

TERRORISM FINANCING- INDIA FAILS TO HIT THE BULL'S EYE

Adv. Mrs. Mayura Sabne-Botungale

Visiting Faculty of Law at Navalmal Firodia Law College, Pune, Dist- Pune, State – Maharashtra

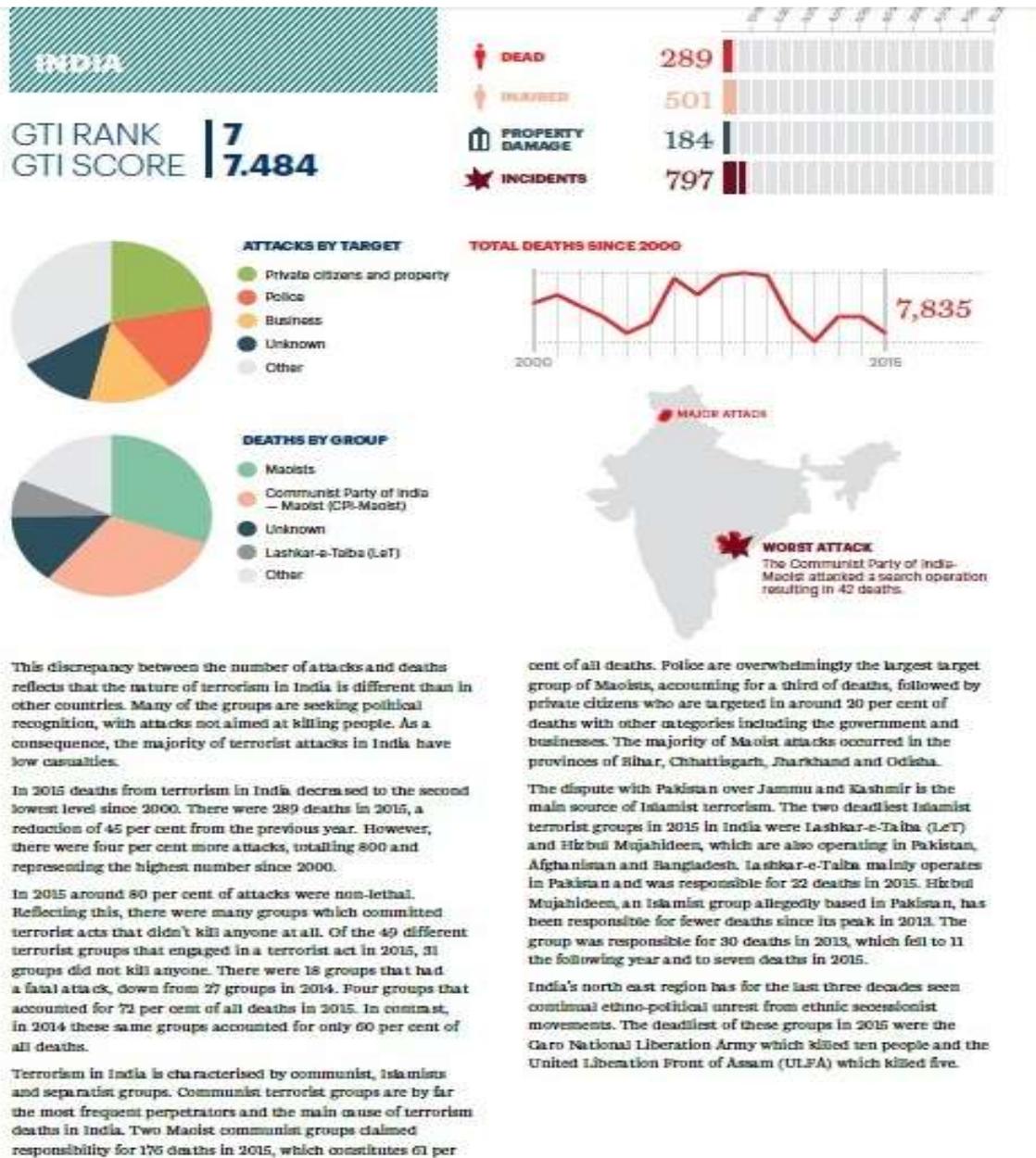
Terrorism, in all its forms & manifestations, is one of the most vicious and unjustifiable crime against the whole humanity. The ongoing investigations of NIA and other global investigation agencies in terrorist attacks reveal that the lifeblood of this felony is finances. Along with whole world, India is also vigorously pursuing its agenda, both at international, regional & national levels, to strengthen counter-terrorism mechanisms targeted at the menace of terrorism & its financing. Thus, it can be seen that terrorism financing is the most significant, inseparable and integral element of any terrorist activity or organization or network. It is the soul of terrorism which keeps it sustaining for ages. In the light of this background, the researcher has traced the conceptual development of terrorism financing initially in the present research paper. Further, the researcher has taken an overview of various sources through which funds are obtained and channels of funding through which money reaches its evil destinations. After having understood the nature of terrorism financing, the researcher has tried to evaluate the Indian counter-terrorism mechanism along with enforcement and operational initiatives. Along with the assessment of these legal avenues, the Researcher has given a glance at social policies and outlook which silently supports the growth of the evil of terrorism & it's financing. After this socio-legal critical analysis, the researcher has tried to put forth some valuable practical recommendations based upon the conclusions.

Key Words- Terrorism Financing, Money Laundering, FEMA, Hawala, Demonetization

1.INTRODUCTION-

Source- The Global Terrorism Index, 2016

The above mentioned information[1] portrays the nature of terrorism in India.



