

PREVENTION OF MONEY LAUNDERING ACT, 2002:
IT'S IMPLICATIONS & CHALLENGES IN INDIA

**A DISSERTATION TO BE SUBMITTED IN PARTIAL FULFILMENT OF THE
REQUIREMENT FOR THE AWARD OF DEGREE OF MASTER OF LAWS**

SUBMITTED BY

MR. ABHAY SHARMA

1200990002

SCHOOL OF LEGAL STUDIES

UNDER THE GUIDANCE

OF

MS. TRISHLA SINGH

ASSISTANT PROFESSOR

SCHOOL OF LEGAL STUDIES



BBD UNIVERSITY

SESSION 2020-21

CERTIFICATE

This is to certify that the dissertation titled, **PREVENTION OF MONEY LAUNDERING ACT 2002: ITS IMPLICATION & CHALLENGES IN INDIA** is the work done by **Abhay Sharma** under my guidance and supervision for the partial fulfilment of the requirement for the Degree of **Master of Laws** in School of Legal Studies Babu Banarasi Das University, Lucknow, Uttar Pradesh.

I wish her/his success in life.

Date 5-7-2021

Place-Lucknow

MS. TRISHLA SINGH

ASSISTANT PROFESSOR

DECLARATION

Title of Dissertation **PREVENTION OF MONEY LAUNDERING ACT 2002: ITS IMPLICATION & CHALLENGES IN INDIA**

I understand what plagiarism is and am aware of the University's policy in this regard.

ABHAY SHARMA

I declare that

- (a) This dissertation is submitted for assessment in partial fulfilment of the requirement for the award of degree of **Master of Laws**.
- (b) I declare that this **DISSERTATION** is my original work. Wherever work from other source has been used i.e., words, data, arguments and ideas have been appropriately acknowledged.
- (c) I have not permitted, and will not permit, anybody to copy my work with the purpose of passing it off as his or her own work.
- (d) The work conforms to the guidelines for layout, content and style as set out in the Regulations and Guidelines.

Date : 5-7-2021
Place- Lucknow

ABHAYSHARMA
Roll no.-1200990002

LL.M. (2020-21)

CCL

ACKNOWLEDGEMENT

I sincerely appreciated the assistance and support of people whose contributions have been instrumental in completion of this research report. The research report was undertaken as L.L.M pursuing at Babu Banarsi Das University, Lucknow.

With the overwhelming sense of legitimate pride and genuine obligation, I seize this jubilant occasion to express my deep sense of gratitude and personal regards to my Head of Department, **Assistant Prof. Trishla Singh** for the immense support, cooperation and guidance. I choose to acknowledge their contribution grateful.

I perceive as this opportunity to as a big milestone in career development. I will strive to use gained skills and knowledge in the best possible way and will continue to work on their improvement in order to attain desired career objective. Hope to continue cooperation with all of you in future.

ABHAY SHARMA

Roll no.-1200990002

LL.M. (2020-21)

CCL

CONTENT

ABSTRACT.....Pg.1

CHAPTER-I INTRODUCTION

1.1: Introduction.....Pg.2-6

1.2: Literature Review.....Pg.7-9

1.3: Research Methodology.....Pg.10-13

 1.3.1: Overview of the Research.....Pg.10-11

 1.3.2: Aim & Objective of the Research.....Pg.12

 1.3.3: HypothesisPg.13

CHAPTER- II MONEY LAUNDERING

2.1: Money- The Root of the Problem.....Pg.14-16

2.2: Origin of the term Money Laundering.....Pg.17

2.3: Definition of Money Laundering.....Pg.17-18

2.4: Sources of Illegal MoneyPg.19

2.5: Methods of Money Laundering.....Pg.20-21

2.6: Volume of Money Laundering.....Pg.22-23

2.7: Global efforts to control Money Laundering.....Pg.24-25

2.8: Anti-Money Laundering Regime.....Pg.26

2.9: Steps taken by Government of India to

Prevent Money Laundering.....Pg.27-28

2.10: Stages of Money Laundering.....Pg.29-32

CHAPTER-III PREVENTION OF MONEY LAUNDERING ACT,2002

3.1: Scheme of Prevention of Money Laundering Act,2002.....	Pg.34-37
3.2: Objectives/ Purposes of the Act.....	Pg.37
3.3: Background & Legislative History	Pg.38-39
3.4: Salient Features of the Act.....	Pg.40-42
3.5: Life cycle of the Act- Major Amendments.....	Pg.43-44
3.5.1: Preventions of Money Laundering Act (Amendment), 2005	Pg.43
3.5.2: Preventions of Money Laundering Act (Amendment), 2009.....	Pg.43-44
3.5.3: Preventions of Money Laundering Act (Amendment), 2012.....	Pg.44-45
3.6: Authorities Under the Act	Pg.45-46
3.7: Powers available to the investing officer.....	Pg.46-47
3.8: To whom does the provision of the Act apply?	Pg.47
3.9: Offence of the Money Laundering.....	Pg.48-49
3.10: Essence of the Offence.....	Pg.49
3.11: What are the proceeds of Crime.....	Pg.50
3.12: What are the provisions for Arrest?	Pg.51
3.13: What are the conditions after Arrest?	Pg.51-52
3.14: Attachment, Adjudication& Confiscation.....	Pg.52

CHAPTER-IV IMPLICATIONS OF MONEY LAUNDERING IN INDIA

4.1: Extent of Money Laundering.....	Pg.56-58
4.2: Implications of Money Laundering.....	Pg.59-63
4.2.1: Terrorism.....	Pg.59-60

4.2.2: Threat to Banking System.....	Pg.60
4.2.3: Threat to Political Stability.....	Pg.61
4.2.4: Economic Distortions.....	Pg.61-62
4.2.5: Social Effects.....	Pg.62-63
4.2.6: Impact on Financial System& Banks.....	Pg.63
4.3: Demonetization & Money Laundering	Pg.64-66
4.3.1: Impact of Demonetization on Money Laundering.....	Pg.64-65
4.3.2: Methods of Money Laundering and during Demonetization	Pg.66
4.4: New Areas of Operation of Money Laundering.....	Pg.67-69
CHAPTER-V CHALLENGES FACED DURING MONEY LAUNDERING	
5.1: Challenges faced.....	Pg.71-74
5.1.1: Increased Governance.....	Pg.71
5.1.2: Lack of skilled personnel.....	Pg.72
5.1.3: Complicated Processes & Technology.....	Pg.72
5.1.4: Operations Challenges.....	Pg.72
5.1.5: Future Implications.....	Pg.72-73
5.1.6: Limited Availability of Data.....	Pg.73
5.1.7: New Payment Methods.....	Pg.73-74
5.2: Relationship between Money Laundering and Crime.....	Pg.75-76
CONCLUSION & SUGESSTION.....	Pg.77-78
BIBLIOGRAPHY	Pg.79

ABSTRACT

Money laundering is not a recent phenomenon and has been prevalent for centuries. Money laundering is most familiar act in every country and it indulges in transferring money across different countries creating an illegal acts. However, with unprecedented development of technology, the manner in which money is laundered has become more sophisticated and unrestrained.

In light of the growing global debate around the concept of money laundering, understanding the meaning and concept of ‘money laundering’ becomes all the more relevant and important. Money Laundering enables such activities to continue across the nation expanding the unethical activities which causes social impacts which weaken the government or political stability. For most countries, money laundering and terrorists’ financing raise significant issues with regard to their prevention, detection and prosecution of those involved therein – directly or indirectly.

The Research report in the first instance focuses on the concept of money laundering along with the procedure and methods followed in it. Then it carries with discussing the impacts on the economy. It then analysis the various initiatives taken to prevent money laundering with special significance on the Indian initiatives particularly focussing on the Prevention of Money Laundering Act, 2002. Also, focusing the major amendments during the life cycle of Prevention of Money Laundering Act,2002. An efforts are made to distinguish the various problems or gaps in the law and providing measures in order to get better results.

CHAPTER I
INTRODUCTION

INTRODUCTION

Money is any object or record that is generally accepted as payment for goods and services and repayment of debts in a given country or socio-economic context. Money is generally considered to have the following four main functions, which are summed up in a rhyme found in older economics textbooks: "Money is a matter of functions four, a medium, a measure, a standard, a store." The troublesome question, 'what is money?' has so frequently engaged the minds of economists that a lawyer might hesitate to join in the attempt to solve it. Yet the true answer must, if possible, be determined. For 'money answers everything', Money is a fundamental notion, not only in the economic life of mankind, but also in many spheres of law. It therefore seems appropriate for the lawyer to seek a definition of money, given the frequent use which is made both of the term itself and its many derivatives, including debt, damages, payment, price, capital, interest, tax, pecuniary legacy, and doubtless many others. All of this terminology may have further consequences; for example, only an obligation expressed in money can involve any obligation of payment or repayment, or carry any right to interest. Money is a term so frequently used and of such importance that one is apt to overlook its inherent difficulties, and to forget that the multitude of its functions necessarily connotes a multitude of meanings in different legal situations.

The term Money **Laundering** refers to the conversion or "Laundering" of money which is illegally produced, and showed as it is created from the legal activities following all rules and regulations. Thus it is a process by which proceeds from illegal activities are disguised in order to conceal their illicit origin. INTERPOL's definition¹ of money laundering is: "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".²

In practice, criminals are trying to personate the origins of money obtained through illegal activities so it appears to be generated from legal sources. Otherwise, they cannot use the money because it would connect them to the criminal activities, and law enforcement officials would seize.'

¹https://www.researchgate.net/publication/317117136_The_Determinant_of_Money_Laundering_Evidence_from_Italian_Regions

²Interpol General Secretariat Assembly in 1995 <http://www.interpol.int/Crime-areas/Financial-crime/Moneylaundering>. David A. Chaikin "Investigating Criminal & Corporate Money Trails".

The process of money laundering is explained in many different ways: money laundering is the method by which one hide the existence of unlawful foundation, or illegal application of earnings, and then concealing that earnings in order to give it a legitimate appearance; or money laundering is the sequence of taking the income of criminal activity and making these profits legal; or money laundering is the operation of converting funds resulting from criminal activities into consumable or unpreserved form.

U.S. Customs Service has given this definition of Money laundering: “Money laundering is the procedure whereby proceeds, plausibly believed to have been derived from criminal activity, are transported, transferred, transformed, converted or intermingled with legitimate funds for the purpose of concealing or disguising the exact nature, resource, disposition, movement or possession of those proceeds. The aim of money laundering process is to make funds derived from, or associated with, illicit activity appear legitimate.”

All developed and developing countries of the world have paid attention on the entire concept of money laundering and have recognized that money laundering is a major source of the funding of terrorist activities. The process of globalization and the communications revolution have made crime increasingly international in scope, and the rapid advancement in technology have made the financial aspects of the crime more rigid and complex. International banks have its branches all over the world and that helped in transmission and the disguising of the origin of funds. This may have devastating social consequences and poses a threat to the security of any country, large or small. It provides help for illegal arms dealers, drug dealers, corrupt public officials, terrorists and other criminals to activate and spread out their criminal activities. Money laundering enables illegal activity to persist.

Money laundering makes a diversion of funds to less productive areas of the financial system of a country, which in turn discourages economic development. The possible social and political consequences of money laundering, if left uncontrolled or dealt with ineffectively, are severe.

The economic and political power of criminal associations can weaken the social structure, collective moral standards, and eventually the democratic establishments of society.

At the starting of the millennium, the battle against money laundering features very high on the international level and in many countries, also on the domestic and political agenda. The speed with which policy-makers have put in place a set of legal rules intended to fight the

laundering of the unlawful earnings, first from the activities of drug trafficking, and later on, of the income from many other illegal activities as well, is notable. There is of course more than one explanation for the high level of attention the issue of money laundering is being paid. The high spirit with which authorities beat the drum of the fight against money laundering should of course be set against the back drop of the wide spread concern about the phenomenon of organized crime, and in particular organized drug trafficking, and may in part also be attributable to international pressure. “Many support the view that ‘going after the money’ is the best way to tackle organized criminal activities. The first rationale is that to punish criminals confiscating their incentive is one. Second rationale is that universally, powerful criminals rarely come into contact with the illicit goods such as drugs, while they do come into contact with proceeds of crime, which often provide a paper trail or rather evidence which points to crucial connection with a violation of law. A third rationale is that by confiscating the proceeds of crime would make law enforcement pay for itself”³. It seems that the anti-money laundering rules are in fact looked up on as a very powerful instrument against various forms of acquisitive crime.

A consequence of the political Declaration adopted by the special session of the United Nations General Assembly (UNGASS) held on 8th to 10th June 1998 (of which India is one of the signatories) calling upon member States to adopt Anti-Money Laundering Legislation & Programme, the Parliament has enacted a special law called the ‘**Prevention of Money Laundering Act, 2002**’ (PMLA 2002). This Act has been substantially amended, by way of enlarging its scope, in 2009 (w.e.f. 01.06.2009), by enactment of Prevention of Money Laundering (Amendment) Act, 2009. The Act was further amended by Prevention of MoneyLaundering (Amendment) Act, 2012 w.e.f. 15-02-2013.

Fictitious sales, manipulation of manufacturing records, fraudulent sale of tickets, bogus lotteries, income shown as income from casinos, inflated income from property sales, falsely recording profits in securities market, inflating gains in security market, falsely claiming agricultural income which does not incur income-tax burden, utilizing amnesty schemes, over invoicing /under-invoicing are some of the techniques by which money is laundered.

³ Nadelmann, E, “Unlaundering Dirty Money Abroad – US Foreign Policy & Financial Secrecy Jurisdictions” Inter-American Law Review, Vol-18, Issue-1, USA, 1986, p22

1. LITERATURE REVIEW

Money laundering has fairly benign origins in the hawala and hundi systems of South Asia, which were informal financial systems which allowed people to execute financial transactions in confidence and secrecy⁴. These systems were perfectly legitimate to begin with, and merely reflected institutional underdevelopment or unfamiliarity or lack of confidence in the formal banking system. However, these systems soon attracted criminal organizations, which began to use them along with other means in order to launder money to remove the taint of illegality. In the past century, money laundering has become an international problem.

The term "money laundering" is said to originate from Mafia ownership of Laundromats⁵ in the United States. Gangsters there were earning huge sums in cash from extortion, prostitution, gambling and bootleg liquor. They needed to show a legitimate source for these monies. One of the ways in which they were able to do this was by purchasing outwardly legitimate businesses and to mix their illicit earnings with the legitimate earnings they received from these businesses. Laundromats were chosen by these gangsters because they were cash businesses and this was an undoubted advantage to people like Al Capone who purchased them⁶. Al Capone, however, was prosecuted and convicted in October, 1931 for tax evasion. It was this that he was sent to prison for rather than the predicate crimes which generated his illicit income. But, according to **Robinson** this tale that the term invented from this time is a myth. He states that:

"Money laundering is called what it is because that perfectly describes what takes place -illegal, or dirty, money is put through a cycle of transactions, or washed, so that it comes out the other end as legal, or clean, money. In other words, the source of illegally obtained funds is obscured through a succession appear as legitimate income".

