

“The Progression of Anti-Money Laundering Regulations: A Global Perspective”

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Abstract: -

Money Laundering causing perils to society. These activities shaken the socio-economic structure of nations. This paper describes how launderer obtained the illicit money via illicit mode, Phases of money laundering. It also covers popular cases related to money laundering. It also indicates the number of organized crime ratio in India and World Level. It is arduous to investigating agencies to crack down the origin of scams and funds. There is need of effective technological solutions that can prevent this type of crimes. Money Laundering is an emerging concept, it is done via online and offline modes. Ordinary, Criminal use cash intensive business to prevent the illicit gain. They develop shell companies and off shore bank accounts. This also involve regulatory framework established at national and international level. Largest Financial institutions demand need for better technologies to deter the illicit activities.

Keywords: - Money laundering, Scams, Financial Intelligence Unit, Anti- Money Laundering Regime, Regulatory framework etc.

Introduction: - Money Laundering is a process where wrongdoer transfer illegal funds to another account. It is done through various channels to show off legalised. Generally, Person tries to conceal the true origin of money which he kept in his custody. These kinds of activities are occasionally done by the wrongdoer for doing its illegitimate business transactions such as Drug trafficking, Terror funding, Tax Evasion, Corruption, Extortion etc.¹ These funds are converted and transferred into other accounts.

In Literal Sense, Cleansing of dirty money into clean money. It includes disguise the origin of money. As per report, Total 2 to 5 % of total GDP is laundered every year. It causes financial threat to the economy of nations. Generally, these activities are done by Off- Shore companies, shell companies, Manipulation into accounts, Evasion of taxes etc.

“Money laundering is an activity where offender tries to conceal the true source of illegal money.it means conversion of illegitimate money into legitimate resources”.²

“Money Laundering is called what it is because that perfectly described what takes place-illegal of 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 way, it can be achieved through deals and transfer of funds from one place to other, this eventually reflects as legitimate one.”

Robinson

To avoid the suspicion, criminal use cash- oriented business. Virtual tools can expose the location of wrongdoer. To conceal the identity of sender and receiver, they do these activities via physical mode. They swiftly indulge into criminal activity and transfer their goods and money from one state to another. Ordinary, Financial institutions such as Banks, Non- Banking Financial Institutions carrying cash transactions in routine manner. Know your customer and Due Diligence part must ensure during

dealing with customers. It should be the duty of financial institutions to be vigilant at the time of opening account including large sum of amounts. It requires to monitor suspected transactions carried by customers. Regulations and guidelines are drafted by Reserve Bank of India from time to time. In the same manner, Financial Intelligence Unit is also central agency. This is established for monitoring, analysing and reporting suspicion financial transactions to Enforcement Directorate. ED is an investigating agency to trace out the hidden source of income carried by criminals. Furthermore, Financial Action Task Force is also constituted at World Level. This force also gives recommendations to nations time to time. It is called as international watchdog.

Methodology

This research paper carried doctrinal research methodology. The crucial role of doctrinal research includes with analysing existing legal principles, statutes, case law, and legal frameworks to interpret, understand and critique the current legal landscape surrounding a particular issue. In this study, doctrinal research focuses on analysing the Indian legal context relating to money laundering and their various stages, specifically within the context of national and international laws. The research process initiated with comprehensive review of authentic legal documents like Prevention of Money Laundering Act,2002 in India, Judicial precedents and other nation policies developed at global level. The primary source of data is legal texts, academic articles etc., supplemented by examples of legal challenges pertains to combating money laundering and how to curb this menace. This research throws a light upon the crucial legal framework developed in India and under other countries. Through revising and examining a few key cases, this approach indeed helpful to clarify the application of law, providing a theoretical foundation to understand how legal norms evolve and are applied in practice.

Phases of Money Laundering

Money Laundering means establishment of illicit flow of cash into national economy. These pass-through various channels. In ordinary sense, Criminals use cash intensive businesses to conceal the true origin of money. Cash plays vital role for doing illegal activities such as Immoral acts, trafficking of human beings, corruption and drug trafficking and investment in real estate sectors etc. The prime object of money laundering is to conversion of dirty money into white money. In this way, criminal generally follows three steps to constitute an offence of money laundering.

