Money Laundering and its Impact with Remedial Measures in context to Indian Scenario: A Critical Study

Aayushi Goel* and Bhupinder Singh**

The topic titled as “Money Laundering and its impact with Remedial Measures in context to Indian Scenario: A Critical Study” is a topic of essence keeping in view globalization and expansion of economic avenues. The Money Laundering has its different stages- Placement, Layering and Integration, etc. basically in money laundering the tainted money is presented as if legally begotten money. The aspect of money laundering does not know territorial barriers as it can initiated in one stage and proceeded further in different stages till the color of the money derived by committing offence becomes a legal tenure and accepted economic avenues of an individual or individuals. Its impact is in several minors including funding for terrorists activities, procuring narcotics, banned arms and drugs, trafficking woman and children, so on and so forth. To crack down on the offence of money laundering, The Global Legal Order has framed guidelines and conventions extra which the India state has also adopted by framing the law known as The Prevention of Money Laundering act, 2002. The law so framed has entered into the bank secrecy areas to the extent that it is obligatory on banks to disclose the suspicious transactions without any intimation to its customer. The Act lays different modes for tracing the money laundering, investigation thereto and adjudication thereof besides, the remedial measures for the aggrieved behold the tribunal and the courts extra. Despite all this there is a scope of for extra territoriarity to be dealt on reciprocal basis with other countries in the globe so as to make it effective for which, the executive ought to strive for better administration and prevention on unjust enrichment. The topic as such has

* Ph.D Research Scholar, Amity Law School, Amity University, Sector-125, Noida - 201313, Uttar Pradesh (India) E-mail: <nickygoel90@gmail.com>
** Research Supervisor and Assistant Professor (G-II), Amity Law School, Amity University, Noida - 201313 Uttar Pradesh (India) E-mail: <bsingh8@amity.edu>
been deliberated upon primary and secondary source of data where one set of data has been corroborated to arrive at certainty.

[Keywords : Money Laundering, aggrieved, offence, tainted money, extra territoriality, unjust enrichment, trafficking, etc.]

1. Introduction

Money produced from criminal activity in a huge amount is the process of money laundering. It includes drug trafficking activities and activity in terrorism, may be obtained from legitimate source. It is the dirty money which comes from illicit activities and the process which is used to disguise this dirty money into clean money is known as money laundering.

The dirty money earned from illicit sources needs laundering so that it may be used effectively in other activities. If large amount of black money is used in dealings, it may be dangerous and inefficient as well. Always a way is needed by the criminals to deposit their black money in financial institutions but it is only possible if it appears to be white money and hence the laundering of money is done to show that the money is from legitimate source.

2. Steps in Money Laundering

Money laundering three steps namely: placement, layering and integration.

1. In the first step of money laundering i.e. placement, the money which is obtained from illegitimate sources or by criminal means known as dirty money is introduced in some way or the other into the financial institutions.

2. The second step of money laundering that is layering involves the concealing part. It is the process of disguising the source of money obtained by any way or tricks for example book keeping tricks or by way of a series of transactions.

3. Now the last step that is integration includes the process of using that black money into white money.

“Of these steps, placement of the money into financial institutions is the most difficult. This is because the Bank Secrecy Act of 1970 requires financial institutions to report deposits over $10,000 in a single day. To circumvent this step then, launderers funnel cash through a legitimate high-cash business, such as a check cashing service, bar, nightclub, or convenience store.”

For obvious reasons when black money is obtained from illegal sources like gambling or drug trafficking, it is impossible to for anyone to deposit that money directly in any of the financial institution as it may suspicious and dangerous and it may be revealed that the money is obtained from criminal activity. Whenever the money is deposited in the financial institution, it is necessary to show from where the money is obtained and financial record is created and hence the money should be white in the eyes of law and this is the reason that money laundering is done to convert the black money to white money.
Money laundering is a crime and is defined differently in different jurisdiction whether it is foreign or domestic, they have their different definitions. Now the question arise that which agency is capable of investigating the crime of money laundering or punishing the criminals of this offence. Estimation has been made of at least $300 billion which has been laundered each year in United States. United States sentencing commission has published a study in 2009 which reveal the fact that more than 81000 people were convicted of the offence of money laundering each year in United States on some or the other level.

