

ECONOMICS OF ECONOMIC OFFENCES

'A STUDY OF CUSTOMS OFFENCES IN KERALA'

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University of Calicut
For the award of the Degree of
DOCTOR OF PHILOSOPHY
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By

K.M .GEORGE

**Department of Economics
University of Calicut, Dr.John Matthai Centre,
Aranattukara, Thrissur, Kerala**

May, 2003

Dr.P.P.Pillai
Pranavam, Aiswarya Nagar,
West Fort, Thrissur,
Kerala, Pin Code-680004.

Date: 28.05.2003

CERTIFICATE

This is to certify that this thesis entitled *Economics of Economic Offences: 'A Study of Customs Offences in Kerala'* submitted to the University of Calicut, Kerala for the award of the Degree of Doctor of Philosophy in Economics is a record of the bona fide research carried out by Mr.K.M.George under my supervision, and that no part of this thesis has been submitted for the award of any degree or diploma or any other similar title before.



Dr.P.P.Pillai

DECLARATION

I hereby declare that the thesis entitled *Economics of Economic Offences: 'A Study of Customs Offences in Kerala'* is a record of the bona fide research carried out by me under the supervision of Dr.P.P.Pillai, and that no part of it has previously formed the basis for the award of any degree, diploma or any other similar title.

K.M.George

Calicut

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INTRODUCTION

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CHAPTER-1

INTRODUCTION

A clear exposure to the different forms of crimes and the distinction between crimes and economic crimes in particular, is a necessary prerequisite for a study on the economics of economic crimes. This introductory Chapter is meant to explain the different types of crimes and their likely consequences on the economy. The significance of the study of economic offences, the objectives of the present study and its limitations also are dealt with in this Chapter.

1.1 CRIME

Crime, “an act committed in violation of a law prohibiting it or omitted in violation of a law ordering it”¹ is as old as man. It is an act or omission prohibited by public law for the protection of the public, and made punishable by the State in a judicial proceeding. It is a public wrong as distinguished from a mere private wrong or civil injury to an individual.² Mensrea is its essential ingredient unless expressly excluded. It is not an essential ingredient in cases (a) involving public

¹ *Webster's New World Dictionary*, Third College Edition, Simon & Schuster, New York, 1961.

² *International Encyclopedia of the Social Sciences*, Macmillan, Vol.17, New York, 1968, p.5.

nuisances, (b) which are really not criminal but in the interests of public are prohibited under penalty, and (c) which are criminal in form but which are really only a summary mode of enforcing a civil right. As crimes consume the psyche and physique of an economy its present phase has to be succinctly stated.

It has now evolved into an organized one, committed by a relatively large group of continuous and coordinated criminal entities, constituted as an enterprise for profit, which is insulated against social control through an admixture of illegal and legal means. In short, it is composed of a "group of individuals organized for the purpose of profiting by illegal means on a continuing basis".³

The organized crime groups have now developed into national and further into transnational crime groups and have become omnipotent to control even labour unions in many developed countries. The income they generate even exceeds the gross national income of many nations. They are categorized into different types.

³ United Nations, *Commission on Crime Prevention and Criminal Justice-Economic and Social Council Official Records*, Supplement No.10, 1992, p.20.

Structured hierarchies, internal rules, discipline, codes of behaviour and diversity of illegal activities characterize the traditional type. The classic example is the Mafia, the largest criminal organization in the world with a history dating back to the 13th century. In 1982 its annual turnover and profit due to gambling, protection rackets, tobacco bootlegging, hijacking, drug peddling, loan-sharking and prostitution were \$200 billion and \$75 billion respectively.

The professional type is characterized by an association of members who join together for certain ventures like car-theft, extortion, drugs-peddling, trafficking in women and children, counterfeiting. In U.S.A, if the car-theft industry, which has gone global, were organized as a single company, it would occupy the place of 56th largest U.S Corporation.⁴

The borderlines between these types of criminal groups are not rigid; often they involve multiplicity of component features since they, being manned by professionals with transnational experience in criminal enterprises, are easily adaptable to the changes in the criminal justice policies.

⁴ Editorial, "Car Theft: Big Business in U.S ", *The Hindu*, 21-07-1995.

That crimes have now acquired diabolical dimensions jeopardizing modern economies can be understood from the following facts. In U.S.A rape, robbery, aggravated assault, larceny and motor vehicles thefts have increased from 11,292,400 in 1975 to 11,881,800 in 1984, giving a growth rate of 0.50% per annum. There in 1965, the total cost of crime against persons and property and the related costs was estimated at \$21billion i.e. 4% of her national income.⁵ In 1974 the crime burden was estimated at \$288 billion,⁶ in 1994 it was updated to \$728 billion⁷ and in 1999 the annual gross and net costs of crime, including direct and indirect costs, were estimated at \$1705 billion and \$1,102 billion respectively.⁸ In Russia, the army of well paid criminal gangs, and corrupt bureaucracy and underpaid police virtually run the state and the economy. There, the criminal gangs control 70 trillion roubles (\$113 billion) that accounts for 40% of the money in circulation; and manage 60% of the banks and

⁵ Gary.S.Becker, "Crime and Punishment: An Economic Approach", *Journal of Political Economy*, 76, p.16.

⁶ A Anderson, "The Aggregate Burden of crime", *Law & Economics*, 1975, p.615.

⁷ Collins, Sara. "Costs of Crime", *U.S. News and World Report*, Jan.17, 1994, p.40.

⁸ David. A. Anderson, "The Aggregate Burden of Crime", *The Journal of Law & Economics*, Vol. XL11 (2) Oct.1999, p.629.

companies. It is estimated that, during 1991-1996 they stashed away \$150 to \$300 billion. In the state where not even one-third crimes are reported, out of 5000 contract murders of businessmen registered per year not even a dozen crimes are solved. In the nation of 150 million people, where there are only 10,000 judges, people having lost faith in the judicial system and being suspicious of the rule of criminal oligarchy resort to the local mafias to settle disputes and debts.⁹ Crime in South Africa is so pervasive that it has ceased to be news. Though, 1 in 36 rapes is reported, its rate of 115.80 per 1000 population, with an incidence of 42,280 in 1998, has earned it the distinction of the 'rape capital of the world'.¹⁰ The organized crime of illegal trafficking in children has its network that extends from Italy to U.S.A, Germany, Holland, Britain, Portugal, Greece, Ecuador and Brazil.¹¹ In Philippines, kidnapping for ransom that is highly organized has affected even her capital investment.¹²

⁹ Vladimir A. Radyuhin, "Crumbling Kremlin", *The Hindu*, 24-11-1996.

¹⁰ M.S. Prabhakara, "A smoking gun", *The Hindu*, 04-11-1999.

¹¹ V.G. Kanetkar, *Crime in Future*, Jaico Publishing House, Bombay, 1995, p.88

¹² Seth Mydans, "Easy victims, easy money", *The Hindu*, 23-03-1996.

In India the scenario of crime is dreadful. The total number of cognizable crimes under the Indian Penal Code increased from 984,773 in 1972 to 1,353,904 in 1982 representing an increase of 37.5%, which exceeds the growth of population of 25.10% over the decade. In 1997 the total number of cognizable crimes increased to 1,729,820 (i.e. an average of 12 cognizable crimes per minute) and the non-cognizable crimes increased to 4,691,000.¹³ In the nation over one lakh Nepalese women are involved in the flesh trade and an additional 5,000 are trafficked in every year.¹⁴ In Bombay's Kamatipura, 40,000 children below 14 years are in the business.¹⁵ The cost of these crimes to the society is yet to be analyzed.

The genocide of more than 3000 Sikhs in 1984¹⁶ in the Capital of the nation in which all the perpetrators escaped scot-free¹⁷ because of the acquiescence and complicity of the guardians of law and the subversion of the rule of law into personalized law; the pogrom in Gujarat in which more than

¹³ *Crime In India-1997*, N.C.R.B (M.H.A), New Delhi, p.4.

¹⁴ *The Hindu*, "One Lakh Nepalese Sex Workers in India", 22-08-1998.

¹⁵ National Women's Commission, "Tourism helping child abuse", *The Hindu*, 30-11-1996.

¹⁶ "Turning Points, A Brief History of Secular Crisis", *India Today*, April 8, 2002, pp.24&25.

¹⁷ Editorial, "Communal Crimes And Punishment", *The Hindu*, 27-12-2002.

800 Muslims were butchered, 1.5 lakhs people were rendered homeless¹⁸ (which even affected her commerce and industry to the extent of Rs.10000 crores),¹⁹ in which even the Chief Minister was indicted by the National Human Rights Commission, the Independent Citizens' Forum and the European Parliament put a pall over the democratic future of the nation.

Here criminals and tax-dodgers can become legislators, rulers and bureaucrats. The fact that a convict who was disqualified to contest in an election headed a government in Tamil Nadu that had to execute her sentence, the criminal records of 47 members of Parliament and 700 members of legislative assemblies (furnished by the Election Commission in August 1997), the annual business turnover of Rs.3000 crores of the under world tycoon-Dawood Ibrahim,²⁰ the asset of Rs.500 crores amassed by Ramesh Sharma-the V.V.I.P who enjoyed the 'Y'-category protection in 1991-through smuggling, kidnapping, pimping etc.²¹, the stashing away of Rs.468 crores

¹⁸ Dionne Bunch, "The crisis of the camps", *Frontline*, April 26, 2002, p.22.

¹⁹ Uday Mahurkar, "The Modi Effect Gujarat", *India Today*, April 29, 2002, p.40.

²⁰ Editorial, "Corruption, Crime and Politics." *The Hindu*, 10-05-1998.

²¹ Special Correspondent. "Rajakeeyamaya rangapravesam", *The Malayala Manorama*, 09-11-8.

from the Indian Bank at Chennai by N.R.I businessman M.V.Raja whose business spans every continent,²² the bribery and illegal accumulation of wealth by B.P Verma, the Chairman of the Central Board of Excise and customs(CBEC) who headed the 80,000 strong workforce that included 1,729 Class 1 officers responsible for the collection of Rs.53,750 crores in revenue during 2001-2002, the nexus among smugglers, terrorists, customs officials, politicians and the tinsel world in the mafia capital of India corroborated by the Bombay blast of March 6 -12 all point to the sordid situation. The flagrant violation of law by guardians of law, involving instances of custodial deaths, rapes, extortions etc. (for eg. 174 custodial deaths during 1994-95 in Maharashtra,²³ 331 custodial rapes during 1991-93, 674 cases of extortions during 1994²⁴), over 1300 custodial deaths in 2001-2002 of which 1140 were in judicial custody,²⁵ the liquidation of 170 innocent people in fake encounters by the Police in Uttar

²² Satyantana Chakravarty, "Unsafe Account", *India Today*, July 30, 2001.

²³ Susan Abraham, "To Sir. Rowlatt with love", *The Hindu*, 18-9-1999.

²⁴ *The Hindu*, "Towards People's Police", 25-12-1999.

²⁵ Our Legal Correspondent, "Over 1300 custodial deaths in 2001-2002," *The Hindu*, 4-5-02.

Pradesh, which is composed of 30% criminals,²⁶ the incarceration of 5000 people under TADA in 1993 under which the conviction rate is only 0.81%,²⁷ the operation of 136 criminal gangs in the state of Uttar Pradesh under the patronage and tutelage of the politicians,²⁸ the stultification of the rule of law that proceeded with the withdrawal of more than 5000 criminal cases, due to political favouritism by the Government of Kerala during 1996-2000,²⁹ the reign of terror unleashed by the Ranveer Sena in Bihar that organized the murder of more than 250 dalits during 1995-1999,³⁰ and by the politically organized criminals in the Kannur district of Kerala³¹ and elsewhere signal the seriousness of the situation. Here the might of a forest brigand who poached on 1200 pachyderms, smuggled sandalwood and murdered more than 120 officials (to nab whom more than Rs.100 crores was

²⁶ Kuldip Nayar, "Custodian or Criminal", *The Hindu*, 01-08-1997.

²⁷ V.R Krishna Iyer, "Rowlatt Act, TADA and POTA", *The Hindu*, 04-08-1998.

²⁸ Kuldip Nayar, op. cit.

²⁹ Special Correspondent. "Caseukal illathavunnu, swanthakar rekshapedunnu", *The Malayala Manorama*, 28-01-2000.

³⁰ (a) Krishna V. Ananth, "Legitimizing gun culture in Bihar", *The Hindu*, 23-06-2000.
 (b) Bhelari Kanayya. "Ranveer Senayudae belam rashtreyakarudae pinthunna", *The Malayala Manorama* 20-06-2000.

³¹ (a) Rani George, "Party grammangalil pada orungunnu"-Series-4 *The Malayala Manorama*, 08-03-2001 to 11-03-2001.
 (b) Leela Menon, "I need a gun for protection", *The Hindu*, 18-02-2001.

frittered away) and striking terror at will is mightier than the might of the State.³² In a nation where the might of a state is challenged when the law is set to take its own course by the politicians, causing deflection of laws, not only crimes flourish but also rule of law will be replaced by force of law.

The Vohra Committee corroborates that the canker of crimes of all hues afflicts the Indian economy. The crime syndicates with their interstate and international linkages have become a law unto themselves, treading into every sphere of political and economic activities with their muscle and money power. Some of them involved in drugs and weapons trafficking have established macro-terrorism networks. They have established a parallel government. In Bihar alone 30 organized criminal gangs, engaged in professional murder, kidnapping for ransom, extortion, robbery and rioting have liberated several areas from government controls. They levy taxes called firauti tax and various other taxes for running business, patronage/protection tax called rangadari tax for kidnapping for ransom, hold courts and award punishments with their administrative cadres. The crime-syndicates have

³² *The Hindu*, " Striking terror at will ", 06-08-2000.

not only swayed the market-sector but also the non-market sector activities, misutilising and misappropriating allocation to the social sector, especially meant for the poor sections.

The state of affairs of law portends ominous for the nation. The backlog of cases pending disposal before the courts is more than 3 crores. Whereas in Korea the prosecution and final disposal, including appeals, of a criminal case takes just 14 months, in India it has become an interminable process. We have not yet achieved the ratio of 107 judges to 10 lakhs population recommended by the Law Commission ten years ago; we have only 10.5 judges per 10 lakhs population. Moreover, unlike the developed countries where 15% of the gross revenue of the state is earmarked for courts, India spends only 0.73% of its revenue on courts. These are reflected in the backlog of three crores of cases pending disposal before the courts.

1.2 ECONOMIC OFFENCES

Law breaking can be divided into two categories, conventional crimes (murder, burglary, theft etc.), and crimes for pure economic gains (smuggling, tax-evasion, corruption etc.). The socio-economic development of societies, especially

in the modern era of rapid pace of liberalization and globalization that increased social intercourse, accelerates law breaking for economic gains. They, unlike traditional crimes, are usually not punishable under the criminal law, but by means of penalties, civil damages, revocation of licenses, seizures or destruction of commodities etc.

Now, economic offences can be defined as acts done solely or in an organized manner, with or without association, to earn income and wealth and to wheel and deal with the proceeds, circumventing the laws or exploiting the deficiencies in laws, which victimizes not any specific individual but society at large, thereby undermining its socio-economic fabric. Though the terms economic-crimes, public-welfare offences, socio-economic- offences, white-collar crimes etc. are more or less synonymously used, the present study, for preciseness in definition, employs the term economic offences.

The crimes like violations of export-import control measures, currency-control measures, embezzlement of public funds are born out of greed, avarice, and rapacity. They are acts of production for income committed with economic rationale from the perspective of the offender. But from the

societal point of view, they are directed against the society as a whole since they clandestinely lead towards a redistribution of income, misallocation of resources and shifts in market-entitlements. They are crimes since they meet the basic requirements of criminal laws viz. the existence of formal social condemnation and provision of sanction for their prevention. These offences differ from the traditional offences in their modus operandi; either the rule of law is circumvented or the lacunae in law is exploited.

Whereas in the traditional crimes that spring out of hatred and lust mensrea is important, in economic offences it is exempted in the interest of the public, and the administrative procedure anent them is different from that employed for adjudication of guilt by the ordinary criminal courts.

The crimes for economic gains are very complex and diffused for a long span of time unlike traditional crimes. The socially injurious nature of such law breaking is obscured and hence their essential criminality is also obscured, which reduces the public resentment. Hence public pressure for

stronger legislation to mete out severe punishment for such crimes, however socially injurious they may be, lacks steam.

Furthermore, unlike conventional crimes, law breaking for economic gains does not have any specific victims; the society at large is the victim. The violators, usually being of high social status with power at their command, evade or twist the arm of law, demonstrating the unenforceability of law; and if ever prosecution takes place the result is minor penalty. Besides, as the offender's self-esteem is high and his associates regard him as respectable citizen, little stigma is attached with conviction unlike in traditional crimes.

The explanatory variables like childhood emotional insecurity, repressed primitive drives, guilt feeling etc. considered by the psychologists or poverty, broken home etc. considered by the sociologists to explain traditional criminal behaviour lose their relevance in the context of law breaking for economic gains.

Economic offences are crimes against society. The irreparable damages they cause to the economy are:(i) breeding of corruption, (ii) generation of black money, (iii) diversion and distortion of resources of financial institutions

(iv) accentuation of inflation, (v) marginalization of tax-base, (vi) distortion of growth and development, (vii) creation of parallel economy, (viii) inequitable distribution of resources, (ix) marginalization of the poor, (x) decline in public morale and ethics etc. Now a brief survey of the economic offences in various economies would highlight its gravity.

1.3 ECONOMIC OFFENCES - A BRIEF SURVEY

Economic offences have afflicted both the developed and the developing countries. In U.S.A, in 1981 the unreported income ranged between \$280 billion and \$ 420 billion i.e. about 16-24% of its gross income.³³ In Italy, the annual income earned from betting and gambling by the economic offenders is estimated to be Rs.8000 crores and Rs.32,000 crores respectively.³⁴

The drug-trafficking industry has now emerged as the second largest industry in the world. In Russia, the annual turnover of this industry is \$30 billion, and in the capital Moscow alone it fetches a profit of \$1billion.³⁵ The Asian organized crime syndicate, which recruits Asian officers with

³³ E.L Feige, *The Underground Economies*, Cambridge University Press, Cambridge, 1988, pp. 34 & 35.

³⁴ *The Hindu*, " Crime in Italy", 06-04-1996.

³⁵ Vladimir Radyuhin, " Opium, the new religion", *The Hindu*, 20-05-2001.

skills in various languages and dialects and training in foreign cultures, has made Washington, New York, Seattle and Chicago as its transit routes for heroin. In Myanmar and Columbia the drug-barons maintain their own well-equipped armies.³⁶ Afghanistan earns \$1.1 billion from its 3000 tons of opium produced from the 8000 hectares of land under poppy cultivation; and in Pakistan the demand for opium of the 3.1 million people i.e. 2.60% of the population flourishes the drug industry.³⁷ And in Afghanistan smuggling constitutes one-fifth to one-fourth of its foreign trade volume.³⁸ The money-laundering activities associated with these crimes constitute the third largest business in the world involving more than \$500 billion annually.³⁹

The economic offences squeeze the vitals of an economy. For instance, in China smuggling is estimated at \$18 billion (1988), tax evasion on construction projects at \$2 billion (1997), illegal electric connections at \$804 million (1993), non-performing assets to state-owned enterprises at \$120 billion to

³⁶ Jeans, "Drug lord, now overlord", *The Hindu*, 21-01-1996.

³⁷ *The Hindu*, "Taliban encouraging drugs production", 19-10-1996.

³⁸ Bhagawati, J.N. *Illegal Transactions in International Trade*, Vol.1, 1974, North Holland Publishing Company, Amsterdam.

³⁹ Jayaseelapandian. P. "Understanding money laundering", *The Hindu*, 17-10-2000.

\$200 billion and, diversion of funds from grain departments at \$6.7 billion (1992-1998); in Pakistan smuggling, tax-evasion and default of loans to the banks constitute \$3 billion each, theft of power through 450,000 illegal electricity connections in Karachi constitutes 35% of its electricity-output, and the parallel economy is of the range \$35 billion-\$40 billion. And in Bangladesh 40% of the electricity produced is not paid for because of the illegal connections and non-payment of bills. There, corruption accounts for two to three percent of the Gross Domestic Product every year and 30% of the development funds are lost through various malpractices.

1.4 INDIAN SCENARIO

The historical records of crimes and economic crimes abound in India.⁴⁰ The Santhanam Committee found that during 1958-62, 700 firms obtained or utilized licenses worth Rs.70 million illegally through misrepresentation, forgery or breaches of export/import control regulations. The illegal accumulation of foreign exchange through under-invoicing/over-invoicing of imports and exports ranged between Rs.40-50 crores per year. During this period, 548

⁴⁰ Sukla. Das, *Crime and Punishment in Ancient India*, Abhinav Publications, New Delhi, 1977.

firms obtained 660 licenses valued at Rs.23,824,149 by misrepresentation or based on forged documents. Another 361 firms wrongfully utilized 717 licenses valued at Rs.44, 510,784 which they had obtained under the category of actual users. Each license fetched 100% to 500% of its face value when sold. In 1956, the amount of tax evasion approximated to Rs.300 crores. In 1960-61 the Enforcement Directorate (Foreign Exchange Control) of the Ministry of Finance registered 3645 cases relating to unauthorized purchase/use, borrowing and lending of foreign exchange, maintenance of accounts in foreign banks, making payments to or on behalf of non-residents and non-realization of full export proceeds. It imposed a penalty of Rs. 92 lakhs in 1472 cases.

The size of economic offences has become colossal. It has increased from 4942 in 1961 to 26,891 in 1991 i.e. by 441.13% during the period.⁴¹ The harm caused to the capital and money markets and hence on the financial stability by the securities scam, involving more than Rs.5000 crores;⁴² the embezzlement of public exchequer, for instance the Bihar

⁴¹ *The Hindu*, "Crime and Punishment", 29-8-1995.

⁴² K. Balchand, "Tarred with the same brush", *The Hindu*, 30-06-96.

fodder scam involving more than Rs.750 crores;⁴³ and the lottery scam worth Rs.38,297 crores during October 1993 to November 1997 in Nagaland⁴⁴ have corrosive effect on the economic texture of the nation.

The drain of capital to the United States of America from India due to under-invoicing of exports and over-invoicing of imports in 1993 was estimated at \$4.40 billion out of the total Indo-U.S trade volume of \$7.30 billion. The aggregate capital flight may be higher since India's total external trade volume was \$50 billion then.⁴⁵ It also reflects money-laundering activities. During 1991-1996, the Indian Tobacco Company alone committed FERA violations worth \$100 million by under invoicing export of leaf tobacco.⁴⁶

⁴³ (a) Prasad, Manor. "Top brass were well aware of fodder scam", *The Hindu*, 24-02-1996.

(b) Balchand.K, "A Mega scam in Laloo Land", *The Hindu*, 11-02—1996.

⁴⁴ *The Hindu*, "A.G Unearths Rs.38,000Cr.lottery scam in Nagaland", 22-07-1999.

⁴⁵ *The Hindu*, "I.T.C Chief admits FERA violations", 06-11-1999.

⁴⁶ *The Hindu*, "E.D Raids ITC Office, FERA Violations", 31-10-1996.

TABLE 1.1
TOP TEN TAX EVADING MNCS IN INDIA

Income-Tax Rs.Crores		Central Excise Duty Rs.Crores		Customs Duty Rs.Crores	
Asia Satellite Telecom.Ltd.	195.70	Hindustan Lever Ltd.	22.99	Sony India Pvt. Ltd.	457.65
Sabre Group Inc.	126.32	Procter & GambleLtd.	13.57	SEDCO Forex Int.Drilling. Inc	131.22
Lucent Technologies, Int. Inc.	125.87	Nestle India Pune.	12.05	ABB Ltd.	62.00.
Nokia Network O.Y	119.82	Indian Shaving Products (Gillette).	5.67	Hyundai Motor India Ltd.	44.40
Caribjet Inc.	113.84	Voltas Ltd.	5.58	I Ranbaxy Lab.Dewas.	26.84
Allied Signal Inc	97.50	Johnson & Johnson Ltd.	5.50	Hindustan Lever ltd.	18.49
Ericsson Radio systems AB	69.4	British Health Products (Pvt.) Ltd. Bhiwadi.	4.87	Nestle (Pvt.) Ltd	12.05
Amadeus Marketing S.A	67.06	Perfetti India Ltd.	4.68	Hindustan Lever Ltd.	5.76
Pan Amsat.	52.10	Larsen Toubro Ltd, Bangalore.	4.21	P&G (I) Ltd	5.08
Motorola Inc.	50.09	Bata India Ltd.	4.10	Novartis	3.20.

Source: Lok Sabha, Starred questions; *The Hindu*, 22-6-2000.

Note: Income tax for assessment years 1996-97, 1997-98 & 1998- '99.

Central Excise & Customs duty detected in 1997-98, 1998-99 & 1999- 2000.

The multinationals in India evade taxes with impunity, and if ever it is detected before proceeding with prosecution under Section 26C of the Income Tax Act, they escape by paying taxes and penalty. The impudence with which they violate the economic laws and thereby undermine the fisc of our nation is evident from Table 1.1 which gives the evasion of taxes - income tax, central excise duty and customs duty - committed by top ten multinational companies in India.

The economic offences have pervaded the banking sector, even in the public sector. The number of frauds in the public sector banks in 1990-95 was 11,332 valued at Rs.951.73 crores.⁴⁷ The foreign banks in India committed 592 offences worth Rs.14.66 crores during the period. The volume of outstanding income-tax dues of the banking sector is gargantuan. In the sphere of foreign banks, there are 130 cases of default amounting to Rs.13,750 crores as on 31st March 1995.⁴⁸ The non-performing assets worth Rs.52,000 crores⁴⁹ constituting 14.30% of the gross outstanding advances, that eats away the vitals of the banking system portends the

⁴⁷ Editorial, "Crime and Punishment", *The Hindu*, 29-08-1996.

⁴⁸ S.P.S Pannu, "Foreign banks among 130 I.T defaulters", *The Indian Express*, 28-08-1995.

⁴⁹ *The Hindu*, 14-07-2000, "Banks and the Borrower".

blunting of banking laws by the bankers and loanees. In the security scam of 1992, the investments worth Rs.3192 crores⁵⁰ made by banks and institutions without any security speak of the specialized knowledge and skill of the wizardry in organizing and camouflaging illegitimate banking and financial transactions.

The public sector companies are also engrossed in tax evasion and corruption. For instance, are the urea scam of Rs.133 crores involving the National Fertilizers Limited⁵¹ (the payment of Rs.133 crores in 1998 to the Turkish trading outfit Karsan Ltd. for the import of two million tons of urea without any import of its granule), and the customs duty evasion by the Indian Oil Corporation for Rs.975.90 crores during 1994-95 that increases to Rs.3000 crores when the mandatory penalty and the interest rate are added, and the additional duty evasion of Rs.450 crores by suppressing facts and mis-declaring items.⁵²

The tax compliance index depicts a negative trend; in 1992-93 it halved its value of 1965. The tax revenue as a share of gross domestic product in India was only 11.30 whereas for

⁵⁰ C.V.Gopalakrishnan, "Murky world of white collar crime", *The Hindu*, 30-09-1998.

⁵¹ S.Swaminathan, "The urea scam-the hidden message ", *The Hindu*, 09-10-1996.

⁵² *Excise Law Times*, Vol.117, Part.2, April 2000, p. A103.

all developing countries it was 31.20 in the late 1980s.⁵³ Here, only 12 million people, i.e. 0.80% of the population do pay income tax and that too mostly the salaried class while the middle class (100 million) constitutes 10 to 15 percent of the population with adequate purchasing power. Whereas in the United Kingdom, the United States of America, Switzerland etc. tax evaders cannot hold political or administrative posts, there is no such legal impediment in India. The Corruption Index of the Transparency International ranks India as the 73rd among 99 countries for the year 1999. The burden of corruption in daily life for the delivery of public services in health, education, public distribution system, power, railways, telecommunication, land administration, police, and the judiciary is estimated at Rs.26,728 crores in the year ended May 2002; which means a mulcting of per capita bribery of Rs.267.⁵⁴

The trafficking in drugs and guns has become a lucrative business in the nation. In Manipur, the daily demand for heroin exercised by its 35,000-400,000 drug addicts (out of the total population of 20 lakhs) exceeds 15 kilograms valued at Rs.1 crore in the international market. It is the transit route for

⁵³ Pulapre Balakrishnan. "Will the Govt. learn to tax?" *The Hindu*, 18-11-1995.

⁵⁴ "Burden of corruption in daily life", *The Hindu*, 27-12-2002.

heroin worth Rs.3650 crores annually. Now Kerala and Tamil Nadu, because of the long coastline, geographical proximity, and historical and ethnic links with Sri Lanka are emerging as narcotic centres of the world. In Kerala, where 5000 acres of forestland is under ganja cultivation, the Neela Chadayan grown in the Idukki district is world famous.

In the Northeast, the smuggling of timber by the timber mafia during 1998 alone was worth Rs.100 crores; it is denuding the region of its forest cover, which would imminently cause ecological disaster.⁵⁵

In India, the number of children below 14 years working in the most excruciating conditions is more than 265 million. Not only the Child Labour Act but also the labour laws are flouted.⁵⁶

The impact of socio-economic crimes can be gauged from the size of the black money. The estimates vary from 30% and upwards of the gross domestic product. The lowest estimate is that in absolute terms it has grown from Rs.250 crores in 1965 to Rs.184,321 crores in 1982, representing a compound growth rate of 18% and the present unofficial estimate is that it has

⁵⁵ Vinay Kumar, "Timber mafia running amok in North-east", *The Hindu*, 04-12-1999.

⁵⁶ Staff Reporter, "Child labour persists despite awareness", *The Hindu*, 08-10-1996.

grown to Rs.100,000 crores.⁵⁷ It had grown from 3% of the gross domestic product in the mid fifties to around 35% by 1990-92 and to 40% in 1995-96.

1. 5 ECONOMIC LEGISLATIONS

The modern state has to regulate economic activities by numerous legislations. As the state graduates towards a welfare state, its activities increase both extensively and intensively and so is the spectrum of socio-economic offences. The state has now multiplex functions of a provider, regulator, entrepreneur, and umpire besides its traditional functions of maintenance of law and order.⁵⁸ The collective aspirations of the society enshrined in the Directive Principles of the Constitution reflect this. It enjoins the State to secure a social order that promotes welfare, minimize inequalities in income and status, provide adequate means of livelihood, and distributes material resources that best serve the common weal and that which does not result in concentration of wealth. Accordingly, the state has evolved certain social standards, which are manifested in the regulatory legislations that regulate economic activities.

⁵⁷ C.R. Reddy. "A play in immorality", *The Hindu*, 10-11-1998.

⁵⁸ W.Friedman, *The State and Rule of Law in a Mixed Economy*, 1971, Stevens & Sons Ltd. London.

The manner in which the State regulates economic activities can be understood, for instance, from the Preamble of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act of 1974(repealed). It states that it provides for preventive detention in order to conserve and augment foreign exchange and to prevent smuggling activities that have deleterious effect on the economy and security of the nation. The Customs Act tailored to the needs of the economy states its purposes, inter-alia, as the maintenance of security, prevention of smuggling, conservation of foreign exchange and safeguarding of balance of payments etc. The judicial pronouncements also delineate the impact and gravity of economic offences on the public economy and financial stability of the nation. Now a mere enlistment of the numerous activities regulated by economic legislations would highlight the concern of the state in protecting the social and commercial interests of the nation, and the scope and amplitude of the legislations.

The most important economic legislations relate to smuggling, income tax evasion, bank frauds, insurance frauds, excise duty evasion, manipulation of foreign contribution, illicit trafficking in drugs and narcotics, fraudulent bankruptcy, credit card frauds, company frauds, money laundering, illegal foreign

trade, computer crime, thefts of antiquities, thefts of intellectual properties, manipulation of stocks, real estate frauds, illicit trafficking in arms, illicit trafficking in explosives, racketeering in employment, racketeering in false travel documents, trade in human body parts, terrorist activities, bribery and corruption. Different legislations are enacted and different enforcement authorities are constituted corresponding to the structural differences in these offences. Though there are many other economic offences like adulteration of foodstuffs, fabrication of weights and measures, evasion of state taxes (e.g. sales tax) etc. for which separate laws and enforcement authorities exist, the National Crime Records Bureau of the Ministry of Home Affairs considers only the above said twenty-four crimes under its classification. The Acts of legislation it considers are Customs Act, 1962; Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974; Income Tax Act; Indian Penal Code; Central Excise and Salt Act, 1944; Narcotic Drugs and Psychotropic Substances Act of 1985 & PIT NDPS Act, 1988; Banking Regulation Act, 1949; Import and Export (Control) Act, 1947; Companies Act, 1956; Foreign Exchange Management Act, 1999; Copy Right Act, 1957; Antiquity and Art Treasures Act, 1972; Arms Act, 1959; Explosives Act, 1884; Explosive

Substances Act,1908; PassportAct,1920; Terrorist and Disruptive Activities (Prevention) Act,1987; Transplantation of Human Organs Act,1994;and Prevention of Corruption Act,1988. The present study just for the sake of expediency abides by this listing of crimes.

The society, after considering the multifaceted dimensions of the economic offences has instituted specialized agencies, both administrative and judicial, deploying its scarce resources having alternative uses for the implementation of the laws.

Nevertheless, the scenario of economic offences is appalling and the entire gamut of economic offences desiderates economic analysis. However, among the economic offences customs offences demand serious attention, as its economic impact is very severe. Further, as domestic and international economic transactions and international relations are involved therein, they can cause havoc to an economy easily. Among the numerous customs offences, the present research is confined to the offence of smuggling because of its gravity, and the paucity of time and resources.

1.6 THE SIGNIFICANCE OF THE STUDY

Among the economic offences, customs offences are of serious concern in that it consumes the economic and financial health of a nation quickly. They distort the aims and objectives of our plans and policies, subvert the Directive Principles of the Constitution, and hence emasculate the Constitution itself. That is why provisions for preventive detention to prevent and deter crimes have been incorporated in the Customs Act. It is noteworthy that the rampant violation of customs laws and the demonstration effect of the conspicuous consumption of smuggled goods by the nouveau riche affect the psyche and physique of the economy. Then the laws fail to secure compliance from the people and the socio-engineering aspect of law and economics becomes infructuous. Thus, customs offences constitute a research problem with multifaceted dimensions.

Though the basic function of Customs administration is collection of revenue, the customs offences have serious economic dimensions, not only on the revenue side but also on the state of health of the economy. Further even the collection of tax revenue, for instance, Rs. 81,088 crores in 1995-96

constituting only 19% of the total revenue, does not reflect the potential of the economy. Nevertheless, little research has been done on customs offences. Hence there is the need to fill up this research gap.

The problem hovering around economic offences in general and customs offences in particular is that they are preoccupied with other areas. They were considered as mere illegal acts and simply left out of the realm of economic analysis, till recently. However, from the point of view of the offender, they are committed to amass wealth and maximize profit and utility to him irrespective of societal sanctions. Now they have grown into gigantic size that posed threats to an economy. Hence it is imperative to study the customs offences, particularly the offence of smuggling, in the theoretical framework of economics.

The offence of smuggling attracts prime concern because not only mere smuggling of goods takes place but also their trading on a massive scale involves masses. This erodes the fear of law and the general observance of law. This causes rapid cancerous growth of the illegal sector of the economy over its legal sector. Further, the black money the smuggling transactions generate has multiplier effect that boosts up and

pervades the parallel economy. Further, the Customs Act remains as a gateway for international commercial transactions of an economy. Smuggling sneaks through the gateways, waylays it and gradually reins the power of the sovereign, and the economy gets topsy-turvy. Therefore the study of smuggling in the theoretical framework of economics is of high significance.

1.7 OBJECTIVES.

- i. To examine the impact of changes in the laws and policies on customs offences in the pre-liberalization and the post-liberalization period.
- ii. To examine the factors that determine the volume of customs offences, i.e. the supply of offences.
- iii. To examine the economic rationale and judiciousness of the decisions of the law enforcement machinery, viz., the Economic Offences Court and the Customs Department.
- iv. To examine the social/community background of offenders.

1.8 SCOPE OF THE STUDY

The study is on the customs offence of smuggling in Kerala. The Malabar region of Kerala, comprising the districts

of Malappuram, Kozhikode, Kannur and Kasaragode coming under the jurisdiction of the Commissionerate of Customs and Central Excise, Calicut, the Air Customs, Calicut, and the Directorate of Revenue Intelligence, Kozhikode, is the most acute customs offence prone area in Kerala. The present study therefore concentrates on this region. Besides this, all cases of smuggling occurring under the jurisdiction of the Commissionerate of Customs & Central Excise, Cochin are also subjected to detailed examination. The impact of the changes in law and enforcement on smuggling has been studied with reference to all-India data also because the state level data were found to be inadequate for an exhaustive study.

The determinants of the supply of offences could be studied only with the help of the All-India level data as the state level data were insufficient and did not depict the reality of smuggling in its totality as the smugglers switch over their venue of operations in response to the changes in the degree of enforcement.

The judiciousness and the economic rationale of decisions of the enforcement machinery are analyzed with respect to the above said state-level data and of the Economic Offences Court, Ernakulam. This helps to evolve certain

parameters to reduce arbitrariness and indiscreetness in judicial or quasi-judicial proceedings.

1.9 LIMITATIONS OF THE STUDY

The study is confined to the offences under the Customs Act and the Gold Control Act. The offences under the allied Acts like Foreign Exchange Regulation Act/Foreign Exchange Management Act, Income Tax Act, Narcotic Drugs and Psychotropic Substances Act, Import and Export (Control) Act are not considered, though the offences under these Acts and Customs Acts are joint products of illegal activities.

The study deals with the offence of smuggling only, other offences under the Act are not considered. Hence it is not a comprehensive study of the customs offences. This is because of the paucity of time, resources and data availability and for the manageability of the problem.

No inter-state comparison of the smuggling business is attempted, as the spatial dimension of the problem with respect to time and changes in the degrees of law-enforcement are beyond the scope of this study. Further, the socio-economic status of the offenders and recidivism are not analyzed, as they are not within the ambit of the present study.

1.10 CHAPTERIZATION

Chapter-1 introduces the significance, scope and amplitude of the study of the economics of smuggling under the Customs Act. Chapter-2 deals with the 'Review of Literature'. Chapter-3 discusses the methodology employed for the study and for the empirical verification of the hypothesis mentioned. Chapter-4 presents customs laws and allied laws for their ramifications and for the proper perception of the problem. Chapter-5 deals with the administrative set up of the Department and Kerala's place in the customs map of the nation. Chapter-6 and Chapter-7 analyze the impact of changes in the dichotomized variables of law and enforcement on smuggling during the pre-liberalization and post-liberalization periods respectively. In Chapter-8 we examine the factors that determine the supply of offences. Chapter-9 studies the judicial and economic rationale behind the decisions relating to customs offences made by the enforcement agencies viz. Economic Offences Court and the various departments of the Customs. Conclusion and findings of the study are presented in Chapter-10.

CHAPTER-1

INTRODUCTION

A clear exposure to the different forms of crimes and the distinction between crimes and economic crimes in particular, is a necessary prerequisite for a study on the economics of economic crimes. This introductory Chapter is meant to explain the different types of crimes and their likely consequences on the economy. The significance of the study of economic offences, the objectives of the present study and its limitations also are dealt with in this Chapter.

1.1 CRIME

Crime, “an act committed in violation of a law prohibiting it or omitted in violation of a law ordering it”¹ is as old as man. It is an act or omission prohibited by public law for the protection of the public, and made punishable by the State in a judicial proceeding. It is a public wrong as distinguished from a mere private wrong or civil injury to an individual.² Mensrea is its essential ingredient unless expressly excluded. It is not an essential ingredient in cases (a) involving public

¹ *Webster's New World Dictionary*, Third College Edition, Simon & Schuster, New York, 1961.

² *International Encyclopedia of the Social Sciences*, Macmillan, Vol.17, New York, 1968, p.5.

nuisances, (b) which are really not criminal but in the interests of public are prohibited under penalty, and (c) which are criminal in form but which are really only a summary mode of enforcing a civil right. As crimes consume the psyche and physique of an economy its present phase has to be succinctly stated.

It has now evolved into an organized one, committed by a relatively large group of continuous and coordinated criminal entities, constituted as an enterprise for profit, which is insulated against social control through an admixture of illegal and legal means. In short, it is composed of a "group of individuals organized for the purpose of profiting by illegal means on a continuing basis".³

The organized crime groups have now developed into national and further into transnational crime groups and have become omnipotent to control even labour unions in many developed countries. The income they generate even exceeds the gross national income of many nations. They are categorized into different types.

³ United Nations, *Commission on Crime Prevention and Criminal Justice-Economic and Social Council Official Records*, Supplement No.10, 1992, p.20.

Structured hierarchies, internal rules, discipline, codes of behaviour and diversity of illegal activities characterize the traditional type. The classic example is the Mafia, the largest criminal organization in the world with a history dating back to the 13th century. In 1982 its annual turnover and profit due to gambling, protection rackets, tobacco bootlegging, hijacking, drug peddling, loan-sharking and prostitution were \$200 billion and \$75 billion respectively.

The professional type is characterized by an association of members who join together for certain ventures like car-theft, extortion, drugs-peddling, trafficking in women and children, counterfeiting. In U.S.A, if the car-theft industry, which has gone global, were organized as a single company, it would occupy the place of 56th largest U.S Corporation.⁴

The borderlines between these types of criminal groups are not rigid; often they involve multiplicity of component features since they, being manned by professionals with transnational experience in criminal enterprises, are easily adaptable to the changes in the criminal justice policies.

⁴ Editorial, "Car Theft: Big Business in U.S ", *The Hindu*, 21-07-1995.

That crimes have now acquired diabolical dimensions jeopardizing modern economies can be understood from the following facts. In U.S.A rape, robbery, aggravated assault, larceny and motor vehicles thefts have increased from 11,292,400 in 1975 to 11,881,800 in 1984, giving a growth rate of 0.50% per annum. There in 1965, the total cost of crime against persons and property and the related costs was estimated at \$21 billion i.e. 4% of her national income.⁵ In 1974 the crime burden was estimated at \$288 billion,⁶ in 1994 it was updated to \$728 billion⁷ and in 1999 the annual gross and net costs of crime, including direct and indirect costs, were estimated at \$1705 billion and \$1,102 billion respectively.⁸ In Russia, the army of well paid criminal gangs, and corrupt bureaucracy and underpaid police virtually run the state and the economy. There, the criminal gangs control 70 trillion roubles (\$113 billion) that accounts for 40% of the money in circulation; and manage 60% of the banks and

⁵ Gary.S.Becker, "Crime and Punishment: An Economic Approach", *Journal of Political Economy*, 76, p.16.

⁶ A Anderson, "The Aggregate Burden of crime", *Law & Economics*, 1975, p.615.

⁷ Collins, Sara. "Costs of Crime", *U.S. News and World Report*, Jan.17, 1994, p.40.

⁸ David. A. Anderson, "The Aggregate Burden of Crime", *The Journal of Law & Economics*, Vol. XL11 (2) Oct.1999, p.629.

companies. It is estimated that, during 1991-1996 they stashed away \$150 to \$300 billion. In the state where not even one-third crimes are reported, out of 5000 contract murders of businessmen registered per year not even a dozen crimes are solved. In the nation of 150 million people, where there are only 10,000 judges, people having lost faith in the judicial system and being suspicious of the rule of criminal oligarchy resort to the local mafias to settle disputes and debts.⁹ Crime in South Africa is so pervasive that it has ceased to be news. Though, 1 in 36 rapes is reported, its rate of 115.80 per 1000 population, with an incidence of 42,280 in 1998, has earned it the distinction of the 'rape capital of the world'.¹⁰ The organized crime of illegal trafficking in children has its network that extends from Italy to U.S.A, Germany, Holland, Britain, Portugal, Greece, Ecuador and Brazil.¹¹ In Philippines, kidnapping for ransom that is highly organized has affected even her capital investment.¹²

⁹ Vladimir A. Radyuhin, "Crumbling Kremlin", *The Hindu*, 24-11-1996.

¹⁰ M.S. Prabhakara, "A smoking gun", *The Hindu*, 04-11-1999.

