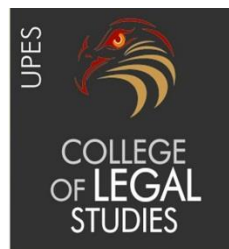


**COUNTERFEITING AND SMUGGLING- GROWING THREAT TO NATIONAL
INTEREST**

Gaurang Goel

Submitted under the guidance of Dr Sujata Bali

*This dissertation is submitted in partial fulfillment of the degree of B.B.A.,LL.B.
(Hons.)*



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University of Petroleum and Energy Studies
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CERTIFICATE

This is to certify that the research work entitled “**COUNTERFEITING AND SMUGGLING- GROWING THREAT TO NATIONAL INTEREST**” is the work done by **Gaurang Goel** under my guidance and supervision for the partial fulfillment of the requirement of B.B.A., LL.B. (Hons.) degree at College of Legal Studies, University of Petroleum and Energy Studies, Dehradun.

Dr Sujata Bali

ASST. PROFESSOR

Date

DECLARATION

I declare that the dissertation entitled “**COUNTERFEITING AND SMUGGLING-GROWING THREAT TO NATIONAL INTEREST**” is the outcome of my own work conducted under the supervision of Prof. Sujata Bali, at College of Legal Studies, University of Petroleum and Energy Studies, Dehradun.

I declare that the dissertation comprises only of my original work and due acknowledgement has been made in the text to all other material used.

Gaurang Goel

Date

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1: INTRODUCTION

"Money is the lifeblood of terrorist operations. Today, we're asking the world to stop payment."

President George W. Bush, 24 September 2001

Terrorism is an eminent dilemma that has been prevailing all over the world and stands a grave and dangerous threat to civilians, the industry and governments. Terrorist organizations may work with varied set of goals in their mind like damaging the economy of a state, hurting the people including regional, ideological or economic. Nonetheless, in order to pursue such terrorist activities any organization would require huge amounts of financing from various sources to carry out their operations.

Now when terrorist organizations receive money and are financed from anonymous sources these funds are incurred and spent on Direct Costs or Indirect costs. The costs incurred by terrorist organizations can be summed up into direct and indirect costs. The direct costs spent by the terrorist establishments cover in its ambit the materials used in attacking and spreading terrorism so as to threaten the people of a country, e.g., explosives, vehicles, weapons, communication equipment, etc. The indirect costs incurred, are considered and most of the times are very much higher than the costs incurred on direct ones. Thus Indirect Costs cover in its ambit the major tasks to be done by Terrorist Organizations such as their running and administration as well as the recruitment of young people their training, propagation of agenda, cost of sleeper cells (cost of inactive terrorist cells) etc. As per news, media reports and survey conducted by organisations during several past years and various instances and cases disclosed by law enforcement agencies and government organisations, terrorist establishments tend to acquire and receive resources, funds through a wide range of anonymous sources, largely from state- funding and donations and charities. Although, during the past few years these terrorist organisations have widened the scope of their funding avenues and have

been rigorously using counterfeiting and smuggling to make meet ends in order to fund their continued terrorist activities.

Counterfeiting and Smuggling including all other related terms that come in order like passing off, faking brings into its ambit a large range of illegitimate activities related to IPR includes wide range of illegal activities linked to IPR infringement. The use and spreading of Counterfeit goods (Commonly called knock-offs) have become Global and are being used in a rigorous way. Customarily, counterfeiting was used and related with money-laundering, fake documents etc. Counterfeit is basically a replica that is not original or from time to time¹ is bested to look even better than the original made mostly with the intention of dishonestly increasing the volume of sales so as to increase profit at a low cost by using the brand equity of the product by representing its contents or origins. Since the past few years, substantial evidence of continued involvement of terrorist establishments have been detected by intelligence and law enforcement agencies in using counterfeiting and smuggling as means to achieve funds for gathering resources in order to conduct terrorist attacks². It has also been seen that various people camouflage terrorist activities by opening shops and selling counterfeit goods the proceeds of which help the terrorists. The major sources of funds for extremist groups are through counterfeiting of drugs, luxury good, cigarettes etc. Likewise, smuggling of goods, products even people are used by terrorist organizations to raise funds and launder proceeds from other businesses, and use these to finance terrorism. Surveys conducted globally and the investigations of law enforcement agencies show that smuggling of high end and luxury goods like Gold, Cigarettes, Cars, precious stones, drugs, DVD's all of them are major sponsors for financing terrorism and causing worldwide disruption of balance by financing of terrorism³.

As per the recent news reports, apart from their direct involvement in counterfeiting and smuggling to raise funds, terrorist organizations have increasingly begun to develop strong linkages with organized crime and mafia organizations to fund their operations.

¹ www.nolo.com › Legal Topics › Criminal Law › Crimes In-Depth

² www.thehindu.com/todays-paper/tp-national/.../article5194660.ece

³ www.thehindu.com/todays-paper/tp-national/.../article5194660.ece

Given their vast network, it is easier for organized crime outfits to raise funds through counterfeiting and smuggling, which are then laundered to finance terrorist organizations. India has made various agendas to eradicate the problem of counterfeiting and smuggling and its relation to the funding of terrorism so as to bring peace and harmony among the society which is disrupted by these perpetrators. The Government has passed and enacted several laws⁴ and enforcement agencies are now given the authority to locate and prevent the menace of counterfeiting and sponsoring of terrorism which is one great step towards achieving societal objectives to the least. Important technological developments have been made by the industry and the government aiding the industry to implement capacity building measures to create awareness among the consumers so that they know the difference between original and counterfeit goods so as to prevent this menace as much as possible.

In addition to efforts made till now, it is essential for the Government and industry to collaborate on tackling the menace of counterfeiting and smuggling⁵. Some effective measures could include:

- ✚ Putting up of agencies of the government that are mainly responsible for eradicating counterfeiting and smuggling in any way possible. This would be like an instant check on these activities and can be termed as short term remedy.
- ✚ Making provisions in laws of the country that empower enforcement agencies to investigate and prosecute the people committing such activities. Strengthening laws and regulations would also help in this aspect.
- ✚ Working on creation and implementation of standard technical solutions for anti-counterfeiting / smuggling to be adopted across industry sectors
- ✚ Making the consumers aware of the evils of counterfeiting and smuggling so that they in no ways contribute or help the terrorist organisations in receiving funds and also so that the enforcement agencies understand the dire need of stopping such activities.

⁴ en.wikipedia.org/wiki/Anti-Counterfeiting_Trade_Agreement

⁵ ficci-cascade.com/download-studies.php?pdfid=28

This war against terrorist activities has brought the entire nation along with its citizens and government to stand together on the same ground alike. Has been collectively seen that in order to prevent terrorism it is very important to cut the very grounds of terrorist activities by stopping their financing activities⁶. However the traditional ways of financing terrorist activities like state sponsorship, donations and charities carry on to play an important role; Although in this modern era organizations worldwide use newer modes of terrorism financing such as counterfeiting and smuggling have started emerging.

India although has come a very long road in countering and opposing terrorism through several steps taken that are related to changing the form and intensity of regulations, constituting intelligence agencies along with giving them the appropriate authority, building capacity in IT infrastructure and personnel. One of the major initiatives taken in this direction is the enactment of regulations such as the Prevention of Money Laundering Act (PMLA)⁷ and the Unlawful Activities Prevention Act (UAPA)⁸. Another was setting up of the Financial Intelligence Unit (FIU), which plays a leading role in countering financing of terrorism (CFT) by collecting and monitoring activities in the financial and banking network, and thereby identifying potential transactions leading to financing of terror. Furthermore, agencies such as the National Intelligence Grid (NATGRID)⁹ and the National Investigation Agency (NIA) have been established and will be responsible for prevention and investigation of cases relating to financing of terrorism and other national security issues.

Product counterfeiting of luxury, consumer goods and industrial goods is a major problem world over and is more acute in developing countries (Economist 2003). TRIPs agreement defines counterfeits as any goods bearing unauthorized trademark and thereby

⁶ www.imf.org/external/np/leg/amlcft/eng/aml1.htm

⁷ fiuindia.gov.in/pmla2002.htm

⁸ [http://www.nia.gov.in/acts/TheUnlawfulActivities_\(Prevention\)_AmendmentAct,1967\(37of1967\).pdf](http://www.nia.gov.in/acts/TheUnlawfulActivities_(Prevention)_AmendmentAct,1967(37of1967).pdf)

⁹ www.davp.nic.in/WriteReadData/ADS/eng_19138_1_1314b.pdf

infringing the rights of the trademark owner under the law of the country of importation. Counterfeiters emerge and thrive where there is low literacy level, low purchasing power, low consumerism level, high unemployment rate, nexus between counterfeiters and law enforcers, slow judiciary process and loopholes in laws and its enforcement¹⁰. It is basically the developing countries that fall prey to activities like smuggling and counterfeiting as they get attracted to the business as they find little risk for a large profit, the possibility of getting caught in developing countries are low as the people support buying good at low rates low so the probability to get caught gets very low, even if the person gets convicted he can go off easily at very less conviction rates apart from that manpower can be hired at very low rates as the level of unemployment is very high¹¹, simple technology to produce and consumer ambivalence¹². The concept of Counterfeits are different from smuggling and passoff brands. Counterfeits products are made or produced without any grants and licences and have no protection as far as trademarks are concerned. Smuggling is unauthorised use of copyrighted and / or patented goods and brands. Counterfeiting is production related and smuggling is associated with the product or brand. Pass off brands are similar in appearance to the original but are not exactly the same. For example, Colgate is a passoff brand of Colgate.

¹⁰ (Harvey, 1988, Bush et al, 1989, Olsen, et al, 1992, Wee et al, 1995, Chaudhry, et al, 1996, Cordell, et al, 1996, Jacobs, et al 2001, Bazerman and Jason, 2003, Cunningham, 2003).

¹¹ (Dubey Case, 1994)

¹² (Kaikati and LaGrace 1980)

1.1 The Good and the Ugly

Counterfeiting of products harms organisations two ways that are monetary such as they inflict heavy losses to them and counterfeiting is done at a heavy cost of the time of managers. Consumers on the other hand are cheated¹³ after purchasing counterfeits and they would be at loss on various fronts like physical, monetary, emotional, and time. Sometimes the effect could be even death and injuries. Government also faces decline in foreign capital investments, and tax revenues. In addition, it has to also tolerate a parallel economy and injustice to legitimate business.

Although one positive effect of counterfeiting is that it benefits the consumer in a way that they can get the goods at a very low rates now this leads the organisations to strive harder for competition the primary facet of which is lowering prices of the original product which brings to the consumer quality goods at low rates.

1.2 Magnitude of the Menace

The irony in this aspect is that where the world trade is going at a rate of 3 to 4% counterfeit goods and products are leading at a rate of 150 percent¹⁴. Global losses from counterfeiting of products amounted to more than \$200 billion in 1996¹⁵ and counterfeit products accounted for 5 percent of world. In international markets, four broad categories are considered to be highly vulnerable to the product. These are:

- ✚ *Highly visible, high volume, low-tech products with well-known brand names.*
(Examples are toothpaste, candies, and chocolates)
- ✚ *High-priced, high-tech products.* (Examples are computer games and audio or video entertainment products, fake auto parts, airplane parts and so on)

¹³ Consumers encounter both deceptive and non deceptive kinds of transactions with the counterfeits.

Deceptive counterfeiting is a situation in which the consumers are not aware of purchasing a counterfeit product at the time of purchase. A survey conducted by A. C. Neilson in India reveals that 80 percent of the consumers realize that they have brought a counterfeit only after they have consumed.

¹⁴ www.slideshare.net/nabeelfarooq/counterfeiting-of-luxury-brands

¹⁵ As per consolidated reports of International Chamber of Commerce

- ✚ *Exclusive, prestige products* (Examples include well-known apparel and accessories as well as perfumes and other expensive gift items).
- ✚ *Intensive R&D, high-tech products such as pharmaceuticals* (Examples also include defense related products, industrial goods and so on).

India's Brand Protection Committee names eight categories of products seriously under attack from counterfeits¹⁶: Rubs and balms, Glucose Biscuits, Beverages, Coconut Oil, Batteries, Detergents, Shampoos, Soaps and Fairness creams. In India, FMCG¹⁷ sector is losing about Rs. 1,700 crore of revenue annually as a result of counterfeits. Government from FMCG sector is losing about Rs. 600 crore by way of unpaid taxes and duties from this sector alone. Software smuggling rate in India is estimated to be about 60 percent as per NASSCOM. Almost one sixth part of Pharma products in India are counterfeits resulting losses to many organizations¹⁸. Music industry is losing 40 percent of its revenue due to smuggling.

