Combating Financing of Terrorism: 
Legislative Initiatives in India

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I. INTRODUCTION

One of the first and most important lessons of the 9/11 terrorist attacks on the World Trade Centre is that “Money is the life blood of terrorist operations.” The investigation by the US authorities after the 9/11 attacks successfully traced the funds that were used to finance them. The money trail led them to Al-Qaeda, the terrorist network that planned the attacks. A recent report by the National Commission on Terrorist Attacks upon the United States states that the total cost of the 9/11 attacks was between $400,000 and $500,000 U.S. Therefore, tracing the various transactions involved in the financing of terrorism is a crucial step in the investigation of terrorist funding.

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2 Lee, supra note 1, at 11.

3 For an account of the sources from which the funds came see Jason Burke, Al-Qaeda: The True Story of Radical Islam 251 (2004).


5 According to article 2 of the International Convention for the Suppression of the Financing of Terrorism, a person commits the offense of the financing of terrorism if he or she “by any means, directly or indirectly, unlawfully and willfully provides or collects funds with the intention that they should be used, or in the knowledge that they should be used, in full or in part, in order to carry out” (a) an act that constitutes an offence under any of the nine United Nations Conventions that deal with terrorism; or

(b) any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act is to intimidate a population, or to compel a government or an international organization to either do or abstain from doing a specific act.

International Convention for the Suppression of the Financing of Terrorism, art. 2, Dec. 9, 1999, 2178 U.N.T.S. 197. It is not necessary that the funds are actually used to commit an offence. Id.
attacks and finding out the real culprits behind the attacks. It is equally crucial to disrupt the flow of money to terrorist operations in order to prevent future attacks.\footnote{See Wesley J.L. Anderson, Disrupting Threat Finances: Utilization of Financial Information to Disrupt Terrorist Organizations in the Twenty-First Century (Apr. 11, 2007) (unpublished graduate monograph, School of Advanced Military Studies), available at http://handle.dtic.mil/100.2/ADA470454.}

In any serious effort to combat terrorism financing and disrupt the money trail there should be sufficient laws that support and enable the authorities to prevent, curb, and trace the sources of financial support for terrorists, and eventually to prosecute the offenders. The legislative measures adopted in India to deal with terrorist financing have a checkered history. The legislative approach has been piecemeal and lacks consistency. In the Unlawful Activities Prevention Act of 1967,\footnote{The Unlawful Activities (Prevention) Act, 1967, No. 37 of 1967; INDIA CODE, available at http://indiacode.nic.in/fullact1.asp?tfnm=196737.} which was the first major legislation dealing with terrorism, there was very little effort to curb terrorist financing. After amendments of this Act in 2004 and 2008, the law now contains specific provisions to deal with combating financing of terrorism. The Prevention of Money Laundering Act of 2002, which was not brought into force until July 2005, deals with the money laundering aspect of terrorism funding.\footnote{The Prevention of Money-Laundering Act, 2002, No. 15 of 2003; INDIA CODE, available at http://indiacode.nic.in/fullact1.asp?tfnm=200315.} The Foreign Contribution Regulation Act of 1976,\footnote{The Foreign Contribution (Regulation) Act, 1976, No. 49 of 1976; INDIA CODE, available at http://indiacode.nic.in/fullact1.asp?tfnm=197649.} which regulates the receipt of foreign funds by charitable organizations in India, could also provide assistance to curb the flow of funds to terrorists through charities, but the Act does little to address this problem. To address this issue, the Government has introduced the Foreign Contribution Regulation Bill in 2006 in the Rajya Sabha.\footnote{The Foreign Contribution (Regulation) Bill, 2006, Rajya Sabha Bill No. 112 of 2006, available at http://rajyasabha.nic.in/legislative/amendbills/home/CXII_2006.pdf.} But the fear that the medicine is too strong for the disease lurks in the minds of the voluntary agencies and therefore the Bill is yet to be made a law due to their opposition.\footnote{These bills are all discussed in detail infra Part V.}

The discussion below will focus on some of the key areas in combating financing of terrorism such as the source of funds for terrorists, the manner in which funds are transferred, the international efforts to combat financing of terrorism, the applicable Indian laws, and some of the emerging critical issues regarding the efforts to combat financing of terrorism.
II. SOURCES OF FUNDS FOR TERRORISTS

Terrorist organizations normally use funds from various sources such as sponsorships by governments; contributions from private sources (individual and corporate); financing by diasporas of ethnic and religious groups; proceeds of drug trafficking; and organized crime and other crimes (kidnapping, extortion, etc.). Funds are also raised from innocent people in the form of contributions for charities which are eventually used to finance terrorism. Charitable organizations play a big part in this mode of financing. Charitable organizations can mingle legitimate funds from individuals, private enterprises (whether voluntary or not), and governments with the proceeds from criminal activities, all behind a charitable facade that makes potential investigations unseemly and makes it difficult to distinguish dirty money from clean money.