¹¹ V.G. Kanetkar, *Crime in Future*, Jaico Publishing House, Bombay, 1995, p.88

¹² Seth Mydans, "Easy victims, easy money", *The Hindu*, 23-03-1996.

In India the scenario of crime is dreadful. The total number of cognizable crimes under the Indian Penal Code increased from 984,773 in 1972 to 1,353,904 in 1982 representing an increase of 37.5%, which exceeds the growth of population of 25.10% over the decade. In 1997 the total number of cognizable crimes increased to 1,729,820 (i.e. an average of 12 cognizable crimes per minute) and the non-cognizable crimes increased to 4,691,000.¹³ In the nation over one lakh Nepalese women are involved in the flesh trade and an additional 5,000 are trafficked in every year.¹⁴ In Bombay's Kamatipura, 40,000 children below 14 years are in the business.¹⁵ The cost of these crimes to the society is yet to be analyzed.

The genocide of more than 3000 Sikhs in 1984¹⁶ in the Capital of the nation in which all the perpetrators escaped scot-free¹⁷ because of the acquiescence and complicity of the guardians of law and the subversion of the rule of law into personalized law; the pogrom in Gujarat in which more than

¹³ *Crime In India-1997*, N.C.R.B (M.H.A), New Delhi, p.4.

¹⁴ *The Hindu*, "One Lakh Nepalese Sex Workers in India", 22-08-1998.

¹⁵ National Women's Commission, "Tourism helping child abuse", *The Hindu*, 30-11-1996.

¹⁶ "Turning Points, A Brief History of Secular Crisis", *India Today*, April 8, 2002, pp.24&25.

¹⁷ Editorial, "Communal Crimes And Punishment", *The Hindu*, 27-12-2002.

800 Muslims were butchered, 1.5 lakhs people were rendered homeless¹⁸ (which even affected her commerce and industry to the extent of Rs.10000 crores),¹⁹ in which even the Chief Minister was indicted by the National Human Rights Commission, the Independent Citizens' Forum and the European Parliament put a pall over the democratic future of the nation.

Here criminals and tax-dodgers can become legislators, rulers and bureaucrats. The fact that a convict who was disqualified to contest in an election headed a government in Tamil Nadu that had to execute her sentence, the criminal records of 47 members of Parliament and 700 members of legislative assemblies (furnished by the Election Commission in August 1997), the annual business turnover of Rs.3000 crores of the under world tycoon-Dawood Ibrahim,²⁰ the asset of Rs.500 crores amassed by Ramesh Sharma-the V.V.I.P who enjoyed the 'Y'-category protection in 1991-through smuggling, kidnapping, pimping etc.²¹, the stashing away of Rs.468 crores

¹⁸ Dionne Bunch, "The crisis of the camps", *Frontline*, April 26, 2002, p.22.

¹⁹ Uday Mahurkar, "The Modi Effect Gujarat", *India Today*, April 29, 2002, p.40.

²⁰ Editorial, "Corruption, Crime and Politics." *The Hindu*, 10-05-1998.

²¹ Special Correspondent. "Rajakeeyamaya rangapravesam", *The Malayala Manorama*, 09-11-8.

from the Indian Bank at Chennai by N.R.I businessman M.V.Raja whose business spans every continent,²² the bribery and illegal accumulation of wealth by B.P Verma, the Chairman of the Central Board of Excise and customs(CBEC) who headed the 80,000 strong workforce that included 1,729 Class 1 officers responsible for the collection of Rs.53,750 crores in revenue during 2001-2002, the nexus among smugglers, terrorists, customs officials, politicians and the tinsel world in the mafia capital of India corroborated by the Bombay blast of March 6 -12 all point to the sordid situation. The flagrant violation of law by guardians of law, involving instances of custodial deaths, rapes, extortions etc. (for eg. 174 custodial deaths during 1994-95 in Maharashtra,²³ 331 custodial rapes during 1991-93, 674 cases of extortions during 1994²⁴), over 1300 custodial deaths in 2001-2002 of which 1140 were in judicial custody,²⁵ the liquidation of 170 innocent people in fake encounters by the Police in Uttar

²² Satyantam Chakravarty, "Unsafe Account", *India Today*, July 30, 2001.

²³ Susan Abraham, "To Sir. Rowlatt with love", *The Hindu*, 18-9-1999.

²⁴ *The Hindu*, "Towards People's Police", 25-12-1999.

²⁵ Our Legal Correspondent, "Over 1300 custodial deaths in 2001-2002," *The Hindu*, 4-5-02.

Pradesh, which is composed of 30% criminals,²⁶ the incarceration of 5000 people under TADA in 1993 under which the conviction rate is only 0.81%,²⁷ the operation of 136 criminal gangs in the state of Uttar Pradesh under the patronage and tutelage of the politicians,²⁸ the stultification of the rule of law that proceeded with the withdrawal of more than 5000 criminal cases, due to political favouritism by the Government of Kerala during 1996-2000,²⁹ the reign of terror unleashed by the Ranveer Sena in Bihar that organized the murder of more than 250 dalits during 1995-1999,³⁰ and by the politically organized criminals in the Kannur district of Kerala³¹ and elsewhere signal the seriousness of the situation. Here the might of a forest brigand who poached on 1200 pachyderms, smuggled sandalwood and murdered more than 120 officials (to nab whom more than Rs.100 crores was

²⁶ Kuldip Nayar, "Custodian or Criminal", *The Hindu*, 01-08-1997.

²⁷ V.R Krishna Iyer, "Rowlatt Act, TADA and POTA", *The Hindu*, 04-08-1998.

²⁸ Kuldip Nayar, op. cit.

²⁹ Special Correspondent. "Caseukal illathavunnu, swanthakar rekshapedunnu", *The Malayala Manorama*, 28-01-2000.

³⁰ (a) Krishna V. Ananth, "Legitimizing gun culture in Bihar", *The Hindu*, 23-06-2000.
 (b) Bhelari Kanayya. "Ranveer Senayudae belam rashtreyakarudae pinthunna", *The Malayala Manorama* 20-06-2000.

³¹ (a) Rani George, "Party grammangalil pada orungunnu"-Series-4 *The Malayala Manorama*, 08-03-2001 to 11-03-2001.
 (b) Leela Menon, "I need a gun for protection", *The Hindu*, 18-02-2001.

frittered away) and striking terror at will is mightier than the might of the State.³² In a nation where the might of a state is challenged when the law is set to take its own course by the politicians, causing deflection of laws, not only crimes flourish but also rule of law will be replaced by force of law.

The Vohra Committee corroborates that the canker of crimes of all hues afflicts the Indian economy. The crime syndicates with their interstate and international linkages have become a law unto themselves, treading into every sphere of political and economic activities with their muscle and money power. Some of them involved in drugs and weapons trafficking have established macro-terrorism networks. They have established a parallel government. In Bihar alone 30 organized criminal gangs, engaged in professional murder, kidnapping for ransom, extortion, robbery and rioting have liberated several areas from government controls. They levy taxes called firauti tax and various other taxes for running business, patronage/protection tax called rangadari tax for kidnapping for ransom, hold courts and award punishments with their administrative cadres. The crime-syndicates have

³² *The Hindu*, " Striking terror at will ", 06-08-2000.

not only swayed the market-sector but also the non-market sector activities, misutilising and misappropriating allocation to the social sector, especially meant for the poor sections.

The state of affairs of law portends ominous for the nation. The backlog of cases pending disposal before the courts is more than 3 crores. Whereas in Korea the prosecution and final disposal, including appeals, of a criminal case takes just 14 months, in India it has become an interminable process. We have not yet achieved the ratio of 107 judges to 10 lakhs population recommended by the Law Commission ten years ago; we have only 10.5 judges per 10 lakhs population. Moreover, unlike the developed countries where 15% of the gross revenue of the state is earmarked for courts, India spends only 0.73% of its revenue on courts. These are reflected in the backlog of three crores of cases pending disposal before the courts.

1.2 ECONOMIC OFFENCES

Law breaking can be divided into two categories, conventional crimes (murder, burglary, theft etc.), and crimes for pure economic gains (smuggling, tax-evasion, corruption etc.). The socio-economic development of societies, especially

in the modern era of rapid pace of liberalization and globalization that increased social intercourse, accelerates law breaking for economic gains. They, unlike traditional crimes, are usually not punishable under the criminal law, but by means of penalties, civil damages, revocation of licenses, seizures or destruction of commodities etc.

Now, economic offences can be defined as acts done solely or in an organized manner, with or without association, to earn income and wealth and to wheel and deal with the proceeds, circumventing the laws or exploiting the deficiencies in laws, which victimizes not any specific individual but society at large, thereby undermining its socio-economic fabric. Though the terms economic-crimes, public-welfare offences, socio-economic- offences, white-collar crimes etc. are more or less synonymously used, the present study, for preciseness in definition, employs the term economic offences.

The crimes like violations of export-import control measures, currency-control measures, embezzlement of public funds are born out of greed, avarice, and rapacity. They are acts of production for income committed with economic rationale from the perspective of the offender. But from the

societal point of view, they are directed against the society as a whole since they clandestinely lead towards a redistribution of income, misallocation of resources and shifts in market-entitlements. They are crimes since they meet the basic requirements of criminal laws viz. the existence of formal social condemnation and provision of sanction for their prevention. These offences differ from the traditional offences in their modus operandi; either the rule of law is circumvented or the lacunae in law is exploited.

Whereas in the traditional crimes that spring out of hatred and lust mensrea is important, in economic offences it is exempted in the interest of the public, and the administrative procedure anent them is different from that employed for adjudication of guilt by the ordinary criminal courts.

The crimes for economic gains are very complex and diffused for a long span of time unlike traditional crimes. The socially injurious nature of such law breaking is obscured and hence their essential criminality is also obscured, which reduces the public resentment. Hence public pressure for

stronger legislation to mete out severe punishment for such crimes, however socially injurious they may be, lacks steam.

Furthermore, unlike conventional crimes, law breaking for economic gains does not have any specific victims; the society at large is the victim. The violators, usually being of high social status with power at their command, evade or twist the arm of law, demonstrating the unenforceability of law; and if ever prosecution takes place the result is minor penalty. Besides, as the offender's self-esteem is high and his associates regard him as respectable citizen, little stigma is attached with conviction unlike in traditional crimes.

The explanatory variables like childhood emotional insecurity, repressed primitive drives, guilt feeling etc. considered by the psychologists or poverty, broken home etc. considered by the sociologists to explain traditional criminal behaviour lose their relevance in the context of law breaking for economic gains.

Economic offences are crimes against society. The irreparable damages they cause to the economy are:(i) breeding of corruption, (ii) generation of black money, (iii) diversion and distortion of resources of financial institutions

(iv) accentuation of inflation, (v) marginalization of tax-base, (vi) distortion of growth and development, (vii) creation of parallel economy, (viii) inequitable distribution of resources, (ix) marginalization of the poor, (x) decline in public morale and ethics etc. Now a brief survey of the economic offences in various economies would highlight its gravity.

1.3 ECONOMIC OFFENCES - A BRIEF SURVEY

Economic offences have afflicted both the developed and the developing countries. In U.S.A, in 1981 the unreported income ranged between \$280 billion and \$ 420 billion i.e. about 16-24% of its gross income.³³ In Italy, the annual income earned from betting and gambling by the economic offenders is estimated to be Rs.8000 crores and Rs.32,000 crores respectively.³⁴

The drug-trafficking industry has now emerged as the second largest industry in the world. In Russia, the annual turnover of this industry is \$30 billion, and in the capital Moscow alone it fetches a profit of \$1billion.³⁵ The Asian organized crime syndicate, which recruits Asian officers with

³³ E.L Feige, *The Underground Economies*, Cambridge University Press, Cambridge, 1988, pp. 34 & 35.

³⁴ *The Hindu*, " Crime in Italy", 06-04-1996.

³⁵ Vladimir Radyuhin, " Opium, the new religion", *The Hindu*, 20-05-2001.

skills in various languages and dialects and training in foreign cultures, has made Washington, New York, Seattle and Chicago as its transit routes for heroin. In Myanmar and Columbia the drug-barons maintain their own well-equipped armies.³⁶ Afghanistan earns \$1.1 billion from its 3000 tons of opium produced from the 8000 hectares of land under poppy cultivation; and in Pakistan the demand for opium of the 3.1 million people i.e. 2.60% of the population flourishes the drug industry.³⁷ And in Afghanistan smuggling constitutes one-fifth to one-fourth of its foreign trade volume.³⁸ The money-laundering activities associated with these crimes constitute the third largest business in the world involving more than \$500 billion annually.³⁹

The economic offences squeeze the vitals of an economy. For instance, in China smuggling is estimated at \$18 billion (1988), tax evasion on construction projects at \$2 billion (1997), illegal electric connections at \$804 million (1993), non-performing assets to state-owned enterprises at \$120 billion to

³⁶ Jeans, "Drug lord, now overlord", *The Hindu*, 21-01-1996.

³⁷ *The Hindu*, "Taliban encouraging drugs production", 19-10-1996.

³⁸ Bhagawati, J.N. *Illegal Transactions in International Trade*, Vol.1, 1974, North Holland Publishing Company, Amsterdam.

³⁹ Jayaseelapandian. P. "Understanding money laundering", *The Hindu*, 17-10-2000.

\$200 billion and, diversion of funds from grain departments at \$6.7 billion (1992-1998); in Pakistan smuggling, tax-evasion and default of loans to the banks constitute \$3 billion each, theft of power through 450,000 illegal electricity connections in Karachi constitutes 35% of its electricity-output, and the parallel economy is of the range \$35 billion-\$40 billion. And in Bangladesh 40% of the electricity produced is not paid for because of the illegal connections and non-payment of bills. There, corruption accounts for two to three percent of the Gross Domestic Product every year and 30% of the development funds are lost through various malpractices.

1.4 INDIAN SCENARIO

The historical records of crimes and economic crimes abound in India.⁴⁰ The Santhanam Committee found that during 1958-62, 700 firms obtained or utilized licenses worth Rs.70 million illegally through misrepresentation, forgery or breaches of export/import control regulations. The illegal accumulation of foreign exchange through under-invoicing/over-invoicing of imports and exports ranged between Rs.40-50 crores per year. During this period, 548

⁴⁰ Sukla. Das, *Crime and Punishment in Ancient India*, Abhinav Publications, New Delhi, 1977.

firms obtained 660 licenses valued at Rs.23,824,149 by misrepresentation or based on forged documents. Another 361 firms wrongfully utilized 717 licenses valued at Rs.44, 510,784 which they had obtained under the category of actual users. Each license fetched 100% to 500% of its face value when sold. In 1956, the amount of tax evasion approximated to Rs.300 crores. In 1960-61 the Enforcement Directorate (Foreign Exchange Control) of the Ministry of Finance registered 3645 cases relating to unauthorized purchase/use, borrowing and lending of foreign exchange, maintenance of accounts in foreign banks, making payments to or on behalf of non-residents and non-realization of full export proceeds. It imposed a penalty of Rs. 92 lakhs in 1472 cases.

The size of economic offences has become colossal. It has increased from 4942 in 1961 to 26,891 in 1991 i.e. by 441.13% during the period.⁴¹ The harm caused to the capital and money markets and hence on the financial stability by the securities scam, involving more than Rs.5000 crores;⁴² the embezzlement of public exchequer, for instance the Bihar

⁴¹ *The Hindu*, "Crime and Punishment", 29-8-1995.

⁴² K. Balchand, "Tarred with the same brush", *The Hindu*, 30-06-96.

fodder scam involving more than Rs.750 crores;⁴³ and the lottery scam worth Rs.38,297 crores during October 1993 to November 1997 in Nagaland⁴⁴ have corrosive effect on the economic texture of the nation.

The drain of capital to the United States of America from India due to under-invoicing of exports and over-invoicing of imports in 1993 was estimated at \$4.40 billion out of the total Indo-U.S trade volume of \$7.30 billion. The aggregate capital flight may be higher since India's total external trade volume was \$50 billion then.⁴⁵ It also reflects money-laundering activities. During 1991-1996, the Indian Tobacco Company alone committed FERA violations worth \$100 million by under invoicing export of leaf tobacco.⁴⁶

⁴³ (a) Prasad, Manor. "Top brass were well aware of fodder scam", *The Hindu*, 24-02-1996.

(b) Balchand.K, "A Mega scam in Laloo Land", *The Hindu*, 11-02—1996.

⁴⁴ *The Hindu*, "A.G Unearths Rs.38,000Cr.lottery scam in Nagaland", 22-07-1999.

⁴⁵ *The Hindu*, "I.T.C Chief admits FERA violations", 06-11-1999.

⁴⁶ *The Hindu*, "E.D Raids ITC Office, FERA Violations", 31-10-1996.

TABLE 1.1
TOP TEN TAX EVADING MNCS IN INDIA

Income-Tax Rs.Crores		Central Excise Duty Rs.Crores		Customs Duty Rs.Crores	
Asia Satellite Telecom.Ltd.	195.70	Hindustan Lever Ltd.	22.99	Sony India Pvt. Ltd.	457.65
Sabre Group Inc.	126.32	Procter & GambleLtd.	13.57	SEDCO Forex Int.Drilling. Inc	131.22
Lucent Technologies, Int. Inc.	125.87	Nestle India Pune.	12.05	ABB Ltd.	62.00.
Nokia Network O.Y	119.82	Indian Shaving Products (Gillette).	5.67	Hyundai Motor India Ltd.	44.40
Caribjet Inc.	113.84	Voltas Ltd.	5.58	I Ranbaxy Lab.Dewas.	26.84
Allied Signal Inc	97.50	Johnson & Johnson Ltd.	5.50	Hindustan Lever ltd.	18.49
Ericsson Radio systems AB	69.4	British Health Products (Pvt.) Ltd. Bhiwadi.	4.87	Nestle (Pvt.) Ltd	12.05
Amadeus Marketing S.A	67.06	Perfetti India Ltd.	4.68	Hindustan Lever Ltd.	5.76
Pan Amsat.	52.10	Larsen Toubro Ltd, Bangalore.	4.21	P&G (I) Ltd	5.08
Motorola Inc.	50.09	Bata India Ltd.	4.10	Novartis	3.20.

Source: Lok Sabha, Starred questions; *The Hindu*, 22-6-2000.

Note: Income tax for assessment years 1996-97, 1997-98 & 1998- '99.

Central Excise & Customs duty detected in 1997-98, 1998-99 & 1999- 2000.

The multinationals in India evade taxes with impunity, and if ever it is detected before proceeding with prosecution under Section 26C of the Income Tax Act, they escape by paying taxes and penalty. The impudence with which they violate the economic laws and thereby undermine the fisc of our nation is evident from Table 1.1 which gives the evasion of taxes - income tax, central excise duty and customs duty - committed by top ten multinational companies in India.

The economic offences have pervaded the banking sector, even in the public sector. The number of frauds in the public sector banks in 1990-95 was 11,332 valued at Rs.951.73 crores.⁴⁷ The foreign banks in India committed 592 offences worth Rs.14.66 crores during the period. The volume of outstanding income-tax dues of the banking sector is gargantuan. In the sphere of foreign banks, there are 130 cases of default amounting to Rs.13,750 crores as on 31st March 1995.⁴⁸ The non-performing assets worth Rs.52,000 crores⁴⁹ constituting 14.30% of the gross outstanding advances, that eats away the vitals of the banking system portends the

⁴⁷ Editorial, "Crime and Punishment", *The Hindu*, 29-08-1996.

⁴⁸ S.P.S Pannu, "Foreign banks among 130 I.T defaulters", *The Indian Express*, 28-08-1995.

⁴⁹ *The Hindu*, 14-07-2000, "Banks and the Borrower".

blunting of banking laws by the bankers and loanees. In the security scam of 1992, the investments worth Rs.3192 crores⁵⁰ made by banks and institutions without any security speak of the specialized knowledge and skill of the wizardry in organizing and camouflaging illegitimate banking and financial transactions.

The public sector companies are also engrossed in tax evasion and corruption. For instance, are the urea scam of Rs.133 crores involving the National Fertilizers Limited⁵¹ (the payment of Rs.133 crores in 1998 to the Turkish trading outfit Karsan Ltd. for the import of two million tons of urea without any import of its granule), and the customs duty evasion by the Indian Oil Corporation for Rs.975.90 crores during 1994-95 that increases to Rs.3000 crores when the mandatory penalty and the interest rate are added, and the additional duty evasion of Rs.450 crores by suppressing facts and mis-declaring items.⁵²

The tax compliance index depicts a negative trend; in 1992-93 it halved its value of 1965. The tax revenue as a share of gross domestic product in India was only 11.30 whereas for

⁵⁰ C.V.Gopalakrishnan, "Murky world of white collar crime", *The Hindu*, 30-09-1998.

⁵¹ S.Swaminathan, "The urea scam-the hidden message ", *The Hindu*, 09-10-1996.

⁵² *Excise Law Times*, Vol.117, Part.2, April 2000, p. A103.

all developing countries it was 31.20 in the late 1980s.⁵³ Here, only 12 million people, i.e. 0.80% of the population do pay income tax and that too mostly the salaried class while the middle class (100 million) constitutes 10 to 15 percent of the population with adequate purchasing power. Whereas in the United Kingdom, the United States of America, Switzerland etc. tax evaders cannot hold political or administrative posts, there is no such legal impediment in India. The Corruption Index of the Transparency International ranks India as the 73rd among 99 countries for the year 1999. The burden of corruption in daily life for the delivery of public services in health, education, public distribution system, power, railways, telecommunication, land administration, police, and the judiciary is estimated at Rs.26,728 crores in the year ended May 2002; which means a mulcting of per capita bribery of Rs.267.⁵⁴

The trafficking in drugs and guns has become a lucrative business in the nation. In Manipur, the daily demand for heroin exercised by its 35,000-400,000 drug addicts (out of the total population of 20 lakhs) exceeds 15 kilograms valued at Rs.1 crore in the international market. It is the transit route for

⁵³ Pulapre Balakrishnan. "Will the Govt. learn to tax?" *The Hindu*, 18-11-1995.

⁵⁴ "Burden of corruption in daily life", *The Hindu*, 27-12-2002.

heroin worth Rs.3650 crores annually. Now Kerala and Tamil Nadu, because of the long coastline, geographical proximity, and historical and ethnic links with Sri Lanka are emerging as narcotic centres of the world. In Kerala, where 5000 acres of forestland is under ganja cultivation, the Neela Chadayan grown in the Idukki district is world famous.

In the Northeast, the smuggling of timber by the timber mafia during 1998 alone was worth Rs.100 crores; it is denuding the region of its forest cover, which would imminently cause ecological disaster.⁵⁵

In India, the number of children below 14 years working in the most excruciating conditions is more than 265 million. Not only the Child Labour Act but also the labour laws are flouted.⁵⁶

The impact of socio-economic crimes can be gauged from the size of the black money. The estimates vary from 30% and upwards of the gross domestic product. The lowest estimate is that in absolute terms it has grown from Rs.250 crores in 1965 to Rs.184,321 crores in 1982, representing a compound growth rate of 18% and the present unofficial estimate is that it has

⁵⁵ Vinay Kumar, "Timber mafia running amok in North-east", *The Hindu*, 04-12-1999.

⁵⁶ Staff Reporter, "Child labour persists despite awareness", *The Hindu*, 08-10-1996.

grown to Rs.100,000 crores.⁵⁷ It had grown from 3% of the gross domestic product in the mid fifties to around 35% by 1990-92 and to 40% in 1995-96.

1. 5 ECONOMIC LEGISLATIONS

The modern state has to regulate economic activities by numerous legislations. As the state graduates towards a welfare state, its activities increase both extensively and intensively and so is the spectrum of socio-economic offences. The state has now multiplex functions of a provider, regulator, entrepreneur, and umpire besides its traditional functions of maintenance of law and order.⁵⁸ The collective aspirations of the society enshrined in the Directive Principles of the Constitution reflect this. It enjoins the State to secure a social order that promotes welfare, minimize inequalities in income and status, provide adequate means of livelihood, and distributes material resources that best serve the common weal and that which does not result in concentration of wealth. Accordingly, the state has evolved certain social standards, which are manifested in the regulatory legislations that regulate economic activities.

⁵⁷ C.R. Reddy. "A play in immorality", *The Hindu*, 10-11-1998.

⁵⁸ W.Friedman, *The State and Rule of Law in a Mixed Economy*, 1971, Stevens & Sons Ltd. London.

The manner in which the State regulates economic activities can be understood, for instance, from the Preamble of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act of 1974(repealed). It states that it provides for preventive detention in order to conserve and augment foreign exchange and to prevent smuggling activities that have deleterious effect on the economy and security of the nation. The Customs Act tailored to the needs of the economy states its purposes, inter-alia, as the maintenance of security, prevention of smuggling, conservation of foreign exchange and safeguarding of balance of payments etc. The judicial pronouncements also delineate the impact and gravity of economic offences on the public economy and financial stability of the nation. Now a mere enlistment of the numerous activities regulated by economic legislations would highlight the concern of the state in protecting the social and commercial interests of the nation, and the scope and amplitude of the legislations.

The most important economic legislations relate to smuggling, income tax evasion, bank frauds, insurance frauds, excise duty evasion, manipulation of foreign contribution, illicit trafficking in drugs and narcotics, fraudulent bankruptcy, credit card frauds, company frauds, money laundering, illegal foreign

trade, computer crime, thefts of antiquities, thefts of intellectual properties, manipulation of stocks, real estate frauds, illicit trafficking in arms, illicit trafficking in explosives, racketeering in employment, racketeering in false travel documents, trade in human body parts, terrorist activities, bribery and corruption. Different legislations are enacted and different enforcement authorities are constituted corresponding to the structural differences in these offences. Though there are many other economic offences like adulteration of foodstuffs, fabrication of weights and measures, evasion of state taxes (e.g. sales tax) etc. for which separate laws and enforcement authorities exist, the National Crime Records Bureau of the Ministry of Home Affairs considers only the above said twenty-four crimes under its classification. The Acts of legislation it considers are Customs Act, 1962; Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974; Income Tax Act; Indian Penal Code; Central Excise and Salt Act, 1944; Narcotic Drugs and Psychotropic Substances Act of 1985 & PIT NDPS Act, 1988; Banking Regulation Act, 1949; Import and Export (Control) Act, 1947; Companies Act, 1956; Foreign Exchange Management Act, 1999; Copy Right Act, 1957; Antiquity and Art Treasures Act, 1972; Arms Act, 1959; Explosives Act, 1884; Explosive

Substances Act,1908; PassportAct,1920; Terrorist and Disruptive Activities (Prevention) Act,1987; Transplantation of Human Organs Act,1994;and Prevention of Corruption Act,1988. The present study just for the sake of expediency abides by this listing of crimes.

The society, after considering the multifaceted dimensions of the economic offences has instituted specialized agencies, both administrative and judicial, deploying its scarce resources having alternative uses for the implementation of the laws.

Nevertheless, the scenario of economic offences is appalling and the entire gamut of economic offences desiderates economic analysis. However, among the economic offences customs offences demand serious attention, as its economic impact is very severe. Further, as domestic and international economic transactions and international relations are involved therein, they can cause havoc to an economy easily. Among the numerous customs offences, the present research is confined to the offence of smuggling because of its gravity, and the paucity of time and resources.

1.6 THE SIGNIFICANCE OF THE STUDY

Among the economic offences, customs offences are of serious concern in that it consumes the economic and financial health of a nation quickly. They distort the aims and objectives of our plans and policies, subvert the Directive Principles of the Constitution, and hence emasculate the Constitution itself. That is why provisions for preventive detention to prevent and deter crimes have been incorporated in the Customs Act. It is noteworthy that the rampant violation of customs laws and the demonstration effect of the conspicuous consumption of smuggled goods by the nouveau riche affect the psyche and physique of the economy. Then the laws fail to secure compliance from the people and the socio-engineering aspect of law and economics becomes infructuous. Thus, customs offences constitute a research problem with multifaceted dimensions.

Though the basic function of Customs administration is collection of revenue, the customs offences have serious economic dimensions, not only on the revenue side but also on the state of health of the economy. Further even the collection of tax revenue, for instance, Rs. 81,088 crores in 1995-96

constituting only 19% of the total revenue, does not reflect the potential of the economy. Nevertheless, little research has been done on customs offences. Hence there is the need to fill up this research gap.

The problem hovering around economic offences in general and customs offences in particular is that they are preoccupied with other areas. They were considered as mere illegal acts and simply left out of the realm of economic analysis, till recently. However, from the point of view of the offender, they are committed to amass wealth and maximize profit and utility to him irrespective of societal sanctions. Now they have grown into gigantic size that posed threats to an economy. Hence it is imperative to study the customs offences, particularly the offence of smuggling, in the theoretical framework of economics.

The offence of smuggling attracts prime concern because not only mere smuggling of goods takes place but also their trading on a massive scale involves masses. This erodes the fear of law and the general observance of law. This causes rapid cancerous growth of the illegal sector of the economy over its legal sector. Further, the black money the smuggling transactions generate has multiplier effect that boosts up and

pervades the parallel economy. Further, the Customs Act remains as a gateway for international commercial transactions of an economy. Smuggling sneaks through the gateways, waylays it and gradually reins the power of the sovereign, and the economy gets topsy-turvy. Therefore the study of smuggling in the theoretical framework of economics is of high significance.

1.7 OBJECTIVES.

- i. To examine the impact of changes in the laws and policies on customs offences in the pre-liberalization and the post-liberalization period.
- ii. To examine the factors that determine the volume of customs offences, i.e. the supply of offences.
- iii. To examine the economic rationale and judiciousness of the decisions of the law enforcement machinery, viz., the Economic Offences Court and the Customs Department.
- iv. To examine the social/community background of offenders.

1.8 SCOPE OF THE STUDY

The study is on the customs offence of smuggling in Kerala. The Malabar region of Kerala, comprising the districts

of Malappuram, Kozhikode, Kannur and Kasaragode coming under the jurisdiction of the Commissionerate of Customs and Central Excise, Calicut, the Air Customs, Calicut, and the Directorate of Revenue Intelligence, Kozhikode, is the most acute customs offence prone area in Kerala. The present study therefore concentrates on this region. Besides this, all cases of smuggling occurring under the jurisdiction of the Commissionerate of Customs & Central Excise, Cochin are also subjected to detailed examination. The impact of the changes in law and enforcement on smuggling has been studied with reference to all-India data also because the state level data were found to be inadequate for an exhaustive study.

The determinants of the supply of offences could be studied only with the help of the All-India level data as the state level data were insufficient and did not depict the reality of smuggling in its totality as the smugglers switch over their venue of operations in response to the changes in the degree of enforcement.

The judiciousness and the economic rationale of decisions of the enforcement machinery are analyzed with respect to the above said state-level data and of the Economic Offences Court, Ernakulam. This helps to evolve certain

parameters to reduce arbitrariness and indiscreetness in judicial or quasi-judicial proceedings.

1.9 LIMITATIONS OF THE STUDY

The study is confined to the offences under the Customs Act and the Gold Control Act. The offences under the allied Acts like Foreign Exchange Regulation Act/Foreign Exchange Management Act, Income Tax Act, Narcotic Drugs and Psychotropic Substances Act, Import and Export (Control) Act are not considered, though the offences under these Acts and Customs Acts are joint products of illegal activities.

The study deals with the offence of smuggling only, other offences under the Act are not considered. Hence it is not a comprehensive study of the customs offences. This is because of the paucity of time, resources and data availability and for the manageability of the problem.

No inter-state comparison of the smuggling business is attempted, as the spatial dimension of the problem with respect to time and changes in the degrees of law-enforcement are beyond the scope of this study. Further, the socio-economic status of the offenders and recidivism are not analyzed, as they are not within the ambit of the present study.

1.10 CHAPTERIZATION

Chapter-1 introduces the significance, scope and amplitude of the study of the economics of smuggling under the Customs Act. Chapter-2 deals with the 'Review of Literature'. Chapter-3 discusses the methodology employed for the study and for the empirical verification of the hypothesis mentioned. Chapter-4 presents customs laws and allied laws for their ramifications and for the proper perception of the problem. Chapter-5 deals with the administrative set up of the Department and Kerala's place in the customs map of the nation. Chapter-6 and Chapter-7 analyze the impact of changes in the dichotomized variables of law and enforcement on smuggling during the pre-liberalization and post-liberalization periods respectively. In Chapter-8 we examine the factors that determine the supply of offences. Chapter-9 studies the judicial and economic rationale behind the decisions relating to customs offences made by the enforcement agencies viz. Economic Offences Court and the various departments of the Customs. Conclusion and findings of the study are presented in Chapter-10.

REVIEW OF LITERATURE

K.M. George “ Economics of economic offence a study of customs offences in Kerala” Thesis. Department of Economics , Dr.John Matthai Centre , University of Calicut, 2003

REVIEW OF LITERATURE

This Chapter gives a review of literature on the economics of economic offences. As there is a paucity of literature on the economics of economic offences, the review has to be done with respect to the crimes in general. The available literature on economic offences also is considered in this context.

The field of economics of crime usually orbits around the traditional crimes. Hence little study on economic offences, particularly customs offences, is done either in India or abroad.

The works of Marx, Weber, Commons, Coase and others were instrumental in delineating the nexus between law and economics. Marx, dividing the societal structure into the basic structure comprising the economic structure, and the superstructure comprising the politico-juridic structure, analyzed the historicity of development in their dialectics and theorized that the basic structure determined by the mode of production determines the superstructure. His reductionist views of growth pace of societies could not comprehend the socio-economic engineering aspect of law. Weber, defining law

as a formal order that structures economic activity, separated the legal phenomena from the key economic variables with which they interact, and constructed ideal types to analyze the factors responsible for the development of capitalist market economy. Then he theorized that the legal rationalism and the calculability of rules were essential for the development of capitalist market economy. The classical economists also highlighted that, the maintenance of laws of property and contract by the state, within which individuals could pursue their self-interest, is essential for the development and operation of the market system. Weber's theoretical paradigm fails in the analysis of newly emerging market economies where development proceeds with "unlimited supplies of laws".¹ Common's (1924) works on the economics of property rights which constitute the legal foundation of capitalism and Coase's (1960) works on the allocative efficiency of the assignment of rights and liabilities, under the assumptions of zero-transaction cost and zero-income effect (though the

¹ Arthur Lewis, *Economic Development with Unlimited Supply of Labour*, 22, Manhattn School, 1954, p.13.

assumptions are shaky), and the works of many others, elucidated the symbiotic relationship between law and economy, that the allocation and distribution of income and resources, and rights and liabilities are determined by a joint function of law and economics.

Beccaria (1764-65) made the maiden attempt to analyze crime in the economic framework of rationality during the 18th century. The analysis was further advanced by Bentham (1789) who argued that man being governed by two sovereign masters of pain and pleasure, in all walks of life including crimes and punishments, rationally maximizes his utility. This conformed to Wicksteed's view that man acts purposefully. Further progress was tardy until Becker entered the arena. Becker (1968), approaching human behaviour from its positive and predictive side, extended the economic approach to the entire gamut of human behaviour. He assumed a criminal as a rational being and crime as "an economically important activity or industry, which is a subset of the class of activities that cause diseconomies".² Applying the occupational theory of

² Gary.S. Becker, "Crime and Punishment: An Economic Approach", *Journal of Political Economy*, 1968 ,p.168.

choice to crime that, a criminal participates in criminal activities because the expected utility from it exceeds the utility by using time and resources in other activities, he built up a formal model that incorporates the variables viz. the number of offences, probability of conviction, punishment, expenditure on police and courts. The model proceeding with the presumption that a criminal maximizes his utility/gain subject to the constraint of price (punishment), aims to seek the optimum values of the variables for the optimum enforcement of laws. But Becker's (1968) one time model which considers only the cost of punishment, not reward, and its assumption that the offenders eventually receive diminishing marginal gains from crime and the approach to costs of crime as the value of resources used up in crime (for e.g. in murder as the victim's loss of earnings) and the assumption of theft as transfer earnings are disputatious. Above all, is the fact that the model is not subject to rigorous econometric analysis.

Blumstein (1969), examining the total criminal justice system-police prosecution, courts and correction agencies-in an integrated manner developed an operations research model

with a feedback feature (recidivism) to address to the problem of improvement of law enforcement. The model includes workload (annual demand for service), manpower requirement (work load divided by annual working time per man), total operation costs, number of offenders etc. corresponding to seven types of crimes: homicide, forcible rape, aggravated assault, robbery, burglary larceny of \$50 or over and auto theft. In the model, the flow of arrested persons through the system is considered as a function of crime type involving a feedback and crime-switch matrix. It provides a basis for allocating costs to system components and crime types. The defect with the model is that it does not separate the cost into fixed and variable costs and ignored the interaction between the variables and the deterrent effects of punishment.

Stigler (1970), considering crime as an act of production for income or consumption, also applied the occupational theory of choice to his crime model which involved the variables viz. the probability of apprehension, number and size of offences, societal enforcement expenditure. He attempted to determine the principles of rational enforcement of laws reckoning seven common felonies in United States of America.

Ehrlich (1973) developed a more comprehensive econometric model of crime as a part of general theory of occupational choice, wherein the offender's decision problem is to optimally allocate his resources under uncertainty, subject to the budget constraint of time, to competing legitimate and illegitimate activities that are not mutually exclusive, unlike in Beckarian model. The model includes the variables viz. the probability of capture and punishment, the discounted value of punishment, returns from legitimate and illegitimate pursuits, unemployment etc. The model employs simultaneous equations to estimate the supply-of-offences function and production function of law-enforcement. And unlike in Becker's model, it distinguishes between the preventive and deterrent effects of punishments on crime-rate. Anyhow his model on deterrent effect of capital punishment is contentious.

Carr-Hill and Stern (1973) analyzed the recorded offences in England and Wales in 1961-1962 in their cross-section study, and built up an econometric model of the supply and control of offences. The model was aimed at determining the offence rate, proportion of offences cleared up

and number of policemen per-capita. The model included probability of apprehension, potential gains from offence and class and age structure of population. The study has found that the clear up rate is more important in reducing offence rate than the severity of punishment, which is analogous to the result of earlier studies.

Phillips and Votey (1972), regarding the process of crime generation being determined by costs and benefits of criminal activity to the criminal and, law-enforcement agency as a firm in a service industry bent up on maximizing its output given its annual budget, analyzed the deterrent effect of law-enforcement on criminal activity. Wolpin (1978) also conducted an economic analysis of crime and punishment in England and Wales for the period 1896-1967. Devising a methodology to separate the deterrent effects from the incapacitating effect of punishment, he found that approximately 50% of the total effect of incarceration pertained to deterrence. But the estimation of the deterrence effect is fraught with methodological defects as pointed out by Cook (1979). He argued that the assumption of negative relationship between crime rates and clearance rates, and the hypothesis

of direct relationship between punishment and deterrent effect on potential criminals, are questionable on the basis of inaccuracies of data and the choice behaviour of criminals who improvise the modus operandi of crimes and change the types of crimes.

Adesltein (1979) analyzed the constitutional limitation on sentencing death penalty in an economic framework, treating punishment as price of crimes. But as value of life is involved in the problem the approach is debatable. However, the approach is not fully flawed when valuation of life under life insurance policies is considered.

The economic analysis of crime stems from the concept of homoeconomicus, a criminal as a rational human being who always calculates and chooses his occupation, legitimate or illegitimate or both, on the basis of opportunity costs of prices (punishments). And to cap it all, in Posner's (1973) words, one commits criminal activity because its expected utility to him net of expected costs exceeds the utility in any legitimate alternative activity. Yochelson's psychiatric research on criminals also adds credence to the concept.³

³ V.G. Kanetkar, *Crime In Future*, Jaico publishing House, Bombay-400001, 1995, p.6.

There is paucity of literature on economic offences in the framework of law and economics. In India, the earliest study on economic offences like misappropriation of gold, adulteration, counterfeiting etc. can be found in the works of Brahaspati, Kshemendra, Nagendra, Koutaliya and others.⁴ Now, the evolution and development of the arts and techniques and institutionalization of such crimes in the modern techno-economic world renders it imperative to analyze such crimes in the broad framework of the emerging field of law and economics.

The economic crimes are codified under various Acts in all countries. Giving a broad spectrum to this species of crimes as any crime that springs out of economic motives, the study of property crimes by Sjoquist can be considered as the first one on economic crimes in the framework of law and economics.

Sjoquist (1973) developed an economic model of property crimes using Von Neumann-Morgenstern utility function in which a criminal allocates his time between legitimate and

⁴ Sukla Das, *Crime and Punishment in Ancient India*, Abhinav Publications, New Delhi., 1977.

illegitimate activities so as to maximize his expected utility. The model contained the variables viz. the joint probability of arrest, conviction and punishment, gains from legal and illegal activities, marginal cost of crime with respect to time, an index of variable to measure taste and other variables. The model on employing over a cross-section data revealed that, an increase in the probability of arrest and conviction and an increase in the cost of crime (punishment), both results in a decrease in the number of major property crimes committed.

The other works on economic offences in the analytical framework of law and economics pertain to the economics of tax evasion, the notable works being done by Alingham and Sandmo (1972), Sreenivasan (1973) and Singh (1973). Alingham and Sandmo (1972) examined the behaviour of taxpayers under uncertainty using a mathematical model that contained the variables: the probability of detection, penalty rate, actual income and undisclosed income. The model was based on the assumption of maximization of expected income, proportional taxation and proportionality of penalty rate to concealed income. Sreenivasan (1973) also examined the same phenomena using his model that contained the same variables, but based on the assumption of risk-neutrality and

progressive income taxation. Both of the studies yielded the same result that the actual reported income increases when penalty rate increases, and the fraction of understatement of income decreases when the probability of detection increases. Singh (1973) employed the Sreenivasan model to study administrative measures on tax evasion. Using data on income distribution among non-salaried taxpayers in India he found that the Gini-Coefficient declined from 1953-54 to 1964-65 and increased thereafter due to lowering of tax rate and administrative measures against evasion.

Besides these and a few other studies, studies on economic offences in the analytical framework of law and economics remain scanty. Though the economic and social ramification of the customs offences is very wide, economists have paid little attention to it either in India or abroad mainly because of the obsession with legitimate activities.

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METHODOLOGY

K.M. George “ Economics of economic offence a study of customs offences in Kerala” Thesis. Department of Economics , Dr.John Matthai Centre , University of Calicut, 2003

CHAPTER-3
METHODOLOGY

This Chapter deals with the methodology employed in this study.

3.1 THEORETICAL FRAMEWORK OF THE ANALYSIS

The theoretical paradigm of the present study, as in other studies on economics of crimes, has its edifice on the assumption of rationality. The offender's participation in illegal activity, which involves risk and uncertainty, is brought under the theory of occupational choice under uncertainty, wherein he maximizes the expected utility of his returns from the illegal activity.

The theoretical framework of the analysis is an adaptation of Ehrlich's theoretical construct. Considering a criminal as a rational being who allocates his time between competing legitimate and illegitimate activities based upon the expected returns and utilities, Ehrlich built up mathematical and econometric models, incorporating the variables such as probability of capture and punishment, cost of punishment, law-enforcement expenditure to analyze the participation in illegal economic activities.

The theoretical paradigm of the present study rests on

the following assumptions:

- i. The offender is a rational maximizer of his expected utility of income from illegal activity.
- ii. The total time available i.e. time-budget to an offender is fixed and it is allocated among consumption activities, economic activities (legitimate and illegitimate) and leisure. It is assumed that the time spent for leisure and consumption activities is a constant, and that the rest of the time, which is a constant, is allocated between legal and illegal economic activities so as to maximize his expected utility.

Now, the states of the world confronting him are that: (a) he is arrested with a probability 'P(a)' and (b) convicted with a probability 'P(c)'. An individual engages in economic offences since it generates income or wealth. But it involves risks of apprehension, and punishment (fine or imprisonment or both) that is a cost to him. To him his activity becomes an absolute success if he is not caught and punished and it becomes a failure otherwise. Now, the states of income of the offender depending upon his success or failure in the illegal activities are:

$$Y_S = W_0 + W_L(T_L) + W_I(T_I) \dots\dots\dots (3.1)$$

$$Y_F = W_0 + W_L(T_L) + W_I(T_I) - C \dots\dots\dots (3.2)$$

Where Y_S denotes his state of income when the operation is absolutely successful, and Y_F when it ends up in failure i.e., when apprehended, whether punished or not. W_0 represents his initial wealth/income, and W_L and W_I represent the income accruing from legal and illegal activities respectively. C is the cost of punishment to him measured in terms of fine, penalty and the income foregone during the period of incarceration less any direct benefit he enjoys in jail.