Around at 1980, fraud was committed by the customers of BCCI and the board itself. They performed the activity of money laundering all over the world. When the money laundered was estimated then it was about 17.6 billion.

“This gained BCCI a reputation as a banker to arms smugglers, drug cartels and dictators. In fact, it had relationships with officials in multiple countries from Argentina to Zimbabwe which ranged from questionable to the fully corrupt.”

Afterwards in 1988, a senate from US was appointed so that investigation may be done as the BCCI was involved in money laundering. And later bank was fined with 11.3 million as he pleaded guilty for the crime of money laundering.

Bank of England ordered an investigation in 1991 which is to be conducted by Price Waterhouse. “This reported ‘evidence of massive and widespread fraud’ taking place over several years. About one month after this, BCCI was shut down by international regulators whilst still owing over £10 billion to its creditors.”

BCCI has been using a set which is of complex mechanisms to so that it may hide for what was done; it has mainly used shell companies and also the secrecy havens as well as layering its corporate structure. It had also enriched itself with kickbacks, bribes and also the well-placed insiders, who appreciably discouraged the governmental action.

“This case is thought to be one of the reasons that Gordon Brown, when he became the UK’s Chancellor of the Exchequer in 1997, transferred banking supervision from the Bank of England to the Financial Services Authority.”

3. Commission of Money Laundering Offence

Money laundering has the same features all over the world. There are two characteristics to the offence of money laundering which are as follows:

1. The necessary act of laundering itself i.e. the provision of financial services;
2. A requisite degree of knowledge or suspicion (either subjective or objective) relating to the source of the funds or the conduct of a client.

The offence of money laundering is performed in situations in which an individual is engaged in and arrangement and that arrangement includes the proceeds of crime. And these types of arrangements involve a huge variety of
relationship of business for example fiduciary and investment management, banking, etc.

4. **Illegality of Money Laundering**

   The aim of the offence of money laundering is none other than of earning of profit out of the proceeds of crime. It is kind of assisting criminals by providing financial services to the offenders which is harmful for individual and organization as well. And this financial help to the offenders makes it possible for them to commit the proceeds of crime.

5. **Impact of Money Laundering**

   According to a 2016 survey from PwC, “global money laundering transactions account for roughly 2% to 5% of global GDP, or roughly $1 trillion to $2 trillion annually.

   Although the act of money laundering itself is a victimless, white collar crime, it is often connected to serious and sometimes violent criminal activity. Being able to stop money laundering is, in effect, being able to stop the cash flows of criminals, including international organized crime.”

   Legitimate business is much more affected by the offence of money laundering as it hinders the interest of such business and it becomes difficult for them to compete in the market as products and services are provided at quite less value by the money launderers. People committing money laundering enjoys the competition in the market and legitimate business suffers in such situations.

   “Businesses that associate with people, countries or entities that launder money face the possibility of fines. Deutsche Bank, ING, the Royal Bank of Scotland, Barclays and Lloyds Banking Group are among institutions that have been fined for being involved with transactions associated with money-laundering activities in countries such as Iran, Libya, Sudan and Russia.”

   In one of the leading case of money laundering, fine was imposed on international bank HSBC as it could not put proper measures of anti money laundering in the bank. According to the report of U.S. federal government, the international bank HSBC was guilty for having negligent over the transactions by the unit of Mexican and in some way helped in the proceeds of money laundering to different drug cartels which involve huge movement of cash to the United States by the international bank HSBC. Even the government was convinced that HSBC was incapable to maintain proper details and record as prescribed by the Anti Money Laundering measures. This also involves the proof of accounts which were not reviewed and thus was a failure to file suspicious activity report by HSBC.

