Severing the Hawala Trail to and from India

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Terror groups need money for procuring weapons, ammunitions, material, communication equipment, recruiting, conducting information operations, housing, and paying compensation to active members and their dependents. Terror organizations utilize a number of sources to fund their operations such as charities, extortion from local traders, forest produce, narcotics, kidnapping-ransom, extortion from NGOs and aid organisations. So where does Hawala figure in the above matrix. Hawala largely acts as the mover of funds than source of funding. The advantages of this informal money transacting system make it extremely attractive to both genuine and illegal customers. India lacks a focused approach to counter the terrorist financing in general and Hawala in particular, and there is a need to minimise the illegal flow of money through Hawala system.

Introduction

Do terrorists require a lot of money to conduct a terrorist strike? Surely not, by all available accounts, the money required to conduct a terror strike is not very much. For example, the 1993 World Trade Centre bombings needed Rs. Nine lakhs (US$19000), Madrid bombing Rs. Eight lakhs (US$16000), and Bali bombing just Rs. Seven lakhs fifty thousands (15000 US dollars).[1] However, groups themselves need considerable amount of money for their sustenance. Terror groups need money for procuring weapons, ammunitions, material, communication equipment, recruiting, conducting information operations, housing, and paying compensation to active members and their dependents in the event of the death of a member during an operation especially suicide bombing. Reports exist which indicate that Al Qaeda's pre 9/11 budget was approximately Rs. 150 crores (30 million dollars) a year and post 9/11 is around Rs 20 to 25 crores (4 to 5 million dollars).[2] Similarly, Hezbollah's budget is around Rs. 500 to 1000 crores (100 – 200 million US dollars), Irish Republican Army around Rs. 25 to 50 crores (5 to 10 million US dollars), and FARC Columbia around Rs 5000 crores (one billion US dollars).[3] Given the fact that money is essential for the sustenance of terrorist or insurgent groups, its (money) interdiction can seriously impede terrorism. However, as a strategist it is important to determine whether it is beneficial to interdict or follow the

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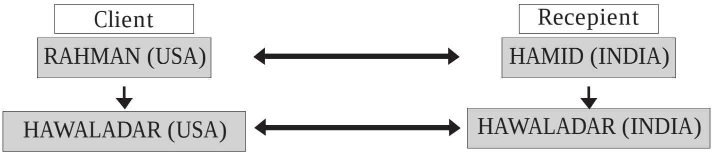
trail of money. Both have their advantages and disadvantages but following the trail offers the opportunity for gathering vital intelligence and striking at a group when it is extremely critical or for eliminating the strategic leadership of the group—so makes a better strategy.

Assuming that following the money is more important than interdicting the source of money, understanding various mechanisms to move money by terrorist groups assumes importance in conducting counter terrorist operations especially at the strategic level. While there are a number of money laundering means such as bulk cash couriers, banking and other formal money transmitting systems like the Western Union, Money Gram and Stored Value cards, it is the informal money transmitting system, commonly known as the Hawala or Hundi that is extremely difficult to either interdict or follow. This form of money laundering system has its origin in South Asia especially in India, although it is becoming equally popular in other parts of the world such as the Middle East (ME), South East Asia, Far East, and even Latin America. Illegal flow of Hawala money into India directly translates into the number of terrorist incidents that take place in India. This paper will focus on threat that is posed to the Indian Security environment from the menace of Hawala and suggest some counter measures.

Hawala System

Before highlighting the degree of threat posed to the state of India from Hawala, a word about the Hawala system would be in order at this stage. Basic Hawala system is illustrated in figure 1 below.

Figure 1: Basic Hawala System[4]



In Hawala, a client in country A (e.g. USA) hands over a sum of money to a Hawaladar and requests that the equivalent amount (usually in the currency o the receiving country) be sent to a designated recipient in country B (e.g. India). The sending broker relays all the necessary information concerning the transaction to a counterpart broker in country B, either through telephone, facsimile, or email. At this stage of the process, a "collection code" is agreedupon between the two brokers. The broker in country A will then communicate this code to the client, who, in turn, will relay it to the designated recipient in country B. The broker in country B will give the money to the recipient upon presentation of the collection code. If the sending client is also the recipient, he would have to present the code to the counterpart broker, upon arriving in country B before the money could be released to him. In many cases, the payment will be made by the counterpart broker to the designated recipient within hours after the request to remit money was placed by the client in country A. The income of the broker from the transaction may come from charging a commission of 0.25% to 1.25% of the amount involved or from disparities in currency exchange rates.[5]