⁴ <https://www.wirc-icai.org/images/material/Introduction-and-Overview-of-PMLA.pdf>

⁵A service mark used for a commercial establishment equipped with washing machines and dryers, usually coin-operated and self-service. Excerpted from The American Heritage Dictionary of the English Language, Third Edition

⁶Gururaj, B.N., *Commentaries on FEMA, Money Laundering Act and COFEPOSA*, Nagpur: Wadhawa, Ed. 2005, p.729

Meyer Lansky⁷ (affectionately called ‘the Mob’s Accountant’) was particularly affected by the conviction of Capone for something as obvious as tax evasion. Determined that the same fate would not befall him he set about searching for ways to hide money. Before the year was out he had discovered the benefits of numbered Swiss Bank Accounts. This is where money laundering would seem to have started and according to Lacey Lansky was one of the most influential money launderers ever. The use of the Swiss facilities gave Lansky the means to incorporate one of the first real laundering techniques, the use of the ‘loan-back’ concept, which meant that hitherto illegal money could now be disguised by ‘loans’ provided by compliant foreign banks, which could be declared to the ‘revenue’ if necessary, and a tax-deduction obtained into the bargain⁸.

Even though the term has been used for a fairly long period of time, the first judicial use of the term was only in 1982 in America. Towards the latter half of the last century, money laundering began to be increasingly connected to the offences of drug trafficking and organized crime, and criminal organizations and drug lords began to conduct large operations to launder their profits of their taint of illegality. The conversion or transfer of proceeds from drug trafficking in order to conceal or disguise the illegal origin of the property was made an offence under the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.⁹

Money laundering also was developed in order to facilitate trade. Nigeria is the money laundering centre of Africa and that Nigerians around the world are engaged in large-scale crime and laundering.¹⁰ The criminals create an illusion that the money they are spending is actually theirs.

As a 1993 UN Report noted: “The basic characteristics of the laundering of the proceeds of crime, which to a large extent also mark the operations of organised and transnational crime, are its global nature, the flexibility and adaptability of its operations, the use of the latest

⁷ http://www.imlib.org/page1_hist.html

⁸ <http://www.moneylaundering.com/>

⁹ <https://www.unodc.org/unodc/en/treaties/illegal-traffic.html>

¹⁰ <https://www.lawteacher.net/free-law-essays/commercial-law/the-early-history-of-money-laundering-commercial-law-essay.php>

technological means and professional assistance, the ingenuity of its operators and the vast resources at their disposal¹¹.”

In India money laundering is popularly known as Hawala transactions. It gained popularity during early 90's when many of the politicians were caught in its net. Hawala is an alternative or parallel remittance system. The Hawala Mechanism facilitated the conversion of money from black into white. "Hawala" is an Arabic word meaning the transfer of money or information between two persons using a third person. The system dates to the Arabic traders as a means of avoiding robbery. It predates western banking by several centuries.¹²

1.3:RESEARCH & METHODOLOGY

1.3.1: Overview of the Research

This study argues that conducting research in this field has enormous potential to make an original contribution to the understanding of money laundering as problems of transnational organized crime. Also in my study of research the focus point is with regard to Prevention of Money Laundering Act,2002 which was passed in year 2005 with an effort to control the Money Laundering crimes and providing some strict guidelines for it.

The study uses historical method, analytical method, evaluation method, descriptive method and comparative method regarding the money laundering. The research is based on the use secondary sources. The research work is primarily doctrinal in nature.

Historical method is used to point out the origin and impact of money laundering nationally. Descriptive method is used to examine the threat of money laundering and various issues involved in it. This method is also used to point out preventive measures in the international atmosphere, with specific reference to India and challenges involved in compliance of anti-money laundering measures.

¹¹¹¹ <https://www.slideshare.net/divyansh111/banking-law-money-laundering>

¹² Mark P. Hampton, "Where Currents Meet: The Offshore Interface Between Corruption, Offshore Finance Centres, and Economic Development," IDS Bulletin , vol. 27, no. 2 (1996) 3.

The study uses the secondary sources for data collected based on previous analysis on the aspect of Money Laundering by various authors and professor while there researches. The motive behind the collection of data based on secondary sources help in clear defined terms, provisions, various preventive measures taken to control Money Laundering with all helpful results and recommendations.

Adopting a comparative research method, this study will explore, analyse and evaluate secondary sources, structures and institutions that are involved in the control of money laundering in India.

1.3.2: Aim & Objective of the Research

The objective of this thesis is to observe the term “Money Laundering,” to find out the limitations of the Prevention of Money laundering Act and provide suggestions/recommendations to beat such difficulties.

This research study is done with aim of understanding the Money Laundering as whole, its process, Consequences and major steps taken to get control over it.

Also, the research pinpoints some of the past cases related to Money Laundering and scams resulting into black money creation.

Objective Of The Research-

- To understand the term Money Laundering and its consequences on various sectors.
- The foremost the objective of my research is undergoing through the Act of Prevention of Money Laundering Act,2002 and how it was effective.
- The study also helps in understanding the stages of the Money Laundering.
- To disclose the source of unlawfully earned money and placement, layering and integration of such funds.
- To identify the grey areas of anti-money laundering regulations and provide appropriate solution.

1.3.3: Hypothesis

This study will also examine the validity of the following assumptions:

- Examine the preventive steps taken by the government for Money Laundering and its effectiveness in India are in accordance with the standards and criteria..
- Find out about the framework of the PML ACT,2002, its authorities under the Act and also the major Amendments throughout the life cycle of the Act.
- Examine the sectors affected by the Money Laundering and threats towards them. Finding out whether the various Global efforts to combat Money Laundering are sufficient to control the criminal offences.
- Whether Money Laundering impacts on Demonetization and the methods of money laundering indulging to demonetization.

Lastly, focusing on the areas of operations of Money Laundering and challenges faced during the Prevention of Money Laundering Act introduced on 2002.

CHAPTER- II
MONEY LAUNDERING

2.1- MONEY

Money is any object or record that is generally accepted as payment for goods¹³ and services and repayment of debts in a given country or socio-economic context. Money is generally considered to have the following four main functions, which are summed up in a rhyme found in older economics textbooks: "Money is a matter of functions four, a medium, a measure, a standard, a store."

Money is the root cause of many evils like corruption, black marketing, smuggling, drug trafficking, tax evasion etc¹⁴. The more developed the nation, the more the standard of living of the people. People want more money to cater to their needs and at a point of time they don't hesitate to have money from any source i.e. black or white money. This is the point where the concept of money laundering enters and then prospers

*Mahatma Gandhi*¹⁵ said-

Capital as such is not evil; it is its wrong use that is evil. Capital in so other will always be needed.

Money-The Root of the problem

¹³ <https://positivemoney.org/2011/05/what-is-money/>

¹⁴ <https://www.civildaily.com/india-internal-security-money-laundering-introduction-and-causes/>

¹⁵ Mohandas K. Gandhi (1869–1948), Indian political and spiritual leader. Harijan (28 July 1940), id.

The primary function of money is to serve as a medium of exchange, and as such it is accepted without question in final discharge of debts or payment of goods or services.¹⁶

The term 'money' generally includes banknotes as well as coins, although it may be limited to such of each as are legal tender at the time and place in question¹⁷. The precise meaning of the term depends upon the content in which it is used so that, for example, it is usually given a wide meaning when used in a will and when that meaning gives effect to the intention of the testator, an intermediate meaning in connection with claims for money paid or for money had and received, and a narrow meaning in the criminal law and in relation to execution.

Money has been regarded as bone of contention between friends and relatives. It is said lend money to a person if you want to spoil him or make foe. Money - wealth, property or estate have always caused family, feuds and even murders for it is said that all is fair in love and war. Money is devil's child and is responsible for many mischief and evils.

Some people think that wealth can bring happiness in life but it is not so.¹⁸

Money is the root cause of many evils like corruption, black marketing, smuggling, drug trafficking, tax evasion, and the buck does not stop here it goes to the extent of sex tourism and human trafficking (a human selling another human in the era of human rights). People are crazy for money. Majority is here to become rich and money has become the basic goal of

¹⁶Moss vs. Hancock [1899] 2 QB 111 at 116 per Darling J., quoted in Halsbury Laws of England, 4th Ed., Vol. 32 para 102 p. 63

¹⁷The term is sometimes used to include not only actual cash but also a right to receive cash, as for example, sums standing to the credit of a bank account or invested in securities; and the term may in some cases be used in a popular sense to include all personal or even, exceptionally, all real and personal property. Id.

¹⁸Frank Desantis, 'Love of Money is Root Cause of Evils', available at <<http://ezinearticles.com/?Love-of-Money-is-Root-Cause-of-Evils&id=664612>>, last accessed on November 10, 2008

education¹⁹. The more developed the nation, the more the standard of living of the people. People want more money to cater to their needs and at a point of time they don't hesitate to have money from any source (black or white who cares). This is the available soft corner where the concept of money laundering enters and prospers.

The influence of money on the people was appropriately portrayed by *Henry Fielding*²⁰ as follows:

'Sir, money, money, the most charming of all things; money, which will say more in one moment than the most elegant lover can in years. Perhaps you will say a man is not young; I answer he is rich. He is not genteel, handsome, witty, brave, good-humoured, but he is rich, rich, rich, rich, and rich— that one word contradicts everything you can say against him.'

2.2: ORIGIN OF THE TERM “MONEY LAUNDERING”

Laundering refers to the conversion or “Laundering” of money which is illegally obtained, in order to make it appear to originate from a legitimate source. Thus it is a process by which proceeds from illegal activities are disguised in order to conceal their illicit origin.

Money laundering, loosely defined, is the transactional processing or moving of illicitly gained funds (such as currency, cheques, electronic transfers or similar equivalents) towards disguising its source, nature, ownership or intended destination and/or beneficiaries. The

¹⁹Based on an ad-hoc survey conducted among the students, majority of whom join National Law Universities for an attractive package. Now the studies have become package-driven. Frank Desantis remarks “Instead of acquiring learning for the sake of learning, majority has hectic aims to earn money by hooks or crooks and become rich over night.”

²⁰Henry Fielding (1707–54), English novelist, dramatist. Mariana, in *The Miser*, act 3, sc. 7, the Columbia Dictionary of Quotations.

desired outcome of this process is “clean” money that can be legally accessed or distributed via legitimate financial channels and credible institutions.

2.3: DEFINITION OF MONEY

LAUNDERING

The first formal definition of money laundering which achieved international appreciation is found in the United Nations' Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (commonly referred to as the 1988 Vienna Convention). The definition is as follows:-

“The conversion or transfer of property, knowing that such property is derived from any offence or offences established in accordance with subparagraph (a) of this paragraph, or from an act of participation in such offence or offences, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of such an offence or offences to evade the legal consequences of his actions;

The concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, knowing that such property is derived from an offence or offences or from an act of participation in such an offence or offences.”

Some other definitions are follows:

“Money Laundering is the method by which criminals disguise the illegal origins of their wealth and protect their asset bases, so as to avoid the suspicion of law enforcement agencies and prevent leaving a trail of incriminating evidence.”

(United Nations Offence on Drugs and Crime)

“Money laundering is the process by which proceeds from a criminal activity are disguised to conceal their illicit origin”.

(IMF)

“Any act or attempted act to conceal or disguise the identity of illegally obtained proceeds so that they appear to have originated from the legitimate sources.”

(Interpol)

“Money Laundering is the conversion of profits of illegal activities into financial assets which appear to have legitimate origins.”

(US Senate’s Sub-Committee on Narcotics and Terrorism)

“The concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, knowingly that such property is derived from serious crime.”

(Article 1 of the EC Directive of March 1992)

2.4: SOURCES OF ILLEGAL MONEY:-

Money laundering washes the dirt off from the money / proceeds or profits generated from:

1. Real estate transactions
2. Drug trafficking
3. People smuggling
4. Arms, antique, gold smuggling
5. Casinos & Gambling avenues (such as Horse Race & lotteries)
6. Prostitution rings
7. Financial frauds
8. Corruption, or
9. Illegal sale of wild life products and other specified predicate offences

Though the term "money laundering" was invented in the 20th Century, the activity of money laundering has been around far longer. Sterling Seagrave in his book *Lords of the Rim* provides a roundup of the history of the Overseas Chinese. He explains how the abuse of merchants and others by rulers led them to find ways to hide their wealth, including ways of moving it around without being identified and confiscated. Money laundering in this sense was prevalent 4000 years before Christ. Money laundering is called what it is because that perfectly describes what actually happens: illegal or dirty money is put through a cycle of transactions, or washed, so that it comes out from the other end as legal or clean money. In

other words, the source of illegally obtained funds is obscured through a succession of transfers and deals in order that they can eventually be made to appear as legitimate income.

2.5: METHODS OF MONEY

LAUNDERING

The following methods show the means or the medium through which launderers carry out their activities:

(a) Structuring ("Smurfing"): Smurfing is possibly the most commonly used money Laundering method. It involves many individuals, who deposit cash into bank accounts or buy bank drafts in small amounts to avoid the reporting threshold.

(b) Bank Complicity: Bank complicity occurs when a bank employee is involved in facilitating the money Laundering process by opening multiple accounts without following KYC norms or by allowing operations in cash without reporting them.

(c) Money Services and Currency Exchanges: Money services and currency exchanges provide a service that enables individuals to exchange foreign currency that can then be transported out of a country. Money can also be wired to accounts in other countries. Other services offered by these businesses include the sale of money orders, cashiers cheques and travellers cheques.

(d) Asset Purchases with Bulk Cash: Money Launderers may purchase high value items like cars, boats or Luxury items such as jewellery and electronic items. Money Launderers will

use these items but will distance themselves by having them registered or purchased in an associate's name.

(e) Electronic Funds Transfer: Also referred to as telegraphic transfer or wire transfer, this money Laundering method consists of sending funds electronically from one city or country to another to avoid the physical handling of money.

(f) Postal Money Orders: The purchase of money orders for cash allows money Launderers to send these financial instruments out of the country for depositing them into foreign or offshore accounts.

(g) Credit Cards: Overpaying credit cards and keeping a high credit balance gives money Launderers access to these funds to purchase high value items or to convert the credit balance into cheques.

(h) Casinos: Cash may be taken to a casino to purchase chips that can then be redeemed for a casino cheque.

(i) Refining: This money Laundering method involves the exchange of small denomination bills for Larger ones and can be carried out by an individual who converts the bills at a number of different banks in order not to raise suspicion. This decreases the handling of Large quantities of cash.

(j) Legitimate Business / Co-mingling of Funds: Criminal groups or individuals may take over or invest in businesses that customarily handle a high cash transactions in order to mix Illicit proceeds with those of Legitimate businesses. Criminals may also purchase businesses that commonly receive cash payments, including restaurants, bars, night clubs, hotels, currency exchange shops, and vending machine companies. They will then mix criminal funds as false revenue with income that would not otherwise be sufficient to sustain a Legitimate business.

