

A study on money laundering in India context as Economic crime.**Dr. Manisha Dipak Badgujar**

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Abstract:

Money laundering can be defined as a method, which is supposed at legitimizing the proceeds of crime. Money Laundering refers to changing illicit earned cash into legit money. The long-ignored trouble of money laundering in India – the use of financial transactions to conceal the identity, source, and vacation spot of cash – is no longer solely linked to organised crime however additionally to tax evasion or false accounting. The authorities do no longer get any tax on the cash due to the fact there is no accounting of the black money. So Money Laundering is a way to cover the illegally received money. Money laundering is now regarded as a substantial hassle practiced through individuals, businesses, officers and governments all over the world. This article examines definitions of "money laundering" and the conceptual and true position its rules performs in dealing with more than a few sectors of the economy, as nicely as the procedural components of the same. It offers a perception into the records of this process. Then it goes on to talk about the three steps concerned into cash laundering. Also find out about on anti-money laundering act in India. If laundering is prevented, incentives to grow to be foremost criminals are diminished. The influence of anti-laundering efforts on enforcement resources, geared up crime markets, or drug consumption ranges stays modestly understood at present.

Keywords: Cash, Crime,India,Money laundering, prevented**Introduction**

Money Laundering mentionsthat the conversion or "Laundering" of money which is illegally obtained, so as to make it show up to originate from a legit source. Money laundering is the unlawful system of making huge quantities of monies generated by using a crook activity, such as drug trafficking or terrorist funding, show up to have come from a genuine source. The moneys from the illegal activity is regarded dirty, and the method "launders" it to make it seem to be clean.

Money Laundering in easy expressions is shifting moneys not having much more documents. Laundering money entails the usage of current price channels, to funnel the money across. Money Laundering is method of moving colour from black to white.

With the evolution of technology, the method of laundering is evolving. Growing reliance on technological know-how helps the criminals to preserve the black colour of money. However, money is transported out of the nation in equal colour.

Money Laundering, the metaphorical “cleaning of money” with regard to look in law, is the exercise of attractive in unique monetary transactions in order to conceal the identity, supply and/or depot of money and is a major operation of underground economy. Thus money laundering is a method by means of which huge quantities of illegally received money (from drug trafficking, terrorist things to do or different serious crimes) is given a look of having originated from a legitimated source.

Definition of Money Laundering

While there are many definitions for Money laundering, one that is in many instances used is the definition via FATF. Given under are a number definitions- The Financial Action task force on Money laundering (FATF) defines money laundering as “the processing of criminal proceeds to disguise their illegitimate origin” in instruction to “legitimize” the “ill-gotten gains of crime.”

History of Money Laundering

Historically, money laundering is in existence given that at-least 2000 years. Chinese retailers cycled cash via a variety of agencies and complicated monetary transactions to conceal the earnings from authority’s bureaucrats.

But the time period won glamour solely when the accountant of Al Capone discovered it hard to give an explanation for the supply of cash received from unlawful activities. This accountant bought cash-only Laundromats and used them as a front in order to hide the supply of the soiled cash they had been getting from prostitution, bootlegged liquor income and different criminal activities. A frequent faith is that the time period ‘money laundering’ originated due to the fact Italian contributors of the mafia in the United States, such as Al Capone. Amount of money flowing into the Laundromat operations used to be tough for regulation enforcement to monitor, which potential a lot of money ought to sneak previous the device disregarded. India forensic, which imparts training and certifications on Anti Money Laundering, defines money laundering as any procedure that cleans funds of their criminal origins, permitting them to be utilized inside the financial system. The laundering of unlawful cash happens when the perpetrators go the ill-gotten money via one or extra a number of legit agencies or the financial institution money owed of the non-suspecting persons to legitimize the illegally acquired quantity of money.

Forms of money laundering

Money laundering can take up several forms, some of them, *inter alia*, are as follows:

- Structuring, also referred to as smurfing,
- Cash-intensive businesses,
- Bulk cash smuggling,
- Trade-based laundering,
- Shell companies,
- Round tripping,

- Gambling,
- Black salaries,
- Tax amnesties,
- Transaction laundering.

Literature Review

Raj Kumar S. Adukia⁴ - The Author of the Book "Encyclopaedia On Prevention Of Money laundering Act 2002" dealing with the prevention of cash laundering, Indian Initiative in money laundering, Record Keeping and Reporting, Identity of Clients, Notification and Guidelines issued by way of a range of authorities, International Organisations involved in the combat towards Money Laundering and Anti cash laundering Authorities.

