

MONEY LAUNDERING A FAST GROWING MENACE: EMERGING TRENDS AND MEASURES TO CURB

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Abstract

‘Money is a good servant but a bad master.’ Money is an essential commodity that helps you to run your life. Philosophically speaking, money cannot buy everything but practically money is the basic thing without which it is impossible to imagine life. Money is the foremost thing which is used for calculating the status of any person. Money is reckoned as the fruitful source but root cause of numerous criminal practices both at the National as well as Global level. The illicit use of money, commonly termed as Money Laundering, serve the purpose of some specific interest group/s is quite prevalent in the contemporary era. Money laundering has been reckoned as a flow of the funds obtained from the numerous sources the prime purpose of which is to conceal the real sources of owing and the utilization of funds. The illegally obtained and utilized money in the form of Hawala transactions, Bulk Cash Smuggling and Smurfing is very extensively used methods to launder the money. Although, some stringent anti-money laundering regulations exist in the system, even then such practices take place by and large in every Nation. The present paper makes an endeavour to examine various aspects and issues related to money laundering menace and also discuss the measures to curb this fast growing practice.

Keywords: Money Laundering, Fraud, Corruption, Financial Intelligence Units, Organized Crimes, Asset Forfeiture

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1.1 Introduction

Money laundering has been known as one of the widespread financial frauds, which are prevalent across the globe with higher intensity. It has been the practice of disguising and transforming the origins of money, which has been obtained through illicit ways and means so that the attempts of crime could appear to be legitimate. The main motive of the concerned interest groups is generating and using the profits for those groups or the individuals engrossed in the entire process. The main logic behind the idea to keep control over the illicit money is finding the adequate way to transform the funds to be used as the usable modes of finances in order to make their derivation legal in the society (Levi, 2002). Money laundering could be reckoned as the entire system where by the criminal proceedings are transmitted into the legal financial sources or the numerous other modes of assets. The criminal proceeds are processed for disguising the origin of the money. It could also be recognized as the mode of deriving money, which is coming from some other in a way so that it could look as if it has come from some other source. It has to do with the intention of concealing the financial sources or other form of assets from the authorities in order to prevent them from loss by way of tax payments, confiscation of money as well as by the enforcement of legislative practices. The illicit or illegitimate practices like drug trafficking, sales of illegal arms and ammunition, terrorist activities and way to ascertain the right way for the utilization of such funds without highlighting the sources of their origin. Such activities are generally performed by the corrupt politicians, public officials, embezzlers, mobsters, terrorists and such others to take the profitability out of the crime. The main rationale behind the establishment of such kind of activities is that it is not right for the persons or the interest groups in order to provide assistance to the criminal activities to get the benefits derived from the criminal practices. These practices are proliferating due to the advent and growth of technology at the greater pace making it its assertive probability for the money launderers to perform in a way to obscure the real origin of the illicit activities of crime with the help of cyber finance techniques; the illiterate or poor people still prefer to go with Hawala transactions instead of paper work transaction with the banks to avoid complexities. They are unaware of the crime they are engrossed into the entire network; the crime of money laundering practices is not confined to one domain of operation but it has grown by leaps and bounds across many other areas as well as in the context to the Indian economy. There are many segregated and established wings of the agencies related to law enforcement which are constantly dealing with

the terrorist activities, economic criminal offences, cyber bullying, money laundering and many other such practices. These agencies have lack of convergence among them. The other prominent reason of such activities is the widespread act of smuggling whereby the black market channels in India offer numerous imported goods like food stuffs, electronics, cosmetics and other luxury items for the purpose of selling goods. The merchants dealing with these activities usually deal with the cash transactions so as to avoid the custom and excise duties by making offers related to the better prices other than the regular sellers in the market. As an extensive process, it is generally regarded as the way to keep finding the new ways to achieve their illegitimate motives. It is being employed by the launderers all over the world for concealing their criminal activities, which are associated with the arms, trafficking, terrorism and extortion (Ganesh, 2008). Hence, Money laundering is the outcome of the dependent activity, and all the activities are conducted with the way to get sigh of relief from the government authorities to keep up pace with the illicit ways to make money and harness the maximum profits from them in a smart manner.

