



Money laundering & It's prevention

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Abstract

In recent times, one of the biggest threats to the global economy is money laundering. The three essential pillars of the economy are privatisation, globalisation and liberalisation which are expanding day by day. The illegal money is generated by these big companies, powerful persons and associations. Thereby, causing the arrangement of stockpiling cash into legal ones. Major initiatives were taken by legal mechanism and government enforcement to clear out the black money from the economy.

Keywords: New criminal laws, Bharatiya Nyaya Sanhita, a new era, evolution of criminal justice administration, reforms in criminal laws, modernized legal framework

Introduction

Money laundering is the procedure of transforming of unlawful money to lawful one through the mechanism of monetary and financial transactions and transfers. In the era of 19 century the term money laundering came into spotlight by United States. In 1920 the survey took place by United States to stop the production, destruction and selling of alcoholic food. The main agenda of the government is to stop the crime and corruption and real estate money laundering which slows down the economic growth of the country. The main origin of the money laundering is stock market, gambling and drug sum and so on. Money laundering is the tool to change black money into white money in illegal manner.

“Money laundering is giving oxygen to organised crime.”^[1]

1. History of Money Laundering

In the era of 2000 BC when Chinese merchants transmit their profits through various layers in financial transactions and transfers which is invisible to the Chinese rulers as their main source of increment. These interest were created by black marketing, drug smuggling, and extortion and cheating by Chinese people. As the Chinese people is power hungry. This gives rise to money laundering which increase in business community of China.

Easily hides their black money from administrator and office-bearer. They transfigure their black money into houses, properties and other things except the investment. As one of the bases which gives rise to the money laundering. The crimes started their production in alcohol making a black money into white one by forming a monetary transactions and transfers.

The term money laundering means “cleaning of money” According to Robinson “The term money laundering means the washing of money through various layers which become washed and clean used as the legal one”. Alphonse Gabriel Capone is one of the American gangsters which started the alcohol business and making profits in illegal form by creating layers using the money in legal form where give rise to money laundering in China. Money laundering is one of the declarations and biggest crime in society which affects the economic, social and political background of the society. Al Capone is the person who started the network chain of drug smuggling from illegal profits and used a legal one where it gives rise to money laundering.

2. Significance of Money Laundering

The issue of money laundering gained its significance by the events of 9/11 U.S twin towers attack which play a major role in the concept of money laundering and uses these funding for terrorist activities and narcotic drugs. By increment in the technology and communication skills this crime increases rapidly at international level. The main source of the crime is international banks which creates threat to the society at large.

These decrease the production and slow down the economy. When the business dealers hide their money, which is unchecked by office bearer and causes harm to political, social and economic level of the society. The criminals stop the social fabric of the society.

The Impact of Money Laundering on the Economy

Money laundering is the serious issue which is having its negative impact on the economy. The threat we cannot measure but showing by its major activities which damages the monetary and economic sector of the economy. It encourages the criminals for black marketing, drug smuggling, where they collect the illegal money and use into leg. the developing countries having their own strategies like OFCS channels for the economy development. These activities of money laundering can be in financial and real sector.

3. The Impact of Money Laundering in Financial Sector

The banking and non-banking financial institutions get bad impact due to money laundering in the economy which directly or indirectly affects the equity shares this impacts the whole of economy. There is a co-relation between the money laundering and financial institutions which shows the basic elements of crime where there is increase in money laundering and employees misuse the records in the intuitions which shows the prime elements of the money laundering.

4. The Impact of Money Laundering in Real Sector

Money laundering can be found in real sector as well where there is less production activities which simply the rate of the corruption and crime in the economy. As for instance criminals know the common methods through which they do crimes. In real estate they understand the strategy that

how they are going purchase the land in the name of third party which increase the crime rate in the economy.