The above piece of information itself speaks that India faces the threat of various forms of terrorism which has spread in the nook and corner of the country. Time and again, India has stressed the fact that terrorism is survived and thrived on the blood of finances. Thus, terrorism financing is the crux of survival and spread of terrorism. The financing of terrorism is best described as octopus with tentacles spreading across vast territories as well as across a wide range of religious, social, economic and political realities[2].

Initially, the present research tries to trace the conceptual development of term "terrorism financing". In order to understand the intricacies of the research topic, the Researcher has tried to take a brief overview of the various sources and channels through which funds are obtained and are either placed and integrated into the financial system and then used or directly mobilized in the hands of these terrorists.

Thus, after examining the basic concepts related with terrorism financing, the major consideration of the Researcher is the Indian legal framework and social policies and outlook dealing with the subject of terrorism financing. Therefore, the Researcher has critically examined the counter - terrorism financing regime along with regulatory and enforcement mechanism developed by India from socio-legal perspective.

Thus, by doing all the above mentioned detailed investigation through socio-legal lens, the Researcher has tried to diagnose the measures and find out existing lacunas. After arriving at conclusion, the Researcher has provided some recommendations.

2.OBJECTIVES OF RESEARCH-

The present research is carried out with a view -

- 1] To understand the concept of terrorism financing and study its sources and channels;
- 3] To evaluate the Indian legal provisions dealing with suppression of terrorism financing;
- 4] To assess the successes and failures of the Indian legal mechanism and social policies dealing with socio-legal challenges posed by terrorism financing;
- 5] To provide practical recommendations for converting failures into successes;

3.RESEARCH METHODOLOGY-

The present research is doctrinal research. It employs descriptive, analytical, evaluative and interactive legal research models. The present paper has utilized primary data available from various statute books and secondary data which are available from various books written by authors of international and national acclaim, various online journals available on the website of jstor, oxford and online resources of websites of Finance Ministry of India etc. The Researcher has used SILC Rules for citation methodology.

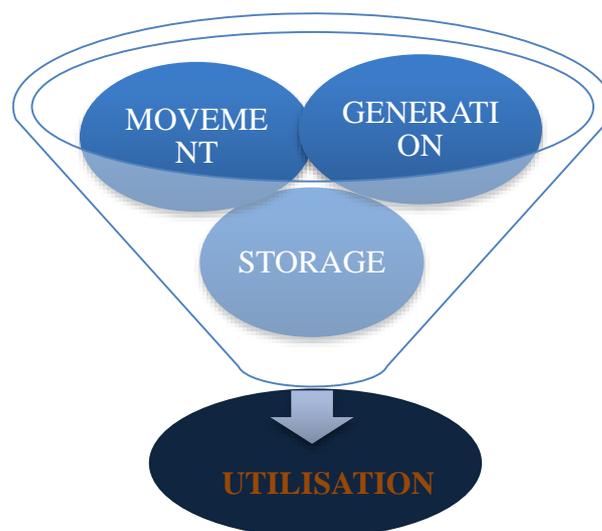
4. ANALYSIS-

A] CONCEPTUAL DEVELOPMENT OF TERM “TERRORISM FINANCING”, SOURCES AND CHANNELS-

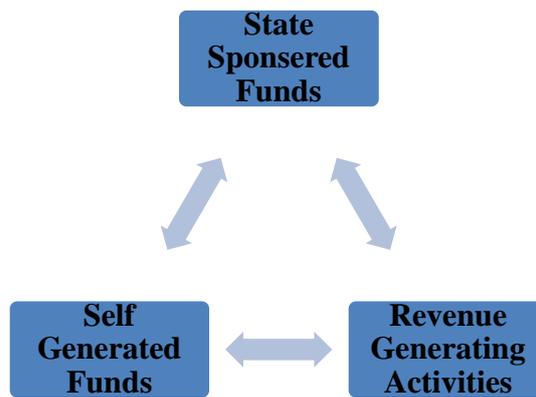
The World Bank and International Monetary Fund have defined financing of terrorism as “the financial support, in any form, of terrorism or of those who encourage, plan or engage in it.”[3]The fund raising methods of wide range of groups are most often lumped together under the general rubric of terrorism financing.[4] Terrorism financing is generally understood as an activity which deals with collecting and accumulating funds in order to support terrorism or donating to the terrorist outfits with complete knowledge regarding the intentions of the receiver of the funds.

Thus, it can be seen that terrorism financing covers within its fold all those activities which provide funding to terrorist activities of operation, training, propaganda, recruitment, compensation , social support mechanisms in one form or another. Terrorism financing is a financial as well as a public crime.

