

ECONOMIC CRIME IN INDIA

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I. INTRODUCTION

Crimes in whatever form or category they may fall in, impact mankind in multifarious ways. They damage democratic development, skew social development, inhibit industrial development and endanger economic development. Overall crime is the antithesis of development and is strongly pitted against it. Development is an innate urge nurtured by nations. Economic development, a pre-requisite for development of any other kind, and development is also intrinsically linked to mutual and international cooperation.

The United Nations Declaration and the Programme of Action on the Establishment of a *New International Economic Order (1974)* aims at the creation of better conditions so that all peoples may attain a decent life. It then proceeds to define new guiding principles for the future course of crime prevention and criminal justice in the context of development needs and the goals of an International Development Strategy for the third U.N. Development Decade. This would appear as a collective global response towards development, the key element being economic development.

Countries, without exception, have been spurred into economic activities in the recent decades, with the objective of ensuring improved quality of living for their citizens. The 'haves' sharing with the 'have nots' through monetary and material aids became a norm, serving mutual interests equally. As if to add conviction to

the trite saying that 'good and evil go together' is the emergence of new forms of crime, more sophisticated at exploiting loopholes and opportunities. These are characterised as economic crimes, growingly becoming the order of the day, robbing the masses of the assurances of the State.

The global march from the industrial age to the economic age is confronted principally by the growth of crime, that impedes progress towards an egalitarian society. The disruptive effects of crime, particularly economic crime, that makes mankind collective victims, can not be checkmated unless countries stand united. The effective countermeasures against economic crime need, therefore, to be on a firm foundation of international cooperation.

A. Globalization and Liberalization

From time immemorial, the driving force behind every nation is to boost trade and build the economy. The dominant economic trends of the current decade are globalization and liberalization. Globalization is being growingly recognized as the present day compulsion for growth. Liberalization has put countries world over on a fast track to grab the opportunities that lie ahead to establish economic competitiveness.

There is a revolutionary tide sweeping the world as a consequence of the above. Profound changes are taking place in the way businesses, small or large are being done. Remarkable technological developments, significantly the information revolution and enticing

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economic opportunities, have opened a new world of commerce. Traditional paper based procedures are fast being replaced by new standards such as Electronic Data Interchange (EDI), Electronic Fund Transfer (EFT), Electronic Commerce (EC) etc.

A Pandora's box of opportunities to indulge in crime of a sophisticated kind have also grown. With an openness of economy coupled with the vacuum in law and procedures, 'economic crime' was not far behind. Even the traditionally known forms of economic crimes such as cheating, fraud, larceny, embezzlement, criminal misappropriation and criminal breach of trust have taken serious proportions involving enormous sums of money and affecting scores of victims. Globally, nations seem to be driven to the realisation that it is not possible to be at once politically internationalist and economically isolationist.

B. Globalization of Crime

In recent times we are witness to a growth of crimes not merely in quantity but more so in quality. The threats posed by present day dimensions of crimes, particularly their sophistication in personal and public security are matters of serious concern. Crimes are presently modeled on business ventures, operated in syndicate styles and with 'profit' as the motive, practically emulating the current economic development in this respect. Organised crimes, as they are called, have even transcended borders to constitute transnational organised crime.

In the above developments, crimes are ignoring or overcoming borders. However, borders have established themselves as the bane of law enforcement. The criminals thus operate as if they are in a borderless world, while the law enforcers are confined to operate in a bordered world. If efforts

towards economic development and growth compel countries to stop recognizing borders and start cooperating, it is a major question as to why there is reservation or resistance to the same in the effort to curtail crime.

Cosmopolitanism has led to the emergence of criminal networks. This would call for the development of a law enforcers network capable of countering the commissions of criminal networks. Many relevant question will arise; should not economic liberalization and development be matched by the liberalization and development of criminal justice system? Should not the emergence of criminal networks be countered by the establishment of a law enforcers network? Does it not call for law enforcement cooperation that emulates economic cooperation?

