

Socio Economic Offences and IPC, 1860: An Analysis

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Abstract

This paper investigates the criminality of socio-economic offences. It is contended in this paper that socio-economic offences ought to be dealt with as 'infringement' or 'semi-criminal offences' and not as 'violations' or 'crimes'. At the point when mensrea has been expressly or impliedly (including when it isn't explicitly avoided) excluded in a statute, courts can't read such a necessity into the dialect of the statute. In the event that it is regarded to be a social welfare enactment which by chance punishes a specific direction, the court can't read mensrea (which is a criminal law necessity) into the provision. In the event that it is regarded to be a criminal statute, courts still can't read into the expressions of a statute a mensrea prerequisite, as a criminal statute is required to be developed entirely. These issues prevent us the open door from claiming to derive an intelligible rule which can be utilized as a part of such a case. An exit plan if this irregularity would be the addition of a Social Welfare Offenses Code, as recommended by Malimath advisory group and searching for elective strategies for discipline that can viably expand the stigma against the guilty parties.

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Introduction

Socio-economic offenses are typically thought to be synonymous with white collar crimes however a profound report into the idea uncovers that despite the fact that there is a crossing point between socio-economic offenses and white collar violations, yet white collar crimes are narrower in scope. White Collar violations are those which are conferred by privileged of the general public over the span of their occupation, for e.g., a major multinational company liable of tax avoidance. A beneficiary submitting false return may not perpetrate a white collar crime but rather strangely, both are socio-economic offenses. Social crimes are those which influence the well-being and material of the society and monetary violations are those which influence the nation's economy and not simply the victim.

Henceforth it can be securely expected that socio-economic offenses are those which influences the nation's economy too. The wellbeing and material of the general public is affected as well. In India, the 29th Law Commission Report proposed to contemplate the Santhanam Committee Report of 1964. The panel report watched that, "the Penal Code does not deal with any satisfactory manner with acts which may be described as social offences having regard to the special conditions in which they are conferred and which have now turned into an overwhelming element of certain capable areas of present-day society. In most by far of the offences that were recognized, two features could be seen; money related preferred standpoint and unjust enrichment. It proposed that a different section ought to be incorporated into IPC to manage socio-economic crimes".

The issue of characterizing crime has been known as the 'consistent centre of criminal law'. As criminal law symbolizes the most extraordinary type of state control on individual freedom, when a lead or consequence of a direct is 'criminalized', it has wide implications as far as status, social disgrace and open recognition. The established approach rearranges it by expressing that what the state proclaims to be a crime is a crime. Be that as it may, this approach is roundabout in nature – it is a crime when state characterizes it as one and state characterizes it as one when it accept the attributes crime. It is contended that crime is essentially a construct of specific social and lawful frameworks, reflecting incidentally and geologically parochial interests and arrangements. Thus, the assumption that criminal law deals with a singular, discrete category may not be desirable.

Emergence of Socio-Economic Offences in India

By turning the pages of History, it is learnt that India was the place where there is adherents, where put stock in, trustworthiness, truth and generosity were winning in the procedures of

life, and basic leadership approach. However, after the British developed triumphant in the war of progression to the Mughal administer, unfavourable changes started to show up in the social and monetary structure of this nation. In 1717 the Mughal Emperor issued a 'Regal' Farman, which conceded the flexibility to East India Company to import and fare its merchandise in Bengal without paying assessments. That Farman additionally gave a privilege to the organization for issuing dastaks (goes) for the development of its products. This Farman gave likely conditions to the workers of the British organization to submit financial offenses. The following is observed by Bipan Chandra: "...the energy to issue dastaks (Passes) for the organization's merchandise was abused by the organization's workers to dodge assesses on their private exchange."

Along these lines the most recent type of guiltiness rose in India, and the financial offenses continuously ended up dynamic. It is more apparent from the announcement made by Lord Clive: "I shall only say that such a sense of anarchy, confusion, bribery, corruption and extortion was never seen or heard of in any country but Bengal; nor did such and so many fortunes acquire in so unjust and rapacious a manner..."

Types of Socio-Economic Crimes

A rundown arranged for socio-economic offences by the Santhanam Committee Report, however, the rundown isn't far-reaching.

