

AN ANALYSIS ON MONEY LAUNDERING IN INDIA

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Abstract

Money Laundering is one of the most unscrupulous acts which is practiced at a global level and has become one of the biggest concerns for various developing and developed countries. The scheme of money laundering generally involves transferring money through various means of business and investment to conceal its illicit origin. The act of Money Laundering is practiced by *Money launderers*; they can not only be a specific criminal or a mobster but can be a person from daily life. Any person who assists a criminal to disguise the illicit proceeds can be considered as a *Money Launderer*. This means a lawyer, an accountant, or a banker can be a launderer if he permits the criminal to utilize their place of business to launder their cash, through the purchased property with their washed cash, or recommends them a loophole to assist their laundering will be considered as a *Money Launderer*. Money Laundering promotes crime by allowing criminals to disguise and then legitimize the illegal proceeds, which are earned through illicit activities. These illegal proceeds permit various criminals all around the world to finance their other criminal activities which results in accusations of more criminally accumulated proceeds, which in return encourages corruption and jeopardizes the integrity of the economic institution of the country.

This paper deals with the idea and concept of money laundering, the people who are involved in laundering it, and the various stages and procedures involved in conducting the actual act, then it deals with its impact - socially, economically, and politically, and also discusses various *Anti Money Laundering* initiatives which have been adopted both nationally and internationally over the period. This paper emphasizes on the *Prevention of Money Laundering Act of 2002* and discusses its salient features and refers to various case studies from the recent as well as from the past years. The paper has also attempted to identify various loopholes that blockade law enforcement and has provided with suggestive measures regarding it.

KEYWORDS: Money Laundering, Money Launderers, Anti-Money Laundering, Prevention of Money Laundering Act, 2002, Illicit Proceeds, Disguise, Legitimize:

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1.1 INTRODUCTION

The Concept of Money Laundering can be defined as an act that intends to legitimize the cash which is accumulated from the commission of a crime. Its principle is to reduce and eliminate the risk of being caught and confiscation of their illicit proceeds by the enforcement. It is a way through which the illegal origin of the money can be disguised to keep it safe from law enforcement. The term *Money Laundering* was birthed from practice in the 1920s by various Chicago mobsters who laundered their criminal proceeds through Bets, Rackets, and Liquors.

The United States Customs Service has defined money laundering as the procedure in which proceeds which are believed to have been accumulated from criminal offenses has been transferred, converted, and mixed with legitimate cash or funds to disguise the source and nature of money.

Commonly Money is laundered by various embezzlers, corrupt politicians, traffickers, mobsters, and public officials. Different criminal activities such as drug trafficking, illegal weapon, and arms sale, deals with a huge amount of cash because of which the people running such organizations need to find ways to legitimize their cash which they earn to eliminate suspicion and maintain a safe distance from authorities. The main objective of criminalizing money laundering is to eliminate the element of *profit*. The authorities and financial investigative units understand that the criminal offenses which are committed like smuggling and trafficking generate an unrealistic amount of profit and if they can eliminate that

element of high returns then they would be able to prevent the crime itself.

1.2 THE PROCESS OF LAUNDERING THE MONEY

To interpret the methodology of laundering money in the way it is carried out today at a global scale, then one needs to acknowledge money as a commodity.¹ The act of laundering money cannot be summed into a singular act but is the kind of operation which is achieved in three basic steps; the very first step of the process is depositing the cash which is to be laundered into the financial system. This can be achieved in various ways such as changing its denominations and depositing it in different bank accounts. The second step would be concealing its criminal origin by various cash withdrawals, wire transfers, and splitting and merging it between different bank accounts, and the final step would be creating a believable legal origin of the cash accumulated which can be achieved by creating different kinds of fictitious financial statements, ownership of assets, etc.

The techniques which are used by the launderers are advancing each day with the use of new electronics and technologies, and their financial transactions are becoming much more sophisticated and complicated to detect, which has exponentially increased their rate of conversion and assets.

1.2.1 THE STAGES

The 3 stages of Money Laundering are as follows:

1. Placement

¹ Praveen Kumar [Subject: Finance] International Journal of Research in Humanities & Soc.Sciences [I.F. = 0.352] Vol. 3, Issue: 7, July:2015 ISSN:(P) 2347-5404 ISSN:(O)2320 771X

The very first stage of the entire process is disposing of the accumulated cash by introducing them into the financial system which can be accomplished by depositing the cash into various numbers of domestic banks and different kinds of formal and informal financial establishments.

