex-gratification of his wife whom he has accepted as his life partner. Conversely, the wife herself might not be in a position to satisfy the sex urge of her husband. The reason for his dissatisfaction need not necessarily be impotency alone but there may be several other reasons such as temperamental differences, physical imbalance, disease, attitude of neglect or distrust for each other, personal occupations or vices in any of the spouses or it may also be due to family circumstances where opportunities for conjugal meetings may be wanting. This is bound to cause sex frustration among the spouses which in turn, results in violation of sex-codes thus leading to sex delinquency. Significantly, the provisions of Mohammedan law as to marriage, dower and divorce seem to be more elastic and permissive in this regard. The permissibility of four wives to a Muslim husband, provisions of muta marriage and easy modes of *talaq* (divorce) are in fact meant to mitigate illegal sex-indulgence.

In spite of legal restrictions imposed on illegal sex indulgence, the incidence of this vice is on a constant increase. The obvious reason for the upward trend in sex-offences is that sexuality which is bio-physiological phenomenon is as essential to human organism as food or water. In fact life and sex are inseparable. When harnessed along correct lines, it is a great creative force in all walks of life.<sup>1</sup> That apart, sexual impulse affects all alike whether male or female, rich or poor, educated or illiterate, men of high status or lower status. The intensity of sex-emotion among individuals may, however, vary depending on their personal traits and bio-physical factors. Thus, certain persons may by nature be more sexy while others may be passive in response. This difference is due to the condition of gonad glands which are more active in some individuals than in others. These variations in attitude towards sexuality may also depend on physical, cultural or socio-economic environment of individuals. Persons of high status, though actuated by sex-desire may not have sufficient courage to spell it out due to

1. Dr. Puran Batria : Sex & Crime in India (1992) p. 1.

the fear of losing their social status whereas those who do not have any real status in society may not hesitate to express their sex-desire and indulge in sex-behaviour because they have no fear of losing their status in society. Thus, sex-crimes arise out of the physiological urge of human beings to satisfy their sexual impulse. If this basic urge is not pacified through legitimate means, the individual may resort to forbidden sexual acts which eventually result in sexual crime. The problem of prostitution as a worse type of sex delinquency necessarily arises out of this basic consideration about the sex activities of mankind. Other forms of sex crime are rape,<sup>1</sup> adultery,<sup>2</sup> incest,<sup>3</sup> outraging the modesty of a woman,<sup>4</sup> prostitution,<sup>5</sup> sodomy,<sup>6</sup> pornography,<sup>7</sup> fornication,<sup>8</sup> homosexuality,<sup>9</sup> exhibitionism, etc. The list is only illustrative and not exhaustive. Obscenity, though not a sex-offence may, however, act as a catalyst for sexual criminality. Minors may also be kidnapped for the purpose of prostitution.

Biologically also, sex is considered as a great analgesic. It cures the sick and makes the healthy, healthier. The amount of harmonial activity that takes place during sexual intercourse is phenomenal and feeds virtually every part of the body by increasing circulation and supply of blood and nutrients to every area of the body. Good sex life keeps one in good shape. It has, therefore, medically been established that a good sex life has a number of advantages over sexual frustration or self-imposed celibacy.

### **Causes of Sex Delinquency**

Bio-scientists have opined that sex involvement though basically evil, is necessary for procreation, physical fitness and mental satisfaction of mankind.<sup>10</sup> Like any other society, the Indian Society expects that sexual activities must be confined to marital relationship and sex indulgence outside marriage wedlock is an offence punishable under the penal law.<sup>11</sup> Another notable feature regarding sexuality is that chastity is stressed more on women than men.

Commenting on sexual behaviour of mankind Donald Taft observes

1. Forceful enjoyment of sex with a person against her/his will (Sec. 375 IPC).
2. Voluntary sexual intercourse with a married woman without her husband's consent. (Sec. 497 IPC).
3. A sexual intercourse between two persons related to each other by consanguinity or affinity within prohibited degree of relationship.
4. An act done to or in the presence of a woman clearly suggestive of sex. (Sec. 354 IPC).
5. Practice of a woman/man who permits a man/woman to have sexual intercourse with her/him for a settled price.
6. Sodomy is anus sexual intercourse, especially between males.
7. Explicit presentation of sexual activity in book, magazine, pamphlet or any other literature form or films etc.
8. Sexual intercourse by mutual consent between a man and a woman who are free from bondage of marriage.
9. A genital sexual relationship with a person of one's own sex.
10. Donald Taft—Criminology (4th Ed), p. 248.
11. The penal provisions for sexual offences are contained in different sections of the Indian Penal Code, viz, Rape Sec. 375 ; Adultery, sec. 497 : Outraging the modesty of women, Sec. 354 ; Kidnapping of minors for prostitution Sec. 372 ; Sodomy, sec. 377, and Homo-Sexuality and other unnatural offences, sec. 377.

that sexuality being a biological phenomenon needs no specific training. The bio-physical changes with the growth of human body automatically prepare men and women for sex behaviour) As regards the futility of external medical appliances for controlling procreation he observes that the knowledge of contraceptives is unnecessary because that would remove a deterrent on immoral behaviour and people would be free to indulge in sex delinquencies with impunity without the fear of possible conception or birth. It must, however, be noted that the present moral confusion and vanishing effect of religious sanctions has given rise to an unprecedented increase in sex delinquency. Sex-crimes have now-a-days become so common that people have lost all seriousness about them and they are looked upon as an ordinary mode of human behaviour.

The factors which are mainly responsible for steep rise in sex offences are as follows :-

(1) Man is a creature of endless moods and caprices. Just as he wants change and variety in food he eats and clothes he wears and the music he hears, so he finds it difficult to remain absolutely faithful to one sex-partner. Thus variety being the essence of enjoyment, men and women indulge in extra-marital relations which are not always approved by society or law.

Dr. Freud, in his theory of criminal behaviour has explained sexual criminality in terms of functional deviations and mental conflicts in the personality of individuals. According to him, Id generates sex urge in a person yet the force of ego and super-ego within him makes him conscious that only the righteous means to fulfil this desire would project his personality and any deviation from the accepted norms would damage his reputation. Thus, it is the force of self-consciousness (ego) and self-criticism (super-ego) which keeps most persons on the right path. However, those in whom there is lack of ego and super-ego tend to indulge in extra-marital sex-relations.)

(2) The institution of religion which was once regarded as a potential weapon of social control has lost its force in modern times. So is the case with moral and ethical values of life. Due to the impact of western culture, the age-old traditional norms and customs are fast losing their hold on Indian society. The craze for comforts and luxurious life has undermined the glory of past traditional culture which has seriously jeopardised the compactness of Indian life. The legislative measures such as the Special Marriage Act, 1954 ; the Hindu Marriage Act, 1955 ; etc. have contributed to disrupt the unity of joint Hindu family. Consequently, morality has lost all its significance in modern sexy civilization. Slackness in domestic discipline offers frequent opportunities for judicial separation, divorce and marital disputes. This tendency is more conspicuous among the educated people. It is significant to note that uneducated and illiterate masses still have an unshaken faith in the institution of family and integrity of family life. This accounts for the growing incidence of sexual crimes in urban areas as compared to rural regions.)

(3) Industrial development in India has brought in its wake a radical change in the pattern of Indian society. The institution of family has

disintegrated. The modern Indian woman no longer confines herself within the precincts of four walls of her house but participates in outdoor activities shoulder to shoulder with men. As a result of this change in the attitude of women, the housewife is no longer content with a passive role in her domestic life. She does not meekly submit herself to the commands of her husband but prefers to remain only a companion to him asserting her independent existence in every walk of life. As a result of this the integrity of marital life is gradually vanishing. Closer association of women with men, particularly at work places, provides occasion for intimacy which creates a background for sex delinquency. Unfortunately, sexual harassment of women in jobs and elsewhere have not yet received much public attention.

(4) Urbanisation due to industrial progress of the country has given rise to several new problems in human life. Parents have to stay away from their home for a considerable long time during working hours. This results into neglect of children and lack of parental control over them. The youngsters, therefore, tend to become more indisciplined, reckless, repulsive and irresponsible. The tendency of hooliganism, rowdyism and attitude of indifference among the youngsters is essentially because of the impact of urbanisation and industrialisation which has necessitated men and women to stay away from their homes in pursuit of work and employment, thus leaving little time to be spared for proper care of their wards.

(5) Referring to sex deviants, *Donald Taft* rightly observed that changes in the habits of dress and undress, sex themes in literature, dramas, obscenity in advertisements, movies, television and cinemas may stimulate sexual impulse in varying degrees. So far India is concerned, the impact of western civilization on Indian life has been so great that people have developed a craze for imitating western ways in every walk of life. In result, Indian people have become more sexy than their ancestors. The peculiar costumes and clothings of modern girls and women invite lustful looks of sexy persons. The cosmetics used by modern women and the fragrance of scent, essence, perfumes and other cosmetics also stimulate sex sensation. To add to the misery, the impact of television and cinema is so great on the younger people that they learn new ways of flirting, romance and courtship from these films and try to practise them in their real life.<sup>1</sup> Thus, acquaintance between the male and female adolescents leads to intimacy which finally turns into courtship and in a fit of excitement and irresistible sex-desire, the spouses momentarily forget themselves and indulge into acts which they subsequently realise to be sex crimes.<sup>2</sup> Once having experienced the pleasure of sexual act, they are hardly able to resist their sex-urge and repeat it times again fully knowing about the illegality and gravity of the consequences. This finally turns them recidivists. Commenting on this aspect of sexuality, *Edwin Sutherland* observed that out of all the crimes, sex crime tops the list so far as recidivism is concerned. The story does not end here. One single cohabitation is enough to involve both spouses into further criminality. Thus, if the illicit intercourse results into pregnancy, that woman in order to conceal her act and to get rid of the conceived child, would resort to illegal abortion which in itself is a crime. If,

1. Blumer, H. and Hauser, P. M. : Movies, Delinquency and Crime, p. 143.

2. Burgess, E. W. : Sociological Aspects of the Sex Life of the Unmarried Adult, p. 144.

## SEXUAL OFFENCES

however, due to fear or inadvertence the conceived child is allowed to take birth, this again creates complications as it results into unmarried motherhood. This further raises the problem of legitimacy of the child so born. It is, therefore, often said that the sex crime apart from being a single offence, is occasionally followed by a series of other correlated offences.