1.2 Meaning and Definitions of Money Laundering

Money laundering is the generic term used to describe the process by which criminals disguise the original ownership and control of the proceeds of criminal conduct by making such proceeds appear to have derived from a legitimate source. It is quite complex to define the entire phenomenon in few lines, even then attempts have been made to define the rationale and concept behind such illegitimate aspect. The concept began with the awareness of making more money and harnesses the profitability out of these criminal practices concerning the huge drug abuse aspect across the western countries by creating the whole responsibility on the government authorities for taking suitable actions against those by making legislations. John Walker was the first one who took the initiative to quantify the concept of money laundering and its initial output (Singh, 2009).

Article 1 of European Communities (EC) Directive defines Money Laundering as *“The conversion of property, knowing that such property is derived from serious crime, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in committing such an offence(s) to evade the legal consequences of his action, and 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 serious crime”(Chaikin, 1992).

Another definition of money laundering by INTERPOL 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"* (Interpol General Secretariat Assembly, 1995). The criminal try to conceal the money thus obtained as Per the illegal activities to make it look like as if it is obtained as per the legitimate sources because otherwise they would not be able to make use of that money due to its connectivity to the criminal activities and the enforcement authorities would definitely seize them (Chaikin, 1992).

In the words of Robinson, *“Money laundering is illegal or dirty money which is put through a cycle of transactions, or washed, so that it comes out at 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 those same funds can eventually be made to appear as legitimate income”* (Ganesh, 2008).

1.2.1 Steps in Money laundering: The entire process of money laundering involves the different stages in terms of Placement, Layering and the Integration. These steps could be changed on the basis of peculiarities attached with the particular case.

1. **The Placement Phase:** At this phase, the criminally obtained funds are made introduced in the entire monetary system. The money launderers inject the illicit money into the legal financial institutions generally in the forms of fair cash deposits with the banks. This is considered as the stage of highest intensity of risk as the amounts are quite conspicuous, so the banks need the adequate reporting of the high-value monetary transactions from them. In order to overcome such risks arisen, the huge amount of cash is then segmented into the petty and less doubtful units, which are deposited with the bank accounts directly, or by way of buying a large series of financial mechanisms such as pay orders, monetary cheques and such other mechanisms. These are then mustered and deposited into the accounts at the other relevant locations.

2. **The Layering Phase:** At this phase, the highly entangled financial activities are then carried out to hide the illicit sources of money attained. The money launderers are engrossed across a long range of money movements to keep them away from the actual point of their origin. Hence, the money flows by way of numerous financial transactions in order to keep its real form difficult to be ascertained or followed. This process comprises of numerous transfers across banks, the wire transfers across distinctive bank accounts in different nations, so as to make the withdrawals and deposits vary in the accounts. Moreover, the process includes changing the currency of money, buying the highly expensive and values goods such as yachts, choppers, diamonds, opulent houses and cars to transform the real form of money. It is also known as the most difficult and meticulous phase in any introduced manner where it is all about making the origin of money tough to be recognized and traced. In some other cases, the money launderers could hide or reform the transfers in terms of monetary payments for the services as well as goods availed by giving them licit shape or appearance.

3.

4. **The Integration Phase:** This is probably the final or last phase, where the laundered money or asset is re-injected into licit system being meticulous. At this phase, the concerned launderers then make choice of the investment of these funds into the luxury assets, real estate and many profitable business ventures. Real estate is widely popular source of introducing the money into the economy in a fair way. Many real estate groups act in the same manner to make more money and earn a large amount of profits. At this phase, the money launderers could make use of the financial source without actually getting the money and hence, it is quite tough to snare the launderers at this phase if there is no possible track of adequate documents during the early phases of money laundering.

