

# India under FATF Lens Layers of AML/CTF Exposed



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# India under FATF Lens Layers of AML/CTF Exposed



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2023

ISBN 978-627-7691-03-5

E-book: 978-627-7691-04-2

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## Acknowledgments

We extend our sincere gratitude to President IPRI, Ambassador Dr. Major General Raza Muhammad (Retd), and Director Research, Brig (r) Dr. Raashid Wali Janjua and Research Fellow, Khalid Hussain Chandio for their patronage and support throughout the entire process of this endeavour.

We express our gratitude to IPRI's Publication department, including Ms Shamsa Nawaz (Editor), Ishtiaq Ali Mehkri (Deputy Editor), Ms Saleha Sadaf (Graphic Designer), and the entire Communication Team. We hope this book will act as a useful primer for analysts and practitioners engaged in the process of understanding and exposing porous layers of India's Anti-Money Laundering and Terrorism Financing regime.





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# ACRONYMS

<b>AML</b>	Anti Money Laundering
<b>CTF</b>	Counter Terrorism Financing
<b>FATF</b>	Financial Action Task Force
<b>NRA</b>	National Risk Assessment
<b>RBA</b>	Risk Based Approach
<b>SARS</b>	Suspicious Activity Report
<b>INR</b>	Indian Rupee
<b>RBI</b>	Reserve Bank of India
<b>DNFBPs</b>	Designated Non-Financial Businesses and Professions
<b>LEAs</b>	Law Enforcement Agencies
<b>NPO</b>	Non Profitable Organisations
<b>UNSC</b>	United Nations Security Council
<b>FinCEN</b>	Financial Crimes Enforcement Network
<b>ED</b>	Enforcement Directorate
<b>IDRF</b>	India Development and Relief Fund
<b>ATTF</b>	All Tripura Tiger Force
<b>LTTE</b>	Liberation Tigers of Tamil Eelam
<b>TFS</b>	Targeted Financial Sanctions
<b>SEZs</b>	Special Economic Zones
<b>ICJ</b>	International Court of Justice
<b>US</b>	United States
<b>UK</b>	United Kingdom
<b>IPL</b>	Indian Premier League
<b>SBLC</b>	Standby Letter of Credit
<b>IFFRAS</b>	International Forum for Rights and Security
<b>DRI</b>	Directorate of Revenue Intelligence
<b>NCB</b>	Narcotics Control Bureau
<b>NFHS</b>	National Family Health Survey
<b>AIDs</b>	Acquired Immunodeficiency Syndrome

<b>HIV</b>	Human Immunodeficiency Virus
<b>UNODC</b>	United Nations Office on Drugs and Crime
<b>IRS</b>	Internal Revenue Service
<b>FCRA</b>	Foreign Contribution (Regulation) Act
<b>BJP</b>	Bharatiya Janata Party
<b>PMLA</b>	Prevention of Money Laundering Act
<b>ICT</b>	Information and Communication Technology
<b>FEOA</b>	Fugitive Economic Offenders Act
<b>COFEPOSA</b>	Conservation of Foreign Exchange and Prevention of Smuggling Activities Act
<b>POeV</b>	Proceeds of Estimated Value
<b>PoC</b>	Proceed of Time
<b>CDD</b>	Customer Due Diligence
<b>EDD</b>	Enhanced Due Diligence

## INTRODUCTION

The Financial Action Task Force (FATF) is set to conduct an onsite review of India's Anti-Money Laundering (AML) and Counter-Terrorism Financing (CTF) measures. This review comes a decade after India's last appraisal by FATF in 2013, a period marked by significant global financial leaks, regarding its ties with India. These leaks include the Offshore Leaks, Swiss Leaks, Panama Papers, and Paradise Papers, unveiling layers of secrecy in global financial transactions involving Indian entities. Notably, the US Treasury Department's Financial Crimes Enforcement Network (FinCEN) has highlighted numerous suspicious transactions involving prominent Indian nationals. This compilation aims to provide insights into India's preparedness for the FATF's assessment focusing on potential lapses in its AML and CTF vigilance.

The persistent persecution of minorities, India's rapid financial technology growth and traditional financial practices like gold-based transactions are other areas of concern. This document aims to dissect these complexities and offer a comprehensive understanding of India's financial integrity challenges in the South Asian context.

### India's National AML and CFT Framework

While India's Anti-Money Laundering<sup>1</sup> (AML) and Terrorism Financing<sup>2</sup> (TF) frameworks are generally appreciated, however, a closer examination reveals significant grey areas. Despite its dominant economic role, India's informal financial systems remain a concern, potentially affecting South Asian economic stability. Rapid technological growth seems to have outpaced regulatory readiness, leading to vulnerabilities in digital financial arenas in India.

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<sup>1</sup> Money Laundering: Money laundering encompasses financial transactions wherein criminals, including terrorist organisations, seek to conceal the proceeds, sources, or nature of their illicit activities. This illicit practice supports a spectrum of serious underlying criminal offenses and pose a direct threat to the integrity of the financial system. The US Department of Treasury, (2023), 'Terrorism and illicit finance.' Available at <https://home.treasury.gov/policy-issues/terrorism-and-illicit-finance/money-laundering>.

<sup>2</sup> Terrorism Financing: Terrorist financing entails the solicitation, collection, or provision of funds with the intention that they may be used to support terrorist acts or organisations. These funds may originate from both legal and illicit sources. (IMF, 2022). <https://www.imf.org/external/np/leg/amlcft/eng/aml1.htm>.

### *India under FATF Lens: Layers of ML/CFT Exposed*

National Risk Assessment (NRA) is a crucial tool to investigate money-laundering and Counter-Terrorism Financing. It is also used to develop policies and strategies to reduce the risks. According to FATF, the NRA is very important to build trust and confidence among stakeholders and individuals. India had a NRA in 2016, but its report is not available publicly to stakeholders or to reporting authorities. India is also deficient in a multifaceted approach, which involves enhancing regulatory frameworks, strengthening law-enforcement agencies, improving international cooperation, and increasing public awareness about Money-Laundering (ML) and CFT. Indian authorities lack awareness of the risks due to the absence of a NRA. Both supervisory agencies and the private sector in India remain unaware of the risks associated with ML and countering the financing of terrorism until they receive the assessment report.

### **Reporting and Compliance**

Central and Eastern India have seen a rise in terrorism linked to left-wing extremism over the past two decades.

<b>Table: 1 Prominent Terrorist Groups</b>	
<b>North-eastern Separatist Groups</b>	The United Liberation Front of Assam, People's Liberation Army – Manipur, United National Liberation Front, People's Revolutionary Party of Kangleipak and All Tripura Tiger Force (ATTF).
<b>Sikh Separatist Groups</b>	Khalistan (Sikh homeland) Movement - Babbar Khalsa International, Khalistan Commando Force, and International Sikh Youth Federation.
<b>Left-wing Extremist Groups</b>	Maoist, Akhil Bharat Nepali Ekta Samaj, a Maoist group based on Nepali migrants to India, recently defeated Sri Lanka-based Liberation Tigers of Tamil Eelam (LTTE) and lesser-known Tamil National Retrieval Troops.

Table: 2 Major Threats	
<b>Non-availability of Consolidated Terrorist List with India</b>	India lacks a publicly accessible, consolidated terrorist list that includes individuals, charities, or entities associated with those listed under the UNSC Resolution 1267. The non-existence of a consolidated list raises questions about the TF regime. <sup>3</sup>
<b>India has a Lack of Understanding of Its Domestic and Trans-national Counter-Terrorism Financing (CTF) Risks</b>	The number of terrorist groups, based and operating inside India, posing a threat to regional as well as world security indicates that India does not understand its domestic and trans-national TF risks across different sectors and geographical areas within and outside India.
<b>Activities as a Source of ML Risk</b>	Main sources of ML in India result from a range of illegal activities committed within and outside the country, mainly corruption, drug trafficking, fraud, counterfeiting of the Indian currency, transnational organised crime, human trafficking, and corruption.

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<sup>3</sup> United Nations Security Council. (2018). Available at <https://www.un.org/securitycouncil/content/unsc-consolidated-list>.



## **MAJOR SOURCES OF COUNTER-TERRORISM FINANCING (CTF) IN INDIA**

Based on a threat assessment, India has a number of identified major sources for TF comprising funds and resources from organisations outside India, including foreign non-profit organisations (NPOs) counterfeiting of currency; and criminal activities, including drug-trafficking and extortion.

Table: 3	
<b>Corruption: A Major Source of Illegal Earnings</b>	With Asia's highest bribery rate at 39 percent, corruption emerges as a major source of illegal proceeds in India.
<b>Substantial Increase in Gold Smuggling</b>	On average, 25 percent of the global gold supply is consumed in India. India is susceptible to unofficial gold imports into the country. Gold imports and trade are also associated with tax evasion (Customs, Sales Tax, Central Sales Tax, Wealth tax, etc.). Gold is associated with money-laundering.
	Special Economic Zones (SEZs) are vulnerable to ML and tax evasion.
<b>India's Private Sector Lacks Awareness of its Risks</b>	India lacks a unified database for Non-Profit Organisations (NPOs), highlighting a gap in sector awareness. These government estimates are approximately two million foreign and domestic NPOs operating in India.
	Indian banks have an inadequate Risk-based Assessment (RBA) approach implementation.
<b>DNFBPs Sector Lacks and TF Risk Understanding</b>	AML and CFT preventive measures were only recently extended to casinos, which raises concerns regarding the implementation of the preventive measures and functioning of both regulatory and supervisory regime.

## India Related Revelations in Financial Crimes Enforcement Network (FinCEN)

Financial Crimes Enforcement Network (FinCEN) is a Financial Crimes Enforcement Network at the US Treasury that combats financial crime. They look into grievances and concerns about transactions made in the US dollars that need to be sent to FinCEN, even if they took place outside the US. FinCEN papers are different because they are not just documents from one or two companies, but they come from a number of banks. They highlight a range of potentially suspicious activities involving companies and individuals and also raise questions about why banks that had noticed this activity did not always act on their concerns. Financial Crimes Enforcement Network said the FinCEN leaks could impact the US national security, compromise investigations, and threaten the safety of institutions and individuals who file the reports. Out of a total of 2,657 files, 2,121 are Suspicious Activity Reports covering the years 2000 to 2017.

