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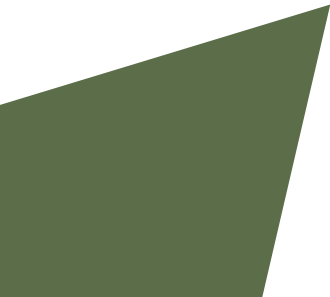
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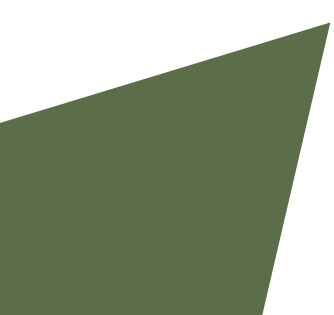
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Money Laundering in the Twenty-First Century: An Analysis

Harshita Puri

ABSTRACT

Money laundering has become an international threat. It has affected the developed and developing countries at large scale. It is concerned with transferring the tainted money earned through an illegal source and converting into legitimate money. In India, money laundering has affected the entire nation in so many aspects. It has increased more drug trafficking, corruption, human trafficking, tax evasion, and other crimes as well. It causes instability in the economy. In the 1990's it resulted in the failure of the bank sector in India. Until 2002, India didn't have a stringent and comprehensive law that dealt with money laundering. The Prevention of Money Laundering Act 2002 was enacted in India with the objective of preventing money laundering and confiscating the property which is involved in money laundering. Prior to the enactment of the act, offenders were punished under the various other Act like IPC, NDPSA, Arms Act, and others. This paper aims at understanding the concept, effects of money laundering in context to India, and analysis of the Prevention of Money Laundering Act and other criminal laws along with case references.

KEYWORDS: Money laundering, PMDA 2002, Drug trafficking

INTRODUCTION

Every activity which one undertakes for sustaining his life undergoes the transaction of money which is the key essential to sustain his living. Without money, one cannot survive in this world as everything in today's world revolves around it. It is not similar to the time when people lived with physical money. Money is the main reason for the development of the nation it can be said to be the wheels of the economy. Money is the root problem for most of the crimes which take place in society. People have a certain standard of living and they have their own needs which can be fulfilled through money. It ignites the never-ending hunger to have more and more money which is why it is one of the reasons why there is an increase in the number of crimes as people go to any extent to fulfill their needs and to get money from any source which they get. Due to the digitalization definition of money has changed from the physical currency which was notes, coins, promissory notes, cheques to bitcoins, net bank, etc which means all the electronic remittance is now part of it. Money has been called evil when it is associated with crime. In the entire world, there is a large problem of drug dealing, human trafficking, organ trafficking, Arms dealing, terrorism, corruption, tax evasion, illegal trading, smuggling of diamonds, ivory, etc cross borders, and money is the origin for these crimes.

Here is where the concept of money laundering comes in. Money laundering is one of the major threat to every nation in the World. Illegal means are a faster way to get money. Word "laundering" means cleaning or washing. Whereas, money laundering in layman language would mean to clean up the money which is not from a legal source, and turning that money into a clean one so that is used without anybody knowing the actual source of the money. Basically, the criminals turn their tainted money into untainted and use the money freely. They don't fear of being linked to the criminal activities through which they earn this huge amount of money once they clean it. It protects the criminal from being traced back by the police and other authority as money doesn't directly get cleaned up. To clean the tainted money, it has to go through the large network through which the money travels before converting into untainted money. It is not an independent crime it is mostly the outcome of another crime. Many Criminals have launderers who launder their money through different networks to make it legal or white money. Once the money from the illegal activities is converted then criminals escape every time without any repercussions. Without repercussions means that they feel encouraged. Recently there is a new class of launderers has emerged which consists of bankers, lawyers, bureaucrats, politicians, accountant, and others these highly qualified people those who commit this crime. It greatly affects the society at large, security,