The stages of terrorism financing are as follows-

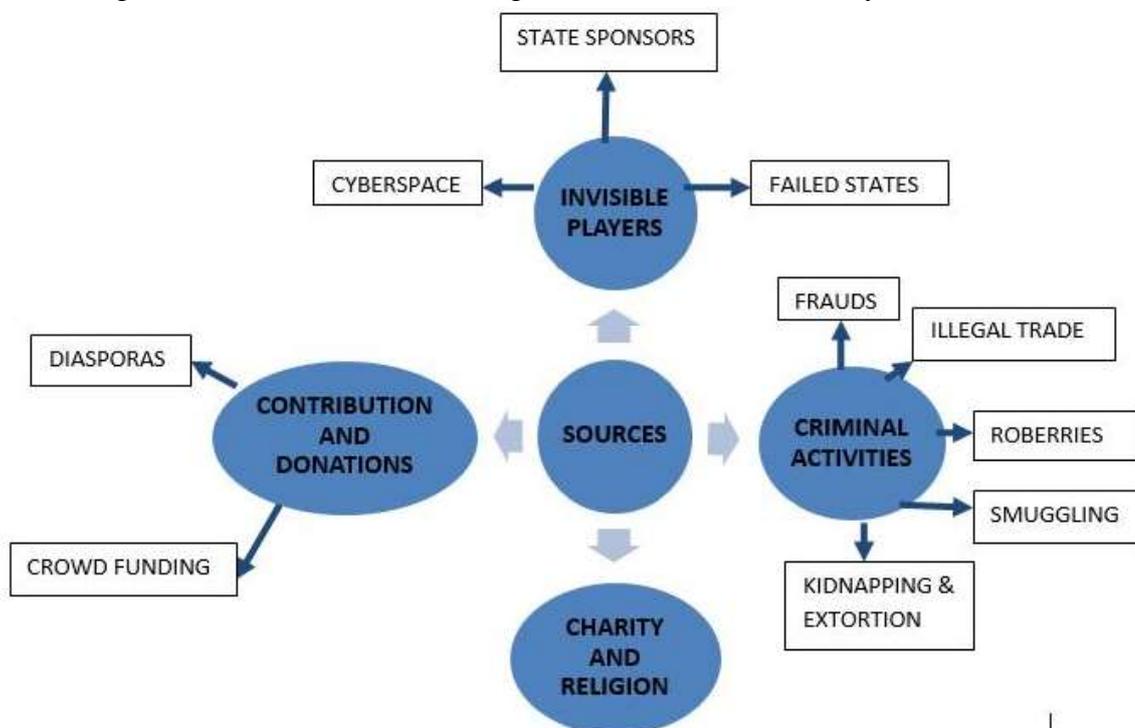


Following are the types of sources



Out of all these three types, India has and is suffering from state sponsored terrorism funding by Pakistan. Pakistan[5] is one of those states which are known to have been actively involved in terrorism financing directly and knowingly since decades.

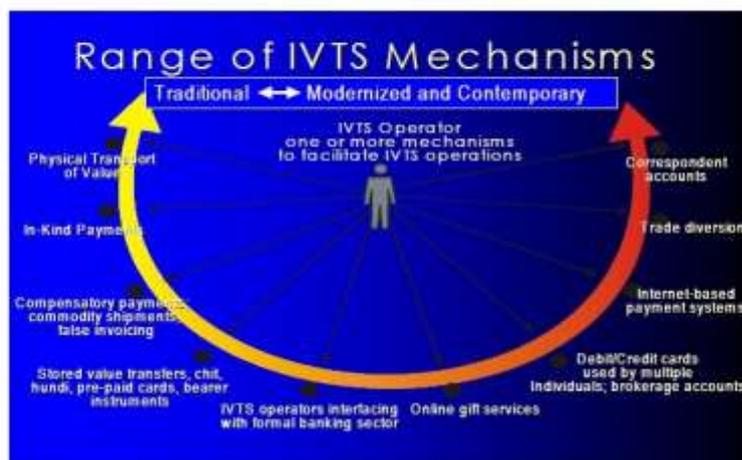
Following are the various sources through which funds are raised by terrorists-



Money generated acquires significance only when it is channeled safely through proper path to reach its destination. Following are the various channels employed by terrorists to move their funds-

1. Formal Financial Systems;
2. Physical Channels of Personal Courier;
3. International Trade System;
4. Diplomatic channels;
5. Informal Value Transfer Systems;

In the Indian context, it has been found that cross-border trade, smuggling of precious materials like gold and other criminal activities like bank robbery are some of the important sources of terror funding. In case of channels of terrorism financing, hawala is the most widely used to channelize terror funds. Some ways of hawala transfers are shown in the following picture-



[6]

B) INTERNATIONAL & REGIONAL COMMITMENTS OF INDIA -

1. Role in United Nations-

India has always taken a lead role in United Nations for carrying forward the fight of international community against terrorism. India is signatory to The International Convention for the Suppression of the Financing of Terrorism, 2001. India has actively and progressively implementing the Security Council Resolutions pertaining to terrorism financing.

India has drafted the Comprehensive Convention on International Terrorism in the year 1996 and submitted to United Nations for consultations and adoption. The Convention is still under consultation in the UN Committee. Every time after the terrorist attacks anywhere in the world, India has urged the international community to set aside their differences on various issues arising out of interpretation of the Convention and adopt the Convention unanimously.

2. Role in Regional Organizations-

India is one of the active members of SAARC AND BRICS. India has ratified and is signatory to the SAARC Regional Convention on Suppression of Terrorism (1987) and its Additional Protocol (2004). India has been an architect of recent BRICS- Xiamen Declaration[7] which is a great leap in the development of regional counter-terrorism strategy. India is also working closely with European Union to cut the flow of funds and economic resources to individuals and to other entities involved in terrorism.[8] Thus, it can be seen that India has committed robustly to fight the menace of terrorism financing and to accord regional co-operation with full strength and vigor on multiple fore.

To enhance the functionality of the FATF in India, government agencies have launched a National Risk Assessment exercise on January 2016 so as to identify the sectors that are most susceptible to money laundering and terror funding and thereby plug deficiencies, if any. This conforms to the FATF recommendations. The World Bank had made a customizable self assessment software tool available to Indian agencies which emphasizes on all vital aspects of money laundering, including terror financing risks, and helps identify threats and vulnerabilities in different sectors.[9]

C) LEGISLATIVE INITIATIVES-

1. One of the premier acts dealing with the issue of terrorism and its financing is **The Unlawful Activities Prevention Act** which was passed and enacted in the year 1967 and amended in the years 2008 and 2013.

The analysis of the said Act points out that the provisions which have targeted at terror funding are devised on two lines- funds for unlawful association and funds for terrorism and its allied activities. Besides providing direct punishment for raising funds for terrorist organizations and acts, it also imposes punishment for holding proceeds of terrorism. The newly added Section 51A[10] empowers Central Government with special powers

to freeze, seize and attach funds, other financial and economic resources held, owned or possessed by terrorist. This section reflects the international commitment of freezing assets immediately in order to thwart the terrorism financing.

