

Organised Crime

➤ 8.1 | What is the Meaning of the Term 'Organised Crime'?

Organised crime means '*a structured group of three or more persons existing for a period of time and acting in concert with the aim of committing serious crimes or offences to obtain, directly or indirectly, financial or other material benefit*'.

It manifests in many forms. Organised crime can be further classified into two categories, *viz*, traditional organised crime and non-traditional (modern) organised crime.

Traditional organised crime includes illicit liquor trade, betting, gambling, kidnapping, extortion, prostitution rackets, robbery, blackmailing, sand mafia, mining mafia, contract killing, pornography, etc.

Non-traditional organised crime includes transnational crime like money laundering, pumping fake Indian currency notes (FICN), *hawala* transfer, cybercrime, hacking, human trafficking, arms smuggling, drugs smuggling, etc.

➤ 8.2 | What is Transnational Organised Crime?

As per UN Convention, transnational organised crime comprises

- A group of three or more persons that was not randomly formed;
- Existence of such a group for a period of time;

- Acting in concert with the aim of committing at least one crime punishable by at least four years' incarceration;
- In order to obtain, directly or indirectly, a financial or other material benefit.

Since most 'groups' of any sort contain three or more people working in concert and most exist for a period of time, the true defining characteristics of organised crime groups under the UN Convention are their profit-driven nature and the seriousness of the offences they commit. The following table defines organised crime and terrorism and compares traditional versus modern versions.

	Traditional	Modern
Organised Crime	Based on power over local communities Family organisation	Based on expansion of global markets Networks of entrepreneurs
Terrorism	Based on support in oppressed communities Military model of top to bottom organisation	Based on sympathisers in several countries Networks of ideologically committed operatives

► 8.2.1 Link Between Organised Crime and Terrorism

Terrorists engage in organised crime to support themselves financially. Drugs trafficking, money laundering, FICN, supari killing and extortion are the main organised crimes by which terrorists generate money.

Organised crime groups and terrorists often operate on same network structures. Terrorists thrive under the cloak of transnational organised crime groups. Both organised crime groups and terrorist groups operate in areas with little governmental controls, weak enforcement of laws and open borders. Both often use similar means of modern technology to communicate.

These groups may provide smuggled arms and explosives to terrorist groups in exchange for drugs or diamonds, etc. Terrorist groups make use of smuggling networks established by organised crime to move operatives around the world. Criminal groups also provide money laundering services. Terrorist groups controlling the terrain tax drug traffickers in return for protection.

Organised crime and terrorism thrive on ineffective governance, poor checks and balances. They have developed a symbiotic relationship. But neither are all terrorist acts organised crime, nor are all organised criminal acts terrorism; in most developed countries, organised crime thrives with little or no terrorist activities, and in most developing countries, terrorism exists along with varying levels of organised criminal activity.

► 8.2.2 Major Differences Between Organised Crime and Terrorism

The differences between them rest on means and ends. Terrorism aims to overthrow the existing government by altering the status quo. Organised

crime, on the other hand, aims to form a parallel government(parallel economy) while co-existing with the existing one; any change in the status quo is only circumstantial or a by-product and born out of convenience rather than zealous revisionist policy. Secondly, terrorism primarily uses violent means, whereas organised crime prefers to be non-violent notwithstanding the odd resort to belligerence. Third, terrorism is driven purely by political objectives despite sometimes resorting to exploitation of regional, national and religious sentiments to achieve their ends; conversely, economic objectives are the operational determinants of organised crime.

► **8.3 | Different Types of Organised Crime**

Different types of organised crime include:

- Narcotics trafficking
- Arms trafficking
- Human smuggling
- Gold smuggling
- Fake currency
- Kidnapping and extortion
- Contract killing/supari killing
- Cyber crime
- Money laundering
- Maritime piracy
- CBRN smuggling (Chemical, Biological, Radiological and Nuclear Defence)
- Trading in human body parts
- Infiltration of illegal businesses

It is worth mentioning that the first five activities in the above list are more prone to have terrorist linkages.

► **8.4 | What are the Links Between Terrorism and Organised Crime and How are They Relevant in the Indian Context?**

More than ever before, groups engaged in terrorism and organised crime operate together. These relationships have helped terrorist groups to be less dependent on state sponsors, and on their domestic and international supporters. The 1990s, especially the second half, witnessed a number of terrorist groups learning from criminal networks. Operating through the cover of sympathetic organisations in Europe and North America, many Asia-Pacific terrorist groups generate huge revenues from video and CD piracy, business in phone cards and credit card scams.