1. **Placement:** - In first Phase, wrongdoer took the money and dividing into smaller amount then deposited into different-different bank accounts. They use this money for purchasing Real estate transactions, Portable instruments and Monetary instruments etc. We can say that Placement denotes setting up of funds into financial institutions. At this stage, Criminal introduce illegal gains into national economy. They are opting cash-oriented business.³ On the other hand, they engage other persons in lieu of some financial advantage under this process. Wrongdoer do smuggle of assets across the borders. They obtain cash from illegal activities and put them into another accounts. They adopt new techniques to hide the inflow of cash. This becomes difficult task to investigating agency to trace out the illegal flow. It is initial step for the wrongdoer. They draft a plan to do money laundering.

2. **Layering:** - Layering is the second stage to constitute money laundering. At this stage, wrongdoer creates different layers upon real source of income to hide the true source. Criminal's perform banking transactions in numerous accounts. They credit amount on the name of other account holder. They create shell companies, Off shore banks and Tax havens etc.⁴ Offence of money laundering and its

mode became burdensome for investigation teams to find out the lead of crime. This channel could be considered as safe and secure way to hide the origin of money. Launderer accumulated money in those countries where these can't be easily detected. This layering process also include those countries who have stern banking secrecy laws, where cash transactions cannot be reveal.⁵

3. Integration: - In third phase, launderer use illegal money reinject into financial sector. They tend to show that this money acquired from normal business earnings. They enjoy and spend that money to bring up products and as well as assets. They mixed their illicit money with legal economy. They even don't bother about the tracing and investigating of their illegal works.

Regulatory Frameworks to combat Money Laundering

Money Laundering is a process of conversion of black money into white money. It can be done through Hawala System, Shell Companies, Off -shore Accounts, Smurfing etc. Legislations pertaining to money laundering has developed at domestic as well as global level. It is a serious concern. It threatens the national sovereignty and integrity of a nations. Despite the various laws and regulations framed by legislature, Criminal opted advanced techniques to launder the money. They earn huge profits through Drug Trafficking, Corruption, Real Estate Businesses, Tax Evasion and Invoice Tampering etc.

Anti Money Laundering Regulations developed at Domestic Level

There is no consensus about the origin of money laundering. First legislation associated with Prevention and combating these crimes such as Prevention of Money Laundering Act,2002 which came into enforcement in 2005. This statute directly deals with the offence of money laundering, Procedure to curb this menace and establishment of Special Courts for trying the offences related to money laundering. Prior to these, there were different treaties and conventions held at international level. If we specifically talk about the India, there was great need to brought up comprehensive legislation which directly attributed to money laundering. At Initial level, PMLA bill was introduced in Parliament. In Pursuance to that bill was referred to the Parliamentary Standing Committee on Finance; they forwarded their report to the Lok Sabha on 4/3/1999. After that Central govt. made acceptance towards this bill with some desired changes. India was being a member of various different- different treaties at global level.⁶

To Confiscate the proceeds of crime, setting up of proper redressal mechanism and establishment of special courts which can tackle financial crimes committed in India.

Central govt. gave certain recommendations to modify the bill:

1. Expression "Person" and "Banking Company" may be defined.
2. Scheduled offence prescribed under Indian Penal Code; the word offence must be omitted which is prefixed under Section 477 A pertains to falsification of accounts.
3. Word "Knowingly" must be added in Section 3 (b) related to offence of money laundering.
4. All information pertains to Banking Company and Financial Institutions must be furnished before Director instead of Income Tax Commissioner.
5. Person should produce before Gazetted Officer or Magistrate within 24 hrs of crime.
6. Punishment must be harsh and stiffer to those people who renders false information and vexatious search.

Above mentioned objects were proposed by Central Govt. Therefore, some measure kept in the legislation. Subsequently Central govt. made some recommendations to Standing Committee for the bill.

- Relaxation of Bail and Court should grant bail to Infirm, Sick, women and below age of 16 years.
- Imposition of fine upon wrongdoer, if he does not make compliance with issue of summons.
- Certain approaches like transfer of an accused from one custody to other and other arrangements for assistance.
- Procedure for Attachment and Confiscation of Property. Finally, this proposed bill was passed by both houses of parliament and received assent from President on 17/01/20203. This Statute known as “Prevention of Money Laundering Act,2002”. ⁷

This came into force on 01/07/2005. This is a special law which directly attributed to Offence of Money laundering, Attachment and Confiscation of proceeds of crime.⁸ Special Court have been incorporated under this Act in Section 43. Section 49 pertains to Offence triable by Special Courts.⁹ Before the Enactment of PMLA, Narcotics Drugs and Psychotropic Substance Act, 1985 was implemented. It contains substantial provision related to drugs and proceeds of certain drug related offences.