In the United States and Europe after the 9/11 attacks, several charitable organizations were banned on the ground that they were front organizations for raising money to finance terrorist groups. On November 25, 2008 the United States District Court for the Northern District of Texas convicted five officers of a charitable organization known as the Holy Land Foundation for Relief and Development (HLF) based in Dallas, Texas, which was the biggest Muslim charity in the United States. The HLF was founded in 1988 but banned in December 2001, soon after the 9/11 attacks. The HLF had been raising money in the United States since 1988 and providing funds for the humanitarian and aid objectives of Hamas, a Palestinian Organization based in the Middle East. Hamas had been banned in the United States as a terrorist organization. The main allegation against the five accused officers of HLF was that they were funding Hamas in Palestine, which was using the funds for terrorist activities against Israel. The U.S. District Court rejected the arguments of the accused that the money was used purely for humanitarian activities.

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14 For a discussion on how charitable organizations receiving foreign contributions could be misused by money launderers and terrorist funding see Y. Srinivas, NGOs and Foreign Contributions, Chartered Accountant, June 2006, at 1744.
The five officers were convicted for various offences including terrorist financing and money laundering.\textsuperscript{15}

Terrorist financing also has close links with organized crime and drug trafficking. For the 26/11 Mumbai attack, Dawood Ibrahim’s drug money was allegedly involved in the funding of Lashkar-e-Toiba and other terrorist organizations located in Pakistan. Viktor Ivanov, the Director of Russia’s Federal Anti-Narcotics Service, in an interview with the government daily \textit{Rossiskaya Gazeta}, has said that the evidence shows that “regional drug baron Ibrahim had provided his logistics network for preparing and carrying out the Mumbai terror attacks.” Ivanov added that the attacks were a vivid example of how the illegal drug trafficking networks are used to carry out terror activities.\textsuperscript{16}

Apart from charities and drug trafficking, there are other activities which also provide significant sources of terrorism funding. Some of them include: racketeering, sometimes discreetly called a “revolutionary tax”; abductions with ransom demands (especially by Colombian paramilitary groups and groups active in the republics of the former Soviet Union); trafficking in precious stones (especially by the Khmer Rouge and rebel groups in Sierra Leone and Angola); as well as procuring and trafficking in human beings.

\section*{III. Transfer of Funds by Terrorists}

The techniques involved in the transfer of funds for financing terrorism are divergent. The terrorist organizations commonly use “informal money transfer systems” or “informal value transfer systems” to transfer money from their headquarters to various offices and even from offices to operators onsite.\textsuperscript{17} Some of these techniques are \textit{hawala} and \textit{hundi}, which is an informal transnational network of money brokers; the black market peso exchange networks; Fei Chien and other underground Asian financial networks; invoice manipulation schemes; in-kind fund transfers; trade diversion schemes; and courier services and physical transfer methods. Transfer of funds using these informal money transfer systems pose difficulties in finding the real people or organizations behind terrorist attacks. Therefore,

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Curb or totally destroying the informal money transfer system is a key to combat financing of terrorism.

Terrorists also use modern formal money transfer systems to transfer funds. In the 9/11 terrorist attacks, federal investigators were able to trace the bank accounts and credit card transactions used to transfer funds to the terrorists who carried out the actual operations. Terrorists use the latest technological developments in fund transfer systems, such as prepaid cards; Internet payment systems; mobile payments; digital precious metals; and all other high-tech modes of funds transfer. Their key motive would be to transfer funds faster and in the money trail following the terrorist operation it would be difficult for the investigators to trace the origin of funds and the real culprits.

IV. GLOBAL INITIATIVES IN COMBATING FINANCING OF TERRORISM (CFT)

Efforts to combat financing of terrorism run parallel with the efforts to prevent money laundering. This is because mostly the money used for terrorist financing has illegal origin.

