

WHEN VIRTUAL WORLD MEETS THE REAL WORLD: CYBER CRIME INDUCED DRUG TRAFFICKING

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ABSTRACT

Crime has several forms and these thrive mainly on lust for power, thirst for ego and quest for wealth. Crime promises rewards, albeit with huge risks, which lure the person to commit the crime. The things which are constantly changing in the field of crime are its form, complexities, modus operandi etc. In the world of crime Drug Trafficking is arguably the most serious as well as heinous type of organized crime which hampers the economy of the nation and also has its social and political and individual consequences. Things become more complex when no physical transfer of drugs takes place but still the crime of drug trafficking is commenced, this is when the trafficking takes place in the virtual cyber world but actually the crime is being committed in the physical world. This paper is an attempt to get insights into one such type of Cyber induced Drug Trafficking case with the help of the study of a real case, in which the researcher tried to examine the complex modus operandi adopted by the offender in detail. And also the researcher had find out the problems faced by investigation agencies. Methodology adopted was exploratory in nature, extensive study of the case from every possible angle is done and also the interview of the investigation officers and NDPS judges is conducted with the help of Interview Schedule and Interview Guide to get insights into the prevalent problems in our governing legislations which are often misused by the offenders to evade the law process. Some suggestions have also been provided on the preventive strategies which can be adopted.

KEYWORDS: Drug Trafficking, Cyber Crime, Modus Operandi, Investigation Problems

INTRODUCTION

The changing trend in criminal activities has not only gone beyond the imagination but also had crossed all the borders and limits. One term which can describe such type of crimes is transnational crimes. Transnational crime in leman language can be defined as an organized crimes committed out of the bounds of borders. There are many forms of transnational crime, to name few are Drug Trafficking, Human Trafficking, Cyber Crime, International Terrorism etc.

Drug trafficking is a revenue powered endeavor that operates in compliance with traditional principle. Drug trafficking appears to be simple and efficient technique to obtain revenue around the globe, reason being boundary less setup the world is now facing (J. McClom, UNODC).

CLASSIFICATION OF DRUGS

Drugs can be classified into three categories

Narcotic Drugs

The term Narcotics in its medical meaning refers to opium derivatives. The examples of narcotic drugs are

Opium, Morphine, Heroin, Cocaine, Cannabis, Marijuana etc. More forms of narcotic drug include Bhang, Ganja, Charas or Hashish etc.

Psychotropic Substances

They are prescribed drugs, and mostly come in the form of pills. They affect the user's brain activity and mental state. The examples of Psychotropic substances are Methadone, Barbiturates, Lysergic Acid Diethylamide (LSD), Phencyclidine etc.

Pure Illicit Synthetic Drugs

Also known Amphetamine type stimulants (ATS), or club drugs which are mostly abused in clubs, discos, bars etc. The examples of such drugs are Amphetamine, Ecstasy, MDA etc.

Precursor Chemicals

Usually all major narcotic drugs and psychotropic substances are manufactured with the help of chemicals called precursors. The most common examples of precursors are acetic anhydride, ephedrine, potassium permanganate etc.

DRUG TRAFFICKING

Two of most significant problems of today's society are illegal drug trafficking and drug abuse (Bagley, 2001). Approximately 5% of the world's total population use drug at least once a year, which estimates around 200 million people worldwide (UNODC, 2007). Around 16 million users depend upon illegal drugs in their day to day lives (UNODC, 2007).

Drug Trafficking has turned out to be a phenomenon with intensifying number every passing year. This prevalent act has turned out to be a universal concern, creating ominous signs and moral fear topically. Because of its geographical position, India has a strategic place in the trafficking and smuggling of international illegal drugs. At present India is not only treated as a transit country, but has also become a real prospective industry for drug traffickers.

Drug trafficking is perhaps not only a kind of transnational crime but also arguably a type of organized crime, because in order to international trafficking to take place, a proper plan needs to be executed at different hierarchical levels of the traffickers organization.