1. Offences discovered to prevent or halt the economic development of the country and endanger its economic health
2. Evasion and avoidance of taxes lawfully imposed;

In the case of *Vodafone International Holdings B. V. v. Union of India*,² it was held by J. (K.S. Radhakrishnan) that:

"I, therefore, find it difficult to agree with the conclusions arrived at by the High Court that the sale of CGP share by HTIL to Vodafone would amount to transfer of a capital asset within the meaning of Section 2(14) of the Indian Income Tax Act and the rights and entitlements flow from FWAs, SHAs, Term Sheet, loan assignments, brand 275 license etc. form integral part of CGP share attracting capital gains tax.

Consequently, the demand of nearly Rs.12, 000 crores by way of capital gains tax, in my view, would amount to imposing capital punishment for capital investment since it lacks authority of law and, therefore, stands quashed and I also concur with all the other directions given in the judgment delivered by the Lord Chief Justice."

²341 ITR 1 (SC) / [TS-23-SC-2012].

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3. Misuse of their position by public servants in making of contracts and disposal of public property, issue of licenses and permits and similar other matters;
4. Conveyance by people and industrial and business/commercial endeavours of merchandise not as per concurred particulars in satisfaction of agreements went into with public authorities.
5. Profiteering, black marketing and hoarding;

In the case of *BannalalVahildaChavla v. Union of India and Others*,³it was held by G.T Nanavati and S.N Phukan, JJ.

“It may be that M/s Purvi Petroleum was dishonestly selling blue-coloured kerosene to those not entitled to it and was thus indulging in black marketing of blue-coloured kerosene; but, there was hardly any reason for the petitioner to collude with it. There was no necessity for him to do so. There was also no material before the detaining authority to show that the petitioner had in the past committed any illegal act as regards possession, storage and use of blue-coloured kerosene.

In the result, we allow this writ petition, quash and set aside the impugned order of detention and direct that the petitioner be set at liberty forthwith, unless his presence is required in jail in connection with some other case.”

6. Adulteration of food stuff and drugs;

In the case of *Dinesh Kumar v. State of Madhya Pradesh*⁴, Dinesh Kumar was held liable for the offence of selling adulterated besan. The Apex Court held as follows:

“Besides, Section 2(i) (c) of the Act is relevant, Section 2(i) defines “adulterated” Section 2(i) (c) deals with substitution of an article by inferior or cheaper substance which affects injuriously the nature, substance or quality thereof. In the Public Analyst’s report there was no reference to this aspect. What would happen if the Public Analysts’ report in this regard even if Rule 44-A was not in operation, does not, therefore, fall for consideration in this case. On that score alone the High Court’s judgment is indefensible and is accordingly set aside.”

7. Theft and misappropriation of public property and funds; and
8. Trafficking in licenses and permits.

SubhashPopatlal Dave v. Union of India,⁵ the prime question that arose was whether the detenu who has absconded or evaded the execution of the detention order can

³AIR 1999 SC 2542.

⁴2004 AIR SCW-7406.

⁵(2014) 1 SCC 280.

besubsequently challenged and the detention order which remains unexecuted. The court held that

“A person against whom an order of preventive detention has been issued vide section 7(1) (b) 58 of COFEPOSA is bound by law to appear before the notified authority. The fact that the accused absconded and later challenged the order on grounds of non-execution cannot be permitted as it allows the law breaker to take advantage of their own conduct. The view of the court was justified as quashing of the preventive order merely on ground of non-execution without examining the reasons would make the intent under the said provision nugatory.”

Laws Relating To Socio-Economic Offence

The Government of India after the arrangement of the Santhanam Committee had delegated the Wanchoo Committee on second of March, 1970. The obligation of this panel was to concentrate on the issue of black money which is aggregated through infringement of forex (Foreign Exchange) regulation, black-marketing and hoarding etc. That advisory board made important proposals for specific corrections in statutes managing Socio-Economic Offenses. The proposals of those boards of trustees drove the Indian governing body to establish more laws, e.g. The Foreign Exchange Regulation Act 1973; The Smuggling and Foreign Exchange Manipulators Act 1976; The Control of Foreign Exchange and Prevention of Smuggling Act 1974; and Criminal Procedure Code 1973 and so on.

