

CHAPTER 25

Economic offences and White collar crime

523-1. Economic offences are also called financial crimes. These crimes are also popularly known as White-collar crimes by virtue of the fact that perpetrator of such crimes are normally persons of responsibility, holding high offices and in the course of their occupation, either they themselves commit the crime or facilitate the perpetration of crime by others. These relate to offences of fraud, forgery, cheating, misappropriation, criminal breach of trust, money laundering etc. They also include conspiracies and abetments for the commission of these offences. With the increase of corporate, banking, stock market, trade and other commercial activities, the types and magnitude of fraud has undergone a vast change. The export and import regulations, customs, excise and income tax levies, foreign exchange transactions along with revolution in information technology and electronic transfer of money have brought into existence several methods that have provided opportunities for crime in the form of fraudulent transactions. Several non-banking financial institutions have come into existence. The use of computers also has thrown up the problems of computer and cyber crimes.

2. Several laws have been made to regulate and also to penalize activities, which are illegal and aimed at defrauding the public, and the Government. Sections 415 to 424 in Chapter XVII, Chapter XVIII of the IPC, and other Acts such as the Excise Act,

the Income Tax Act, the Companies Act, the Customs Act, contain the relevant law.

3. Fraud involves deception, and has been explained as causing to believe what is false or misleading as to facts, or leading into error by intentional concealment of facts or positive misrepresentation.
4. Forgery has been defined in section 463 and a false document in section 464 IPC. Though forgery in its simple form is not cognizable the police are very often called upon to investigate forgery in conjunction with other cognizable offences or under the orders of a court.
5. The ingredients to prove the offence of forgery are — (a) the making of a false document or part of it; (b) such making should be with intent - (i) to cause damage or injury either to the public or to any person, or (ii) to support any claim of title, or (iii) to cause any person to part with property, or (iv) to enter into any express or implied contract, or (v) to commit fraud or that fraud may be committed.

Corporate and bank frauds.

6. Corporate frauds have emerged as a major economic offence in recent times. This term includes a large number of activities such as frauds by business people against each other, against investors, consumers, tax authorities, by directors and employees against their companies. Different forms and modus operandi are adopted.

7. The broad categories are embezzlement by employees, management frauds, investment scams and customer frauds. Stock market frauds include sale of forged share certificates, cheating by sub-brokers, theft of securities from share registries or theft while in transit. The range of bank frauds is also quite wide and covers fraud prone areas in the banking system like loans, advances, remittances and foreign exchange transactions. The use of plastic money has also generated offences of credit and cheque fraud. Technological developments have propelled some of the old crimes into new shape. The direct dialing facilities, computer aided dispatch system and fax message enable fraudsters to distance themselves geographically from their targets.

8. The offshore banking and investment schemes and tax havens have propelled the financial crimes enabling the offenders to conceal the proceeds of crime. The documentary frauds in the shipping of goods are done to gain benefits of export by fraudulent means. The use of forged documents for land grabbing, sale of bogus marks sheets and degree certificates and travel documents are yet another category of financial offences.

Classification

578. Economic offences or white collar crimes and can be broadly categorized as under

:-

- ❖ Income/Corporate/Wealth/Interest Tax Evasion
- ❖ Excise/Customs duty evasion/Smuggling in contraband goods Export/Import frauds. Bank frauds/Scams Corporate frauds/offences under Companies Act/SEBI

Act etc.