The 2008 and 2013 amendments have recognized the dynamic and changing nature of terrorist organizations and networks in correct perspectives. 2013 amendment has rightly targeted one of the significant channels of counterfeiting currency[11] which funds terrorism on Indian soil to the largest extent. The amendments of 2013 has widened the scope of terrorist act by inserting a new schedule[12] which lists international treaties which contain various acts that can be termed as terrorist act. However, the perusal of the Schedule points out that the international convention dealing with terrorism financing is not included in the said schedule. Terrorism financing is a direct terrorist act which is required to be included within the purview of “terrorist act” so as to obstruct other terrorist acts.

The Act was relevant when drafted. It underwent significant amendments to cope with changing times but it lags behind in encompassing the changes and developments taken place in the typologies and nature of terrorism and terrorism financing. Procedural aspect is appreciable, but how much it is utilized is undecided question.

2.The second most important Act which addresses the issue of terrorism financing is **The Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1976** which is the follower of The Maintenance of Internal Security Act, 1971 (26 of 1971).

The said Act is relevant in the context of terrorism financing because of the facts that-

1. Foreign exchange is highly vulnerable component for the crime of terrorism financing and the Act tries to conserve the foreign exchange for national security and economic stability and
2. Smuggling is one of the important sources and channels of terrorism financing and the Act is enacted to remedy the menace of smuggling.

The critical analysis of the said Act reveals that the Act has been based on the policy of providing preventive detention which is in conformity with the constitutional mandate given in Article 22 of the Constitution of India. However, the said Act does not itself define the main elements of foreign exchange or what is meant by its conservation and augmentation. The grant of discretionary powers, use of value loaded and ambiguous words like “satisfaction of the officer”, imprecisely worded grounds for passing the detention order dilutes the strength of this law and makes it prone to the abuse by corrupt officials. The execution of the detention order has been left at the mercy of traditional criminal justice system, which is already riddled with its own limitations. Thus, the Act lacks clarity in terms of provisions and leaves the fate of law to be decided at the hands of Bureaucracy.

3.Another important legislation in terms of terrorism financing is **The Foreign Exchange Management Act [FEMA], 1999.**

Terrorism financing is closely connected with foreign exchange because it involves transnational generation and movement of money. Therefore, law dealing with the management of foreign exchange assumes great significance form the context of study of terrorism financing.

The evaluation of the said Act points out that the Act has extensive applicability[13] and it covers within its ambit all types of financial instruments and variety of financial transactions. The provisions of the Act endow legality to various transactions and dealings of foreign exchange and illegality is punished as civil contravention. The Reserve Bank of India is rule making and regulatory body for the purpose of implementation of this Act. It has devised electronic reporting system[14] which facilitates implementation of the provision. Section 36[15] of the said Act provides for the establishment of Directorate of Enforcement for the purpose of investigation into contraventions. The Central Government is amending these rules and regulations from time to time to keep them updated.

Thus, the Act represents a comprehensive and clearly worded framework dealing with management of foreign exchange. Apart from providing well articulated substantial provisions, it lays down enforcement mechanism at length. However, the inclusion of the ground of “public interest” for revocation of orders or for suspension of operation of the Act brings uncertainty and weakens the vigor of law. Further, the limited reach of execution authorities in case of civil detention orders passed against extra-territorial entities obstructs the effective enforcement of law. Considering the globalization of economy, this proves to be an important impediment in the implementation of this Act.

4. The offence of money laundering is the prime channel of terrorism financing. Due its proximity with terrorism financing, the countering mechanism also takes the same line of action. In the light of this background, **The Prevention of Money Laundering Act, 2002 (Amended Up to Date)** is the milestone in Indian Counter Terrorism Financing measures. It formulates rules and regulations for maintaining stability of financial system and to protect its integrity.

The said Act was enacted with a view to prevent money-laundering and to provide for confiscation of property derived from, or involved in, money-laundering.

The scrutiny of the said Act reveals that it covers within its purview some of the important sources and channels of terrorism financing which are highly vulnerable to its threat. Besides criminalizing the act of money laundering, it has laid down a detailed mechanism for attachment, adjudication and confiscation of proceeds of crime. The said Act has enlisted the obligations of reporting entities.[16] Apart from this, the Act imposes monetary punishment for the non-compliance by the Reporting entities. Along with the Appellate mechanism, the said Act also sets up a mechanism of special courts for speedy trial. The provisions for reciprocal arrangement for assistance in certain matters and procedure for attachment and confiscation of property are intended to give effect to cross-border legislations which are of similar nature dealing with the same offence of money laundering and empower the Indian authorities to carry out transnational investigations in required cases.

The Scheduled offences under the said Act cover wide variety of offences ranging from offences under UAPA to environmental protection related statues. The Prevention of Money Laundering (Maintenance of Records) Rules, 2005 (Amended up to date) lay down minute details of variety of provisions contained in the parent Act.

The said Act is comprehensive and consolidated piece of legislation dedicated solely to the offence of money laundering. However, it can be seen that the punishment provided under the Act for commission of offence of money laundering is very light as compared to the gravity of the offence. Lack of stringent actions against reporting entities weakens the dynamism of the law.

5. **The Foreign Contribution (Regulation) Act, 2010 [FCRA]** was enacted to curb the misuse of global financial opportunities for illegal and malicious purposes including funding terrorist activities. The said Act was enacted to-
 6. to consolidate the law regulating the acceptance and utilization of foreign contribution or foreign hospitality by certain individuals or associations or companies and
 7. To prohibit acceptance and utilization of foreign contribution or foreign hospitality for any activities detrimental to the national interest.