Other than the previously mentioned Acts, some primary authorizations which manage financial offences are as per the following:

1. The Prevention of Corruption Act.
2. The Prevention of Food Adulteration Act.
3. The Prevention of Immoral Traffic (Amendment) Act, 1986.
4. The Drugs and Cosmetics Act.
5. The Essential Commodities (Amendment) Act.
6. The Dowry Prohibition Act.
7. The Narcotic Drugs Psychotropic Substances Act, 1985.
8. The Standard of Weights and Measures Act.
9. The Customs Act.
10. The Drug (Control) Act.
11. The Income Tax Act,
12. The Anti-Corruption Laws (Amendment) Act,
13. The Indian Penal Code,

Monetary Offenses shape a different class of criminal offences. Financial Offenses exploit people with monetary misfortune as well as have genuine repercussions on the national economy. Monetary offences, for example, counterfeiting of currency, financial scams, fraud, money laundering, are wrongdoings which summon genuine concern and effect on the Nation's security and administration.

Socio-Economic Offences & Indian Penal Code

The Santhanam Committee report reported that "the Penal Code does not manage any acceptable way with acts which might be depicted as social offences having respect to the exceptional conditions in which they are submitted and which have now turned into a prevailing component of certain capable areas of current society."

The board of trustees extensively arranged the offenses as offenses computed to anticipate or hinder the financial advancement of the nation and imperil its monetary health; avoidance and evasion of taxes legitimately forced; abuse of their positions by public servants in making of agreements and disposal of property, issue of licenses and allows and comparable different issues; delivery by people and modern and business undertaking of products not as per concurred particulars in satisfaction of agreements went into with open experts; profiteering, black marketing and hoarding; corruption of foodstuffs and medications; burglary and misappropriation of open property and supports; and trafficking in licenses, grants, and so on. The advisory group went ahead to embrace the view that these offences ought to be incorporated into another part in the Indian Penal Code with the goal that they "will locate a noticeable place in the general criminal law of the nation."

The law commission, in its 29th report, distinguished the accompanying basic highlights:

1. The offences are submitted by the 'privileged societies' of society
2. Those privileged societies themselves set the ethical benchmarks of society, and henceforth a genuine view isn't taken of these offences;
3. The casualties of the offences are unascertainable people (ordinarily the State or group), as diverging from the Indian Penal Code, where the greater part of the offences are against a predetermined person.

In any case, these highlights depend on 'clerical wrongdoings, which as expressed prior is just a subset of financial offences, as it isn't vital that 'privileged societies' of society are associated with each case (for e.g., beggary, however, its temperament as an offence is dubious).

In its 47th report, the commission noticed the accompanying notable highlights:

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1. 'Motive' of the criminal is voracity or avarice (not desire or loathe).
2. 'Background' of the wrongdoing is non-enthusiastic.
3. 'Victim' is generally the State or 'devouring open'.
4. Mode of the task is a misrepresentation, not constrain.
5. The act is thought and wilful.
6. Social intrigue is secured for conservation and growth of the general economy.

This is by all accounts an adequate arrangement of highlights. In view of these perceptions, on the off chance that we endeavour to characterize a financial offence, it can be extensively named:

"As an action that damages the distribution and association of assets in a general public. An absolutely social malice like sati or abominations towards individuals from planned rank/booked clan (making the absence of chance for those included to get to the assets) and a simple financial lead like tax avoidance locate a reasonable place in such a rundown."

In any case, to consider the counter-contention that significantly kill denies the general public of a profitable human asset thus all offences are basically hostile to social. What separates these offences from those punished as offences against property or individual in the Indian Penal Code? It is presented that on account of financial offences, the damage to the general public is prevalent, not at all like different offences, where damage can be followed to a specific person.

Corruption In Banking Sector

In the case of *CBI v. Jagjit Singh*,⁶ the accused obtained loan on fabricated documents with the help of certain banking officials and a case was registered under IPC, 1860 and section 13(1) (b) read with section 13(2) of the PC Act, 1988. The accused on the order of the Debts recovery tribunal paid the amount to the bank and on that pretext move to the high court to quash the criminal proceedings.

The court held that:

“The high court decision to quash the proceedings on the ground of amicable settlement of dispute was erroneous. It was held that there was no compromise between the offender and victim as the sum was paid pursuant to the tribunal order. The offences committed in relation to banking have harmful effect on public and the bank is not the only victim and the society in general and its customers are also victimised.”

Dowry Prohibition Act, 1961

⁶(2013) 10 SCC 686.