The offender gains utility out of his income accruing from legitimate and illegitimate activities between which his time budget is allocated, corresponding to the above two states of success or failure. Hence his aggregate utility function of income can be formulated as:

$$U = \Psi (W_0, W_L, W_I, C) \dots(3.3) \quad W, W_L, W_I \text{ \& } C \text{ are functions of } T.$$

Where 'U' represents the utility function corresponding to the two states of success or failure. The utility function is assumed to be a monotonically increasing function of income that follows a Von Neumann-Morgenstern utility function under uncertainty.

The offender maximizes the expected utility of his income

under uncertainty subject to the budget constraint of time. If he specializes in legitimate activity alone (i.e. if the entire time budget is allocated for legitimate activity), assuming zero-risk and zero-uncertainty, $Y_s=Y_F$, which implies certainty of income as in the case of a risk-averse individual. On the other hand if he specializes in criminal activity it is assumed that $Y_F \geq 0$ and $W_0 + W_L + W_I \geq C$. Now, the sufficient condition for one to participate in illegal activity can be formulated as:

$$\left. \frac{dE(U)}{dT} \right|_{T=0} \geq 0 \text{-----(3.4)}$$

This means that for the occurrence of an offence the differential marginal reward should be greater than or equal to the expected value of punishment.

3.2 SPECIFIC TOOLS OF ANALYSIS

The impact of changes in laws and enforcement on smuggling is analyzed by the sequential changes in the dichotomized variables of law, and enforcement (measured by the punishment variables viz. prosecutions, convictions, raids and searches, preventive detentions); and the corresponding changes in the volume of offences, both in terms of number and value, during the two differentiated periods of pre-liberalization and post liberalization. The dynamics of offences

during the emergency period and the periods immediately preceding and succeeding it are analyzed using simple percentage changes in the variables on year-to-year basis. Whereas for the rest of the periods of pre and post liberalization, the best-fit time series trends, linear, exponential and quadratic as the case may be, are employed. As the most sensitive item, gold is given special emphasis in the analysis using the above tools. As a prelude to the analysis of the customs offences, the general IPC cognizable crime scenario is analyzed as they are correlated and it reflects upon the customs scenario.

To analyze the dynamics of IPC cognizable crimes under the emergency period, and the periods immediately preceding and succeeding it, the changes in its volume is related with the changes in the law, and the changes in enforcement measured by the percentage changes in the trials completed, percentage changes in convictions, and percentage changes in conviction per total number of cases under trial. In a similar manner the rest of the periods under the pre-liberalization and the post liberalization are analyzed; the only difference being that the time series trends- linear and exponential - are employed. The dynamics of customs offences are analyzed in

this background.

The factors that determine the supply of offences is analyzed based on the following methodology. The number of offences an offender commits i.e. his supply-of-offences is broadly formulated as:

$$S = f \{ (P(a), P(\text{pros}), P(c), P(a \& c), P(d), Y_1, Y_L, C, Z) \} \text{ ---- (3.5)}$$

Where 'S' is the number of offences an offender commits, P(a) and P(c) are probabilities of arrest and conviction respectively, P(pros) denotes the probability of prosecution and P(d), the probability of detention,

P(a&c) represents the joint probability of arrest and conviction,

Y_1 shows his returns from the illegal activity, and

Y_L is the opportunity cost of illegal activity i.e. the returns from the alternative occupation that is legitimate.

'C' stands for the cost of punishment as defined earlier, and 'Z' for the community of the offender.

The model incorporates community since it is presumed that the social background of offenders influences crime. The studies on crime in U.S.A have revealed that the crime-rate increases as the proportion of population of non-whites to

whites increases. Further the studies on suicides have found out its skewed distribution among different communities in the West, the incidence being the lowest among Catholics. Community is also a factor that determines population growth rate. This is evident from the fact that in Kerala during 1981-'91 the religion-wise percentage decadal variation of population was 12.62 for the Hindus, 25.49 for Muslims and 7.41 for Christians, whereas for all the religions combined it was 12.32;¹ which variation has taken place in the State that has given a uniform heavy thrust to the family planning measures.

The sociological view is that one's community plays a dominant role in one's nurture and nature and in the imbibitions of social norms. The norms exert a significant influence in one's rational behaviour, be it internalized or externalized. If the norms are internalized the norm-guided rational behavior of the individual is in conformity with the mores of the society. If they are not internalized, the individual least bothers about the opprobrium of the society; only the force of law can guide his rational behaviour.

The probability of arrest 'P(a)', probability of prosecution

¹ Census of India, 1991, Series -12, Kerala, p.12

'P(pros)', probability of conviction 'P(c)', joint probability of arrest and conviction 'P(a&c)' and, the probability of detention under COFEPOSA 'P(d)' are estimated as stated under Chapter-8

The theory assumes that the supply of crime is negatively related with the probabilities of apprehension 'P(a)', prosecution 'P(pros)', conviction 'P(c)', and the joint probability arrest and conviction 'P(a&c)'. Since the very fear of them, to some extent, deters people from committing offences, assuming that on an average they are not entirely risk-preferers. But no attempt is made here to isolate the deterrence effects of punishment and also recidivism because of lack of data.

It is assumed that single equation regression models that are exponential express the relationship between the dependent variable, the supply of the offence of gold smuggling (in terms of quantity and value), and its explanatory variables. The ordinary least square method is used for the estimation of parameters.

The price margin elasticity of the supply of gold smuggling is employed to examine the responsiveness of the supply to changes in the price margin. And the returns from illegal activity is reckoned as the profit margin i.e. $Y_I = P$

(difference between domestic and international prices).

To determine the supply of offence (value terms) under the Gold Control Act, it is assumed that it is directly related to the number of dealers, turnover of licensed dealers and the price margin; and indirectly related to prosecution, other things remaining the same. Further it is assumed that an exponential relationship, in a single equation regression model, exists between the dependent and independent variables. The price margin elasticity of supply is also used to find out the responsiveness of supply to changes in the price margin.

To examine the judicial and economic rationale of decisions, the Law Enforcement System (hereinafter mentioned as LES) has to be considered. It includes the Commissionerate of Central Excise and Customs, the Directorate of Revenue Intelligence, their adjudicative mechanisms, and the judicial system, mainly the Economic Offences Court. It is to be noted that there are two main processes in the LES to deal with an offence - the adjudicatory process and the judicial process. The two processes are not mutually exclusive and the simultaneous processing of an offence under both of them is not hit by the rule of double jeopardy.

In the present study a twist is given to the presumption of law that an accused is not an offender unless proved otherwise, and that the imposition of penalty and confiscation of goods on adjudication do not tantamount to conviction. The presumption and formalities being merely procedural under law, they are disregarded for the present study; and confiscation of goods and imposition of penalty on adjudication are regarded as conviction itself. Further, the confiscation of goods and imposition of penalty by the adjudicative system are regarded as conviction despite the fact, that the offender is acquitted by the court of law, since the procedural formalities before the court of law are very rigorous.

To apply economic analysis, the LES is viewed as a firm in a service industry; which given the state of technology, maximizes its outputs of completions of trials and convictions, measured in terms of various probabilities mentioned below, subject to the budget constraint determined exogenously by the State. The activity of the agency is a process in which the personnel operate upon the flow of offences in the system, utilizing their time and resources having opportunity costs to produce the outputs. Hence, a functional relationship between

the output and inputs can be formulated in the form of production functions and subjected to economic analysis. But as the data on the staff-strength, capital equipments, annual expenditure on salary, other expenditures etc. are not made available it cannot be attempted.

However the problem is circumvented by analyzing the various outputs, measured in terms of various probabilities, produced by the LES during a given period, viz. the probability of completion of a trial ' $P(tc)$ ', the probability of a case ending up in conviction out of the total number of cases in which trials are completed ' $P(c)$ ', the joint probability that a trial is completed and it ends up in conviction ' $P(tc \& c)$ ', the probability of a case being convicted out of the total number of cases under trial ' $P(c/n)$ ', and the probability of an accused being convicted out of the total number of accused undergoing trial ' $P(ac/tac)$ '. Theoretically speaking, the LES effectiveness is absolutely perfect, if each of these probabilities is equal to one, and absolutely ineffective if zero, i.e. the actual values range from zero to one. These outputs reflect the extent of effectiveness of the LES in preventing the 'bads' to the society, though to the offenders their activities produce goods to them.

Further, to analyze the economic and judicial rationale of decisions, the inconsistencies in the award of judgments are examined. The trends in the simple and rigorous imprisonments and the fine awarded by the Court are also examined for analyzing the alacrity with which the economic offence is dealt with.

The inconsistencies in the valuations of the seizures and the imposts on them by way of basic duty, redemption fine, and personal penalty by various Customs departments are analyzed for their judiciousness and economic rationale. Gold is considered as a standard commodity for reasons stated in Chapter-7. The ratios between the actual imposed by the departments and the potential estimated, described in detail in Chapter-8, are analyzed for all the departments under study; uniformity in the measures are expected.

3.2 THE DATA

The sources of data for the study are few and poor in content. The National Crime Records Bureau, Ministry of Home Affairs, New Delhi publishes an annual report called 'Crime in India' which is very exhaustive excepting economic crimes. A separate chapter to economic offences was given only since 1995. But even that does not give detailed state-

wise and district-wise statistics on the number of arrests, conviction, recidivism, status of the offenders as to their age, qualification, community, the number of law-enforcement personnel involved, total expenditure on the enforcement agencies, details of capital equipment viz. number of electronic gadgets, motor vehicles and so on. But still what is available is availed of. Though the Ministry of Finance of the Government of India publishes 'Annual Reports' it is not exhaustive.

Further, even to get the published data sources in continuum was very difficult; a lot of time had to be spent in the Libraries of the Law Secretariat, Center for Development Studies and Police Training College, all in Trivandrum; The Madras Institute of Development Studies, Madras; National Law School and Institute of Socio-Economic Change at Bangalore; Jawaharlal Nehru University and Indian institute of Public Finance and Policy at New Delhi; and the offices of the Crime Records Bureau at Trivandrum and the Customs House, Wellington Island, Cochin.

The Central Board of Excise and Customs neither does publish any literature pertaining to the above aspects nor does maintain detailed records of cases under trials and adjudications. It occasionally circulates some internal reports

that are cursory. Further, the departmental case records are not yet properly classified, codified, coordinated and computerized. Furthermore the cumbersome procedure of manually noting the available data on day-to-day basis consumed a lot of valuable time and resources.

The Economic Offences Court neither does maintain a detailed register of cases it tried since its inception nor does it keep the dossiers disposed of for more than the period required under the Manual of Office Procedure. But what is available is used to the extent possible.

The Home Department of the State does not publish any administrative reports on crime in the State as is done in Andhra Pradesh. Further, though the Bureau of Economics and Statistics of the State assists the Police Department in their statistical work it does not bring out any publication anent crimes and law-enforcement agencies.

Another drawback is in the cases relating to narcotics. As different law enforcement agencies viz. Central Excise and Customs Department, Police Department, Narcotics Control Bureau, and Forest Department are empowered to deal with these cases, and as little co-ordination exists among these agencies, detailed records of their smuggling cannot be

expected. But in the present study, to obviate certain difficulties, only those offences detected and prosecuted by the Customs Department are considered.

The collection of data was a Herculean task. They had to be collected at the time convenient to the department officials and many doubts that arose in the course of collection of data had to be clarified. The officials were really forthcoming and helpful. But because of the very nature of the office and offences sometimes the work had to be stopped in the midway.

As the departments do not maintain computerized records of seizures, viz. the lists of commodities seized, their individual values, the imposition of various charges, they had to be collected manually from the daily registers. It yielded a mass/ mess of data under all the departments. The collection and classification was cumbersome, consumed many years and caused consternation.

3.4 ESTIMATION

The study abides by the presumption of law 'ignorantia-juris-non-excusat', even though above 98% of the offenders apprehended are mere carriers or agents of the kingpins of the crime syndicate who seldom come to limelight.

The opportunity cost of illegitimate activity Y_L which is

the returns from legitimate activity is difficult to estimate. Hence as an approximation, the per-capita income of the society is taken as the measuring rod in the general studies on crimes, though it is fraught with the dangers of overestimation or underestimation (if the probable income of the offender from legal activity were less than the per-capita income of the society and vice-versa). But in the empirical model employed here it is excluded because the smugglers' horizon of operation is unbounded. The income from the illegal activity (Y_i) is approximated as the price margin of the smuggled goods.

The cost of punishment ought to be estimated by the penalty/fine and, the discounted value of income forgone during imprisonment that is roughly based on the per-capita income. But in the empirical model developed here the penalty/fine and the imprisonment are separately entered as punishment variables without any such discounting. The benefit an offender enjoys in jail is not reckoned in the study, to marginally offset the part of psychic costs of his imprisonment (viz. the loss of association with his family and society, the loss of opportunity to gain employment in the legal sphere once he is branded as an offender). Further, the advantage an offender gets in improvising the arts and

techniques of illicit operations, which reinforces his inclination towards recidivism is not estimated and analyzed in the study.

The determinants of the supply of offences viz. P, P(a) are estimated by linear and exponential regression equations, as the case may be, using OLS method. The responsiveness of the supply of offences to P and P(a) are estimated by their respective elasticities. To examine the effectiveness of the P(a) and P(a&c) their respective ranges during the periods under study are also estimated.

The trend of punishments awarded by the Economic Offences Court, during the periods under study, are estimated by the time-series trend equations of the combined arithmetic mean of simple and rigorous imprisonments. The inconsistencies in the decisions are estimated by the coefficient of variations of the imprisonments in lieu of fine.

The estimations of the range of variations of the various imposts levied by various Customs departments are analyzed with respect to gold as a standard commodity, for reasons stated in Chapter-7. Its values are estimated with respect to the corresponding Bombay price. Then the ratio between the actual imposed by the department and the potential estimated is calculated for all the departments under study.

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THE CUSTOMS AND ALLIED LAWS

K.M. George “ Economics of economic offence a study of customs offences in Kerala” Thesis. Department of Economics , Dr.John Matthai Centre , University of Calicut, 2003

CHAPTER-4

THE CUSTOMS AND ALLIED LAWS

The aim of this Chapter is to present a brief description of the evolution of customs laws in India and to provide a background of the laws. It is expected that this will help a better understanding of the present study.

4.1. THE CUSTOMS-BRIEF HISTORY

The customs (the levy of customary duties) formed an integral part of the fiscal system of the ancient Hindu polity. The Mughals incorporated it into their fiscal system and made its administration admirable and lenient towards the merchants. However, the crumbling of the Mughal Empire and the elaborate system of duties made the administration of customs cumbersome. It is from its debris the British (who realized its importance in their fiscal system from the 16th century onwards) built up a new customs system for India.

The fiscal administration and hence the customs in India attained dynamism since 1765, with the grant of Diwani right (right of fiscal administration) to the East India Company over Bengal, Bihar and Orissa by the Mughal Emperor, Shah Alam. The customs designed for the protectionist cannon of Great Britain up to 1861 traversed through the trajectory of free-

trade (1862-1914) and protectionism (1915-1990) and now is passing through the phase of globalization and liberalization (1991-).

The British attempted fiscal reconstruction on provincial basis during 1765-1833 since the existence of umpteen numbers of tolls, transit and inland customs duties and other oppressive local taxes, and their multiplicity, frequency, failure to discriminate between grades of commodities, faulty methods of collection and the attendant evils and abuses obstructed free trade and commerce. The problem was complicated further by the labyrinth of borders among the 700 motley states in the Indian sub-continent.

The regulation of Indian foreign trade via obstruction of her exports, promotion of British imports and obstruction of other nation's imports were the avowed policy of the British. The flourishing of the Indian manufactures, especially textiles in the early 19th century, was throttled by the unequal competition under British fiscal laws in order to encourage similar rising manufactures in Britain. This necessitated radical changes in the customs. It was re-determined in accordance with their national policy of industrial and

commercial expansion by means of a complicated system of differential duties. The restrictions were lifted only when they ceased to be necessary.

When the British manufactures finally replaced the Indian manufactures, the British pursued the *laissez faire* policies in all manufacturing industries, expanded the commercial colonization and exploitation of Indian resources, and systematically increased British trade with India, which meant exchange of Indian raw materials and foodstuffs with British goods. During the second half of 19th century, free trade became the established policy of the British and it was thrust upon India without being consulted. When widespread famines took place, the government employed customs as a means to earn revenue by hiking tariff. For 12 years (1882 to 1894) the imports into India were free of duty with a few exceptions, namely arms and ammunitions, the duty of which was retained for administrative purposes; liquor, opium and salt, the duties of which were necessary in view of the excise duties on indigenous production and on petroleum as a revenue measure. The general policy of free trade continued until 1914, occasionally set aside when the Imperial interests

were at stake due to strong foreign competition. The financial stress of the war and its after effects, and the Indian movements for a protective tariff and fiscal autonomy caused a shift in the customs policy, bringing forth a hike in the tariff rates. The customs revenue deliberately relegated to an insignificant position in the financial system of India, acquired importance in the post first world war period due to the impelling reason of financial burden. For instance in order to contribute £100mn to the Imperial treasury, the Government of India resorted to customs as a source of revenue hiked tariff rates. The excise used as a countervailing measure in accordance with the free trade policies also lost that character and it was perceived purely from the revenue angle. The post first world war customs tariff policies, though aimed purely for revenue purpose, were not entirely free from protective effects. The post war period saw a transition from old free trade policy to a policy of protection. The increasing financial burden, the ceasing of land revenue as a source of income to the Central Treasury, and the discontinuance of provincial contribution to the Central Exchequer impelled the Government of India to

rely more on the customs revenue as the mainstay of finance. The customs was designed in tune with these policies.

The financial needs of the Indian Treasury, the strong public demand for protection to Indian industries and the Montague-Chelmsford Report on Indian constitutional Reforms that advocated the abandonment of the laissez faire policy for active encouragement to Indian industries led towards the grant of freedom of action to the Government of India in determining its fiscal policy. The First Indian Fiscal Commission (1921) that examined India's right to regulate her tariff vis-à-vis the principle of Imperial Preference also made its recommendations on these lines. This in principle led to the appointment of the Tariff Board in 1924 and to the enactment of the Indian Tariff Act, 1934 which followed the draft Geneva Nomenclature of the League of Nations framed in 1931.

Further in 1858, the political and fiscal sovereignty of the Nation usurped by the Company went into the hands of the Crown. This helped the British to pave the way for the political and fiscal consolidation of the Nation. In 1865, at the instance of Britain, the coastal states of Travancore and Cochin entered into a treaty for the removal of fiscal

restrictions on trade among them and British India, and for the adoption of British India tariff at their ports. By 1875 the reforms regarding abolition of general transit duties came into vogue and some of the states also gave up their frontier customs. The reforms ultimately led towards a unified customs law with a low, uniform and simple tariff-system for the whole of India, enacted under the Sea Customs Act of 1878, solely confined to the Sea Customs. The Land Customs Act of 1924 followed this. When exports and imports by air followed, rules for the administration of customs were framed under the Indian Air Craft Act.

The post-independent India underwent dynamic changes. The rapid industrialization of the nation, diversification of trade, vast changes in the procedures relating to levy of customs duty and Customs Administration necessitated numerous amendments in the above Acts. When they became overlaid with amendments, it became imperative to consolidate them into a comprehensive legislation. This led to the enactment of the Customs Act, 1962.

In addition, the developments in science and technology and the resultant developments and diversifications of

industries and trade caused an enlargement of the list of articles in the foreign trade statistics to 4850 (from 1717 in January 1957), following the Standard International Trade Classification and the assignment of the code numbers to each article recommended by the Economic and Social Council of the United Nations. On February 15, 1971, India joined the Customs Cooperation Council, Brussels to deal with the problems of Customs Technique at the international level. In order to modernize/rationalize and internationally compare the import tariff 'The Tariff Act, 1975' was enacted adapting the Customs Co-operation Council Nomenclature, an International Tariff (CCCN), to suit the nation's requirements, replacing the Customs Tariff Act, 1934. It contains 1097 Headings arranged in 100 Chapters grouped into 22 Sections. This was amended by the Customs Tariff (Amendment) Act, 1978 for better alignment with the CCCN. Again amendment was introduced by The Customs Tariff (Amendment) Act, 1985 based on the Harmonized System of Nomenclature. It provided for a uniform and comprehensive classification system, which would facilitate international trade and help in tariff negotiations both in the Generalized System of Preferences as

well as bilateral or multilateral trade negotiations among countries. This is the terse history of customs laws. Now, the various provisions of the law have to be considered.

4.2 THE CUSTOMS LAW

Customs offences are those acts, which violate absolute or conditional prohibition on importation or exportation of any goods, notified in the Gazette for the purpose described under sub-section 2 of Section 11 of the Act: a) the maintenance of the security of India; b) the maintenance of public order and standards of decency or morality; c) the prevention of smuggling; d) the prevention of shortage of goods of any description; e) the conservation of foreign exchange and the safeguarding of balance of payments; f) the prevention of uncontrolled import or export of gold or silver; g) the prevention of surplus of agricultural product and product of fisheries; h) the maintenance of standards for classification, grading or marketing of goods in international trade; i) the establishment of any industry; j) the prevention of serious injury to domestic production of goods; k) the protection of human, animal or plant life or health; l) the protection of national treasures; m) the conservation of exhaustible natural

resources. n) the protection of patents and copyrights; o) the prevention of deceptive practices; p) the carrying on of foreign trade in goods by the state to the exclusion, partial or complete of citizens of India; q) the fulfillment of obligations under the Charter of United Nations for maintenance of international peace; r) the implementation of any treaty with any country; s) the compliance of imported goods with laws that are applicable to similar goods produced in India; t) the prevention of dissemination of documents; u) the prevention of contravention of any law in vogue; v) and any other purpose conducive to the public interest. The Section is in consonance with the General Agreement on Tariff and Trade, of which India is a signatory.

Section 14 is one of the most important sections of the Customs Act, which deals with valuation of goods for purposes of assessment. This, in conformity with the GATT Code of Valuation, lays down elaborate rules to provide for a fair, uniform and neutral system of valuation of goods. When goods were grossly undervalued the rejection of transaction value

and the invoice price,¹ and the enhancement of value by the customs department were held valid.²

Section 25(1) empowers the Central Government to exempt wholly or partly the duty leviable on goods of specified category in public interest; and under Sub-section-2 in individual cases in public interest when there are exceptional circumstances. In this context it has to be stated that there are numerous instances of misuse of power. In *Re Maya Enterprises* the court struck down the issue of a discriminatory notification denying exemption for power projects to captive power projects as it vitiated Article 14 of the Constitution.

Section 104 vests the customs officer with power to arrest a person suspected to be guilty of evasion of duty or prohibition. He has the same authority of a police officer to release such a person on bail or otherwise and is subject to the Cr.P.C. The Act enjoins upon the officer to produce him before a Magistrate. However the power to grant bail, collect evidence, and search persons and conveyances without

¹ *Kanji Morarji v Commissioner of Customs, Mumbai-1997* (96) E.L.T. 204 (Tribunal).

² *Maya Enterprises v Collector of Customs, Kandla-1994* (71) E.L.T. 817 (Tribunal).

recourse to a Magistrate does not make the customs officer a police officer.

An Assistant Collector or duly authorized customs officer, by virtue of Section 105, has the power to search premises for contrabands or documents. The occupant of the premises has to be present at the time of search, if not it vitiates the proceedings.³ The custom officer has to report about the search and seizure to the Collector of Customs and not to the Magistrate. If there were sufficient grounds for search and seizure, and the authority acts reasonably, then there is no infringement of fundamental rights guaranteed under Articles 19(1) and (31) of the Constitution, and the court will not exercise its jurisdiction under Article 226 of the Constitution.⁴ If any person refuses to be a witness he shall be deemed to have committed an offence under Section 187 of the Indian Penal Code, and Sections 100(4) and 100(8) of Cr.P.C.

The proper officer under Section 106, on reasonable belief, can stop and search at any time any conveyance, vehicle, vessel, aircraft or animal engaged in, and for their stoppage even gun power can be used as a last resort. As per

³ Ramesh Chandra v. Emperor of India- ILR 41 (Cal.) 350.

⁴ Ajith Kumar Agarwalla v. Union of India -1998 (100) E.L.T.333 (Cal).

Section 106A an authorized proper officer can at any time enter any place and inspect any goods or documents or require information from any person to ascertain illicit exports and imports. Section 107 facilitates investigation process relating to smuggling without any restriction on person, time and place.

Section 108 empowers any Gazetted officer of customs to summon any person (certain women exempted under Section 132 of Civil Procedure Code) to give evidence or produce documents relating to smuggling (smuggling includes under invoicing or under valuation). The enquiry shall be deemed to be a judicial proceeding within the meaning of Section 193 and 229 of the I.P.C, according to which furnishing of false evidence is punishable with imprisonment. The enquiry might lead to prosecutions in criminal court or imposition of an administrative penalty. The provisions of Cr.P.C relating to investigation are not strictly applicable to enquiries under the Act. The person called for questioning during investigation under the Act or FERA is not an accused ⁵ and hence no constitutional protection under Article 20(3) and Article 21

⁵ Poolpandi v. Superintendent of Central Excise -1992 Cri.L.J. 2761 (SC.).

against testimonial compulsion is available to him. But he cannot be compelled to answer questions that incriminate him, which Section 132 of the Evidence Act perforce requires. It does not hit Article 22 of the Constitution if the person has neither been arrested nor a formal accusation made against him. The Sections 107 and 108 do not authorize the customs officer to extract, coerce or use any third degree methods in examination and interrogation. Further the confession made before a customs officer does not collide with Sections 161 and 162 of Cr.P.C or Sections 24 to 26 of the Evidence Act since customs officers are not police officers.⁶ The confessional statement even though retracted is to be taken as truthful and voluntary and is to be corroborated during trial. Thus, where silver valuing crores of rupees was smuggled, it was declared that the retracted statement of the co-accused subsequently made is not fatal to the prosecution and that the conviction is not barred.⁷

⁶(i) Abdul Khader Haji and others v. Collector- 1987 (32) E.L.T.479 (Ker.).

(ii) Union of India v. Ashok Sukhadeo Singh Chavan-1991CriL.J. 2359 (Bom.).

⁷ Haji Abdulla Haji Ibrahim Mandhra v. Superintendent of Customs-1992 (60) E.L.T. 176 (Guj.).

Furthermore, it has to be stated that though the customs officer is not a judicial tribunal as he deals with offences which carry punishment of confiscation, fine or penalty as well as prosecution and conviction that are penal in nature, the proceedings are akin to the nature of criminal proceedings. Therefore the fundamental principles of criminal jurisprudence and natural justice apply unless expressly barred.

The power to seize goods under Section 110 is also distinct and separate from the power of confiscation and imposition of penalty under Sections 111 and 112. Though the Act provides for reasonable belief as a prerequisite for the exercise of the powers, the courts will not microscopically examine the circumstances under which the opinion is formed.

The powers of the customs authorities are well guarded. A Magistrate cannot exercise jurisdiction under Sections 451 or 157 of Cr.P.C to order release of goods before the launching of criminal proceedings. Also, even the inherent powers of the

High Court cannot be invoked for the release of property seized.⁸

The ensemble of the above is that most of the safeguards, rights and privileges to which an accused is entitled to in the course of investigation under Cr.P.C and Evidence Act are usurped by judicial hermeneutics or legislative departures in the investigations under the Act (also FERA), before any FIR or complaint is filed. This is because of the deleterious effects the offence like smuggling produce in the economy.

Section 111 deals with confiscation of goods improperly imported. Section 127 of the Act provides that the award of confiscation or penalty under Sections 111 and 112 are no clogs to the infliction of punishment under Section 135, which Section 135 further reiterates. Thus the customs authorities are empowered to initiate proceedings for confiscation, penalty and in addition can proceed with trial in a criminal court. It has been held that the customs authorities are not forbidden to act on the basis of the statement of the accused, rejected by the criminal court as being given involuntarily. It is to be noted that where the criminal court acquitted an accused

⁸ P.O.Thomas v. Union of India –1989 (44) E.L.T 414 (Ker.).

charged under Section 23 of the FERA, 1947 on benefit of doubt, his penalization under section 167(8) of Sea Customs Act was upheld.⁹ Furthermore it was declared that an acquittal for an offence under Section 111 of the Act is not bar on prosecution under Section 85 of the Gold Control Act or the Defence of India Rules, as the ingredients of the two offences are different.¹⁰

In 1973 Section 111(m) of the Act was amended to include not only dutiable and prohibited goods but also duty free goods since in duty free goods parties indulge in over-invoicing that affects the foreign exchange position of the nation.

The Section 112 deals with penalty for improper importation of goods. It provides for personal penalty for every contravention and its abetment. But the power to impose penalty must not be put to arbitrary, excessive or oppressive use. Where gold of the value of only Rs.6250 was confiscated but penalty of Rs.50000 was imposed, the order was quashed as being excessive and arbitrary.¹¹

⁹ M.K.Mohd.Hussain v. K.Gangasetty -1994(110) E.L.T.223 (SC).

¹⁰ Gopal Saran v. Collector-1987 (30) E.L.T 533 (Tri.).

¹¹ Gyanoba Yashwant v. Collector-AIR 1974 A.P .76.

It has been held that confiscation under Section 111 (m) on account of mis-declaration attracts penalty under Section 112 (a) irrespective of mensrea, because mensrea is not a condition precedent for levying personal penalty.¹² However, penalty and redemption fine being different kinds of punishments their quanta have to be determined inasmuch as mensrea, conduct, and attendant extenuating circumstances weigh. This section does not provide for a mandatory penalty.

Section 113 provides for confiscation of goods attempted to be exported improperly. It is only the dutiable prohibited goods that become liable to confiscation, whereas in the case of duty-free goods only personal penalty applies. The Section 114 provides for penalty not exceeding five times the duty sought to be evaded or five thousand rupees whichever is greater. In order to check the burgeoning problem of duty evasion Section 114A was introduced into the Act with effect from 28-9-1996, prescribing mandatory penalty equal to the duty or interest not levied, short levied, not paid or part paid or erroneously refunded.

The Customs authorities have jurisdiction to verify violation of conditions of license or of any notification under

¹² Macneill & Magor Ltd.v.Collector-1987 (28) E.L.T.318 (Tribunal).

which goods are exempted from customs duty.¹³ Where notification issued under Section 12(1) of the FERA prohibited export of goods to certain places unless certain conditions were fulfilled, the confiscation of goods under section 113(d) and imposition of penalty under Section 114 of the Act for violation of conditions was held justified.¹⁴ Under Section 115 any conveyance used in smuggling becomes liable to confiscation. The confiscation is permissive, not mandatory.

Section 116 envisages imposition of penalty both to dutiable and non-dutiable goods. Its objective is not only to compensate the Government for the loss of revenue by way of fraud but also to deter others from committing the offence. It imposes strict liability on the person in charge of the conveyance. If the goods at its destination in India are not unloaded or short loaded as per the document accompanying them penalty is imposable.

Section 117 envisages that where any goods imported in a package are liable to confiscation the package and its contents are liable to confiscation. Further, goods used for concealing smuggled goods and sale proceeds of smuggled

¹³ Prabha Lohia v. Collector-1994 (70) E.L.T.559 (Mad).

¹⁴ South India Coir Mills v. Additional Collector- AIR 1971 Cal. 444.

goods are all confiscable under Sections 119 and 121 respectively.

The Section 122 deals with adjudication of confiscation and penalties. The Commissioner of Customs or a Joint Commissioner has unlimited powers, an Assistant Commissioner or Deputy Commissioner can exercise powers if the value of the goods does not exceed fifty thousand rupees, and for a Gazetted Officer below the rank of an Assistant Commissioner if the value of goods does not exceed 2500 Rupees.

The quasi-judicial functions are bound by the principles governing the doctrine of bias typified by the maxims known in common law as (a) Audi Alteram Partem- no man shall be condemned unheard, (b) Nemo Judex in Causa- no man shall be judge of his own cause, and (c) justice should not only be done but manifestly and undoubtedly seem to be done.¹⁵ The custom authorities are not plenipotentiaries.

Under Section 123 when any goods are seized in the reasonable belief that they are smuggled, the burden of proof shifts to the alleged offender. This section applies to gold and

¹⁵ Collector of Customs v. Prehlad Singh Chadda -1986(26) E.L.T.787 (Tribunal).

manufactures of gold (manufactures of gold was introduced by an amendment Act, 1989), watches and other notified goods. Where the goods are not notified the burden of proof rests with the department itself.

Section 124 ordains the issue of show cause notice before confiscation of goods. The adjudication proceedings are dependent on the grounds mentioned therein.

Section 125 provides to the owner of goods or to the custodian, by an amendment with effect from 27-6-1985, an option of payment of fine in lieu of confiscation, at the discretion of the officer. The considerations relevant to determine the quantum of personal penalty such as mensrea, bonafide beliefs are relevant to determine the quantum of redemption fine also. The prevailing market conditions, storage charges, actual sale proceeds etc are relevant factors for the purpose of fixing the quantity of redemption fine.¹⁶ After ascertaining the market rate the duty payable on the goods under confiscation is deducted, which gives the ceiling for levy of the fine in lieu of confiscation.¹⁷ An order is

¹⁶ Jain Exports (P) Ltd.v.Collector-1988 (33) E.L.T.199 (Tri.).

¹⁷ Ashwin Vanaspati Industries (P) Ltd. v. Collector -1987 (29) E.L.T.991 (Tribunal).

arbitrary if personal penalty exceeds the amount of redemption fine adjudged.¹⁸

As per section 126, on confiscation, the property vests in the Central Government; on requisition the police has to assist the customs officer to take possession of the goods.¹⁹ Section 127 specifies that the award of confiscation or penalty do not interfere with other punishments.

Chapter XVI of the Act comprises ten sections, Sections 132 to 140A. It enumerates two types of offences: (a) customs offences involving contravention of the Act and Rules for which penalties are imposed by the customs authorities themselves and (b) criminal offences triable by magistrates resulting in conviction and sentence of imprisonment and or fine.

The Act provides for imprisonment up to six months or fine or both for the offence of furnishing false documents/declaration under Section 132, and under Section 133 for the obstruction of officer of customs in the exercise of his powers. The refusal to be X-rayed and the objection to expulsion of goods secreted inside one's body also attract punishment as said above (Section 134).

¹⁸ Sandip Agarwal v. Collector of Customs -1992(62) E.L.T.528 (Cal.).

¹⁹ Digvijaisinghji Spinning & weaving Mills Ltd. v. Collector- AIR 1958 Bom.305.

Section 135 was amended in 1973 and in 1978 to provide for heavier sentences for the offences. To ensure adequate punishment the Magistrates can resort to the provision of Cr.P.C or to Section 325 therein.²⁰ The offence is triable summarily. Preparation in contravention of the Act is also made punishable with imprisonment for a term extending to three years or with fine or both. This was introduced by Section 6 of the Customs, Gold (Control) and Central Excise and Salt (Amendment) Act 1973.

According to Section 135, with effect from 1973, the evasion of duty or prohibition in respect of goods worth above Rs.1 lakh is punishable up to seven years of imprisonment (enhanced from five years) and with fine. The Section 138 provides for summary trial of offences, other than an offence punishable under Section 135(1) (i) or Sub- section 2, where much evidence is not needed.

The Section 138C, introduced with effect from 1-7-1988, provides microfilms, facsimile copies of documents and computer print outs as admissible evidence. The documents include inventories, photographs, and even statements made by the accused. Section 140 provides for award of punishment

²⁰ D.L Vyas v. Aravind Bhai Haribai Desai -(1976) 17Guj.L.R.695.

for those in charge of a company for the offence committed by the company.

According to Section 141 conveyances and goods in a customs area are subject to the control of officer of customs. This Section incorporates the amendment by Section 66 of the Finance Act, 1995 which bestows power upon the Collector of Customs to distrain any moveable or immovable property for the realization any amount due to the department.

The Section 151 empowers and requires the officers of Central Excise, the Navy, the Police, the Port Officers, the Airport Officers and such other notified officers to assist the officers of customs in the execution of their duties under the Act.

The Section 159 specifies that every rule made under the Act and every notification issued under certain sections viz. Sections 11, 11B, 11H, 11-I, 11N, 14, 25, 28A, 43, 66, 69, 70, 74, 75, 76, 98, 98A, 101 and 123 shall as soon as issued be laid before each House of Parliament, which has the right to modify or annul them. That is the ultimate power rests with the legislature, its supremacy is not surrendered to the executive. It is laid down that notifications as well as executive

orders are all subject to judicial examination, mere recital of Public Interest does not save an order, it must stand the test of reasonableness and other tests against violation of the fundamental rights.²¹

It is to be emphasized that the Customs Act is well knit by its own provisions and with various provisions in other Acts, in order to ensure economic security of the nation. For instance, by virtue of Section 3(4) of the Imports and Exports Control Act the Government can protect, restrict or otherwise control the import or export of any goods, and as per the deeming provision under Sub-section 2, this comes under Section 11 of the Customs Act also. Hence imports in violation of Section 3 of the former Act comes under the mischief of section 11 of the Customs Act also.²² Similarly, all the restrictions that come under the Foreign Exchange Regulation Act-FERA- (Now repealed and replaced by the Foreign Exchange Management Act-FEMA) are deemed to come under Section 11 of the Act also. For instance the possession of foreign exchange interdicted under Section 13 of the FERA

²¹ Sri Hari Exports v Director General of Foreign Trade -1994(73) E.L.T. 794 (Del.).

²² Collector v. Hindustan Motors Ltd. 1979(4) E.L.T (1313).

attracts its confiscation under Section 11(d) of the Customs Act also.²³

4.3 GOLD

India, the largest consumer of gold in the world, is a sink for the precious metals. During 2001 the nation's stock exceeded 14500 tons (out of the entire world stock of 145,000 tons) worth more than Rs.841,000 crores (at Mumbai prices as on January 22, 2002).

The indigenous production from the two mines Hutti and Bharat is less than two tonnes. This and the recycling being grossly inadequate, the main demand is met by smuggling from Dubai, Singapore and Hong Kong, usually as ten tola bars. Since 1947 smuggling has become a professional business. Now consider the specific Act, the Gold Control Act, enacted to deal with gold alone.

4.4 THE GOLD CONTROL ACT

It is only in 1939, a license was prescribed for the import of gold by a notification issued under the Sea Customs Act. The customs duties on imports of gold came into force only after 1946. Its import was banned from 1947 to 1991.

²³Kala Gems v. Collector- 1997(92) E.L.T (156) (Tribunal).

The Gold Control Act, 1962 was enacted to regulate trade in gold, through a system of licensing of dealers and certification of gold smiths and through prescribed accounts and submission of periodic returns. It forbade private holding of gold bars.

The Gold Control Act, 1968(hereinafter called as GCA) was enacted, replacing the Gold Control Act, 1965 and the Gold (Control) Ordinance, 1968, in the light of the experience gained from the actual working of the gold control measures to plug legal and administrative lacunae.

The GCA empowers any Gold Control Officer authorized by the Administrator to enter and search any refinery or business premises of a dealer or a goldsmith (Section 58), search any person (Section 59), or any conveyance or animal (Section 60) for suspected contravention of the G.C.A. Its constitutional validity was upheld by the courts despite the fact that it does not provide for the usual safeguards except those contained in Section 102 under the Code of Criminal Procedure. The Gold Control Officer has the power to summon any person to give evidence, or being duly authorized to arrest any person in connection with any contravention of the GCA.

According to section 69, sections 102 and 103 of the Cr.P.C apply to search and seizure. And section 71 provides for confiscation of gold or even any conveyance or animal used for the transport of gold. Section 73 provides for an option to pay fine in lieu of confiscation, not exceeding the value of goods confiscated. But prior to the Gold Control (Amendment) Act of 1971 it was twice the value of the good. Section 74 provides for personal penalty not exceeding five time the value of the gold or one thousand rupees whichever is more, whether the gold is confiscated or not or of any purity (Section 76). Section 77 specifies that the confiscation of penalty does not interfere with other punishments.

Section 85 provides for punishment for illegal possession of gold. If the value of gold exceeds one lakh rupees the imprisonment may extend to seven years and with fine. If the offender is a recidivist for every subsequent offence the imprisonment may extend to 7 years with fine. The fact that the offender is convicted for the first time, or that he is not the principal offender but a mere carrier, or that he has been ordered to pay penalty does not provide special and adequate reasons for awarding a lesser sentence of less than six

months' imprisonment. The failure to make a declaration also attracts punishment extending to two years and with fine (Section 86). The failure to submit accounts or to maintain correct accounts invite punishment for a term, which may extend to two years (Section 87). The Section 92 of the GCA empowers the court to order forfeiture of any equipment used in the manufacture of gold or gold ornaments. Section 93 provides for punishment of those in charge of companies for contravention of the Act. Section 95 provides for punishment of Gold Control officer for dereliction of duty or connivance at contravention, of imprisonment extending to three years or with fine.

The courts are entitled to take cognizance of offences against the Act only on the basis of complaint lodged by the Gold Control Officer not below the rank of Collector of Customs, and the cognizance of any offence by the Gold Control Officer requires prior sanction of the central Government (Section 97). Section 98B states, that for any offence, which requires culpable mental state, the courts shall presume the existence of such mental state unless otherwise

proved. Further, according to Section 98 the offences, other than those stipulated, are to be tried summarily.

The Gold Control Act was subsequently repealed consequent on the liberalisation.

4.5 THE COFEPOSA

As a general perception of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 and the emergencies that reigned in the nation helps to illumine our study, they are encapsulated below.

India is the only democratic country in the world which retains preventive detention, that is detention without trial, to prevent a person from committing an offence coming within any of the grounds specified by the Constitution unlike punitive detention which is punishment given after trial in a court of law for an illegal act; it is retained as a permanent feature of the Constitution and that too under Part III of the Fundamental Rights. The Preventive Detention Act enacted in 1950, which provided for preventive detention up to one year, pertained to the defence of the nation, its safety and security or of its any State, maintenance of public order, maintenance of supplies and essential service. It was originally passed for

one year but was extended several times until it expired by the end of 1969. But it reincarnated as the 'Maintenance of Internal Security Act' in 1971 (hereinafter referred to as MISA). Then in 1974 the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act (hereinafter referred as COFEPOSA) was enacted which provided for preventive detention. It was an economic adjunct of the MISA; whereas the MISA was aimed at subversive activities, the COFEPOSA was aimed at anti-social activities like smuggling, racketeering in foreign exchange. On 26-6-1976 the MISA was amended to provide for detention up to 24 months. And subsequently it was made applicable to smuggling activities also.

4.6 EMERGENCIES

On 26-10-1962 the President proclaimed emergency under Article 352 of the Constitution due to Chinese aggression. And by a Presidential Order under Article 359, a person deprived of his rights under the Defence of India Act was disentitled to move any Court for the enforcement of his Fundamental Rights conferred by Articles 14, 19, and 21. The proclamation was revoked on 10-1-1968.

On 3-12-1971 emergency was again declared under Article 352 when Pakistan attacked India. The MISA was also made applicable to smugglers as stated earlier. When courts released many smugglers detained under MISA the President promulgated an Order under Article 359 suspending the right of any such detenu to move to any Court for the enforcement of his fundamental rights under Articles 14, 21, and 22 for a period of six months or during the continuance of emergency, whichever expired earlier.

Then, on 25-6-1975 for the first time in the democratic history of the nation emergency was declared on the basis of internal disturbances, whereas the preceding two were based on external aggression. Also this was when the second one was in operation. Then on 27-6-1975 by a Presidential Order under Article 359 the right to move any Court for the enforcement of fundamental rights guaranteed under Articles 14, 21 and 22 was suspended. In *A.D.M. Jabalpur v. S. Shukla*, popularly known as Habeas Corpus case even the apex court declared that no person has any locus standi to move a writ of Habeas Corpus or to challenge an order of detention on the ground of illegality, non-compliance with the Act or mala fide

factual or legal since the Presidential Order is blanket. Thus the fundamental rights were clipped and judicial remedies were jettisoned.

