

MONEY LAUNDERING IN INDIA

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ABSTRACT

As a concept Money laundering has gained lot of importance in the last few years as there was a sudden spike in terrorism. So even though history has seen so many methods of money laundering, modern money laundering mechanisms and models leave experts perplexed by the rapid movement of money across different networks and channels, along with the ability to cover up the source of this money using the advanced technology created by the 21st. Money laundering corresponds the concealing of true ownership of the land as well as money and rendering the foundation or the origin of money seeming to be legitimate. In this article the author discusses the process of how money laundering takes place and also the various techniques used. It also focuses on various initiatives taken for the prevention at national as well as international level. It also looks at the impact money laundering has on the society and its financial implications.

INTRODUCTION

Consequently, the practice of turning fraudulent criminal proceeds into legitimate cash/money and the illicit nature of the money is concealed. In simple terms, it can well be described as a cash or property display that is initiated through one channel to seem as instigated from yet another channel. It covers original ownership of property and making the money made out of criminal activities look legal. INTERPOL's defined as: "any act or attempted act to conceal or disguise the identity of illegally obtained proceeds so that they appear to have originated from legitimate sources."ⁱAs a result, the criminals are attempting to disguise the cradle of cash earned from illegal operations, to appear like it was obtained from legal sources on the street, or else they would not have the option of using money, as it will connect them with the crime, and the police enforcement will hang on to it. The increase in the global terrorism, illegal arms sales, financial crimes, prostitution rings all these activities generate lump sum number of gains and creates an incentive to make the illegal gains look legal through various methods of money laundering. In the era of globalisation and increase in trade and development of technology the crimes and frauds over the internet and E-banking has given rise to the activities of money laundering. when these criminal actions create significant profits, the individual or group of individuals engaged with such exercises, course the assets and money to safe paradise by camouflaging their cradles, shifting the structure or shifting the assets and money to a spot where they are less inclined to stand out. There has been tremendous impact on development due to money laundering, such as it has increased the crime rate in the country, increased the corruptions and frauds, also lead to laundering of money activities technique, impacted the control systems adequacy, damaged the integrity and reputation of banks and financial institutions which also impacted the foreign direct investment in the country. The creditability and positive image of the banks is tampered and people loses faith in the financial system of the country. Through money laundering large economic sectors can be acquired by investing and by illegally funding the officials of the government. Hence it is said money laundered funds are inception of criminal activities underlying and therefore there must be stringent actions for its prevention in the country.

In India there was sudden increase in the activities of embezzlement of funds through the hawala system and also the crimes were at an increasing pace due to lack of stringent regulatory

frameworks to combat these practices. “Therefore, a bill was passed for the prevention of money laundering activities which was passed by both the houses and received the president’s assent”ⁱⁱ and the act called “Prevention of Money Laundering Act 2002” came into force with the objective to discourage the acts of money laundering as well as to lay down rules and procedures or seizure of any property arising from and engaged in money laundering operations and related matters.

“The Act consists of 10 chapters containing 75 sections and 1 schedule divided in 5 parts”ⁱⁱⁱ. Various aspects covered under the act are, Money laundering offence and its punishments, attachment adjudication and confiscation, Banking companies and financial institutions obligations, Enforcement authorities, Summons and seizures it also deals with Anti money laundering standards issued which are to be followed by RBI.

MONEY LAUNDERING PROCESS

The Process is complex and multi layered cycle of utilizing illicitly acquired cash and concealing its causes to cause the source to appear to be true. While this course appears to be more obvious, as a general rule it comprises of three essential steps of covering which makes money laundering conceivable. The imperative for this system is obtaining cash from criminal operations or benefits emerging from sorted out crimes over some stretch of time. From that point the need to launder such cash surfaces.