Impact of Drug Trafficking

Drug trafficking, trading and its use affects the economic and social policies of the country, hampers the system and adversely affect the future of the country. It is a global problem, not just confines to one state but spreading all over the world just like virus, infecting every society. The worse impact of this crime is that it effects the most ambitious and dynamic portion of our society that is the youngsters. The young people coming from weaker section of the society, who initially engage in the transportation but later falls for the addiction, are also the soft victim of such crime. It is not only attracting males but also females from all over the world are getting involved in such business. Thus the economic and social loss of the life of the people and the wealth of the nation is very hard to be estimated.

In recent times, there has been significant development of the communication system, transportation system, and technology, which in turn has worked as a fuel in the fire of drug trafficking cases. This is a business which yields huge amount of illegitimate money, which in turn gives birth to the crime of money laundering, for the placement of the money

generated. The revenue thus generated is at times is used for fulfilling the terrorist activity purposes and even surreptitious dealing in arms and ammunition.

Often the drug trafficking organization results in political nexus. It can be also said that many industrialists are financed by the drug, and also they are able to escape from the process of law that causes big harm to the economic as well as social development of the nation. It is a chain process as significant factors of drug trafficking in developing and underdeveloped countries are lack of employment opportunity, poverty, illiteracy, migration and poor governance. Therefore, it can be said that Drug Trafficking is one such crime which is seriously hampering the socio economic growth and multi dimensional growth of the country.

Emerging Trend in Drug Trafficking

Although Drug Trafficking is in itself a complex crime which is at times difficult to investigate but things become more complex when drug trafficking is done in the cyber world. When illicit smuggling is done with the help of internet and computers, it might be called cyber infused drug trafficking. In these types of crime the order is placed online from any corner of the world, and the money transaction is also done online only. Irony is that the suppliers don't know the receiver and in the end the receiver will receive his drugs from any corner of the world, the whole procedure has number of layers which becomes very difficult for law enforcement agencies to penetrate.

In contrast to regular pharmacy 'Internet Pharmacy' is the extension of e-commerce in the pharmacy industry. Through websites, orders are received; they are downloaded and passed on to the suppliers of drug, who may be sitting in any part of the world. After receiving the orders by the supplier, they the source the drug illegally are orders are being executed through couriers and pass on the tracking number of the individual parcels to the website operators. Payments are received online through credit cards, debit cards etc.

Many people are involved in this business as it is less risky and promise the anonymity to the offender. Most of the times educated youngsters, professional like computer experts, engineer are involved in order to make quick money. The most common drugs sold using this method are anti depressants, anxiety relieving drugs like diazepam, lorazepam, codeine, alprazolam etc. As per NCB annual report (2007), first case of illicit internet pharmacy was busted in 2002 in which around Rs. 40 Crore was seized and 4 persons were arrested, on the similar grounds in a joint operation by NCB and DEA in the year 2005 another internet pharmacy racket was busted in Agra and Jaipur in which 20 people were arrested.

Magnitude of the Problem

Magnitude of the problem in the industrialized and developed countries demonstrates that the harmful influence of Drug Trafficking neither recognizes the border nor the stages of their development. The drug trafficking incidences have been on rise from the past few years and the persons involved have blossomed over times in spite of severe punishment awarded under the law because mostly they are able to escape the law procedures.

According to International Narcotic Control Board report 2010, India holds third position globally in the pharmaceuticals production by volume and is strategically geographically located which makes India an attractive source of precursor chemicals. Narcotic Drugs like Heroin, Cocaine, ATS and Methamphetamine are produced with the help of precursor chemicals. The chemicals are trafficked various region like Pakistan, Iran, Europe from India. Presently Chennai is the mostly used transit point for trafficking of precursor chemicals to South-East Asia.

In the year 2008, in USA more than 1 megaton of pseudoephedrine was seized, which was shipped from India. Also India's illegal drug trades with Mexican Drug organizations have increased from the past 5 years. (International Narcotic Control Board, 2010).

The statistics released by the Narcotics Control Bureau indicate that from the year 2000 onwards shows that despite of large number of arrests the conviction rate is very low in such cases. There can be many reasons behind the conviction rate being so low, it can be related to investigation procedure, lack of coordination among the investigating bodies and states etc.