The Real Sector Attract the Criminal Money in Three Ways

1. Big and save investment
2. Difficult to excess in the record
3. When black money transform in white returns

5. The Impact of Money Laundering in External Sector

The money laundering is one of the major connections at global level as because we are working with international financial institutions at larger level. Money laundering is one of the serious crimes which show its crime elements which effects the cross broader challenges as well. The illegal money which is used by foreign investors for purchasing the luxury goods. The employees and directors are keeping this black money which is blind in the nature of the criminal activity which is hazardous to the economy. Money laundering does not harm the financial sector only but also the economic, social and political sector in the economy. This disturbs the whole of intermediaries between the financial sector and which affects the economy at its global level. It affects the society in moral and ethical manner by showing its actives like drug trafficking, smelling, corruption and many more other criminal actives.

6. Process of Money Laundering Techniques

Money laundering is a complex concept where the companies, persons and associations are creating the layers and how the illegal money transfers into legal one. This is one of the limelight issues which is currently threatens the global economy. The Money laundering divides its stages into three parts;

- 1st Part PLACEMENT
- 2nd Part LAYERING
- 3rd Part INTEGRATION

a. Placement

This is an opening stage of money laundering. Where it consists of all illegal money collected through banking sector and financial institutions. Now, this cash will transfer into cash deposit, demand drafts, houses and property into small amounts and start avoiding the financial crimes and investigation. This is one of the dangerous stages in money laundering where the bulk of illegal money transfers to legal one. This stage leads to two basic elements –

1. Firstly, the bulk of illegal cash transforms into legal one.
2. Secondly, they transfer the money into financial legal system.

Money laundering is one biggest crime which is opposed to the legal mechanism collecting huge amount will be doubtful in the mind of the legal enforcement. The major forms of money laundering are like currency exchange and security broker and so on.

b. Layering

The layering is the second stage in the money laundering where the illegal money transforms into various offshore accounts and global levels transfers. Another name of layering is structuring. Basically, they create the various layers of the financial transactions and into different accounts into different banks and remove the main origin of the money that what is the present status and what was

earlier. This money transfers into the stock bounds, money orders and so on. The main objective of the layering is to confuse the criminal investigation as what is the actual reality of the gains and what is the present status of the money. Some of the basic examples of money laundering are shell companies, property transactions and international banking systems^[3].

c. Integration

Where the origin of the money is finished the final step that occurs is integration. As this is the final stage of the money laundering includes the banking sector and banks. Where the big transactions are transfers the black money into white one. This can be achieved by financial action task forced and KYC checks. In this stage it is very difficult to trace back its origin. Now, money is ultimately in the hands of criminal organisation.

7. Money Laundering in Indian Prospective

In the era of 2002 where the anti-money laundering laws have been come into picture. After the amendments of 2002 by Reserve Bank of INDIA in KYC policy we need to link the personal details with the bank accounts. There is no chance for the criminals to laundering their money. In INDIA the money laundering also known as HAWALA SYSTEM. Where the money transfer is not in physical way but in digital form from one person into another. How we can prevent the money laundering by passing proper legalisation and to detect the money laundering in INDIA. There are major steps taken by legal enforcement.

8. Prevention of Money Laundering Act 2002

This initiative was taken by central government of INDIA to put a stop on money laundering activities. It was validating on 17th JANUARY 2003 which was impose on 5th of July. It controls the crimes like white collar crimes, financial frauds and cross broader crimes if it is related to INDIA. It will under Prevention of Money Laundering Act 2002. Institutions like financial institutions, banks which are been by government on regular basis. This act includes the punishment as well where minimum 3years and maximum 7years of regroups impressment. Under section -3 of prevention of money laundering act defines the offence of money laundering where directly and indirectly attempts to include knowingly assists in proceeds of crime and section -4 describes the punishment of money laundering.

9. Black Money for Imposition of Tax Act 2015

‘Money is 80% behaviour 20%head knowledge it’s what you do, not what you know ‘This basically introduces this act to curb the black ⁴money in the society. This applies when any Indian citizen having monetary gain on foreign investment or account. If the person conceals the foreign Liabile for the penalty of undisclosed property sum equal to the three times of the tax plus basic taxes.

Landmark Judgement in the Case of Vijay Madanlal Choudhary &Ors. Versus Union of India &ors. July 27 2022^[5]

In this case Hon’ble Supreme Court upheld constitutionality of powers of enforcement directorate for arrest, search and seizure attachment. The courts uphold the constitutionality of reserve burden of proof and twin conditions of bail.