Endowed with extra-territorial competence, the Act has encompassed broad and elaborate definitions. The acceptance of any foreign contribution from foreign source and its delivery is well regulated to nab the state sponsored terror funding as well as to restrict the misuse of charities for terrorism financing. Apart from this, the transfer of foreign contribution is also supervised and regulated. The Act encompasses detail provisions with regard to the registration of non-governmental organizations for the purpose of acceptance of foreign

contribution. The Act provides punishment for civil contraventions as well as lays down penal provisions for non-compliance with provisions of this Act.

However, the exclusion of certain sources of foreign contribution like business payments, legal remittances, and help from relatives is not appreciable because these are proved to be vital sources of terrorism financing. The critical scrutiny of the disqualification grounds mentioned in the Sub section 4 of the Section 12 and of grounds for cancellation of certificate elucidated in Section 14 nowhere includes “terrorism financing”. In spite of having glaring experience of misuse of foreign contributions for the purpose of funding terrorism[17], the Act has failed to take cognizance of its severity and widespread existence.

6. The cyberspace is most widely abused today by the terrorist organizations and networks for spreading their wicked propaganda, recruiting and raising funds. India is also no exception to this nuisance.

The cyber law in India is mainly encoded in **The Information Technology Act** which was passed in the year 2000 and amended in the year 2008. With the passage of the time, new provisions dealing with cyber terrorism and national cyber security[18] were inserted. The perusal of newly added provisions reveals that it nowhere includes the offence of terrorism financing committed through electronic medium.

The misuse of cyberspace for raising funds through digital currency is emerging threat to Indian financial security. However, current Indian IT Act does not contain any provisions with this regard. The terrorist organizations are abusing websites for malicious propaganda and inspiring and radicalizing Indian youth to join terrorist organizations. Still Indian cyber law does not contain any provision for punishing hate speech made by using the platform of internet or social media.

D) EXECUTIVE INITIATIVES AND POLICIES-

1. Analysis of Enforcement Agencies-



The critical analysis of the modus operandi of FIU reveals that some transactions may escape Suspicious Transactions Reporting requirements altogether: lower-value transactions below the reporting threshold, surreptitious cash couriers, trade-based transactions, sales of illicit diamonds, gemstones or gold, smuggling, prepayment of credit cards, travel tickets, and the like. Moreover, the diversion of legitimate charitable donations to terrorist ends is particularly problematic for FIU to track in foreign jurisdictions.[19]

Further, if we critically analyze the organizational structure of FIU-IND, we can see that it employs only 75 personnel which is very negligent number for such a vast country like India. Thus, it can be said to be

understaffed. Moreover, all the personnel are recruited from different organizations which are regulatory bodies and the training of FIU-IND for the purpose of intelligence gathering is a questionable fact. Many cases have been decided within a span of three to five years which seems to be time-consuming considering the dynamic nature of the crime. Further, it can be seen that since 2014, FIU-IND has not furnished any report of its activities.

The analysis of the performance of Enforcement Directorate from the year 2012 to 2015 shows that during the period of three years, only 111 cases were investigated. Only 52 persons were arrested and only 173 prosecutions complaints were filed for the purpose of implementation of PMLA. Under the Foreign Exchange Management Act, the number of investigations initiated, as on 13/02/2012, were 5823 and as on 31/03/2015, 4776 investigations were still pending. Out of 1560 show cause notices issued in the year 2012, 1304 were still pending for adjudication in the year 2015.

These figures point out towards the fact that the Enforcement Directorate is not functioning effectively and it is failure on its part that it is struggling with such a huge pendency of cases. The sanctioned strength of the Directorate is 2064 and as on 31/03/2015, only 682 persons were employed in it. It means that it is functioning with only 34% of sanctioned staff. The scarcity of human resource is hampering its efficiency and obstructing timely investigations and prosecutions. It can also be seen that it nowhere deals with the offence of terrorism financing independently.

NIA has been established under the NIA Act, 2008 but the said Act is not updated according to emerging trends. Since 2009, NIA has investigated 11 cases related to terror funding.[20] NIA is carrying on investigations into various terrorist acts performed by ISIL, Jaish-e-Mohamd, FICN Smuggling Gangs, Harkat-ul-Mujahidin. It investigates the offences of abduction by terrorists, counterfeiting of Indian currency, connections with international terrorist organizations like ISIL, criminal conspiracy for planning and executing terrorist attacks, terrorism financing and many other. It can be seen that NIA has registered and investigated 159 cases till date. Out of that, since 2011, hardly four to five cases have been closed after investigation and only in two matters, judgments have been delivered. All other cases are at the stage of pending investigations. This is dismal state of affairs. It shows delay in investigations and remedy of effective and speedy trial is not provided in reality.

If we analyze the operational aspect of NIA, the branch offices of NIA are very few compared to the population of India and number of offences it needs to investigate. There is no branch office located nearby the Rajasthan border which touches Pakistan, which is hotbed of allied terrorist activities. The agency is facing as much as 30 percent manpower shortage on its sanctioned strength of a little over 800 people. This has forced the agency to depend on outside agencies. The shortage is worst in Kolkata and Guwahati, which have emerged as the hotbed of Jihadi terrorism.[21]

2. Role of SEBI & RBI-

Pursuant to its agenda to promote the development of the securities market in India and in order to fulfill its mandate under the Prevention of the Money Laundering Act, 2002, Securities and Exchange Board of India (SEBI) has issued Guidelines for Anti-Money Laundering Measures. These Guidelines obligate senior management of a registered intermediary[22] to establish appropriate policies and procedures for the prevention of money laundering and terrorist financing and ensure their effectiveness and compliance with all relevant legal and regulatory requirements.