The United Nation's effort to curb money laundering and terrorist financing has resulted in the following four framework conventions: 18

1. The UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 19
2. The UN Convention for the Suppression of the Financing of Terrorism of 1999 20
3. The UN Convention Against Transnational Organized Crime of 2000 21
4. The UN Convention Against Corruption of 2003 22

All four conventions provided a basic framework for national legislation to be enacted by the signatory nations. The UN conventions dealing with narcotic and psychotropic substances, organized crime,

18 For a survey of the global initiatives to combat money laundering see Francis Julian, The Global Legal Regime on Anti-Money Laundering, in Prevention of Money Laundering (Chandrasekharan Pillai & Francis Julian, eds., 2008).
and corruption mandate that national laws should criminalize laundering of money generated by drug trafficking, organized crime, and corruption. The UN Convention for the Suppression of the Financing of Terrorism mandates the criminalization of financing of terrorism and terrorist organizations. The four conventions also contain additional measures that address issues such as search, seizure, and confiscation of assets belonging to the perpetrators of these crimes and those connected with them. In addition, these conventions provide for cooperation among various authorities both at the national and international levels in terms of law enforcement, mutual legal assistance, asset recovery, and extradition of offenders.

The main fulcrum of the framework conventions is the requirement that financial and non-financial institutions, as well as certain businesses and professions, follow certain obligations in the form of reporting suspicious transactions involving money laundering and terrorist financing. Banks and other financial institutions such as insurance companies and securities exchanges have to perform due diligence when opening customer accounts and keep records of all transactions. They also have an obligation to regularly monitor accounts and to report suspicious transactions to the Financial Intelligence Units (FIUs) which are constituted within the country. They also must periodically send information to these FIUs. The supervisory authorities in the country have to ensure that financial institutions comply with these requirements.

In addition to financial institutions, certain “designated non-financial businesses and professions” such as casinos, real estate agents, and dealers in precious metals and stones, and professions such as lawyers, notaries, and accountants have to report suspicious transactions.

All the above measures have been prescribed by the intergovernmental agency known as the Financial Action Task Force (FATF), founded in the year 1989. FATF has been constantly revising these

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23 In India, the Financial Intelligence Unit-India (FIU-IND) has been set up as the central national agency under the Department of Revenue, Ministry of Finance, Government of India, with effect November 18, 2005, with a view to coordinate and strengthen collection and sharing of financial intelligence through an effective national, regional, and global network to combat money laundering and related crimes. The FIU-IND is an independent body reporting directly to Economic Intelligence Council (EIC) headed by the Finance Minister. See The Permanent Representative of India, Fifth Report of the Government of India to the Counter-Terrorism Committee, delivered to the Counter-Terrorism Committee and the Security Council, U.N. Doc. S/2007/196 (Apr. 11, 2007), available at http://daccess-ods.un.org/access.nsf/Get?Open&DS=S/2007/196&Lang=E&Area=UNDOC.

24 The Financial Action Task Force was set up in 1989 by seven major developed countries, namely, the United States, Japan, Germany, France, the U.K., Italy, and Canada, and the President of the Commission of European Communities with the aim of fighting money laundering. Subsequently, eight more countries, namely, Sweden, Denmark, Netherlands,
measures so that new measures will be adopted in tune with the changing patterns in money laundering and terrorist financing. After the 9/11 incident FATF announced the following additional measures that today form the backbone of combating terrorism financing.

- Criminalization of financing terrorism;
- Effective sanctions for legal persons for financing terrorism;
- Freezing and confiscating terrorist assets;
- Obligations to report suspicious transactions involving terrorist acts or organizations;
- International cooperation for investigations, inquiries, and proceedings related to the financing of terrorism;
- Other important preventive and detective measures;
- Increased control of alternative remittances, wire transfers, non-profit organizations, and cash couriers; and
- Inter-agency coordination among relevant agencies (e.g. FIU, Law Enforcement, Intelligence) in the investigation of terrorist financing offences.

V. INDIAN LEGISLATIVE INITIATIVES IN COMBATING FINANCING OF TERRORISM

Currently, national legislation to combat the financing of terrorism operates in three areas. The first is laws dealing with prevention of terrorism. The second is laws dealing with prevention of money laundering. The third is laws regulating charity funding. Thus, in order to effectively combat the financing of terrorism, national legislation must provide adequate measures pertaining to each of the above three key areas.