The statistics from Narcotics Control Bureau indicates that the conviction rate of drug trafficking cases is around 44.22. The percentage of conviction was found to be highest in the year 2008 that is 77.8 % and was found to be lowest in the year 2003 that is 15.59%. Despite of increasing conviction rate, the average conviction is still very low which is not even touching the 50 % of the total.

“The conviction rate in drug offences is rather low. It was 48.8% in 1995. The acquittals mainly result due to non observance of statutory and procedural safeguards viz, the enforcement officer failing to volunteer himself for person search before conducting the personal or house search of the accused or failure in offering to have the accused searched by a gazetted officer or a magistrate. It is being contemplated to amend the act to plug the procedural loopholes and to calibrate punishments by grouping the offences”, Madan Lal Sharma, Joint Director, CBI.

In the last three decades drug traffickers have moved from domestic based enterprises into large scale criminal organization. This is due to the fact that drug trade is one of the world's largest profit centers. According to UNESCO's monthly publication source, the drug industry turns over 400 billion annually.

REVIEW OF LITERATURE

Today, drug trade represents a \$300 billion business every year which is equivalent to 60,000 crores of rupees. This is more than the GNP of many countries (Mehta, Asha “Prevention of Drug Abuse and Alcoholism” 1990). To a large extent Drug Trafficking is dominated by organized crime groups whose sole motive is to gain financial profit and power. (Stamler, 1984). A research done by United Nation Social Defence Research Institute in 1988 finds that Asia and Africa are somewhat similar and are mutually working together in the manufacturing and trafficking of the Drugs. The resemblance can be found in their socioeconomics attributes. Both of these continental areas, though having assorted cultures with {respect to history of drug use, protect weather conditions and biological belt quite appropriate for flourishing opium poppy, cannabis, khat, and others, utilized for usage} by localized populations and symbolizing things illegitimate trade and smuggling into wealthier areas of the globe. (Cotic, 1988).

Felonious associations seem to be strongly associated in the cocaine trade followed by trade in opiates. Drug Trafficking activities of such group were also centered on Cocaine, Heroin, Cannabis, Methamphetamine and Amphetamine. The statement was based on the fact that how Drug Trafficking is still the key business activity for more than half of the organized criminal group. (Pietschmann, UNODC). Tribulations linked with illegitimate drugs are also linked with politics, economics and social life, it is not only confined to people's wellbeing (Bagley, 2001; Madi, 2003; Makarenko, 2002; Chris, 2001). According to Cakir, 2002, the worldwide illegitimate drug industry's profit ranges from \$13 billion to \$500 billion.

The huge amounts of money gained by the illegal trafficking of drugs have lured organized criminals into this souk (Chris, 2001). Drug traffickers adopt numerous techniques to protect their market, which includes terrorism, violence & fraud (Curtis & Karacan, 2002).

Narayanan & Broadhurst (2008) in their study identifies the common problem encountered by the law enforcement agencies associated with the changing form of transnational crime. The author identifies that the major problems arising because of the changing patterns are weak law enforcement, cultural diversity and lack of common strategies in respect to illicit markets and also pointed out that the lack of coordination across the borders is also a major problem that come across while dealing with transnational crimes.

While talking about society, the drug business is very much related with judicial, political, and socioeconomic unsteadiness in community (Fenepetovm 2004; Makarenko, 2002; Madi, 2003; UNODC, 2007). Fenepetov, 2004 and Madi, 2003 argues that in countries where drug crimes are rampant, the organized gangs have add on advantage on political and economic dimensions that in a way hampers the government's aptitude to brawl corruption and crime.

OBJECTIVE OF THE STUDY

The broad objectives of the paper are:

- To examine the modus operandi of real cyber induced drug trafficking case.
- To study the problem and constraints that comes across while investigating these cases.
- To suggest some preventive measures that can be taken in order to control drug trafficking.

RESEARCH METHODOLOGY

Research Design

The research design adopted for this study is Exploratory in nature as the problem taken up has not been that much investigated so far. Thus the exploratory research design shall be useful in bringing out new facts and finding related to the problem.

Sampling Design

Purposive sampling and case study method is used for conducting the study.

10 NDPS Judges, 15 Investigating Officers, 2 UNODC personnel and 1 Forensic Expert were interviewed to get insights into the problem and constraints that come across while dealing with complex cases of Drug Trafficking and also one extensive case study of cyber induced drug trafficking is done to know about the recent emerging trend in Drug Trafficking by investigating its modus operandi.

