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SOCIO-ECONOMIC OFFENCES

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I INTRODUCTION

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

In India, the 29th Law Commission Report suggested to take into consideration the Santhanam Committee Report of 1964.[1] The committee report observed 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 circumstances in which they are committed and which have now become a dominant feature of certain powerful sections of modern society. In most of the offences that were identified, two features could be witnessed, economic benefit and unjust enrichment. It suggested that a separate chapter should be included in IPC to deal with socio-economic crimes".[2] Later the 47th Law Commission Report laid down a new

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1 *Available at:* http://lawcommissionofindia.nic.in/1-50/Report29.pdf . (last visited on July 10th 2014).

2 The committee broadly categorised the offences as (a) offences calculated to prevent or obstruct the economic development of the country and endanger its economic health; (b) evasion and avoidance of taxes lawfully imposed; (c) misuse of their positions by public servants in making of contracts and disposal of public property, issue of licenses and permits and similar other matters; (d) delivery by individuals and industrial and commercial undertaking of goods not in accordance with agreed specifications in fulfilment of contracts entered into with public authorities; (e) profiteering, black marketing and hoarding; (f) adulteration of foodstuffs and drugs; (g) theft and misappropriation of public property and funds; and (h) trafficking in licenses, permits, etc.

composite category of socio-economic crimes. The three basic forms include illegal economic activities,[3] illegal way of performing commercial and allied transactions [4] and evasion of public taxes or monetary liabilities.[5]

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

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

The Essential Commodities Act, 1955[6] entails to an era of food scarcity and when secured food supply was considered to be a government responsibility. The main aim of the Act is to provide food supply to the consumers and to protect them from the exploitation of unscrupulous traders. One of the major problems with regard to essential commodities was its hoarding and black marketing. In order to curb it, the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (hereinafter PBMSEC Act, 1980) was enacted to provide for detention in certain cases or the purpose of prevention of black marketing and maintenance of supplies of commodities essential to the community.

Public distribution scheme

In *PUCL (PDS Matters)* v. *Union of* India,[7] a writ petition was filed in the Supreme Court primarily aiming at the reforms of the PDS (Public Distribution Scheme). The main contention of the petitioners was that in spite of large availability of food grains in the country and in spite of subsidies meant for food grains distribution among poorer section of the society, there is large scale misappropriation and wastage of food grains. The court in this case focused on

3 Black marketing, food and drug adulteration, smuggling, bootlegging, gambling and prostitution.

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

5 Income tax, excise, sales and customs evasion.

6 Hereinafter EC Act, 1955.

7 (2013) 2 SCC 663.

Wadhwa J CVC report.[8] The report mentioned that PDS which is the largest food distribution network in the world suffers due to corruption. The Supreme Court called upon CVC to sum up its final recommendations at the national as well as the state level and directed it to give short/immediate measures and long term objectives to be taken up by state/central government. The long term objectives were primarily to set up civil supplies corporation and for computerisation of PDS operations. The report held that it becomes important that a civil supplies corporation in the state is constituted to work as an independent body to distribute PDS food grains at Fair Price Shop (FPS) level and take over existing FPS. The report also held that computerisation is the only way to prevent diversion of PDS food grains.

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

In another case *Ranjit Kr* v. *State of Bihar*,[9] the petitioner was accused of violating section 6A[10] of the EC Act,1955 as his tractor-trailer contained rice and wheat in sacks having the FCI marks and the driver on being asked about papers ran away. It was held that merely because the food grains were found in sacks bearing FCI marks cannot be a ground of violating any statutory order. Usually, once the food grains are sold by the PDS dealers they sell the sacks to the agriculturists and in the absence of any finding on violation of any statutory order, the court held the confiscation cannot be sustained. It was thoughtful of the court as innocent people could have been wrongly incriminated in such matters.

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8 Ministry of Consumer Affairs, Food and Public Distribution (Department of Food) constituted a Central Vigilance Committee (CVC) under the chairmanship of D.P. Wadhwa J, to look into the *maladies* affecting the proper functioning of the PDS and also suggest remedial measures on 01.12.2006

9 AIR 2014 Pat 14.

10 S. 6A provides for confiscation of essential commodities under certain circumstances.

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

In the case of *Abdul Rashid* v. *State of Haryana*,[11]the accused were found in illegal possession of kerosene. In order to attract the provision of section 7[12] of the EC Act, 1955 it has to be proved that the appellant was a dealer appointed under PDS, or was dealing with business of kerosene as a dealer. The petitioner and the person driving (deceased) were found with kerosene drums but it could not be revealed whether they were dealers or when as how they were planning to sell them. It was also held that if an offence was put under section 11[13] of the Act, the court shall take cognisance only when the report is written by a public servant.

III FOOD SAFETY AND STANDARDS ACT, 2006

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

Adulteration in milk and soft-drinks

In *Swami Achyutanand Tirth* v. *Union of India*,[15] a group of citizens led by Swami Achyutanand Tirth of Uttarakhand filed a writ position against preparation of synthetic and adulterated milk and milk products using urea, detergent, refined oil, caustic soda, white paint *etc*., which according to studies are hazardous to health and can even lead to cancer. The PIL sought framing of a comprehensive policy on the production, supply and safety of healthy, hygienic and natural milk.

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11 2014 Cri LJ 1588.

12 S. 7 penalises contravention of s. 3 which provides mechanism/power to control production, supply, distribution of essential commodities.

13 S. 11 provides that no court shall take cognizance of any offence punishable under this Act except on a report in writing of the facts constituting such offence made by a person who is a public servant as defined in section 21 of the IPC (45 of 1860).

14 The Act replaces the following food laws that were being implemented in the country, The Prevention of Food Adulteration Act, 1954; the Fruit Products Order, 1955; the Meat Food Products Order, 1973; the Vegetable Oil Products Order, 1947; the Edible Oil Packaging Order, 1988; the Solvent Extracted Oil, De oiled Meal, and Edible Flour Order, 1967; the Milk and Milk Products Order, 1992 and any order relating to food issued under the Essential Commodities Act, 1955.

15 2013(5) SCALE 23.

