

HAWALA FINANCING: AN AID TO TERRORISM

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INTRODUCTION

Most of the terrorist activities prevailing all over the world are predominantly backed by multifarious sentiments, but a closer analysis would reveal that the lifeblood of most of the terrorist activities is finance. Therefore, it can be assumed that curtailing the inflow of such funds to back up terrorist activities would relatively reduce the extent of terrorism. Time and again, it has been reiterated that terrorist activities are largely inexpensive. However, to the contrary, Ehrenfeld¹ says, even a very sophisticated and deadly attack such as that of September 11, 2001, has been estimated to have cost only US\$500,000, though the maintenance and expansion of terrorist bases require constant infusions of large amounts of money. There may be multiple theories, discrepancies while evaluating the chief causes of terrorism and the related backward integration, but the hypothesis of pecuniary backup for the continuation of such terror based activities cannot in any way be nullified. To stop the inflow of finances to terrorists is in itself a real big fight, but once curbed, it would make the world a place with peace and harmony to live in.

The September 11 attack (often described as a horrendous, dastardly and despicable attack) on the World Trade Center, had an enormous financial, as well as psychological impact on New York City. This attack was meticulously planned, having the capacity to terrify what is known as the 'mightiest nation'. The aftermath of the global war on terror after this attack unleashed a series of legislations and conventions, both national and international, to check the financing of terrorist and criminal activities.

For an easy understanding, the paper has been divided into three parts. Part 1 will generally summarize the meaning and the logic behind a typical Hawala transaction. This Section chronicles several characteristics of Hawala transactions that help explain the reasons behind its development and why it continues to be an appealing transfer system till date. Part 2 will attempt to scrutinize the Hawala system by piercing its veil. After the explanation of the Hawala system, Part 3 studies the merits of domestic regulatory efforts against Hawala businesses in India and assesses the relative success and failure of these legislative efforts. Part 4 concludes the paper with remarks on the challenges posed to the enforcement authorities by terrorist financing.

1. Sean S. Costigan, "Funding evil: How terrorism is financed and the nexus of terrorist and criminal organizations", 1st ed. 2007, Ashgate Publishing.

PART-1

CONCEPT OF HAWALA

*"According to the World Bank, the total value of money remitted to developing countries in 2002 through Hawala system reached at least U.S. \$80 billion, a figure that is double the aid provided by the combined total of government aid, private bank lending and International Monetary Fund ("IMF") or World Bank aid and assistance."*²

Known as *Hawala* in India, *Hundi* in Pakistan or *Fei-qian* in China, this underground banking system is colossal and widespread. Today, Hawala system is used primarily by diaspora communities, although there is concern that some sectors of the population use Hawala networks to launder money, evade taxes, traffic contraband, and fund terrorist activities.³ However, to check such unregulated informal funds transfer, the Indian government has made rigorous efforts to follow international standards of Anti-Money Laundering (AML) regulations. To this effect, the guidelines on know your-customer (KYC) and AML standards issued by the Reserve Bank of India and the provisions of the Prevention of Money Laundering Act (PMLA), 2002, are consistent with the international best practices and are applicable uniformly. Further, SEBI has asked non-banking agencies to put in place their AML policies and KYC norms and procedures.

The Hawala practice is cost-effective, efficient and far-reaching. In a simple Hawala transaction, a Hawala broker in one country takes money from a customer and, for a fee, dispenses an equal amount to the recipient through an associate in another country. For instance, 'A', an Indian salesman, entered the United States on a tourist visa five years ago, which has now expired. He has saved US\$15,000 which he wants to send to his family in India. He has several options; he could go to a bank, use money transfer mediums such as Western Union, or use Hawala.

If 'A' chooses to use a bank, he would probably have to first open an account with proper identification, which might be difficult on account of his expired visa. In addition, the bank could charge him the official exchange rate, an additional charge to issue a bank draft in order to send the money abroad, all of which could take a week to reach the desired destination. If 'A' uses a money transfer service, it would also require proper identification and will be expensive.