M. Michelle Gallant⁵ – The Author of the Book "Money laundering and the Proceeds of Crime" dealing with the upcoming assault on crook finances, a dramatic transformation is taking place. Increasingly states are selecting to put into effect their assault via civil proceedings. Rather than matter on ordinary crook felony processes, states are relying on civil proceedings. This revolution fuses crime manipulates coverage and civil offence processes. This work significantly examines this fusion. Some investigates this transformation from the potential of crook law. This work broadens the inquiry.

Raj Kumar Makkad - The Author of the Article "Money Laundering in India" dealing with the two strands in the dispute on black cash generated in the Indian economy. At one level, the quandary is of vulnerable pursuit of current legal guidelines and, at the different point, the place there are vested interests; these have formed incredible firewalls to block investigation. Another is the exception that the dealer classification has extracted from the authorities in the price delivered tax.

Process of Money Laundering

Money laundering is a three-part process. Laundered cash aren't viewed "clean" till the integration step is completed

1. Placement

It is the stage at which criminally derived cash are presented in the monetary system. At this stage, the launderer inserts the "dirty" money into an authentic monetary organization regularly in the structure of money bank deposits. This is the riskiest stage of the laundering technique due to the fact massive quantities of money are exceedingly conspicuous, and banks are required to file high-value transactions. To curb the risks, giant quantities of money is damaged up into much less conspicuous smaller sums that are then deposited at once into a financial institution account, or via buying a collection of financial gadgets (cheques, cash orders, etc.) that are then amassed and deposited into bills at some other location.

2. Layering

It is the stage at which complicated monetary transactions are carried out in order to camouflage the illegal source. At this stage, the launderer engages in a sequence of conversions or actions of the money in order to far-off them from their source. In different words, the money is despatched via a variety of monetary transactions so as

to alternate its structure and make it challenging to follow. Layering can also consist of countless bank-to-bank transfers, wire transfers between unique money owed in distinctive names in special countries, making deposits and withdrawals to always range the quantity of cash in the accounts, altering the money's currency, and buying high-value gadgets such as houses, boats, diamonds and vehicles to trade the structure of the money. This is the most complicated step in any laundering scheme, and it is all about making the starting place of the cash as difficult to hint as possible. In some instances, the launderer would possibly cover the transfers as repayments for items or services, for that reason giving them an official look

3. Integration

it is the last stage at which the 'laundered' property is re-introduced into the authentic economy. At this stage, the launderer may select to make investments the money into tangible estate, luxurious assets, or enterprise ventures. At this point, the launderer can use the cash barring getting caught. It's very tough to seize a launderer in the course of the integration stage if there is no documentation all through the preceding stages.

The table below provides some typical examples

Placement Stage	Layering Stage	Integration Stage
Cash paid into bank (sometimes with staff complicity or mixed with proceeds of legitimate business).	Wire transfers abroad (often using shell companies or funds disguised as proceeds of legitimate business).	False loan repayments or forged invoices used as cover for laundered money.
Cash exported.	Cash deposited in overseas Banking system.	Complex web of transfers (both domestic and international) makes tracing original source of funds virtually Impossible.
Cash used to buy high value goods, property or business assets.	Resale of goods/assets.	Income from property or Legitimate business assets appear "clean".

Money Laundering Methods

i. Structuring

Also referred to as smurfing, it is a technique of placement whereby cash is damaged into smaller deposits. This technique is used to beat suspicion of money laundering and to dodge anti-money-laundering reporting requirements. In a variant of this method, criminals use smaller quantities of cash to buy monetary instruments, such as money orders,

and then subsequently credit these contraptions in financial institution accounts, once more in small amounts.

ii. Bulk Cash Smuggling

A basic cash laundering example, this includes bodily smuggling banknotes to some other jurisdiction and depositing them in a monetary institution, such as an offshore bank, with higher financial institution secrecy or much less extreme cash laundering enforcement.

iii. Cash-intensive businesses

In this method, criminals set up cash-intensive companies that normally obtain a giant percentage of its income as cash. Then, they use commercial enterprise bills to credit criminally derived cash. Such agencies function overtly and generate money income from official enterprise in addition to the illicit cash. Parking structures, strip clubs, tanning salons, automobile washes, arcades, bars, restaurants, and casinos are some examples of these businesses.

iv. Investments in Commodities

Here, some crook purchases valuable and cellular commodities such as diamonds, gemstones and gold that can be moved to different jurisdictions in an effortless manner.

