

## **TERRORISM FINANCING- A DYNAMIC CHALLENGE FOR INDIAN LEGAL SYSTEM**

Mayura Sabne-Botungale\*

### ***Abstract***

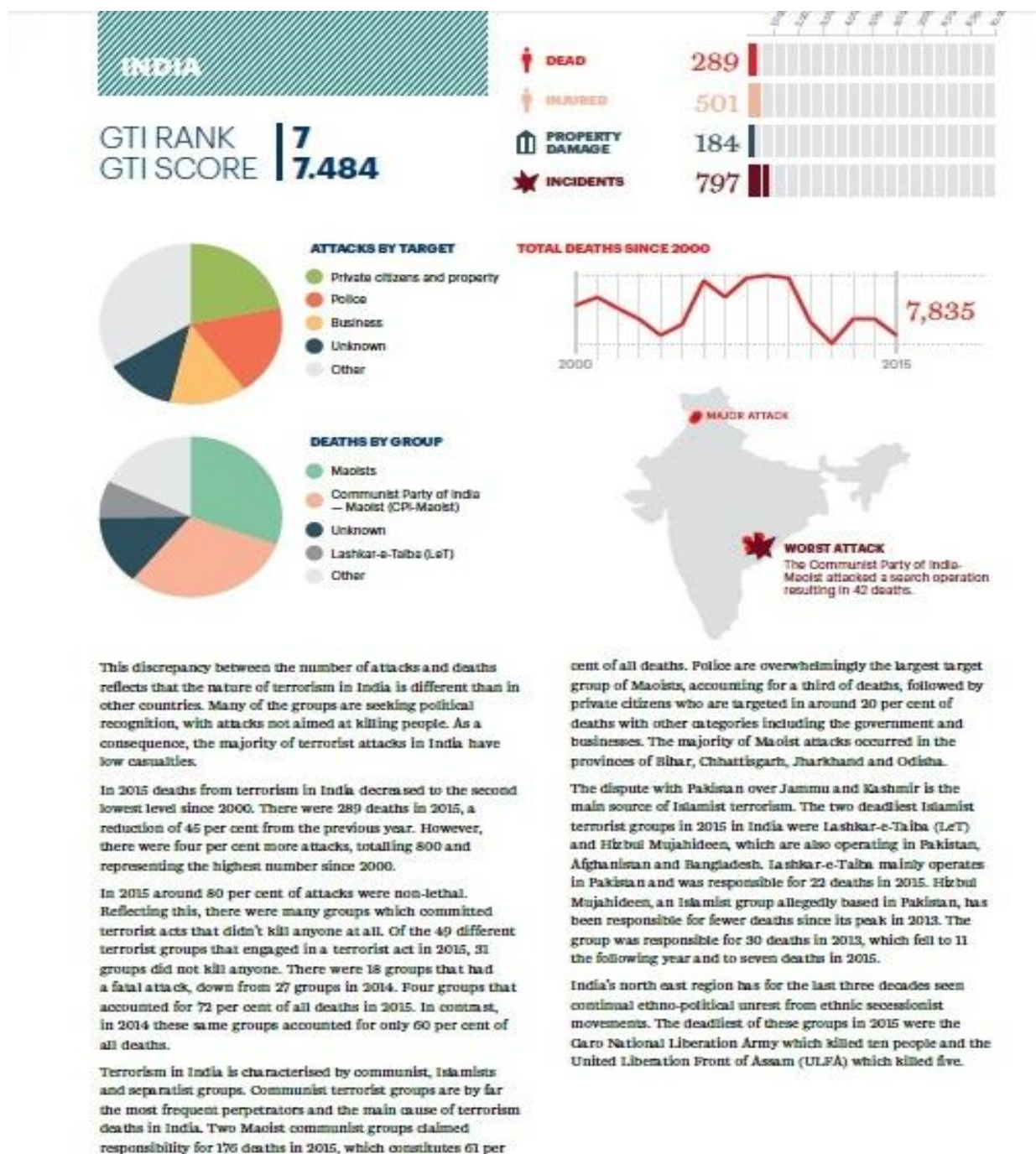
*Today, no state in the world is immune from the threat of terrorism and India is no exception to it. India has been combating terrorism since its birth as “independent nation”. It has built a strong legislative foundation along with operational mechanism to deal with menace of terrorism. Time and again, India has stressed on the fact that terrorism financing is the soul of terrorism and in order to eliminate terrorism, its financing must be thwarted with immediate effect. In the light of this background, the researcher has initially traced the conceptual development of the term “terrorism financing” in the present research paper. Further, the journey of present research paper continues with the basic understanding of various sources through which terror funds are obtained and channels of funding through which money is mobilized in the hands of terrorists. After having understood the nature of terrorism financing, the researcher has tried to assess the Indian legal framework dealing with terrorism financing. This evaluation is carried out from the perspective of dealing with the dynamic challenge posed by terrorism financing. After the analysis of Indian legislative initiatives, the researcher has tried to put forth some valuable practical recommendations based upon the conclusions.*

**Keywords-** Terrorism Financing, UAPA, FEMA, Hawala, Demonetization

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## INTRODUCTION



Source- The Global Terrorism Index, 2016

The above piece of information<sup>1</sup> depicts the nature of terrorism in India.