In India three major laws deal with these three areas. The first is the Unlawful Activities Prevention Act of 1967 (UAPA), which has been amended by the Parliament in 2004 and 2008 to deal specifically with financing terrorism. The Prevention of Money-Laundering Act of 2002 (PMLA), which was brought into force rather belatedly in July 2005, deals with money laundering. PMLA was also amended in the year 2005. The Foreign Contribution Regulation


Act of 1976 (FCRA) regulates foreign funding of charities, although there is no specific regulation that addresses the possible use of charity funding within the country for the financing of terrorism. The FCRA was considered inadequate to deal with terrorist financing through charities, and therefore in 2006 the Government of India introduced the Foreign Contribution Regulation Bill in the Rajya Sabha, but this bill is yet to be passed.

In India, foreign currency transactions were initially regulated by the Foreign Exchange Regulation Act of 1947, which was repealed and replaced by the Foreign Exchange Management Act of 1999 (FEMA). Under FEMA all foreign currencies should be received only through authorised foreign exchange dealers. All export values should be received within a particular period. However, in spite of FEMA, there is a widespread use of hawala, which is an illegal system for the transfer of funds from foreign countries.

A. Unlawful Activities (Prevention) Act of 1967

Before India’s independence there were draconian laws dealing with terrorism. After independence, the Prevention of Unlawful Activities Act of 1967 (UAPA) was enacted to prevent certain unlawful activities of individuals and associations. Under UAPA “unlawful activity” means any action taken by an individual or association (whether by committing an act or by words, either spoken or written, or by signs or by visible representation or otherwise) which is intended, or supports any claim, to bring about, on any ground whatsoever, the cession of a part of the territory of India or the secession of a part of the territory of India from the Union, or which incites any individual or group of individuals to bring about such cession or secession; or which disclaims, questions, disrupts, or is intended to disrupt the sovereignty and territorial integrity of India. The unlawful associations under the UAPA are those associations which have for their object any unlawful activity, or which encourage or aid persons

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31 See the preamble of the UAPA, which states as follows: “An Act to provide for the more effective prevention of certain unlawful activities of individuals and associations and for matters connected therewith.” The Unlawful Activities (Prevention) Act, 1967, No. 37 of 1967, preamble; INDIA CODE, available at http://indiacode.nic.in/fullact1.asp?fnm=196737.

32 Id. § 2(0).
to undertake any unlawful activity, or of which the members undertake such activity; or which have for their object any activity which is punishable under section 153A or section 153B of the Indian Penal Code (Number 45 of 1860), or which encourage or aid persons to undertake any such activity, or of which the members undertake any such activity.\textsuperscript{33} The UAPA empowers the Government to declare an association as an unlawful association and prescribes the procedure for the same.\textsuperscript{34} The UAPA also empowers the Government to prohibit the use of funds belonging to any association declared an unlawful association under the Act.\textsuperscript{35} Under the UAPA, anybody who participates in an unlawful association or its activities or deals with the funds in contravention of the orders of the Government is liable to be punished with imprisonment.\textsuperscript{36} Thus the UAPA as originally enacted was very limited in its scope and applicability and had a very limited role in combating terrorist financing.

In the year 2004 the UAPA was amended by the Unlawful Activities (Prevention) Amendment Act, which made substantial changes.\textsuperscript{37} The Amendment Act gave a wider coverage and applicability to UAPA by bringing terrorism and terrorist funding under its purview. It introduced a definition of "terrorist act"—meaning that a person commits terrorism if she or he with the intent to threaten the unity, integrity, security, or sovereignty of India does any act by using bombs, dynamite, or other explosives, chemicals, firearms etc., so as to cause, or likely to cause, death or injuries to any person or loss or damage to property or disruption of essential supplies or cause damage to Government property or equipment or detains any person and threaten to kill or injure in order to compel the Government to do or abstain from doing any act.\textsuperscript{38} The Amendment Act also made

\textsuperscript{33} Id. § 2(g).

\textsuperscript{34} Id. § 3.

\textsuperscript{35} Id. § 7.

\textsuperscript{36} Id. §§ 10-11.

\textsuperscript{37} In between two legislations were enacted by the Indian Parliament. The first was the Terrorist and Disruptive Activities (Prevention) Act, 1987 (TADA), No. 28 of 1987, available at http://www.satp.org/satporgtp/countries/india/document/actandordinances/TADA.HTM. The provisions of TADA were challenged as unconstitutional and violative of several fundamental rights before the Supreme Court of India. Though the Supreme Court of India upheld TADA, see Katar Singh v. State of Punjab, (1994) 3 S.C.C. 56, it was allowed to lapse in 1995 under the sunset provision because of large-scale human rights abuses while implementing TADA. Subsequently, the Indian Parliament enacted the Prevention of Terrorism Act, 2002 (POTA), No. 15 of 2002; INDIA CODE, available at http://indiacoode.nic.in/fullact1.asp?tfnum=200215. The provisions of POTA were found to be draconian and POTA was also repealed in 2004. See The Prevention of Terrorism (Repeal) Act, 2004, No. 26 of 2004; INDIA CODE, available at http://indiacoode.nic.in/fullact1.asp?tfnum=200426.