The emergency was revoked on 21-3-1977, and the polity and economy underwent and is undergoing through rapid and radical changes especially in the present era of liberalisation and globalisation. All these generate their impact upon economic offences and especially on customs offences.

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CUSTOMS ADMINISTRATION & KERALA IN THE CUSTOMS MAP

K.M. George “ Economics of economic offence a study of customs offences in Kerala” Thesis. Department of Economics , Dr.John Matthai Centre , University of Calicut, 2003

CHAPTER-5
**CUSTOMS ADMINISTRATION & KERALA IN THE
CUSTOMS MAP**

The aim of this Chapter is to briefly delineate the administration of the Customs Act and Rules, and to depict the position of Kerala in the customs map of the nation as our study is on the Kerala scenario.

5.1 CUSTOMS ADMINISTRATION

The customs administration of the Government of India, which exercised its jurisdiction over the entire nation, encountered myriad problems with bifurcation of the nation into India and Pakistan. The emergence of Pakistan as a foreign territory required the setting up of a number of land customs station on the land frontiers and the prescribing of routes by which alone transit of goods had to be permitted. This widened the horizon of smugglers since the trade with Pakistan became international trade. The wars between India and Pakistan and the hostility that remained, the formation of East-Bengal of Pakistan as a nation state and India's contiguity with the 'Golden Triangle', the historical links with the gulf nations etc. expanded the horizon of the smugglers.

The Customs Administration is not merely confined to the enforcement of the Act. Though collection of revenue is its basic function, as it controls the gateways of trade with the international community, it is entrusted with the enforcement of law relating to imports and exports and other related functions.

The Department of Revenue of the Ministry of Finance which functions under the overall direction and control of the Secretary (Revenue) deals with matters of policy and administration in regard to direct and indirect taxes of the Union Government. It seeks to achieve three main objectives viz. to build up an atmosphere of mutual trust between the tax-payer and the tax-gatherer, tackle problems of tax-evasion and tax- arrears, and to promote socio-economic policies of the Government. It exercises its control through two statutory Boards constituted under the Central Boards of Revenue Act, 1963, the Central Board of Direct taxes and the Central Board of Excise and Customs, each headed by a Chairman. These two wings function as the Direct Taxes Wing and the Indirect Taxes Wing respectively of the Department of Revenue.

The Central Board of Excise and Customs (CBEC) is primarily concerned with the formulation of policy for the levy and collection of indirect taxes, anti-smuggling operations and administration of matters relating to them. It is the administrative authority for subordinate organizations, viz., Customs Houses, Central Excise Commissionerates, and the Central Revenues Control Laboratory. The Board is assisted in its administrative and executive functions by the following attached and subordinate offices: -

- (i) Directorate –General of Inspection & Audit;
- (ii) Directorate-General of Revenue Intelligence;
- (iii) Directorate-General of Anti-Evasion;
- (iv) National Academy of Customs, Excise, & Narcotics;
- (v) Directorate of Organization & Management Service;
- (vi) Directorate of Statistics & Intelligence;
- (vii) Directorate of Preventive Operations;
- (viii) Directorate of Publicity & Public Relations;
- (ix) Central Revenues Control Laboratory; and
- (x) Directorate of Vigilance.

There are at present 61 Commissionerates of Customs and Central Excise in the nation to perform the executive functions entrusted to the Board viz. mainly matters relating

to Central Excise, Customs and smuggling. Besides these, there are 4 major Customs Houses at Bombay, Calcutta, Madras and Cochin, and 20 Customs Commissionerates at Mumbai Airport, Calcutta Airport, Chennai Airport, Delhi, Bangalore, Goa, Amritsar, Jodhpur, Shillong, Mangalore, Vizag, Pune, Ahmedabad, Trichy, Lucknow, Patna, Mumbai (Preventive), Nhava Sheva, New Kandla and West Bengal. The Narcotics Department, headed by a Commissioner having headquarters at Gwalior, is another important subordinate office of the Board. The Gold Control administered under the Gold (Control) Act, 1968 (now repealed) is implemented through the Commissioners of Customs and Central Excise. Additional Commissioners/Deputy Commissioners and Assistant Commissioners and other executive and ministerial staff assist the Commissioners. There is an institution of Commissioners (Appeals) to deal with appeals against the orders passed by the officers lower in rank than the Commissioners under the Customs Act, Central Excise and Salt Act, 1944 and the Gold Control Act, 1968. There are at present 25 such Commissioners stationed in four metropolitan cities, namely, Delhi, Bombay, Calcutta and Madras.

An appellate Tribunal-Customs, Excise and Gold (Control) Appellate Tribunal (CEGAT)- was constituted in 1982 to hear appeals against the decision/orders of Commissioners of Customs and Central Excise and Commissioners of Customs and Central Excise (Appeals), with headquarters at New Delhi and regional benches at Calcutta, Madras and Bombay.

The Economic Intelligence Bureau formed in 1985 is the central nodal agency that co-ordinates and strengthens the intelligence activities and enforcement action by various agencies concerned with economic offences and the enforcement of economic laws, both at the Central and State Government levels. It is entrusted with the responsibility of administering the 'Conservation of Foreign Exchange and Prevention of Smuggling Activities Act' and of monitoring State Government actions under it. It also acts as the nodal agency for cooperation and coordination at the international level with agencies in the spheres of economic offences.

The Directorate of Revenue Intelligence, an apex agency in the field of anti-smuggling, maintains close liaison with the Coast Guard, Central Reserve Police Force, Income Tax, Narcotics Control Bureau and all other departments of

Customs and Central Excise in the Country and enforcement agencies abroad. It advises the Ministry in all matters relating to anti-smuggling measures and in formulating law, policies and procedures to plug the loopholes.

It becomes obvious that a gigantic organization with good organizational structure is instituted by the society, devoting its scarce resources, for the administration of the Customs Act and allied Acts. But despite these, smuggling industry has luxurious growth in the economy. As the study pertains to Kerala its position in the overall scenario of the nation has to be borne in mind before proceeding with the detailed study.

5.2 KERALA IN THE CUSTOMS MAP

The West Coast of India is the most vulnerable region to organized smuggling. Table 5.1 furnishes the data on region-wise smuggling in India since 1984. The volume of smuggling in this region which was worth Rs.5975 lakhs in 1984 increased to Rs.31263 lakhs in 1989, i.e; an increase of 423.23%. And in 1999-2000 it rose to Rs.107,620 lakhs, which represents an increase of 1701.17% compared to 1984.

In terms of value, during 1989 the West Coast accounted for more than 63% of the seizures made in the whole of India and it formed more than three-and a-quarter times the

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seizures from the East Coast, the second most vulnerable region for smuggling. In 1997-98 it constituted more than thrice the corresponding share of the East Coast.

TABLE 5.1.
REGION-WISE SMUGGLING IN INDIA (IN Rs. LAKHS)

Year	W.C	E.C	I.P	I.N	I.B	I.Br	I.S	Others	Total
1984	5975	2071	560	180	257	22			9065
1985	10856	3947	1550*	603	405	29			15840
1986	10778	4349	2500	895	519	47			19088
1987	12361	3583	3030	1287	657	50	626		21594
1988	25652	5896	2639	1659	745	50	899	6774	44314
1989	31263	9210	3997	2051	1131	40	2105	5698	55495
1990	43934	16248	2470	2463	1381	122	2285	7103	76006
1991	47265	14740	3725	3488	1353	112	1774	5374	77831
1992	23206	12933	2235	3456	1336	104	457	6487	50214
1993/94	24376	12953	1070	2279	1887	417	560	12301	55843
1994/95	25225	15346	1522	1618	2935	789	4212		51647
1995/96	29000	21900	3000	2600	1800	1000	727		60027
1996/97	21405	22578	3658	4901	2718	1063	1017		57340
1997/98	21615	7031	1725	1960	1894	197	354		34776
1998/99	51713	29893	2987	8006	2833	1031	662		97125
1999/00	107620	61118	486	8456	3015	1236	1095		183026
2K/01*	20931	22228	414	5946	1970	565	826		52880

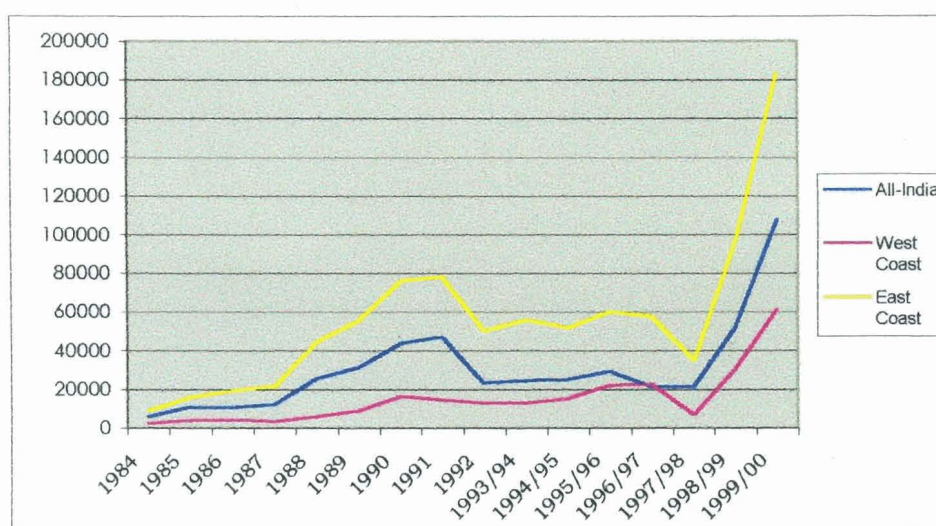
Source: Annual Reports, Ministry of Finance, New Delhi.

N.B*Plus 365 gms. Heroin seized during the year. Yr-Year, Reg-Region, W.C-West Coast, E.C-East Coast, I.P-Indo-Pak border, I.N-Indo-Nepal border, I.B-Indo-Bangladesh border, I.Br-Indo Burma border, I S-Indo Sri Lanka border.

The gravity of the problem in the West Coast is obvious from the fact that during the period 1984-1999/00 the volume

of smuggling in the region had increased from Rs.5075 lakhs to 107,620 lakhs, that is by 17 times. Chart 5.1 portrays the smuggling behaviour in the East Coast, West Coast and at the All-India level.

CHART 5.1
REGION WISE SMUGGLING (Rs.LAKHS)



Source: Ref. Table 5.1

Kerala, on the West Coast of India having coastline extending to over 600 kms, from Kunjathur in the north to Vizhinjam in the south with favourable geographical features is a haven for smugglers. The umpteen unguarded creeks and backwaters on the extensive Malabar Coast providing easy access to interior areas and the number of deserted areas connected to the national high ways affording easy transportation avenues to major marketing centres present

vantages for smuggling. Further the Union Territory of Lakshadweep, an archipelago of 36 islands scattered in the Arabian Sea, with its proximity to the mainland and to the Maldives with numerous uninhabited islands, provides congenial geographical features for smuggling. The absence of preventive units in the archipelago provides added advantage.

Kerala has a glorious maritime past. The trade relations between Kerala and the foreign countries, especially the Persian Gulf countries, date back to 9th century. The common brotherhood of Muslims, especially in the Malabar Coast of Kerala and Arabia, and the ensuing marital relations furthered the social and commercial intercourse. Gradually there arose clandestine trade activities also-smuggling in consumer goods and smuggling out leather, spices, teas, gold etc. The restrictions on trade during the Second World War made smuggling more lucrative and it developed into an organized one, carrying the contrabands in small boats to outer sea and transshipping them to Arab Dhows anchored there. And by now the illicit trade had developed into an advanced stage using chartered vessels, sophisticated equipments and communication networks.

The developments in the commercial arenas in the immediate post-war period made smuggling out of India unprofitable. The restrictions/prohibitions on import of gold and other consumer goods under the Foreign Exchange Regulation Act and the Import and Export Control Act in the independent India caused escalation of prices of these goods in the domestic market. It led to the conduct of smuggling in an organized manner, for the Arabs had ample facilities to procure goods from the foreign markets and opportunities to market them in India by exploiting their commercial and social relations. The seizure of sovereigns and tea during 1945 and 1946 and the intelligence reports since 1954 regarding the smuggling in of gold and other goods in Arab vessels, successfully penetrating the customs barriers, the seizure of a consignment of gold worth Rs.17.5 lakhs on 15-01-1956, at Vengali Rail Road Cross, Calicut and a series of seizures which culminated in the seizure of 32,080 tolas of gold from Talap, Cannanore on 26-08-1956—the largest individual seizure in India till 1960 impelled the Government to set up a Special Preventive Division at Calicut on 18-9-1956, with jurisdiction extending to Coimbatore in the Madras State and Malape, Coondapur and Mangalore in the State of Karnataka.

The series of seizures, especially the seizure of gold worth Rs.1crore smashed the smuggling network and provided a good deterrence to the smugglers. This was reflected in the workload. It resulted in diverting the post of Assistant Collector of Customs of the Circle to the East Coast Customs Preventive Division at Ramnad in 1959, and in attaching all the West Coast outposts north of Ernakulam to it on 1-12-1962. The constitution of the Customs and Central Excise Collectorate with effect from 1-5-1960, bestowed with jurisdiction over the reconstituted State of Kerala, divested the jurisdiction of the Preventive Circle in Madras and Karnataka States.

As the anti-smuggling operations intensified, the modus operandi of the clandestine business changed. Instead of bringing in contrabands in boats on regular trips, chartered launches manned by trusted crews were employed. The upward spiralling of the price of the white metal in the international market during the sixties made its smuggling out of India and smuggling in of consumer goods like textiles, nylon yarn, cloves, cinnamon, motor parts, radios and watches, besides gold, more lucrative. This provided flexibility and malleability in the surreptitious operations of the

smugglers. The developments in the underground economic operations rendered the preventive operations of the Department, not equipped even with single sea-worthy launch, very difficult. It was only in February 1970 a Sea-Base Party with a single launch was formed in Beypore. Equipped with this launch and the launches seized, the Department gave a cudgel blow to the nefarious activities during 1970-71 and 1971-72. But the smuggling industry is developed and plastic to bear the shocks – temporary setbacks – in its operations just as any other matured firm or industry in the legal sphere passing through economic vicissitudes. The organizational structure was revamped and sophisticated equipments and vessels were put into service while the arsenals of the Department remained niggard.

The Government being seized of the matter upgraded the Division into a full-fledged one, under the charge of an Assistant Collector, with effect from 21-9-1974. It was strengthened by additional manpower, fleet of vessels and vehicles and communication systems. This measure along with the promulgation of MISA on 17-9-1974 that provided for preventive detention of smugglers bolstered the anti-smuggling efforts. As the jurisdiction of the upgraded Division extending from Cannanore District in the north to Alleppey District in

the south was unwieldy, its jurisdiction was confined to the revenue districts of Cannanore, Calicut and Malappuram excluding Ponnani.

The preventive operations imposing COFEPOSA/MISA cracked down on the empire, organisational and financial, of the smugglers. But the sphinx was reborn. The craze for gold and foreign goods and the market conditions provided the opportunity, instead of chartering bulk goods like textiles in chartered vessels, gold, watches and electronic goods which are easy to handle, were stealthily brought in through cargo and passengers' vessels and aircrafts. The Department has to muster additional strength to deal with the situation. Hence, the Special Customs Division, Kozhikode comprising the districts of Kasaragode, Kannur, Wynad, Kozhikode and Malappuram (except Ponnani Taluk) and the costal belt stretching about 250 kilometers from Manjeswar in the north to Ponnani in the south of Kerala under the charge of Assistant Collector of Customs was formed.

The Commisionerate of Customs and Central Excise, Cochin-2, vested with jurisdiction over the entire state of Kerala, except in the port of Cochin which is under the Commissioner of Customs, Customs House, Cochin-3 was formed on 1-5-1960. The Special Customs Preventive Division,

Kozhikode headed by an Assistant Commissioner, under the Commissionerate of Customs and Central Excise, Cochin-2 was formed on 21-09-1974. This was upgraded into the Commissionerate of Customs and Central Excise, Calicut on 3-9-1999.

§§§§§

LAW AND ENFORCEMENT, AND CUSTOMS OFFENCES (PRE- LIBERALIZATION PERIOD: 1961-1991)

K.M. George “ Economics of economic offence a study of customs offences in Kerala” Thesis. Department of Economics , Dr.John Matthai Centre , University of Calicut, 2003

CHAPTER-6

LAW AND ENFORCEMENT, AND CUSTOMS OFFENCES
(PRE-LIBERALIZATION PERIOD: 1961-1991)

This Chapter analyses the impact of the changes in the dichotomized variables of law and enforcement on smuggling during the pre-liberalization period. Further, the period of emergency (1975-77), and the periods immediately preceding and succeeding it, are analyzed separately as they pertain to abnormal situations of zealous and lethargic enforcement of laws. The main thrust of the analysis is on gold, which is more or less homogenous in nature and highly sensitive in smuggling. Besides this is the availability of data on domestic and international prices of this economically volatile good. As the general crime scenario has a bearing on the scenario of customs offences, in the study both are correlated for proper appraisal of the problem.

6.1 GENERAL CRIME SCENARIO (1961-1991)

During the pre-emergency period 1961-1975 the total IPC crimes under trial in the nation increased from 8,00,84 in 1961 to 9,433,94 in 1971, registering a growth rate of 1.65% per annum. And in 1974 it further increased to 13,079,33, annual growth rate being 11.51%.

During the emergency period 1975-1977 the annual growth rate of IPC crimes declined compared to 1974. In 1975 it slightly increased, in 1976 declined and again in 1977 increased absolutely. The absolute decline from 14,567,81 in 1975, to 13,450,07 in 1976, representing a negative growth rate of 7.67%, is attributable to the operation of emergency in full swing during the entire year, whereas in 1975 and 1977 emergency existed only for six and three months respectively (approx).

TABLE 6.1

DISPOSAL OF IPC CRIMES BY COURTS-ALL INDIA DATA

1	2	3	4	5	6	7	8	9	10
Year	Total IPC Crimes-Trials	Compounded or withdrawn	Conviction	Acq/disc.	Pendency	Trials completed (4+5)/2 (%)	Conv. 4/(4+5) (%)	Conv/total (4/2) (%)	Growth rate of trials (%)
1961	800,784		157,318	85,274		30.29	64.84	19.65	
1971	943,394		187,072	114,797	641,508	32	61.97	19.83	1.65
1972	1,011,699	65,249	312,744	196,089	633,706	50.29	61.46	30.91	7.24
1973	1,147,318	66,751	330,688	205,044	749,879	46.69	61.73	28.82	13.41
1974	1,307,933	75,532	363,565	227,800	868,836	45.21	61.48	27.80	14.00
1975	1,456,781	81,280	395,869	253,319	979,632	44.56	61.06	27.17	11.38
1976	1,345,007	110,493	1,003,52	230,994	585,832	91.78	81.29	74.61	-7.67
1977	1,662,522	95,652	438,089	251,766	1,128,781	41.49	63.50	26.35	23.61
1978	4,550,959	281,943	486,576	557,105	3,225,335	22.93	46.62	10.69	173.74

Source: Crime in India, Ministry of Home Affairs, New Delhi.

During the immediate post-emergency period 1977-1978 the IPC cognizable crimes increased from 1,662,522 to 4,550,959, representing a huge growth rate of 173.74%.

Thus, when the crime scenario during the pre-emergency period 1961-'75 and the post-emergency period 1977-'78 are juxtaposed with that in the emergency period 1975-'77, the two phases of law and enforcement become conspicuous, one when emergency reigned and law was strictly implemented and the other when emergency was not in vogue and law became dozy.

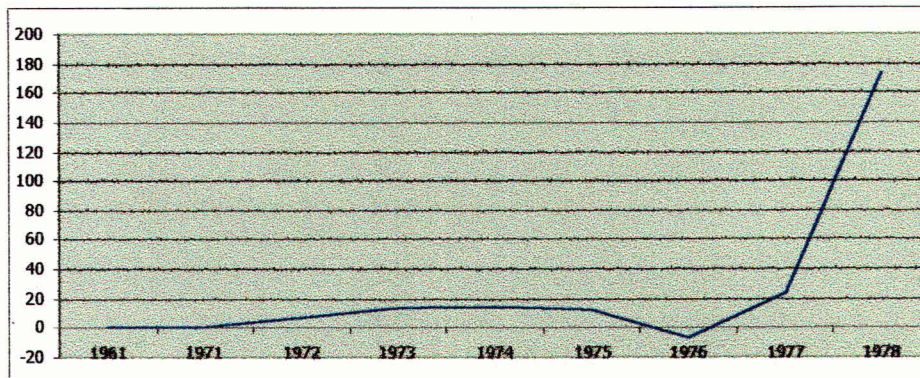
The percentage of trials completed and the conviction rate further corroborate the above fact (Ref. Table 6.1). The percentage of trials completed to the total number of crimes under trial declined from 50.29% in 1972 to 45.21% in 1974, but it increased to 91.78% in 1976 when emergency was in its full course. And thereafter, as an onset of the lifting of emergency on 21-3-1977 the percentage of trials completed declined to 41.49% during 1977 itself, and further down to 22.93% in 1978.

The conviction percentage, i.e. conviction to the trials completed declined from 64.84% in 1961 to 61.06% in 1975,

but it rose to 81.29% in 1976, the year when emergency was in its full stead, to be followed by a decline of 63.5% in 1977 and further down to 46.62% in 1978 indicating the fading force of law.

CHART 6.1

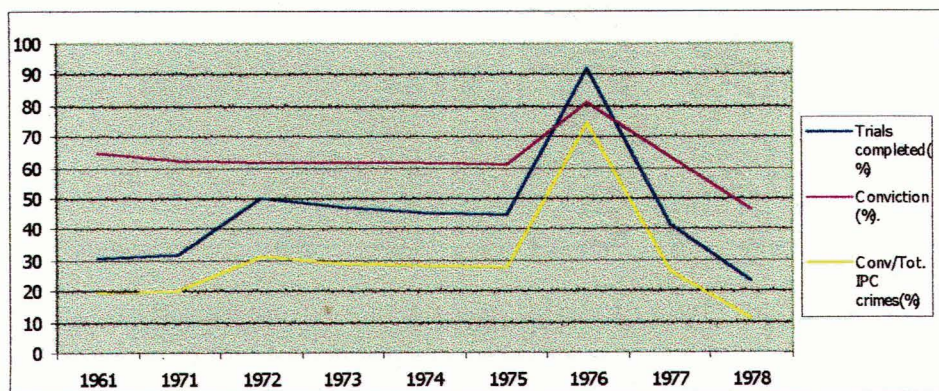
ANNUAL GROWTH OF IPC CRIMES UNDER TRIAL IN INDIA (%)



Source: Based on Table 6.1

CHART 6.2

IPC CRIMES DISPOSAL BY COURTS -ALL INDIA (%)



Source: Based on Table 6.1

As the general public is more concerned with the number of convictions to the total number of IPC crimes under trial which is more perceptible, rather than with the total number of cases in which trials are completed, the conviction with respect to the total number of IPC crimes under trial is to be considered as signifying the efficacy in the prosecution of law and the rule of law. The percentage of convictions to the total number of IPC crimes under trial decreased from 30.91% in 1972 to 27.80% in 1974, but it shot up to 74.61% in 1976 as a sequel to the implementation of emergency. But except for this brief spell the rate continued its course of decline. It declined from 74.61% of 1976 to 26.35% in 1977 and further down to 10.69% in 1978. This makes it obvious that the wax and wane of the might of law reflects upon the general scenario of crime, the Charts 6.1& 6. 2 also depict this.

6.2 CUSTOMS OFFENCE SCENARIO

During 1961-'75 - pre-emergency period - the scenario of customs offences that prevailed was appalling. Table 6.2 shows that during the period 1969-70(Oct-Sept.) to 1974-75(Oct-Sept) the customs offences, in terms of volume, value and value per offence increased tremendously. The volume of

offences increased from 33,125 to 61,841 i.e., by 86.69%, the value of offences increased from Rs.2247 lakhs to Rs.5409 lakhs i.e. by 140.72%, and the value per offence increased from Rs.6783.39 to Rs.8746.62 i.e. by 29% during the above period. And compared to the twelve-month period of 1956(Jan.-Dec.) in the twelve-month period of 1974-75(Oct.-Sept.) the number of offences grew by 329.15% (from 14,410 to 61,841), the value of offences grew by 5,593.68% (Rs.95 lakhs to Rs.5,409 lakhs), and the value per offence grew by 1285.05% (Rs.631.50 to Rs.8,746.62).

TABLE 6.2
CUSTOMS OFFENCES – ALL INDIA

Period	Nos.	Rs.lakhs	Value/Offence Rs.
1955(Jan-Oct)	14410	95	631.50
1956(Jan-Dec.)	15593	164	1051.75
1958(Jan-Oct.)	15021	236	1571.13
1959(Jan-Sept.)	12380	143	1155.08
1969-70(Oct-Sept)	33,125	2247	6783.39
1971-72(Oct-Sept)	35,437	2268	6400.90
1974-75(Oct-Sept)	61,841	5409	8746.62
1975-76(Oct-Sept)	63,724	2604	4086.37
1976-77(Oct-Sept)	114225	2855	2499.45
1978(Jan.-Nov.)	N.A	2789	

Source: Computed from Annual Reports,
Ministry of Finance, New Delhi.

In 1975-'76(Oct.-Sept.), the period during emergency, though the supply of offences in terms of number increased over the previous year by 3.04%, the value of offences and the value per offence decreased by 51.86% and 53.28% respectively. The decreases are clearly attributable to the operation of the third emergency (25-6-1975 to 21-3-1977).

On 21-3-1977 emergency was revoked. The change in the perception of law and enforcement is reflected in the spurt in the supply of offences. In 1976-'77(Oct.-Sept.) the number of offences increased to 114,225 from 63,724 in 1975-'76(Oct.-Sept.), i.e. it grew by 29%. And the value of offences increased to Rs.2855 lakhs from Rs.2604 lakhs, a growth of 9.64%, during the period, though it includes the six months of the post emergency period (Ref.Table 6.2). The decrease in the value per offence to Rs.2499 from Rs.4086, a decline of 38.83%, during the period was due to the difficulties countenanced by the smugglers in properly coordinating their activities within six months from the date of lifting of the emergency, which was not anticipated. Now the legal scenario is to be examined.

6.2.1 LEGAL SCENARIO

The period 1961-'75 was marked by tremendous increase in the offences. But this was strictly not due to the absence of laws against smuggling since the Act, GCA, FERA etc. were in vogue then. During the second emergency period, which had been continuing since 3-12-1971, the MISA was also made applicable to smugglers, and as per the Presidential Order under Article 359 the judicial enforcement of fundamental rights of a detainee was suspended. Further the 'Maintenance of Internal Security Ordinance, 1974' promulgated with effect from 17th September 1974, which was subsequently revoked and replaced by COFEPOSA Act, 1974, was in operation then. But despite all these the supply of customs offences in terms of number, value, and value per offence increased in full stead as data furnished in Table 6.2 reveals. The laws did not consummate because law enforcement was sterile.

On 25-6-1975, for the first time, emergency was declared on the ground of internal disturbances. Preventive legislations were adopted to curb smuggling. The Presidential Order under Article 359(1) of the Constitution of India suspended the operation of Articles 14, 21 and 22 of the Constitution that

deals with Fundamental Rights. The suspension of the Habeas Corpus writ jurisdiction of the High Courts was upheld by the Supreme Court in its judgment dated 28-4-1976. The COFEPOSA was also amended to dispense with the normal procedure of detention during the operation of emergency. The Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 was also enacted to forfeit the illegally acquired property, both moveable and immovable, of smugglers and foreign exchange racketeers, and of their relatives and associates. And by virtue of the 'Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Ordinances, 1975' promulgated on 5-9-1975 even the jurisdiction of courts was barred.

However a comparison of the legal scenario during the period of emergency and the preceding period reveals that the corpus of laws relating to the customs offences was more or less the same. Hence the retardation in the growth rate of supply of offences and the decline in the value and value per offence during the period 25-6-1975 to 21-3-1977 implies not the change in law per se but the law- enforcement per se.

On 21-3-1977 emergency was revoked and normal law was restored. But there was little change in the scenario of customs laws. However selective application of COFEPOSA to smugglers and foreign exchange racketeers was not disregarded. Now consider the law enforcement.

6.2.2 LAW ENFORCEMENT

During 1961-'75 emergencies prevailed and rigorous laws existed but law enforcement was limping. The rapid rise in the offences reflects this.

TABLE 6.3
DETENTION & RAIDS - ALL INDIA DATA

Period	Detention		Raids No	Seizure Rs.lakhs
	Orders No.	Actual No.		
1974			9194	504.83
1975	1978	1670	21585	447.35
1976*	3118	2675	36699	390.54
1977	368	377		

Source: Annual Reports, Ministry of Finance, New Delhi.

N.B: 1976* Pertains to (Jan - Oct). The total and actual numbers of detentions for 1976 include the figures for the preceding year also.

The period 25-6-1975 to 21-3-1977 was remarkable for law enforcement; the enforcement machinery was steered to achieve the desired results. The intelligence machinery was geared up for better collection of and pursuance of Intelligence Reports, effective co-ordination with the Directorate of Revenue Intelligence, the Foreign Exchange Enforcement

Directorate and with the State Government Agencies was established. Maintenance bases were also set up along the west coast. The 18 high speed launches acquired and the confiscated ones were added to the Customs fleet. The vigorous enforcement of law is reflected in the detentions and raids/searches conducted, given in Table 6.3.

Many prominent smugglers and underworld tycoons were nabbed, and a large number of operators, landing agents, carriers and crewmembers were placed under detention. As a preventive measure up to 25-12-1976, 3118 orders of detention were issued (an increase of 57.63% compared to the 1978 orders of detention in 1975) and 2675 were actually detained (an increase of 60.18% compared to the 1670 actual number of persons detained in 1975). Further the actual number of persons detained under the COFEPOSA was more than 84% of the orders of detention issued in the two periods. Actions were taken to attach the properties of the absconders and for the impoundment of their passports, orders to attach properties worth Rs.103 lakhs were issued, and informants were rewarded for the information leading to the arrest of absconding smugglers and foreign exchange racketeers.

The number of raids and searches conducted increased to 134.77% in 1975 and to 85.79% in 1976(up to 30-11-1976) compared to 1974. The plethora of events made open display and even camouflaging of smuggled goods very risky. All these shot up the prices of smuggled goods in the clandestine markets. The links among the smugglers were broken. The efforts bore fruits. The fact that the value of seizures declined from Rs.504.83 lakhs in 1974 to Rs.447.35 lakhs in 1975 and further down to Rs.390.54 lakhs in 1976 shows the effectiveness in implementing the laws and measures against smuggling during the period of emergency.

Further, when the fact that during 1975-76(Oct.-Sept.) the value of offence (Rs.2604 lakhs) and the value per offence (Rs.4086) more than halved their respective figures for the previous year (Ref.Table 6.2) is posited against the decline in the seizure value of goods in 1975 and 1976, despite the increase in detentions and raids (Ref.Table 6.3), the high elasticity of offences to law enforcement becomes obvious. And even the marginal increase in the supply of offences is due to the vigorous pursuits of the law enforcement machinery. Thus

the stricter the enforcement of laws and policies against smuggling the lower is the scale of smuggling.

In the immediate post-emergency period (1977-'78), in contra-distinction to the emergency period, law enforcement underwent thorough change. The cases of all persons detained /absconding were reviewed. When the Government found that the problem was going elusive it had to resort to preventive detention in 1977 itself to provide for deterrence to organized smuggling, though the grounds of detention were communicated to the detenués. Steps were taken to confiscate the ill-gotten wealth of smugglers and foreign exchange racketeers under the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976. The competent authorities forfeited properties worth Rs.505 lakhs in 212 cases under SAFEM (FOP) Act. New vessels, vehicles, night searches, binoculars, wireless communication system, arms and ammunitions acquired and confiscated were also pressed into anti-smuggling activities. It is these measures, which to some extent contained the growth in the volume of offences and value per offence despite the lifting of the emergency.

CHART 6.3
NUMBER OF CUSTOMS OFFENCES IN INDIA

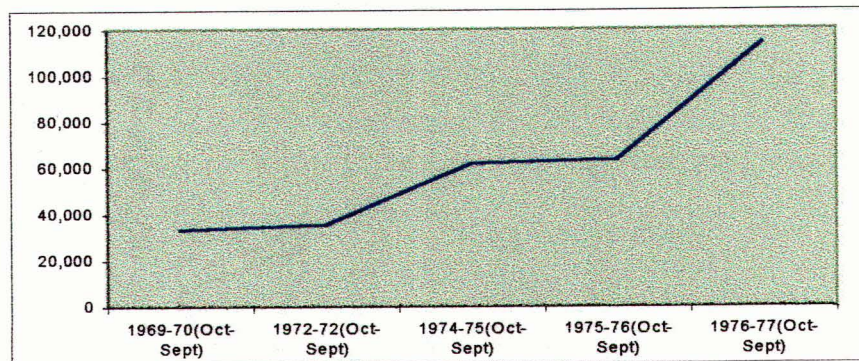


CHART 6.4
VALUE OF CUSTOMS OFFENCES - ALL INDIA (Rs. LAKHS.)

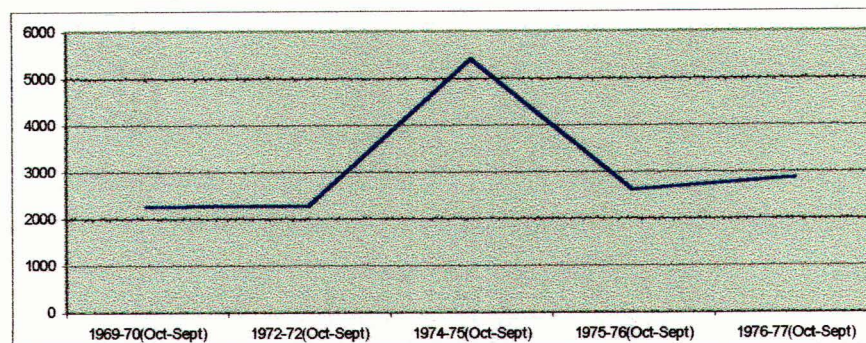
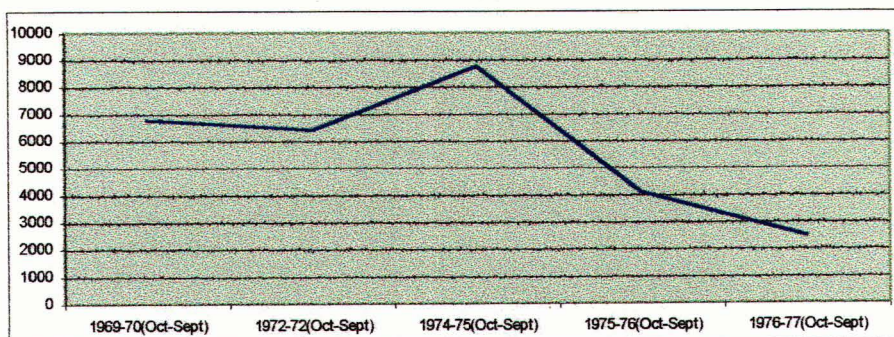


CHART 6.5
VALUE PER CUSTOMS OFFENCES IN INDIA (Rs.)



Source: Based on Table 6.2

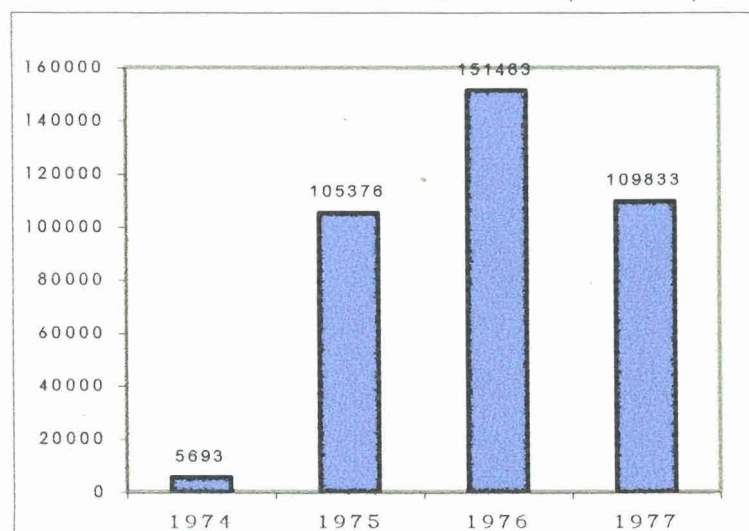
However the law enforcement lacked rigour and vigour. For instance, during 1977-78 the number of detention orders became just 368 from 3118 in 1976(Jan.-Oct.) and raids and seizures almost zero (presumed in the absence of any data). The environment was conducive for the conduct of the clandestine business.

Charts 6.3 to 6.5 show different phases of customs offences during the period 1961-1978. Chart 6.3 shows that the number of customs offences which had been rising since 1969-'70 increased only marginally during the period 1974-'75 to 1975-'76 signifying the impact of emergency on smuggling.

Chart 6.4 shows that despite this slight increase in the number of offences the value of customs offences had climbed down to Rs.2649 lakhs in 1975-76 from its peak value of Rs.5409 lakhs in 1974-75. Chart 6.5 shows that the value per customs offences had plummeted to Rs.4086 from its peak value of Rs.8747 in 1974-5. That is, both the value of customs offence and the value per customs offence decreased more than half during the said period. This aptly refers to the strict implementation of laws.

The galloping of the supply of offences (numbers) curve in Chart 6.3 from 63,724 in 1975-76 to 114,225 in 1976-77 establishes the lethargy in the implementation of laws following the lifting of emergency. Though the 'value of offence curve' in Chart 6.4 also increased, the increase is not commensurate with the increase in the supply of offences (numbers), which is also reflected in the value per offence in Chart 6.5. This may be due to the fact that the network of smugglers being cracked down during emergency; within a short span of time they were not able to muster enough strength to efficiently organize their inputs, men and materials, in the industry.

CHART 6.6
INWARD REMITTANCES—ALL INDIA DATA (Rs.LAKHS)



Source: Annual Reports, Ministry of Finance, Central Govt., New Delhi.

The changes in the law enforcement are reflected in the inward remittances also. Chart 6.6 shows a steep rise in the inward remittances in 1976 by 2560.86% compared to 1974 (from Rs.569.31 crores in 1974 to 1514.83 crores in 1976) and by 1750.97% compared to 1975, indicating a decrease in the demand for foreign exchange for smuggling; it also suggests the deterrence effect of the anti-smuggling measures on using illicit channels for remittances of foreign exchange. These along with the decline in the official inward remittances by 27.55% in 1977, the year when emergency was revoked, compared to 1976 (from Rs.151,483 lakhs in 1976 to Rs.109,833 lakhs in 1977) amply provide a comparison and contrast on the impact on smuggling when the arm of law was extended and when it was amputated. When law and enforcement are forcefully implemented against smuggling volume, value, value per offence and seizure value on raids and searches decreased but also the inward remittances of foreign exchange earnings through official channels increased.

6.3 IPC COGNIZABLE CRIMES & CUSTOMS OFFENCES

A comparison of Charts 6.1, 6.3, 6.4 & 6.5 shows that the behaviour pattern of the customs offences is analogous to

the IPC cognizable crimes. The IPC cognizable crimes, which were growing at an alarming rate in the pre-emergency period, waned during the emergency period (-7.67% based on previous year) and waxed during the post-emergency period (shooting up to 23.71% in 1977 and 173.74% in 1978 on year to year basis). In the same manner the supply of customs offences, value of offences and value per offence behaved in the pre-emergency, emergency, and post-emergency periods. This similar behaviour pattern of the two types of crimes suggests the determinative characteristic of the IPC cognizable crimes on customs offences.

6.4 GOLD SMUGGLING SCENARIO (1961-1978)

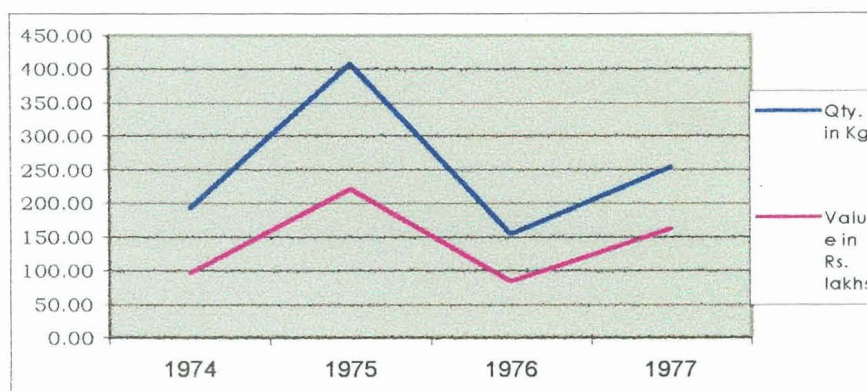
The behaviour pattern of gold smuggling is also the same as the customs offences in general and the IPC cognizable crimes. Table 6.4 and Chart 6.7 compared to Charts 6.1, 6.3, 6.4 & 6.5 reveal this.

TABLE 6.4
GOLD SMUGGLING - ALL INDIA DATA

Year	Qty.Kg	ValueRs.Lakhs
1974	192.74	96
1975	408.32	222
1976	153.65	83
1977	254.12	162
1978*	196.36	144

Source: Annual Reports, Ministry of Finance, Central Govt., New Delhi

CHART 6.7
GOLD SMUGGLING IN INDIA



Source: Based on Table 6.4

Table 6.4 shows that during 1974 192.74 kilograms of gold worth Rs.96 lakhs was smuggled. It rose to 408 kilograms worth Rs.222 lakhs during 1975, i.e. both the quantity and value more than doubled (111.68% and 131.25% respectively) despite the fact that it included the six-months' period of emergency.

But during 1976, the entire period during which emergency was in operation it declined to 153.65 kilograms worth Rs.96 lakhs i.e., both the quantity and value more than halved (62.34% and 56.76% respectively). This portends to the efficacy in the enforcement of law.

Then during 1977 smuggling rose from its lull and jumped to 254.12 kilograms worth Rs.162 lakhs, representing a growth rate of 65.39% and 95.18% respectively. This is a sequel to the withdrawal of emergency on 21-3-1977, which enfeebled the enforcement.

6.4.1 SCENARIO OF LAW & ENFORCEMENT

In 1977-'78 the licensing control under Gold Control Regulations was rationalized and streamlined with a view to eliminate monopolistic tendencies, besides the law relating to gold under the Gold Control Act and Regulations described in Chapter-4. To combat smuggling 12.956 tones of gold was sold at a price of Rs.86.5 crores during 1978 in 14 auctions. Gold was sold through the State Bank of India at a competitive price to exporters of gold jewelry in replenishment of gold used in their exports and such gold imported was exempted from customs duties. But despite all these efforts smuggling of gold went on its steam because of perfunctory law-enforcement. This also establishes that the volume of smuggling has high elasticity to the degree of enforcement; it is inversely related to the degree of enforcement, the higher the level of enforcement the lower the scale of smuggling.

To cap it all, the three periods, the period of emergency and the periods preceding and immediately succeeding the emergency witnessed two phases of law enforcement impacting upon the supply and value of offences. The two periods constituting pre-emergency and post-emergency periods did not witness appreciable changes in the sphere of customs and gold control laws and in the number of personnel in the law enforcement system, but only with regard to the enforcement of laws. The stricter the law and enforcement, the lower is the volume and value of the offences because of the apprehension of law and enforcement and their deterrence effect on illicit operations.

6.5 GENERAL CRIME SCENARIO (1979-1990)

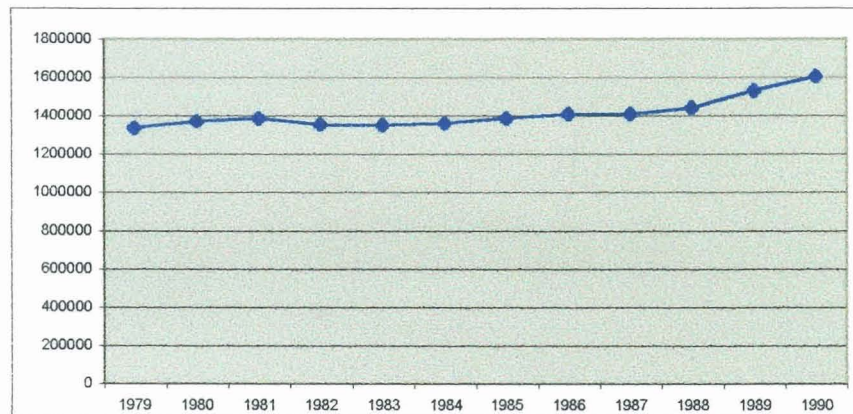
This phase witnessed listless law-enforcement, and growth in the aggregate supply of the IPC cognizable crimes following the lifting of emergency. Table 6.5 furnishes the data on IPC cognizable crimes. The fading force of law is evidenced by the fact that during 1979-1990 the total IPC cognizable crimes had increased by 20.08%. Chart 6.8 depicts the data.