Since the birth as free independent nation, India has faced the threat of terrorism in various

<sup>1</sup> Global Terrorism Index, 2016, Available at: <http://www.economicandpeace.org/wp-content/uploads/2016/11/Global-Terrorism-Index-2016.2.pdf>, (Accessed on 01/02/2018)

forms from several factions of the society. Time and again, India has adopted various strategies and has enacted several legislations to tackle the menace of terrorism. India has also stressed upon the fact that the soul of terrorism is finances. Without funds, terrorism is crippled to death. 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<sup>2</sup>.

In the light of this background, the present research makes an attempt to understand the conceptual development of term “terrorism financing”. In order to appreciate the minutiae of the research topic, the Researcher has tried to take a concise overview of the various sources which funds for terrorism are obtained and channels through which they are either placed and integrated into the financial system and then used or directly mobilized in the hands of terrorists.

After understanding the basic concepts related with terrorism financing, the major deliberation of the Researcher is the Indian legal structure dealing with the offence of terrorism financing. Therefore, the Researcher has critically examined the counter - terrorism financing regime developed by India from legal perspective.

Thus, by doing all the above mentioned detailed exploration through legal lens, the Researcher has tried to analyze the measures and find out lacunas, existing if any. After arriving at conclusion, the Researcher has provided some useful practical recommendations.

## 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;
- 2) To critically evaluate the Indian legal provisions dealing with suppression of terrorism financing;
- 3) To provide practical recommendations for converting failures into successes;

## 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

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<sup>2</sup> 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>, (Accessed on 17/01/2018)

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.

## ANALYSIS

### A) CONCEPTUAL DEVELOPMENT OF TERM “TERRORISM FINANCING”, SOURCES AND CHANNELS

Terrorism financing is generally understood as an activity which deals with collecting and accumulating funds in order to sustain terrorism or donating to the terrorist organizations or networks, sometimes with complete knowledge regarding the intentions of the receiver of the funds and sometimes with complete ignorance about the misuse of funds.

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.”<sup>3</sup>The fund raising methods of wide range of groups are most often lumped together under the general rubric of terrorism financing.<sup>4</sup>

Thus, it is made clear that terrorism financing covers within its ambit all those actions which provide funding to terrorist activities of individual terrorists, terrorist organizations and networks. The terrorist activities include operation, training, propaganda, recruitment, compensation, social support mechanisms in one form or another. Therefore, it can be said that terrorism financing is the crux and driving force behind any terrorist activity.

Terrorist acts require very less funds<sup>5</sup>, however sustainability of terrorist organization demands continuous and stable funding in required considerable amount. Thus, without flow of funds, sustenance and operations are impossible. Terrorism is an expensive proposition and without a system of financiers and financial institutions, it cannot be sustained.<sup>6</sup> The decisions regarding terrorism financing affect the behavior of the terrorist organization to a large extent. Therefore, terrorism financing assumes significance.

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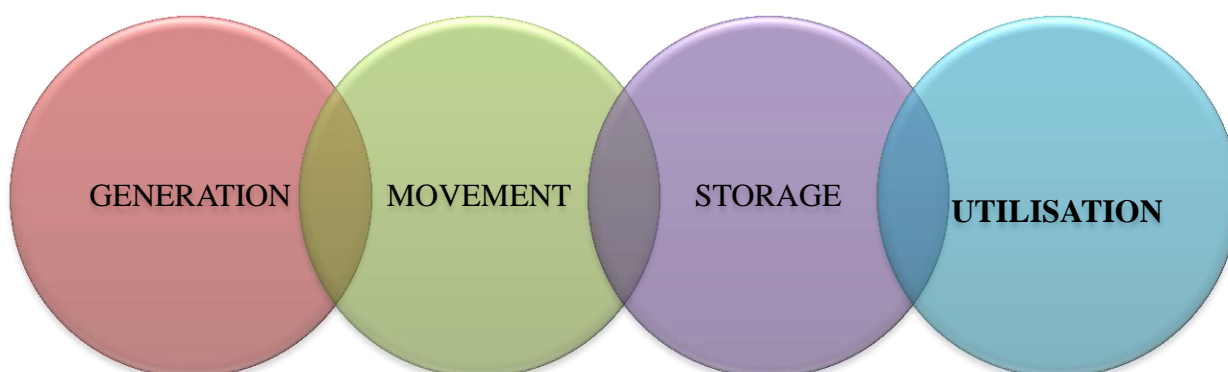
<sup>3</sup> Thomas J. Biersteker & Sue E. Eckert, *The Challenge of Terrorist Financing*, 1,6 in *Countering the Financing of Terrorism* (Thomas J. Biersteker & Sue E. Eckert, 2008)

<sup>4</sup> 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)