¹⁶ <http://dspace.iimk.ac.in/bitstream/2259/313/1/>

¹⁷ As per an estimate losses suffered due to counterfeits by organizations is as follows; HLL - Rs 1000 crore, Marico Industries - 15 – 20 percent of sales revenue, P & G - 10 percent of its sales revenue, Dabur's Lal Dantmanjan Tooth Powder - 7 – 8 percent (www.indiainfoline.com)

¹⁸ Of the total sales losses due to counterfeits for Alembic is 25 – 30 percent, Cipla is 20 – 30 percent and Ranbaxy is 10 – 12 percent (www.indiainfoline.com)

1.3 Generic Strategies

The responsibility or task to fight counterfeits is basically the work of the corporates as it is they who would feel the effect of losses. The damage done by counterfeiting of products is very severe to corporates as they are directly related to them in the sense that the fall in proceeds or sales affect them where such damages are remote to the government or consumers¹⁹. Secondly, governments find such issues very petty in front of the wider picture of the nation which are more serious. On the other hand, there is very less awareness among the consumers as far as counterfeit goods are concerned apart from this the dispute redressal mechanism systems are very slow and would take a lot of time so they usually avoid getting caught in such situations. However, civil society organizations can play a key role either independently or in collaboration with government and corporate²⁰.

Corporate organizations can use both reactive and proactive strategies to counter counterfeits²¹. Some of the generic proactive strategies are government lobbying, proactive changes in marketing mix and labeling. Reactive strategies include warning, reactive changes in marketing mix, and legal action.

¹⁹ www.oecd.org/industry/ind/38707619.pdf

²⁰ www.patientsorganizations.org/showarticle.pl?id=759;n=37200

²¹ <http://foodfraud.msu.edu/wp-content/uploads/2013/03/Chapter-9-Selecting-Authentication-Tools-Counterfeit-Medicines-Vol-I.pdf>

1.4 Proactive Strategies

Government Lobbying:

It is basically a process in which the organizations come into an agreement with the state and central governments for making and properly implementing of property rights and copyrights at local, state and central levels. The effect of this is that the government in a state makes sure that no activities like counterfeiting are encouraged now these can be done by the corporate in individual capacity or through rules and regulations made by the associations like CII and FICCI. Although such efforts sometimes hold no impact as the law enforcement agencies along with the counterfeiters make arrangements among themselves and share the profit. Further, government may find the issue to be of less importance when compared to other problems and hence may give a step treatment. Apart from this the organization should consider the fact that the war against counterfeiting is a long run thing and cannot be achieved in short term and that the government would give minimum support as the damage done is remote to them.

Proactive changes in marketing mix:

Organizations promote the advantage of buying the original product by modifying marketing²² mix elements thus restricting or delaying the entry of the counterfeits into their product categories. For example software firms like Microsoft launch basic version of the windows and send upgrades only to the original window users by doing this they delay the entry of counterfeiters making the same windows and providing them at a lower cost. Consumers with original software would be able to upgrade the software. Although these techniques are not possible for every kind of product as food products and toiletries cannot be launches in such a manner.

²²https://www.google.co.in/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0CCQFjAA&url=http%3A%2F%2Fdeepblue.lib.umich.edu%2Fbitstream%2Fhandle%2F2027.42%2F832812FCULTURE%2520CHANGE%2520CHAPTER%2520Revised%2520%2520OD%2520HANDBOOK.d%3Fsequence%3D1&ei=zeFCU6fnGoKQrQe74CADg&usg=AFQjCNEef0xK4BrBwynP2bN_dAu7GmUVg&sig2=hTVIidmK79IRHjW4ar72Ew&bvm=bv.64367178,d.bmk

Labeling:

Corporates and organisations are nowadays constantly inserting holograms and bar codes on their products which make it merely impossible for the counterfeiters to deceive the consumers as they can easily detect seeing the hologram. DNA Security maker is being used nowadays by the textiles and software industries where the manufacturer encrypts the product information summary as a part in the product. Such techniques are adapted from the devices being used by the RBI for developing currency notes

Although labeling is considered to be an effective and sophisticated way of protection for product but in situations that the counterfeiter precedes his reputation they can easily make holograms and make the counterfeit product look as though it is original. Thus counterfeiting of holograms have raised serious doubts on viability of the technology apart from that these technology are not cost efficient hence leading to increased costs. .

1.5 Reactive Strategies

Warning:

Nowadays corporates tend to send a warning by way of calling or by sending a notice to the concerned person regarding the infringement of copyright Nevertheless, this also sometimes proves to be non-useful as the counterfeiters remain hidden at places and go underground for months and operate from there²³. In some cases, they halt their activities for some time and later resume. This strategy is often used in this part of the world and is known as the initiation phase of the cycle

Reactive changes in marketing mix:

Sometimes organisations use various marketing mix technology like Price cuts Promotional drive against counterfeiting. The basic thing in this is to mix elements of marketing so that they can help skip counterfeiting. The reactive changes in marketing

²³ dspace.iimk.ac.in/bitstream/2259/313/1/

mix are that organisations mix elements like selective price cuts, special promotional drives through several media against counterfeits, partnering with channel members and so on. Another useful technique used by organisations is that they reward the middlemen if they help them and play a key role in countering counterfeits²⁴. These channel members help organizations in identifying counterfeits, finding out the sources of counterfeit products, and advise consumers about the ill effects of counterfeits.

However, poor infrastructure, higher illiteracy levels pose challenges for this strategy to work. Added, many retailers and wholesalers would shy away from helping the organizations trace counterfeits as they are more interested in earning higher margins from the counterfeiters.

Legal Action:

As counterfeiters are criminals and counterfeiting has become an organized crime²⁵, organizations pursue criminal procedures to thwart the counterfeits proliferation. Organizations facing the threat of counterfeits can present a complete dossier to the concerned government authorities with samples of counterfeits, proof of purchase, photos or videos of purchase, information on counterfeiters, and information of counterfeit godowns. The dossier helps the authorities to conduct their own independent investigation to confirm the information provided by the organizations. Once confirmed a case can be filed to thwart the counterfeits proliferation. Tough penalties and imprisonment could be possible verdicts. One of the limitations of legal action is that it is costly and time consuming. Further, nexus between law keepers and law breakers raises doubts on this strategy's success. Only big and influential firms can afford this approach.

²⁴ kms1.isn.ethz.ch/.../1422842_file_Yadav_Drug_Resistance_FINAL.pdf

²⁵ (Bazerman and Jason, 2003)

1.6 Managerial Implications

As mentioned earlier, the responsibility of taking initiative to counter counterfeits has to come from the corporate.

Broadly there are five steps and each of these steps is discussed briefly below.

Scan for Counterfeits:

Organizations have to initially estimate the extent of counterfeits present in their local, regional and countrywide markets²⁶. They can look for counterfeits through various sources like detectives, publications and distribution channel members²⁷. Each of these sources helps in different ways. For example, published information at local level is scanty and difficult to obtain and hence relying on distribution channel members like retailers, distributors would be of immense help. To trace where the counterfeits are manufactured, detectives can be used. Published sources help to generate a macro picture²⁸. Organizations need to use such information sources judiciously.

Effect on Business:

Scanning for counterfeits should lead to assessment of its effect on the business. If counterfeits are absent in the market (which is rare), organizations need to foresee the emergence of counterfeits. This gives a clear picture as to what strategies are appropriate at different points of time. Key areas that need to be assessed are loss of sale, profits, brand loyalty and time and human resources.

Search for appropriate strategies:

The organization should constantly be on the lookout for counterfeiters and keep in hand strategies that are to be used in case counterfeiting against their product starts. If they find out that counterfeiters are present in the market and are leaving a huge impact on the business then reactive measures should be used. If it is seen that there is no grave effect

²⁶ www.ncbi.nlm.nih.gov › Journal List › Elsevier Sponsored Document

²⁷ www.iacc.org/assets/iacc_whitepaper.pdf

²⁸ www.oecd.org/industry/ind/38707619.pdf

on the business at the present time but there is a possibility for future counterfeiting then reactive strategies must be used

Choice of better alternative:

Choice of appropriate strategies, reactive or proactive, should primarily depend on three factors. Firstly, appropriateness of the strategy to the situation. For example, if the threat of counterfeits is more to the brands then reactive and proactive communication is more appropriate. IF it turns out that the counterfeiting done is leading to the infringement of copyright then legal action should be considered immediately.

Second and important factor is time. The strategy opted to fight counterfeits should show their results in good enough times because if it doesn't the threat of counterfeits manifolds.²⁹

Third is the cost and benefit ratio of the strategy. Many times choosing the right strategy only doesn't matter the strategy should also be cost effective in order to ensure that implementing the strategy does not cause more harm to organization than the.

Feedback:

Organizations should realize that an end to counterfeiting may be too much to hope for. Hence, feedback got should be incorporated in the future strategic initiatives. This is because strategies used now might be ineffective tomorrow.

²⁹ https://www.webproid.unitn.it/report/eCrime_Research_Reports-01.pdf

1.7 Terrorism and Financing of Terrorism

Terrorism is a devil which is spread worldwide and witnessed by everyone. Since a long time it has been posing grave threat to the citizens and the Government of all countries. Terrorist attacks not only affect the victims, but also civilization as a larger audience³⁰. Terrorism cannot be defined in a nutshell all the countries working to remove the menace of terrorism and prevent it define it. Terrorism is defined in the Code of Federal Regulations as “*the unlawful use of force or violence against persons or property to intimidate or coerce a government, the civilian population, or any segment thereof, in furtherance of political or social objectives.*”³¹

According to the Global Terrorism Index, India is the fourth most terrorism-afflicted country in the world after Iraq, Pakistan and Afghanistan³². There were 529 incidents of terrorism in India in 2011³³. The Global Terrorism Database (GTD) has a specific definition of terrorism — “...covering acts of intentional violence perpetrated by sub national non-state actors.” Furthermore, the acts must satisfy two of the following three criteria:

- ✚ The terrorist activity conducted should be done in order to attain a specific goal be it political, economic, religious or social.
- ✚ Such an activity should leave a message that antagonizes a larger audience than a few victims, if not so then it won't be a terrorist activity but a communal riot
- ✚ The acts must be outside the context of legitimate warfare-related activities.

³⁰ https://www.diw.de/documents/publikationen/73/diw_01.../dp1050.pdf

³¹ U.S. Department of Justice, Federal Bureau of Investigation. Terrorism 2002-2005 from the world wide web: <http://www.fbi.gov/stats-services/publications/terrorism-2002-2005>.

³² www.globalpost.com › GlobalPost Blogs › On India

³³ Global Terrorism Database.

1.8 Overview of terrorist organizations

The necessary thing to understand over here is that before we get into the details of financing terrorism we should understand the fact that there are various terrorist organisations working with different intentions at different times and what kind of funds they would require to do their work. Though the terrorist can be categorized in varied ways, for the sole purpose of this section, we have categorized them on grounds of their affiliations, geographical spread and operational goals. The various categories of terrorist organizations overlap to describe a single terrorist organization and helps in identifying the motivation factor of these groups.

Figure 1: Categories of terrorist organizations³⁴



- ✚ ***Non-state-supported terrorist groups:*** These groups are independent groups receiving no form of support from any government. Whatever operations they conduct, intelligence activities performed by them are on their own resources there is no govt interference in their e.g., the Naxalites.
- ✚ ***State-supported terrorist groups:*** Such kinds of groups work independently although the differentiating factor is that they receive weaponry, intelligence and other resources through the help of some or the other government..
- ✚ ***International/Transnational terrorist groups:*** Such a terrorist group works in cross borders it has contacts in various countries and these groups from different countries collaborate together and work harmoniously. They help each other for weapons, intelligence and other resources.

³⁴ www.terrorism-research.com/groups/categories.php

- ✚ ***Domestic terrorist groups:*** These terrorist groups tend to upset the peace and balance of their own country. They may start and influence communal riots between two religions and most of the times they are supported by international terrorists.
- ✚ ***Regional terrorist groups:*** The operations and influence of such groups are predominant in specific geographies. They may be regional affiliates of international terrorist organizations or independent entities.
- ✚ ***Ideological terrorist groups:*** These groups attempt to impose their ideals on others. These ideals can be religious, political or dedicated to a particular cause such as anti- globalism, animal rights, ecology, and so on. Religious terrorist groups are motivated by religious ideologies and are most common. These perpetrator groups are dedicated to a religious cause. Terrorists associated with such organizations are trained, indoctrinated with religious teaching and even encouraged to sacrifice themselves for a religious cause. These perpetrators generally use terrorist tactics such as suicide bombing.
- ✚ ***Economic terrorist groups:*** Such groups tend to play with and cause economic instability in a country or state.