\textsuperscript{38} UAPA's section 15 defined "terrorist act" as follows:
the person who commits a terrorist act punishable with death or imprisonment for life.\textsuperscript{39} This Amendment Act also introduced the concept of "proceeds of terrorism."\textsuperscript{40} Under this definition properties which have been derived or obtained from the commission of any terrorist act or have been acquired through funds traceable to a terrorist act, irrespective of the person in whose name such proceeds are held or in whose possession they are found, and including any property which is being used, or is intended to be used, for the purpose of a terrorist organization are treated as proceeds of terrorism.

Similarly, the Amendment Act also made it an offence to raise funds for committing a terrorist act\textsuperscript{41} or raise funds for a terrorist organization.\textsuperscript{42} A person commits the offence of raising funds for a terrorist organization if she or he, with the intent to further activity of a terrorist organization, either invites another person to provide money or property with the intent that it should be used or reasonable cause to suspect that it might be used for the purpose of terrorism; or receives money or other property, and intends that it should be used, or has reasonable cause to suspect that it might be used for the purpose of terrorism; or provides money or other property, and knows, or has reasonable cause to suspect that it might be used for the purpose of terrorism. The Amendment Act made it an offence to hold terrorist funds or the proceeds of terrorism and also empowered forfeiture of the proceeds of terrorism.\textsuperscript{43}

Whoever, with intent to threaten the unity, integrity, security or sovereignty of India or to strike terror in the people or any section of the people in India or in any foreign country, does any act by using bombs, dynamite or other explosive substances or inflammable substances or firearms or other lethal weapons or poisons or noxious gases or other chemicals or by any other substances (whether biological or otherwise) of a hazardous nature, in such a manner as to cause, or likely to cause, death of, or injuries to any person or persons or loss of, or damage to, or destruction of, property or disruption of any supplies or services essential to the life of the community in India or in any foreign country or causes damage or destruction of any property or equipment used or intended to be used for the defence of India or in connection with any other purposes of the Government of India, any State Government or any of their agencies, or detains any person and threatens to kill or injure such person in order to compel the Government in India or the Government of a foreign country or any other person to do or abstain from doing any act, commits a terrorist act.

The Unlawful Activities (Prevention) Act, 1967, § 15.

\textsuperscript{39} Id. § 16.

\textsuperscript{40} The Unlawful Activities (Prevention) Amendment Act, 2004, No. 29 of 2004, § 2(g); India Code, available at http://indiacode.nic.in/fullact1.asp?fnm=200429.

\textsuperscript{41} Id. § 17.

\textsuperscript{42} Id. § 40.

\textsuperscript{43} Id. § 24.
In 2008, after the 26/11 Mumbai attack, the Indian Parliament again amended UAPA by incorporating specific provisions to deal with terrorism and terrorist funding. This amendment again widened the definition of "terrorist act." By virtue of this amendment, it is now an offence if a person, in India or in a foreign country,

directly or indirectly, raises or collects funds or provides funds to any person or persons or attempts to provide funds to any person or persons, knowing that such funds are likely to be used by such person or persons to commit a terrorist act, notwithstanding whether such funds were actually used or not for commission of such act.

Thus by repeated amendments the law dealing with terrorism and terrorist funding has been given wider scope and applicability. A person now commits an offence under UAPA if she or he raises or collects or provides funds for terrorism, even if the actual act of terrorism does not take place. Raising funds even in a foreign country is brought under the coverage of UAPA.

B. Prevention of Money Laundering Act, 2002

There is a close relationship between money laundering and terrorist financing. Money launderers use all the techniques prevailing in the international financial system to transfer funds as in the case of terrorist organizations. The preventive and enforcement measures that have evolved through a series of international efforts to prevent money laundering can also be used to combat terrorist financing. However, conceptually there is a difference between money laundering and terrorist financing. Money launderers launder the