Another option for 'A' is to send money through a Hawala broker. He will be charged comparatively less. The Hawala broker will provide 'A' with a code, which

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2. Dilip Ratha, *Workers' Remittances: An Important and Stable Source of External Development Finance*, World Bank Global Dev. Fin., at 159 (2003).
 3. El Qorchi, *supra* note 4 (pointing out illegal uses of Hawala networks); Carroll, *supra* note 5 (positing that Hawala networks are tied to criminal activity).

he will disclose to the recipient. This Hawala broker will contact his associate in India via telephone, facsimile, or e-mail and instruct him to give an equal amount to A's family on provision of the correct code. Using the Hawala route would allow 'A' to get a better exchange rate as compared to banks and Western Union, and thus, send more money home.

Hawala remittance can be completed in a matter of days or even hours in large cities. In contrast, banks or money service businesses usually take several business days, and could involve additional delays due to holidays, weekends and time differences. Also, because there are many places without banks, Hawala networks fill the void.

Furthermore, some recipients are illiterate, and do not know how to encash a cheque, operate a bank account, or sign for legitimately wired money.

It can easily be seen, therefore, that the biggest factor which contributes to the popularity of Hawala as a transaction mechanism is its simplicity and the lack of procedural formalities. It is essentially an informal system, that is not intrinsically evil, but the fact that it enables the parties to transact without leaving a 'paper trail' makes it immensely suited for financing criminal activities, such as terrorism.

PART-2

PIERCING THE VEIL OF HAWALA

Very few events leave such palpable changes perceived in every human transaction in such short periods of time. It would not be inappropriate to accord 9/11 the status of such an event which has had a direct impact on all kinds of institutions, irrespective of the fact whether they were military, economic or social.

Financial and Banking Institutions were no exception to these changes. As a matter of fact, they were subjected to intense pressure to bring about a direct change in the existing policies and increase the levels of scrutiny and security. Hawala and its alleged connection to money laundering and terrorist activities started getting mainstream media attention.

There are varying opinions regarding Hawala; in October 2001, nearly a month after the September 11, 2001 terrorist attacks, Time Magazine published an article entitled "A Banking System Built for Terrorism" which portrays it to be a peculiar financial system which is both dangerous and beyond ordinary analysis.⁴

The Hawala system is often linked with money laundering and terrorist activities, or described as a mysterious system for "moving money without money moving at all,

4. Meenakshi Ganguly, "A Banking System Built for Terrorism", Time Magazine, Oct. 5, 2001, <http://www.time.com/time/world/printout/0,8816,178227,00.htm>.

and without leaving traces or records.”⁵ Contrary to these interpretations, John F. Wilson, a senior economist with the International Monetary Fund (IMF), argues that Hawala should be understood as an “economic phenomenon,” comparable in mechanics and economic structure to most remittance alternatives, which can only be regulated by reducing the economic incentives to engage in Hawala.⁶

While piercing the veil it is essential to draw a distinction between “White Hawala” and “Black Hawala”. Following the Indian and Pakistani usage, the term “White Hawala” refers to legitimate transactions while the term “Black Hawala” refers to illegitimate transactions.

This distinction is valuable for money laundering enforcement. While the legitimacy of informal Hawala transactions are subject to national legal frameworks, “white Hawala” transactions consist mainly of migrant worker remittances, humanitarian relief aid, personal investments and expenditures.⁷ “Black Hawala” transactions, in contrast, are “almost always associated with serious offences that are illegal in most jurisdictions” such as smuggling, money laundering and terrorist financing. This paper focuses mainly on Black Hawala Transactions, which necessitated legal action by various financial authorities.

BLACK HAWALA

1. Smuggling: It is a known fact that the growth of the present Hawala network has its roots in trading and smuggling operations in South Asia in the 1960’s and 1970’s.⁸ In an effort to avoid gold import restrictions, traders and smugglers used boats to ship gold from places like the Gulf Cooperation Council (GCC) countries to South Asia.”⁹ To remit funds back to their countries of origin or purchase more gold, traders and smugglers used the growing population of South Asian nationals working in the GCC countries.

5. John F. Wilson, “Hawala and Other Informal Payment Systems: An Economic Perspective”, Remarks at Seminar on Current Developments in Monetary Financial Law (May 16, 2002), [http:// www.imf.org /external /np/leg/sem/2002/cdmfi/eng/wilson.pdf](http://www.imf.org/external/np/leg/sem/2002/cdmfi/eng/wilson.pdf).

