



DRUG TRAFFICKING: A MAJOR SOURCE OF MONEY LAUNDERING IN INDIA

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Abstract- Drug Trafficking is a major source of money laundering in India and affects the economy negatively. The purpose of this paper is to show how illicit drug trafficking leads to money laundering in India. The paper comprises of both primary sources and secondary sources of research. Doctrinal research has also been used by referring to various library databases for the in-depth analysis of this issue. The paper will try to answer whether drug trafficking is a major source of money laundering in India. Illicit drug trafficking affects the economy as a whole and there are provisions set in place by the Government of India to deal with the issue of drug trafficking with the help of various statutes like Narcotic Drugs and Psychotropic Substance Act, 1985 and Prevention of Money Laundering Act, 2002. The researcher hopes that this study will bring some light on the issue of money laundering and drug trafficking for better enforcement of laws in place to prevent illicit drug trafficking.

Keywords: Drug Trafficking; Drugs; India; Prevention of Money Laundering Act (PMLA); Hawala; Narcotic Drugs and Psychotropic Substances Act (NDPS).

I. INTRODUCTION

Drug trafficking is one of the most significant organized crime which affects both the developing as well as developed nations. Abuse of tobacco, alcohol, and illicit drugs is costly to our nation, exacting more than \$740 billion annually in costs related to crime, lost work productivity and health.¹ Out of this \$11 billion cost in health care and as high as \$192 billion cost overall annually to the nation due to the illicit use of drugs only.² The problem of illicit drug trafficking leads to many other related issues as the routes used by the drug traffickers are used to smuggle arms and ammunitions. These routes are also used by the terrorists as was seen in the case of Bombay attacks as well as the Gurdaspur and Pathankot attacks in India. Most of the drugs that enter India is due to its proximity to the 'Golden Crescent' and the 'Golden Triangle'. Another issue that arises due the illicit drug trafficking is the increased use of drugs by the population of India especially among the youth. Drug trafficking leads to money-laundering which is carried out by organized channels that make the illegal money legal without the physical movement of cash in most cases and once the money is made legal these accounts are destroyed leaving no trace of the illegal activities being carried forward. *Hawala* dealers are the persons involved in the business of drug trafficking to convert the black money to white money. This affects the economy of India due to increased inflation, high volatility of interest rates and increased demand of currency in the market.

The government of India have set in place various statutes to deal with the issue of drug trafficking and money-laundering. The act that deals with illicit drugs and psychotropic substances is called Narcotic Drugs and Psychotropic Substances Act (NDPS), 1985 and the act that deals with money laundering is called Prevention of Money Laundering Act (PMLA), 2002. Punishment under NDPS is minimum three years which can be extended to ten years with a fine. Whereas, punishment under PMLA is minimum of three years which can be extended to seven years with a fine. Also, the immovable and movable assets of the accused are attached and can be confiscated under PMLA. NDPS works at the state level whereas, PMLA works at the central level to search, seize and prevent the illicit drug trafficking trade, hawala transactions and money laundering.

II. STUDY OBJECTIVE

This paper will try to answer why illicit drug trafficking is bad? What other issues arise due to the illicit drug trafficking trade? How does drug trafficking lead to money laundering which in turn affects India economically? What are the provisions and statutes set in place by the Government of India to deal with (a) Illicit Drug Trafficking and (b) *Hawala* money generated from this trade? What are the Jurisdictions of Narcotic Drugs and Psychotropic Substance Act, 1985 and Prevention of Money Laundering Act, 2002? and are these laws effective in preventing (a) illicit drug trafficking trade and (b) black money?

III. LITERATURE REVIEW

The journal article, *"International Drug-Trafficking and Money-Laundering"* talks about the various international treaties signed by different countries to combat the problem of drug trafficking and subsequently money laundering. The author explains in-depth how illicit drug trafficking affects locally as well as the economy of whole world. He also talks about the massive drug profits that were earned during 1970s and 1980s which revealed the vulnerability of national economics and governmental systems to laundered money and sophisticated criminal organizations.

