

TRANSNATIONAL ORGANIZED CRIME: THE INDIAN PERSPECTIVE

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I. A BRIEF OVERVIEW

Today, a criminal considers the world as his field of operation. He commits a crime in one country, deposits the money derived from criminal activities in an offshore bank in another country and takes refuge in yet another country. The widespread political, economic, social and technological changes as well as variations in legislation, procedures and policies in different countries on mutual assistance in criminal matters have allowed organized crime groups to become increasingly active in the international arena. International criminal organizations are taking full advantage of globalization of world markets, dismantling of trade barriers, the increased ease of international travel, liberalized emigration policies, high-tech communications equipment and sophisticated money laundering techniques to enhance and further their criminal efforts and to forge alliances with other criminal groups. They are engaged in such felonious activities as illicit drug trafficking, money laundering, the use of violence and extortion, acts of corruption, trafficking in women and children, illicit manufacturing of and trafficking in firearms, environmental crime, credit card fraud, computer related crime, illegal trafficking of stolen vehicles, industrial espionage and sabotage, maritime piracy, etc. The problems raised by the current

acceleration of the globalization process cannot be brought under control unless various governments coordinate the strategies and policies at the national level with the strategies, policies and regulations issued at the international level.

II. ORGANIZED CRIME—THE INDIAN PERSPECTIVE

Criminal gangs have been operating in India since ancient times. There is no firm data to indicate the number of organized criminal gangs operating in the country, their membership, their *modus operandi* and the areas of their operations. Thousands of organized criminal gangs operate in the countryside. Their structure and leadership patterns may not strictly fall in the classical Italian Mafia module. They may sometimes be operating in loose structures, but the depredations of such criminal gangs are too well known to be recounted. However, the purpose of organized crime in India, as elsewhere in the world, is monetary gain and this is what makes it a formidable force in today's socio-political set up.

In India, organized crime is at its worst in Mumbai, the commercial capital of the country. The first well-known organized gang to emerge in recent times was that of Varadharajan Mudaliar in the early sixties. His illegal activities included illicit liquor, gold smuggling, gambling, extortion and contract murders. Three other gangs emerged shortly thereafter, namely, Haji Mastan (gold smuggling),

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Yusuf Patel (gold smuggling) and Karim Lala (drug smuggling). During the emergency in 1975, when there was a crackdown on the Indian Mafia, new gangs emerged. Dawood Ibrahim, the most successful, came in conflict with the Pathan gangs of Alamzeb and Amirzada which led to bitter internecine gang warfare. The Pathan gangs were liquidated to leave the field free for Dawood Ibrahim. In 1985, there was increased police pressure which made Dawood Ibrahim flee the country. In March 1993, Dawood Ibrahim was behind the serial bomb blasts in Mumbai in which 257 persons died and 713 were maimed. Public and private property worth several million rupees was destroyed. Investigation revealed the transnational character of the conspiracy, the objective of which was to cripple the economy, create communal divide and spread terror in the commercial capital of India. Dawood Ibrahim, Tiger Memon and Mohammed Dosa are presently reported to be operating from Dubai. Their field of activity primarily extends to extorting money from builders and film producers, mediating in monetary disputes, and undertaking contract killings. The other major gangs of Mumbai indulging in organized crime are those of Chhota Rajan (Drug Trafficking and Contract Killings), Arun Gawli (Contract Killings and Protection Money), Late Amar Naik (Protection Money) and Chhota Shakeel.

Organized crime exists in other cities too, though not to the same extent as in Mumbai. There are several gangs operating in Delhi from neighboring State of Uttar Pradesh indulging in kidnapping for ransom. Om Prakash Srivastava, alias Babloo Gang of Uttar Pradesh, has been responsible for organizing kidnappings in Delhi and Mumbai in which ransom amounts were

paid in foreign countries through "Hawala". Land Mafia has political connections and indulges in land grabbing, intimidation, forcible vacation, etc. Of late, the ganglords of Mumbai have started using Delhi as a place for hiding and transit. Chhota Rajan group is strengthening its base in Delhi.

Ahmedabad city has been a hotbed of liquor Mafia because of a prohibition policy (banning of liquor). The Mafia became synonymous with the name of Latif, who started in the mid-seventies as a small time bootlegger and grew up to set up a 200 strong gang after eliminating rivals with intimidation, extortion, kidnappings and murders. He won municipal elections from five different constituencies with strong political patronage. He was killed by the police in an encounter in 1997.

A boom in construction activities in Bangalore city has provided a fertile breeding ground for the underworld. Builders are used for laundering black money. Forcible vacation of old disputed buildings is a popular side business for the underworld. The local gangsters in the State of Karnataka have connections with the underworld of Mumbai. One of the Mumbai gang operations here is the Chhota Rajan gang.

Brief profiles of three major transnational organized criminal groups are as follows:

A. Dawood Ibrahim Gang

Dawood Ibrahim group is the most dreaded mafia gang with countrywide network and foreign connections. He has stationed himself in Dubai since 1985 and has indulged in drug and arms trafficking, smuggling, extortion and contract killings. His brother Anees Ibrahim looks after smuggling, drugs and

contract killings, Noora looks after film financing and extortion; and Iqbal is in charge of the legitimate business which includes stock broking in Hong Kong. Anees is in legitimate business too, managing the Mohd. Anees Trading Company in Dubai. His business interests in India are shopping centres, hotels, airlines and travel agencies in Mumbai with an annual turnover of about Rs.20000 million. Extradition of offenders from Dubai has not been possible since there is no extradition treaty with Dubai. Moreover, some of these offenders have strong social links with politicians and other top personalities in Dubai.