(k) Value Tampering: Money Launderers may look for property owners who agree to sell their property, on paper, at a price below its actual value and then accept the difference of the purchase price "under the table". In this way, the Launderer can, for example, purchase a 2 million-rupee property for 1 million rupees, while secretly passing the balance to the seller. After holding the property for some time, the Launderer sells it for its true value of 2 million rupees.

(l) Loan Back: Using this method, a criminal provides an associate with a sum of illegitimate money and the associate creates paperwork for a Loan or mortgage back to the criminal for the same amount, including all the necessary documentation. This creates an illusion that the criminal's funds are Legitimate. The scheme's Legitimacy is further reinforced through regularly scheduled Loan payments made by the criminal.

2.6: VOLUME OF MONEY

LAUNDERING

It is extremely difficult to give an estimate that how much money is actually laundered in the United States, any other country, or globally. Money Laundering is a mainly complicated and secret phenomenon. The exact number of launders involved in this crime? How much money they launder in one year and in which countries and sectors? Which techniques of money laundering are being used by them? These are some questions which are very difficult to answer.

“However, a constant effort of FATF²¹ between 1996 and 2000 to produce such estimates was failed. In fact, no express estimates existed of how much money passes through the process of money laundering, whether broadly or narrowly defined, for the purposes of converting illegal gains into a non-traceable form John Walker (1995) made a first serious effort at quantifying money laundering and initial output. His model suggested that US\$2.85 trillion are laundered worldwide. As per an estimate given by the International Monetary Fund, the total volume of money laundering in the world could be somewhere between two and five percent of the world’s Gross Domestic Product. Although it is impossible to accurately measure the volume of money laundering, so it is estimated that US\$300 billion to US\$500 billion in proceeds from serious crime (not tax evasion) is laundered each year. Though statistics on the volume of money laundering are inadequate, UK and US officials estimate that ‘the amount of money laundered annually in the financial system worldwide was roughly \$500 billion – some 2% of global GDP’. According to international accounting firms, India is estimated to have a parallel economy of nearly 40 percent of its \$600 billion Gross Domestic Product.”

In spite of these estimates, no reliable global figure is yet available. Money laundering would definitely appear to be a major problem amounting to hundreds of billions of dollars per year and part of those finances would be adding to an international stock of illicit money and assets purchased with earnings of crime, thereby escalating the strength of a number of transnational organised crime groups. It can also be the conclusion that if the above mentioned estimates are accepted, money laundering causes not only an international problem for criminal justice systems but also a macroeconomic trouble for financial sector. However, there is as yet no truly trustworthy quantification of the extent of money laundering globally. Work is presently in progress to develop a suitable methodology for this purpose. A trustworthy estimate is required not only to conclude the extent of the problem of money laundering but also to find out effective counter-measures over the time.

In *Pareena Swarup v. Union of India*,²⁷²²“the applicant sought declaration of certain provisions of the Prevention of Money-Laundering Act, 2002, for instance section 6, which speaks about adjudicating authorities, powers, composition etc., section 25, which speaks about the formation of Appellate Tribunal; section 27, which speaks about the structure etc.

²¹ <http://www.fatf-gafi.org>

²² CDJ 2008 SC 1701, judgment dated 30-09-2008 in WRIT PETITION NO.634 OF 2007

of the Appellate Tribunal; section 28, which speaks about qualifications for appointment of Chairperson and Members of the Appellate Tribunal; section 32, which speaks about their appointment, resignation and removal; section 40, which speaks about members etc. as *ultra vires* of Article 14, 19 (1) (g), 21, 50 and 323B of the Indian Constitution. The applicant also said that these provisions were in violation of the Constitutional Provisions and power of judiciary. As required by the Court, K K Venugopal, Senior Counsel and the Additional Solicitor General discussed the issue and by consensus submitted certain proposals. The Additional Solicitor General informed the court that the suggest actions were complete by amending the relevant rules framed under the Prevention of Money-Laundering Act, 2002". The court took note of the change made in the rules and disposed of the writ petition with the direction to implement the said provisions and if not amended by that times as suggested, to make changes as suggested within six months of the date of receipt of the copy of the judgment.

2.7: GLOBAL EFFORT TO CONTROL MONEY LAUNDERING

In order to check the menace of money-laundering, the jurisdictions have to devise ways which are preventive and punitive. Some of global efforts to combat Money Laundering are as below mentioned:

- **The Vienna Convention²³:** It creates an obligation for signatory states to criminalize the laundering of money from drug trafficking.
- **The 1990 Council of Europe Convention:** It establishes a common criminal policy on Money Laundering.

²³The Vienna Convention – 19th December 1988. A delegation of 106 States participated in the Convention. Mr. Guillermo Bedregal Gutiérrez (Bolivia) was elected President of the Convention. As of 24 March 2003, there were 167 parties and 87 signatories to this convention. (http://untreaty.un.org/english/treatyevent2003/Treaty_7.htm) see also <http://www.unodc.org/pdf/convention_1988_en.pdf> last accessed on November 14, 2008.

- **G-10's Basel Committee statement of principles:** It issued a “statement of principles” with which the international banks of member states are expected to comply.
- **The International Organization of Securities Commissions (IOSCO):** It encourages its members to take necessary steps to combat Money Laundering in securities and futures markets.
- **The Financial Action Task Force:**
 - It has been set up by the governments of the G-7 countries at their 1989 Economic Summit, has representatives from
 - 24 OECD countries
 - Hong Kong
 - Singapore
 - The Gulf Cooperation Council
 - The European Commission
 - It monitors members’ progress in applying measures to counter Money Laundering.
 - The famous **Forty Recommendations** are given by FATF.
- **IMF:** It has pressed its 189 member countries to comply with international standards to thwart terrorist financing.²⁴
- **The United Nations office on Drugs and Crime:** It proactively tries to identify and stop Money Laundering.

Pre 2002 Initiatives To Combat Money Laundering

²⁴Asian Development Bank (ADB), International Monetary Fund (IMF), World Bank (IBRD/IDA), European Bank for Reconstruction and Development (EBRD) and Inter-American Development Bank (IDB)

There was a reluctance on the part of Indian bank's to depart from their stringent bank secrecy policies, and this further enabled individuals to launder money in India. The money laundering problem in India is even further complicated by the ancient underground banking system of Hawala. In an effort to eliminate money laundering, the Indian government drafted the Money Laundering Prevention Bill ("MLPB"). It has also entered into agreements with certain countries to assist each other in money laundering investigations.²⁵

2.8: ANTI-MONEY LAUNDERING REGIME

Since the financial institutions of most of the legal systems were averse to government of legislative interventions, in order to address the growing problems of money-laundering, the regulatory bodies of such financial institutions initiated action for formulation of codes of conduct for the financial institution against money-laundering. The international initiatives resulted in formulation of certain standards to be followed by national institutions and the international conventions required formulation and implementation of national legislative measure to combat the problem of money-laundering. The global criminal law regime on anti- money laundering comprises of the sub-regime of preventive law regime and punitive criminal law enforcement regime.

“In combating transnational crime, it is necessary to have an understanding of how the proceeds of crime are disposed off. Large volumes of proceeds of crime are laundered

²⁵International Strategies to Combat Money Laundering Remarks of Joseph M. Myers, Assistant Director(International Programs) Financial Crimes Enforcement Network, U.S. Department of the Treasury for the International Symposium on the Prevention and Control of Financial Fraud Beijing, 19 - 22 October, 1998at <http://www.icclr.law.ubc.ca/Publications/Reports/myer_pap.pdf> accessed on November 15, 2008.

through ‘offshore’ banks located in places like the Cayman Islands, Dominica, St. Kitts and Nevis, and Nauru etc. Such money is also laundered through well-known financial centres such as London, New York, and Zurich. Bank of Credit and Commerce International (BCCI) was charged by the US Federal Government for laundering more than US \$ 32 million drug money, which benefitted Medellin Cartel which had a large share in illegal cocaine sale in the US”.

Money launderers set up offshore companies in tax haven countries using a local lawyer or another person as a nominee owner with an account at a local bank. From this company they issue loans to the money launderer in his own country, in effect borrowing their own money and paying it back as if it were legitimate loan.

2.9: STEPS TAKEN BY GOVERNMENT OF INDIA TO PREVENT MONEY LAUNDERING

Criminal Law Amendment Ordinance (XXXVIII of 1944): It covers proceeds of only certain crimes such corruption, breach of trust and cheating and not all the crimes under the Indian Penal Code.

- **The Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976:** It covers penalty of illegally acquired properties of smugglers and foreign exchange manipulators and for matters connected therewith and incidental thereto.
- **Narcotic Drugs and Psychotropic Substances Act, 1985:** It provides for the penalty of property derived from, or used in illegal traffic in narcotic drugs.
- **Prevention of Money-Laundering Act, 2002 (PMLA)**

- It forms the core of the legal framework put in place by India to combat Money Laundering.
- The provisions of this act are applicable to all financial institutions, banks(Including RBI), mutual funds, insurance companies, and their financial intermediaries.
- **PMLA (Amendment) Act, 2012**
 - Adds the concept of ‘**reporting entity**’ which would include a banking company, financial institution, intermediary etc.
 - **PMLA, 2002** levied a fine up to Rs 5 lakh, but the amendment act has removed this upper limit.
 - It has provided for provisional attachment and confiscation of property of any person involved in such activities.
- **Financial Intelligence Unit-IND²⁶**: It is an independent body reporting directly to the **Economic Intelligence Council (EIC) headed by the Finance Minister.**
- **Enforcement Directorate (ED):**
 - It is a law enforcement agency and economic intelligence agency responsible for enforcing economic laws and fighting economic crime in India.
 - One of the main functions of ED is to Investigate offences of money laundering under the provisions of Prevention of Money Laundering Act, 2002(PMLA).
 - It can take actions like confiscation of property if the same is determined to be proceeds of crime derived from a Scheduled Offence under PMLA, and to prosecute the persons involved in the offence of money laundering.
- **India** is a **full-fledged member of the FATF** and follows the guidelines of the same.

²⁶<http://fiuindia.gov.in/> There are 43 personnel working under this organization chosen from different organizations like CDBT, CBEC, RBI and SEBI

2.10: STAGES OF MONEY

LAUNDERING

The cycle of money laundering has three steps: placement, layering, and integration. At each step, launderers take action to subvert existing impediments to money laundering.

1. Placement

Placement is the first step in the money laundering process, occurs when dirty money first enters the legitimate financial system by being deposited into financial institutions. This initial step is the most vulnerable to law enforcement detection because it involves the physical disposal of cash. While cash is anonymous - an attractive quality for criminal proceeds - it is bulky and difficult to physically transport. For example, 44 pounds of cocaine worth \$1 million equates to 256 pounds of street cash worth the same amount; the cash weighs more than six times the drugs.²⁷

Transferring that same \$1 million through a series of international transactions is much simpler and more transfer or other non-cash transaction, money launderers face additional problems in the placement stage: financial institution policies and reporting requirements. In recent years, countries have recognized that financial institutions are in a unique position to combat money laundering because traffickers use them to deposit illegal profits. Therefore, countries have instituted programs that require financial institutions to "know discreet than the logistical nightmare of moving that much cash. In addition, cash is easily lost, stolen, or destroyed. Even where the placement is effected by wire their customers", meaning banks and other institutions should only conduct transactions, such as accepting deposits from or opening

²⁷While countermeasures to all three components of money laundering are important, laundered money is generally most vulnerable to detection at the placement stage. As a consequence, international regulatory and law enforcement efforts have concentrated especially on developing methods to make it difficult to place illicit funds without detection by developing measures such as mandatory record-keeping and even reporting of large or unusual currency transactions, "know your customer" and suspicious transaction reporting requirements, and cross-border monetary declaration requirements.

accounts for, customers who show identification. By requiring potential launderers to verify their identity and thus relinquish their anonymity, banks aid in deterring moneylaundering.

Also, many jurisdictions have implemented reporting requirements for financial institutions. In the United States, for example, financial institutions must file Currency Transaction Reports for each transaction that involves more than \$10,000. Additionally, individuals must file a Report of International Transportation of Currency and Monetary Instruments when they transport more than \$10,000 into or out of the United States. A final measure that financial institutions must implement in many countries is filing Suspicious Activity Reports (SARs) when they suspect a transaction is illegal.

To counter those measures, however, launderers engage in "structuring." This occurs when traffickers hire many people to make small deposits totalling slightly less than the mandatory reporting amount. Launderers will also have family, friends, or acquaintances who are trusted in the community conduct business on the launderers' behalf, thereby disguising the source of the illicit funds. Other launderers use a cash-intensive business, such as a restaurant, to justify large deposits that exceed reporting requirements.

2. Layering

The second step of the money laundering process, layering, occurs when the launderer separates the illicit proceeds from their source through a series of financial transactions. This step is called "layering" because the layers of financial transactions disguise the drug proceeds' owner and obscure the money trail. Layering is the most international and complex step of the laundry cycle because funds are typically moved from one foreign account to another²⁸. The Cayman Islands' primary connection with

²⁸International standards to discourage layering have also begun to develop, through a focus on increased transparency in financial systems generally and through increased recognition of the need to eliminate techniques, such as the use of nominees and numbered accounts to disguise the actual ownership of assets. Likewise, there has been growing international recognition that bank secrecy

money laundering is in the layering stage, due to the Caymans' large offshore financial sector.²⁹

Law enforcement finds that detecting money laundering is particularly difficult when the countries involved in the layering process are tax havens or strict bank secrecy jurisdictions. An example of a layering process is when a money launderer sends funds electronically from one bank to a different bank in another country, then invests and moves the funds within an overseas market to avoid detection. Each transaction that a launderer makes creates an additional layer that law enforcement must analyse in order to follow the paper trail, and "the deeper the 'dirty money' gets into the international banking system, the more difficult it is to identify the origin."

3. Integration

The third and final step of the money laundering process is integration³⁰. During integration, the illicit funds return to the legal economy and appear as legitimate business proceeds. For example, after being deposited in a U.S. bank account and wire transferred through Cayman financial institutions, laundered drug proceeds arrive in a bank account in Colombia. The Colombian trafficker then withdraws the money from the bank account and spends it in the legitimate economy on such items as cars or guns.

