CHAPTER 12

ECONOMIC CRIMES

An analytical study of the organised crimes in India would point to the fact that a large chunk of them take place in the financial sector. Traditionally, economic crimes were not known to be organised. However, considering the present spate of scams especially bank scams, hawala operations, extensive money laundering, etc., the scope of organised crime transcends the normative definition of being confined to the field of professional criminals involving men and property; it also includes the organised criminal activities taking place in the exclusive domain of money matters. Such crimes could be treated as "organised economic crimes" and would comprise any continuing unlawful activity by an individual, singly jointly, either as a member of an organised crime syndicate or on behalf of the syndicates, by use of violence or threat of violence or intimidation or coercion or other unlawful means, with the objective of gaining pecuniary benefits or gaining undue economic advantage for himself or any other person or for promoting large-scale financial crises. Financial crimes would include organized frauds, white-collar crimes and also market manipulations wherein the genuine investors are deprived of their rightful benefits and legitimate dues. They would also include misleading the customers in such a way that they get carried away by the perceived advantages arising out of market manipulations, whereas these advantages would be a facade created by wasted interest through successful manipulation of the market process, for their personal gains.

Both the NPC has gone into this crucial aspect and their recommendations are given below.

Economics offences:

Tax evasion, manipulation of stocks and share, fraud in licences and permits, profiteering, black-marketing, hoarding, adulteration of drugs, food stuff, and other
essential commodities are examples of economics offences. By there very nature these crimes have no overt aggressive physical aspect as the traditional crimes like murder, dacoit or theft have, but are committed in a highly organised manner involving a lot of background activities and sophisticated methods under a facade of law abiding life to escape detection. There crimes involve high economic stakes and the offenders gain at the enormous expense of the government and the community as a whole.

Failure in dealing with economic crimes generate cynicism among the ordinary people who tend to exclaim the rich and influential can get away with nonpayment of taxes, dishonest trade practices etc., which help them make more and more money while the processes of criminal law are severe with the ordinary people who happen to commit ordinary crimes in situations of economics distress. To restore the confidence of the ordinary man in the efficacy of the rule of law it is most important to ensure that these economic offences are effectively handled by the police and accused persons concerned are demonstrably brought to book.

A separate economic offences wing may be set up in the State police on the pattern adopted in Assam where they have a Bureau of Investigation (Economic Offences) headed by an officer of the rank of Additional Inspector General of Police and staffed by officers drawn from the Police, Sales Tax, Transport, Forest, Excise, Agricultural, Supply and Audit department. It is the composite nature of the inquiry staff in this organisation that increases its effectiveness in the investigation of economic offences requiring a deep probe into several matters affecting more than one department.

Financial considerations should not deter the State Governments in setting up these wings since it has been amply demonstrated in the case of CBI and a few States that the cost of the additional staff is more than off set by the gain to the State exchequer by way of recovery of concealed income, besides heavy fines realised through courts.

It would be advantageous from the point of view of building up expertise and optimizing the utilisation of the investigating staff if the Economic Offences Wing
functions under the overall charge of the Special Inspector General of Police or Additional Inspector General of Police who is in charge of the State CID.

A small training course may be developed in the Police training in each State which can be conveniently attended by the investigating staff of the State Economics Offences Wing. Lectures on appropriate subject can be arranged at this course from senior officers of the different departments in the State dealing with the various subjects like sales-tax, entertainment tax, agricultural loans, subsidies, etc.

A concerted drive in all the States to expose the embezzlement in co-operative societies, recover large amounts of embezzled money from the accused concerned and get the powerful and influential accused duly convicted in court, would put down this crime considerably and enable the financial benefit of cooperative movement to reach the sections for whom it is really intended.

In their Forty seventy report (1972) the law commission had recommended that the minimum fine for a economic offence should not be less, than the amount of the ill-gotten gains of the offender arising from the offence committed by him. We, however, notice that no amendment has been made in individual economic enactments like the Essential Commodities. Act or Drugs and Cosmetics Act or the Prevention of food Adulteration Act etc. to give effect to this recommendation. This omission may be made good now with appropriate amendments in the different laws concerned.

The scope of the smugglers and Foreign exchange Manipulators (Forfeiture of Property) Act, 1976 (SAFBMFOPA) may be enlarged to cover economic offenders also by-

(i) Appropriately amending the heading and preamble of the Act, to include economic offenders;

(ii) Including a person convicted under certain specified economic offences like Essential Commodities Act, Prevention of Food Adulteration Act, and Drugs and Cosmetics Act in the category described in section 2 (a) of the Act;
(iii) Including under section 2 (b) of the Act any person in respect of whom an order of detention has been made under the provisions of the prevention of Black-marketing and Maintenance of supplies of Essential Commodities Ordinance, 1979 or any similar law for the preventive detention of hoarders and black-marketers; and

(iv) Including in the definition of “illegally acquired property” in section 3 (1) (C) of the Act any property in the possession of the person which is disproportionate to his known sources of income and for which he cannot satisfactorily account.