B. Chhota Rajan Gang

Chhota Rajan was a member of the Dawood gang but parted company after the 1993 serial bomb blasts in Mumbai. He raised his own gang in 1994–95 which is reported to have a membership of several hundred persons today. Chhota Rajan himself is in a foreign country to avoid elimination by the Dawood gang. His gang indulges in drug trafficking and contract killings. In collaboration with another local gang, he organized the killing of a trusted leader of the Dawood Ibrahim gang, Mr. Sunil Samant, in Dubai in 1995.

C. Babloo Shrivastava Gang

Om Prakash Shrivastava in Babloo Shrivastava is facing 41 cases of murder, kidnappings for ransom, etc. He was arrested in Singapore in April 1995 on the basis of a Red Corner Notice issued by INTERPOL and extradited to India in August 1995. He has since been in jail but his gang continued to indulge in organized kidnappings and killings. The ransom amount is received by them in foreign countries through hawala (alternative non-banking remittance

channel). The power of this gang has dwindled after his arrest.

III. ILLICIT DRUG TRAFFICKING

Illicit drug trafficking is the most significant transnational organized crime which has become a serious issue confronting both developing and developed countries. In most countries, despite years of drug suppression and prevention efforts, the cycle of drug trafficking and drug abuse continues. If allowed to remain unabated, the drug menace will considerably destroy the quality of life of people and hamper countries in their social, economic and cultural development.

India is a vast country with land borders extending over more than 15000 kilometers and a sea coast line of over 7000 kilometers. India's narcotic problem needs to be visualized from its geographical situation. India is flanked on either side by two regions which are internationally acknowledged as major sources of illicit opiates namely, South-West Asia (Afghanistan and Pakistan) and South-East Asia (Myanmar, Laos, Thailand). Additionally, Nepal, a traditional producer of cannabis, both herbal and resinous, fringes the country in the North.

India is a traditional producer of licit opium for medicinal and scientific purposes. It is grown in three states, namely, Uttar Pradesh, Rajasthan and Madhya Pradesh under official control of Narcotics Commissioner. A part of the licit opium enters the illicit market in different forms. Although opium production is strictly under Government control in India, illicit poppy plantations have been reported in some places. Besides, there is illicit cultivation of opium in the hill tracks of some states.

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India has a large presence of chemical industries producing precursor materials like acetic anhydride, acetyl anthranilic acid, etc. for lawful purposes. These chemicals are also utilized for processing and manufacturing heroin. The illicit cultivation of opium as well as the precursor chemicals can be used for the manufacture of heroin. For the last several years, India has also become a base for the manufacture of heroin, particularly in and around the opium producing districts of Uttar Pradesh, Madhya Pradesh and Rajasthan.

The illicit drug trade in India has centered around five major narcotic substances namely heroin, hashish, opium, herbal cannabis and methaqualone. The Indo-Pak border has traditionally been the most vulnerable to drug trafficking. Drug trafficking through India consists of hashish and heroin from Pakistan, hashish from Nepal, white heroin from Myanmar and heroin from

Bangladesh. In the early eighties, the Border State of Punjab became affected with narco-terrorism with the smuggling of narcotic drugs and arms from across the border. This was also the time when the drug Mafia emerged in Golden Crescent countries.

Although the use of India by the drug traffickers as a transit country has resulted in an increase in drug abuse due to the spill-over effect, drug addiction in India has not assumed such a serious magnitude as in some of the western countries, but there are no grounds for complacency. There have been reports of drug use among the students of universities in Delhi, Mumbai, Calcutta and Chandigarh. Indian society is not agitated too much. It is customary in some places to consume Bhang (crushed leaves of the cannabis plant) on the popular festival of Holi. There is no such tolerance for charas or ganja which also derived from the same cannabis plant.

1. Quantities of the most common drugs and precursors seized in India during the years 1997 to 2000

Name of the drug/precursor	Quantities seized in kilograms			
	1997	1998	1999	2000
Opium	3,316	2,031	1,635	2,524
Morphine	128	19	36	37
Heroin	1,332	655	861	1,198
Ganja	80,886	68,221	40,113	94,682
Hashish	3,281	10,106	3,391	4,923
Cocaine	24	1	1	0.08
Methaqualone	1,740	2,257	474	1,095
Acetic Anhydride	8,311	6,197	2,963	1,337

2. Details of significant seizures of narcotic drugs and psychotropic substances made during 2001

- (i) On 5 January 2001, the Directorate of Revenue Intelligence, Amritsar

Regional Unit seized 17,900 kg heroin from a truck at octroi post. The suspected source of the seized drug was Pakistan and it was concealed in three packets kept in a

cabinet in a driver's cabin and 15 packets in an LPG cylinder lying in the tool box on the roof of the truck.

- (ii) On 8 February 2001, the Narcotics Control Bureau, Mumbai Zonal Unit seized 1423.690 kg of mandrax tablets from a truck at the premises of M/s High Point Industries, MIDC, Talaja.
- (iii) On 17 April 2001, the Directorate of Revenue Intelligence, New Delhi seized 17.000 kg of heroin at National Highway No.8, opposite Shiva temple, Delhi-Gurgaon Road when the occupants of two vehicles were transferring the drug from one vehicle to another. The suspected source of the seized heroin was South-West Asia.
- (iv) In the first week of August, 2001, the Directorate of Revenue Intelligence, New Delhi seized two tonnes of hashish from two godowns in Mordabad, near Delhi. It is the biggest ever seizure in Northern India. The hashish was brought from Nepal, where it was processed initially for over a period of 2 to 3 months. The bundles of 200 to 300 kgs of hashish were brought hidden in a mini luxury bus over a period of 3 to 4 months, and stashed away in a godown in Mordabad. The bundles were then covered in polythene bags, wrapped with aluminum foils, vacuum-packed and the bundles shifted to another godown nearby. The machine used in vacuum packing was also recovered. A total of 4,000 packets, each containing 500 gms of hashish in cake form, were recovered. The vacuum-packed hashish concealed in packages of handicrafts was to be transported to Mumbai docks and then shipped to the United States.

