EFFECTIVE COUNTERMEASURES AGAINST ECONOMIC CRIME AND COMPUTER CRIME

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I. INTRODUCTION

Economic crime has been a phenomenon of commercial life since the days of the Romans, but in the latter half of the 20th century, it has become a growth industry. With the development of sophisticated means of communication, jet travel, facsimile machines, the wire transfer of money and now open borders, there are now no barriers to those who would prey on our financial institutions, destroy the economic stability of our commercial enterprises or corrupt our governments. Moreover, it is a crime of low risk and high gain, with usually very little investment from the perpetrator. Access to a fax machine and telephone are sufficient tools with which to perpetrate massive frauds.

The detection, investigation and successful prosecution of the economic criminal is difficult enough for those responsible for it in developed countries. The cases being complex and multi-jurisdictional, require not only dedication and commitment of the investigating agencies and their governments, but also the expertise, manpower and funding necessary for the task. Developing countries face an insurmountable task in this regard. The officials of many of these governments, as a result of a combination of factors, including all pervasive corrupt practices and low wages, are themselves highly vulnerable and have little incentive to change the situation. Many Governments are loath to delve into allegations of massive frauds and corruption committed by their predecessors, for fear that their successors may be inclined to do the same.

At the heart of all free market economies lies a fundamental paradox. It is the need to provide the greatest degree of commercial freedom for the market to enable the entrepreneurial business to flourish, while at the same time ensuring that those whose criminal activities would subvert and undermine the commercial effectiveness of those markets are denied access to the benefits which that very freedom allows. It is one of the great ironies of western capitalism that in so many cases, the most apparently innovative and entrepreneurial financial schemes, which are most attractive to investors are all too often the brainchild of the white collar criminal. For countries whose free market economies are still evolving, it is extremely difficult to strike the delicate balance between the imposition of too great a degree of bureaucratic regulation, which has a tendency to inhibit entrepreneurial activity, and deliberately refraining from introducing tough regulatory legislation, thereby allowing emerging markets to become infiltrated by criminally corrupting influences (who offer the tempting short-term profits, with accompanying long term damage and subversion). Nevertheless, it must be recognised at the threshold that criminal infiltration of the commercial infrastructure of society is one of the quickest ways of ensuring the ultimate corruption of the social and political fabric, with all the inherent implications which such a scenario possesses for the very basis of a free democracy.

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Economic crime, by the very disparate nature of its component activities, is incapable of simple definition. White-collar crime is expressed most frequently in the form of:

- misrepresentation in financial statements of corporations
- manipulation in the stock exchange
- commercial bribery
- bribery of public officials directly or indirectly in order to secure favourable contracts and legislation
- misrepresentation in advertising and salesmanship
- embezzlement and misapplication of funds
- short weights and measures and misgrading of commodities.
- tax-frauds
- misapplication of funds in receivership and bankruptcies.

Measuring the underground economy of any nation, much less of developing countries, is an imprecise science, involving only guesstimates and probabilities based on imperical hypotheses. According to Edger L. Feige, Professor of Economics, University of Wisconsin-Madison;

> "the world economy appears to subsume a hidden economy which employs US currency as its medium of exchange and is roughly 90 per cent as large as the US. economy".

The Congressional Quarterly Researcher, puts the size of the global underground economy at a staggering US$ 5.8 Trillion (1993). Generation of unaccountable funds from an underground economy is not peculiar to the United States. Among other industrialised nations the problem is equally severe. However, the problem is more acute in developing economies, particularly, in Africa and South Asia. The International Labour Organisation estimates that the informal economy employs 59 percent of the urban labour force throughout Sub-Saharan Africa, and accounts for as much as half the GDP of some countries in the region.

In India, various estimates have been made to ascertain the extent of black money generated from time to time. Amongst them, the most authentic is that of the National Institute of Public Finance and Policy, New Delhi (NIPFP). NIPFP estimated the black money income in India at Rs. 405,000/- Million (USD $ 32,440 Million) in 1985, amounting to 18 to 21 per cent of the GNP. This study also estimated that the tax evaded can be anywhere up to 70 percent. The main headings under which the estimates were made are as below :

i) Grant of licences and permits in return for bribes or political contributions.
ii) 'Speed money' to accelerate administrative procedures.
iii) The sale of jobs, postings or transfers in various public services.
iv) Regular bribes to petty functionaries from different government departments (for instance factory inspectors, health inspectors, police, tax inspectors, etc.). These collections are often shared with higher officials of the department concerned.
v) Bribes to alter land use, zoning or to regularise unauthorised structures.
vi) Bribes to obtain and maintain scarce public goods and services, such as electricity, telecommunications, irrigation water, and rail wagon allotments.
vii) Bribes to obtain public contracts.
viii) Bribes to political authorities at various levels, ostensibly to finance elections and post election manipulations.

Apparently the above report did not take into account many other factors responsible

for generating unaccountable funds in India. According to Prof. Suraj B. Gupta of the Delhi School of Economics, the black income in India stood at Rs.1,492,970 Million (US $ 113,241- Million) in 1987-88.

It is to be noted that most of the estimates of black income made by economists do not take into account unaccountable funds generated in arms sales, organised crimes, drug trafficking, terrorism and money laundering. The underground economy by definition is informal, invisible, subterranean and off-the-books. These factors make it extremely difficult to guesstimate, let alone estimate, the quantum of funds involved in these transactions.

India has a plethora of laws to curb economic crime in its various manifestations and dimensions. Appendix 'A' indicates such crimes and the corresponding statutes to deal with them.

II. CORRUPTION (GOVERNMENT & CORPORATE)

Ingowalter identified four distinct categories of payments which possess corrupt characteristics:

i) *Bribes* : Significant payments to officials with decision making powers to convince them to do their jobs improperly.
ii) *Grease* : Facilitating payments to minor officials to encourage them to do their jobs properly.
iii) *Extortion* : Payment to persons in authority to avoid damage from hostile actions on the part of unions, criminals, utilities, etc.
iv) *Political contributions* : payments to political parties linked to favours or threats of retribution in case of non-payment.

The effect of such payments means that ordinary commercial life soon becomes undermined, because the bribes paid are inevitably passed on by the payer of the bribe to the customer, who has to pay more for inferior goods. At the same time, the corrosive effect of institutionalised corruption permeates every level of society. This leads to the growth of a cynical disregard for subjects such as commercial morality, public sector ethics or the rule of law.

Economic crime is invariably associated with corruption, which of course represents an even more direct attempt on the integrity of the State and its institutions. Corruption, illegal gratification and considerations which are not due, involve huge amounts of money and valuables. These transactions not only breed black money but are also potential grounds for parties with vested interests for the commission and expansion of the activities directed towards economic offences. Even few millions of illegal dispensation by way of bribery is sufficient for economic manipulation to the tune of billions, by these offenders.

Corruption in public and corporate life has assumed serious dimensions in India. From the early eighties, political corruption has been on the increase and many leading political figures in India and many political parties have been accused of accepting illegal monetary contributions from the business world in the matters of arms contracts, power and fertiliser contracts, etc. Liaison agents, both of leading Indian and foreign firms, have been operating this system in conjunction with corrupt politicians and bureaucrats. In some of the cases which have come to light, complicated money laundering operations and "hawala" (underground banking operations) have been found to have taken place in order to stash illegal funds abroad. The higher

judiciary in India, particularly, the Supreme Court of India and various State High Courts had to intervene and order investigations against leading political figures on the basis of public interest litigations, when the normal criminal justice system and the anti-corruption machinery was found weak or insufficient to proceed against them.

The issue of corruption in public life has engaged the attention of the people, the judiciary and the Government of India. India has had the legislative tools (Anti Corruption laws) for the last five decades to combat corruption in the public service. The updated Prevention of Corruption Act, 1988 is quite comprehensive in its scope and covers the bribe giver, the bribe taker, their aides, abettors and conspirators including the 'touts' or middlemen. Under Criminal Law Amendment Ordinance 1944, assets acquired through corrupt means, both in the name of self or "Benami", can be forfeited. However, the legal provisions alone are not sufficient to tackle the problem on account of the enormity of the problem. Only a small number of investigators are available to tackle the task and a long time is taken in investigation and trial. The information collected from the Central Bureau of Investigation, India and various State Vigilance Bureauxs in regard to punitive actions against the public servants and others is indicated in Tables I to IV.

Table I indicates cases registered by the CBI and by the various State Anti-Corruption Bureaus.

TABLE I

Year	No. of cases registered		Persons Arrested	
	CBI	States/Uts	CBI	States/UTs
1991	1180	1708	-	1325
1992	1231	1772	-	1011
1993	1282	1895	-	1167
1994	1106	2104	463	2296
1995	825	2064	297	2604

Table II indicates departmental action taken against various categories of public servants by the CBI, for their involvement in corruption cases. Table III indicates departmental action taken against various categories of public servants by the State/ UT Vigilance Bureau. Table IV gives statistics with regard to the public servants prosecuted by the CBI for their involvement in corruption cases along with assets seized from them.