1.9 Need of Financing for Terrorist Organizations

Resources are the lifeblood of terrorist activities none of these organisations cannot work without resources³⁵ such as manpower, money, intelligence activities, weaponry and logistics. Terrorist organizations need funds at each every step of their operations.

1.10 Sources of Financing Terrorism

Funds used by the terrorist organisations are gathered from illegitimate and legitimate sources to fund their activities.

³⁵ www.informationclearinghouse.info/article2320.htm

1.10.1 Legitimate sources of funds

Legitimate sources of funds include Government sponsorship, donation from business and corporate organizations, religious financing, public charities and legal businesses.

- ✚ ***State-sponsored terrorist groups***³⁶: These receive significant funding from the state.
- ✚ ***Ideological terrorist groups***³⁷: These seek funding through religious financing and donations. These donations are from people who share the same ideology or religious beliefs as the groups. One of the methods to collect funds is through international Non- Profit Organizations (NPOs) as a front and then transferred from one country to another without any regulatory issues being faced.³
- ✚ ***Transnational terrorist groups***³⁸: Such groups raise funds through their legal businesses, e.g., shares in trading and real estate companies, banks, venture capital firms, and import and export companies³⁹. By conducting their businesses, they generate funds and also transfer these from one location to another in their networks.

1.10.2 Illegitimate sources of funds

Illegitimate sources of funds include smuggling of various goods and oil, counterfeiting, smuggling, trafficking in drugs, trading of gems and stones and arms and ammunition, money laundering, kidnapping and extortion. Countries such as Iran, Cambodia, China, Russia and Tanzania face a significant oil-smuggling problem⁴⁰. Illegal diamond trade is another source for funding terrorist groups.

³⁶ www.state.gov/j/ct/list/c14151.htm

³⁷ www.terrorismstudies.com/page/understanding_terrorist_ideology

³⁸ www.dfat.gov.au/publications/terrorism/chapter4.html

³⁹ Schneider, Friedrich G. (2010) : The (hidden) financial flows of terrorist organizations: A literature review and some preliminary empirical results, Discussion paper series // Forschungsinstitut zur Zukunft der Arbeit, No. 4860

⁴⁰ <https://www.fas.org/irp/threat/pub45270chap2.html>

Counterfeiting and smuggling seem to be funding terrorism directly and indirectly. Some perpetrator groups manufacture and sell fake goods in the market and remit a portion for financing their terrorist activities. Counterfeiting of drugs and cigarettes are key sources of funding for extremist groups⁴¹. A terrorist organization was engaged in various counterfeiting activities to generate money, e.g., production of counterfeit commodities and sale of such products in a free trade zone.

Smuggling seems to be another key source of funding terrorism activities⁴². Many terrorist organizations are engaged in smuggling gold, oil, precious gems and stones, music and film DVDs, narcotic drugs, computer parts, cigarettes and many other items.

Counterfeiting, smuggling and smuggling are emerging as the likely sources for financing of international terrorist organizations, non- state sponsored terrorist organizations and domestic terrorist groups

⁴¹ Irina Caunic and Gabriela Prelipcean (2011), The Market for Counterfeit Goods and Financing of the Extremist

Organizations in Europe in the Last Decade, 2nd International Conference on Humanities, Historical and Social Sciences IPEDR vol.17 (2011) © (2011) IACSIT Press, Singapore

⁴² <https://www.ncjrs.gov/App/publications/abstract.aspx?ID=239041>

2. MENACE OF COUNTERFEITING AND SMUGGLING

As it has been discussed in previous portions, there are a large number of cases showing the involvement of counterfeiting and smuggling activities in funding of terrorist activities. So it is very important to analyse these in a substantial manner and locate discover their nexus with terrorist groups and their sources of funding. In the following sections, we try and percept the links among these and point out the continuum that has come among various criminal and terrorist activities.

2.1 Counterfeiting

*Counterfeiting is a source of terrorism financing*⁴³. It has been widely seen worldwide over the last few decades nonetheless the fact that it cannot be substantially proven up to date that an increase in counterfeiting has a direct relationship with the increase in terrorist activities there has been nothing which can disapprove their links as well. The amount of terrorist activities although show that they are significantly being affected by the amount of counterfeiting being done. In the modern era of technology it has been seen that counterfeiting of goods seems to be a rather lucrative and relatively simpler means for raising funds⁴⁴. In this context, it is important to study counterfeiting in detail and its linkage with organized crime and terrorism.

2.1.1 Worldwide scale of counterfeiting

Counterfeiting is enormously growing day by day. This industry is catching pace in a manner that not only impacts leaves a mark on World Trade rather has much more grave consequence like the detoriating health of consumers using fake products as well as terrorist activities. . The total global economic value of counterfeit and pirated products was as much as US\$650 billion in 2008⁴⁵. This figure is expected to more than double to US\$1.7 trillion by 2015, due in part to rapid increases in physical counterfeiting and

⁴³ michiganjb.org/issues/1/article4.pdf

⁴⁴ www.iwu.edu/economics/PPE17/lewis.pdf

⁴⁵ The Frontier Economics study report commissioned by ICC BASCAP

smuggling (measured by reported customs seizures and increased worldwide access to high-speed internet and mobile technologies)⁴⁶.

The counterfeit trade has been given a tremendous boost in the present eco-system, with the breakdown of international borders, evolving technology (which is available to the common man) and pervasive globalization. On the demand side, people's aspirations to own branded products at low costs have in some measure contributed to the proliferation of the counterfeiting industry. International Anti-Counterfeiting Coalition (IACC) professes that low risk of prosecution and enormous profit potential has made criminal counterfeiting an attractive source of funding for organized crime groups. There are connections between intellectual property theft and terrorist groups and terrorists can use intellectual property crimes as both source of funding and means of attack⁴⁷. For example, convicted counterfeit retailers in France face two-year prison sentences and fines of €150,000, as opposed to the 10-year prison terms and €7.5 million fines for drug dealers. Furthermore, profit margins are huge in counterfeiting. Researchers have noted that counterfeited goods can bring returns of as much as 900%. All these factors have contributed to a massive explosion in counterfeiting⁴⁸.

Counterfeiting has been defined differently by different agencies engaged in combating terrorism. Some of the definitions given below will help to set the context:

According to the Indian Penal Code, a person is called a *counterfeiter* if he or she makes a product that looks similar to another product who by dishonesty or deception wishes to sell the product intentionally in order to make profit.

According to the trade-related aspects of Intellectual property rights (the TRIPS agreement), "*counterfeit trademark goods*" shall mean any goods, including packaging, bearing without authorization a trademark which is identical to the trademark validly registered in respect of such goods, or which cannot be distinguished in its essential

⁴⁶ Business Action to Stop Counterfeiting and Smuggling (BASCAP), Confiscation of the Proceeds of IP Crime, 2013.

⁴⁷ Socio – Economic impact of counterfeiting, smuggling and tax evasion in seven key Indian industry sectors, FICCI, 2012

⁴⁸ from balenciaga to bombs: how terrorist groups are exploiting the global counterfeit goods trade for profit and murder ,Zachary A. Pollinger, Harvard University 2008

aspects from such a trademark, and which thereby infringes the rights of the owner of the trademark in question under the law of the country of importation”.

Counterfeiting has managed to acquire a foothold⁴⁹ in virtually all important sectors/domains. The counterfeit goods market can be divided into two categories — deceptive and non-deceptive counterfeiting. Deceptive counterfeiting refers to consumers’ purchase of counterfeit products, believing they have purchased genuine articles, whereby counterfeiters earn huge profits on account of the premiums charged for low-cost alternatives. Non-deceptive counterfeiting refers to consumers knowingly buying counterfeit products, looking for what they believe to be bargains⁵⁰.

The spread of counterfeiting is far and wide, and ranges from counterfeit automobile and aerospace parts to fake luxury items. As per Euromonitor International report “Tobacco: Illicit trade in tobacco products 2012”, world’s illicit penetration excluding China is around 11.5% which means an illicit market worth around US\$ 34 billion. Counterfeiting of illicit tobacco accounts for approximately 13% which is worth US\$ 4 billion.

It is evident that counterfeiting has managed to become a huge business in itself. Reports compiled by agencies working on counterfeiting indicate that penetration of counterfeiting is huge in some sectors. According to these publications, almost 10% of all the drugs sold worldwide are fake, and this number goes up to 25% in India. Similarly, the percentage of fake products is alarmingly huge in the electronics and software industry, with one estimate putting the number of fake software and music CDs to one in three of the total number produced.

2.1.2 Perpetrators of counterfeiting⁵¹

Understanding and analyzing the dimensions of counterfeiting would not be complete without becoming aware of the details of agencies involved in counterfeiting.

Organized criminal organizations engaged in illegal activities including drug trafficking, arms smuggling, illegal employments, etc., have been found to be increasingly involved in counterfeiting and smuggling activities to make profits and also as a means of

⁴⁹ souljournaler.blogspot.com/.../counterfeit-religions-xiii-scientology.html

⁵⁰ Socio – Economic impact of counterfeiting, smuggling and tax evasion in seven key Indian industry sectors, FICCI, 2012.

⁵¹ <http://edition.cnn.com/2014/03/08/justice/new-york-counterfeit-beauty-supplies/>

laundering money. Innumerable instances have been reported by agencies, which point to the involvement of such organizations. For example, there have been instances where smuggled drugs and counterfeited goods were caught on the same vessel⁵². Similarly, there have been incidents of organizations using illegal immigrants and under-age employees to manufacture counterfeit products. According to statistics released by the National Criminal Intelligence Service, 26% of counterfeiters are also involved in more serious criminal activities such trafficking in drugs and money laundering. Drug traffickers employ similar operational mechanisms as counterfeiters. According to experts, techniques (including false bottoms, transshipments, vague air waybills, etc.) used by drug traffickers and counterfeiters to surreptitiously cross borders are identical. Therefore, these are increasingly being carried out together. Perpetrators of counterfeiting and smuggling can be divided into various levels.

⁵² Counterfeiting and Organised Crime, Report by Union des Fabricants

Figure 4: Types of perpetrators of counterfeiting⁵³



Terrorist organizations have begun to see counterfeiting and smuggling as an excellent source of funding⁵⁴. Terrorists are increasingly becoming engaged in counterfeiting and smuggling activities. Financing of terrorism assumed new dimensions with state sponsorship drying up after the end of the cold war in the 1990s, and led to increasing decentralization of the structures of terrorist organizations.

Criminal organizations are increasingly finding counterfeiting a lucrative business proposition due to the high profits involved⁵⁵ and because they already have existing networks for their other activities such as drug smuggling and arms trafficking, which can also be used to transfer counterfeit goods.

⁵³ <https://www.gov.uk/government/uploads/...data/.../fraud-typologies.pdf>

⁵⁴ www.iacc.org/assets/iacc_whitepaper.pdf

⁵⁵ Counterfeit Goods and Their Potential Financing of International Terrorism, Zachary A.

Pollinger1, Harvard University, The Michigan Journal of Business

Apart from criminals and terrorists, counterfeiting and smuggling has extended its net to many **big and small-scale business organizations** that have adopted it as their primary business. Such organizations can be financially strong and invest heavily in technology and capital infrastructure. There is large-scale counterfeiting of goods including sports apparel and leather products that requires huge capital expenditure in machinery and technology (€50,000–€100,000 for certain moulds and €300,000–€600,000 for certain plastics production lines⁵⁶). As per Union des Fabricants report, counterfeiters are adept in adopting the latest technology and establishing global networks. Equipped with modern technology to make fake products ranging from textiles to automotive spare parts, these networks are a part of mass-production industries.

Individuals are also involved in activities, in which a local counterfeiter can produce counterfeit CDs of software using the simplest of devices, such as a computer and a CD writer, to make quick money.

Although it is not very apparent on the surface whether all other types of counterfeiters (other than terrorists) have any links with terror financing, it increasingly becomes clear in the following sections that there is a definite connection between organized crime and terrorism, through which the proceeds of counterfeiting are indirectly transferred to fund terrorist activities. Similarly, counterfeiters can be a part of a nexus aiding terrorism, as is witnessed in the involvement of members of the sleeper cells of terrorist organizations in small-scale counterfeiting activities⁵⁷.

⁵⁶ Counterfeiting and Organised Crime, Report by Union des Fabricants

⁵⁷ Organised crime and Terrorism ,GAIL WANNENBURG, War and Organised Crime Research Fellow, South African Institute of International Affairs Journal, Volume 10 Issue 2 Winter/Spring 2003, page 77-90

2.2 Smuggling

Smuggling is defined as the import and export of goods unlawfully and most important factor being without paying duties imposed by the law⁵⁸.

