

Transnational Organized Crimes: Beyond The Geopolitics Of States- Indian Perspective

Narem Vnss Usha Amulya
School of Law, GITAM University, Visakhapatnam

ABSTRACT:

Transnational Organized Crimes not merely have a bearing to the security of states, but also to that of its economy, given the large retail value of these crimes. Illicit Drug Trafficking, Terrorism, Money Laundering, smuggling, arms trade are not crimes independent of other crimes. They have a nexus and influence on one another as each is a means to the other. The proliferation these crimes has also been facilitated due to geopolitics and geography of the states, as can be seen in the case of India which requires more strengthening of border management to prevent these elements in taking advantage of the situation to facilitate these Transnational Organized Crimes. Furthermore, these crimes are not specific to one state though a particular state may be the leading market for the crimes. This paper addresses various Transnational Organized Crimes as an outline to expiate the menace of these threats to India, in particular and beyond the confines of geopolitics and geography, in general, as seen in the case of FATF (Financial Action Task Force) regulations, terrorism, money laundering and drug trafficking. The paper also attempts to understand the nexus between these various Transnational Organized Crimes concisely. Furthermore, the paper seeks to underline the recommendations to combat and regulate this menace of Transnational Organized Crimes.

Keywords: Transnational Organized Crimes, Terrorism, Drug Trafficking, Money Laundering

I. INTRODUCTION

With the advent of globalization, there is an accentuation in relations of trade and commerce affecting diplomacy and triggering wars amongst the states. Crimes are no longer confined to the domains of the geographical boundaries of any specific country and can be politically motivated or pertain to terrorism, money laundering, trafficking, drugs and arms trade, smuggling, etc. It must be observed that the world's biggest markets for illicit goods and services are often the world's biggest trading partners. This highlights as to how the global economy is often linked to and also influenced by the underworld and Transnational Organized Crimes.

Moreover, its impact on the global economy ought not to be underestimated, given the Retail Value of Transnational Crime¹ for Drug Trafficking, estimated at \$426 billion to \$652 billion, Small Arms & Light Weapons Trafficking estimated at \$1.7 billion to \$3.5 billion, Human Trafficking estimated at \$150.2 billion, Organ Trafficking estimated at \$840 million to \$1.7 billion, Trafficking in Cultural Property estimated at \$1.2 billion to \$1.6 billion, Counterfeiting estimated at \$923 billion to \$1.13 trillion, Illegal Wildlife Trade estimated

¹Channing May, *Transnational crime & the Developing World*, GLOBAL FINANCIAL INTEGRITY, March 2017, (Aug. 02, 2018, 06:00 PM), https://www.gfintegrity.org/wpcontent/uploads/2017/03/Transnational_Crime-final.pdf.

at \$5 billion to \$23 billion, IUU Fishing estimated at \$15.5 billion to \$36.4 billion, Illegal Logging estimated at \$52 billion to \$157 billion, Illegal Mining estimated at \$12 billion to \$48 billion, Crude Oil Theft estimated at \$5.2 billion to \$11.9 billion with the total amounting to \$1.6 trillion to \$2.2 trillion. This evinced that the Transnational Organized Crimes not merely jeopardize national security but also that of its population directly.

Last November, in 2017, three south Mumbai properties belonging to the fugitive don were auctioned for Rs 11.58 crore. The properties were put on auction by the ministry of finance, under the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act.²Hence, many of these pertinent issues which are rather dismissed to the state level are often issues that plague the entire nation. For instance, due to prohibition of liquor in Ahmedabad, liquor mafia has become a commonplace whereas Bangalore has seen the rise of construction mafia. Similarly, Terrorism and Drug trafficking is also a national and transnational problem in as much as it is a state issue, as is in the case of drugs issue in Punjab which underline the necessity of border management. In such a scenario, it is necessary to have some legal framework in place internationally. The Indian Government has ratified 2 UN Conventions, namely the United Nations Convention against corruption and the United Nations Convention against Transnational Organized Crimes and its 3 protocols in May 2011. States that have ratified UNTOC undertake to control and prevent transnational organized crime by making the participation in an organized criminal group, in crimes like money laundering, criminal and also adopt extradition frameworks for mutual assistance and cooperation.