6. Supra n.4; see also International Monetary Fund, About the IMF, at <http://www.imf.org/external /about.htm> (last visited Dec. 25, 2007). “The IMF is an international organization of 184 member countries. Since the IMF was established its purposes have remained unchanged but its operations-which involve surveillance, financial assistance, and technical assistance-have developed to meet the changing needs of its member countries in an evolving world economy.”

7. Patrick M. Jost & Harjit Singh Sandhu, The Hawala Alternative Remittance System and Its Role in Money Laundering, Interpol General Secretariat, at <http://www.interpol.int /Public/FinancialCrime /Money Laundering /hawala/default.asp> (last visited Dec. 24, 2007).

8. Patrick M. Jost & Harjit Singh Sandhu, The Hawala Alternative Remittance System and Its Role in Money Laundering, Interpol General Secretariat, at <http:// www.interpol.int/Public/FinancialCrime /MoneyLaundering /hawala/default.asp> (last visited Nov. 24, 2007).

9. Ibid.

2. Terrorist Financing: Major concerns have been raised about using Hawala as an instrument to fund terrorists. The lack of requirements for identification or inquiries into the source is an important facet of Hawala transactions. It allows dealers to facilitate multiple transfers, which conceal the ultimate origin of the funds through their effective network in different jurisdictions. For example, international attention was directed towards the Hawala system when investigators traced an anonymous fund transfer by Al-Qaeda operatives involved in the September 11 terrorist attacks.¹⁰
3. Money Laundering: Interpol has defined money laundering to embody three phases: (1) placement; (2) layering; and (3) integration. Hawala is vulnerable to abuse at each phase of the money laundering process.¹¹

Despite the classification between Black and White Hawala Transactions, it can be concluded that Hawala *per se* (whether White or Black) is illegal in India and most part of the Asian economy, because the very nature of the process permits evasion of financial and other regulations.

PART -3

IS HAWALA LEGAL?

“International guidelines designed to bring Hawala under a regulatory umbrella fail to explain why Hawala has survived for so many years and why it is likely to continue its survival despite increased regulation”

Many South Asian nations (such as India) have laws that prohibit speculation in the local currency, prohibit foreign exchange transactions at anything other than the official rate of exchange, and impose strict licensing requirements on money remitters and foreign exchange dealers. In addition, there are regulations governing inbound and outbound remittances. One of the attractions of Hawala networks is the evasion of these regulations.

As mentioned in chapter 2, it is possible to state that Hawala is illegal in India because it offers privacy and lacks paper trail, and is largely used for illegitimate purposes.

In India, there already exists a very centralized and over-regulated pattern of banking in which the Reserve Bank of India (RBI) determines almost all the general policies of banking and, indirectly, large number of internal policies as well.¹² The shield of professional ethics can easily be pierced if there exists large-scale corruption and

10. K. Raveenran, “U.A.E. Takes Unprecedented Action on Hawala”, The Daily Star, Oct. 25, 2003, available at <http://goldismoney.info/forums/archive/index.php/t-4556.html>.

11. http://en.wikipedia.org/wiki/Money_laundering for more information; last visited Jan 12th, 2008.

unprofessionalism in the banking sector. A banker cannot be penalized under criminal law for divulging sensitive financial information. Instead of curbing the malpractices, which already exist, the growing threat to terror and 'national security' should not prove to be an excuse for curbing financial freedom and privacy.

The draconian POTA (though now repealed) and the amendment to the Unlawful Activities (Prevention) Act, 1967 gave wide powers to the authorities in these countries to investigate financial matters of its citizens on grounds which are far less convincing.¹³

As on date, the estimated Hawala money in India is around 40% of its Gross Domestic Product.¹⁴ Consequently, the Indian government has adopted firm measures with respect to the regulation of its informal market, particularly the Hawala system, with the passage of two legislations, i.e. The Foreign Exchange Regulation Act (FERA)¹⁵ and its later consolidated and amended version, The Foreign Exchange Management Act (FEMA).¹⁶ These acts have explicitly prohibited "Hawala-type" transactions.

LEGISLATIONS IN INDIA

There are three key enactments, which have a bearing on the financing of terrorism and other criminal activities i.e. COFEPOSA, FEMA and Money Laundering Act. The main issue that appears to emerge is the incongruity between these three enactments. For instance, if we look at the interplay among the Money Laundering Act, 2002, the COFEPOSA and the FEMA, we find that the legal position is somewhat unclear.