and the economy of the countries. It is the major problem for countries that are still making rules and regulations related to it. Another problem is that money laundering affects the legitimate sector as there are many shell companies that open as cover to convert the money from illegal activities into a legal one and it leads economic instability as there is an inadequate distribution of resources among the legitimate sector. Due to digital communication and networks, money laundering has become easier for criminals. They can transfer the money without being traced as the major issue of jurisdiction come into question. When the question gets resolved, by then the criminals transfer it into a new place which makes it harder for the government to trace that money and catch hold criminals with proof. It is seen that money laundering forms around 20% of the entire economy, which is a large number. This indicates how rapidly this crime is increasing despite the countries having laws made for it. There is a greater need for more stringent laws throughout the world which helps every government to fight against this crime and protect the other citizens. Laws need to be very comprehensive and stringent with respect to this. If the money is not laundered then the crime rate would decrease especially crimes like drugs, smuggling, and terrorism.

MONEY LAUNDERING: DEFINITION

Money Laundering is a broad term that is difficult to define as according to every country it means something else. Some Countries have defined it by giving it a broader meaning whereas some countries have not defined it properly and they have not covered every aspect related to it. Money laundering has been recognised as a crime by UN agencies as well.

According to **UN reports**, Money laundering is a process where criminals get profit from illegal activities without compromising criminals. This is a three-stage process that includes moving the funds or the money from which crime it is linked to; then moving fund through trail and then making the money available to the criminals again once it is cleaned.

In India, according to **Prevention Money Laundering Act, 2002** offence of money laundering means anybody who directly or indirectly attempts to assist, indulge or is a party to it knowingly or is part of any process related to the activity of crime and its proceeds, showing it as untainted property or fund, that person shall be guilty of the crime.¹

¹ The Prevention of Money Laundering Act 2002 S 3.

MONEY LAUNDERING: BACKGROUND IN CONTEXT WITH INDIA

India has been one of the biggest generators of income through illegal drug money hosting a big criminal enterprise. The sale and transfer of these illegal drugs through state and country borders have not only created an economic problem but a social, political, and historical problem as well. The increase in sales and income from these illegal drugs has reached its peaks in recent years. The same has been made possible with the involvement of politicians and bureaucrats in this illegal trade. It is an easy mode to generate huge amounts of money and the channels have made it very much easier to launder the same, but this at of money laundering affects the economy of the country very badly. During the year of 1989, a large number of scandals were exposed by the media worldwide. It was that time when the term money laundering was associated with some other crimes, mainly; fraud, finance terrorism, theft, tax evasion, etc. It is believed that the annual money laundered in India sums up to \$500 million, from which a major share is held by the illegal drug trafficking. From time to time there had been many committees set up by the country's government to look over the issue of money laundering in the country. In the year 1972, the Wanchoo Committee had warned the government about the problem of money laundering and had further said that this problem will increase in the future and if not controlled can cause some catastrophic effects on the country's economy. Further, in 1985, it was discovered by economist G.B Gupta that black money constituted 42% of the GDP for the year 1980-81 and then 51% for 1987-88. During an economic summit in the year 2000, the Central Vigilance Commissioner estimated the laundered money to be 40% of the GDP.² The Prevention of Money Laundering Act³ enacted on 17 January 2003 came into force on July 1, 2005. The act was the outcome of a political declaration adopted by the United Nations General Assembly in the year 1999, according to which the member states were required to make money laundering legislation and programs. Even before the General Assembly took place, many UN member states had already made rules and regulations in this regard, and the ones without such legislation were mandated to do the same. It was only after the recommendations of the Standing Committee on finance that the act was incorporated and presented in the Lok Sabha. All the authorities regulating money in the country, such as RBI, SEBI, and IRDA have been included in this act and the act is further applicable on

² Samridhi, Money laundering, (May 10,2020, 11:39 AM), <http://www.legalservicesindia.com/article/436/Money-Laundering.html>.