The reason behind this stage is criminals possessing the cash can put them in a vulnerable position which can directly link them to the laundering, therefore the most viable option for them is to smuggle the cash into different countries through various bank accounts and transforming it into different assets to make it difficult to detect the cash by the authorities.

2. Layering

The second stage of laundering money can be dubbed as *Layering*. This is the step in which the illegal or the illicit source of the accumulated cash is compounded in various layers of transactions which supposedly covers up trails of the cleaning (laundering of the cash) and keeps the origin of the dirty money anonymous. This process helps to keep the source of the money and the criminal activities related to it distant from the investigative authorities. These monies are often invested in various foreign accounts, bonds, and stocks and transferred through a wire to various countries to keep investigation off their trails.

3. Integration

This is the third and the final stage in the process of money laundering. This is the step in which the washed money is re-injected into the economy legally. The process of Integration will be considered successful only when the launderer can make it appear that money that is being introduced

into the economy, is legally earned. It is to be noted that not all money laundering transactions follow these three stages in this given order mentioned above. All three stages may take place separately at different phases of the laundering process or may occur all at once depending on the techniques used by the launderer.

1.3 TECHNIQUES OF LAUNDERING CASH

Various criminal syndicates have constructed a sequence of highly exclusive techniques to eliminate the taint from the cash and to keep it out of the reach of law enforcement. Given the numerous courses through which the cash is laundered these days, there must be a potent procedure to launder the money which would essentially cover all the aspects of the financial systems.

Some essential businesses have a naturally high level of cash which is ideal for laundering some dirty money. Some of those ideal businesses are Restaurants, Bars, Nightclubs, Casinos, Art and Antique dealerships, Car dealerships, Estate agents, etc.

1.4 IMPACT OF MONEY LAUNDERING

The process of money laundering not only damages the financial sector of the economy but also has a long-lasting impact on society and its political institutions. In an attempt to launder money to cheat the financial institutions, money laundering also gives rise to various criminal activities like corruption, fraud, identity theft, gambling, and all such similar activities which are considered illegal and immoral.

However, certain sectors are more affected by this process than others.

1. SOCIAL IMPACT- The risk to society concerning money laundering is considered to be very high. People might think that since they have no involvement in the crime, it might not affect them, but this is not the scenario. Firstly, an easy way of making money might appeal to a lot of people to get into this practice. This seems an attractive way of making 'easy money'. The ones who are the most crucially affected by this process are the 'honest taxpayers' of the society as when the economy runs at a loss, the burden is shifted upon the taxpayers. Further, tax revenues are diverted as there is an increase in the demand for proper law enforcement to fight the personal crimes arising out of the money laundering process. Some areas of the society are hugely impacted in monetary terms such as small and upcoming business ventures for which growth and expansion are utterly impossible due to the infection of legitimate business houses by the illegal ones. The Money laundering process multiplies the criminal activities going on in society as the criminals involved in this process have economic power over the others. The illegitimate money made by this process is used for the illegal sale of arms, smuggling, gambling, and other such practices, and activities which are considered to be very unethical and immoral in a society like ours. This unchecked money also gives rise to a lot of social malpractices like drug trafficking, prostitution, and organ smuggling. In the greater picture, a lot of terrorist organizations are also funded by the people involved in this process of

money laundering². The criminals so involved in these activities find various kinds of frauds and schemes to legitimize the ill-gotten money. This process makes a criminal organization appear to be a legitimate one. International investors hesitate in investing their money in business ventures as money laundering is considered to be a global crime and an immoral act. Thus, the negative impact of money laundering on the society as a whole is profoundly huge and efforts from an individual stage can be the first process to curb this practice.

2. ECONOMIC IMPACT- The impact that the process of money laundering has on the economy is difficult to put into numbers. The activities involved in money laundering not only affect the financial and economic sector but also has an impact on the international relations of the country and its reputation in the global market. The first and foremost impact is on the country's productivity in various economic sectors, like international trade, capital flows, etc. Also, the chances of organized crimes setting a foot into the financial institutions can acquire large sectors of the economy by bribing the officials and the government. The ethical standards of the business will go down because of this practice. Some of the developing economies around the world are not selective about the kind of capital that they attract but there is certainly a need to keep a close check on such transactions. In certain circumstances, money laundering increases the probability of the financial institution turning corrupt, as there are chances that it might be

²Council of Europe, Committee of Experts on Evaluation of Anti-Money Laundering Measures and the Financing Of Terrorism (Sept,01,2020)
Terrorism <https://www.coe.int/en/web/moneyval/implementation/financing-terrorism>

controlled and operated by criminals with criminal intent. The most adversely affected are the financial institutions of developing countries as they require investors to keep up with the financial soundness of the economy also while, on the other hand, they cannot afford to get their names associated in any way with any such malpractices. The reputational risk of an economy is highly on stakes when it involves itself with such immoral activities. To sum it up, money laundering is essentially weakening the foundation of a democratic institution and damaging the social fabric of the economy. The private sector is undermined and causes a situation of the financial crisis wherein tax evasions are encouraged.