In a subsequent journal article called, *"A North-South Perspective"*, Andre McNicholl examines the international production and consumption patterns of several illicitly trafficked drugs and documents the historic interrelation between the producing (developing countries) and consuming (industrialized) countries. He has highlighted that due to an increase in demand of illicit drugs by the industrialized countries there has been an increase in the production of these substances.

In *"International Drug trafficking: A Global Problem with a Domestic Solution"*, the author, Matthew S. Jenner, talks about the various programs that government has set in place to dismantle the illicit drug trafficking industry. He also argues that there has been just a marginal success in these movements to curb up the problem of illicit drug trafficking and that stricter measures are needed to deal with the issue in hand. The author recommends legalising the business of producing and selling drugs but proposing a 'universal legalization' scheme.

William O. Walker III in his journal article, *"Drug Trafficking in Asia"* talks about the cultivation and trade of illicit drugs that is prevailing in the south-east Asian countries. The article also talks about the role of political economy in drug trafficking.

Green in her article, *"Drugs, Trafficking and Criminal Policy"* points out that, "drug control is not about the control of drugs but the control of people, albeit certain people". She also argues that as drug trafficking is a very lucrative business, strict measures need to be in place to control the prevalence of this business in the society.

"Drug Trade in Himachal Pradesh: Role of Socio-economic Changes" by Molly Charles talks primarily about the business of drug production, sale and consumption in the state of Himachal Pradesh. Molly talks about how even after the enactment of NDPS, drug trade and smuggling continues to rise unabated in India. The article mentions that there needs to be a stricter differentiation between drugs of various kinds and for restricting certain drugs to 'local use', especially so in the case of cannabis that has for long been popular with mystics and sadhus.

IV. RESEARCH METHODOLOGY

The research conducted for this paper includes a combination of various Doctrinal research methods including library research. Various government websites have been referred to collect both qualitative as well as quantitative data. Moreover, legal databases like Manupatra and LexisNexis were also referred to get the case that involved PMLA as well as NDPS provisions. Many articles published on JSTOR were also referred to do an in-depth study of money laundering and illicit drug trafficking in India.

V. ANALYSIS

A. Issues relating to drug trafficking

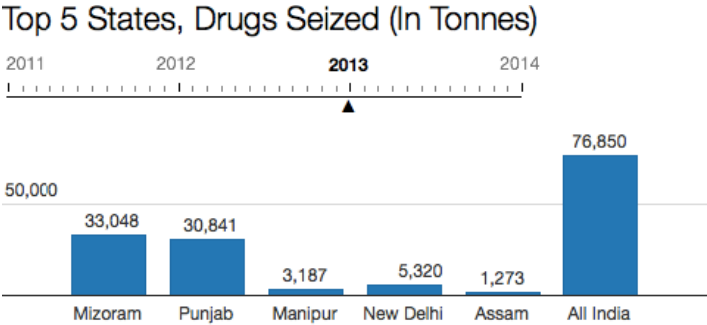
A lot of illegal activities are carried on from the money earned from drug trafficking which threatens the security of India as a whole. Firstly, the routes that are used for drug trafficking are also used to smuggle weapons into the country which leads to an increase in terrorist activities in the country. According to an article published by Pushpita Das, *"In fact, it has been established that the arms and explosives used in the 1993 serial bomb blasts in Mumbai were transported by the Dawood Ibrahim gang through the traditional trafficking routes."*³ Also, the Pathankot attack conducted on December 31, 2015 also hinted that the route that the terrorists used to enter India from Pakistan was through the routes that have been tried by drug traffickers. As it can be seen in **Appendix 1** that India shares its north-western border with the 'Golden Crescent' and its north-eastern border with the 'Golden Triangle' resulting in increased smuggling