II. GEOPOLITICAL LOCATION & ILLICIT DRUG TRAFFICKING: INDIAN SCENARIO

In specific to India, Illicit Drug Trafficking is the one of the major Transnational Organized Crimes, since India is one of the leading producers of licit opium which is required in the fields of medicine. Geographically, India shares its borders with many countries and is located in between the Golden Triangle and the Golden Crescent, thereby becoming the focal pass through which drugs are trafficked and smuggled to other nations. The usual “Balkan Route” is the principle route for organized crime factions to traffic Afghan opiates throughout the Western and Central Europe continues to be the principle channel for trafficking heroin. Particularly in drug trafficking, the discussion would be incomplete without addressing the “Golden Triangle”. It comprises mostly of North and North-Eastern part of Myanmar, in and around the border of Laos, Thailand and China. The drug traffickers also utilize the “natural benefactors” such as steep terrain, mountains, and dense forests along with heavy rains which also keeps them from the “emanating “eyes of law enforcement agencies. ³Hence, it is necessary to strengthen border management to keep a check on transmission which results in these crimes.

² Supreme Court orders Centre to seize Dawood Ibrahim's properties, TOI, Apr., 20, 2018.

³Anant Mishra, *From Drug Trafficking to Cultivation: A Global unchallenged Nexus*, INDIAN DEFENCE REVIEW, (Aug., 07, 2018, 2:33 PM), <http://www.indiandefencereview.com/spotlights/from-drug-trafficking-to-cultivation-a-global-unchallenged-nexus/>.

Another concern is the production of counterfeit drugs and pharmaceuticals in which china and India figure out among the leading producers.

III. TERRORISM: SECURITY CHALLENGES- BEYOND THE CONFINES OF GEOPOLITICS

According to Indian policymakers, terrorism and insurgency are the most significant among India's security challenges. In response to efforts to intercept them, these groups increasingly seek refuge in Pakistan, the United Arab Emirates, and other countries further afield such as Canada, Thailand, Malaysia, Singapore, Kenya, and Portugal. In 1980s, Pakistan's military developed strong links to drug barons involved in the afghan heroin trade.⁴ Despite collaboration and security deliberations with US to eliminate terrorist outfits and sharing of information regarding terror threats, it has not yet yielded the desired output. FATF (Financial Action Task Force) sanctions on Pakistan with regard to terror financing and Money Laundering, wherein Asia Pacific Group visit to review the compliance with international obligations will have repercussions to other countries. This is especially the case, since terrorism is no longer merely a national issue.

Similarly, Iran is facing challenges as it is trying to manage the compliance to demands set up FATF.

IV. MONEY LAUNDERING: INDIA, AN EMERGING LEADER IN FINANCIAL INTELLIGENCE OR AS A NICHE FOR THE VIOLATORS?

Vijay Malaya Case has been the poster case for Money Laundering in India. Furthermore, the affect of demonetization in curbing black money apparently seems to have added more to the woes of the people during the entire process, than yield results at which the process is directed at. In a first-of-its kind criminal case aimed to choke cyber banking fraudsters, the Enforcement Directorate (ED) has launched a money laundering probe against a clutch of alleged conmen based in a sleepy Jharkhand town who make fake calls to gullible people and steal monies from their accounts.⁵

In 1998, India officially entered the AML/CTF international regime by joining the Asia/Pacific Group on Money Laundering (APG), an FATF-style body focused on implementing AML/CTF initiatives in the Asia Pacific region. In March 2007, the Union Cabinet approved Financial Intelligence Unit- India (FIU-IND)'s ability to sign memorandums of understanding (MOUs) with its foreign counterparts to share financial intelligence within a structured framework. More recently, FIU-IND, through its foreign counterparts, has

⁴Rollielal, *Transnational Security Challenges in India, Issues for engagement: Asian perspectives on Transnational Security Challenges*, 128, 130-131, 2012, (Aug., 06, 2018, 7:37 PM), <https://apcss.org/wp-content/uploads/2012/02/128-139-Transnational-India.pdf>.