1) The **first stage** of the process is Placement. Money earned through illegally activities are usually large in amount depending upon the intensity of the crime and usually the funds are in cash form. In this stage the main purpose is to take the money away from its original source so that it cannot be traced by the law officials. In this process the launderer brings his illegally earned money into financial system by dividing the large amount of money into smaller amounts so that it becomes less suspicious and then deposit the money with the bank through a bank account or by using various financial instruments. Banks and financial institution play a crucial role during this stage as they are the basic routes through which this occurs. Therefore, banks needs to be vigilant while dealing with the customer transactions.

2) The **second stage** is Layering. Once the money is entered into the financial institution, this stage begins. The launderer through various series of dialogues and movement of funds tries to distance the money and the funds from its source. The most common method is channelizing the funds through buying and selling of the investment instruments so that the original money which was used to do this buying cannot be located by the officials. Launderer also uses various bank accounts through which it wires the money across the globe.

3) The **third stage** of money laundering is Integration. At this step the money is again entered in the legitimate environment. The Funds obtained from illegal sources here enter into the legal world leaving behind its illegal origin. As the money shall be recirculated in the economy the integration is done through different banking systems. Launderer performs the integration process by investing into real estate sector, deluxe and expensive assets, business ventures and film industry as these methods are easy to integrate the illegal money with the white money.

TECHNIQUES USED FOR MONEY LAUNDERING:

- 1) ***Structuring Deposits:*** It's a method which is also referred as Smurfing. The placement is done in this method by breaking the cash in smaller amounts of deposits, so that the doubt of money laundering is defeated and also the reporting guidelines under anti money laundering requirements are avoided.
- 2) ***By using Shell Companies:*** These are the fake companies created for laundering activities. These companies are called the front companies which take the payment from the launderer as a consideration for goods which is not actually sold and takes this illegal money into the company formed and mixes it with the legitimate money so that the origin of illegal money vanishes due to the mixing.
- 3) ***“Cheques through third party”:*** Counter checks or financier's drafts on various foundations are used and cleared through different outsider records. Outsider cheques and secured cheques are regularly bought utilizing criminal proceeds. “Since these are

negotiable in many countries, the nexus with the source money is difficult to establish.”^{iv}

- 4) ***Smuggling of cash in Bulk***: “This involves physically smuggling cash to another jurisdiction and depositing it in a financial institution, such as an offshore bank, with greater bank secrecy or less rigorous money laundering enforcement^v.”

GLOBAL INITIATIVES FOR PREVENTION OF MONEY LAUNDERING

As laundering of money is a global phenomenon, international support is of basic significance in the battle against this hazard”. Various activities have been taken to manage the issue at the global level. The significant peaceful accords tending to illegal laundering incorporate the “United Nations Convention against Illicit Dealing with Drugs and Psychotropic Substances”, prominently identified as “Vienna Convention” and “Council of Europe Convention on Laundering”. Part of monetary establishments in forestalling and identifying illegal laundering of money has likewise been the subject of professions by the Advisory group of Basle on Finance Regulation Superintendent Practices, the “European Union and the Global Organization of Securities Commissions.”

1) The Vienna Convention:

Its principal significant activity during anticipation of laundering activities which was held in “December 1988”. Its evidence formed the basis for efforts such that it could curb the practices of laundering through considering part States to condemn the money laundering of the drug trade. This therefore encourages worldwide cooperation in the exams and allows the elimination of money laundering between the Member States concerned. “The convention also establishes the principle that domestic bank secrecy provisions should not interfere with international criminal investigations”^{vi}.

2) *Basle Committee's Statement of Principles*

"In December 1988, the Basel Committee on Banking Legislation and Supervisory Procedures released a statement of principles aimed at advising the financial industry to follow a specific situation in order to ensure that banks are not used to cover up or wash subsidies for fraud." The Declaration of Values is not limited to sedate related smuggling operations, but applies to all aspects of the laundry through the financial system, such as deposits, moves and, in addition, disguising money from illegal activities such as robbery, psychological oppression, extortion or medicine. It aims to refuse the financial system of those involved in money laundering practices with the use of four basic principles, in general, by defining the client, conformity with the statute, participation mostly with law enforcement authorities and accordance with the declaration.