The Hawala system is advantageous for all the elements involved in the transaction. For users, the charges levied are very low by the hawala operator. A formal remitter charges the sender approximately 10-20% of the total amount transferred whereas a hawaladar will typically charge 0.25%-1.5% commission. Also hawala reaches to remote locations. Formal remitters provide service to larger population centers while hawala provides better and responsive services to large population centers as well as remote areas of the world. Further, hawala transmits money more quickly than other formal systems. Transfers initiated by formal remittance agencies typically take days or weeks, whereas hawala transactions are conducted within hours with even home pick-up and delivery services. Hawala has very simple identification procedures to receive or transmit the system. Recipients must present identification when receiving transfers at a formal agency, whereas hawala only requires an anonymous code for the receipt of funds."[6]

The advantages of hawala make it extremely attractive to both genuine and illegal customers. The risks are only at the agent level. Even if one were able to get hold of the hawala agents, it is practically impossible to trace the money trail or distinguish the black from the white trails because of minimal recordkeeping and undecipherable coding of each transaction. Tracking and following money travelling through hawala therefore is the most challenging proposition for national and international agencies involved in counter terrorism financing efforts. In addition, money launderers are drawn to hawala for the unparalleled confidentiality that they offer, allowing them to conduct transactions in near anonymity.

Threat to India from Hawala Networks

India does not have appropriate provisions to deal with hawala since the repeal of Prevention of Terrorism Act (POTA). In fact, India has among the weakest

Management Act, (FEMA) 1999, hawala is only a civil offence and persons violating its provisions are penalised with fine up to three times the amount detected in a contravention.[7] This is a grossly inadequate deterrence to terrorists indulging in hawala for their sustenance and operation. Kanchan, a research associate at Institute of Peace and Conflict, India says that despite weak provisions for Anti Money Laundering (AML), a number of arrests and recoveries have been made which indicate the severity of the threat. Kanchan has quoted that:

..., there have been a substantial number of recoveries and arrests in such transactions in J&K in the post-9/11 period. On December 6, 2001, the arrest of Abdul Rashid Lone, 'group commander' of the Hizb-ul-Mujahideen (HM) in the Baramulla area, led to recovery of Rs. 40 lakhs (US$80000 approximately). On the same day, Abdul Rehman Sofi alias Rehman Lala and Mohammed Shabban Khan were arrested in Delhi returning from a meeting with HM chief Syed Salahuddin in Pakistan. Their confessions led to the recovery of Rs. 15 lakhs (US$ 30000 approximately) received through hawala for distribution to the HM, Lashkar-e-Toiba (LeT) and Jaish-e-Mohammed (JeM). On December 13, 2001, the killing of Nazir Ahmad Yattoo, alias Shakir Ghaznavi, HM 'divisional commander' (who was also looking after the distribution of finances), in an encounter with security forces at Pattan in Baramulla district, was followed by the recovery of Rs. 32 lakhs (US$ 64000). On January 14, 2002, the arrest of four Kashmiris linked to the LeT at Delhi led to the recovery of Rs. 34.9 lakhs (US$ 70000), which they had received through hawala on behalf of the South Kashmir Valley 'commander' of the Lashkar. ... . Another Rs. 4.6 lakhs (US$ 9000) was recovered from a Delhi-based Hawala operator who had provided the money to the Lashkar activists.[8]

These incidents, clearly indicate the opportunity of curbing the funding of terrorism by dealing with hawala. Given the number of terrorist attacks in South Asia in general and India in particular[9], and the fact that in India hawala is directly linked to terrorist financing, India should prioritize cooperation with international initiatives that provide increased transparency in alternative remittance systems. A report, released by Assistant US Secretary of State for International Narcotics and Law Enforcement Affairs, David T Johnson, quoted Reserve Bank of India estimates that remittances to India sent through legal, formal channels in 2007-2008 amounted to Rs 2130 crores (USD 42.6 billion). According to Indian observers, the report said funds transferred through the billion-dollar hawala market are between 30 to 40 per cent of the formal market. "In that case the hawala market could amount to between Rs 650 to 850 cores (United State Dollars (USD) 13 billion to USD 17 billion)."[10]