1.3 Different Forms or Techniques of Money laundering prevailing in the present times

There is a widespread network of the numerous practices related to money laundering

1. **Structuring and Smurfing:** It is performed by breaking the cash into smaller amounts of money. It is the widely used method to launder the money in cash at the first stage i.e. the placement stage, which includes the use of many smurfs or the individual channels to exchange the illegitimate monetary sources into the small segments for the liquid items such as the cheques, bank drafts and the directly deposit money sent to saving accounts. These are then

handed over to the launderers who then start them with the layering phase in the short span of time. Hence, smurfing is the technique or methods of placing the cash into small segments of financial deposits that are utilized for defeating the doubts of practices related to money laundering and avoiding the anti-money laundering report system (National Drug Intelligence Center, 2011).

2. **Hawala:** Hawala is a parallel or the alternative system of remittance of money, which existed and operated in a way, outside or simultaneously to the other conventional financial channels. The main reason for the inception and development of the entire concept was the existence of various banking initiatives across western economies and the remittance system prevailing at the global level. The money does not flow physically in the Hawala system, but reaches at the doorstep of the concerned individual or his relative in a cheaper or speedy manner (Singh, 2009). The commission for the entire process in Hawala is comparatively lesser than the bank charges and is away from the complications like opening a bank account or visiting the banks or other institutions.

3. **Cash Intensive Businesses:** Some businesses have both licit and illicit cash flows but they claim their earnings to be legal (Giriraj and Mishra, 2015). The launderers make use of the payments by depicting them to be the legal source of origin. The amalgamation of legitimate and illegitimate sources enables the launderers to escape the entire process in a precise manner.

4. **Bulk Cash Smuggling:** When cash is smuggled to the other jurisdiction and in terms of black salaries when the companies have a lot of unregistered employees, which receive cash payments from them. It encompasses the physically smuggled financial resources to the other jurisdiction and gets that deposit in the financial institution such as offshore banks, which have higher level of bank secrecy and lesser complex money laundering enforcement. (Kumar, 2009).

5. **Real Estate:** The business related to real estate is proliferating by leaps and bounds. The builders purchase the land with illegal money, make flats and sell them off to get the legitimate income. It is very famous these days as many big real estate groups are making use of their political and administrative links to make use of their money to get the projects pass through them. They don't even think wisely because some time their activities pose a big threat to the biodiversity and the people living in the particular area. The flats or houses are further sold at very dearer amounts enabling them to fetch more money from people and keep it as a track of the licit money.

6. **Credit Cards:** The clearing credit is balanced at counters of multiple banks as the cards have number of uses they could be used at the global level, such as to buy some assets, making the payment for the use of service or goods received as well as the global network of cash dispensing machines (Singh, 2009).

7. **Shell companies:** The shell companies are the fake companies, which are created and these exist for no imperative reason in the society except for the benefit to the individual or group, which have created it with the main purpose to launder money. The dirty money is taken in the form of the payments made for the services and goods. But there is no provision of such services and goods in the real manner. They have been created for appearing as evidence of legitimate transactions via fake invoices as well as the balance sheets (Giriraj and Mishra, 2015).

8. **Third-party Cheques:** These are the counter cheques or the bankers' drafts, which are drawn on the distinctive entities or institutions, which utilize them or clear them by way of the various third party accounts. These are generally bought with the proceeds of crime. They are quite easy to access and negotiable across many countries as there is probable nexus with the original source of money derives, which is quite tough to find (Kumar, 2009).

To add, money laundering is a crime which assumes new dimensions with the times and the launderers are super busy brains who keep on exploring the new ways or methods of laundering the money.