While organised crime involves many activities, its linkages with terrorism stem from illegal trafficking of drugs, arms and human beings, fake currency

and money laundering. Terrorist groups, whether indigenous or sponsored by outside states, need arms and money for their fight against the security forces. Organised crime needs a client and couriers who can smuggle drugs, arms and human beings across countries and regions.

In India, the linkages between the two exist at national and transnational levels. At the national level, both terrorists and those involved in organised crime are within India. At the international level, collaboration exists between transnational syndicates and terrorists from inside and outside India.

➤ 8.4.1 Links Between Terrorism and Organised Crime in the North-East

In India's north-east, almost all militant groups run a parallel government or have their areas of influence and are involved in collecting money directly from the people. Much of the government funds reach the militants indirectly due to mal-governance. Government officials in conflict zones are either threatened or bribed to award contracts to individuals patronised by the militant groups. Contracts apart, essential commodities like rice and fuel reach the militant groups directly which are then sold to the public at much higher prices. This phenomenon, though unnoticed in other parts of India, is a clear example of the linkage between organised crime and terrorism inside India.

Extortion, kidnapping, contracts and black marketing still fall short of financing the nefarious activities of the militants. This is where transnational drugs and arms syndicates come into play. Terrorist organisations, especially in the north-east, mobilise funds by becoming couriers of illegal drugs and arms, and at times even human beings, from one point to another within the country. Some of the infamous entry points from South-east Asia include Moreh and the entire Chittagong Hill tracts, especially Cox's Bazaar. Initially, international criminal syndicates had their own network; however, with these routes being taken over by various terrorist groups in the north-eastern states, the syndicates have started using them instead of bribing them to let their consignments get through.

➤ 8.4.2 Links Between Terrorism and Organised Crime in Kashmir

In Kashmir, the linkages between terrorists and organised crime exist at a different level. Unlike the north-east, reliance on funds from extortion and other related means is minimal. There is no parallel government in Kashmir and government resources do not reach militant hands. However, external funds compensate for inadequate internal mobilisation. External funds reach the militant organisations fighting in Kashmir through various means. For instance, enormous funds mobilised in Pakistan and other Muslim countries, especially in the Gulf, are channelled through various organisations in Pakistan to Kashmir. Markazdawa al Arshad, for example, mobilises funds from inside

and outside Pakistan to support its militant wing, Lashkar-e-Toiba. Besides, external funds are also routed through select organisations and individuals in Kashmir, which finally reach the militants. Money laundering plays a significant role. Hawala transactions take place swiftly and effectively. Besides, it is also believed that the ISI uses drug money to fund militant activities in the state.

Another significant relationship between organised crime and terrorism, especially in Kashmir, is through the spread of counterfeit currency, FICN. Terrorists are the main couriers of Indian counterfeit currency inside Kashmir, which then spreads all over India. Even guides for the militants from across the border are paid with counterfeit money. In fact, when some of the 'indigenous' militants were also paid with counterfeits, it resulted in squabble between them and the so-called guest militants.

► 8.4.3 Links Between Terrorism and Organised Crime in the Rest of India

Besides Kashmir and the north-east, sporadic incidents in other parts of India, like the Mumbai blasts, for instance, have exposed the connection between terrorism and organised crime. This is distinct from the traditional linkages flourishing between organised crime syndicates and local criminals.

Bombay Blast

Bombay Blast 1993 was a classical example of organized crime cartel's planning and executing terrorist activities. The 1993 Bombay bombings were a series of 13 bomb explosions that took place in Bombay on Friday, 12 March 1993. The coordinated attacks were the most destructive bomb explosions in Indian history. The single-day attacks resulted in over 350 fatalities and 1200 injuries.

The attacks were coordinated by Dawood Ibrahim, don of the Bombay-based international organised crime syndicate named D-Company. Dawood Ibrahim was the mastermind behind these blasts. He is involved in all kind of organized crime cartels like Drugs smuggling, gold smuggling, Supari killing, match-fixing etc.

Linkages between terrorism and organized crime came to limelight first time in India in Bombay blast. Communal tension led to terror activities first time in India. First time revenge of riots was taken in the form of terror attacks.