TABLE II

Year	Persons reported for regular Dept. action	Persons reported suitable for action by Dept.	Departmental punishment				Catagories of public servants involved in regular Dept. action		
			Dismissal	Removal	Major	Minor	Gazetted	NGO	Pvt
1991	1132	364	35	10	NA	NA	608	493	31
1992	1338	582	54	24	NA	NA	NA	NA	NA
1993	1179	NA	NA	NA	NA	NA	NA	NA	NA
1994	1922	149	22	22	137	256	249	187	1
1995	735	44	11	11	133	194	392	322	21

TABLE III

Year	Persons reported for regular Dept. action	Persons reported suitable for action by Dept.	Departmental punishment				Catagories of public servants involved in regular Dept. action		
			Dismissal	Removal	Major	Minor	Gazetted	NGOs	Pvt
1991	734	317	19	17	207	207	868	1623	159
1992	831	45	6	2	45	45	1027	1253	151
1993	939	35	18	10	52	52	411	1431	294
1994	318	103	7	3	27	27	464	1176	229
1995	295	87	27	14	53	53	1114	1278	499

TABLE IV

Year	No. of cases regd.	No. of public servants involved						Total seizure during searches
				Charge sheeted Arrested		Convicted		
		GO	NGO	GO	NGO	GO	NGO	(Rupees)
1992	1025	234	252	38	33	31	130	6,70,54,928/-
1993	1016	277	248	45	57	57	10	8,31,94,603/-
1994	1117	295	470	46	65	70	139	4,55,14,180/-
1995	1134	384	425	51	53	87	153	3,07,34,994/-
1996	1189	478	412	57	76	78	131	9,07,95,209/-
1997	988	385	331	66	110	57	114	5,60,59,639/-
1998	430	119	195	31	53	14	38	92,79,954/-

III. ABUSE OF FOREIGN AID PROGRAMMES

Since World War II, the more developed countries of the northern hemisphere have provided financial and economic aid to underdeveloped nations in the "Third World". A proportion of the aid supplied has been donated by religious and social welfare charities who draw their funding, to a large extent, from voluntary contributions given by private donors.

By far, the greatest proportion of aid funds are provided by government agencies. The terms under which such aid packages are given are often associated with parallel, reciprocal agreements such as the supply of arms or other military hardware, the provision of political advice or consultancy, or guaranteeing (by the recipient government) the suppression of the political ambitions of groups whose aims are perceived to be antithetical to those of the donor State.

Examples are payments made in the Iran-Contra Affair. In an investigation in 1991, evidence surfaced of U.S. Contractors improperly using foreign military financial funds to pay unauthorised commissions for contracts in Egypt and Israel. Huge fortunes in foreign

banks, deposited by dictators of underdeveloped countries, are nothing but the systematic plunder of nations by those leaders. In India, allegations have frequently been made of misuse with corrupt motives of foreign aid programmes by both officials and politicians.

IV. SMUGGLING AND CUSTOMS/ EXCISE FRAUDS

Smuggling, which involves clandestine operations leading to un-recorded trade, is another major economic offence. The volume of smuggling depends on the nature of fiscal policies pursued by the Government. The nature of smuggled goods and the quantum thereof is also determined by the prevailing fiscal policies.

India, with a vast coastline of about 7500 kilometres and open borders with Nepal and Bhutan, is prone to large scale smuggling of contraband and other consumer items. Though it is not possible to quantify the value of contraband goods smuggled into this country, it is possible to estimate the extent of smuggling from the value of contraband seized, even though it may constitute a very small proportion of the actual size. Table V shows the value of goods seized.

TABLE V

Year	Value of Goods Seized (in crores)
1988	443.14
1989	554.95
1990	760.08
1991	740
1992	535.71
1993	388.96
1994	535.22
1995	631.25

The high point of smuggling was in 1990 when contraband worth Rs.760 Crores was seized. The introduction of various liberalisation measures, such as with regard to gold and silver imports in 1992-93, had an impact on customs seizures. The total value of seizures came down by 30% (Rs.536 Crores in) 1992 and further down to Rs.389 Crores in 1993. The value of seizures of other important commodities from 1991 to 1996 is shown in table VI.

The value of seizures of gold and silver accounted for about 44% of total seizures annually prior to the liberalised import policies. It came down to 21% after the announcement of new policies and has continued to fall. On the other hand, the seizures of commodities like electronic goods, narcotics, synthetic fibres, wrist watches, Indian currency, foreign currency,

TABLE VI

(in Crores)

Items	1990-91	1991-92	1994-95	1995-96
Gold	198.8	188.5	55.4	50.8
Silver	146.6	147.7	3.6	0.54
Narcotics	25.1	21.8	54.3	77.94
Electronic Items	55.5	23.1	51.2	38
Foreign Currency	7.7	10.8	27.4	40.2
Indian Currency	6.5	5.6	6.6	5.6
Synthetic Fabrics	4.8	2	2.4	12.9
Watches	3.2	6.2	3.3	3.9

etc, rose during 1994-95. The value of seizures of electronic items rose from Rs.35 Crores in 1993 to Rs.51 Crores in 1995. The value of Indian currency and foreign currency seized rose from Rs.5 Crores and Rs.20 Crores in 1993 to Rs.10 Crores and Rs.43 Crores respectively in 1995. In 1987, gold occupied the top position amongst the smuggled items followed by narcotics, electronics, watches and silver. In 1995, however, narcotics occupied number one position followed by gold, electronics, foreign currency and synthetic fibres.

Table VII shows the number of persons arrested, prosecuted and convicted under the Customs Act. In addition, 758 persons were detained under COFEPOSA in 1991; 423 in 1992; 372 in 1993; 363 in 1994 and 350 in 1995.

TABLE VII

Year	Arrested	Prosecuted	Convicted
1991	2358	1669	574
1992	1745	1051	381
1993	1234	679	350
1994	1210	301	352

Sovereign countries of the free port areas, with few exceptions, impose import tariffs on goods being brought within their jurisdiction for the following reasons :

(i) Indirect taxation.
(ii) To prohibit the importation of articles which may pose a specific threat to the host nation.
(iii) As a measure of protection to home based industries.

Fraudsters find ways and means to circumvent these regulations/duties. In Europe, it takes the form of an attempt to obtain unlawful payment of agricultural subsidies based upon the production of forged documents etc. In India, the various schemes employed by the fraudsters are:

(i) Over-invoicing of exports to take advantage of the DEEC scheme wherein imports of duty-free raw materials are made subject to the export obligation being fulfilled. The larger the value of the export goods, the greater the value of the duty-free imports permitted. Difficulty experienced in countering this is that the Customs Department has to prove the contract between the Indian and the foreign parties is fake. An unholy relationship between the exporter and the importer has to be established. This requires foreign investigation which is both expensive and time-consuming, and cannot be undertaken in every case. Double taxation treaties do not help as they do not exist in every country. Problems have been encountered by India, particularly with regard to the investigation of such deals between Indian exporters and importers in Dubai.

(ii) Another method adopted by the fraudsters in India is to over-invoice the exports, in which case the money comes back to India through 'Hawala' or by the smuggling of narcotics, gold, etc. Similarly, another method to defraud Customs is by under-invoicing the imports. In this case, money is transferred out of the country by 'Hawala'.

(iii) Fraudulent importers also misuse the provisions of value-based, advance-licensing schemes for importing raw materials into the country, and later for selling the same at huge profits in the black market.

Table VIII gives the latest figures in respect of the value of seizures under the Customs Act.

TABLE VIII

(Value Rs. in Crores - a Crore is ten million).

NAME OF ITEM	1994-95	1995-96	1997	1998 (to August)
Value of seizures (smuggling)	587.46	648.59	539.96	256.18
Duty value of evasion cases	66.83	364.87	143.98	73.01
Total	654.29	1,013.46	683.94	329.19
Seizures of major Commodities	1994-95	1995-96	1997	1998 (to August)
Gold	60.8	56.76	54.59	30.25
Foreign currency	33.26	51.53	53.05	26.77
Synthetic yarn and fabrics	13.78	22.62	21.67	7.41
Electronic items	57.24	51.07	24.45	5.78
Narcotics	89.7	73.31	41.32	12.9
Narcotics (International value)	NA	1,250.79	765.33	209.59
Chemicals	2.68	1.92	3.99	14.77
Agricultural produce	NA	4.26	5.58	2.6
Ball bearings	NA	5.43	12.63	5.05
Machinery & parts	NA	23.74	32.42	16.96
Others including vehicles/vessels/aircraft	330	357.95	290.26	133.69
Major commodities in respect of duty evasion cases	1994-95	1995-96	1997	1998 (to August)
Electronics	NA	21.23		0.01
Synthetic yarn and fabrics	NA	13.42	8.73	11.95
Machinery & parts thereof	NA	2.15	1.75	2.29
Chemicals	NA	6.94	2.05	1.87
Others	NA	321.13	131.45	56.89

V. DRUG ABUSE AND DRUG TRAFFICKING

This is perhaps the most serious (organised) crime with economic overtones affecting the country, being truly trans-national in character. India is geographically situated between the countries of the Golden Triangle and Golden Crescent, and is a transit point for narcotic drugs produced in these regions, to the West. India also produces a considerable amount of licit opium, part of which also finds place in the illicit market in different forms. Illicit drug trade in India centres around five major substances, namely; heroin, hashish, opium, cannibas and methaqualone. Seizures of cocaine, amphethamine and LSD have not been known, and if occur, are insignificant and rare.