C. Crime Prevention

The United Nations commemorated their golden jubilee in October 1995. What figured prominently on the agenda was the urgent need for international cooperation against crime. The serious global concerns of the late 20th Century are economic crimes and organised crimes, the transnational kind in particular.

In the present day global trends, if criminal development outpaces economic development it would be a disquieting development because of its deleterious and destabilising effects. The rule of law and public security are as essential for democratic development as they are for economic development. Governments are governed by priorities. The compulsions of economic growth may have given precedence for economic development over democratic development. In this context, issues of contention and conflict may also arise. Are globalization and liberalization aiding and contributing to growth and

sophistication in new crimes? Should the priority be shifted towards crime control with strict regulations and stringent laws? However, a base approach can not be advocated, nor will it ever be acceptable. For analogy, if there are bank hold ups, can we stop banking? In the conflict between the administrators of economic development and criminal justice, the overarching question concerns identification of a balance between the twin exigencies of economic development and democratic development. Both are essential for the establishment of a new economic order and improved quality of living.

A response to resolve the conflicts could be crime prevention as a policy, with strategies and plan of actions. Also, possibly to conceive the appointment of Crime Prevention Managers whose singular task would be to prevent crime.

II. ECONOMIC CRIME

Barter, a trade by direct exchange of goods, as was prevalent even at the beginning of the millenium, would perhaps appear as the safest economic practice. With a monetary system consisting of money currency, money value, exchange value, market determined goods/products value etc., controlling the present economic practices in relation to trade in diverse forms, the idea of going back to barter system would be a utopian one.

A. Crime Classification

Over the decades, a few broad classifications of crimes have come into general usage. One set distinguishes them as 'crimes against life', 'crimes against body', 'crimes against property', 'white collar crimes' and 'others'. Prevalently in use is the set that classifies them as 'violent crimes', 'property crimes', 'economic crimes' and others. These terms are self-

explanatory.

The U.N.Crime Survey adopts a direct classification of crimes by type, under eleven (11) heads. The Interpol crime survey adopts a direct classification of crimes by the type under ten (10) heads, but using slightly different terminology. Though not differing much in general classification, some degree of difference in the usage of terminologies continues to exist in the approaches of countries. It would be suffice to mention that similarity helps foster appreciation and further generate conviction to cooperate and coordinate efforts to curb crimes.

B. Definition

"Economic crimes are a manifestation of criminal acts done either solely or in an organised manner with or without associates or groups with an intent to earn wealth through illegal means, and carry out illicit activities violating the laws of the land, other regulatory statutory provisions governing the economic activities of the Government and its administration" (Crime in India, NCRB, Govt. of India).

Once popularly known as 'white collar crime' by virtue of the fact that it can be indulged in by a person of responsibility (holding an office) in the course of occupation, these forms of crime were known to cover cheating, fraud, larceny criminal misappropriation, embezzlement, criminal breach of trust and to some extent forgery, corruption and counterfeiting. Considering the profound economic changes and directions, these forms of crime have taken a hydra-headed transformation as economic crimes, encompassing many more new generation crimes from misappropriation to money laundering; from simple fraud to floating fictitious firms; from breach of trust to bank manipulations. Thus in form and content, crime would appear to be dynamic and ever-changing.

When it comes to defining 'economic crime' there appears to be agreement that it can not be defined precisely, comprehensively and wholly acceptably. There are as many definitions as there are countries, with each one correct in themselves and based on the perceptions as well as experiences in dealing with these forms of crimes already manifested and manifesting. The sheer diversity of such crime makes us appreciate that it can be defined infinitely. This would only go to project the scope and extent to which economic crimes have become all pervasive universally.

As far as criminality is concerned these economic offences, while bearing similarity to traditional offences, constitute a separate class by virtue of their scale and dimension; *modus operandi*; and in making individuals/state/society as collective victims of financial loss.