- ❖ Stock market manipulations/ e.g. rigging of stock prices, circulation of fake hare certificate etc.
- ❖ Insurance frauds
- ❖ Foreign Exchange Violations (Hawala)
- ❖ Money Laundering,
- ❖ Drug trafficking
- ❖ Real estate dealing in benami names
- ❖ Industrial espionage and unfair Trade Practices
- ❖ Intellectual property Right Violations,
- ❖ Credit Card frauds/Passport frauds/fake certificates
- ❖ Corruption, in Public as well as Private Sector.
- ❖ Counterfeiting of Currency / Bonds/ Shares,
- ❖ Large Scale public frauds, cheating and forgery cases
- ❖ Land and Building rackets and other mafias
- ❖ Fake placement agencies, foreign jobs and manpower agents.
- ❖ Tax exemption rackets
- ❖ Production and role of spurious goods.
- ❖ Floating fictitious companies for raising public funds e.g. raising money from public on false promises & then vanishing.
- ❖ Floating Non-Banking Financial Companies to raise deposits from public with false promises and misappropriating the same in due course.
- ❖ Collection of rangdari tax/Protection money
- ❖ Frauds relating to misuse of Govt. subsidy and breach of trust
- ❖ Misuse/abuse of foreign aid programs.
- ❖ Cyber Crimes including software piracy
- ❖ Discounting of cheques/drafts etc.
- ❖ Inflation of cost of projects for obtaining higher credit from Banks/Financial Institutions and sharing the inflated portion with the officials, who facilitate advances against inflated projects etc.

579. Major Areas of Economic Offences

(i) Public Servant orientation: Economic Offences and public servants are closely interlinked. It will not be an exaggeration to say that most economic offences can not be committed without the active connivance of the Public Servant.

(ii) Import/Export Frauds : Involvement of Public Servants is found in issuance of licence to fictitious and nonexistent parties, acceptance of faulty letters of undertaking furnished by the party, and in extending the validity of the license. These days recourse is taken by unscrupulous operators to the value based advance licensing scheme (VABAL), to under-invoice the exports in money laundering operations, many a time only junk is exported, paid for by the exporter through hawala and duty free import licenses are obtained. This has become one of the most favored routes of money-laundering by black-marketers and those who have unaccounted wealth.

(iii) Forgery in Travel Documents : Serious/widespread Passport Act offences including those involving job-racketeering are on the increase. Passport rackets also have clear security implications as they are required primarily by trans-border criminals, smugglers and drug traffickers. The usual modus operandi in such cases is following:-

- a) Photo-substitution
- b) Page substitution and fake booklets
- c) Fake endorsement of arrivals/departure stamps, of children and alteration in respect of entries etc.
- d) Obtain passports based on false/suppressed information.
- e) Fake/forged visas and Haj permits etc.

579.1 Involvement of public servant of the Regional Passport Offices and Local Police officials is often found in these cases. Loopholes can be plugged by introducing

features in the passport and visas which would make their forgery difficult e.g machine readable passports and visas, distinctive watermark, complicated printing technique, permanent inscription of biographical data, high quality of inked (wet and embossed (dry) seals and advance passenger information systems.

(iv) Bank Frauds : Bank have evolved detailed systems/procedures/rules, inter alia, taking into account the instructions issued by Reserve Bank of India from time to time on the various areas of their operations. If such rules/norms/procedures, as laid down, are strictly adhered to, the chances of malpractice's can be well avoided/restricted to great extent. An 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 :-

- (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 fake/fictitious name.
- (iv) Misappropriation through manipulation of books of accounts.
- (v) Perpetration of frauds through clearing transactions.
- (vi) Misutilisation/over stepping of lending/discretionary power, 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 consideration and'
- (viii) Frauds in foreign exchange transactions, mainly through non-adherence to Exchange Control Manual Provisions.

(v) Insurance Frauds : Broadly Insurance frauds are of two types viz within the Insurance

industry and outside the industry. Under the first category frauds occur with the definite connivance of public servants e.g. granting insurance cover without booking (accepting) the premium and until claim is made by party, providing after-accident/loss insurance cover, allowing inflated claim, not taking over an accounting the salvage and other recoveries to reduce the loss to the company entertaining a totally fictitious claim etc. Examples of frauds under the second category are endless and the following examples are only illustrative :-

- a) deliberately setting fire to the insured article/factory/godown when the market is low;
- b) making repeated claims on the basis of same accident.
- c) making claims based on false repair bills/invoices without conducting any repairs or without purchasing parts;
- d) utilizing bogus lorry receipts as proof of goods sent and making claim of non-delivery ;
- e) scuttling vessels where value of cargo is disproportionately higher than the value of the ship etc.