FOREIGN EXCHANGE MANAGEMENT ACT, 2000¹⁷

The FERA, enacted in 1973, was drafted with the objective of introducing regulations for the entry of foreign capital into India's economy.¹⁸ It represented the Indian legislature's efforts to combat the extensive Hawala system that continues to flourish in India. Under FERA, Sections 8 and 9 provided "detailed legal prohibitions on the Hawala market." In particular, Section 8 imposed strict licensing requirements on money changers and prohibited the acquiring, borrowing, selling, or transferring

12. <http://www.rbi.org> as visited on Jan. 15th, 2008.

13. <http://www.satp.org/satporgtp/countries/india/document/actandordinances/POTA.htm> as visited on Jan. 2nd, 2008.

14. <http://www.merineews.com/catFull.jsp?articleID=132023>.

15. Foreign Exchange Regulation Act, No. 46 (1973) (India) [hereinafter FERA].

16. Foreign Exchange Management Act, (1999) (India) [hereinafter FEMA].

17. FERA was repealed in June 2000 and replaced by FEMA, which is largely considered a law much more in keeping with the spirit of liberalization and globalizing the Indian economy. While the offences under FERA are those of criminal in nature, the offences under FEMA are civil in nature.

18. Rohit Sachdev, "Comparing The Legal Foundations Of Foreign Direct Investment In India And China: Law And The Rule Of Law In The Indian Foreign Direct Investment Context", Columbia Business Law Review, 2006 CLMBLR 167.

of foreign exchange from persons other than “authorized dealers” in India. Moreover, Section 8 regulated persons other than authorized dealers or money changers and imposed on them requirements to sell any foreign exchange acquired to an authorized dealer in an effort to legislatively force funds from the informal market into the formal market.¹⁹ Additionally, Section 9 of FERA specifically restricted Hawala transactions by prohibiting the making of any payment or credit to any person outside India without conditional approval from the Reserve Bank of India.

Taking into consideration the substantial financial developments in India, FEMA was introduced which further expands upon FERA’s concept of licenses for moneychangers.²⁰ In particular, FEMA provides for a heightened role of the Reserve Bank of India in regulating the transactions by specifying that the Reserve Bank, in consultation with the Central Government, may specify: “(a) any class or classes of capital account transactions which are permissible; and (b) limit which foreign exchange shall be admissible for such transactions.”²¹

Beyond these measures, the government in India has established a special federal police unit with the sole function to fight economic crime. The unit’s mission is to tackle economic crimes like bank fraud and the movement of money from foreign countries through informal fund transfer systems.

THE CONSERVATION OF FOREIGN EXCHANGE AND PREVENTION OF SMUGGLING ACTIVITIES ACT, 1974

Several preventive detention laws have been enacted by the Central Government, most of which have been particularly frowned upon. ‘The Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974’ (COFEPOSA) enacted in 1974, provides for preventive detention in certain cases for the purposes of conservation and augmentation of foreign exchange and prevention of smuggling activities and for matters connected therewith, is one such legislation, which is a powerful instrument in the hands of the Central Government. It is a preventive detention law relating to economic offences. The Act was enacted to provide for preventive detention in certain cases for the purposes of conservation and augmentation of foreign exchange and prevention of smuggling activities and for matters connected therewith.²²

Time and again, we come across news items wherein huge sums are transferred either from India or to India. Funds from clandestine channels are received, credited

19. Section 8(3), FERA.

20. see also India Info Law, Foreign Exchange Management Act (FEMA) 1999 to replace Foreign Exchange Regulation Act (FERA), at <http://law.indiainfo.com/foreign-exchange/fema.html> (last visited Dec. 26, 2007).

21. FEMA ch. 2(a)-(b).

22. Derek P. Jinks, “the anatomy of an institutionalized emergency: preventive detention and personal liberty in India”, *Michigan Journal of International Law*, 22 MIJIL 311.

into bank accounts and maintained under fictitious names and addresses. Such transactions, more often than not, are results of criminal conspiracies leading to Hawala transactions.

