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Transnational Approaches on Money Laundering as an Organized Crime: Resolving Jurisdictional Conflicts and the Indian State Practice

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Abstract- Money laundering refers to the conversion or "laundering" of money which is illegally obtained, so as to make it appear to originate from a legitimate source. Money laundering is being employed by launderer's worldwide to conceal criminal activity associated with it such as drugs/arms trafficking, terrorism, extortion and reason for various other heinous crimes. But in simple term, it is the conversion of black money into white money. The research inevitably to explain the paper to context that any instance of money laundering would have an angle of international degree, as money laundering typically involves transferring money through several countries in order to obscure its origin. Further the research has divided into four parts; first part deals with the jurisdictional issue arise during transnational money laundering. Second part deals with the intention of Parliament of India meant to target "proceeds of criminal conduct" then and now in the money laundering and its related offenses. Third part elaborates international development through different instruments and controlling mechanisms to deal with this problem and analyse the position of India in controlling money laundering. Fourth part discusses various problems and loopholes in implementation of anti-money laundering laws. Finally, the research concludes with few suggestions to have better anti-money laundering regime.

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Transnational Approaches on Money Laundering as an Organized Crime: Resolving Jurisdictional Conflicts and the Indian State Practice

Dr. P.R. Ramdhass [α] & Abhinav Kumar [σ]

Abstract- Money laundering refers to the conversion or "laundering" of money which is illegally obtained, so as to make it appear to originate from a legitimate source. Money laundering is being employed by launderer's worldwide to conceal criminal activity associated with it such as drugs/arms trafficking, terrorism, extortion and reason for various other heinous crimes. But in simple term, it is the conversion of black money into white money. The research inevitably to explain the paper to context that any instance of money laundering would have an angle of international degree, as money laundering typically involves transferring money through several countries in order to obscure its origin. Further the research has divided into four parts; first part deals with the jurisdictional issue arise during transnational money laundering. Second part deals with the intention of Parliament of India meant to target "proceeds of criminal conduct" then and now in the money laundering and its related offenses. Third part elaborates international development through different instruments and controlling mechanisms to deal with this problem and analyse the position of India in controlling money laundering. Fourth part discusses various problems and loopholes in implementation of anti-money laundering laws. Finally, the research concludes with few suggestions to have better anti-money laundering regime.

I. Introduction

Money laundering refers to the conversion of money that is illegally obtained the ownership is concealed and used like it flows from a legitimate original source.[1] In the United States of America Money-Laundering is defined as the concealment of source of money that has been earned through illegal means.[2] Similarly Article 1 of the European Commission Directive defines Money-Laundering and extends to aiding in the nature of concealment, its movement and the source of the illegal money.[3]

In India the Prevention of Money-Laundering Act, 2002 defines Money Laundering under section 2(1) read with S. 3 as any direct or indirect means of concealing the source of proceeds or property that is achieved by the means of criminal activities.[4] The International Monetary Fund has studied the impact of Money-Laundering globally to State that 2 to 5 per cent of the World's GDP in laundered due to its illegal source of emergence.[5] The Supreme Court of India in *P. Chidambaram* v. *Directorate of Enforcement*[6] had recognised the impact of money laundering as the serious threat not only to the economy but also to its integrity and sovereignty of the country.

The peril of Money Laundering covers the series of International facet which includes the many national jurisdiction with the aim to make it difficult to identify the origin of illegal money and mixed with the legitimate financial market.

Offence of money laundering takes place in three stages:

1. *Placement:* The illegal money obtained is normally in huge liquid cash. The placement deals with the taking away of this illegal money from its source and divided into multiple smaller amount and invested into legal financial market.

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[1] Michael Lev and Peter Reuter, Money-Laundering: Crime and Justice, *A Review of Research*, Vol. 34, 289-376, (2006).

[2] Laurel Terry, US Legal Profession Efforts to Combat Money-Laundering and terrorist Financing, New York Law School Review, Vol. 59, Issue 3, 490-491, (2014-15).

[3] Directives (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015. Article 1 talks about, "*Flows of illicit money can damage the integrity, stability and reputation of the financial sector, and threaten the internal market of the Union as well as international development. Money laundering, terrorism financing and organised crime remain significant problems which should be addressed at Union level. In addition to further developing the criminal law approach at Union level, targeted and proportionate prevention of the use of the financial system for the purposes of money laundering and terrorist financing is indispensable and can produce complementary results*". On the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32015L0849, (last visited on: 03-03-2022).

[4] Section 2 and 3 of the Prevention of Money-Laundering Act, 2002, Offence of money-laundering — "*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*".

[5] FATF, FAQ about Money-Laundering, <http://www.fatf-gafi.org/faq/moneylaundering/>, (last visited on: 03-03-2022).

[6] *P. Chidambram v. Directorate of Enforcement*, (2019) 9 SCC 24, para 23.

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2. *Layering:* It is the process where the multiple smaller sums of money that is introduced into the economy is widely transacted in order to conceal the link to source of origin of this money
3. *Integration:* This is the final stage where money is finally reintroduced as a white money into the mainstream economy from the illegal activities.

II. International Conventions and Laws on Money Laundering

In pre 70s era counties were dealing such kind of problems by their own law. There was lack of clarity on international conventions about money laundering despite the maximum laundering schemes had international dimension.