Although different countries may have different interpretations as to what smuggling is.. The United Nations Convention against Transnational Organized Crime defines each form of smuggling separately. A closely related offense to smuggling is illegal trade. Smuggling relates to transporting legitimately permitted goods through an illegitimate channel in order to escape duties and customs, and illegal trade refers to transportation of illegal goods. Although the two have similar outcomes for the criminal, consumer demand and costs differ due to the contrasting legality and availability of these goods. However, it is often difficult to differentiate these two offences due to inconsistent laws in various jurisdictions in the trade route, and these are considered synonymous by many social scientists. The Customs Act considers both these offences as smuggling.

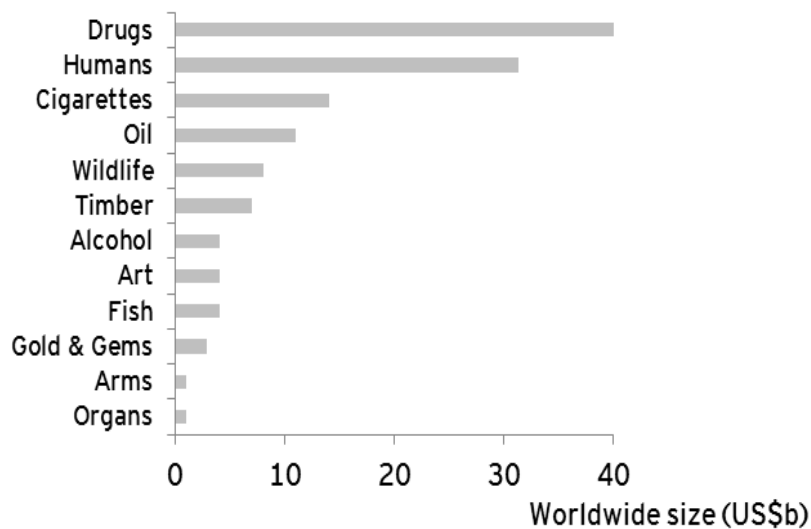
2.2.1 Worldwide scale of smuggling

Although several studies have been conducted in this regard, it is difficult to measure the actual flow of smuggling in various types of goods. However, a conservative figure can be obtained, based on gathered anecdotal evidence and research conducted by organizations such as UNODC, Global Financial Integrity and other similar sources. The illicit global flow (due to smuggling) is estimated at around US\$650 billion⁵⁹.

⁵⁸ Customs Act, 1962

⁵⁹ Transnational Crime in the Developing World, February 2011, Global Financial Integrity

Figure 5: Size of worldwide smuggling flows in 2020⁶⁰



2.2.2 Perpetrators of smuggling

As in the case of counterfeiters, smugglers can be classified as follows⁶¹:

- ▶ Terrorist organizations
- ▶ Criminal organizations
- ▶ Businesses (large and small)
- ▶ Individuals

🚩 **Terrorist organizations** undertake smuggling activities to finance their operations⁶². They smuggle goods such as recreational drugs, cigarettes and oil. Terrorists are also known to directly deal in arms smuggling to augment their resources and strengthen like-minded organizations. Their links with smuggling activities are on the rise due to the favorable risk-return characteristics of these activities.

⁶⁰ Transnational Crime in the Developing World, February 2011, Global Financial Integrity

⁶¹ www.csd.bg/fileSrc.php?id=10646

⁶² Links between terrorism and other forms of crime, Foreign Affairs Canada and the United Nations Office on Drugs and Crime, April 2004

- ✚ **Criminal organizations:** Large and sophisticated criminal organizations engage in smuggling to generate increased profits. This is structured into separate wings such as counter-intelligence, bribes and money-laundering.

- ✚ **Businesses (large and small):** Local businesses or groups smuggle raw materials for final goods⁶³.

- ✚ **Individuals:** Small groups or individuals only engage in smuggling for their own consumption and are most likely to smuggle drugs or human beings. While organized criminals are present across the entire spectrum of products, other perpetrators are likely to be selective in the nature of the goods they smuggle. However, much of the available data is anecdotal rather than quantitative due to the highly clandestine nature of this topic.

⁶³ Lichtenwald T.G, Drug Smuggling Behaviour – a developmental smuggling model, The Forensic Examiner, 2003

2.3 Growth Related Facts and Impact Of Counterfeiting And Smuggling

Due to various and spread access to technological advancements there is no product left that cannot be counterfeited or of which replicas cannot be made.. It is easy to duplicate labels, packaging, documentation, authentication devices and/or symbols/marks/ logos with speed, accuracy and relative anonymity.

Some of the factors driving counterfeiting and smuggling ⁶⁴include:

- ✚ **Technological advances:** The advancement in technology does not only benefit the original manufacturers but at the same time benefits the counterfeiters as they are able to access the new technology and make the same product at a reasonably low cost but also along with low quality. Distribution of fakes is becoming increasingly sophisticated through international networks⁶⁵.
- ✚ **Increased international trade:** International trade, including trade in counterfeited goods, has increased substantially. Resource-related constraints imposed by the Customs departments of many countries leads to reduced surveillance and increased smuggling in them.
- ✚ **Emerging markets:** Free markets and enforcement agencies/institutions are not growing in tandem. This is leading to increased counterfeiting and smuggling in free markets.
- ✚ **Emerging products:** The share of manufactured and processed products increasing in international trade provides an opening for counterfeiting.
- ✚ **Demand side:** The drivers of known consumer demand for counterfeit goods include low prices, acceptable perceived quality, ability to conceal status, no health or safety concerns, personal budget constraints, a low regard for intellectual property rights, and low risk of discovery and prosecution.
- ✚ **High profitability:** Large potential market size, genuine brand power, moderate need for investments and technology requirements, unproblematic distribution

⁶⁴ www.ficci-cascade.com/download-past-event-pdf.php?pdfname...pdf

⁶⁵ <https://www.fas.org/irp/threat/pub45270chap2.html>

and sales, the ability to conceal operations, low risk of discovery, weak enforcement and penalties leads to high profitability for counterfeiters.

- ✚ **Risk-to-reward balance:** Till date, anti-counterfeiting laws are non-existent or penalties imposed by most governments have been vague or not tough enough to act as a deterrent to counterfeiting and smuggling.

The impact of counterfeiting and smuggling ⁶⁶is seen across several segments.

❖ **Government**

- ✚ Loss of revenue due to loss in taxes(direct and indirect)
- ✚ Anti-counterfeiting and anti-smuggling measures such as police raids, customs seizure and mass public awareness campaigns
- ✚ Public welfare costs including monetary compensation and health care-related ones
- ✚ Legislative costs

❖ **Original right holder**

- ✚ Loss of sale and profitability
- ✚ Loss of brand value
- ✚ Infringement of copyright
- ✚ Special advertising campaigns
- ✚ Increased packaging costs
- ✚ Reputational risk
- ✚ Consumer patronage

⁶⁶ www.ccapcongress.net/archives/Brussels/Files/fsheet5.doc

❖ **Economy**

- ✚ Reduced GDP
- ✚ Increase in black money
- ✚ Increased criminal activity and terrorism
- ✚ Reduced employment and deteriorating working conditions
- ✚ Degradation of environment
- ✚ Reduced expenditure on research and development

❖ **Consumers**

- ✚ Defrauding of consumers
- ✚ Health care costs

Country focus: India — illicit trade dominated by home-produced DNP⁶⁷

Illicit trade in cigarettes in India includes duty-not-paid (DNP) smuggled branded cigarettes and counterfeit goods. India is the world's sixth-largest market for illicit cigarettes, which has grown by 50% over 2006–2011⁶⁸, to account for 17% of the market. An independent study conducted by the Tobacco Institute of India in 2008 revealed that 16% of the domestic market was captured by domestic DNP products, placing the proportion of smuggled cigarettes in the country at 1% of the domestic market. Growth factors of illicit cigarette trade in India:

- ✚ Rise in excise tax on cigarettes resulting in establishment of unlicensed but legal cigarette factories that clear most of their products without paying tax
- ✚ Rise in Value Added Tax (VAT) up to 16%–18%, resulting in growth of illicit trade in tobacco
- ✚ Rise in the per stick cost of cigarettes manufactured by legitimate cigarette manufacturers⁶⁹ and availability of illegal cigarettes at the price of *bidis*
- ✚ Easy availability of illicit brands in the market due to their low prices .

2.3.1 Factors That Lead To Counterfeiting And Smuggling

- ✚ It is a general perception of the people that counterfeiting is a victimless crime⁷⁰.
- ✚ Lure of High Profit Margins: Pirated and Counterfeit goods and service are cheap to produce because (i) No taxes are paid (ii) Labour employed is cheap (iii) sometimes child labour are employed with no compliance with labour standards.
- ✚ The buyer and end-user save upto 20 to 60% on the price of branded goods⁷¹.
- ✚ Some consumers buy counterfeit either unwittingly or they cannot distinguish between the fake and the genuine.
- ✚ Sometimes buyer buy counterfeits knowingly and deliberately⁷² because they are cheap and

⁶⁷ Euromonitor International, Tobacco: Illicit trade in tobacco products, 2012

⁶⁸ According to Euromonitor International data

⁶⁹ <http://news.nationalpost.com/2014/02/11/federal-budget-unveils-major-tax-hike-for-smokers-that-will-see-jump-in-cost-of-cigarettes-tobacco-and-cigars/>

⁷⁰ <http://www.mondaq.com/x/180554/Trademark/Counterfeiting+The+Perceived+Victimless+Crime>

⁷¹ www.nalsar.ac.in/pdf/Journals/Nalsar%20Law%20Review-Vol.%206.pdf

such fakes do not harm their health and safety. One would willingly buy a fake garment but may not like to buy a fake medicine.

- ✚ Counterfeiters flourish because of lesser risk of detection and lack of certainty of penalties. Police and other authorities have other priorities and treat smuggling and counterfeiting as petty crimes. Sometimes, there is lack of political will and enforcement is weak. Unscrupulous counterfeiters may have political protection and can pay hush money.
- ✚ Sometimes, counterfeits are produced in the same factory which produces authentic products, using the same material. The factory owner, unknown to the trade mark owner, orders intentional “OVER-RUN”. Identical manufacturing and material make this type of Counterfeiting impossible to detect and distinguish the product from the authentic article.e.g. Production contractor manufactures 5000 articles against an order of only 2000 articles and excess products are of the same quality and standard.
- ✚ Another serious practice which promotes counterfeiting is the manufacture of an entirely NOVEL product, using quality material or incorporating more features in it than in the genuine product and by using prominent brand names and logotypes. The example is the imitation “NOKIA” cellular phones with features like WiFi, touch screens or T.V. which are not available in the original NOKIA.
- ✚ Lack of effective National and International legal framework, lack of effective technological and electronic detection systems and Jurisdictional problems encourage the counterfeiters, particularly, on-line pirates.
- ✚ Some of the companies which are victims of counterfeiting silently suffer because of the fear that their brand name would be impacted adversely with the exposure, sales would go down and consumers may switch to other brand products.
- ✚ Smuggling and Counterfeiting in some cases like music, films, perfumes has become a parallel industry and some Governments may be deliberately indifferent because pirated products provide local employment and earn much needed money⁷³.
- ✚ Sometimes, unfriendly conditions, unreasonably high pricing, and anti-competition practices at the cost of public interest promote counterfeiting and smuggling and consumers with low purchasing power buy cheaper counterfeit products because they cannot afford

⁷² <http://www.consumerline.org/search/?cat=Buying+Goods+%26+Services&item=Counterfeit+Goods>

⁷³ www.oecd.org/industry/ind/38707619.pdf

genuine high-priced goods. Anti-competition practices must be curbed with iron-hand through competition laws. Compulsory licensing should be introduced by statutory authorities wherever public interest so demands.

- ✚ Some relate counterfeiting to Globalization⁷⁴. More and more MNCs move manufacturing to third world where labour is cheap and laws are weaker and they earn higher profits. The new producers do not owe any loyalty to the MNC and feel that MNCs earn profits only through advertisement of brand products, and therefore, they see the possibility of removing the MNC as a middleman and reach the consumer direct
- ✚ The advantage of anonymity, flexibility of counterfeit operations from easily movable sites, low investment, lack of legal accountability and quick movement to other jurisdictions where IPR legislation and enforcements are weak are the factors that encourage Smuggling and Counterfeiting.