The Guidelines put forth by SEBI are all encompassing. The identification, verification, monitoring of clients, the classification of customers according to the perceived risks, reporting requirements and suspicious transaction reporting aid the investigation authorities in constructing money trail in case of investigation into alleged terror funding links. However, it must be noted that these Guidelines are applicable only to the registered intermediaries. The unregistered intermediaries are left out of its purview and the study of sources

and channels of terrorism financing makes it clear that unregistered players play vital role in raising and moving funds. This is serious loophole which breaches the global standards set by FATF and needs to be rectified with immediate effect. Further, it can be seen that these are merely the Guidelines and their breach entails the liability of payment of monetary penalty. Therefore, these Guidelines must be converted into Regulations so that they can be made liable for more strict enforcement measures.

In order to fulfill its protective function, every year the Reserve Bank of India issues Master Circular with regard to Know Your Customer (KYC) norms / Anti-Money Laundering (AML) standards/Combating of Financing of Terrorism (CFT)/Obligation of banks under PMLA, 2002. Same types of Circulars are also issued with respect to the Non-Banking Financial Companies.[23] These Master Circulars are devised on the international standards which require the banking and non-banking entities to identify their customers, verify their identity, monitor their transactions, report the suspicious transactions and maintain appropriate record. These Circulars expire each year; therefore they are updated from time to time. However, as they are short-lived, they have transitory value.

Apart from these Master Circulars, RBI has issued Master Direction - Know Your Customer (KYC) Direction, 2016 to strengthen the mechanism of AML/CTF. This Direction is issued in pursuance of the Prevention of Money Laundering Act, 2002 and the Rules made there under. This Direction is made applicable to all the listed entities and lays down detailed principles which are required to be followed while fulfilling their KYC obligations.

RBI has also warned that any user, holder, investor and trader dealing with virtual currencies would be doing so at his/her own risk. The absence of counter parties in usage of virtual currencies including Bitcoins, for illicit and illegal activities in anonymous/pseudonymous systems could subject the users to unintentional breaches of anti-money laundering and combating the financing of terrorism laws.[24] However, it has to be noted that the use of virtual currency is not regulated by any law or regulation in India. Mere warning is not sufficient to tackle and prevent the misuse of electronic currencies.

3. Demonetization Policy-

Demonetization refers to the decision of RBI/Government to recall the status of a currency note to be used as a legal tender. Usually all the currencies issued by RBI can be used as a legal tender as the value they carry is promised by RBI and once the value has been demonetized/recalled/revoked, the currency note cannot be used.[25]

The Government of India maintained that it announced the demonetization policy in the month of November 2016 with a view to tackle the menace of black money/parallel economy/shadow economy & to prevent the cash being used for terrorist activities/terror funding.[26]

The drive of demonetization initially hit the roots of terrorism financing to some extent. In his statement to the Lok Sabha, Minister of State for Home Affairs Kiren Rijiju said that insurgent groups in North East, Maoists and terror groups in Kashmir have suffered losses of around Rs 800 crore. The money amassed by the armed groups mostly in cash through extortion, taxation and illicit hawala transfers to sustain their operations, logistics and support their manpower, is now as good as scrap paper.[27]

The demonetization initiative is showing impact upon the sources of terrorism financing. For example, according to data accessed by Times of India, there have been 13 bank robberies and burglaries and 9 such attempts across the Kashmir Valley after the demonetization.[28] The sources have analyzed that before demonetization, local terrorists had hoards of cash which they were using for funding terrorist activities in valley. But after demonetization, this way was closed. This example also points out how demonetization is becoming responsible changes in the use of sources of terrorist funding.

Demonetization will deal a severe body blow to the bad money generated by the underworld, black marketers, criminals, dealers and terrorists, temporarily. But it is not a permanent death knell for terror groups,

intelligence officials and counter-terrorism, experts warn.[29] The dynamic policy and adaptive nature of terrorist networks is neutralizing the impact of the said policy. The counter-terrorism experts have opined that demonetization will hit the terror funding but only for a short period. The terrorists will find another ways to move their funds. Therefore, only the upcoming developments will help to evaluate the long term impact of demonetization.

G) SOCIAL POLICIES AND OUTLOOK-

India is the world's largest democracy and a land of unity in diversity. Democracy ensures its subjects the right to live the life with dignity and equality. Since unknown times, India has cherished these democratic values in their true spirit. All the major and minor sects and religions have cohabited happily on this land since times immemorial. However, the British Rule and its divide and rule policy had sown seeds of partition on religious lines. Till date, India has been unable to shed this colonial legacy and continues to walk on the same path, with more aggressive and exclusionary attitude.

The Indian politics thrives on religious divisions and this ultimately fuels the social and cultural divisions. Today, the religious minority in India is left out of the mainstream of development and is struggling to achieve its own identity and existence. The lack of good governance and sympathetic administrative attitude towards them has forced them to adopt the extremist and terrorist ideologies. Those who are unable to involve directly in terrorist activities are supporting terrorism, within and outside country, through financial means. The winds of globalization have further fuelled these hostile sentiments and have facilitated the participation in direct and indirect ways.

Today, India lacks a consolidated social policy to assimilate the minorities into the mainstream. All the measures are guided by political considerations and therefore, they appease one religion while hurting the sentiments of others. India has always embraced refugees and stateless people into its bosom. But the recent debate of assimilating Rohingya refugees in India[30] out of fear of national insecurity is a mere outcome of insensitive and unreceptive attitude guided by religious considerations. The basic problem lies in the fact that India does not have any consolidated legislation to deal with the issue of migrants and refugees. Nor it has formulated any sound and long-lasting policy to tackle the socio-legal issues arising out of migrant crisis. Moreover, the voices of victims of terrorism are neglected and not taken into consideration while investigating or formulating any counter-terrorism strategy.