TABLE 6.5
IPC COG. CRIMES – ALL INDIA DATA

Year	IPC Cog. Crimes	Year	IPC Cog. crimes
1979	1336168	1985	1384731
1980	1368529	1986	1405835
1981	1385757	1987	1406992
1982	1353904	1988	1440356
1983	1349866	1989	1529844
1984	1358660	1990	1604449

Source: Crime in India, Ministry of Home Affairs, New Delhi.

CHART 6.8
IPC COGNIZABLE CRIMES IN INDIA (Nos.)



Source: Ref. Table 6.5

The time-series trend equation for the aggregate supply of IPC cognizable crimes (All-India):

$$S_{IPC} = 1291230 + 18337.5t \quad \text{Adj. } R^2 = 0.6459$$

$$t = (43.91) \quad (4.590)$$

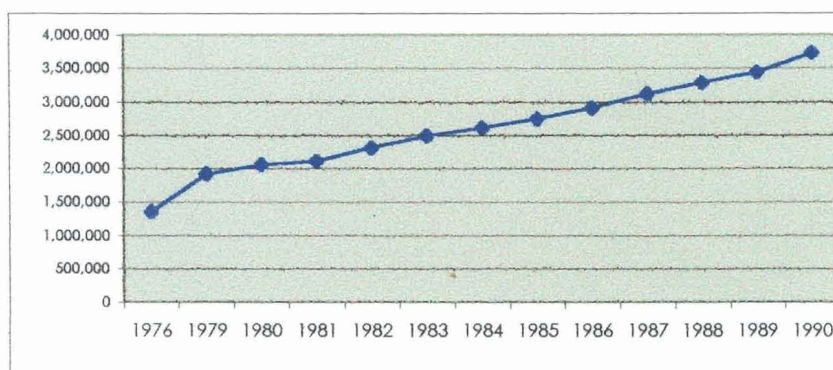
Shows that the supply of IPC cognizable crimes had been increasing at an absolute rate of 18,338 per annum. This tells upon the law enforcement.

TABLE 6.6
DISPOSAL OF IPC COG. CRIMES BY COURTS - ALL INDIA DATA

Year	Total IPC crimes-trial	Trial completed %	Conv. %	Conv/total IPCcrimes %
1976	1,345,007	91.78	81.29	74.61
1979	1,917,003	38.42	64.82	24.9
1980	2,057,641	36.76	35.72	13.13
1981	2,111,791	23.93	52.54	12.57
1982	2,304,389	23.96	51.93	12.44
1983	2,491,328	22.28	49.24	10.97
1984	2,602,593	34.18	66.93	22.87
1985	2,743,054	22.09	50.21	11.09
1986	2,906,416	30.34	66.12	20.37
1987	3,110,491	30.34	67.1	20.36
1988	3,286,962	19.52	51.14	9.98
1989	3,440,832	17.99	49.12	8.34
1990	3,724,566	17.41	48.86	8.51

Source: Crime in India, Ministry of Home Affairs, New Delhi.

CHART 6.9
TOTAL IPC CRIMES UNDER TRIAL IN INDIA



Source: Ref. Table 6.6

Now consider the IPC crimes under trial before courts given in Table 6.6. It is obvious that compared to 1976, the year when emergency was in full swing, in 1979 the total IPC crimes under trial before courts had increased by 42.53%

(from 1,456,781 to 1,917,003) and that since 1979 it had been growing at an annual compound growth rate of 5.96%. Chart 6.9 shows a consistent upward steep slopping linear trend. The trend equation:

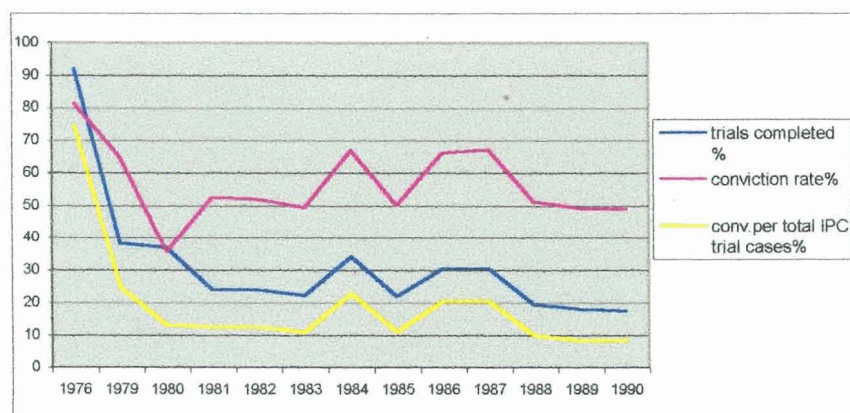
$$S_{IPC} = 1679884 + 160749.45t \quad \text{Adj. } R^2 = 0.9898$$

$$t = (46.292) \quad (32.602)$$

giving an annual increase of 1,60,749 IPC crimes under trial before courts signifies the rapid permeation of crimes in the society. This rising trend cannot be attributed to the rise in the legal and judicial awareness of the society for the disposal of the cases is indicative of indisposition of the system. Consider the trials completed.

CHART 6.10

DISPOSAL OF IPC CRIMES BY COURTS-ALL INDIA



Source: Ref. Table 6.6

The trials completed which had been declining rapidly since 1976, though occasionally crawled up, came down to 17.41% in 1990 from 91.78%, and the conviction rate declined to 48.86% from 81.29% (Ref. Table 6.6). This shows indigent enforcement of laws.

As the conviction percentage conventionally calculated, based upon the number of trials completed, is wrought with a faulty conception of the crime scenario the conviction made during an year has to be reckoned on the basis of total number of cases under trial during an year. From Chart 6.10 it is obvious that the conviction based on total cases under trial is more in synchronization with the movement of the total number of cases under trial. Table 6.6 and Chart 6.10 reveal a bad picture; the conviction per total number of cases under trial had declined from 74.61% in 1976 to just 8.51% in 1990.

6.6 CUSTOMS SCENARIO (1979-1990)

The customs scenario is analyzed with respect to the changes in (i) law and policies and (ii) enforcement delineated below. There is some overlapping in the periods under study because of the changes in the Government at the Centre.

Table 6.7 furnishes the data on supply of offences in terms of volume (number), value and value per offence for the period 1979 to 1990. In the calculation of the trend the data for 1979-80(Oct-Sept) is omitted for uniformity in the periods under study.

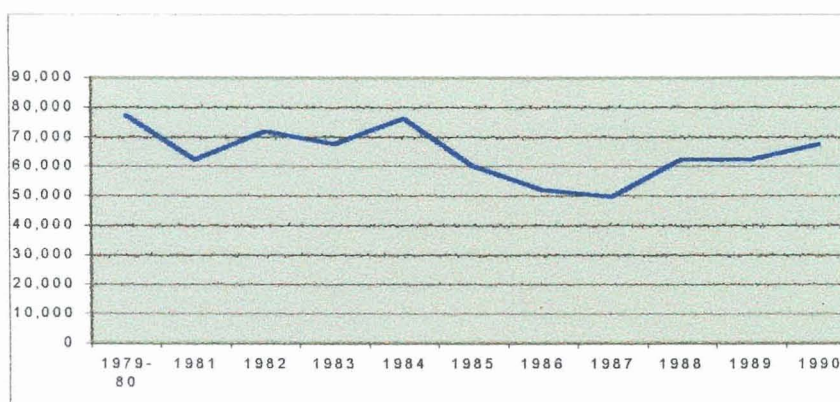
TABLE 6.7
CUSTOMS OFFENCES - ALL INDIA DATA

Period	Offences No.	Value Rs. lakhs	Value/Offence In Rs.
1979-80*	77,213	3,839	4972
1981*	62,124	3972	6394
1982	71,751	6639	9253
1983	67,655	8992	13291
1984	76,342	10109	13242
1985	60,077	19563	32563
1986	52,194	21752	41675
1987	49,551	25002	50457
1988	62,293	44314	71138
1989	62,224	55054	88477
1990	67,613	72004	106494

Source: Annual Reports, Ministry of Finance, Central Govt., New Delhi

N.B : For 1979-80: Oct.-Sept., from 1981 onwards-calendar year.

CHART 6.11
NUMBER OF CUSTOMS OFFENCES - ALL INDIA



Source: Table 6.7

The best-fit trend equation for the supply of offences (numbers) during 1981-'90

$$S_n = 75066 - 4538t + 339.625t^2 \quad \text{Adj. } R^2=0.0436$$

$$(7.618) \quad (-1.103) \quad (0.932)$$

The trend curve has a negative slope, but the rate of change of this slope is positive. That is, the acceleration—the rate of change of the rate of change—in the supply of customs offences is positive. But the very low value of the Adj. R^2 and the statistically insignificant 't' values of the coefficients of 't' and 't²' mean that the number of offences remained more or less the same over the period. That is, time as a proxy variable for the changes in the law enforcement created little impact on the volume of offences. This further means that the number of persons employed in the smuggling industry remained more or less unchanged. The rising trend in the supply of offences in terms of value and value per offences depicted in Charts 6.12 and 6.13 also corroborate it.

Table 6.7 and Charts 6.12 & 6.13 show that during the period the supply of offences in terms of value and value per offence had been rising consistently and rapidly since the revocation of emergency. For instance, in 1990 compared to

1981 the supply of offences in terms of value and value per offence had risen by 1712.79% and 1565.53% respectively, whereas the number of offences had been declining annually by a compound growth rate of 1.26%.

CHART 6.12
ALL INDIA CUSTOMS OFFENCES (Rs. LAKHS)

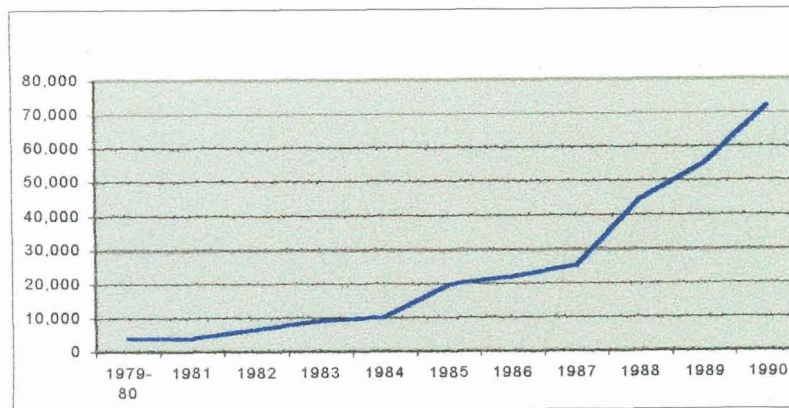
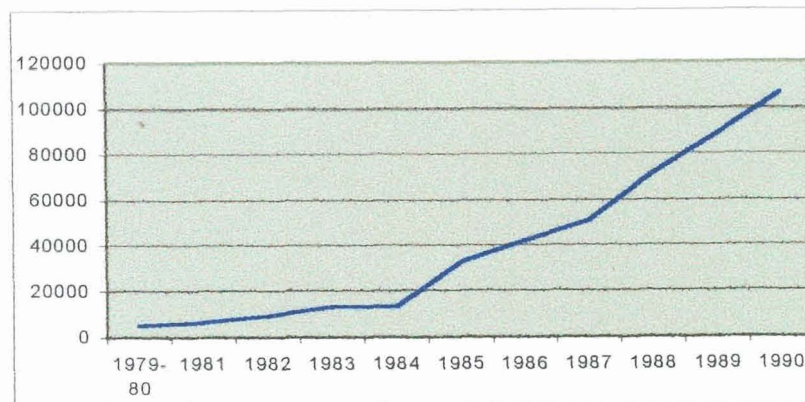


CHART 6.13
VALUE PER CUSTOMS OFFENCES (Rs.) - ALL INDIA



Source: Table 6.7

The time-series trend equation for the supply of customs offences in value terms (Rs.lakhs) during the period 1981-1990:

$$S_v = 328816e^{0.3132t} \quad \text{Adj. } R^2=0.9825$$

$$t = (11.581) (22.508)$$

gives a compound growth rate of 31.20% per annum. And the value per customs offences (in Rs.) during the period:

$$S_{v/o} = 4893.07e^{0.3259t} \quad \text{Adj. } R^2 = 0.9693$$

$$t = (8.357) (16.898)$$

yields a compound growth rate of 32.59% per annum. These show the exponential manner in which the value of offences and the value per offence had been growing despite the negative rate of change in the supply of offences (number). These suggest perfection and development in the science and techniques of management of the smuggling business. Rather than increasing the number of offences the smugglers had concentrated on increasing the size of the booty. Now the behaviour of the supply of offences has to be analyzed in the light of the prevailing scenario of law and enforcement.

6.6.1 LEGAL SCENARIO

In 1978-79, the changing scenario of customs offences consequent on the withdrawal of emergency impelled the Government to adopt selective application of the COFEPOSA, which was jettisoned. The Customs Act was amended to provide for minimum imprisonment of one year (previously six months) of persons involved in offences where value of goods exceeded Rs.1 lakhs and (b) in second and subsequent offences.

In 1980 the Government undertook measures against tax evasion and smuggling. In 1980-81 as part of the 20 Point programme law and policies to combat smuggling were refurbished. The intensified application of COFEPOSA was pursued. To curb smuggling of silver out of India the provisions of Chapter IVB of the Act relating to the regulatory provisions on storage, sale and transport of silver were extended to 50 kms. belt on the Indo-Nepal and Indo-Pakistan borders with effect from 27-3-1980 as in the case of Western Coast or Tamil Nadu and Pondicherry. And agreements with neighbouring countries were entered into to deal with the problem.

The COFEPOSA Act was made more stringent by amending some of its provisions through an ordinance on 13-7-1984, which was later replaced by the COFEPOSA (Amendment Act) (Act 58 of 1984) on 31-8-1984. Besides certain procedural changes, it provided for a longer period of detention of smugglers. The maximum period of detention was enhanced to two years from one year to provide for greater deterrence to smuggling activities. Further, the rewards to the departmental officers and informers were enhanced from 10% to 20% of the value of the contraband; and the policy and procedures relating to the grant of rewards were rationalized and liberalized in March 1985.

In September 1985 'The Economic Intelligence Bureau' was set up for coordinating and strengthening the Intelligence gathering activities of various agencies dealing with economic offences and the enforcement of economic laws.

In 1986-87 Section 125 of the Customs Act was amended to enable the Customs authorities to demand and collect customs duty on smuggled goods seized either from the owner or from the person from whose custody the goods were seized. Section 110 of the Act was also amended to enable the

department to dispose of perishable or hazardous goods, etc after observing certain special formalities. The Ground Rules for searches and seizures conducted under various fiscal enactments were also laid down to clearly spell out the statutory functions vested /conferred on various authorities and the rights and privileges of citizens. Besides these, steps were taken to strengthen bilateral co-operation between neighbouring countries to tackle the problem.

6.6.2 LAW ENFORCEMENT

As part of preventive measures against smuggling attempts were made to strengthen the preventive and intelligence machinery by modernizing and equipping it. Additional staff was sanctioned and deployed, observation posts were set up at vulnerable points along the West Coast, rewards to informants increased to Rs.60/tolas, three Sea Ward Defence boats, and six interceptor craft etc. with anti-smuggling devices were deployed. And the Coast Guard Organization was set up charged with the responsibility of supplementing Customs Departments' efforts to combat smuggling. But despite these measures the dithering of the unstable Governments at the Centre in the immediate post-

emergency period caused reinvigoration of the smuggling operations, which continued its momentum.

In 1980 in spite of the reduction in raids and searches by 50%, the value of seizures remained almost at the level of 1979 showing voluminous increase in smuggling, notwithstanding the preventive detention measures and special drive to check the involvement of public servants in smuggling, and the special measures for speedy disposal of cases. In 1982 an action plan that set forth the objectives and targets was chalked out and the pattern of smuggling was kept under constant review.

In 1984-85 intensified patrolling in vulnerable areas, launching of special drives to prevent availability of foreign goods, greater coordination with other enforcement agencies of the Centre and State Governments were under taken. Additional manpower and equipments-augmented were pressed into service. Confiscated boats and appropriate out-board motors, telecommunications system etc. acquired were employed for the anti-smuggling operations. A special operation was planned and organized by the Directorate of Revenue Intelligence on 01-07-1984 for the intensification of

COFEPOSA action against smugglers/foreign exchange racketeers.

The Economic Intelligence Bureau, set up in 1985, coordinated operations code-named 'KALBHAIKAV' in December 1985 itself against drug traffickers on country wide basis, 'Operation RUDRA' against tax evaders in the State of Jammu & Kashmir in 1986, and undertook direct strike action against gangs of smugglers engaged in smuggling of arms and ammunitions.

In 1986-87 to tone up the efficiency of the Department in its anti-smuggling operations acquisition/modernization of anti-smuggling equipments were made. In July 1986 under operation 'RANA', 96 premises were searched in the metropolitan cities which led to the seizure of goods valued at Rs.163.25 lakhs, 70 antiques, shares in fictitious names of face value of Rs.152 lakhs and Indian/foreign currency worth Rs.12.52 lakhs. In September 1986, under operation 'BURMA BAZAAR' about 634 shops were raided at Burma Bazaar, Madras, Bangalore, Bombay and Gujarat and contraband goods valued at Rs. 37.08 lakhs were seized. In February 1987, the operation code-named 'KHUKHRI' against the

syndicates of smugglers in Bombay involving 45 premises, and the operation code named 'RAHU' against foreign exchange racketeers in Bombay were conducted, which caused panic among the smugglers and foreign exchange racketeers in their dens.

In 1988 and 1989 the anti-smuggling measures were intensified and thrust was given for optimal utilization of existing resources to achieve optimum results in the form of seizures, arrests, preventive detentions under COFEPOSA and disposal of confiscated goods. And post seizure activities were galvanized to ensure (i) speedy investigations (ii) adjudications (iii) prompt prosecutions (iv) immediate invocation of COFEPOSA Act (v) prompt reference to Competent authority under SAFEMFOPA, and (vi) concurrent action under the Income Tax Act, 1962, FERA, etc. by other departments concerned and for blacklisting such persons by CCI & E

In 1988 the Operations 'SEA ROCK' and 'HARD ROCK' were coordinated and organized by the Directorate of Revenue Intelligence in association with related agencies to detain financiers, smugglers and hawala racketeers under the COFEPOSA Act and drug-traffickers under the Narcotic Drugs

and Psychotropic Substances Act, 1988 (PIT NDPS). During the operation 578 detention orders were issued under various Acts, out of which 375 persons were actually detained; special drive was also launched against smuggling of gold and narcotics. The anti-smuggling machinery was geared up particularly in the vulnerable areas on land borders, coastline and the international airports and seaports. As a result of these efforts 821 kilograms of contraband gold valued at Rs.259.55 crores and narcotics worth Rs.32.90 crores were seized during 1989.

In 1990 the Directorate of Revenue Intelligence continued to maintain the cooperation and coordination with the Coast Guard, Border Security Force, Central Reserve Police Force, Income Tax, Narcotics Control Board and all the field formations of the Customs & Central Excise. The coordination between Intelligence/Enforcement agencies of the neighbouring countries was strengthened. The Indo-Nepal Trade and Transit Treaty was implemented to strengthen the bilateral trade and to prevent smuggling. As smuggling on the coast increased the capability of the maritime front was also boosted up, by equipping them with additional fast interceptor

crafts, Night vision binoculars, baggage X-ray machines, door frame metal detectors, gold detector developed by BARC, Trombay, Hand Metal Detectors, sniffer-dogs, Bullet-Proof Vests, besides the training courses for anti-smuggling operations. Further actions were also initiated for disposal of confiscated items and forfeiture of the properties seized. The pressure on the organized crime syndicates was mounted up by pursuing the post seizure activities like investigations, prosecutions, preventive detentions etc.

The noteworthy achievement of the cooperation and coordinated work among different agencies is the seizure 186,546 kilograms of silver valued at Rs.21 crores during 1990 as against 99,322 kilograms in 1989. However it is to be emphasized that during the year the violation of exports-imports control laws, evasion of customs duty, irregular utilization of export benefits like draw back, cash compensation support and fraudulent utilization of DEE involving huge loss of duty and illegal remittances of hefty amounts took place.

However the exponential increase in the volume of offences, both in terms of value and value per offence, during

1979-1990 implies that the above said enforcement measures were not sufficient enough to instill adequate deterrence effect among smugglers especially because of the tardy and lengthy process of law, frailty of the law enforcement and the misconception and miscarriage in the implementation of policies. Furthermore is the smugglers' entitlement over resources in all respects and their ability to employ best legal luminaries who can save them from the clutches of law. Above all is the fact that the measures lacked the vigour and vitality as under the emergency period, which is reflected in the preventive detentions under COFEPOSA (Ref.Table.6.8), customs prosecutions (Ref.Table.6.9) and the raids and seizures conducted furnished in Table 6.10 and analyzed below.

From Table 6.8 it is obvious that compared to 1976 in the period immediately following the revocation of emergency the total number of detention orders issued under COFEPOSA decreased from 3118 to just 368 i.e.; by 88.20% and the actual number of persons detained decreased from 2675 to 377 i.e. by 85.91%. In 1979 the total number of detention orders issued and the actual number of detentions realized

TABLE 6.8
COFEPOSA DETENTION – ALL INDIA DATA

1	2	3	4
Period	Detention orders No	Actual Detention No.	Actual/det.orders No.(3/2) %
1975	1978	1670	84.43
1976(Jan-Oct)	3118	2675	85.79
1977-78	368	377	102.45
1979(Jan-Oct)	215	198	92.09
1980(Jan-Oct)	321	243	75.70
1981	360	265	73.61
1982	517	438	84.72
1983	563	463	82.24
1984	904	719	79.54
1985	973	760	78.11
1986	1078	812	75.32
1987	936	775	82.80
1988*	1605	1169	72.83
1989	1556	1114	71.59
1990	1083	749	69.16

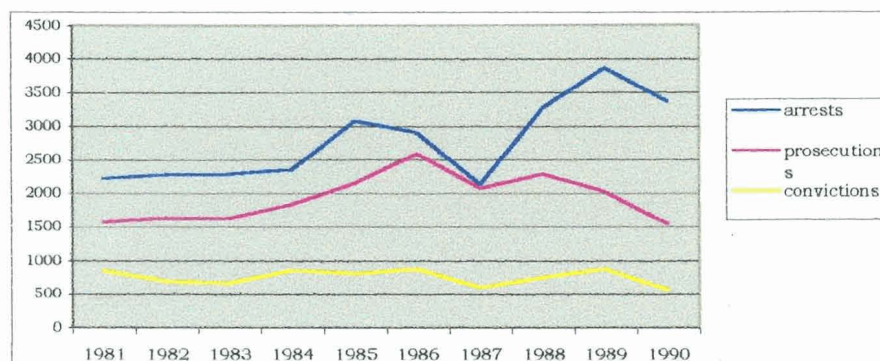
Source: Annual Reports, Ministry of Finance, Central Govt., New Delhi.

TABLE 6.9
CUSTOMS PROSECUTIONS IN INDIA

1	2	3	4	5	6
Year	persons arrested	Pros. No.	Conv No.	Conv./Pro. (4)/(3) %	conv/arrest (4/2) %
1981	2213	1573	844	53.66	38.14
1982	2266	1626	691	42.5	30.49
1983	2281	1619	665	41.07	29.15
1984	2345	1830	856	46.78	36.50
1985	3065	2141	805	37.6	26.26
1986	2900	2587	871	33.67	30.03
1987	2125	2070	598	28.89	28.14
1988	3265	2281	750	32.88	22.97
1989	3866	2028	876	43.2	22.66
1990	3356	1528	555	36.32	16.54

Source: Annual Reports, Ministry of Finance, Central Govt., New Delhi

CHART 6.14
CUSTOMS PROSECUTIONS- ALL INDIA



Source: Ref. Table 6.9

further decreased to 215 (i.e. by 41.58%) and 198 (i.e. by 47.48%) respectively. And compared to the detention orders against 3118 persons and the actual detention of 2675 during 1976(Jan-Oct), in 1990 the corresponding figures came down to 1083 and 749, the decline being 65.27% and 72% respectively. And during 1982-'90 the realized detentions i.e. the ratio of actual detentions to total number of detention orders issued decreased from 84.72% to 69.16%. This range of variation establishes the pitiable state in the enforcement of law, further corroborated by the trend equation for percentage of realized detention 'D (real.)' which shows an annual negative growth rate of -1.44%.

$$D(\text{real.}) = 85.55e^{-0.0144t} \quad \text{Adj.}R^2 = 0.3470$$

$$t = (-2.616) \quad (24.659)$$

Table 6.9 & Chart 6.14 imply low level of enforcement of rules and laws. Though the number of persons arrested and the number of persons prosecuted during the period 1981-1990 show increasing trends, the decline in the ratio between them from 38.14% to 16.54% during the period, portray the enfeebled enforcement of rules and laws. The negative growth rate in the conviction rate 'C_P' (Conviction/Prosecution (%)) by -3.68% as shown by the trend equation ('t' values are given in brackets):

$$C_P = 47.8146e^{-0.0368t} \quad R^2 = .3686, \text{ Adj. } R^2 = 0.2897$$

$$t = (9.472) \quad (-2.161)$$

And the more apt trend equation for conviction per arrest:

$$C_A = 40.0766 e^{-0.0693t} \quad \text{Adj. } R^2 = 0.7008$$

$$t = (10.929) \quad (-4.699)$$

showing 6.93% annual rate of decline in the conviction per arrest establishes the poor state of law enforcement.

The indigent enforcement of law is obvious from the raids and searches given in Table 6.10 above. It shows that the total number of raids and searches conducted declined continuously; it declined rapidly from 36,699 in 1976(Jan-Oct)

TABLE 6.10

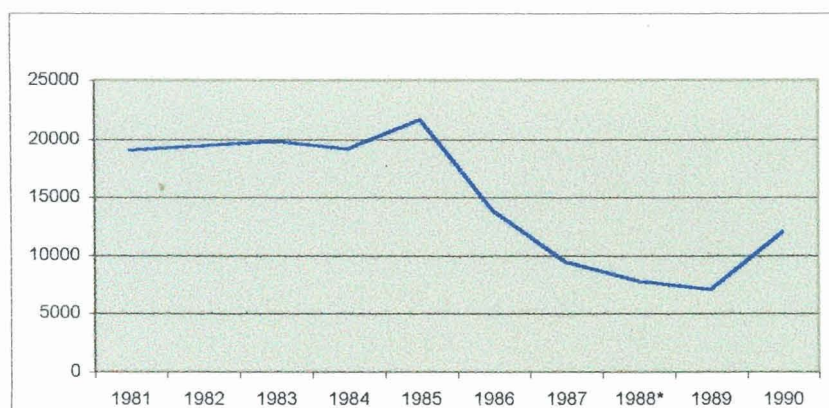
RAIDS & SEIZURES- ALL INDIA DATA

Period	Raids	Seizure Rs.lakhs	Seizure value/Raid (Rs.)
1975	21585	447	2070.88
1976(Jan-Oct)	36699	391	1065.42
1977-78	N.A		
1979(Jan-Oct)	27332	486	1778.14
1980(Jan-Oct)	13485	440	3262.88
1981	18974	847	4464.00
1982	19391	1420	7322.98
1983	19791	1277	6452.43
1984	19095	1827	9567.95
1985	21655	3602	16633.57
1986	13805	2350	17022.82
1987	9402	1702	18102.53
1988*	7785	2315	29736.67
1989	7077	3790	53553.77
1990	12021	4524	37634.14
1991	3224	4040	125310.17
1992	2967	3925	132288.51

Source: Annual Reports, Ministry of Finance, Central Govt., New Delhi

CHART 6.15

CUSTOMS RAIDS -ALL INDIA



Source: Table 6.10

to 27,332 in 1979 and further down to 13,485 in 1980 over the same period i.e., a decline by 63.26%. Though it increased

to 18,974 in 1981 and rose marginally up to 1985, declined to 13,805 in 1986 to proceed on its downward course. The time-series trend equation for raids and searches:

$$R \ \& \ S = 23090.7 - 1489.3t \quad \text{Adj.}R^2 = 0.6223$$

$$t = (9.942) \quad (-3.979)$$

This shows that raids and searches were decreasing at the rate of 1489 per year. But when this decrease is collated with the seizure value and the value/seizure the enormity of the problem magnifies for the latter two were increasing at the rate of 14.72% and 25.87% per annum as shown by the trend equations:

$$\text{Seizure value (Rs. Lakhs), } S_z = 931.033e^{0.1472t} \quad \text{Adj.}R^2 = 0.6668$$

$$(4.775)(4.361)$$

$$\text{Seizure value per raid (Rs.) } S_{z/R} = 3641.12e^{0.2587t} \quad \text{Adj.}R^2 = 0.9294$$

$$(6.808) (10.929)$$

The terms in parenthesis represent 't' values. The increases in the seizure value 'S_z' at the rate of 14.72% and seizure value per raid 'S_{z/R}' at the rate of 25.87% per annum while the number of raids and searches was decreasing at 1489 per annum cannot be construed as reflecting the efficiency of the anti-smuggling operations, rather it implies that the measures were not effective in putting a cap on the growth of smuggling.

It reflects the smugglers' perception of the laxity in the enforcement of laws vis-à-vis emergency period, and the surge in the lucrativeness of the business of smuggling. This means that if the pursuance of law is not rigorous and vigorous smuggling will flourish despite the profligacy of rules and laws.

CHART 6.16

SEIZURE VALUE ON RAIDS & SARCHES-ALL INDIA (Rs. LAKHS)

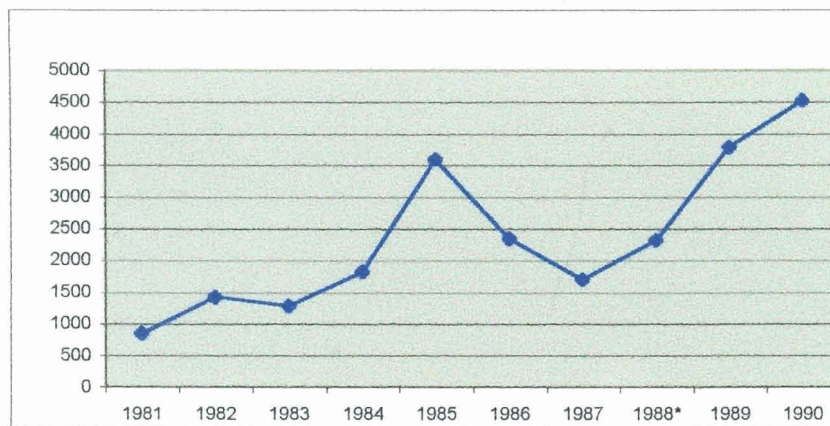
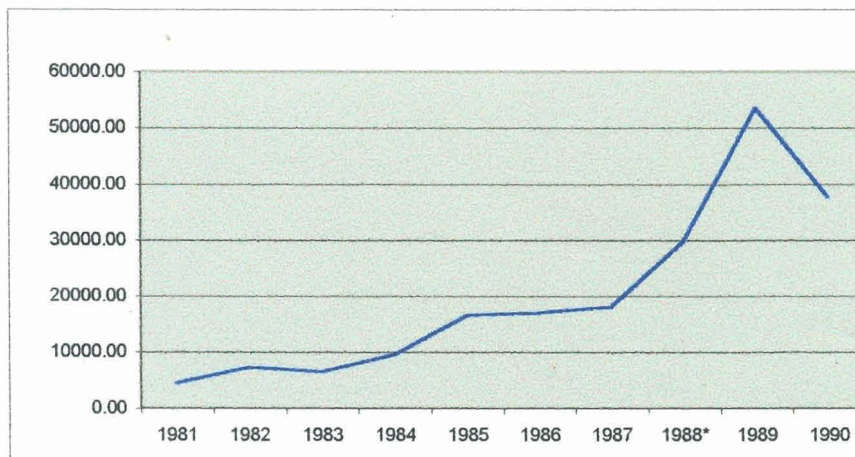


CHART 6.17

SEIZURE VALUE PER RAIDS IN INDIA (Rs.)



Source: Table 6.10

A comparison of Charts 6.16 and 6.17 with Chart 6.15 above vividly shows that the decreasing trend in the raids and searches is associated with increasing trend in the seizure value and seizure value per raid. There exists a negative correlation of $R=-0.379$ (10% level of significance) between the seizure value and the raids and searches; and a negative correlation of $R=-0.790$ (1% level of significance) between the seizure value per raid and the raids and searches, which vouch that if the law is not adequately energized by enforcement the smuggling industry will expand its business.

Further, the fact that the marginal returns on raids was high did not prod the department to conduct more raids and thereby establish the omnipotence and omniscience of law implies that the law enforcement machinery was in hibernation, which tempted the smugglers to pursue their business with prowess.

6.7 GOLD SMUGGLING SCENARIO (1975-1990).

Gold and silver continued to be the most sensitive item in smuggling, the other items individually do not even constitute one percent of the total volume. In the case of watches its easy availability at reasonable cost and better

quality dampened the craze for foreign watches. In the case of textiles also the indigenous production of good quality fabrics made its smuggling uneconomical. And there was only a marginal improvement in the smuggling of electronic goods.

TABLE 6.11
SMUGGLING ALL-INDIA (Rs.LAKHS)

Year	Gold		Others	Total
	Qty.	Value		
1975	408.32	222	4436	13748
1976	153.65	83	1178	3700
1977	254.12	162	1290	4194
1978*	196.36	144	1309	4215
1984	523.09	1024	3658	13022
1985	2500.00	5189	5796	10985
1986	2200.00	4666	10985	15651
1987	2263.73	6544	18458	25002
1988	6264.99	20058	24256	109404
1989	8150.00	25960	29535	130976
1990	5690.00	19296	53550	181341

Source: Annual Reports, Ministry of Finance, Central Govt., New Delhi

Table 6.11 gives the data available relating to smuggling of gold and all-other commodities clubbed together for the period 1975-'90. The quantity of gold smuggled, which came down to 153.65 kilograms valued at Rs.83 lakhs in 1976 from 408.32 Kg. valued at Rs.222 lakhs in 1975 soared to 8,150Kgs. worth Rs.25,960 lakhs in 1989. That is, compared to 1976 the quantity and value of gold smuggled rose by 5204.26% and 31,177.11% respectively. And in the case of all-other commodities and all-commodities combined the

increases were 2407.22% and 3439.89% respectively. And compared to 1989 in 1990 the quantity and value of gold smuggled slumped by -30.18% and -25.67% respectively; the decreases were more than compensated by 81.31% increase in the volume of smuggling of all other goods causing an overall increase of 38.45% in respect of all commodities combined.

The time-series trend equations constructed over the data for the period 1984-1989 (data for 1990 is omitted as it does not relate to any significant changes in law or enforcement) yields the following result given in Table 6.12 for the volume smuggling; for gold in terms of quantity and value and for other goods and all goods clubbed together.

TABLE 6.12
GROWTH OF GOLD SMUGGLING (Qty. in Kg. & VALUE IN Rs.LAKHS)

MODEL $Y = ae^{bt}$				
Dependent variable	Intercept a	Variable b	Growth rate %	Adj. R ²
Gold Qty: Gq	504.757 (2.40)	0.4718 (4.410)	47.18	0.7867
Gold value: Gv	847.762 (2.52)	0.5874 (5.779)	58.74	0.8663
Others: So	2623.17 (6.330)	0.4359 (10.745)	43.59	0.9582
All goods: Sa	4602.21 (2.263)	0.5402 (4.761)	54.0.2	0.8125

Source: Computed from Table 6.11. The 't' values are in brackets.

Table 6.12 shows that the gold smuggled recorded an annual growth rate of 47.18% in terms of quantity and 58.74% in terms of value. Whereas for others and for all goods combined together the growth rates were 43.59% and 54.02% respectively. These point toward poor law enforcement. Now consider the enforcement of the Gold Control Act provided in Table 6.13.

6.7.1 GOLD CONTROL ACT

TABLE 6.13
ENFORCEMENT OF GOLD CONTROL ACT-ALL INDIA DATA

1	2	3	4	5	6	7
Year	No. of cases	Qty. In kgs.	Value Rs.lakhs	Pros. No.	Value/seizure (4/2). Rs.	P(pros.) (5/2)
1979	1061	308.00	255.38	45	24070	0.0424
1980	950	306.00	355.29	43	37399	0.0453
1981	934	266.00	386.38	108	41368	0.1156
1982	1019	725.86	1167.00	172	114524	0.1688
1983	779	292.72	471.53	141	60530	0.1810
1984	929	406.55	737.27	110	79362	0.1184
1985	1189	764.97	1508.51	41	126872	0.0345
1986	1074	719.00	1463.00	116	136220	0.1080
1987	1105	472.55	1243.86	245	112567	0.2217
1988	910	1121.19	3481.34	352	382565	0.3868
1989	705	2507.26	7973.97	118	1131060	0.1674

Source: Annual Reports, Ministry of Finance, Central Govt., New Delhi.

Table 6.13 shows that the quantity of gold seized under the Gold Control Act has increased from 308Kgs. in 1979 to 2507.26Kgs. in 1989 i.e. by 714.05% and the value of gold seized has increased from Rs.255.38 lakhs to Rs.7973.97

lakhs i.e. by 3,022.39%; and the value per seizure has increased from Rs.24,070 to Rs.1,131,060 i.e. by 4,599.09%.

6.7.2 SCENARIO OF LAW & ENFORCEMENT

To reiterate, despite the profusion of laws, rules and policies mentioned above the smuggling of gold, both in terms of quantity and value, increased exponentially at the rate of 47.18% and 58.74% per annum respectively. This is symptomatic of poor law enforcement. The data shows that during 1990 the volume of gold smuggled in, both in terms of quantity and value, declined by -30.18% and -25.67% respectively compared to the previous year. But it is incredible. For the official sources themselves mention the adoption of a novel practice of dumping gold into the sea by the smugglers on fear of apprehension by the Customs/Coast Guard. Besides this is the fact that the smuggling of all-other goods and all-goods combined (including gold), had shown tremendous increases of 81.31% and 38.45% respectively compared to the previous year which bespeak of a conducive climate for smuggling. Above all is the fact that, during 1990 the price margin between the international and Bombay prices during any particular month was very high, and that the

TABLE 6.14
TRENDS IN GCA VIOLATIONS

MODEL Y= ae ^{bt}				
Dependent variable	Intercept a	Variable b	Growth rate %	Adj. R ²
Gold quantity : Gq	204.569 (3.532)	0.1668 (3.995)	16.68	0.5993
Gold value : Gv	181.131 (3.505)	0.2860 (6.799)	28.60	0.8191
Value/seizure: Gv/Sz	17713 (3.102)	0.2967 (6.243)	29.67	0.7916

Source: Table 6.13

TABLE 6.15.
NO. OF CERTIFIED GOLDSMITHS & DEALERS' TURNOVER.

1	2	3	4	5	6
Year	No. of certified goldsmiths	No. of licensed dealers	Turnover of licensed dealers Kgs.	Value Rs.lakhs	Turnover/dealer (5/3) Rs.
1978	239853	11037	68817	50467.46	457257
1979	249234	11656	69240	72226.78	619653
1980	263057	12113	48509	70420.35	581362
1981	274109	12520	50185	85540.29	683229
1982	286449	12902	49745	84986.47	658708
1983	298279	13212	49234	89660.41	678629
1984	310272	13696	55871	109372.60	798573
1985	320824	14152	49234	103664.24	732506
1986	336761	14641	69799	154282.26	1053769
1987	354699	15049	60474	174817.99	1161658
1988	362307	15713	65301	209067.90	1330541
1989	375792	16704	N.A		

Source: Annual Reports, Ministry of Finance New Delhi.

Value of gold estimated at average annual price in Rs. at Bombay

average of the prices during the year were Rs.2160 and Rs.3,405.93 per 10 grams respectively, which is an important lucrative factor in inducing smuggling rather than reducing it. This also questions the state of law enforcement.

The implementation of the Gold Control Act also tottered. Table 6.14 encapsulates the trend equations relating to GCA. Though the volume of gold seized under the GCA were increasing in terms of quantity and value at annual compound growth rates of 16.68% and 28.60% respectively and the value per seizure at a compound growth rate of 29.67% as found in the trend equations given below, the probability of prosecution remained only in the range of 0.0424 to 0.3868; out of which the probability of conviction, though not furnished, can be guesstimated as negligible. That the increasing violation of rules and laws under the GCA is not being responded with more vigorous prosecutions is borne by the fact that the absolute number of cases under prosecution was only in the range of 41 to 352. When these are read along with the data given in Table 6.15 the picture becomes more glaring. It shows that when the number of certified goldsmiths increased by 50.78% and the number of licensed dealers increased by

43.31% during 1978-1989, the total turnover of the licensed dealers in terms of quantity decreased by 5.67%, whereas the value of the turnover increased by 189.46% and the turnover per dealer increased by 114.72%. This means shoddy enforcement of the Gold Control Act.

All these clearly establish the fact that it is not the law that is wanting but the enforcement, and that the numerous laws, rules and polices can never consummate by themselves.

6.8 GOLD SMUGGLING, KERALA SCENARIO (1979-1990).

Table 6.16 furnishes the data available on gold smuggling during the pre-liberalization period in the region coming under the jurisdiction of the Customs Preventive Division, Calicut.

Table 6.17 yields the various values of trends in gold smuggling derived by the trend equations run over the data in Table 6.16. The trend equations show that the quantity of gold smuggled under the jurisdiction of the Calicut Preventive Division was rising at an annual compound growth rate of 54.73%, and its value at the rate of 68.36%; whereas the value of all-goods smuggled in had been growing at a compound rate of 21.69%. These also establish the fact it is not because of the

absence of law but because of the faltering enforcement that the smuggling industries flourish.

TABLE 6.16
GOLD SMUGGLING DETECTED BY CUSTOMS PREVENTIVE DIVISION. CALICUT.
(QTY. IN Kg. & VALUE IN Rs.LAKHS)

Year	Gold		Others	Total
	Qty.	Value		
1978/79	0.597	0.4079	0.8883	1.2962
1979/80	0.176	0.1200	2.9109	3.0309
1980/81	0.075	0.1180	32.4364	32.5544
1981/82	0.996	1.4267	9.1770	10.6037
1982/83	2.030	3.6423	6.5369	10.1792
1983/84	3.710	7.1628	176.8367	183.9995
1984/85	8.789	18.4378	9.1748	27.6126
1985/86	15.601	33.5304	10.6663	44.1968
1986/86	51.985	123.7132	15.3111	139.0243
1987/88	36.648	115.5392	20.7632	136.3023
1988/89	26.962	89.5893	40.0741	129.6633
1989/90	25.126	78.4425	35.2074	113.6498

Source: Compiled by the Researcher.

TABLE 6.17
TRENDS IN SMUGGLING

MODEL Y= ae ^{bt}				
Dependent Variable	Intercept a	Variable b	Growth rate %	Adj. R ²
Gold Quantity: Gq	0.1097 (1.649)	0.5473 (6.640)	54.73	0.7967
Gold Value : Gv	0.0820 (1.689)	0.6836 (8.498)	68.36	0.8662
All others : So	3.3147 (1.393)	0.2169 (2.224)	21.69	0.2639

Source: Ref. Table 6.16

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LAW AND ENFORCEMENT, AND CUSTOMS OFFENCES (POST- LIBERALIZATION PERIOD SINCE 1991)

K.M. George “ Economics of economic offence a study of customs offences in Kerala” Thesis. Department of Economics , Dr.John Matthai Centre , University of Calicut, 2003

CHAPTER-7

LAW AND ENFORCEMENT, AND CUSTOMS OFFENCES (POST-LIBERALIZATION PERIOD SINCE 1991)

This Chapter analyses the impact of the changes in law and enforcement on smuggling in the post-liberalization period since 1991 and makes a comparative analysis of the dynamics of smuggling in the pre and post liberalization periods. For reasons stated in Chapter-6 the analysis is mainly concerned with gold smuggling. Further, as in Chapter-6, the analysis of general crime scenario forms a prelude to the analysis of the customs offence.