The paper trail created through the layering process complicates law enforcement's task of determining which funds within the legitimate economy are illegal. Unless law enforcement has established an audit trail during the first two stages of the laundry cycle, the funds' illicit origin will not be discovered. For this reason, the launderer may use the funds for whatever purpose he chooses, including buying luxury goods,

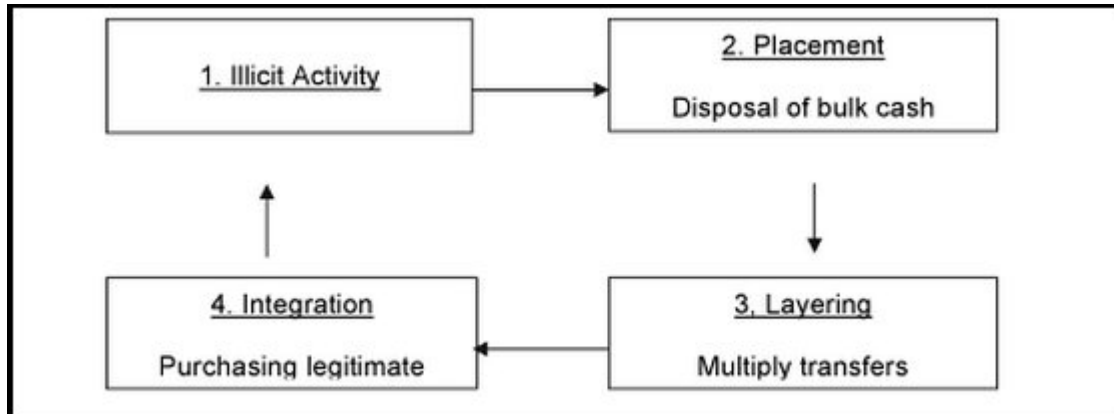
rules must give way to permit law enforcement agencies to review financial records in cases where there is an active criminal investigation pertaining to the source of the funds.

²⁹<http://money.howstuffworks.com/moneylaundering3.htm> last accessed on November 13, 2008

³⁰Finally, integration of illicit proceeds can be fought through the strengthening of asset forfeiture laws, by which governments can seize the proceeds of criminal activity even when those proceeds have been reinvested in ostensibly legitimate enterprises. Many states are currently working to improve methods by which asset forfeiture regimes, and asset sharing among law enforcement agencies of different countries, to make it more difficult for criminals to protect their money from the law.

such as automobiles or aircraft, and investing in legitimate business enterprises, such as tourism or real estate ventures.

The basic steps³¹ explaining the process of Money Laundering:



The Process of Money Laundering

³¹Georgios Boustras, 2012; <https://www.civilserviceindia.com/subject/General-Studies/notes/money-laundering-and-its-prevention.html>

CHAPTER-III

PREVENTION OF MONEY

LAUNDERING ACT,2002

In view of an urgent need for the enactment of a comprehensive legislation for preventing money laundering and connected activities, confiscation of proceeds of crime, setting up of agencies and mechanisms for coordinating measures for combating money laundering etc., the Prevention of Money Laundering Bill 1998 was introduced in Parliament on 4th August, 1998. The Bill received the assent of the President and became Prevention of Money Laundering Act, 2002 on 17th January 2003. The Act has come into force with effect from 1st July 2005. It has been amended in 2005, 2009 and recently in 2012. The objective of the Act is to prevent money-laundering and to provide for confiscation of property derived from, or involved in, money-laundering and for matters connected therewith or incidental thereto.³²

PMLA has designated one or more courts of sessions as Special Court or Special Courts to try the offences punishable under PMLA and offences with which the accused may, under the Code of Criminal Procedure 1973,

be charged at the same trial. Under the Act, Central Government is permitted to enter into an agreement with Government of any country outside India for enforcing its provisions, exchange of information for the prevention of any offence under PMLA or under the corresponding law in force in that country or investigation of cases relating to any offence under PMLA.

³²Mahanivesh Oils and Foods Private Ltd. v. Directorate of Enforcement, 2016 (228) DLT 142

3.1: SCHEME OF THE PREVENTION OF MONEY LAUNDERING ACT,2002

The Prevention of Money-laundering Act, 2002, hereinafter called the PMLA, was enacted in pursuance of the Political Declaration adopted by the Special Session of the United Nations General Assembly held in June, 1998, calling upon the Member States to adopt National Money laundering Legislation and Program, primarily with a view to meet out the serious threat posed by money laundering the Financial Systems of countries and to their integrity and sovereignty. If we have a look at the statement of object and reasons and also trace the historical basis for the Political Declaration and Global Program of Action adopted by the General Assembly, it could be seen that the concern of the Global Community which led to the above resolutions, was about the illicit traffic in narcotic drugs and the huge amount of money generated from the same. The original object of the Declaration of the General Assembly and the 2002 Act was not to deal with the normal crimes such as robbery, dacoity, fraud etc. but in course of time, the Prevention of Money-laundering Act, 2002 also appears to have fallen into the same kind of disuse/misuse as other enactments of similar nature, by the first targeting local criminals than their international counter-parts.³³

The Act consists of 10 chapters containing 75 sections and 1 schedule divided in 5 parts. Chapter I contain section 1 and 2 which deals with short title, extent and commencement and definitions. Section 2 is the definition section, which defines the important expressions used in the Act.

Chapter II of the Act comprises two sections, i.e. section 3, which defines the offence of money laundering and section 4, which stipulates the punishment for the offence of money-laundering.

Chapter III has sections 5-11 which provide for attachment of property, adjudication and confiscation.

³³Paresha G. Shah v. State of Gujrat, 2016 (1) Guj LH 329 (Guj)

Chapter IV of the Act which contains 5 sections (i.e. sections 12, 12A, 13, 14 and 15) casts certain obligations on the banking companies, financial institution and intermediaries such as maintenance of certain records and furnishing certain information on transactions handled by them, empowers the Director to impose fine on the defaulting institutions etc., protects the institutions from civil proceedings for the information provided and confer the powers on the Central Government

in consultation with the Reserve Bank of India to make rules that provide for the manner in which the records are to be maintained and the information furnished.

Chapter V of the Act which contains 9 sections (i.e. section 16 to 24) provides for survey, search of buildings, etc., and seizure, search of persons, arrest, retention of property, retention of records, presumption as to records or property in certain cases, presumption in inter-connected transactions and the presumption that proceeds of crime are involved in money-laundering.

Chapter VI of the Act that deals with the various matters such as establishment of Appellate Tribunal, appeals to it, composition of the tribunal, senior-most member acting as Chairperson in certain circumstances, procedure and powers of the tribunal, distribution of business amongst benches, power of the Chairperson to transfer cases, decision to be taken by majority, taking assistance of authorized representatives and appointment of presenting officers for presenting the case of Government, designation of Chairperson/members of the tribunal etc. as public servants, bar of jurisdiction of civil courts, appeals to the High Courts are dealt in this Chapter.

Chapter VII of the Act which contains provisions on Special Courts has 5 sections (i.e. sections 43 to 47).

Chapter VIII, which has 7 sections (sections 48 to 54) has provisions on various authorities under the Act, their appointment and powers, their power regarding summons, power of Central Government to give directions, empowerment of certain officers, certain officers to assist in inquiry etc.

Chapter IX, which has 9 sections (i.e. sections 55, 56, 57, 58, 58A, 58B, 59, 60, 61) has provisions on reciprocal arrangements for assistance in certain matters with other countries.

This chapter has a section that defines the expressions used in the Chapter. Other provisions of the chapter include the power vested on the Central Government to enter into agreement with other countries, issuance of letter of request, assistance to other countries in certain matters, reciprocal arrangement for processes and assistance for transfer of accused persons, attachment, seizure, confiscation etc. of property and the power of the Central Government of specify the procedure in respect of letter of request.

Chapter X of the Act has the miscellaneous provisions of the Act. It has 14 sections (i.e. sections 62 to 75). The provisions of the Chapter speaks about the punishment for vexation search, for giving false information or failure to give information etc., cognizance of offences, offences by companies, overriding effect of the Act, continuation of proceedings in the event of death or insolvency, power of the Central Government to make rules and the laying of the rules before Parliament and the power of the Central Government to remove difficulties.

3.2: OBJECTIVE /PURPOSES OF THE ACT

The PML Act seeks to combat money laundering in India and has three main objectives:

- To prevent and control money laundering
- To confiscate and seize the property obtained from the laundered money; and
- To deal with any other issue connected with money laundering in India.
- The Act also proposes punishment under sec.4.

3.3: BACKGROUND & LEGISLATIVE HISTORY

A. Background³⁴:

Throughout the world, money earned through illegal means is a major cause for worry for the Government. The illegal money which is earned, is masked and reintroduced into the regular economy through varied ways, thereby bringing a shell of respectability for ill-gotten wealth and depriving the Government revenue arising out of such transactions.

The term Money Laundering means procedures adopted in legitimizing assets earned which may be not under the four corners of the law. The source of such ill-gotten wealth may be Corruption, Organized Crime, Narcotics Trade, prostitution arms trade etc.

Money Laundering is an offshoot of parallel economy, which deprives most governments of legitimate revenue, thereby, the less endowed section of the society will be deprived of their upliftment. Throughout the world, governments are seized of the gravity of the situation and have introduced statutes to prevent money laundering and India is also a signatory to the global convention against money laundering.

The present ruling dispensation in India, have brought a series of measures to check the generation of ill-gotten money and its reintroduction into the mainstream. One of the measures introduced was the enactment of the Prevention of Money Laundering Act 2002. One important and significant feature of this enactment is that, it covers the ill-gotten wealth reintroduced in the mainstream in other countries also and reverse introduction of such wealth in India from illegal monies earned outside India, which in other words is known as cross border transaction.

B. Legislative History:

Prevention of Money Laundering Act, 2002 is an **Act** of the Parliament of **India** enacted by the NDA government to prevent **money-laundering** and to provide for confiscation of property derived from **money-laundering**. **PMLA** and the Rules notified there under came into force with **effect** from July 1, 2005.

³⁴ <https://taxguru.in/rbi/insight-prevention-money-laundering-act-2002.html>

In India, before the enactment of the Prevention of Money Laundering Act 2002, the Government of the day brought several legislations to address the menace of money laundering.

These statutes were, The Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974, The Income Tax Act, 1961, The **Benami Transactions (Prohibition) Act, 1988**, The Indian Penal Code and Code of Criminal Procedure, 1973, The Narcotic Drugs and Psychotropic Substances Act, 1985, The Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 and also included demonetization of currency.

However, the provisions of such statute were inadequate and in consonance with GLOBAL concerns a specific statute to deal with the issue was introduced.

The specific legislation dealing with money laundering is the Prevention of Money-Laundering Act, 2002 (for short 'PMLA'). The law was enacted to combat money laundering in India and has three main objectives:

- To prevent and control money laundering;
- To provide for confiscation and seizure of property obtained from laundered money; and
- To deal with any other issue connected with money-laundering in India.

It came into force with effect from 1st July 2005. The Act was amended by the Prevention of Money Laundering (Amendment) Act 2009 w.e.f. 01.06.2009. The Act was further amended by the Prevention of Money Laundering (Amendment) Act, 2012 w.e.f. 15-02-2013.

It extends to the **whole of India including the state of Jammu & Kashmir**.

Apart from the provisions of PMLA, there are other specialised authorities dealing with the menace, such as RBI/SEBI/IRDA anti-money laundering regulations. Many of these authorities are bound to provide suspicious transaction reports, which are in-turn analysed by Financial Intelligence Units established by the Central Government.

3.4: SALIENT FEATURES OF THE ACT

I. Offence of Money Laundering and its punishment

An offence of money laundering is said to be committed when a person in any way deals with the proceeds of crime.³⁵ The proceeds of the crime referred above include the normal crimes

³⁵Section 2(u) of the Act: any property derived or obtained, directly or indirectly, by any person as a result of

and the scheduled crimes³⁶. The prescribed punishment is 3-7 years rigorous imprisonment for an offence of money laundering with fine. In case of an offence mentioned under Part A, imprisonment would extend up to 10 years.³⁷

II. Attachment, Adjudication and Confiscation

The confiscation of the property under the Act is dealt with in accordance with the chapter III of the said Act. An official not below the rank of Deputy Director can order attachment of proceeds of crime for a period of 180 days, after informing the Magistrate. Thereafter he will send a report containing material information relating to such attachment to the Adjudicating Authority³⁸. Section 8 details the procedure of adjudication. After the official forwards the report to the Adjudication Authority, this Authority should send a show cause notice to concerned person(s) within 30 days. After considering the response and all related information, the Authority can give finality to the order of attachment and make a confiscation order, which will thereafter be confirmed or rejected by the Special Court.

III. Obligations of Banking Companies, Financial Institutions and Intermediaries

The reporting entity is required to keep a record of all material information relating to money laundering and forward the same to the Director. Such information should be preserved for 5 years³⁹. The functioning of the reporting entity will be supervised by the Director who can impose any monetary penalty or issue warning or order audit of accounts, if the entity violates its obligations. The Central Government, after consulting the Reserve Bank of India is authorised to specify rules relating to managing information by the reporting entity.

IV. Enforcement Paraphernalia

- Adjudicating Authority - The Act empowers the Central Government to constitute an Adjudicating Authority having a Chairman and 2 members and define their scope of functioning and other terms of service. The Adjudicating Authority will operate through a

criminal activity relating to a scheduled offence or the value of any such property or where such property is taken or held outside the country, then the property equivalent in value held within the country.

³⁶The crimes which are mentioned in the Part A and Part B and now Part C (added in PML Bill -08) of the Schedule attached to the Act, if the total value involved in such offences is thirty lakh rupees or more (this limit has also been removed under PML Bill 08); Section 3 of the PMLA.

³⁷Provision to Section 4 of the PMLA.

³⁸Section 5 of the PMLA.

³⁹Section 12 of PMLA.

Single or Division bench. The Authority has been given autonomous powers to regulate its adjudicating procedure⁴⁰.

- Administrator - The property laundered will be taken care of i.e. managed after confiscation by an Administrator who will act in accordance with the instructions of the Central Government⁴¹.
- Appellate Tribunal - All appeals from an order made by the Adjudicating Authority will lie to an Appellate Tribunal constituted by the Central Government. It will consist of 2 members headed by a Chairman⁴². An official can resign by sending his resignation to the Central Government thereby giving a 3 months' notice. He can also be removed by an order made by the Central Government on the grounds of misbehaviour or incapacity⁴³.
- Special Courts - the Central Government, after consulting the High Court is empowered to designate Court of Sessions as Special Courts⁴⁴. The Special courts can try all scheduled offences and that under section 4 and also offence under section 3, but after the authority requests in this behalf.
- Authorities under the Act - There shall be the following classes of authorities for the purposes of this Act, namely: (a) Director or Additional Director or Joint Director, (b) Deputy Director, (c) Assistant Director, and (d) such other class of officers as may be appointed for the purposes of this Act⁴⁵.

V. Summons, Searches and Seizures etc.

The power of surveying and scrutinizing records kept at any place is conferred on the Adjudicating Authority. The Authority may ask any of its officials to carry on the search, collect all relevant information, place identification marks and thereafter send a report to it. The search of a person to be conducted is allowed if it is ordered by the Central Government. The authority authorized in this behalf cannot detain a person beyond 24 hours, must ensure the presence of 2 witnesses, prepare a list of things seized signed by the witnesses and forward the same to the Adjudicating Authority. A property confiscated or frozen under this Act can be retained for 180 days. This period can be extended by the Adjudicating Authority

⁴⁰Section 6 of PMLA.

⁴¹Section 10 of PMLA.

⁴²Section 27 of PMLA.

⁴³Section 32 of PMLA.