The Indo-Pakistan border has traditionally been most vulnerable to drug trafficking. In 1996, out of the total quantity of heroin seized in the country,

64% was sourced from the "Golden Crescent". The Indo-Mynamar border is also quite sensitive but the percentage of seizures from there is much smaller. The Indo-SriLanka border has also started contributing considerably to the drug trade.

The seizure of narcotic drugs from 1991 to 1995 and the persons involved in the trade is indicated in Table IX. In 1996, 13,554 persons were arrested under the Narcotic Drugs and Psychotropic Substances Act (NDRS). Out of them, 130 persons were of foreign origin. Eighty persons were detained under the NDPS Act in 1991; Eighty each in 1992 and 1993; 123 in 1994 and 89 in 1995.

India has a draconian anti drug law - the Narcotic Drugs and Psychotropic Substances Act 1985, which provides a minimum punishment of 10 years for offences under this Act. The conviction rate in drug offences is rather low. It was 48.8% in 1995. The acquittals mainly result due to non-observance of statutory and procedural safeguards, i.e. the enforcement officer failing to volunteer themself for personal search before conducting the personal or house search of the accused, or failure in offering to have the accused searched by a Gazetted Officer or a Magistrate. It is being contemplated to amend the Act to plug procedural loopholes and to calibrate punishments by grouping the offences.

Investigative skills need to be honed and trials expedited. Inter-agency exchange of information amongst the countries by the quickest possible means, coupled with expeditious extradition proceedings, would prove helpful in curbing the drug menance. India has signed bilateral agreements with the USA, UK, Myanmar, Afghanistan, UAE, Mauritious, Zambia and the Russian Federation for drug control.

VI. CORPORATE FRAUD (THEFT & FALSE ACCOUNTING)

This consists of the formation of limited companies which will then obtain large quantities of goods on credit, in what would appear to be a normal commercial deal. The supplies are then secretly re-routed to other corporate entities or sold at 'knockdown' prices. The proceeds from the sale are then passed back to the controllers of the fraud, whose names and antecedents in most cases do not appear anywhere in the company documentation. The main difficulty lies in being able to differentiate between a deliberate operation of such a company and the activity of a wholly legitimate concern; which falls upon hard times owing to economic recession or a fall in commercial demand for its products. Once the proceeds from the crime have

TABLE IX

Drug Type	1991	1992	1993	1994	1995
Opium	2145	1918	3011	2256	1183
Marijuana	52633	64341	98867	187896	57584
Hashish	4413	6621	8238	6992	3073
Heroin	622	1153	1088	1011	1251
Mandrax	4415	7475	15004	45319	16838
Persons Arrested(No.)	5300	12850	13723	15452	14673
Persons Prosecuted (No.)	5546	7172	9964	9154	12918
Persons Convicted (No.)	855	761	1488	1245	2456

been secured, the directors of the company allow it to be liquidated and start another company in another town using the same method. During the year 1992-93, the British Serious Fraud Office was investigating fraud cases of this nature where total losses exceeded 5,300 million pounds.

In India it is very easy to register a company, private or limited, or a partnership concern. Inter-company transactions are established with a view to defrauding income tax authorities. In banks also corruption invariably plays a part, as in most of such deals, certain officials of the departments/banks concerned are compromised.

With the liberalisation of the Indian economy, positive developments in the stock exchange, primary share/securities markets, foreign investments, opportunities for joint ventures abroad etc., there has been a sudden spurt in demand for credit/finance from the corporate world. Unfortunately, this has also resulted in a growing incidence of corporate frauds which can be clubbed in the following categories :

(i) *Frauds in Public Issue of Shares*: Many private limited companies have floated the public issues of shares. On receipt of application money, the shares have not been allotted. At times, against the public issue of shares, bridging loans have been obtained from the banks. The funds so obtained have been diverted to the front companies for various other purposes. One securities scam on a huge scale took place in the country and will be discussed under bank fraud.

(ii) *Non-banking Financial Companies, Plantation Companies and Chit Funds*: In the recent past, there has been a mushroom growth of NBFCs, Teak/Agro Plantations, Chit Funds, etc. These promised very high and attractive returns on investments made with them. Funds thus collected have been diverted for other purposes and most of these companies have become defunct.

(iii) *Imports into Bonds*: Gold, as an unfinished product, is imported into bonded warehouses by specified agencies without payment of Customs duty. From the bonded warehouses, gold is then issued to export-oriented units for manufacturing finished products for exports. However, it has been observed that in a large number of cases, gold was found to have been diverted to the local markets for huge illegal profits.

VII. BANK AND SECURITIES SCAMS

All the free market economies are based, to a large extent, on trust. Indeed, without a degree of trust, it is doubtful whether any of the instruments of the free market economy would work successfully. At the heart of that trust lies the reputation of the banking sector. All international trade is conducted on a documentary basis ; bills of exchange, certificates of deposit, bills of lading, letters of credit, cheques, bank drafts, telegraphic transfers and collateralised lending, to name but a few of the financial documentary services provided by banks.

Apart from the obvious kinds of fraudulent activities to which the banking sector is exposed and well-attuned to ie cheque and credit card fraud, forged credit documentation etc, banks are increasingly concerned about the egregious use of their

computer systems by dishonest employees or criminal outsiders to obtain cash.

In the last two decades, India has seen a transformation in banking from class-banking to mass-banking. There has been a phenomenal growth in banking - both in terms of size and activities/businesses. This large scale expansion has not been without attendant risks. It has brought in its wake, dilution in the quality of various services, weakened supervision and control mechanisms in many banks. In 1976, commercial banks reported to the Reserve Bank of India 930 cases of fraud involving an amount of about Rs.9 Crores. During 1990, these figures had gone up to 1785 cases of fraud involving amounts more than Rs.110 Crores. The public sector banks had reported a total number of 24,918 cases of fraud involving an amount of Rs.512 Crores for the period from 1976 to 1990.

Analysis of the fraud cases reported by banks to the Reserve Bank, however, broadly indicates that frauds perpetrated on banks could be classified into the following categories :

(i) Misappropriation of cash tendered by the bank's constituents, and misappropriation of cash in remittances.
(ii) Withdrawals from deposit accounts through forged instruments.
(iii) Fraudulent encashment of negotiable instruments by opening an account in a fictitious name.
(iv) Misappropriation through manipulation of books of accounts.
(v) Perpetration of frauds through clearing transactions.
(vi) Misutilisation of lending/ discretionary powers, non-observance of prescribed norms/procedures in credit dispensation etc.
(vii) Opening/issue of letters of credit, bank guarantees, co-acceptance of bills without proper authority and consideration.
(viii) Frauds in foreign exchange transactions, mainly through non-adherence to Exchange Control Manual Provisions.

Category-wise, classification of frauds reported by the 19 Public Sector Banks to the R.B.I. during the period from 1/1/90 to 30/6/91 is given in Table X. The perpetration of frauds are mainly attributable to :

(i) Laxity in observance of the systems and procedures by the operational staff and also by supervisory staff.
(ii) Over-confidence in the bank's constituents, who often indulge in breach of trust; and
(iii) Frauds committed by unscrupulous constituents taking advantage of the laxity on the part of the officials in the observance of established time-tested safeguards.

An expert committee has undertaken the task of devising ways and means for tightening regulatory procedures, as well as for devising effective countermeasures for the prevention of bank fraud. The committee has recommended that steps be taken by the bank authorities in the following areas :

(i) Matter of handling cash, valuables and other negotiable instruments to stop diversion of scarce credit resources for unrelated purposes, and for regulating the growing tendency to use banking channels for money laundering etc.
(ii) Prevention of fraud in investment portfolios.
(iii) Prevention of fraud in advances portfolios.
(iv) Prevention of frauds in the area of foreign exchange operations.