(vi) **Corporate Frauds, Embezzlements and Scams** : Corporate frauds have emerged as a major economic offence in recent times. This term includes a large number of activities such as frauds by business people against each other, against investors, consumers, tax authorities, by directors and employees against their companies. Different forms and modus operandi are adopted. The broad categories are embezzlement by employees, management frauds, investment scams and customer frauds. Stock market frauds include sale of forged share certificates, cheating by sub-brokers, theft of securities from share registries or theft while in transit. The range of bank frauds is also quite wide and covers fraud prone areas in the banking system like loans, advances, remittances and foreign exchange transactions. The use of plastic money has also generated offences of credit and cheque fraud. Technological developments have propelled some of the old crimes into new shape. For example, the developments of the

multi-colour copiers whose laser scanners can reproduce exact colour variations and other subtle nuances in the printing process have increased the forged currency notes rackets. The direct dialing facilities, computer aided dispatch system and fax message enable fraudsters to distance themselves geographically from their targets.

Forged Currency Notes

11. Under the Currency Department Code, forged currency notes received into Banks are sent to the Police Station in the jurisdiction of which the Bank is situated for enquiry. Whenever counterfeit currency is presented or discovered by the Bank an offence may be construed to have been committed and the Police may register a case and investigate it.
12. The same principle should be applied and followed in cases in which a member of the public reports the appearance of forged notes direct to the police station.
13. In every instance, in addition to sending a special report to the Criminal Investigation Department, a report should be sent to the Currency Officer, immediately on the appearance of a forged note. The report should give the following particulars.
 - A. series and number of notes
 - B. value
 - C. from whom and under what circumstances they were received

and date of receipt

D.designation of officer receiving the note

E.reasons for not registering a case, if a case has not been registered, and

F. any other particulars

G.The note seized should be sent to the Currency Officer along with the report, except when the note is required for investigation, in which case the note should be forwarded to the Currency Officer after the investigation is over, quoting the number and date of the original report sent to him.

14. Various methods are employed for manufacture of counterfeit currency. The printing press, the offset machines and more recently the computer aided printing processes and the colour photocopiers are used in the manufacture of counterfeit currency.
15. **Methods employed for circulating counterfeit currency:** The fake currency is mixed with genuine notes and passed on in bundles to unsuspecting but avaricious victims. The forged currency notes are passed on to the agents at a reduced value providing them with the commission as an incentive. The notes are also used in shops and establishments for the purchase of valuable items.
16. **Method of identification:** The forged currency notes can be

identified from the paper, colours, sharpness of the print, watermark, security thread and serial numbers. The paper of the genuine notes is crisp and the print extremely sharp and of good quality and each note contains a separate number. The alignment of number is not proper on a forged note compared to a genuine note.

17. The source of manufacture is the vital thing which should be the primary objective of the IO.
18. All the counterfeit currency notes in circulation have to be pooled by the Investigation Unit of the CID and each series separated. An analysis and comparison of different series and areas of their circulation would provide a clue to the Investigating Officer. Each series should form a separate case for investigation unless the comparison of different series shows the same pattern.
19. The IO should maintain close liaison with the Reserve Bank to know the circulation of the fake currency in question. The opinion of the expert on the type of paper used, colours, watermark and security thread mark would provide clue as to the source from where these materials were obtained. It is rare that a genuine security thread can ever be inserted in a fake currency note. It is shown more as a thin line whereas in a genuine currency note a metal wire is inserted as part of the paper on which note is printed.

Money Laundering

524-1. Money laundering, i.e., conversion of money secured through

illegal means into white money is the main method, which helps the economic offenders. To facilitate transfer of the proceeds of crime which include narcotics trade, smuggling of arms and explosives, hawala transactions have come to surface. The total amount of money involved due to economic crimes is considerably higher compared to the traditional crimes such as dacoities, burglaries etc. To the list of various economic crimes should also be added corruption, violation of copy right, video and software piracy, computer fraud, computer forgery, computer hacking, adulteration, employment and immigration rackets, and host of other connected activities.