The Government of India have taken various legislative, administrative and preventive measures to counter drug trafficking in the country. Among the prominent legislative measures are the provisions of deterrent punishment under the NDPS Act, 1985, applications of preventive detention of drug traffickers under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (COFEPOSA), notification of certain chemicals like acetic anhydride as a 'specified item' under the Customs Act, 1962 and India's land border with Myanmar falling within the territories of the States of Arunachal Pradesh, Nagaland, Manipur and Mizoram having been declared as 'specified areas' under the said Act for the purpose of checking illegal trafficking across the border. The creation of the Narcotics Control Bureau as an apex coordinating and enforcement agency at the national level is one of the prominent administrative measures taken by the Government.

The Narcotic Drugs & Psychotropic Substances (NDPS) Act, 1985, which was enforced with effect from 14 November 1985, provides for a minimum punishment of 10 years' rigorous imprisonment and a fine of one hundred thousand Rupees extendable to 20 years rigorous imprisonment and a fine of two hundred thousand Rupees. In respect of repeat offenses, the Act provides for the death sentence in certain circumstances. In remaining cases, a minimum punishment of 15 years rigorous imprisonment and a fine of Rs.1.5 hundred thousand, which is extendable up to 30 years rigorous imprisonment and fine of three hundred thousand Rupees. The courts have been empowered to impose fines exceeding the above limits for reasons to be recorded in their judgments.

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The N.D.P.S. Act also provides for:

- (i) Constitution of a National Fund for Control of Drug Abuse to meet the expenditure incurred in connection with the measures for combating illicit traffic and preventing drug abuse.
- (ii) Control over chemical substances which can be used in the manufacture of narcotic drugs and psychotropic substances through appropriate licensing and deterrent punishment for violation thereof.
- (iii) Total ban on suspension, remission or commutation of sentences under the penal provision.
- (iv) Forfeiture of all illegally acquired properties derived from or attributable to illicit trafficking. All enforcement agencies have been empowered to trace and freeze/seize such property as are liable to forfeiture under the Act, subject to confirmation within a period of 30 days by the competent authority appointed under this Act. The law applies to all properties and assets of traffickers acquired within a period of six years immediately preceding the date on which such a trafficker is charged with an offense under this Act.

India is one of the few countries in which an adequately deterrent penal system has been developed with regard to drug trafficking. This is in conformity with the UN Resolutions of 1961, 1971 and 1988 on Narcotic Drugs and Psychotropic Substances.

IV. ILLEGAL FIREARMS TRAFFICKING

Firearms trafficking is a global phenomenon and generally resorted to for generating profit, purchasing narcotics

and supporting illegal activities of organized criminal groups.

In India, the states of Punjab which were affected by terrorist activities during the 1980s and Jammu & Kashmir have been particularly vulnerable to arms trafficking across the border. India has a long border with Pakistan, Nepal, Bhutan, China, Myanmar and Bangladesh. The Border Security Force, which guards the borders, continues to seize large quantities of AK Series rifles, heavy machine guns, pistols and revolvers, rocket launchers, rifles, magazines and ammunition.

In 1993, a consignment of AK-56 rifles, magazines, live rounds and hand grenades was sent from a Gulf country by land at the cost of Dighi Jetti in the State of Gujarat. Subsequently, huge quantities of arms, ammunition and explosives were smuggled into India by sea route at Shekhadi in District Raigad. These were used for bomb blasts in Mumbai on 12 March 1993, which caused terror, widespread damage, loss of 257 lives and maiming of 713 persons. During investigation, some of the arms recovered included 62 AK-56 rifles with 280 magazines and 38,888 rounds, 479 hand grenades, 12 pistols of 9 mm make with ammunition, 1100 electronic detonators, 2313 kgs. of RDX, etc.

The Police Authorities in the state of Madhya Pradesh in central India recovered 24 AK-56 rifles, 5250 cartridges, 81 magazines and 27 hand grenades on 4 November 1995.

On 17 February 1996, Delhi Police recovered 361 pistols of 0.30 caliber with the inscription "Made in China by Norinco", 728 magazines and 3738 live rounds in a cavity in the undercarriage of a caravan bus. In this case, a Swiss

national and an Iranian national living in Pakistan since 1981, were detained and the investigation disclosed that this in fact was the second consignment, the first one having been successfully smuggled into India in 1995. 22 persons including five foreign nationals have been prosecuted in the court of law in this case.

A sensational case called the Purulia arms drop case was an example of illicit arms trafficking by air. On 17th December 1996, an Antonov 26 aircraft dropped over 300 AK47/56 rifles and 20,545 rounds of ammunition, dragnov sniper weapons, rocket launchers and night vision devices in Purulia village in West Bengal. The aircraft was bought from Latvia for US\$2 million and chartered by a Hong Kong registered company Carol Airlines. Payments were made mostly from foreign bank accounts. The aircraft picked up a consignment of arms from Bulgaria using end-users certificate issued by a neighboring country. The arms were airdropped over Purulia in the state of West Bengal.

This case was investigated by the Central Bureau of Investigation and a charge sheeted in the City Sessions Court, Calcutta. After trial, the court found the accused persons guilty of offenses under the Indian Penal Code, Explosive Substances Act, Arms Act, Explosives Act, and the Aircraft Act and sentenced Mr. Peter James Gifran Van Kalkstein Bleach (British National), Mr. Alexander Klichine, Mr. Igor Moskvitine, Mr. Oleg Gaidash, Mr. Evgueni Antimenko, Mr. Igor Timmerman (all Latvian nationals) and Mr. Vinay Kumar Singh (Indian national) to various terms of rigorous imprisonment on 2 February 2000.