The insurance sector, open security market and cybercrime are some new areas of operations of money laundering (Singh, 2009). The internal channels of laundering money in case of insurance sector are the reinsurance frauds, the phony insurance entities, the internet companies, the pre-decided accidents, staging fire, higher level settled frauds such as Vijay Malya's fraud and Neerav Modi's fraud, are the various extrinsic money laundering channels. Sometimes these scams and activities are performed with the connivance of the Government officials. The huge amounts of finances are stored in the digital manner and cybercrimes are widely popular these days. Such types of activities are prevalent in the forms of online gateways or channels to get multiplicity of accounts. Such infiltration could lead to a higher level of trouble in distinctive aspects at one point of time or other. The money launderers could target any of these numerous forms of business activities, which participate in the security industry. The broker dealers also

provide a wide range of merchandise for retailing, purchasing and making sale of products, stocks and mutual funds in the market.

1.4 Impacts of Money Laundering on a Nation

Money laundering has potential to undermine and affect the social, political and economic stability of the countries. The activities not only impacts their stability of financial situations by eroding the nations' economy, transforming the exigency for cash and causing the situation of inflation in the nations where the criminal activities are performed at the bigger scale. The huge funds are drained every year away from the usual economic growth of the nations by posing a real threat for the nation's financial health and the global economy at the higher level (Saxena, 2015). The organized crime pose threat to any nation as they could infiltrate the nations' financial institutions by acquiring the access or ownership of the gargantuan and wide economic domains in terms of making investments and offering the bribes to the government officials and the politicians. The influence of such activities could weaken the ethical standards, norms, social fabric of the nation as well as the institutional set up of the nation. Money laundering is generally linked up with the underlying criminal practices, which generate it; and in turn money laundering enables the criminal activities to continue. The major negative impacts of money laundering are as given below:

1. **Discourage the foreign investment:** These activities discourage the foreign investment in the nation. The potential investors do not take initiatives to make investment and establish trade related ties with the nation. It has negative impact on the nations' good will. They don't want to take risk of losing money by investing in these nations due to the lack of growth prospects in future.
2. **Negative impact on the social structure:** Such activities weaken the democratic institutions and social fabric of the society. There are lesser prospects for the growth in the social system. There are feelings of disorganization among the people of that nation due to the lack of appropriate and safe social structure.
3. **Crisis in the financial market:** Money laundering potentially damages the reputation of

the business market and financial institutions of the nation. They make the economy of the nation disabled by causing financial crisis and create policy distortion due to the problem in accurate measuring as well as misallocation of the resources in the market.

4. **Tax Evasion Culture:** It leads to the formation of culture where the citizens are not ready to pay the taxes at regular intervals of time. The proliferation of such activities frame the irresponsible mind set across the natives. It further leads to volatility in exchange as well as interest rates. The criminals are provided with the opportunity to hijack the entire process of privatization and contaminating legal transactions (Shah et al., 2006).

5. **Terrorism:** Terrorism is an evil, which affects everybody in the society. Now and then we can find terrorist attacks being made here and there. These attacks, definitely, involve money in large scale (Ray, 2005) and for such attacks money laundering serves as an important mode of terrorism financing. Terrorists have shown adaptability and opportunism in meeting their funding requirements. Terrorist organizations raise fund from legitimate sources, including the abuse of charitable entities or legitimate businesses or self-financing by the terrorists themselves.

6. **Threat to Economic and Political Stability:** The conversion or transformation of illicit money into the licit financial domains and accounts could affect the political as well as economic stability or situation in the nation. The threat of monetary instability due to unsound asset structures; effects on tax collection and public expenditure allocation due to misreporting of income and many other such factors (Alexander, 2007).

1.5 Anti-money Laundering Legislations and Initiatives undertaken at the Global and National level

Due to the existence and execution of activities related to money laundering, the nations have been more vulnerable and exposed to the exploits (Aluko and Bagheri, 2012). There are anti-money laundering initiatives, which are executed by the nations as complex of actions for preventing and reporting the money laundering practices spotted by them. The guidelines on the anti-money laundering became well known at the global level after 11 September, 2001. The increase in the problems in terms of modernized types of the criminal activities has been mushrooming due to the absence of efficacious laws at international as well as national level for combating the organized crimes. Many nations have and still entering into Conventions at the

Global level in order to stabilize and enhance their initiatives to withstand the problem relating to money laundering practices. The launderers target the jurisdictions, which do not have ample laws for dealing with such kind of offence.