3. POLITICAL IMPACT- Money laundering is not only a threat to the socio-economic sectors but also the political integrity and reputation of the States. It leads to organized penetration of criminals into the banking and monetary institutions which eventually result in bringing down the authority and control of the government as these institutions are directly controlled and directed by the government. The tax evasion situation so created by the money laundering process also throws light on the non-performance of the government. Government revenues are reduced and economic security is thoroughly weakened. Thus, this process stuns the growth of healthy competition in the market and ultimately results in the ineffectiveness of the government.

1.5 ANTI- MONEY LAUNDERING WORLD-WIDE INITIATIVES

The theme of Money Laundering has become a global phenomenon because of which international initiatives became one of the most important

initiatives to fight this threat. Numerous actions and agreements have been adopted to create an action plan, various foreign policies; agreements which addressed the aspect of money laundering were established which included the United Nations Conventions against illicit trafficking in drugs and psychotropic substances, which is widely acknowledged as the Vienna Convention³ and The Council of Europe Convention on laundering, seizure, search, and confiscation of crime.

1. THE VIENNA CONVENTION: The Vienna Convention was one of the first major initiatives in the field of Money Laundering which took place in December in the year of 1988. This provided an immense amount of groundwork upon which Money Laundering from Drug Trafficking was criminalized. This Convention has established the principle which states that the provisions of domestic banks secrecy should not create any interference with international criminal investigations⁴.

2. THE COUNCIL OF EUROPE CONVENTION: The Europe Council Convention was established in 1990 and has provided a common policy on Money Laundering. The established policy laid down the principles for International cooperation between the member states which also included states outside the council of Europe. Another purpose of this convention was to provide international investigative assistance, particularly on serious crimes like Drug offenses, arms dealing,

³ The Vienna Convention –19th December 1988. A delegation of 106 States participated in the Convention. Mr. Guillermo Bedregal Gutierrez (Bolivia) was elected President of the Convention. As of 24 March 2003, there were 167 parties and 87 signatories to this convention.

⁴ United Nations Convention Against Illicit Traffic In Narcotic Drugs And Psychotropic Substances, 1988 available at (http://www.unodc.org/pdf/convention_1988_en.pdf)

and terrorism along with crimes that generated a considerable amount of profit.

3. THE GLOBAL PROGRAMME AGAINST MONEY LAUNDERING

The Global Programme against Money Laundering is the initiative of the United Nations which was established in the year of 1997 to maximize its authority on international action against the laundering of money by providing *Technical Support* to the government. This programme included three particular activities that ensured certain effective means to the states by which it would be able to fight money laundering⁵.

One of the main objectives of the programme was technical cooperation which included activities like creating awareness and training. Secondly, to understand the concept or the phenomenon of money laundering and devising effective plans to combat it. Lastly, to establish a financial investigative service to raise the effectiveness of the authorities and the officials.

1.6 INDIAN ANTI-MONEY LAUNDERING INITIATIVES

India has had various laws in regards to deal with drugs, smuggling, narcotics, foreign exchange laws, and manipulations, which were established in the late 20th century, but the act known as the Foreign Exchange Regulation Act of 1973 changed the course of these laws in

regards to violation of civil offenses which was enacted under the Foreign Exchange Management Act, FEMA⁶.

1.6.1 THE PREVENTION OF MONEY LAUNDERING ACT 2002

This Act was established in 2005 and was later amended in 2005, 2009, and 2012 respectively. Its main objective was to prevent money laundering and matters connected to it. This act consists of 10 chapters that contain 75 sections and a schedule that is divided into 5 parts. The features of the act are as follow: -

1. OFFENSES AND ITS PUNISHMENT- The offense of money laundering is said to have occurred when a person deals with the proceeds of a crime⁷. The punishment of the said offense is rigorous imprisonment of three to seven years which may extend to ten years⁸ with fine⁹.

2. ATTACHMENT, ADJUDICATION, AND CONFISCATION- Confiscation is dealt with in chapter three of the said act and section 8 provides the details of adjudication. After the report is received by the adjudicating authority¹⁰; he is required to send a show-cause notice within 30 days to the concerned person and after getting a response from the said person, the authorities can send a proper order of confiscation which either can be rejected or confirmed by the Supreme court.