The Supreme Court in the judgment dated 05.12.02013 showed concern about adulteration of milk and its hazardous effect on public health. The court held that in cases of this kind, even though prosecution has been launched, the maximum punishment is six months imprisonment. States like Uttar Pradesh, West Bengal and Odisha taking note of the seriousness of the offence has increased the penalty under section 272 IPC, 1860 wherein adulteration of food is treated to imprisonment for life and also fine. The court in the order also directed various states to file affidavit of the number of cases they have booked wherein synthetic material have been added to milk. They were also asked to give details of inspection results, especially during festival season like Diwali and Dussehra.

This writ petition *Centre for Public Interest Litigation* v. *Union of* India,[16] was preferred for constituting an independent expert/technical committee to evaluate the harmful effects of soft drinks on human heath, particularly on children. The main grievance of the plaintiff absence of a regulatory regime which could control and check the contents in a particular chemical addictives in food including soft drinks. The court in its judgment held that any food article which is hazardous or injurious to public health is a potential danger to the fundamental right guaranteed under article 21 of the Constitution of India. The Food Supply and Standards Act, 2006 (FSS Act) has been enacted to consolidate laws relating to food and to establish the Food Safety and Standrad Authority of India (FSSAI) for laying down scientific/uniform standards for articles of food. Many food articles contains elements that are hazardous for human health and fruit based soft drinks contain pesticides residues in alarming proportion, but it was observed that no attention was made to examine its contents. Children and infants are uniquely susceptible to the effects of pesticides because of their physiological immaturity and greater exposure to soft drinks, fruit based or otherwise. The court has directed the FSSAI to coordinate with their counterparts in all the states and Union Territories and conduct periodical inspections and monitoring of major fruits and vegetable markets, so as to ascertain whether they conform to such standards set by the Act and the rules. The court held it was essential for safeguarding the right to life guaranteed under article 21 of the Constitution of India.

In the case of *Mahesh Chand* v. *State of* UP,[17] the court had to quash the petition on the ground of delay on behalf of the prosecution. The case was registered in 1994 as the mustard oil which the petitioner manufactured was found to be adulterated. The second sample which was called by the petitioner to send it to Central Food Laboratory (CFL) could not reach the court in twenty years. The court while expressing displeasure mentioned that if this state of affair is allowed to continue then in today's world where the health of people in the society is at stake and if the prosecuting agencies are not conscious about their duties and responsibilities it will be of no fruitful purpose that the legislation such as Prevention

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16 AIR 2014 SC 49.

17 2013 (10) ADJ 222.

of Adulteration Act,1954 which is now replaced by a new Act, *i.e*. FSS Act, 2006 would be able to efficiently check the adulteration in food items and the object for which it has been enacted by the Parliament would definitely lose its significance and value.

IV PREVENTION OF CORRUPTION ACT, 1988

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

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

In the case of *Manohar Lal Sharma* v. *Principal Secy,*[18] the Central Bureau of Investigation (CBI) has registered preliminary enquiries (PEs) against unknown public servants, *inter alia*, of the offences under the Prevention of Corruption Act, 1988 (PC Act,1988) relating to allocation of coal blocks for the period from 1993 to 2005 and 2006 to 2009. One of the important question which was considered in this impugned order was whether the approval of the Central Government is necessary under section 6A[19] of the Delhi Special Police Establishment Act, 1946 (DSPE Act) in a matter where the inquiry/investigation into the crime under the PC Act,1988 is being monitored by the court. There is no doubt that the objective behind the enactment of section 6A is to ensure that those, who are in decision making positions, are not subjected to frivolous complaints and make available some screening mechanism for frivolous complaints. In this case the court held the filtration mechanism is achieved as the constitutional court that monitors the inquiry/investigation by CBI acts as guardian and protector of the rights of the individual and, if necessary, can always prevent any improper act by the CBI

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18 2013 (15) SCALE 305.

19 S. 6A - Approval of Central Government to conduct inquiry or investigation.—(1) The Delhi Special Police Establishment shall not conduct any inquiry or investigation into any offence alleged to have been committed under the Prevention of Corruption Act, 1988 except with the previous approval of the Central Government where such allegation relates to-(a) the employees of the Central Government of the level of Joint Secretary and above; and (b) such officers as are appointed by the Central Government in corporations established by or under any Central Act, Government companies, societies and local authorities owned or controlled by that Government. (2) Notwithstanding anything contained in sub-section (1), no such approval shall be necessary for cases involving arrest of a person on the spot on the charge of accepting or attempting to accept any gratification other than legal remuneration referred to in clause (c) of the *explanation* to section 7 of the Prevention of Corruption Act, 1988.

against senior officers in the Central Government when brought before it. The court *per curiam* held that approval under section 6A from Central Government is not necessary to investigate senior government officers/public servants when enquiry/investigation is monitored by constitutional courts.

Conditions on grant of bail in economic offences

In *Y.S. Jagan Mohan Reddy* v. *CBI*,[20] the petitioner adopted several ingenious ways to amass illegal wealth which resulted in great public injury. The only question posed for consideration is whether the appellant-herein made out a case for bail. The Supreme Court held that economic offences constitute a class apart and hence a different approach has to be taken in matters of bail. The economic offence having deep rooted conspiracies and involving huge loss of public funds needs to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing a serious threat to the financial health of the country. The court held that while granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/state and other similar considerations. The court rejected the bail as it felt that it may hamper the investigation.

In a similar case of *Nimmagadda Prasad* v. *CBI*,[21] the appellant was accused of committing grave economic offences of alienating prime lands to selected private companies under grab of development using deceptive means resulting in wrongful ownership and control of material resources. The court held that economic crimes unlike other crimes are committed with cool calculations and deliberate design with an eye on personel profit regardless of consequences to the community. The court reiterated the circumstances of granting of bail as laid down Y S Gyan Mohan Reddy case and held that bail should not be granted. Keeping in mind that economic crimes are a class apart and those involved are big shot people, the decisions of the court in both the decisions needs an applaud.

Restriction on broadcasting of corruption cases

The matter in hand was with regard to irregularities in recruitment of teachers Junior Basic Trained Teachers (JBT) in Haryana resulting in conviction of petitioners under section 13(2)[22] of PC Act, 1988 and section 120-B of the

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20 (2013) 7 SCC 439.

21 (2013) 7 SCC 466.

22 Any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than one year but which may extend to seven years and shall also be liable to fine.