v. Trade-based laundering

This is one of the most recent and most complicated varieties of money laundering. This technique includes under- or over-valuing invoices to conceal the motion of money. The artwork market is regularly criticised for being a handy cash laundering channel. The subjective fee of artwork and the secrecy norms of public sale homes about customers and dealers make it less difficult for cash launderers to easy their cash instead easily.

vi. Shell companies and trusts

Trusts and shell businesses hide the genuine proprietors of money. Trusts and company automobiles want no longer reveal their genuine proprietor or recommended proprietor in many jurisdictions. Shell groups do now not have any energetic commercial enterprise operations however have a criminal personality. These company's money owed are used to save soiled money.

vii. Round-tripping

In this method, crook cash is deposited in the money owed of a managed overseas company offshore, ideally in a tax haven us. the place AML exams are minimal. The cash is then shipped again as an overseas direct investment, regularly exempt from taxation. A variant on this is to switch cash to a regulation association or comparable corporation as fees, then to cancel the retainer and, when the cash is remitted, characterize the sums obtained from the legal professionals as a legacy below a will or proceeds of litigation.

viii. Bank capture

In this case, cash launderers or criminals buy a controlling hobby in a bank, most regularly in a jurisdiction with extraordinarily vulnerable money-laundering controls. The criminals then go cash via the financial institution except any scrutiny.

ix. Casinos

In this method, a person walks into an on line casino and buys chips with illicit cash. The character will then play for a distinctly quick time. When the man or woman cashes in the chips, they take price in a test or get a receipt for the cash acquired so they can declare the proceeds as playing winnings.

x. Other Gambling

In this method, cash is spent on gambling, ideally on excessive odds games. Criminals may additionally guess on each and every feasible result of some tournament that has many viable outcomes, and the bettor will have one or greater prevailing bets that can be proven as the supply of money. The dropping bets will continue to be hidden.

xi. Black Salaries

A corporation can also have many unregistered personnel except written contracts and pay them salaries in cash. Dirty cash is used to pay them.

xii. Tax Amnesties

Tax amnesty is a limited-time alternative for some taxpayers to pay a described amount, in trade for forgiveness of a tax legal responsibility referring to to a preceding tax length or intervals besides crook prosecution. Many use this alternative to legalize unreported belongings and money in tax havens.

xiii. Business Email Compromise

This is a systematic rip-off in which companies working with overseas suppliers and doing normal wire transfers are targeted. Here, a crook compromises respectable enterprise e mail bills with the aid of social engineering or pc intrusion methods to habits unauthorized fund transfers. While the scheme is usually used to defraud any other out of money, it can additionally be a tremendous device to layer and launder cash with or except the know-how of the victim.

xiv. Transaction Laundering

In this method, a service provider knowingly or unknowingly strategies illicit savings card transactions for every other business. Here, the repayments ecosystem is used to cover that the transaction even occurred.

xv. Cyber-laundering

Often defined as cash laundering in the digital age, it is the exercise of cash laundering carried out in our on-line world thru on-line transactions. Criminals use strategies such as e-commerce, digital currencies, on-line games, crowd funding, etc. to launder cash with velocity and ease.

Effects of Money Laundering

1. Effects on Business:

The integrity of the banking and monetary offerings in market place depends closely on the appreciation that it features inside a framework of high legal, expert and moral standards. A recognition for integrity is one of the most precious property of a monetary institution. If money from crook activity can be without problems processed via a unique group – both due to the fact its personnel or administrators have been bribed or due to the fact the group turns a blind eye to the crook nature of such money – the group may want to be drawn into active complicity with criminals and grow to be section of the crook community itself.

Evidence of such complicity will have a destructive impact on the attitudes of other economic intermediaries and of regulatory authorities, as properly as ordinary customers.

2. Effects on Economic Development:

Launderers are constantly searching for new routes for laundering their funds. Economies with developing or creating economic centres however inadequate controls for desire of complete anti-money laundering regimes are particularly vulnerable. Difference between countrywide anti-money laundering systems is exploited via the launderers, who have a tendency to pass their networks to countries and economic structures with vulnerable or ineffective counter measures⁴¹. Thus, if left unchecked, cash laundering can erode a nation's economy by altering the demand for cash, making pastime and change prices more volatile, and via inflicting excessive inflation in international locations the place crook factors are doing business. The siphoning away of billions of bucks a 12 months from normal economic increase poses an actual threat for the economic fitness of each and every nation which in flip adversely influences the steadiness of the world market; and hence laundering is awful for the economy