Source of Data Collection

Primary Source: The primary data will be collected with the help of semi structured interview schedule, Interview Guide, Case studies, observation, documents etc.

Secondary Source: The secondary data will be sourced from books authored by Indians as well as foreign writers, national and international journals, previous studies, articles and the internet.

Data Analysis

For analyzing the data Triangulation approach will be used, which points to the value of utilizing multiple data collection techniques, such as a combination of interviews, government data, & observation to explore a research question.

CASE STUDY

Offender's Profile

Sanjay Kedia, 31 years, a young male who completed his Bachelor of Technology degree from one of the eminent institute of the nation that is Indian Institute of Technology, Delhi after that completed his masters in Information Technology from USA.

Offence

Sanjay Kedia is said to be king pin of a big organized drug trafficking over internet racket having a US based partner Steven Mahana who owned 49% of stakes in Kedia's organization. He used to do illegal trading in banned/ controlled drugs by supplying those drugs in various countries like USA, Canada, and Sweden etc. thereby earning around US \$ 5000000 per month.

Modus Operandi

Offender alleged to have designed many online pharmaceuticals, medicine delivery companies like Xpense Technology Pvt Ltd, deliveredmedicine.com, truevalurpharmacy.com etc. They were front end marketing websites like brotherpharmacy.com and backend websites like lessRx.com. Backend websites used to process the orders of drugs through frontend websites (there were around 7-8 websites which were active on the same IP address). Person (drug addict) sitting anywhere, at any corner in the world can access the websites and place the order of the required drugs. The drugs mainly trafficked were Phentermine and Butalbital to the customers all over the world. Phentermine is a prescribed drug used as an appetite suppressant. Chemically, it is an amphetamine and a psychoactive substance, it acts as a stimulant for the central nervous system and might lead to hallucinations. (Phentermine and Butalbital are both mentioned in the schedule 1 of NDPS Act, 1985).

When a customer (drug addicts) places the order a form used to appear on the screen, which was needed to be filled by the customer and after that it was submitted. Orders were also placed with the help of toll free numbers. Customers were promised complete anonymity and large drug quantity. The server in the USA transfers the data to the server in New Delhi, and that data was pulled from Delhi server to Kolkata server through file transfers protocol. The payment was made through an internet gateway which is designed by Sanjay Kedia called PAYNOVA with the help of credit cards. PAYNOVA was sold to some person in Switzerland and is still active for all the dicey transactions on the internet.

After the payment is received, labels were created, having the registration number and stamp of the doctor who is geographically nearest to the customer. The label thus generated appears to be authentic. As per NCB officials a database of doctors was built by Sanjay Kedia which included doctors' registration numbers and the list of the drugs which they used to prescribe. The prescription generated had the doctors' forged signature, registration number and the patient's basic details. Thus, the labels were send directly to the pharmacy located nearest to the customer and the pharmacist believing it to be genuine will supply the drugs to the customer, apparently he made over 2 crore a month, through 29 websites.



Source: Internet

Figure 1

At the time of trial the main problem which arises was that, although the crime committed by the offender was Drug Trafficking and was booked under 24, 29 & 30 of NDPS Act 1985, but Kedia lawyers argued that Sanjay Kedia has nothing to do with this online trafficking business and has been falsely implicated. They also said that their software and websites are being misused by some third party finally they took the plea under section 79 of IT Act, 2000 which states that “Intermediaries, like Google, Yahoo, Facebook etc are not liable for third party information if they observe due diligence while discharging their duties”, under this section the offender tried to save himself by arguing that he just provided the IT platform which was misused for the trafficking of drugs.

Challenge for Investigating Agencies (As Discussed During Interviews)

- Use of encrypted data to establish and maintain their criminal network across the international borders.
- Internet was used as a medium to buy and sell NDPS Drugs.
- As such there was no physical movement of drugs from one place to another.
- There was no physical recovery of drugs (Under NDPS Act 1985 most of the time punishment depends upon the quantity seized).
- Clashes between different sections of different act was observed (NDPS Act 1985 & IT Act 2000).
- Internet Service Providers didn't offer much support in the due course of investigation.