Section 3 of the Act points out several grounds under which persons can be detained.²³ A reading of this section reflects that the COFEPOSA has not evolved from the stage of its enactment in the 1970s when the chief concern of the Indian state was not terrorism, but of smuggling. The crimes that come within the mischief of the COFEPOSA, as per Section 3 of the Act relate mainly to smuggling, and to activities prejudicial to the conservation and augmentation of foreign exchange. While these activities may constitute a part of terrorist activities, they certainly do not cover the entire spectrum. An expansion of the offences that the COFEPOSA covers must be re-examined. At the same time it must be noted that Preventive Detention enactments in India have been apt to misuse by the enforcing authorities. For instance, the POTA gathered so much bad press due to misuse that it ultimately had to be repealed. The COFEPOSA therefore must at best be used as an enforcing legislation rather than one which criminalizes Hawala and similar activities *per se*. It should accordingly only be used sparingly and in the most evident of cases.

On the one hand, FEMA treats foreign exchange violations merely as civil violations, while on the other, these are liable for preventive detention under COFEPOSA.

THE MONEY LAUNDERING ACT, 2002

Money laundering is yet another system, which aids launderers to disguise their criminal acts, i.e., wiping off the nexus between the crime and its source.²⁴ Money laundering as a concept refers to the conversion or “Laundering” of money which is illegally obtained, so as to make it appear to originate from a legitimate source.²⁵ As per an estimate of the International Monetary Fund, the aggregate size of money laundering in the world could be somewhere between two and five percent of the worlds gross domestic product.²⁶

23. Section 3 of the COFEPOSA provides five grounds for the detention of persons under the Act. These are:

- (a) smuggling goods, or
- (b) abetting the smuggling of goods, or
- (c) engaging in transporting or concealing or keeping smuggled goods, or
- (d) dealing in smuggled goods otherwise than by engaging in transporting or concealing or keeping smuggled goods, or
- (e) harbouring persons engaged in smuggling goods or in abetting the smuggling of goods.

24. Kenneth Kaoma Mwenda, “can insider trading predicate the offence of money laundering”, *Journal of Business & Securities Law*, 6 JBSECL 127

25. See <http://www.rbi.org.in/scripts/BTCDisplay.aspx?pg=BTCMoneyLaunder.htm> for more information. Last visited on Dec. 26th, 2007.

26. *Ibid*.

The money laundering process has three stages:²⁷

- a) Placement: This is the first step whereby the money derived from illegal activities is introduced into the existing financial cycle so as to blend such money into the system. This is the most important stage as this relieves the criminal from the major responsibility of guarding such bulk cash, which could otherwise raise suspicion against him.
- b) Layering: It consists of a series of transactions and conversions whereby the original source of the funds is concealed i.e. separating the money derived from illegal activities from its source.
- c) Integration: This is the final stage whereby the money reverts to the criminal, and the criminal re-introduces such money into the economy, that too in a manner which is legitimate, or atleast appears to be legitimate.

The technique for money laundering is essentially the same as that used to conceal the sources of, and uses for, terrorist financing (both of them i.e. money laundering and terrorist financing, being geared towards secrecy).²⁸ However, a peculiar feature of terrorism is that funds involved may arise from legitimate as well as criminal or illegal activities. So far as the funds for financing terrorism are derived from illegal sources, it would fall under the ambit of the Money Laundering Act in India. The funds utilised for financing terrorism derived from legitimate sources would require treatment under special laws.

The Money Laundering Act, 2002 and the rules notified thereunder came into force with effect from July 1, 2005. The Act attempts to give a broad definition of the offence of money laundering, by defining it as “any activity connected with the proceeds of a crime.” The crimes which are covered under the Act are listed in the schedule to the Act, and range from waging war against the Indian State (thus squarely covering terrorism), to violations of the Narcotic Drugs and Psychotropic Substances Prevention Act, to the Wildlife Protection Act. The Act therefore hits at monetary operations related to criminal activities by making these operations criminal in themselves. Apart from this, the Securities and Exchange Board of India (SEBI) has also been active in issuing guidelines to Banks and Financial institutions to monitor and track money laundering activities. The Ministry of Finance under the Government of India has also set up a Financial Intelligence Unit to ensure that underground transactions such as the Hawala System can be tracked and curbed by

27. It would be advisable to read this segment in consonance with money laundering in Chapter 2.

28. See Money Laundering and Terrorist Financing: Definitions and Explanations- http://www1.worldbank.org/finance/html/amlcft/docs/Ref_Guide_EN/v2/01-Ch01_EN_v2.pdf for more information; last visited on Jan 5th, 2008.

the authorities. It is the central reception point for receiving Cash Transaction Reports (CTRs) and Suspicious Transaction Reports (STRs) from various reporting entities, analysing information gathered to discover transaction patterns and sharing this information with investigation agencies.²⁹ This is an effective step towards enforcement, but the issue is, that in the absence of a strong primary legislation curbing Hawala transactions, and grassroots level training of enforcement officials (the Police for instance,) is this enough?