V. HUMAN (WOMEN AND CHILDREN) TRAFFICKING

Emigration of human beings from one country to another for trade, commerce, religious and other purposes is as old as human civilization itself. However, the word 'traffic in human beings' implies illegal movement of people from one country to another in violation of existing national laws and procedures. The countries of the West have become highly vulnerable on this count as they are attracting hoards of illegal emigrants mainly because of their relative economic prosperity. Illiterate, innocent and gullible persons from under developed and developing countries, in their urge to earn more money from overseas employment, fall easy prey to unscrupulous and unauthorised agents. Such activities in India have turned into a lucrative business as the agents induce/make the immigrants part with large sums of monies towards their commission/service charges, expenses on journeys as well as for arranging passports, visas and statutory clearance. Often the travel documents are not valid and sometimes they are simply dumped into foreign lands without giving them promised employment.

India has also been significantly affected by such immigrants. India is found to be both the country of origin and destination for trafficking in women. According to intelligence reports, about 1200 thousand emigrants from Bangladesh have settled in the border States of West Bengal and Assam after independence. The problem, however, has spread as far wide as Mumbai, Rajasthan and Delhi, which have an estimated 300 thousand emigrants from Bangladesh. Similarly, a large number of Indians are working abroad, particularly in the Gulf region. A number of young girls from

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southern India have been sent to the Gulf countries. There have also been reports that India has served as a transit point for trafficking of young virgins from Nepal, Myanmar and Bangladesh to the Middle East, mostly Dubai.

An estimated 5,000 to 7,000 Nepali girls are annually sold into brothels in India for prostitution. According to a press report, 9 Nepalese girls aged between 14 and 25 years, were rescued at Nepal-India border point at Kakarbhitta in Eastern Nepal in September, 2000. The rescued girls said that they were lured by the agents on the pretext of getting them married or obtaining jobs for them in India. According to another press report, the Nepal police arrested one Dhan Bahadur Gurung in November, 2000 on charges of selling more than 300 women and girls. He is accused of luring them into prostitution by falsely promising marriage and jobs in the circuses in India. In early 2001, an emigration racket, in which a nexus of policemen deployed at the Hyderabad airport and travel agents facilitated more than 3,000 people sneaking out on fake papers, came to light when nearly 40 women mostly illiterate were being sent to the Gulf countries from Hyderabad airport on fake papers.

Paedophiles now have a titillating new tool—the Internet. It allows them to access pornographic photographs of children, enter their homes, and ‘groom’ them for rape. The first case of paedophilia appears to have come to light in India in April, 1991 when the police raided the house of Father Freddy Peat, who had been running an orphanage in Goa, and recovered drugs and 2,305 photographs of children forced into sexual acts. Peat was arrested and later sentenced for life. It is believed that copies of a large number of pictures

seized from Peat in 1991 have made their way onto the Web.

On December 16, 2000, a Swiss couple William and Loshier Marty, who were part of an international paedophile racket with operations in the West, Thailand, Sri Lanka and India were arrested at a resort in Madh Island, Mumbai with two minor girls. According to the police sources, photos of the couple’s victims—some as young as seven—were supplied to paedophiles rings and were also posted on the Web. The internet has facilitated the organization of paedophiles, who can now easily download pictures, forward them to friends, enter chat rooms and pick out targets and eventually lure them into a meeting.

Another site came into the focus of CBI’s Cyber Crime Investigation Cell during routine surfing. The site sold itself as a platform for those who would like to buy or sell sex slaves. In business since 1998, it offered members a sickening variety of slaves: virgin, black, teen, pregnant and more. A membership fee could be waived if a person tortured a slave and sent in photographs. The CBI set up a decoy customer and were promptly offered a teenage girl. The site’s pimp was learnt to be operating from cybercafes in Delhi. At the last minute, however, he backed out of the deal and remained untraceable.

India’s first case of child porn on the Net came to notice last year. The site in question had a deceptively innocent homepage. But persist with the links and the site brought out 27 files with titles such as “Little bitches on the beach” and “All in the family”. By paying a little more one could watch the “VIP series” and customized videos. Most of the girls featured were under 10 and South Asian. Investigation reveals that the site was

created in Lima, Peru. But its domain server was being provided by Arvind Shyam Jagdam from Hyderabad. Jagdam was arrested in September, 2000. Information was sought from Peru police but the response is still awaited. An interesting fact revealed during investigation was that the naked children shown on the site were missing from their homes.

Child-porn sites showcase India as a paedophile's paradise. However, most Indians still discount child porn on the net as a western perversion. Paedophilia and more so its prevalence online is still not a priority crime for the police in India. The Indian mind set is such that few are willing to accept that their children can be at such risk.

India has sufficient legislation to deal effectively with the problem of Suppression of Immoral Traffic as well as illegal emigration out of India. The Suppression of Immoral Traffic in Womens and Girls Act, 1956 to deal with these offenses, was re-enacted under the name of Immoral Traffic (Prevention) Act, 1986 to rectify some lacunae in the earlier Act.

The National Commission for Women reviews laws, conducts inquiries for redressal of complaints, undertakes promotional research for policies, advises the Government and ensures custodial justice for women. The Commission enjoys the powers of a Civil Court by virtue of Section 10(4) of National Commission for Women Act, 1992. It has formed an Expert Committee and has formulated a 10-year National Plan of Action (1997–2006) to coordinate with the 9th and 10th Indian Five Year Plans.

The law relating to emigration of citizens of India was consolidated and

amended by enacting the Emigration Act, 1983 which repealed the earlier Act of 1922. In order to protect and aid, with advice, all intending emigrants, a provision was made for the appointment of a Protector-General of Emigrants and Protector of Emigrants by the Central Government. The Act prohibits a recruiting agent to commence or carry on the business of recruitment except under, and in accordance with, a certificate issued on that behalf by the Prosecutor-General of Emigrants or any other officer notified as registering authority under the Act. It further prohibited an employer to recruit any citizen of India for employment in any country or place outside India except through a recruiting agent competent under the Act to make such recruitment or in accordance with a valid permit issued on this behalf under the Act.

