

DIMENSIONS OF ECONOMIC CRIMES IN INDIA.

- Mahendra Kumawat IPS, Addl. D.G.P. & Chairman, SLPRB, A.P.

Since the early 90's India has witnessed a spate of major economic scams in different sectors of the economy. While millions of small investors have lost thousands of crores of rupees, the economic crimes have also caused havoc in the government managed institutions like Banks, Public Sector Undertakings, Telecom Department, Insurance Companies, etc. The magnitude and the new methods of committing economic crimes have been a cause of serious concern to the Government as well as to the people.

Economic Crimes are not a new phenomenon in our country. Even one and a half century ago, when the Indian Penal Code was enacted, punishment was provided for Cheating (Sec.420), Criminal Breach of Trust (Sec-409), Counterfeiting of Coins (Sec-232), Making and Selling of Adulterated Drugs (Sec.274 & 275), Fraudulent use of Weights and Measures (Sec.265), Counterfeiting Govt. Stamps and their Sale (Sec,255 and 258), Making and Selling of Fake Goods (Sec. 481 to 489), Soon after the introduction of currency notes in our country, counterfeiting of the currency led to addition of Section 489-A and B in the Indian Penal Code in the year 1955. But what has changed in the past few decades is the magnitude and enormity of economic crimes owing to the development in technology and improved means of transport and communication and their use by the perpetrators of these crimes.

The terms 'Economic Crime' and 'White Collar Crimes' are more often than not, used as synonyms. In fact, both the terms need to be used to define different categories of

crime. While white collar crimes can be said to be crimes committed by professionals like chartered accountants, public servants, private employees in the course of their occupation, economic offences are crimes committed by intelligent but devious individuals involving huge sums of public or government money.

Magnitude of the problem

Economic offenders have exploited weaknesses in almost all areas of economic activity and siphoned off thousands of crores. Their depredations will continue till the law makers plug loopholes in the affected system. But the economic offenders, as they have the knack of exploiting weaknesses in any system either traverse a new territory or subvert the system which is their specialized field. In the recent past alone, scams have cost the exchequer and millions of Indians, astronomical sums of money. Some major scams/ economic offences, which have adversely affected our national economy in the recent past are:

i) Primary Market Frauds:

The Stock Market Scams of 90's affected millions of small investors across the country. Fly-by-night operators entered the primary markets and through Initial Public Offers (IPOs), collected hundreds of crores and vanished! The irony is that the whereabouts of over 100 companies are still not known either to SEBI or to the other investigating agencies. Even those companies, which did not vanish, used the people's money for purposes other than for which it was

collected. As a result, the value of their shares plummeted resulting in heavy losses to the investors.

ii) Secondary Market Frauds:

Insider trading has the dangerous potential of market manipulation and misuse of unpublished price sensitive information by a privileged few insiders who are in possession of such information. This kind of malpractice defeats the very principle of fair and ethical business practices, besides spelling a doom for the common and small investors. The Capital Markets in India have been victims of this malady for years and more particularly when liberalization attracted small investors to the markets. Instances of artificially jacking up prices of shares and thereby inducing gullible people to buy them are also common. People have lost heavily on account of frauds of this nature committed by unscrupulous market players.

iii) Bank Frauds:

Economic offenders have targeted nationalized and cooperative banks and siphoned off thousands of crores by having criminal nexus with the managements of the banks. The big borrowers alone are responsible for the huge non-performing assets (Rs. 55,000 Crores in 2003) the nationalized banks are saddled with.

In the 90's, unscrupulous economic offenders set up large number of UCBs (Urban Cooperative Banks) in the States of Andhra Pradesh, Maharashtra, Gujarat and collected thousands of crores by offering unsustainable high rate of interest and later siphoned off hundreds of crores either by sanctioning loans to themselves, or to the borrowers with whom they had criminal nexus. Naturally, such banks collapsed, which caused havoc to the millions of small investors.

iv) Import /Export Frauds:

Money laundering operations by under-invoicing imports and over-invoicing of exports have been resorted to by unscrupulous traders in a big way and thereby converted their black money into white and at the same time, obtained liberal incentives given by the Government in the form of exemption of income tax on the earnings, etc. This is in addition to import/export frauds being committed based on forged and fictitious documents.

v) Insurance Frauds:

Insurance companies have been victims of frauds perpetrated by unscrupulous claimants with or without the active connivance of insurance officials. Instances of deliberately setting fire to the insured goods, go-down, factory, making more than one claim on the basis of same accident, inflated claims supported by corrupt surveyors, are quite common.

vi) Intellectual Property Crime/ Theft:

The Federal Bureau of Investigation (FBI) of USA has estimated that in 2003 alone, \$3 billion (Rs. 13,500 Crores) worth money was lost world wide as a result of criminals swiping copyright protected digital copies of music, movies, software and games and distributing them through websites, chat rooms, mass e-mails.