Summarising, "an evil (criminal) intent is evident in economic crime - an intent to gain wrongfully by the perpetrators and cause loss wrongfully to the perpetrated". With general acceptance on this fundamental, the call of tomorrow may be a comprehensive "economic offences code", distinct from penal codes, to effectively counter economic crimes.

C. Impact on National Economy

Economic crimes cause significant damage to the general economy of the country, adversely affecting the growth and development of the nation. Internationally it erodes confidence in the financial credibility and stability of the nation, thus weakening its global competitiveness and further, becoming unattractive to investments from within as well as outside. Where there is a high incidence level of economic crime, the government and bureaucracy are also viewed as being corrupt and weak.

Some of the major impacts on the national economy that may be caused by the economic crimes, are:

- Increase in inflationary pressure
- Uneven distribution of resources and creation of elitism
- Marginalisation of tax base
- Generation of abundant black money
- Creation of parallel economy
- Undermining of developmental works/efforts
- Becomes a breeding ground for corruption
- Illicit businesses thrive affecting licit business
- Resources of financial and commercial institutions are diverted and distorted
- Weakens morale and commitment of citizens
- Poor/weakest continue to be at risk
- Countries economic equilibrium is at stake

A significant corollary to the above is the diversion and investment of the illicit money (black money) acquired by committing such crimes into furthering crimes and the hegemony of the criminal syndicates rule. The threats to public security and eventually national security, would appear imminent as an ultimate consequence.

D. Problem of Definition

Controlling and effectively dealing with crimes, even the ordinary kind, pose some challenges. Some of the major ones are:

- (i) A legal definition and precise conception of economic crime is yet to come into acceptance.
- (ii) In a large number of cases, these forms of crime are viewed not as 'criminal' but as 'civil' in nature, falling somewhere between 'crime' and 'tort'.
- (iii) Often *mens rea*, criminal intent or

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malafides may prove to be difficult to establish, and they can be effectively hidden by claiming carelessness, procedural infirmities, lack of supervision, pretention of not knowing the consequence, transfer or distribution of culpability and diluted liability.

- (iv) While individual liability for a crime is the accepted principle, collective liability and/or vicarious liability is yet to be strongly encoded in statutes and law. These constitute the grey areas of law.
- (v) There is application of the rigid judicial doctrine of evidence beyond all reasonable doubt. Adverse presumption of conduct of the accused and shifting of the onus of proof is yet to become acceptable as a relaxation of the doctrine.
- (vi) There is a tendency to treat these forms of crime as 'fine only' offences, whereas the calculated manner in which these crimes are schemed, organised and committed strongly call for prison terms in addition to fines and forfeitures.
- (vii) Generally public awareness is lacking for want of legal education, with the result they get preyed on are to their gullibility. They also continue to get trapped despite lessons learnt, in their craze to get rich quick.
- (viii) No less important are a score of organisational issues such as information sharing, availability of trained manpower, collective drive, coordination of efforts, trust between law enforcement agencies etc.
- (ix) There are innumerable regulations in government, with areas of incompatibility. This coupled with compartmentalisation of various regulatory and enforcement measures lends to easy exploitation

and commission of economic crimes.

- (x) By the very nature of such crimes, economic crimes surface long after the actual period of commission and evidence (oral/documentary/circumstantial) is hard to come by. Further, what is reported constitutes the tip of the iceberg, leaving scores of others unexposed and not dealt with.

E. Cost of Crime

A precise and universally acceptable method of computing the costs of crime is yet to emerge. Society pays substantial costs, both directly and indirectly, as a result of crimes and in confronting them. The operation of the criminal justice system and crime prevention efforts direct cost is itself quite substantial. The U.N Survey (1990) revealed that highly developed countries expend on an average 2% to 3% of their budgets on crime control and the administration of justice. The same in developing counties showed a high percentage ranging from 9% to 14% of the national budgets. The 3rd U.N. Crime Survey revealed that developed countries enlist the services of 225 police officers for every 1,00,000 population for crime control, and about 20 per 1,00,000 to staff prisons. The developing countries maintain more than 500 police officers and more than 50 prison staff per 100,000 population.