These figures are mind boggling especially because sustaining and conducting terror attacks does not require much money. Why is India unable to effectively clamp down on this source of money laundering? Despite the large number of formal channels of banking and money transmitters such as nationalized and private banks, and Western Union, the Hawala trade flourishes in India for several reasons. First, criminals find it difficult to use formal channels due to strict foreign-exchange laws, transaction reporting requirements and the banking industry's diligence policy. Therefore, large proportion of the illegal money is laundered through Hawala or Hundi.[11] Second, the hawala market is linked with entrenched national and international gangs. These gangs have made inroads into the socio – political system of the country because of which the law enforcers sometimes are hamstrung in prosecuting the Hawaladars, especially the big players. The following case demonstrates this fact :

"He could be India's billionaire number four, a man of Rs 35,000-crore of wealth. Hassan Ali, 53, is believed to have come from quite a successful business family in Pune. He owns a farm, apartments in Mumbai and bungalows in other parts of the country. The people, who know Ali, believe that he is probably largely involved in investing black money of politicians and bureaucrats in stock markets. Yet nobody knows whether Khan is a mere intermediary, an agent or is he a big fish. But behind his story, there is a larger story of how millions of rupees are illegally sent to India through Hawala to politicians, drug dealers and terrorists."[12]

Third, hawala is also linked to criminal activities. Former director of Criminal Bureau of Investigation (CBI) has stated, "Hawala has become a channel for drugs trade, arms trade, human trafficking, and legalizing kickbacks." He has gone on record that "It (Hawala) is also used to pay for insurgency in Kashmir, North Eastern terrorist outfits and fundamental parties."[13] While India's formal money transfer system and banking sector is well regulated, the informal sector goes unattended and unaddressed.

Regulatory Challenges

The above problems are further compounded by regulatory shortcomings. At present, the laws in force to check terrorism in India are the National Security Act, 1980 and the Unlawful Activities (Prevention) Act, 1967 (UAPA). There have been other anti-terrorism laws in force in India at different points such as the Terrorism and Disruption Act (TADA), which lapsed in 1995 and the Prevention of Terrorism Act (POTA), withdrawn by the current Congress government. In place of POTA the current government has amended the Unlawful Activities Act 1967 in December 2008 following the Mumbai Attacks of November 26, 2008. The law includes more stringent measures against terrorism but some experts feel that repealing of the POTA has adversely affected the counter terrorism efforts. However, recognizing this fact, the government has

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also introduced the National Investigation Agency Act (NIAA), 2008 which envisages integrating the investigation efforts related to security issues across the country including the state agencies.[14] In addition, various states in the union have anti-terrorism acts; for e.g. the Government of Maharashtra has the Maharashtra Control of Organized Crime Act, 1999, (MCOCA). These acts have focused traditionally on dealing with terrorism, militancy, and insurgencies by direct actions of police and military forces (when requisitioned by the Central or state governments of India). There have been no specific counter terrorist financing bills or acts in the country; it was only in February 2009 that the Indian Parliament passed the Prevention of Money Laundering (Amendment) Bill.[15] However, this is not enough, it does not confirm to the Financial Action Task Force (FATF) standards and regulations. Given the international connectivity of Hawala system, India also needs to become a full-fledged member of the FATF then only an integrated action would be effective in dealing with the international Hawala network of which India is a major actor.

Other Shortcomings

India also lacks adequate trade transparency, especially in the diamond and gold market which can very easily be used to settle the trade imbalance that occurs in incoming and outgoing hawala funds in the country.[16] Normally trade imbalance occurs in hawala because the flow of money into India from US and other Western countries is much more than what goes out from India to these countries. Therefore, the hawala operatives in India compensate it through other illegal activities. Money laundering in India also aims to facilitate widespread tax avoidance; criminal activities also contribute substantially to the growth of hawala system. Some common sources of illegal proceeds in India are narcotics trafficking, illegal trade in endangered wildlife, trade in illegal gems (particularly diamonds), smuggling, human trafficking, corruption, and income tax evasion.[17]

Internal Counter Measures

While India lacks a focused approach to counter the terrorist financing in general and Hawala in particular, there are steps that can be taken to deal with minimizing the illegal flow of money through Hawala system. These steps are discussed below.

First, legalizing the Hawala operations would go a long way in shrinking the operating space for illegal elements that attempt to abuse this system. The biggest impediment to this system is the exorbitant license fees and regulatory procedures that Indian bureaucratic machinery imposes. We need to let these operations run officially at a very minimal licensing fees and remove some of the stringent bureaucratic procedures to establish such business in the country.