2.3.2The Indian Scenario

After China, India figures most frequently in Counterfeiting and Smuggling⁷⁵:

- ✚ 15 to 20 % of the total market share consists of bogus medicines produced without license.
- ✚ Music songs are illegally downloaded and pirated versions are sold at very low cost causing the music industry large.
- ✚ In the cinema world the number of Bollywood movies are more than that of the Hollywood but still the revenue generated in India is less than that of hollywood Likewise, Bollywood makes more films than Hollywood. Counterfeiting and Smuggling costs Indian Entertainment industry a loss ⁷⁶of US\$ 4 Billion and loss of approximately 800,000 jobs annually. India has the highest level of Smuggling of films in all the English -speaking countries. Hindi movie “KAMINEY” was down-loaded over 350000 times on BIT TORRENT with 2/3 down-loaders located in India. This is just Online smuggling Offline smuggling with CDS and DVDs is in addition India ranks Fourth in all sorts of illegal downloads after US, UK and Canada.

⁷⁴ www.mrglobalization.com › .International Trade

⁷⁵https://reportingproject.net/underground/index.php?option=com_content&view=article&id=5:cigarette-smuggling-still-booming-&catid=3:stories&Itemid=1

⁷⁶ articles.economicstimes.indiatimes.com › Collections › India

- ✚ One in every three automotive parts is fake and this accounts for 37% of the total market share.
- ✚ 10% of major soft drinks and 10 to 30% of cosmetics, packaged food are fake.

A random survey of registered Indian Companies reveals that more than 60 companies start with the word “NIKE”, 65 with the name “ROLEX”, 217 companies with the word “INTEL”. This phenomenon is not limited to multinationals only. 136 companies start with the word “TATA” and over 400 with the word “RELIANCE”.

Impact and consequences of Counterfeiting and Smuggling on Stakeholders

These illegal activities have multiple adverse direct and indirect effects on various stake-holders.

Impact on National economy, security and welfare

- Tax evasions tend to impact government revenue at a larger level.
- Loss of jobs
- India is a developing country so the workforce here works at very cheap rates causing their exploitation.
- Exploitation of women, Child Labour and illegal immigrant workers
- Negative impact on environment and public health
- Terrorist organisations tend to flourish and make a hub in India due large scales revenue.
- It causes decreases FDI as the brand image decreases due to counterfeiting
- Foreign trade structure and volume may suffer on account of distrust about quality of products.
- The level of counterfeiting is so sophisticated that high costs have to be incurred in order to prevent it.

Impact on entrepreneurs, Investors and Manufactures

- Counterfeiting and smuggling are inversely related to Innovation and creativity which has the effect of decreasing it.

- Counterfeit goods are always low in quality so they tend decrease the brand equity and goodwill
- Less and less people want to set up business in India as counterfeiting here is done at a huge level which decreases the profits and lowers the sales.
- Costs of litigation for enforcement of IPRs and other Rights.
- Reduced incentive for investment and expansion of business

Impact on consumers / buyer and end-user

- Counterfeit goods are not the same in quality as the original product so it exposes people to health hazards.
- Consumers stop using the products due to poor quality hence decreasing sales.
- Total or partial loss of money due to very low quality.

Existing Anti-Counterfeiting Systems

In today's world counterfeiting of products has increased to such a sophisticated level and is a worldwide process practised in different countries varied intensities. According to surveys and reports after China, India stands at second place to use most number of counterfeit products. As such, control strategies have been evolved both at international and national levels. As stated above, counterfeiting is increasing for variety of reasons like lack of well articulated policy, legal frameworks and enforcements.

3. LINK BETWEEN COUNTERFEITING, SMUGGLING & TERRORISM FINANCE

In this modern era of technology terrorist activities have changed and evolved ⁷⁷over the past few years. Even the structure and categorization of terrorist establishments have changed. Over the past few decades, counterfeiting has seen huge changes and has emerged from its small-scale industry origins to a huge network of “international entrepreneurs,” who are engaged in mass production of counterfeit goods by leveraging technology, intricate networks and huge financial strengths. Likewise smuggling has reached at a level that limits it not only to certain good but to all the kind of products including people so as to provide for cheap labour More decentralized structures began to evolve, in which the central units are responsible for overall administration and management, and operational activities are carried out by independent and frequently self-financed units with largely locally recruited employees.

In a similar manner it has been seen that terrorist group are setting their feet in almost all the countries due to easy access in them because of breaking up of international borders, changing trends are being seen in organized criminal activities due to increasing globalization. Criminal organizations are now more interlinked among each other and are so connected in all the countries that they are easily able to execute massive global crime activities at ease. They have the proper resources and have good networking among them The links between counterfeiting, smuggling and smuggling organizations and terrorist units are in the following four modes:

- ✚ **Operational:** Although research has established sharp similarities between terrorist and counterfeiting and smuggling operations and their prevalence in India, lack of long-term trust between different criminal groups means that this type of cooperation is more the exception than the rule. It was observed that foreign terror organizations worked with criminal organizations smuggling in India in the Mumbai blasts in 1993⁷⁸.
- ✚ **Logistical:** It has been seen that logistics is one of the most important way in which terrorism counterfeiting and smuggling can be related. The people carrying out smuggling and counterfeiting activities are strong people in the country. So terrorist organisations tend to seek their help in order to meet requirements. It is smugglers who at a heavy consideration help the terrorists enter the country through their secret ways and influence

⁷⁷ www.fema.gov/pdf/about/programs/oppa/evolving_terrorist_threat.pdf

⁷⁸ Ryan Clarke and Stuart Lee, The PIRA, D-Company and the crime –terror nexus, *Terrorism and Political Violence*, Vol. 20, No. 3, July 2008

For example, it has been found that leveraging established smuggling pipelines was the second most preferred method used by terrorists to enter the US⁷⁹.

- ✚ **Financial:** It has been a wide accepted fact that organisations carrying out smuggling and counterfeiting activities tend to provide financial assistance to terrorist organizations⁸⁰. This is due to shared ideological links elaborated below.
- ✚ **Ideological:** While the goals of counterfeiting and smuggling and terrorist organizations differ by definition, i.e., the counterfeiter or smuggler is more concerned with personal profit than any set agenda, it is not unusual to see purely criminal groups transform themselves by adopting political roles.

The examination of various research papers and views of experts tends to show that there are pretty good chances that it is the terrorist organisations who are involved in the manufacturing of bogus medical drugs and make fake currency notes because making these things require a skilled person who has an expertise in doing such things apart from that it requires adequate machinery to do production which can only be acquired by such organisations rather than normal people. Terrorist and criminal organizations both seem to have links with counterfeiting and smuggling, although this is more so in the case of criminal organizations. Moreover, although counterfeiting and smuggling is perpetrated on a much larger scale by criminal organizations as compared to terrorists, the proceeds only indirectly finance terrorists due to their links with organized crime.

Several cases that directly link terrorist groups with counterfeiting and smuggling activities have been reported through various reports⁸¹. The following are some of these:

- ✚ Interpol seized US\$1.2 million worth of counterfeit German brake pads in 2004. Later, investigations revealed that these were to be used to support the Lebanese terrorist

⁷⁹ The relationship between criminal and terrorist organizations and human smuggling, Naval Postgraduate School, December 2009

⁸⁰ Links between terrorism and other forms of crime, Foreign Affairs Canada and the United Nations Office on Drugs and Crime, April 2004

⁸¹ Counterfeiting and Organised Crime, Report by Union des Fabricants, Links between terrorism and other forms of crime, Foreign Affairs Canada and the United Nations Office on Drugs and Crime, April 2004

organization Hezbollah.

- ✚ Based on evidence with FBI, the terrorists who bombed the World Trade Center In 1993 used funds channelled from counterfeit textile sales in New York.
- ✚ It was found that Chechen rebels were financing their operations by selling pirated CDs.
- ✚ According to New York's Police Commissioner, the Madrid train bombing incident was funded through the sale of pirated CDs.
- ✚ According to an interview, published in French daily *Le Monde*, of the head of a French security agency, Afghan terrorist groups have been found to use the proceeds of duplicates of credit cards and counterfeit designer products.
- ✚ A suspect, Faruk Aksu, who is allegedly linked to several terrorist groups, was arrested in Turkey with US\$3.2 million fake US dollars, which he had obtained from Iraq. These dollar notes used the paper used by the US Government and incorporated all the security features of a real US dollar.
- ✚ Al Qaeda training manuals recovered in 2002 reveal that the organization recommends the sale of fake goods as a means of fundraising for cells.

Smuggling and terrorism

The reason why terrorist organisations are attracted towards counterfeiting and smuggling is the amount of revenue generated from them is too large as compared to the investment required.

Another reason That benefits the terrorist being linked to the counterfeit and smuggling organisations is that terrorists are able to leverage their operational risks by hiding in disguise. Use of illegal sources of funding to support local terrorist cells is a trend that has been observed through increased tracking of donations and other legal sources of income. Terrorist organizations have been quick to spot local patterns of crime and have been obtaining finance from major sources of smuggling, including drugs, cigarettes and oil. This has been confirmed by the following reputed sources:

- ✚ The Drug Enforcement Administration has linked 14 designated foreign terrorist organizations as having ties with the drug trade. It was also found that these foreign terrorist organizations are generating illicit proceeds through international drug trafficking⁸².
- ✚ Leveraging established smuggling pipelines is the second most preferred method used by terrorists to enter the US⁸³. This was revealed by senior US officials who participated in interviews. Other methods terrorists use include fraudulent documentation, corruption etc. They also depend on the support provided to them by smuggling.
- ✚ Colombia, Kenya, the Kyrgyzstan, Myanmar and Turkey, among others, reported a direct link between the illegal drug trade, trafficking in firearms, smuggling of migrants and terrorism⁸⁴. It was noted that terrorists trafficked in small arms and drugs by corrupting public officials and using illegal migrants.
- ✚ While drug trafficking was earlier the preferred mode of financing for various terrorist organizations, cigarette smuggling seems to be the fastest growing revenue stream in recent years⁸⁵. Cases of illegal cigarette sales, with ties to major terrorist groups, have been documented. The low risk involved makes cigarette smuggling an attractive source of revenue for terrorist organizations.

⁸² Links Between Terrorism and Other Forms of Crime, Foreign Affairs Canada and The United Nations Office on Drugs and Crime, April 2004

⁸³ The relationship between criminal and terrorist organizations and human smuggling, Naval Postgraduate School, Dec 2009

⁸⁴ Links Between Terrorism and Other Forms of Crime, Foreign Affairs Canada

⁸⁵ Van Djick, the link between the financing of terrorism and cigarette smuggling

Crime Syndicates In India⁸⁶

During the early years like in the 1970s the people committing crime were involved in kidnapping, extortion, infringing copyrights by selling pirated versions of movie and songs they were also involved in contract killings but the crime was limited to this and no terrorist activities were financed by this money. After they became sophisticated in these activities the terrorist organizations got hold of these groups and they started receiving funding from such crimes in the country itself. The first tremors of such change were felt in 1990s when a series of bombing attacks were done in Mumbai killing 257 people in response to the destruction of the Babri Mosque in Uttar Pradesh. Investigations revealed that a major Mumbai-based criminal gang was responsible for this terror attack. This act reflected the tactical transformation of profit-minded criminal gangs to terrorist organizations with ideological goals. It has been noted and found out that many of the terrorist organisations working in India have now shifted over to the middle east and are now receiving financial backing and support from the countries that oppose India with the plus point that they can carry out their activities without any interference from Indian Govt. The US Government has also identified many former Mumbai-based crime syndicates that provide finance and share smuggling routes with major terrorist organizations in India and worldwide.

The Tragic events and incident mentioned above send out a clear signal that it very easy for the terrorist organisations to make links with crime syndicates in India and that it takes no time at all to convert a mere criminal group into a terrorist one. These criminal groups that have now converted into terrorist groups have vetted their operational expertise in laundering huge amounts of money overtime as well as the necessary ammunition, to engage in terrorist activity.

Therefore, it is evident that not only is there the possibility of organized criminal organizations becoming terrorist ones, but that counterfeiting, smuggling and smuggling have evolved significantly, leading to close interaction and links between these activities⁸⁷.

4. FRAMEWORK FOR PREVENTING FINANCING OF TERRORISM⁸⁸

⁸⁶ Gregory F. Treverton et al., Film Smuggling, Organized Crime, and Terrorism, RAND Corporation, 2009

⁸⁷ Ryan Clarke and Stuart Lee, The PIRA, D-Company, and the Crime-Terror Nexus

The present condition of the funding of terrorist activities can be analysed and categorized into four different perspective. Below we will study the Indian aspect of how initiatives have been taken to counter financing of terrorism.