(6) The influence of intoxicants such as liquor, drugs etc., also accounts for the incidence of sex crimes. Consumption of wine and liquor has become a part of habit with most of the persons. Under the influence of intoxication, a man becomes wild and rash. He becomes emotionally excited and forgetting all normal restraints, becomes aggressive and commits sex crime recklessly, though he may repent for it after he resumes normal sense. Even fathers are known to have raped their daughters or daughter-in-laws under the influence of intoxication.

(7) The satisfaction of sex impulse is an important biological need of human personality. It is in fact a psycho-biological urge which needs to be pacified through legitimate means. It is for this reason that early marriages acted as a safety valve to put a check on sex crimes because they offered legitimate opportunities to spouses to satisfy their sex desire and refrain from forbidden sex indulgences. Commenting on the desirability of marriage as an appropriate institution to suppress sex delinquency, *Mrs. Ruth Shonle Cavan* observed that marriage shapes the personal life of man and fulfils his physio-biological needs which, if otherwise left unfulfilled, would drag him into sex delinquency.

(8) Family unhappiness due to wife being frigid or husband being weak in sex act may also divert the spouses to prohibited sex conduct. Incompatibilities with regard to physique, temperament, habits etc. may disturb the marital life of life-partners which may lead either of them or both to promiscuity as and when they get opportunity. At times, physical, complexion, features of spouses may also be the cause of dissatisfaction leading to extra-marital sex indulgences.

(9) It is significant to note that intensity of sex-desire among persons is never uniform. It varies from person to person depending on his cultural, group and social environment. There are certain persons who on account of their emotional instability and impulsiveness, are not able to foresee the dangers of their sex involvements and, therefore, repeat them without bothering about the evil consequences. Those living in broken homes, slums, crowded localities or vicious inhabitation are easily prone to sex delinquency and generally become sexual psychopaths. These persons are positive danger, particularly ; to women and children who are usually the victims of sex-crime. *Dr. Paripurnanand* has rightly pointed out that bad conditions of living actually serve as training ground for the children and adolescents to learn sexual behaviour. The innocent children who indulge in sex-acts without knowing that what they are doing is a crime and at a later stage when they grow older they turn to be sexual psychopaths, thus frequently resorting to sex crime on account of their irresistible passion.

(10) In context of sex-crimes, a word must also be said about obscenity which provides a fertile ground for sex-stimulation. The definition of the word 'obscene' suggests that any book, pamphlet, writing, article, drawing, figure or painting or any such material shall be deemed to be obscene if it

stimulates sex and is likely to pervert the minds of those who read it or see it.<sup>1</sup>

The test whether a particular matter is obscene or not, depends on the interpretation of section 292 IPC and not on expert evidence.<sup>2</sup> Thus a passage contained in a serious work giving advice to married men on how to regulate sexual side of life was held not to be obscene<sup>3</sup> although it contained detailed description of sex-act. In the historic *Hicklin's* case,<sup>4</sup> the court observed that the test for deciding obscenity is whether the tendency of the matter charged as obscene is to deprave and corrupt those whose minds are open to such immoral influences, and into whose hands a publication of this sort may fall.

In *Samresh Bose v. Amol Mitra*,<sup>5</sup> the Supreme Court drew a distinction between obscenity and vulgarity and held that a vulgar writing is not necessarily obscene. Vulgarity arouses a feeling of disgust and repulsion and also boredom but does not have effect of depraving, debasing and corrupting the morals of any reader which obscenity does. The test is objective. In the instant case the publication was not held to be obscene though it could be called vulgar.

(11) One more reason for growing incidence of sex crime in India is that majority of sex offenders get acquitted in the absence of eye-witnesses as these offences are always committed in desolate lonely places. Besides fear, awe and humiliation also dissuades woman, who is a victim of sex crime, from approaching the law court and even if they dare to do so, they feel awkward in replying to questions relating to the details of sex-act. The medical experts also avoid giving a definite opinion about the sexual intercourse having been done by the accused in order to play safe. The victimised woman seldom raises hue and cry against the culprit.

In brief, "the trauma of the incident of sex crime, particularly the offence of rape, followed by the trauma of having to narrate the facts to the police followed by the trauma of undergoing medical examination of the most intimate organs of the body, are enough discouragements to a victim. Added to this, is the trauma of being subjected to rigid cross-examination in the court-room".<sup>6</sup> If the victim happens to be a child or a teenage girl, she may not be able to unfold the story fully and freely before the court, when confronted with the offender.

### Remedial Measures

*Dr. Sigmund Freud*, an expert in psychiatry has given a very convincing exposition of sexual psychopaths and suggested that these delinquents need medical treatment rather than penal servitude. *Dr. Philthrop*, the famous British writer, while explaining the psychology of sex-delinquents has also expressed similar views. He suggests that if the psychology and the mental frame of the sex-offender is not properly attended to, mere punishment

1. Sec. 292 IPC.
2. *Ranjit D. Udeshi v. State of Maharashtra*, AIR 1965 SC 881.
3. *Emperor v. Harnam Das & another*, (1947) 34 Lahore, 387.
4. (1868) QB 360.
5. AIR 1986 SC 967.
6. Quoted from LAW INDIA Vol I No. 4 (Oct.—Dec. 1992)—a Quarterly News Letter published by the Indian Law Institute, Delhi.

would hardly serve any useful purpose and he would become more dangerous to society. Therefore, the object should be to cure the offender's weakness of mind which is responsible for depriving him of his vitality to resist the force of circumstances and fall a prey to sex-desire. In short, the adequate remedy for sex delinquency is to subject sex delinquents to socio-medical treatment through a proper follow-up method under the control and supervision of competent psychiatrists.

The following remedial measures may further be suggested for the prevention of sex delinquency—

(1) The marriage between the spouses who are related by blood must be discouraged. The reason being that the off-springs of such union are often degenerated and have little appreciation for morality. Consequently, they fall an easy prey to sex-crime. It is mainly for this reason that most of the personal laws forbid marriage between those who are related by blood and fall within the prohibited degrees of relationship. Likewise, marriage on account of consanguinity or affinity is considered to be *bati* (void) under the Mohammedan law. Even the English law, as early as 1250 A.D., permitted marriage only between such persons who were related beyond three cousins. Henry VIII during his reign imposed a restriction on marrying even the wife's sister with a view to tightening up matrimonial discipline. The object was to inculcate a sense of morality and strengthen matrimonial discipline among the people.

(2) Unfortunately, the International Year for Women observed in 1975 did not consider the problem of sex offences and criminality against women. In India, the Law Commission in its 71st Report suggested that the existing divorce-laws should be suitably amended so as to make irretrievable break-down of marriage as a good ground for the grant of decree of divorce under the Hindu Marriage Act, 1955. It is hoped that the Women's Commission set up by the Government under the National Women's Commission Act, 1990, would initiate concrete measures to prevent victimisation of women and reduce the incidence of sex crimes.

(3) Parents should keep their wards well under control and pre-warn them of the possible dangers involved in illegal sexual acts. No sooner a child approaches the age of adolescence he should be explained the various aspects of sexual life and consequences flowing therefrom. It should be noted that the psychology of adolescents at this difficult age is very precarious and they are unable to resist their sex urge if they are placed in surroundings conducive to sex-crime. If they have the fore-knowledge of the possible dangers and evil consequences which are likely to flow from their momentary sex indulgence, they would certainly refrain from such acts. This is particularly necessary in case of adolescent girls so that they are prevented from landing into a life of shame and disgrace. Commenting on this point Dr. Paripurnanand Verma observed : "the man's role in sexuality is a single act—the disposition of sperm where it can fertilize an ovum. Woman's role is more time taking and consists of triple acts in which accepting sperm comes first, pregnancy and child-birth, second, and the lactation (nursing) the third.....By man's completing his sexual activity, woman's is merely initiated and there are two sound ways for the girl to deal

with a young man who is insistent ; she can marry him or she can say "No"<sup>1</sup>.

(4) Some criminologists suggest that imparting sex education and providing correct knowledge about sex to the young persons would help them to understand sex better than get addicted to aberrations which border on crime. The confusion prevailing about the sex values among various sections of society as also the lack of properly trained or qualified staff for the purpose may, however, pose practical difficulties in imparting sex education to youngsters at school level. Then again, the question as to at what exact age or stage the sex-education should be introduced and the curriculum of teaching the subject are also some of the debatable issues connected with this subject.

It has been generally accepted that the primary object of sex education should be to help young boys and girls to acquire healthy understanding of sex relations and correct role of man and woman so that they can better adjust as husbands and wives in future and may maintain harmonious inter-personal relations between sexes. At the same time, they may also become aware of the evils of sex-perversion including prostitution, homosexuality, illegitimacy, venereal diseases, AIDS, etc., and may be properly prepared to play their role as a spouse, parent and citizen effectively when they enter marital life. Needless to say that family can perhaps play a more effective role in imparting sex education to their children in home in a more informal manner, providing adequate opportunities to their wards to develop their personality and lead a normal, healthy and aesthetic sex-life.

(5) Much of the sex criminality may be prevented by the initiative of women themselves. They should guard against providing any opportunity to the potential sex offender. For this purpose, minor and young girls should be properly escorted and they should not be entrusted to the care of servants or strangers. Women should take care that they are not misled by fake *sadhus* and *taniriks* and fall a prey to their evil designs. More recently, providing *karate* training to young girls and women is being emphasised so as to train them for self-defence and protection against vicious offenders. It is indeed a welcome step.