3) *The Financial Action Task Force (FATF)*

"The FATF is an inter-governmental body established at the G7 summit at Paris in 1989 with the objective to set standards and promote effective implementation of legal, regulatory and operational measures to combat money laundering and terrorist financing and other related threats to the integrity of the international financial system."^{vii} The FATF sets up progression of guidelines which are considered to be global principles for tackling the problem of laundering and funding of illicit coercion. However, they structure the rationale for a concerted solution to all these risks to such honesty of its monetary organization and support to maintain fair field for playing. In April 1990, it submitted a study containing a series of Forty Guidelines, which were proposed to complete the policy to tackle laundering. In October 2001, eight unique recommendations were sent to the Commission to resolve the problem of fear monger funding. The 10th Special Recommendation during October 2004 was released to further reinforce the negotiated global principles for countering illicit money laundering and psychological terrorist funding.

4) *United Nations Global Programme against Money Laundering*

GPML was established in 1997 in order to re-establish the adequacy of its global operation of illicit money laundering through far-reaching specialist government involvement. The software

encompasses three exercise territories, which offer various intentions to states and foundations in their efforts to fight money laundering in a viable manner:

1. Specialized collaboration is the fundamental undertaking of the Program. It envelops exercises of making mindfulness, foundation building and preparing.
2. The exploration and investigation seek to provide States with crucial knowledge to better understand the wonders of illicit money laundering and to enable the global network to build more efficient and effective counter-measure mechanisms.
3. The duty to promote the creation of financial audit administrations in order to strengthen the general adequacy of the regulatory authorisation initiatives.

5) The Council of Europe Convention

This display constructs an old-style money laundering planning in 1990. It points out the usual definition of money laundering and routine efforts to handle it. The Display lays out the criteria for the worldwide presence of the Groups, which can also include States just outside of the European council. One of the reasons behind such a show is to promote worldwide cooperation as respectful of informative support, search and seize as well as seizure of returns from a wide variety of remorse, in particular real crimes, for example, drug offences, weapons management, fear of monger offenses and so on, and multiple offenses that create tremendous benefits.

PREVENTION OF MONEY LAUNDERING – INDIAN INITIATIVES

Before enacting “Prevention of Money Laundering Act 2002” major enactments which addressed the issues of money laundering are:

- The Income Tax Act, 1961
- The Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (COFEPOSA)
- The Smugglers and Foreign Exchange Manipulators Act, 1976 (SAFEMA)
- The Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPSA)

- The Benami Transactions (Prohibition) Act, 1988
- The Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988
- The Foreign Exchange Management Act, 2000, (FEMA)

Throughout the "second half of the twentieth century", by the expanding danger with respect to current and modern types of multinational crime, concern has emerged over the absence of powerful national regulations to battle coordinated wrongdoing and the washing of its returns. However, India has had different laws to manage carrying, opiates, unfamiliar exchange infringement, unfamiliar trade controls and so forth, and furthermore exceptional lawful arrangements for preventive detainment and relinquishment of property and so forth, which were ordered throughout around vague time setting to manage such genuine violations. "However, the provisions under one of the Indian laws, namely, the Foreign Exchange Regulation Act, 1973 (FERA) were considered to be 'draconian' and it was repealed making foreign exchange violations civil offences under a new law called the Foreign Exchange Management Act (FEMA)."^{viii}

ANTI MONEY LAUNDERING STANDARDS

RBI released Master Circular on Know Your Customer (KYC) Standards/Anti-Money Laundering (AML) Standards/Obligation of Banks under the Prevention of Money Laundering Act, 2002. Financial firms were instructed to follow a certain recognizable customer proof protocol for opening accounts and observing transactions of a suspicious sort in order to send them to an appropriate venue. These KYC regulations have been re-examined with reference to the Recommendations of the Financial Action Task Force (FATF) on Anti-Money Laundering (AML) and Countering the financing of Terrorism (CFT). Financial institutions have also been advised to ensure that the legitimate strategy process for KYC and AML programs, with the approval of the Board, is detailed and applied. The goal of the KYC Standards/AML Factors Guidelines is to prevent banks from being used, purposely or unintentionally, by criminal elements for t-laundering or alleged marginalized party financing

activities. In addition, KYC strategies help banks to understand better and recognize their customers and their financial activities, thus helping them to deal strategically with their risks.