<sup>5</sup> *Supra* note 3 at 6

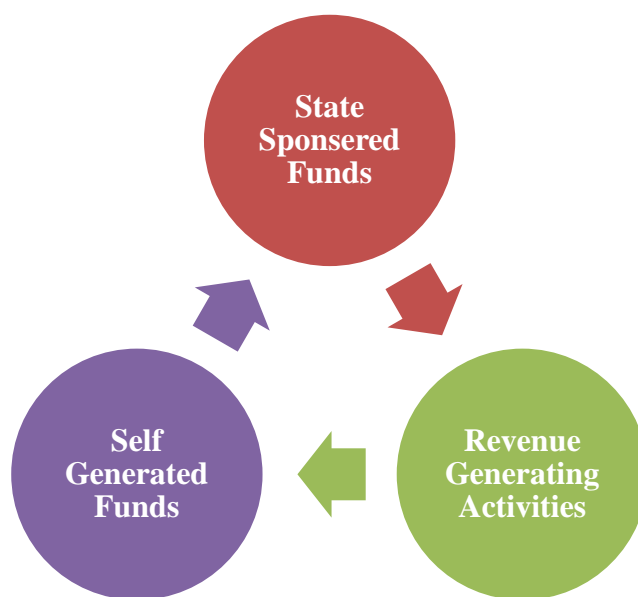
<sup>6</sup> Air Marshal S.C. Mukul, *Key note Address*, 7,10 in *War Against Global Terror* (Col.S.K.Sharma, 2009)

Terrorism financing does not envisage one single activity or stage; but it comprises of following multiple stages:



The sources of terrorism financing can be categorized according to the activities and persons or entities involved in it.

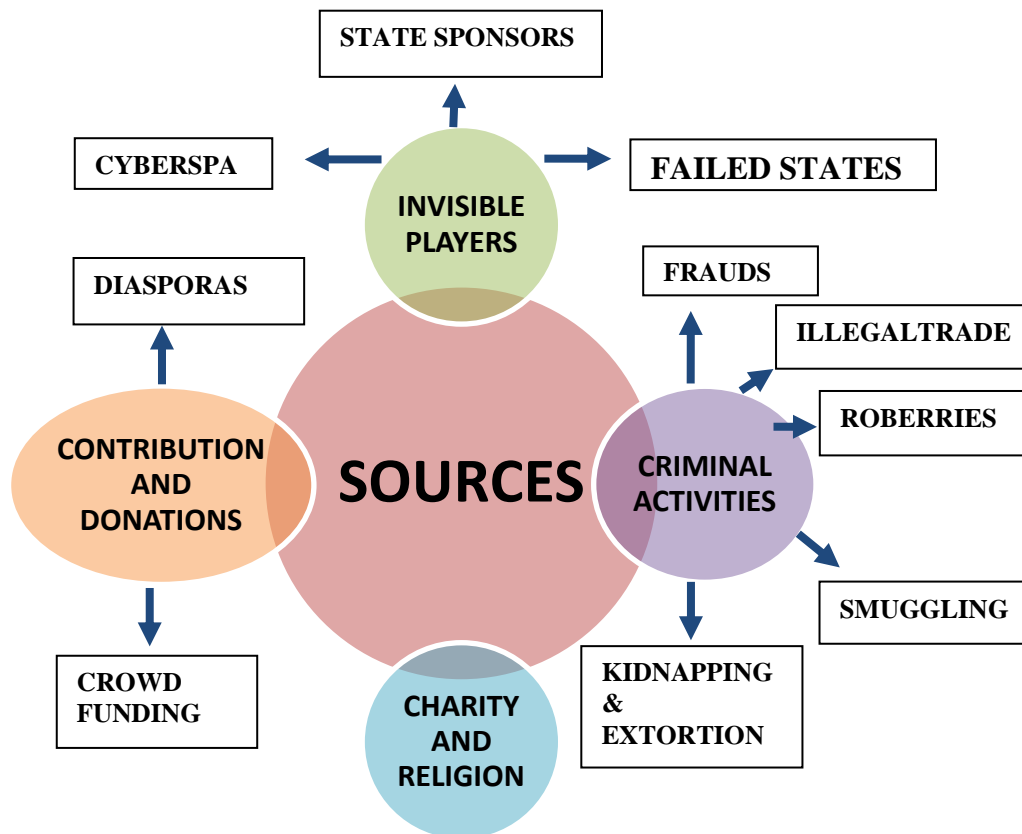
Following are the types of sources-



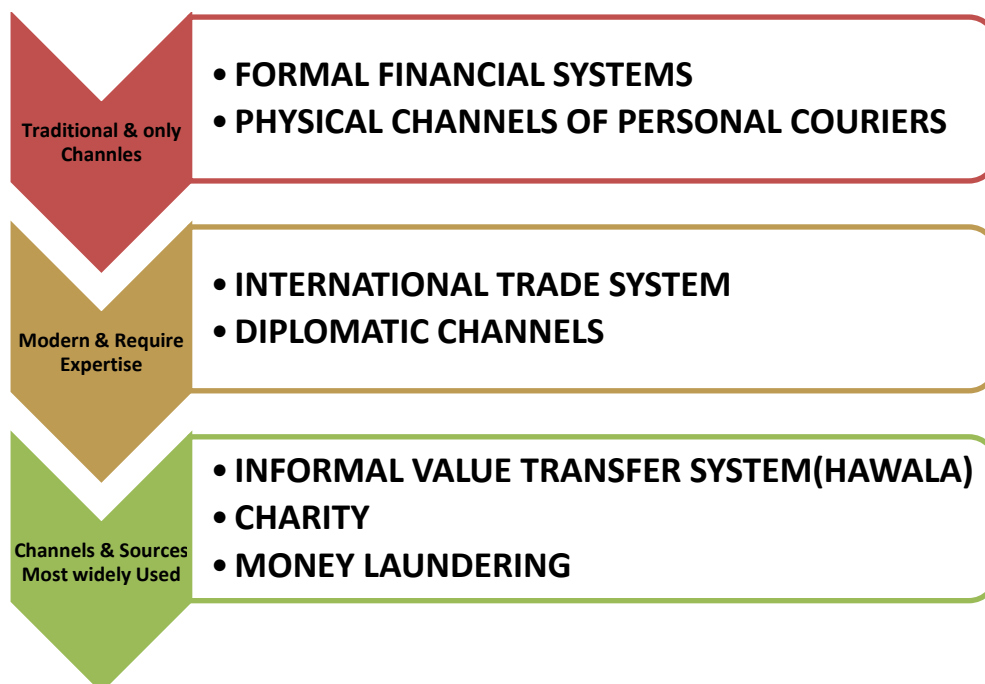
In the Indian context, it has been found that India has and is suffering from state sponsored terrorism funding by its neighborly country of Pakistan. Pakistan<sup>7</sup> is one of those states which are known to have been aggressively occupied in financing cross-border terrorism directly as well as indirectly and knowingly since decades.