Second, there is a need to integrate the investigating mechanisms to identify illegal fund flows by combining the efforts of various crime monitoring agencies including narcotics, customs, and other security agencies such as CBI and various state investigating agencies. The Finance Secretary of the Central Government could coordinate their activities. Some direct action measures that can be taken by investigating agencies are 1) check for multiple deposits of combinations of cash, money orders, or third-party checks, made to the same account from different states in India. 2) Monitor daily deposits of funds of suspected agents. 3) Check for multiple structured deposits; and, multiple incoming wire transfers followed by any of the activities such as outgoing wire transfers, either domestic or international; outgoing transfers via automated clearing; house debits to known Medium size businesses (MSBs) ; checks written to cash by the accountholder; and checks written to or endorsed by known MSBs; or ATM cash withdrawals in remote locations, including other countries. 4) Check for multiple financial ledgers (one for legitimate transfers, one for criminal activity, possibly an additional ledger for settling accounts between brokers) of agents suspected of being involved in illegal hawala trade. 5) Look for numerous lengthy telephone calls made to overseas recipients (indicates the broker is coordinating with counterparts and placing orders).[18]

Third, some other specific measures could include devoting more law enforcement and customs resources to nongovernmental organizations including charities, especially the remittance that emanate from Middle East in general and Saudi Arabia in particular. It should devote more law enforcement and customs resources to curb abuses in the diamond and gold trade. A US department report also suggests that India also needs to consider establishing a Trade Transparency Unit (TTU) that promotes trade transparency.[19] This would greatly help in preventing corruption and avoid underground or black market fund flow from the business sector.

Fourth, since Hawala system provides remittance at almost no or minimal charges instantly, there is a need to make money remittance simpler, faster and if possible attractive by offering some financial benefits. The State Bank of India is addressing this issue but more needs to be done. Indian formal money transmission systems need to become more open and inspire more confidence in the customers (Non Resident Indians) living abroad. This would further shrink the illegal hawala trade and make the monitoring and investigations easier, faster, and responsive.

Finally, the banking and formal remittance apparatus must extend to even remote areas of Jammu and Kashmir in the North, states of the North East and Eastern India, and the tribal areas of central and southern India. This would also help shrink the hawala market further and enable the monitoring of illegal elements still trying to indulge in money transfers through hawala.

External Counter Measures

Given the deep international linkages in the hawala system, globalization of money generation by various terror groups operating in India, a greater cooperation is called for with international counter terrorism financing efforts. For example, India should become a full-fledged member of the FATF. Similarly, India should become a party to the UN Conventions against Transnational Organized Crime and Corruption. It should also pass the "Foreign Contribution Regulation Bill for regulating nongovernmental organizations including charities," which will help clamp down on the money flow through illegal proceeds from charities as well. The international efforts must be supplemented by efforts by various US investigating agencies to monitor the hawaladars operating in the US as the Indians residing in the US constitute the largest remitters of money to India. Activities typical to hawala operators in the US are firstly, structured deposits followed by wire transfers to unrelated businesses in Asia. Secondly, hawaladars normally send a high volume of mail and packages from out of state that contain various monetary instruments such as checks or money orders to another hawaladar. Thirdly, a pattern of short telephone calls coming into the broker (instructions from the customer sending funds). Fourthly, fax transmittal logs of hawaladars may be a rollup of the day's transactions or may be a single transaction. Faxes may contain the name of a sender (not necessarily a real name), beneficiary, or code used by the receiving broker to identify the beneficiary.[20]

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While actions to detect terrorist financing activities are being taken by the US and other Western countries, these need to be improved upon by entering into agreements that facilitate joint investigation with Indian investigating agencies on a regular basis. Officers from the CBI could operate with FBI in the US when required and similarly officers of FBI could operate with CBI in India when required to do so. An Indian criminal advisor would have better understanding of the nuances of criminal systems linked to India. Similarly, US investigating officers from FBI would facilitate greater international cooperation in dealing with bursting illegal hawala networks.

Conclusion

Mark Basile says that financial regulations imposed to reduce terrorist financing must be applied more broadly and be supported by significant ing requires better international coordination, more effective use of financial regulations, and regulating the charity structure.[21] The hawala system, due to its informal nature, trust based operation and almost negligible cost of remittance to the users, is extremely difficult to find and follow. This calls for a broader observation and monitoring mechanism of money flow into India from countries like the US and Europe and the charity providing countries of the Middle East. To conclude then, we must think of money as oxygen for sustaining terrorism.[22] If we choke it, terrorism would be severely curtailed. Hawala probably forms the most important component of money laundering in India to the terrorist groups. Most of these groups are sustained from the donations and remittances received from the US and other European countries. Therefore, it would be in the interest of India to cooperate internationally in general and the US and EU in particular under the aegis of the UN to stem financing of terror.

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Notes

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