10. Powers of Enforcement Directorate

The PMLA gives the some of the powers to ED-

1. THE ED has authority to the search, seizures, of assets

- and real estate that is unlawful.
- 2. If there is distrust in the bank accounts for carrying of the laundered money than ED has a power to seizure it.
- 3. The ED has power to conduct the survey.
- 4. ED is essential for review and safeguarding the financial system of the society.

Element	USA	United Kingdom	India
	The Crime of Money Laundering and Criminal Enforcement	Proceeds of Crime Act (POCA)	Prevention of Money Laundering Act, 2002 (PMLA)
Legal authority	Criminal Division of the Department of Justice, the Money Laundering and Asset Recovery Section (“MLARS”) [6]	Financial Conduct Authority (FCA) [7]	The Enforcement Directorate in the Department of Revenue, Ministry of Finance, the Government of India [8]
List of offences	Exemplary predicate offenses include narcotrafficking, tax evasion, murder, grievous bodily harm, corruption, fraud, smuggling, human trafficking, illegal wildlife trafficking, and forgery [9].	Conceal criminal property (for example, by depositing funds obtained through criminal activity into a gambling account) disguise criminal property (for example, by placing funds obtained through criminal	Under PMLA, the commission of any offence, as mentioned in Part A and Part C of the Schedule of PMLA will attract the provisions of PMLA. Some of the Acts and offences, which may attract PMLA, are enumerated below: Part A enlists offences
Actions that can be initiated against the	There is criminal liability for natural and legal persons. The maximum penalties are fines of up to \$500,000 or double the amount of property involved, whichever	Activity into a gambling account and then withdrawing them at a later date) convert criminal property (for example, by placing bets in a gambling establishment and then cashing in the winnings) transfer criminal property (for example, by transferring property to another person or to a gambling operator) remove criminal property from the United Kingdom (for example, by taking their Winnings overseas). acquire criminal property use criminal property have possession of criminal property (for example, via stakes) [10].	under various acts such as: Indian Penal Code, Narcotics Drugs and Psychotropic Substances Act, Prevention of Corruption Act, Antiquities and Art Treasures Act, Copyright Act, Trademark Act, Wildlife Protection Act, and Information Technology Act. Part B specifies offences that are Part A offences, but the value involved in such Offences is Rs 1 crore or more. Part C deals with trans-border crimes and reflects the dedication to tackle money laundering across global boundaries [11].
		Actions that can be Initiated Against the Person Involved in Money Laundering.	Seizure/freezing of property and records and attachment of property obtained with the proceeds of crime. Any person who
Person involved in money laundering	is greater, for each violation; and for individuals, imprisonment of up to 20 years for each violation. The statute of limitations for money laundering crimes is five years [12].	Seizure/freezing of property and records and attachment of property obtained with the proceeds of crime. Rigorous imprisonment for a minimum term of three years and this may extend up to seven years. Fine (without any limit).	Commits the offence of money laundering shall be punishable with – Rigorous imprisonment for a minimum term of three years and this may extend up to seven years. Fine (without any limit).
Method of operation	There is both criminal forfeitures following a conviction for money laundering and civil forfeiture against the assets involved in, or traceable to, money laundering criminal conduct. Under 18 U.S.C. § 982, if a person has been convicted of money laundering, any property, real or personal, involved in the offence, or any property traceable to the offence, is subject to forfeiture. Under 18 U.S.C. § 981, a civil forfeiture action can be brought against property involved in or traceable to the money laundering conduct	Confiscation proceedings are the name given to the process of seizing the proceeds of financial crime, in the form of money or valuable assets. This process can only be initiated by the prosecution team or the Crown Prosecution Service themselves, at the end of the case. At this stage, police will work with a Financial Investigation Officer to establish the criminal benefit – this is a monetary figure which the offending party is	The first stage is when the money derived through crime is introduced into the formal financial system called ‘placement. In the second stage, the money so introduced into the system is layered and spread over various transactions with a view to clear the tainted origin of the money and is called ‘layering ‘. In the third and the final stage, the money enters the financial system in such a way that original association with the crime is sought to be cleared so that the money can then be used by the offender or person receiving it as
	even if no one has been convicted of money laundering. Because this is a civil action, the standard of proof for the government is lower than if there were a criminal prosecution for the money laundering conduct (preponderance of the evidence versus beyond a reasonable doubt). There is no need to establish that the person alleged to have committed money laundering is dead or otherwise unavailable.	Then legally obliged to pay. If they can’t pay this amount of money, they’ll be asked instead to pay the available figure – which is effectively the value of all the assets they possess. When the repayment figure is agreed, the defendant is also given a date they need to pay it by, and failing to meet this deadline can often Result in a prison sentence.	Clean money and this is called ‘integration