On the other hand, Reserve Bank of India is the key regulator of all banking and financial institutions. It governs the economic structure as well as regulated capital market through regulatory framework.

The Unlawful Activities Prevention Act, 1967

This legislation rendering provisions related to restriction on increasing funds to accused for terrorism and terrorist organization by making it offence.

Simultaneously, Numerous legislations are incorporated to combat the money laundering offences. These are mentioned below:

1. The Income Tax Act,1961
2. Benami Transaction (Prohibition) Act, 1988
3. Narcotic Drugs and Psychotropic Substance Act, 1985
4. Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substance Act,1988
5. Conservation on Foreign Exchange & Prevention of Smuggling Act,1974.

Other Important bodies are established to Combat the money laundering:

1. FIU-IND: - Financial Intelligence Unit- India is an independent body. This is established by Government of India. It is central agency responsible for verifiable money related transactions. It receives, processing, analysis and transmitting suspected financial transactions. It is reliable for smooth functioning, maintain coordination and ensure strengthen the National & International Intelligence investigations & Enforcement agencies at Global Level. This directly reported to Economic Intelligence Council (EIC) headed by Finance Minister. This body associated with Anti Money Laundering measures and constituted under Ministry of Finance.¹⁰

2. Regional Economic Intelligence Council (REIC): - FIU-IND provided suspected data to Directorate of Enforcement to take stern action against wrongdoer. The substantial task of this body is to ensure coordination and co-operation among those bodies who are dealt with economic offences

at their own spheres. The REIC was established in 1996 with 18 centres. That is nodal regional agency. These regional economic intelligence council are incorporated at numerous regions. Now, REIC has 30 regional centres across the country, designated numerous officers and head of CBDT, CBI, ED, CBEC etc. at Central and State Level. This intelligence council does not solely deal with tax matters, it covers and made compliance with all suspected economic matters. Central Economic Intelligence Bureau is apex body which creates co-ordination among other intelligence regional wings. This agency is under the control of Department of Revenue, Ministry of Finance. ED is also part of REIC. Both associated with offences of money laundering.¹¹

3. Reserve Bank of India: - Reserve Bank of India is key regulator of all banking, Non-Banking Financial Companies, also involves commercial banks and Co-operative banks and other financial markets. The Board for Financial Supervision has also constituted.

This board performs supervision function over the financial institutions which are under the circumference of Reserve Bank. RBI issued time to time Guidelines, Circulars and Directions to financial entities. This is protector of all financial institutions. This gave precautionary recommendations to the financial sectors, how to deal with customer and how to develop credible relationship between customer and financial institutions. All financial institutions should keep focus towards the Identity, Background and Reflection of changes in customers account from time to time.¹²

Famous cases relating to Money Laundering

➤ Manish Sisodia v. Central Bureau of Investigation, Order date 30-10-2023

Mr. Manish Sisodia was serving as the post of Deputy Chief Minister as well as an education minister in Delhi Government. He was charged under various provisions of Prevention of Money Laundering Act and Prevention of Corruption Act. He was alleged the offence of Proceeds of crime. He was received illegal gratification from private stakeholders who were carried Private liquor companies in NCT Of Delhi. Enforcement Directorate imposed allegations of Rs.100 crores scam in new liquor policy. That allegations imposed by ED were unproven and no money trail found in this case. Petitioner contended that he was charged under frivolous as well as Concocted story. ED had neither stern evidence to prove the guilt. They manipulated the co-accused of this case and declared overall kingpin of this scam was Manish Sisodia. Petitioner claimed that all allegations and statements made through undue influence and coercion upon witnesses and arrested co-accused under this case. In this case, ED contended that Petitioner received illegal commission of 5 % to 12% from Private wholesalers of Liquor licenses and Petitioner did favour to this Private Liquor companies. Proceeds of crime is crucial evidence to constitute the offence of Money Laundering. In Pursuant to this, ED claimed that Appellant was received illegal gratification and constructive possession of money. These allegations were sufficient to made his arrest. ED contended that Due to the execution of New Liquor Policy launched by Delhi govt, Approx. Rs.581 crores got by private stakeholders. This cause financial loss to Public Exchequer. Therefore, Court denied bail to accused person in this case. Court stated that every case decided on the merits of case. Every case cannot be treated as same. This case is now under Process.¹³