⁶ (last updated Apr.05,2017)
<https://indianexpress.com/article/explained/express-economic-history-series-3-how-draconian-fera-clause-triggered-flush-of-retail-investors/> (Express Economic history series- 3: (How 'draconian' FERA clause triggered flush of retail investors) | Explained News, The Indian Express)

⁷ Prevention of Money Laundering Act 2002 Section 2(u)

⁸ Prevention of Money Laundering Act 2002 Proviso to Sec. 4

⁹ Prevention of Money Laundering Act 2002 Section 4

¹⁰ Prevention of Money Laundering Act 2002 Section 5

⁵ United Nations, Office On Drugs and Crime, Objectives of The Global Programme Against Money Laundering, Proceeds of Crime and The Financing of Terrorism, (Sept. 01,2020), (Objectives of the Global Programme against Money-Laundering (GPML),<https://www.unodc.org/unodc/en/money-laundering/programme-objectives.html?ref=menuseide>

3. OBLIGATIONS OF BANKING COMPANIES, FINANCIAL INSTITUTIONS, AND INTERMEDIARIES-

The officials who are to report shall keep the records of all information relating to the laundering of money and are required to forward the report to the director and preserve all the reports up to five years¹¹. The Central Government is also supposed to consult the Reserve Bank of India and shall a certain legal rules and regulations on how to manage the information and reporting entities¹².

4. ENFORCEMENT PARAPHERNALIA - Adjudicating Authorities:

The said act gives the Central Government the right to appoint an Adjudicating Authority which is to be constituted of two members and a chairman. The Adjudicating Authority is to operate through a single or a division bench and has the power to regulate certain adjudicating procedures¹³.

Administrator: The laundered property is to be managed after its confiscation by an administrator who will be instructed by the Central Government¹⁴.

Appellate Tribunal: All appeals which are made by the order of Adjudicating Authority are to be laid in the Appellate Tribunal¹⁵.

Special Courts: The Central Government on consulting with the High Court will get the power to designate the Court of Sessions as the Special Court¹⁶. The Special Courts then has the authority

to try all the scheduled offences under section 4, and 3 of the said act only after it is requested on their behalf by the authority¹⁷.

5. SUMMONS, SEARCHES, AND SEIZURES -

The Adjudicating Authority shall ask any of its officials to search and retrieve any relevant information and send a detailed report of it. The search which is to be permitted shall be ordered by the Central Government. The Confiscated property in the said search can be retained for 180 days which can be further extended by the Adjudicating Authority on the merit of the case¹⁸.

1.7 THE FINANCIAL INTELLIGENCE UNIT-INDIA

The primary foundation to face Money Laundering in India was laid down by the Prevention of Money Laundering Act of 2002. The Financial Intelligence Unit – India is regarded as a prime agency or unit which manages the *Anti-Money Laundering* department and has remarkably assisted all national and international intelligence units regarding their investigations and various criminal cases. The Financial Intelligence Unit is a specialized agency which connects the financial sector of the country to the law enforcement, this agency collects information and then analyses them and retrieves suspicious financial transactions all over the country¹⁹.

According to the rules set by the Prevention of Money Laundering Act of 2002, all banks are required to report all suspicious cash transactions which involve non-profit organizations valuing

¹¹ Prevention of Money Laundering Act 2002 Section 12

¹² Prevention of Money Laundering Act 2002 Section 15

¹³ Prevention of Money Laundering Act 2002 Section 6

¹⁴ Prevention of Money Laundering Act 2002 Section 10

¹⁵ Prevention of Money Laundering Act 2002 Section 25

¹⁶ Prevention of Money Laundering Act 2002 Section 43

¹⁷ Prevention of Money Laundering Act 2002 Section 44

¹⁸ Retention of property in the Prevention of Laundering Act 2002 Section 20

¹⁹ Financial Intelligence Unit – India, The Prevention of Money Laundering Act 2002, FIU-India

more than 10 Lakh rupees or foreign currency equivalent to that amount to the Director of the Financial Intelligence Unit. The Director shall then forward that report to the Central Board of Excise and Custom Enforcement Directorate, Central Board of Direct taxes, Central Bureau of Investigation, Intelligence Agencies, and other Financial Regulatory Institutions, this is because the Financial Intelligence Unit does not investigate cases but assists these Bureaus with information, data and report analysis.