Victims face colossal losses in both direct and indirect terms. While precise costs are available for property of various kinds, there are no yardsticks to compute the indirect costs. Even in respect to the former, constituting the direct kind, it is often alleged that property lost is undervalued and correspondingly the properties recovered are overvalued.

Since 1990 the U.N. has carried out a novel 'Victimisation Survey' to indicate the growth of crime and the indirect costs as a

result of these; largely in terms of the level of general insecurity of the citizenry. Based on empirical data and on an interview-based approach, a cross-section of the urban population of 50 countries principally, the first round of study showed that more than half the urban population worldwide have been victimized by a crime at least once during the period 1990-1994. It profiled regions of high crime rates as Africa, Latin America on the one hand and Canada, Australia and the USA on the other, as well as regions of relatively low crime rates in Asia, Europe, west Asia and Arab Countries.

Citizens not usually perceived as victims do also pay for crime. The cost of the same being indirect can not be easily estimated and quantified. For example, witnesses spend hours and days in investigation and trials. Consumers pay higher prices, without knowing that they do, in crimes related to business or economic crime. Car owners and real estate owners pay higher insurance premium than what they would have otherwise paid. Take into account the manhours lost through leave on mourning and obsequies. Tax evasion by the unscrupulous brings on higher taxation of honest tax payers. Ultimately everyone, every citizen of every country, is short on the goal of improved quality of living.

Crime discourages investments and inhibits economic growth. Low income slums and ghettos of countries in transition, when plagued by crimes, bear the brunt when capital is diverted to more productive environments. The ability of crime to distort economic activities is more manifest in the emergence of organised crimes of a transnational nature. The criminal syndicates are a force to reckon in the world economy and determine even the destiny of developing nations. The 'Economist' in an article (1995) points out that "where the main purpose of

investment (illegal) is to launder drug money, the effect is often to crowd out legal business".

F. Classification

Though 'economic crime', being non-violent in nature with often organised or collective perpetrators, could be precisely set as a major classification distinctively from 'violent crime' and 'property crime', its minor classification based on nature and form could generate a healthy debate. The popular understanding of 'economic crime' at the functional level is that these offences concern money and matters of finance. The traditional classification of 'white collared crime' covers cheating, fraud or larceny; misappropriation or embezzlement; breach of trust and counterfeiting principally involving money.

To attempt a sub-classification of economic crime purely on a criteria that it concerns money and matters of finance will be contestable, as it would exclude some important types already characterised as economic crime. Correspondingly, there may arise logical questions as to traditional offences where gain, in terms of money and value figures, may be included under economic crimes. These are all matters to consider before a sub-classification is attempted. Largely the following forms of crimes have been characterised as constituting economic crimes or offences:

- (i) Tax evasion
- (ii) Excise/Custom duty evasion
- (iii) Smuggling in contraband goods
- (iv) Bank frauds/Scams
- (v) Corporate frauds
- (vi) Stock market manipulations/Scams
- (vii) Insurance frauds
- (viii) Foreign Exchange violations (Hawala)
- (ix) Money laundering
- (x) Drug trafficking
- (xi) Real estate dealings (Benami)

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- (xii) Industrial espionage
- (xiii) Intellectual Property Rights violations
- (xiv) Credit Card crimes
- (xv) Corruption (Political/Govt/Corporate)
- (xvi) Counterfeiting (Currency/Bonds/Shares)
- (xvii) Floating fictitious firms
- (xviii) Floating Non-Banking Financial Corporations (NBFC)
- (xix) Collection of protection money (Extortion)
- (xx) Frauds relating to government subsidy
- (xxi) Abuse of Foreign Aid programmes

Considerations may arise whether 'organised crime', including 'transnational crime', should figure as the 'genus' and the above forms as 'species', particularly when the main motive of these crimes is 'profit'. It still leaves from consideration a few more types of crime such as 'theft of cultural objects', 'Real Estate frauds/land hijacking', 'Trade in human body parts', 'Racketeering in employment', 'Racketeering in passports', 'Illegal migration', 'Computer-related crimes' including software piracy.