⁵*In A First, Money Laundering Case Against Bank Fraudsters*, NDTV, (Aug., 05, 2018, 9:03 PM), <https://www.ndtv.com/india-news/in-a-first-money-laundering-case-against-bank-fraudsters-1895597>.

identified two bank accounts in Belgium belonging to Nirav Modi, the perpetrator of a massive 11,400 crore rupee (about \$1.67 billion) bank scam in February 2018. FIU-IND then shared this information with the Enforcement Directorate (ED), which asked the Belgian authorities to freeze those accounts; the authorities honored that request. Additionally, FIU-IND helped the ED and the Income Tax Department with their investigation of Sanjay Bhandari, a former arms dealer, by asking its counterparts in Europe and the Middle East for information about Bhandari's assets abroad.⁶ The agency, which tracks black money under provisions of the Prevention of Money Laundering Act (PMLA) and prosecutes offenders for foreign exchange violations, has claimed in a report that 48 per cent of all cases of money laundering are associated with financial institutions.⁷

Hence, whether India is an emerging Leader in Financial Intelligence or as a niche for the violators can be interpreted after critical analysis of the overall scenario.

V. THE NEXUS OF TERRORISM, DRUG TRAFFICKING, ILLEGAL ARMS TRADE AND OTHER TRANSNATIONAL CRIMES

Terrorists are important non-state beneficiaries of drug trafficking. The term narco-terrorism first was used in Peru in the early 1980s.⁸ Indeed drug trafficking has provided funding for insurgency and those who use terrorist violence in various regions throughout the world, including in transit regions.⁹ As noted by UNODC in its Afghanistan Opium Survey 2017, The significant levels of opium poppy cultivation and illicit trafficking of opiates will probably further fuel instability, insurgency and increase funding to terrorist groups in Afghanistan.¹⁰

“Pakistan-based crime-terror group, D-company, whose origins lie in India, expanded Karachi's historic role as a drug transshipment point, and built a powerful transnational crime-terror organization, in part from drug proceeds, noted Dr Louise Shelley in a Congressional hearing, “Exploring the Financial Nexus of Terrorism, Drug Trafficking, and Organized Crime,” organized by the Committee on House Financial Services Subcommittee on Terrorism and Illicit Finance. Dawood Ibrahim's company has branched into weapons

⁶ Neil Noronha, *Follow the money: India should become an International Leader in Financial Intelligence*, CARNEGIE INDIA (Aug., 05, 2018, 9:00 PM), <https://carnegieindia.org/2018/07/16/follow-money-india-should-become-international-leader-in-financial-intelligence-pub-76819>.

⁷ Deeptiman Tiwary, *Enforcement Directorate: 48% of money laundering cases linked to financial institutions*, THE INDIAN EXPRESS, Nov., 10, 2017.

⁸ Dr. Louise Shelly, *Exploring the Financial Nexus of Terrorism, Drug Trafficking, and Organized Crime*, The Terrorism and Illicit Finance Subcommittee, US HOUSE COMMITTEE ON FINANCIAL SERVICES DEMOCRATS, (Aug., 05, 2018, 6:38 PM), https://democrats-financialservices.house.gov/uploadedfiles/03.20.2018_louise_shelley_testimony.pdf.

⁹ *Drug trafficking and the financing of terrorism*, UNODC, (Aug., 06, 2018, 10:45 PM), <http://www.unodc.org/unodc/en/frontpage/drug-trafficking-and-the-financing-of-terrorism.html>.