Dawood Ibrahim

Dawood Ibrahim is the most powerful Mumbai Mafia 'don', with a countrywide network and extensive linkages abroad. He is a classic example of Organized crime Mafia. He is one of the most powerful gangsters involved in transnational crimes, including narcotics smuggling, extortion and contract killing. It is believed that he lives in Pakistan and Dubai with support from ISI, though ISI denies it.

Dawood Ibrahim was believed to control much of the hawala system, which is the commonly used unofficial system for transferring money and remittances outside the view of official agencies. He is currently on the wanted list of Interpol for Cheating, Criminal Conspiracy and Organised Crime Syndicated. He was No. 3 on the *Forbes'* World's Top 10 most dreaded criminals list of 2011, rising from the 4th position in 2008.

According to the United States, Dawood Ibrahim maintained close links with Al-Qaeda's Osama Bin Laden. As a consequence, the United States declared Dawood Ibrahim a "global terrorist" in 2003 and pursued the matter before the United Nations in an attempt to freeze his assets around the world and crack down on his operations. The US administration imposed several sanctions on Ibrahim and his associates. Indian and Russian intelligence agencies have pointed out Ibrahim's possible involvement in several other terror attacks, including the November 2008 Mumbai attacks.

Currently, the primary activities of this gang are extortion, contract killing, film financing, match-fixing, drug trafficking, smuggling gold and computer parts and illicit trade in arms and ammunition. The Dawood gang has been supplying arms both to criminals and terrorists.

► 8.4.4 Links Between Terrorism and Money Laundering

Terrorist groups have begun to lay a premium on gaining domestic respectability, as also international acceptance, for their goals. Accordingly, such groups have gradually tended to distance themselves from visibly illegitimate businesses and to invest in legitimate businesses like investment in share market, capital market, IPL, spot-fixing, etc. Specifically, with regard to organised crime, terrorist groups have taken advantage of existing laws to further their own agenda of establishing a transnational network. Irrespective of who does it, it is not a criminal offence in most countries to generate funds through businesses and raise funds through charities. A large proportion of 'dirty money' can be traced to proliferating narcotics cartels, alien smuggling networks, etc. But law enforcement agencies find it more difficult to detect *clean-clean* money (money which is both generated and transferred legally) as compared to *dirty-clean* money (money generated from criminal operations and 'laundered'). The former has certain legitimacy and no illegal hooks attached. With governments allocating significant resources to combat money laundering, it is becoming difficult for terrorist groups to rely on criminal proceeds. The latest United Nations (UN) Conventions on (a) the Suppression of the Financing of Terrorism and (b) Transnational Organised Crime will make money laundering even harder.

In order to evade the police dragnet, terrorist groups are consequently developing and maintaining clean money sources. Accordingly, the future scenario is likely to see rag-tag/groups-in-transition utilising 'dirty-clean money routes' and sophisticated groups using 'clean-clean money routes'. Emerging trends in organised crime indicate that most groups with a national reach are involved in illegitimate businesses, e.g., narcotics and alien smuggling, abduction, ex-

tortion, etc. At the other end, a majority of the groups with a global reach are involved in legitimate/quasi-legitimate businesses, e.g., manufacturing, CD/video piracy, etc.

► 8.4.5 Links Between Terrorism and Drug Trafficking

Heroin from the Golden Crescent (Afghanistan, Iran and Pakistan) and Golden Triangle (Myanmar, Laos and Thailand) feeds the Asia-Pacific – a region with major transit routes to Europe and North America.

The increase in consumption within the region has also contributed to regional insecurity because of the terrorist-criminal nexus. While organised crime groups that are often linked to terrorist groups control narcotics distribution, many terrorist and guerrilla groups control the territories where the narcotics are cultivated or refined. The erstwhile Taliban regime controlled parts of Afghanistan where heroin was produced and taxed the cultivators as also the transporters of opium. Furthermore, the threat posed by narcotics to health, economic, and law and order spheres in the region is on the increase.

Narcotic trafficking is a major source of revenue for terrorists and organised crime networks, particularly groups with trans-state reach. As much as armed ethnic groups in Myanmar control the flow of narcotics from Myanmar, armed Islamic groups tax and control organised crime networks regulating the flow of narcotics from Afghanistan. Organised crime, already prevalent in the Far East and South-east Asia, has gained a prominent foothold in the cities of South Asia since the mid-1990s. Organised crime networks in Japan, Hong Kong and China have also made greater inroads in the West. With South Asia increasingly moving towards a market economy, it is likely that organised crime will take deeper roots.