According to a music and film market survey, the Indian Music and Film industry is losing around Rs. 1800 crores because of piracy, since some unscrupulous people are making copies of DVD movies and MP 3 songs illegally without obtaining permission and paying royalty to the concerned producers. Some internet sites are offering free of cost latest music from hit movies by

uploading to the internet which can then be downloaded by people anywhere in the world without paying anything to the original producers of the music. Thus, the original producers of movies and songs as well as exchequer lose heavily on account of this new type of economic crime committed with the help of technology.

vii) Non -Banking Finance Companies (NBFCs) Frauds:

NBFCs engaged in wide range of activities like hire-purchase finance, hiring finance, equipment leasing finance, loans and investments have been performing an important role in our financial sector. However, unscrupulous market players targeted NBFCs in a big way in the early 90's . As a result, the number of NBFCs which were 24,009 in 1990, rose to 55,995 in 1995 with deposits of Rs. 45,000 crores. By offering very high rate of interests and commissions, which were commercially unviable in the long run, thousands of crores of rupees were collected from investors across the country. However, the bubble burst sooner than later, when the scamster C.R. Bhansali, who alone floated over 130 companies, was arrested for the frauds committed by him, in which the investors and the nationalized banks lost a staggering amount of Rs. 1200 crores.

In the wake of CRB scam, the Reserve Bank of India introduced compulsory registration of NBFCs with the RBI. It is interesting to know that of the 37,880 applications received by the RBI as on 31st March, 1994 for registration, only 9000 were found eligible. As many as 28,500 NBFCs did not have the required net owned funds of Rs. 25.00 lakhs, but they were collecting crores of rupees from the investors. Consequently, many of the

NBFCs failed to repay the amounts to the depositors and finally they collapsed. And hundreds of NBFCs vanished, leaving investors in financial crisis. Unfortunately, till date, non-repayment by NBFCs is still a non-cognizable crime. The Financial Companies Regulations Bill 2000, which seeks to protect the interest of investors, introduced in the Parliament on 13th December, 2000, has not yet received the attention it deserves.

viii) FAKE CURRENCY :

Large scale circulation of fake currency can undermine the economy, as well as national security of any country. In India, the problem is age old, but with the development in technology, high quality fake currency notes have been recovered from terrorists, who had come from across the border. Fake currency printed abroad is generally channelised into India through Nepal and Dubai. Besides high quality fake currency notes being pumped into the country from across the border, criminal gangs and individuals within the country are making use of computers and sophisticated printers in making fake currency notes. Since the problem has national as well as international dimensions, it needs to be tackled effectively by the RBI, CBI and State Police Forces.

ix) FAKE STAMPS SCAM:

A multi crore fake stamps racket operated by Abdul Karim Telgi throughout the length and breadth of the country for many years with the active collusion of Police, Security Press and officials of banks and insurance companies exposed vulnerability of the system. The extent of the revenue loss caused to the exchequer by this gang alone is being estimated to the tune of Rs. 25,000 crores. Since there are many other gangs also engaged in different parts of the country,

the problem needs to be dealt with in a proactive and holistic manner.