The Act provides for a punishment of imprisonment for a term which may be extended to two years and with a fine which may extend to two thousand rupees for contravening the above provisions or collecting, from an emigrant, any charges in excess of the limits prescribed under the Act or cheating any emigrants, etc. All offenses under the Emigration Act, 1983 are cognizable.

V. MONEY LAUNDERING

Crime pays and criminals naturally want to be able to enjoy their profits without worrying about the police or the courts. This is not a new economic or sociological problem. However, geo-political developments over the past 50 years together with economic globalization have meant that the international movement of money has increased. The rapid expansion of international financial activity has gone

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hand-in-hand with the development of transnational crime, which takes advantage of political borders and exploits the differences between legal systems in order to maximise profits. The groups involved are genuinely multinational and pose a direct threat to the financial stability of economic systems. They destabilise democracy because they are backed by clandestine networks subject to the law of the underworld.

Money laundering cannot be disassociated from other forms of crime. It is a fact that it thrives on corruption. Corrupt people use financial techniques to hide their fraudulently obtained assets and the continued successful application of these techniques depends on the involvement of influential accomplices. Money laundering is therefore at the centre of all criminal activity, because it is the common denominator of all other criminal acts, whether the aim is to make profits or hide them.

Laundering operations are, in fact, intended more to conceal the origin of the money than its criminal nature, in other words to hide the traffic from which it is derived rather than the general criminal activity which actually generated it. It is therefore essential to move the money in order to scramble the route it takes. The operation is wholly successful when the nature of the money is also concealed and it is impossible to establish a link with any criminal activity because the different circuits taken give it the appearance of legitimate income.

The Indian "Hawala" or "Hundi" system can be explained as a transfer of money through unofficial channels, normally outside the banking channels used by businessmen. The money so transferred often includes the money

derived from criminal activities or in violation of the country's legislation. Underground banking which conveys a sense of a system may not strictly cover misuse of banking channel. It may refer to, in a restricted manner, a system of rendering services which are similar to banking services, the most important in this context being the transmission of money. Hawala represents such services.

As a developing nation, India feels seriously concerned not only because money laundering, including compensatory payments known as HAWALA transactions, have been threatening the economy but also because such practices contribute to the country's illicit drug trafficking and terrorist and subversive activities leading to large scale violence.

Of late, an impression is gaining ground that India is becoming increasingly vulnerable to money laundering activities and is becoming a transit point for drug traffickers and other criminals from the Golden Crescent i.e. Pakistan, Afghanistan and Iran and the Golden Triangle i.e. Burma, Thailand and Laos. The Economic Intelligence Council meeting of August, 1993 also observed that money laundering is now a major issue and has become a means of financial clout and strength of economic offenders and drug traffickers. India is fast becoming a conduit for the South East, Middle East, Far East and Latin American countries. The Indian hawala system or underground banking is used extensively for drug trafficking and remittances of money by both non-resident Indians and resident Indians.

In 1992-93, there were press reports on the U.S. State Department's investigations into the possible use of Indian Banking Channels for laundering

drug money, including the possibility of links with the securities irregularities of 1992. An article in the London Times of May, 1993 had suggested that India, more specifically Bombay, was attracting huge amounts of Narcotics money from drug cartels in Columbia.

There were also, in 1994, reports in the press that the private sector in India is making its presence felt in the area of quick transfer of cash across continents. Travel agents and courier companies are targeting Indians living abroad who want to repatriate money. As no minimum/maximum limits are prescribed, the time taken to transfer money is much less. As such private companies do not fall within the direct control of the banking system, it could perhaps lead to the facility being used by money launderers, though there is no such case reported so far.

The high tax rate and the Exchange Control Regulations (though now considerably liberalised) have been the major reasons for hawala and other economic crimes in India. The Indian hawala system or underground banking is used extensively for drug trafficking and remittances of money by both non-resident and resident Indians. It is the Hawala where the economic offenders and the launderers meet. These offenders easily become prey for money launderers, or it can be said that these offenders on the one side and the money launderers on the other side close the circle.

In India, money laundering is also indulged in by some corporate houses to evade taxes as well as by the organized criminal groups to launder dirty money. Money laundering techniques include smurfing, establishment of front companies, acquisition of commercial and non-commercial properties, remittances through Hawala (non-banking channels),

over-invoicing and double invoicing legitimate business and foreign remittances. Non-resident Indians have been given some special banking facilities. These facilities are misused to bring back the money as white money. For example, a portfolio account is opened in a foreign country and the money is laundered back to be invested in the stock markets. Another *modus operandi* is to launder the money through bogus exports. The conversion of black money is done by over-invoicing the products. Some shell companies are setup to issue bills or invoices accompanied by bogus transport receipts in order to obtain funds against these documents from bank/financial institutions and then divert major parts of such proceeds by issuing cheques in the names of non-existent front companies of cheque discounters. The cheque discounters then hand over cash immediately to the party after deduction of their commission. The cheque discounters are generally associated with commodities markets where fake transactions in commodities can largely go unnoticed. The cheque discounters also issue fake Letters of Credit and false bills. The cheque discounters file income tax returns in which the commission is shown as taxable income.

Money laundering *per se* has not been made a criminal offence in India so far. Certain activities like diversion of funds, submitting false statements relating to inventories, multiple financing etc. which could serve as means towards the end of money laundering are also not considered as crimes. The problem had so far been dealt with mainly under the Foreign Exchange Regulation Act, 1973, but with effect from June 2000, FERA has been replaced by the Foreign Exchange Maintenance Act. A bill to enact a money laundering law to be named 'The

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Prevention of Money Laundering Bill' has been introduced in Parliament by the Government of India but the same still remains to be enacted as law. Money laundering has been proposed as a cognizable crime punishable with rigorous imprisonment of 3-7 years which could be extended to 10 years and a fine of up to Rs. 0.5 million. The acquisition, possession or owning of money, movable and immovable assets from crime, especially from drug and narcotic crimes, would be tantamount to money laundering. Concealment of information on proceeds or gains from crime made within India or abroad is proposed to be an offence. An adjudicating authority is proposed which would have powers to confiscate properties of money launderers. An administrator may be appointed to manage the confiscated assets. An appellate tribunal is proposed to be set up with three members to hear appeals from the orders of the adjudicating authority. The rulings of the adjudicating authority would thus not be contestable in the local courts. Financial institutions are expected to maintain transaction records and furnish these to the adjudicating authority. Failure to do so would be punishable too.