IPC,1860.[23] In this case *Vidya Dhar* v. *Multi Screen Media (P) Ltd.,*[24] during pendency of the cases in the appellate court, the respondent party proposed telecasting the events leading to conviction of the petitioner. Petitioners filed that it might result in prejudice if broadcasted before the matter is finally disposed of and against the concept of a free and fair trial. The court held that once the trial is completed and the petitioners convicted, there is no possibility of biasness. The contents of the trial and ultimate conviction are in public domain. But the court imposed certain restrictions on the broadcasting particularly that there should be no direct similarity of the characters in the serial.

Quashing of case on account of delay not allowed

In the case of *Niranjan Hemchandra Sashittal* v. *State of Maharashtra*,[25] the petitioner a public servant approached the Supreme Court for quashing a criminal case that was pending against him since 1993 under section 13(2)[26] read with section 13(1)[27] of the PC Act, 1988. It is clear as crystal that no time limit can be stipulated for disposal of the criminal trial. The delay caused has to be weighed on the factual score, regard being had to the nature of the offence and the concept of social justice and the cry of the collective. The Parliament intended to eradicate corruption and provide deterrent punishment when criminal culpability is proven. Corruption has been treated to have the potentiality of corroding the marrows of the economy. There are cases where the amount is small and in certain cases, it is extremely high. An attitude to abuse the official position to extend favour in lieu of benefit is a crime against the collective and an anathema to the basic tenet of democracy, for it erodes the faith of the people in the system. It creates an incurable concavity in the rule of law. Be it noted, system of good governance is founded on collective faith in the institutions. If corrosions are allowed to continue by giving allowance to quash the proceedings in corruption cases solely because of delay without scrutinizing other relevant factors, a time may come when the unscrupulous people would foster and garner the tendency to pave the path of anarchism. It is perceivable that delay has occurred due to dilatory tactics adopted by the accused, laxity on the part of the prosecution and faults on the part of the system, *i.e.,* to keep the court vacant. It is also interesting to note that though there was no order directing stay of the proceedings before the trial court, yet at the instance of the accused, adjournments were sought. The court was right in rejecting the quashing of the petition as the matter has to be weighed in terms of the impact of the crime on the society and to maintain the confidence of the people in the judicial system.

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23 S. 120-B of IPC provides for punishment for criminal conspiracy.

24 (2013) 10 SCC 145

25 (2013) 4 SCC 642

26 *Supra* note 22.

Corruption in banking sector

In the case of *CBI* v. *Jagjit Singh*,[28] 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)[29] read with section 13(2)[30] 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.

Corruption in education sector

Irregular fixation of staff and bogus admissions are becoming major problems in government aided schools. Such a case came into light in the *State of Kerala* v. *President, Parent Teacher Association SNVUP* [31] case. The court held that the state has to spend a lot of public money in connection to scholarship, grant, noon feeding, books to students and such allotment is a total wastage in such scenarios. It also held that there is a great responsibility on general education department to curb such menace. The education department of Kerala was directed by the court to issue Unique Identification Authority of India (UIDAI) cards to all school students. Later on the government could adopt better scientific method to curb such bogus admission. Time will Brave how far this recommendation would be fulfilled by the state as scientific methods to curb such admission would require huge infrastructure.

Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS)

Although Narcotic Drugs and Psychotropic Substances have several medical and scientific uses, they can also be abused and trafficked. The Narcotic Drugs

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27 It provides what constitutes criminal misconduct by a public servant.

28 (2013) 10 SCC 686.

29 See S. 13(1)(b) Criminal misconduct by a public servant if he habitually accepts or obtains or agrees to accept or attempts to obtain for himself or for any other person, any valuable thing without consideration or for a consideration which he knows to be inadequate from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by him, or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned.

30 *Supra* note 22.

31 AIR 2013 SC 1254.

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

In *Ashok Kumar Sharma* v. *State of Rajasthan*,[32] the appellant was charged under section 15[33]of the NDPS Act, 1985 and was convicted. The important question before the court is that whether officer acting under section 50[34] of the NDPS Act is legally obliged to apprise the accused of his rights to be searched before a gazetted officer or magistrate. The court very reasonable held that although ignorance of law is not an excuse but it cannot be imputed to every person, *eg*., a rustic villager, a poor man in the street. It is the duty of the officer to inform the suspects of his right under section 50 of the NDPS Act, 1985. The court set aside the conviction.

The accused was held guilty under section 8 and section 18 of NDPS Act, 1985 in *State of Rajasthan* v. *Bheru Lal.*[35] The accused on the date of the incident was found carrying three kilograms of opium by one police-officer who was temporary in charge, SHO, of the local police station. He was later convicted at

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32 (2013) 2 SCC 67.

33 S. 15 provides for penalties for contravention in relation to poppy straw.

34 S. 50 provides conditions under which search of persons will be conducted. -(1) When any officer duly authorised under section 42 is about to search any person under the provisions of section 41, section 42 or section 43, he shall, if such person so requires, take such person without unnecessary delay to the nearest Gazetted Officer of any of the departments mentioned in section 42 or to the nearest Magistrate. (2) If such requisition is made, the officer may detain the person until he can bring him before the Gazetted Officer or the Magistrate referred to in subsection (1). (3) The Gazetted Officer or the Magistrate before whom any such person is brought shall, if he sees no reasonable ground for search, forthwith discharge the person but otherwise shall direct that search be made. (4) No female shall be searched by anyone excepting a female. 2 (5) When an officer duly authorised under section 42 has reason to believe that it is not possible to take the person to be searched to the nearest Gazetted Officer or Magistrate without the possibility of the person to be searched parting with possession of any narcotic drug or psychotropic substance, or controlled substance or article or document, he may, instead of taking such person to the nearest Gazetted Officer or Magistrate, proceed to search the person as provided under section 100 of the Code of Criminal Procedure, 1973 (2 of 1974) (6) After a search is conducted under sub-section (5), the officer shall record the reasons for such belief which necessitated such search and within seventy two hours send a copy thereof to his immediate official superior.