<sup>7</sup> 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>, (Accessed on 07/01/2018)

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



Money generated through above mentioned sources assumes importance only when it is channeled safely through suitable path to reach its objective. Following are the various channels employed by terrorists to move their funds-

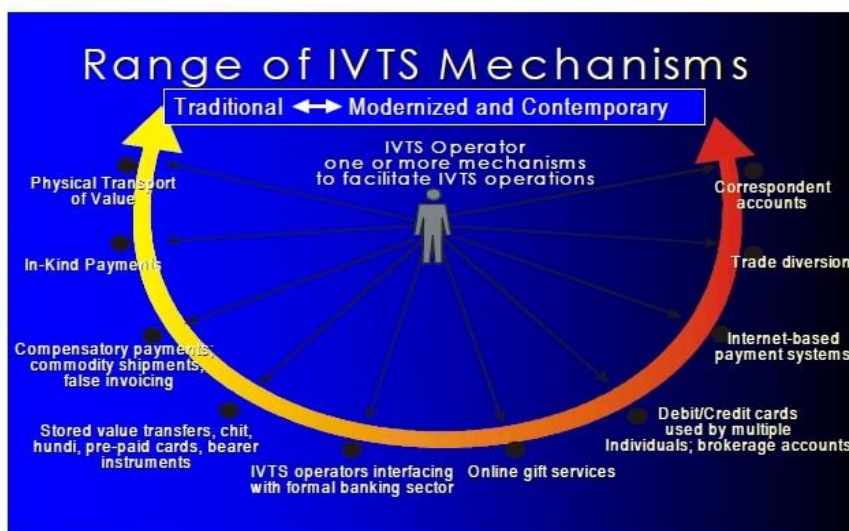




It has been found that cross-border trade of various supplies, smuggling of precious resources like gold and other criminal activities like bank robberies are some of the key sources of terror funding on Indian soil. If we have to consider the channels of terrorism financing, hawala is the most widely used to channelize terror funds in India. Some ways of hawala transfers are shown in the following picture-

IVTS Report

Nikos Passas



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## B) INDIA AT INTERNATIONAL & REGIONAL LEVELS

India has always contributed significantly in the development of international law dealing with combating terrorism and for countering its financing. India is signatory to The International Convention for the Suppression of the Financing of Terrorism, 2001. India has keenly and progressively implementing the Security Council Resolutions bearing number 1373 of 2001 and 2253 of 2015 pertaining to terrorism financing.

India is the architect of the Comprehensive Convention on International Terrorism which has been submitted to United Nations in the year 1996 and is still under consultation in the UN Committee. After the terrorist attacks anywhere in the world, India has made an appeal to the international community to set aside their differences on various issues arising out of interpretation of the Convention and adopt the Convention collectively.

<sup>8</sup> *Informal Value Transfer Systems, Terrorism and Money laundering*, Nikos Passas, The National Institute of Justice, 8( November 2003), Available at: <https://www.ncjrs.gov/pdffiles1/nij/grants/208301.pdf>, Accessed on 08/01/2018

In regional context, it has been found that India is one of the lively 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). Recently, India along with the ASEAN nations has committed itself to deepen cooperation in combating terrorism financing<sup>9</sup>. In the year 2017, India has pushed through its counter-terrorism agenda on the BRICS platform and has been successful in persuading the BRICS countries to adopt BRICS- Xiamen Declaration<sup>10</sup> which is a significant step 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.<sup>11</sup> Thus, it is evident that India is committed to accord regional co-operation with full strength and vigor on multiple fronts in the fight against terrorism financing.

Financial Action Task Force is one of the most important regional organizations committed to tackle the menace of terrorism financing. 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 has also assisted the Indian authorities by providing all the necessary functional utilities.<sup>12</sup>

### C) INDIAN LEGAL FRAMEWORK DEALING WITH TERRORISM FINANCING

The offence of terrorism financing is criminalized in India, pursuant to various International Conventions and Resolutions. The Indian statutes dealing with the crime of terrorism contains provisions which are aimed at curbing menace of terrorism financing.