➤ Senthil Balaji v. Deputy Director, 2024 SCC Online Mad 284, Order dated 28-02-2024

Senthil Balaji was transport minister in the State of Tamilnadu. He was appointed in 2011 to 2016 as transport minister. He was alleged under PMLA. During his posting, he offered job employments in transport undertaking in lieu of illegal gratification. Those aspirants who were paid certain amount to

minister as well as his allied associates, they were accommodated. He was charged for job scam through misusing his position. ED took the cognizance of this matter and brought accused in his custody on 14/6/2023. In this case, Court held that Senthil Balaji was involved in cash for Job scam case and he also deprived genuine aspirants from getting job in transport department. In Pursuance Court directed that if Senthil Balaji came out from incarceration, it will be counted as bad signal and also cause deprivation to public interest. furthermore, court held that Senthil Balaji was not entitled to enlargement on bail given under section 439 of CrPC.¹⁴

➤ **Enforcement Directorate v. Aditya Tripathi, Order date on 12-5-2023**

In this case the accused was charged for meddled down E-Tender of Madhya Pradesh Govt. They earlier mentioned the tender amount as 1769 crores after that it was changed the bid price of the bidders and that was supported to lowest bidders. That aftermath was put under investigation and Investigating officer found that E - Tender amount was tempered by someone. It became significant subject- matter, thereafter FIR was registered by Economic Offences Wing (EOW) Bhopal on July 4, 2009. Enforcement Directorate took accused in their custody and Enforcement Case Information report (ECIR) was lodged against them. In Pursuant to this, High Court granted bail to accused and that bail application was challenged before Hon'ble Supreme Court. The Supreme Court initiated inquiry and rely that section 3 and 4 of PMLA were pending. It pronounced that High Court could not take too much easy like these matters. they need to take serious concern about this crucial matter. They did not take the harshness of section 45 of PMLA and other complied condition therein. IN this case, Supreme Court found that during the alleged offence imposed upon wrongdoer, High court can not release the accused on bail as wrongdoer was alleged under Predicate offence and Offences under PMLA.¹⁵

➤ **Ashish Mittal v. Enforcement Directorate, Order date 19-10-2023**

In this case, Petitioner had business ties with Edu comp Solution Limited (ESL). He was acted as Chief Financial officer. His functioning was to enforcement of corporate debt restricting scheme. Neither he was member of any executive post, nor shareholder and he also didn't hold any statutory authority under this business undertaking. He had resigned from the company in February 2018. During his working period, all business transactions were carried out in legal manner with the consent of Monitoring Committee of the lender banks. Under Insolvency and Bankruptcy Code, 2016, Resolution Board was also appointed by the National Company Law Tribunal (NCLT). Petitioner filed writ Petition under Article 226 read with Section 482 of code of criminal Procedure to quash the ECIR maintained by Enforcement Directorate. ED was restricted to take any illicit acts against the petitioner and infringing the personal liberty. After that, petitioner furnished this matter before the court to take that matter into cognizance. Summons was issued by ED under Section 50 of PMLA. Petitioner contended that ED had not given copy of ECIR and also his name was not mentioned in this case. He was not being an accused. That case was registered by CBI under Sections 420, 467, 468 and 471 of Indian Penal Code along with other provisos of Prevention of Corruption Act. Therefore, Court held that this writ petition was not maintainable based on summons under section 50 of the PMLA. Petitioner filed premature proceedings before the Hon'ble Court. This case was dismissed.¹⁶

International Perspective relating to Anti- Money Laundering

Money Laundering is serious concern at global level. It steadily grows up in developing and developed countries. This huge amount earned through illegitimate sources. Every year 2-4 % money has laundered at global level.¹⁷

Let's discuss some key regulations at international level. Drug Trafficking and Embezzlement generally operated in developed countries, But in Developing Countries Criminal choose cash intensive business. They avoid to pay taxes. Numerous bodies are signatory to curb this menace. It shall be the global responsibility to use appropriate mode to curb the illicit money sources. Every country has to develop their Anti- Money Laundering laws at their own level.¹⁸

1. United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substance, 1988: -United Nation took initiatives to curb this menace of illegitimate proceeds of crime. They held convention against Illicit trafficking in drugs and allied substances among different signatory of the world. This is also known as Vienna Convention. The object of this convention is to prohibit money laundering offence, such offender persuades from drug trafficking and Narcotics on International basis. That convention held in 1990. Under this specifically Money Laundering has not been defined, But in Article 1 of that convention describes: criminal activities and illegitimate gains are considered part of criminal activity.