2. Money laundering for a layman means conversion of dirty money into clean money. The Interpol as “Any act or attempted act to conceal or disguise the identity of illegally obtained proceeds so that they appear to have originated from legitimate sources describes it”. It may also be defined as “(A) engaging directly or indirectly in a transaction which involves property by utilizing proceeds of crime, or (B) receiving, possessing, concealing, disguising, transferring, converting, disposing off within the territories of India, removing from or bringing into the territory of India the property i.e., proceeds of crime”. Crime refers to several IPC offences like 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, counterfeit currency etc.; certain provisions of the Prevention of Corruption Act, 1988; NDPS Act, 1985; Foreign Exchange Management Act, 1999 (FEMA) and the Customs Act, 1962.
3. The money generated through ‘crime’ is liable to be confiscated

by the State. The existing laws relating to confiscation of proceeds of crime are found in different statutes. The Confiscation of proceeds of crime can be taken only under these laws. The important Acts in this regard are (A) Chapter 3 of Prevention of Money Laundering Act, 2002 (As amended by the Prevention of Money Laundering (Amendment) Act, 2005) (B) Sections 102 and 452 of CrPC; (C) The Criminal Law (Amendment) Ordinance, 1994 (Ordinance XXXVIII of 1994); (D) Sections 111 to 121 of the Customs Act, 1962; (E) Section 68 of the Narcotic Drugs and Psychotropic Substances Act, 1985; (F) Foreign Exchange Management Act, 1999 (Section 63); (G) Smugglers and Foreign Exchange Manipulations (Forfeiture of Property) Act, 1976; (H). The illegal currency transfers via non-banking channels are called hawala. It is an underground banking system. This medium is used for overcoming the Government regulations on foreign exchange and also to conceal the proceeds of illegal earnings.

4. The objects of money laundering are —
 - A. criminals distance themselves from the crime making it more difficult to prosecute them;
 - B. to prevent/delay the proceeds of crime from being confiscated if the criminal is caught;
 - C. enjoy the fruits of the proceeds without being noticed;
 - D. reinvest the proceeds in future criminal activity or in legitimate business;

5. The process by which money is laundered has three stages.
 - A. **Placement** - Physical disposal of cash proceeds for its placement into a financial services institution.
 - B. **Layering** - Adding complex layers of transactions
 - C. **Integration** - Place the laundered money back into economy in such a way that it appears as normal business earnings.
4. The methods of laundering take the form of currency smuggling, real estate, gold and diamonds, shell companies, tax havens, casinos, hotels, stores, wire transfer etc.

Agencies to investigate Economic offences

5. There are various investigating agencies to deal with corporate frauds and other economic offences. The Customs and Central Excise, the Income Tax, the Directorate of Enforcement, the Securities and Exchange Board of India (SEBI) are some of the agencies authorized under the relevant Acts for investigation of cases. The criminal offences, which fall within the IPC as also the other cognizable offences, which the police have been, empowered to investigate, are the responsibility of the police. The investigation of these offences requires a thorough knowledge of the procedures, laws and practice prevalent in financial sector, taxes both direct

and indirect, exchange regulations, functioning of stock markets, banking, non-banking financial institutions, audit and accounting, computer technology etc.

Investigation of Economic Crimes

- 525-1. Preliminary Enquiry:** In financial crimes the report generally lists out certain details with a request for investigation. The report may not clearly disclose a cognizable offence and at the same time the information cannot also be ignored. The newspapers also publish information on some frauds. The documents to support allegations may not be available immediately. Some of the information received may not be clear about the period and the exact offence committed but it may very often contain general information. The place of the offence in some cases is spread over a vast area. On the face of it, sometimes the information may only disclose a civil liability. In such situations it is necessary to take up a preliminary enquiry. The I.Os should have the full knowledge about the way these crimes are committed and its ramifications besides possessing minimum knowledge in Computer applications, foreign exchange transactions, import and export, excise and customs, share market transactions etc.
2. **Registration of FIR:** A preliminary enquiry into the information is permissible before registering an FIR and taking up investigation. As and when the enquiry discloses a cognizable offence, it should be registered and investigated. Sometimes departmental authorities conduct enquiries and lodge a complaint for registration of a case and investigation. In such cases the facts will be clear and the case should be registered

and investigation taken up. If, even such report does not disclose an offence, the authorities should be informed in writing and requested to make further enquiries or clarify and send a report.