► 8.5 The Future of the Links Between Terrorism and Organised Crime and How They Can be Broken

With the loss of state sponsorship for terrorism, terrorist groups need to pursue different means of financing, mainly through arms and drugs trafficking. Terrorist dependence on organised crime for financial viability and organisational survival will increase in the near future. Structurally, terrorist groups will increasingly mirror organised crime groups. Terrorist groups will rapidly move in search of new opportunities to generate funds. Dependent on the financial opportunities available, both sources and methods of generating revenue will differ from one another. With state-sponsors distancing themselves, terrorist groups will either develop robust organised crime components or work closely with organised crime groups. While the bulk of the terrorist groups will retain their political leanings, the potential for a few terrorist groups to degenerate into pure criminal groups will, nevertheless, increase.

To effectively combat international terrorism, state response will have to factor in the nexus between terrorists and organised crime.

Among the principal responses to regulating these existing and emerging threats are:

- Develop exceptionally good military and intelligence expertise to neutralise terrorist groups. The approach of punishing individuals, but permitting groups that have perpetrated violence to exist, is highly counter-productive.
- Develop arrangements with states to disrupt terrorist support networks and assist states by sharing intelligence and exchanging personnel to fight transnational terrorist networks.
- Terrorist groups can be effectively crushed only at an early stage. The failure to fight efficiently, legitimately and ethically — especially against an ethnically and religiously empowered group — can lead to indiscriminate violence, which can favour the terrorists. With time, most conflicts can gather momentum generating substantial popular support. In such instances, a political solution over a military solution should be considered.
- Often, devolving regional autonomy or power sharing has been the most effective strategy. But, it works primarily in the formative phases of a conflict. The process requires close supervision, particularly during the implementation phase.
- A politico-military approach should be evolved to politically isolate a group in order to stem support and recruits, and to simultaneously offer political and economic incentives and to militarily pressurise it to join the mainstream. Often, links with foreign groups, state sponsors, or diaspora-support can provide the confidence to fight on. Transnational networks make such groups more resilient.
- Stringent law like TADA, MCOCA, Gangster Act, etc. to deal with organised crime.
- While some of these threats can be resolved unilaterally by states, most require bilateral and multilateral arrangements.
- Some of the threats can be regulated at the sub-regional and others at the regional level.
- Some of the threats are new, others are old, but have assumed a renewed dimension. Therefore, new institutions capable of delivering multi-pronged responses are essential to regulate extant and emerging threats.

➤ **8.6 | UN Convention against Transnational Organised Crime and the Protocols**

UNTOC is the guardian of the United Nations Convention against Transnational Organised Crime (Organised Crime Convention) and the three Protocols (Trafficking in Persons, Smuggling of Migrants and Trafficking of Firearms) that supplement it.

This is the only international convention, which deals with organised crime. It is a landmark achievement, representing the international community's commitment to combating transnational organised crime and acknowledging

the UN's role in supporting this commitment. The adoption of the Convention at the fifty-fifth session of the General Assembly of the United Nations in 2000 and its entry into force in 2003 also marked a historic commitment by the international community to counter organised crime.

The Organised Crime Convention offers states which are party to the convention, a framework for preventing and combating organised crime, and a platform for cooperating in doing so. These states have committed to establishing the criminal offences of participating in an organised crime group, money laundering, corruption and obstruction of justice in their national legislation. By becoming parties to the UNTOC, these states also have access to a new framework for mutual legal assistance and extradition, as well as a platform for strengthening law enforcement cooperation. States have also committed to promoting training and technical assistance to strengthen the capacity of national authorities to address organised crime.

► 8.7 Money Laundering

The process of creating the appearance that large amounts of money obtained from serious crimes, such as drug trafficking or terrorist activity, is from a legitimate source is called *money laundering*. The process of making 'dirty money' look like 'clean money' is referred to as money laundering.