7.1 GENERAL CRIME SCENARIO

The year 1991 heralded the policies of globalization and liberalization in the economy and consequent to this, crimes and economic crimes also began to increase rapidly. The data on IPC cognizable crimes and economic crimes, which Table 7.1 provides, the similar movements of their curves, which Charts 7.1 and 7.2 portray, and the correlation coefficient of 0.682 between them establish their interrelationship. Now consider the IPC crimes under trial before courts. Table 7.2 shows that during 1991-1999 the total number of IPC crimes coming under trial before had

TABLE 7.1
INCIDENCE OF CRIMES - ALL INDIA DATA

Year	Total cog. Crimes (IPC)	Eco.Crimes Incidence
1991	1678375	49428
1992	1689341	52455
1993	1629936	50846
1994	1635251	50581
1995	1695696	48384
1996	1709576	51987
1997	1719820	52533
1998	1779111	55712

Source: Crime in India, Ministry of Home Affairs, New Delhi.

CHART 7.1
INCIDENCE OF IPC COG.CRIMES-ALL INDIA

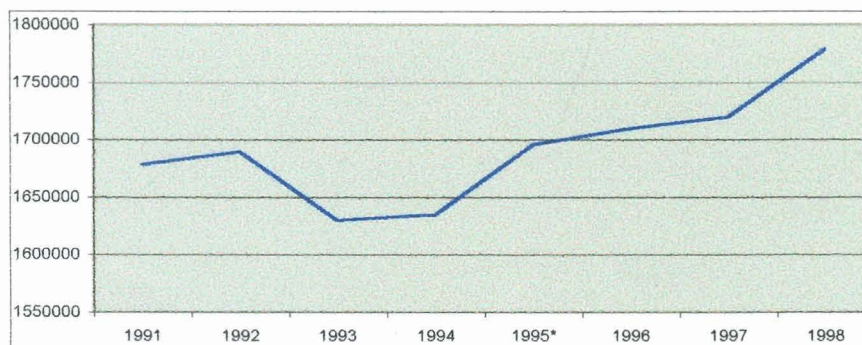
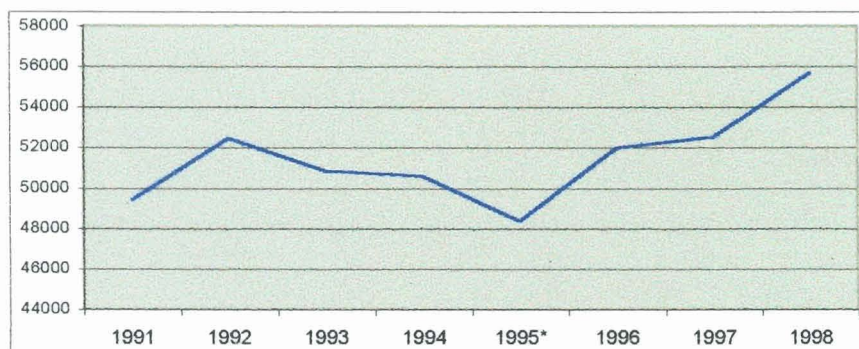


CHART 7.2
ECONOMIC CRIMES - ALL INDIA



Source: Table 7.1

TABLE 7.2
DISPOSAL OF CRIMES BY COURTS – ALL INDIA DATA

Year	Total IPC Trial Cases	Trial completed %	Conv. %	Conv/tot. IPC crime %
1991	3964610	16.83	47.83	8.05
1992	4274361	17.15	46.38	7.96
1993	4504396	16.71	45.93	7.68
1994	4759521	15.48	45.93	6.64
1995	5042744	15.15	42.1	6.38
1996	5297662	15.92	37.81	6.02
1997	5461004	16.11	38.23	6.16
1998	5660484	15.82	37.42	5.92
1999	5890744	15.8	39.65	6.26

Source: Crime in India, Ministry of Home Affairs, New Delhi.

increased from 3,964,610 to 5,890,744, that is, it increased by 48.58%; the trials completed varied within the range of 15.15% to 17.15% and the conviction-rate varied within the range of 37.81% to 47.83%. The abysmal enforcement aspect protrudes when the more apt conviction per total IPC crimes under trial is considered; it varies only within the range of 6.02% to 8.05%. The low conviction rate and the conviction per total cases (IPC cognizable) under trial point toward the malady in the law enforcement system. The time series trend equation for the supply of IPC crimes under trial:

$$\text{Sipc} = 3,791,092 + 238,571t \quad \text{Adj. } R^2 = 0.9942$$

$$t = (104.762) \quad (37.099)$$

This shows an increase of 238,571 crimes per annum that foretells a worsening state of law. The trend equation for conviction rate:

$$C = 49.6453 e^{-0.0326t} \quad \text{Adj.}R^2 = 0.7780$$

$$(29.378) \quad (-5.389)$$

Where terms in the brackets represent the 't' values. The equation shows a negative annual growth of -3.26% in the conviction rate. This forebodes aggravation of the problem.

7.2 CUSTOMS SCENARIO

Table 7.3 shows that since 1990, the total number of cases of smuggling detected by the department has decreased. In 1995 compared to 1994, when the total number of seizures increased from 49,997 to 55,947 i.e. by 11.9%, the value of seizures increased to Rs.1062 crores from Rs.535.2 crores i.e. it nearly doubled. In 1996, when the total number of seizures

TABLE 7.3
CUSTOMS OFFENCES-ALL INDIA

Period	Offences No.	Offences Rs.lakhs.	Value/Offence Rs.
1991	60,173	77,490	128,779
1992	59,270	50,210	84,714
1993	52,963	38,900	73,448
1994	49,997	53,520	107,046
1995	55,947	106,200	189,823
1996	49,580	53,340	107,584
1997	48,993	98,390	200,825
1998	39,906	127,435	319,338

Source: Crime in India, Ministry of Home Affairs, New Delhi.
Annual Reports, Ministry of Finance, New Delhi

declined by 11.38% the value of offences decreased by 47.89%. But in 1997, though the total number of offences declined by 1.18% compared to 1996, the value of offences and the value per offences increased by 77.79% and 86.67% respectively. That is the time-series movement of the supply of customs offences is highly fluctuant. The time-series trend analyses make the point clear. The trend in the supply of customs offences:

$$S_n = 62,681.5 - 2350.63t, \text{ Adj. } R^2 = 0.7321$$

$$(23.691) \quad (4.486)$$

This shows a decrease in the number of customs offences at the rate of 2351 per year. The value of customs offences,

$$S_v = 8,4243.3 - 19,028.36t + 3022.35t^2 \quad \text{Adj. } R^2 = 0.4533$$

$$t = (2.560) \quad (-1.134) \quad (1.661)$$

Which shows that the quadratic trend curve has an increasing rate of change of 3022.35 in the growth rate of the value of offences. This suggests accelerated increase in the supply of offences in value terms. And value per offences (Rs.):

$$S_{v/o} = 163,509.38 - 49,732.82t + 8303.08t^2 \quad \text{Adj. } R^2 = 0.7256$$

$$t = (2.729) \quad (-1.628) \quad (2.506)$$

Gives a positive rate of change in the rate of change of the value of offences. This suggests accelerated increase in the value per offence. It thus becomes obvious that smuggling is

rampant even under the policies of liberalization and globalization and that its behaviour has become highly erratic and its prognosis perplexing.

7.2.1 LEGAL SCENARIO

In the year 1991 drastic anti-smuggling measures were introduced in consonance with the policies of globalization and liberalization. Gold and silver were removed from the negative list of imports. In 1992-'93, in addition to the continuance of the measures already described, the Baggage Rules were simplified. The rate of duty on gold was fixed at Rs.450 per ten grams. Gold importation is permitted, provided the passenger comes to India after a period of not less than six months of stay abroad and that the duty is paid in convertible currency and the quantity of gold does not exceed five kilograms. The rules and procedures were simplified for passenger clearance; even oral declaration of passengers was admitted for barrier-free flow through green channel. The duty free allowance was enhanced from Rs.2400 to Rs.3000 and made applicable even to passengers from Sri Lanka and Maldives. The effective rate of duty was reduced to 150% for 35 specialized items since 8th February and a degree of flexibility was introduced in Transfer of Residence. The Tourist

Baggage Rules were also updated to include new items. The number of consumer durables that can be imported was increased to 14.

In 1994-95 a major restructuring of customs duties was undertaken, the rates were significantly reduced and 230 exemption notifications were rescinded. The effective and statutory rates of customs duty were reduced to a level not exceeding 65% ad valorem for almost all goods. The effective rate of duty on gold up to 5 kilograms imported by a passenger was reduced to Rs.220 per 10 grams. Besides the above, as a measure of liberalization and rationalization the three separate set of Baggage Rule, 1978, Transfer of Residence Rules, 1978 and the Tourist Baggage Rules, 1978 were amalgamated into Baggage Rules,1994. And in addition to the anti-smuggling measures mentioned above, steps were taken to enter into bilateral agreements for cooperation in customs matters with countries like Israel, Korea, Hong Kong which would further the anti-smuggling operations.

In 1995-96 in pursuance of the policy of liberalization and globalization the peak rate of customs duty was reduced to 50% from 65%. The import duty on electronics sector was rationalized and duty rates were slashed. In the case of

baggage the general free allowance was raised to Rs.6000 from Rs.4000 and the duty on baggage was reduced to 80% from 100%, and to wipe out the gray market the customs duty on CD-ROMS and floppy disks were reduced to 25% from 50%.

In 1996-97 several anomalies in the duty rates were removed, customs duties on raw materials and components of electronic goods and computers were reduced. In order to reduce the smuggling of cellular phone, pagers and trucking handsets the customs duties on them were reduced to 30%. In 1998-99 as part of GATT obligations duties on a number of items were further reduced and software used in information technology were completely exempted.

7.2.2 LAW ENFORCEMENT

In addition to the usual measures of law enforcement in vogue, in 1994-95 in order to well-equip the Department two Multi-Energy Baggage X-ray machines were installed at Indira Gandhi International Airport and Sahara Airport, and up to January 1995, 54 Door Metal Detectors were installed in the field formations for detection of contraband gold, Gold Detector developed by BARC was installed at Bombay, sensitive field formations were equipped with 840 Bullet Proof Vests etc. And to increase the operational efficiency of the marine front

additional Hand Held Search Lights and confiscated crafts were provided to them. And during 1995-96 in the operational front of the Marine Wing 15 Fortune Marine Radars Model/1940 were installed on Customs crafts to tone up the operational efficiency. Also during 1995-96 some structural adjustments in customs duty rates were made to mitigate the menace of smuggling.

In 1996-97 out of 18 Norwegian speed crafts with the Customs, 13 were retrofitted and pressed into service, 15 radars were installed on Customs crafts to tone up the operational efficiency of the Customs, 54 metal detectors were put into operation for detection of contrabands, 669 Hand Detector were also deployed, 80 Night Vision Binoculars were deployed, 17 sniffer dogs for detection of narcotics were also employed. In 1997-98 the Commercial and Economic Intelligence, came across various types of customs offences on a massive scale viz. foreign exchange fraud of over Rs.20 crores by a Finance/Leasing Company, under invoicing of rice exports worth Rs.195 crores, frauds in exports to Russia valued at Rs.195 crores etc.

Now, in the light of the above said law and enforcement the scenario of customs offences has to be analyzed. Consider

Table 7.4 & 7.5 that furnish data on customs prosecutions and COFEPOSA detentions. The trend equations run over the data in Table 7.4 yield the results given in Table 7.5.

TABLE 7.4
CUSTOMS PROSECUTIONS-ALL INDIA

period	2	3	4	5 Conv/pros (4/5) %	6 conv/arrests (4/2) %
	Number of persons				
	Arrested	Prosecuted	convicted		
1991	2539	1659	626	37.73	24.66
1992	1805	1053	338	32.1	18.73
1993	1234	679	274	40.35	22.20
1994	1220	608	325	53.45	26.64
1995	1270	443	284	64.12	22.36
1996	1173	548	226	41.24	19.27
1997	1203	677	268	39.59	22.28
1998	952	235	117	49.79	12.29
1999	851	241	104	43.15	12.22

Source: Crime in India, Ministry of Home Affairs, New Delhi
Annual Reports, Ministry of Finance, New Delhi.

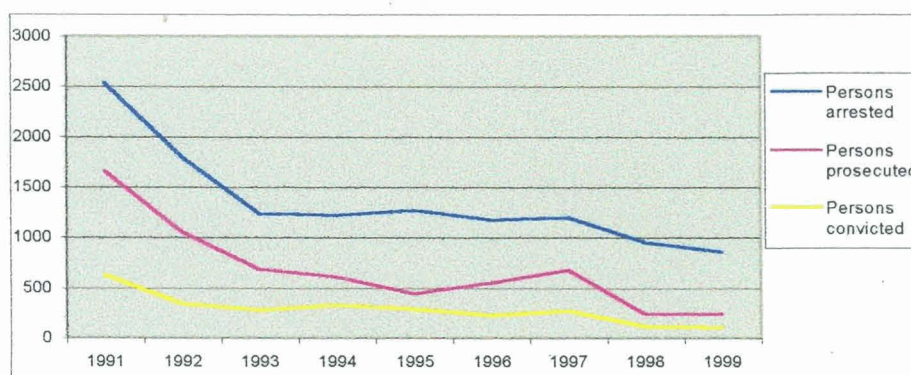
TABLE 7.5
TRENDS IN CUSTOMS PROSECUTIONS-ALL INDIA

MODEL $Y = ae^{bt}$					
Dependent variable		Intercept a	Variable b	Growth rate %	Adj. R^2
Arrest:	A	2198.68 (8.653)	-0.1064 (-5.180)	10.64	0.7635
Prosecution:	Pros	1601.90 (4.548)	-0.2054 (-5.258)	20.54	0.7691
Conviction :	Cp	615.638 (5.403)	-0.1795 (-5.457)	17.95	0.7825
Conviction/Arrest:	Ca	28.004 (6.46)	-0.0732	.0732t	0.4315

Source: Table 7.4. Terms in brackets give 't' values.

From Table 7.5 it is obvious that the number of arrests is decreasing annually at a rate of 10.64%, the number of prosecutions is decelerating at a rate of 20.54% per annum, the number of convictions is retarding at a rate of 17.95% and the convictions per arrest is declining yearly at 7.32%. And above all is the fact that the probability of conviction on arrest ranges 0.1222 to 0.2664. All these signify that the law enforcement is not forceful to cause sufficient deterrence effect among smugglers. Chart 7.3 vividly shows the rapid decline in the number of persons arrested, prosecuted and convicted over time. This is further corroborated by Table 7.6, which shows reduction in the number of detention orders by 92.61% (from 1083 to just 80) and the actual number of detentions by 94.70% (from 1114 to just 59) during the period 1990-1999.

CHART 7.3
CUSTOMS PROSECUTIONS-ALL-INDIA



Source: Based on Table 7.4

TABLE 7.6
COFEPOSA DETENTIONS-ALL-INDIA DATA

Year	COFEPOSA Orders No.	Actual No. Detained
1990	1083	749
1991	1457	749
1992	865	423
1993	555	372
1994	537	363
1995	316	306
1996	326	251
1997	366	308
1998	203	126
1999	80	59

Source: Annual Reports, Ministry of Finance New Delhi.

The trend equation for the COFEPOSA detention orders, with 't' values in brackets:

$$D_o = 1196.36 - 134.72t \quad \text{Adj. } R^2 = 0.7489$$

$$t = (7.869) \quad (-4.966)$$

Gives a decrease of 135 detention orders per year (annual compound growth rate -28.80%) and the actual number of detentions.

$$D(\text{real.}) = 652.81 - 64.85t \quad \text{Adj. } R^2 = 0.7892$$

$$t = (9.952) \quad (-5.563)$$

Showing a decrease of nearly 65 detentions per year (annual compound growth rate of decline - 24.24%) also adduce to this fact of weak law enforcement.

Further, the fact that the number of raids decreased from 3224 in 1991 to 2967 in 1992 and consequently the seizure value decreased from Rs.4040 lakhs to Rs.3925 lakhs, whereas the seizure value/raid increased from Rs.125,310 to Rs.132,289 gives credence to the laxity in the implementation of laws and policies against smuggling. To cap it, the entire problem is not on the side of law but on enforcement.

7.3 GOLD SMUGGLING

Table 7.7 below gives the data relating to gold and other commodities smuggled during the on-going period of post liberalization. It apparently shows significant decline in the

TABLE 7.7
GOLD SMUGGLING- ALL INDIA DATA
(QTY IN Kg, VALUE IN Rs.LAKHS)

Year	Qty.	Value	All others	Total
1990	5690	19296	53550	72846
1991	5004	19002	59098	78100
1992	2889	12610	40810	53420
1993	1372	5910	32990	38900
1994	1147	5340	45380	50720
1995	1169	5830	33070	38900
1996	1100	6570	49670	56240
1997	1325	6190	66840	73030
1998	552	2321	71938	74259
1999	917	3926	213163	217089

Source: Annual Reports, Ministry of Finance New Delhi.

volume of gold smuggled, both in terms of quantity and value since 1990; during 1990-1999 the quantity decreased by 83.88% and the value decreased by 79.65%, suggestive of the effective impact of the law and policies on gold smuggling.

7.3.1 SCENARIO OF LAW & ENFORCEMENT

The economic policies of liberalization and globalization and the changes in law and enforcement were expected to reduce the smuggling of goods in general and gold in particular. Indeed the sudden change in the policies and law derailed the smuggling industry. Hence the best-fit trend curves for the quantity of gold smuggled:

$$G_q = 5795.24 - 1546.6t + 115.498t^2 \quad \text{Adj.}R^2 = 0.8153$$

$$t = (7.625) \quad (-4.432) \quad (3.393)$$

And the value of gold smuggled:

$$G_v = 21,530.67 - 5067.94t + 357.83 t^2 \quad \text{Adj.}R^2 = 0.7595$$

$$t = (6.726) \quad (-3.448) \quad (2.496)$$

They have negative slopes showing decline in the smuggling. But this was ephemeral. The smuggling industry has a high degree of resilience; it is plastic enough to bear shocks. And that is why the best-fit time series trends are 'U' shaped acquiring an upward swing after a temporary phase of downward swing. This gives positive rates of increase in their rates of growth. Now this requires close examination.

TABLE 7.8

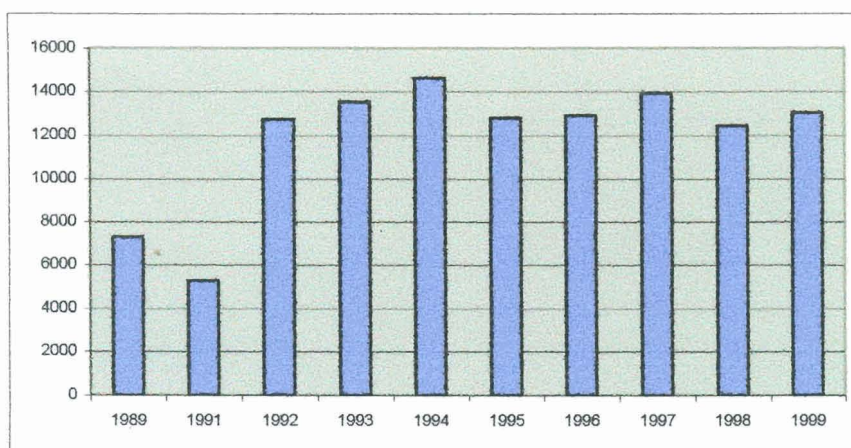
NARCOTICS SMUGGLING CASES (Nos.)

Year	No. of Cases
1989	7322
1991	5299
1992	12751
1993	13518
1994	14649
1995	12799
1996	12917
1997	13908
1998	12446
1999	13029

Source: Crime in India, Ministry of
Home Affairs, New Delhi.

CHART 7.4

NARCOTCS SMUGGLING CASES (Nos.)



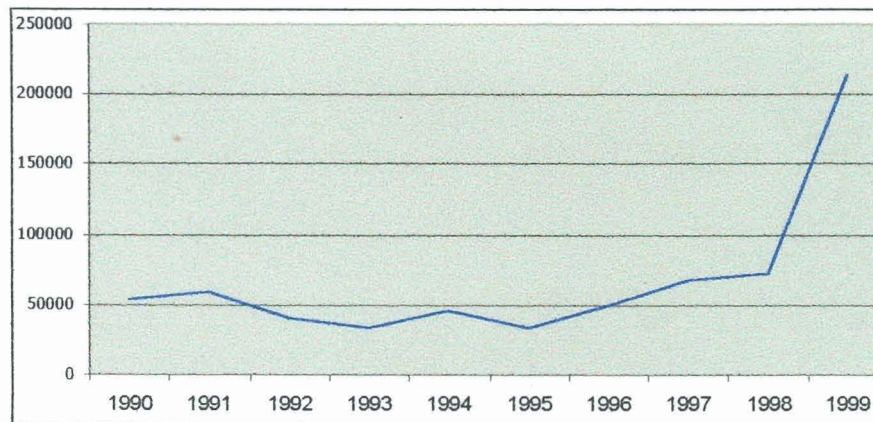
Source: Ref. Table 7.8

As gold smuggling turned out to be less lucrative the smuggling industry switched over to the smuggling of other

commodities that are more lucrative as it could not remain idle in the utilization of its resources, being driven by the objective to expand the horizon of its activities. This is evident from the fact that during the period 1991-1999 whereas the smuggling of gold decreased by 79.34% the smuggling of other commodities increased by 260.94%. The most alarming trend is the growth in the volume of narcotics business, given in Table 7.8 and depicted in Chart 7.4. They show that the volume of narcotics business has grown from 5299 major cases in 1991 to 13,029 in 1999, a remarkable increase by 145.88%. This suggests the flexibility of the industry to adapt to the changing business scenario.

CHART 7.5

ALL INDIA SMUGGLING: OTHERS (Rs. LAKHS)



Source: Table 7.7

TABLE 7.9
MAGNITUDE OF SMUGGLING DETECTED – ALL INDIA
(Quantity in tons, Value and Duty in Rs. Lakhs)

1	2	3	4	5	6	7	8	9
Year	WGC	Government sources		Undetected	Total illegal		Seizure (4/6) %	Duty loss
		Legal	Illegal	2-(3+4)	Qty (4+5)	Value		
1996	511.2	338.19	1.1	171.91	173.01	1033,336	0.64	37,820
1997	688	635.79	1.325	50.89	52.21	243,928	2.54	11,196
1998	774.4	521.73	0.552	252.12	252.67	1062,400	0.22	68,956
1999	730.7	331.07	0.917	398.71	399.63	1,710,957	0.23	159,485
2000	723							
2001	726.17							

Sources: Annual Reports, Ministry of Finance New Delhi, Crime in India, Ministry of Home Affairs, New Delhi. & WGC Reports.

Chart 7.5 traces out the behaviour of smuggling of all other commodities. It is clear that as in the case of gold the time-series trend equation is quadratic:

$$S_0 = 108856.38 - 44728.76t + 5775.6t^2 \quad \text{Adj. } R^2 = 0.749$$

$$t = (3.042) \quad (-2.723) \quad (3.605)$$

Chart 7.5 traces out the path of the data; its steep rise after the year 1995 portends the ineffectiveness of the law and policies in putting a ceiling on smuggling unless reinforced by proper enforcement as under emergency.

Above all is the magnitude of smuggling magnified by the solid data presented in Table 7.9. It shows the actual import of gold into India as per the World Gold Council, and the legal and illegal imports according to the Ministry of Finance,

Government of India. The WGC's data pertains to calendar year and that of the Government relates to financial year. As the monthly/quarterly data are not available their conversion into common years is impossible. However as the periods in both cases consist of 12 months the distinction between the calendar and financial years is ignored. The Table reveals wide disparity between the data furnished by the above two sources during the period 1996-'99. It is conspicuous that the gold seized by the Customs Department is less than 2.54% of the entire volume of gold smuggled into the nation. In other words out of the total volume of gold smuggled in any year 97.46% goes undetected, and that even out of that detected the probability of attracting punishment is a nullity. This means that the risk attached with a business firm in the smuggling industry is less than the risk faced by any other business firm in the legal sphere. This furthermore means that the Customs Department is competent enough to touch only the tip of the iceberg of smuggling. The total volume of gold smuggled during 1996-'99 is 877.52 tons estimated at Rs.40,506.20 crores and the total loss of duty is Rs.2774.57 crores. Further, contrary to the Government statistics, since 1996 the quantity of gold smuggled is growing at the rate of 40.88%, the value of

gold smuggled at the rate of 29.84% and the loss of duty at the rate of 61.35% per year. This means smuggling is a highly successful enterprise and that the anti-smuggling operations are ineffective in arresting smuggling. In short gold smuggling is growing at a fast pace rendering to naught the law and policies against its smuggling. This establishes the fact that it is not the lack of law and polices but the low enforcement that is the main bane of the economy.

7.4 THE KERALA SCENARIO

The post-liberalization period saw a general decrease in the volume of offences (in terms of the number and value) in the state, excepting the huge increases during 1992/93 to 1993/94 and the huge seizures under the Directorate of Revenue Intelligence.

TABLE 7.10

SEIZURES BY CUSTOMS PREVENTIVE DIVISION, CALCUT

Year	No. Of Offences	All goods Rs. Lakhs	Value/Off. (Rs.)
1990/91	126	176.7787	140301
1991/92	100	144.8129	114931
1992/93	106	545.3752	432837
1993/94	468	753.0765	597680
1994/95	364	349.0135	276995
1995/96	31	324.9417	257890
1996/97	9	39.1985	31110
1997/98	8	52.867	41958
1998/99	9	47.839	37967
1999/00	9	67.1742	53313

Source: Compiled by the Researcher

But when this general trend is compared with the All-India level there is no room for consolation. For instance in 1997-'98 in addition to the contraband seizures of Rs.53,030 lakhs, all the Customs Houses and the Directorate of Revenue Intelligence detected numerous cases involving narcotics, violation of Import-Export Control Laws, evasion of customs duty, fraudulent claims of export benefits like drawback and duty free imports under Advance License/DEEC and DEPB Schemes, which involved both loss of customs duty and illegal remittances amounting to crores of rupees. In 1999-2000 (up to November 1999) the contrabands seized in the nation amounted to Rs.167,736 lakhs and duty evasion detected amounted to Rs.51,330 lakhs, besides these is the varied and voluminous customs offences of the above nature, posing severe threat to the economy. The customs offences are indeed increasing in the country despite the laws and policies.

Table 7.10 furnishes the data relating to the volume of smuggling under the Customs Preventive Division, Calicut. It shows that during 1991/92 - 1999/2000 the number of offences decreased from 100 to just 9, a decrease by 91%, the value of goods decreased from Rs.144.81lakhs to Rs.67.17lakhs, a decrease by 53.61%, and the value per

offence decreased from Rs.140301 to Rs.53,313, a decrease by 63.21%.

The trend equations are presented in Table 7.11. It shows that the supply of offences (numbers) had been declining at the rate of 48.11% per annum, value of offences by -29.79%, and value per offence by a compound growth rate of 29.79% per year. All these show that the supply of offences was drastically declining under the Calicut region.

TABLE 7.11
TRENDS IN SMUGGLING: CUSTOMS PREVENTIVE DIVISION, CALICUT.

MODEL $Y = ae^{bt}$				
Dependent variable	Intercept a	Variable b	Growth rate %	Adj. R ²
Supply of offences (Nos.) S _n	454.39 (1.276)	-0.4811 (-3.454)	-48.11	0.5774
Supply of offences (Value) S _v	676.77 (1.613)	-0.2979 (-2.705)	-29.79	0.4411
Value per offence S _{v/o}	53718.18 (1.613)	-0.2979 (-2.705)	-29.79	0.4411

Source: Compiled by the Researcher

TABLE 7.12
SMUGGLING UNDER AIR CUSTOMS, CALICUT

Year	Offences No.	Total Rs.lakhs	Value/Offence Rs.
1992	69	284.95	412971
1993	406	231.32	56974
1994	329	200.98	61088
1995	114	145.94	128020
1996	35	45.95	131279
1997	76	63.73	83855
1998	120	88.94	74117
1999	49	25.54	52122
2000	9	53.07	589667

Source: Compiled by the Researcher.

From 1996 onwards data pertains only to gold, others not available.

The Table 7.12 shows the smuggling that took place under the Air Customs, Calicut. It does not contain the data relating to goods other than gold since 1996. It shows that the total value of offences, which was Rs.284.95 lakhs in 1992, declined to Rs.145.94 lakhs in 1995, i.e. by 48.78% and the value per offence, which was Rs.412,971, declined to Rs.128,020 i.e. by 69% during the period. And in the case of gold the volume marginally increased from Rs.45.95 lakhs in 1996 to Rs.53.07 lakhs in 2000, whereas the corresponding figure for the value per offence records an increase from Rs.131,279 to Rs.589,667 i.e. 349.17%.

TABLE 7.13
SMUGGLING UNDER COMMISSIONERATE OF
CENTRAL EXCISE & CUSTOMS, COCHIN

Year	Total Rs.lakhs	Value/Offence Rs.
1990	106.7700	242659
1991	345.0624	205394
1992	0.0000	0
1993	259.5090	6487725
1994	603.2878	2234399
1995	610.4853	2180305
1996	585.4903	1540764
1997	237.5087	791696
1998	150.1532	1155025

Source: Compiled by the Researcher.

Table 7.13 provides data on seizures under the Commissionerate of Customs, Cochin. The total value of offences rose from Rs.106.77 lakhs in 1990 to Rs.345.06 lakhs in 1991, which reduced to zero in the following year. In 1993 it increased to Rs.259.51 lakhs, which more than doubled in 1995, followed by decreases in the following years to come down to the lowest level of Rs.150.15lakhs in 1998. The value per offences also shows a similar behaviour. This erratic movement in the smuggling is not due to the changes in law or policies but because of the perception of the smugglers about the most conducive environment for smuggling; they shifted the venue of their operations.

Now a different picture of smuggling emerges in the state itself when the volume of offences detected by the Directorate of Revenue Intelligence, Kozhikode is considered. The data are furnished in Table 7.14. During the period 1991/92 to 1999/00 the number of offences increased by a compound growth rate of 14.28% per year, whereas the value of offences and the value per offence increased at compound growth rates of 24.91% (from Rs.121.34 lakhs to Rs.1627.68lakhs) and 10.63%(from Rs.1,213,410 to Rs.5,425,614) respectively.

TABLE 7.14
CONTRABAND SEIZURES DRI, CALICUT

Year	Offences No.	Value Rs.lakhs	Value/Offence Rs.
1990/91	10	30.4100	304100
1991/92	10	121.3410	1213410
1992/93	10	1028.0353	10280353
1993/94	5	660.5023	13210046
1994/95	43	1308.6620	3043400
1995/96	16	204.0778	1275486
1996/97	21	434.7866	2070412
1997/98	22	792.4976	3602262
1998/99	25	484.2695	1937078
1999/00	30	1627.6843	5425614

Source: Compiled by the Researcher.

Thus, it cannot be concluded that the liberalization and globalization policies were effective in curbing the smuggling activities. The smugglers operate in a borderless region, their industry remaining in far-flung areas is centralized and coordinated, and being flexible and elastic in structure, organization and activities can migrate to regions where the industry has the most conducive climate for their operations. This becomes clear from the fact that simultaneous to the slack in operations in the Kerala State the industry has expanded its activities in the rest of India. This is further

corroborated by the data on smuggling under the Directorate of Revenue Intelligence in Calicut itself.

7.5 GOLD SMUGGLING: KERALA SCENARIO

Table 7.15 shows that the gold smuggled in Kerala coming under the jurisdiction of the Customs Preventive Division of Calicut had increased from Rs.70.52 lakhs in 1991/92 to Rs.342.14 lakhs in 1992/93, i.e. an increase of 385.17% and after this it declined drastically. It reduced to zero during 1996/97 - 1997/98 and then increased to Rs.21.7 lakhs during 1998/99 and acquired a slight increase to Rs.28.5 lakhs during 1999/00. The trend estimates show that during 1991/92 - 1999/00 the gold smuggled in had been declining at Rs.29.226 lakhs per annum and the smuggling of all-other commodities had been decreasing at the rate of 24.82% per annum as given by the trend equation:

$$S_0 = 343.59e^{-0.2482t} \quad \text{Adj.R}^2 = 0.419.$$

$$t = (1.605) (-2.247)$$

It can also be noticed from Table 7.15 that gold continued to be the most important individual item smuggled.

TABLE 7.15
CONTRABAND SEIZURES (Rs. LAKHS) BY
CUSTOMS PREVENTIVE DIVISION, CALICUT

1	2	3	4	5
Year	Gold	All others	All goods	(Gold/Total)%
1990/91	128.6357	48.1430	176.7787	72.77
1991/92	70.52194	74.2910	144.8129	48.70
1992/93	342.1495	203.2257	545.3752	62.74
1993/94	233.5075	519.5690	753.0765	31.01
1994/95	157.2907	191.7228	349.0135	45.07
1995/96	33.5044	291.4373	324.9417	10.31
1996/97	0	39.1985	39.1985	0.00
1997/98	0	52.8670	52.8670	0.00
1998/99	21.7	26.1390	47.8390	45.36
1999/00	28.54951	38.6247	67.1742	42.50

Source: Compiled by the Researcher.

TABLE 7.16
GOLD SEIZURES BY AIR CUSTOMS, CALICUT

Year	Qty. Kgs.	Value Rs.Lakhs
1992	72.35	280.9
1993	27.15	113.27
1994	41.55	166.87
1995	10.53	35.31
1996	11.55	42.07
1997	14.95	63.73
1998	21.78	88.94
1999	6.43	25.54
2000	11.86	53.07

Source: Compiled by the Researcher.

Table 7.16 furnishes data on smuggled gold seized by the Air Customs, Calicut. The trends run over the data also show

that the gold smuggled, in terms of quantity and value, through the Calicut Air Port had been declining in the post liberalization period at annual compound growth rates of -20.83% and -19.67% respectively, given by the exponential functions:

$$G_q = 52.24e^{-0.2083t} \quad \text{Adj. } R^2 = 0.5055$$

$$t = (2.585) (-3.029)$$

$$G_v = 195.82e^{-0.1967t} \quad \text{Adj. } R^2 = 0.4116$$

$$t = (-2.320) (-2.568)$$

Where G_q and G_v represent quantity and value of gold smuggled respectively.

TABLE 7.17
GOLD SMUGGLING UNDER COMMISSIONERATE
OF CENTRAL EXCISE & CUSTOMS, COCHIN

Year	Qty. Kg.	Value Rs.Lakhs	All goods Rs.Lakhs
1990	25.27	86.6276	106.77
1991	103.49	301.141	345.0624
1992	0	0	0
1993	8.83	40.0731	259.509
1994	59.55	275.736	603.2878
1995	31.58	152.976	610.4853
1996	73.01	373.208	585.4903
1997	13.78	59.7991	237.5087
1998	1.17	4.869	150.1532

Source: Compiled by the Researcher.

Table 7.17 shows that under the Commissionerate of Central Excise & Customs, Cochin the volume of gold

smuggling, which was 103.49Kgs. worth Rs.301.141 lakhs in the year 1991 declined just to zero in 1992 giving a cent percent decline. And during the period 1993-1998 the volume of smuggling in terms of quantity and value acquired negative compound growth rates of -39.02% and 40.66% respectively.

The trend curves:

$$G_q = 210.139 - 157.79t + 39.4905t^2 - 10.951t^3 \quad \text{Adj.}R^2 = 0.3462$$

$$t = (2.758) \quad (-2.289) \quad (-2.283) \quad (-2.290)$$

$$G_v = 635.673 - 511.37t + 140.804t^2 - 10.951t^3 \quad \text{Adj.}R^2 = 0.2194$$

$$t = (1.980) \quad (-1.760) \quad (1.932) \quad (-2.048)$$

The trends for G_q and G_v exhibit cyclical fluctuations, peaks and troughs, suggesting responsiveness of the smuggling industry to changes in the degree of enforcement.

TABLE 7.18
CONTRABAND SEIZURES, DRI, CALICUT

Year	Gold		Total (Rs.lakhs)
	Qty.Kgs.	Value(Rs.lakhs)	
1990/91	13.656	19.8551	30.4076
1991/92	10.790	65.3940	121.3414
1992/93	37.272	145.6482	1028.0353
1993/94	7.229	29.5231	660.5023
1994/95	11.262	51.7270	1308.6630
1995/96	0.000		204.0778
1996/97	4.897	25.0587	434.7866
1997/98	0.000		812.4977
1998/99	18.026	78.4724	453.2695
1999/00	24.532	109.7069	1638.3847

Source: Compiled by the Researcher.

Table 7.18 shows that compared to 1991/92 in 1999/00 the quantity of gold smuggled detected under the jurisdiction of the Directorate of Revenue Intelligence increased by 127% (from 11Kgs. to 25Kgs.). And the value of gold smuggled increased by 67.76%(from Rs.65.3940 lakhs to Rs.109.7069 lakhs). The value of all goods smuggled in had increased from Rs.76.184 lakhs to Rs.134.23 lakhs i.e. by 76.20%, giving an annual compound growth rate of 12.11%. This shows that the behaviour of smuggling under the DRI is different from that under the jurisdiction of the Customs Preventive Division, Calicut, Air Port Customs, Calicut and the Commissionerate of Central Excise & Customs, Cochin.

Thus it becomes crystal clear from the entire analysis that the menace of smuggling cannot be met by mere changes in laws that are not accompanied and reinforced by enforcement. And the problem with the Indian economy is the problem of enforcement not laws.

§§§§§§§§

THE DETERMINANTS OF CUSTOMS OFFENCES

K.M. George “ Economics of economic offence a study of customs offences in Kerala” Thesis. Department of Economics , Dr.John Matthai Centre , University of Calicut, 2003

THE DETERMINANTS OF CUSTOMS OFFENCES

The purpose of this Chapter is to analyze the factors that determine the supply of customs offences. This is done with respect to gold, the more or less homogeneous commodity that is the most sensitive item in smuggling historically. In the import bill of the nation it constitutes the second single item after oil, even vying to overtake oil; since 1998 its annual import bill was claiming more than Rs.35000 crores. Further it has a world body 'World Gold Council' that analyses its supply and demand and related issues and policies unlike in the case of other commodities.

8.1 PRE-LIBERALISATION PERIOD (1979-1990)

8.1.1 GOLD CONTROL ACT: As a specific Act called the Gold Control Act existed that solely dealt with gold, the determinants of the offences under this Act has to be analyzed. Table 8.1 gives the data on offences under the Gold Control Act for the period 1979-1989. It is to be noticed that in the history of the nation only during 1980 did the international price of gold exceed the domestic price, which caused a net outflow of gold. It being not a normal situation and as its inclusion in the regression analysis would distort

the analysis it is excluded. The data are analyzed based on the following hypothesis:

- i. *Ceteris paribus*, the output of the offences is directly related to the number of dealers, turnover of licensed dealers and the price margin (difference between international and domestic prices).
- ii. The prosecution determines the output of offences, other things remaining the same.

TABLE 8.1

ENFORCEMENT OF GOLD CONTROL ACT

Year	Value Rs.lakhs	No. of cases	Pros No.	Licensed dealers	Turnover of Licensed dealers(Kgs.)	Price margin in Rs. Per10 gms.
1979	255.38	1061	45	11656	69240	238.82
1980	355.29	950	43	12113	48509	-99.39
1981	386.38	934	108	12520	50185	424.38
1982	1166.81	1019	172	12902	49745	559.77
1983	471.53	779	141	13212	49234	422.7
1984	737.27	929	110	13696	55871	643.65
1985	1508.51	1189	41	14152	49234	844.33
1986	1463.00	1074	116	14641	69799	718.05
1987	1243.86	1105	245	15049	60474	1030.09
1988	3481.34	910	352	15713	65301	1249.23
1989	7973.97	705	118	16704	N.A	1194.66

Source: Annual Reports, Ministry of Finance, New Delhi.

The hypotheses were tested. Hypothesis-1 was collated against Hypothesis-2. Then hypothesis-2 is found irrelevant. The regressions without lag and with one-year lag were run over the data to find the best fit. Out of many regression models tried the best-fit is double log linear:

$$\text{LnG}_v = -4.469 + 1.772\text{LnP} \quad \text{Adj.R}^2 = 0.792.$$

$$t = (-2.301) \quad (5.932)$$

$$\text{ie. } G_v = 0.01146 P^{1.772} \quad \text{-----} \quad (8.1)$$

$$\eta_s = \frac{d(\text{LnG}_v)}{d(\text{LnP})} = 1.772 \text{-----} \quad (8.2)$$

Where G_v denotes the supply of offences under the GCA in value terms (Rs.lakhs) and 'P' the price margin per 10 grams of gold (difference between domestic and international prices) and η_s denotes the elasticity of supply.

Equation (8.2) shows that the supply of offences is highly elastic to the price margin. The elasticity of supply of offences is 1.772%, which means that for a 1% change in the price margin the supply of offences would increase by 1.772%.

The curious aspect of the finding is that the numbers of offences, prosecution, licensed dealers and their turnover have little impact on the output of offences, they are not statistically significant. And it is the price margin that determines the commission of the offences to a higher degree. This alludes to the frailty of the enforcement system.

8.2 GOLD SMUGGLING: Gold smuggling in the pre-liberalization period is analyzed to determine the factors that determine the volume of offences. The hypothesis is that the output of gold

smuggling depends upon the probabilities of arrest, prosecution, conviction, arrest and conviction, detention and the price margin. As the probability of arrest, probability of prosecution, probability of conviction, probability of arrest and conviction, probability of detention under COFEPOSA specific to gold alone are not available the respective values are taken from the data pertaining to the smuggling of all commodities at the All-India level. In the computation of the probability of arrest, the total number of customs offences reported by the official sources is taken for granted though it constitutes only an insignificant proportion of the actual number of cases occurring.

TABLE 8.2

GOLD SMUGGLING-ALL INDIA DATA (QTY IN Kg. & VALUE IN Rs. LAKHS).

Year	Qty.	Value	P(a)	P(Pros)	P(c)	P(a&c)	P(D)	Price margin Rs./10 gms
1	2	3	4	5	6	7	8	9
1984	523	1024	0.034	0.78	0.4678	0.013848	0.7954	643.65
1985	2500	5189	0.031	0.78	0.376	0.014368	0.7811	844.33
1986	2200	4666	0.051	0.699	0.3367	0.019182	0.7532	718.05
1987	2264	6544	0.056	0.892	0.2889	0.018707	0.828	1030.09
1988	6265	20058	0.043	0.974	0.3288	0.012389	0.7283	1249.23
1989	8150	25960	0.052	0.699	0.432	0.017234	0.7159	1194.66
1990	5690	19296	0.062	0.525	0.3632	0.026837	0.6916	1245.54

Source: Compiled by the Researcher based on Annual Reports,
Ministry of Finance, New Delhi.

Table 8.2 furnishes the available data on smuggling of gold in the pre-liberalization period. As the data on gold smuggling from 1979 -1983 is not available the continuous data for the period from 1984 to 1990 is used for the analysis.

The best-fit regressions are:

$$\text{LnGq} = -12.906 + 3.043\text{LnP} \quad \text{Adj.R}^2 = 0.761, \text{ --- (8.3)}$$

$$t = (-2.770) \quad (4.487)$$

$$\text{LnGv} = -17.691 + 3.888\text{LnP} \quad \text{Adj.R}^2 = 0.852, \text{ --- (8.4)}$$

$$t = (-3.951) \quad (5.5954)$$

Where Gq and Gv represent the quantity and value of gold smuggled respectively and P_a the probability of arrest. The terms in parenthesis are the 't' values of the parameters.

Equation (8.3) yields an elastic supply of the quantum of gold smuggled with respect to the price margin. The measure is 3.043. It means that a 1% increase in the price margin would increase the quantity of gold smuggled by 3.043%.