3. The investigation into economic crime is mostly based on documents and instruments. The IO has to secure all the relevant files and documents as per the procedure and processes prescribed in law. The location and tracing of the documents is a matter of utmost importance. In cases involving official agencies no time should be lost in getting hold of the connected files. The documents and files include those stored in computers. Presently computers of various sizes are used to store information files or notes instead of paper files or notebooks or in addition to them. The courts have to be provided with best available evidence.
4. The forwarding of documents to the concerned experts and obtaining of samples are to be done with expedition and in the manner prescribed in Chapter Scientific Aids to investigation in the orders relating to documents.
5. **Examination of Witnesses-** The examination of witnesses particularly those who are connected with the documents are the other steps that an IO has to take. A questionnaire should be prepared with reference to the records and the statements of the witnesses recorded. It will be difficult for the witnesses to deny or mislead if the documents are in possession of the Investigating authorities.
6. **Examination of accused-** The examination of the accused

person in great detail is required to know the significance of various entries in the registers as also other documents seized in the course of investigation. As in the case of witnesses the IO covering all the points that require to be elicited should prepare a detailed questionnaire. It is in framing the questionnaire the skill of the IO is exhibited. The question should not be framed in such a manner that the accused comes to know the nature of evidence available with the investigating authorities. As investigation in economic frauds is a lengthy process, it will be necessary to fully utilize the provisions of remand of the accused to police custody. Lie detector tests wherever necessary would be useful in such cases.

7. **Cooperation and coordination**-Mutual cooperation with different agencies and other institutions is extremely important in the investigation of these cases. After locating the witnesses or documents it would be very necessary to enlist the cooperation of the concerned authorities in securing the documents and the presence of the witnesses. The personnel either posted in the department or working elsewhere who have the expert knowledge should be identified and their help obtained. Mostly the accounts, banking, stock markets, excise and other tax departments and chartered accountants would be useful for consultation and scrutiny of documents in such cases.
8. The most effective method of dealing with economic offences is to obtain information relating to location of the money involved in the form of cash or bank deposits or fixed assets or in any other form and taking measures for its seizure. It will be necessary to collect evidence to link the money or the assets to

the accused. It is in this area that painstaking enquiries are required. The first action to be taken on the information should be to safeguard the property or the assets movable or immovable either by having the bank account frozen or seizing the property or entrusting the property to the concerned Revenue authorities under the provisions of section 452 CrPC. After this action is taken it would be necessary to collect evidence so that its forfeiture and confiscation can be done. In the event of the assets being in another jurisdiction within India the help of concerned police should be taken in the manner provided in CrPC. An IO has powers to search and seize the property concerned in a case anywhere in the country. It is advisable however to take the assistance of the local police at a proper level. If the property or money is abroad, the investigative assistance may be requested under 166-A CrPC. Similar assistance to other countries is permissible in the manner provided in 166-B. The instructions on obtaining the documentary evidence are given in Chapter Collection of evidence and also in sections 105 A to 105 L of Chapter 7-A of CrPC.

Computers – preservation of information

9. The economic offences involve a multitude of transactions and entries and vast volume of information. The IO is advised to prepare a chart and load the information in a computer system

to enable analysis and comparison as also not to miss out any important aspect. If for any reason, a computer system cannot be used, this may be done manually.

2. The Investigating Officers have to remember that a computer is on the same footing as a document and as such will prove a useful and necessary piece of evidence. The matter entered in a computer whether on magnetic media like hard discs, tapes, floppy discs or optical media like compact discs, whether audio or video, come within the meaning of a document as defined in the Indian Evidence Act. In preserving them as evidence or producing them the procedure laid down in the law for search, seizure, forwarding should be followed as in the case of any other document or material object. The handling preservation and comparison of these require special precautions, which are dealt in the Cyber crime.