VOLUME 4 | ISSUE 3

INTERNATIONAL JOURNAL OF ADVANCED LEGAL RESEARCH

MONEY LAUNDERING: IDEAS, IMPACTS, AND LEGAL REQUIREMENTS IN INDIA

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ABSTRACT:

Internationally, money laundering has become a buzzword. Both wealthy and developing nations have concerns about it. The process of converting money obtained from illicit sources into legitimate sources is known as money laundering. According to estimates from the World Bank and IMF, two to four percent of the global GDP comes from illegal sources. Agarwal and Agarwal (2006, 2004) estimate that global money laundering amounts to more than 2.0 to 2.5 trillion US dollars annually, or roughly 5-6% of World GDP in 2006 (44,444 trillion US dollars in 2006), based on forecasts from regression analyses and taken from economic intelligence units. This estimate is to be contrasted with an observed figure of US$ 500 billion to one trillion in 2004 (Agarwal and Agarwal (2004)) within the banking sector only. These numbers can provide insight into the extent of unlawful activity and the significance of reducing money laundering for a country's overall development. The goal of this study is to discuss money laundering as a concept, as well as its methods and the Indian anti-money laundering legislation.

Keywords: Prevention of Money Laundering Act 2002, Corruption, Banking Sector, Frauds.

INTRODUCTION

The act of hiding the source of funds acquired through illegal methods is known as money laundering. It involves fabricating evidence to suggest that substantial sums of money earned through violent crimes, including drug trafficking or terrorist activities, came from a respectable source.

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Money laundering makes crime financially viable by enabling offenders to conceal and justify gains from illicit activity. A new estimate puts the total annual amount of money laundering operations worldwide at about $1 trillion. Criminals can use these illegal proceeds to fund a variety of other criminal endeavours. In addition, money laundering exacerbates societal problems, corrupts economic decision-making, promotes corruption, and jeopardises the stability of financial institutions.

Money laundering is the process of making proceeds obtained illegally (also known as "dirty money") appear legitimate (also known as "clean"), according to the US Treasury Department. Three steps are usually involved: integration, layering, and placement. First, the illegal money is sneakily injected into the banking system that is authorised. The funds are then transferred between accounts, sometimes by wiring them around to cause confusion. After a few more transactions, the "dirty money" is finally incorporated into the financial system and appears "clean."

In short, money laundering is the act of purifying funds obtained from illicit operations such as drug trafficking, gun smuggling, and extortion, among others. By using sophisticated positioning, stacking, and laundering techniques, the tainted money is made to appear clean.

The term "laundering" is defined in Black's Law of Lexicon as the investment or other movement of funds into lawful channels from illicit sources, such as drug sales and racketeering, so that the original source of the funds cannot be determined. People who assist criminals in hiding the earnings of their crimes are, in most cases, also considered money launderers. Money launderers come from many walks of life, with many of them behaving quite innocently.

This means that if they permit their companies to be used by someone else to launder the proceeds of a crime, bankers, attorneys, accountants, auto dealers, and other professionals are money launderers. Those who own property obtained through criminal activity are also involved in money laundering. Thus, an accountant who suggests a way to evade taxes is also involved in money laundering.

HISTORY

The history of banking and trade is entwined with money laundering since it shields assets and funds from taxation and seizure by the government. Although its origin is uncertain, money has existed for many millennia. In "Lords of the Rim," Sterling Seagrave describes how merchants in China used to conceal their wealth from emperors who would then take it away and exile them, some 4,000 years before the time of Christ.

They would not only conceal it, but also relocate it and use it to fund ventures in far-flung regions or even outside of China. Over time, the offshore sector and tax havens developed, leading to overseas investments, money laundering, and payments into hidden bank accounts.

Money laundering has been used to transfer and conceal proceeds of crime from the control of governments, even repressive ones under authoritarian rulers. Numerous minority, such as the Jews, have taken action to protect their riches from elected and unelected officials who have singled them out due to their race or religious beliefs. It's common knowledge that the word "money laundering" first appeared during the notorious American gangsterism that resulted from prohibition, or the outlawing of alcoholic beverages. The huge sums of money made by the import and sale of alcohol as well as other "rackets" like gambling, some of which were illegal, were hidden by a number of strategies.

There is a claim that the word "money laundering" came from American mafia ownership of launderettes. Gangsters were using prostitution, gambling, extortion, and bootlegging to make enormous sums of money. They had to provide proof of a reliable source for these funds.