35 (2013) 11 SCC 730.

the trial court. At the high court, he was acquitted because the police officer who conducted the search, seizure and arrest was not the SHO. The Supreme Court held that although he was not the SHO but was given temporary charge as SHO. He relied on reliable sources and complied with necessary requirements and proceeded to the spot to trap the accused. Any delay would have allowed the accused to escape, and hence there is no justification to place unnecessary importance on the term 'posted'. The Supreme Court set aside the high court decision and the judgment of the trial court was restored.

In the case of *Navdeep Singh* v. *State of Haryana,*[36] the appellant was convicted under section 20 of the NDPS, 1985 for carrying one kilogram of *charas* and was sentenced to undergo rigorous imprisonment of ten years and a fine of one lakh rupees. The trial court as well as the high court convicted him for the offence of carrying it without a license. On behalf of the appellant, it was pleaded that since the contraband substance was lesser than the commercial quantity, the sentence awarded must be modified to the sentence already undergone by appellant stressing on 2001 amendment of the NDPS. The court held that as per the amended section 20 of the Act, the minimum sentence that can be awarded if there exists an order of conviction under the Act is ten years and the said term was rightly confirmed by the high court. The sentence cannot be modified as provisions do not permit the court to award a punishment less than what is prescribed under the Act.

Physical disability does not preclude accused from the purview of the Act

In *Abbas Ali* v. *State of Punjab*,[37] the appellant was accused under section 25[38] of the NDPS Act, 1985 as the canter registered in his name was carrying bags containing rice polish and poppy husk. He was held guilty and thus penalised. The appellant has neither been successful in rebutting the statutory presumption of the existence of culpable mental state[39] nor has he been able to prove, beyond reasonable doubt that his canter was used for the activity without his knowledge

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36 (2013)2 SCC 584.

37 (2013) 2 SCC 195.

38 Whoever, being the owner or occupier or having the control or use of any house, room, enclosure, space, place, animal or conveyance, knowingly permits it to be used for the commission by any other person of an offence punishable under any provision of this Act, shall be punishable with the punishment provided for that offence.

39 S. 35 provides for Presumption of culpable mental state. S. 35(1) In any prosecution for an offence under this Act, which requires a culpable mental state of the accused, the court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution. Explanation. -In this section "culpable mental state" includes intention, motive, knowledge of a fact and belief in, or reason to believe, a fact. Section 35(2) For the purpose of this section, a fact is said to be proved only when the court believes it to exit beyond a reasonable doubt and not merely when its existence is established by a preponderance of probability.

or connivance or the person in charge of the cantor and that he had taken reasonable precaution against the use.[40] The appellant took the plea that he is a disabled person and, therefore, the disability of the disabled person, which is a vital factor, operating in his favour, so as to determine his culpability vis-à-vis the use of his canter only at the apex court. The court while finding him guilty held that the factum of a person being physically disabled does not imply that he would accord his permission to the use of his vehicle for an offence punishable under the provisions of the Act.

No remissions in offences under the Act

In the instant case of *Budh Singh* v. *State of Haryana*,[41] the petitioners challenged the constitutionality of section 32A[42] of the NDPS Act, 1985 as violative of article 14, 20(1) and 21 of the Constitution of India as it enlarged the period of incarceration. Section 32 A provides that no sentence awarded under the Act shall be suspended or remitted or commuted. The petitioner claimed that taking into account the remissions which was due to him he would have been entitled to be released from prison. The Supreme Court while examining the matter held that it was in no way violative of the Constitution of India and while disposing the matter held that the motive behind section 32 A of the NDPS act is to obliterate the benefit of remissions that a convict under the Act would have normally earned. But it in no way enlarges the period of incarceration.

Under trials

In *Thana Singh* v. *Central Bureau of Narcotics*,[43] the accused had been in jail for more than 12 years awaiting commencement of his trial for an offence under section 37 of the NDPS Act 1985. He has been consistently denied bail even by high court. The maximum punishment for the offence is 20 years and the accused had already been for more than half of the term. The court held that in previous cases (*Achint Navinbhai Patel* case) also it has been stressed that NDPS cases should be tried as soon as possible as in such cases normally accused are not released on bail. The court while giving conditional bail held that unduly long deprivation of personal liberty is violation of article 21 of the Constitution of India. The court in this case also sent notice to all states to furnish information of under trials under NDPS Act, 1985 who have been incarcerated for a period of 5 years or more.

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40 S. 60(3) of the NDPS Act provides that any animal or conveyance used in carrying any narcotic drug or psychotropic substance, 2 [or controlled substances] or any article liable to confiscation under sub-section (1) or subsection (2) shall be liable to confiscation, unless the owner of the animal or conveyance proves that it was so used without the knowledge or connivance of the owner himself, his agent if any, and the person-in-charge of the animal or conveyance and that each of them had taken all reasonable precaution against such use.

41 (2013) 3SCC 742

42 S. 32 A provides that there will be no suspension, remission or commutation in any sentence awarded under this Act.

43 (2013) 2 SCC 603.

Reliability of police witnesses

In the case of *Kashmiri Lal* v. *State of Haryana*,[44] the accused was held guilty of carrying opium in his vehicle and was caught in a Dhaba. He was convicted by the trial court and the Punjab and Haryana High Court. The accused pleaded that he was falsely implicated and claimed non-guilty. The accused also took the defence of section 50 of the NDPS,[45] 1985 as he had not been informed about his right to be searched in the presence of a gazetted officer or a magistrate that vitiates the conclusion and that evidences of independent witnesses was not taken although the search and seizure tool place in a public place. The court held that section is 50 applicable when the person of the accused is searched not the vehicle and that there is no absolute command of law that the police officers cannot be witnesses and their testimony should be treated with suspicion. In the instant case, the police officers had requested people present in Dhaba to be witnesses but they declined to co-operate and did not make themselves available. Moreover, the other claims of the accused were also unacceptable by the court, that is, quantity of morphine and for commercial/non-commercial use irrelevant as the provisions amended in 2001 but the matter were of 1993. The plea that the scooter was not brought was refuted by the court as all the relevant documents pertaining to the accused were ceased. The court upheld the conviction.