1.8 AN INSIGHT TO CYBER-LAUN-DERING IN INDIA

In today's world, imagining a life without the internet is just impossible. All the daily spheres of our life mostly have something to do with the internet. It has made our lives much simpler and easier; we are just one click away from handling everything just by sitting at our homes on the internet. But as much as it has proven itself to be a boon in our lives, on the other hand, it is as much of a bane too. The Internet has given rise to a lot of crimes globally. Cybercrime is considered as a crucial problem all across the globe. The abuse of the internet by money launderers to commit illicit crimes over the internet is a serious threat. Technological developments have created an environment in which these criminals and money launderers can easily thrive.

What attracts these criminals about cyber laundering is essentially the fact that they can easily maintain their anonymity and there is no face to face interaction. People can easily hide among millions of such users on the internet. Moreover, the encryption technology which is now in use hinders

law enforcement bodies to catch cybercriminals. Also, another aspect that attracts the criminals to go for cyber laundering is that the speed of all the transactions is much faster and secure than the traditional methods of *whitewashing* their illicit money. The flow of funds concerning cyber laundering is very fast and inexpensive as it makes the hiding of the source much difficult to trace, making the entire procedure much cheaper.

Hacking, identity theft, theft of intellectual property, transaction fraud, phishing, mail spoofing, phishing, etc are some forms in which criminals commit money laundering activities over the internet.

1.9 JAMTARA: INDIA'S EMERGING PHISHING HUB A CASE STUDY

What exactly is phishing? Phishing is a form of cyber laundering that uses a fake or a disguised mail as a weapon²⁰. This fraudulent practice is mostly induced in reputed companies to get individuals to reveal their personal information such as login ids, passwords, and credit card numbers.

Jamtara district in the northeastern region of Jharkhand is said to be the new capital for cybercrimes²¹. According to an investigation conducted by the India Today, the Jamtara district in Jharkhand, merely 225 kilometers away from the

²⁰ Josh Fruhlinger, What is Phishing? How this Cyber attack works and how to prevent it, CSO India, (Sept.04,2020) (<https://www.csoonline.com/article/2117843/what-is-phishing-how-this-cyber-attack-works-and-how-to-prevent-it.html>)

²¹Nitin Jain, Arvind Ojha, Jugal R Purohit, India Today Investigation: Jamtara emerges as the biggest den of digital crime, India Today, (Jan.03,2017) (<https://www.indiatoday.in/india/story/india-today-investigation-jamtara-digital-hackers-cyber-crimes-953010-2017-01-03>)

capital state Ranchi is the biggest den of cyber crimes and cyber laundering in the country. If you get a phone call inquiring about your bank details or your password or credentials of the card, chances are that this call is being operated from the Jamtara district of Jharkhand. This is primarily operated by a group of young individuals, mostly trained with computer skills to spread out this racket of call scammers and fraud, who will just manipulate the people over the phone and will end up emptying their bank accounts within minutes, leaving absolutely no trace of their identity. Their modus operandi centers on manipulating fear into the minds of innocent people. Each day their task is to make innumerable calls impersonating as employees or representatives of some financial institution or government body. With the state being among the top states in terms of poverty and hunger index, malnutrition and unemployment rates being extremely high, such kinds of cybercrime activities and opportunity to earn money mostly by people falling within the age group of 16-25, and smart phones and internet, make the world a little less of an unequal space for these money launderers²². They mostly operate from small cyber cafes in the district which are now being raided by the police every other day so some of them also operate from their own houses. The state police have registered numerous FIRs against them. Jharkhand, which was previously known for its pretty crimes like looting trains for their minerals and petty theft, has now become the digital crime capital of the country and still, no effective action has been taken yet which is a matter of great concern.

²²Shiv Sahay Singh, The Cyber Con Artists of Jharkhand's Jamtara Districts, The Hindu, (last updated Oct.26,2017) (<https://www.thehindu.com/news/national/other-states/the-cyber-con-artists-of-jamtara/article19476173.ece>)

1.10 CONCLUSION

Money laundering has become a global threat and is a matter of utmost concern. It not only damages the economy of a country but also gives a platform for criminals to earn 'easy money' and results in an upsurge in the criminal activities taking place in society. This method to make money has now become even more popular among the younger generations with the advancement in the technology sector as the chances of getting caught amongst millions of users over the internet are minimum.

The country has therefore adopted various laws, acts, and Anti-money laundering measurements to bring this issue under its control but somehow these criminals often find ways and loopholes to achieve their desired goals. Thus, strict policies and measures must be taken against such activities and a proper check on suspicious transactions must be kept. The need of the hour is a significant change in the methods and approach in combating the problem of money laundering as it has now become a matter of global concern.