They raise concerns about what their clients might be doing. These documents, known as SARs, are some of the international banking systems' most closely guarded secrets. Fergus Shiel from the International Consortium of Investigative Journalists (ICIJ) said that the leaked files were an insight into what banks know about the vast flows of dirty money across the globe.<sup>4</sup> According to reports that appeared in *The Indian Express*, which is a part of ICIJ and has accessed the leaked FinCEN files, Indian entities (names not disclosed) figuring in these documents include the following: -

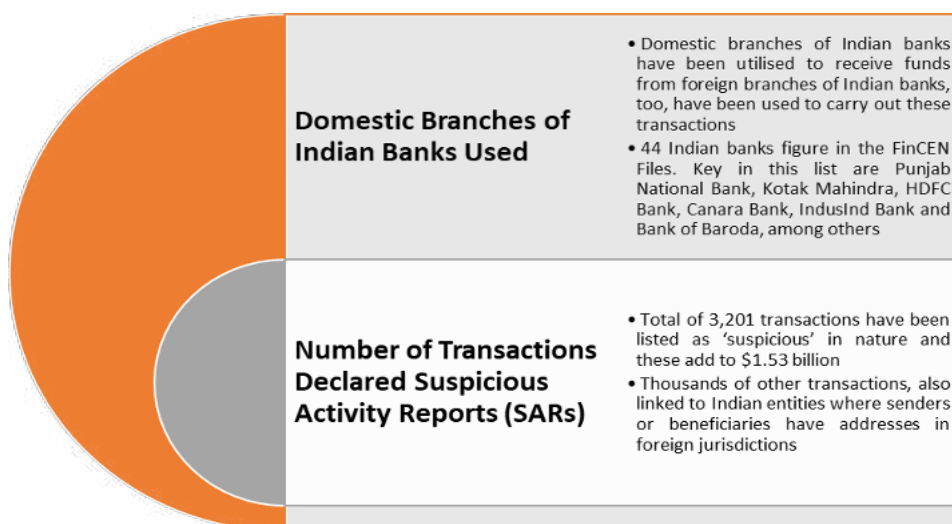
Table: 4 Indian Entities
A jailed art and antique smuggler
A global diamond firm owned by Indian-born citizens named in several offshore leaks
A premier healthcare and hospitality group
A bankrupt steel firm

<sup>4</sup> "Explained: What are FinCEN Files and its India-related revelations," (2020). Available at <https://www.theweek.in/news/biz-tech/2020/09/21/explained-what-are-fincen-files-and-its-india-related-revelations.html>.

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A luxury car dealer who allegedly tricked several high-net-worth individuals
A multinational Indian conglomerate
A sponsor of the Indian Premier League (IPL) team
An alleged <i>Hawala</i> dealer

Source<sup>5</sup>: *The Indian Express*, September 24, 2020.



India's Suspicious Transactions

## Indian Premier League (IPL) Links

Indian Premier League (IPL) has also emerged on the US financial regulator's radar in a network of transactions involving a leading US bank, a little-known UK

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<sup>5</sup> <https://indianexpress.com/article/express-exclusive/fincen-files-44-indian-banks-transactions-of-1-billion-flagged-to-us-regulator-6608181/>

company, a Kolkata-based sponsor of an IPL team, and allegations of fraud and forgery.

Table: 5 Major Frauds		
2013	KPH Dream Cricket	Cheating and duping of \$3 million in sponsorship fee.
2013	San Francisco-based Wells Fargo Bank	Received a \$2,975,460 SBLC (Standby Letter of Credit) from Deutsche Bank AG in London with KPH Dream Cricket as the beneficiary.

It is concluded that the SBLC is believed to be counterfeit as a search of Wells Fargo's electronic messaging system. It does not show receipt of this transaction, according to the SAR. An investigation by Wells Fargo's Trade Finance Investigations unit also found that the transaction also involved a forged signature. The IPL case is just one among the many transactions with Indian connections that were red-flagged in a SAR. According to leaks, Indian banks received \$482,181,226 from outside the country and transferred from India \$406,278,962. These transactions were red-flagged to the US authorities.

List of Indian Banks named by International Court of Justice (ICJ) for Dubious Transactions			
1.	State Bank of India	14.	Kotak Mahindra Bank
		15.	Yes Bank
3.	Union Bank of India	16.	Indian Overseas Bank
4.	HDFC Bank	17.	Canara Bank
5.	IndusInd Bank	18.	Bank of Maharashtra
6.	Axis Bank	19.	Karur Vysya Bank
7.	ICICI Bank	20.	Tamilnad Mercantile Bank
8.	Allahabad Bank	21.	Standard Chartered Bank (India operations)
9.	Indian Overseas Bank	22.	Bank of Baroda
10.	Indian Bank	23.	Bank of India

11.	Deutsche Bank (India operations)	24.	UCO Bank
12.	Karnataka Bank	25.	Vijaya Bank
13.	RBS (Royal Bank of Scotland) in India	26.	Andhra Bank

Source: *CNBC*. (2020).<sup>6</sup>

### **Government and Entrepreneur Involvement in ML and CFT**

Rampant corruption, banking crimes, financial frauds like Nirav Modi PNB Bank Fraud (14,000 Crore INR), Rotomac (3,600 Crore INR), Karvy Stock (Brokering) Broking Limited (2,800 Crore), Vijay Mallaya Scam (9800 Crore), Satyam Computers Scam (14,000 Crore), and Adani Group Scam 2022 the largest scam in the global corporate history with international connections, are the important causes of an inherently weak ML enforcement regimes.

### **Gautam Adani's Episode**

On January 24, 2023, Hindenburg Research – an activist US investment group that bets on stocks falling – accused Adani Group of committing a deliberate stock manipulation and accounting fraud scheme over the course of decades. Adani is accused of defrauding the public, keeping them under falsehood, and shoring up shares through several close associates, who manage a vast quantum of offshore Shell entities on his behalf, which is equivalent to a breach of public trust.

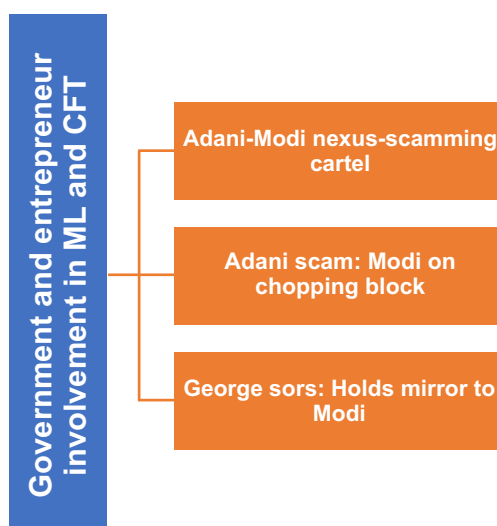
Adani is said to be involved in businesses ranging from power generation and coal mining to cement, media, and food. Its seven listed units had a market value in January 2023, of about \$220 billion. According to Forbes Credible circles, close to Adani's exposition, his success is due to his close friendship association and friendship with Prime Minister Narendra Modi, a fellow native of Gujarat state. He is getting an unfair advantage in winning businesses around India. Hindenburg Said: *"We believe the Adani Group has been able to operate a large, flagrant fraud in*

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<sup>6</sup> <https://www.cnbcvt18.com/finance/fincen-documents-show-how-suspicious-bank-transactions-of-indians-were-red-flagged-to-top-us-regulator-6967311.htm>

*broad daylight in large part because investors, journalists, citizens, and even politicians have been afraid to speak out for fear of reprisal.”<sup>7</sup>*

According to Bloomberg News, these allegations have sparked a huge sell-off in shares in Adani’s firms, wiping out more than \$68 billion in market value trading in some stocks was also temporarily halted.<sup>8</sup> These assertions hit Adani’s personal wealth hard, and the value of its assets has dived by around \$40 billion, and he has tumbled down the real-time Forbes rich list to number eight. Sequel to Hindenburg’s revelations with regard to Gautam Adani’s financial scam his shares have been in free fall, with the conglomerate’s cumulative market value loss topping \$110 billion. In nine years of Modi’s tenure, Adani’s wealth grew from \$8 billion to \$137 billion. In 2022 alone, he made \$72 billion which is more than the combined earnings of the world’s next nine billionaires put together.



### **Government and Indian Entrepreneur’s Involvement**

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<sup>7</sup> <https://time.com/6250052/adani-hindenburg-fraud/#:~:text=in%20Corporate%20History',India's%20Richest%20Man%20Accused%20of%20Pulling%20the%20Largest%20Con%20in,19%2C%202022.>

<sup>8</sup> [https://www.bloomberg.com/news/articles/2023-02-07/india-opposition-says-modi-government-afraid-of-debate-on-adani?leadSource=uverify%20wall.](https://www.bloomberg.com/news/articles/2023-02-07/india-opposition-says-modi-government-afraid-of-debate-on-adani?leadSource=uverify%20wall)

## **Demonetisation<sup>9</sup> in India**

India demonetised its currency of INR 500 and INR 1000 in November 2016. Due to that demonetisation, around 86 percent of the total Indian currency was in circulation. The whole concept of demonetisation was highlighted in India due to the high volume of cases related to corruption and terrorism. Demonetised currency which attacks a stock does little to impede the fresh creation of undeclared income, which is a flow problem. The bulk of red and black money has evidently resided in the real estate and gold business. India's policy to eradicate corruption and terrorism by demonetisation of its currency drastically failed as 1.8 million bank accounts and 200 individuals are still required for investigation. As this has turned into a different mobilisation form and terrorist organisations are still getting what they want by using black money, complex money-laundering networks sprang up in the wake of demonetisation to help the wealthy. Generally people who were in possession of old denominators got them exchanged for new ones at a discounted rate, and the same were traded by currency brokers to whiten their black money.