44 Id. § 17.

45 Money laundering involves five different directional fund flows: (1) Domestic money laundering flows, in which illegal domestic funds are laundered within the country and reinvested or otherwise spent within the country. (2) Returning laundered funds, which originate in a country, are laundered abroad, and returned back. (3) Inbound funds, illegal funds earned out of crime committed abroad are either initially laundered ("placed") abroad or within the country, and ultimately are integrated into the country. (4) Outbound funds, which typically constitute illicit capital flight from a country and do not return. (5) Flow-through funds enter a country as part of the laundering process and largely depart for integration elsewhere (although the "fees" for money laundering activity may remain). See Brent L. Bartlett, The Negative Effects of Money Laundering on Economic Development, (Economic Research Report prepared for the Asian Development Bank, May 2002), available at http://www.adb.org/documents/others/ogc-toolkits/anti-money-laundering/documents/money_laundering_neg_effects.pdf.

money derived from a crime (known as the predicate crime) so that its tainted origin will disappear. Thus, in a case of money laundering, the crime precedes the money or the money is the byproduct of a crime. However, in the case of terrorism both the money produced out of crime and clean money are used. The act of terrorism is committed after the money transaction is completed. The key difference between the two is that money laundering involves post-crime money whereas terrorist financing is a post-money crime. Therefore, terrorist financing is sometimes called “reverse money laundering.”

In many countries, the money laundering laws also deal with terrorist financing. In India the Prevention of Money Laundering Act of 2002 (PMLA), which was brought into force in July 2005, has made the “act of projecting the proceeds of crime as untainted property” as a money laundering offence.\(^{47}\) The PMLA provides for attachment and confiscation of the properties involved in a money laundering offence.\(^{48}\) It also empowers the authorities under the Act to conduct survey, search, and seizure of the properties.\(^{49}\) The Act obliges banks and other nonfinancial institutions to exercise due diligence measures while opening accounts, maintain records of transactions, and report suspicious transactions to the Financial Intelligence Unit.\(^{50}\) The Reserve Bank of India and Securities Exchange Board of India have issued various guidelines to give effect to these measures.\(^{51}\) The Act specifically states that when a person is accused of having committed the offence under Section 3, the burden of proving that proceeds of crime are untainted property shall be on the accused.\(^{52}\) This Act does not directly deal with terrorist financing. But indirectly it would prevent the use of criminal proceeds for financing terrorism.

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\(^{48}\) Id. §§ 7-10.

\(^{49}\) Id. §§ 16-18.

\(^{50}\) Id. § 12.

\(^{51}\) The following are the guidelines: (i) Guidelines on “Know Your Customer” Norms Applicable to Banks; (ii) Know Your Customer (KYC) Norms/Anti-Money Laundering (AML) Standards/Combating of Financing of Terrorism (CFT) — Wire Transfers; (iii) “Know Your Customer” (KYC) Guidelines — Anti Money Laundering Standards For All Non-Banking Financial Companies, Miscellaneous Non-Banking Companies, and Residuary Non-Banking Companies; (iv) Revised “Know Your Customer” guidelines for NBFCs; (v) Simplified KYC procedure for Opening Accounts by NBFCs; (vi) Adherence to Know Your Customer (KYC) Guidelines by NBFC and Persons Authorised by NBFCs Including Brokers/Agents; (vii) Guidelines on Anti Money Laundering Programme for Insurers; (viii) Guidelines on Anti Money Laundering Standards to All Intermediaries Registered With SEBI Under Section 12 of the SEBI Act.

C. Foreign Contribution (Regulation) Act, 1976

In many cases, clean money is used for financing terrorism. The normal route through which such funds are raised is through contributions to charities, which are diverted for terrorist purposes. Many countries have enacted specific laws to regulate charities and their mode of raising money.\textsuperscript{53} In India, non-governmental organizations (NGOs) play a major role in raising funds for charitable purposes. NGOs are normally registered under the various Societies Registration Acts, or under Section 25 of the Companies Act. Some of them also function as charitable trusts. Many of these charities receive huge foreign contributions every year.\textsuperscript{54}

Acceptance and utilization of foreign contributions by these organizations is governed by the Foreign Contribution (Regulation) Act of 1976 (FCRA). This Act does not regulate individuals receiving foreign contributions. Only those associations working in cultural, economic, educational, religious, or social fields are regulated under the FCRA. Under the FCRA these associations can receive foreign contributions only after obtaining registration or prior permission from the Government.\textsuperscript{55} The FCRA empowers the Government to monitor the utilization of foreign contributions received by an association, and provides for inspection of accounts and penal provisions for violations.\textsuperscript{56} The Foreign Contribution (Regulation) Rules of 1976 prescribe the manner of documentation, such as application forms, annual returns, and the manner of maintenance of accounts. Though FCRA was intended to regulate both the receipt and utilization of foreign contributions, in practice it has had little effect on the actual utilization of funds. Though the organizations that receive foreign contributions have the obligation to furnish annual reports showing how the funds are used, there was large scale default by many organizations. The Government has had very little control once an organization is a registered organization under FCRA. There was a perception that terrorist or-