³ The Prevention of Money Laundering Act 2002.

all the financial institutions, banks, mutual fund companies, and financial intermediaries. The Financial Intelligence Unit is responsible for all governing all the activities related to anti-money laundering in the country. All the financial institutions and the financial intermediaries have to furnish information and maintain records according to the norms prescribed by the Financial Intelligence Unit. The act has been further amended in the years 2005, 2009, and 2012. The act makes rules and regulations to control and prevent money laundering in the country and also enacts the competent authorities to confiscate any property that has been acquired or obtained through the laundered money. The act also empowers the government and the competent authorities to make any such rules required to control and prevent the money laundering acts.

EFFECTS OF MONEY LAUNDERING

Money laundering has an adverse effect on the entire country in all aspects like social, economic, government, and health. Money laundering has become more challenging for the governments to deal with as due to globalization crimes have increased across the border and so does the proceeds from such crimes. It damages the countries reputation, causes instability in the economic growth of the country, it increases the risk of failure of banks and other financial institutions.

Increase in Criminal Activities

Every successful proceeds increase more crime in countries like drug trafficking, smuggling, sex trafficking, corruption, embezzlement. Due to organised crime, it has increased the corruption in the society and especially in the government sector whose structure has weakened over the years. Money laundering has been one of the main reasons for major terrorist attacks in India like the Mumbai attack at Taj and other areas in 2008, in the year 2001, Attack on Indian Parliament, Bombay blast, and others. If these groups were not funded then the attacks would have not happened. Funding the terrorist groups is part of money laundering because they are directly funded.

Effect on Finance

In the 90's there was a time when there were a large number of shell companies that opened in India and later invested the money in the market and financial institutions. Due to large scams back then, SEBI was made by the government to have a check over these shell companies which affects the stock market and disturbs the economy. Many banks' reputation is affected when they deal with the money from the illicit source. It also affects the share of the financial institutions as people who invest in such banks don't want to associate themselves with the bank of such

reputation. There is a major problem when the fund is withdrawn immediately and liquidated. Cross border flow of fund cause fluctuation in the exchange rates as funds are not anticipated.⁴ It also affects the legitimate sectors as they have to pay high taxes because of the people who launder their funds for escaping from paying proper taxes. The screen companies have the make the legitimate business deficit of adequate resources. This causes hindrance in the growth of the country. It also affects foreign investments in the country.

JURISPRUDENCE RELATED TO MONEY LAUNDERING IN INDIA

The problem in India of money laundering has been severe for years now. The country has faced a lot of crises as a result of money laundering like corruption, terrorism, drug supply, smuggling, human trafficking, etc. In the '90s problem had become a national threat and India was not ready to combat this problem due to a lack of legal mechanism. In 1998 UN assembly recognized the worldwide threat of money laundering and the increasing number of crimes especially related to drugs and resolution was passed in this concern urging the countries to recognise money laundering as crime and make stringent laws in that regard. It urged every country to help another to combat this problem at the International level. In 2002 India made comprehensive law in regard to this issue, **PMLA 2002**⁵, which dealt with money laundering, Proceeds related to certain crimes mentioned in Schedule of the act, Corporation from other countries, imposes strict regulation upon the banks and other financial institution and there are even provision where cases are referred to the special court. Prior to the enactment of the act Under IPC few sections which dealt with money laundering are **Criminal conspiracy** which says any person who is part of the criminal conspiracy which is to commit an offence whose punishment is at least two years or more. Punishment will be so as if that person has abetted the crime if punishment is not specified in that code for the offence⁶. **Waging war** against the state or government or abetting the war is a serious crime against the state which is punishable by life imprisonment or a death sentence. It is part of criminal conspiracy and war which are waged against the government are funded by the people to that person or to the group. This funding is used for preparation and to carry out the war.

Earlier people were punished under offences like Cheating, Criminal breach of trust, misappropriation of property, Counterfeit currency notes instead of money laundering. The Schedule of PMLA specifies the offence from IPC in Part A and Part B of the act. **Section 420**⁷

⁴ Praveen Kumar, Money Laundering in India: Concepts, effects and legislation, Vol.3 International Journal of Research in Humanities & Soc. Sciences 51, 59 (2015).

⁵ The Prevention of Money Laundering Act 2002.

⁶ The Indian Penal Code 1860 S 120B.