11. Landmark judgements on money laundering

a. Bhupinder Singh V. Enforcement of directorate July 1 2022^[13]

The court held the PMLA complaint however was filed naming only the petitioner and applicant and one other person as accused by ED, there were the reasonable grounds to believe that the petitioner was not involved in the commission of scheduled offences or in the generation or laundering of proceeds of crime derived as result thereof. The petitioner was found to the qualifying the triple test laid down under the section -45 of the PMLA and thus enlarged on regular bail.

b. Ajay Kumar Chandraprakash Baheti V. directorate Enforcement July 72022^[14]

The court held that the petitioner applied for the grant of regular bail in connection with offences under PMLA. The predicate offences were registered under section – 406, 476, 468 and 120 B of Indian Penal Code against the applicant. Thus, the vicarious liability was not attracted in the absence of specifies allegations. Three stages were explained by the court in this case placement, layering and integration which were explained by court. On replying judgement of STATE OF MAHA RASSHTRA V. MOHD. YAKUB¹⁵ it was held that the knowledge of trained nature of the property being proceeds of crime. Derived or obtained directly or indirectly as the result of criminal activity would be at the most necessary part of the accused. The deriving or obtaining of property must be directly as a result of criminal activity.

c. Satender kumar antil V. CBI July 11 2022^[16]

This is one of the landmark judgements on cost-criminal jurisprudence relating to enlargement of accused on bail in various categories of offences. The judgement possesses signific in constitutional law for the reason that it correlated the concept of bail with liberty freedoms and Part 111 articles especially as the concept of bail by referring to a long line of precedents specially GURBAKSH SINGH SIBBIA V. STATE OF PUNJAB¹⁷, SANJAY CHANDRA V. CBI¹⁸ in the Indian criminal jurisprudence. The court also broadly laid down the guiltiness regarding the approach to be followed by trial as well as high courts whilst considering bail applications under various provisions of CRPC.

d. Paravathi V. State August 16 2022^[19]

The High Court examining the contentions held that since the ECIR was premised on the FIRs relating to scheduled offences that were already stayed by the Supreme Court on the date of their registration therefore the ECIRs could not have been registered at the first instance. Referring to judgment of Arun Kumar v. Union of India,²⁰ it was held that a ‘jurisdictional fact ‘must exist before a court, tribunal or any authority for it to assume jurisdiction over any matter. If the “jurisdictional fact” does not exist, the court authority, or any officer cannot act. If the existence of such fact is wrongly assumed, such order can be set aside by way of writ of certiorari. The High Court also referred to the judgment of State of Punjab v. Davinder Pal Singh Bhullar²¹, to state that if the foundation is being removed, the superstructure automatically falls; when there is no cause of action, there is no “jurisdictional fact” for the ED to have registered ECIR. The grant of stay of any particular proceedings would amount to eclipsing of proceedings

initiated on the premise thereof. Thus, when the criminal proceedings pertaining to scheduled/predicate offence were stayed by the Supreme Court, they stood eclipsed, suspended during the period of stay and thus ED ought to have waited for the finality of the said proceedings before the Supreme Court.

Conclusion

MONEY laundering is one serious issue in your country where millions of the people invest their money in illegal form. This is a major challenge where we need to decrease the money laundering by doing major alteration. This is the global issue which inspire the global concerns. Even without global cooperation we cannot control money laundering. There are major steps to control money laundering but criminals find the way to this methodology. Legal mechanism has to keep an eye on money launders and various technologies to amend it. Anti – money laundering laws are not enough in our country we need the major alteration to improve money laundering activities which threats the global economy.

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