All these negative waves are breeding crime-terror nexus and are aiding cross-border terrorists to exploit various sources and channels for funding their malicious terrorist plans.

6) CONCLUSION AND RECOMMENDATIONS-

It is unfortunate reality that terrorism will keep haunting the humanity till infinity. Considering this, the counter-terrorism efforts of states should concentrate on eliminating the root causes which fuel the terrorist violence. Financing is the most essential and critical need of terrorist organizations and networks and it is one of the most important root causes of sustenance of terrorism. Shortage of money obstructs successful implementation of evil terrorist intentions. Therefore, countering terrorism financing assumes immense significance in plummeting the devastating consequences and spread of terrorism.

India, being the victim of terrorism since birth, has strong foundation of legislative enactments. It has taken its best efforts to translate its international commitments into domestic laws and actions. However, the Indian legal framework dealing with terrorism financing is insufficient and riddled with many lacunas. It still carries on the old traditional outlook of looking towards the offence of terrorism financing. Unfortunately, India still has not framed any legal enactment dealing exclusively with the offence of terrorism financing and enlisting the measures of countering it. The very grave subject of terrorism financing is dealt in piecemeal manner by fragmented legislations and that too inadequately. The offence of money laundering is targeted accurately with detail legal provisions but the researcher has found that there are significant differences between money

laundering and terrorism financing and both of these diseases require separate treatment. Indian legal system dealing with cyber space and cyber crimes is in very nascent stage. It is lagging far behind of technological advancement. Therefore, the broader issue of terrorism financing must be dealt in detail independently by separate legislation solely dedicated to all the angles of it.

Law emerges out of policy and it is part and parcel of it. Therefore, the lack of Counter-Terrorism Financing policy has further augmented the legal lacuna. There is a dire need of encoding all CTF mechanisms under the umbrella of single dynamic, adaptive, flexible and efficient policy which shall provide for both social and legal avenues targeted towards countering and thwarting financing of terror. The policy must envisage participation of all players engaged in various arena of terrorism.

The Indian operational and enforcement mechanism exhibits plurality of agencies, with no positive outcomes and desired success. The multitude of agencies, their uncooperative attitude, and their greed for supremacy and fierce competition between them is weakening the system and impeding effective implementation of CTF measures. These agencies need to leave behind the colonial legacy and adapt themselves to changing times to counter effectively the menace of terrorism financing. The Government must take steps to nurture capable human resources and make provisions for robust infrastructural facilities with sufficient funding.

The financial aspects of Indian economy are regulated by multiple agencies. Though these agencies have laid down a co-operative web of guidelines to be followed by financial institutions, the conflict of jurisdiction and bureaucratic rivalry between them is creating confusing environment and carving out many ways out for terrorist activities. Merely following due diligence measures is not sufficient to prevent and combat terrorism financing on ground. The short term measures like demonetization are not going to prevent the ever growing and clandestine monster of terrorism financing. The financial measures must be supported with active and supportive co-operation from national CTF agencies. These measures must be supported with sound backbone of policy and comprehensive legislative enactment.

Instead of making the law only for the purpose of making it constitutionally valid, let's make the law to cure the nuisance which it intends to remedy. Making and implementing law is the process of social engineering. In order to shape all inclusive social policy, law must understand and take cognizance of the facts that prompt normal people to fund terrorist causes. Law must have inclusive approach. It must not let any religious or minority community to develop its own defense mechanism which is anti-national and hostile towards fellow civilians and political authorities. Law and people responsible for making and implementing law must adopt an all-encompassing attitude. Law must take cognizance of extra-legal psychological, biological, cultural and social factors influences, if it really wants to hit the bull's eye in the context of terrorism financing.

REFERENCES

STATUES

The Unlawful Activities (Prevention) Amendment Act, 2012

The Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1976

The Foreign Exchange Management Act, 1999

The Prevention of Money Laundering Act, 2002

The Information Technology Act, 2000 (Amended Up to Date)

The Foreign Contribution (Regulation) Act, 2010

The Securities and Exchange Board of India Act, 1992 (Amended Up To Date)

Master Circular – 'Know Your Customer' (KYC) Guidelines – Anti Money Laundering Standards (AML) - 'Prevention of Money Laundering Act, 2002 - Obligations of NBFCs in terms of Rules notified there under

RESEARCH ARTICLES

Nimrod Rapheli, *Financing of Terrorism: Sources, Methods and Channels*

Thomas J. Biersteker & Sue E. Eckert, *The Challenge of Terrorist Financing*

Jeanne K. Giraldo & Harold A. Trinkunas, *The Political Economy of Terrorist Financing*

Dr. Sanghamitra Sarma, *Financial Action Task Force-An Indian Perspective*

Martin Rudner, *Hizbullah Terrorism Finance: Fund Raising and Money Laundering*

Anand Mishra, *Indian Counter-terrorism Policy: Muddled and Confused*

Understanding Demonetization: A critical Analysis

REPORTS

Global Terrorism Index,2016

Nikos Passes , *Informal Value Transfer Systems, Terrorism and Money laundering*

ONLINE SOURCES

www.timesofindia.indiatimes.com

www.thehindu.com

www.rbi.org.in

www.governancetoday.co.in

www.dnaindia.com

www.indianexpress.com

www.icwa.in

www.ncjrs.gov

www.economicandpeace.org

[1] Global Terrorism Index,2016, available at economicandpeace.org/wp-content/uploads/2016/11/Global-Terrorism-Index-2016.2.pdf, last seen on 01/10/2017