⁴⁴Section 43 of PMLA. &Section 44 of PMLA.

⁴⁵Section 48 of PMLA.

after being satisfied of the merits of the case. The Court or the Adjudicating Authority can subsequently also order the release of such property⁴⁶. There shall be a presumption of the ownership of property and records recovered from a person's possession⁴⁷. The burden of proof will be on the accused to prove that he is not guilty of an offence under this Act. The offences under the Act are to be cognizable and non-bail able⁴⁸.

3.5: LIFE CYCLE OF THE ACT- MAJOR AMENDMENTS

PMLA has been amended thrice till date since the time of its enactment. The first amendment to the Act was by the Prevention of Money Laundering (Amendment) Act, 2005, second amendment was by Prevention of Money Laundering Act, 2009 and the third in the year 2013 by the Prevention of Money Laundering (Amendment) Act, 2013.

3.5.1: Prevention of Money Laundering (Amendment) Act, 2005

The key amendments made by this Amendment Act are as follows –

- Definition of Investigation was inserted since the word investigation and investigation officer used by several sections in the Act.
- Under Section 45, all offences were cognisable. If an offence is cognisable, then any police officer in this country can arrest without a warrant. Section 19 says, only the Director or Assistant Director should investigate the offence. Thus, Section 45 of the Act was amended to resolve the conflict.

⁴⁶Retention of Property u/s 20 of PMLA.

⁴⁷Presumption as to records or property in certain cases u/s 22 PMLA.

⁴⁸Section 24 of PMLA. And Section 45 of PMLA.

3.5.2: Prevention of Money Laundering (Amendment) Act, 2009

The Prevention of Money Laundering (Amendment) Act, 2009 came into force from June 1, 2009.

Important changes brought out by the Amendment Act of 2009 are as follows –

- Definitions of authorised person; designated business or profession; offence of cross border implications; and payment system operator were incorporated. Changes were made in the definition of financial institution non- banking company and scheduled offence.
- Provisions with regard to attachment of property involved in money laundering and search and seizure were amended. Also, provisions for attachment seizure, confiscation of property in a contracting state were amended.
- The age of retirement of Chairperson and Members of the Adjudicating Authority was increased from 62 years to 65 years. Provision for mandatory consultation with the Chief Justice of India before removal of the Chairperson or a Member of the Appellate Tribunal was inserted.
- Certain offences were added to Part A and Part B of the Schedule of the Act. These offences include those pertaining to insider trading and market manipulation as well as smuggling of antiques, terrorism funding, human trafficking other than prostitution, and certain environmental crimes. A new category of offences which have cross-border implications was enacted as Part C of the Schedule.

3.5.3: Prevention of Money Laundering (Amendment) Act, 2012

The following are the key amendments to the PMLA Act:

- The definition of offence of money laundering was expanded to include activities like concealment, acquisition, possession and use of proceeds of crime
- The upper limit of fine of ` 5 lakh was removed. After the amendment, the quantum of fine proportionate to the seriousness of the offence will be determined by the Court on a case-to-case basis

- The Act originally provided for attachment of property for 150 days. It has been increased to 180 days. The Act, prior to its amendment, provided that the person from whom property is attached must have been charged of having committed a scheduled offence. This amendment expands the scope of attachment by stipulating that any proceeds of crime which are even likely to be concealed or transferred can be attached. Further, this amendment provided that if any proceeds are to be used for any purpose which will frustrate the confiscation of proceeds of crime, then such property will also be attached.
- The concept of Reporting Entity has been introduced by this Amendment Act. Banks, intermediaries, financial institution and persons carrying out designated business or profession are responsible for maintaining records of all transactions and give access to information to the Director. The Amendment Act provides that reporting entity has to report an attempted transaction. These are done in order to cut down suspicious transactions from the very beginning.
- Powers of the Director to call for records and conduct inquiries were strengthened.
- The Adjudicating Authority is empowered to pass an order for freezing of property so that it can be seized or confiscated later.
- In any proceedings relating to proceeds of crime under this Act, in case a person is charged with the offence of money laundering under Section 3 of the Act, it shall be presumed by the Court or the Adjudicating Authority that such proceeds of crime are involved in money laundering unless the contrary is proved.
- It is clarified that a company can be prosecuted and the prosecution or conviction of legal juridical person is not contingent on prosecution of any individual
- Monetary threshold is removed for the offence of money laundering. Prior to the amendment, Part B of the Schedule in the Act included merely those crimes where the total value involved is ` 30 lakh or more whereas Part A did not specify any monetary limit of the offence.

3.6: AUTHORITIES UNDER THE ACT

Section 48 of the Prevention of Money-Laundering Act, 2002, reads as follows:

The PMLA 2002, speaks about the appointment under Chapter VIII of four categories of officers for the purposes of the Act i.e.

- (i) Director/Additional Director/Joint Director;
- (ii) Deputy Director;
- (iii) Assistant Director; and such other class of officer appointed for the purpose of the Act. The said classes of officers are also authorized to appoint other authorities below the level of Assistant Director.

The Director, while exercising the power of imposing fine under section 13 have the same powers as are vested in a civil court under the C.P.C. 1908, in respect of matter such as:

- (a) discovery and inspection;
- (b) to summon and enforce attendance of persons;
- (c) to compel the production of documents;
- (d) to receive evidence on affidavits;
- (e) to issue commission for examination of witnesses and documents; and
- (f) other matters which are prescribed.

In order to exercise the powers vested and to hold the responsibilities bestowed under various sections, the Act by section 48, envisages creation of a hierarchy/hierarchies of authorities with the nomenclatures as given therein.

The Director of Enforcement shall also at the same time exercise powers conferred by section 26(3), (4), (5), section 39, 40, 41, 42, 48, 49, 66 and section 69 of the PMLA⁴⁹.

3.7: POWERS AVAILABLE TO THE INVESTING OFFICER

The Investigating Officers have the following powers:

⁴⁹GRS No. 440 (E) dated 1 July 2005.

- (a) to **provisionally attach** any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property [Section 5];
- (b) to conduct **survey** of a place [Section 16];
- (c) to conduct **search** of building, place, vessel, vehicle or aircraft & seize/freeze records & property [Section 17];
- (d) to conduct **personal search** [Section 18];
- (e) to **arrest** persons accused of committing the offence of Money Laundering [Section 19];
- (f) to **summon and record the statements** of persons concerned [Section 50].

3.8: TO WHOM DOES THE PROVISION OF THE APPLY?

The provisions of the Act applies to every “Person directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming it as untainted property shall be guilty of offence of money-laundering” [Sec 3].

As per Section 2(1)(s) “Person” includes—

- (i) an individual,
- (ii) a Hindu undivided family,
- (iii) a company,
- (iv) a firm,
- (v) an association of persons or a body of individuals, whether incorporated or not,
- (vi) every artificial juridical person not falling within any of the preceding sub-clauses, and
- (vii) any agency, office or branch owned or controlled by any of the above persons mentioned in the preceding sub-clauses.

Thus, besides the natural person, even legal entities are also covered under the expression “person” as per the Act.

3.9: OFFENCE OF MONEY LAUNDERING

The objective of the PMLA, 2002 as reflected in the preamble to the Act is to prevent money laundering and to provide for confiscation of property derived from, or involved in, money laundering. For effective preventing money-laundering it is necessary that the act of money laundering itself is made an offence. Having this as the objective, the PMLA envisages money-laundering *ipso facto* an offence. The Act also envisages laundering of money involved in drug trafficking as a serious offence for which section 4 of the Act prescribes higher level punishment, i.e., the maximum imprisonment of 10 years RI in place of 7 years rigorous imprisonment for laundering of proceeds of other predicate offences⁵⁰.

Section 3 of the PMLA, 2002, which defines the offence of money-laundering, reads as follow:

“Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the [proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming] it as untainted property shall be guilty of offence of money-laundering.”

Section 3 of the Prevention of Money-Laundering Act is important not only from the view point that it is the most important offence, which is envisaged in the Act, but also from the view point that it is this section which specify different activities that are comprised in the offence of money-laundering for the purposes of the Act.

“Before the Amendment of the Act carries out in the year 2013, the offence of money-laundering was envisaged as mere projection of the proceeds of crime as untainted property. However, the Prevention of Money-Laundering (Amendment) Act, 2012 (2 of 2013), expanded the definition of the offence of money-laundering so as to include concealment, possession, acquisition or use and projecting or claiming the proceeds of crime as untainted property. The definition of moneylaundering

⁵⁰Substituted by the Prevention of Money-Laundering (Amendment) Act, 2012 (2 of 2013), s.3, for the words “proceeds of crime and projecting” (w.e.f. 15th February, 2013).

as stands now covers every conceivable act of money-laundering.

The offence of money-laundering is a standalone offence within the meaning of the Prevention of Money-Laundering Act, 2002, and its investigation alone is in the exclusive domain of the Enforcement Directorate.” The provisions of the Prevention of Money Laundering Act do not ponder on the inquiry of any of the Schedule (predicate) offences such as offences under the Indian Penal Code, 1860, Prevention of Corruption Act, 1988 and etc. by the Enforcement Directorate.

For prosecutions under section 3 of PMLA the date of getting hold of illegal funds is not relevant, however the date on which such money is being processed for projecting it untainted is relevant.

3.10: ESSENCE OF THE OFFENCE

The essence of the offence defined in section 3 of PMLA is projecting the proceeds of crime as untainted property. One would think that it is only when a legitimate source of the earning with respect to the tainted property, i.e. proceeds of crime, is suggested or attempted to be suggested that the offence punishable under section 4 of the Act would be said to be committed. In other words it requires consideration whether where a person having proceeds of crime in his possession puts them in a bank account and then transfer the same to another accounts, he can be said to have projected the money as ‘untainted property’. The proceeds of crime would remain the proceeds of crime irrespective of that whether they are kept in the house or deposited in a bank account, or kept with somebody else. Projecting them as ‘untainted property’ is the essence of the offence punishable under section 4 of PMLA. The prima facie view in this regard is that it is only when an attempt is made to show the source of that money as something legitimate, it would amount to projecting the proceeds as ‘untainted property’.

3.11: WHAT ARE THE PROCEEDS FOR ARREST?

*“Proceeds of crime” means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a **scheduled offence** or the value of any such property [Section 2(1)(u)].*

The offences listed in the Schedule to the **Prevention of Money Laundering Act, 2002** are scheduled offences in terms of Section 2(1)(y) of the Act. The scheduled offences are divided into two parts – Part A & Part C.

In Part ‘A’, offences to the Schedule have been listed in 28 paragraphs and it comprises of offences under Indian Penal Code, offences under Narcotic Drugs and Psychotropic Substances, offences under Explosive Substances Act, offences under Unlawful Activities (Prevention) Act, offences under Arms Act, offences under Wild Life (Protection) Act, offences under the Immoral Traffic (Prevention) Act, offences under the Prevention of Corruption Act, offences under the Explosives Act, offences under Antiquities & Arts Treasures Act etc.

Part ‘B’ Omitted by the Amendment in 2012 and all the offences have now been placed in Part A of the Schedule.

Part ‘C’ deals with trans-border crimes and is a vital step in tackling Money Laundering across International Boundaries.

Every Scheduled Offence is a Predicate Offence. The Scheduled Offence is called Predicate Offence and the occurrence of the same is a prerequisite for initiating investigation into the offence of money laundering

3.12: WHAT ARE THE PROVISIONS FOR ARREST?

The relevant authority under PMLA can arrest a person if on the basis of material in his possession,

- he has reason to believe that any person has been guilty of an offence punishable under PMLA, and
- the reason for such belief has been recorded in writing.

in *Vakamulla Chandrashekar vs. UOI*, where it was held that **the “information of the ground of arrest” “as soon as may be”** satisfies the requirement of the arrest under Section 19 of the PMLA.

3.13: WHAT ARE THE CONDITIONS AFTER ARREST?

- inform the arrested person about the grounds for his arrest.
- forward a copy of the arrest order along with the material in his possession to the Adjudicating Authority.
- Produce such person, within twenty-four hours, before the Special Court or Judicial Magistrate or a Metropolitan Magistrate, as the case may be, having jurisdiction.
- Provided that the period of twenty-four hours shall exclude the time necessary for the journey from the place of arrest to the Court.

Is Warrant mandatory for Arrest?

From the bare perusal of the Section 19 of the PMLA, it is apparent that **there is no requirement under the section to obtain an arrest warrant** from the Court before arresting a person. If the conditions mentioned in Section 19 of the PMLA are fulfilled, the relevant authority under PMLA can arrest a person.

3.14: ATTACHMENT, ADJUCATION & CONFISCATION

The Prevention of Money Laundering Act, 2002, envisages attachment of the proceeds of crime by the authorities authorized under the Act and its eventual adjudication and confiscation by a quasi-judicial authority, namely Adjudicating Authority. As in the case of most of the similar legislation like The Indian Income Tax Act, 1961, the Customs Act, 1962, the Central Excise and Salt Act, 1944 and the Narcotic Drugs and Psychotropic Substances Act, 1985, the action of confiscation (of proceeds of crime) is carried out by quasi-judicial authority and trail for commission of offence by the court of law. By establishing a composite adjudicatory authority, PMLA

departs from other revenue/criminal legislation enumerated above. The Adjudicating Authority under the Act has one member each having experience in the field of law, administration, finance or accountancy. Unlike the other Acts which envisage departmental officers as adjudicating authorities, the Adjudicating Authority under the Act is a composite body having in it officers from the related fields such as administration, finance, law or accountancy.

The composite nature and having in it officers from fields such as law give the Adjudicating Authority under PMLA, much more acceptability and credibility.

CHAPTER-IV

IMPLICATIONS OF MONEY

LAUNDERING IN INDIA

Large numbers of criminal acts are done to generate profit for an individual or a group. Money laundering is the main process of these fraudsters to conceal the illegal source of such transactions. This procedure enables the criminal groups to enjoy the profits without jeopardizing their source.

Criminal activities like smuggling, illegal arms sales and the tricks of organised crime, including drug trafficking and prostitution rings, can produce large amounts of earnings. Criminal misappropriation, fraud, insider trading, bribery and computer scam can also generate huge profits and give encouragement to convert the ill-gotten money in legitimise income through money laundering.

Money laundering is a global phenomenon and is happening all over the planet which in turn is disturbing the economy of all countries. “In a developing economy like India money laundering is a rising as a serious problem but it is primarily limited to domestic activities that are far from being only drugs related frauds, corruption and smuggling are obvious additional ones. The governments of different countries have been using different actions to stop money laundering, on the other hand developing countries like India, are still struggling with the crisis of money laundering due to less awareness and lack of common understanding connected to money laundering and corrupt businessmen and government officials take advantage of this ignorance for their individual profit. Money laundering performs a main role in achieving the desires of drug trafficker, terrorist organisations, gangs of organised criminals, inside dealers, the tax evader as well as others who wish to stay away from any kind of interest from the authorities that sudden wealth brings from illegal activities. The primary objective of engaging in this type of activity is to place the proceeds beyond the reach of any asset forfeiture laws”. Indian legislative councils have recognized money laundering as a dangerous and serious crime for the economy and the society but on the other hand the lack of awareness, understanding regarding money laundering and inability on the government’s part to enforce the anti-money laundering regulations effectively, new cases of money laundering are coming out every day and causing a serious threat to the economy of the country. According to estimations done by international accounting firms, India is expected to include a parallel economy of almost 40 percent of its \$600 billion Gross Domestic Product. That is serious parallel banking structure⁵¹.