- Article 1 defines: Any Property whether corporeal or incorporeal, movable or immovable, Tangible or intangible derived or obtained through direct or indirect manner via commission of an offence under Article 3.
- Article 4 states: Any act pertains to obtain illegal gains from illicit activities; conversion is prime facie act of money laundering. It means transfer or conversion of property from one source to other and that derived from illegal sources. The act of hiding or concealing true origin of property as well as assisting any person who indulged in illegal activities.

The other bodies like FATF, European commission have expanded the dimension of this convention. They involved the definition of predicate offences and other serious crimes. The prime object of this convention is to combat serious offences; it has to promote the co-ordination and co-operation among parties to take stern action against illicit trafficking in Narcotic Drugs and Psychotropic substance on international level.¹⁹

2. United Nations Global programme against Money Laundering:

The United Nation hold programme against money laundering in year 1997 at global level. This was established in pursuant of United Nation convention against illicit traffic in NDPS. This session was highly strengthened and encourage Action Plan against money laundering and illicit trafficking of drugs. It includes all crime related to money laundering. This was first key initiative established by UN against money laundering. Ambassadors of numerous nations took participated in this convention. This was held on 10 June 1998 at New York. The prime object of this programme is to combating money laundering and terror financing activities at global level.²⁰

3.The Egmont Group (1996)

International Organization and Other Govt. of different nations formed a group, that was called Egmont group. This deals with the issue of Money laundering and Terror financing at global level. The paramount aim of this group is to exchange sensitive information to other nations associated with money laundering and terror financing, so other Nations can take key initiatives and preventive measures against these offences.

FIU was defined by Egmont Group in 1996: - A central agency responsible for money related transactions, it receives, processing, analysis and transmitting suspected financial transaction.²¹

The Egmont group was constituted to provide coordination and cooperation among the various nations to fight against money laundering and terror financing on behalf of Egmont group. FIN-CEN developed Egmont Secure Web (ESW). This group has its head office at Toronto, Canada.²²

4.FATF: Financial Action Task Force is an inter-governmental body. It was developed in 1989 by G-7 Countries to counter and combating illicit proceeds of crimes such as Money Laundering, Drug Trafficking and Terror Financing etc. There was a great need to lay down recommendations at global level against serious issues. The object of FATF is to ensure development of efficient strategies against money laundering at National as well as international level. FATF reviewed, accessed information from every nation as required. It mandates regularly check the compliance made by regulating entities and also recommend improvements. This body gives guidelines and recommendations from time to time. It also traces out the emerging trends related to illegitimate proceeds of crime. This provides 40 recommendations to counter measures against AML and CFT. Many Countries are in favour of FATF recommendations. On contrary, some countries are not part of this force, they don't bind and follow recommendations given by FATF.

FATF has UN support, first time recommendations were given in 1998 to take cognizance over money laundering trends as to emancipate greater risks and threats. It provides comprehensive frameworks against Money Laundering and Terror Financing at International Level.

Simultaneously, Numerous Institutions are established by Various countries to counter illegitimate activities at their own level. Every country has drafted its own legislation which curb these menaces such as illicit Narcotics Drugs, Trafficking of illegal substances etc. To curb this menace, In Pakistan Anti Money Laundering Act 2010, In USA, The Bank Secrecy Act and US Patriot Act, In UK Proceeds of crime Act had enforced.

Conclusion: - There are multiple laws related to money laundering at global level. But there is still need of proper execution of these laws. Financial Action Task Force regulates key provisions to curb the trait of illicit money mules. But some nations are directly or indirectly giving funding to culprits to do illegal activities. In Indian context, Prevention of Money Laundering Act,2002 is crucial legislation which deals with financial crimes. There are lot of agencies developed in India, but culprits are not caring about the agencies. they perform their activities as per their own accord. Enforcement Directorate perform the procedure of arrest, search and seizes illegal acquired assets and Properties. But the implementation and its execution still ignored.

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