## **Weak Area or Problem in Demonetisation**

- Intricate money-laundering networks emerged, aiding wealthy Indians in depositing undisclosed currency without tax exposure.
- The country's demonetisation moves failed to weed out illicit cash transactions.
- Massive demonetisation was carried out to curb TF and ML, but India is still investigating 1.8 million bank accounts and 200 individuals associated with unusual deposits during demonetisation.

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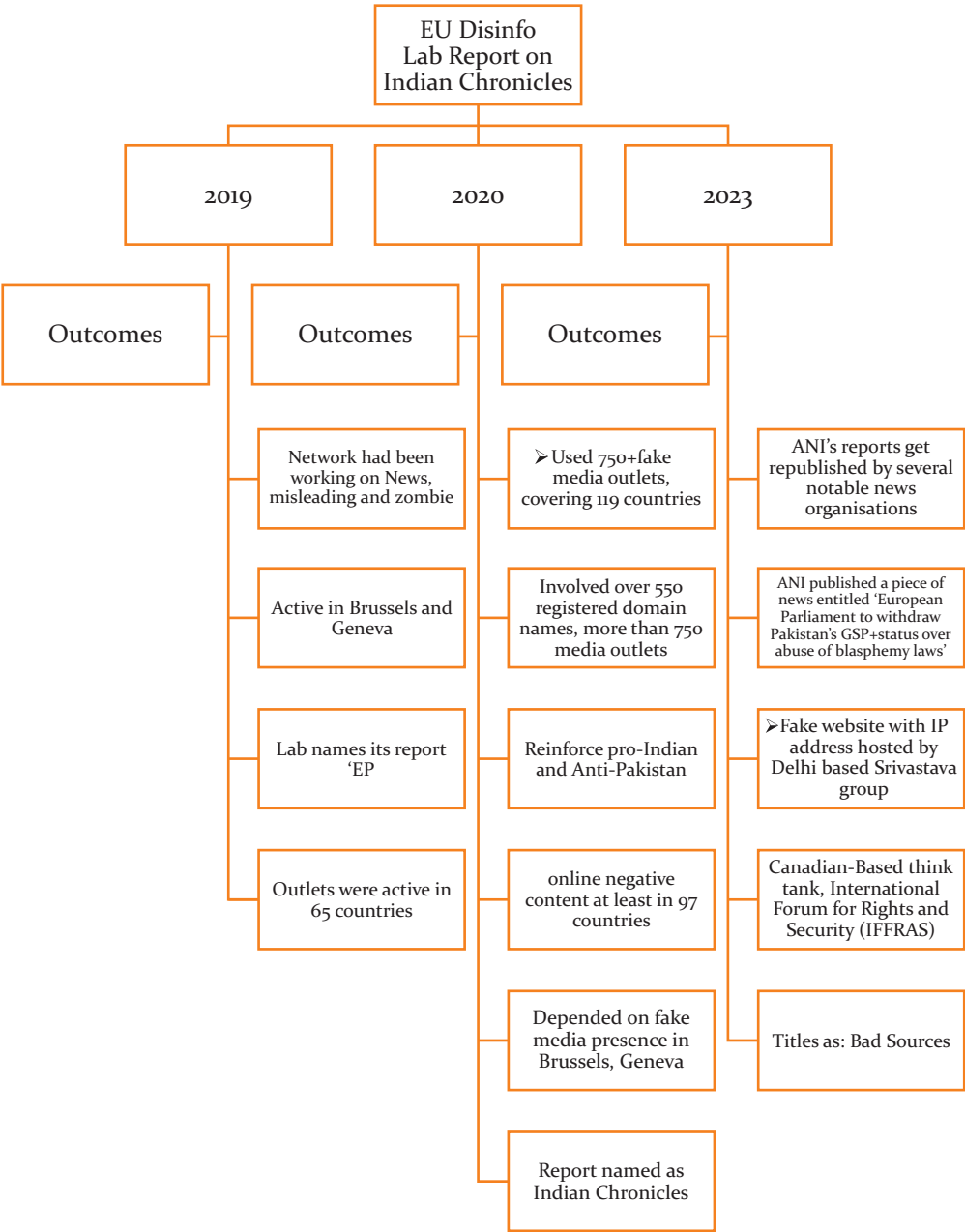
<sup>9</sup> Demonetisation is an economic process in which a country's currency unit loses its status as legal tender. The currency unit, typically in the form of physical money like banknotes and coins, becomes essentially worthless during demonetisation, rendering it unusable for the purchase of goods and services. (CFI, 2020). Demonetisation. Corporate Finance Institute. Available at <https://corporatefinanceinstitute.com/resources/economics/demonetization/>

## **EU DISINFO LAB**

As a self-sustaining non-profit organisation, EU DisinfoLab acquires information and proficiency concerning disinformation in Europe. By compiling research, conducting investigations, and applying policy expertise, EU DisinfoLab actively participates in and assists a dedicated and extensive community focused on identifying, addressing, and preventing information disorders that jeopardise citizens' integrity, peaceful coexistence, and democratic values.

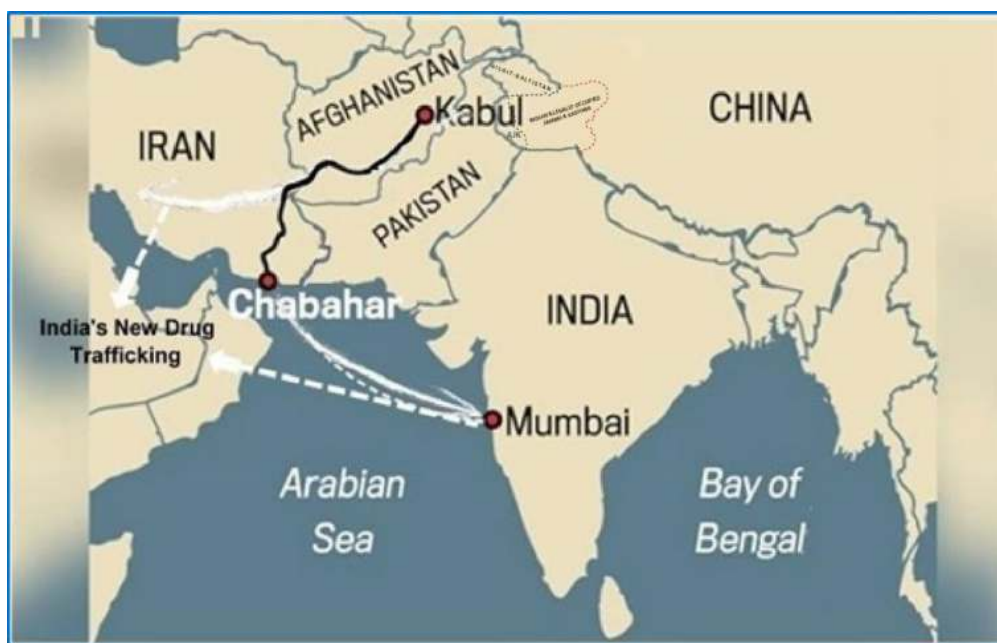


Salient – EU DISINFO Lab Reports



## **Heroin: The Deadly New High in India**

In the last two decades, India has experienced a notable rise in a substantial drug market, presenting a significant narcotics threat. The heroin trade initiates in Afghanistan, covering a distance of a thousand kilometres to the northwest, making its initial stop at the Indian-managed Iranian ports of Chahbahar and Bandar Abbas. On September 15, 2021, the Directorate of Revenue Intelligence (DRI) revealed and confiscated 3 tonnes of Afghan-origin heroin valued at approximately INR 15,000 crore from the Mundra port in Indian Gujarat. This event marked one of the most extensive drug seizures in India, prompting suspicions (*India Today Magazine*, October 18, 2021). The surge in illicit opium trade from India's New Drug Trafficking Silk Sea Route, originating from Afghanistan through Chabahar Port to Mumbai bypassing Pakistan, has seen India become both a major trans-shipment hub for Global Drug business and a big consumer Market.



**India's New Drug Trafficking Routes**

## **India's New Drug Trafficking Routes**

In 2021, two significant drug busts in India, within a short span of a month, have raised concerns about the credibility of Indian security agencies in international drug regulatory bodies. On September 16, 2021, the Indian Directorate of Revenue Intelligence (DRI) seized a massive consignment of three tons of refined heroin from a warehouse in Ahmedabad, India. A fortnight later, the Narcotics Control Bureau (NCB) arrested a group of partygoers in Mumbai for consuming drugs, including Aryan Khan, the son of the prominent Muslim movie star Shah Rukh Khan. Despite being a guest at the party, Aryan Khan was named the main accused by Indian drug law-enforcement agencies. However, he was later exonerated of charges. Indian authorities and state-owned media attempted to establish a connection between drug-trafficking in India and a wealthy Muslim movie star (as a scapegoat). The handling of these large drug consignments and the suspicious actions of the Indian authorities suggest an effort to tie up loose ends. There is a palpable fear among the Indian authorities of exposing India's involvement in international drug-trafficking via its golden drug silk route through Iran. The narcotics were headed to Delhi, with the Mundra Port's shipload of heroin originating from Kandahar and loaded into two containers at Iran's Bandar Abbas port. Another seizure in Mumbai had originated from Iran's Chabahar port, owned by the Indian business tycoon Gautam Adani, a close associate of Modi. The Indian authorities are portraying these seizures as one of the biggest catches ever in documented history by any drug-enforcement agency, projecting the Indian government as having a highly skilled Anti-Narcotics force.

As Satya Narayan Pradhan, Director General of Narcotics Control Bureau (NCB), said: *"Drug consumption is no longer a social stigma in India, which is worrisome. Over 50 million drug addicts in India are a huge pull. This indicates the widespread drug peddling and availability, entering India from somewhere."*<sup>10</sup>

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<sup>10</sup> <https://narcoticsindia.nic.in/Publication/2020.pdf>.