\textsuperscript{54} Indeed, the amount of foreign charitable giving to India has increased markedly in recent years. See Foreign Funds to Indian NGOs Soar: Pak Among Donors, TIMES OF INDIA, Dec. 24, 2008 (reporting that Indian NGOs received Rs 12,289.63 crore in foreign contributions in 2006-07, an increase of fifty-six percent from the previous year).


\textsuperscript{56} Id. §§ 13-16.
organizations were using the FCRA route for funding organizations within India.

To have a more stringent law regulating the receipt and utilization of foreign contributions in India, the Government introduced the Foreign Contribution Regulation Bill of 2006 (Bill) in the Rajya Sabha.\textsuperscript{57} In the object and reasons for the Bill, it was stated that the Bill was necessary because of changes in the internal security scenario, the increased influence of voluntary organizations, the spread of communication and information technology, the quantum jump in the amount of foreign contributions being received, and the large scale growth in the number of registered organisations.\textsuperscript{58}

This Bill is intended to consolidate the law regulating the acceptance and utilization of foreign contributions or foreign hospitality by individuals, associations, or companies, and to prohibit the acceptance and utilization of foreign contributions or foreign hospitality for activities detrimental to the national interest. The twin objectives of the law have made its scope wider and its application more stringent than FCRA. To achieve these twin objectives the new Bill has brought about some fundamental changes from FCRA.

The main changes from FCRA are that the Bill seeks to regulate individuals receiving foreign contributions,\textsuperscript{59} the prohibited class of persons who can receive foreign contributions has been widened to cover persons connected with electronic media and mass communication,\textsuperscript{60} and the transfer of foreign contributions received by a registered person to an unregistered person has been specifically prohibited.\textsuperscript{61} Thus the person who receives the foreign contribution should utilize it directly or through another registered person only. The Bill also severely regulates the utilization of the foreign contribution by stating that the person who receives the foreign contribution should utilize it only for the purpose for which it was received.\textsuperscript{62}

The Bill also provides that the permission obtained by charitable organizations would be valid only for the specific purpose for which it was obtained, and empowers the Central Government to specify the person, the areas, the purpose, and the source for the purpose of ob-


\textsuperscript{58} See id. at 21 (Statement of Objects and Reasons).

\textsuperscript{59} For this purpose a "person" is defined as an individual, a Hindu undivided family, or an association. Id. cl. 2(1)(m).

\textsuperscript{60} Id. cl. 3.

\textsuperscript{61} Id. cl. 7.

\textsuperscript{62} Id. cl. 8.
taining prior permission. The certificate of registration or prior permission obtained under the FCRA has been limited to five years.\textsuperscript{63}

The Bill provides in detail the procedure for granting a Certificate of Registration. Any application that is not in the prescribed form is rejected forthwith. The Bill empowers the Government to conduct a detailed inquiry into the background of the applicant and the proposed utilization of the funds before granting the certificate. The Bill for that purpose provides specific grounds for refusal. The inquiry into the background of the applicant pertains to (i) whether it is fictitious or \textit{benami}; (ii) whether it has indulged in religious conversion through inducement or force, either directly or indirectly; (iii) whether it has created any communal tension or disharmony; (iv) whether its funds have been diverted or mis-utilised; (v) whether it has engaged or is likely to engage to propagate sedition or advocate violent methods to achieve its ends; (vi) whether the person is likely to use the funds for personal gain or undesirable purposes; (vii) whether the person has contravened the provisions of the Act; (viii) whether the certificate has been suspended; (ix) whether a previous certificate has been cancelled within the three preceding years; and (x) whether the person has not been prohibited from receiving foreign contribution, as well as whether the director or office bearers have been convicted or prosecution is pending under any law, or if the applicant is an individual, whether the person has been convicted or prosecution is pending; and whether the acceptance of foreign contribution would affect the sovereignty and integrity of India, the security or other interests of India, the public interest, free and fair elections, friendly relations with another nation, or religious, social, social-linguistic, regional, caste, or communal harmony.\textsuperscript{64} The Central Government also has to see that the applicant for certificate has undertaken meaningful activity in a chosen field for the benefit of people. The validity of the certificate is limited to five years.\textsuperscript{65} The Bill empowers the Government to suspend a certificate already granted for a maximum period of 180 days.\textsuperscript{66} The Bill has made stringent penalties including imprisonment for violating the provisions of the Act.