In *Ram Swaroop* v. *State (Govt. Of NCT, Delhi)*,[46] the same principles of *Kashmiri Lal* case were reiterated. The appellant herein has been found guilty of the offence under section 15[47] of the NDPS Act, 1985 and sentenced to undergo rigorous imprisonment for a period of ten years and to pay a fine of rupees one lakh. On behalf of the appellant it was raised that though the alleged seizure had taken place at a crowded place, yet there was no independent witness and in the absence of corroboration from independent witnesses the evidence of only police officials should not have been given credence to and there has been non-compliance of section 50[48] of the NDPS Act, 1985 inasmuch as the accused was not informed his right to be searched in presence of a gazetted officer or a magistrate despite the mandatory nature of the provision and, therefore, the conviction is vitiated. The court held that if the court has any good reason to suspect the truthfulness of such records of the police the court could certainly take into account the fact that no other independent person was present at the time of recovery. But it is not a legally approvable procedure to presume the police action as unreliable to start with. Moreover the court held that it is clear that the compliance with section 50 of the Act is not required. The appellant was carrying a bag on his shoulder and the said

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44 (2013) 6 SCC 595 (decided on 16/5/13).

45 *Supra* note 34.

46 (2013) 14 SCC 235

47 *Supra* note 33.

48 *Supra* note 34.

bag was searched and contraband articles were seized and not the person. Therefore, the search conducted by the investigating officer and the evidence collected thereby, is not illegal.

In this case of *Gian Chand* v. *State of Haryana*,[49] the accused were found guilty of carrying poppy hush in the vehicle in which they were travelling. They were found guilty and penalised. The petitioner argued that no independent witness was examined although many were present during the time of incident. The court held that it is a legal proposition that once possession of contraband material with the accused is established, the accused has to provide the information as how he came in possession of the same. The court observing the facts held that although many witness were present, but they did not agree to be witnesses. In such condition, when acts are of official nature and has undergone process of scrutiny by official person, a presumption arises that the work has been regularly performed.

In matters such as that of NDPS the independent witnesses may not be willing to join or may turn hostile. So if the testimony of the police is corroborated by the documentary evidence, the conviction should sustain.

V FOREIGN EXCHANGE REGULATION ACT (FERA) AND FOREIGN EXCHANGE MANAGEMENT ACT (FEMA)

In the case of *Telstar Travels (P) Ltd.* v. *Enforcement Directorate*,[50] the appellant was a travel agent and specialized in booking of tickets for crew members working on the ships. The representatives of most shipping companies in Bombay would issue instructions to the appellant company to arrange air passage for the crew from Bombay and other places in India to particular ports abroad. The travel agencies in UK started offering cheap tickets for seamen/crew and the companies asked appellant to organize it for them. The appellants hence approached M/s. Dyde Travels (CTL) in Glasgow. According to the arrangement, CTL would send prepaid ticket advice to appellants in India based on which the appellant in India would secure tickets for airlines. The money for the tickets would be credited to a Swiss bank account of a company registered in British Virgin Islands; named Bountiful Ltd. Bountiful would then transfer money to CTL. The appellant held that this process of ticket purchasing is a commercial arrangement and not a violation of FERA. But the Directorate of Enforcement, Mumbai held that documentary evidence seized from the office of M/S Telstar and residence of MD under investigation under section 37 of FEMA 1999 revealed that Bountiful Ltd. was a holding of appellant. The adjudicating authorities held the appellant guilty of violation of section 8 and 14[51] of FERA, 1973. The Supreme Court upheld the decision of Bombay High Court and appellate tribunal for foreign exchange holding the victim guilty.

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49 (2013) 14 SCC 420

50 (2013) 9 SCC 549.

51 S. 8 provides for restrictions on dealing in foreign exchange and s. 14 provides circumstances under which there can be acquisition of foreign exchange by the central government.

In *Venkat N.R Akkineni* v. *Appellate Tribunal for Foreign Exchange*,[52] a company M/s. Heart Entertainment Limited obtained the approval of RBI for establishing a foreign concern in the USA subject to the condition that the company would submit certified true copies of audited balance sheet and profit loss account together with report of director on the working of the overseas foreign concern during a year and certificate of incorporation of joint venture. The company which acquire foreign security shall submit to RBI Annual Performance Report (APR) each year in respect of joint venture outside India within 30 days of expiry of statutory period. The sanction letter of RBI contemplated that APR's shall be submitted within 6 months from the date of closing of relevant accounting period of the host country in the event no statutory period is provided by the foreign country. The court held that the defence could not be sustained that the subsidiary company in the host country was not willing to submit its account for auditing where there is no statutory compulsion for limited companies. The court finally decided that appellant were sanctioned foreign exchange on certain conditions to be fulfilled in the future, since there is a failure *vide* regulation 15(iii) of FEM (Regulation), 2000, and also failed to furnish information called for under section 37 of FEMA, 1999 read with section 131(1A) of Income tax act of 1961, it is exposed to penal consequences.

In the case of *Basant Kumar Sharma* v. *Government of India*,[53] the appellant was employed in Saudi Arabia under a contract of six years and on completion of the contract, came back to India. The appellant had bank accounts with a bank based in Mumbai, one of which was a capital NRE account available only to non-resident. On returning to India, he wrote to the bank to convert the status of his account to NRO capital as he has come to explore the possibility of resettlement also leaving the option for another assignment overseas. The bank took note of the fact and gave him NRE status. The bank took clarification from RBI that since the appellant has taken benefit under 'transfer of residence' and also requested correspondence in India, he became resident under FERA. The appellant challenged the decision and the court had to decide on two questions, first, whether the appellant could be considered as a non-resident for the purpose of FERA and the other question was whether provisions of FERA were arbitrary and violative of article 19(1) (g) of the constitution of India. The court held as per article 2 (p) (ii) (c) of FERA, he became resident as the provision clearly stated that any person who ceased to be a resident of India on account of his having left India for taking up employment abroad and has returned to India in circumstances which would indicate his intention to stay in India for an uncertain period would fall within the definition of a person resident in India. The next issue pertained to section 2 (p) of FERA being unconstitutional and violative of article 14 and article 19 (1) (g) of Constitution of India. The appellant contended that he was entitled as ordinarily non-resident and repartriate his assets in India overseas. Various countries like

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52 2013(4) ALD 529: 2013(3) ALT 700.

53 [2013] 120 SCL 122 (Del).