(6) Perhaps, keeping people engaged in work seems to be the best solution for mitigation of sex crime. Particularly, in the modern sexy civilization where living conditions are quite congenial to sexual offences, it is necessary to keep the youths fully engaged in work so that there is no time left for them to waste their energy on perverse sex-thoughts. Adolescents who lead an idle-life are apt to become sexual psychopaths. It is, therefore, an established fact that a busy life with meaningful work can mitigate sex-crime to a considerable extent.

(7) Sex delinquency among prisoners presents a special problem for the prison authorities. Quite a large number of prisoners are sex-psychopaths for the reason that they are completely deprived of marital life during their term of imprisonment.<sup>2</sup> Mrs. Ruth Shonle Cavan and

1. Paripurnanand Verma : Crimes, Criminal & Convict, (1963) p. 148.

2. *Ibid.*, p. 142.

*Eugene S. Zamans*<sup>1</sup> made an intensive investigation on sex crimes in prisons and pointed out that complete denial of marital life to a prisoner in jail is most unjust and inhuman as it has an adverse effect on his personality due to non-fulfilment of one of the basic urges of life. Consequently, sex desire in him often makes him obstinate and indifferent towards the jail authorities and at times he even resorts to unnatural offences such as homosexuality or sodomy in an attempt to pacify his sex impulse.

With a view to reducing sex tension among prisoners, some progressive countries have recently permitted private conjugal visits to their prisoners at regular intervals under the supervision of jail authorities. During these visits the spouses are allowed conjugal meetings in complete privacy. The period of such visits, generally, varies, from half-an hour to two hours in different countries. However, this privilege is not extended to women prisoners for the reasons of social security and possibility of their getting pregnant and giving birth to a child which would add to the problems of prison. In India such facilities are not considered compatible with the accepted modes of the Indian life as it lays undue emphasis on the satisfaction of a baser urge of human being. However, in Uttar Pradesh, the system of 'ticket on leave' has been introduced for prisoners in 1951 with a view to enabling the long termers to visit their families at regular intervals. This is intended to serve two main purposes. Firstly, this offers an opportunity to the prisoners to pacify their sex-impulse thus making them less violent and it helps in reducing tension in prison. Secondly, it greatly helps in rehabilitation of prisoners not only during their prison-term but even after their release from the institution.

Many States in India allow their prisoners the benefit of furlough under the Rules framed under the Prisons Act, 1894, with a view to enabling the inmate to have access to his family and social life which certainly helps in mitigating the rigours of prison life. Perhaps Sweden is the most liberal country so far this facility to prison inmates is concerned. It allows 30 to 50 minutes conjugal visit to its prisoners on Sundays. It is submitted that greater emphasis on parole and probation may also serve the same purpose without giving expression to this bio-physical urge of prison-inmates.

(8) Another significant aspect of sex-crime is the psychology of adolescent girls at the time of puberty and menstruation when they are undergoing a biological change in their physical features. This period is particularly difficult for girls. It roughly commences from the onset of menstruation which signifies their transition from childhood to adolescence. At this delicate age girls mostly get mentally disturbed and need to be told that the physio-biological changes in them are not unusual or abnormal and they should take them as a normal phenomenon of life. This is a stage when they should be tenderly looked after. The boys, however, attain maturity at a comparatively later age than the girls. Thus, if the parents take proper care of their children at this 'difficult age', many problems relating to sex delinquency can be timely eliminated. Young girls in particular, should be sensitised about the possible dangers of illegal sex indulgences.

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1. Mrs. Ruth Shonle Cavan was a Professor of Sociology, Rockford College, Illinois (U.S.A.) and Eugene S. Zamans was the Director of John Howard Association in Chicago.

(9) Active vigilance by the police particularly, in busy streets, markets, railway stations, bus-stands, schools, colleges, cinema houses, public gardens etc. is necessary to keep the sex offenders away. Those indulging in rowdyism and eve-teasing should be sternly dealt with. Strict vigil of the police in prostitution dens and pimps and procurers who indulge in kidnapping or trafficking in innocent girls and women for immoral purpose, may also help in preventing sex offences. During interrogation, female victims of sex offence should not be subjected to repeated awkward questioning by different police officials and their identity should not be disclosed to public or press.

The police must take action against goondas and loafers under the preventive laws and special squads may be set up to identify sensitive areas. Those giving information regarding sex offence or offender must be duly protected. Special Women Police squads may also be pressed into service for apprehending sex offenders and women who are actively involved in this heinous crime.

(10) Alcoholism is also one of the potential causes of sex crimes. It is a vice which weakens the character and impairs the faculties of mind and body. Under the influence of the intoxicants, a person loses his self-control and he may indulge into sex act even with his daughter, daughter-in-law or any other woman. It is, therefore, necessary to eradicate this menace by strict regulatory measures. Drinking in public should be made a cognizable offence and the number of bars and liquor houses should be limited by adequate licensing.

(11) The five main agencies of professionals which are required to deal with sex crime victims are the police, the doctors, the lawyers, the magistracy and the Rescue Home officials. They must actively cooperate with each other to bring the sex offenders to book.

(12) The existing law relating to sexual offences such as rape, adultery, abortion, obscenity etc., has become outdated and needs to be suitably amended. It has rightly been said that rape is a legal technicality inasmuch as it is nothing but passive resistance on the part of female victim against the sexual act of man. During 1970's the public opinion in India favoured legislation for abortion hence the law of abortion was suitably amended<sup>1</sup> with a view to provide relief to saving unmarried mothers and women who have fallen a prey to sex crime and offer them an opportunity to rehabilitate themselves in society. It must, however, be mentioned that liberalised abortion law should be used with utmost caution as the sexual psychopaths, particularly the delinquent women, may use it as an easy way to escape penal consequences for their sex indulgence and this may increase sex-crime.

The Indian Penal Code recognises eight major forms of sex offences which are punishable under the law : They are :

- (1) Rape (Sec. 375).
- (2) Intercourse by a man with his wife during separation (Sec. 376-A).
- (3) Intercourse by a public servant with woman in his custody (Sec.

1. Abortion has been legalised in India by the Medical Termination of Pregnancy Act, 1971.

376-B).

- (4) Intercourse by Superintendent of Jail, Remand Home etc. (Sec. 376-C).
- (5) Intercourse by any member of the management or staff of a hospital with any woman in that hospital (Sec. 376-D).
- (6) Assault or criminal force to women with intent to outrage her modesty (Sec. 354).
- (7) Selling or buying minors for purposes of prostitution (*Sections 372 and 373*).
- (8) Unnatural offences such as carnal intercourse against the order of nature with any man, woman or animal (Sec. 377).

Besides the above offences, incest and homosexuality are also crimes against sex in India.

### Incest

Incest is sexual relation or intercourse between persons so related by kindred affinity that legal marriage cannot take place between them. Incest was punishable with death in England in 1650. Subsequently, it was punishable with three to seven years penal servitude under the Incest Act, 1908. The consenting female was liable to same term of sentence. In Scotland, incest was punishable as an offence under the Incest Act, 1887. Justifying consensual incestuous behaviour between two consenting heterosexual adults as an offence, the Scottish Law Commission in its report of 1981 observed that it causes psychological harm not only to the actual participants but to other members of the family, either at the time of incident or later. Thus incest not only undermines the family institution but also ultimately causes 'injury' to it.

Highlighting the dangerous repercussions of consensual incest *Jennifer Temkin* remarked that, "incest started in younger age may continue into adulthood. Most of the women who are abused during their childhood, find it difficult to extricate themselves from such relationship owing to their dependence—emotional, economical or physical, on their families. Further, the abuses may resort to all the familial, discreet, exploitative and manipulative devises at their command to 'exploit' the abused ones to continue the consensual incestuous relationship.<sup>1</sup>

In India, however, incest though a prohibited act under the Hindu Law, is more or less common among some of the tribals, particularly the Gonds of Bastar in Madhya Pradesh. The reason being, while 'sex' means 'pleasure' to the civilised people, for primitive race of Gonds it is 'a pleasure as well as duty to its community as also to the super divinely power that has created life'.

Surprisingly, the Indian Penal Code does not provide incest as a distinct offence. Although incestuous relationship can be brought indirectly within the purview of IPC only if it amounts to 'child-rape' when the victim of incest is below 16 years of age or 'adultery' when the willing female partner to incestuous sexual intercourse is married to some one. However, the Fifteenth Law Commission of India in its 172nd Report of the year 2000

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1. Jennifer Temkin : "Do we need the Crime of Incest?" (1991) 44 CLP 185.

expressed great concern for sexual violence against children within their own families by *near relative* or any other person being in a *position of trust or authority*, towards his victim, and recommended inclusion of 'incest' as an offence in the Penal Code. The Law Commission, *inter alia*, observed :—

"If the sexual assault is committed by a person in a position of trust or authority towards the person assaulted he/she shall be punished with RI for a term which shall not be less than ten years but which may extend to life imprisonment and shall also be liable to fine."

As rightly pointed out by Professor K.I. Vibhute of Pune University the aforesaid proposal suffers from two deficiencies. Firstly, it will not include consensual incestuous act between two consenting 'near-relatives' and secondly, it does not specify the categories of so called 'near-relatives' for the purpose of sexual assaults.<sup>1</sup>

Be that as it may, it is high time when the Parliament should take a serious note of this omission and make incest as an offence under the Indian Penal Code.

### **Homosexuals**

The homosexual may be either a passive individual who assumes the role of female, regardless of his true-sex or he (or she) may adopt the active role of the pair. In either case, they go to the extremes to stimulate the roles they are by their nature or conditions to play.<sup>2</sup> Homosexuality between adults is no longer an offence in England, West Germany, Norway and several other western countries provided it is not done in a public place. In India it is, however, punishable under Sec. 377 of the Indian Penal Code.

