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With regard to the question whether foreign investment in India will be affected, it is difficult to analyse whether the scam will work against the New Economic Policy. True, the scam may act as a discouraging factor as far as foreign investment is concerned. However, there are many other factors too which have resulted in foreign investors shying away from India. First of all, the registration process itself is too tedious and it takes at least three to four months for clearance through all the relevant channels. Moreover, foreign brokers are not allowed to operate in India and foreign investors may be reluctant to hire the services of an Indian broker. To top it all, the capital gains tax is still a very high 30 per cent. The above mentioned factors as well as the political situation in the country have, to a larger extent been responsible for discouraging foreign investment in India.



White Collar Crimes with specific reference to Section 630, Indian Companies Act, 1956¹

Sarasu Esther Thomas and Vivek G Menon*

The emergence of the corporate culture and the consequent rise of a small controlling elite — the managerial class, has led to an intricate institutional machinery. Adherence to ethics is necessary for the honest functioning of the corporation. The inability of society to appreciate this dimension has resulted in the emergence and growth of white collar crimes. These crimes are more dangerous not only because the financial stakes are higher, but also because they cause irreparable damage to public morals.

Sutherland² defines a white collar criminal as a person of the upper socio-economic class who violates the criminal laws in the course of his occupational or professional activities.

The development of new dimensions in the crimes of the corporate world has rendered this definition obsolete. Block and Geis³ categorise white collar crimes as:

1. Crimes committed by individuals as individuals,
2. crimes committed by employees against the Corporation, and,
3. crimes committed by policy making officials of the Corporation.

Section 630, Indian Companies Act⁴, falls within the second part of this classification. The section encompasses the penalty for wrongfully withholding the property of the Company by an employee or officer thereof.

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1. Section 282A of the erstwhile Companies Act of 1913.

2. *Ibid.*.

3. Section 630 concerns itself with the penalty for wrongful withholding of property..

4. Cited in Ahmed Siddique, 'Criminology': Problem and Perspectives, (Lucknow: Eastern Book Co., 1983) 34

Judicial Development of section 630 Indian Companies Act, 1956

It is an established principle that a company may act only through its Board of Directors or its General Meetings.⁵

With respect to section 630, this principle assumes added significance. The Members in General Meeting is an inadequate safeguard to check the activities of the Board of Directors. The share holders are geographically scattered and have no means to unite against the powerful board. Even in the extreme eventuality of action by the General Meeting against a director, it is possible that he would still compel the loyalty of his colleagues. The 'brain' of the Company may thus 'decide' not to file a complaint under section 630.⁶

In India, the Supreme Court views the director as a trustee of the company who can be proceeded against for misapplication of funds and criminal misappropriation.⁷

A director falls within the meaning of 'officer or employee' in section 630, which also includes those employees whose employments have been terminated⁸ and their heirs and relatives.⁹

However, at the same time, the company is not allowed to use this provision unfairly — thus, the concept of 'lien' developed. An employee may retain with himself properties of the company for monies due to him without incurring the penalty under section 630.¹⁰

Dual Safeguards Civil and Criminal

The section provides for both civil and criminal causes of action. Regarding the need for a dual safeguard the courts have expressed conflicting views, one based on the ground that the multiplicity of proceedings is not in the interests of the public¹¹ and that simultaneous criminal proceedings would embarrass the accused.¹² The other view is that it is a quasi-criminal proceeding and the object of this provision is to provide for a speedy recovery of the property of the Company.¹³

Section 630 mirrors in its quintessential sense, the concept of trust.¹⁴ The trustees wield a lot of power and therefore, there is an increase in the opportunities for the abuse of this fiduciary relationship. Section 406 of the Indian Penal Code, 1860¹⁵ speaks of entrustment and wrongful withholding of property which also falls within the ambit of section 630. Hence, they should be considered on the same footing. The offence envisaged in section 630 ought to be considered as grave as that in section 406, IPC, as by withholding properties of

5. *S. L. Joshi v. State of Maharashtra*, (1980) 2 SCC 465.

6. The judiciary has not been very enterprising in plugging such loopholes. The principle of indoor management as stated in *Foss v. Harbottle*, (1843) Hare 461 and *Royal British Bank v. Turquand*, (1856) 6 E&B 327 offers protection, as third parties cannot question the validity of the Board's decision. In *Harlowe's Nominees Pvt. Ltd. v. Woodside Oil Co Ltd. NL*, (1968) 42 AJLR 123, it was held that the director's judgment if exercised in good faith and not for irrelevant purposes is not open for review.

7. *Amrit Lal Chum v. Dattaroy*, AIR Mad. 595.

8. *Ibid.*

9. *Abdul Quayyam v. State of Maharashtra*, 1990 (2) Bom LR. 437.