⁵¹http://www.igidr.ac.in/~money/mfc-11/Singh_Vijay.pdf (last accessed on 10 March 2016)

According to news report published in Indian Express, UP chief minister Ms. Mayawati was accused of laundering money by using novel techniques in order to avoid tax payment legitimately. Huge cash donations were made in her name by people who didn't exist and by fictitious people. When a CBI inquiry was ordered it was found that most of these persons who made the donations don't exist or their financial conditions were such that they were in no positions to donate such large amount of money to her".

A famous Indian who is a stock-broker by profession named Ketan Parekh was also charged for the crime of money laundering. He got publicity in 1999 when he was in news for his manipulative transactions in the stock of many companies like Digital Global Tele, Infosys, Himachal Futuristic, Wipro and the K-10 scrips (also known as Zee Tele). A CBI enquiry was made against him in December 2002 and he was arrested. He was accused of moving the cash received from Bank of India pay order scam to different countries of the world in order to launder that money and at last in Swiss Bank accounts.

As mentioned in the above paragraphs, that how giant is the problem of money laundering, it doesn't just effect one nation or two but is prevailing at international level particularly in developing economies like India. In India the financial industry has just been liberalized is at larger risk as criminal elements and persons with ulterior objectives can take advantage of the ever emerging financial sector for their nefarious actions. This research is determined to bring general awareness among the public working in financial industry, banking industry etc. about money laundering. This goal can be achieved by the comprehensive study of money laundering tricks taken place in our country and various other countries and also analyzing that what measures have been taken to beat it⁵².

4.1: EXTENT OF MONEY LAUNDERING

Money laundering is an unlawful activity carried out by criminal elements of the society which takes place outside of the normal range of monetary, financial and economic statistics. Along with various other aspects of alternative financial activities, rough estimations have been put forward to give some common idea of the size of the problem of money laundering. Due to its nature money laundering is not amenable to any data collection. Hence, no reliable

⁵²<http://www.ukessays.com/essays/finance/analysing-the-process-of-money-laundering-finance-essay.php> (last accessed on 12 March 2016)

figures are available about extent of money laundering. However, various global organizations and economical research institutes have attempted to estimate the extent of funds that would have been laundered. The first estimate of money laundering made by John Walker (University of Wollongong) in 1995 was of USD 2.8 trillion, Michael Camdessus (IMF) in 1998 placed the figure at USD 1.5 trillion (about 5% of GDP). Subsequently, Buehn and Schneider estimated that in 20 OECD countries money laundering funds increased from USD 273 bn (1.33% of GDP) in 1995 to USD 603 bn (1.74% of GDP) in 2006. A study conducted by the United Nations Office on Drugs and Crimes (UNODC) estimated that funds generated by drug trafficking and organized crimes in 2009 amounted to 3.6% of global GDP, with 2.7% (or USD 1.6 trillion) being laundered.

“The United Nations Office on Drugs and Crime (UNODC) conducted a study to determine the magnitude of illicit funds generated by drug trafficking and organised crimes and to investigate to what extent these funds are laundered. The UNODC report estimates that the total amount of criminal proceeds generated in 2009, excluding those derived from tax evasion, may have been approximately \$2.1 trillion, or 3.6 per cent of GDP in that year (2.3 to 5.5 per cent). Of that total, the proceeds of transnational organized crime - such as drug trafficking, counterfeiting, human trafficking and small arms smuggling - may have amounted to 1.5 per cent of global GDP, and 70 per cent of those proceeds are likely to have been laundered through the financial system. This falls within the widely quoted estimate by the International Monetary Fund, who stated in 1998 that the aggregate size of money laundering in the world could be somewhere between two and five percent of the world’s gross domestic product. Using 1998 statistics, these percentages would indicate that money laundering ranged between USD 590 billion and USD 1.5 trillion. At the time, the lower figure was roughly equivalent to the value of the total output of an economy the size of Spain⁵³. The above approximation should be used with prudence. They are planned to give an approximation of the extent of money laundering. Because of the unlawful temperament of the dealings, accurate figures are not obtainable and consequently it is not possible to generate a perfect estimate of the quantity of funds that is laundered every year at international level. The FATF therefore does not publish any figures in this regard⁵⁴.

⁵³“Illicit money: how much is out there?” available at http://www.unodc.org/unodc/en/frontpage/2011/October/illicit-money_-how-much-is-out-there.html (accessed on 16.7.2016)

⁵⁴<http://www.fatf-gafi.org/pages/faq/moneylaundering/>

International consultant, KPMG has estimated “ that money laundering flows into India are reported to be in excess of US\$ 1 trillion every year by drug dealers, arms traffickers and other criminals. According to Indian observers, fund transferred through the hawala/ alternative remittance system are equal to between 30 to 40% of the formal market. The RBI estimated that remittances to India amounted to US\$ 28.2 billion. According to international accounting firms, India is estimated to have a parallel economy of nearly 40 per cent of its \$600 billion Gross Domestic Product.”⁵⁵ “According to the research conducted by India forensic in 2011, the estimated size of money laundering in India was Rs 18.86 lakh crore for the 2000-2010⁵⁶.

Out of 140 countries, India has been ranked 93rd, 70th and 88th in 2012, 2013 and 2017 respectively with a score of 6.05 in 2012 and 5.95 in 2013, and 5.58 in 2017 as compared to Finland, which has a score of 3.04 and ranks No. 1 in the Anti Money Laundering (AML) Basel Index 2017. This clearly shows that India, in the present-day scenario, is very vulnerable to money laundering activities and is a high risk zone”.

It is the urgent need of our country to control money laundering because the practice is widespread all over the country. It is expected that a total sum of \$343 billion has been laundered out of India for the duration of the period 2002-2011. This is a huge amount and it should be a priority for the government to control the problem of money laundering.

How much money is laundered per year?

By its very nature, money laundering is an illegal activity carried out by criminals which occurs outside of the normal range of economic and financial statistics. Along with some other aspects of underground economic activity, rough estimates have been put forward to give some sense of the scale of the problem.

The United Nations Office on Drugs and Crime (UNODC) conducted a [study](#) to determine the magnitude of illicit funds generated by drug trafficking and organized crimes and to investigate to what extent these funds are laundered. The report estimates that in 2009, criminal proceeds amounted to 3.6% of global GDP, with 2.7% (or USD 1.6 trillion) being laundered⁵⁷.

⁵⁵Alagiri, Dhandapani, “ Money Laundering: Issues and Perspectives”, Hyderabad: ICFAI University Press, 2006, p.86

⁵⁶“Digital currency to abet money laundering” available at http://articles.economictimes.indiatimes.com/2013-07-21/news/40709270_1_bitcoin-liberty-reserve-money-laundering (last accessed on 6 Jan.2014)

⁵⁷<https://www.fatf-gafi.org/faq/moneylaundering/>

This falls within the widely quoted estimate by the International Monetary Fund, who stated in 1998 that the aggregate size of money laundering in the world could be somewhere between two and five percent of the world's gross domestic product. Using 1998 statistics, these percentages would indicate that money laundering ranged between USD 590 billion and USD 1.5 trillion. At the time, the lower figure was roughly equivalent to the value of the total output of an economy the size of Spain.

However, the above estimates should be treated with caution. They are intended to give an estimate of the magnitude of money laundering. Due to the illegal nature of the transactions, precise statistics are not available and it is therefore impossible to produce a definitive estimate of the amount of money that is globally laundered every year. The FATF therefore does not publish any figures in this regard.

4.2: IMPLICATIONS OF MONEY LAUNDERING

Money laundering not only financially deteriorates a nation but also exposes to terrorist attacks, and threatens its honour and independence. Bank system has become extra vulnerable to money laundering tricks and financial crimes. The major portion of laundered money is processed through banking system. This is mainly because of the fact that banking system is generally the first step in a multi-tiered laundering system. Investment firms, including brokerages, mutual fund corporations and hedge funds also form a major amount of activity, covering more than 25% of total money laundering operations. A plethora of products and services are used to disguise the original source of money, which are presented by the banking system and financial services sector. Money launderers try to make banks and investment firms to minimize their procedures with their lucid and sophisticated manners, so that they can achieve their goal. The difficulty of the banks and financial institutions here in the perspective of money laundering is to find out through the banking activities representing

legitimate business and suspicious transactions. This discussion shows the exposure of the banking system and financial institutions to money laundering and therefore recommends the stipulation of influential regulatory structure to regulate these illegal activities.

4.2.1: TERRORISM

Terrorism is an immorality which influences each and everyone. We can come across terrorist attacks being done by terrorists from time to time. These terrorist assaults absolutely cannot be completed without the help of funds. Money laundering provides a significant method of terrorism financing. Terrorists have shown flexibility and pragmatism in fulfilling their financial necessities. Terrorist groups raise finances from lawful sources, as well as the misuse of charitable entities or lawful businesses or self-financing by the terrorists themselves. Terrorists also receive money from different of illegal activities which includes different scale and sophistication from low-level offense to organised crime or narcotics smuggling, or from state supports and other secure financial havens. Terrorist groups use different techniques to make transfer of funds which includes physical movement of cash by couriers, and the movement of goods via trading structure among different organizations as well as the financial sector of the economy. Alternative remittance schemes and charities are also used to conceal movement of finances by terrorist groups⁵⁸.

4.2.2: THREAT TO BANKING SYSTEM

Banking system have become the main goal of criminals for activities of money laundering and financial crime only for the reason that they provide multiplicity of services and instruments that can be used to hide the illegal source of funds. With their elegant, communicative and attractive behaviour, criminals try to make bankers to lower their safeguards and security measures so that they can achieve their goal. Therefore strict norms and rules for account opening, record keeping, transaction monitoring, and reporting are being enacted by central banks around the world for checking the occurrence of money laundering activities and the staff of banks also be skilled to identify suspicious transactions, the abeyance of the banker in the perspective of money laundering is to investigate and

⁵⁸“Estimated direct attack cost in Bali Bombings is estimated at USD 50,000” – Financial Action Task Force Report on Terrorist Financing, 29th February 2008, available at <<http://www.fatfgafi.org/dataoecd/28/31/40196357.pdf>> (last accessed on 14 November, 2013)

separate the dealings showing lawful business and banking activity from the irregular or doubtful dealings. Money launderers normally use banking system in two different stages, firstly they hide the illegal origin of the funds, when they put their unlawful money into financial stream of the economy to legalize the funds and bring in these finances in the financial system and secondly, once these funds have gone through the banking system, via a series of dealings, then they distance the funds from unlawful source. The banks and other financial institutes through which the 'dirty money' is laundered become innocent sufferers of this offense.

4.2.3: THREAT TO POLITICAL STABILITY

The Intrusion and sometimes dispersion of illegal earned money into lawful financial system and national accounts can make threats to the political and economic stability of the country. An IMF working paper suggests that money laundering can cause impact on monetary financial behaviour and macro-economic performance in different ways. It includes policy mistakes due to measurement inaccuracy in nationwide account statistics; instability in interest and exchange rates due to unexpected cross border movements of funds; the menace of monetary volatility due to unstable asset structures; effects on tax collection and public expenditure allocation due to misreporting of income and many more such ways⁵⁹. Proliferation of criminals in jurisdictions where money laundering is prevalent would lead to their gaining influence over the social and political systems. This would gradually lead to their gaining a control over the socio-political system of the country, and it would ultimately undermine its democratic system.

4.2.4: ECONOMIC DISTORTIONS

Money laundering has negative effects on economic development. It poses a serious threat to national economies and respective governments. The infiltration and sometimes saturation of dirty threaten economic and political stability. Economic crimes have a devastating effect on

⁵⁹Gururaj, B.N., "Commentaries on FEMA, Money Laundering Act and COFEPOSA", Nagpur: Wadhawa,Ed. 2005, p.729 . " It is known, for instance that in early 1990s an influx of tainted money into several banks in the Baltic states resulted in their collapse due to the high number of withdrawals triggered by customers' knowledge of dirty deals and lack of consumer confidence".

a national economy since potential victims of such crimes are far more numerous than those in other forms of crime. Economic crimes also have the potential of adversely affecting people who do not prima-facie, seem to be the victims of the crime. For example, tax evasion results in loss of government revenue, thus affecting the potential of the government to spend on development schemes thereby affecting a large section of the population who could have benefited from such government expenditure. Furthermore, organisations laundering money have a fundamental unfair businesses advantage. This is because they “can afford to sell a product for cheaper because their primary purpose is to clean money”. This means smaller businesses lose customers as they cannot compete.

On a larger scale, developing economies may find it hard to break the cycle of corruption, as they have less money to spend on anti money laundering (AML) regulations. Criminals are much more likely to target weaker systems. This means losing lots of money to laundering, but the government lacks the funds to prevent it. Consequently, developing countries need help from international and regional organizations to sure-up their economic systems.

Unhindered conversions of illegal money to legal money could impact economy adversely. It would lead to unfair competition between honest and dishonest businesses. It could also results in distortion of prices, and crowding out of honest business. Thus the investment climate in the economy gets dampened. Thus there is an impending impact on economic growth. Infusion of illegal money also impacts the money supply that is unpredictable thus making it more difficult to manage monetary situation in the economy. Cross-border movement of illegal funds increased the volatility of international capital, and impacts the exchange rates not determinable from the official trade.

4.2.5: SOCIAL EFFECTS

Corruption and organized crimes are two of the major concerns of several jurisdictions across the globe. Money Laundering facilitates camouflaging ill-gotten wealth of corrupt officials. It facilitates structuring and perpetration of organized crimes. Thus in a jurisdiction with no control on money laundering corruption and financial frauds are likely to increase. Besides, such countries would be attractive harbors for crimes leading to deleterious effect on their social environment. Governments will spend more money on AML regulations and law enforcement through a reaction. As a result, public spending decreases and normal people suffer.

Furthermore, as illustrated above, criminals make businesses less productive. This leads to a drop in quality of services offered to customers. As a result, neither customers nor innocent businesses can trust certain organizations to deliver the services they need.

Corruption and the laundering of money spread like a wildfire. Once it begins, businesses, the public and governmental employees could be encouraged to follow suit. Under no circumstances should criminals be incentivized to commit further offences.

When money laundering exists in society, everyone loses out. Meaning, that governments need to draft effective anti-money laundering regulations for businesses to comply with. Compliance is in everyone's interests for a safe and transparent society.