VI. Critical Issues

This survey of laws in India to combat terrorist financing also brings out several issues that need to be addressed by the lawmakers

\textsuperscript{63} Id. cl. 11.
\textsuperscript{64} Id. cl. 9.
\textsuperscript{65} Id. cl. 12.
\textsuperscript{66} Id. cl. 13.
and enforcers. There are several human right issues involved in the regime dealing with combating financing of terrorism. There has been severe criticism in the past of the enforcement of terrorism laws. There have been instances of arbitrary, selective, and non-uniform enforcement by state governments of terrorism laws. There has often been discriminatory enforcement of these laws against dalits, tribal communities, and religious minorities.\(^{67}\) There have been several instances of violations of the right to speech and association and malicious prosecution. There are also several instances of police misconduct and abuse. The conflict between protection of constitutional guarantees to the citizens and their safety and security is a never-ending one while enforcing terrorism laws.

Similarly, there are several other human right issues involved in the enforcement of money laundering laws. Disclosure requirements prescribed by anti-money laundering laws have direct effects on the right to privacy. This issue is being hotly debated among jurists and academics.\(^{68}\) Similarly, the duty to disclose information on financial transactions to foreign countries under the mutual legal assistance measures may also violate constitutional guarantees.

Under the pretext of combating terrorist financing, these laws and regulations may severely affect the flow of funds to genuine charitable activities. Charitable institutions who have rendered invaluable services to the needy and the poor for several decades may find it difficult to comply with cumbersome rules and regulations. Genuine institutions and programs may suffer from stringent laws regarding the receipt of foreign contributions. This approach is evident in the new Foreign Contribution Regulation Bill which contains severe restrictions in granting permission for receiving foreign contributions and in the use of funds. The justification for introducing such stringent provisions is said to be that such foreign contribution are likely to be used for terrorist financing. In the United States in the Holy Land Foundations case the principal argument of the accused was that the Holy Land Foundation was a genuine humanitarian institution, that the funds were collected and given purely for humanitarian purposes such as treating the sick and injured in Palestine, and that

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the funds were not used for terrorist purposes. Though this argument was rejected in that case, there is a possibility the law would curb the mobilization of funds by genuine charities which are involved in humanitarian proposes.69

VII. CONCLUSION

Terrorists need funds to exist, operate, and carry out terrorist operations. In addition to their many other needs, such as a cause, motivation, committed members, training, and other logistics, terrorist organizations need sources of funds. They raise funds from both illegal and legal sources across the globe. There is a close link between terrorist funding and drug trafficking, organized crime, human trafficking, and other criminal activities. The terrorist organizations also use genuine funds in the form of contributions to charities by their sympathizers and supporters. Some terrorist organizations also camouflage themselves as charitable organizations.

The terrorist organizations also use both legal and illegal money transfer systems to move funds around the globe. They use both formal banking systems and informal money transfer systems such as hawala. Curbing the movement of funds across the globe for illegal purposes is an effective way to prevent terrorist funding. The terrorist laws therefore obstruct the flow of funds to terrorist organizations. The money laundering laws not only criminalize money laundering but also impose certain preventive measures to ensure that the funds do not get into the hands of terrorist organizations and terrorists.

Necessary laws to deal with terrorist activities and for combating terrorism financing are vital in the fight against the scourge of terrorism. A study of laws in India in this field shows that there are three major enactments currently in operation that have impact in the effort to combat the financing of terrorism. The Unlawful Activities Prevention Act of 1967, after the amendments in 2004 and 2008, now prohibits any dealing in funds that may be connected with terrorism. The Prevention of Money Laundering Act of 2002 is another piece of legislation that criminalizes laundering money generated out of criminal activities. This act, if enforced effectively, would prevent the illegal flow of funds from crime to terrorism. Terrorist organizations often camouflage themselves as charitable organizations. They also raise funds in the name of charities. The laws dealing with charities have little scope in the effort to combat terrorist financing. The Foreign Contribution Regulation Act of 1976 regulates the flow of foreign money in the form of charities in India to charitable organiza-

tions. Since the said law has been found grossly inadequate to deal
with terrorist financing, the Government has introduced the more
stringent Foreign Contribution Bill in 2006 in the Rajya Sabha. An
analysis of the legal provisions of this bill also raises certain critical
issues which need to be addressed.