### **Contraceptives—A Boon to Sex offenders :**

It may not be out of place to mention here that the family planning techniques which are being presently used to control birth-rate are indirectly contributing to sex delinquency. The oral contraceptives such as birth-control pills and loop insertions are undoubtedly aimed at controlling population growth by limiting birth-rate. But these devices serve as a boon to sex offenders who carry on their activities without the fear of being detected with the application of these methods.<sup>3</sup> These anti-birth devices also help them to avoid conception or child-birth which would otherwise be a cause of shame and disgrace for them. Thus it would be seen that although statistically sex crime may not record an upward trend the expansion of family-planning programme contributes indirectly to shield this menace and quite a large number of sex-offences escape detection through the use of these contraceptives.

### **Law Relating to Abortion in India**

The protection of law to human life also extends to an unborn child in mother's womb. Causing miscarriage with or without consent of the woman

1. K.I. Vibhute : INCEST—A Blissful or Miserable Omission in IPC of 1860; 44 JILI (2002) p. 92.

2. Barnes and Teeters : New Horizons in Criminology, p. 100.

3. Taft : 'Criminology' (4th Ed.), p. 263.

is an offence under Sections 312 and 313 of IPC respectively. Section 312 requires two elements to be satisfied for the offence of miscarriage, namely, (i) it should not have been caused voluntarily; and (ii) it should not have been caused in good faith for the purpose of saving the life of the woman.

Although the word 'abortion' has not been used in the aforesaid sections but the word 'miscarriage' technically speaking refers to abortion which means expulsion of the embryo—foetus at any time before it attains full growth.

Miscarriage may be caused at two different stages, that is, when a woman is 'with child' or she is 'quick with child'. A woman is considered 'with child' as soon as gestation begins, and she is said to be 'quick with child' when she feels the motion of child in her womb. In other words, quickening is a perception by the mother that movement of the foetus has started. Therefore, it obviously indicates an advanced stage of pregnancy. The punishment of these two offences under Sections 312 and 313 respectively also varies. The former is punishable with imprisonment which may extend to seven years while in the latter case, the punishment may extend upto ten years or imprisonment for life with or without fine.

When an act done with intent to cause miscarriage of woman with her consent and it results into her death, it is an offence punishable under section 314 of IPC upto ten years' imprisonment, and if the act was done without the consent of the woman, it is punishable with life imprisonment.

Section 315 further provides that an act done with intent to prevent a child being born alive or to cause it to die after birth is punishable with imprisonment which may extend to 10 years with or without fine. An act of causing death of unborn child at the advanced stage of pregnancy (at 'quick with mother' stage) amounts to culpable homicide and is punishable upto 10 years imprisonment with or without fine as provided in Section 316 IPC.

### **Medical Termination of Pregnancy Act, 1971**

In order to extend protection to women against illegal abortions, the Medical Termination of Pregnancy Act, 1971 has been enacted with the following objectives :—

- (i) Abortion will be legal as a measure of health where there is a danger to the life or risk to physical or mental health of a woman; or
- (ii) On humanitarian grounds, such as when pregnancy is caused as a result of sex offence or intercourse with lunatic woman; or
- (iii) Eugenic grounds, when there is a substantial risk that the child, if born, would suffer from deformities and disease.

The Act, however, does not permit termination of pregnancy after 20 weeks. Again, no pregnancy can be permitted without the consent of the woman. Section 4 of the Act further provides that the pregnancy must be terminated in a Government hospital or a place approved by the Government for the purpose.

Section 8 extends protection to medical practitioners for acts done by them under the Act. Any wilful failure of the compliance of any provision of the Act or rules made thereunder shall be punishable with fine which may

extend to one thousand rupees.

The Medical Termination of Pregnancy Act, 1971 (MTPA) is no doubt a landmark legislation in the history of post-independent social legislations in India. Since abortion has been liberalised in quite a wide range of circumstances, it has come to the rescue of girls and unmarried women who unfortunately fell a victim to sex crime and became pregnant. They are thus saved from the stigma of 'unmarried-motherhood'.

### **The Pre-natal Diagnostic Techniques Act, 1994**

The Pre-Natal Diagnostic Techniques Act, 1994 was enacted to prohibit sex-selection techniques and its advertisement throughout the country. A writ petition was filed<sup>1</sup> challenging the correctness of the title name of the Act which was later withdrawn on 14th February, 2003 consequent to the Act having been amended and named as the Preconception and Prenatal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994. The amended Act requires the Union and the State Governments to submit their quarterly reports to the Central Supervisory Board on the implementation and working of the Act and the rules framed thereunder. The Act provides punishment for medical professionals practising foeticide and sex determination.

### **W The Problem of Prostitution**

Any discussion on sex crime without reference to the problem of prostitution shall be incomplete. Prostitution as a menace is essentially an outcome of sex delinquency. As rightly observed by *Donald Taft*, "our attitude towards prostitution varies from approval through acceptance and tolerance to violent opposition." To quote him again, "whenever the institution of marriage weakened, prostitution declined because sex gratification could be obtained without payment. Thus, prostitution in a way is an index to morality." In India with the declining morality and impact of western culture the attitude of people towards prostitution has considerably softened and it has been accepted an inevitable evil for maintaining the general moral discipline in the community. In spite of repressive policies and regulatory measures on prostitution as an organised crime, the institution still survives as a regular profession as it offers unlimited opportunity for sex gratification, monetary rewards to prostitutes and pimps for reasons of promiscuity. However, one remarkable feature of modern reforms on prostitution is that it has now been possible to rehabilitate the prostitutes to normal life. This was not possible three or four decades ago because of the stigma attached to this profession. Many innocent girls and women who fall victim to this dubious profession can now be saved from leading a life of immorality through the process of rehabilitation. Social service agencies for rehabilitation of neglected and victimised women, girls and children are operating throughout the country.

Indian history reveals that prostitution has been an age-old practice in this country. The Mourya period is well-known for its State-regulated prostitution. An analysis of the forces behind the causes of prostitution would reveal that nearly sixty per cent of the prostitutes embrace this

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1. *CEHAT and others v. Union of India*, Writ Petition (C) No. 301/2000.

profession due to poverty while forty per cent accept it due to hereditary influences or the force of circumstances. Besides sex gratification, these circumstantial causes include disturbed domestic life, mutual quarrels, cruelty and running away from home due to the fear of punishment and displeasure of members of the family. Though effective provisions exist under the Indian Penal Code for suppressing prostitution, it has not been possible to wipe it out completely because of its peculiar nature. There are specific provisions in the Indian Penal Code, to discourage prostitution. They are as follows :—

*Section 361, I.P.C.*—"Whoever takes or entices any minor under sixteen years of age if male, or under eighteen years of age, if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship."

*Section 362, I.P.C.*—"Whoever by force compels, or by any deceitful means induces any person to go from any place is said to abduct the person."

*Section 372, I.P.C.*—"Whoever sells, lets or hires, or otherwise disposes off any person under the age of eighteen years with intent that such person shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person will at any age be employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

*Section 373, I.P.C.*—"Whoever buys, hires or otherwise obtains possession of any person under the age of eighteen years with intent that such person shall at any age be employed or used for the prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person will at any age be employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to ten years and also be liable to fine."

*Section 498, I.P.C.*—"Whoever takes or entices any woman who is and whom he knows or has reason to believe to be the wife of any other man from that man, or from any person having the care of her on behalf of that man, with intent that she may have illicit intercourse with any person or conceals or detains with that intent any such woman, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine or with both."

Most criminologists have projected prostitution as a woman's characteristic crime which enables her to earn wealth and status. But as Prof. Wootton puts it, each act of prostitution requires male partner too. Therefore, it is erroneous to exclude man from the purview of this crime although it has been accenuated by the growth of woman's sex freedom in modern times. At present, there are nearly one lakh known prostitutes in India but they have been deprived a good deal of their trade-by the educated call-girls. Now-a-days exchange of wife and marriage by 'hiring' is becoming

a common menace among the so-called elites of metropolitan cities which is destroying the social fabric of the Indian society.

Besides the provisions of the Indian Penal Code, the Immoral Traffic (Prevention) Act, 1956 has also been enacted to suppress the menace of prostitution.

### The Immoral Traffic (Prevention) Act, 1956

Among all the professions in the world of human beings, prostitution is perhaps the oldest and universally rampant. The need for sexual gratification of sexual urge has impelled men and women of all ages all over the world to exploit either sex. With the growing degradation of moral values, the world opinion in the Newyork Convention of May 9, 1950 favoured regulatory measures to check immoral trafficking of women and girls. Consequently an Act called SITA i.e., Suppression of Immoral Traffic in Women and Girls Act, 1956 was passed in India which aimed at suppressing the evils of prostitution. Under the Act, the individual prostitutes were inhibited from practising their profession only in the vicinity of certain public places e.g. places of religious worship, educational institution etc. Section 3 of the Act made brothel keeping as a serious offence. The term 'prostitution' was defined in Section 2(f) of the Act as "the sexual exploitation or abuse of persons for commercial purposes".<sup>1</sup>

Despite working of the Act for twenty years no significant achievement was made to eradicate prostitution. The Act was, therefore, amended drastically in 1978 and Probation of Offenders Act, 1958 was extended to the fallen women and girls and penalties for offences under SITA were enhanced and made more stringent. But these measures were again felt inadequate, hence the Parliament again intervened and by the Amendment Act of 1986, the provisions relating to probation of fallen women and girls were completely repealed and stricter penalty was provided for offences under the Act. It was also realised that time has come when male prostitution should also be covered by the Act. Therefore, the title of the Act was changed from SITA to ITPA<sup>2</sup> (Immoral Traffic Prevention Act) and the word 'person' was substituted in place of 'women and girls'. Thus, the definition of a 'prostitute' now includes both female and male.

The Act provides<sup>3</sup> for the appointment of a special police officer for investigating the offences with inter-State ramifications. Raids and searches should be conducted in the presence of atleast two police women.

Despite widened scope, the Act still suffers from certain serious defects. The customer of the sex demand still remains a mere witness against the victim woman. The punishment for keeping a brothel or allowing premises to be used as a brothel is too lenient.