As money laundering is the global phenomenon, the cooperation at the global level is required to fight against the problem. Many actions have been initiated and practices at the International levels in the forms of The Council of Europe Conventional on Laundering, The Vienna Convention and Search Seizure and Confiscation of Proceeds of Crime, which deal with keeping vigil over the practices related to money laundering and keeping track over it (The Vienna Convention, 1988). The International Organization of Securities Commissions, the European Union and The Basle Committee on Banking Regulation Supervisory Practices have taken steps in the financial institutions to prevent and detect the money laundering (Gardner, 2007). The Financial Action Task Force (FATF) has been created in 1989 to establish standards and promote the precise execution of the regulatory and legal measures for combating the money laundering and terrorist financing (Gardner, 2007).

In India, we have separate laws for dealing with the narcotics, smuggling, foreign trade violations as well as foreign exchange manipulations, along with the separate legal set up for preventing the detention of the property. There has been many measures incorporated by the Government at regular intervals of time to tackle the gauntlets pertaining to money laundering such as The Narcotic Drugs and Psychotropic Substances Act, 1985, The Smugglers and Foreign Exchange Manipulators Act, 1976 (SAFEMA), (NDPSA), The foreign Exchange Management Act, 2000 (FEMA), The Income Tax Act, 1961 The Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (COFEPOSA) before the enactment of Prevention of Money Laundering Act, 2002 (PMLA), The Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (Satapathy, 2003). There are also many anti-money laundering software, which are developed and executed across distinctive institutions. The software filter the information retrieved from the various clients and categorize them as per the suspicious echelons.

The Know your customer (KYC) norms are another way to keep check over the activities

performed by the concerned individuals as it becomes obligatory for the banks to keep check over their customers under the Prevention of Money Laundering Act, 2002. The banks have to follow the guidelines and procedures to open the accounts and find suitable ways to keep track over their transactions. All these initiatives are recommended as per the Financial Action Task Force on the Anti-Money Laundering yardsticks on tackling the practices relating to financial terrorism all over the world. The banks must be directed to ensure a proper policy framework and measures on the basis of KYC measures for preventing criminal activities related to wrong utilization of money, money laundering and terrorist activities. These initiatives help the banking institutions to know their valuable customers and help them in management of all the associated risks.

Banks should keep some obligatory measures in mind like collecting right information of their customers and keep the adequate details confidential by ensuring that such enquiry regarding the information is not going to create any trouble for them in future.

The Prevention of Money Laundering Act (PMLA) 2002 acts as the foundation of the current scenario in order to keep check and combat the problem prevailing all over the globe at a very highly intensified scale. The Financial Unit-India acts as the main agency to handle the Anti-money laundering system by synchronizing the initiatives taken at international as well as national level. The intelligence agencies are helpful in creating an interface between these agencies as well as financial domain to collect, analyze and disseminate the information especially in context to the financial transactions. As per the terms of the Prevention of Money Laundering Act 2002 (PMLA), the banks must be informed according to the cash activities, doubtful transactions and the money transactions relating to the receipts of the NPOs (Non Profit Organizations) having the value more than 10 lakh or its equal in terms of FOREX (Foreign Exchange). The banks get the mentioned information as per the rules from the authorities and the information thus obtained is disseminated to the concerned agencies like CBI (Central Bureau of Investigation), Central Board of Direct Taxes (CBDT), Narcotics Control Bureau, Central Board of Excise and Customs (CBEC) Enforcement Directorate but they do not investigate the cases (The Prevention of Money Laundering Amendment Bill, 2011).