of drugs into the country. Golden Crescent is the name which is given to one of the Asia's largest producer of illicit opium. The countries that fall in the Golden Crescent are Afghanistan, Iran and Pakistan. Whereas, Golden Triangle is the name given to the other major producer of opium in Asia and comprises of countries like Burma, Vietnam, Laos and Thailand. **Appendix 2** shows the trafficking trends as stated in the Annual Report of 2015 by Narcotic Control Bureau, Ministry of Home Affairs, Govt. of India.⁴ Due to the political and territorial unrest between India and Pakistan most of the drugs and weapons are smuggled from the Golden Crescent into the borders of India. India-Bangladesh border is most vulnerable with 1,607 cases reported from 2011 till June 2014, followed by India-Nepal (799), India-Myanmar (317) and India-Pakistan (120).⁵ Therefore, this shows that the breach of international borders by drug traffickers provides a route which is used for smuggling arms and ammunitions as well as terrorists into the country.

Secondly, the money earned by illegal sale of drugs is used to finance terrorist activities. In India, militants use this drug money to finance their struggle against India. It is estimated that 15 percent of the finances of the J&K militants were generated through the sale of drugs.⁶ Lastly, illegal trafficking of drugs into the country has led to an increased consumption of drugs among the local population especially the youth of the country. According to the data published by National Institute on Drug Abuse, there has been an increasing trend in the deaths due to the overdose of drugs from 2002 to 2015. As seen in the bar graph it is clear that there has been an upward trend in the number of deaths due to overdose of the drugs. Death due to the overdose of Heroin has increased 6.2-fold from 2002 to 2015.⁷ This shows the increased consumption relating to an increase in the business of illicit drug trafficking. Officials have seized 105,173 tonnes of illegal drugs over the period, a reminder of a growing Indian problem on the international day against drug abuse and illicit trafficking, observed on June 26 by the United Nations (UN).⁸ According to the data by Lok Sabha on seizure of drugs, in the year 2013 a total of 76,850 tonnes of drugs were seized. In Mizoram alone this number was as high as 33,048 tonnes and in Punjab it was 30,841 tonnes of drugs seized. Studies have revealed that 12% of drug addicts are below the age of 15, as are 31% in the age group of 16-25 years and 56% in the age group of 25-35 years.⁹ This data shows that most drug addicts are between the age group of 25-35.

B. Drug Trafficking and Money Laundering: Effects on the economy

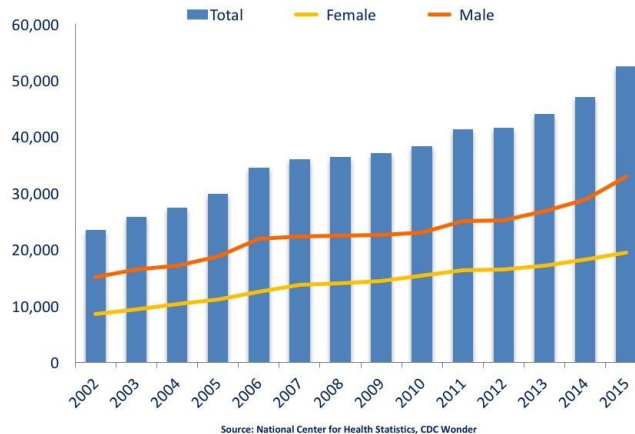
Drug Trafficking has been on a rise in India since the 1980's. One of the major reasons of drug trafficking, as discussed earlier, is the proximity of India to the 'Golden Crescent' and the 'Golden Triangle'. The annual income generated from drug trafficking is very high in India. Drugs are transported and distributed to North American and European markets using border states as transit points results in the generation of black money. The unholy nexus between politicians and bureaucrats on the one hand and the businessmen on the other, fuels black economy in India.¹⁰



Get the data
 Source: Lok Sabha; Figures for 2014 as on Dec 9, 2014; units in tonnes



National Overdose Deaths Number of Deaths from All Drugs



Money Laundering is the process of creating the appearance that large amounts of money obtained from serious crimes, such as drug trafficking or terrorist activity, originated from a legitimate source.¹¹ INTERPOL defines money laundering as, “any act or attempted act to conceal or disguise the identity of illegally obtained proceeds so that they appear to have originated from legitimate sources.”¹² Article 1 of EC Directive defines Money Laundering as:

“The conversion of property, knowing that such property is derived from serious crime, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in committing such an offence(s) to evade the legal consequences of his action, and the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, knowing that such property is derived from serious crime.”