¹⁰ Afghanistan Opium Survey 2017: Cultivation and Production, United Nations Office on Drugs & Crimes and Ministry of Counter Narcotics, Islamic Republic of Afghanistan, UNODC (Aug., 02, 2018, 11:00 PM), https://www.unodc.org/documents/crop-monitoring/Afghanistan/Afghan_opium_survey_2017_cult_prod_web.pdf.

trafficking, counterfeit DVD and providing financial services through the hawala system.¹¹ Likewise, the influence of other Transnational Crimes on Terrorism and vice-versa cannot be underestimated. The Paris attack in 2015 traces as to how flow of weapons and weapons and arms trafficking resulted in the culmination of the attack. But, with failed states at the edge of Europe's borders and stockpiles of guns floating around in unstable regions like Libya and Ukraine, the continent's struggle is likely to be a long one.¹²

The impact on security and development which has been very disastrous has also been observed in the case of the trafficking of small arms and light weapons (SALW). Similarly, Money laundering is not the 'original' crime. All these proceeds are from original 'predicate' crimes, from human trafficking, through extortion and fraud. Whilst it is a crime in its own right, it is important to note the danger of double-counting the money laundering incidence with the predicate crime.¹³

VI. RECENT DEVELOPMENTS IN INDIA TO COMBAT TRANSNATIONAL ORGANIZED CRIMES

Few of the laws introduced and passed by the parliament to combat Transnational Organized crimes are as follows: The Parliament Passed the Fugitive Offender Act, 2018 to prevent offenders like Nerve Modi and Vijay Malya from fleeing the country, also empowering to confiscate the properties of these economic offenders. Furthermore, The Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2018 was introduced in Lok Sabha providing for the prevention, rescue, and rehabilitation of trafficked persons, National Anti-Trafficking Bureau, expiating its functions, State Anti-Trafficking officers, Anti-Trafficking units, Anti-Trafficking Relief and Rehabilitation Committee, Search and Rescue, protection & Rehabilitation etcetera has been passed in Lok Sabha.

VII. RECOMMENDATIONS TO COMBAT TRANSNATIONAL ORGANIZED CRIMES

Few of the recommendations to combat Transnational Organized Crimes can be summarized as follows:

- Making provision of information about Beneficial Ownership mandatory

Since most of the companies or channels through which offenders use anonymous name, it is necessary that countries require mandatory sharing of information as to the beneficial ownership when they are formed which ought to be updated regularly in a central register.

- Enhancing cooperation between law enforcement authorities / Inter-agencies

Authorities like Interpol, needs to be strengthened and cooperation must be ensured between inter-agencies so

¹¹Supra note 5.

¹²Naina Bajekal & Vivenne Walt, *Long seen as a haven from gun violence, Europe faces a new threat*, TIME, (Aug., 05, 2018, 8:30 PM), <http://time.com/how-europes-terrorists-get-their-guns/>.

¹³ Transnational Organized Crime and the Impact on the Private Sector: The Hidden Battalions, The Global Initiative against Transnational Organized Crime, UNODC, (Aug., 05, 2018, 7:03 PM), http://www.unodc.org/res/cld/bibliography/transnational-organized-crime-and-the-impact-on-the-private-sector_-the-hidden-battalions_html/gitoc_tocprivatesector_web-3.pdf.

that information is shared between them, thereby facilitating the global initiative to fight against Transnational Organized Crimes.

- Increased bilateral and multilateral cooperation between the nations

The nations ought to enter into agreements in combat these Transnational Organized Crimes by trapping and keeping a check in records of these criminals.

- Border Management:

Since, India shares its boundaries with more than 5 nations, it is necessary to ensure that its borders are properly managed and protected so that the criminals do not take advantage of geographical difficulties to engage in rampant trade, especially that of Drugs and arms trafficking. Similarly, the maritime security of India needs to be enhanced not only to assert its geopolitical strength in the wake of Chinese play of game of go in winning its allies and tuning its power, but also in the wake of smuggling activities by transit through seas which are rampant and which needs to be taken care of so that we do not face any accentuated threat from the southern peninsular side as well.