## **Rise in India's Domestic Drug Business (Case in Point Northeast India)**

A study (2019) by two professors at Jawaharlal Nehru University, based on the National Family Health Survey (NFHS) 2015–2016, found that 70.8 percent prevalence of substance abuse among north-eastern men is 20 percentile points higher than the rest of India. The region accounts for 8 percent of India's total geographical area but 41 of the country's 272 districts vulnerable to drug addiction are in this region (northeast India). This addiction is leading to an alarming rise in HIV cases in the northeast—the trend of intravenous use of drugs among those between 15 and 20 years being the key factor. A report by the National AIDS Control Organisation in 2021 stated that AIDS-related mortality per 100,000 population in India was estimated to be the highest in Manipur (36.86 percent), followed by Mizoram (28.34 percent) and Nagaland (26.20 percent).

At the root of this drug menace is the region's geographical proximity to Myanmar which, along with the Lao People's Democratic Republic (Laos) and Thailand, belongs to the Golden Triangle of the drug trade. Northeast India shares a 1,643 km border with Myanmar and is responsible for 95 percent of total opium production in the triangle. According to the US Drug Enforcement Administration, 80 percent of heroin production is in Southeast Asia, and 60 percent of the world's total supply.

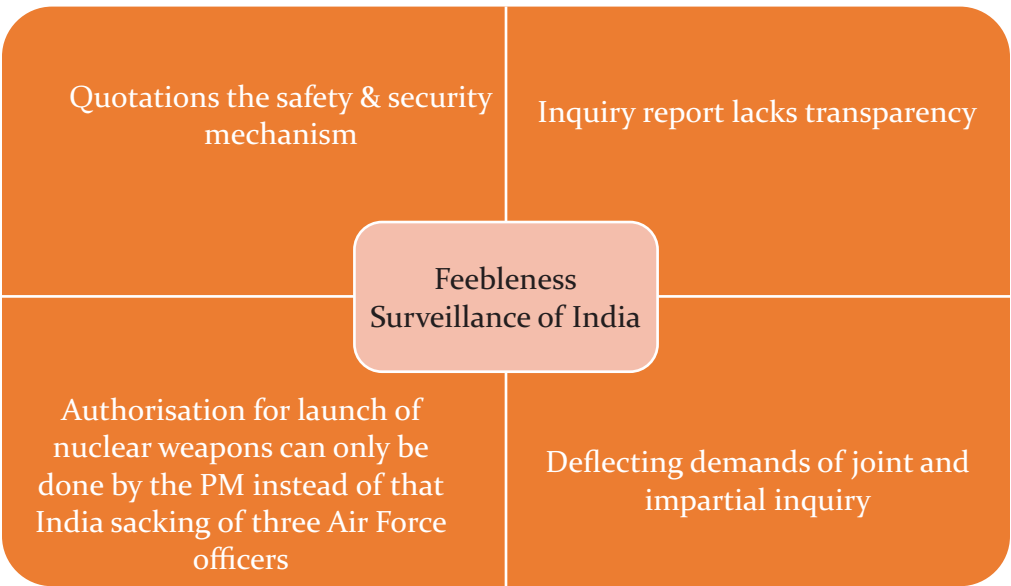
According to the International Narcotics Control Board and the UNODC, Myanmar is also one of Asia's main sources of illegal production of methamphetamine, or the "crazy drug" Yaba (a powerful and addictive stimulant). Myanmar's supply of opium has led to a massive prevalence of opioid use in Northeast India. In states like Arunachal Pradesh, Nagaland, and Mizoram, over 20 percent of the total population has used opioids at least once a year, as opposed to the national average of just over 2 percent as per a 2019 report, "Magnitude of Substance Use in India."

## **Poor Safety and Security Standards in India**

India always tries to harm Pakistan through different stratagems. On March 9, 2022, India launched a nuclear warhead-capable missile, which they later claimed to be a mistake. That missile could have caused serious damage to infrastructure besides millions of casualties. Indians claim that it was by mistake but according to

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the rules, this type of missile cannot be launched by any force without the Prime Minister’s permission. It raised many questions on the security protocols of the Indian Air Force. India may be driing away from its “No First Use” doctrine, but it is evident that India intends to destroy Pakistan. The Indian army has deployed three regiments of Brahmos missiles along the Pakistan-China border.



**Poor Safety and Security Standards**

## **INTERNATIONAL CO-OPERATION AND CO-ORDINATION**

### **Crowdfunding**

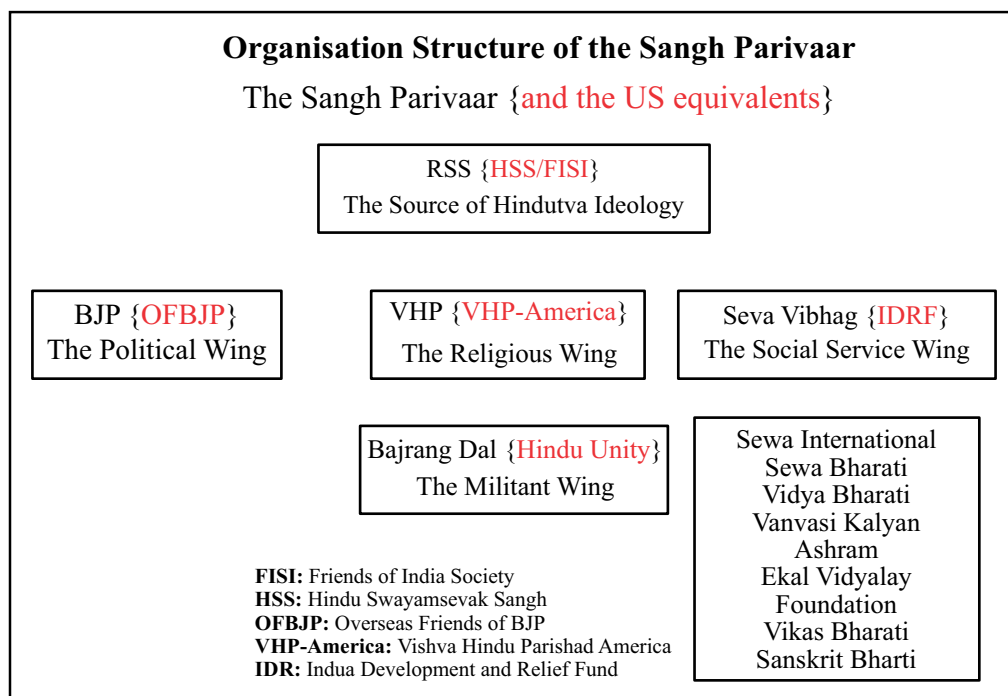
Crowdfunding is a method for generating funds to support various projects and enterprises. It empowers fundraisers to gather financial contributions from a broad online audience (EU Commission). Financial Crimes Enforcement Network exposes gaps in India's AML and CTF defences. Despite its self-projected financial might, Offshore Leaks (2013), Swiss Leaks (2015), Panama Papers (2016), and Paradise Papers (2017) have exposed secrecy surrounding international financial transactions involving India. India's regulatory claims seem more rhetoric than reality.

### **Non-Profit Organisations (NPO)**

A non-profit organisation is eligible for tax-exempt status granted by the IRS, as its objectives primarily involve advancing a social cause and offering a benefit to the public. Examples of non-profit organisations encompass hospitals, universities, national charities, and foundations. A shadow report, compiled by anonymous civil society actors and forwarded to the FATF by the Global NPO Coalition on FATF, shows that India has weaponised its laws to target and stifle non-profit organisations (NPOs) in the country. Interviewing representatives of over 700 NGOs and field experts find that the Indian government – without involving or informing the NGOs about the ways of the FATF – has been indiscriminately targeting them on “unproven” and “frivolous claims.” The number of refused licenses to the NGOs has rocketed from 41 in 2010 to 20,693 NGOs in 2023, an increase of refusals by 50,000. India follows the Foreign Contribution (Regulation) Act, 2010. When the FCRA law was first enacted in 1967, the main focus of the Act remained on the prohibition of foreign funds in domestic elections. Ironically, in 2018, political parties were explicitly exempted from the scrutiny of funds they received from abroad through the passage of the Finance Bill 2018, which was passed without debate. Modi has accused NPOs of conspiring to remove him from office. India's banking institutions did not release the money to the beneficiary organisations, citing security concerns flagged by the government.

## Foreign Funding for RSS

Businessmen, political workers, and other agents have been found guilty of money-laundering. The bigger question, of course, is India's state-sponsored terrorism, which is evident in the Kulbushan Yadav case and many others. The footprint is not just in South Asia now, but the tentacles span other continents too: the recent Canada-India spat over the murder of a Sikh separatist leader is the best example.



Source: World Report, Hindi national organisation<sup>11</sup>

<sup>11</sup> <https://andand.com/world/report-hindu-nationalist-organisations-take-root-in-the-united-states-2000363>.

### **Foreign Funding for Rashtriya Swayamsevak Sangh (RSS)**

The Rashtriya Swayamsevak Sangh (RSS) was raised in 1925, with the intent to Hinduise India, leading to its Hinduisation at the cost of religio-cultural diversity. Since its manifesto also has *Hindutva* as part of an ideology, it is now hell-bent on implementing *Hindutva* ideology being aided and abetted by Modi-led Bharatiya Janata Party (BJP) government. It operates with the help of *Sangh Parivar* - an umbrella term used for the outfits toeing the ideological line of RSS both in India and abroad. A number of outfits operating in America have a direct nexus with RSS-allied *Sangh Parivar* organisations in India. The latter is in fact being financed by US-based outfits.

The RSS has an abundant presence across the nook and corner of India with an array of affiliates working in line with its RSS agenda – to take India away from Nehru’s secularism to Nathuram Godse’s *Hindutva*. Being facilitated by the BJP government, the RSS has been proliferating its motto with ease and comfort. The RSS has been maintaining an effective foothold in America, the UK, Canada, and elsewhere with the help of so-called NGOs and charity organisations. Said organisations are being run by the RSS ideologues. They have both stated and unstated (covert) objectives. The funds from foreign RSS chapters are funnelled to *Sangh Parivar* outfits toeing the line of RSS back in India.