It would be a constructive exercise to attempt 'major' and 'minor' classifications of economic crime by harmonizing views. One such attempt is a classification by the nature of crime and by form of punishment. In a broad way, the former can be subclassified as:

- (i) Crimes involving government finances (eg. tax evasion, duty evasion, subsidy frauds etc.)
- (ii) Crimes involving individuals' finances (eg. cheating, misappropriation, breach of trust etc.)
- (iii) Crimes related to corporate management (eg. commissions as bribes, illegal gratification, floating

fake firms, copyright violations etc.)
(iv) Crimes affecting national economy (eg. foreign exchange manipulations, stock market manipulations, counterfeiting currency etc.)

The latter can be sub-classified as:
(a) Crimes punishable by penal codes
(b) Crimes punishable by special laws

III. INDIAN SCENARIO

A. Institutional Support

A sound institutional arrangement exists in India to collect, collate and analyse reported crime statistics, to support effective decision making and regularly review policy formulation. The National Crime Records Bureau is such an institutional arrangement set up under the Ministry of Home Affairs (interior) on the strength of the National Police Commission (1979). A strong organisational structure exist at the: district level (province), the District Crime Records Bureau; the State level (regional), the State Crime Records Bureau; again networked at the national level, the National Crime Records Bureau, to collect information on crimes and criminals.

The common objective, "to act as a clearing house of information on crimes and criminals", has greatly enabled effective, efficient and economic law enforcement. The statistical information for analysis is a by-product and is published as "Crime in India" for public dissemination covering more than 55 million crimes, thus making the criminal justice system accountable. The report covers all the criminal cases reported under a score of laws and by all enforcement agencies set up to deal with ordinary, as well as sophisticated, crimes.

A major technological upgrade is responsible for attaining this capability, establishing a fully computerised "Crime

Criminal Information System”. A captive sat.com based network styled “Polnet”, an exclusive law enforcement computer network that offers voice, data and image transfer facilities, is the next step of upgrade to be taken up.

In addition to the key steps of institutional networks and technology upgrade, a major unifying step is the uniformity of procedures, forms and reporting systems. This has become the focal issue for achieving “standardisation in policing” as a vision for the future.

B. Economic Crime Statistics

The ‘Crime in India’ publishes annually the reported crimes and also profiles the percentage of detection, number of accused persons charged, the result of trial etc. It features the list of criminal laws that demand effective enforcement by law enforcement agencies. The bulk of reported crimes constitute those falling under the relevant sections of the Indian Penal Code namely cheating, fraud or larceny; misappropriation or embezzlement; criminal breach of trust, counterfeiting, and narcotic drugs cases.

C. Law Enforcement Agencies

Besides strengthening laws where there are perceived loopholes, regular upgrade of laws, by enacting ‘special laws’ to deal with emerging crimes, have received close attention. Institutionalised arrangements ensure that a close degree of monitoring is exercised. A few of the recent legal initiatives are:

- (i) Foreign Exchange Management Bill
- (ii) Money Laundering (Prevention) Bill
- (iii) Security Exchange Board of India Act
- (iv) Depositories Ordinance
- (v) Computer Crimes (Prevention) Bill (draft)
- (vi) Information Technology Bill (draft)

A major step was recently initiated by setting up a Commission for Administration of Law to take up legal reforms holistically. In the first report submitted only recently, the Commission has observed the following:

- (i) List of Central (federal) Acts-more than 2500
- (ii) List of Central Acts to be scrapped-1300
- (iii) List of laws to be changed-60
- (iv) List of laws to receive regular review-115

As anachronistic laws abound, they advocate recourse to ‘sunset’ provisions in all laws, which compel review at predetermined periods for decision as whether to continue, amend or scrap such laws.