In another case *TummalaVenkateswarRao v. State of Andhra Pradesh*,⁷ the appellant was accused under section 304-B IPC. The wife of the appellant used to complain of mental and physical harassment and returned with 4 days of first going to cohabit with her husband. The wife at her parent’s house revealed that her in-laws also threatened to get her husband married to another woman for higher dowry and because of this she would commit suicide unable to bear the mental and physical torture being imposed on her. She eventually committed suicide at her parent’s house.

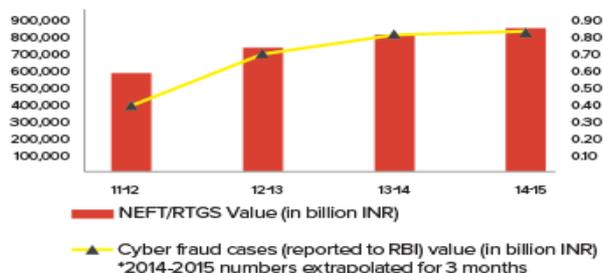
“The Supreme Court while deciding the matter disagreed to the contention made by the appellant that the harassment for dowry was not shown to have made immediately before the death of the deceased. The court held that the term “soon before death” does not mean immediately before death. The court confirmed conviction under section 304B of IPC, 1860.”

Cyber & Financial Fraud (White Collar Crime)

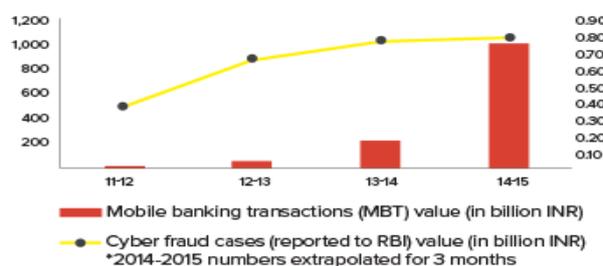
In the 19th Annual Global CEO Survey-2016, six in 10 CEOs ranked cyber threats and the speed of technological change as top threats to growth. India has also seen a rise in cybercrime incidents. The following graph is by PwC & Kroll, Global Fraud Report, 2015-2016.

Megatrend in Financial Fraud

Growing trend of cyber fraud with growth in NEFT/RTGS transactions



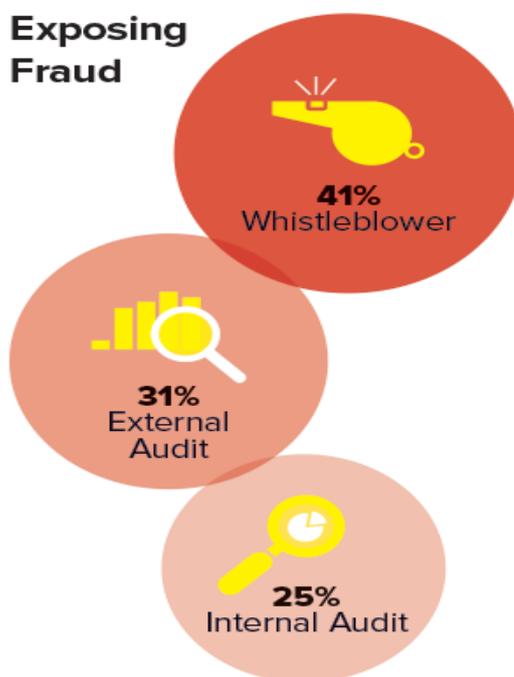
Growing trend of cyber fraud with growth in mobile banking transactions



Cyber frauds now have another platform to thrive with the growth in mobile banking. The value of the cyber fraud cases reported to the Reserve Bank of India has gone up from a little less than ₹70 crore in 2012-13 to ₹80 crore* in 2014-15

Source: PwC

Methods of Exposing Fraud



**Percentage of uncovered frauds that were exposed via the method

Source: Kroll, Global Fraud Report, 2015-2016

⁷(2014) 2 SCC 240.

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Cyber-crime is the second most reported threat in economic crime affecting 32% of the organizations and it falls under the category of Socio-economic offences more or less under white collar crimes.

Approximately 50 organizations have suffered losses over a \$5 million; of these, nearly a third reported cybercrime- related losses in excess of \$100 million.

Of the 56% who said they have not been victims, many may have likely been compromised without knowing it.