Governance: It is the government which has to take a step forward in this aspect of countering the financing of terrorism it would act as killing the baby in its womb so that the terrorist organization are not able to move forward. It has to facilitate and govern the operations and activities of Law enforcement agencies and provide them with adequate intelligence.

Laws and regulations: This is the part in which the legislature drafts various acts and rules in order to counter terrorism.

Technology: The government should move a step forward in technological advancement and set up such an infrastructure that helps capturing and analyzing required and dangerous information.

Capacity-building: This includes infrastructure set up to train resources to identify cases of terrorism financing and take the appropriate action through set procedures.

Each aspect of the framework is discussed in detail in further sections.

4.1 Governance

It has been seen that in India is a fast developing economy and the pace at which it is moving it is important for the Government not only to focus on the expansion of government but also to check activities relating to money laundering and terrorism. In the past India has been a favourite target of terrorist attacks and it is necessary for the Government to frame laws and check these activities in order to move ahead in all fronts. Now, India in the past few years has been able to setup a governance mechanism system in a tangible form in name of Financial Intelligence Unit (FIU) with the sole purpose of fighting money laundering and terrorism funding. The FIU was formed in order to provide nexus between law enforcement agencies and financial sector so that they communicate with ease acc to proper hierarchy.

⁸⁸ <http://www.mas.gov.sg/regulations-and-financial-stability/regulatory-and-supervisory-framework/anti-money-laundering-and-countering-the-financing-of-terrorism.aspx>

4.1.1 Current status of India's governance mechanism

In June 2010, India became a full member of the Financial Action Task Force (FATF), the premier international body, which is dedicated to anti-money laundering (AML) and counter financing of terrorism (CFT). Recommendation 29 (earlier R 26) of FATF requires member countries to establish FIU to serve as their national center for collection and analysis of information about Suspicious Transaction Reports (STRs) and other relevant information on money laundering, associated predicate offences and financing of terrorism, and disseminate the analyzed results to relevant law enforcement bodies. FIU India (FIU-IND) was established by the Government of India vide its Office Memorandum dated 18 November 2004. It is an independent body that reports to the Economic Intelligence Council (EIC) headed by the Finance Minister. FIU-IND is headed by its Director, who is of the rank of Joint Secretary to the Government. FIU-IND does not investigate cases; it collects, analyzes and disseminates information to the concerned law enforcement agencies.

Role of FIU-IND in combating financing of terrorism and money laundering⁸⁹

- ✚ **Preventing misuse of financial system:** The regulators eg RBI has explicitly laid down rules and are trying to create awareness among the citizens on issues like Anti money laundering processes , countering financing of terrorism and a detailed know how on what to do. They also monitor transactions and develop risk management strategies.
- ✚ **Detection and reporting of suspected cases of financing of terrorism:** The Financial Intelligence unit is involved in creating awareness among agencies to report any signs of financing of terrorism. It is one of the major agencies spearheading the governance of countering financing of terrorism.
- ✚ **Information exchange with domestic agencies on suspected cases of financing of terrorism:** FIU-IND not only collects and disseminates information on financing of terrorism, it also helps other intelligence agencies by sending the

⁸⁹ Annual Report 2012, FIU

required information in order to help them reach their goals on countering financing of terrorism.

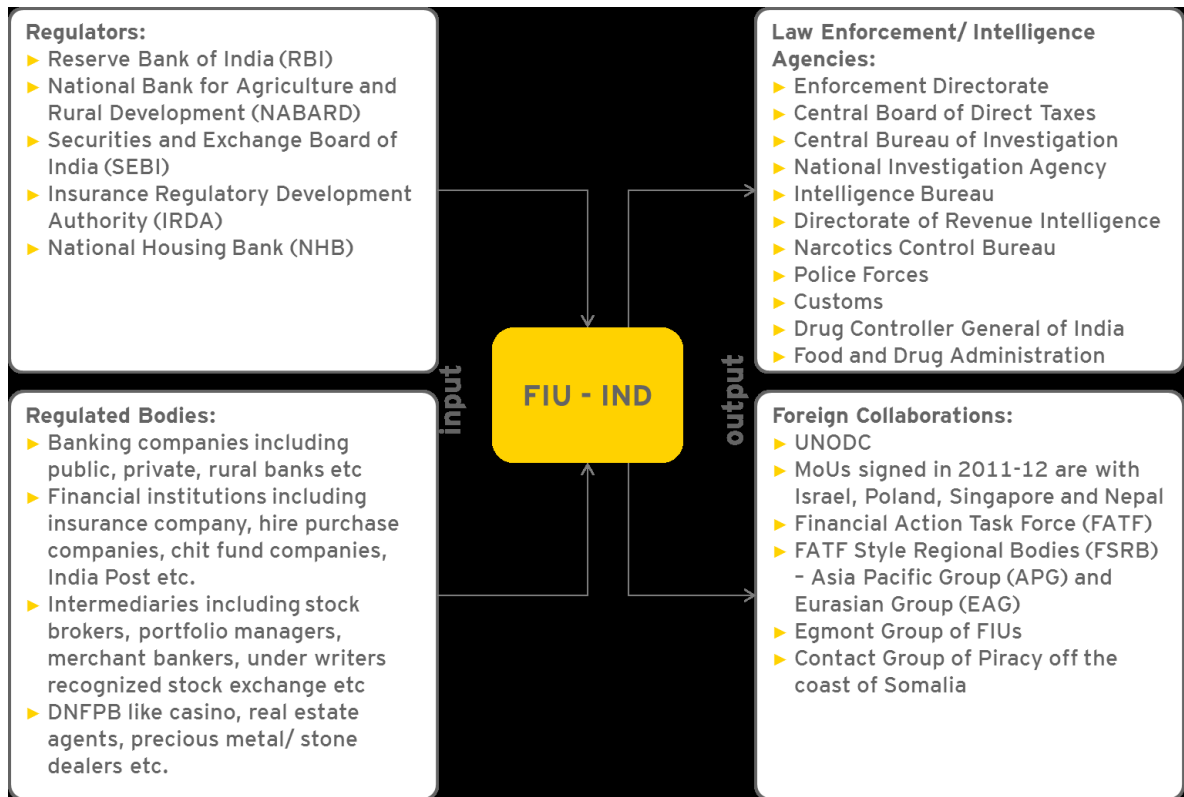
- ✚ **Exchange of information with foreign FIUs on terrorism-financing cases:** FIU-IND became a member of the Egmont Group of FIUs in 2007 and currently has MOUs with 19 countries for cooperation and exchange of information to combat financing of terrorism.
- ✚ **Contribution to global efforts to combat financing of terrorism:** FIU-IND participates in various international working groups such as the Egmont Group and the Joint Working Group (Government of India) to combat financing of terrorism
- ✚ **Providing input to strengthen legal and operational framework to combat financing of terrorism:** The Financial Intelligence Unit tries to step into the shoes of terrorist organization and explores new ways in which terrorist organisations might be funding their activities. It basically studies the recent trends in financing of terrorism and helps making ways to counter them.

4.1.2 Organizations involved in preventing financing of terrorism, counterfeiting, smuggling and smuggling

Financial Intelligence Unit forms a nexus between the Finance sector of the country and the Law enforcement agencies. Information provided by the FIU to the LEA are monitored on a daily basis in order to receive purified information and get quality reports. The landscape of various agencies interacting with the FIU is depicted in the figure below

Figure 9: Organizations involved in preventing financing of terrorism, counterfeiting

and smuggling⁹⁰



Regulators

Financial Intelligence Units have good relations with the regulators so as to enable them to keep a check and monitor the financial sector so as no loophole is left in the system where the terrorists can perpetrate ensuring suitable modifications ⁹¹in KYC, CFT, AML circulars issued by the regulators, regular interactions with industry associations, development of a common understanding of PMLA obligations, identification of sector-specific issues through analyses of Suspicious Transaction reports and provision of training to regulators staff members. The steps taken by FIU-IND aided effective monitoring of AML/CFT systems.

⁹⁰ www.ficci-cascade.com/download-past-event-pdf.php?pdfname...pdf

⁹¹ fiuindia.gov.in/downloads/Annual%20Report%202009-2010.pdf

Regulated bodies

According to Section 12 of PMLA, it is the obligation of every banking institution and intermediary to provide information on pointed out matters and prescribed transactions to the director of financial intelligence unit. This provision also gives authorization to the Director of FIU to request any records that are suspicious in nature and inquire into any matters related to non-compliance of the provisions of PMLA.

Law enforcement agencies (LEAs)

Financial Intelligence Units work harmoniously with the LEA's. Both these agencies work hand in hand in combating money laundering and financing of terrorism through sharing information distributing authentic reports among each other. The government through various provisions has given the police the authority to act upon reports received on counterfeiting by the citizens. Various agencies along with the police are also authorized to conduct civil raids on receiving any information or any nature of activities relating to counterfeiting and smuggling that creates a doubt in their mind. Customs authorities are empowered to seize all goods that infringe Intellectual Property at the point of entry.

Foreign collaborations

Financial Intelligence Units provides continuous help and contribution in the form of international efforts made by it by disseminating information to counter money laundering and fight financing of terrorism. India is a signatory to the Egmont Principles and acc to it facilitates exchange of information without any consideration. All requests for information, including those for which no information is available, receive a prompt response. India has seen increasing exchange of information with foreign FIUs over the years.

4.2 Laws and Regulations in India

4.2.1 Laws/Acts To Combat Financing Of Terrorism

India plays an increasingly important role in combating terrorism and financing of terrorism in the world. The country's AML/CFT regime is relatively young⁹². The Prevention of Money Laundering Act, 2002 (PMLA) came into force in 2005 and was amended in 2009. The Unlawful Activities (Prevention) Act (UAPA), 1967 was amended in 2004 to criminalize, inter alia, financing of terrorism. The UAPA was further amended in December 2008 to broaden its scope and to bring legislation more in line with the requirements of the United Nations Convention for the Suppression of the Financing of Terrorism (FT Convention).

India has outlawed money laundering under the Prevention of Money Laundering Act, ⁹³2002 (PMLA), as amended in 2005 and 2009, and the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act), as amended in 2001. While ML provisions under the NDPS Act only relate to predicate drug offences, the PMLA applies to a much broader range of predicate offences, including those relating to narcotics. India has made a serious effort to bring criminalization of money laundering in the PMLA in line with FATF standards by expansion of the list of predicate offences under Schedule A and B and addition of Schedule C (offences with cross-border implications) since 1 June 2009.

⁹² www.fatf-gafi.org/countries/d-i/india/.../mutualevaluationofindia.html

⁹³ <http://www.manupatrafast.com/articles/PopOpenArticle.aspx?ID=301fc7d4-2e7b-454f-a427-63d992829dea&txtsearch=Subject:%20Finance/Banking>

Key clauses of the PMLA and the UAPA

Section 3 of the PMLA explicitly renders the activity of money laundering as a criminal activity following terms:

“Any person or individual who intentionally or unintentionally, directly or indirectly involves himself or helps any other person in any work or activity which results in the outflow of proceeds of crime and tries to clear it off as legitimate money is considered to be guilty of that offence.

Section 40 of the UAPA criminalizes raising of funds for terrorist organizations listed in the Schedule to UAPA in the following terms:

“Any individual with the intention to promote the activity of terrorist organisation person commits the crime of collecting and raising funds for terrorist organisations, who,

(a) brings more individuals to give money of other property, and intends that it should be used, for the purpose of terrorism; or

(b) tends to receive money or other property, and intends that it should be used, or has reasonable cause to suspect that it might be used, for the purpose of terrorism; or

(c) provides money or other property, and knows, or has reasonable cause to suspect, that it would or might be used for the purposes of terrorism..”

4.2.2 Laws to combat counterfeiting⁹⁴

The increasing trend of counterfeiting and smuggling has various countries to amend the laws and regulations so as to incorporate such provisions and rules that would deter criminal organisations from pursuing such activities Nationally and Internationally. There are various acts in India that specifically target the control of counterfeiting and smuggling activities, now these acts help in various ways a simple eg is the agencies and manufacturers can permanently block the channels and medium through counterfeit and smuggled goods are brought in the market. Some Acts and legislations to prevent counterfeiting and smuggling in various fields are discussed below.

The **Trademarks Act of 1999** helps the manufacturer register their trademarks that are used to

⁹⁴ www.ficci.com/sector/5/Project_docs/CASCADE-Committee-profile.pdf

identify the originality of the product and also provides for statutory protection of registered trademarks⁹⁵. The Act imposes a fine that may reach upto Rs 50000 and to top the cake with icing an imprisonment ranging from six months to three years provided for selling or applying false trademarks, trade descriptions, etc.