TABLE X

(Amount in Crores of Rupees)

Category	No. of frauds (1990)	Amount (1990)	No. of frauds (1991 to June 30)	Amount (1991 to June 30)
Fraudulent encashment, manipulation of books of account and conversion of property	729	28.28	345	8.64
Cheating and forgery	215	5.7	134	4
Misappropriation or criminal breach of trust	162	4.81	89	6.04
Negligence and cash shortage	53	0.2	25	0.06
Unauthorised credit facility extended for illegal gratification	18	3.12	7	0.43
Irregularities in foreign exchange transactions	11	0.9	10	0.19
Others	54	5.05	53	4.94

(v) Prevention of frauds in a computerised environment.

(vi) Ensure the effectiveness of existing systems of inspection, audit and control returns.

(vii) Tone up the vigilance set up in the public sector banks.

(viii) Co-ordination amongst various agencies like the Central Bureau of Investigation, Police and the Bank Vigilance machinery to ensure prompt detection and effective prosecution of fraud cases.

A. Fraud in the Securities Market

This subject is as old as the markets themselves. The decision to buy or sell a particular security is based, in many cases, upon nothing more than a representation of its future value made by a promoter of the share itself. Therefore, the potential for a fraudulent share offering is very high, and it is with the aim of preventing a fraud in the sale of securities that all mature free-market economies design their securities legislation. However, such fraud prevention activities cannot be brought to bear on the determination of the specific worth of an individual stock offer, as this would impose an artificial standard on the working of a free commercial market. In other words, it is axiomatic in free market economies that investors must be free to make imprudent commercial decisions which act to their financial detriment. The need to ensure a continued uniform policy of anti- fraud surveillance of the international securities market has become more acute in the last decade, following a greater degree of internationalisation of the capital markets.

The main areas of fraudulent activity, which possess the greatest degree of commercial risks, in the trade of securities are :

(i) *Market Manipulation*: individuals or groups operating in such a way as to bring undue influence to bear, thereby affecting the value of a share.

(ii) *Insider Dealing*: is a criminal activity whereby an investor, knowing that a bid is about to be made for a particular stock or having

information gained from connections with the management of a firm which could directly affect the price of a particular share, makes a considerable short-term profit by buying as much of the stock as they can acquire prior to the announcement of the bid, and then sells the same once the share value has risen.

(iii) *Trading of Worthless Securities*: An example is to famous Wall Street crash of 1929 before which approximately 20 million Americans took advantage of the post-war prosperity and tried to make a fortune on the stock market. Between 1918-1929, out of the USD $50 billion worth of new securities offered to the public, half proved to be worthless. Variations of this fraud can be the well-known "PONZI" scheme to "Pyramid" schemes or chain-letters or the lotteries by "Caritas" of Romania.

The investment in the securities market has provided organised crime with a fertile ground for fraudulent activity. Around 1990, India and a few developing countries have started to restructure their economies. Economic and fiscal policies have taken a turn towards liberalisation, deregulation, non-control and non-licensing, and the economy has opened up resulting in macro-adjustments.

As a part of the liberalisation process, foreign exchange regulations were relaxed, multinational companies and overseas corporate bodies were permitted to invest in Indian companies (up to 51 percent barring a few selected sectors) and foreign banks were allowed to operate. Under the same process, there is a talk of the services and insurance sectors being opened up. Public sector banks were allowed to set up Mutual Funds and Portfolio Management Schemes. Public sector companies were permitted to raise funds from the public through bonds. Government encouraged companies both in the private and public sectors to reduce surplus staff through 'golden handshakes' or other similar schemes. This resulted in considerable sums of money entering the market.

The weakness of the securities exchange mechanism was exposed when a massive security scam, running into several billions of rupees, surfaced in April 1992 involving the Standard Chartered Bank, the National Housing Bank, many other nationalised banks, Mutual Funds and other financial institutions. The committee (CBI) set up by the RBI estimated the loss at Rs.40,000 million (US$ 1,279.63 million). In the estimation of the CBI, the loss has been Rs.83,830 million (US$ 2,665 million). This case was a deliberate and premeditated misuse of public funds through various types of security transactions, with the sole object of illegally siphoning funds from the banking system and public sector undertakings.

After the above experience, the Indian Government set up a Securities and Exchange Board of India (SEBI) with the sole objective of regulating the shares and securities business. Needless to say, certain individuals and institutions involved in the above mentioned securities scam are facing prosecution in a special court.

VIII. INSURANCE FRAUD

As large funds are available with insurance companies, they are liable to be subjected to a high degree of fraudulent activity. Competitiveness of the insurance market is such that rather than attract a reputation for being unsympathetic to client claims, the companies will pay out

claims which they know may be made by professional fraudsters, but will be pursued vigorously by the claimants. However, the smaller but honest claims, more difficult to pursue, will suffer because the companies feel that the claimants will eventually get tired of the remorseless bureaucracy and abandon the claim.

The insurance salesmen indulge in widespread mis-selling of financial policies in order to enhance their own commission income and to ensure a regular cash-flow of new capital. In India, at the moment, both the life insurance and general insurance are in the public sector and are, therefore, subject to strict government regulations and audit requirements. However, small and medium scale frauds, do sometimes take place. These frauds are mostly related to the filing of false or exaggerated claims on the insurance companies. Most of the times, these frauds are perpetrated in collusion with the employees of the insurance companies like the surveyors and field agents, who, for corrupt motives, tailor their reports to the advantage of the claimants.

IX. FRAUD IN INTERNATIONAL TRADE

Fraud in the international trade takes the following forms :

(i) Shipping of adulterated products.
(ii) Theft of goods in transit, as in the Nigerian Oil Fraud.
(iii) Hijacking and piracy at sea.
(iv) Deviation of ageing, low-value ships.
(v) Phantomship fraud in which corrupt employees, with the registries of such countries as Panama and Honduras, indulge in false registration. The high-value cargo simply disappears with the ship, which later appears again under a new name and guise.
(vi) Product counterfeiting, whereby cheaper and less stringently produced products are manufactured to lower tolerance levels and are introduced in to the market. Counterfeit aircrafts parts or bogus pharmaceuticals with lower chemical standards, are sold. It is estimated that 6 percent of the total world trade involves trading in counterfeit products.

X. TAX EVASION & MISUSE OF TAX HAVENS

With the passage of time, the imposition of taxes has become as much a political means of social and economic control, as it is a measure of raising revenue. The dichotomy expressed, in the moral conundrum of the difference between lawful tax avoidance (generally perceived to be the legitimate work of *bona fide* tax advisors) and criminal tax evasion (the illegitimate activities of those who hide lawfully taxable proceeds from the fiscal authorities) has been reflected in the competing effectiveness of tax-shelters as opposed to tax havens.

Tax-shelters are a legal form of tax avoidance, expressed most usually, in the creation of a tax saving incentive for high-worth individuals, encouraging them to invest theoretically in socially responsible activities, or in schemes which attract a lower rate of tax. Since these provisions are subject to the changes in law and court rulings, they less popular than tax havens.

Tax-Havens are sovereign off-shore countries with an advanced degree of willingness to permit foreign, non-resident, high-rate taxpayers to deposit funds secretly behind anonymous corporate fronts, or by forming highly complex trust arrangements.

Since the foreign depositors are likely to face considerable difficulties in their home jurisdictions, an obsessive level of secrecy and the guarantee of complete discretion in the handling of clients affairs are the hallmarks of the most successful tax havens. Such havens have been one of the main influences on the proliferation of channels for moving criminally generated money, whether it be in the form of the proceeds of drugs, crime or for terrorist purposes. A typical example of the transfer of money to off-shore tax havens is the transfer of money from the USA to the Bahamas, from where it ultimately lands in Swiss Banks.

XI. MONEY LAUNDERING & "HAWALA"(UNDERGROUND BANKING)

Money laundering means the conversion of illegal and ill-gotten money into seemingly legal money so that it can be integrated into the legitimate economy. Proceeds of drug-related crimes are an important source of money laundering worldwide. Besides this, tax evasion and the violation of exchange regulations play an important role in merging this ill-gotten money with tax-evaded income, so as to obscure its origin. The aim is generally achieved via the intricate steps of placement, layering and integration, so that the money so integrated in the legitimate economy can be freely used by the offenders without fear of detection.

Besides the traditional methods of money laundering, with the advent of the Internet, cyber-laundering by means of anonymous digital cash has also come to the fore. E-cash may facilitate money laundering on the Internet. Money laundering thus poses a serious threat world over, not only to the criminal justice systems of countries, but also to their sovereignty.