One of the leading legislations dealing with the problem 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 said Act deals with terror funding on two lines- funds for

<sup>9</sup> Press Information Bureau, *Delhi Declaration of the ASEAN-India Commemorative Summit to mark the 25<sup>th</sup> Anniversary of ASEAN-India Dialogue Relations*, Available at: <http://pib.nic.in/newsite/PrintRelease.aspx?relid=175908>, (Accessed on 03/02/2018)

<sup>10</sup> 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>, (Accessed on 12/01/2018)

<sup>11</sup> 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>, (Accessed on 12/01/2018)

<sup>12</sup> Dr. Sanghamitra Sarma, *Financial Action Task Force-An Indian Perspective*, 09/08/2016, Available at [www.icwa.in/pdfs/IB/2014/FinancialActionTaskForceIB09082016.pdf](http://www.icwa.in/pdfs/IB/2014/FinancialActionTaskForceIB09082016.pdf), (Accessed on 12/01/2018)



unlawful association and funds for terrorism and its allied activities. Apart from providing direct punishment for raising funds for terrorist organizations and acts, the Act also imposes punishment for holding proceeds of terrorism. The newly added Section 51A<sup>13</sup> reflects the international obligation of freezing assets instantly in order to prevent the financing of terrorism.

The amendment made in the year 2008 has rightly acknowledged the dynamic and changing nature of terrorist organizations and networks. 2013 amendment has precisely targeted counterfeiting currency<sup>14</sup> which is one of the extensively used channels of funding terrorism on Indian soil. They have widened the range of definition of “terrorist act” by inserting a new schedule<sup>15</sup> which lists international treaties which contain a range of acts that can be termed as “terrorist act.” However, the scrutiny of the Schedule points out that unfortunately, the International Convention dealing with terrorism financing is not included in the said Schedule.

Since inception, the said Act has undergone relevant amendments to cope with changing needs of time but still it lags behind in encompassing the changes and developments taken place in the typologies and nature of terrorism financing. Procedural aspect is aptly drafted, but there is doubt how much of it is practically implemented.

Another relevant Enactment 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 Act tries to conserve the foreign exchange, which is highly vulnerable component for the crime of terrorism financing. It also makes an attempt to remedy the menace of smuggling.

The said Act envisages the policy of providing preventive detention which is in compliance with the constitutional mandate given under Article 22 of the Constitution of India. However, the said Act nowhere explains the main terms such as “foreign exchange” or “its conservation” and “augmentation.” The Act grants discretionary powers & uses value loaded and ambiguous words like “satisfaction of the officer”. The roughly worded grounds for passing the detention order weaken the force of law and make it prone to the abuse by corrupt officials. The fate of execution of the detention order has been left in the hands of traditional criminal justice system, which is already crippled with its own limitations. Thus, the Act lacks crisp provisions and becomes a puppet in the hands of Bureaucracy.

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<sup>13</sup> Section 51A, The Unlawful Activities (Prevention) Act, 1967

<sup>14</sup> Section 4(iv) (b) , Ibid

<sup>15</sup> Section 4(v) and Schedule 2, The Unlawful Activities (Prevention) Amendment Act, 2012

Another applicable legislation is *The Foreign Exchange Management Act [FEMA], 1999*. Foreign exchange is one of the significant components in the crime of terrorism financing because it facilitates transnational movement of money and hence this Enactment assumes importance.

With far-reaching applicability<sup>16</sup>, the said Act covers within its sphere all types of financial instruments and mixture of financial transactions. It endows legality to various transactions and dealings of foreign exchange and punishes illegality as “civil contravention”. Section 36<sup>17</sup> of the said Act establishes Directorate of Enforcement for the purpose of investigation into contraventions. However, the critical analysis of the functioning of Enforcement Directorate points out that it has failed to translate the law into reality. The Reserve Bank of India, which is rule making and regulatory body under this Act, has devised electronic reporting system<sup>18</sup> which facilitates realization of the provisions.

Though the Act encompasses an all-inclusive and clearly worded framework dealing with management of foreign exchange, the inclusion of the vague ground of “public interest” for revocation of orders or for suspension of operation of the Act weakens the strength of law. Further, in the view of globalization of economy in today’s age, the limited reach of execution authorities in case of civil detention orders passed against extra-territorial entities proves to be an important obstacle in its effective implementation.

One of the principal channels of terrorism financing is money laundering. Being synonymous with terrorism financing, the countering mechanism aimed at both of them envisages identical measures. In the light of this background, *The Prevention of Money Laundering Act, 2002 (Amended Up to Date)* becomes the major Indian Counter Terrorism Financing measure. 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 said Act covers within its purview some of the essential sources and channels of terrorism financing. It has criminalized the act of money laundering and has laid down a detailed mechanism for attachment, adjudication and confiscation of proceeds of crime. Along with

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<sup>16</sup> Subsection (3), Section 1, The Foreign Exchange Management Act, 1999

<sup>17</sup> Section 36, Ibid

<sup>18</sup> Electronic Reporting System, Available at <https://www.rbi.org.in/Scripts/ElectronicReportingSystem.aspx>, (Accessed on 12/01/2018)

enlisting the obligations of reporting entities<sup>19</sup>, it imposes monetary punishment for their non-compliance. The said Act also sets up a mechanism of special courts for speedy trial along with Appellate mechanism. The procedure for attachment and confiscation of property and provisions for reciprocal arrangement for assistance in certain matters aim to give effect to international legislations which are of similar nature dealing with the identical offence and empower the Indian authorities to carry out effective transnational investigations.