⁷ The Indian Penal Code 1860.

of the code says that any person whosoever dishonestly or through cheating deceives any person for a property by either converting it or either destroying the part of it, that person shall be punished for a period extending to seven years. **Criminal breach of trust** when a person is entrusted with property and he dishonestly misappropriates it or converts the property for his own use or discharge of the property not in the manner he was entrusted with. He shall be liable for the criminal breach of trust.⁸ The punishment prescribed in the act is that it may extend to 3 years term or with a fine. There is a special provision in context with **public servants** who commit **criminal breach of trust** it says that public servant who is entrusted with property or dominion over it and commits a breach of trust he should be punished with life imprisonment or imprisonment extending up to ten years term. Public servants are important for the proper working of the mechanism of the country. There are certain servants who are involved in evil like corruption which is like a pest for the country. There was a need for stringent laws to catch hold of these servants under money laundering for proceeds which they laundering from corruption.

Drug trafficking is one of the major offences whose proceeds are laundered. Drugs are permitted by the government for a certain quantity which is mainly for industrial purpose but drugs are imported and exported out of India and anyone who is caught importing and exporting drugs that person may be imprisoned for 10 years and 1 lakh rupees fine. If the quantity is more commercial level Then he shall be imprisoned for more than 10 years or fine of more than 2 lakh rupees by giving the reason in the judgment.⁹ The narcotic act empowers the government to trace the substance and proceeds related to it as the punishment for NDPSA and money laundering together may extend to 10 years. **CrPc** lays down the procedure to search, attach, confiscate illegal proceeds along with PMLA.

In the above mention which PMLA, it is at present the anti-money laundering law which is stringent and deals with the proceeds of scheduled offences and others as well. Act in **Section 4** states the punishment for money laundering in India which is that person should be punished with minimum imprisonment for 3 years which may extend to 7 years but for the scheduled offense under 2 of Part A will have rigorous punishment which may extend to 10 years or fine of Rs 5 lakhs. According to **Section 19** of the act, that person can be arrest by the authorities appointed by the central government if the authorities believe that person is guilty of an offence which is punishable under the act on basis of material which is in his possession. The person has to be presented in front of a magistrate within the 24 hours' time period. **Section 5** says that any person

⁸ The Indian Penal Code 1860 S 405.

⁹ The Narcotic Drugs and Psychotropic Substance Act 1985 S 23.

who is in possession of the proceeds of crime or authority believes that proceeds can be concealed or transferred by the person and he has committed any offence punishable under act then the authority can confiscate and attach the property for not more than 90 days. Any property can be attached under **section 5(1) 2nd proviso** which says authority if has reason to believe that property is part of money laundering then he can attach it. **Section 8** lays down the detailed procedure for adjudication for the complaint under the act. Act also lays down the strict obligation over the banks and financial institution, **section 12** says that records of every transaction should be made which is related to prescribed value and also maintain the verified records of all the clients. **Section 17 and 18** of the above-stated act deals with the search of place and person, it says that the director on basis of information can search a person or property which is suspected to have been involved in money laundering. Any place aircraft, room, building, etc can be searched by the authority where proceeds of crime are suspected to have been kept. Authority can seize any proceed or property related to it found during the search. In **chapter VII** of the act, there is a provision of the trial to be conducted by the court of sessions which will be considered as special Court. It states the offences triable by a special court, appeals, revision, and criminal procedure code applicability. **Section 65** says that criminal procedure is applicable unless it is inconsistent with the act. Financial institutions have to follow KYC policies.