   “After a year-long investigation, the federal government indicated HSBC had failed to comply with U.S. banking laws and consequently subjected the United States to Mexican drug money, suspicious traveler’s checks and bearer share
corporations. In 2012, the bank agreed to pay $1.92 billion in fines to U.S. authorities.”

Some set of rules, regulations, procedures and laws are set up to avoid the practice of obtaining money from illicit actions, these rules are known as Anti Money Laundering (AML). It may be possible that these anti money laundering may cover quite less number of transactions and criminal activities but its effect is relatively far. For example, under anti money laundering rules institutions are required to keep full due diligence and KYC norms in issuing credit and in opening the accounts of the customers so that these financial institutions may be sure that the individuals are not involves in any type of money laundering activities or not aiding in the proceeds of any crime. These rules are to be followed by the financial institutions and customers and government are not to be blamed for such activities.

The rules of anti money laundering includes corruption of public funds, market manipulation, tax evasion and trade of illegal goods and also the activities which are performed to disguise the proceeds of such crimes.

“In 2012, the British bank Standard Chartered was accused, by New York’s Department of Financial Services (DFS), of helping the Iranian government to circumvent US money laundering regulations to the tune of an estimated £191.8 billion over 10 years.”

The bank had to pay “a civil penalty of £262 million in 2012 by the DFS and the US Department of Justice for failures in its anti money laundering controls and for violating US sanctions on Iran, Burma, Libya and Sudan.”

“It then had to pay a further £232 million in civil penalties in 2014 by the DFS for the bank’s internal controls failing to flag suspicious transactions. This arose from the regulator deeming that the bank had not improved its systems after promises in the 2012 settlement. It was also forced to discontinue certain activities such as exiting certain high-risk customers at its United Arab Emirates branch.”

6. **Financial Action Task Force**

An intergovernmental agency was made known as Financial Action Task Force (FATF) in 1989. It was formed by coalition of countries to promote and develop cooperation among international level for combating the offence of money laundering. The FATF included 34 countries as per the report of 2015 but the agency was with the aim of expanding its members to more and more regions. FATF worked to combat the financing the offence of terrorism and it had its headquarters in Paris and France. It had developed the suggestions and advice to combat the offence of money laundering and also had three functions in respect to criminal activity:

1. The progress of member countries was monitored in the measures taken by them for anti money laundering.
2. Trends and techniques were reviewed and used to report them and new countermeasures as well to member countries.

3. FATF anti money laundering measures and standards were promoted globally.

"In 1998, Russian criminals laundered an estimated £53.7 billion through shell banks in Nauru. They were able to do this as Nauru reportedly allowed its banks to function without verifying the identities of its customers or questioning where deposited money came from.

Because of this, US sanctions were imposed by the US Treasury and Financial Crimes Enforcement Network on Nauru that were harsher than those imposed on Iran. Since 2001, however, Nauru has worked to clean up its act and has accepted aid from Australia in exchange for hosting a detention centre for asylum seekers that were trying to enter Australia illegally.

The sanctions were eventually lifted in 2005 when the Financial Action Task Force (FATF) removed Nauru from its ‘blacklist’ after the island abolished its 400 shell banks.”

7. **Bank Secrecy Act**

Congress provided for The Bank Secrecy Act (the BSA) in 1970, it was an effort for combating the money laundering crime in financial institutions. “The Act contains laws that require financial institutions to report certain transactions to the United States Department of Treasury, including transactions in excess of $10,000. The institutions must also file a Suspicious Activity Report, or “SAR”, if they consider any financial transaction suspicious or believe the funds comes from unlawful activities. The Act is also responsible for the creation of the Financial Crimes Enforcement Network, which makes reports of money-laundering or suspicious activity available to criminal investigators around the world.”