USA, Canada prescribes a minimum network as prerequisite for immigration. Denying non-resident status was hence violative of his fundamental right. The logical sequiter is that exchange control regulations which restricts citizens of the country to export their wealth overseas could be construed as unreasonable restrictions on the right of citizens to carry on their trade or vocation. Article 19 (1) (g) does not confer absolute right to citizens and there are restrictions under article 19(6). The FERA was enacted to consolidate and amend the existing laws relating to foreign exchange. It was enacted for the larger interest of this country and to manage the valuable foreign exchange resources of this country. The legislature has considered it necessary to control and regulate foreign exchange in the national interest and hence denial of repatriation benefit to the appellant imposed was not an unreasonable restriction. It did not restrain the appellant from pursuing his employment of carrying on any business or trade and only restricted him from repatriating funds from India.

In *Rajesh Shantilal Adani* v. *Special Director, Enforcement Directorate, Mumbai*,[54] certain important legal positions were cleared. First, proceedings commenced prior to 31.5.2002 under erstwhile section 51 of FERA, 1973 cannot be saved under section 49(3) of FEMA, 1999. Secondly, the court further held when authorities under FERA, 1973 issues notice relying on investigation of the custom authorities then in such circumstances the authorities under FERA should not take a stand contrary to those taken by the custom authorities.

VI INCOME TAX ACT, 1961

Among the economic offences, tax evasion is the most illegitimate activity which is practised by suppressing the facts and manipulation of records by corporate houses, professionals and other eligible tax payers.

Income tax evasion

The appellant in the case of *Mak Data (P) Ltd.* v. *CIT*[55]concealed his income while filing his income tax return. Replying to the show cause notice the appellant offered to surrender a sum to avoid litigation and to amicably settle the dispute. The department initiated penalty proceedings under section 271(1) (C)[56] of the Income Tax Act, 1961 for concealment of income and imposed penalty. The court held that the statute does not recognise the type of defence that the appellant was providing that he is voluntarily surrendering. The Supreme Court held that surrender of income not voluntary in the sense that the offer of surrender was made with a view after detection was made the assessing officer in the search conducted. If the

54 (2014) 1 GLR 819.

55 (2014) 1 SCC 674.

56 The Assessing Officer or the Commissioner of Income Tax in the course of any proceedings under this Act is satisfied that any person has concealed the particulars of his income or furnished inaccurate particulars of such income.

intention of the appellant was good, he would have filed a return inclusive of the sum which is surrendered later after the assessment proceeding.

VII CONSERVATION OF FOREIGN EXCHANGE AND PREVENTION OF SMUGGLING ACTIVITIES ACT, 1974 (COFEPOSA)

The aim of the act is to provide for preventive detention in certain cases for the purposes of conservation and augmentation of foreign exchange and prevention of smuggling activities. The preamble to the Act also mentions that it is necessary to detain people for the effective prevention of such activities.

In the case of *Subhash Popatlal Dave* v. *Union of India*,[57] the prime question that arose was whether the detenue who has absconded or evaded the execution of the detention order can subsequently challenge 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.

The same principle was reiterated in the case of *Narayanan K.* v. *State of Kerala*.[59] The petitioner in this case claimed that actual detention took place after five months of the detention and hence the live link[60] between prejudicial activity and purpose of detention is lost. Therefore the detention order under section 3[61] of the COFEPOSA was wrong. The court held that petitioner was absconding and

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57 (2014) 1 SCC 280.

58 S. 7(1)(b) provides if the appropriate government has reason to believe that a person in respect of whom a detention order has been made has absconded or is concealing himself so that the order cannot be executed, that Government may by order notified in the Official Gazette direct the said person to appear before such officer, at such place and within such period as may be specified in the order; and if the said person fails to comply with such direction, he shall , unless he proves that it was not possible for him to comply therewith and that he had, within the period specified in the order, informed the officer mentioned in the order of the reason which rendered compliance therewith impossible and of his whereabouts, be punishable with imprisonment for a term which may extend to one year or with fine or with both.

59 ILR (2014) 1 Ker 654.

60 The live nexus theory states that there should be a live nexus between order sought to be quashed and intentions of the authorities to detain the detenue by virtue of such detention order.

61 Power to make orders detaining certain persons. (1) The Central Government or the State Government or any officer of the Central Government, not below the rank of a

has been held in the *Subhash Popatlal Dave* case that those who evade the process of law shall not be heard by a constitutional court to say that their fundamental rights are in jeopardy.

VIII DOWRY PROHIBITION ACT, 1961

In the case of *Kulwant Singh* v. *State of Punjab*,[62] the question was whether the conviction of the appellant under section 304B[63] and section 498A[64] of IPC,

Joint Secretary to that Government, specially empowered for the purposes of this section by that Government, or any officer of a State Government, not below the rank of a Secretary to that Government, specially empowered for the purposes of this section by that Government, may, if satisfied, with respect to any person (including a foreigner), that, with a view to preventing him from acting in any manner prejudicial to the conservation or augmentation of foreign exchange or with a viewto preventing him from- (i) smuggling goods, or (ii) abetting the smuggling of goods, or (iii) engaging in transporting or concealing or keeping smuggled goods, or (iv) dealing in, smuggled goods otherwise than by engaging in transporting or concealing or keeping smuggled goods, or (v) harbouring persons engaged in smuggling goods or in abetting the smuggling of goods, It is necessary so to do, make an order directing that such person be detained. (2) When any order of detention is made by a State Government or by an officer empowered by a State Government, the State Government shall, within ten days, forward to the Central Government a report in respect of the order. (3) For the purposes of clause (5) of Article 22 of the Constitution, the communication to a person detained in pursuance of a detention order of the grounds on which the order has been made shall be made as soon as may be after the detention, but ordinarily not later than five days, and in exceptional circumstances and for reasons to be recorded in writing not later than fifteen days, from the date of detention.

62 (2013) 4 SCC 177.

63 S. 304B Dowry death: Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or har-assment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death. Explanation.—For the purpose of this sub-section, "dowry" shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961) and whoever commits dowry death shall be punished with imprison-ment for a term which shall not be less than seven years but which may extend to imprisonment for life.