3. Social Impact:

The feasible social and political expenses of cash laundering, if left unchecked, are serious. Organized criminals can infiltrate monetary institutions, acquire manipulate of giant sectors of the economic system via funding or offer bribes to public officers and certainly the government. The financial and political impact of crook companies can weaken the social fabric, collective moral standards; and eventually the democratic establishments of the society. Moreover, in international locations which are in transition to democracy, this crook have an effect on undermines the transition itself. Most demanding of all, money laundering empowers corruption and equipped crime. Corrupt public officials need to control launder bribes, kick-backs, public dollars and, on occasion, even improvement loans from worldwide monetary institutions. Most fundamentally, cash laundering is inextricably linked to the underlying criminal recreation that generated it and, therefore, permits crook recreation to continue. Moreover, terrorist businesses use cash laundering channels to get cash to purchase arms. Thus social penalties of permitting these groups, get entry to to launder money, can be disastrous.

Stages Taken by Government of India to Prevent Money Laundering

The Prevention of Money Laundering Act, 2002 (PMLA)

The Prevention of Money Laundering Act (PMLA), 2002 was enacted in January, 2003. The Act alongside the Rules framed thereunder have come into force with effect from 1st July, 2005. Sec. 3 of PMLA defines offence of money laundering as whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime and projecting it as untainted property shall be guilty of offence of money-laundering. It prescribes obligation of banking companies, financial institutions

and intermediaries for verification and maintenance of records of the identity of all its clients and also of all transactions and for furnishing information of such transactions in prescribed form to the Financial Intelligence Unit-India (FIU-IND). It empowers the Director of FIU-IND to impose fine on banking company, financial institution or intermediary if they or any of its officers fails to comply with the provisions of the Act as indicated above.

PMLA empowers certain officers of the Directorate of Enforcement to carry out investigations in cases involving offence of money laundering and also to attach the property involved in money laundering. PMLA envisages setting up of an Adjudicating Authority to exercise jurisdiction, power and authority conferred by it essentially to confirm attachment or order confiscation of attached properties. It also envisages setting up of an Appellate Tribunal to hear appeals against the order of the Adjudicating Authority and the authorities like Director FIU-IND.

PMLA envisages designation of one or more courts of sessions as Special Court or Special Courts to try the offences punishable under PMLA and offences with which the accused may, under the Code of Criminal Procedure 1973, be charged at the same trial. PMLA allows Central Government to enter into an agreement with Government of any country outside India for enforcing the provisions of the PMLA, exchange of information for the prevention of any offence under PMLA or under the corresponding law in force in that country or investigation of cases relating to any offence under PMLA.

Institutional FrameworkED (Enforcement Directorate)

The Directorate of Enforcement was established in the year 1956 with its Headquarters at New Delhi. It is responsible for enforcement of the Foreign Exchange Management Act, 1999 (FEMA) and certain provisions under the Prevention of Money Laundering Act. Work relating to investigation and prosecution of cases under the PML has been entrusted to Enforcement Directorate. The Directorate is under the administrative control of Department of Revenue for operational purposes; the policy aspects of the FEMA, its legislation and its amendments are within the purview of the Department of Economic Affairs. Policy issues pertaining to PML Act, however, are the responsibility of the Department of Revenue. Before FEMA became effective (1 June 2000), the Directorate enforced regulations under the Foreign Exchange Regulation Act, 1973.

Financial Intelligence Unit – India

Financial Intelligence Unit – India was set by the Government of India vide O.M. dated 18th November 2004 as the central national agency responsible for receiving, processing, analysing and disseminating information relating to suspect financial transactions. FIU-IND is also responsible for coordinating and strengthening efforts of national and international intelligence, investigation and enforcement agencies in pursuing the global efforts against money laundering and related crimes. FIU-IND is an independent body reporting directly to the Economic Intelligence Council (EIC) headed by the Finance Minister.

The PMLA also enumerates a list of offences which are classified as ‘scheduled offences’ constitute as ‘crimes’.

The growing number of financial crimes and high profile embezzlement have become a matter of severe concern. As a result of which the Finance Act, 2019, has introduced an amendment to the

PMLA to curb the same. The amendment provides stringent rules for investigation and gives the required clarifications on ambiguities that existed earlier. It is significant to note that the amendments have been made by inserting an ‘Explanation’.

The amendments made in the PMLA in the Finance Act, 2019 can be accessed here.