However, at present, there is certain legislation to deal with such offenders. Such legislation is specifically intended to deprive offenders of the proceeds and benefits derived from the commission of offences against the laws of the country. Besides, such legislation also provides for the confiscation or forfeiture of the proceeds or assets used in connection with the commission of certain crimes. In the offences relating to narcotic drugs and psychotropic substances in particular, the very act of acquisition of property derived from or used in illicit trade and in relation to which

proceedings for forfeiture have been initiated has been made punishable, also as a distinct offence (Sec. 68-Y of NDPS Act, 1985).

To deprive persons of the proceeds and benefits derived from the commission of an offence against the law of the land including forfeiture or confiscation of such property, Indian legislation also include the following Acts:

- (i) Criminal Law (Amendment) Ordinance, 1944;
- (ii) Customs Act, 1962 (Secs. 119 to 122);
- (iii) Code of Criminal Procedure, 1973 (Sec.452);
- (iv) Smugglers & Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976;
- (v) Narcotic Drugs & Psychotropic Substances Act, 1985 (Secs. 68-A to 68-Y);
- (vi) In addition, Indian statutes also contain provisions for preventive detention of foreign exchange racketeers under the Conservation of Foreign Exchange and Prevention of Smuggling Activities (COFEPOSA) Act, 1974, and of the drug traffickers under the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances (PITNDPS) Act, 1988.

In one of the cases of money laundering dealt with by the Central Bureau of Investigation, an organized group of Hawala dealers operating from London and Dubai used to receive remittances from foreign banks for transferring the same to India. A telephonic message in coded words would be passed to agents in India to pay money in Indian currency. The remittances so received by the above mentioned persons in Dollars or Pounds Sterling at London and Dubai were used for purchase of gold, drugs, arms, ammunitions and explosives through the

underworld. The arms, ammunitions and explosives were used to be smuggled into India and sold to various criminal/terrorist groups while the drug used to be distributed to the traffickers.

VII. CYBER CRIME

The exponential growth of computer-related crime commensurate with the increasing dependence of computers in our day-to-day lives has posed new challenges to the law enforcement agencies in India. With the physical growth of the Internet over the past few years, a number of new generation crimes affecting the LAN, WAN and Internet have created extraordinary situations. Hacking, computer network breaches, copyright piracy, software piracy, child pornography, password sniffers, credit card frauds, cyber squatting are some of the new terms in the average criminal investigator's dictionary. Highly intelligent persons commit these new generation crimes leaving hardly any trace and making investigation highly difficult and complicated. Recently, one of the hurdles in the investigation of computer-related crimes in India was overcome by the enactment of legislation in the form of the Information Technology Act, 2000, which came into force on October 17, 2000.

The Act delineates two separate types of penal provisions: contraventions and information technology offences. While contravention results in monetary penalty, the IT offences may result in the offender being imprisoned or paying a fine or both. Tampering with computer source codes, obscenity, hacking, unauthorized access to a protected system, misrepresentation before authorities, breach of confidentiality and privacy, publication of false particulars in digital signature certificates, etc. have

been listed as criminal offences under this Act. Amendments have also been made to the Indian Penal Code, Indian Evidence Act, the Bankers' Book Evidence Act and Reserve Bank of India Act to facilitate investigation and prosecution of cyber crime.

The Central Bureau of Investigation has recently created a Cyber Crime Research & Development Unit which maintains close liaison with international agencies like the FBI, Interpol and other foreign police agencies to share skills and techniques in investigating cyber crimes. The officers of CBI associated in this exercise share their expertise with the State police forces through regional training programmes held periodically.

VIII. CURRENCY COUNTERFEITING

Currency counterfeiting is one of the organized white collar crimes which has assumed serious proportions globally. It not only causes serious setbacks to the world's economy but also jeopardizes the genuine business transactions. Nowadays, the counterfeiting of currency notes is done with the help of modern equipment such as colour scanners, colour copiers and printers, as well as by offset process. Most of the security features are copied from genuine notes by using modern techniques to produce the counterfeit currency notes very close to genuine currency notes. For achieving the required finish in the art of counterfeiting, the advance computer technology provides them with sophistication and perfection.

There has been an upsurge in the incidents of supply of counterfeit Indian currency notes from across the border of India especially from the Indo-Pakistan border and Indo-Nepal border. During

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the year 1999, counterfeit Indian currency notes valued at Rs.18.4 million were seized as compared to Rs.6.5 million during 1998 indicating a threefold increase. During the year 1999, the three States of Uttar Pradesh, Bihar and West Bengal accounted for almost 40% of the total seizures. There are two recent cases of recovery of counterfeit Indian currency notes which have international ramifications:

- (i) In January, 2001, the Uttar Pradesh Police, with the arrest of a suspected ISI agent, identified as Abal, from Muzaffarnagar District, busted a gang responsible for circulating fake currency notes across Western Uttar Pradesh, Delhi, Haryana, Rajasthan and Punjab. Currency notes worth Rs.17,000/- in the denominations of Rs.500/- and Rs.100/- were seized from Abal.
- (ii) In March, 2001, the Mumbai Police, in one of the biggest hauls, seized counterfeit currency notes worth Rs.15 million in two separate cases. Ten persons linked to a Dubai-based notorious ISI agent Aftab Batki, were arrested. The counterfeit notes were of Rs.500/- denomination. The consignment had arrived from Dubai by air a couple of weeks ago. The notes were concealed in water dispensers and TV sets. After being smuggled into Mumbai, these were handed over to the Dawood gangsters for circulation. The interrogation of the arrested accused revealed that they worked for Aftab Batki. The police recovered from them a separate consignment of fake currency notes worth Rs.9 million meant to be supplied to certain businessmen in Mumbai.