An endeavour has been made to unearth the fundraising and financial flow of Organisations for RSS-promoted *Sangh Parivar* outfits involved in Hinduisation in India. On 27 November 2022, the Global Hindu Heritage Foundation organised a fundraising concert in the USA. In its flyer, it inter alia stated to use the money for ‘*Ghar Wapsi*’ demolition of Churches in Tripura, etc in India. Besides fundraising and funds funnelling to *Sangh Parivar* outfits the US-based entities are also found involved in lobbying in America for India in line with RSS-dictated BJP government policies.



**Table: 7 Names of Rastriya Swayamsevak Sangh (RSS) - Affiliated Outfits Based Abroad**

Sr.	Outfit Name	Host Country
1.	India Development and Relief Fund (IDRF)	Maryland, US
2.	Hindu Swayamsevak Sangh (HSS)	US, UK, Australia, Kenya, Nepal, & Liberia
3.	Ekal Vidyalaya Foundation (EVF)	US & Australia
4.	Infinity Foundation (IF)	New Jersey, US
5.	Sewa International (SI)	Houston, US
6.	Hindu American Foundation (HAF)	Washington, US
7.	Vishwa Hindu Parishad America (VHPA)	Illinois, US
8.	Uberoi Foundation (UF)	Colorado, US
10.	Aggarwal Family Foundation (AFF)	Los Angeles, US
9.	Bhutada Family Foundation (BFF)	Texas, US
11.	Global Hindu Heritage Foundation (GHHF)	Texas, US

**Table: 8 Details of Donations Received by Sangh Parivar Outfits**

Sr.	Donor Name	Amount Donated	To Whom	Remarks
1	US federal funds	\$51,872	Infinity Foundation	Received the amount in the wake of the Covid-19 pandemic as per SBA. <sup>12</sup>
2	US-based charity	\$1.9 million	Infinity Foundation	The amount received between 2001 & 2012.
3	US-based charity	\$3.3 million	Sewa International	The amount received between 2001 & 2012.

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<sup>12</sup> United States Small Business Administration (SBA) - a federal agency that helps small business owners and entrepreneurs.

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4	Fulshear (Houston) based outfit	\$150,621	Sewa International	Amount received in the name of so-called relief works.
5	Lion's share of US Federal Funds	\$378,064	Hindu American Foundation	The amount received for the Paycheck Protection Program in 2019-2020.
6	Lion's share of US Federal Funds	\$10,000	Hindu American Foundation	Amount received for Economic Injury Disaster Loan Advance (EIDLA) in 2019-2020.
7	HSS <sup>13</sup> affiliated Uberoi Foundation	\$142,000	Hindu American Foundation	The amount received during 2012-2016.
8	Bhutada Family <sup>14</sup>	\$392,000	Hindu American Foundation	The amount received during 2006-2018.
9	Uberoi Foundation	\$142,000	Hindu American Foundation	Amount donated to influence contents and textbooks in California from 2012 to 2016.
10	US federal funds	\$150,000	Vishwa Hindu Parishad America	The amount received for the Paycheck Protection Programme (PPP).
11	US federal funds	\$21,430	Vishwa Hindu Parishad America	The amount received for the Economic Injury Disaster Loan Advance (EIDLA).
12	US-based charity groups	\$3.9 million	Vishwa Hindu Parishad America	The amount received between 2001 & 2012.
13	US-based charity groups	\$27 million	Ekal Vidyalaya Foundation	The amount received between 2001& 2012.
14	Uberoi Foundation	\$561,000	VHPA's Hindu University America,	To influence textbook contents, the establishment of university endowments, teacher training

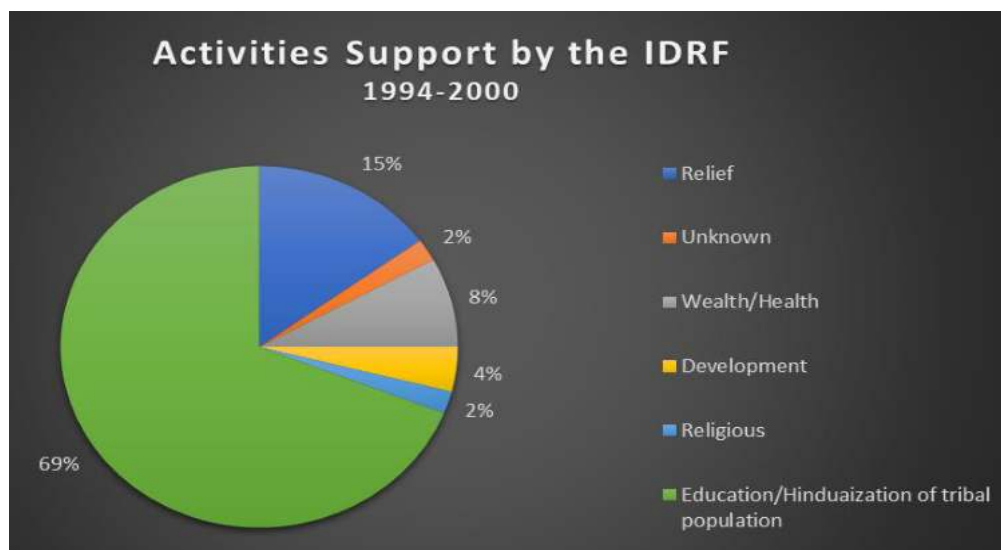
<sup>13</sup> Hindu Swayamsevak Sangh.

<sup>14</sup> Sangh-affiliated Bhutada Family Foundation.

### India under FATF Lens: Layers of ML/CFT Exposed

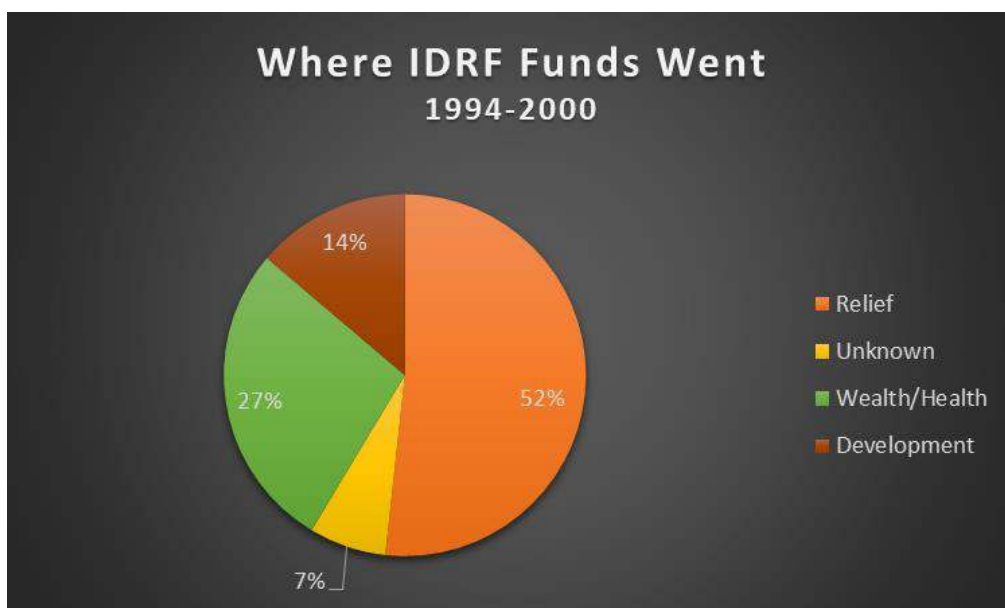
			Orlando, Florida	programmes, and research grants during 2010-2016.
15	Bhutada Foundation	\$1 million	VHPA's HUA	To influence textbook contents taught in Hindu University America.
16	Bhutada Foundation	\$1.7 million	Sangh Parivar outfits affiliated with RSS	From 2006 to 2018.
17	Aggarwal Family Foundation (AFF)	\$272,000	Sangh Parivar outfits affiliated with RSS	From 2008 to 2018.

### Sangh Parivar Outfits with Equivalents Operating in the US



Source: Sabrang Communications & South Asia Citizens Web titled: "The Foreign Exchange of Hate," IDRF and the American Funding to Hindutva.<sup>15</sup>

<sup>15</sup> [https://www.sabrang.com/hnfund/sacw/downloadss/sabrang\\_sacw.pdf](https://www.sabrang.com/hnfund/sacw/downloadss/sabrang_sacw.pdf).



Source: Sabrang Communications & South Asia Citizens Web titled: “The Foreign Exchange of Hate,” IDRF and the American Funding to Hindutva.<sup>16</sup>

**Table: 9 Uberoi Foundation Grants to the Hindu American Foundation (2012-2016)**

Year	Amount
2012	\$17000
2013	\$30000
2014	\$35000
2015	\$30000
2016	\$30000
<b>Total: \$142000</b>	

<sup>16</sup> <https://www.sabrang.com/hnfund/sacw/part4.html>.

## **Nuclear-Related Theft and Lapses**

Since 1994, more than 20 nuclear thefts happened in India in comparison to Pakistan where no such activity reported ever. This indicates the weak safeguards at nuclear sites India has become a potential hotspot for the illegal trade of nuclear technology and materials. Several thefts were done by the workers who are working on the nuclear technology of India. Nuclear materials have been smuggled from India to around the world many times and yet international community has not taken any serious notice.