The Scheduled offences under the said Act cover wide variety of offences ranging from offences under UAPA to environmental protection related statutes. The Enforcement Directorate is charged with the responsibility of investigations initiated under the provisions of this Act. The details of the parent Act are enumerated and explained by enacting Prevention of Money Laundering (Maintenance of Records) Rules, 2005 (Amended up to date).

There is no doubt that the said Act is detailed and consolidated piece of legislation dedicated exclusively to the offence of money laundering. However, since its birth, its strict provisions were debated as being “draconian” and political community has made every attempt to dilute the provisions for their personal political interests. Further, it can be seen that the low quantum of punishment provided for commission of offence of money laundering and lack of stringent actions against reporting entities weakens the vitality of the law. Moreover, the recent judgment of the Supreme Court of India striking down provisions under Section 45(2) of the said Act concerned with denying bail to the accused<sup>20</sup> are bound to have negative impact on severity of law.

Due to globalization, acceptance and utilization of foreign contribution for funding terror under the garb of charity became widespread agenda. Therefore, in order to consolidate the law regulating the acceptance and utilization of foreign contribution and to prohibit its misuse for any activities detrimental to the national interest, *The Foreign Contribution (Regulation) Act, 2010 [FCRA]* was enacted.

The Act is armed with extra-territorial competency and contains elaborate definitions. The acceptance of any foreign contribution from foreign source and its delivery is well regulated to pinch the state sponsored terror funding and to restrain malicious use of charities. Along with

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<sup>19</sup> Section 2(wa), The Prevention of Money Laundering Act, 2002

<sup>20</sup> *Beyond the News: How Supreme Court eased bail in money laundering charge*, The Indian Express (29/11/2017), Available at: <http://indianexpress.com/article/explained/how-supreme-court-eased-bail-in-money-laundering-charge/>, (Accessed on 10/01/2018)

supervision and regulation of the transfer of foreign contribution, the said Act lays down exhaustive 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 and also lays down penal provisions for non-compliance.

One of the grave lacunas in the said Act is that it excludes certain sources of foreign contribution like business payments, legal remittances, and help from relatives which have been proven to be vital sources of terrorism financing. Unfortunately, the disqualification grounds and grounds for cancellation of certificate of registration nowhere include “terrorism financing”. The investigations into Zakir Naik’s alleged misuse of charity<sup>21</sup> for funding terror are exposing failures of the said Act.

The exploitation of cyberspace for spreading terrorist propaganda and for recruiting and raising funds has been increased leaps and bounds with the revolution in information and technology. India is also victim of the said disease. *The Information Technology Act, 2000* which was amended in the year 2008 laid down new provisions dealing with cyber terrorism and national cyber security<sup>22</sup>. The scrutiny of newly added provisions reveals that it nowhere includes the offence of terrorism financing committed through electronic medium.

The misuse of digital currency for raising funds is budding threat to Indian financial security. However, current Indian IT Act has still not taken this warning into consideration. The European nations are taking lead in combating the menace of terrorism financing through digital currencies. In this era of digital globalization, India cannot remain unaffected by this unwanted current and therefore, now the time has come that India must follow the suit and implement stringent legal provisions targeted at preventing the abuse of digital currency for funding terror. The terrorist organizations are abusing opportunities on the internet and social media platforms for spreading their malicious propaganda and ideology and for radicalizing Indian youth. In spite of having knowledge of this widespread exploitation, Indian cyber law fails to punish hate speech made by using these platforms.

The above discussed substantial provisions of law are implemented through following operational, investigative and enforcement agencies-

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<sup>21</sup> 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/](http://www.indianexpress.com/article/india/nia-moves-to-revoke-zakir-naiks-money-trail-probe-his-trail-4695667/), (Accessed on 10/01/2018)

<sup>22</sup> sections 66 F, section 70 A and section 70 B ,The Information Technology Act,2000 (Amended Up to Date)



The FIU-IND is armed with various powers and rights under the new Amendments made in the PMLA and its Rules. It has been robustly active in detection and reporting of suspected cases of financing of terrorism. Along with adopting of new technologies, it has widened its co-operative network at state, national & international level<sup>23</sup>. However, in reality, only 75 personnel are overburdened with so many responsibilities to perform at multiple levels. Moreover, the recruitment of these personnel from different regulatory organizations casts a doubt about their training for the purpose of intelligence gathering and sharing of information.