India, as a signatory to the Geneva Convention, 1929, is committed to extend

full cooperation to all other countries for eliminating or containing to the furthest extent possible, the counterfeiting of domestic as well as foreign currencies. Indian laws and enforcement measures are in full conformity with the principles laid down in the Convention. The Indian Penal Code provides for punishment of life imprisonment or imprisonment for up to 10 years for counterfeiting any currency note or bank note, using as genuine, forged or counterfeit currency notes or bank notes and making or possessing instruments or materials for forging or counterfeiting currency notes. It also provides for punishment of imprisonment up to 7 years for possession of forged or counterfeit currency notes or bank notes. The making or using of documents resembling currency notes or bank notes is also an offence punishable with a fine. The investigation of cases involving counterfeit currency is done by specially trained staff of the State Police. At the national level, the Central Bureau of Investigation has created a separate unit to take up the investigation of offences of counterfeit currency which have inter-state or international ramifications.

**IX. SPECIAL INVESTIGATIVE
TOOLS TO COMBAT
TRANSNATIONAL ORGANIZED
CRIME**

The use of traditional investigative methods to combat transnational organized crime has proved to be both very difficult and ineffective. This demands that law enforcement agencies utilise special investigative tools such as controlled delivery, undercover operations and electronic surveillance (wiretapping, communications interception etc.) to effectively fight transnational organized crime. However, the use of these tools are often

surrounded with controversy because there is always public fear that they might infringe on human rights to privacy or are likely to be misused by the government to oppress citizens.

A. Controlled Delivery

Controlled delivery techniques have proven an important enforcement tool in identifying the principles involved in drug trafficking and other major smuggling offences. It is particularly important in countering the criminal activities of drug traffickers who, by the use of couriers, creation of false documents and other deceptive practices, carefully disassociate themselves and try to be remote from the drug trafficking operations.

The United Nations Conference for the adoption of a Convention against illicit traffic in narcotic drugs and psychotropic substances has defined controlled delivery as follows:

“Controlled delivery” means the technique of allowing illicit or suspect consignments of narcotic drugs, psychotropic substances, substances in Table-I and Table-II annexed to this Convention, or substances substituted for them, to pass out of, through or into the territory of one or more countries, with the knowledge and under the supervision of their competent authorities, with a view to identifying persons involved in the commission of offences established in accordance with Article 3, paragraph-1 of the Convention.”

Further, Article 11 of the Convention, covering controlled delivery, reads as follows:

“1. If permitted by the basic principles of their respective domestic legal systems, the Parties shall take the necessary measures, within their possibilities, to allow for the appropriate use of controlled delivery at the international level, on the basis of agreements or arrangements mutually consented to, with a view to identifying persons involved in offenses established in accordance with Article 3, paragraph 1, and to taking legal action against them.

2. Decisions to use controlled delivery shall be made on a case-by-case basis and may, when necessary, take into consideration financial arrangements and understandings with respect to the exercise of jurisdiction by the Parties concerned.”

Section 4 of the Indian Narcotic Drugs and Psychotropic Substances Act, 1985 provides:

1. Subject to the provisions of this Act, the Central Government shall take all such measures as it deems necessary or expedient for the purpose of preventing and combating abuse of narcotic drugs and psychotropic substances and the illicit traffic therein.
2. In particular and without prejudice to the generality of the provisions of subsection (1), the measures which the Central Government may take under that subsection include measures with respect to all or any of the following matters, namely:
 - a.
 - b. Obligations under the International Conventions;
 - c. Assistance to the concerned authorities in foreign countries

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and concerned international organisations with a view to facilitating coordination and universal action for prevention and suppression of illicit traffic in narcotic drugs and psychotropic substances.

The above provisions thus enable the drug law enforcement agencies in India to use the controlled delivery technique as an effective tool of investigation against organized syndicates, nationally and internationally. However, before adopting this technique, the originating country and the recipient country should discuss in detail the entire operation, maintain surveillance simultaneously in both the countries, keep close surveillance on the movement of drugs either through cargo or through couriers, and time the final strike operation simultaneously in both the countries to achieve maximum results. It will also be necessary to authenticate the evidence gathered in both the countries for successful prosecution of the traffickers.

In India, the Narcotics Control Bureau, the nodal agency for enforcement of laws concerning narcotic drugs and psychotropic substances, has undertaken controlled delivery operations with a number of countries from time to time both on its own initiative or when suitable cases are brought to its notice by other enforcement agencies.

The operation of controlled delivery is very difficult and complicated, particularly when it involves many countries and there is a difference in their legal systems and practices. In using this technique, there is always a fear that the consignment of illicit drugs may be lost during transit. The uniformity of legislation and close cooperation amongst the law enforcement

agencies of different countries are necessary make this technique effective.

B. Electronic Surveillance

Electronic surveillance covers wiretapping, communications interception, etc. Telephone interception and the monitoring of all electronic communications are the most controversial aspects of electronic surveillance. Yet these are very useful in assisting law enforcement agencies to combat transnational organized crime. Wiretapping or telephone interception is defined simply as the interception of a telephone conversation between parties without their knowledge, using equipment that is inserted into the electronic circuit between the transmitter and the receiver.