D. Estimates and Guestimates: Cost of Economic Crime

The fall out or consequences of economic crime, are colossal. At the high end are arguments that the illegitimate economy generated by various forms of crime virtually matches the size of the legitimate economy of the country. Economic crime, being a high reward and low risk activity, is also construed as an area of expansion, much like the national economy. The existence of ‘black money’, principally in cash form, is known to exist in practically every country. Drug crimes have added a new dimension by bringing into existence ‘dirty money’. While black money is obtained by avoiding taxes/duties, including circumvention of regulations, dirty money is obtained completely by illegal means.

A recent survey estimated that nearly Ro 46,000 crores (\$460 million) proved to be bad loans given by banks, with little or no scope for recovery. If this represents the accounted for input of loss to the national

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economy, it is possible to guesstimate the true, staggering size of the illegitimate economy. The National Institute of Public Finance and Policy estimated in 1985 a black economy of Ro 405 billion. Tax evasion is stated to be anywhere close to 70%.

There should be well formulated effort in the days to come to estimate, as accurately as possible, the damage in terms of money as a result of the commission of economic crimes. This, in other words, would be a step to estimate the cost of crime itself. The obvious benefit would be a compulsion for proper policy formation, regulations for plugging loopholes coupled with effective enforcement measures. Needless to add, the strategy of the criminal justice system should not only be to establish that 'crime does not pay' but also to assert that 'crime will entail recovery of illegitimate money'.

IV. THE COUNTERMEASURES

A. Introduction

It is difficult to make anything foolproof. Further, law enforcement becomes complicated when on the one side, crimes are growing in sophistication and on the other, individual rights recognition is growing in stringency. In the present day reality, the criminal justice system can at best make things difficult, and aim in the process to achieve crime prevention. If our experiences are any lesson, a successful example of crime prevention exists in counterfeit proofing currency and travel documents. By its very nature economic crimes call for counterfeit proofing measures.

Though some battles have been won, the war waged against economic crimes will continue to be a relentless one; with every modus operandi adopted by criminals countered by successful strategies by law

enforcement agencies. It would not be a convincing argument to maintain or expect that the traditional law enforcers, namely the police or the anti-corruption agencies, alone are to come to grips with the development of economic crime. The growing complexity and diversity of economic operations would necessitate a multiplicity of enforcement agencies, but with a high degree of coordination. This is expected to be achieved only by sensitizing all the enforcement agencies adequately.

B. The Progress

What was viewed essentially as a national malady, with duty and tax evasion constituting black money, assumed global dimensions with the coming into circulation of 'dirty money' as a consequence of drug money or laundered money. The U.N Drug Convention (Vienna 1988) focused attention on this problem. The constructive development is the constitution of the Financial Action Task Force (FATF) to conceive policy measures that inhibit and detect money laundering attempts. A recent attempt is the preparation for a UN declaration on Organized Transnational Crime (Warsaw 1998). It would be a matter of interest to study the forty (40) recommendations given by the FATF which zeroes in on the banking operations that contribute in a major way in the perpetration of money laundering. The principal recommendations are:

- (i) Limit bank secrecy laws
- (ii) Adopt 'know the customer policy'
- (iii) Compel banks to report suspect transactions
- (iv) Regulate non-banking business
- (v) Introduce measures for asset forfeiture
- (vi) Treat money laundering as an offence and as extraditable

Progressively, attempts have been made in few countries to consider largely legal

reforms involving measures to amend and upgrade existing laws, and introduce special laws to deal with emerging forms of sophisticated crimes. Principal among them are laws to deal with money laundering; enabling asset forfeiture; regulating bank transactions, operation of non-banking financial corporations; and regulating operations of stock markets. Institutional support for enforcement, fine and imprisonment as penalty, and measures for expeditions trial, are other concrete steps that have been initiated.