4.2.6: IMPACT ON FINANCIAL SYSTEM & BANKS

Banks and financial institutions, since they deal in public money and provide a variety of services and instruments, are most vulnerable to receiving criminal money disguised in the form of genuine business. Globalization of banking and finance coupled with technological advancement in payment systems has widened the scope for concealing criminal money and increased its mobility across borders. Absence of any preventive mechanism would expose these institutions to reputation risk, which is one of their most valuable assets. Prevalence of money laundering also enhances the risk of frauds and economic crimes thereby impacting the soundness and stability of financial systems and the financial system of a country.

However, money laundering harms the development of these financial institutions at this point. The anti-money laundering measures applied within the relevant financial institutions show that there is a relationship between money laundering and fraudulent activities carried out by employees, and thus their joint work harms the institutions. If money laundering occurs at high rates, criminals use financial institutions to drain the funds they obtain, which negatively affects these institutions. These adverse effects also undermine the trust of customers. Therefore, the trust of customers and related institutions is essential for developing financial institutions, respectively, to have a stable financial sector and develop the economy through them. The impression of fraud in

relevant institutions, such as depositors, investors, and society in general, as well as customers, is a major obstacle to trusting them.

4.3: DEMONETIZATION & MONEY

LAUNDERING

Government of India has undertaken the program of removal of legal tender of the current bank notes in value of INR 500 and INR 1000 issued by Reserve Bank of India, which is commonly described as ‘demonetization’, with the objective of reducing black money, decrease financing of terrorism and preventing the circulation of fake currency in the financial system.

Simultaneously, the use of demonetization as a weapon to combat corruption and money laundering is arguable. The Indian case study, as per a memo released on 11th August 2017 by RBI reveals that approximately INR2.8 to INR 4.3 Trillion flowed incrementally (currency which was reserved outside the traditional banking sector) into the banks all over the country⁶⁰.¹³² After considering all things, keeping in mind FATF recommendations, demonetization is not a risk based anti-money laundering/ combating the financing of terrorism approach. It has been used some times by different countries combating extremely high price increases and the value of the national currency is extremely eroded.

4.3.1: IMPACT OF DEMONETIZATION ON

MONEY LAUNDRING

The effects of demonetization has been experienced across the political and financial sectors of the country and according to our study, it has mainly effected the circulation of fake currency alternative remittance system like ‘hawala’ and alternative networks of unlawful money changers for example ‘hundi’ and ‘angadia’ etc. It also has an extensive effect on price increases and availability of liquidity of funds with the banks, and that consequently affected lending rates. Short terms availability of cash in different sectors for instance

⁶⁰https://www.rbi.org.in/Scripts/MSM_Demonetisation.aspx accessed on 18 May 2018.

agriculture, real estate and other cash-based business was severely effected and difficulty faced by common people in order to get the exchange of old notes for new was the other significant effect of demonetization. The Indian government has declared huge penalties for the currency deposited in banks which does not go with income tax returns filed by the persons concerned. Therefore, in order to defeat these provisions, several money launderers and black money holders resorted to extensive and innovative methods of money laundering. When Indians were struggling with the disorder created by unexpected exclusion of their Rs. 500 and Rs. 1,000 currency notes, money-laundering system was spreading all over the country, making a new market and giving the service to the people to turn their black money into legal tender. Although public was given time until year-end to deposit old currency in their bank accounts, the government said it will examine large cash transaction and currency from undeclared origins and the depositors will have to face heavy penalties and trial. It created a flurry for methods to convert so-called black money into white.rush The policy was aimed at reducing the size of the black economy and to include more people into the tax net, in the short term, but it done just the opposite: increased money-laundering, opened new possibilities for existing organized crime, the development of the long-standing hawala like money-transfer system and tax-evasion. “The Enforcement Directorate (ED) is investigating over 3,700 cases of money laundering and hawala transactions, involving tainted assets worth Rs 9,935 crore, as part of its action against black money generated post demonetization. The other categories of post-note ban financial crimes being probed by the ED include cases of corruption (31 percent), drugs and narcotics trade (6.5 percent), arms and explosives (4.5 percent) and others (8.5 percent).”⁶¹A report by the Financial Times said “complex money-laundering networks sprang up in Asia's third-largest economy after the demonetization scheme was announced. Rich persons attempted to avoid tax authorities and sold the banned currency notes at a discount to brokers who managed to deposit or exchange them at banks. Others took help of friends and relatives to deposit their black money into the banks.”⁶²

4.3.2: METHODS OF MONEY LAUNDERING DURING DEMONETIZATION

⁶¹<https://www.firstpost.com/business/post-demonetisation-ed-has-taken-up-over-3700-money-laundering-andfema-cases-for-probe-4201891.html> last (accessed on 25 Feb. 2018)

⁶²<https://www.ft.com/content/7dbe0e14-8d8a-11e7-a352-e46f43c5825d> (last accessed on 26 Feb. 2018)

We admit that there has been active laundering of black money in the period of demonetisation, The Economic Survey conducted by 'The Economic Times' lists the techniques used by the people to convert black into white.

The techniques listed involve back-dating of income, getting another persons to queue and exchange banned notes, depositing funds in Jan Dhan accounts, converting black money into white by paying 'conversion fees'. If there was one example of theft in plain sight, this was it. People with huge amount of banned currency factually engaged armies of people to stand in queues and exchange old currency for new, only for a little commission.

The Government of India made efforts to control this practice and ordered the bank officials to make a mark by indelible ink on the fingers of those who had exchanged old notes once over the counter, but that was not proved beneficial. Ultimately, over-the-counter exchange was closed and people were requested to deposit old currency in their bank accounts. "Hawala" system of money transfers using 'hundi' instrument was also used by some criminal and corrupt people during the process of demonetization.

Another method required the black money holders to pay a fixed percentage to private intermediaries as a commission for converting black money into white. It was also informed that Jan Dhan accounts were used to deposit huge amount of old currency since demonetisation and it is alleged to be black money being laundered. The government quickly felt that deposits into such accounts was more than thousands of corers, and consequently imposed a monthly limit on withdrawal from them. In all these cases, black money owner suffered a considerable loss, in form of taxes or "conversion fees". Moreover, bank accounts are still under screening for doubtful dealings, so those who were engaged in money laundering have the danger of punitive taxes and legal action, besides the fees or taxes previously paid⁶³.

4.4: NEW AREAS OF OPERATION OF MONEY LAUNDERING

⁶³<https://economictimes.indiatimes.com/wealth/personal-finance-news/economic-survey-lists-active-launderingmethods-used-for-black-money-during-demonetisation/articleshow/56892149.cms>

Both authorities and the money launderers seem to permanently change their behaviour when trying to hunt and escape money laundering. One can notice changed techniques of money laundering as a reaction to regulation⁶⁴. Launderers continuously explore new routes for laundering their money. Economies with growing or developing financial centres, but inadequate controls are more vulnerable than countries with established financial centres as the latter must have implemented comprehensive money-laundering regimes.

1. Insurance Sector: The insurance sector is a relatively less haunted sector compared to banks and other avenues of financial services. However, there has been a gradual increase in laundering activity in insurance as well⁶⁵.

2. Open Securities Market: Money launderers have traditionally targeted banks, which accept cash and facilitate domestic and international funds transfers. However, the securities markets, which are known for their liquidity, may also be targeted by criminals seeking to hide and obscure illicit funds. Money launderers can target any of the various types of businesses that participate in securities industry. Broker-dealers, for instance, provide a variety of products and services to retail (usually individual) and institutional investors—buying and selling⁶⁶ stocks, bonds, and mutual fund shares. This is more over possible due to the instruments like Hedge Funds and Participatory Notes which have very limited disclosures as to the source. These funds can be effectively used as Laundromats. Although the number of documented cases in which broker-dealer or mutual fund accounts have been used to launder money is limited, law enforcement agencies are concerned that criminals may increasingly attempt to use the securities industry to launder money.

This is a new area which requires a serious thought processing.

3. CYBER CRIME

These days one has to confront with hybrid crimes, the crimes with many attributes. Cyber crimes such as identity theft, illegal access to e-mail, and credit card fraud are coming together with money laundering and terrorist activities.

⁶⁴Brigitte Unger, “The Scale and Impacts of Money Laundering”, UK: Edward Elgar Publishing, 2007, p.107

⁶⁵<http://fiuindia.gov.in/downloads/IRDA.pdf>.

⁶⁶<http://www.gao.gov/new.items/d021111.pdf>,”Anti-Money Laundering: Efforts in the Securities Industry”.

Large amount of money is now stored in digital form and can be transferred through electronic and online gateways to multiple accounts.

4. Gold & Diamond Markets

There are considerable differences between the gold and diamond markets. Value of gold is much more per unit of weight, and there is a regular marketplace for it. It is very easy to determine the purity of gold, and analysis or test marks are well implicit and easy to observe. On the other hand, diamonds are extra composite form; single diamond can be of much more value than the same weight of gold, but it requires the 'right' buyer for a particular diamond. Moreover, a diamond is not dividable i.e. a diamond worth \$100,000, cannot be divided in to two halves worth \$5,000 each. Valuation of diamonds is a more complicated procedure than gold; it requires specific training, without any assurance that a sale can be done⁶⁷.

Gold Market—Gold provides an attractive avenue to the money launderer, due to its high natural price, convertibility, and the possible anonymity in transfer. Most laundering methods relating to gold are linked with drug trafficking, corruption, organized crimes, and unlawful trade in commodities and goods. The gold can also be the proceeds of crime that required to be laundered if it has been stolen or smuggled by generating a structure of false billing. Some cultures have high demand for gold due to cultural or religious importance attached to it, and therefore it provides avenue for the smuggling of gold. Moreover, gold is also used for making transactions, due to its high value that provide a cover for laundering operations.

Diamond Market--The unlawful business in diamonds is famous in certain parts of the world, and a number of terrorist groups are using diamonds from these areas to provide funding to their terrorist activities. The easiness with which diamonds can be concealed and transported, and the high value for some stones, makes diamond market an eye-catching avenue for the criminals. The simplest typology concerning diamond is the direct purchase of diamond with criminal earnings. Other general typologies via diamond trading include retail foreign exchange transactions, purchasing of gaming chips at casinos, fake or false invoicing, and mixing of lawful and unlawful earnings in the financial records of diamond trading corporations.

⁶⁷at <http://fiuindia.gov.in/downloads/IRDA.pdf>

5. PEPS/Corruption

Instances of persons in charge of governing a country and superior government officials and administrators involved in corruption and other type of proceeds generating crime are no longer rare incidences. In the last few years, a number of high visibility corruption cases involving corrupt politicians and other laundering significant criminal proceeds have been noticed and investigated.

6. Misuse of NPOs and Charities

Non-Profit Organization constitution has been found to be extremely useful by terrorist outfits for carrying out their nefarious clandestinely. The exploitation of NPOs by terrorist groups can be seen from many perspectives. One, an NPO established with a charitable purpose, but it actually subsists only to provide finances to a terrorist organization. From another view, an NPO established with a charitable or generous objective is infiltrated by the terrorists groups often without the awareness of the donors, or the staff members. In another method, the charitable organization serves as an intermediary for the movement of funds, generally on an international level.

CHAPTER:5
CHALLENGES FACED DURING
MONEY LAUNDERING

5.1: CHALLENGES FACED

Banks and financial institutions are facing several serious anti-money laundering compliance challenges that can be normally accredited to defective improvement approach. Firms that failed to stop laundering are liable to give a heavy penalty in the form of declining revenues, customer dissatisfaction, huge penalties, loss of reputation, and fall in stock prices. Banks around the world use different technology-based programs and solutions. The Financial Action Task Force (FATF), an inter-governmental body currently with 37 members from 35 jurisdictions and 2 regional organizations, has enacted a set of regulations that is acknowledged as an international framework of anti-money laundering standards. These anti-money laundering recommendations help in detecting, reporting, and preventing suspicious activities in different financial institutions.

A number of challenges are being faced by banks and financial institutions in managing risks involved in comply with the current anti-money laundering regulations and recognizing vulnerabilities. Dissimilar dealings and escalating complications of cybercrimes and fraud make the situation more complex. To tackle these challenges, banks and financial institutions need to be sure about data protection, identify fraud in time, and prioritize compliance with the FATF recommendations. Compliance programs mainly rely on the identity of persons. This information is essential when comparing sanctions lists or classifying the customer into risk-pools. Here is the other challenge which banks are facing now days:

5.1.1: Increased Governance

Financial institutions and banks find it complicated to deal with the requirements of national, cross-border and multi-jurisdictional anti-money laundering regulations and ever-growing customer due diligence requirements. Identifying beneficial ownership and requirement to

make the first move for remedial actions are not addressed by anti-money laundering regulations and hence uncovered by regulatory reviews. These shortcomings also come with their own set of challenges.

5.1.2: Lack of Skilled Personnel

There is a great challenge to get trained and experienced human resources with exhaustive knowledge of anti-money laundering regulations and compliance requirements. Other problem includes high on-boarding timelines and expenditures, and attrition. In keeping employees abreast with changing regulatory necessities institutions are required to devote significant time and efforts.

5.1.3: Complicated Processes and Technology

Banks are required to follow multiplicity of processes and put in place many technology solutions that will consolidate KYC data and systems in a single repository for anti-money laundering compliance. They are also required to build infrastructure for cross-channel recognition of suspicious activities, improve data quality, and regulate data to enable centralized analysis of fraud and other financial crimes. The risk level assigned during on-boarding differs according to the dealings undertaken by the customer. It means that financial institutions and banks have to evaluate the risks vigorously for each customer, and adjust risk levels consequently, to avoid false positives. This requires repetitive transaction monitoring for every customer, which is a mammoth job.

5.1.4: Operations Challenges

When it move toward dealings the use of hard cash and other monetary instruments in amount under regulatory reporting threshold avoid fraud controls in place. The lack of widespread anti-money laundering programs that don't settle in changing regulatory

environment and lack of attention to the nuances places an additional tension of short-staffed and underqualified groups. Moreover, false alerts drive investigative costs up and tarnish the customer relationship.

5.1.5: Future Implications

Banks and financial institutions work very hard to comply with anti-money laundering requirements as they don't want to be liable for the payment of huge fines. However, rather than come up to it from a mechanical perspective, investigators should also remember that there is a moral implication to permit even one fraudulent dealing. Money that slips past compliance potentially authenticates the crimes that generated them.

When large banks are improving their anti-money laundering attempts constantly, criminals are looking towards smaller banks and investment banking and as a result low-risk chances. There has to be regular modification of anti-money laundering framework across the banking industry to control fraud once and for all; reducing costs and process regularity will be the best criteria.

5.1.6: Limited Availability of Data

There can be limited accessibility of data which is needed to complete the anti-money laundering risk assessment, with non-repeatable processes used to collect quantitative statistics. Moreover, inadequate data granularity can affect the suitability and appropriateness of the data in the anti-money laundering risk assessment. To deal with these challenges, banks should include all accessible information into the evaluation, leveraging internal and external data and evaluate risk and controls to internal metrics. Banks should identify the

biased nature of the anti-moneylaundering risk evaluation, but can make stability through standardizing terminology and the overall evaluation procedure.