There is a strict need to enforce the existing laws, rather than framing new laws which fail effective implementation. The question that remains unanswered is whether this new legislation has enough teeth to bite? While it is too early to decide or comment on the effectiveness of the legislation, what remains to be seen is whether the Act will be able to contribute efficiently and effectively to combat terrorist funding.

Apart from the aforesaid legislations, the Government of India set up the Financial Intelligence Unit- India (FIU-IND)³⁰. The main function of FIU-IND is to receive financial information pursuant to India's AML laws, analyze and process such information and disseminate such information relating to suspect financial transactions to appropriate authorities. It is also responsible for co-ordinating and strengthening efforts of national and international intelligence, investigation and enforcement agencies in pursuing the global efforts against money laundering and related crimes.³¹

LESSONS FROM THE PAST

UNION OF INDIA V. VENKATESHAN AND ANOTHER³²

Facts: Defendant was doing business of collecting Saudi Riyals from Indians in Saudi Arab and in equivalent thereof he was making arrangements for delivery of Indian rupees to various persons in India. It is further alleged that in a very short span the detenu had collected Rs. 16.79 million and had distributed Rs. 1.25 million and was involved in Hawala transactions. Hence, detention order under Section 3(1)³³ of the COFEPOSA Act was passed, directing the defendant to be detained and kept in custody with a view to prevent him from acting in any manner prejudicial to the augmentation of foreign exchange.

29. <http://www.rbi.org.in/scripts/BTCDisplay.aspx?pg=BTCMoneyLaunder.htm> for more information; last visited on Jan 15th, 2008.

30. Set up vide O.M dated 18th November 2004. It is an independent body reporting directly to the Economic Intelligence Council headed by the Finance Minister.

31. <http://fiuindia.gov.in/about-overview.htm>.

32. AIR 2002 SC 1890.

Issue: The High Court quashed and set aside the detention order on the ground that what was considered to be criminal violation of the Foreign Exchange Regulation Act, 1973 has ceased to be so, on the repeal of FERA which is replaced by the Foreign Exchange Management Act, 1999. Hence, the limited question would be whether a person who violates the provisions of the FEMA to a large extent could be detained under the preventive detention Act, namely, COFEPOSA?

Judgment: COFEPOSA and the FEMA occupy different fields. COFEPOSA deals with preventive detention for violation of foreign exchange regulations and FEMA is for regulation and management of foreign exchange through authorized persons and provides for penalty for contravention of the said provisions. But both the legislations aim to promote orderly development and maintenance of foreign exchange market in India.

For exercising the power under COFEPOSA and detaining a person, his involvement in a criminal offence is not a must, as borne out by the provisions of Section 2(e) of the COFEPOSA. Power of detention is clearly a preventive measure. It does not partake in any manner the nature of punishment. Hence, the order of the High court is not justified. Further, if the view of the High court is accepted it would result in implied repeal of the substantial part of Section 3 under COFEPOSA.

Comment: It is to be noted that Article 14³⁴ of the Indian Constitution is inapplicable because preventive detention and prosecution are not synonymous. The authorities are different. The nature of proceedings is different. In a prosecution, an accused is sought to be punished for a past act. In preventive detention, the past act is merely material for inference about the future course of probable conduct on the part of the detenu.