The United Nations Convention Against Illicit Traffic in Narcotics Drugs and Psychotropic Substances Act 1988 (known as Vienna Convention), to which India is a party, calls for criminalisation of laundering of the proceeds of drug crimes and other connected activities, and for the confiscation of proceeds derived from such offences. There are no reliable statistics as to how much money is laundered in India, but the problem is certainly serious and a lot of drug money is being laundered and integrated into the economy. The tainted money is being accummulated by organised racketeers, smugglers, economic offenders and antisocial elements, and is adversely affecting the internal security of the country. In order to curb the menance of money laundering, the Government of India is in the process of enacting the Money Laundering Prevention Act 1998. In the proposed Act, money laundering has been defined as:

(i) Engaging directly or indirectly in a transaction which involves property i.e. proceeds of crime; or
(ii) Receiving, possessing, concealing, disguising, transferring, converting, disposing of within the territory of India, removing from or bringing into the territory of India, the property i.e. proceeds of crime.

"Crime", as defined in the Act, covers several Penal Code offences, i.e. waging war against the Government of India, murder, attempted murder, voluntarily causing hurt, kidnapping for ransom, extortion, robbery, dacoity, criminal breach of trust, cheating, forgery, counterfeiting currency, etc. Also for certain provisions of the Prevention of Corruption Act 1988; NDPS Act 1985; Foreign Exchange Regulation Act 1973; and the Customs Act 1962. Thus, crime has been defined very comprehensively in the Act. The money generated through crime is liable to be

confiscated by the State.

Illegal currency transfer via non-banking channels is called "Hawala". It is an underground banking system. Secret flows of money can take place in free currency areas, as well as in areas where currency conversion restrictions are practised, due to the shortage of foreign exchange. An example of the operation is as follows - somebody in the USA deposits $1000 with an underground banker for a payment to be made to an Indian in India. The US underground banker contacts their counterpart in India immediately via phone, and sends some coded message for payment to the Indian recipient. The hawala operator in India would contact the recipient and fix a meeting place. The recipient, in the meanwhile would have got instructions on the telephone about the codeword s/he has to exchange with the hawala operator. Thus, the hawala operator in India would, after the exchange of codeword, hand over money to the Indian recipient. Of course, the hawala operator in the USA would charge some fee for the services rendered. There is no physical transfer of money in hawala transactions, as in the regular banking channels. This channel is generally used by drug traffickers, smugglers and kidnappers.

Basically, the system operates on an ethnic network and is based on mutual trust. The network may include more than three or four countries. The principal operators engage agents and sub-agents in various countries for collection and disbursement of money. Hawala is widespread in India. Families who have members earning abroad are clients of the system. The dangerous aspect of the hawala system is the nexus between the hawala and illicit arms smuggling, drug trafficking and terrorist crimes.

Investigations in hawala-related crimes are conducted under the Foreign Exchange Regulation Act. Even though the word 'hawala' has not been defined in FERA, the essence of the Act is that any person who retains foreign exchange abroad or sends foreign exchange abroad, without the Reserve Bank's permission, is violating the provisions of the Act. In the liberalised economic atmosphere, the Government of India has felt it necessary to ease restrictions in the flow of foreign exchange, both into and out of the country. Thus, a new draft Act called Foreign Exchange Management Act (FEMA) has recently been introduced in the Parliament to replace the FERA. After the passage of the Act, foreign exchange offences will acquire the character of civil offences, as against criminal offences as is at present. It is hoped that with ease in transactions relating to foreign exchange after the passage of FEMA, the propensity to make use of hawala channels will decrease.

Table XI shows figures relating to crime involving illegal transactions in foreign exchange in India. Table XII shows the data relating to cases registered, offenders prosecuted, etc. with regard to foreign exchange offences in India.

XII. COUNTERMEASURES

Increase in international law enforcement activity is having a very positive result and the doomsday-based scenario is changing. Organised crime can never be eradicated, but it can be capped and controlled. However, there is much to be done in the form of assisting less developed countries with expertise, guidance and encouragement. Since work against the Mafia is resource-intensive and expensive, it requires talented and skilled personnel to be able to travel and operate with the same freedom as the criminals.

TABLE XI

Year	No. of		Currency Seized		Currency confiscated		Fines	
	Searches /Raids	Seizures / Recoveries	Indian	Foreign	Indian	Foreign	Imposed	Realised
1991	2319	1482	11.8	3.6	1.1	1.5	-	2.8
1992	1215	738	3.9	2.5	2.4	2.2	-	2.3
1993	1234	843	6.7	4.5	3.1	3	-	3.2
1994	1540	1046	9.8	8.1	1.8	2.2	27.8	3.4
1995	1175	832	10.2	6.5	1.2	2.3	10.6	2.2

(Cases under FERA in Indian Rs. inCrores)

TABLE XII

NAME OF ITEM	1994	1995	1996	1997
Searches & Seizure				
Searches conducted	1540	1175	1164	1238
F.E. seized*	314.26	541.34	724.42	555.48
I.C. seized*	974.78	1,021.02	1,083.16	1,269.49
Total of F.E & I.C	1,289.04	1,562.36	1,807.58	1824.97
Investigations				
Initiated	6,601	5,633	5,486	5,511
Disposed	6,300	4,652	4,347	5,219
SCNs issued	2,771	2,456	2,291	2,721
Amount involved in SCNs issued*	76,265.32	144,728.58	39,095.21	209804.07
Penalties				
Imposed*	2,775.32	1,067.29	7,804.19	8380.59
Prosecutions				
Launched	264	202	101	92
Disposal	265	125	64	49
Arrests				
Persons arrested	365	228	213	159
Cofeposa				
Orders issued	107	62	38	49
Detained	74	67	43	39

(* in lakhs of Rs.)

A. Steps at the International Level

Some of the steps which have been taken by the international community and individual nations as counter measures against economic crime are still in their initial stages. As more nations participate in taking steps against this type of crime, there is every hope that the world economic order will become more stabilised.

International Co-operation

Efforts have been made in the last five years for increasing co-operation between the national police forces and the customs

and excise services. It has been matched by the efforts of government departments, legislators and judiciaries particularly, the Member States of the European Union, G-7 Group of States, the OECD and the British Commonwealth, in providing the machinery for assisting each other in the pursuit of suspected and convicted criminals, and for their repatriation, prosecution, also for the recovery of the proceeds of crime. Given the disparities between domestic legislation, judicial systems, penal codes and the application of domestic law to foreign citizens, the task of harmonising practices internationally is immensely complex and results have been mixed. However, the pace of international co-operation has quickened significantly during the last five years.

Some of the useful international conventions in this direction have been: Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime; European Community Directive on Prevention of the Use of the Financial System for Money Laundering; European Convention on Extradition. In this direction, some of the other steps recommended for the collective action of the nations are:

(i) Development and regular upgrading of networks of national contact points on police/customs co-operation and judicial co-operation.
(ii) Exchange of information regarding the scale and trends of organised crime.
(iii) Regular exchange of information on the provisions and effectiveness of national laws relating to organised crime.
(iv) Continuing study of the scope to simplify the legal arrangements for judicial co-operation between States, to overcome difficulties associated with differences in national laws such as offence definition and prosecution time limits.
(v) In relation to money laundering, further study of the desirability and practicability of applying the obligation to report suspicious transactions (currently applicable to financial institutions) to other relevant professions and organisations, and the sharing of information derived from disclosures.
(vi) Exchange of experience and information about witness protection methods and consideration of effective measures to protect other persons involved in the administration of justice.

Confiscation

International conventions, as well as corresponding domestic legislation relating to confiscation of the illegal proceeds of serious crime, have their origin in measures designed to stop the criminals from being able to retain and use the proceeds of their criminal activities. A key element in the national and international strategy is to deny criminals the huge profits derived from organised crime, in the form of laundered money. The aim of measures authorising the confiscation of laundered money are :

(i) *Deterrent:* making organised crime less profitable.
(ii) *Preventive:* stopping reinvestment of the proceeds in further criminal activities.
(iii) *Investigative:* enable investigators to follow the money trail, thereby making it easier to identify and dismantle criminal organisations.

As in all aspects of international organised crime, co-operation is vital if confiscation measures are to be successful. Major criminals are skilled in concealing

and putting their ill-gotten wealth beyond the reach of the law through the use of modern banking, and communications technology and practice.

In this regard, some of the major international and national efforts have been in the form of: European Convention on Extradition (fiscal offences) Order 1993; United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances; the Prevention of Terrorism (Temporary Provisions) Act 1989 passed by UK; Vienna Convention 1988; and the proceedings of the Basel Committee on Banking Regulations and Supervisory Practices (1990).

National crime control organisations like FINCEN of the USA, NCIS Financial Intelligence Unit of UK, TRACFIN of France and AUSTRAC of Australia are some of the new specialised agencies making use of financial intelligence and data-communications in the field of economic crime. In India, the DRI (Directorate of Revenue Intelligence) and the EIB (Economic Intelligence Bureau) have been collecting intelligence, as well as investigating serious cases of economic crime and spearheading efforts to plug the loopholes in existing laws, they have also proposed enactment of new laws like FEMA (Foreign Exchange Management Act) and the anti-money laundering legislation.