MEASURES TO BE TAKEN TO CONTAIN ECONOMIC OFFENCES:

Despite a slew of measures taken by the Governments there is neither decline in overall volume of economic crimes, nor reduction in the number of major scams that are occurring with regular frequency in the country. In fact, the menace of economic crimes has assumed serious proportion, which needs to be addressed with a holistic approach. The following measures are recommended:

i) Revamping of Laws Governing Economic Offences:

The Laws governing economic offences are soft as compared to the laws enacted to deal with violent crimes like murders, dacoities, etc. Moreover, the laws have not kept pace with the time, as a result, they have lost their efficacy. In fact, many of the laws seen in the present context have become absurd. For instance, frauds in telecom sectors are costing exchequers hundreds of crores of rupees annually, but the action against the culprits has to be taken under the Indian Telegraph Act, 1885. The highest punishment provided under the Act is three years imprisonment with a maximum fine of rupees one thousand only! Imagine a culprit sentenced to a fine of one thousand rupees for causing loss of a few hundred crores! The Drugs & Cosmetics Act too has become anachronistic. The fine provided for selling spurious drugs (Section 275 IPC) is a meager one thousand rupees, even when the offender would have made crores of rupees by making and selling fake and spurious drugs. Therefore, all the laws relating to economic offences need to be reviewed and

revamped to create necessary deterrence as has been done for dealing with the menace of terrorism, smuggling of psychotropic substances, etc.

ii) Deprive Economic Offenders of the Proceeds of Crime:

Though thousands of crores of rupees are siphoned off by economic offenders every year, they continue to enjoy a luxurious life, since the proceeds of crime in most of the cases continue to remain with them. Therefore, enforcement agencies dealing with the economic crime should make all out efforts to ensure that the fruits of crime are taken away from the economic offenders. Unless this is done, economic crimes will be a paying proposition to criminals.

iii) Tightening of Bail Provisions:

Economic offenders are able to engage the best legal brains to defend them and obtain bail, though they would have duped lakhs of investors causing unimaginable agony to the investors. The State should also engage prosecutors with sound knowledge of law and impeccable integrity, to ensure that the economic offenders are not released on bail and thereafter secure strong conviction. The Ruling of the Supreme Court of India in Narenderjeet Singh Sahni v/s Union of India, needs to be followed by the courts in dealing with economic offenders.

"The White Collar Crimes are akin to ECONOMIC GENOCIDE and considering for bail of such accused, would be misplaced sympathy of the Court because accused have deceived millions of countrymen who had invested their entire life's saving in fictitious and frivolous companies."

iv) Creation of Exclusive Courts:

For a variety of reasons, the courts in India

are not able to dispense justice promptly. One of the principal reasons is heavy backlog of cases. Therefore, there is need to create exclusive courts to bring offenders to book quickly.

v) Need to Simplify Court Procedure:

Economic offenders with their huge ill-gotten wealth are known to have taken the criminal justice system in India for a ride. Either they corrupt it or derail it by procrastination of trial. The end-result is that hardly any economic offender is punished in a reasonable time frame. For instance, the cases against late Harshad Mehta the biggest scamster of 90's and his associates, are still pending trial for more than a decade, whereas in the case of Lesson, who committed a similar type of crime in Singapore at the same time, was convicted swiftly within a year. Hence, there is need to simplify Court procedure and ensure that economic offenders are not allowed to subvert the system. They need to be nailed within a year or two, which will definitely create necessary deterrence among their fraternity.

vi) Notify Economic Offenders on the Internet:

Economic offenders target different financial institutions like banks, etc., and also people at different places in the country and abroad. Therefore, the known economic offenders along with their photographs need to be notified on the internet, which will help financial institutions and the public to take note of their modus operandi so as not to fall prey to their designs.

vii) Need for Coordinated Action:

There are a number of Indian enforcement agencies / departments dealing with economic offenders, viz., Police, Income Tax, Customs, DRI, Serious Fraud Investigation Office, Enforcement Department, Commercial Taxes Department, SEBI, etc., but there is hardly any coordination among them. Every economic offence of significance needs to be examined by all the agencies dealing with economic offences.

viii) Make Diversion of funds / loans a Specific Offence:

The financial institutions including banks are saddled with non-performing assets (NPAs) of over Rs. 1,00,000/- crores. Many of the big borrowers use them for the purpose other than for which the loans were sanctioned. Therefore, there is need to make diversion of funds a specific offence, with a punishment of over 10 years or more. It is also suggested that the loanees should submit an end-use certificate to the financial institutions.

CONCLUSION:

Economic crimes have the propensity to cause havoc and undermine not only the economy of the country, but the national security as well. The enormity of the challenge posed by economic offenders calls for a professional and pro-active approach. This multi-headed monster can be controlled effectively only by coordinated and imaginative efforts of all the enforcement and investigative agencies.