BANK OBLIGATIONS WITH REGARD TO MONEY LAUNDERING

Banking institutions should realize that the data collected by the client for the purpose of starting an account with a bank is to be regarded as hidden and that their subtleties do not have to be disclosed for strategic or similar purposes. Banks should, therefore, make sure that the information sought by the client is appropriate to the apparent danger, does not interfere, and is consistent with the rules laid down in that sense. Any other data from the client should be searched individually with the consent of the client and after starting the bank account. Banks should ensure that any settlement of assets by request or by mail or by any other means and issue of protected checks for the calculation of Rupees 50,000 or more is impacted by a fee on the customer's record or even against checks but not against a cash instalment. Banks should promise that Foreign Contribution (Regulation) Act, 1976 has been amended every now and then to some location appropriate.

KNOW YOUR CUSTOMER POLICY (KYC)

Financial institutions should detail their KYC strategies in accordance with the following four main components: Customer Acceptance Policy; Customer Identification Procedures; Monitoring of Transactions; and Risk Management. In addition, the definition of "customer" under the KYC guidelines has been maintained thoroughly in control in order to enable banks to track the activities of laundering at its roots. "This definition includes personal accountholders, beneficial owners, beneficiaries to transactions that professional intermediaries such as stock exchanges conduct and any such persons who conduct high-risk transactions that can hurt the reputation of the bank."^{ix}. These KYC requirements assist in the detection of laundering operations, making it more difficult to conceal the wellspring of illegally made money.

IMPACT OF MONEY LAUNDERING ON ECONOMIC DEVELOPMENT

1. Economies with developing or creating monetary focuses, however lacking controls are especially weak versus the money market which is developed with severe anti money laundering guidelines.
2. Money launderers will usually transfer their enterprises to nations and monetary systems with inadequate or incompetent counter-measures.
3. It would not be right to propose that the development of markets should not be so specific to the sources of resources on which they depend. Deferring conduct is dangerous in any situation. The more it is acknowledged, the more it will become resolved in organized corruption.
4. There is a pivotal effect on "foreign direct investment" as the nation's market and monetary fields are seen to be reliant on the monitoring and impact of organized misconduct.

NEXUS BETWEEN MONEY LAUNDERING AND SOCIETY AT LARGE

If the prospective political as well as social impact by the laundering activities it kept untapped or else is not dealt seriously and efficiently it will cause a serious damage to the society at large. Financial institutions can be infiltrated by the organised crimes as it can further acquire a large control over different sectors of the economy by way of making numerous investments and will lead to offering bribe to the authorities in the public as well as government authorities. "The social and ethical fabric of the society will be jeopardized threatening the democratic institutions of society. The criminal influence will be more hazardous in countries in transition. The government will be rendered ineffective. Money laundering enables criminal activity to continue."^x Eventually, this laundered cash streams into worldwide monetary frameworks where it could subvert public economies and monetary standards. Laundering of money activities is consequently a law requirement issue as well as represents a genuine public and global security danger too. Decreasing assessment incomes through underground economies,

contending unreasonably with genuine organizations, harming monetary frameworks, and disturbing financial advancement will be inescapable. Battling cash launderers not just lessens monetary wrongdoing; it likewise denies lawbreakers and psychological oppressors of the way to carry out other genuine violations.