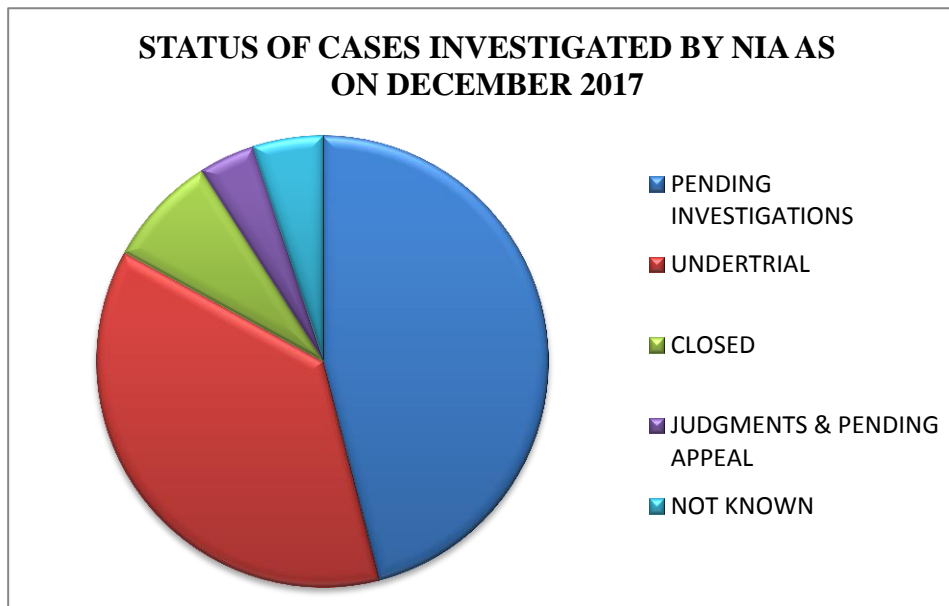
The statistical analysis of the performance of Enforcement Directorate from the year 2012 to 2015 shows that during the period of three years, only 111 cases were investigated. Only 52 persons were arrested and only 173 prosecutions complaints were filed for the purpose of implementation of PMLA. Under 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 showing the pendency of cases expose the inefficiency of the Enforcement

<sup>23</sup> Financial Intelligence Unit-India, *Annual Report* (2015-2016), Available at: <http://fiuindia.gov.in/pdfs/downloads/annualreport2015-16.pdf>, (Accessed on 1/02/2018)

Directorate. The scarcity of capable 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 and exclusively. Though the legal and executive fraternity is aware that the offences of money laundering and terrorism financing are very similar in nature and one aids another, still the premier investigative agency has not taking serious note of the offence of terrorism financing.

NIA has been established under the NIA Act, 2008 but said Act is not updated according to emerging trends. NIA is carrying on investigations into range of terrorist acts performed by ISIL, Jaish-e-Mohamd, FICN Smuggling Gangs, Harkat-ul-Mujahidin and various terrorist organizations. Since 2009, NIA has registered and is investigating 172 cases.



NIA has investigated only 11 cases related to terror funding out of all the above cases.<sup>24</sup> Prominent among them include cases against Babar Khalsa International operatives in Canada transferring funds to their counterparts in Punjab through front organizations for distribution to sleeper cells, jailed terrorists and the families of the terrorists, Assam based Dima Halem Daogah (Jewel) for procurement of arms and ammunition with cash involving Rs 1 crore, Ningthoujam Tomba alias N Rajen Singh, the self-styled Finance Secretary and Commander in chief of Manipur based Kanglei Yaol Kanba Lup (KYKL). ``We were able to trace the funding in these cases directly with the leaders and members of the banned terrorist groups. Our

<sup>24</sup> Sweta Desai, *Terror activity hit by currency ban, but only a matter of time before it returns, warn experts*, DNA, Mumbai (03/12/2016), Available at: <http://www.dnaindia.com/india/report-demonetization-is-a-body-blow-not-a-death-knell-for-terror-funding-2279160>, (Accessed on 03/02/2018)



investigations led us to evidence in the form of banking transactions, suspicious bank accounts, purchase of property, tax rate sheets for extortion," an NIA official who worked in the financial intelligence unit said.<sup>25</sup>

The critical analysis of the legal framework which is the base of the NIA points out towards the fact that the Agency has been given sound backing of the law. However, the applicability of regular criminal procedure to the trials has crippled the law enforcement and it is natural that the trial under the said act has to undergo the same peril of lengthy, tedious criminal procedures. The perusal of the list of Scheduled offences makes it clear that the law is restricted in nature and it has not been updated according to the changing needs of time. All the powers have been given to Central Government. This concentration of power may result into corrupt practices and it can harm national interests.

The critical analysis of the operational aspect of the agency reveals the huge number of under trial and pending investigations which negates the very notion of remedy of effective and speedy trial, embodied in its legal framework. The further analysis reveals that it lacks widespread institutional and territorial reach. There is no branch office located nearby the Rajasthan border which touches Pakistan, which is hotbed of allied terrorist activities. 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 is also riddled with scarcity of expertise manpower.

Terrorism financing is financial crime and therefore, the financial guardians like the Reserve Bank of India (RBI) and the Securities and Exchange Board of India (SEBI) are also charged with the responsibility to devise counter terrorism financing measures in order to protect stability and integrity of Indian financial system.

Securities and Exchange Board of India (SEBI) has issued Guidelines for Anti-Money Laundering Measures. These Guidelines obligate senior management of a registered intermediary<sup>26</sup> to establish appropriate policies and procedures for the prevention of money laundering and terrorist financing and ensure their effectiveness and compliance with all

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<sup>25</sup> Ibid

<sup>26</sup> Section 12, The Securities and Exchange Board of India Act, 1992 (Amended Up To Date)

relevant legal and regulatory requirements. However, application of these Guidelines only to the Registered intermediaries and their non-enforceable nature being “Guidelines” make them less effective. 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. Apart from these Master Circulars, RBI has issued Master Direction - Know Your Customer (KYC) Direction, 2016 to strengthen the mechanism of AML/CTF.

RBI has also issued warning in respect of use of virtual currencies including bitcoins.<sup>27</sup> However, now time has come that mere warning is not sufficient to tackle. A concrete step must be taken to nip the threat in the bud.