**Table: 10**

<b>Year</b>	<b>Quantity of theft<sup>17</sup></b>
<b>2021</b>	<ul style="list-style-type: none"><li>• 7 kg and 6.4 kg from Maharashtra and Jharkhand<sup>18</sup></li><li>• 7 kg from a scrap dealer</li><li>• 250 kg from Kolkata<sup>19</sup></li><li>• 200g from West Bengal</li><li>• 13.75 kg</li></ul>
<b>1994</b>	<ul style="list-style-type: none"><li>• Several kg stolen by criminal gang</li><li>• 2.5 kg of yellow cake</li></ul>
<b>2008</b>	<ul style="list-style-type: none"><li>• Smuggling of low-grade uranium across the Bangladesh border. The gang leader was the son of an employee of the atomic mineral division.</li><li>• Smuggling of low-grade uranium to Nepal</li><li>• 4 kg from supra districts</li><li>• 1 packet of unprocessed uranium from Meghalaya</li></ul>
<b>2013</b>	Illegally uranium obtained from northeast India

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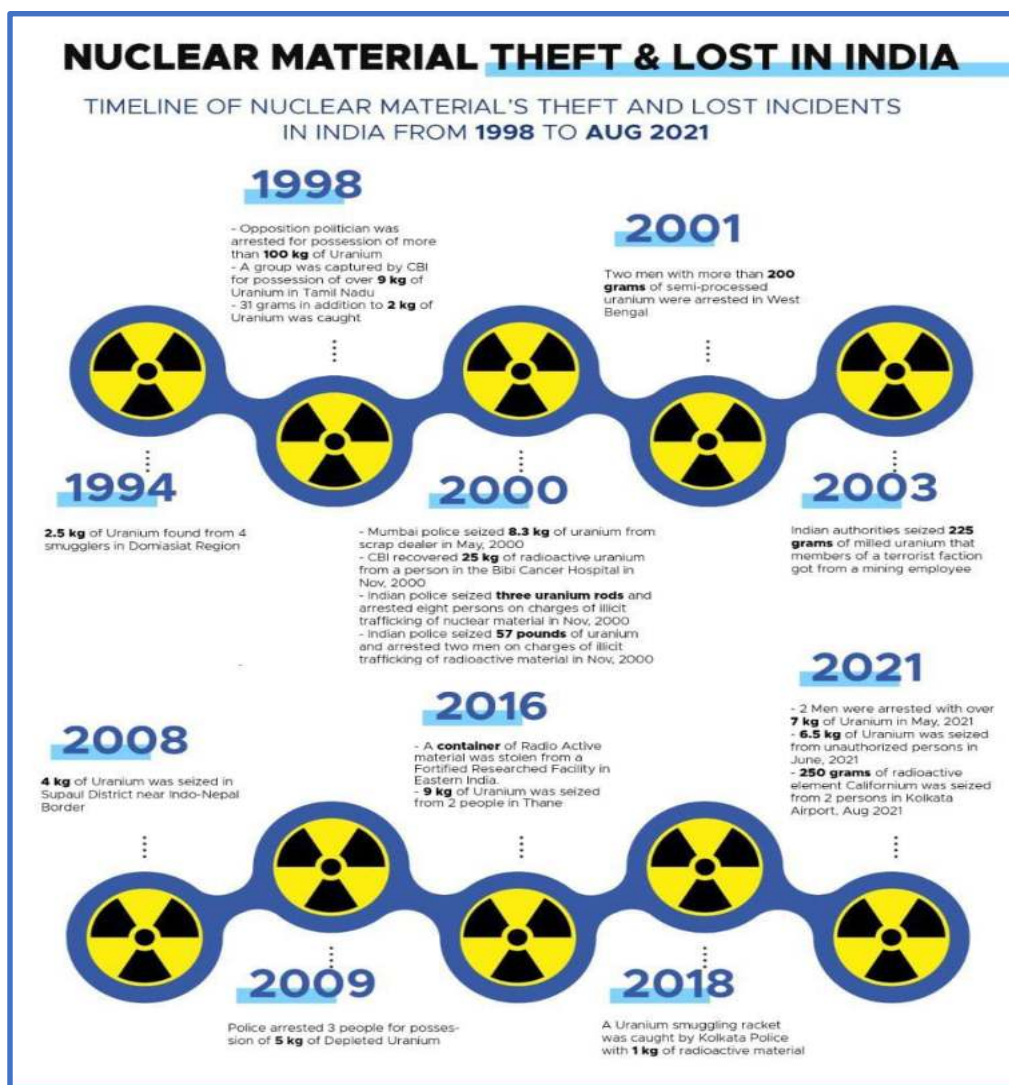
<sup>17</sup> <https://publicintegrity.org/national-security/indias-nuclear-explosive-materials-are-vulnerable-to-theft-u-s-officials-and-experts-say/>[https://search.wikileaks.org/plusd/cables/o8NEWDELHI2996\\_a.html](https://search.wikileaks.org/plusd/cables/o8NEWDELHI2996_a.html).

<sup>18</sup> <https://www.indiatoday.in/magazine/indiascope/story/19941115-uranium-smuggling-whodunit-in-meghalaya-809916-1994-11-14>.

<sup>19</sup> <https://www.app.com.pk/national/1994-2021-over-200kg-uranium-theft-in-india-poses-nuclear-terrorism-threats/>.

	<ul style="list-style-type: none"><li>• 8 kg from Tamil Nadu</li><li>• 6 kg</li><li>• 111 kg</li></ul>
<b>2006</b>	A packet of radioactive material from Rajappa
<b>2009</b>	5 kg from Mumbai
<b>2000</b>	59.1 kg
<b>2016</b>	9 kg
<b>2018</b>	1 kg

In the recent past, world has witnessed how India has become an international market of radioactive material. The dangerous business of the sale and purchase of weapon-grade radioactive material has further supported the flourishing Indian radio-active market. This indicates the Indian government's greed for easy money to further speed up its regional power ambitions.



Source: The South Asian Strategic Stability Institute, SASSI University<sup>20</sup>

<sup>20</sup> SASSI University, (2022). Available at: <https://issi.org.pk/tag/south-asian-strategic-stability/>

## **India's Challenges in Tracking Financial Scams**

### **Large Undocumented Economy**

- Challenges to trace financial links for moving funds in or out of the country
- Investigation or prosecution of financing cannot be done without missing piece located abroad.
- India has not implemented measures to facilitate international co-operation.

### **Sagging Areas**

- It does not have its own standalone MLA law.
- Extradition Act is too old and latest crimes are missing in schedule of offences.
- LOR Procedure is lengthy offering possible changes of movement of criminal and disposal of property.
- A dual criminality issue is haunting India's extradition process which is against International conventions.

### **Sagging Areas**

- Avoid being caught by taking advantages of shortcomings and one of the biggest shortcomings
- Non-treaty countries are free heaven for criminals and it is not possible to get information or extradite the criminal.



## **BENEFICIAL OWNERSHIP<sup>21</sup> AND REGIME**

### **Beneficial Ownership (BO)<sup>22</sup>**

In domestic and international commercial law, a “legal arrangement and entity is defined as a relationship established under a contract between two or more parties that does not result in the emergence of a legal person.”

### **The Department Dealing with BO**

The Ministry of Corporate Affairs in India is concerned with the administration of applicable Acts, Rules, and Regulations for companies and Limited Liability Partnerships (LLPs) administered by it.

### **Information on LPLAs**

Information on the creation and types of Legal Persons and Legal Arrangements (LPLAs),<sup>23</sup> trusts, etc. is not available to the concerned ministry.

### **Seizures and Confiscations**

Normally, criminal proceeds, instrumentalities, and property of equivalent value (PoEV) are pursued as a policy objective; however, India does not have a national confiscation policy, nor there is a national mechanism for identification, tracing, seizing, and subsequently confiscating assets at the inquiry stage. The absence of a national confiscation policy with special reference to Proceeds of Crime (POC), instrumentalities and PoEV leaves a huge gap, since ML investigation mostly occurs after predicate investigation, if assets are not pursued at the predicate offense stage, subsequent confiscation under ML charge becomes remotely possible. This reflects very weak confiscation outcomes being low in ML convictions. India has only 14 ML convictions in the last 15 years and no significant asset confiscations with TF connections. The ML is supervised by the PMLA 2002, amended on March 7, 2023.

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<sup>21</sup> Beneficial Owner is a natural person or persons who ultimately own(s) and share(s) or control an interest in a legal entity or arrangement, such as a company, a trust, or a foundation (FinCEN, 2021).

<sup>22</sup> Beneficial Ownership Information Reporting. Available at [https://www.fincen.gov/boi-faqs#D\\_](https://www.fincen.gov/boi-faqs#D_).

The ML offense is cognisable. India has no National Policy that provides prioritisation of depriving criminals of their proceeds.

It has more than 130 crimes enlisted as predicate offenses (components of major crimes) in Schedule to 2002, Prevention of Money-Laundering Act (PMLA); however, there exists no unifying national-level policy document with regard to asset confiscation for predicate offenses.

The Enforcement Directorate (ED) secured convictions of only 15 individuals and entities, including one high-profile fodder scam case. During the past 14 years (2005-2019), ED has registered 2,300 cases of ML and about 14,000 cases of forex violation. The ML Conviction and Confiscation Outcomes do not commensurate with one of the largest economies in the world (\$2.67 Trillion GDP). The growing informal economy, rising corruption, widespread utilisation of Information and Communication Technology (ICT) services, escalating incidents of banking crimes, and high-profile instances of financial fraud with international repercussions, such as the Nirav Modi PNB Bank Fraud (14,000 Crore INR), collectively raise questions about the robustness of India's financial and legal framework. According to the reports, Banking Crimes in India are increasing as compared to earlier years; however, this has not been reflected in an increase in the confiscation of assets associated with banking crimes, nor there is an increase in ML convictions, associated with Banking Crimes in India.

India has a huge ICT service and associated financial frauds; however, it has not confiscated assets in online banking frauds. Assets confiscated through international cooperation with an ML conviction are non-existent. Also, there is non-existent confiscation of assets with regard to banking offenses, IT services Fraud, online services fraud, as well as *Hawala* offenses. The country has not provided data with regard to the number of passengers that declare cash when travelling into and out of India. It does not have mandatory cash declaration for international passengers. There is no evidence of a nationwide cash declaration IT system that covers land-border stations, and all international airports also provide access to all the LEAs.