In 2011 a stipulation as far as procedures are concerned were made to counter and fight the spreading of Bogus drugs in India causing adverse effect to the health of people rather than improving it. This was suggested by the Drug Controller General of India. In addition, an amendment was required in rule 96 of the **Drugs and Cosmetics Act, 1940**, which makes it mandatory for every drug manufactured in India to carry on its primary label the Unique Identifier Code and 2D bar code by which a drug can be verified by an SMS. The Drugs and Cosmetics Act, 1940 provides definitions of “adulterated,” “spurious” or “misbranded”⁹⁶ drugs and cosmetics. It empowers certain government agencies to not only inspect but also seize and confiscate any product that is found to be adulterated, spurious or misbranded. The Drugs and Cosmetics (Amendment) Act, 2008 provided for a flexible procedure, heavier penalties and longer prison terms for those convicted of offences relating to counterfeiting of drugs

Likewise, the **Prevention of Food Adulteration Act, 1954** gave authorization and powers to the agencies to confiscate and seize any goods that are found out to be misbranded or adulterated. Apart from seizing these agencies were also given the power to suspend and cancel the licenses of manufactures found to be involved in adulteration.

Another significant development with regard to the border enforcement of IPR with the enactment of the Intellectual Property Right (Imported Goods) Enforcement Rules, 2007 it was basically the inheritance of TRIPS procedure and norms from Art 51 to 60 in national laws of India and to be bound by it.

Apart from these acts numerous number of bodies have been set up as initiation on the part of the victim industry in order to fight the menace of counterfeiting. For example, the Alliance against Copyright Theft (the Bollywood-Hollywood anti-smuggling coalition) was responsible for 301 raids being carried out on suspected counterfeiters of hard goods (DVDs) in Mumbai and 19 such raids were conducted across north India. This has had a significant impact on counterfeited sales of

⁹⁵ <http://www.worldtrademarkreview.com/issues/article.ashx?g=40077c18-6ebb-4453-b9d6-eaf2cb095c3e>

⁹⁶ <http://www.indianembassy.org.cn/pdf/Note%20on%20salient%20provisions%20under%20the%20drug%20and%20cosmetics%20act.pdf>

DVDs, which has declined significantly at the street level.

4.2.3 Laws to combat smuggling

There are many laws and regulations for combating smuggling. Some of the key laws and regulations to are highlighted below⁹⁷:

The Customs Act, 1962 defines various acts that constitute smuggling into and outside the country and goods covered under its ambit

The Conservation of Foreign Exchange and Prevention of Smuggling Activities Act (COFEPOSA)⁹⁸, 1974 allows preventive detention of currency smugglers and drug traffickers

The Narcotics Control Bureau was constituted as the enforcement body under **The Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1985 (Amended 1988)** to tackle the menace of drug trafficking. The minimum punishment under the Act is 10 years of rigorous imprisonment and a fine of INR100, 000, while repeat offenders can be sentenced to death in certain situations. Enforcement agencies are also empowered to trace and freeze or seize any property acquired through funds generated by illicit drug trafficking to prevent money laundering.

Immoral Traffic (Prevention) Act, 1986⁹⁹: Originally, the Suppression of Immoral Traffic in Women and Girls Act, 1956, this was re-enacted to rectify lacunae in enforcement agencies and strengthen their operations.

The Emigration Act, 1983 makes it mandatory for any agent intending to recruit Indian citizens for employment outside India to obtain a certificate from the Prosecutor-General of Emigrants and provides for imprisonment of up to two years with fine up to INR2,000.

The Extradition Act, 1962 provides for extradition of fugitive criminals under 18 specified offences including smuggling.

The Wildlife Protection Act, 1972 (Amended 2006) provides for the creation of the National Wildlife Crime Bureau to monitor trade and gather intelligence on criminal activities related to wildlife.

⁹⁷ www.epa.gov/agstar/tools/funding/renewable.html

⁹⁸ <http://dor.gov.in/conservationforeignexchangeact>

⁹⁹ www.childlineindia.org.in > ... > Child Related Legislations

4.3 Technology

In the modern era of science and technology where the advancement in technology is unquestionable specifically in the sector of Information and communication it has helped the government and its agencies to easily make softwares and processes that help them and enable them to find out counterfeiting and smuggling activities in a very simple manner. This part of the dissertation helps in analyzing all the kinds of advancements made in India and even other parts of the world that help and aid in fighting the menace of counterfeiting and smuggling activities. It also helps to find out the manner in which the use of such technologies help eradicate smuggling and counterfeiting as well as determining the manner in which the proceeds are used terrorist organisations to fund terrorism .

4.3.1 Adoption of technology by industry to prevent and detect counterfeiting, smuggling and smuggling

It has always been the industry and the manufacturers that have to face main damage done by the works of counterfeiters and smugglers, so it is these manufacturers and industrialists who tend to take a step forward in this aspect and tend to come up with new technologies to avoid this practice and come industry bears the brunt of the menace of counterfeiting, smuggling and smuggling, and therefore, has always been at the forefront of technological measures to prevent and detect such acts. Two primary types of technological measures are adopted by industry in their fight against counterfeiting and smuggling¹⁰⁰ — authentication packaging, and track and trace packaging. Now the above mentioned techniques work in such a manner that authentication packaging makes it real easy for the consumers buying the product to check whether it is original or not and pay the right price for the right product whereas on the other hand it helps the law enforcement agencies and the police in identifying whether the goods stored in a warehouse or godown are original products or fake products. track and trace technology assists the company in checking the movement of their goods on various stages of the supply chain. Some common technologies employed by industry include radio frequency identification (RFID), holograms¹⁰¹, non-clonal identity, optical technology, smart cards, microscopic tags, plastic tags, biotechnology, etc.

The catch in applying technologies is that various different industries will have to apply varied

¹⁰⁰ According to the FICCI CASCADE Report 2013

¹⁰¹ www.holoflex.co.in/automatic-identification-data-capturing.html

technologies for different kind of products. The major drawback in developing such technologies are that the industries do not tend to work along with each other and keep the invention to themselves so there is lot of cash flow of companies in finding these technologies. Hence the costs incurred in making in developing and making anti-counterfeiting and anti-smuggling technologies cannot be recovered easily from the consumers the result of which is that industry cannot recover those costs in the short run it can only be done in the long run.

4.3.2 Adoption of technology by the Government to prevent and detect counterfeiting, smuggling and smuggling

It is very important and almost mandatory for both the Central Government as well as the state government to work hand in hand amongst each other harmoniously in order to invent and do the promotion of such technologies and introduce measure which force the industries to make proper implementation of these technologies to help prevent counterfeiting and smuggling. While the industry has been developing several types of anti-counterfeiting / anti-smuggling technologies¹⁰², the success of these is limited by the extent to which they are mandated by government laws and regulations. For instance, the use of the invented technologies should be mandated to be used by all the industries because if the technology is invented and is not being used then it is satisfying no purpose at all eg the use of Unique identifier code was suggested or the 2D mark was introduced, now, the point at which these technologies render to be non-useful are by the reason that the LEA should have proper resources and a clear understanding of the technology in order to differentiate between original and fake which LEA in our country do not possess.

Government intelligence and law enforcement agencies have also begun using technology to prevent and detect cases of counterfeiting, smuggling and smuggling. For eg A system has been invented that puts in one place together all the data analysed from the customs office and can be easily used to detect the smuggled good in them. This was brought up by the Directorate of Revenue Intelligence (DRI) of the Central Board of Excise¹⁰³

4.3.3 Adoption of technology to prevent and detect proceeds of counterfeiting, smuggling and

¹⁰² www.oecd.org/industry/ind/38707619.pdf

¹⁰³ dri.nic.in/home/history

how this is used to finance terrorism

It is becoming increasingly difficult to detect and prevent financing of terrorism ¹⁰⁴in this age of camouflaging of funds and leaving no paper trails it is merely impossible to detect the flow of funds nowadays there has been an increased activity of terrorists and they transfer a lot of funds here and there country to country but the terrorist organisations hire experts in this field to conceal their money flow so that no terrorist funds can be caught. Terrorist organizations are able to hack the network of banks in such a way that even they are not able to detect the amount of transactions made by them. Now taking in view e banking services there has been a phenomenal increase in the number of transactions that makes it merely impossible to detect cash flows of terrorist organisations. Therefore, sophisticated IT solutions are required at the micro and macro levels to detect such transactions and identify the perpetrators.

Proceeds towards financing of terrorism cannot be detected easily because the transfer of funds seem normal like plain business transactions it is only when a deep eye is used that it is visible because fund flows from counterfeits and smuggling appear to be disproportionate in the volume of flows and the various security measures that are used by terrorist organization to hide the fact that these funds even existed. The growth of information and communication technologies in the past few decades has facilitated innovations that can be used by terrorists to solicit and receive funds¹⁰⁵. So, advancement in technology and softwares are good as it facilitates the detection of transfer of funds for terrorist activities but its offset is that if there is advancement for us then it is for the terrorists as well and they are getting more and more sophisticated in hiding funds transactions and even making offshore accounts where India has no jurisdiction to investigate.

One of the major initiatives taken by the Government of India in this regard was the establishment of the Financial Intelligence Unit (FIU)¹⁰⁶, which has the mandate to detect and prevent money laundering and counter financing of terrorism. The FIU initiated its flagship Project FINnet, in 2006, which included deployment of advanced technical solutions to build a financial intelligence network and identify suspicious transactions that may be linked to financing of terrorism.

The RBI's KYC/AML/CFT guidelines require banks and financial institutions in India to deploy Anti-Money Laundering (AML) IT systems to identify potential transactions that may lead to

¹⁰⁴ <https://www.fas.org/irp/threat/commission.html>

¹⁰⁵ https://www.un.org/en/terrorism/ctitf/pdfs/ctitf_financing_eng_final.pdf

¹⁰⁶ fiuindia.gov.in/

financing of terrorism. Furthermore, under the Prevention of Money Laundering Act (PMLA), India has brought Designated Non-Financial Businesses and Professions (DNFBPs) under the purview of FIU reporting, and these are now required to report any suspicious transactions that may lead to financing of terrorism.

Another initiative is being planned by the National Intelligence Grid (NATGRID), which was set up as a nodal agency to analyze all the data accessed from various systems and agencies to identify issues pertinent to national security¹⁰⁷. Similarly, the National Investigation Agency (NIA) is in the process of setting up an IT system to assist in analyzing various sources of data in order to investigate cases of terrorism. These systems are expected to analyze “big data” and have the potential of enabling a breakthrough in tackling the nexus between counterfeiting, smuggling and financing of terrorism¹⁰⁸.

4.3.5 Overall assessment of progress made on adoption of technology in India

So now it is clearly obvious from the research shown in the abovementioned topics that it is the primary objective for the industries to prepare technologies that help prevent counterfeiting and smuggling but it is also important for the government to lend in a hand to the industries for developing technologies otherwise they would get really shorthanded and the expenditure incurred will be too high.

4.4 Capacity Building

It is essential that all involved participants are equipped with the requisite training and skillsets to effectively implement anti-counterfeiting/smuggling and anti-smuggling initiatives to detect and prevent financing of terrorism in the country¹⁰⁹. This section explores efforts being made in this area as well as in leading training and capacity-building practices for industry players, consumers and law enforcement agencies

¹⁰⁷ www.davp.nic.in/WriteReadData/ADS/eng_19138_1_1314b.pdf

¹⁰⁸ www.unicri.it/topics/counterfeiting/.../D7.1_OC_Strategies_2013.pdf

¹⁰⁹ www.ficci.com/spdocument/20307/FICCI-Anti-piracy-paper.pdf

4.4.1 Capacity-building for controlling counterfeiting and smuggling

It is essential to build awareness among consumers, industry and enforcement agencies on available means for stopping counterfeiting, smuggling and smuggling, and sensitize them to the implications of this menace for India and industry. The Government and industry have been running consumer-awareness programs¹¹⁰ such as “Jaago Grahak Jaago,” which utilize various media including television, print, art, etc., to increase consumers’ awareness of their rights.

The large players in the industry are well aware of their intellectual property rights, and are well staffed with legal professionals to protect their interests. However, awareness needs to be built among small and medium enterprises, which are often vulnerable to counterfeiting and smuggling, and require support from the Government and industry associations.