10. *Kanailal Jatia v. Ramkrishnadas Gupta*, AIR 1958 Cal. 128.

11. *Thakorelal Vadilal v. Ambalal Bhikabhi Patel*, 44 Cri LJ 100.

12. *M.S. Sheriff v. State of Madras* AIR 1954 S.C. 397

13. *Supra*, n.6

14. *Supra*, n.4

15. Hereinafter IPC.

the company, such as money, documents and real estate, the interests of the company could be jeopardised. However, the offence under section 630 is not considered as grave as that of section 406 IPC.¹⁶

Relevance of section 630 *vis-a-vis* Liberalisation

White Collar Crimes have gained a lot more importance with the advent of the liberalisation policy. The centerpiece of the reforms has been the expansion of the role to be played by the corporate sector, especially the private sector. This indicates that corporations and in logical sequence, companies are going to be huge entities, helpless before the misadventures of those who manage them.

In the old model of development itself, the need to check white collar crimes was very much felt.¹⁷ The object of the Companies Act has been to provide a mantle of protection for this fictitious person. That is why unlike other laws, nearly one-fourth of the provisions of the Companies Act are penal in nature.

White collar crimes like section 630 have always been viewed sympathetically by the public. This is primarily due to the fact that these crimes are committed by 'respectable' persons of high social standing. The moral standards of society are generally laid down by these very people belonging to the upper strata. The *modus operandi* of white collar crimes is different and is difficult to distinguish it from normal commercial behaviour.

The Santhanam Committee¹⁹ had recommended that these crimes should be within the structure of the IPC. This recommendation had been rejected on the ground that it would mar the structure of the IPC. It is difficult to interpret special offences without reference to the whole of the statute which creates the offence. Thus, although liberalisation has heightened the danger posed by white collar crimes, such as those under section 630, it would be better not to view them as crimes under the IPC but to view them as crimes within the ambit of the Indian Companies Act as it offers more efficacious remedies.

A Final Analysis

Market societies promote crime by increasing inequalities and economic deprivation. The situation calls for a trade-off between the interests of the company on the one hand and the employees interests on the other.

The common man's perception of section 630 is that a person who has loyally worked for the company, though not entitled to movables like documents or money, may be entitled to retain such things like accommodation or furniture until he can provide for himself.

While the public can identify with traditional offences such as those in the IPC, it does not look upon offence such as the one contemplated by section 630, as immoral.

16. Under Section 630 Indian Companies Act, 1956 the summary trial is followed, the maximum punishment is one year imprisonment, fine or both. Section 406 Indian Penal Code has a warrant trail and maximum punishment is seven years imprisonment or fine or both.

17. The Twenty Ninth Law Commission Report is a testament to this contention.

18. *Ibid.*

19. 29th Law Commission Report.

The National Renewal Fund must statutorily receive contributions from all employers and employees to ensure that it can adequately fund those retrenched, and not leave this to cash-strapped companies which lack the necessary finances.

The NEP will most certainly have an adverse effect on labour both in the short and long run. If the short term set backs are to be neutralised, the NEP would have to produce a high growth rate which would result in employment generation. Further the employers must have the inclination to justly share the profits with the workers.

The 'structural adjustment programme' (SAP) is sometimes referred to as the 'Severe Adjustment of the Poor Programmes' because the worst hit are the poorer sections of society, the working class.



The Securities Scam — A Legal Perspective

Sanjay Bhatia*

India witnessed the biggest financial scam in her history when the securities scam came to light early last year. It could not have been possible, but for the large scale violation of the banking laws which, to a large extent are to be enforced by the Reserve Bank of India¹.

The Genesis of the Scam

The misuse of an instrument called "Bankers Receipt",² was largely responsible for the siphoning of money from the banks by a few brokers in connivance with certain banking officials working at the operational level. This money was used for the purpose of speculating in the stock market and as long as these brokers made a profit, they faced no problem in repaying the money illegally obtained from the banks.

Every commercial bank has a Statutory Liquidity Ratio³ requirement, under which it has to invest a certain percentage of its deposit in government securities. These government securities are purchased either directly from the government or from another bank holding excess securities. It must also be mentioned that these government securities carry a very nominal rate of interest which is far below the market rate. Apart from investing in government securities, banks also invest in non-government securities.

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1. Hereinafter RBI.

2. Hereinafter BR. A "Bankers Receipt" is a temporary certificate issued by a bank selling securities to a buying bank. A BR is issued in lieu of the actual securities and the selling bank thereby acknowledges receipt of the funds from the purchasing bank. The selling bank is then bound to exchange the BR for the actual securities as soon as possible and in any case, not later than ninety days.

3. Hereinafter SLR.