1.6 Measures to prevent the menace

‘Prevention is better than Cure’ is an old maxim. We all know that money laundering engrosses all the practices which are global and dynamic with the higher level of intensity having significant effects on social and economic conditions of a nation. Therefore, it becomes imperative that nations must frame stringent and adequate legislations in order to prevent such illicit activities. As the States have limited authority in making decision with regard to the offences resulting into money laundering at the global level, thus, most of the times offenders go Scott free. Therefore, it becomes necessary to find suitable ways and make appropriate transformations in the existing systems to combat one of the biggest challenges of money laundering across the globe by warning the public not to fall prey to such lucrative deals, which ultimately end up in such kind of crimes.

1.6.1 Global Perspective

1. There is dire need for enlisting the common predicate criminal activities in order to sort the challenge at the global level by keeping the trans-national attribute of the practices related to money laundering in mind.
2. Further, the provisions related to financial camouflage across nations is an imperative challenge. The nations worldwide are not willing to compromise and share such confidentialities regarding such crimes. Hence, the state suggests to make a crystal clear cut line between the regulations pertaining to the confidentiality as well as the institutional systems, which are considered hub of money laundering practices.
3. Many people are not aware of the negative and annihilating impacts of money laundering as they perceive it as a victim free criminal activity. They must be made aware to inculcate and retain an enlightening approach. They must be educated to have a vigilant approach with regard to the system relating to money laundering and its aftermaths for the economy and the society. It would be very beneficial in enhancing the enforcement of law because it could prove to be subjective for the examination and clarification of public.
4. The governments of all the nations should strive hard to introduce guidelines and checklists to decrease the activities relating to the system of money laundering and remove the practices, which hamper the international coordination and efforts to check money laundering.
5. Private players, public, money lenders, bankers, and other dealing agencies, must take

active part in keeping a check over the practices relating to money laundering. Such checks are not the sole responsibility of the Government; hence the all stakeholders must actively intervene thoroughly in the system.

6. The political system should be stable and strong enough to handle the challenge with the global coordination and compliance as the number of legislations are not adequate to serve such purpose. The governments should be capable enough to work in unison to form effective regime to handle the problem.

1.6.2 National Perspective

7. All such legislations to curb the menace must be executed at the Government levels, be it a Centre or State, not making it sole responsibility of the Central Government. The laws are executed speedily at the local level.

8. Anti-money laundering warnings should be worked out in a detailed manner with the adequate synchronization between the Centre Government, State Government as well as Local governments.

9. All the possible DO's and Don'ts for the public must be worked out with the coordinated efforts of all the players who are likely to bear the adverse effects.

Therefore, it is necessary that the laws and regulations must have immaculate reach and should be implemented fairly and revived at regular intervals of time to keep in tune with the times. The whole mechanism of curbing these malpractices must act effectively at the global, national as well as local level.

1.7 Conclusion

It is a hard fact that money laundering is a very heinous or serious crime, which should be taken precisely as any other serious offence. The current stress is on the financial domain to execute stringent and strict money laundering compliance mechanisms. The nations has been continuously responding to combat the menace of money laundering though numerous legislative measures at the national level, yet money launderers are continuously exploiting the tax regulatory environment and the financial structures. The present mechanisms are not efficaciously sufficient to keep check over the money laundering activities. These mechanisms

are easily circumvented by the money launderers using the non-financial sectors so that they could carry out their illicit activities (Maxmillian and Teichmann, 2017).

The nation has adopted numerous Anti-money laundering mechanisms for curbing the issue but somehow these measures have certain loopholes, which are not meeting the entire purpose. Although, the nation has adopted numerous extensive measures to curb the issue, but still there is need for increasing the enforcement machinery to take effective actions against the persons violating these norms. The financial institutions are required to execute the adequate & additional measures to keep check over the areas like annual review, transaction monitoring, and timely updating of the accounts. There is a definite exigency to have anti-money laundering activities.

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