The State Security Commission envisaged in our Second Report should specially oversee the working of the Economic offences wing, assess the results achieved every year and make an annual report in this regard to be before the State Legislature.

*The Malimath Committee* has to say this regarding Economic crimes:

_Economic Crimes_

Inspite of well over 70 laws, apart from earlier laws in the Penal Code, the magnitude and variety of Economic Crimes is growing at a fast rate. The number of agencies for regulation and investigation have also increased. Yet, the need for rigorous laws and strong regulatory enforcement and investigation agencies cannot be more obvious. The attempts made in the last few decades to legislate in the matter have not been quite successful. Our judicial processes have not been helpful either. It is essential that these crimes are tackled urgently through legislative and other measures and it is for this purpose that the following recommendations are made:

Sunset provisions should be continued in statures and these provisions be examined keeping in view the continuing changes in economy and technology. Such
statutes should not be allowed to become out-of-date which can be ensured by comprehensive drafting of those statutes to cover future crimes.

The procedural laws regarding presumption of burden of proof in the case of economic crimes should not be limited to explanation of an accused who must rebut charges conclusively.

ii. Adverse inference should be drawn if violation of accounting procedures are prima facie established and public documents including bank documents, should be deemed to be correct (A.I.R 1957 S.C. 211: 1957 Cr.LJ 328).

Sentences in economic offences should not run concurrently, but consecutively. Fines in these cases should be partly based on seriousness of offence, partly on the ability of the individual/corporation to pay, but ensuring that its deterrence is not lost.

Legislation on proceeds of crime be enacted on the lines of similar legislation in the UK and Ireland. An Asset Recovery Agency at the Federal level and similar agency at the State levels may be created.

In the past, non-compliance with procedures, healthy norms, and institutional rules has led to financial frauds of enormous proportion. The abdication of responsibility by Regulatory Bodies has also contributed to the perpetuity of frauds. Keeping this in view, it is recommended that Regulatory Agencies should at all time be vigilant and launch timely investigation and punish offenders expeditiously.

While bona fide or inadvertent irregularities should normally be ignored with appropriate advice for remedial action, the failure of the Regulatory Bodies in serious lapses should be viewed adversely by the Central Government.

Most economic crimes are amenable to investigation and prosecution by the existing law and institutions. However, there are still some economic offenders of such
magnitude and complexity that could call for investigation by a group of different kind of specialists. Therefore, it is recommended that a mechanism by name 'Serious Fraud Office' be established by an Act of Parliament with strong provisions to enable them to investigate and launch prosecution promptly,

- To inspire the confidence of the people and ensure autonomy, the Chairman and Members of Serious Fraud Office be appointed for a term of not more than five years following a procedure that itself should inspire confidence, integrity, objectivity and independence.

- In a similar manner, State Government must set up Serious Fraud Office, but appointment be made in consultation with the Chairman of the Central Fraud Office to eliminate political influence.

The Committee recommends that the existing Economic Intelligence Units under Ministry of Finance be strengthened suitably by induction of specialists, state-of-the-art technology and specialised training. Moreover, to achieve a common preventive strategy for tackling serious economic crimes, it is necessary that a closer coordination be maintained between the National Authority, the SFO, the Intelligence Units and the regulatory authorities as also private agencies. They should develop and share intelligence tools and database, which would help investigation and prosecution of cases.

For tackling serious economic offences, it is necessary that our domestic laws are made compatible with laws of other countries. Mutual legal assistance, under appropriate Conventions/Treaties/Protocols of the "United Nations should be developed for exchange of information of a continuous basis.

It is recommended that to reduce the work of judges, the responsibility of recovery of assets be given to a newly created Assets Recovery Agency which will deal with not only forfeiture of confiscation on behalf of courts and government departments but also support in certain other type of work.
The practice of appointing serving representatives of regulators on the Board of Directors of financial institutions be discontinued immediately to avoid conflict of interests. To ensure compliance with guidelines of Regulators, the Government may consider appointing independent professionals to represent regulators.

An effective coordination mechanism must be introduced between the Government and Regulators to detect suspicious activities in time and take prompt action.

Violations of environmental laws having serious economic and public health consequences must be dealt with effectively and expeditiously.

The Committee recommends the enactment of a law to protect informers, covering major crimes. The seriousness of the potential of these crimes to wreck havoc on the economy to such an extent that the country takes a long time to recover. Organised economic crime has far greater reach and consequence than is usually believed.

As brought out in the above recommendations we would be fighting a losing battle against these type of crimes unless we reform are existing laws giving them more teeth and shifting the burden of proof while also changing the importance attached to the nature of evidence collected. The economic offences wing of each state need to be strengthened and modernized. It needs to be manned by officials from revenue, finance and related fields. These officials need to be given protection and encouragement so that they work with commitment and devotion.