Section 3 of the Act prescribes the special procedure with respect to arrest, investigation and trial of offences under the Act. The offences under the Act are cognizable<sup>4</sup> and search can be made without warrant.<sup>5</sup>

1. *Baishanta v. State of Gujarat*, (1967) Cr. L.J. 1940 (Gujarat) : See also, *T. Jacob v. State*, (1971) Cri. L.J. 952 (Kerala).
2. For details of the Act See Appendix III.
3. Sec. 13 of the Act.
4. Sec. 14.
5. Sec. 15.

For most of the offences under the Act, a minimum sentence of seven years has been provided which may extend to life or ten years.

Section 23-A of the Act confers powers on the Central and State Governments to establish Special Courts for trial of offenders under ITPA. The offences can be tried summarily under the Code of Criminal Procedure but the sentences in such trial cannot exceed one year's imprisonment as provided under Section 22-B of the Act.

The ultimate purpose of the Act is to control the growing menace of prostitution in public places. A special feature of the Act is Section 21 which provides that no person or authority shall establish or maintain any *protective home* except under licence by the State Government which can put a condition while granting licence that the 'Home' should be entrusted to women. This is a salutary provision to check misuse of 'homes' as 'dens' of prostitution.

The State Government may associate with Special Police Officer a non-official advisory body consisting of not more than five leading social welfare workers of the area including woman social welfare worker to advise them on questions of general importance regarding the working of the Act.<sup>1</sup>

The constitutional validity of the Immoral Traffic (Prevention) Act, 1956 was challenged in *Shama Bai v. State of Uttar Pradesh*<sup>2</sup> but the court held that Sections 4(2) and 20 of the Act were constitutional and not violative of fundamental rights as none of the provisions of the Act are intended to stop profession or trade of a prostitute altogether. Only restrictions can be imposed reasonably as section 3 only punishes running of a brothel.

It may be noted that Article 23 of the Constitution of India prohibits immoral traffic in human being and makes it punishable under the law.

### International Dimensions of Human Trafficking

The trafficking of women, young girls and children at international level continues to be a global problem which is generating seven billion dollars business every year. It is the third largest illegal transnational business after drugs and arms. The merchandise for this lucrative trade is mostly women and children from marginal communities who are looking for a viable employment and means of survival. The traffickers use the bait of better life opportunities to deceive the victims and exploit their innate human need to migrate for better opportunities. Women and young girls are primarily trafficked to satiate the demand of the global sex trade. The principle underlying illegal human trafficking is the sheer powerlessness of the victims arising out of gender disparities and the lack of economic choices. Although each nation state has laws and policies against illegal human trafficking but they lack effective implementation.

The global community is constantly responding against the menace of human trafficking by formulating numerous regional and International Conventions to mitigate this rampant violation of human rights. Some of these are the Conventions on the Elimination of all forms of Discrimination

1. *Delhi Administration v. Ram Singh*, A.I.R. 1962 SC 63.

2. AIR 1959 All 57.

Against Women (CEDAW) 1979 and the Convention on the Rights of the Child (CRC) 1989. The Beijing + 5 conference and recent SAARC Conference at Male also took up this issue for deliberation and discussion.<sup>1</sup>

### **Rescue Homes For Destitute Women**

There are several social service institutions such as the Rescue Homes, Vigilance Homes, Vigilance Rescue Shelters, Stri-Sadans, Nari Niketans etc. operating in different parts of India for rehabilitation of destitute girls and women who have fallen a prey to prostitution willingly or per chance. The Nari Niketan functioning at New Delhi under the Social Welfare Board offers all possible help to the morally wrecked girls and deserted women, thus preventing them from landing into the world of prostitution. Similar services are rendered by the Mahila Ashram at Wardha. The States of Madras and Maharashtra seem to have taken up the task of rehabilitation of women prostitutes on priority basis. Referring to the problem of prostitution, Smt. V.T. Laxmi, the Chief Inspectress of Women's Institutions, Madras, commented that majority of the women drift into prostituted life on account of neglected parental care and for want of real home.

In order to tackle the problem of prostitution effectively, it is necessary to focus greater attention on the exploiters of prostitutes and pimps who carry on their illegal activities in such a manner that the poor girls who fall a prey to these rogues are left with no other alternative but to continue a life of shame and disgrace as a prostitute. It is further to be noted that the prostitutes cannot approach the law courts for redress against their exploiters because of the illegality of their occupation. This affords sufficient protection to pimps who are associated with prostitutes. It is disgusting to note that the agents of prostitutes are operating in big cities and they even do not hesitate to procure girls from respectable families and force them to submit to their vicious wishes and lead a prostituted life. Besides this, in some cases the husband himself voluntarily offers his wife to others for sexual enjoyment in exchange of money or some other material gain. The problem of repressing this type of prostitution obviously remains unsolved with the existing laws. It is, therefore, desired to inculcate respect for moral values and self-restraint among people through an improvised system of moral education. The social and correctional institutions can certainly contribute to educate the delinquents who have deviated from the righteous path and landed into the world of immorality. Since the evil is deep rooted in Indian society, the legislators and the social reformers should not feel disheartened if their efforts to repress the menace of prostitution do not bring immediate success. The problem has to be tackled on all fronts with courage and determination keeping in view the rapidly changing behavioural patterns of Indian society. The vice is sure to vanish in course of time. It must be stated that the network of social agencies which are presently at work to repress prostitution and co-related offences are doing commendable service. It is, however, a different matter that with the new methods of repression, new techniques are devised by the professional pimps and prostitutes to carry on their occupation.

The judiciary has also expressed its concern for the unabated increase

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1. UNIFEM. SARO : Human Trafficking; Times of India (Delhi) dated April 24, 2001.

in prostitution. The Supreme Court of India in *Gaurav Jain v. Union of India*,<sup>1</sup> *inter alia* observed :

"despite legislation which has been brought to control prostitution it has been on the increase and what was once restricted to certain areas of human habitation has now spread into several localities and the problem has become serious".

The Apex Court ruled that the children born to prostitutes should be separated from their mother as they should not be permitted to live in inferior and undesirable surroundings of prostitute homes. This is particularly true so far young girls are concerned whose body and mind are likely to be abused with growing age for being admitted into the profession of mother.<sup>2</sup>

The Supreme Court was once again called upon to review the plight of prostitutes in its recent decision in *Gaurav Jain v. Union of India & others*.<sup>3</sup> It issued directions for the prevention of induction of women in various forms of prostitution, their rescue from vile flesh-trade and rehabilitation through various welfare measures so as to provide their dignity of persons, means of livelihood and socio-economic empowerment. The Court observed :

"It is the duty of the State and all voluntary non-government organisations and public spirited persons to come to the aid of prostitutes to retrieve them from prosecution, rehabilitate them with a helping hand to lead a life with dignity of person, self-employment through provisions of education, financial support, developed marketing facilities as some of major avenues in this behalf. Marriage and acceptance by family is also another important input to rekindle the faith of self-respect and self-confidence".

The Apex Court remarked that flesh-trade should be viewed as victims of adverse socio-economic circumstances rather than as offenders.

It must, however, be noted that in India, prostitution was known to have been in existence from ancient-times. *Kautilya*, in his "ARTHASHASTRA" has referred to the duties of Superintendent of Prostitute Homes. *Vatsayana* in his KAMASUTRA has dealt with all aspects of sexual life including those of prostitutes.

Prostitution also flourished well under the patronage of Moghul rulers. The Harem of Moghul Nawabs consisted of hundreds of concubines. Visit to prostitute's house was taken to be a symbol of status and young boys of Royal family and nobles were sent to prostitutes so that they could not only learn about the pleasurable sex but also gain knowledge about the manners in this field.

Later, during the British period prostitution became the source of great entertainment for male foreigners and the two World Wars gave great impetus to brothels and prostitution houses with the large number of foreign soldiers and sea-men visiting these places and paying for sex-enjoyment handsomely. Poverty, sex perversions, unhappy and disturbed family life,

1. AIR 1990 SC 292.

2. *Ibid.*

3. AIR 1997 SC 3021 (PIL Relief Petition).

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abnormal carnal appetite etc. have become the known causes of prostitution which has upset the equilibrium of Indian society.

Now-a-days, a new form of prostitution called 'Clandestine Prostitution' is constantly increasing wherein maid servants, mistresses, and women labourers indulge in illegal sex for earning additional income. They make themselves available in lonely houses, hotels, lodges and even on way-side desolate places. The decline of family life, decay of traditional morality, craze for pleasure and luxurious life and commercialised sale of contraceptives are some of the factors which are responsible for clandestine prostitution.

Though *Devdasi* system in Southern India was a form of prostitution, it is now banned by the law. But it still continues in certain parts of Karnataka and Maharashtra in some clandestine form.



## Sex Ethics

Finally, it may be stated that the menace of prostitution cannot be eradicated by law alone unless people themselves take initiative in mobilising public opinion against it and ensure rehabilitation of existing prostitutes. Perhaps the lack of general agreement as to the sex ethics presents real difficulty in reducing sex delinquency. As stated by Donald Taft, "attitudes towards sex behaviour are not the same in rural areas as in cities, among poor and rich, educated and ignorant and orthodox and puritans.<sup>1</sup> One group considers contraception as unnecessary interference with the divine institution and intercourse except for the purpose of procreation as sinful, while the other holds that it is the primary right of every child to be wanted and permits sex relations for pleasure so long as worst social consequences are avoided. One conceives marriage as sacred, irrevocable and religious ceremony while the other approves of various degrees of experimentations holding that marriage is too important to be entered into without trial, one approves of while the other disapproves of sex discussions." The fact, however, remains that whether a particular conduct comes within the purview of sex offence or not is always judged in the light of the actual social consequences of that conduct. What the society condemns is represented through the legal prohibitions which if violated, entail punishment.