[2] Nimrod Rapheli, *Financing of Terrorism: Sources, Methods and Channels*, 15:4 *Terrorism and Political Violence* 59, 59 (2010), available at <http://dx.doi.org/10.1080/09546550390449881>, last seen on 07/10/2017

[3] Thomas J. Biersteker & Sue E. Eckert, *The Challenge of Terrorist Financing*, 1,6 in *Countering the Financing of Terrorism* (Thomas J. Biersteker & Sue E. Eckert, 2008)

[4] Jeanne K. Giraldo & Harold A. Trinkunas, *The Political Economy of Terrorist Financing*, 7,8 in *Terrorism Financing and State responses: A Comparative Perspective* (Jeanne K. Giraldo & Harold A. Trinkunas, 2007)

[5] PTI, *Sushma slams Pakistan over Terror funding*, *The Hindu*, (23/09/2017), available at <http://www.thehindu.com/news/national/sushma-slams-pakistan-over-terror-funding/article19730782.ece>, last seen on 02/10/2017

[6] *Informal Value Transfer Systems, Terrorism and Money laundering*, Nikos Passes, *The National Institute of Justice*, 8(November 2003), available at <https://www.ncjrs.gov/pdffiles1/nij/grants/208301.pdf>, last seen on 03/10/2017

[7] PTI, *Pak based Terror Groups named in BRICS declaration for first time*, *The Times of India*, (04/09/2017), available at <https://timesofindia.indiatimes.com/india/pak-based-terror-groups-named-in-brics-declaration-for-first-time/articleshow/60361371.cms>, last seen on 07/10/2017

[8] TNN, *India, EU for Joint Effort to Fight Terrorism*, *The Times of India*, (07/10/2017), available at <https://timesofindia.indiatimes.com/india/india-eu-for-joint-effort-to-fight-terrorism/articleshow/60978627.cms>, last seen on 08/10/2017

[9] Dr. Sanghamitra Sarma, *Financial Action Task Force-An Indian Perspective*, 09/08/2016, available at www.icwa.in/pdfs/IB/2014/FinancialActionTaskForceIB09082016.pdf, last seen on 02/10/2017

[10] Section 51A, *The Unlawful Activities (Prevention) Act, 1967*

[11] Section 4(iv) (b) , *Ibid*

[12] Section 4(v) and Schedule 2, *The Unlawful Activities (Prevention) Amendment Act,2012*

[13] Subsection (3), Section 1, *The Foreign Exchange Management Act, 1999*

[14] *Electronic Reporting System*, available at <https://www.rbi.org.in/Scripts/ElectronicReprotingSystem.aspx>, last seen on 29/09/2017

[15] Section 36, *Supra* 13

[16] Section 2(wa), *The Prevention of Money Laundering Act,2002*

[17] Varinder Bhatia, *NIA moves to revoke Zakir Naik's passport, probe his money trail*, *The Indian Express* (09/06/2017), available at www.indianexpress.com/article/india/nia-moves-to-revoke-zakir-naiks-money-trail-probe-his-trail-4695667/, last seen on 05/10/2017

[18] sections 66 F, section 70 A and section 70 B ,*The Information Technology Act,2000 (Amended Up to Date)*

[19] Martin Rudner, *Hizbullah Terrorism Finance: Fund Raising and Money Laundering*, *Studies in Conflict and Terrorism* (13/07/2010), available at <http://dx.doi.org/10.1080/1057610x.2010.494169>, last seen on 02/10/2017

[20] Sweta Desai, *Terror activity hit by currency ban, but only a matter of time before it returns, warn experts*, *DNA*, (03/12/2016), available at <http://www.dnaindia.com/india/report-demonetization-is-a-body-blow-not-a-death-knell-for-terror-funding-2279160>, last seen on 03/10/2017

[21] Anand Mishra, *Indian Counter-terrorism Policy: Muddled and Confused*, (03/06/2015), available at <https://www.goernancetoday.co.in/indian-counterterrorism-policy/>, last seen on 06/10/2017

[22] Section 12, *The Securities and Exchange Board of India Act,1992 (Amended Up To Date)*

[23] *Master Circular – 'Know Your Customer' (KYC) Guidelines – Anti Money Laundering Standards (AML) - 'Prevention of Money Laundering Act, 2002 - Obligations of NBFCs in terms of Rules notified there under*, RBI/2015-16/108 DNBR (PD) CC No. 051/03.10.119/2015-16, available at https://www.rbi.org.in/Scripts/BS_ViewMasCirculardetails.aspx?id=9914, last seen on 05/10/2017

[24] PTI, *Use of Bitcoin, other virtual currencies not authorized by RBI, says govt.*, *The Hindu* (28/03/2017), available at www.thehindu.com/business/Economy/use-of-bitcoin-illegal-says-govt/article17702483.ece, last seen on 02/10/2017

[25] *Understanding Demonetization: A critical Analysis*, available at <http://byjus.com/free-ias-prep/demonetization-of-rs-500-and-rs-1000>, last seen on 02/10/2017

[26] *Ibid*

[27] *Supra* 20

[28] Bharti Jain, *Rise in Number of locals joining J& K Militancy causing cash crunch*, *Times of India*, available at timesofindia.indiatimes.com/india/rise-in-number-of-locals-joining-kj-militancy-causing-cash-crunch/articleshow/58584233.cms, last seen on 02/10/2017

[29] *Supra* 20

[30] Anantkrishnan G, *Illegal Rohingyas are a security threat: Govt tells Supreme Court*, *The Indian Express*, (19/09/2017), available at <http://indianexpress.com/article/india/rohingya-illegal-migrants-are-terror-threat-government-to-supreme-court-4849909/>, last seen on 02/10/2017