JAIN HAWALA SCANDAL³⁵

The Indian Central Bureau of Investigation, while investigating a case pertaining to “funding of Jammu and Kashmir militants”, raided a house in Delhi seizing account

33. Power to make orders detaining certain persons: (1) The Central Government or the State Government or any officer of the Central Government, not below the rank of a Joint Secretary to that Government specially empowered for the purposes of this section by that Government, or any officer of a State Government, not below the rank of a Secretary to that Government, specially empowered for the purposes of this section by that Government, may, if satisfied, with respect to any person (including a foreigner), that, with a view to preventing him from acting in any manner prejudicial to the conservation or augmentation of foreign exchange or with a view to preventing him from: (i) smuggling goods, or (ii) abetting the smuggling of goods, or (iii) engaging in transporting or concealing or keeping smuggled goods, or (iv) dealing in smuggled goods otherwise than by engaging in transporting or concealing or keeping smuggled goods, or (v) harbouring persons engaged in smuggling goods or in abetting the smuggling of goods, it is necessary so to do, make an order directing that such person be detained.

34. Right to Equality: equality before law.

35. Please visit the website www.thehindu.com/fline/fl1417/1417s001.htm for more information, last visited on Jan 12th 2008.

books implicating India's richest and powerful people, including the then Prime Minister, P.V. Narasimha Rao, in receiving funds through India's illegal Hawala market.³⁶ Twenty-four politicians were ultimately charged with being beneficiaries of 64 million rupees in bribes and gifts from businessmen.³⁷

This case illustrates that a nation's stage of economic, financial, and political development must be taken into account when formulating regulatory strategies, particularly with respect to systems like the Hawala that are so firmly rooted in that country's financial and political being. In a developing country like India, criminal elements already exploiting Hawala transactions have a strong incentive to infiltrate the political structure to ensure their survival and are able to find willing partners among Indian politicians who have not seen big money. Moreover, Financial Action Task Force (FATF)³⁸ recommendations, which rely heavily on strong criminal justice infrastructure to enforce licensing requirements, are disadvantaged in India where high-ranking Indians are able to escape prosecution unscathed. As a matter of fact, Narasimha Rao survived "numerous corruption scandals in government," the worst of them being a payment to escape prosecution.

CONCLUSION

"Where strong commercial interests tempt; no amount of legal restrictions will be successful."

India is facing multifarious challenges in the management of its internal security. There is an upsurge in the number of insurgent groups and terrorist activities, and an intensification of cross-border terrorism in different parts of the country. The menace of money laundering like Hawala, having a close nexus with organized crime, hits not only at the root of a country's financial structure but also kills its social structure by financing anti-social activities. The western world has woken up to the fact that terrorism can best be attacked by hitting at its roots i.e. by cutting off its means of finance. The United States has reacted through the Patriot Act, amendments to the Banking Security Act and the Money Laundering Act. At the global level, the United Nations has taken steps through the Convention for the suppression of financing of Terrorism.

Despite having numerous legislations in India, there is still a dire need to be vigilant. The COFEPOSA prevents violation of foreign exchange regulations and smuggling

36. Sanjay Kapoor, *Bad Money, Bad Politics: The Untold Hawala Story* 88 (1996).

37. The Jain Hawala case implicated high-ranking officials in India including "seven serving Cabinet ministers, all of whom have resigned; the president of the leading opposition Bharatiya Janata Party, who gave up his parliamentary seat; and the chief minister of the local government in New Delhi, who also quit.

38. Financial Action Task Force, an inter-governmental body whose purpose is the development and promotion of national and international policies to combat money laundering and terrorist financing.

activities. The appropriate authority is empowered under the said Act to make a detention order against any person whose act is prejudicial to the conservation or augmentation of foreign exchange. Correspondingly, one of the many objectives of FEMA is also to promote the orderly development and maintenance of foreign exchange market in India. The recent introduction of the Prevention of Money Laundering Act, 2002 in the Indian Statute books has given another instrument to counter the economic roots of terrorism. Further, the RBI has issued guidelines on KYC and AML standards.

However, despite the Indian Government's most restrictive legal provisions, Hawala remains a "routine transaction," as people continue to transfer funds out of India at their "sweet will." Indeed, the Indian regulation of Hawala is a typical example where even the most severe licensing provisions cannot ensure compliance. One can say that decades of corruption have bred more corruption, destabilizing efforts to reign in Hawala transactions.

In spite of several laws and legislations in place, it appears to the authors of this paper that the system is not as yet set/ ready to be able to handle this task. It is hoped that more targeted groups such as the 'Financial Intelligence Unit' will be set up by the Government of India in order to track and curb financial transactions to fund terrorism and other criminal activities. At the end of the day, a law is only as strong as its enforcers.