Other Measures

Some of the other measures required for the effective fight against the economic crime are :

(i) *Steps to provide teeth for regulators and international standards of practice*: Steps should be taken to ensure that criminals are not able to take advantage of imperfect investigative co-operation, a lack of harmonisation between domestic legislation, bank secrecy and absence of regulations, etc. Confiscation procedures should be swift and effective with the result that the accumulated proceeds from organised crimes, and assets acquired subsequently from them, are hard to replace.

(ii) *Steps for making domestic and international anti-money laundering systems effective.*

(iii) *Steps for protecting the integrity of the financial system*: This involves measures to protect the transparency and integrity of economic and financial systems. Criminal penalties are often applied to reinforce the integrity or transparency of the financial system, while regulatory policies are used to detect or deter criminal activities.

(iv) *Steps for motivating banks and financial institutions to co-operate with law enforcement agencies.*

(v) *Steps for improved auditing practice:* Such auditing techniques can be applied as a part of the organisational control framework, where they form part of activities described as internal audit, inspection or monitoring.

(vi) *Steps for strengthening corporate governance:* Weaknesses like dominant chief executives with unfettered powers, insufficient checks and balances over executive directors, no clear role for the board of directors and for non-executive directors, inadequate control over levels of executive remuneration and insufficient disclosure of what is actually happening to the business, are some of the areas which must be addressed.

(vii) *Mobilisation of public opinion:* Public awareness of the dangers involved in various facets of economic crime has yet to be taken up by the media and politicians to a level where the public starts taking an active interest, and is willing to accept reasonable regulatory efforts required to tackle this crime.

B. Steps for India

In India, the concept of economic crime is still in its initial stages of being understood and appreciated. Understandably, there are several difficulties in combating economic crime, not the least of which is lack of awareness in government circles, media, investigating agencies and the general public about the extent and corrosive effect of economic crime on Indian society and its institutions. Violent crime makes headlines, consumes media attention and raises public furore.

However, since the early 1990s, after the liberalisation of the economy and discovery of serious financial scandals/scams in its wake, which adversely affected a large number of private investors, the subject has started receiving serious attention from the Government and Parliament.

Existing laws have been found to be totally inadequate in dealing with economic crime, as they target individuals and not the criminal groups or criminal enterprises. It is therefore imperative to enact special laws covering each aspect of economic crime, i.e, the criminal group itself and its members or associates, as has been done in many countries. At the same time, there is a need to deprive the criminal groups and their co-conspirators of the ill-gotten gains of their criminal enterprises by the enactment of effective confiscation laws.

Strengthening of Criminal Laws

(i) *Substantive law:* India does not have special laws to control/suppress organised crime, including economic crime. However, there has been a move in this direction. The Government has brought before the Parliament draft bills for economic offences in the field of foreign exchange and money laundering (FEMA and Money Laundering Prevention Bills) which are soon expected to become law. Earlier, SEBI (Securities Exchange Board of India) legislation was passed in order to regulate the securities market after a famous securities scam. Thus, the Indian Government and Parliament is alive to the emerging situation in the field of economic crime and suggestions for modification of various laws already in place are also being given careful consideration.

(ii) *Procedural Law:* It is in the field of procedural law that considerable improvement is required in India. Police are a 'State Subject' in India, with the result that many cases having inter-state ramifications get stalled in legal/jurisdictional wrangles.

Under section 167 of the Code of Criminal Procedure, the police are required to file charge-sheets within 90 days from the date of arrest, failing which the accused is liable to be freed on bail. This often results in charge-sheets being filed on the basis of 'half-baked' investigations.

Bail provisions in India are quite liberal and "bail and not the jail" is the rule pursuant to a Supreme Court order. Legislatures should intervene to make the bail provisions more stringent. The provision for anticipatory bail (section 438 CrPC)

in grave crimes (i.e. punishable with 7 years or more) should be deleted. Further, no ex-parte bail orders should be passed by the judiciary in grave crimes without hearing the public prosecutor.

(iii) *Evidentiary Law:* The Indian police are legally handicapped in collecting foolproof evidence against criminals due to certain archaic provisions of evidentiary law. According to section 25 of the Evidence Act, a confession made before a police officer is not admissible in the court, resulting in valuable evidence gathered during questioning of the accused persons being lost. Such confessions are admissible in most countries of the world. Of course, the courts should look for material corroboration of such confessions.

There is no law in India which legally binds an accused to give specimens of handwriting, photos, etc to the police, even under the orders of the court. The result is that valuable evidence is beyond the ambit of the investigating agency. A provision should be incorporated in the Criminal Procedure Code legally binding the accused to give handwriting samples etc, if required by the investigating agency.

Miscellaneous

(i) *Monitoring of Telephones and Computer Networks etc*: These facilities are freely used by gangs in organising criminal activities. Section 5 of the Indian Telegraph Act 1885 empowers the Central Government or the State Government to monitor telephones and intercept calls for a period of 60 days. However, the evidence thus gathered is not admissible in the trial. In the USA, telephones can be monitored by a law enforcement agency under the order of the Federal Court, and the evidence so gathered can be used in the trial. The Indian Telegraph Act and the proposed Computer Law should have provisions to provide for admissibility of evidence gathered by interception of telephonic conversation. Similarly, evidence of computer print-outs of telephone calls or fax messages sent or received on a particular telephone terminal should be made admissible as evidence.

(ii) *Under-cover Agents / Decoys*: Law enforcement agencies use under-cover agents in most countries to gather information about the criminal gangs, study their *modus operandi* and evaluate their future plans and strategies. This information is used both for preventive and investigative purposes. In the USA, evidence gathered by undercover agents is admissible as evidence - whether it is in the form of their oral testimony or in recorded audio or video form. Indian law does not permit the same. It is suggested that the law should be amended to provide for admissibility of such evidence.

(iii) *Witness Protection Programme*: In cases of economic crime where influential businessmen and politicians are involved, the witnesses are reluctant to depose in open court for fear of reprisal at the hands of criminal syndicates. The cases of threat or criminal intimidation of potential witnesses are too many to be recounted. As the courts use the evidence on record for determining the guilt of the accused, it is essential to protect the witnesses

from the wrath of the criminal gangs. Hence, legal and physical protection should be provided to crucial witnesses in sensitive cases, so that they can depose fearlessly in court. After the enactment of the Witness Security Reform Act 1984, the USA authorities secured convictions of several notorious Mafia leaders. The US Witness Protection Programme essentially involves changing the identity of the witness, relocation, physical protection (if needed) and financial support until such time as they become self-supporting, subject to the condition that they depose truthfully in court. It is extremely necessary to provide protection to witnesses in India which, to begin with, could cover cases of International/National/State importance involving criminal syndicates.

(iv) *Confiscation of Proceeds of Crime*: The main object of economic crime is the acquisition of money/assets. It is through money-power that gangs corrupt criminal justice agencies and political leadership. A stage comes when gangs put a question mark on the existence of the State. It has already started happening in small pockets of India. It is therefore, essential to deprive the criminal gangs of their ill-gotten wealth through stringent legislative measures. The laws relating to confiscation of the proceeds of crime are found in parts of several statutes. Some of the important Acts relating to this are as follows :

(i) Sections 102 and 452 of CrPC;
(ii) Sections 111 to 121 of the Customs Act 1962;
(iii) Section 68 of the Narcotic Drugs and Psychotropic Substances Act 1985;
(iv) The Criminal Law (Amendment) Ordinance 1944;
(v) Foreign Exchange Regulation Act 1973; and
(vi) Smugglers & Foreign Exchange Manipulations (Forfeiture of Property) Act 1976.

Notwithstanding the existence of the aforesaid legal provisions, it is a well known fact that organised criminal gangs have acquired huge assets. The annual turnover of the Dawood Ibrahim Gang is estimated to be about Rs.2000 Crores a year. Several Bombay smugglers have invested hundreds of crores in real estate and other front businesses. This clearly shows the inadequacy of the current laws. Hence, consolidation and strengthening of laws regarding seizure/confiscation of proceeds of crime is essential. It must, however, be added that the provisions in the Narcotics and Psychotropic Substances Act 1985 are quite stringent, but this Act is applicable only to drug related money and not to the money amassed through other crimes.

(v) *Immunity from Criminal Prosecution*: As per section 306 of the CrPC, on the request of a police officer or a public prosecutor, the court may tender pardon to an accused at the investigation or trial stage, subject to the condition of them making full and true disclosure of facts and circumstances concerning an offence. This provision is applicable in offences punishable with imprisonment of seven years or more. The witnesses are not overly keen to turn approvers (State Witnesses), as they have to remain in jail till the conclusion of trial. As the trials take

years, there is little incentive for them to accept immunity from the State. As the evidence in conspiracy cases is rather weak, approver testimony helps in securing convictions. It is suggested that the law should be amended to the effect that the approver will be released on bail soon after the conclusion of their testimony in court. This may encourage some accused to turn approvers.