They were able to accomplish this, among other things, by buying companies that appeared to be genuine and combining their illegal profits with the profits these companies gave them. Launderettes were a cash business, which was undoubtedly advantageous to persons like Al Capone who bought them, which is why these gangsters opted to operate them.

American criminal Alphonse Gabriel "Al" Capone (January 17, 1899 – January 25, 1947) was the head of a crime syndicate during the Prohibition era. Dedicated to prostitution and other criminal operations like spirits smuggling and bootlegging, the Chicago Outfit (later known as the "Capones") operated in Chicago from the early 1920s until 1931.

On the other hand, tax evasion led to Al Capone's prosecution and conviction in October 1931. Rather than the underlying offences that led to his illegal income, it was this that landed him in prison. According to him, the term "money laundering" accurately captures the process by which illicit or tainted funds are passed through a series of transactions and emerge as legitimate or untainted funds. Put another way, the source of money gained unlawfully is hidden through a series of transactions and transfers so that the money can eventually be presented as legitimate income.

Paradoxically, one way to hide where the money came from was through legal gaming. The fact that the money was in cash, frequently in little denomination coins, was the biggest problem gangsters faced. There would be inquiries if the coins were placed in the bank. Keeping a lot of cash in small-value coins is a storage headache. Thus, they established businesses, including gambling machines and laundries. Thus, the phrase "money laundry" originated. Due to the mistreatment of traders and other individuals by governing bodies, they developed strategies for concealing their riches, such as shifting it around to avoid detection and seizure.

Only in the 1980s did money laundering as a crime garner attention, mostly in relation to drug trafficking. This led to a growing concern about the widespread drug abuse problem in western society and an increased awareness of the enormous profits made from this illegal activity. This gave governments the idea to take action against drug dealers by passing laws that would rob them of their illicit gains.

LITERATURE REVIEW

In their 2004 paper "International Money Laundering in the Banking Sector," Dr. J.D. Aggarwal and Prof. Aman Aggarwal discussed the definition of money laundering, the banking industry's controversies, and the steps institutions have taken to prevent money laundering.

Money laundering is the conversion or laundering of funds that are gained unlawfully. T.S. Masani (2007) clarified the role of FIU-IND and provided an outline of the Prevention of Money Laundering Act, 2002 in his article "Money Laundering - A Big Crime." In his article "Money Laundering in India: An Overview," Kishore Jagirdar (2008) noted that money laundering generally has two goals. He also elucidated the function of the Prevention of Money Laundering Act of 2002. In her thesis titled "Money Laundering: Concept, Significance and its Impact," Vandana Ajay Kumar came to the conclusion that money laundering is a worldwide issue that has to be addressed. It is impossible to stop money laundering without international cooperation.The criminals outsmart the law enforcement agencies and assemble a group of professionals, including bankers, solicitors and chartered accountants, to pass off their illegal funds as legitimate income. These professionals bill a fee that ranges from 10% to 15% of the total amount. It is impossible to rule out the connection between politicians, law enforcement, mafias, and white-collar criminals. The procedure cannot be completed without the cooperation of bankers, who play the most important role. The development of new high-tech technologies combined with wire transfers of money has made it more difficult to track the movement of slush cash. Due to the global nature of money laundering, successful investigations and prosecutions of those behind these intricate criminal schemes necessitate collaboration between international law enforcement agencies. The primary methods of stopping money laundering must be criminal ones, carried out within the parameters of international collaboration between judicial and law enforcement agencies. Not to mention, it is critical to remember that the mere enactment of anti-money laundering laws is insufficient; instead, the law enforcement community needs to stay up to date with the dynamically shifting nature of money launderers, who are always coming up with new, creative ways to evade the law.

In his work titled "Controlling Money Laundering in India: Problems and Perspective," Vijay Kumar Singh clarified that fighting money laundering is a dynamic process since those who do it are always looking for new ways to further their illicit goals. Furthermore, the FATF's frequent typologies exercises have made it clear to the organisation that while its members have fortified their anti-money laundering measures, criminals have attempted to take advantage of gaps in other jurisdictions in order to carry out their money laundering operations.

PROCESS OF MONEY LAUNDERING

One must recognise money as a commodity in order to comprehend money laundering as it is carried out globally today. In this regard, professional money launderers and corporate money managers are similar. In an ongoing endeavour to raise the manager's average position at the time of payment, a corporate money manager joins the money markets of different nations where the company will require national currencies throughout the course of the upcoming year and buys and sells currencies. Similar to this, money launderers purchase and sell narcotics earnings, particularly in US dollars, using a bidding mechanism. Similar to how a well-constructed investment portfolio consists of stocks, bonds, and other financial instruments, money brokers also diversify their assets.