FINDINGS AND DISCUSSIONS

Problem in our Governing Legislations

Despite of the fact that we have one of most stringent act to handle the Drug Trafficking cases that is NDPS, 1985, still the conviction rate is just around 44% which means that around 66% of the accused are taking advantages of the loop holes and lacunas that our governing act has.

Interview Findings

- **Section 9A, 25A & 54 - Reward**

Under this section the investigation officers are rewarded if some seizure is done by them (depending upon the

case and the quantity) but these sections doesn't take into the account the precursor chemicals used for the manufacturing of the drugs, in a way it gives such impression that possession of precursor chemical is not a crime at all.

- **Section 27 - Commercial Quantity/Small Quantity**

This section talks about the quantity of drug that can be possessed for the personal medical consumption and categorize the drugs in the small and commercial quantity. As per NDPS notification 5 gram quantity of drug is acceptable for the personal consumption for medical purposes, but at times 5gram quantity is too large for certain drugs which give encouragement for drug trafficking and drug abuse and also in case of few drugs 50 grams quantity is considered as small quantity and above it, it is considered as commercial quantity, which at times creates confusion for the criminal justice functionaries, because if the quantity is exact 50 grams, then it becomes difficult to classify as small or commercial quantity.

- **Section 50 - Presence of Gazetted Officer**

This section makes presence of Gazatted Officer mandatory during investigation & recovery but it becomes practically quite difficult for the investigating officers to have Gazatted Officer present during the search and recovery, and it is almost impossible to have a Gazatted Officer present at time of chance recovery, and also this section give impression that it is applicable only for the search of the person not for the luggage which at times becomes a weak point on the part of investigating officers.

- **Section 52A - Pretrial Disposal**

This section talks about the pre trial disposal of the materials, which is not applicable to vehicles as a result it becomes the responsibility of the investigating officer to take care of the vehicle which is practically not possible.

- **Section 100 - Police Officers to Arrange Certain Witnesses**

Under this section the police officers/Investigating Officers are required to arrange for the witnesses in the court. But because of lack of public cooperation it becomes quite difficult for them to arrange witnesses as nobody comes up on their own.

- At times there is delay in sending samples for the forensic examination.

The drug at times changes its composition with due course of time.

Prevention Strategies

- India is a signatory to many international conventions but still the problem lies in the implementation area. Therefore, the conventions and the laws should be implied strictly.
- There should be a formation of specialized unit for cyber patrol.
- Internet service providers should provide coordination of to obtain loop holes and mirror image of the servers of forensic examination of transactions.
- There should be surveillance teams to regularly visit the foreign post offices and the courier hubs.
- Tracking of the money laundering channels from foreign countries should be done on regular basis.

- Short duration educational and sensitization program should be organized for officers.
- There is lack of awareness among citizen regarding criminal nature; therefore there should be campaign to educate the public.
- Capsule training should be provided to the officers.
- Surveillance teams should regularly visit the Foreign post office and courier hubs.

CONCLUSIONS

A Haitian proverb says “the fish trust the water and it is in the water the fish is cooked” the efforts then must be sensitive to the environment, analyze logically and bring to bear creative imagination so that we are ahead of the criminals. Drug trafficking now days are the creations of professionals organized criminals and also the educated personals. Most of the time they are committed through unknown routes, computers etc.

Today’s drug trafficking is most serious in dimensions and more sophisticated in its modus operandi. Usually, it is less expensive to prevent crime than to detect it. Crime prevention should take precedence over detection. Internal controls alone don’t prevent such crimes, prevention measures include adequate tools, proper training, and environment that values honesty.

It could be said that the crime like drug trafficking, drug abuse have been committed in the past, being committed in the present and will be committed in the future. It is difficult to foresee a situation in which there are no such crimes, as long as human greed persists, such crime will continue to haunt the Nation. As long as opportunities are available to make easy money, the creative brains would make attempts to cash on it. Crimes on the net need readily different enforcement solution, effective law for tackling them. What is needed is a constant evaluation of systems/procedures for their adequacy and ruthless adherence to it, supported by deterrent punishment for lapses/negligence.

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