FINANCIAL IMPACTS OF MONEY LAUNDERING

1. Credibility of the financial sector as well as its ethical and professional principles are being compromised.
2. The Foundation is taken into complex complicity with offenders and turns out to be central to the crime network itself, such banks which are known as to be the Bank of Criminals and Crooks International, which is the Bank of Credit and Commerce International (BCCI)
3. IMF cautioned of unexplained shifts in cash interest, the threats to bank suitability and the diluting of legal currency exchanges.
4. The nation-wide increase in capital and currency rates will become erratic due to unforeseen cross-line asset developments.

CONCLUSION

Laundering is a real threat to the financial system, because everything is comparable, and it leads to an end to the influence and personality of the nation. Fighting laundering operations is expected to be a major catalyst, at both the public and global levels, due to the scale that money laundering activities have begun to anticipate, especially with regard to terrorist funding activities. The negative monetary effect of laundering money on financial advancement is difficult to assess, just as the extent of money laundering activity itself is difficult to assess. However, it is clear from available facts that encouraging money laundering to proceed unquestioned is obviously not an optimal monetary turn of events policy, as it hurts monetary institutions that are important to financial growth, decreases viability in the real economy by

rerouting assets and enabling corruption and debasement, and so on we have to recognize that money laundering is a matter for the public authorities of the country as well as for the people at general. Awareness of public is important, as the masses themselves do not realize the challenge. The schooling structure should have the option of creating the value structures that our generation of people yet to arrive is not engaged in this measure. There should be a vigilant framework and our legal executive needs to rebuff these crooks early to send a message that money laundering is not relevant to democratic society.

Modern banking regulation needs to be tailored to make way for such complicated business transactions that can be made possible as a result of this increase Globally in technology and privacy rules. India has sought to do the same through its PMLA and its Modifications. However, the application of the laws remains a concern. In comparison, the denial of fairness Progress in this field of law has not generate a positive precedent. However, the method of the Indian legislature would rejoice the introduction of principle of "one size does not fit all". This, however, is complemented by the underlying concepts of openness in Money laundering legislation and rules in India as enforced by the RBI, SEBI and the Central Government. We would then take this further by enforcing stricter sanctions and greater penalties on money laundering activities, as well as closing regulatory and compliance gaps in the current policy system.

ENDNOTES

ⁱ “ Interpol General Secretariat Assembly in 1995 <http://www.interpol.int/Crime-areas/Financial-crime/Moneylaundering> accessed 6th October 2020”

ⁱⁱ “ Praveen Kumar Money Laundering in India: Concepts, Effects and Legislation, International Journal of Research in Humanities & Soc. Sciences Vol. 3, Issue: 7, July:2015”

^{iv}“ Kumar S. Vijay. (2009) “Controlling Money Laundering in India –Problems and Perspectives” Mumbai, INDIA pg. 11”

^v “National Money Laundering Threat Assessment" (PDF). December 2005. p. 33 <http://www.dea.gov/pubs/pressrel/011106.pdf> (accessed on 14 May 2015)”

^{vi} “United Nations Convention Against Illicit Traffic in Narcotic Drugs And Psychotropic Substances, 1988”

^{vii} “Kathryn L. Gardner, Fighting Terrorism the FATF Way, Lynne Rienner Publishers, Vol. 13, No. 3 (July–Sept. 2007), pp. 325-345.”

^{viii} “C. Satapathy, Money Laundering: New Moves to Combat Terrorism, Economic and Political Weekly, Vol. 38, No. 7 (Feb. 15-21, 2003), pp. 599-602.”

^{ix} “Enakshi Jha, MONEY LAUNDERING: THE DIRTY CRIME ERODING THE BANKING SYSTEM, HNLU STUDENT BAR JOURNAL, November, 2016 ISSUE I, VOLUME II”

^x “Praveen Kumar Money Laundering in India: Concepts, Effects and Legislation, International Journal of Research in Humanities & Soc. Sciences Vol. 3, Issue: 7, July: 2015”