India borders the Golden Triangle (bordering Laos, Thailand, and Myanmar), coupled with low ML asset confiscation outcomes, and high financial, cash smuggling, drug smuggling, corruption, and informal economy dynamics. It provides a fertile ground for the diversion of proceeds to TF activities, which is a cause for regional security concern.

### **Unregulated Cryptocurrencies**

In 2013, the Reserve Bank of India (RBI) warned against the risks associated with using cryptocurrencies. In 2017, the RBI banned banks and regulated entities from providing services to individuals or businesses, dealing in cryptocurrencies. In March 2020, the Supreme Court of India overturned the RBI's ban on cryptocurrencies, making it legal to buy and sell these in India. The Indian government has since considered a regulatory framework for cryptocurrencies, but cryptocurrencies have not been recognised as currencies by RBI and no specific laws related to cryptocurrencies have been introduced. In 2022, the Ministry of Finance proposed the creation of a state-backed digital rupee and a framework for regulating private cryptocurrencies.<sup>24</sup> India's unregulated cryptocurrency market presents significant risks for terrorist financing.

Cryptocurrencies can be used for money-laundering and financing illegal arms trade, which can ultimately lead to the proliferation of weapons of mass destruction. Cryptocurrency has no clear legal status, nor has any legislation been carried out. There have been reported thefts of cryptocurrencies from Indian exchanges by DPRK hackers (\$18 million as per Kennedy School report). The lack of a regulatory regime in India poses a grave threat to global non-proliferation efforts and provides an alternative revenue stream for UNSC-designated states.

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<sup>24</sup> Thakur, D.S., Varma, R.A. and Hake, D.M., 2022. Regulation of Cryptocurrency in India: Issues and Challenges. *Journal of Positive School Psychology*, pp.8921-8929.

## **ENFORCEMENT DIRECTORATE (ED) OF FINANCIAL ACTION TASK FORCE (FATF)**

Enforcement Directorate of India is mandated to investigate Money-laundering. They have only 5 branches in over 4000 cities and towns in India, which is a big question mark on Indians' assessment system of ML and CFT. The Enforcement Directorate has already mentioned that due to lack of resources, it is impossible to investigate ML and CTF. Keeping 49 offices in the whole of India is humanly not possible to investigate CTF. The UK Department of Home Affairs reported over 200 illegal immigrants, led by a human trafficking gang, the Indian Enforcement Directorate were unable to discover. The FATF reported INR 6 crore fraud, which is also not investigated by ED. The ED has only managed 15 conventions in the past 14 years, which is not acceptable to give a trustable label to the Enforcement Directorate. Although the ED has been provided the blanket powers under the PMLA Act 2002, but conviction rate is very low. The FATF should contemplate the rising incidents of ML, CFT, human trafficking, and banking fraud in India, which might warrant a re-evaluation of India's status within the grey list.

### **Relevant Laws Empowering Enforcement Directorate (ED)**

The Prevention of Money-Laundering Act (PMLA) of 2002 is a criminal law enacted to prevent money-laundering and to provide for confiscation of property derived from, or involved in, money-laundering and for matters connected therewith or incidental thereto. Second, Foreign Exchange Management Act (FEMA) of 1999, is a civil law enacted to consolidate and amend the laws relating to facilitating external trade and payments. It is to promote the orderly development and maintenance of the foreign exchange market in India. Third, The Fugitive Economic Offenders Act (FEOA) of 2018, is a law enacted to deter economic offenders from evading the process of the Indian law by remaining outside the jurisdiction of the Indian courts. It is a law whereby the Directorate is mandated to attach the properties of fugitive economic offenders who have escaped from India warranting arrest and provide for the confiscation of their properties to the Central Government.

The main functions of the Foreign Exchange Regulation Act (FERA) of 1973, under the repealed FERA, are to adjudicate the show-cause notices issued for the alleged contraventions of the Act which may result in the imposition of penalties and to

pursue prosecutions launched under FERA in the concerned courts. Under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act (COFEPOSA) of 1974, the ED is empowered to sponsor cases of preventive detention regarding contraventions of FEMA.

The following cases have been filed under the PNL Act of 2002 in the High Court and Supreme Court.

Table: 11 Cases Filed under the PML Act of 2002 (2008-2015) in High Courts and the Supreme Court							
Year	2008	2009	2010	2011	2012	2013	2014
Cases Filed	2	4	12	22	18	23	18
Cases filed in the Appellate Tribunal under the PML Act of 2002 (2009-2014)							
Year	2009	2010	2011	2012	2013	2014	
Cases Filed	8	5	14	3	19	13	
Cases Related to PMLA of 2002 in Tribunals and High Courts and Supreme Court							
					No. of Cases		
Appeal					16		
Bail Granted					8		
Attachment of Property					14		
Burden of Proof					19		
Constitutionality of the Act					39		
Source: Mutual Legal Assistance in Asia and the Pacific (2017) <sup>*25</sup>							

<sup>25</sup><https://www.oecd.org/corruption/ADB-OECD-Mutual-Legal-Assistance-Corruption-2017.pdf>

## **Gaps in Enforcement by the Enforcement Directorate (ED)**

### **Effectiveness Gap**

14 Convictions, in 15 years with a backdrop of the largest informal economy in the world, increased crimes of corruption, banking and financial frauds, online and digital scams, and drug trafficking, raise a big question on the effectiveness of India's AML and CFT regime. Low conviction and associated confiscation outcomes in India reflect a centralised and weak enforcement structure, along with poorly resourced and inexperienced human resources. This combination poses a significant systemic weakness in implementing the AML and CTF regime, especially considering India's socio-economic, geographic, and offense-trend complexities.

India's socio-economic and geographical stature, with regional connectivity, the inherent systemic weakness of India's AML and CFT regime, is a source of major threat to regional AML and CFT systems.

### **Lack of Resource**

India's least prioritisation of ML investigation, and associated tracing, seizing, and confiscation of assets is reflected by ED with only 1,005 staff, which is less than 50 percent of the total sanctioned staff capacity of 2,064. There are only 49 offices of ED, while the CBI has 100 plus offices across the country. Thus, under-resourced ED cannot do justice to the responsibilities it is entrusted with.

### **Rampant Corruption and Scams**

Rampant corruption, banking crimes, financial frauds like Nirav Modi PNB Bank Fraud (14,000 Crore INR), Rotomac (3,600 Crore INR), Karvy Stock Broking Limited (2,800 Crore), Vijay Mallaya Scam (9800 Crore), Satyam Computers Scam (14,000 Crore), and Adani Group Scam 2022, the largest scam in the global corporate history with international connections, are the important causes of an inherent weak ML enforcement regime.

### **Legislative Gap**

The resource-constrained ED is entrusted with privileges from the Indian government to investigate, trace, seize, and prosecute ML crimes, whereas LEAs

with expertise in predicate offenses (major components of crime) are not authorised to investigate, trace, seize, prosecute, confiscate, or convict ML offenses. The major drawback is that law-enforcement agencies in India do not have legislative powers to seize, investigate, prosecute, and confiscate ML assets, connected with the predicate offenses of their specific scope of functions and jurisdictions. The expertise of LEAs to investigate, trace, and seize ML assets, becomes ineffective since the powers are centralised with ED.

### **Administrative Gap**

The ED does not have the human resource to investigate ML offenses, emanating from multiple predicate offenses that have intricate complexities. In most instances, the ML assets investigation cannot be separated from predicate offense - related Proceeds of Crime (PoC), instrumentalities, and Proceeds of Estimated Value (POeV).

### **Capacity and Skill Gap**

ED does not possess the expertise or capacity to investigate assets, associated with multiple and broad-based predicate offenses.

### **Predicate and ML Investigation Seizure Confiscation Dichotomy**

At the outset, PoC, instrumentalities are required to be attached and seized and restrained at the initial inquiry stage of predicate offense (the major component of offense) and PoEV needs to be identified at the predicate offense stage. The ML-Predicate implementation dichotomy is one of the cardinal reasons for low confiscation and ML conviction outcomes for such a huge economy.

### **Ineffective International AML and CFT Outcomes**

Furthermore, with regards to international cooperation, India reportedly has a large number of international financial frauds and scams, involving hundreds of billions of US dollars, but there is no significant development with regards to repatriation of assets, seizing of assets through international cooperation as well as extradition of ML convict. For instance, Vijay Mallya property seized in France worth 1.6 million Euro has never been repatriated to India, nor Mr. Vijay has been extradited.

## **Mutual Legal Assistance (MLA)**

Globalisation of crime requires states to have a wide range of methods for international cooperation with countries from the same region (regional instruments) and different regions of the world (international instruments). Under the MLA regime, international cooperation is sought and extended in order to provide or get any form of legal assistance from and to other countries in criminal and other matters.

## **Designated Non-Financial Businesses and Professions (DNFBPs): Loopholes**

### **DNFBPs and Shortcomings**

In India, real estate, including sectors involved in dealing with precious metals and stones, falls under the category of Designated Non-Financial Businesses and Professions (DNFBPs), characterised by a lack of transparency. Negotiating the complex AML and CFT regulations in India proves challenging for DNFBPs, particularly due to linguistic differences, leading to a lack of awareness about their obligations in these domains. The high-end real estate sector, spanning the nation, has become a focal point for fraud, unauthorised money pooling, illicit money stashing, price manipulation, and incorrect valuation, contributing significantly to widespread money-laundering. According to the Enforcement Directorate (ED), the real estate sector accounts for 35 percent of reported money-laundering cases. Despite its rapid growth, an accurate estimate of real estate agents in India remains elusive. Many DNFBPs, especially small businesses, lack the necessary resources and expertise for implementing effective AML and CFT controls, exacerbated by limited supervision, resulting in compliance and enforcement gaps. The Indian real estate market, valued at \$263.37 billion in the current year, is projected to witness a Compound Annual Growth Rate exceeding 20.51 percent through the forecast period until 2028.