In India, a number of special laws have been enacted to deal with various forms of economic crimes. The existing legal provisions in the following legislation for asset forfeiture are being increasingly and effectively used with a growing degree of success:

- (i) Criminal Law Amendment Ordinance (1944)
- (ii) Customs Act (1964)
- (iii) Code of Criminal Procedure (1973)
- (iv) Foreign Exchange Regulation Act (1973)
- (v) Smugglers and Foreign Exchange Manipulates (forfeiture of property) Act (1976)
- (vi) Narcotic Drugs and Psychotropic Substances Act (1985)

The mere conception of new laws can not be deemed as a panacea for legal ails. Proliferation of laws many prove over a period of time counter-productive for very many reasons. One school of thought holds that we should stop making new ineffective laws and seek means to render effective the existing laws. Effective enforcement becomes relevant in this context. However, a blend of both, or a balance by enacting laws on a needs based manner (coupled with effective enforcement) is advocated.

The emerging concept of sunset laws is borne out of years of long experience. Under this principle, laws are enacted for a specified period (say 10 years) to meet the challenges of a new form of crime. At the due time, a review of the law becomes a compulsory measure either to extend or to allow its continuance, or it becomes anachronistic at the time of review. Considering the proliferation of laws, new enactments should necessarily contain sunset provisions to keep the list at an optimal level.

C. Recommendations

1. Conceptual

In battling economic crimes there has been an overwhelming introduction of regulations and enactments of new laws. Regulations and laws are good, provided they are regularly monitored and effectively enforced.

(i) *Counterfeit Proofing*

It has been elaborated that 'crime prevention' holds a lot of promises, if proper strategies are devised. If counterfeit proofing measures have proved effective to prevent counterfeiting of currencies and travel documents, similar approaches/measures in economic operations may result in prevention of economic crimes. Illustratively:

- (i) Shares can be counterfeit-proofed to prevent use of forged shares for transactions.
- (ii) The Depository System can be adopted where shares are held in trust by the depository and their trading be done notionally, without physical exchange/transaction in shares.
- (iii) Floating of fictitious firms in the name of non-existing persons can be frustrated by obtaining photographs of the constituent members, by verifying their addresses, by

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subjecting the cases to physical inspections.

- (iv) Operation of Non-Banking Financial Institutions can be subject to tighter regulations, regular monitoring, their members made accountable, and by simply generating public awareness campaigns.
- (v) Unauthorised taking of deposits can also be made a cognizable offence.
- (vi) Operation of bank account can be subject to regulations such as keeping photographs of account holders, restricting the limit of monetary transactions on a single day etc.

Many more innovative steps can be conceived and regularly monitored after implementation.

(ii) *Crime Prevention Officers*

The time-tested approach to deal with crime has at best proved to be a post mortem step. Typically, a law enforcement officer comes into role after the commission of a crime, to set the law into motion or investigate. Economic crimes are distinctively different from ordinary crime. The crime that gets committed remains shrouded in secrecy and surfaces incidentally when a situation has gone out of control.

This situation is unlikely to improve unless there are meaningful measures, such as by appointing Crime Prevention Officers whose sole task would be as watchdogs to monitor developments day to day and report suspicious transactions. If there exists a concept of a vigilance officer in government departments, it has to permeate widely and role redefinition is also needed.

2. Legal

(i) *Redefining Economic Crime*

It is difficult to deal with sophisticated crime by relying on the traditional sections

of the law. A glaring disparity in economic crime is the existence of collective involvement in crime as in corporations and other institutions, as against the conventional concept of an individual's involvement in the crime. Legally, this aspect needs to be addressed.

Most importantly, existence of *mens rea* or criminal intent is difficult to prove in this form of crime; having to pass the judicial doctrine when it comes to trial. A recognized concept in defining the culpability of an individual can be:

1. Misconduct, as in departmental discipline.
2. Criminal misconduct, as in corrupt practices
3. Criminal conduct, as in a crime.

A path breaking measure could be to conceive acts involving economic crimes as either 'financial misconduct' or as 'criminal misconduct', to give the same a new dimension and meaning. The next progression, linked to the same, would be innovative punishments for such offences that involve recovery of the illgotten money.

