

THE INDIAN LAW INSTITUTE, NEW DELHI

Seminar

on

Government Regulation of Private Enterprise

March 1969

The Role and Efficacy of Criminal Sanctions
in the Control of Private Enterprise.¹

by

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A major legal trend discernible in Post-Independence legislation in India has been the increasing use of criminal sanctions intended to protect public economic interests and collective welfare. Though it cannot be said to be a wise legislative policy in all cases, nonetheless the effectiveness of criminal sanctions, properly and judiciously administered, in controlling business behaviour and maintaining proper commercial standards cannot be minimised. This paper attempts to focus attention on some of the problems and postulates in the field of enforcement of business laws, particularly through criminal sanctions.

Punishment, it is said, has the twin objectives of preventing a person who has committed a crime from repeating it and deterring others from committing similar crimes. The accomplishment of these objectives is to a large extent dependent upon a careful use of the sentencing discretion provided by the law and an objective appreciation of the legislative intention in prohibiting the behaviour made punishable under the law. In the case of economic offences it is all the more necessary to do so, in so far as an unimaginative exercise of the sentencing function may be self-defeating in its purpose and may well lead to disrespect for law and administration of justice. In this background when one examines the governmental administration and judicial enforcement of laws regulating private enterprise one cannot fail to notice wide disparities in approaches and irrational discriminations in treatment

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1. A brief outline of a paper that forms part of the forthcoming book by the author on "WHITE COLLAR CRIME IN INDIA".

resulting in much avoidable social, economic and moral damage. Assuming that administration of criminal justice has to play an increasingly important role in social and economic reconstruction in India, the following suggestions are submitted for consideration.

1. The legislature has to be cautious and objective in its approach in respect of prescribing punishments for economic deviations. Legal control through criminal sanctions should be sparingly employed in the control of economic behaviour. In cases of serious violations the policy should be to provide for such fines on the offender as to be deterrent enough and also, as far as possible, to make good the loss suffered by the public through the commission of the offence. Such measures like publicity of the offence in stated newspapers at the offender's expense, confiscation of property, for forfeiture of economic rights and privileges etc., are effective punishments against businessman-criminals. The practice of providing the maximum and minimum punishments may be supplemented by giving appropriate criteria in the legislation itself for distinguishing greater and lesser degrees of crime and levels of punishment.

The dominant attitude of considering regulatory offences as technical deviations is detrimental to the socio-economic policies of the government as reflected in these legislations. Nominal fines are of no consequence against mighty corporations and some of them seem to be inclined to take it as part of their occupational hazards ignoring the sanctions altogether.

2. The traditional concepts of criminal jurisprudence, particularly in the field of procedural law, need suitable modification in its application to economic and welfare legislations.

Effective enforcement of business laws is made difficult in India by a large number of complex and varied socio-economic factors. The corporate form of business organization and the separation of ownership from control have made the fixation of responsibility rather difficult and the perpetration of fraud comparatively easy. Furthermore, the change in the economic and social structure of commercial property has revolutionized the practices of modern business dynamics and has made its control through traditional methods ineffective. Many business violations are non-violent offences of a highly complex and technical nature which affect the public not directly as conventional crimes do, but indirectly and in a diffused form over a period of time. The investing public who form the innocent victims of many business frauds

may not even know about the violations and the harm they have suffered for quite some time, and by the time they come to realize their losses legal proceedings will have become either impossible, futile or infructuous.

Concentration of economic power in terms of income, property and operational control over the private corporate sector has tended to monopolistic and restrictive practices on the part of big business. The situation is further complicated by inter-corporate investments, multiple directorships, interlocking of directorships between banks and industrial undertakings managing agency system and control of newspapers by industrial houses. In many cases the economic power in the hands of big business has been used for political corruption and abuse of the legal and administrative processes.

It is in the above context one has to examine the procedural modifications which could be adopted in the criminal enforcement of business laws. A change that could more often be employed than new is the shifting of the burden of proof to the accused on the establishment of a prima facie case. Further, it may also be examined whether the assessment on technical matters of fact by the enforcement agencies of the government could be made ordinarily binding on the courts unless they are disproved by the opposite party.

3. The enactment of increasing number of regulatory laws by the State is itself indicative of the conflicting ideologies held by the society vis-a-vis the business community. Unless businessmen themselves realize their social responsibilities in the context of contemporary socio-economic philosophy as enshrined in the Constitution, governmental control is likely to develop into state monopoly, a situation which may not be consistent with the spirit of the Constitution. As such there is urgent need for evolving a strong institutional framework by business for voluntary enforcement of moral standards in their occupational conduct. Strict enforcement of a comprehensive code of ethical norms in business behaviour through professional organizations is the minimum that should be immediately done to improve the public image of business in India.