Taking profit out of crime is the main objective of criminalising money laundering. The possible uses of this illicit drug money includes the financing of terrorism, own use by the traffickers and for buying of political influence. There is a substantial effect of moneylaundersing on the economy of India in terms of lost tax revenue to the government. An increased trend has been observed in the consumption of illicit drugs in India. According to Narcotics Control Bureau’s 2015 report, during 2015, 1687 Kgs of Opium, 1416 Kgs of Heroin, 94,403 Kgs of Ganja, 3349 Kgs of Hashish, 113 Kgs of Cocaine, 827 Kgs of Ephedrine/Pseudo-Ephedrine, etc. were seized by various agencies.¹³ It is very unlikely to find out the exact amount of money laundering that is happening in India due to illicit drug trafficking business. KPMG and International Monetary Fund has estimated that funds worth a whopping US \$590 billion to \$1.5 trillion are laundered annually through the global economy which amounts to two to five percent of the global GDP.¹⁴ In 2000, the Central Vigilance Commission estimated black money to be around 40% of GDP which was Rs. 70,000 – 80,000 crores.¹⁵

Hawala Money is one of the most common method used by the persons involved in the business of drug trafficking to convert black money earned from the trade to white money. *Hawala* or *Hundi* market is estimated to be anywhere between 30% - 40% of the formal market.¹⁶ Gold is the most popular *hawala* commodity that is used in the making of illegal mo

ney legal. To transfer money using banks there is a very lengthy process that needs to be followed so what the *hawala* dealers do is that they provide the same services with little or no paperwork and at rates lower than the banks to transfer the money. The Reserve Bank of India, the country’s Central Bank, itself admits that widespread *hawala* dealers operate illegally and therefore they cannot be registered and are beyond the reach of regulation.¹⁷ Using the *hawala* system, individuals transfer value from one place to another often without the actual movement of currency. The problem that arises with this transfer is that the money is either transferred into foreign accounts where there is less enforcement of *hawala* activities, or the money is invested in immovable and movable assets like buying of properties or cars. Most of this money does not come in the knowledge of the Government or the Reserve Bank of India as the accounts are destroyed by the *hawala* dealers right after the transaction is completed. There is a case of a bank whose branches in Coimbatore, Thrissur, Ernakulam and Palakkad received cash deposits aggregating Rs. 76 crores between October 1999 and April 2000, only to be en-cashed almost immediately which is a suspected case of *hawala*.¹⁸

Money Laundering can erode a nation's economy by changing the demand for cash, making interest and exchange rates more volatile, and by causing high inflation in countries where criminal elements are doing business.¹⁹ All black-market activities result in a loss of tax money for the government. In the same way *hawala* activities and *hawala* money is almost if not all tax paid money leading to huge losses to the government. Thus, drug trafficking leads to money laundering using the *hawala* dealers which affects the local economy of India in terms of volatile exchange rates and increased inflation in the country.