## Women and Domestic Violence

Women constitute nearly one-half of the Indian population, but they are placed at various disadvantageous positions due to gender discrimination and bias. In the male dominated society, women have been victims of violence and exploitation. India being a tradition bound society, women have been socially, economically, physically, psychologically and sexually exploited for centuries. The concepts like sex-equality,<sup>2</sup> woman's empowerment etc. have come out of the constitutional provisions after the Constitution of India came into force on 26th January 1950. But truly speaking equality of status guaranteed by the Constitution is only a myth to millions of women who are subjected to various kinds of violence within their domestic home. The domestic violence manifests as verbal, physical or psychological abuse of

1. Taft Donald : Criminology. (3rd Ed.), p. 121.

2. Article 15 of Constitution of India.

women. The victim's inability to access to law makes legal remedies ineffective and the inability of the law to reach the victim is even more tragic.<sup>1</sup>

Marital rape is a common form of domestic violence. A government organisation for women's right dealt with a case wherein a middle aged woman called up the Human Rights Commission and accused her husband of forcing sexual contact with her. She wanted to avoid any such contact as her husband apparently visited sex workers quite often and she suspected him of having contacted venereal and related diseases. There is proposal before Law Commission of India for inclusion of marital rape in the law but many believe that the provisions may be misused and that the Indian society is not prepared for such a provision as yet. However, there is no doubt that the problem of marital rape is a grey area of law and evidence.

Even in England rape within marriage was considered an impossibility till recent years. But it was in *R. v. R.*<sup>2</sup>, that the House of Lords had altered this position and observed that the position of woman had changed so radically that rape within marriage has now become possible if the wife has not consented the intercourse by the husband. Therefore, husbands have now to be sure that their wives are consenting to intercourse, not merely submitting to it out of fear or some compelling reason. It is, however doubted if such a legislation could be enacted in India in view of the tradition, culture and norms of the Indian society.

### Torture and Harassment

The role of women in India is confined to that of a daughter, housewife and mother. Unfortunately women are not safe even within the four walls of their homes. Housewives are subjected to physical torture and psychological harassment irrespective of their economic status, religion, caste and creed. Perhaps family conflict stress, cultural norms and sexual inequality contribute to wife battering.

The worst aspect of violence against women is that it receives social sanctity. Neighbours, authorities and even the police hesitate to intervene in cases of domestic violence because they feel it as a very private domain. Women are vulnerable to acts of violence in the family which include foeticide, infanticide, marital cruelty, dowry, murder, child abuse, incest, battering etc. At the community level, they face violence in the form of rape, sexual harassment, eve-teasing trafficking and sexual discrimination. Custodial violence and institutional deprivations are types of gender violence that emerge at the level of the State.

The World Conference on Human Rights at Vienna held on June 25, 1993 for the first time recognised the violations of women's human rights in many ways and held that they are inalienable, integral and indivisible part of the universal human rights and demanded equal status of women with men. It favoured eradication of all forms of discrimination against women.

Despite these rights of women and setting up of Women's Commission at the Centre and State level, the plight of Indian women, by and large, has still remained miserable. The reason being that a vast majority of women

1. AIR 1999 (Journal) 146.

2. (1992) 1 AC 599.

are ignorant of the protective laws or even their existence.

The Government of India being a signatory to the UN General Assembly Resolution to adopt the Declaration on the Elimination of Violence Against Women (December, 1993), the Ministry of Human Resource Development has brought out a Bill on Protection from Domestic violence, Bill, 2001 (Bill No. 133 of 2002) which has been introduced in the Parliament in the budget session of 2002. This Bill when becomes an Act, will provide much needed emergency relief and succour to aggrieved and powerless women who are exposed to various forms of abuses. However, without making women aware of their rights through education and society at large conscious of its duty to respect the rights of women, no law can bring about the desired change in the status of Indian women.

The Parliament has already enacted numerous legislations to eradicate gender bias and discrimination against women. The Constitution also provides adequate protection to women against gender injustice. The Dowry Prohibition Act, 1961, the Suppression of Immoral Traffic (Prevention) Act, 1956 the Maternity Benefit Act, 1961, the Indecent Representation of Women (Prohibition) Act, 1986 are enacted to protect the rights of women and ensure them a life of dignity. Speaking about the inefficacy of the Dowry Prohibition law, the Supreme Court in *Norottam Singh v. State of Punjab*,<sup>1</sup> observed, "it is distressing that dowry or bride price should mar marriage felicity with feudal cruelty in India, largely because the anti-dowry law sleeps on the statute book and social consciousness is not mobilised to ban effectually its vicious survival."

As stated earlier, the Global Instruments on Human Rights related to women and children have been emphasizing on protection of human rights of women which include right to equality before the law, right against gender discrimination, right against harassment; right to abortion, right to privacy and the right to economic empowerment.<sup>2</sup> In recent years, right against female infanticide is also gaining momentum as a human right in some parts of the world. The Supreme Court in *State of Maharashtra v. Madhukar Narayan*,<sup>3</sup> has observed that in the context of Art. 21 even a woman of easy virtue is entitled to privacy and that no one can invade her privacy as and when he likes. The Supreme Court has consistently maintained that the offence of rape is violative of the right to privacy of the victim. "A murderer destroys the physical body of his victim but a rapist degrades the very soul of the helpless female."<sup>4</sup>

### **Sexual Harassment of Women at Work Places**

One of the evils of the modern society is the sexual harassment caused to the women particularly the working women by their male counterparts at work-places. The Supreme Court in a PIL time and again has been emphasising on the need for an effective legislation in India to curb sexual harassment of working women. Finally, in *Vishakha v. State of Rajasthan*,<sup>5</sup>

1. AIR 1978 SC 1542.

2. The year 2001 was celebrated as the year of Women's Empowerment.

3. AIR 1991 SC 207.

4. *State of Punjab v. Gurmit Singh*, AIR 1996 SC 1393.

5. AIR 1997 SC 3011.

the Court laid down guidelines to remedy the legislative vacuum on this issue. It defined "sexual harassment" as including any unwelcome sexually determined behaviour (whether directly or by implication) like physical contact and advances, a demand or request for sexual favours, sexually coloured remarks, showing pornography and any other unwelcome physical, verbal or non-verbal conduct of sexual nature. As a result of this judgment any woman employee who is subjected to sexual harassment of any kind can take recourse to initiating criminal proceedings, disciplinary action and also seek compensation from the guilty employer or other person responsible for the sexual harassment.<sup>1</sup>

It is gratifying to note that the broad guidelines laid down in *Vishakha's* case were applied by Bombay High Court in 1998 in the case of Mrs. Shehnaz Sani who was working as a ground hostess in Saudi Arabian Airlines of Bombay and was sexually harassed by her employer. The Court directed the employer of Mrs. Sani to reinstate her with back wages for 13 years, during which she was rendered unemployed due to the wrongful termination of her services by her boss. This judgment has certainly set a new trend in the protection of human rights to dignity of working women in India.

The Supreme Court in *Apparel Export Council v. A.K. Chopra*,<sup>2</sup> emphasised that in cases involving violation of human rights, the Court should be alive to the international convention and apply the same in deciding cases, particularly, those relating to violation of right to gender equality and right to life and liberty including sexual abuse and harassment of female at the work place. In this case the delinquent, a superior officer was found guilty of molesting and of having tried to physically assault a female subordinate employee.

The Court held that the act of the delinquent was wholly against moral sanctions and decency and, therefore, mere want of actual assault or bodily touch or contact does not render the punishment of removal of the delinquent from the service wholly unjustified. In other words, the conduct of the delinquent does not cease to be outrageous as it clearly amounts to sexual harassment. The appeal was, therefore, dismissed.

### Dowry And Dowry Deaths

Giving of dowry in the marriage of a daughter is an age-old practice in India perhaps because she had no right to inherit the parental property after her marriage under the old Hindu Law. Of late, the greed for acquiring more and more property in the form of dowry has reached a stage when married women are subjected to physical and mental torture by the husband or her in-laws for non-fulfilment of the demand of dowry by girls' parents. Many a time this torture leads to unnatural death of the married woman or she is compelled by circumstances to commit suicide.

Despite the Dowry Prohibition Act, 1961 and amendment in 1987 providing for stringent punishment, the menace of dowry and dowry deaths persists unabated. Sections 3 and 4 of the Act not only prohibit actual giving

1. *Medha Kotwal Lele v. Union of India*, 2004 (5) SCALE 573.

2. AIR 1999 SC 625.

or taking of dowry, but also make the demand of dowry at the time, before or after marriage, an offence punishable with imprisonment which may extend to two years. The Supreme Court in *S. Gopal Reddy v. State of Andhra Pradesh*,<sup>1</sup> has ruled that the demand of dowry for the proposed marriage which does not materialise for non-fulfilment of the dowry demand, is also an offence punishable with imprisonment upto two years. These offences are cognizable for the purpose of investigation by the police.

In the case of *Shobha Rani v. Madhukar Reddy*,<sup>2</sup> the ground of divorce was cruelty caused by incessant demand of dowry. The husband's version was that there was nothing wrong in his parents asking for few thousand rupees in time of need. The trial court and the High Court of Andhra Pradesh ruled that a dowry case was not made out because there was nothing wrong and unusual in asking the wife to spare money when needed. But on appeal, the Supreme Court reversed the findings of the Courts below and held the husband guilty of demanding dowry.

The Supreme Court in *Narottam Singh v. State of Punjab*,<sup>3</sup> commenting on dowry menace and domestic violence against women observed :

"It is distressing that dowry or bride-price should mar married felicity with feudal cruelty in India, largely because the anti-dowry law sleeps on the statute book and social consciousness is not mobilized to ban effectually its vicious survival. Law hanging limp, is a slur on the executive charged with its enforcement and its traumatic consequences.....Will the administration be aware to the urgency of a campaign so that the people may become participants in the observance of social welfare legislation."