In India, interception of messages, transmitted or received by any telegraph is covered under subsection 2 of section 5 of the Indian Telegraphic Act, 1885, when it is necessary or expedient to do so in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with a foreign country or for preventing incitement to commission of an offence. The issue of constitutional validity of this provision came under scrutiny of the Supreme Court of India in a writ petition filed by the People's Union for Civil Liberties. The Supreme Court passed a judgment on 18th December, 1996, upholding the constitutional validity of the Act but laid down certain guidelines prescribing that the order for interception will be issued by the Home Secretaries at the Centre and in the States. A copy of the order should be sent to the Review Committee within a week. The order will cease to have an effect after two months unless renewed. The Review Committee will review the order passed by the authority concerned within two months of the passing of the order.

The total period shall not exceed six months.

The Government of India has made a legal provision in the licensing conditions formulated along with the cellular operators to make it mandatory on the part of the cellular companies to provide parallel monitoring facilities for all communications being received and emanating from a particular mobile set. Cellular operators operating in four metropolitan cities of Mumbai, Kolkata, Delhi and Chennai have made this facility available whereas others are bound to provide this facility within three years of the initiation of the mobile network.

C. Undercover Operations

The law enforcement agents, through undercover operations, are able to infiltrate the highest levels of organized crime groups by posing as criminals when real criminals discuss their plans and seek assistance in committing crimes. In India, there is no legislation or regulations to undertake undercover operations.

D. Immunity Systems

Immunity refers to the process of exempting from prosecution a co-accused, in order to maximise the potential of witness co-operation as a tool for combating transnational organized crime. The testimony of a person, who is party to a crime is very reliable because of his relationship to any co-accused. During investigation, a co-accused can reveal the true identities of other suspects, assist the police in locating the victim of a crime, or point out the *corpus delicti* or body of the crime. It is a very effective tool in prosecuting terrorists or members of criminal organisations.

Section 306 of Code of the Criminal Procedure, 1973, provides for the obtaining of evidence of an accomplice by tender of pardon subject to his voluntarily making a full disclosure of the facts and circumstances relevant to the offence for which the accomplice and co-accused are being charged with or investigated for. This provision is applicable in offences punishable with imprisonment of seven years or more.

E. Witness and Victim Protection Programmes

There is no legislation in India at present for protection of witnesses and the members of their families. Section 171 of the Criminal Procedure Code prohibits police officers to carry the complainant or witness to court. The intention of such legislation appears to be to ensure independence of evidence given by the witnesses without any influence from the police.

X. CONCLUSION

National strategies are inherently inadequate for responding to challenges that cross multiple borders and involve multiple jurisdictions and a multiplicity of laws. The rapid growth in transnational organized crime and the complexity of their investigations requires a global response. At present, the measures adopted to counter organized crime are not only predominantly national, but these measures differ from one country to another. It is absolutely imperative to increase cooperation between the world's law enforcement agencies and to continue to develop the tools which will help them effectively counter transnational organized crime.

In India, the Extradition Act, 1962 deals with extradition of fugitive

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criminals. Extradition can be made if the offence is an extraditable offence, i.e., an offence provided for in the extradition treaty with a State which is a treaty state and for other countries, an offence which is specified under the Second Schedule of the Act. Under this schedule, there are 18 types of offences. India has extradition treaties with Nepal, Belgium, Canada, Netherlands, the United Kingdom, the United States of America, Switzerland, Bhutan and Hong Kong and extradition arrangements with Sweden, Tanzania, Australia, Singapore, Sri Lanka, Papua New Guinea, Fiji and Thailand. Extradition treaties with Russia, Germany, UAE, Bulgaria, Thailand, France, Ukraine, Romania, Oman, Spain, Kazakhstan, Greece, Egypt, Malaysia and Mauritius are under finalisation.

India has entered into Mutual Legal Assistance Agreements/Treaties in criminal matters with the United Kingdom (1992 agreement concerning the investigation and prosecution of crime and the tracing, restraint and confiscation of the proceeds and instruments of crime, including currency transfer and terrorist funds), Canada (1994), France (1998), Russia (1993), Kyrgyzstan, Kazakhstan (all Mutual Legal Assistance Agreements in Criminal Matters), Egypt, China, Romania, Bulgaria and Oman. Mutual Legal Assistance Treaties have been negotiated with United Arab Emirates but is yet to be ratified. Negotiations are continuing for signing treaties on Mutual Legal Assistance in Criminal Matters with countries such as Australia, Norway, Mongolia, Turkmenistan, Bulgaria, Hong Kong, Ukraine, Uzbekistan and Azerbaijan.

Section 166 of the Criminal Procedure Code deals with reciprocal arrangements regarding processes. A court in India can

send summons or warrants in duplicate to a court in a foreign country for service or execution and the said foreign court will cause the service or execution. Section 166-A of the Criminal Procedure Code provides for letters of request to the competent authority for investigation in a foreign country. A criminal court in India may issue a letter of request to a court or a competent authority to examine orally any person supposed to be acquainted with the facts and circumstances of the case, to record his statement made in the course of such examination and also to require such person or any other person to produce any document or thing. Similarly, Section 166-B provides for letters of request from a country or place outside India to a court or an authority for investigation in India. Under this provision, the Central Government may forward the letter of request received from a foreign country to a magistrate who may summon such person and record his statement. The Central Government can also send the letter to a police officer who will investigate the offence.

India is a signatory to the South Asia Association for Regional Cooperation (SAARC) Convention for Suppression of Terrorism. SAARC consists of India, Pakistan, Bangladesh, Nepal, Sri Lanka, the Maldives and Bhutan. Pursuant to the SAARC Convention, India enacted the SAARC Convention (Suppression of Terrorism) Act. Extraditable crimes include unlawful seizure of aircraft; unlawful acts against the safety of civil aviation; crimes against internationally protected persons; common law offences like murder, kidnapping, hostage taking; and offences relating to firearms, weapons, explosives and dangerous substances, etc. when used as a means to perpetrate indiscriminate violence involving death or serious injury, or serious damage to property.