### **Opaqueness in Gold Trade**

The Precious Metals and Stones sector, characterised by its cash-intensive nature and a blend of legal and illegal trade, poses substantial challenges in India. Renowned as one of the world's primary gold capitals, with nearly a third of global gold passing through its borders, India grapples with a significant portion of its



gold sector being tainted by gold from questionable sources, as reported internationally. Over a quarter of India's gold sector is allegedly linked to unknown international sources, with reports suggesting large-scale money-laundering and tax evasion within the gem and jewellery sector, including instances of trade-based money-laundering.

The import of gold into India is entangled with conflicts, human rights violations, smuggling, child labour, and corruption in Africa and South America. Illicit gold seamlessly integrates into the legal market, posing challenges for DNFBPs in India to identify and verify customer identities and fund sources. The Enforcement Department highlights the rampant illicit trade in gold and silver in India, emphasising the prevalence of trade-based money-laundering.

Challenges persist with corruption hindering the effectiveness of AML and CFT measures. The shortage of staff and resources within the ED limits its ability to enforce the Prevention of Money Laundering Act. The Controller and Auditor General of India report underscores large-scale money-laundering and tax evasion in the gem and jewellery sector, providing 19 recommendations for government action. Despite India signing international treaties, effective international cooperation for these sectors is lacking.

Deficiencies in record-keeping and a lack of enforceable regulations for Terrorist Financing Screening for Precious Metals and Stones sectors further highlight the shortcomings in the regulatory and supervisory regime. The real estate sector's inadequate coverage for implementing Customer Due Diligence and Enhanced Due Diligence measures, combined with the absence of risk-based supervision, exacerbates money-laundering risks. The absence of market entry policies, official estimates regarding the DNFBPs sector population, and assessments of risks associated with "New Technologies" raise concerns about the effectiveness of the current regulatory framework. In light of the real estate sector's size, there is a heightened risk of money-laundering due to a weak understanding, with observations indicating extensive use of the real estate and precious metals and stones sector for stashing proceeds of crimes.

## Key Takeaways

India is treated as an “*Anokha Ladla*.”<sup>26</sup>

- India is leading the global crypto boom with 30 percent of 674 million users by 2023, a rise of 244 million from the previous year. According to Bitcoin Casinos crypto users in India have increased from under 5 million users in 2017 to 674 million users in 2023.
- Voluntary disclosure agreements (VDA) channels are particularly amongst predatory criminals such as drug dealers, human traffickers, smugglers, etc. India has rampant problems like drug users (estimated 10 million users), human trafficking (2<sup>nd</sup> largest source of human trafficking as per UK) and gold and uranium smuggling (various media reports), etc. As after demonetisation cash dealings have reduced in India, therefore, it can be clearly stated with confidence that either the banking system is being used for the settlement of these predicate crimes or VDA is the settlement mode in all crimes.
- Despite the Supreme Court overturning the 2018 crypto ban, a 2021 law aimed at banning private crypto currencies is being delayed, pointing to a lack of commitment and possible political motivations.
- The Financial Intelligence Unit (FIU) of India tasked with regulating the VDA, struggles with a short fall of 75 people and inadequate resources, raising doubts about proper monitoring of crypto transactions in the country.
- India faces massive crypto scams, as seen in the case of Himachal Pradesh, where 100,000 victims were defrauded of \$300 million, illustrating the gap in public constitutional awareness and wider financial risks.
- The UN Special Rapporteur reveals that hate crimes against minorities in India have increased by 786 percent between 2014 and 2018, and warns that India has become a hotbed of instability and violence.
- The *Sangh Parivar* system, including the BJP, VHP and *Bajrang Dal*, works systematically, using limited restrictions on NPOs to promote Hindu ideology worldwide.
- Originally aimed at controlling black money, the demonetisation reflects a statistical significance that turns black money into a white money issue, with a few high crime rates, especially in BJP-controlled areas.

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<sup>26</sup> Dr. Fraz Ahmed. Associate researcher at Pakistan Institute of Development Economics (PIDE), Islamabad, Pakistan.

### *India under FATF Lens: Layers of ML/CFT Exposed*

- Local investors like Adani and international organisations like VHP America play a significant role in supporting terror funding, influencing learning centres and joint investment projects with the Modi government.
- Urgent international perspective and cooperation are needed to tackle the funding mechanisms of NPOs, which are rife with money-laundering and terror finance backed by *Hindutva* groups and Modi agendas.
- The SECP, which covers 200,000 companies and 2,000 limited liability partnerships (LLPs), initially faced challenges in implementing beneficial ownership rules, but priorities were taken after the intervention of the FATF and commended by the APG.
- India has demonstrated deficiencies in proactive risk assessment, including a lack of regulation of laws for the formation of legal persons (LPLAs), difficulties in obtaining proprietary information, and poor policy implementation, especially for companies listed in India.
- Indian law enforcement agencies lacked the effective capacity to obtain and verify information, outdated registration trusts and non-existent enforcement procedures, resulting in non-compliance.
- In reviewing India, the FATF should prioritise enhancing transparency, preventing misuse of legal arrangements, and evaluating the effectiveness, discouragement, and proportionality of India's sanctions and enforcement regime.
- The FATF should objectively identify deficiencies in India, ensure due impartial investigations, and address identified deficiencies to strengthen the global AML/CFT framework.
- India is engaging in a hybrid war of proxy and direct intervention, as evidenced by organised killings and international cases like the Hardeep Singh case.
- India uses cultural influence and indoctrination to shape narratives, but gaps such as *Hawala* practices and shortcomings in the DNFBPs system provide opportunities to FATF for monitoring and implementation of the loopholes in India's economic landscape that could facilitate TF and ML.
- Despite the initial unawareness, Pakistan has changed its policies and procedures, becoming a global model in the implementation of ABG-adopted TF/AML policies.

- India faces deficiencies in the investigation and prosecution of AML/CFT activities, including limited resources and weak infrastructure, which hinder the effective handling of threats and claims.
- The FATF reports highlight the substantial risk of money-laundering related to trafficking in persons in India and emphasise the need for interagency cooperation and specialised teams.
- India struggles to tackle corruption due to regulatory gaps, including offenses representing aggressive use of bribes, and challenges in cases of money-laundering in the proper use.
- India delayed information on unresolved regulatory issues, including vague definitions, fiscal constraints, and the need for coordination, which hinders its ability to investigate and stop money-laundering, harming the implementation of effective anti-money laundering strategies in process.
- Pakistan's success in tackling economic crime through law and order, as evidenced by its exclusion from the FATF grey list, builds on effective mechanisms, inter-sectoral coordination, and capacity-building emphasis on development.
- FATF, with more than 50% of its members from Western Europe, raises problems about the balance of regional jurisdiction, which affects the investigation of countries like India.
- FATF should consider India's unique circumstances in the review, including high levels of gold consumption, gold smuggling, and lack of oversight and low conviction rates, to ensure that it has conducted a nuanced analysis.
- Lessons from Pakistan highlight the importance of uniformity in appraisal standards, particularly advocating consistent appraisal standards in sectors such as non-profit organisations.
- India's proactive but restrictive approach, which uses FATF "Recommendation 8" to restrict public participation, prevents NGOs from addressing important gaps, especially in a crisis like the Covid-19 pandemic.
- NGOs, through forums like the Global Alliance on NPOs, have expressed their concerns and highlighted the impact of India's actions. The motion suggests a two-pronged approach, i.e. (i) exposing inefficiencies in India's practices and (ii) challenging the FATF's legitimacy.

### *India under FATF Lens: Layers of ML/CFT Exposed*

- The FATF is criticised for questioning its role in dealing with issues, such as money laundering and the financing of terrorism. The resolution recommends challenging the jurisdiction of the FATF and calls for these issues to be addressed by competent and impartial member states of the international treaty.
- NGOs in India are accused of using a money-laundering scheme to suppress freedom of expression, threatening to cancel licenses and tax returns, and colluding with RSS tactics to silence voices highlighting human rights violations.
- There is a possibility of India abusing the FATF as a weapon against Pakistan. It raises concerns. “Recommendations 10, 11 and 20” emphasise the importance of legal measures, and warn against such actions.
- Non-financial sectors and professional bodies, including lawyers, are not adequately regulated in India, posing challenges in areas, such as uranium sales. It contributes to international regulatory concerns.
- Proposed legal mechanisms are strong enough to highlight violations of India’s fundamental international legal obligations, especially in cases of gross human rights violations, to put a stop to the issue of cross-border money-laundering, which is not permitted by the host country.

## CONCLUSION

As India prepares for the Financial Action Task Force (FATF) Mutual Evaluation, it faces critical scrutiny of its Anti-Money Laundering (AML) and Counter-Terrorism Financing (CTF) practices. The findings of this analysis reveal that despite India's efforts to align with FATF standards, there are substantial concerns regarding its AML and CTF regime. The proliferation of unregulated financial channels, the rise in corruption, money laundering cases, and the challenges posed by new financial technologies like crypto currencies, underscore the need for more robust and effective regulatory frameworks.

India's role in the South Asian region and its impact on regional financial integrity cannot be understated. The persistent issues of unofficial financial systems, such as the *Hawala* network, and lack of a consolidated terrorist list, pose significant threats to both national and regional stability. These weaknesses are exacerbated by India's burgeoning fintech sector, which, while being full of promise, introduces new vulnerabilities in the absence of comprehensive regulations.

Furthermore, the involvement of various sectors, including the banking, real estate, and non-profit sectors in financial irregularities, calls for heightened vigilance and enforcement of AML and CTF measures. The upcoming FATF evaluation is not only a moment for India to demonstrate its commitment to financial integrity but also an opportunity for the FATF to address systemic challenges and ensure that India's efforts are in line with global best practices.

In the end, this analysis suggests that for India to effectively combat money laundering and terror financing, a multifaceted approach is necessary. This approach should include strengthening the legal and regulatory framework, enhancing enforcement mechanisms, and fostering greater collaboration among government agencies, financial institutions, and regional and international bodies. The FATF evaluation provides a pivotal moment for India to reassess and reinforce its AML and CTF strategies, ensuring not only compliance with international standards but also the safeguarding of its financial systems against abuse and exploitation.