In dowry death cases the courts are often confronted with the problem of deciding as to among the husband and relatives or whether all of them were guilty of burning or killing the wife or causing her death. The problem becomes more difficult when husband and wife are alone in the house. In absence of conclusive evidence, the husband or in-laws of the married woman invariably get acquitted on benefit of doubt.<sup>4</sup>

Having regard to the difficulty in establishing cause of death beyond doubt, the legislature passed the Criminal Law Amendment Act, 1983 to resolve the problem of growing incidence of crimes against women, particularly, bride burning or dowry deaths. A new Section 498-A making cruelty against woman an offence was added to the IPC and consequential changes were made in Sections 174 and 176 of Cr.P.C. and a new Section 198-A was added in it. The Amendment Act also added a new Section 113-A to Evidence Act which provides that where a married women commits suicide within seven years of her marriage or dies an unnatural death, presumption will be that she was subjected to cruelty by her husband or in-laws as the case may be, having regard to the circumstances of the case.

It must be stated that Section 304-B of I.P.C. makes dowry death an

1. 1996 (3) Crimes 35 (SC).

2. AIR 1988 SC 121.

3. AIR 1978 SC 1542.

4. *Sharad Birdichand v. State of Maharashtra*, AIR 1987 SC 1622; See *Venugopal v. State of Karnataka*, AIR 1999 SC 146; *Guru Bachan Singh v. State of Punjab*, AIR 1990 SC 209; *Kundan Bala v. State of A.P.*, (1993) 2 SCC 684 etc.

offence punishable with imprisonment of not less than seven years which may extend to imprisonment for life.

### **Protection of Women Against Possible Sex Harassment by Police Personnel :**

As a law-enforcement agency the police owe a social and legal responsibility to protect women against crimes. However, with the increasing number of women and young girls coming in contact with the police either as complainants or as accused or as victims of crime, there is likelihood of police personnel misusing their power and authority and misbehaving or harassing the women for sex. Therefore, adequate safeguards have been incorporated in the Code of Criminal Procedure, 1973 as also the Police Acts and Rules of the States for the protection of women against possible harassment by the Police.

Section 51(2) of the Code of Criminal Procedure provides that whenever it is necessary to cause a female to be searched, the search shall be made by another female with strict regard to decency.

Section 160 of the Code provides that no male person under the age of fifteen years or woman shall be required to attend any place other than the place in which such male person or woman resides.

Section 437 of the Code of Criminal Procedure further provides for release of any woman, or any sick or infirm person accused of non-bailable offence to be released on bail even where the alleged offence is punishable with death or imprisonment for life.

Again, if a person of a woman has to be examined by the Medical Officer for the purposes of evidence, she should not be sent for such medical examination without her consent and without an order of a Magistrate.

The Jail Manuals and Police Acts of the States mostly contain a provision that while arrested woman is being escorted to jail, one of her male relative should be permitted to accompany the escorting party. In no case fetters shall be imposed on female offenders. Again, female inmates should be lodged separately from males.

### **Amendments of Law Relating to Rape :**

More recently it is being realised that rape should not be treated as a sex-crime but it should be viewed as an aggressive crime against person. Researches have shown that very often the intention of the offender is aggression rather than sex enjoyment. *Groth and Birnbaum* observed that the rapist derives an eroticised pleasure not through sex but through an horrendous assault on victim's body. In case of a rape besides the psychological trauma, the woman is expected to prove physical injuries or some sort of non-genuine consent on her part. It is to be noted that majority of rape cases are not sudden occurrences but they are generally well planned.

The Criminal Law Amendment Act, 1983 has introduced certain important changes in the law relating to rape. A new Section 114-A has been inserted in the Indian Evidence Act. By this amendment the Act lays down that onus of proving that the woman had consented to the act shall be on the accused. Some quarters feel that this stringent provision of the rape law

would expose men to blackmail by interested elements and the women of easy virtue. However, the Supreme Court in *Bhagwada Boghinbhai Hirji v. State of Gujarat*,<sup>1</sup> while rejecting this contention observed that, "instances of false allegations of sexual molestation which are made by western society women who are gold-diggers and seek to extract money by holding out the gun of public disclosure are extremely rare in tradition bound non-permissive Indian society where, by and large, sex is taboo."

It must be stated that though the amendment Act has been widely acclaimed and criticised by the anti-rape movement, it has brought to the fore, key issues around press censorship, age of consent, appropriate punishment, burden of proof, custodial rape and the past sexual history of the victim. To that extent it has helped in controlling violence against women.

The police version is, however, different. They feel that this change in the law has placed policemen in a vulnerable position thus having a demoralising effect on them.<sup>2</sup>

The offence of rape has been defined in Section 375 of the Indian Penal Code whereas Section 376 provides punishment for rape. Under this section, more severe punishment is provided for the rapist if he happens to be a police officer or public servant or a person on the management of the jail staff or remand home and commits rape on any inmate, thus abusing his official position.

The law relating to rape makes a distinction between vulval penetration and vaginal penetration. In order to constitute the offence of rape, the law merely requires medical evidence of penetration, and this may occur and even then hymen may remain intact, i.e., unruptured. Seminal emission is not necessary to establish rape. It is for this reason that absence of spermatozoa cannot negative the commission of rape.

It is significant to note that in 1997 'SAKSHTI', a voluntary organisation interested in the issues concerning women, through a PIL writ<sup>3</sup> petition, approached the Supreme Court of India with a plea that existing Sections 375 and 376 of I.P.C. and judicial interpretation thereof is not in tune with the current state of affairs. It has urged the apex court to direct, through an appropriate writ, that 'sexual intercourse' as contained in Section 375 should include *all forms of penetration*, such as vaginal, and oral penetration as also *penetration by any part of body or by any object*. The Supreme Court had directed the 15th Law Commission to examine the issue and the Law Commission after a careful review of the rape law in vogue has in its 172<sup>nd</sup> Report submitted to the Government of India on March 25, 2000, recommended that the law relating to rape may be made gender neutral, wider and more comprehensive to bring it in tune with current thinking. However, a two-judge Bench of the Supreme Court in *Sakshi v. Union of India and others*,<sup>4</sup> has rejected the plea for re-interpretation of the provisions of Section 375 IPC to give them a wide import by expressly specifying 'various forms of penetration' within its ambit. The Court noted

1. AIR 1983 SC 753.

2. Sanker Sen : Police Today, (1986 Ed.) pp, 119-120.

3. *Sakshi v. Union of India*, (1999) 6 SCC 591.

4. (2004) (6) SCALE 15.

that there is absolutely no doubt about the interpretation of the provisions of Section 375 and the law is well settled. Re-interpretation of Section 375 of IPC will lead to a serious confusion in the minds of prosecuting agencies and would unnecessarily prolong the legal proceedings and would have adverse impact on society as a whole.

In the instant case, giving its opinion on the manner of recording evidence in cases of violence against women, the Court explained that the whole inquiry before a Court being to elicit the truth, it is absolutely necessary that the victim and the witnesses are able to depose about the entire incident in a free atmosphere without any embarrassment. Section 273 of Cr.P.C. merely requires the evidence to be taken in the presence of the accused. The Section, however does not say that the evidence should be recorded in such a manner that the accused should have full view of the victim or the witnesses. The Court remarked that the recording of evidence by way of video conferencing *vis-a-vis* Section 273 Cr.P.C. has been held permissible by the Court. In cases of rape, questions put in cross-examination are purposely designed to embarrass or confuse the victim of rape and child abuse. It will, therefore, be better if the questions are to be put by the accused in cross-examination are given in writing to the Presiding Judge of the Court, who may put the same to the victim or witnesses in a language which is not embarrassing. Also, whenever a victim is required to give testimony, sufficient breaks should be given as and when required.

### **Law Relating to Rape Needs to redefine Gender identities**

A recent judgment handed down by the *Shivpuri* (Madhya Pradesh) District Judge is likely to stir up debate in legal and medical fraternities regarding gender identities in rape cases. The learned judge convicted the accused under section 376 I.P.C. even as the defence counsel argued that the rape victim was not a woman since she had no vagina from birth, implying that she was a eunuch. The decision has far-reaching import for 'third gender'.

The defence argument was that since there was no vagina, there was no penetration of it and thus the offence of rape as charged by the prosecution against the accused Ganesh Ram of village Lukwara (Madhya Pradesh) was not made out.

The convict had forced entry into the house of the victim in the dead of the night and raped her last year *i.e.*, in 2003. The 25 years old victim had been abandoned by her husband who had remarried. She had been living with her brother. Besides rape, the accused had also assaulted her physically.

The learned Judge sent a copy of the judgment to the High Court of Madhya Pradesh with a request to forward it to the law Ministry, Government of India, as she had found that the case had raised the issue of redefining gender identities so as to include transgender and trans-sexual persons within the ambit or have a gender-free definition of the offence of rape. She observed, "this will prevent the violation of essential human dignity and freedom through the imposition of disadvantaged, stereo-typing, or social prejudice of persons born like the victim in this case."

The Judge concluded in her judgment that during the medical examination, no suggestion whatsoever was given that the victim was not a woman, as she had no female organs or that she was a transgender. The doctor opined that her injuries may be due to forcible intercourse. District Judge Renu Sharma noted.

"Merely because the doctor found that there was a hole and instead of vagina, there was a passage and uterus and ovaries could not be visualised, does not automatically take the victim out of the definition of woman for the purpose of Section 376 of IPC". After citing several international judgments, she observed that when the criteria for defining male and female are looked at more closely, two important facts become obvious. First, sex is definable at many different levels, some biological, and some social and some psychological. Second, a significant population is not entirely covered in every aspect of or every level of definition.

The learned judge noted that the existing definition of rape under Section 375 of the IPC does not adequately address nor sufficiently recognise the gender-specific nature of such crime. Today, the determining factor in gender identity is not only chromosomes or the genitalia but the 'markedly gender differentiated brain.' The Judge sentenced the accused Ganesh Ram to ten years of rigorous imprisonment under Section 376 I.P.C. and a fine of Rs. 2000/- and three years RI and a fine of Rs. 2000/- under section 325 and one year's RI and a fine of Rs. 1000/- under Section 451 IPC. The sentences were to run concurrently.<sup>1</sup>

The Supreme Court in *Bodhisattwa Gautam v. Miss Subhra Chakraborty*,<sup>2</sup> explained the socio-legal implications of rape which according to it, "is not only a crime against the person of a woman (victim), it is a crime against the entire society. It destroys the entire psychology of a woman and pushes her into deep emotional crises. Rape is, therefore, the most hated crime. It is a crime against basic human rights and is also violative of the victim's most cherished fundamental right, namely, the right to life as contained in Art. 21 of the Constitution." The Apex Court further observed, "to many feminists and psychiatrists, rape is less a sexual offence than an act of aggression aimed at degrading and humiliating women. The rape laws do not, unfortunately, take care of the social aspect of the matter and are inept in many respects."