64 It provides for Husband or relative of husband of a woman subjecting her to cruelty. Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine. Explanation —For the purpose of this section, "cruelty" means— (a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or (b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

1860 ought to be sustained. The appellant's wife died under suspicious circumstances within four years of marriage. When she was alive, she complained of abuse and torture by her husband and her in laws with regard to bringing more dowries. The Panchayats also intervened in between to sort the problem of maltreatment and harassment so that the couple could live a normal life. The trial court found the appellant and his parents guilty of section 304B and section 498-A of IPC, 1860 and accordingly penalized them. The high court too on appeal confirmed the decision. When the matter reached the Supreme Court, the Supreme Court did not agree with the argument put forward by the appellants that there was a delay in filing the FIR. The victim's father immediately submitted an application in the police station but the police did not lodge it since the report of the chemical examiner had not reached. Moreover the court held that delay in lodging FIR cannot be a ground for throwing away the entire prosecution case. The court finally held that the victim was harassed for dowry and she died under abnormal circumstances. This is sufficient to hold the appellants guilty. Moreover, appellant's contention to show sympathy on the ground of parents being old and sick was turned down the court. Court held that the minimum punishment is 7 years as section 304B IPC, 1860. Sympathizing with an accused person or convict does not entitle to ignore feelings of immediate family of victim.

In another case *Tummala Venkateswar Rao* v. *State of Andhra Pradesh*,[65] 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. She was subsequently taken back by her siblings to her in laws house. The father of the victim went to invite the couple for Diwali. Although the appellant declined, he sent his wife and asked her bring back additional dowry. 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. 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.

In the case of *Ajnappa* v. *State of Karnataka*,[66] it was claimed that the husband of the victim burned her to death. On the day of the incident it was alleged that the appellant poured kerosene on the victim and set her on fire. She was admitted for treatment. The doctor in charge informed that she on questioned told that her husband set her on fire. On reporting, even the head constable recorded her

65 (2014) 2 SCC 240.

66 (2014) 2 SCC 776.

statement. The appellant thus was charged under section 3[67] and section 6[68] of the Dowry Prohibition Act, 1961 and section 498A and section 302[69] of IPC 1860. The trial court acquitted the appellant as the dying declaration did not endorse as to whether the deceased was in a mentally fit condition and her parents also turned hostile. The high court on the other hand convicted him under section 304 IPC 1860. The Supreme Court held the appellant guilty and stated that all test of dying declaration are satisfied in the present case as the doctor himself revealed that the victim was in a fit mental state. The court held it is disheartening that in cases like these, the parents do not stand by their daughters. In this case, the parents created a story of accident.

It is time that very strict punishments are given and the accused in dowry cases should not be allowed to be able to escape the law. Only then this evil socio economic crime can be eradicated from the country. Moreover the attitude of girls' parent's needs a tidal change as it is more often observed that the girls' parents counsel and persuade them to stay in the husbands house in spite of the violence incurred, ultimately leading to fatal consequences.

IX IMMORAL TRAFFIC PREVENTION ACT, 1956 (PITA)

In the case of *CBI* v. *Birendra Kumar Singh @ Virendra Kumar Singh @ Pandit*,[70] the respondent along with others were charged for offences under section 4[71] and 5[72] of PITA, 1956. They were granted bail by the trial court. The high court on appeal denied the bail and held that long period of incarceration in jail by itself would not entitle the accused to be released on bail. The victim has been found missing from her home town and was found with the respondent and the victim, a 14 year old accused that not only the respondent raped her but forced her to have sex with 8 to 10 customers daily for money.

The petitioners' performance license was cancelled by the executive magistrate in *Renuka Kala Kendra* v. *State of Maharashtra*.[73]He was also charged under section 3,4,5,6 of PITA, 1956. This case was filed against the cancellation of license. The court held that after observing the facts and examining the show cause notice of the villagers, one can make out that on pretext of performance, brothel was conducted. The gram panchayats too had objected to the continuation of license

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67 The provision provides for penalties for taking and giving dowry.

68 The said section contains the provision on dowry to be for the benefit of the wife or heirs

69 S. 302 provides for punishment for murder.

70 207(2014) DLT 680.

71 It provides for punishment for living on the earnings of prostitution.

72 It penalises procuring, inducing or taking person for the sake of prostitution.

73 2013 ALL MR (CRI) 2165.

as it had disturbed the public peace. Records show that 72 cases were registered against the petitioner and hence the court held that it cannot be relied that termination of license was without cause.

In *State of Maharashtra v. Indian Hotel and Restaurants Assn.*,[74] the brief facts of this case is that the Bombay Police Act was enacted in 1951 to consolidate and amend laws relating to regulation of the exercise of powers and performances of functions by the state government for maintenance of public order. As a result of reports and recommendations on the adverse effect of hotel establishments in which dance programmes are being conducted (Dance Bars), the Maharashtra Legislative Assembly inserted section 33A[75] and section 33B[76] to the said legislation through an Amending Act in 2005which was challenged as *ultra-vires* as it violated article 14 and 19(1) (g) of the Constitution.

The most serious contention by the state was that the dance bars have become pick-up joints for prostitution. The state has produced a compilation of 34 cases under PITA, 1956 from 2000 to 2005. That some of the women were involved in prostitution by itself would be no answer for the state to take away the right to livelihood of those others not so involved unless it was beyond the state's control. That is not the case considering the stand of the home minister in answer to the call attention motion and the number of cases filed. Cases for breach of conditions of licenses and under the Bombay Police Act, 1951 for obscene and vulgar dancing have been registered under sections 33(w) and section 110 of the Bombay Police Act, 1951 as also under the provisions of the PITA, 1956. The Supreme Court while dismissing the matter held that section 33 A in reference to section 33B is in clear violation of article 14 and article 19 (1) (g) of the constitution. It was held by the Supreme Court that the Government of Maharashtra was wrong in making classifications between prohibited and exempted establishment and it did not satisfy the intelligible differentia doctrine under article 14 of the Constitution. The court went ahead to say that the presumption that runs through section 33A and section 33B of the Act that the enjoyment by the upper class leads only to mere amusement and in the case of the poor classes it would lead to immortality, decadence and depravity was not acceptable. With regard to violation of article 19(1) (g) by the said provisions, the Supreme Court held that the end result of these provisions was that the establishment where dance was conducted was to be shut down. Since the closing down of such establishments since 2005, the court noticed that almost

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74 2013(9) SCALE 47.