VIII. CONCLUSION

Transnational Organized Crimes are a menace to an increasing connected world. It not merely threatens national security but also hampers the global economic development and progress. Drug trafficking, Money Laundering, Terrorism and other Transnational Organized Crimes have a nexus with one another and are not specific to any nation (though their concentration and influence on each of these nations may vary) and extend beyond geopolitical situations and geographical boundaries. Therefore, any solution or recommendation to combat these crimes must be general to all crimes and nations, interlinking them.

IX. REFERENCES

Reports

- Afghanistan Opium Survey 2017: Cultivation and Production, United Nations Office on Drugs & Crimes and Ministry of Counter Narcotics, Islamic Republic of Afghanistan, UNODC (Aug. 02, 2018, 11:00 PM), https://www.unodc.org/documents/crop-monitoring/Afghanistan/Afghan_opium_survey_2017_cult_prod_web.pdf.
- Channing May, *Transnational crime & the Developing World*, GLOBAL FINANCIAL INTEGRITY, March 2017, (Aug. 02, 2018, 06:00PM), https://www.gfintegrity.org/wpcontent/uploads/2017/03/Transnational_Crime-final.pdf.

- Dr. Louise Shelly, *Exploring the Financial Nexus of Terrorism, Drug Trafficking, and Organized Crime*, The Terrorism and Illicit Finance Subcommittee, US HOUSE COMMITTEE ON FINANCIAL SERVICES DEMOCRATS,(Aug. 05, 2018, 6:38PM),
https://democratsfinancialservices.house.gov/uploadedfiles/03.20.2018_louise_shelley_testimony.pdf.
- Drug trafficking and the financing of terrorism, UNODC, (Aug., 06, 2018, 10:45 PM),
<http://www.unodc.org/unodc/en/frontpage/drug-trafficking-and-the-financing-of-terrorism.html>.
- Rollielal, *Transnational Security Challenges in India, Issues for engagement: Asian perspectives on Transnational Security Challenges*, 128, 130-131, 2012, (Aug., 06, 2018, 7:37 PM),
<https://apcss.org/wp-content/uploads/2012/02/128-139-Transnational-India.pdf>.
- *Transnational Organized Crime and the Impact on the Private Sector: The Hidden Battalions*, The Global Initiative against Transnational Organized Crime, UNODC, (Aug., 05, 2018, 7:03 PM),
http://www.unodc.org/res/cld/bibliography/transnational-organized-crime-and-the-impact-on-the-private-sector_-the-hidden-battalions_html/gitoc_tocprivatesector_web-3.pdf.

Newspapers

- Deeptiman Tiwary, *Enforcement Directorate: 48% of money laundering cases linked to financial institutions*, THE INDIAN EXPRESS, Nov., 10, 2017.
- *Supreme Court orders Centre to seize Dawood Ibrahim's properties*, TOI, APR., 20, 2018.

Websites

- Anant Mishra, *From Drug Trafficking to Cultivation: A Global unchallenged Nexus*, INDIAN DEFENCE REVIEW, (Aug., 07, 2018, 2:33 PM), <http://www.indiandefencereview.com/spotlights/from-drug-trafficking-to-cultivation-a-global-unchallenged-nexus/>
- *In A First, Money Laundering Case Against Bank Fraudsters*, NDTV, (Aug., 05, 2018, 9:03 PM),
<https://www.ndtv.com/india-news/in-a-first-money-laundering-case-against-bank-fraudsters-1895597>.
- Naina Bajekal &Vivienne Walt, *Long seen as a haven from gun violence, Europe faces a new threat*, TIME, (Aug., 05, 2018, 8:30 PM) , <http://time.com/how-europes-terrorists-get-their-guns/>.
- Neil Noronha, *Follow the money: India should become an International Leader in Financial Intelligence*, CARNEGIE INDIA (Aug., 05, 2018, 9:00 PM), <https://carnegieindia.org/2018/07/16/follow-money-india-should-become-international-leader-in-financial-intelligence-pub-76819>.