5.1.7: New Payment Methods

Traditional banking system has reasonable grounds to worry due to online alternative payment/transfer services, like Web-Money, PayPal etc. are just few name. The easiness of use of the above mentioned systems gives the customer an excellent option for the old style banking system which is easy to use; flexible; no need to give physical appearance at any location to be able to make an account; the transfer speed is much faster and the duration of any transaction is much lesser etc. These are only some advantages of online payment systems over the established

banking system. Consequently, traditional banking system regularly has to re-evaluate their business models in order to be able to compete with their online challengers. Unluckily, the easiness of the new online services comes with some undesirable consequences. After getting familiar with the working of these systems, criminal elements can use the online platforms to launder the unlawfully acquired money by a quicker and less risky method. Modernization in payment methods has explored new possibilities for money launderers. The improved access of mobile banking facilities, prepaid cards and credit cards has enhanced the hit rate of finding innocent people for skimming, phishing assaults and theft of identity. The introduction of cryptocurrencies such as bitcoin causes another big challenge, which is beyond the control of banking institutions, as these are peer-to-peer, totally unknown due to no engagement of a formal banking system. The 2010 FATF report on money laundering using NPMs articulates the dangers:

“Anonymity, high negotiability and utility of funds as well as global access to cash

through ATMs are some of the major factors that can add to the attractiveness of NPMs for money launderers. Anonymity can be reached either ‘directly’ by making use of truly anonymous products (i.e. without any customer identification) or ‘indirectly’ by abusing personalised products (i.e. circumvention of verification measures by using fake or stolen identities, or using strawmen or nominees, and so on).”

These challenges are only the tip of the iceberg. It is right to remember ourselves of the notorious saying: "with great power comes great responsibility". Banks and financial institutions have the power to direct the flow of the global financial system, but they also have the accountability for the international society to protect this system from being wrongly used for the ill motives of terrorism financing, money laundering and other unlawful activities.

RELATIONSHIP BETWEEN MONEY LAUNDERING AND CRIME: ARE THEY INTER-RELATED?

Various studies have shown that there has been a positive relationship between the amount of money being laundered and the volume of illegal activity. Douglas Husak (2008) in his book, *The Limits of the Criminal Law* (New York: Oxford University Press, 2008), has claimed that in the U.S., a major factor contributing to the high numbers in prison is ‘over criminalization’ i.e. excess of laws has contributed to an increase in the number of violations of criminal laws, which, in turn, has resulted in the meting out of too much criminal punishment. The head of the World Bank has also estimated that African countries lose 25% of their gross national product to corruption (“Countries to Get Help Recovering Stolen Assets,” *The New York Times*, September 17, 2007). The World Bank further states that corruption is “the single greatest obstacle to reducing poverty”. Globalization opens many opportunities for crime, and crime is rapidly becoming global, outpacing international cooperation to fight it (United Nations Human

Development Report, 1999) Indeed Boorman and Ingves note that ‘the main purpose of anti-money laundering laws is to reduce the incidence of predicate crimes. By countering money laundering as an offence distinct from the underlying crime, it is hoped that the number of predicate offences will fall (Gilmore 1995; Levi 2002; Masciandaro 2004). Therefore, Anti-money laundering activities are required to make the country less attractive for the launderers, thus protecting the financial sector from operational and reputational risks. Gill and Taylor (2002) reports that the emphasis on compliance was thought to detract attention from the overall objectives. Indeed they state ‘compliance with the requirements was often assuming a bigger priority than identifying money laundering risks’. The International Financial Institutions Anti-Corruption Task Force (made up of the World Bank, International Monetary Fund, African Development Bank, Asian Development Bank [ADB], European Investment Bank and European Bank for Reconstruction and Development) released a Uniform Framework for Preventing and Combating Fraud and Corruption on September 17, 2006. The Framework defines corruption as “the offering, giving, receiving, soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party.” More explicit is the 2003 United Nations Convention against Corruption (UNCAC). The UN Convention defines corruption to include all of the following activities: the active and passive bribery of domestic and foreign public officials as well as officials from

RELATIONSHIP BETWEEN MONEY LAUNDERING AND CRIME: ARE THEY INTER-RELATED?

Various studies have shown that there has been a positive relationship between the amount of money being laundered and the volume of illegal activity. Douglas Husak (2008) in his book, *The Limits of the*

Criminal Law (New York: Oxford University Press, 2008), has claimed that in the U.S., a major factor contributing to the high numbers in prison is 'over criminalization' i.e. excess of laws has contributed to an increase in the number of violations of criminal laws, which, in turn, has resulted in the meting out of too much criminal punishment. The head of the World Bank has also estimated that African countries lose 25% of their gross national product to corruption ("Countries to Get Help Recovering Stolen Assets," The New York Times, September 17, 2007). The World Bank further states that corruption is "the single greatest obstacle to reducing poverty". Globalization opens many opportunities for crime, and crime is rapidly becoming global, outpacing international cooperation to fight it (United Nations Human Development Report, 1999) Indeed Boorman and Ingves note that 'the main purpose of anti-money laundering laws is to reduce the incidence of predicate crimes. By countering money laundering as an offence distinct from the underlying crime, it is hoped that the number of predicate offences will fall (Gilmore 1995; Levi 2002; Masciandaro 2004). Therefore, Anti-money laundering activities are required to make the country less attractive for the launderers, thus protecting the financial sector from operational and reputational risks. Gill and Taylor (2002) reports that the emphasis on compliance was thought to detract attention from the overall objectives. Indeed they state 'compliance with the requirements was often assuming a bigger priority than identifying money laundering risks'. The International Financial Institutions Anti-Corruption Task Force (made up of the World Bank, International Monetary Fund, African Development Bank, Asian Development Bank [ADB], European Investment Bank and European Bank for Reconstruction and Development) released a Uniform Framework for Preventing and Combating Fraud and Corruption on September 17, 2006. The Framework defines corruption as "the offering, giving, receiving, soliciting, directly or

indirectly, of anything of value to influence improperly the actions of another party.” More explicit is the 2003 United Nations Convention against Corruption (UNCAC). The UN Convention defines corruption to include all of the following activities: the active and passive bribery of domestic and foreign public officials as well as officials from

RELATIONSHIP BETWEEN MONEY LAUNDERING AND CRIME: ARE THEY INTER-RELATED?

Various studies have shown that there has been a positive relationship between the amount of money being laundered and the volume of illegal activity. Douglas Husak (2008) in his book, *The Limits of the Criminal Law* (New York: Oxford University Press, 2008), has claimed that in the U.S., a major factor contributing to the high numbers in prison is ‘over criminalization’ i.e. excess of laws has contributed to an increase in the number of violations of criminal laws, which, in turn, has resulted in the meting out of too much criminal punishment. The head of the World Bank has also estimated that African countries lose 25% of their gross national product to corruption (“Countries to Get Help Recovering Stolen Assets,” *The New York Times*, September 17, 2007). The World Bank further states that corruption is “the single greatest obstacle to reducing poverty”. Globalization opens many opportunities for crime, and crime is rapidly becoming global, outpacing international cooperation to fight it (United Nations Human Development Report, 1999) Indeed Boorman and Ingves note that ‘the main purpose of anti-money laundering laws is to reduce the incidence of predicate crimes. By countering money laundering as an offence distinct from the underlying crime, it is hoped that the number of predicate offences will fall (Gilmore 1995; Levi 2002; Masciandaro 2004). Therefore, Anti-money laundering activities are required to make the country less attractive for the launderers, thus protecting the

financial sector from operational and reputational risks. Gill and Taylor (2002) reports that the emphasis on compliance was thought to detract attention from the overall objectives. Indeed they state ‘compliance with the requirements was often assuming a bigger priority than identifying money laundering risks’.

The International Financial Institutions Anti-Corruption Task Force (made up of the World Bank, International Monetary Fund, African Development Bank, Asian Development Bank [ADB], European Investment Bank and European Bank for Reconstruction and Development) released a Uniform Framework for Preventing and Combating Fraud and Corruption on September 17, 2006. The Framework

defines corruption as “the offering, giving, receiving, soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party.” More explicit is the 2003 United Nations Convention

against Corruption (UNCAC). The UN Convention defines corruption to include all of the following activities: the active and passive bribery of domestic and foreign public officials as well as officials

5.2: RELATIONSHIP BETWEEN MONEY LAUNDERING AND CRIME: ARE THEY INTER-RELATED?

Various studies have shown that there has been a positive relationship between the amount of money being laundered and the volume of illegal activity. Douglas Husak (2008) in his book, *The Limits of the Criminal Law* (New York: Oxford University Press, 2008), has claimed that in the U.S., a major factor contributing to the high numbers in prison is ‘over criminalization’ i.e. excess of laws has contributed to an increase in the number of violations of criminal laws, which, in turn, has resulted in the meting out of too much criminal punishment. The head of the World Bank has also estimated that African countries lose 25% of their gross national product to corruption (“Countries to Get Help Recovering

Stolen Assets,” TheNew York Times, September 17, 2007). The World Bank further states that corruption is “the single greatest obstacle to reducing poverty”. Globalization opens many opportunities for crime, and crime is rapidly becoming global, outpacing international cooperation to fight it (United Nations Human Development Report, 1999) Indeed Boorman and Ingves note that ‘the main purpose of anti-money laundering laws is to reduce the incidence of predicate crimes. By countering money laundering as an offence distinct from the underlying crime, it is hoped that the number of predicate offences will fall (Gilmore 1995; Levi 2002; Masciandaro 2004). Therefore, Anti-money laundering activities are required to make the country less attractive for the launderers, thus protecting the financial sector from operational and reputational risks. Gill and Taylor (2002) reports that the emphasis on compliance was thought to detract attention from the overall objectives. Indeed they state ‘compliance with the requirements was often assuming a bigger priority than identifying money laundering risks’.

The International Financial Institutions Anti-Corruption Task Force (made up of the World Bank, International Monetary Fund, African Development Bank, Asian Development Bank [ADB], European Investment Bank and European Bank for Reconstruction and Development) released a Uniform

Framework for Preventing and Combating Fraud and Corruption on September 17, 2006. The Framework defines corruption as “the offering, giving, receiving, soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party.” More explicit is the 2003 United Nations Convention against Corruption (UNCAC). The UN Convention defines corruption to include all of the following activities: the active and passive bribery of domestic and foreign public officials as well as officials from international organizations, the embezzlement or diversion of public property by a public official, trading in influence or illicit enrichment by a public officials, and bribery and embezzlement in the

private sector. In 2007 the World Bank has observed: Corruption and money laundering are a related and self-reinforcing phenomenon. Corruption proceeds are disguised and laundered by corrupt officials to be able to spend or invest such proceeds. At the same time, corruption in a country's AML institutions (including financial institutions regulators, Financial Intelligence Units (FIUs), police, prosecutors, and courts) can render an AML regime of a country ineffective.

CONCLUSIONS AND SUGGESTIONS

Based on former analysis, I found that there are various programs and laws that helps in identification of Money Laundering crimes and strict set of rules to prevent these crimes. The various provisions set up by Government of India to foster the Money Laundering activities has major one the Prevention Of Money Laundering Act, 2002 come into force on 2005 has played great role.

India has taken up various Anti-Money Laundering measures to curb with this issue but these measures somewhere or the other have some loopholes or fall-outs and thus is not fulfilling the complete purpose. In my opinion, there used regular check on the built laws or measures to get the updates and if necessary making relevant changes when and where required.

Most effective and foremost challenge we are facing with to Money Laundering is that the general public is not aware about the sources, consequences and preventive measure to follow to stop these crimes. So, major initiative lies in making the public aware about Money Laundering, there laws, rights related to them and strict provision under the Act.

Based on the analysis, I generated various possible approaches in order to make an efficient anti-money laundering system as follows:

- To implement all the laws of the PLM Act, 2002 more strictly so that no crisis like Demonetization arises in future and if so, it must be handled with caution keeping in peoples management in concerns.

- Adopt more channels to spread the awareness with regards to Money Laundering as crime in general public and generate positive impacts for already issued program such KYC norms, etc.
- In order to lessen the exposure of the intercontinental financial system to money laundering, regulators must strengthen their attempts to eliminate any injurious regulations and practices which frustrate global mutual assistance against money laundering.
- It is suggested to build a strong political determination to deal with the trouble, so far as it will be only an intercontinental compliance show piece, any number of laws would not serve the purpose. In order to develop an efficient anti-money laundering regime the conflicts among centre and states should be resolved.
- Staff of Anti-Money laundering (banks, insurance companies, securities regulators, and companies) needs to be re-trained according to the current laws and regulations and types of transactions particularly involved for money laundering.
- It is also suggested to include various other professions like the insurance sector, the legal profession, real estate business and commercial traders with in the ambit of provision of Money laundering.

India banks would get paralyzed in developed nations. However, it is strongly felt that PMLA should incorporate within its ambit the casinos, because a huge amount of money, in form of informal transactions, is being operated upon through such places.

Lastly, the anti- money laundering programs should be more strict enacted and must limit the scope of right to financial privacy. So, the creation of a strict regulatory regime for financial institutions will require financial institutions to abandon their policies of customer confidentiality. Such a system would allow to discover suspicious acts with greater ease.

BIBLIOGRAPHY

- “Money Laundering and Its Fall-out”, The Associated Chambers of Commerce and Industry of India available at <https://www.slideshare.net/ResurgentIndia/money-laundering-and-its-fallout>
- <http://jayakathju.blogspot.in/2012/05/tax-crimes-under-money-laundering-law.html>
- Gururaj, B.N., *Commentaries on FEMA, Money Laundering Act and COFEPOSA*, Nagpur: Wadhawa, Ed. 2005, p.729
- Moss vs. Hancock [1899] 2 QB 111 at 116 per Darling J., quoted in Halsbury Laws of England
- Frank Desantis, “Love of Money is Root Cause of Evils”, available at <http://ezinearticles.com/?Love-of-Money-is-Root-Cause-of-Evils&id=664612>, (last accessed on 14th June 2016)
- “Tushar V. Shah, Commentary on The Prevention of Money Laundering Act”, Current Publications, Mumbai, (2002) p. 112
- Scott, Hal. S. and Philip. A. Wellons, *International Finance: Transaction, Policy and Regulation*, 9th Ed., Foundation Press, New York, 2002.
- Schneider, F. and Windischbauer, U. “Money Laundering: Some Facts”. *Economics of Security Working Paper 25*, Berlin: Economics of Security (2010).
- “S. Ganesh, Money Laundering”, article available at <http://www.rbi.org.in/scripts/btcdisplay.aspx?pg=btcmoneylaunder.html>
- Substituted by the Prevention of Money-Laundering (Amendment) Act, 2012 (2 of 2013), s.3, for the words “proceeds of crime and projecting”.
- <http://www.indianexpress.com/oldStory/57766/>
- (Dr). J.D. Agarwal, “International Money Laundering in the Banking Sector”, *Finance India*, Vol. XVIII, No. 2 Jun. 2004.
- <http://www.fatf-gafi.org>