Money laundering is a crucial step in the success of drug trafficking and terrorist activities. The connection between money laundering and terrorism may be a bit more complex, but it plays a crucial role in the sustainability of terrorist organisations. Most people who financially support terrorist organisations do not simply write a personal cheque and hand it over to a member of the terrorist group. They send the money in roundabout ways that allow them to fund terrorism while maintaining anonymity. On the other end, terrorists do not use credit cards and cheques to purchase the weapons, plane tickets and civilian assistance; they need to carry out a plot. They launder the money so that authorities cannot trace it back to them and foil their planned attack. Interrupting the laundering process can cut off funding and resources to terrorist groups.

The basic money laundering process has three steps:

- **Placement:** At this stage, the launderer inserts the dirty money into a legitimate financial institution. This is often in the form of cash bank deposits. This is the riskiest stage of the laundering process because large amounts of cash are pretty conspicuous, and banks are required to report high-value transactions.
- **Layering:** Layering involves sending the money through various financial transactions to change its form and make it difficult to follow. Layering may consist of several bank-to-bank transfers, wire transfers between different accounts in different names in different countries, making deposits and withdrawals to continually vary the amount of money in the accounts, changing the money's currency, and purchasing high-value

items (boats, houses, cars and diamonds) to change the form of the money. This is the most complex step in any laundering scheme, and it's all about making the original dirty money as hard to trace as possible.

- **Integration:** At the integration stage, the money re-enters the mainstream economy in a legitimate-looking form—it appears to come from a legal transaction. This may involve a final bank transfer into the account of a local business in which the launderer is 'investing' in exchange for a cut of the profits. At this point, the criminal can use the money without getting caught. It's very difficult to catch a launderer during the integration stage if there is no documentation during the previous stages.

► 8.7.1 The Effects of Money Laundering

Criminals launder anywhere between \$500 billion and \$1 trillion worldwide every year. The global effect is staggering in social, economic and security terms.

Social Effects

On the socio-cultural end of the spectrum, successfully laundering money means that criminal activity actually does pay off. This success encourages criminals to continue their illicit schemes because they get to spend the profit with no repercussions. This means more fraud, more corporate embezzling (which means more workers losing their pensions when the corporation collapses), more drugs on the streets, more drug-related crime, law-enforcement resources stretched beyond their means and a general loss of morale on the part of legitimate business people who donot break the law and donot make nearly the profits that the criminals do.

Economic Effects

The economic effects are on a broader scale. Developing countries often bear the brunt of modern money laundering because the governments are still in the process of establishing regulations for their newly privatised financial sectors. This makes them prime target. Other major issues facing the world's economies include errors in economic policy resulting from artificially inflated financial sectors. Massive influx of dirty cash into particular areas of the economy that are desirable to money launderers create false demand, and officials act on this new demand by adjusting economic policy. When the laundering processes reaches a certain point or if law-enforcement officials start to show interest, all that money suddenly disappears without any predictable economic cause and that financial sector falls apart.

Some problems on a more local scale relate to taxation and small-business competition. Laundered money is usually untaxed, meaning the rest of us ultimately have to make up the loss in tax revenue. Also, legitimate small businesses cannot compete with moneylaundering front businesses that can afford to sell a product far cheaper because their primary purpose is to get clean money, not earn profit. They have so much cash coming in that they might even sell a product or service below cost.

► 8.7.2 Trade-based Money Laundering (TBML)

Financial Action Task Force (FATF) defines Trade Based Money Laundering (TBML) as the process of disguising the proceeds of crime and moving value through the use of trade transactions in an attempt to legitimise their illicit origins. In simpler terms, TBML is the process of transferring/moving money through trade transactions. In practice, this can be achieved through the misrepresentation of the price, quantity or quality of imports or export.

The basic techniques of trade-based money laundering include:

1. **Over-invoicing and 'Under-invoicing' of goods and services:** Money laundering through the over-invoicing and under-invoicing of goods and services, which is one of the oldest methods of fraudulently transferring value across borders, remains a common practice today. The key element of this technique is the misrepresentation of the price of the good or service in order to transfer additional value between the importer and the exporter. Over-invoicing of exports is one of the most common trade-based money laundering techniques used to move money. This reflects the fact that the primary focus of most customs agencies is to stop the import of contraband and ensure that appropriate import duties are collected.
2. **Multiple-invoicing of goods and services:** Another technique used to launder funds involves issuing more than one invoice for the same trade transaction. By invoicing the same good or service more than once, a money launderer or terrorist financier is able to justify multiple payments for the same shipment of goods or delivery of services. Unlike over-invoicing and under-invoicing, it should be noted that there is no need for the exporter or importer to misrepresent the price of the good or service on the commercial invoice.
3. **Over-shipment and under-shipment of goods and services:** In addition to manipulating export and import prices, a money launderer can overstate or understate the quantity of goods being shipped or services being provided. In the extreme case, an exporter may not ship any goods at all, but simply collude with an importer to ensure that all shipping and customs documents associated with this so called 'phantom shipment' are routinely processed. Banks and other financial institutions may unknowingly be involved in the provision of trade financing for these phantom shipments.
4. **Falsely described goods and services:** In addition to manipulating export and import prices, a money launderer can misrepresent the quality or type of a good or service. For example, an exporter may ship a relatively inexpensive good and falsely invoice it as a more expensive item or an entirely different item. This creates a discrepancy between what appears on the shipping and customs documents and what is actually shipped. The use of false descriptions can also be used in the trade in services, such as financial advice, consulting services and market research. Generally, cases of over-invoicing or under-invoicing primarily designed to gain a tax advantage are considered customs fraud as also other manifestations as above.

➤ 8.7.3 Prevention of Money Laundering Act (PMLA)

PMLA is a criminal law which came into force on July 1, 2005. Under the Act, money laundering linked to the predicate scheduled offences is liable for punishment. There are 156 offences in 28 different statutes which are scheduled offences under PMLA. Once the agency concerned with a predicate scheduled offence registers a case, Enforcement Directorate takes up investigations under PMLA to ascertain the proceeds of crime generated from the predicate offence booked by the Law Enforcement Agency. In case a prima-facie case of generation of proceeds of crime and laundering is made out, PMLA provides for seizure and attachment of laundered properties. The action of seizure and attachment is required to be adjudged by the Adjudicating Authority under PMLA.

The persons, both natural and legal entities, who are accused of the offence of money laundering linked to the scheduled offence, can be prosecuted in Special Courts. PMLA provides for rigorous imprisonment of minimum three years which can extend up to seven years and a fine of up to ₹5 lakh on conviction by the Court of persons who have been accused of the offence of money laundering. The conviction can extend up to 10 years if the offence of money laundering is linked to narcotic trafficking. The property attached under PMLA can be confiscated by the Adjudicating Authority after the conviction by the Court of the accused in the trial for scheduled offence.

In terms of PMLA, the tainted proceeds, if found parked overseas, can also be restituted through mutual legal assistance after the collection of such evidence through the process of Letter of Requests with the foreign administration. PMLA also sets out the procedure for reciprocal arrangements with contracting states for seizure, attachment and confiscation of assets found lying overseas. India has signed Mutual Legal Assistance Treaty (MLAT) with 26 countries and by virtue of the provisions of PMLA, Government of India is fully armed with legal measures to get the tainted assets repatriated back to the country on conviction of persons accused of money laundering. Till the conviction, the assets traced overseas can be requested to be seized or frozen by foreign jurisdictions.

Section 12 of PMLA requires financial sector entities (banking companies, financial institutions and intermediaries) to verify the identity of their clients, maintain records and report suspicious/cash transactions (STR/CTR) to FIU-IND. Director, FIU-IND is empowered to conduct inquiry and impose sanctions against financial sector entities for non-compliance with Section 12. Financial Intelligence Unit India (FIU-IND) conducts analysis of information received under PMLA and, in appropriate cases, disseminates information to relevant intelligence/enforcement agencies, which include Central Board of Direct Taxes, Central Board of Excise and Customs, Enforcement Directorate, Narcotics Control Bureau, Central Bureau of Investigation, intelligence agencies and regulators of financial sector.

It may be seen that under both the acts, i.e. FEMA and PMLA, investigation is initiated against specific persons, both natural and legal, and such action is initiated on the basis of specific information.

➤ 8.8 Black Money

There is no uniform or accepted definition of 'black' money. Several terms are in use, such as 'black money', 'black income', 'dirty money', 'black wealth', 'underground wealth', 'black economy', 'parallel economy', 'shadow economy', 'underground' or 'unofficial' economy. If money breaks laws in its origin, movement or use, and is not reported for tax purposes, then it would fall within the meaning of *black money*. The broader meaning would encompass and include money derived from corruption and other illegal ways—to include drug trafficking, counterfeiting currency, smuggling, arms trafficking, etc. It would also include all market based legal production of goods and services that are concealed from public authorities for the following reasons:

- To evade payment of taxes (income tax, excise duty, sales tax, stamp duty, etc);
- To evade payment of other statutory contributions;
- To evade minimum wages, working hours and safety standards, etc.; and
- To evade complying with laws and administrative procedures.