75 S. 33A prohibits holding of a performance of dance, of any kind or type, in any eating house, permit room or beer bar and declares it as a cognizable and non-bailable offence.

76 The establishments covered under s. 33B which includes establishments where entry is restricted to its members only, or a three starred or above hotel or in any other establishments for promoting tourism and cultural activities enjoy complete exemption from any such restrictions.

75000 women workers became unemployed and many records thereafter mentioned that having no other alternative, many of them were compelled to take up prostitution. Hence the court declared that the legislation proved to be counterproductive and was violation of article 19(1)(g) of the Constitution. The court while giving the final decision mentioned that certain regulation for the safety and security of the dancers is required and in this context the recommendations made by the committees with regard to attire of the dancer, distance and dimension of the dance floor, customer awards to be rooted through management and registration of names of the dancers has to be followed.

X DRUGS AND COSMETICS ACT, 1940

In the case of *Madan Lal Agarwal* v. *State through Drug Inspector*,[77] the petitioner ran a trust and police on raid found that the trust runs a dental and medical clinic. It was also found that there was no inventory of drugs/medicine consumed or stored in the premises. The only drug present was in the clinical laboratory and the petitioner could not even furnish details of the drug found and from where it was procured. It was also found that he was running a health facility without permission and through booklets and advertisements was cheating and defrauding the general public. The plea of the petitioner was rejected and it was held that drug found in the health/diagnostic facilities prima facie fall within the definition of section 3(d)[78] of the Act and the fact that he was unable to furnish information regarding source of procurement of medicine was a violation of the aforesaid provision.

License to be granted only when the medical store is in charge of a competent person

Due to the lack of qualified employee in the medical store during the pendency of renewal of license, the license of the store was cancelled in the case of the appellant in M/s. Attavar Medicals and *Sri Ramdas Attavar Proprietor* v. *The*

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77 2012 Cri L.J. 2584.

78 S. 3 (b) gives an exhaustive definition of drugs. It provides that "drug" includes—[(i) all medicines for internal or external use of human beings or animals and all substances intended to be used for or in the diagnosis, treatment, mitigation or prevention of any disease or disorder in human beings or animals, including preparations applied on human body for the purpose of repelling insects like mosquitoes;] (ii) such substances (other than food) intended to affect the structure or any function of the human body or intended to be used for the destruction of 6 [vermin] or insects which cause disease in human beings or animals, as may be specified from time to time by the Central Government by notification in the Official Gazette;] 7 [(iii) all substances intended for use as components of a drug including empty gelatin capsules; and (iv) such devices intended for internal or external use in the diagnosis, treatment, mitigation or prevention of disease or disorder in human beings or animals, as may be specified from time to time by the Central Government by notification in the Official Gazette, after consultation with the Board;]

state represented by SPP Hc Building.[79] Even after that the appellants were found to be carrying the business which was a violation of section 18(c)[80] of the Act. The court found them guilty.

The next case is of *Namdev Genba Parthe through M/s/ Kulswami Medical and General Stores* v. *State of* Maharashtra.[81] It was held in this case that license to commence medical store should not be granted unless licensing authority is of the opinion that premises in respect of which the license was applied were in charge of a competent person to supervise and control the sale, distribution and preservation of drugs. The decision to uphold the decision of cancellation of license was for the reasons that the petitioner failed to establish that person in charge of medical store had the competency to do so and there were findings of large scale unauthorised sale of drugs.

The court was absolutely right because running a medical store is not equal to running other stores where questions of life and death exist. Not having a person specialised in medicine to supervise may prove to be of dire consequences.

Penalisation on distribution of substandard drugs in the market

In the case of *M/s. G.M.H. Laboratories, HP & Sri Ram Gopal Goyal* v. *The Asst. Drug Controller, Bangalore*,[82]the complainant who was charged under section 18 (a)(i)[83] of the Act claimed that they did not get an opportunity to send the drugs which were declared as sub standard for test in the Central Drug Laboratory before expiry of shelf life samples of drugs. The respondent party mentioned that

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79 MANU/KA/1231/2013.

80 Prohibition of manufacture and sale of certain drugs and cosmetics.—From such date as may be fixed by the State Government by notification in the Official Gazette in this behalf, no person shall himself or by any other person on his behalf (c)[manufacture for sale or for distribution, or sell, or stock or exhibit or offer for sale,] or distribute any drug or cosmetic],except under, and in accordance with the conditions of, a licence issued for such purpose under this Chapter : Provided that nothing in this section shall apply to the manufacture, subject to prescribed conditions, of small quantities of any drug for the purpose of examination, test or analysis: Provided further that the 8 [Central Government] may, after consultation with the Board, by notification in the Official Gazette, permit, subject to any conditions specified in the notification, the [manufacture for sale, or for distribution, sale, stocking or exhibiting or offering for sale] or distribution of any drug or class of drugs not being of standard quality.

81 2014 (1) MhLj 266.

82 MANU/KA/0440/2013.

83 S. 8 (a) (i) provides that no person shall himself or by any other person on his behalf manufacture for sale or for distribution, or sell, or stock or exhibit or offer for sale, or distribute any drug which is not of a standard quality, or is misbranded, adulterated or spurious.

immediately after the findings, they were informed and the petitioners also responded back by saying that they had sent letter to the manufacturer as to why the drug was substandard. Moreover, the petitioner themselves admitted the violation as in the letter addressed to the manufacturer they mentioned that on their own analysis they found the drug to be substandard and hence were withdrawing them from the market. Such a strict approach by the court is required in matters as such as negligence by the manufacturers or even distributors may lead to loss of many innocent lives.

XI CONCLUSION

A good number of cases analysed depicts that the courts in India has taken a serious note of socio economic offences. In cases of corruption especially the courts have not even grant bail to high profile people which showcases their commitment. The courts have also taken pro-active role by giving several recommendations in matters such as that of *Public Distribution scheme*,[84] corruption in education sector[85] but the court has to look that such recommendations do not just remain in letters. In offences under *NDPS*, courts have taken a stricter approach but in certain matters such as that of *Dowry*, *Immoral Trafficking* leniency is uncalled for as these are matters where not only public interest is in question, but life and dignity of the victims are also at stake.

84 See *supra* note 6.

85 *Supra* note 30.