The three stages of money laundering operational principles are as follows: first, removing the cash from any direct connection to illegal activity; second, hiding the trail to thwart detection; and third, returning the money to criminals while maintaining the source's secrecy. Finding the "dirty money's" initial source becomes more challenging the farther it is ingrained in the global banking system. Financial crooks employ legal ploys like "walking accounts," in which bank employees are routinely instructed to transfer accounts to a different jurisdiction at the first sign of a law enforcement investigation.

Additionally, there are commonalities in the variety of techniques employed by money launderers in their quest to conceal their illicit gains. Three common elements are found in most laundering operations: the need to keep control over the proceeds; the necessity to disguise the true ownership and source of the funds; and the necessity to alter the nature of the proceeds in order to reduce the enormous sums of money that were initially obtained through illegal activity.

The process of money laundering involves three steps. These are the three phases of money laundering:

1. Placement Stage: The actual disposal of funds is the first step. The money launderer enters the financial system with his illicit gains. The money is deposited in domestic banks or other official or unofficial financial entities to complete this placement. To accomplish this, either divide big sums of cash into smaller, less noticeable amounts that are placed straight into a bank account, or buy a variety of financial instruments (money orders, checks, etc.). The money is typically laundered abroad and deposited in foreign banks or used to purchase expensive items like art, luxury cars, precious metals, and jewels that may be resold for cash or bank transfers.

2. Layering Stage: Layering is the term for the second stage of money laundering. The term "layering" describes the process of separating illegal proceeds from their source through the creation of intricate financial transaction layers. Layering offers anonymity while hiding the audit trail. To remove the monies from their original source, the launderer performs a number of conversions or transfers of the money. The money could be laundered by buying and selling investment products like stocks, bonds, etc., or it could just be sent through a number of accounts at different banks around the world, especially to countries that don't assist with anti-money laundering investigations.

3. Integration: "Integration" means reintroducing the proceeds of money laundering back into the economy in a way that allows them to re-enter the financial system as regular company finances.The money makes a comeback into the legal economy. The money launderer may decide to put the money into business endeavours, real estate, or opulent possessions.

More advanced money laundering tactics are used in the integration and layering stages of the process. These days, exchange houses and other non-bank financial entities are used to store cash in large quantities or to introduce it into the financial system. In addition to being transferred via wire transfers, it is also moved through a plethora of different legal and illegal financial instruments, such as guarantees, bonds, prime bank notes, and other securities, all without a corresponding improvement in the ability of the global financial system's dispersed components to confirm the legitimacy or beneficiaries of these instruments.

TECHNIQUES AND TRENDS

A number of extremely specialised strategies and tactics have been devised by drug trafficking and other criminal organisations in order to tamper with the money and keep it out of the hands of law enforcement.

The favourable circumstances are:

1. There are several ways to enter the global financial system.
2. Funds are transferred quickly, which makes investigators' jobs challenging.
3. Poor oversight of the transfer of substantial sums of money through banks and other financial dealings.
4. The allure of corruption and bribery in the world of illegal finance.
5. The existence of unofficial, parallel economies that are unregulated by the state.

Smugglers of currency employ diverse methods to remove money from the nation. However, it has been determined that the smugglers prefer four primary channels, namely.

ROLE OF TECHNOLOGY

Technology has enabled the growth of financial centres outside of the legal framework, resulting in a virtual free zone of financial activity. Technology helps to facilitate the flow of capitalto a worldwide market for capital, both legal and illicit. Slush monies can now be moved at the speed of light on roadways without police to stop traffic or customs or immigration officials to identify and seize them.

As in the past, money laundering does not require actual labour. Money can be laundered without being physically moved and without coming to the notice of tax and law enforcement authorities. An electronic medium of exchange is often referred to as electronic cash, digital cash, digital currency, or cyber currency.

Money laundering with anonymous digital currency is the newest method known as cyberlaundering. Another name for digital cash is electronic cash, which is simply an electronic version of cash. It involves several series that are intrinsically worth money in one way or another. Through digital communications, assets are transferred with the use of identifiable bill representation. One thing unites all of the players in the game: E-cash's property of lack of anonymity.

When money laundering first started, it required physical labour to hide the income's illicit source and use. Electronic transfers, sometimes referred to as wire transfers, replaced the physical world of money laundering as a means of avoiding detection. Transferring money across borders is quicker, safer, and more dependable with wire transfers. The inability to maintain a record of transactions makes the job of investigators more challenging and raises the likelihood of successful money laundering.