There are three sources of black money—crime, corruption and business. The 'criminal' component of black money would normally include proceeds from a range of activities, including racketeering, trafficking in counterfeit and contraband goods, forgery, securities fraud, embezzlement, sexual exploitation and prostitution, drug money, bank frauds and illegal trade in arms. The 'corruption' component of such money would stem from bribery and theft by those holding public office, such as by grant of business, bribes to alter land use or to regularise unauthorised construction, leakages from government social spending programmes, speed money to circumvent or fast-track procedures, black marketing of price controlled services, etc.

➤ 8.8.1 Recovery of Black Money

There is a legal framework regulated by the Reserve Bank of India for the opening of bank accounts overseas by Indian residents and for outward or inward remission of funds through authorised channels.

The existing legal framework for dealing with illicitly generated funds transferred overseas and measures for the attachment and repatriation of such illegal assets to India and provision for penalties for offenders are:

- Under the Prevention of Money Laundering Act, 2002 (PMLA), money laundered out of predicate scheduled offences can be attached and seized and individuals and other legal entities found to have indulged in money laundering can be prosecuted. PMLA provides for imprisonment of minimum of 3 years (which can be extended up to 7 years) and a fine of up to ₹5 lakh, and the tainted proceeds parked overseas can be recovered through Mutual Legal Assistance Treaties. India has such treaties with 26 countries.

- Under the Foreign Exchange Management Act, 1999 (FEMA), cases relating to contravention in foreign exchange transactions by Indian residents can be adjudicated with penalty up to a maximum of 3 times the amount involved. Further, FEMA empowers the confiscation of the amounts lying abroad and directing their repatriation.
- Under both statutes (FEMA and PMLA), investigation is taken up against specific persons, both natural and legal, and on the basis of specific information.
- Section 105A of the CrPC provides for reciprocal arrangement and procedure for attachment and forfeiture of properties generated from the commission of an offence. Where such properties are situated overseas and treaty arrangements exist between Government of India and the other country, Letter Rogatories can be issued to a court/ authority of the other country for execution of such an order.
- Under the Income Tax Act also, income earned and not disclosed is taxable and also subject to penalty and interest, as well as prosecution. The amount recovered may even exceed the entire undisclosed income.

► 8.8.2 Strategy to Tackle Black Money

The strategy to tackle black money includes:

- Preventing generation of black money
- Discouraging use of black money
- Effective detection of black money
- Effective investigation and adjudication
- Regulated use of large denomination

► 8.9 | Maharashtra Control of Organised Crime Act (MCOCA), 1999

Maharashtra Control of Organised Crime Act, 1999 (MCOCA) is a law enacted by Maharashtra in 1999 to combat organised crime and terrorism. The preamble to MCOCA says that 'the existing legal framework, i.e., the penal and procedural laws and the adjudicatory system, are found to be rather inadequate to curb or control the menace of organised crime. Government has, therefore, decided to enact a special law with stringent and deterrent provisions including, in certain circumstances, power to intercept wire, electronic or oral communication to control the menace of organised crime. Unlike normal law, the confessions before senior police officers are admissible, not only against the accused giving the confession but also against the other accused in the same case. There is no provision for granting anticipatory bail for six months to the accused.

MCOCA puts a bar on soft liberal bail provisions. Under MCOCA, 'not bail but jail' is the controlling principle. Police can file charge sheet within 180 days instead of the 90 days time limit in normal cases. There are measures in MCOCA which ensure protection of witnesses, like keeping the identity and address of the witness secret, and the witness need not be produced in court.

PROBABLE QUESTIONS BASED ON THIS CHAPTER

1. What do you understand by transnational organised crime?
2. What is the interconnection between terrorism and organised crime?
3. What are the main differences between terrorism and organised crime?
4. How is terrorism thriving under the cloak of organised crime in the north-eastern part of India?
5. Write a short note on Money Laundering and Prevention of Money Laundering Act (PMLA).
6. What is black money and how to tackle the menace of black money?