The Government has taken some initiatives to train personnel of enforcement agencies on laws, regulations and procedures for detecting and preventing counterfeiting, smuggling and smuggling¹¹¹. Specialized agencies such as the Directorate of Revenue Intelligence (DRI), the Central Board of Excise and Customs (CBEC) and the Narcotics Control Bureau (NCB) are actively involved in handling smuggling and counterfeiting cases. However, it is important to ensure that local police forces in each state are trained to handle such cases, such that they can proactively identify these and provide additional capacity to other enforcement agencies, when required.

4.4.2 Capacity-building to prevent proceeds of counterfeiting and smuggling towards financing of terrorism

Counterfeiters and smugglers generally make use of banking and financial institutions to transfer the proceeds of their activities to terrorist organizations¹¹². It is therefore essential to create awareness among the employees of banks, financial institutions, as well as intelligence and enforcement agencies, on identification and prevention of suspicious transactions that may be related to financing of terrorism.

¹¹⁰ consumeraffairs.nic.in/consumer/?q=node/23

¹¹¹ www.ipr-policy.eu/media/pts/1/Brand_Enforcement_Manual_FINAL.pdf

¹¹² www.unafei.or.jp/english/pdf/RS_No83/No83_08VE_Weld3.pdf

The FIU-IND conducts training programs and workshops on financing of terrorism, money laundering, the Prevention of Money Laundering Act and other relevant topics¹¹³. It conducts training sessions for banks and financial institutions, in collaboration with the RBI and the Indian Bankers' Association (IBA), to build their capabilities and help them identify suspicious transactions and report these. The FIU has been supporting industry associations, professional bodies, regulators and financial sector entities to conduct training programs. Furthermore, it also provides technical assistance to banks on their anti-money laundering initiatives and efforts to combat financing of terrorism.

4.4.3 Overall assessment of capacity-building

Looking at initiatives taken to build the capabilities of financial institutions, intelligence and enforcement agencies, it is evident that concerted efforts have been made to upgrade the capabilities of personnel to detect money laundering and counter financing of terrorism. However, many more training and awareness sessions need to be conducted for the employees of financial institutions. There should be greater emphasis laid on building the capabilities of intelligence and enforcement agencies, including the Anti –Terrorist Squad, the Department of Revenue intelligence and National Intelligence Agencies, at the Central and state levels through training programs and online courses.

4.5 The Indian Scenario

India has an excellent track Record of putting together a sound National Policy and Laws on Counterfeiting¹¹⁴. At macro-level, the perception that enforcement mechanics in India are ineffective and slow may be only partly true. However, tide is turning against counterfeiter in India. The important Laws that exist in India which directly and indirectly deal with Counterfeiting and Piracy include:

- The standards of weights and Measures Act 1956
- The Drugs and Cosmetics Act, 1940

¹¹³ fiuindia.gov.in/downloads/Annual%20Report%202011-12.pdf

¹¹⁴ www.nalsar.ac.in/pdf/Journals/Nalsar%20Law%20Review-Vol.%206.pdf

- The Copy Rights Act 1957
- Indian Trade Marks Act 1999
- The Patents Act 1970
- The Customs Act 1962
- The Information Technology Act 2000
- The Intellectual Property Rights (Imported Goods) Enforcement Rules 2007

One of the major institutional deficiency in these statutes is that some of these do not treat violation of Intellectual Property Rights (IPRs) as criminal act and wherever they do, they still stress on ‘Mensrea’ as one of the essential component of such offence. The Indian Patent Act, 1970 and the Design Act, 2000, provide only for civil liability. Though the Copyright Act 1957 and Trade Mark Act, 1999, provide for criminal liability but sanctions are highly deficient and ineffective.

4.5.1 Domain Names

Domain Names is new electronic version of the traditional Trade Marks and the area of conflict is that registration of Trade Mark is governed by the Trade Marks Act, 1999, whereas registration of Domain Names on the Internet is done on the first come first served basis without any direct governmental control¹¹⁵. Mostly registration of Domain Names is done by private organizations without any territorial limits and without any prior check of earlier Trade Marks registered under Municipal Laws of different countries.

In fact, Department of Electronics, Government of India, is exercising some control over the registration of Domain Names whereas in US and U.K. Such registration is an easy process which has led to mushrooming of registration of the Domain Names. There was an advertisement in the “Times of India”, May 7, 1997 with the heading “Internet

¹¹⁵<http://www.worldtrademarkreview.com/account/register/?Reason=FREEVIEWEXPIRED&ReturnUrl=http%3a%2f%2fwww.worldtrademarkreview.com%2fissues%2farticle.ashx%3fg%3d3ddc7d6e-83ce-40ac-9aa1-6af115063a5f>

Property Auctions”. Some important Domain Names which had already been picked up and were later sold back to the owners like BJP, Times of India, ONGC, TATAs and others. The advertisement also mentioned that “some Domain Names are still available”. The minimum auction bid was stated to be U.S.\$ 1500 at the time of closing. In fact, the procedures evolved by the Department of Electronics, Government of India have been more effective in controlling the misuse of Domain Names on account of some specific requirements like an organization seeking **Domain Name registration should have:**

- a) Its office in India
- b) An administrative contact in India, and
- c) An IP address with specific location in India

Unless these requirements are met, Domain Name can not be registered in India. One of the effects of the aforesaid procedure has been that the volume of registration of Domain Names has been very low in India.

The proposed Indian legislation seeks to strengthen protection of IPRs further¹¹⁶. The Trade Marks (Amendment) Bill 2007, tabled in Parliament, seeks to make Trade Mark applications analogous to patent cooperation Treaty Filings. There is a proposal to enact the Optical Disc Law under which a license would be a prerequisite for manufacture of CDs and DVDs with secret coding on each disc for tracking. Again, the Innovation Act is on the anvil to promote research and innovation to evolve cutting-edge technologies including ones to detect and control counterfeiting and piracy.

5. CONCLUSION

¹¹⁶ www.ipo.gov.uk/ipreview-finalreport.pdf

The following are some of the responses from various aspects of the society, which lays down the duties as well as the responsibilities for the whole society:

5.1 The Judicial Response

There have been numerous judgments in India on infringement of Trade Marks through Domain Name registration in UK, Spain, Italy, France and others. Depending on the nature of the infringement, these violations have been called, in the absence of any standard terminology, by various names like Cyber-squatting, Passing-off, Name-grabbing etc. Nearer home in India, when a Website called <http://marks and Spencer.co.uk> came up, Marks and Spencer Private Company Limited had to seek judicial remedy against the British Company named 'One in a Million' for a restraint order.

It was held that the name Marks and Spencer could not have been chosen for any other reasons except that it was associated with the well known retailing group¹¹⁷. In another case, it was held that the Internet domain names are of importance and can be valuable corporate assets and that a domain name is more than an Internet address. A company carrying on business of communication and providing services through the Internet, carried a domain name "REDIFF" which had been widely published. The defendant company also started using the same domain name transcribing it as "RADIFF". It was found that the only object in adopting this domain name was to trade upon the reputation of the plaintiff's domain name. An injunction was ordered against the defendant in use of the said name¹¹⁸.

Despite multiple Laws on IPRs and lack of effective enforcement mechanism, Indian Judiciary has been remarkably creative in controlling and curbing the menace. Indian Courts have been fairly liberal and progressive in granting orders restraining defendants overseas in cases where infringement takes place through a website such as Domain

¹¹⁷ Marks and Spencer PLC v. One in Million, 1998 FSR 265.

¹¹⁸ Rediff Communication Limited v. Cyberbooth , AIR 2000 Bom. 27.

Name infringement or on-line sale of counterfeit. In *Tata Sons v. Ghassan Yacoub*¹¹⁹, an injunction was granted against registration of Domain Name “Tatagroup.com” where the defendant was in New York. In *Laxmikant Patel v. Chetanbhat*¹²⁰ and *Microsoft Corporation v. Mr. Kiran*¹²¹ order known as ROVING ORDERS on ex-parte injunctions, search and seizure and appointment of Local Commissions and Receiver were passed.

In *Time Warner v. Lokesh Srivastava*¹²², punitive and exemplary damages were awarded. Most common problem is that manufacturers often fail to obtain timely relief as identity of defendant is not easily ascertainable. The problem can be overcome by flexible open-ended Orders known as “JOHN DOE” Orders which operate against any potential defendant in regard to seizure of counterfeit products wherever they are. One such order was passed by Delhi High Court in *Taj Television Limited v. Rajan Mondal*.¹²³

5.2 Legislative Response

¹¹⁹ 2004 (29) PTC 522 Del.

¹²⁰ AIR 2002 SC 275.

¹²¹ 2007 (35) PTC 748 (Del).

¹²² (2006)131 Comp Lab 198(Delhi).

¹²³ FSR 2003 (407).

- ✚ International Convention on Extradition of counterfeiters¹²⁴.
- ✚ Consolidation, review and revision of national laws to make them compatible with TRIPS.
- ✚ Counterfeiting be made universal cognizable offence.
- ✚ Simplification of procedures for detection, prosecution and speedy trial of counterfeiters.
- ✚ Anti-competitive practices to be curbed in larger public interest.
- ✚ Suspension and denial of licenses for manufacture to counterfeiters.
- ✚ Rigorous penalties including exemplary fines to make counterfeiting prohibitively expensive.
- ✚ Fines to be used for funding of anti-Counterfeiting operations.

5.3 Technological Response

- ✚ Adequate and reliable data collection on counterfeiting.
- ✚ IP registration to be made mandatory
- ✚ Safety measures like Hall-Marking, Secret Hidden Codes & Bar Codes to be made mandatory.
- ✚ Customs surveillance technology be made effective.
- ✚ Electronic data pool on identification of counterfeiters ¹²⁵(Fingerprinting, IRIS and Bio-metric identification)
- ✚ Computer forensics and other evidence collection methods to be made scientific and credible

5.4 Professional Response

¹²⁴ www.coe.int/t/dghl/.../Study%20jurisdiction%20and%20extradition.pdf

¹²⁵ www.cahpmm.org/docs/UDI-Update-Data-Standards-Sargent.pptx

- ✚ Computer Forensics should be compulsory subject in Law Schools.
- ✚ Specialized training of Judges, Police Officers and Lawyers.
- ✚ Special Courts to be set-up.
- ✚ Restorative justice to the victims of counterfeiting.

5.5 The Social Response

- ✚ Legal Literacy and consumer awareness through formal and informal methods
- ✚ Social action litigation by social groups
- ✚ Initiative by stakeholders, including, Consumer Associations, Chambers of Commerce and Industry and health Organizations.
- ✚ Extensive publicity of names of convicted counterfeiters¹²⁶
- ✚ Expulsion of counterfeiters from Business and Trade Associations.

5.6 Conclusion

¹²⁶ www.nalsar.ac.in/pdf/Journals/Nalsar%20Law%20Review-Vol.%206.pdf

The menace of counterfeiting and smuggling has assumed enormous proportions across the world, and is not only hurting industry and governments in terms of economic loss, but these are also a major source of funding for terrorist outfits and organized crime. Counterfeiters and smugglers are taking advantage of gaps in legislation, governance and information capabilities in various jurisdictions as an arbitrage opportunity. It is therefore essential that all the countries should join hands and collaborate on creating a legal and regulatory framework, which is supported by effective enforcement mechanisms to prevent this menace.

Some of the key steps required in India to stop counterfeiting, smuggling and smuggling in India include:

- ✚ Revision of legislation on counterfeiting, smuggling and smuggling to classify these beyond economic crimes
- ✚ Establishment of an inter-agency coordination mechanism to ensure that efforts made and intelligence can be coordinated to proactively prevent counterfeiting, smuggling and smuggling
- ✚ Establishment of a single entity that is responsible for preventing the proceeds of counterfeiting, smuggling and smuggling from being channelled to finance terrorism
- ✚ Strengthening of technological collaboration between industry and the Government on anti-counterfeiting and anti-smuggling measures
- ✚ Implementation of strong capacity-building and training mechanism to increase awareness of the perils of counterfeiting, smuggling and smuggling among industry players, consumers and enforcement agencies

With this objective in mind, we propose a framework with four different levels of maturity — basic, intermediate, good and advanced — in the areas of laws and regulations, governance, technology and capacity-building. The framework can be used to evaluate the current level of maturity in the current setup for countering the menace of

counterfeiting, smuggling and smuggling, and preventing financing of terrorism through the proceeds of these. Based on this evaluation, the Government can identify the steps required and set short-term, medium-term and long-term goals identify to achieve this.

Organizations should see presence of counterfeits as a challenge and not as a curse. They should view the presence of counterfeits as an opportunity to serve the consumers better, improve their brand loyalty, reduce the costs and build customer relations. Organizations should realize that an end to counterfeiting may be too much to hope for. To curb counterfeits a concerted effort from the government, organizations, civil society and consumers is essential.

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