(vi) *Presumptions against the Accused*: An accused is presumed to be innocent until proved guilty. The entire burden is cast on the prosecution to prove the guilt of the accused beyond reasonable doubt. Silence of the accused in a given crime situation, or his/her presence at the scene of a crime at or about the time of the crime's commission, is not presumed to be a circumstance against which they must explain. This casts an unfair and unreasonable burden on the prosecution.

The Prevention of Corruption Act 1988 (Section 20) provides for a situation where "if it is proved that an accused person has accepted or obtained or has agreed to accept or obtain for himself or for any other person any gratification..... it shall be presumed unless the contrary is proved that he accepted or obtained..... gratification or valuable thing as a motive or reward.....". Such provisions should also be included in other preventive and regulatory economic legislations.

(vii) *Need for Special Courts*: Punishment should visit the crime within a reasonable time if it is to have any deterrence value. The Anglo-Saxon legal system prevalent in India, although seemingly fair and equitous jurisprudence, in practice [due to interminable delays], has tended to be ineffective, unfair, pro-rich and pro-influential. About 770,000 criminal cases are pending trial for over 8 years. This does not include cases pending in the High Courts on appeal/revision, all over the country. The average time of trial taken in grave offences in India is much higher when compared to countries like Japan, where the average time taken is only about 3 months. Few anti-corruption cases in CBI have been pending trial for the last 20 years. More often than not, the accused public servant retires from service and sometimes even dies before the trial is completed. This has resulted in a situation where the investigating agencies get demoralised. It is, therefore, essential that more special courts are set up to try important cases of economic crime.

(viii) *Setting up of National Level Co-ordinating Body*: India has a federal structure in which the States have exclusive jurisdiction to investigate and prosecute criminal cases. The CBI comes into the picture very sparingly in cases of national importance. The police forces in the States gather intelligence. The police forces/concerned departments in the States are supposed to gather intelligence about criminal activities within their jurisdiction. Generally this is not shared by these agencies with other States or the Central Agencies. This insular attitude is equally true of the Central Investigative/enforcement agencies. It would, be advisable to setup a national level co-ordinating body outside of the gamut of present

enforcement agencies. The main function of this body should be coordination between the police forces of the different States and the Central Investigation Agencies in the field of economic crime.

(ix) *Setting up of Economic Offences Wings in Various State Police Forces*: Some State Police Forces in India have separate Economic Offences Wings. All State police forces have separate Vigilance/Anti-Corruption Directorates. However, political will is needed to make these strong and effective; lacking at the moment.

(x) *Common Data Base for Enforcement Agencies*: At the moment no mechanism or institutional arrangement exists for the collection of data regarding economic crime either at the Central or State Level. This hampers investigative efforts and perspective planning. It is suggested that on the pattern of FINCEN of the USA, a common database should be built up and stored in computers in India, which should also be accessible to all enforcement agencies through a network of computers. The National Crime Records Bureau can take up this job.

XIII. COMPUTER CRIME

Information technology today constitutes an integral part of daily life. In India, as in the rest of the world, computers have become an integral part of the fast developing society. Already computers are being used in banking, manufacturing, health-care, defence, insurance, scientific research, strategic policy making, law enforcement etc, apart from their routine use as office-automation and decision-support tools. Increasingly computers which transact huge amounts of business are linked to each other via networks. More than a hundred million electronic messages are transfered daily on the world's network. Banking networks transfer trillions of dollars daily on computer networks.

The computer revolution has a darker side. Most of the computer applications are likely targets for traditional crimes including theft, fraud, vandalism, extortion and espionage. They are also susceptible to new threats specific to computers and networks, such as computer viruses.

Though computerisation in India started 25 years ago, the use of computers, particularly in the service sector, is still very low as compared to world standards. The density of personal computers in the country is only 1.8 per thousand persons, as against the world average of 25 per thousand persons. Only 40 per cent of the computers are connected on LAN. There are quite a few large databases like railway reservation systems, airline reservation systems, the district information system of National Informatic Centre (NIC) etc, which are more of closed user groups in nature, with no outside and inter-connectivity.

Due to low-level computer use, the subject of computer related crime did not gain much importance in India. Nevertheless, as per the statistics gathered by the National Crime Records Bureau, 45 cases of computer crime have been reported so far. Most of the cases pertain to unauthorised copy of programmes/ software, and there are 15 cases mostly relating to alteration of data in the banking accounts maintained on computers. However, this may be just the tip of the iceberg. Difficulty of detection, evidence gathering and lack of knowledge on the part of investigative agencies in computer data processing are the main reasons for

the low number of solved computer crime cases.

The situation in regard to the use of computers in India is changing fast, and it is expected that the usage of computers in the country will reach 10 per thousand persons by the turn of the century. The Internet users in the country are also expected to increase from the present level of 80 thousand to about two hundred thousand. The concept of Internet and intranet is growing. Data processing and its component will be used as a tool in many areas such as tax administration, stock market and capital investment.

Computer crime can be defined as crime against an organisation or individual in which the perpetrator of the crime uses a computer for whole or part of the crime. Computer crime can be broadly divided into computer fraud and computer abuse. Computer fraud is any defalcation or embezzlement accomplished by tampering with computer programmes, data files, operations, equipment or media, resulting in losses sustained by the organisation or individual whose computer system was manipulated. Computer abuse is the improper use of computer resource provided by an organisation to the individual who misuses it.

XIX. CLASSIFICATION OF COMPUTER CRIMES

Classification of computer related crime as defined by OECD and expanded by the Council of Europe as :

(i) *Computer-related Fraud*: The input, alteration, erasure or suppression of computer data or computer programs, or other interference with the course of data processing that influences the result of data processing, thereby causing economic or possessory loss of property of another person, with the intent of procuring an unlawful economic gain for themself or for another person (alternative draft : with the intent to unlawfully deprive that person of their property).

(ii) *Computer Forgery*: The input, alteration, erasure or suppression of computer data or computer programs, or other interference with the course of data processing in a manner or under such conditions which would, according to national law, constitute an offence of forgery if it had been committed with respect to a traditional object of such an offence.

(iii) *Damage to Computer Data or Computer Programs*: The erasure, damaging, deterioration or suppression of computer data or computer programs without right.

(iv) *Computer Sabotage*: The input, alteration, erasure or suppression of computer data or computer programs, or interference with computer systems, with the intent to hinder the functioning of a computer or a telecommunications system.

(v) *Unauthorised Access*: The access without right to a computer system or network by infringing security measures.

(vi) *Unauthorised Interception*: The interception, made without right and by technical means, of communications to, from and within a computer system or network.

(vii) *Unauthorised Reproduction of a Protected Computer Program*: The reproduction, distribution or

communication to the public without right, of a computer program which is protected by law.

(viii) *Unauthorised Reproduction of a Topography*: The reproduction without right of a topography, protected by law, of a semiconductor product, or the commercial exploitation or the importation for that purpose without right, of a topography or of a semiconductor product manufactured by using the topography.

Optional List

(i) *Alteration of Computer Data or Computer Programs*: The alteration of computer data or computer programs without right.

(ii) *Computer Espionage*: The acquisition by improper means or the disclosure, transfer or use of a trade or commercial secret without right or any other legal justification, with intent either to cause economic loss to the person entitled to the secret or to obtain an unlawful economic advantage for oneself or a third person.

(iii) *Unauthorised Use of a Computer:* The use of a computer system or network without right, that is either :

(i) made with the intent to cause loss to the person entitled to use the system, or harm to the system or its functioning; or
(ii) causes loss to the person entitled to use the system or harm to the system or its functioning.

(iv) *Unauthorised use of a Protected Computer Program*: The use without right of a computer program which is protected by law and which has been reproduced without right, with the intent either to procure an unlawful economic gain for oneself or for another person, or to cause harm to the holder of the right.

XV. COMMON TARGETS OF COMPUTER CRIME

The most common targets of computer crime are :

- Military and intelligence computers may be targeted by enemies.
- Business houses may be targeted by their competitors.
- Banks and other financial institutions may be targeted by professional white collar criminals.
- Any organisation of government or service industry may be the target of terrorists.
- Any commercial, industrial or trading company may be the target of employees or ex-employees of competitors.
- Universities, scientific organisations, research institutions may be the target of students, industrial or business houses and other antisocial elements.

Finally, any computer user may be the target of crackers/hackers who do it sometimes for intellectual challenge, for revenge, for gain or even for fun.

XVI. PROBABLE PENETRATION POINTS

In computer crimes, hardware, software, data or communications are vulnerable. Below, some common data security loopholes are specified:

- Erroneous or falsified input data.
- Misuse by an unauthorised end user.
- Uncontrolled system access.
- Ineffective security practices.