Equation (8.4) shows that when the supply of offences is considered in value terms then also it is highly elastic to the price margin, with a measure of 3.888. This means that a 1% change in the price margin produces a change in the offences by 3.888%.

The regressions run over the data do not produce any statistically significant results for the probabilities of arrest,

prosecution, conviction, arrest and conviction, and detention. Further there exists a positive correlation $R=0.439$ between the quantity of gold smuggled and the probability of arrest, and $R=0.192$ between the quantity of gold smuggled and the probability of arrest which imply that arrest, and arrest and conviction are not causing any deterrent effect on smuggling but rather promote it. The punishment variables are ineffective because $0.0307 \leq P(a) \leq 0.06213$ and $0.0124 \leq P(a\&c) \leq 0.0268$, which mean that the probabilities of arrest, and arrest and conviction are negligible and constitute negligible costs in the production of smuggling; whereas the price differential of gold per kilogram in the range of Rupees 131,390 to 226,120 makes the business highly attractive. These further imply that smuggling is the least risky business. The results also show that as in the case of the offences under the GCA price margin alone determines the supply of offences significantly.

Thus, it becomes evident that the crucial variable that determines smuggling of gold is the price margin and that the law enforcement is fragile to cause any fetter on smuggling since it is not contributing towards the cost of production. It is to be emphasized that it is not the absence of law but the

weakness of law enforcement that promotes smuggling as was found in the analysis under Chapters-6 & 7.

8.3 POST-LIBERALISATION PERIOD

8.3.1 *GOLD SMUGGLING*: The post-liberalization period since 1991 in the economy is witnessing vast changes. During 1991 the import of gold was liberalized by permitting a passenger to bring in 5 kilogram of gold (In 1996 it was raised to 10 kilograms) on payment of duty in foreign exchange and its importation under OGL was permitted. Besides this, leading banks in the nation and the Minerals and Metals Trading Corporation (MMTC) are permitted to import gold, and attempts are being pursued to integrate the domestic markets for gold with the international market.

TABLE 8.3
GOLD SMUGGLING- ALL INDIA DATA (QTY IN Kg & VALUE IN Rs. LAKHS)

Year	Qty. Kg.	Value	P(a)	P(Pros)	P(c)	P(a&c)	P (D)	Price margin
1991	5004	19002	0.0400	0.6534	0.3773	0.0018	0.5154	1387.97
1992	2889	12610	0.0300	0.5834	0.3210	0.0009	0.4890	1005.17
1993	1372	5910	0.0233	0.5502	0.4035	0.0005	0.6703	748.25
1994	1147	5340	0.0244	0.4984	0.5345	0.0006	0.6760	778.42
1995	1169	5830	0.0227	0.3488	0.6411	0.0005	0.9684	794.17
1996	1100	6570	0.0237	0.4672	0.4124	0.0006	0.7699	777
1997	1325	6190	0.0246	0.5628	0.3959	0.0006	0.8415	694.54
1998	552	2321	0.0239	0.2468	0.4979	0.0006	0.6207	276.46
1999	917	3926	0.0212	0.2832	0.4315	0.0005	0.7375	

Source: Compiled by the Researcher based on Annual Reports,
Ministry of Finance, New Delhi

Table 8.3 gives the data on smuggling of gold in the post- liberalization period. The best-fit equation:

$$\text{LnG}_Q = 8.775 + 0.807 \text{LnP} + 1.872\text{LnP}(a) \quad \text{Adj.R}^2 = 0.953 \quad \text{-- (8.5)}$$

$$t = (4.175) \quad (5.304) \quad (5.160)$$

$$\text{LnG}_V = 6.943 + 0.956\text{LnP} + 1.221\text{LnP}(a) \quad \text{Adj.R}^2 = 0.959 \quad \text{--(8.6)}$$

$$t = (3.808) \quad (7.237) \quad (3.880)$$

From equation (8.5) the price-margin elasticity of the quantum of gold smuggled can be derived as 0.807. A comparison of the two periods shows that whereas this elasticity was high during the pre-liberalization period it became inelastic during the post liberalization period. This means the regulation of supply by the industry.

The equation (8.6) yields a price margin elasticity of supply (in terms of value) of 0.956. This also means that compared to the pre-liberalization period in the post-liberalization period it has become inelastic, that is the responsiveness of the gold smuggled, in value terms, with respect to the price margin has decreased more than proportionately. This requires thorough probe.

As per equation (8.5) the elasticity of supply of offences (in quantity terms) with respect to the probability of arrest is 1.872 and as per equation (8.6), in value terms, it is 1.221.

That is, both elasticities are very high. This means the probability of arrest is a significant factor that determines the commission of offence positively. The correlation coefficients of 0.974 between the quantity of gold smuggled and the probability of arrest, and 0.955 between the value of gold smuggled and the probability of arrest, both at 1% level of significance, negate the hypothesis that punishment deters crime. This further implies that if arrest decreases smuggling decreases and vice-versa, that is arrests only induce the commission of crime. This is because arrests and punishments have become merely farcical which get embossed by the fact that the joint probability of arrest and conviction is in the range $0.05 \leq P(a\&c) \leq 0.18$ only. In other words though punishment is an input in the smuggling industry its expected contribution towards the cost of production is negligible. This furthermore means that when law enforcement lowers detection of smuggling decreases and vice versa, not that smuggling has decreased because of liberalization. To sum up smuggling has become almost a risk-free business because of poor law-enforcement.

It is true that since the onset of liberalization up to 1996 there occurred a general declining trend in the demand and

supply of gold and hence in its smuggling. The scrapping of the Gold Control Act, liberalized import policy, greater integration with the international market, sale of gold by the RBI, European Central Banks, IMF etc. drained the public confidence in gold for its preciousness, liquidity and store of value. Therefore the decline in the profit margin caused the smuggling (in value terms) to decrease. But this was a temporary phenomenon. The decline cannot be interpreted as denoting the efficiency in law-enforcement but rather to the change in the perception and definition of the offence that rendered such illegal acts as legal, and also to the handicapped vigilance against smuggling. This becomes quite obvious from the analysis under Chapter-6 also.

TABLE 8.4
PRICE MARGIN ON GOLD SMUGGLED - ALL INDIA DATA (QTY. IN TONS)

Year	Total Qty Smuggled	Undetected Qty. smuggled	Price margin Rs. per 10 gms.	Total price margin in Rs. on smuggled	
				Total Qty	Undetected qty.
1996	173.01	171.91	777	134429	133574
1997	52.21	50.89	694.54	36262	35345
1998	252.67	252.12	276.46	69853	69701
1999	399.63	398.71	7.3%		

Source: Annual Reports, Ministry of Finance, New Delhi. & WGC Reports

Further, the decline in the volume of gold smuggled cannot be interpreted as success in general. The smuggling industry cannot remain idle. They switched over to the

smuggling of more lucrative items, especially narcotics, arms, and electronics in which mobile phones, computers and their peripherals occupy predominant position. But the data on the price differential of each of such items are not available. The most noxious consequence is the switch over to the smuggling of narcotics (Ref. Table 7.7 & Chart 7.4) and arms and ammunitions as referred under Chapter-7. In this context it is to be stated the official data does not picture the true magnitude of smuggling. Table 7.8 constructed out of the data provided by the World Gold Council, and the official sources of India and the discussion made there under reflects the reality.

Table 8.4 shows that in 1997, compared to 1996 the price margin per 10 grams of gold decreased by 10.61% whereas the total price margin on gold smuggled decreased more than proportionately by 73.03%, giving a positive total price-margin elasticity of 6.88%. But during 1998 when price margin decreased by 60.2% the quantum of smuggling rather than decrease, increased by 58.16%, causing an increase in the total price margin by 77.92% (from Rs.36,262 lakhs to Rs.69,853 lakhs), giving a negative total price-margin elasticity of -1.29%. This seems to be paradoxical, but it can be

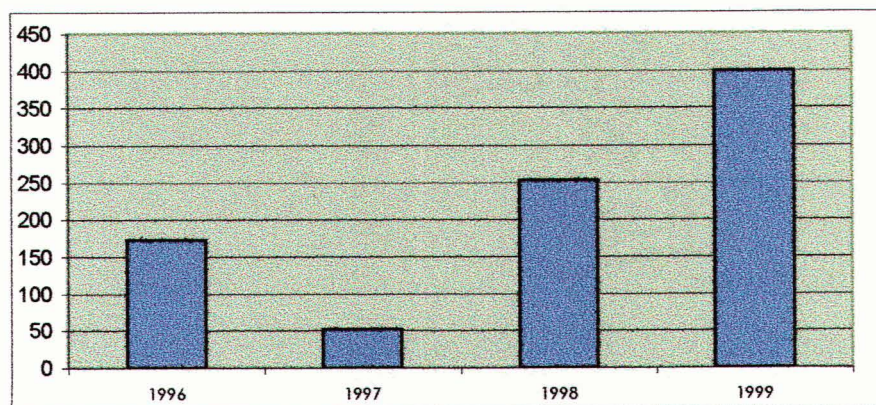
ratiocinated as the resurgence in the demand for gold in the economy. This phenomenon had been continuing since then.

The liberalized policies on gold have reduced its profit margin. Further the profit margins for all commodities have declined. If the rising demand for gold is not met by increasing the smuggling, expecting that its demand surplus would enhance the domestic prices and hence the profit, that expectation could not be realized because of the above stated policies. This would ultimately affect the very existence of the smuggling industry. Hence even while the profit margin is low the smuggling industry began to pursue sales and revenue maximization, with a low profit constraint, as its objectives. Also this is necessary to cripple the above policies, for the industry has to flourish in the long run. The smuggling industry is highly speculative. This becomes obvious from Chart 8.2 below, which shows an increase in smuggling despite the decreasing trend in the price margin depicted in Chart 8.3 below.

The revival of demand for gold despite the liberalization policies are due to the numerous stock market scams and bank scams, crashes in the stock market, decrease in the interest rates at the national and international levels, slump in

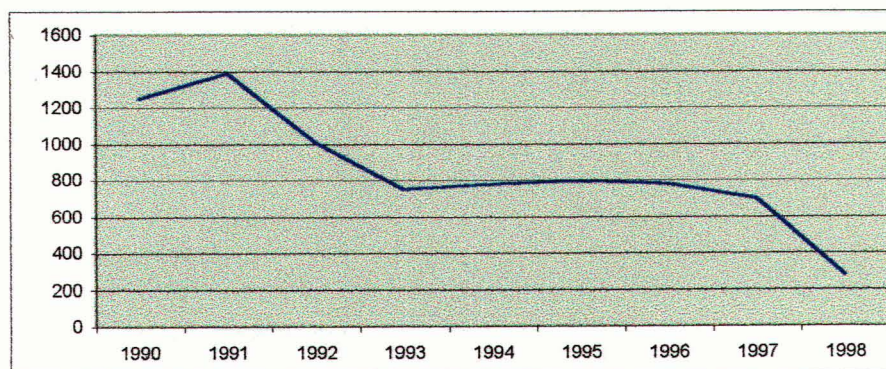
the economy, tensions in the gulf region etc. These have made gold the safest investment having high liquidity; its demand remains unquenchable. In short, in the post-liberalization period the analysis of the determinants of gold smuggling has become more perplexing and complex. The official data has become less reliable compared to the pre-liberalization period.

CHART 8.2
TOTAL QUANTITY OF GOLD SMUGGLED (TONS)



Source: Based on WGC Reports.

CHART 8.3
ANNUAL PRICE MARGIN ON GOLD PER 10Gms. IN RUPEES



Source: RBI Bulletin, Currency and Finance &

Annual Reports of Reserve Bank of India.

The changes in the laws and policies made to wean away the people from gold failed on the enforcement front. Even the Gold Deposit Scheme under which the gold deposited with the banks were exempted from the tax on interest, wealth tax etc could, only mobilize 4 tons up to March 2000 in a nation having more than 13000 tons gold worth above 60,000crores in 1999. The laws and policies become quaint when enforcement is put in a quagmire by the soft and pliable law enforcement machinery.

§§§§§§§§

ECONOMIC AND JUDICIAL RATIONALE OF DECISIONS

K.M. George “ Economics of economic offence a study of customs offences in Kerala” Thesis. Department of Economics , Dr.John Matthai Centre , University of Calicut, 2003

ECONOMIC AND JUDICIAL RATIONALE OF DECISIONS

This Chapter tries to analyse the economic rationale and the judiciousness of the decisions made by the law-enforcement machinery pertaining to the administration of Customs laws in the nation, and to determine the extent of inconsistencies in the decisions and the realization of the objectives of the socio-economic engineering aspect of the law. The law enforcement machinery in Kerala is taken as a prototype for the rest of India.

9.1 ECONOMIC OFFENCES COURT

The Economic Offences Courts were constituted in India considering the specific nature of the economic offences vis- a- vis other offences (IPC) in general. The Economic Offences Court of the State of Kerala was established at Ernakulam in 1985. It is presided over by a Chief Judicial Magistrate. Though The Court deals with all economic offences only customs offences or those under the Gold Control Act that are registered before it are considered for the present study.

The Economic Offences Court takes cognizance only of the offences registered before it by the Department of Central Excise & Customs. It cannot do it suo-moto; the proper officer

(Commissioner/Collector) has to take the decision. And the prosecution of an offence under the Court is not a bar to the proceedings under Arbitration of the Department as stated in Chapter-4.

9.2 IMPORTANT JUDICIAL DECISIONS

The economic rationale and the judiciousness of the decisions of the Economic Offences Court at Ernakulam have been done in the light of the following judicial pronouncements.

In prosecution of customs offences the court presumes culpable mental state of the accused, which includes the intention, motive, knowledge of a fact and belief. This fact has to be proved beyond reasonable doubt, not on preponderance of probabilities.

The imposition of the sentence depends upon the facts and circumstances of each and every case. Its extent, whether adequate or inadequate is left to the discretion of the court which would be justified in imposing more than the minimum but within the maximum limits prescribed by the statute, if the facts of the case so justify.¹

¹ State of Gujarat v. Laxman Jiwan- (1976) 17 Guj.L.R.321.

Where an NRI, convicted for smuggling and sentenced to 6 months imprisonment and fine of Rs.10,000, was not a habitual offender and did not have previous conviction and the six months absence from his country of domicile would result in cancellation of his work permit and cause permanent separation from his foreign wife and infant daughter, the sentence was reduced to that already undergone and the fine paid was released forthwith.²

But where the revision petition was maintainable, the High Court refused to interfere in a case in which minimum sentence of one year required under Section 135(1)(a)(i) of the Customs Act, 1962 was not awarded although reasons given by the trial court were not adequate.³ It is held that even revisional powers are not to be exercised when findings of lower authority are sound and consistent with evidence and circumstances.⁴

Trial for about seven years is not a factor that can stand in the way of enhancement of the quantum of sentence under Section 135 of the Act and Section 85 of the GCA or a ground

²Balraj singh v. Delhi Administration -1995(75) E.L.T.725 (SC)

³ Assistant Collector of Customs v. Krishnamoorthy-1989 (42) E.L.T. 575 (Mad.).

⁴ B.S. Rawat, Assistant Collector v. Bharat Nandlal Kalyani-1990 (45) E.L.T. 231 (Bom.).

for reduction of sentence.⁵ Where there were extenuating circumstances like small value of contraband goods even in local market, voluntary disclosure by the accused, lapse of six years after preparation of offence etc. the sentence was reduced but fine enhanced.⁶

Where a servant was convicted under Section 135(i)(a) and (b) of the Act read with Defence of India Rules P (2)(ii) and (iv) to undergo nine months rigorous imprisonment and pay a fine of Rs.100 on each of the three counts, the Supreme Court reduced the punishment to six months already undergone on the ground that the aforesaid offences were committed twelve years ago and the proceedings have been going on for that much time during which the accused must have gone through a lot of mental and financial strain, and that he was merely a servant.⁷

Where the offence of carrying and transporting contraband goods worth Rs. 27 lakhs was quite serious and the accused not having undergone any sentence, the minimum sentence of one year together with fine ought to

⁵ Union of India v. Abdul Sattar Abdul Gani 1988 (37) E.L.T 541(Guj).

⁶ Ravindra Janardhan Nair v. State of Maharashtra -1991(52) E.L.T 524 (Bom.).

⁷ Laxmi Maharaj v. State of Maharashtra-AIR 1979 SC 1279.

have been awarded despite lapse of twelve years from the date of incident.⁸ But where the appellant was sentenced to one year's imprisonment out of which about five months had been already undergone, the sentence was reduced to the period already undergone as the incident occurred 14 years ago and the value of the goods concerned was very small.⁹

Where only one-year sentence was awarded for smuggling contraband goods of the value of Rs.614,000 it was held that the offenders would not be deterred from committing such offences in future by such light punishments and that it would be difficult to maintain ethical standards and respect for judicial administration. Unless sentences are proper and deterrent, economic laws cannot be enforced properly.¹⁰

Where attempts were made to smuggle to India gold of more than Rs.1 lakh by each of the two sisters, the sentence of rigorous imprisonments of 18 months and fine of Rs. 20,000 were enhanced. The special privileges with regard to bail and

⁸ J.G. Bachoter, Superintendent of Customs v. Dost Mahmud Amad Sumra, 1997 (96) E.L.T.32 (Guj).

⁹ Udai Kant Jha v. Union of India-2000 (121) E.L.T.6 (SC).

¹⁰ State of Maharashtra v. Modh Subnam Sumania-1977 Cr.L.J.893 (Bom.).

distinction on ground of sex were not applied in awarding sentences.¹¹

Where a petitioner knowing fully well the prohibitions, imported gold valued at about 40 lakhs, the sentence of two and a half years was not held excessive by any standard.¹² Where silver was being smuggled out, the plea of the two accused that being in custody for fifteen and eighteen months respectively and being 16 years old, the courts should sentence them to the period already undergone was held not acceptable on the ground that no leniency is called for in cases of economic offences.¹³

It is to be emphasized that it is specifically provided in sub-section (3) of Section 135 of the Act, that either the fact that the offence is for the first time or that the offender is made to pay a penalty under other provisions of the Act or that the offender was acting merely as a carrier of goods or that he is a person of young age should not be taken into account as adequate reasons for awarding the sentence which

¹¹ State of Maharashtra v. Miss Surbi Chagal Hirabhai Maraman Devsi- 1992 Cri.LJ.1384 (Bom.).

¹² Shellina Sultan Ali Habib Ismail v. The Customs-1995 (78) E.L.T.141 (Del.).

¹³ Devchand Kalyan Tandel v. State of Gujarat-1997 (89) E.L.T.433 (SC).

is less than the minimum. This provision highlights the gravity with which the courts have to look at such offences.

9.3 ECONOMIC ANALYSIS OF CASES & DECISIONS BEFORE THE COURT

Table 9.1 gives the data on cases filed before the Economic Offences Court, Ernakulam. It shows that during the pre-liberalization period 1985-1990 the number of cases filed before the Economic Offences Court had increased from 2 to 104, a fifty two-fold increase, and the number of accused increased from 17 to 294, an increase of sixteen fold. But in 2000, the post-liberalization period, the number of cases increased only by 0.18% whereas the number of offenders increased by 55%, compared to 1990.

Further, during the pre-liberalization period, the probability of conviction out of the total number of cases filed was $0.498 \leq P(c/n) \leq 0.627$, the probability of convicting an accused out of the total number of accused was $0.270 \leq P(ac/tac) \leq 0.441$, whereas during the post-liberalization period they are $0 \leq P(c/n) \leq 0.298$ and $0 \leq P(ac/tac) \leq 0.216$ respectively. This shows that the probability that an offender will be visited with punishment on violation of the Customs laws plumped during the post-liberalization period indicating

less concern of the law enforcement machinery toward economic crimes.

TABLE 9.1
TRIAL OF CUSTOMS CASES BEFORE ECONOMIC OFFENCES COURT, ERNAKULAM.

1	2	3	4	5		7	8
				Cases	accused		
Year	Total No. cases	No of accused	Trials completed			Conviction (Nos.)	
1985	2	17					
1986	3	21	1				
1987	16	67	10	8	28	0.500	0.418
1988	75	152	59	47	67	0.627	0.441
1989	42	74	20	19	20	0.452	0.270
1990	235	294	129	117	120	0.498	0.408
1991	104	171	31	31	35	0.298	0.205
1992	167	241	48	45	52	0.269	0.216
1993	168	251	25	24	28	0.143	0.112
1994	168	276	20	16	16	0.095	0.058
1995	189	298	4	4	4	0.021	0.013
1996	209	357	12	10	12	0.048	0.034
1997	221	376	9	9	9	0.041	0.024
1998	242	396	1	1	1	0.004	0.003
1999	256	418	0	0	0	0.000	0.000
2000	278	456	1	1	1	0.004	0.002

Source: Compiled by the Researcher.

N.B : SI & RI refer to simple and rigorous imprisonment.

Col. (2) includes backlog of cases also.

Table 9.2 shows that in the pre-liberalization period the probability that a trial is completed was $0.333 \leq P(tc) \leq 0.787$, and that it ends up in conviction was $0.797 \leq P(c) \leq 0.95$. And the compound probability that a trial is completed and that it ends up in conviction was $0.452 \leq P(tc \& c) \leq 0.627$. But in the post-liberalization period the probability that a trial is

TABLE 9.2
PROBABILITIES OF COMPLETION OF TRIALS & CONVICTIONS.
BY THE ECONOMIC OFFENCES COURT, ERNAKULAM.

Year	P (tc)	P (c)	P (tc & c)
1986	0.333		
1987	0.625	0.800	0.500
1988	0.787	0.797	0.627
1989	0.476	0.950	0.452
1990	0.549	0.907	0.498
1991	0.298	1.000	0.298
1992	0.287	0.938	0.269
1993	0.149	0.960	0.143
1994	0.119	0.800	0.095
1995	0.021	1.000	0.021
1996	0.057	0.833	0.048
1997	0.041	1.000	0.041
1998	0.004	1.000	0.004
1999	0.000	0.000	0.000
2000	0.004	1.000	0.004

Source: Compiled by the Researcher.

completed declined to $0 \leq P(tc) \leq 0.298$ and the compound probability that a trial is completed and that it ends up in conviction also declined to $0 \leq P(tc \& c) \leq 0.298$. These raise doubts on the worth of the prosecution. Since a high officer of Customs files a case before the Court only after being satisfied as to the merits of the case which is drawn from the pursuance of proceedings and prosecution by the adjudicatory mechanism of the Department. The smugglers become less

TABLE 9.3
 IMPRISONMENT IN DEFAULT OF FINE ON CASES DECIDED BY
 THE ECONOMIC OFFENCES COURT, ERNAKULAM

Fine	SIMPLE IMPRISONMENT IN DEFAULT OF FINE IN (MONTHS)												R.I ID FINE (MONTHS)						
	7D	15D	1	2	3	4	5	6	7	8	9	10	11	12	1	6	9	12	18
1000			1	3	1														
2000			11												2				
2500			1	1															
3000				7															
4000			1	1				1											
5000			4	4	7			1											
6000			1																
7000			1		3														
7500				4															
8000			1		2			1											
9000					1		2												
10000		1	1	11	11		1	4											
12000					1	3		1											
13000					1														
14000						1													
15000				2	6		3	14											
16000							1	3											
18000				1				4								1			
19000						1													
20000			4	1	9	5	1	13			3			7	1				
22000								1											
23000											3						2		
24000			4																
25000			1	2	1			9				1		1					
30000			1									2		5					
35000								1			1			1					
40000								4			2			3					1
45000														1	1				
50000			1		1			12			1								
60000			1																
70000					1									1					
75000														2					
90000														1					
100000																		1	
105000																1			
145000																			1
200000	1																		

Source: Compiled by the Researcher.

apprehensive of the law because they employ the best legal luminaries and the prosecution is poor.

Another significant factor is the vagaries of the judiciary in awarding punishments. This becomes clear from Table 9.3. It shows that for the same amount of fine awarded to different accused persons in similarly placed positions in cases, the periods of imprisonment in lieu of fine follow no definite mandate. This is the case even when the rule that in awarding imprisonment in lieu of fine, the imprisonment shall not exceed the imprisonment already awarded in the case and that the total of the two imprisonments shall not exceed the maximum period of imprisonment awardable in the case. For e.g. for the same amount of fine of Rs.10,000 the award of simple imprisonment varied from 15 days to 6 months. Similarly for the same amount of fine of Rs.20,000 the simple imprisonment varied from 1 month to 12 months and rigorous imprisonment of 1 month. These gross inconsistencies in punishment take place because the judicial officer is not well versed with the socio-economic engineering aspect of economic laws and for him the law is just like the usual criminal law.

TABLE 9.4
INCONSISTENCIES IN JUDGMENTS OF THE
ECONOMIC OFFENCES COURT, ERNAKULAM.

FINE	A.M of S.I		C.V OF S.I IN LIEU OF FINE
	M	D	
1000	2		31.62
4000	3		72.01
5000	2	13	50.18
8000	3	8	54.93
10000	2	28	51.62
12000	4	6	29.51
15000	4	25	17.97
20000	5	22	58.24
25000	5	18	49.57
40000	8	21	30.28
50000	5	21	29.29

Source: Compiled by the Researcher.

Table 9.4 shows the coefficient of variation of simple imprisonment in lieu of fine awarded by the Court; its range of variation is 17.97 to 72.01. It shows wide inconsistency in the award of judgment; similar result applies also to rigorous imprisonment awarded in lieu of fine. This occurs not only during the tenures different judges but also during the tenure of the same judicial officer. Thus the calculability of rules and law enforcement, which is the most important requirement for a market economy as enunciated by Max Weber, is seen lacking.

TABLE 9.5
 COMBINED ARITHMETIC MEANS OF FINE & IMPRISONMENT
 AWARDED BY ECONOMIC OFFENCES COURT, ERNAKULAM.

Year	Fine Rs.	S.I Months	R.I Months
1987	27587	10	26
1988	23880	6	14.4
1989	15000	6	16.8
1990	19122	6	14.86
1991	24583	6	12
1992	39815	8	17.14
1993	45833	9	10.8
1994	18333	9	6
1995	5000	6	15
1996	17500	6	6
1997	50000	6	6
1998	25000	6	6
1999	0	0	0
2000	0	0	6

Source: Compiled by the Researcher.

Table 9.5 shows that during the pre-liberalization period the combined arithmetic mean of the simple and rigorous imprisonments were in the range of 6 to 10 months and 14.4 to 26 months respectively. But in the post-liberalization period they plunged to 0 to 9 months and 0 to 17.4 months respectively. The time series trends for the simple and rigorous imprisonments:

$$S.I = 10.0667 - 0.812t \quad Adj.R^2 = 0.5375 \text{-----}(9.1)$$

$$(6.762) \quad (-3.385)$$

$$R.I = 16.593 - 1.5817t \quad \text{Adj.}R^2 = 0.6483 \text{-----}(9.2)$$

$$(7.091) \quad (-4.194)$$

Show that annually the simple imprisonment awarded was decreasing at 24 days and the rigorous imprisonment at 47 days. The declining trends in awarding imprisonments show the lenient attitude of the judiciary on economic crimes. This also implies the indulgence of the prosecution and diligence of the accused in conducting the cases. Further the trend of the average amount fine awarded:

$$F = 39160.27 - 3009.79t \quad \text{Adj.}R^2 = 0.1579 \text{-----}(9.3)$$

$$(-1.639) \quad (3.438)$$

Showing a decrease in the fine imposed at Rs.3010 per annum, though the cases registered are of high magnitude, also gives the above illation.

Table 9.6 gives the data on fine awarded by the Economic Offences Court, pending realization. It shows that even if the Court awards punishment there is little execution of it because of the stay orders obtained from the High Court, which are not well contended against. And even if there is no stay the revenue recovery proceedings are curiously ignored, furthering the scope for evasion.

TABLE 9.6
 YEAR-WISE BREAK UP OF FINE PENDING
 REALIZATION AS ON 31-8-2000 ON CASES DECIDED
 BY ECONOMIC OFFENCES COURT, ERNAKULAM

YEAR	FINE (Rs.)
1990-91	10000
1991-92	255500
1992-93	598500
1993-94	615000
1994-95	134000
1995-96	368000
1996-97	1099500
1997-98	320000
1998-99	675000
1999-00	933000
2000-01	366400
Total	5374900

Source: Compiled by the Researcher.

Though appeal against decisions of the Economic Offences Court lie only to the High Court, after the delivery of judgment or even during the pendency of cases the offenders apply dilatory tactics by approaching the High Court. Further there is no locus standi for anyone under public interest litigation, other than the Department, to seek judicial remedies for the implementation of laws. Thus most of the judgments transcend relevance.

To cap it all, the survey on the decisions of the Economic Offences Court shows that the Court ought to be behooved of the economic rationale coupled with judicial wisdom in deciding upon economic laws having socio-economic engineering aspects. Further the frequent transfers of the judicial officers and the sordid conditions, viz., the cramped space, improper record keeping system and lack of computerization, the lack of ambience and aura with which judiciary has to function tell tale of woes that would affect the efficiency of the Court which has to protect the economic fibre of the nation.

9.4 ADJUDICATION

Before proceeding with the economic analysis of the adjudications and the soundness of the decisions made by various Departments of the Customs and Central Excise in the in the state of Kerala the general legal and judicial stance on this has to be stated.

Adjudicating authority means any authority competent to pass any order or decision under the Act but does not include the Board, Commissioner of Appeals or Appellate Tribunal (Section 2(1) of the Act). It is concerned only with

preponderance of probabilities and cannot be tied down to strict rules of evidence.¹⁴

The Act provides for adjudication proceedings that are distinct from criminal proceedings.¹⁵ The adjudication before Collector of Customs is neither a prosecution nor the Collector a Court. The Rule of estoppel does not apply to it. The department is empowered to impose penalty and confiscation and also to initiate prosecution in a criminal court at the same time.¹⁶ It has been held that the findings in a Magistrate's Court cannot affect adjudication proceedings since the scales for appreciation of evidence in a criminal trial are more stringent. Where gold was found concealed in the cavities of a vessel but the persons concerned were acquitted as no mensrea could be proved by the prosecution in the criminal proceedings under section 167(81) of the Sea Customs Act (corresponding to section 135 of the Act), it was held that such persons can still be guilty under section 8(1) of the FERA.¹⁷ Appeals lie to the High Court from the decision of customs

¹⁴ Santhanam v. Collector Madurai-1995 (79) E.L.T.564 (Mad.).

¹⁵ Jayantilal Patel v. Collector -1986 (25) ELT.696 (Tribunal).

¹⁶ Baldeo Raj Bhatia v. Superintendent -AIR 1963 Mad, 8.

¹⁷(i) Issa Yacub Bichara v. State of Mysore -AIR 1961 Mys.7.

(ii) Mangalore Satish Beedi Works v. State of Karnataka -1994(74) E.L.T.823 (Kar.)

authorities only if there are patent violations of the principles of natural justice.

There are no guidelines provided in the Act itself for regulating the exercise of the discretion conferred on the Collector or for indicating the type of cases in which criminal prosecution shall be resorted to. The scope for arbitrary exercise of powers, especially under Section 135 read with Section 137, and whether it is ultra vires of Article 14 of the Constitution are hotly contended issues. It is decided that the constitutional validity of a statute would have to be determined on the basis of its provisions and on the ambit of its operations as reasonably construed. And if so judged it passes the test of reasonableness.

It was held that the discretion given under a law, however wide it may be, could not necessarily be equated with discrimination. And insofar as there is possibility of the misuse of discretion, the normal presumption of law is that the authority invested with a discretionary power will act fairly and honestly and not abuse it. Its abuse is an indication of human frailty rather than of the power being discriminatory.¹⁸

¹⁸ Sadruddin Suleman Zaveri v J.H.Patwardhan AIR 1965 Bom.224.

In this context it is to be stated that if a tribunal has not acted or operated in the manner provided by the Act then a bar to a suit does not exist.¹⁹ Moreover, even if the jurisdiction of civil courts is ousted it does not exclude the jurisdiction of the High Courts to issue high prerogative writs against illegal exercise of authority by administrative or quasi-judicial tribunals.²⁰

9.5 THE ECONOMIC ANALYSIS OF ADJUDICATION

The economic rationale of the adjudications is analysed with respect to gold because of its more or less homogenous nature. To standardize the estimation of the value of gold, it is calculated at the Bombay price, the redemption fine is calculated only at the rate of 25% of the market value minus basic duty (though under Section 125 of the Act it can be the market value minus basic duty), and the personal penalty is calculated only at the rate of 30% of basic duty (whereas under Section 112(i) of the Act it shall not exceed five times the value of the goods or one thousand Rupees whichever is greater).

¹⁹ Gnash Meade v. Secretary of State-AIR 1991Bom.30.

²⁰ Union of India v. A.V Narasimhalu-1983 (13) E.L.T.1534 (SC).

TABLE 9.7
IMPOSTS ON GOLD SEIZURES, D.R.I, CALICUT
(QTY. IN Kg, VALUE & IMPOSTS IN Rs. LAKHS)

1	2	3	4	5	6	7	8	9	10	11	12											
												Seizure		Confiscation		Release		Total imposts	Aszv	Potential imposts	Szv/Aszv (3/9) %	Total percentage realization of imposts (8/10)
												Qty.	Value	Qty.	Value	Qty.	Value					
1990/91	13.656	19.86	9.365	14.70	4.291	5.16	3.86	47.135	9.921	42.13	38.91											
1991/92	10.790	65.39	10.790	65.39			7.51	46.373	2.104	141.01	356.95											
1992/93	37.272	145.64	37.272	145.65			8.06	152.96	2.527	95.21	318.95											
1993/94	7.229	29.52	1.568	7.00	5.661	25.3	0.7	32.763	7.832	90.10	8.94											
1994/95	11.262	51.72	11.262	51.73			1.25	52.563	0.743	98.40	168.27											
1995/96	0																					
1996/97	4.897	25.06	4.897	25.06			0.5	24.832	0.323	100.92	154.70											
1997/98	0																					
1998/99	18.026	78.47	18.026	78.47			0		1.482													
1999/00	24.532	109.71	24.532	109.71			0		2.944													

Source: Compiled by the Researcher.

TABLE 9.8
IMPOSTS ON GOLD SEIZURES, CUSTOMS PREVENTIVE
DIVISION, CALICUT. (QTY. IN Kg, VALUE & IMPOSTS IN Rs. LAKHS)

Year	2	3	4	5	6	7	8	9	10	11	12											
												Seizure		Confiscation		Release		Total imposts	Aszv	Potential imposts	Szv/Aszv (3/9) %	Total realization of imposts (8/10) %
												Qty.	Value	Qty.	Value	Qty.	Value					
1990/91	37.08	128.64	36.26	125.90	0.75	0.85	10.58	127.99	40.89	100.50	25.87											
1991/92	17.92	70.52	17.70	69.71	0.22	0.81	6.37	77.03	1.49	91.55	427.52											
1992/93	83.75	342.15	73.17	299.63	5.55	23.52	5.2	343.72	11.84	99.54	43.92											
1993/94	53.09	233.51	46.30	201.53	6.70	29.16	5.5	240.62	12.19	97.05	45.12											
1994/95	31.40	157.29	3.25	6.91	21.26	108.87	4.47	146.55	29.93	107.33	14.93											
1995/96	6.68	33.50	5.40	27.65	1.28	5.85	.71	33.11	2.24	101.19	31.7											
1996/97																						
1997/98																						
1998/99	5.00	21.70	N.A					21.28		101.97												
1999/00	6.88	28.55	N.A					30.11		94.83												

Source: Compiled by the Researcher.

N.B: 1) Imposts include Basic Duty (BD), Personal Penalty (PP), & Redemption fine (RF)

2) Svz-Seizure value; Aszv – Actual seizure value.

Table 9.7 provides data on gold seizures made by the Directorate of Revenue Intelligence, Calicut. It is obvious from the Table that the estimation of seizure value as a proportion of its actual value varied within the range 42.13% to 141.01% and the total realized imposts (basic duty + redemption fine + personal penalty) as a proportion of the potential imposts varied within the range 8.94% to 356.96%. These wide discrepancies, over-realization and under-realization, between the actual and potential imply arbitrary and indiscrete exercise of adjudicatory powers.

Table 9.8 provides data on gold seizures made by the Customs Preventive Division, Calicut. The existence of wide discrepancies in the estimations are evident from the fact that using the same standardized measure during the same period, we get the estimation of seizure value as a proportion of its actual value in the range of 91.55% to 107.33%, and the total realized imposts as a proportion of the potential imposts in the range of 14.93% to 427.52%.

Table 9.9 shows that under the Air Customs, Calicut, during 1992-2000 the ratio of the estimate of the seizure value

TABLE 9.9
IMPOSTS ON GOLD SEIZURES BY AIR CUSTOMS, CALICUT.
(QTY IN Kg, VALUE & IMPOSTS IN Rs. LAKHS)

1	2	3	4	5	6	7	8	9	10	11	12
Year	Seizure		Confiscation		Release		Total imposts	Aszv	Potential imposts	Szv/Aszv (3/9) %	Total realization Of imposts (8/10) %
	Qty.	Value	Qty.	Value	Qty.	Value					
1992	72.4	280.9	66.5	258.25	5.853	22.65	11.49	307.87	22.64	91.24	50.75
1993	27.2	113.3	24.25	101.55	2.9	11.72	3.74	119.07	9.21	95.13	40.60
1994	41.6	166.9	38.86	157.41	2.69	9.47	6.23	193.30	12.30	86.33	50.67
1995	10.5	35.31	0.21	0.7305	10.32	34.58	9.02	50.53	14.81	69.88	60.91
1996	11.6	42.07	1.05	4.42	10.5	37.65	8.33	59.96	16.28	70.17	51.15
1997	15	63.73	2.44	13.89	12.51	49.84	11.53	68.12	17.68	93.56	65.25
1998	21.8	88.94	10.42	44.2	11.36	44.74	13.51	90.17	17.88	98.64	75.53
1999	6.43	25.54	1.72	6.963	4.714	18.577	4.93	27.79	7.76	91.90	63.59
2000	11.9	53.07	11.45	51.35	0.412	1.72	7.70	53.39	5.22	99.40	147.54

Source: Compiled by the Researcher.

TABLE 9.10
IMPOSTS ON GOLD SEIZURES BY
COMMISSIONERATE OF CENTRAL EXCISE & CUSTOMS, COCHIN.
(QTY. IN Kg, VALUE & IMPOSTS IN Rs. LAKHS)

1	2	3	4	5	6	7	8	9	10	11	12
Year	Seizure		Confiscation		Release		Total imposts	Aszv	Potential imposts	Szv/Aszv (3/9) %	Total (%) realization of imposts (8/10)
	Qty.	Value	Qty.	Value	Qty.	Value					
1988	6.99	22.31	6.99	22.31			0.40	22.38	6.71	99.69	5.96
1989	0.20	0.60	0.20	0.60			0.02	0.64	0.19	93.75	10.53
1990	25.27	86.63	25.27	86.63			6.64	86.08	25.82	100.64	25.72
1991	103.49	301.14	103.49	301.14			19.06	417.40	125.22	72.15	15.22
1992	0.00	0.00	0.00	0.00			0.00	0.00	0.00		
1993	8.83	40.07	8.83	40.07			0.50	38.70	0.60	103.54	83.33
1994	59.55	275.74	59.55	275.74			3.13	277.02	3.95	99.54	79.24
1995	31.58	152.98	29.11	119.15	6.65	33.82	10.11	151.54	11.91	100.95	84.89
1996	73.01	373.21	65.38	317.42	7.26	36.52	15.79	378.98	15.12	98.48	104.43
1997	13.78	59.80	6.82	28.25	6.97	31.55	9.58	62.81	9.95	95.21	96.28
1998	1.17	4.87	0.85	3.60	0.32	1.27	.64	4.86	0.48	100.21	133.33

Source: Compiled by the Researcher.

of gold to its actual value varied within the range 69.88% to 99.40%, and the ratio of the total realized to the potential imposts varied within the range 40.60% to 147.54%. For the Commissionerate of Central Excise & Customs, Cochin-2 the respective figures during the period 1990-1998 are 72.15 to 103.54 and 5.96 to 133.33, provided in Table 9.10.

Table 9.11 provides a consolidated version of the range of variations in valuations and estimations by various Departments. The data speak that there is little definiteness in the valuations of seizures and in the imposition of various charges not only within a single Department but in the entire Departments.

TABLE 9.11
RANGE OF VARIATIONS IN ESTIMATIONS BY
THE CUSTOMS DEPARTMENTS IN KERALA.

Department	Period	RANGE OF VARIATIONS IN PERCENTAGE	
		Szv/Aszv	Imposts/Potential imposts
D.R.I, Calicut	1990/'91 to 1999/'00	42.13 to 141.01	8.94 to 356.95
Customs Preventive Division, Calicut	1990/'91 to 1999/'00	91.55 to 107.33	14.95 to 427.15
Air Customs, Calicut	1992 to 2000	69.88 to 99.4	40.6 to 147.54
Customs Commissionerate Ernakulam	1990 to 1998	72.15 to 103.54	5.96 to 133.33

Source: Compiled by the Researcher.

The ensemble of above is that the valuations of commodities are highly arbitrary and indiscrete. To cite a few instances: during 1994 the release of 2.69 Kgs. of gold was valued by the Department at Rs.9.47 lakhs i.e. at the rate of Rs.3520 per 10 grams, a rate which neither the international nor the domestic market ever arrived at during the period; in 1994 the average annual price at Bombay was Rs.4652.17 per 10 grams. In 1995 the department underestimated 10.5 kilograms of gold seized at Rs. 35.31 lakhs; whereas the Bombay price was Rs.4798 per 10 grams the Department reckoned the rate at Rs.3353. There are innumerable such cases; besides these, instances of over valuation also abound. If this is the case with the more or less homogenous commodity gold which has a world body to deal with it, the degree of variations in the valuations and estimations with respect to other commodities can be inferred. In short the valuations are not based upon proper appreciation of the market rates or any well-established norms.

These gross variations take place because there is no check, practically speaking, on the exercise of discretionary powers by the officials of the Departments. This drives home

the point that power corrupts and absolute power corrupts absolutely. The imperative is the setting up of well-defined parameters within which the Department has to exercise its discretionary powers.

The problem becomes more diabolic when the fact revealed by the higher echelons of the Law enforcement system is considered, that more than 98% of the persons apprehended are mere carriers and that the kingpins operate behind the curtain. This means that the entire exercise of the Departments to prevent smuggling end up in vain. This is because the machinery is devoid of the duty to investigate crimes. It has only the duty of prevention of evasion of duty and prohibitions and the enforcement of the Act. This in the strict sense means not penetration into the core of crime and routing out the crime, but treatment of crime as epidermis. The core of crime is not penetrated, incised and excised.

The dreadful leakage in the coffers of the Department is conspicuous from Table 9.12 and Chart 9.1. The annual compound growth rate of the evasion of customs duty 'D_v':

$$D_v = 313.507e^{1.3638t} \quad \text{Adj.}R^2 = 0.7649 \quad \text{-----}(9.4)$$

$$t = (0.828) (3.743)$$

This shows that it is growing at a compound rate of 136.38% (provisional estimate for 2000/01 is excluded) per annum. This amplifies the impudence with which customs duties are evaded, reflecting the timidity in the enforcement of laws.

TABLE 9.12

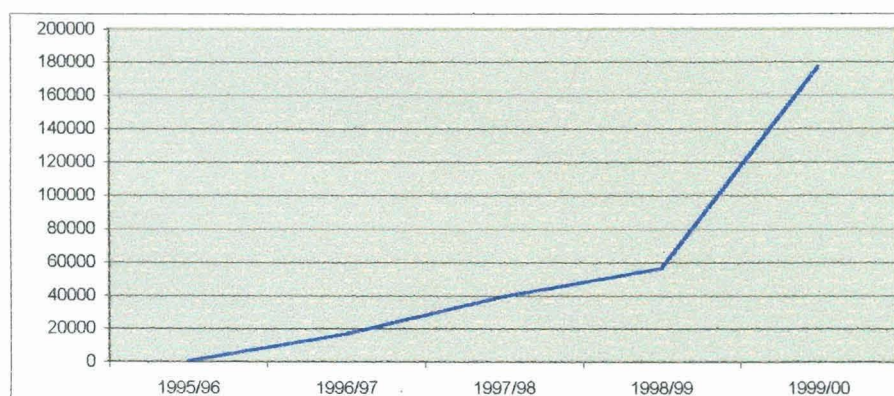
CUSTOMS DUTY EVASION (Rs.LAKHS)- ALL INDIA DATA

Year	1995/96	1996/97	1997/98	1998/99	1999/00	2000/01
Evasion	353	16,844	39,339	56,024	177,135	30,234

Source: Annual Report (2000-01), Ministry of Finance, and New Delhi.