In the case of *Sanjay Kumar v. State of Haryana*,⁸ judgment of conviction dated 01.09.2011 and order of sentence dated 03.09.2011 passed by learned Judicial Magistrate First CRR No.66 of 2013 (O&M) 2 Class, Faridabad, has been upheld, vide which the petitioner has been convicted for offences punishable under Sections 420, 467, 468, 471 of the Indian Penal Code and Sections 65 and 66 of the Information & Technology Act, 2000 and sentenced to undergo rigorous imprisonment.

The court held that:

“Under Section Period Fine 420 IPC Two years Rs.1,000/- 467 IPC Three years Rs.2,000/- 468 IPC Two years Rs.1,000/- 471 IPC Two years Rs.1,000/- 65 I.T. Act Two years Rs.1,000/- 66 I.T. Act Two years Rs.1000/- In default of payment of fine, the petitioner shall further undergo simple imprisonment for a period of two months. All the sentences were ordered to run concurrently.”

Critical Analysis & Countermeasures

The outrageous assorted variety of economic crime implies that no single establishment of counteractive action or control will do the trick. The police can't adapt to economic crimes all by themselves. Or maybe, each different sort of monetary crime is best tended to by a blend of countermeasures. Some of these will be legislative, some will lie in the hands of the imminent casualty, and some will be at the disposal of outsiders.

The first line of defence against economic crime is Awareness of One's Vulnerability. The term commonly used for this is 'risk assessment'. This applies to the individual consumer or investor, who should become familiar with the basic pitfalls of the marketplace; to companies, who should be aware of the procedures and processes which are likely targets; and to governments, whose various functions may be targeted for criminal exploitation.

1. The step is to Take Necessary Precautions- The key to fraud prevention on the part of organisations, whether public or private, is the development and refinement of a

⁸CRR No.66 of 2013 (O&M) 1.

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fraud control system. Having identified points of weaknesses, individual systems and processes should be put in place to protect these vulnerabilities from 'attack'

2. Transparency- Procedures for the public disclosure of basic aspects of a government's or a company's operations can help safeguard against a variety of crimes. Freedom of information legislation can facilitate citizen access to government information.
3. Audit- The scrutiny of a company's accounts by an independent auditor is an important safeguard against economic crime.
4. Cash transactions reporting- The challenge of money laundering and tax evasion is made much easier when the offender is able to shift funds around undetected. To this end, a growing movement among nations around the world has seen the development of cash transaction reporting systems.
5. An adequate regulatory system- Freedom of expression does not extend to the freedom to publish false or misleading advertising or spurious commercial claims. A regulatory system which can identify such misconduct and respond to it effectively will help ensure the integrity of markets is maintained.
6. Responsible banking- In addition to their role in the prevention of money laundering, banks and other financial institutions have an important role to play in the prevention and control of economic crime.

Conclusion

It is submitted that, by virtue of these offences being characterized based on the thought process and a criminal policy of social welfare, they ought to be dealt with as 'infringement' and not as 'wrongdoings'. This does not imply that they are innocuous or insignificant in nature. Then again, they are eviler than some 'true' violations. Since these offences effectively saturate the social structure, they are for all intents and purposes legitimized at last (like corruption). Thinking about the powerlessness of the general public to such offences, they ought to be dealt with in an unexpected way.

A decent number of cases dissected portrays that the courts in India have taken a genuine note of economic offences. In instances of corruption particularly the courts have not allowed safeguard to prominent individuals which features their dedication. The courts have likewise taken professional dynamic part by giving a few suggestions in issues, for example, that of Public Distribution Scheme, corruption in education sector yet the court needs to look that such proposals don't simply stay in letters.

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The more noteworthy the quantity of protection measures set up, the more troublesome it is to execute extortion and different types of monetary wrongdoing. It might be helpful to utilize the relationship of a web. Anybody strand of a web might be deficient to help a heap. However, numerous strands, intertwined, might be extremely solid in reality. The aversion and control of monetary wrongdoing ought not to force farfetched weights on trade or on offices of the state.

Activities for the counteractive action and control of financial wrongdoing ought to be attempted by a hazard advantage math. This would see the most stringent controls working where there is huge powerlessness to cataclysmic misfortune, with fewer controls set up when the chance is correspondingly less. The test for the future lies in executing frameworks which will lessen open doors for extortion, while in the meantime enabling trade to thrive.