8. **Detection of Criminals**

Many complex money laundering technique are used to avoid detection by high level criminals. And the new criminals and smaller scale criminals use simpler methods to avoid detection of the offence of money laundering. Such techniques of money laundering may involve:

1. There may be a transfer of money from bank to bank or it may be from account to account.
2. It may also be also possible that the offender may break large amount of deposits into smaller deposits.
3. It also leads to the purchase of money orders in smaller amounts of money
4. It also breaks the cash into smaller amounts and purchase cashier’s checks.
For example, Neetu steals a good amount of cash from her company and wants that she should not be detected by anybody so she decide to break her deposit into smaller amount. So instead of depositing the whole amount in the bank altogether, she will break and deposit the smaller amount of cash in the bank each week. In this sense she won’t be detected by anyone and even the bank won’t look at her transaction as it will look like her casual transaction of smaller amount and she would not be suspected by any authority.

9. Penalties for Money Laundering

Every offence has sanctions behind it. Similarly there is penalty for the offence of money laundering and it may differ as per the amount involved in the offence. If the offence is occurred in more than one jurisdiction then the penalty may be imposed accordingly. The penalty gets harsh as the amount involved in the offence is higher. It may include imprisonment, large fines, community service and restitution etc.

“Back in 2012, HSBC forfeited £1.2 billion for having inadequate money laundering controls. This followed a report published by the US Senate which alleged, amongst other things, that HSBC had:

- supplied banking services and American dollars to some banks in Saudi Arabia in spite of their connections to terrorist financing
- dodged restrictions created to prevent transactions involving Iran, North Korea and other countries subject to international sanctions
- HSBC US didn’t treat its Mexican counterpart as high risk even though it has a problem with drug trafficking and money laundering.

Control issues like these allowed the laundering of an estimated £5.57 billion over at least seven years.”

“HSBC was able to enter a five-year deferred prosecution agreement or DPA, which is essentially like being on probation. If the US government had pressed charges against HSBC, it could have lost its US dollar license.”

Finally it can be said that government has been effectively vigilant to prevent money laundering since many years by passing rules and regulations like anti money laundering measures. It provides the institution to have preventive measures regarding detecting the money laundering activities and if suspected then report them to the authorities.

“In 1989, the Group of Seven (G-7) formed an international committee called the Financial Action Task Force (FATF) in an attempt to fight money laundering on an international scale. In the early 2000s, its purview was expanded to combating the financing of terrorism.”

Banking Security Act was passed in 1970 by United States. Department of Treasury should be reported for certain transactions by Financial Institutions like cash transactions above $10000 or any transaction which is suspicious in nature.
The information provided by the Financial Crimes Enforcement Network (FinCEN) to the treasury department is used by them so that it can be delivered to the domestic and criminal investigators, foreign financial intelligence units or any international bodies for the investigation.

10. Conclusion and Suggestion

From the aforesaid it can be concluded that Money Laundering has different dimensions and consequence to show as clean money by adopting different steps towards the conversion of ill gotten money into the crime of money laundering can go beyond territorial limitations while commencing in one jurisdiction, entering into another for further process of completion. The money laundering is the cause for terrorist and disruptive actions, besides other immoral and unforeseen activities. Though India is taking its stand on prevention of money laundering by legislation but still there is deficiency with respect to extra territorality while the country is dependent on other jurisdictions including international regime for prevention of money laundering. There is also some sort of deficiencies at prevention and investigation level in addition to adjudicatory delays in the matter. Thus there is need for addressing to extra territorality, investigation/adjudicatory set up, besides in providing prompt and effective mechanism to tackle the offence of money laundering, white collar crime in the context of classification, causation and preventive measures.

Reference

1. Available at: https://www.investopedia.com/terms/m/moneylaundering.asp, visited on: 8.12.2017
6. Available at: www.fintrac-canafe.gc.ca, visited on 4.1.2018


11. Available at: www.jmlsg.org.uk/case studies, visited on: 17.1.2018