C. How to deal with Drug Trafficking and Money Laundering?

To regulate illicit drug trafficking, the Government of India passed an act in 1985 called The Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS, 1985). This act applies to whole of India as well as the citizens of India outside India and to persons on ships and aircrafts registered in India, wherever they may be. The Narcotic Drugs and Psychotropic Substances Act, 1985 was established to define what constitutes as illegal drugs and the punishments involved in its possession, sale, cultivation and transportation. Section 8 of the NDPS, 1985 dictates the provisions relating to cultivation, production, manufacturing, possession, selling, purchasing, transporting, warehousing, use, and import and export of any narcotic drug or psychotropic substance.²⁰ Section 15 to 40 of the act dictates the punishments for contravention in relation to various types of narcotic drugs and psychotropic substances. For instance, the punishment for the possession and use of cannabis plant or cannabis is dictated in Section 20 of NDPS, 1985. If small quantity is found it may lead to six months imprisonment or fine up to ten thousand rupees or both and in the case of quantity less than commercial quantity and greater than small quantity, then a fine of up to one lakh rupees or imprisonment up to ten years or both might be imposed. There have been many cases of possession and use of marijuana like the *Abani Nandi Alias Abani Mohan Nandi Versus State of Tripura, 2010*. In this case cannabis plant was being cultivated in a tilla land at Barbhuiya which belonged to Mr. Abani Nandi.²¹ According to Section 8(c) of the NDPS, it is illegal to cultivate any cannabis plant unless it is allowed by the government for industrial purposes. Punishment under NDPS, 1985 includes imprisonment for a term which shall not be less than three years, but which may extend up to 10 years and shall also be liable to fine.

The Prevention of Money Laundering Act (PMLA), 2002 came into force with effect from 1st July 2005.²² The act extends to whole of India including the state of Jammu and Kashmir. As stated in the Preamble of the Act, it is an Act to prevent money-laundering and to provide for confiscation of property derived from, or involved in, money-laundering and to punish those who commit the offence of money laundering.²³ The Directorate of Enforcement of the Department of Revenue, Ministry of Finance is responsible for investigating the cases relating to the offence of money laundering under Prevention of Money Laundering Act, 2002. According to the Government website of Enforcement Directorate, the following activities constitute as an offence under PMLA that leads to money laundering:

"Illegal arms sales, smuggling, and other organized crime, including drug trafficking and prostitution rings, can generate huge amounts of money. Embezzlement, insider trading, bribery and computer fraud schemes can also produce large profits and create the incentive to "legitimize" the ill-gotten gains through money laundering. The money so generated is tainted and is in the nature of 'dirty money'. Money Laundering is the process of conversion of such proceeds of crime, the 'dirty money', to make it appear as 'legitimate' money."

Section 3 of PMLA, 2002 defines what constitutes an offence under the act. Section 4 of the PMLA, 2002 defines the punishment for money-laundering. Whoever commits the offence of money-laundering shall be punishable with rigorous imprisonment for a term which shall not be less than three years, but which may extend to seven years and shall also be liable to fine which may extend to five lakh rupees.²⁴ Section 5 of the act talks about the '*Attachment of property involved in money-laundering*'. According to this section, Enforcement Directorate has the full power to attach the properties owned by the offender that they believe is acquired by illegal means. Once the summons is issued, the property of the offender is attached and can only be released after giving proper justification and by providing proper source of income from which the defendant acquired the attached properties. This has been challenged in the case of *Sayed Mohamed Masood Vs. Dyputy Director, PMLA (2011)*²⁵ where the appellant argued about the maintainability of attachment order passed by the defendant. It was held that as the appellant was not able to substantiate genuineness of transactions incurred, attachment proceedings initiated by respondent under provisions of PMLA, 2002 were valid proceedings.

"Nepalese are the most arrested foreign nationals: 266 arrests from 2011 to May 2014 followed by Nigerians (210) and Burmese (96)."²⁶ Therefore, there are strict provisions set in place by the government of India to deal with the issue of illicit drug trafficking as well as money laundering.