Digicash, an Amsterdam-based startup, contributes an online payment solution known as "ecash." It is made to enable safe online or email payments between any personal computer and any other workstation. By using a public key digital blind signing mechanism, it prevents the payer from being identified with the payment. Complete anonymity is preserved. However, users don't need to divulge further information to demonstrate beyond a reasonable doubt whether they paid or did not make a payment. This gives the money launderers anonymity.

HAWALA

Hawala is the name of an underground mechanism used for money transfers. Wechsler stated, "The hawala system is faster, cheaper, and more reliable than Citibank for many people in remote areas of the world." Such a system, which is run through a succession of unofficial chits and pledges, is capable of moving enormous sums of money. There is no record of the transactions, and everything is done in-person only with the exception of personal remarks.

Three primary roles of banks are to store funds, make loans, and resolve client debt. Essentially, advisory services consist of one or more of these three developments or broking. Only one or more of those three tasks are carried out by parallel bankers, who eliminate the fundamentals. "Parallel" banking is another term for underground banking. These systems are extremely effective and use completely illegal means to transport money throughout the globe, yet they generally resemble more traditional bank procedures. The most well-known of these are the banking services offered by Chop, Hundi, and Hawala to different ethnic groups, which allow financial transactions to be completed without the need for a traditional paper record.

Hawala is based on connections and trust; the word "hawala" has multiple meanings, one of which is "trust." Consumers put their trust in hawala "bankers" or "operators," or hawaladars, who exploit their contacts to make international money transfers easier. Hawala transfers occur with little to no paper trail, and in the rare cases where records are preserved, they are typically coded. Hawala is a long-standing system that served as South Asia's main means of transferring money before Western banks were introduced. Hawala is still widely utilised today for a variety of legal transactions related to culture and money, frequently in tandem with activities carried out by Western banks.

Some criminal funds are transferred through alternative or underground banking channels, such the "hawala" in Pakistan and India, rather than the official banking system. Family or gang relationships serve as the foundation for these "parallel banking systems." They function devoid of a paper trail. According to Malhotra, a "Hawala banker issues neither an order for payment of rupees in India nor a written receipt for the sum received." What he actually does is give the dollar seller a firm verbal promise that he will use his agent in India to pay the equivalent amount in rupees through the agreed-upon rate of exchange; he then codes his partner with the name of the intended recipient and the payment's time, date, and address.

Hawala is a "alternative remittance system" that was mostly used in Pakistan and India and preceded "traditional" or "western" banking. It can be utilised for many different illicit objectives by abusing and exploiting it. The term "Black Hawala" describes illicit hawala transactions. Some facets of hawala are causing serious issues in India, like smuggling and corruption. Hawala is a part of drug trafficking and corruption in Pakistan. Hawala has been discovered to be a part of other financial crimes, including tax evasion and money laundering, in other parts of the world.

CORRUPTION AND MONEY LAUNDERING

Corruption and money laundering are connected. The connection is obvious: bribers need to locate safe havens for their illicitly acquired cash. The people who are offering the bribes might be open to acting as middlemen and transferring the money to distant banks. Worldwide, banks are used for money laundering. Because bribes allow offenders to avoid punishment for crimes that harm the entire world—such as money laundering, environmental degradation, drug trafficking, terrorism, etc.—international action is required.

Heads of State, Ministers, and other high-ranking officials abuse their positions of power and authority for personal and financial benefit. The level of expertise and scope of operations is so high as to be compared to a "corruption eruption." Globally, prominent corruption scandals have shook nations. Massive corruption was the cause of the collapse of order in Russia, the Asian financial crisis, and the scandals in Italy, Venezuela, and Brazil.

Grand corruption has a negative impact on project quality. The bribers frequently get their money back by sacrificing the projects' quality at great risk to the participants. Bribers will lack the moral standing to hold their employers accountable for their actions. It has also been observed that projects are approved mostly because they present the best chances for bribery rather than because the nation needs them. Consequently, projects that are unsuitable and not economically viable are chosen.

People's trust in the administration begins to decline. Foreign investment will be minimal and the nation's reputation will suffer as high levels of corruption skew decision-making. Due to their own loss of faith, foreign lending institutions will steer clear of such a nation. This will lead to an increase in interest rates, which will make the economic issues worse. A major barrier in South America, Asia, and Africa is high-level corruption. Because the military is never investigated, during a military regime like Pakistan or Nigeria is the perfect time to generate money. Investigations against Army personnel are prohibited in Pakistan by the investigating agencies.