The Supreme Court in its decision in *Delhi Domestic Women's Forum v. Union of India*,<sup>3</sup> took a serious view about the plight of woman and the impact of sexual violence on her life. The Court laid down the broad parameters in assisting the victims of rape during investigation and trial of the case. The guidelines provided that the victims of sexual assault will get legal assistance from a competent lawyer right from the stage of investigation by police till the conclusion of trial in the court. It will be the duty of the police authority to inform the victim of her right to engage an advocate for legal assistance. The advocate so engaged, shall not only render professional service, but also assist the victim in getting help from other agencies like mind—counselling or medical help etc. The anonymity of the

1. Reported in Hindustan Times (Bhopal Edition) dated September 24, 2004.

2. AIR 1996 SC 922.

3. (1995) 1 SCC 14.

victim must be maintained throughout from the beginning of investigation till the conclusion of trial. The victim must be awarded compensation by the Court when the case ends in the conviction of the offender. The Court further directed that the Government must set-up Criminal Injuries Compensation Board for awarding compensation to victims even when the case ends in acquittal of the accused persons.

Despite innovation of Section 114-A in the Evidence Act by the Amendment Act No. 43 of 1983 regarding presumption as to absence of consent in certain prosecutions for rape, the situation has hardly improved. A large number of raped women still fail to report to the police because they are embarrassed due to insensitive treatment by the doctors, the law enforcement personnel and/or the cross-examining defence lawyers.

Emumerating the defects in the present system of handling of rape cases, the Supreme Court noted :—

- (1) the complaints are handled roughly and are not given the attention as is warranted;
- (2) the victims, more often than not, are humiliated by police;
- (3) victims invariably find rape trials a traumatic experience;
- (4) the experience of giving evidence in Court has been negative and destructive;
- (5) victims consider the ordeal of trial worse than the rape itself;
- (6) prolonged proceedings cause psychological stress on rape victims.

In this background the Court laid down the parameters for assisting the victims of rape and recognised their right to compensation.

It would thus appear that the social stigma has a great devastating effect on rape victims and at the same time it is a violation of her right of privacy. Publication of the name of the victim of rape is, therefore, prohibited. Since public disclosure of private facts can result in severe psychic distress, publication or broadcasting thereof would amount to breach of privacy. As such, sexual life of a person is pre-eminently a matter for protection under 'right of privacy'. Thus in the American case of *Flourida State v. B.J.F.*<sup>1</sup>, the police had released the name of a rape victim and a newspaper reprinted the information in violation of State law. The victim sued the newspaper for damages. Recovery was, however, denied to the victim on the ground that government had already made the name publicly available.

It hardly needs to be stated that a large number of rape cases remain unreported because of the social stigma attached to the victim of rape and the humiliation and mental torture which she has to undergo during the court trial. Particularly, in case of unmarried girls who are victims of rape, their marriage becomes a real problem for them as also to their parents.

It is interesting to note that according to the available figures the reported rape cases of unmarried girls exceed married women as victims and married men exceed unmarried boys as offenders.<sup>2</sup>

1. (1989) 491 US 524 (538).

2. CRIME IN INDIA, 2002 Published by the Ministry of Home Affairs, Government of India, New Delhi.

As regards enforcement aspects of law relating to rape, particularly when the offence is against a child or a young girl, certain precautions at the trial stage may prove useful in extracting correct information about the crime and the criminal. Total privacy at the time of recording the statement of the victim, her handling by women police officer and reassuring her safety and security from the offender, would make the victim more comfortable and provide meaningful evidence in rape trial. In rape trials, anonymity of the victim must be maintained and legal assistance should be provided to her at the police station itself.

### ✓ Concluding observations :

It may be stated that like any other crime, sex crime cannot be eradicated completely. The modern changes in living style have contributed to stimulate sex crime in varying degrees. It is, therefore, necessary that apart from the legal provisions various other effective measures should also be utilised for repressing sex delinquency. It may be suggested that the State Department of Family Planning be assigned the additional responsibility of warning the public about the evil consequences of illicit sex-indulgence and mobilise public opinion against this menace through intensive propaganda. If sincere efforts are made to appraise people of the various venereal diseases which the spouses are likely to contact as a result of excessive sex indulgence and the miseries of loss of health and wealth involved in undesirable sex-behaviour, there is no reason why sex-crime cannot be eliminated from society. Educational institutions should also play an active role in mitigating this social evil by educating the youngsters to refrain from undesirable sex involvement because of the seriousness of consequence ensuing therefrom. Adolescents must be made to know the realities of life and choose for themselves the rightful path which can make them a useful member of society. Dissemination of correct knowledge about sex, establishing Marriage Council Bureaus for proper help and guidance of sex psychopaths and creating healthy conditions in which innate sex desire of men and women can be satisfied without any fear of reprobation, may also help in reducing sex crime.

The role of law-enforcement agencies such as the police, the lawyers, the magistracy, the rehabilitation centres as also the voluntary social organisations in combating sex criminality hardly needs to be emphasised. Law is only an instrument through which crimes can be prevented provided the law-enforcement machinery implements the provisions of law efficiently. This is possible only with the active co-operation and support of concerned agencies. Unfortunately, general lack of understanding and coordination among the police, the prosecutors and other agencies and a tendency to criticise each other's performance is hampering the suppression of sex crime and conviction of sex offenders.

Since crimes against women are partly the result of social system and partly the outcome of individual pathologies, a reformatory attitude towards female victims may be helpful in achieving the desired results. The rehabilitation has to be four-fold viz. physical, mental, psychological and social. Physical rehabilitation involves creating proper living and working conditions to the victimised female. Mentally, she needs help to restore her

lost esteem. Psychologically she needs help to overcome her depression and insecurity; and socially, she needs help to be accepted back in the social fold.<sup>1</sup>

The pertinent question which needs to be answered is whether the sex-deviates should be "punished" or "treated". It must be reiterated that punishment implies elimination of criminals so that society is protected from contamination. Undoubtedly, sex-offenders are a potential danger to society and therefore they should be kept at arms length. But the question arises as to how long are we going to hold them in cells or prisons? That apart, most of the sex-offenders are psychologically or physiologically abnormal persons and suffer from weakness of mind which deprives them of the vitality which could have saved them from falling a prey to sex-tension. It would, therefore, be proper that effective treatment methods be employed to cure the sex-offenders rather than subjecting them to rigours of punishment. This, however, does not mean that sex-offenders should be kept in bare custodial confinement like "patients" but some sort of psycho-therapeutic treatment should be given to them so that they are helped to be more discreet in overcoming their guilt.

It is significant to note that majority of the sex-deviants are passive or non-aggressive by nature and therefore they are not difficult to handle. Under the circumstances "treatment" appears to be the only appropriate method of handling sexual offenders. The institution of marriage and religion should also be occasionally used to inculcate the values of morality and mutual respect among sex-deviants. It must be remembered that the very fact of being identified and labelled as 'sexual-offender' makes it more likely that they will persist in crime. It would, therefore, be beneficial to extend helpful support to these offenders by treating them humanly rather than penalising them. It is heartening to note that Indian woman, by and large, is retaining her ancestral virtue of self-sacrifice. Though she is fast imbibing the western ideals and mode of living, she has not yet lost her moorings. Particularly, in villages and rural areas, the influence of conventional morality in women-folk is still great. The need of the hour is to retain the traditional institutions of marriage and family and protect them from degeneration and destruction. Social awakening alone may help in attaining this purpose through mass communication. The National Women Commission and other voluntary women organisations can play a significant role in this direction.

The emerging human rights jurisprudence at home and abroad requires all public authorities to act not merely compatible with the global perception of the right to live with human dignity but to resort to all possible means and strategies to strengthen and ensure the fundamental right to life and liberty of a woman who is a victim of rape.

In *State of Maharashtra v. Madhukar Narayan*,<sup>2</sup> the Supreme Court, without referring to Article 21, has held that even a woman of easy virtue is entitled to privacy and that no one can invade her privacy as and when he likes. In another case i.e., *Neera v. Life Insurance Corporation*,<sup>3</sup> the Apex

1. Dr. Puran Batria : Sex & Crime In India (1st Ed. 1992) p. 171.

2. AIR 1991 SC 207.

3. AIR 1992 SC 1562.

Court held that the right to privacy of women would preclude such questions to be put to female candidates as modesty and self-respect may preclude an answer. In the instant case, the petitioner, a probationer Assistant in LIC gave a false declaration regarding the last menstruation period, during her medical examination. The Court held that such clauses in the declaration intended from the candidates were embarrassing if not humiliating, like the regularity of menstrual cycle as it violates the privacy of the lady employees and, therefore, ordered the deletion of such columns in the declaration.

*Mrs. Shere Hite*, the noted writer on women's sexuality, has expressed a view in the United Nation's International Conference held in Beijing in China<sup>1</sup> from September 4 to 15, 1995, that the problem of women's sexuality covers a large area of violation of human rights. It is a blatant violation of women's bodily integrity. Double standards seeing women's bodies and especially sexuality as shameful and glorification of males over females has to be stopped forthwith. Citing an example she says, "boys and men, women and girls, learn that menstruation must be kept secret, and that girls should not be as sexual or expressive of sexual desires as boys. A boy must express sexual desire to "be a man", but it is something immoral or indecent in case of a girl. This disparity must go and women's sense of selfworth be identified.

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1. The First UN International Women's Conference was held in Maxico in 1975 and the Second one in China in Sept. 1995.