CASES RELATED TO MONEY LAUNDERING IN INDIA

CBI v A. RAJA and Others¹⁰

This case is also known as 2G Spectrum Case. It is one of the highly controversial and highest scams in India. Spectrum is one of the essential services given to the people of the country. The government can sell the same in two ways: Auction - in this case, the highest bidder gets the contract, but if the purchasing price is too high, it can cause a hike in the price of the telecom services; Fixed price – On the other hand with this mode, the government sells the spectrum to the companies on the basis of their qualifications or first come first serve basis. During the time from 2007 – 2009, Congress Communication and IT Minister, A. Raja gave 122 2G spectrum licenses on fixed price basis. The conditions were drafted in a way so that only a certain number of telecommunication companies were gaining and the prices were also kept too low due to which the government of India had to bear a loss of Rs. 1.76 Lakh Crore. In 2010, the Comptroller and Auditor General of India disclosed that for the allocation of 2G spectrum, A. Raja did not take any advance notice from finance and law ministries and further the documents submitted by the

¹⁰ CBI V. A. Raja and others Case RC No: 45 (A) 2009, CBI, ACB, New Delhi.

companies were fake and all the facts were covered. Further, it was disclosed that the price of the spectrum in 2008 was the same as it was in 2001, which was very low. The companies who got the licenses sold the same to foreign companies at a very profitable price. Airtel, Idea, Aircel, Vodafone, and Reliance were some of the private companies which gained profit from this scam. In 2011, TRAI contradicted all the allegations made by CAG and said that the government had made a profit of Rs. 30 billion from the 2G spectrum. Economist Subramaniam Swamy was the one who helped to disclose the scam. In the year 2010, he filed a criminal complaint against A. Raja in the Supreme court of India, and in 2012 the Apex Court in its decision said the allocation of 2G spectrum licenses was 'unconstitutional and Arbitrary' and held all the 122 licenses void. The companies involved in this scam were also subjected to fine. Raja was imprisoned for 15 months in Tihar Jail.

SATYAM SCAM¹¹

Satyam was once the 4th largest IT company in India and did the biggest scam in the history of the country. Mr. Ramaling Raju, the founder of the company was arrested for the scam of Rs. 7,800 crores done by his company. During the confession made by the founder of the company, he disclosed that he had been tampering the accounts of the company for a long time and has shown the total assets of the company with an increase of \$1.47 billion. Further, the \$ 1.04 billion of bank loans and liabilities were non-existent. The quarterly income was also tempered so that no flaw could be seen during the audits of the company. There were a number of fake salary bank accounts on fake employee identities made by the company to show the transactions. This was done by the founder of the company so that he could increase the value of the company's share in the market. In 2008, the company bought which was also run by his family members for \$300 million. Mr. Raju did this so that he could equalize the gap between the fake profits shown to the public and the actual total profits of the company, but this deal was declined because of the shareholders. This cancellation of the deal made Mr. Raju confess to his crime. Bankers, auditors, and SEBI were also held liable.

UNION OF INDIA vs. HASSAN ALI KHAN & ANR¹²

In this case, the accused was holding up to thirty-six thousand crore in Indian rupees in his Swiss bank account, this case was filed by the authority after collection of the documents and other pieces of evidence. The accused has been charged under section 4 of PMLA. The accused was also charged with an

¹¹ SATYAM SCAM, Letter dated 07.01.2009.

¹² (2011) 11 SCR 778.

offence for holding up to three documents and concealing the facts. The special court released the accused on the bail but Authorities filed a petition in Supreme Court and the accused was arrested and imposed fine and imprisonment. It was observed by the court that money laundering is a serious offence.

CONCLUSION

As discussed above money laundering is a threat to the entire country. It affects the countries growth by disturbing the economy of the countries not only this it has a great effect on society too. Governments all over the world are dealing with this issue. In the age of digitalization, these issues have become more severe as money is being laundered in cyberspace through the use of the internet. After being recognized as a major threat by various UN agencies, India adopted the stringent law for this issue which is the prevention of money laundering act. Through this act has been considered much comprehensive but there have been so many scams and money laundering cases in India. They have acted as a hindrance in the growth of the country and have affected the other people of the country like in the case of yes bank case, Nirav Modi money laundering scam has affected hundreds of people of the country. Countries around the world need to help each in a more effective manner so that the offender doesn't escape and agencies can trace the proceeds of the person. Also, there is a need for change in the act according to the current situation. The act was made in 2002 and then amended in 2011. There is a need to have provisions from the people who escape the country before they are caught. There is also a need to have money laundering laws at the state level too.