Money laundering laws must be passed by all states, and bribing foreign officials need to be considered a criminal offence. To stop the laundering of money, the state should close any gaps. Examining the role of banking and commercial institutions is necessary to stop the laundering of funds obtained through illicit means. Shell companies, tax havens, and other cover organisations should all be subject to close examination.

ANTI-MONEY LAUNDERING LEGISLATION IN INDIA

The Prevention of Money-laundering Bill, 1998 was tabled in Parliament with the aim of curbing money laundering. The Standing Committee on Finance was tasked with reviewing the Bill and reported back to the Lok Sabha on March 4, 1999. The President ratified the Prevention of Money-Laundering Bill on January 17, 2003, following its passage by both Houses of Parliament. As THE PREVENTION OF MONEY-LAUNDERING ACT, 2002 (15 of 2003), it was entered into the Statute Book.

The Prevention of Money Laundering Act, 2002 (PMLA)

The Prevention of Money Laundering Act, 2002 (PMLA) was passed with the goals of stopping money laundering and establishing procedures for seizing assets obtained via or connected to money laundering. ratified on January 17, 2003 entered into effect on July 1st, 2005, and is managed by:

1.Financial Intelligence Unit for reporting, record-keeping, and customer identification verification

2. The Enforcement Directorate, which is responsible for looking into and prosecuting money laundering violations.

- A number of regulations went into force in July 2005:
- Regulations outlining the Director FIU's and ED's powers
- Regulations governing the process of attaching property, the length of retention, etc.;
- Regulations governing the acceptance and handling of seized assets; Regulations concerning reporting entities' legal duties.

Rules detailing the legal obligations of reporting entities

The Financial Institutions and Banking Companies are legally required to comply with the Prevention of Money Laundering (Maintenance of Records of the Nature and Value of Transactions, the Procedure and Manner of Maintaining and Time for Furnishing Information and Verification and Maintenance of Records of the Identity of the Clients) Rules, 2005. PMLA and the Regulations restrict the following:

1. Financial institutions;
2. Banking companies;
3. Intermediaries in the securities market
4. To preserve records
5. To give details
6. Verify the identity of the client

Conclusion

Money laundering poses a severe danger to any nation's financial system and erodes the integrity and sovereignty of the state. The extent to which money laundering has started to occur, particularly in relation to the funding of terrorist acts, has given the fight against it an urgent boost on both a national and international level. It is challenging to measure the detrimental consequences of money laundering on economic growth, same as it is challenging to determine the precise scope of money laundering.

The evidence that is currently available, however, makes it evident that allowing money laundering activity to continue unchecked is not the best course of action for economic development. This is because it harms the financial institutions that are essential to economic growth, lowers productivity in the real sector of the economy by rerouting resources and fostering crime and corruption, and can skew international trade and capital flows against the interests of long-term economic development. Money laundering is becoming a major issue in every jurisdiction, which is a sign that the efforts being taken to stop it are starting to pay off. The government should concentrate on the hot topics of black money and money laundering. In India, the AAP, led by Mr. Arvind Kejriwal, won the Delhi elections on the platform of bringing Jan Lokpal to Delhi and putting an end to corruption. The BJP, led by Shri Narendra Modi, won the 2014 Lok Sabha elections on the promise of stopping black money and bringing it back to India.

We must acknowledge that it is a problem that affects the nation's administration as well as the general populace. Since most people do not comprehend the problem, public awareness is essential. It should be possible for our educational system to install the beliefs that prevent the next generation from participating in this process. To send a message that money laundering is unacceptable in this democratic society, a watchful mechanism and early criminal punishment are required from our judiciary.

REFERENCES:

1. "The Money Laundering Prevention Act of 2002"

2. Money Laundering: New Forms of Crime, Victimisation, presented at the National Workshop on New Forms of Crime, Victimisation, with reference to Money Laundering, Indian Society of Victimology, Department of Criminology, University of Madras, India, by J. D. Agarwal and Aman Agarwal (2006)

3. "Black money in India: present status and future challenges," Rajni Arora, 2012. Science, Engineering, and Technology Research International Journal, Volume 1, Issue 5.

4. Gupta, Dr.Anuradha. "A Study on Techniques to Combat Money Laundering in India and the United States of America" Money Laundering and Terrorism Financing. Volume 58, No. 10, April 2010 issue of the Journal of the Institute of Chartered Accountants of India

5. "Money Laundering and Financial Means of Organised Crime: Some Preliminary Empirical Findings," Schneider, F. (2010).