D. Jurisdiction and Implementation of NDPS, 1985 and PMLA, 2002

Narcotic Drugs and Psychotropic Substance Act of 1985 is enforced and implemented at the state level whereas Prevention of Money Laundering Act of 2002 is enforced and implemented at the central level. The Prevention of Money Laundering Act of 2002 applies to all Indians including the state of Jammu and Kashmir. NDPS is implemented on the state level and the state authorities are responsible for search and seizure of illicit drugs and any other psychotropic substance. The search and seizure of drugs mainly works on information based data that is acquired from various sources of the police. Border Security Forces (BSF) that protects the borders of India from our neighbouring countries are also the ones that gather information and find traces of infiltration by illicit drug traffickers as well as terrorists and inform it to local police. According to the BSF, there are plenty of couriers in border villages and they are being paid up to Rs. 60,000 per kg and a well-organised syndicate ensures that drug consignments are "*concealed and cleared*".²⁷ Smugglers even use pipes to transport drugs along the India-Pakistan border. Once police receive the information, they confiscate the drugs, arms and any other illegal commodity that is being smuggled into the country and registers a First Information Report (FIR) against the accused. Police also taps the calls of the prospective drug smugglers to find the network that has been established by these drug traffickers. Once an FIR has been lodged, a copy of the same is also sent to the Enforcement Department (ED) which then decides whether to open the case for PMLA or not. If ED finds enough evidence of money-laundering they issue summons to the accused and initiates the process of attachment of property (Section 5) and subsequently the confiscation of property (Section 17) and records (Section 18).



VI. RECOMMENDATIONS

Illicit Drug Trafficking is a very serious offence as it leads to many other offences like terrorism, illicit arms and ammunition trade, money-laundering etc. Thus, strict measures are needed to deal with this issue. The major problem is the lack of strict enforcement by the local police under NDPS, 1985. Due to this lack of enforcement it has been observed that the illicit drug trade in India has been increasing over the years. As seen earlier that the deaths due to drug overdose have also been increasing since the year 2002 which shows that more and more drugs are being either transported in the country or grown in the country. Once an FIR has been lodged against the accused, it is observed that the Directorate of Enforcement (DoE) acts very effectively by attaching the property of the individual and punishing the accused.

Therefore, there is a dire need for stricter implementation of search and seizure of illicit drugs by the police because until the police performs their duty effectively the Directorate of Enforcement would not receive any information regarding illicit drugs being sold in the country. Police and the Narcotic Control Bureau receives the first-hand information on illicit drugs. Also, as seen under the current Bharatiya Janata Party (BJP) government of Prime Minister Narendra Modi, linking of the aadhaar card has become mandatory to every bank account holder which will help in controlling the issue of money laundering as it will lead to fewer fake bank accounts which the *hawala* dealers will be able to use to convert the black money to white money.

VII. CONCLUSION

Therefore, drug trafficking is a curse to the society as well as the economy of India. Illicit Drug trafficking leads to other issues as well that pertains to the security of the country like terrorism, illegal entry of arms and ammunitions. It also leads to an increase in death due to drug overdose mainly among the youth of the country. Drug Trafficking and money laundering are interrelated as the money generated from the illicit trade of drugs and other psychotropic substances are converted from black money to white money with the help of various *Hawala* dealers that help in this trade. *Hawala* trade affects the economy of India as it leads to inflation in the market as well as leads to highly volatile interest rates as they provide interest rates lower than that provided by the banks. The parliament of India has set up Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS, 1985) and Prevention of Money Laundering Act, 2002 (PMLA, 2002) to deal with the issue of drug trafficking and money laundering respectively. The state has the jurisdiction over NDPS, 1985 cases and the centre has jurisdiction over PMLA, 2002 cases. PMLA, 2002 has been very effective in preventing black money as Section 5 of the act allows for attachment of suspected property and Section 17 talks about the seizure of this property. Moreover, the fear of punishment under both NDPS, 1985 and PMLA, 2002 helps in controlling and decreasing drug trafficking and money laundering. The punishment under NDPS, 1985 is a minimum of three years of imprisonment to a maximum of ten years and a fine whereas, the punishment under PMLA, 2002 is a minimum of three years to a maximum of seven years with a fine. Therefore, illicit drug trafficking is a major source of money laundering in India and both the NDPS, 1985 and PMLA, 2002 need to be enforced effectively to deal with these issues.

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