In the year 2016, the Government of India announced Demonetization Policy<sup>28</sup>. It 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.<sup>29</sup> The counterfeiting of currency is one of vital channels of terrorism funds. In the Indian context, as per the statements given in RS by Arjun Ram Meghwal (Minister of State for Finance), the total FICN is to the tune of Rs 400 Cr. As per the Lok Sabha Website between 2011 and 2015, the RBI has seized around 26 lakh counterfeit notes of denomination Rs 500 and Rs 1000 amounting to Rs 167 Cr. Amongst the two, FICN of Rs 500 currency notes were higher (both in numbers and in value). As per a study done by ISI (Indian Statistical Institute), at any given point of time, the FICN is to the tune of Rs 400 Cr and annually the FICN pumped into the economy is Rs 70 Cr.<sup>30</sup> In the light of this background, the move of demonetization implemented by the Government assumes significance.

The demonetization policy initially hit the roots of terrorism financing to some extent.<sup>31</sup> 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

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<sup>27</sup> 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](http://www.thehindu.com/business/Economy/use-of-bitcoin-illegal-says-govt/article17702483.ece), (Accessed on 12/01/2018)

<sup>28</sup> Understanding Demonetization: A critical Analysis, Available at: <http://byjus.com/free-ias-prep/demonetization-of-rs-500-and-rs-1000/>, (Accessed on 12/01/2018)

<sup>29</sup> *Ibid*

<sup>30</sup> *Ibid*

<sup>31</sup> *Supra* note 24

and illicit hawala transfers to sustain their operations, logistics and support their manpower, is now as good as scrap paper.<sup>32</sup>

However, it has also shown impact upon the changing nature of sources of terrorism financing.<sup>33</sup> Demonetization is not the permanent solution to the menace of terror funding.<sup>34</sup> The dynamic strategy and adaptive nature of terrorist networks is neutralizing the impact of the said policy. Hence, only the upcoming time will assist to calculate its long term impact.

## CONCLUSION AND RECOMMENDATIONS

Terrorism financing is the most dynamic element in the realm of terrorism. It sustains and survives terrorism by adapting to circumstances and transforming itself from one form to another as per the requirements of time and situation. Therefore, it is impossible to uproot it from the bottom but it is always achievable to contain its spread and restrain it within certain limits. Law is one of the instruments which assist the society and State to secure itself from existing and emerging trends in crime and hence Law can carve out ways and means by which the crime of terrorism financing can be controlled.

With this view, the Researcher has carried out an assessment of Indian legal framework dealing with terrorism financing and the Researcher has come to the conclusion that India has well-built establishment of legislative enactments. It has made an appreciable attempt to translate its international commitments into national efforts. However, the said legal framework dealing with terrorism financing is deficient and riddled with many lacunas. It still carries on the old traditional outlook of looking towards the offence of terrorism financing. This very crucial subject is dealt by adopting piecemeal approach and that too scantily by fragmented legislations. The offence of money laundering is targeted precisely with detail legal provisions but the researcher has found that though both the diseases of money laundering and terrorism financing exhibit identical symptoms, both of them require exclusive and independent cure. Indian law lacks dynamism and it is far lagging behind the advancements in the information and technology. Indian cyber law is still in embryonic stage and it needs immediate initiatives for its development. Unfortunately, India still has not enacted any legislation which exclusively and

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<sup>32</sup> *Ibid*

<sup>33</sup> Bharti Jain, *Rise in Number of locals joining J&K Militancy causing cash crunch*, Times of India, Available at: <http://www.timeofindia.indiatimes.com/india/rise-in-number-of-locals-joining-kj-militancy-causing-cash-crunch/articleshow/58584233.cms>, (Accessed on 12/01/2018)

<sup>34</sup> *Supra* note 25

independently deals with the offence of terrorism financing.

The enforcement of law is entrusted to multiple agencies who themselves suffer from severe defects and deficiencies like insufficient funding, lack of advanced and adequate infrastructural facilities, expertise human resource. They are the victims of bureaucratic rivalries, fierce competition and uncooperative attitude of all the participant entities. These negative currents are impeding the effective implementation of law and obstructing their adaptation to demands of new times. The temporary policies like demonetization are not going to thwart the spread of clandestine monster of terrorism financing. The operational and financial measures must be supported with vibrant and supportive co-operation from national CTF agencies.

Law takes birth out of womb of policy and it is very part of it. Therefore, the absence of an all-inclusive Indian Counter-Terrorism Financing Policy has further amplified the legal loopholes. There is an insistent need of encoding all CTF mechanisms under the roof of distinct, dynamic, adaptive, flexible and proficient policy which shall encompass both social and legal avenues for countering financing of terror. The policy must lay down the boarder outlines for enacting legislation which is dedicated solely to all the perspectives of offence of terrorism financing. The Policy must adopt an all-inclusive social and legal approach envisaging involvement of all actors engaged in various arena of terrorism.

In order to tackle the dynamic and emerging challenge of terrorism financing, law must understand the dynamic undercurrents of terror funding. Indian Law must adopt a comprehensive approach and engulf the extra-legal influences to achieve its aim. It must submit itself to dynamism and make itself a transformative guardian of society and State, if it really wants to embark upon the forceful challenge of terrorism financing.