(ii) *Economic Offences Code*

Economic offences are even now dealt by the relevant provisions of the Penal Code. This has resulted in an anachronistic status wherein sophisticated crimes are treated as conventional crimes, namely cheating, fraud or larceny; misappropriation or embezzlement; and breach of trust. This carries many pitfalls.

The newer forms of economic crimes can be countered effectively by evolving a new and comprehensive 'Economic Offences Code'. The Code should also contain institutional arrangements and procedures for its enforcement. The Code may modify investigation procedures, methods/standards of proof, as well as system of

trial. There can be scope for regulated, negotiated settlements. Sentencing can be made innovative and imaginative, including confiscation of property, deprivation of privileges etc. The Code may have to be constructed to convey a message to all that economic liberalization should not mean freedom to exploit.

(iii) *Independent CJS*

The political system has to bear pressures from various corners and the elected bodies' judgements in relation to the national economy is often influenced by various considerations. A reasonably independent criminal justice system, with checks and balance measures, would be more capable of dealing with the crimes effectively in the overall interests of the nation. This is a measure that is much wanted when political parties sustenance is dependent on contributions of the undisclosed kind.

3. Organizational

A sound infrastructure is essential as a countermeasure to deal with economic crime, more so because of their organized manner of operation. Some of the issues concerning organization have been indicated as passing remarks in the preceding paragraphs.

The coming into operation of a number of independent law enforcing agencies is necessitated by the sheer complexity of governmental functions and the inability of one organization to emerge as an omnipotent enforcement agency. While accent will be on strictly monitoring the regulations with an aim of crime prevention, the independent departmental enforcement agencies can play a fruitful role as crime prevention managers; while the criminal acts that gets noticed can be dealt with by law enforcement authorities, namely the police.

Some of the factors that would be resulted oriented are:

- (i) Organized/standardized collection of information and close monitoring of the same
- (ii) Setting up of common database with a view to exchange information
- (iii) Establishment of proper infrastructure to discharge crime prevention responsibilities
- (iv) Informal measures, such as personnel exchange and coordination, at the operational level
- (v) Agreement for a transparent information sharing mechanism
- (vi) Networking of all agencies through innovative technological solutions
- (vii) Hosting the set up with officers of proven integrity
- (viii) Incentives to effective enforcement of crime prevention, detection and recovery measures

(i) *Technical Cooperation and Assistance*

A measure to enable and vitalize collective efforts can not be achieved without technical cooperation within the country or among countries. There is need for specialized organizations to combat these sophisticated crimes. This would call for training of personnel, regular exchange programmes and a means to constructively share experience as a confidence building measure.

(ii) *Mutual Cooperation*

Economic crimes, particularly the money laundering kind, transcend national borders. The effect of such crimes are also felt not only in one's own country, but also in other countries. Traditionally, the place of occurrence of a crime is highly relevant from the viewpoint of jurisdiction. The enforcement of law is by its nature territorial, for no State allows other States, as a general rule, to exercise powers of government within it. National borders are

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regarded, thus, as inviolable. Mutual cooperation has become the only available means to overcome these borders. The available practical solutions are:

- (i) Bi-lateral/multi-lateral treaties
- (ii) Mutual legal assistance treaties
- (iii) Extradition
- (iv) Neutral trial venues

V. CONCLUSION

In the words of Oscar Wilde, a “thief is an artist, and a policeman is, at best, a critic”. If this carries conviction, law enforcers are required to remain convincingly ahead in the race between the law breakers and law enforcers. If countries are to cooperate for economic development, there seems to be no valid reason not to cooperate in curbing crime. The foregoing would substantiate that international cooperation is built and rests on the pivotal props of:

- (i) Legal reforms/harmonization of legislation
- (ii) Institutional growth/professional skills
- (iii) Technical cooperation/assistance
- (iv) Mutual cooperation/assistance

Ultimately, trust could be the triumph card.