Key amendments

1. Explanation to Section 2 (u) inserted

This Explanation clarifies the position of ‘proceeds of crime’. Now, ‘proceeds of crime’ will be understood to relate to any property that directly or indirectly derived or obtained through an activity relatable to scheduled offences.

2. Explanation to Section 3

Section 3 of PMLA relates to “offences of money laundering”. The Explanation under Section 3 mentions, a person shall be guilty of money laundering if the person is directly involved or is knowingly a party to one or more of the following processes, connected with the ‘proceeds of crime’:

- Concealment, (b) Possession, (c) Acquisition, (d) Use, (e) Projecting as untainted property, (f) Claiming it as untainted property, in any manner whatsoever.

The Explanation also states that the process or activity connected with proceeds of crime continues till such time a person is directly or indirectly enjoying the proceeds of the crime. Accordingly, the entire process/activity connected to the proceeds of crime is a continuing offence.

The above Explanation was inserted basis an observation made by Financial Task Action Force (FATF), that concealment, possession, acquisition and use of the proceeds of crime were not criminalized earlier under Section 3 of the PMLA.

3. Proviso to Section 17(1) and 18(1) omitted

Omitting the above *proviso* now gives the authorized officer under PMLA the authority to enter any property for purpose of conducting search and seizure, and the search of any person, even in the absence of the reporting of a scheduled offence to a Magistrate or any other competent authority in this regard.

4. Amendment to Section 44 of the PMLA

Section 44 of the PMLA encompasses the provisions for offences which can be tried by Special Courts.

A *proviso* has been inserted to Section 44(1)(b) of the PMLA which talks about submitting of a ‘Closure Report’ upon conclusion of investigation. It states that if no offence of money laundering can be determined after investigation, the authority shall submit a ‘Closure Report’ before the Special Court. It assists in closing of cases where investigation was completed and no offence was found.

An Explanation has been inserted to Section 44 (1) (d) of PMLA which gives the Special Court an exclusive jurisdiction regarding scheduled offences. The Explanation mentions that the trial conducted by the Special Court for scheduled offences shall be distinct from any other trial being conducted for the same scheduled offence. It shall not be considered as a joint trial.

The Explanation further adds that “Complaint” shall include any subsequent complaint that arises as a result of further investigation against any accused person. It shall be applicable for all persons, whether or not such person was included in the original complaint.

5. Explanation to Section 45 (2) of PMLA

This Explanation clarifies that the offence of cash laundering is a cognizable and non-billable offence. Accordingly, an approved officer can arrest the accused besides a warrant. The above amendments to the PMLA deliver the a great deal wished readability on quite a number unaddressed elements of cash laundering. It can be stated that these amendments now confer the authorities with higher command, concerning investigation and closure. However, the critical query for consideration would be whether or not these amendments will be relevant retrospectively. It is believed that courts in future can throw some mild on the identical through way of litigation that may additionally occur for the duration of the trials of such matters.

The Enforcement Directorate, also known as the ED, has recorded the most money laundering cases over the past eight years. In addition, the ED received 16833 complaints under the Foreign Exchange Management Act (FEMA), 1999, and 2805 complaints under the Prevention of Money Laundering Act (PMLA), 2002, between 2012–13 and 2019–21.

List of Money Laundering

Sr.No	Money laundering cases	Year of scam	Amount of money involved
1	Common Wealth Game	2010	70000 crores
2	Saradha Group financial scandal	2013	2500 crores
3	Indian coal allocation scam or the Coalgate	2012-13	185,591 crores
4	The Kingfisher Airlines case	2007-2017	9900 crores
5	Punjab National Bank Fraud case	2007-2017	11400-13500 crores
6	Yes bank – DHFL cases	2007-2017	5050 crores

Conclusion

MoneyLaundering is a complex and manipulative process. As a whole, it is a problem that affects all countries. Strong financial regulators and uniform legal provisions around the world are fighting this threat. A stringent criminal law is desired by Indians. The provision of imprisonment can be improved and made more suitable for developed nations in order to achieve this goal. Money laundering is primarily based on the degree of severity and dampening impacts on the social, economic, and prison spheres of the US and the punishment and fines must be ranked accordingly as an alternative to having one common parameter of punishment for all offences. The government must take progress in the process of digital transactions to curve the threat of corruption in the country. Corruption and greed are the two main factors that lead to economic frauds and money laundering. Greed can upend economies in money laundering situations. Furthermore, it damages the private sector by fostering fierce rivalry and the decline of successful companies that serve as money laundering fronts, as well as damaging economies.

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