- Procedural errors within the computer EDP Cell.
- Programme errors.
- Flaws in the operating system.
- Failure of communication system.
- Lack of job definition for employees.

XVII. PREVENTION OF COMPUTER CRIMES

Preventive measures should be taken by computer users to make it difficult for possible criminals to penetrate the system. There should also be a set of detection tools to identify instances where preventative tools cannot safeguard the system. First of all, threats which are expensive and critical should be prevented, they are :

(i) Large loss threats having potential to cause great financial distress to the organisation.
(ii) Threats which could stop or disrupt the effectiveness of the organisation for extended periods.
(iii) High visibility threats which could cause serious damage to the image of the organisation.
(iv) Habit forming threats which may lead the criminal from smaller to high level crimes, if not prevented at the initial stages.

XVIII. COUNTER-MEASURES FOR PREVENTION OF COMPUTER CRIME

Counter-measures should be aimed at attacking the various steps which are generally involved in the commission of computer crimes i.e. planning, execution, concealment and conversion stages of computer crime. Some of the steps are :

(i) Identify the potential perpetrator and penetration point(s).
(ii) Determine the magnitude of the risks for each type of threat.
(iii) Identify the most probable threats.
(iv) Select the method of prevention i.e. internal controls, audit, security force and surveillance.

Internal Controls

These include access control, accountability, audit trails, error message follow-up, anticipation controls, data validation, output controls etc.

Audit

Auditing includes promoting a strong audit image, performing surprise audits, adopting audit procedures for electronic data process, designing systems with built-in-audit-jacks, risk analysis, studies and periodical reviews.

Security Force

This would secure the physical safety of the personnel and equipment, and the safety of the data. Some of the safety measures would include posting of dogs, security of the visible area, installation of cameras, censors, TV monitors, warning signs and use of security software having password protection, access control, virus check, copyright protection etc.

Surveillance

Some methods for the most effective use of first-line supervisors to foster anti-computer crime environments include detecting and reprimanding employees for minor policy violations, detecting breaches of control functions or security procedures, creating an environment for which computer crime is difficult to perform, and counselling the staff on matters like integrity, loyalty and conscientiousness.

XIX. THE LAW RELATING TO COMPUTER CRIMES

Interpol has identified the following as offences or crimes which can be classified as computer-related crimes :

(i) Unauthorised access or interception and theft of data (hacking, theft of data, interception of data, time theft and others).
(ii) Alteration of computer data (logic bombs, Trojan horse, virus, worms and others).
(iii) Computer-related fraud (automatic teller machines and cash dispensers, credit cards, computer forgery, gaming machines, input/output/ programme manipulations, means of payment, point of sale, telephone phreaking and others).
(iv) Unauthorised reproduction (computer games, other software, semi-conductor topography etc).
(v) Computer sabotage (hardware, software, etc).
(vi) Counterfeiting using computers.
(vii) Computer pornography.
(viii) Other computer-related crime (bulletin board systems, theft of trade secrets, indictable material, etc).

XX. THE LEGAL PROVISIONS

Laws, criminal justice systems and international co-operation have not kept pace with technological changes. Only a few countries in Western Europe and the Organisation for Economic Co-operation and Development (OECD) have drafted laws to address the problem. However, none of the countries have resolved all legal, enforcement and preventive issues arising out of technological change. Computer crime is a new form of trans-national crime and its effective treatment requires concerted international co-operation.

Some of the important international efforts in the direction of computer crime legislation and its prevention have been :

(i) 12th Conference of Directors of Criminological Research Institutes within Council of Europe (1976) and the formation of select Committee of Council of Europe on Economic Crime.
(ii) Study by Organisation for European Co-operation and Development in 1983 and the publishing of analysis of legal policy in 1986 for international application and harmonisation of criminal laws in the field of computer crimes.
(iii) Study by the Council of Europe wherein procedural issues such as international search and seizure of databanks and international co-operation in the investigation and prosecution of computer crimes were examined.
(iv) International Chamber of Commerce published documents in July, 1988 describing international business view on computer-related crime and criminal law.
(v) OECD developed a set of guidelines for security of information systems in 1992.
(vi) The issue of prevention of computer related crime was discussed in a report entitled "Proposals for Concerted International Action Against Forms of Crime Identified in the Milan Plan of Action" prepared by the United Nations in 1987. In its 13th Plenary meeting, the UN Congress adopted the resolution calling upon the member States to intensify their efforts to combat computer crimes by adopting a series of measures.
(vii) In 1994, the United Nations also prepared a manual on the prevention and control of computer-related crime which presented an international review of the criminal policy.
(viii) Many of the countries, largely industrialised and some which are moving towards industrialisation, have in the past ten years reviewed

their respective domestic criminal laws from the point of view of adaptation, further development and supplementation so as to prevent computer-related crime. A number of countries have already introduced more or less extensive amendments by adding new statutes in their substantive criminal law. These are USA, Austria, Denmark, France, Germany, Greece, Finland, Italy, Turkey, Sweden, Switzerland, Australia, Canada and Japan. Countries like Spain, Portugal, UK, Malaysia and Singapore have made isolated efforts by enacting new laws to prevent computer-related crimes.

There is yet no specific law in India to deal with computer crimes. The various cases reported are dealt with under the existing laws/offences like Copyright Act, theft, trespass, fraud, forgery, etc. However, the Government of India is awave of the issue and it is expected that soon a specific law for prevention and prosecution of computer crimes will be passed, based on the guidelines and classification suggested by OECD.

It is proposed that an information security agency will be set up at the national level to play the role of 'cyber-cop' to take care of computer-related crime. The cyber-cop provisions will take care of acts such as hacking through Internet, and devise ways of maintaining data privacy. According to the action plan on the subject drawn by the Government of India, a national policy on information security, privacy and data protection for the handling of computerised data shall be framed by the Government of India within six months. It is also proposed that a national computerised records security department shall be created within three months for enforcing security requirements.

XXI. CONCLUSION

With the explosion in the field of information technology, certain common features are bound to be found internationaly in the field of economic and computer crime. As of necessity, nations should unite in countermeasures against these crimes. After the Cold War, there has been a fair amount of integration world wide in the spheres of banking, trade and commerce.

Despite our best efforts, domestic crime is likely to spill over into the international arena. Hence the need for international cooperation in suppressing it in the form of expeditious extradition of fugitive criminals, deportation of undesirable aliens, mutual legal assistance in investigations and prosecutions, and the speedy execution of Red Corner Notices issued by Interpol. Further, the International Community must put their heads together to harmonise extradition, deportation, dual criminality and confiscation laws to make the global society and its financial systems sound and stable.

ANNEXURE A

Various Economic Offences

Economic Crimes	Legislation	Enforcement Authorities
Tax Evasion	Income Tax Act	CBDT
Illicit Trafficking in Contraband Goods (Smuggling)	Customs Act, 1962 COFEPOSA, 1974	Collectors of Customs
Evasion of Excise Duty	Central Excise and Salt Act, 1944	Collectors of Central Excise
Cultural Objects Theft	Antiquity and Art Treasures Act, 1972	Police/CBI
Money Laundering	Foreign Exchange Regulation Act, 1973	Directorate of Enforcement
Foreign Contribution Manipulations	Foreign Exchange Regulation Act, 1976	Police/CBI
Land Hijacking /Real Estate Fraud	IPC	Police/CBI
Trade in Human Body Parts	Transplantation of Human Organs Act, 1994	Police/CBI
Illicit Drug Trafficking & PIT NDPS Act, 1988	Narcotic Drugs and Psychotropic Substances Act 1985	NCB/Police/CBI
Fraudulent Bankruptcy	Banking Regulation Act, 1949	CBI
Corruption and Bribery of Public Servants	Prevention of Corruption Act, 1988	State Vigilance Bureaux/ CBI
Bank Frauds	IPC	Police/CBI
Insurance Frauds	IPC	Police/CBI
Racketeering in Employment	IPC	Police/CBI
Illegal Foreign Trade	Import & Export (Control) Act, 1947	Directorate General of Foreign Trade/CBI
Racketeering in False Travel Documents	Passport Act, 1920/IPC	Police/CBI
Credit Cards Fraud	IPC	Police/CBI
Terrorist Activities	Terrorist and Disruptive Activities (Prevention) Act, 1987	Police/CBI
Illicit Trafficking in Arms	Arms Act, 1959	Police/CBI
Illicit Trafficking in Explosives	Explosives Act, 1884 & Explosive Substance Act, 1908	Police/CBI
Theft of Intellectual Property	Copyright Act, 1957 (Amendments 1984 & 1994)	Police/CBI
Computer Crime/Software Piracy	Copy Right Act, 1957	Police/CBI
Stock Manipulations	IPC	Police/CBI
Company Frauds (Contraband)	Companies Act, 1956 MRTP Act, 1968	Civil in Nature