CHART 9.1

ALL INDIA CUSTOMS DUTY EVASION (Rs. LAKHS)



Source: Ref: Table 9.12

The ensemble of the analysis of economic rationale and judiciousness of the Law Enforcement System prognosticates malady of the System. It fails to serve the aspirations of the people to build a sovereign socialist democratic system since

the smugglers rein the sovereign and the Law Enforcement Machinery is steered toward 'low enforcement'.

9.6 SMUGGLING: SOCIAL/COMMUNITY INFLUENCE

The study also examined whether there is any community-wise skewed distribution among the offenders. Table 9.13 furnishes the data relating to it.

TABLE 9.13
COMMUNITY-WISE PARTICIPATION IN THE OFFENCE. RANGE (%).

Dept.	D.R.I, Calicut	Customs Preventive Divison, Calicut	Air Customs Calicut	Customs Commissionerate Cochin	Economic Offences Court Ernakulam
Community	1990-'91 to 1998-'99	1976-77 to 1998-99	1992 to 1999	1988 to 1998	1992 to 1998
Muslims	60 - 92.31	70.14 to 100	66.37 to 80.82	65.67 to 100	75 to 80
Others	7.69 - 40-	0 to 29.86	19.18 to 33.63	0 to 34.33	20 to 25

Source: Compiled by the Researcher.

It is found from the data relating to all the Customs Departments in the State under study and from the Economic Offences Court, Ernakulam that more than two-thirds of the offenders belong to the Muslim community i.e. the distribution is skewed in favour of them. The reasons may be many.

- i. The Muslims in the State had historical links with the Arabs, which developed into social, cultural and commercial intercourse. These fostered not only legal but also illegal trade since there were ample opportunities.

- ii. In the traditional Indian Society occupations being caste based the only occupation that was not forbidden to the Muslims was in the area of trade whether legal or illegal. Hence the Muslims could easily find a slot there.
- iii. Moreover the Muslim community regarded trade as a noble profession unlike usury, gambling, drinking etc. which the religion prohibited. The purchase of a commodity from one place and selling it at another place is not regarded as crime by the community, even if man made barriers are imposed, only the law makes such trading legal or illegal.
- iv. Mere economic analysis will not help to analyze the factors behind this skewed distribution; detailed sociological enquiry is needed.

§§§§§§§§§§

SUMMARY AND CONCLUSIONS

K.M. George “ Economics of economic offence a study of customs offences in Kerala” Thesis. Department of Economics , Dr.John Matthai Centre , University of Calicut, 2003

SUMMARY AND CONCLUSIONS

Crime is “an act committed in violation of a law prohibiting ¹ it or omitted in violation of a law ordering it”. It has now evolved into an organized one, constituted as an enterprise for profit that is insulated against social control through an admixture of illegal and legal means.

Crimes are now broadly classified into conventional crimes like theft, murder, and rape, and economic crimes/offences like smuggling, tax evasion, and drug trafficking. Economic offences spring out of economic motives. They are committed rationally after calculating the opportunity cost of time and resources. As economic offences endanger an economy, legislations are enacted regulating economic activities. The Customs Act, for instance, is meant to regulate the flow of goods to and from an economy and thereby upkeep the socio-economic texture of the nation.

Though economic offences have multifaceted dimensions, little study on them in the theoretical framework of economic analysis has been conducted. The present study

¹ *Webster's New World Dictionary*, Third College Edition, Simon & Schuster, New York, 1961.

on Customs offences is an attempt to fill up the research lacuna. It is positivist and exploratory, there being no parallel study.

10.1 OBJECTIVES OF THE STUDY

The study examines the (i) impact of changes in the law and enforcement on the customs offence; (ii) factors that determine the supply of offences; and (iii) the economic rationale and judiciousness of the decisions made by the law enforcement agencies viz. Economic Offences Court and the Customs Department.

The period under study is broadly divided into two: pre-liberalization and post-liberalization periods. Further, in the pre-liberalization period, the period of emergency-1975-77 and the periods immediately preceding and succeeding it are analyzed separately, as these periods pertain to abnormal situations of zealous and dizzy enforcement of laws.

10.2 METHODOLOGY

The theoretical paradigm of the present study assumes rationality. The offender's participation in illegal activity, which involves risk and uncertainty, is brought under the theory of occupational choice under uncertainty.

Law and enforcement are dichotomized and the impact of the sequential changes of each on the volume of offences is determined for their respective sensitivity and efficacy. This is done using graphs, percentage changes, ranges, and the trend analysis of the time-series data.

The factors that determine the supply of offences are formulated as probabilities of arrest, prosecution, conviction, joint probability of arrest and conviction, detention, returns from illegal and legal activities and punishment. The analysis is done with respect to gold, the more or less homogeneous commodity that is the most sensitive item in smuggling.

As the data on gold smuggling from 1979 to 1983 is not available the continuous data for the period from 1984 to 1990 is used for the analysis. As the probabilities of arrest, prosecution, conviction, arrest and conviction, detention under COFEPOSA specific to gold alone are not available the respective values are taken from the data pertaining to smuggling of all commodities at the All-India level. Further, in the empirical model the returns from legitimate activity are excluded because the smugglers operate in a borderless world. The income from the illegal activity is approximated as the price margin.

The All-India data on offences under the Gold Control Act for the period 1979-1989 are also subjected to study based on the hypothesis that: *ceteris paribus* the supply of offences is determined by the number of dealers, turnover of licensed dealers and the price margin.

The economic rationale and the judiciousness of the decisions made by the law-enforcement machinery are analyzed by determining the consistencies in their decisions, and their achievements of the objectives of the socio-economic engineering aspect of the law.

To analyze the effectiveness of the Law Enforcement System (L.E.S), the LES is viewed as a firm in a service industry. It includes all the agencies for the administration and enforcement of law and justice viz. the Department of Central Excise & Customs, Directorate of Revenue Intelligence and the Economic Offences Court.

10.3 SUMMARY OF FINDINGS:

10.3.1 LAW, ENFORCEMENT AND CUSTOMS OFFENCES

(i) PRE-LIBERALIZATION PERIOD:

There exists a high positive correlation between the general crime rate and the economic offence rate; it is reflected in the customs offences also. Hence an analysis of the customs

scenario has to stem from an analysis of the scenario of IPC crimes.

The IPC cognizable crimes, which were growing at an alarming rate in the pre-emergency period, waned during the emergency period and waxed during the post-emergency period. In the same manner the supply of customs offences, value of offences and value per offence behaved in the pre-emergency, emergency, and post-emergency periods. The customs offences were at their minimum during the period of emergency, 1975-1977, because of the ruthless enforcement of laws as revealed by numerous preventive detentions under COFEPOSA, raids, searches, highest rates of completion of trials and convictions, confiscation of smuggled goods, assets etc. which provided ample deterrent effects of punishment.

During 1975-76(Oct.-Sept.) when emergency was in full swing the value of offences and the value per offence rapidly declined by 51.86% and 53.2% respectively showing the high elasticity of the offences to the impact of law enforcement. The stricter the enforcement of the laws and policies against smuggling the lower is the scale of smuggling. That is smuggling is inversely related to the degree of enforcement.

During 1979-1990 the total IPC cognizable crimes coming under trial before courts had increased by 94.29%, registering an annual compound growth rate of 5.96% signifying the rapid permeation of crimes in the society.

During 1979-1990 the number of offences and the number of persons employed in the smuggling industry remained more or less the same over the period despite the changes in the law and policies; whereas the supply of offences in terms of value and value per offence had been rising consistently and rapidly since the revocation of emergency. The smuggling of all commodities registered a compound growth rate of 31.2% per annum and gold in terms of quantity and value registered annual compound growth rates of 47.18% and 58.74% respectively. These indicate perfection and development in the science and techniques of management of the smuggling business. Though the laws, rules and policies against smuggling were profligate, their enforcement against smuggling limped generating low deterrence effect among smugglers, which goaded smuggling to gallop.

(ii) POST-LIBERALIZATION PERIOD:

During the post-liberalization period the IPC crimes under trial grew at the rate of 238,571 per annum followed by a low conviction rate in the range of 37.81% to 47.83% out of the trials completed that varied within the range of 15.15% to 17.15%. These reflect on the abysmal enforcement aspects.

The year 1991 heralded the policies of globalization and liberalization in the economy. Gold and silver were removed from the negative list of imports. In 1992-93, Baggage Rules were simplified and the importation of gold not exceeding five kilograms and later 10 kilograms per passenger on payment of duty in foreign exchange was allowed subject to certain lax conditions.

During 1991-98 the customs offences in terms of volume (number) was decreasing at the rate of 2351 per year. The value of the offences and the value per offence, after a temporary phase of decline, accelerated which is continuing. The quadratic time-series vouch this. This suggests that smuggling could not be arrested even under the policies of liberalization and globalization, alluding to the poor state of enforcement.

Gold smuggling in terms of quantity and value declined up to 1995, and thereafter began to increase steeply, despite the decrease in the price margin and the official reports to the contrary. Further the tremendous increases in the smuggling of other commodities and especially of the more dangerous commodities like narcotics and weapons are dreadful. The narcotics business alone has grown from 5299 major cases in 1991 to 13,029 in 1999, a remarkable increase by 145.88%.

(iii) KERALA SCENARIO:

The post-liberalization period saw a general decrease in the volume of offences in terms of number and value under the Customs Preventive Division, Calicut, Air Customs, Calicut and the Commissionerate of Central Excise and Customs, Cochin. But in contradistinction to this, under the Directorate of Revenue Intelligence, Calicut the number of major offences rose by 200%, giving an annual compound growth rate in the value of offences by 14.28%. This has to be compared to the steep increase in smuggling at the All India level, especially since 1995.

Thus it cannot be concluded that the liberalization and globalization policies were effective in curbing the smuggling activities. The smugglers operate in a borderless region, their

industry remaining in far-flung areas is centralized and coordinated; and being flexible and elastic in structure, organization and activities can migrate to regions where the industry has the most conducive climate for their operations.

In short in the post-emergency periods (pre and post liberalization), though numerous anti-smuggling laws and policies were introduced they were atrophied by low enforcement; smuggling assumed dangerous dimensions because law is inane without enforcement.

10.3.2 THE DETERMINANTS OF SUPPLY OF CUSTOMS OFFENCES

(i) PRE-LIBERALISATION PERIOD:(1980-1990)

The significant factor that determined gold smuggling, both in terms of quantity and value, was the price-margin. The punishment variables like $P(a)$, $P(c)$, $P(D)$, and $P(a\&c)$ had no impact on smuggling. Though all of them are statistically insignificant, the highest valued among them 'P(a)' and the volume of smuggling were/are positively correlated, which reflects upon the efficacy of enforcement. To summarize, the price margin outweighed the punishment-variables and determined the supply; punishment is an insignificant input in the output of the smuggling industry and the LES is ineffective in injecting adequate deterrence effect among

smugglers. It is not the absence of law but the decadence of enforcement that promotes smuggling.

The main factor that determined the supply of offences under the Gold Control Act is the price margin; it has a high elasticity of 1.772%. The curious aspect of the finding is that the number of prosecutions and the number of licensed dealers and their turnover have little impact on the output of offences; they are not statistically significant. This implies that the law enforcement system is in entropy.

(ii) POST-LIBERALISATION PERIOD (SINCE 1991)

In 1991 the import of gold was liberalized by permitting a passenger to bring in 5 kilograms of gold on payment of duty in foreign exchange and, in 1996 it was further liberalized by permitting import of 10 kilograms of gold on payment of duty in foreign exchange.

The measures apparently caused a decline in the price margin elasticity of supply (in terms of value) to 0.956. But this cannot be interpreted as success of the anti-smuggling measures. The industry could not remain idle. They changed the composition of their outputs, especially to narcotics, weapons, and electronics.

Further the decreases in the demand for gold and its smuggling were a temporary phenomena. Contrary to the official statistics, the demand for gold and its smuggling began to upsurge since 1996 despite the low price margin. The industry began to pursue sales and revenue maximization with a low profit constraint as its objectives, expanding its realm. This became necessary for it to flourish in the long run; it is highly speculative.

Further, the probability of arrest positively determines the supply of offence; supply elasticity with respect to $P(a)$, in terms of quantity and value, are very high. The high positive correlations simply imply that if arrest decreases, the supply of offences decreases and vice-versa, that is, the arrests only induce the commission of crime. This is because punishment has become merely farcical, corroborated by the fact that the joint probability of arrest and conviction crawls in the range of 0.05 to 0.18 only.

All these suggest that the anti-smuggling measures are myopic to the problem of smuggling in its totality and that enforcement is becoming more and more a casualty.

10.3.3 ECONOMIC RATIONALE & JUDICIOUSNESS OF DECISIONS

(i) *ECONOMIC OFFENCES COURT, ERNAKULAM.*

In the pre-liberalization period the compound probability that a trial is completed and that it ends up in conviction was $0.452 \leq P(tc \& c) \leq 0.627$. But in the post-liberalization period it plummeted to $0 \leq P(tc \& c) \leq 0.298$. This is suggestive of the erosion in the prowess of the prosecution which becomes amply clear from the fact that a high officer of Customs files a case before the Economic Offences Court only after being satisfied as to the merits of the case.

The average fine awarded by the Court has been exhibiting a declining trend, though the cases registered before it are of high magnitude. Further even if the Court awards punishment there is little execution of it, furthering the scope for flouting of laws.

The combined arithmetic means of both rigorous and simple imprisonments had been exhibiting declining trends, illative of the lenient attitude of the judiciary toward economic crimes and poor prosecution of the case.

Another significant factor is the vagaries of the judicial process in awarding punishments; for the same amount of fine awarded to different accused persons in similarly placed

positions in cases, the period of imprisonment in lieu of fine follow no definite mandate. The high coefficient of variation in the award of judgments lays bare this inconsistency.

(ii) *ADJUDICATION*

Adjudicating authority means any authority competent to pass any order or decision under the Act but does not include the Board, Commissioner of Appeals or Appellate Tribunal.

The proportion of the seizure value to the actual value of gold and the proportion of the total realized imposts to the potential imposts (basic duty, redemption fine and personal penalty) show that the estimates and imposts made by various branches of the Department, viz. Department of Revenue Intelligence, Calicut; Air Customs, Calicut; Customs Preventive Division, Calicut and Commissionerate of Central Excise & Customs, Cochin are whimsical.

10.3.4 SMUGGLING: SOCIAL/COMMUNITY INFLUENCE

The study examined the community-wise distribution of offenders to verify whether there is any skewed distribution among them. It is found from the data relating to all the Customs Departments in the State under study and from the Economic Offences Court, Ernakulam that above two-thirds of

the economic offenders belong to the Muslim community i.e. the distribution is skewed in favour of them. The historical and sociological aspects behind this ought to be researched to formulate effective polices against smuggling involving all strata of society.

10.4 SUGGESTIONS

- i. The data furnished by the Ministry of Finance and the Ministry of Home are wrought with contradictions and inconsistencies. (The discretion of a researcher is exercised in culling out the reliable data). The statistical system has to be revamped to produce a reliable database.
- ii. To deal with the menace of smuggling the prime thrust has to be given to law enforcement rather than law making. It is not the profusion of laws but the enforcement of laws that reflects the health of a legal system. The non-observance of laws should not go unobserved.
- iii. The discretion given to the Customs authorities in the valuation of commodities and in the imposition of redemption fine, penalty etc. shall be well defined in parametric terms, say the range of variation in percentage between the market price of the commodities and the official imposts. Otherwise the valuation of commodities

and the levy of various imposts will take place according to the predilections of the authorities. There should be proper and prompt audit.

- iv. The law enforcement machinery is devoid of the duty to investigate crimes. It has only the duty of prevention of evasion of duty and prohibitions and the enforcement of the Act. This in the strict sense means not penetration into the core of crime and routing out the crime, but treatment of crime as epidermis. The core of crime is not penetrated, incised and excised. There should be coordinated effort by different enforcement agencies to root out the crime.
- v. Fine is a lighter sentence in comparison with sentence of imprisonment. Speedy trial before court is to be resorted to generate deterrence effect among smugglers and to create sense of fear of law.
- vi. Punishment viz. imprisonment, penalty and fine, constitute a negligible cost in the output of offences. Hence the only factor that affects the output of offences is the price differential. And only when punishment enters into the cost of production of offences in a substantial scale does punishment reduce offences. Steps should be taken in this regard.

- vii. Once a case is registered before a Court the prosecution of the case is tardy, resulting in delay and backlog of cases. This erodes the deterrence effect of prosecution and punishment. The prosecution of the cases ought to be monitored periodically and has to be disposed of within specified time-bounds. It is to be emphasized that society will not feel the deterrent effect of a punishment awarded many years after the commission of an offence.
- viii. Even in cases where judgments are made they are seldom implemented because of the stay order obtained from High Courts which are not well contended against, or due to the inadvertence on the part of the government in implementing the order. Measures ought to be adopted to put a check on these.
- ix. The survey of the decisions of the Economic Offences Court shows that the court ought to be behooved of the economic rationale coupled with judicial wisdom in deciding upon economic laws having socio- economic engineering aspects.
- x. It is to be noted that if one does not internalize the norms of the society, his rational behaviour can be guided by such norms, only if the enforcement is forceful and impersonal.

- xi. The methods of analysis developed have wide application in the field of legislation. Changes in law ought to be made only after conducting an historical analysis of the sequential changes in the dichotomized variables of law and enforcement and the consequent impact of each on the offences. If it is found that the problem lies on the enforcement side and not on the side of existing law, the enforcement side has to be reinvigorated and new legislation has to be avoided. Otherwise changes in law remain inconsequential.

§§§§§§§§§§

BIBLIOGRAPHY

I. BOOKS

- Anderson, R.W, *The Economics of Crime*, The Macmillan Press Ltd.
London, 1976.
- Atiyah, P.S, *Law and Modern Society*, OPUS Editors, London, 1983.
- Basu, Durga Das, *Constitutional Law of India*, Prentice Hall of India,
New Delhi, 1999.
- Beccaria, C, *An Essay on Crimes and Punishments*, London Inc: 1764,
Grupp.S.Ed, *Theories of Punishment*, Indiana University Press,
Bloomington, 1971.
- Becker, G .S, *Essays in the Economics of Crime and Punishment*,
National Bureau of Economic Research, New York, 1974.
- Bentham, Jeremy. *An Introduction to the Principles of Morals and
Legislations*, London, 1789.
- , *Theory of Legislation*, Harcourt Brace Co. New York, 1931.
- Berki, R.N, *Security and Society*, J. M. Dent & Sons Ltd. London,
1979.
- Bhatnagar, S. P, *Customs Law & Procedures 2000*, Fourth Edition,
Centax Publications, Pvt. Ltd, New Delhi, 2000.
- Bhagawathi, Jagdish. N, *Illegal Transactions in International Trade*,
North Holland Publishing Company, Amsterdam, 1974.
- Bowles, Roger, *Law and the Economy*, Martin Robertson, Oxford,
1982.
- Bresler, Fenton. *The Chinese Mafia*, Hamlyn Publishing Group Ltd,
Astronaut House, Middlesex, England, 1980.
- Burrows, Paul. *The Economic Approach to Law*, Butter Worths, London,
1981.
- Chandrasekharan, R.K, *The Comptroller & Auditor General of India,
Analytical History, 1947-1989*, Vol.II, Ashish Publishing House,
New Delhi, 1990.
- Commons, John, R, *Legal Foundations of Capitalism*, Macmillan,
New York, 1924.

- Dallago, Bruno, *The Irregular Economy*, Dartmouth Publishing Company, England, 1990.
- Eide, Erling, *Economics of Crime, Deterrence and the Rational Offenders*, North Holland, Amsterdam, 1994.
- Feige, Edgar, *The underground economies: Tax Evasion and Information Distortion*, Cambridge University Press, Cambridge, 1989.
- Friedman, W, *The State and the Rule of Law in a Mixed Economy*, Stevens & Sons Ltd. London, 1971.
- Galemoor, Thomas. *The Essence of Stigler*, Hoover Institution, Stanford, 1986.
- Ghai, Yash, Ed., *The Political Economy of Law*, Oxford University Press, Delhi, 1987.
- Gordon, Tullock, *The Logic of Law*, Basic Books Inc. New York, 1971.
- Hayek, F. A, *The Road to Serfdom*, Ark Edition, London, 1988.
- Ignace, Lepp, *Death and its Mysteries*, Burns & Oates Limited, London, 1969.
- International Encyclopedia of the Social Sciences*, Macmillan, New York, Vol.17, 1968.
- Kanetkar, V.G, *Crime in Future*, Jaico Publishing House, Bombay, 1995.
- Kindleberger, Charles P, *Economic Laws and Economic History*, Cambridge University Press, 1989.
- Lewis, Arthur' *Economic Development with Unlimited Supply of Labour*, 22, Manhattan, 1954.
- Mehta, Shekhar, *Evasion of State Taxes in India*, Criterion Publication, New Delhi, 1990.
- Nair, K.Chandrasekharan, *Devadasi Tradition in Kerala – A Study With Special Reference To Literature, Dance And Music*, Kerala Historical Society, Trivandrum, 1987.
- Oliver, J.M, *Law and Economics*, George Allen & Unwin, London, 1979.
- Ray, S.K. *Economics of the Black Market*, Westview Press, Colorado, 1981.
- Sen, Amartya, *Poverty and Famines, An Essay on Entitlement and Deprivation*, Oxford University Press, Oxford, 1987.
- Shah, N.J, *History of Indian Tariffs*, Thacker & Company Ltd, Bombay, 1924.

- Stephen, Franc.H, *The Economics of the Law*, Wheat Sheaf Books Ltd, Sussex, 1990.
- Thanu Pillai, K., *Customs and Tariffs, With Special Reference to the Maritime States in South India*, Reddiar Press, Trivandrum, 1935.
- Wadhava, Charan. D, *Some Problems of the Indian Economic Policy*, Mac Graw Hill Publishing Company Ltd., New Delhi, 1977
- Wright, Kevin.N, (Ed), *Crime and Criminal Justice in a Declining Economy*, Oelgeshalger, Gunn & Hayne Publishers Inc, Cambridge, 1981.

II. REPORTS & RECORDS

- Annual Report*, Ministry of Finance, New Delhi.
- Annual Report*, Reserve Bank of India.
- Census of India*, 1991 Series-12, Kerala.
- Crime in India*, N.C.R.B, Ministry of Home Affair, New Delhi.
- The Finance Act, Year –wise*.
- Guinness Book of World Records*, Bantam Books, New York, 1994.
- Indian Tax Statistics*, Indian Tax Institute, New Delhi, 1998.
- Law Commission of India-29th Report*, 1996.
- Report on Currency and Finance*, Reserve Bank of India.
- Reserve Bank of India Bulletins*.
- Santhanam (Justice), *Report of the Santhanam Committee*, 1964.
- Tax Reform Committee Final Report*, Part-1, Ministry of Finance, New Delhi, 2000.
- The Tariff Act*, Year- wise.
- United Nations, *Commission on Crime Prevention and Criminal Justice, Economic and Social Council Official Records*, Supplement No.10, 1992.
- United Nation, *Crime Trends and Criminal Justice Operation At The Regional And Interregional Level*, 1993.
- World Bank, *World Development Report*, 1997.

III. ARTICLES & JOURNALS

- Aarti, Dhar, " Villagers defend child marriages," *The Hindu*, 29.4.2002.
- Abraham, Susan, " To Sir. Rowlatt with love", *The Hindu*, 18-9-1999.

- Adelstein, Richard. A, "Informational paradox and the pricing of Crime, Capital Sentencing Standards in Economic Perspective", *The Journal of Criminal Law, Criminology and Police Science*, 70, 1979, pp.281-298.
- Ananth, Krishna V, "Legitimizing gun culture in Bihar", *The Hindu*, 3-6-2000.
- Anderson, David. A. "The Aggregate Burden of Crime", *The Journal of Law & Economics*, Vol. XL11 (2) Oct.1999, pp.629.
- Baker, C. Edwin. "The ideology of the Economic Analysis of Law", *Philosophy & Public Affairs*, 1976, pp.3-48.
- Balakrishnan, Pulapre. "Will the Government learn to tax?" *The Hindu*, 18-11-1995.
- Balchand, K. "A Mega scam in Laloo Land", *The Hindu*, 11-2-1996.
- Balchand, K. "Tarred with same brush", *The Hindu*, 30-6-1996.
- Becker, G.S. "A Theory of the Allocation of Time", *The Economic Journal*, 1965, pp.493-517.
- Becker, G.S. "Crime and Punishment, An Economic Approach", *Journal of Political Economy*, 76, 1968, pp.169-217.
- Bhelari, Kanayya. "Ranveer Senayudae belam rashtreeyakarudae Pinthunna", (in Malayalam), *The Malayala Manorama*, 20-6-2000.
- Block, M.K & Heineke J.M. "A Labour Theoretic Analysis of the Criminal Choice", *American Economic Review*, 65, 1 975, pp.314-325.
- Block, Michael K & Lind, Robert. "Crime and Punishment Reconsidered", *The Journal of Legal Studies*, 4, 1975, pp.1063-93.
- Blumstein, Alfred. "Models of Total Criminal Justice System", *Operations Research*, 1969, pp.199-231.
- Boulding, Kenneth E, "Economics as a Moral Science", *American Economic Review*, 1969, pp.1-12.
- Bandyoadhyay, A.K, "Over-Invoicing And Under-Invoicing In Customs And FERA", *Excise Law Times*, New Delhi, 1999, pp. A142 - A.149.
- Buchanan, James M. "Good Economics, Bad Law", *Virginia Law Review*, 1974, 60, pp.483-492.
- Bunch, Dionne. "The crisis of the camps", *Frontline*, 2002, April 26, p.22.
- Calabresi, Guido "Optimal Deterrence and Accidents", *Yale Law Journal*,

- 84, 1974-75.
- Chakravarty, Satyantant. "Unsafe Account", *India Today*, July 30, 2001.
- Christopher, Cornwell & William, N.Trumbell. "Estimating the Economic Models of Crime with Panel Data", *The Review of Economics and Statistics*, 1994, pp.360-366.
- Coase, R.H. "The Nature of the Firm", *Economica*, 1937, pp. 386- 405.
- Collins, Sara. "Costs of Crime", *U.S News and World Report*, Jan.17, 1994, p.40.
- Commons, John. R, "Law and Economics", *Yale Law Journal*, 1,1925, pp.371-382.
- Editorial, "Government that failed, India in a sullen mood," *Fortune India*, May15, 2002
- Editorial, "Communal Crimes And Punishment", *The Hindu*, 27-12-2002.
- , "Crime and Punishment", *The Hindu*, 29-08-1996.
- , "Corruption, Crime and Politics." *The Hindu*, 10-05-1998.
- Ehrlich Isaac. "The Deterrent Effect of Capital Punishment. A question of Life and Death", *American Economic Review*, 65, 1965, pp.397-417.
- , "Fear of Deterrence", *The Journal of Legal Studies*, 6, 1977, pp.293-316.
- , "On the Measurement of the Deterrent Effect of Capital Punishment and the Theory of Deterrence", *The Journal of Legal Studies*, 6, 1977, pp.293-316.
- Elmer, Philip. "The Pirates of Cyberspace", *Time*, 1984, pp.38-39.
- Gathani, Batuk. "China is top bribe-payer", *The Hindu*, 1-11-1999.
- George, Rani. "Party grammangalil pada orungunnu"- Series-4, (in Malayalam) *The Malayala Manorama*, 8-3-2001 to 11-3-2001.
- Gibson, Mary, "Rationality", *Philosophy & Pubic Affairs*, 1976, pp.193-225.
- Gopalakrishnan, C.V, "Murky world of white collar crime", *The Hindu*, 30-9-1998.
- Grouchy, Allan. G. "Law, Politics and Institutional Economics", *Journal of Economic Issues*, VII, 1974, pp.623 - 643.
- Hershleifer, J. "Economics from a Biological View Point", *Journal of Legal Economics*, 3, 1977, pp.1-52.

- India Today*, "Turning Points, A Brief History of Secular Crisis".
April 8, 2002, pp .24-25.
- Jayaseelapandian, P. "Understanding money laundering", *The Hindu*,
17-10-2000.
- Jeans. "Drug lord, now overlord", *The Hindu*, 21-01-1996.
- Kenzie, Richard B. "On the Methodological Boundaries of Economic
Analysis", *Journal of Economic Issues*, XII, 1978, P.627-643.
- Kolm, Serge-Christopher. "A Note on Optimum Tax Evasion", *Journal of
Public Economics*, 2, 1973, pp.264-270.
- Iyer, Krishna V.R, "Rowlatt Act, TADA and POTA", *The Hindu*, 4-8-1998.
- Leff, Arthur Allen, "Economic Analysis of Law. Some Realism about
Nominalism" *Virginia Law Review*, 60,1974, pp. 451- 482.
- Lowry, S.Todd and Etal. "The Logic of the Law", pp.111-121.
- Mahurkar, Uday. " The Modi Effect Gujarat", *India Today*, April 29, 2002,
p.40.
- Malayala Manorama*, Onnarakodiyude swarnam ethiyathu vyaja
Passporttil (in Malayalam), 24-7-1997.
- , "15 leksham roopayude kumkumappoovu pidikoodi", 19-10-1999.
- Menon, Leela: " I need a gun for protection", *The Hindu*, 18-2-2001.
- Milovanovic, Dragan. " Marxism and Law ", *Journal of Criminal Law &
Criminology*, 75, 1984, pp.229-306.
- Mishan, E.J. " Pareto Optimality and the Law " *Oxford Economic Papers*,
1967, pp.225-281.
- Mukherjee, Alok. "Abnormal Capital flight to US ", *The Hindu*,
14-10-1996.
- Mydans, Seth. " Easy victims, easy money ", *The Hindu*, 23-3-1996.
- Narasimhan, C.R.I. "Gold is in the news ", *The Hindu*, 16-8-1999.
- National Women's Commission. " Tourism helping child abuse ", *The
Hindu*, 30-11-1996.
- Nayar, Kuldip. " Custodian or Criminal", *The Hindu*, 1-8-1997.
- Nayar, Kuldip. " Custodian or Criminal", *The Hindu*, 1-8-1997.
- Narasimhan, C.V. "Police and the Constitution", *The Hindu*, 20-11-2001.
- Nayar, Kuldip "Custodian or Criminal", *The Hindu*, 1-8-1997.
- Nelaw, Buruce.W, "Formula for Terror", *Time*, 29-81994, P.17-21.

- Nutter, G.Warren. "On Economism" *The Journal of Law and Economics* 22, 1979, pp. 263-268.
- Our Legal Correspondent, "Over 1300 custodial deaths in 2001-2002", *The Hindu*, 4-5-2002.
- Our Staff Reporter, "CBI raid: four Customs officials transferred," *The Hindu*, 6-6-2000.
- , "CAG criticizes Customs on Exemptions", *The Hindu*, 1-4-1997.
- Pannu, S.P.S. "Foreign banks among 130 I.T defaulters", *The Indian Express*, 28-8-1995.
- Parry, O.Hughes. "Economic Theories in English Case Law", *Law Quarterly Review*, 47, 1931, pp.183-196.
- Penberthy, Jefferson. "An Abominable Trade", *Time*, 1985, P.23.
- Philip Llad & Votey Harold.L. "An Economic Analysis of the Deterrence Effect of Law Enforcement on Criminal Activity ", *The Journal of Criminal Law*, 63, 1972, pp.330.
- Polinski, A. Mitchell. "Strict Liability Vs Negligence in a market setting," *American Economic Review*, 70, 1980. pp.363-367.
- , "Economic Analysis as a potentially Defective Product: A Buyer's Guide to Posner's Economic Analysis of Law ", *Harvard Law Review*, 87, 1974, pp.1655-1681.
- Posner, Richard A. "A Theory of Primitive Society With Special Reference to Law ", *The Journal of Law and Economics*, 23, 1980, pp.1-53.
- , "Nobel Laureate Ronald Coase and Methodology," *Journal of Economic Perspectives*, 7, 1993, pp.195-210.
- , "Anthropology and Economics," *Journal of Political Economy*, 1980, p.608-610.
- , "Economic Justice and the Economist", *Public interest*, 33, 1973, pp.109-119.
- , "Some uses and abuses of Economics in Law ", *The University of Chicago Law Review*, 46, 1979, pp.281-315.
- Prabhakara, M.S. "A smoking gun", *The Hindu*, 4 -11-1999.
- Prasad, Manoj. "Top brass were well aware of fodder scam," *The Hindu*, 24-2-1996.
- , "A Mega Scam in Laloo land ", *The Hindu*, 11-12-1996.

- Pushparaj, K.P. "Gold skips legal channel at Karipur; fillip to smuggling", *The Hindu*, 6-4-1999.
- Radyuhin, Vladimir. "Opium, the new religion", *The Hindu*, 20-5-2001.
- Reddy. C.R. "A play in immorality", *The Hindu*, 10-11-1998.
- Robinson, H.W. "Law And Economics", *Modern Law Review*, 1938, pp. 257-265
- Samuels, Warren J. "The Legal -Economic Nexus ", *The George Washington Law Review*, 57, 1989, pp.1556-1578.
- Sebastian, Sunny. "Jaipur emerging as gold market", *The Hindu*, 10-5-2000.
- Sen, Amartya. "Markets and Freedoms: Achievements and Limitations of the Market Mechanism in Promoting Individual Freedoms", *Oxford Economic Papers*, 45, 1993, pp.519-539.
- , "Rational Fools: A Critique of the Behavioural Foundation of Economic Theory", *Philosophy & Public Affairs*, 6, 1976/77, pp.317-344.
- Serril, Michael S. "A Drug Deal", *Time*, 7-11-1994, pp.21-23.
- Shoup, Carl.S, "Standards for Distributing A Free Government Service", *Public Finance*, 19, 1964, pp.383-392.
- Sigh, Balbir, "Making Honesty The Best Policy ", *Journal of Public Economics*, 2, 1973, pp.257-263.
- Sjoquist, David Lawrence. "Property Crime and Economic Behaviour. Some Empirical Results", *American Economic Review*, 1973, pp. 305-311.
- Skogh, Goran. "A Note on Gary Becker's Crime and punishment: An Economic Approach", *Swedish Journal of Economics*, 1973, pp.950-976.
- Smith, M.B.E. "Is there a prima facie obligation to obey the law ", *The Yale Law Journal*, 82, 1973, pp.950-976.
- Smolowe, Jill. "The Jackal ", *Time*, 29-8-1979, P.22-24.
- Special Correspondent. "Caseukal illathavunnu, swanthakar rekshapedunnu", (in Malayalam), *The Malayala Manorama*, 28-1-2000.
- , "Rajakeeyamaya rangapravesam ", (in Malayalam), *The Malayala*

- Manorama*, 9-11-1998.
- Srinivasn, T.N. "The Evasion: A Model", *Journal of Public Economics*, 2, 1973, pp.339-346.
- Staff Reporter, "Child labour persists despite awareness", *The Hindu*, 8-10-1996.
- Stern, N.H. "An Economic Model of Supply and Control of Recorded Offences in England and Wales", *Journal of Public Economics*, 2, 1973, pp.289-317.
- Stigler George, J. "The Optimum Enforcement of Laws", *Journal of Political Economy*, 1970, pp.526-536.
- Subbu, Ramnath. "Monsoon hopes revive gold demand" *The Hindu*, 27-5-2000.
- Swaminathan, S. "The urea scam-the hidden message", *The Hindu*, 9-10-1996.
- Editorial, "Car theft: Big business in US", *The Hindu*, 21-7-1995.
- The Hindu*, "Crime and Punishment", 29-8-1995.
- , "Crime in Italy", 6-4-1996.
- , "E.D Raids ITC Office, FERA Violations", 31-10-1996.
- , "Burden of corruption in daily life", 27-12-2002.
- , "Taliban encouraging drugs production", 19-10-1996.
- , "Gold remains a secure investment," 22-4-1977.
- , "One Lakh Nepalese Sex Workers in India," 22-08-1998.
- , "A.G Unearths Rs.38,000Cr. lottery scam in Nagaland," 22-07-1999.
- , "I.T.C Chief admits FERA violations", 6-11-1999.
- , "Raids on Vellapally unearth 'Rs. 10 Cr. Assets', 6-11-2000.
- , "Towards People's Police", 25-12-1999.
- , "Banks and the Borrower", 14-07-2000.
- , "Striking terror at will", 6-8-2000.
- , "Burden of corruption in daily life," 27-12-2002.
- Thurow, Lester C & Rapport, Carl, "Law enforcement and Cost Benefit Analysis," *Public Finance*, 24, 1969, pp.48-64.
- Trubek, D, "Toward a Social Theory of Law: An Essay on the Study of Law and Development", *The Yale Law Journal*, 82, 1972, pp.1-50.

- Tullock, Gordon, "Does Punishment Deter Crime?" *Public Interest*, 1974, pp.34-37
- Vinay, Kumar, "Timber mafia running amok in North-East," *The Hindu*, 4-12-1999.
- Vittal, "Zero tolerance to corruption-II, *The Hindu*, 23-11-1999.
- Witte, Ann Dryden. "Estimating The Economic Model of Crime with Individual Data" *Quarterly Journal of Economics*, 1980, pp.57-84.
- Wolpin, Kenneth I. "Economic analysis of crime and punishment in England and Wales, 1894-1967", *Journal of Political Economy*, 86, pp.818-839.

IV. TABLE OF CASES

- Balvinder Kaur v. Collector-1990 (45) E. L. T. 61 (Tribunal).
- Collector v. Hindustan Motors Ltd-1979 (4) E.L.T (1313) (Cal).
- Digvijai Singhji Spinning & weaving Mills Ltd. v. Collector-AIR 1958
Bom.305.
- Directorate of Enforcement v. Deepak Mahajan-1994 (70) E.L.T.12 (SC).
- Directorate of Revenue Intelligence v M.K.S. Abu Bucker-1990 (45) E.L.T.
51 (Mad.).
- Eastern Steamship Pvt. Ltd. v Union of India -1986 (25) E.L.T.683 (Bom.).
- Everett Orient Line Incorporated v Jasjit Singh- A.I.R 1959 Cal.237.
- Gnash Meade v. Secretary of State - AIR 1991 Bom. 30.
- Gopal Saran v. Collector -1987 (30) E.L.T 533 (Tribunal).
- Gyanoba Yashwant v. Collector - AIR 1974 A.P .76.
- Haji Abdulla Haji Ibrahim Mandhra v.Suptd.of Customs-1992 (60)
E. L.T.176 (Guj).
- Harbans Singh Sardar Lena Singh v. The State- A.I.R.1970, Bom. 79.
- Hindustan Electronics (Gem House) v. Collector-1987 (31) E.L.T.252
(Tribunal).
- Hong Kong Island Shipping Co Ltd. v Additional Collector-1986(26)
E.L.T 35(Bom.).
- Indian Express Newspapers (Bom.). Pvt. Ltd. V. Union of India - 1999
(110) E.L.T.3 (SC).
- Indian Leaf Tobacco Development Co. Ltd. And ITC Ltd. v. Union of India -

- 1984(16) E.L.T. (Mad.).
- Indian Steamship Co. Ltd. v. Collector -1994 (72) E.L.T.977 (Tri).
- Indo Nissin Foods Ltd. v. Union of India-1993 (68) E.L.T.292 (Kar.).
- Issa Yacub Bichara v. State of Mysore- A.I.R 1961 Mys.7.
- J.G. Bachoter, Superintendent of Customs v. Dost Mahmud Amad Sumra-
1997 (96) E.L.T.32 (Guj).
- Jain Exports (P) Ltd.v.Collector -1998 (33) E.L.T.199 (Tri.).
- Jayantilal R. Patel v. Collector - 1986 (25) E.L.T.696 (Tribunal).
- Jeevanraj v. Collector -1985 (22) E.L.T.44 (Kar.).
- Kala Gems v. Collector -1997 (92) E.L.T.156 (Tribunal).
- Kanungo & Co. v. Collector-A.I.R. 1965 Cal. 248.
- Kasinka Trading v. Union of India-1994 (74) E.L.T. 782 (SC).
- Kuttykrishnan Nair v. T.C.Mohammed-1974 (18) MLJ (Cri). 8.
- Indian Charge Crome-1999 (112) E.LT.753 (SC).
- Laxman Padma Bhagat v. The State-A.I.R.1965 Bom.195.
- Laxmi Mohanraj Kothari v. State of Maharashtra -AIR 1979 (SC) 1279.
- Leo Roy Frey & Thomas Dana v. Superintendent-1983 (13) E.L.T. 1302
(SC).
- M.K.Mohd.Hussain v. K.Gangasetty -1994(110) E.L.T.223 (SC).
- Macneill & Magor Ltd.v.Collector -1987(28) E.L.T.318 (Tribunal).
- Manoharlal Bhogilal Shah v. State of Maharashtra-1983 (13) E.L.T.
1450(SC).
- Maya Enterprises v Collector of Customs, Kandla-1994 (71) E.L.T. 817
(Tribunal).
- Moti Megharaj Gehi v. Collector-1987 (31) E.L.T. 508 (Tribunal).
- Muhammed Yusuff v. Union of India, 1986(1) Cr.L.J 334 P.339 (Bom.)
- Pine Chemical suppliers v. Collector of Customs -1993(67) E.L.T.25 (SC).
- Poolpandi v. Superintendent of Central Excise-1992 (60) E.L.T.24 (SC).
- Prabha Lohia v. Collector -1994 (70) E.L.T.559 (Mad).
- Prabhat Cotton & Silk Mills Ltd. V. Union of India-1982(10) E.L.T.
203(Guj.).
- Prakash Cotton Mills Pvt. Ltd. V. B.N.Rangwani-73 (Bom.) L.R 200.
- Ramesh Chandra v. Emperor of India - ILR 41 Cal. 350.
- Ravindra Janardhan Nair v. State of Maharashtra-AIR, 1991(52), E.L.T

524(Bom.)

Regina v. Hussain -1969 (2) All. E.R.117 (1120).

Romesh Chander v. Superintendent- 1975 Cri.L.J.739.

S.G.Rajadhyaksha v. Leela Daulatram Uttamchandani-1991 (51) E.L.T.3
(Bom.).

Sadruddin Suleman Zaveri v J.H.Patwardhan AIR 1965 Bom.224.

Sandip Agarwal v. Collector-1992 (62) E.L.T.528 (Cal.).

Santhanam v. Collector-1995 (79) E.L.T.564 (Mad.).

Seraveetil Musthafa v. Commissioner- 2000(120) E.L.T.772 (Tribunal.)

Shellina Sultan Ali Habib Esmail v. The Customs-1995 (78) ELT.141
(Del.).

Siris Aqua Ltd. v. Commissioner- (115) E.L.T. 186 (Tribunal).

SoniVallabhadas Liladhar v. Assistant Collector-1983 (13) ELT.582
(Tribunal).

South India Coir Mills v. Additional Collector-AIR 1971 Cal. 441.

State of Gujarat v. Laxman Jiwan- (1976) 17 Guj.L.R.321.

State of Maharashtra v. Major Hans George- AIR 1965 (SC) 772.

State of Maharashtra v. Miss Surbi Chagan Hirabhai Maraman Devsi -
1992 Cri.LJ. 1384 (Bom.).

State of Maharashtra v. Modh Subnam Sumania-1977 Cri.LJ.893 (Bom.).

State of Maharashtra v. Umar Badshah Hassan Damudi-2000 (125) E.L.T.
437 (Bom.)

Turlock Singh Baja v. Collector -1985 (22) E.L.T.587 (Tribunal).

Ukchand Ranka v. Assistant Collector -1987 (30) E.L.T.144 (Mad.).

Union of India v. A.V.Narasimhalu-1983 (13) E.L.T 1534 (SC).

Union of India v. Indian Charge Crome-1999 (112) E.LT.753 (SC).

Union of India v. Abdul Sattar Abdul Gani -1988 E.L.T. (37) 541(Guj.).

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