Then the world realise the need of laws on the problem of money laundering and continuous international conventions came into the picture. There are list of few important convention on this issue.

1. The earliest initiative taken on this issue by the Basle Committee on Banking Regulation and Supervisory Practices in 1974, they mainly focused on to prevent the laundering through the banking and financial system of countries. This committee attracted the attention of law enforcement agencies, legislative bodies and banking regulators in lots of countries. This committee's attention was not only upto a certain criminal activity such as smuggling of drugs. Its ambit also included fraud, terrorism, concealment or misrepresentation of source of money and trafficking.

This issue was further proposed with advanced solution on money laundering through banks in Vienna Convention, 1988 by the four principles.[7]

- *Know Your Customer (KYC):* Banks should ensure make reasonable efforts to determine their client's true character and investigate their true identity rather than relying solely on simple evidence, as well as to have feasible methods for verifying the information of new clients before providing them with banking services.[8]
- *Consistency in compliance with the Law:* If any Money-Laundering conduct is detected, bank management should ensure that high moral standards are maintained in compliance with laws and regulations, and that no benefits are given.
- Participation with Law Enforcement Agencies: This principle was comparable to those outlined in previous anti-money laundering treaties.
- Adherence to the Statement of the Convention.[9]

2. In 1989 FATF came into the picture against the money laundering at international level as intergovernmental body under the supervision of G8 group. The main objective of FATF to discourage money laundering and terrorist financing by generating the necessary political will to bring about legislative and regulatory reforms on the international level. They came with the 40 recommendation and later 9 more recommendation were added to combat the problem of money laundering. They sought the idea of international cooperation and exchange the information about criminal activities through the bilateral treaties and forfeiture of property and other actions.[10] It also recommended that countries enact legislation requiring financial institutions, including money remitters, to include accurate and meaningful originator information (name, address, and account number) on funds transfers and related messages, as well as measures to detect physical cross-border transportation of currency and bearer negotiable instruments, such as a declaration system or other disclosure obligation.[11]
3. Then, in 1997, the Global Program Against Money Laundering (GPML) was established in response to the Vienna Convention, which required Member States to criminalise money laundering related to the proceeds of illicit drug trafficking and to establish legal frameworks to facilitate the identification, freezing, seizure, and confiscation of criminal proceeds. The GPML's primary tactic for combating money laundering is technological cooperation and research. The focus of technical cooperation will be on aiding legal, financial, and law enforcement authorities in establishing the infrastructure required to combat money laundering.[12]

[7] Prevention of Criminal Use of The Banking System For The Purpose of Money-Laundering, Bank of International Settlements http://www.bis.org/publ/bcbsc137.pdf, (last visited on 03-03-2022).
[8] Bank for International Settlements, Core Principles for Effective Banking Supervision, (September 2012), <http://www.bis.org/publ/bcbs230.pdf>, (last visited on: 04-03-2022).
[9] United Nations, Financing for Development: A Critical Global Collaboration, 60-61, (2004 Edn.).
[10] International Federation of Accounts publication, Anti-Money Laundering (2nd ed. March 2004) available at http://www.pab.gov.jm/docs/anti-money-laundering-2nd%20Edition%202004.pdf, (last visited on: 05-03-2022).
[11] Financial Action Task Force, FATF IX Special Recommendation, October 2001, http://www.fatf-gafi.org/media/fatf/documents/reports/FATF%20Standards%20%20IX%20Special%20Recommendations%20and%20IN%20rc.pdf. (last visited on: 05-03-2022).
[12] United Nations Office on Drugs and Crime, United Nations Global Programme against Money Laundering, Proceeds of Crime and the Financing of Terrorism (GPML) Official Website of United Nations Office on Drugs and Crime (October 22, 2015 16:40 hours) https://www.unodc.org/documents/evaluation/indepthevaluations/Indepth_evaluation_of_the_United_Nations_Global_Programme_against_Money_

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III. Jurisdictional Issue in Money Laundering Cases

There is really need of a global working group to combat money laundering with a legislation that is internationally accepted. There has to be cooperation among states, as money knows no political barriers. A good model to follow is the FATF efforts in promoting inter-nation cooperation. In 1992 "Operation Green Ice" where law enforcement from Italy, Colombia, the United Kingdom, Canada, Spain, Costa Rica, the Cayman Islands, and the United States co-operated together to expose the financial infrastructure of the international mafia and showed the nature of transnational nature of modern money laundering.[13]

In the case of R*am Jethmalani v. Union of India*[14] Hon'ble Supreme Court touched the area of money laundering law marks the only real attempt to actively curb money laundering, by mandating efficacious measures. In that case an employee of a bank in Liechtenstein had offered the secret names of bank account holders to the government of Germany. Germany had secured these names on had consequently initiated proceedings against 600 individuals. The government of Germany had also offered the list of names to other countries if they chose to initiate prosecutions against these individuals, outside the framework of the Indo-German Double Tax Avoidance Agreement. However, despite several RTI applications, the Union didn't want to reveal the names of these account holders. Then Supreme Court rejected the contention of Union and formed a SIT committee on that matter. This clearly shows that even the countries want to cooperate with each other but due to lack of political will the issue of jurisdiction remains unsolved.

IV. Proceed of Criminal Conduct in Case of Money Laundering

Prevention of Money Laundering Act, 2002 is a special law drafted to deal with the issue of the money laundering and is due to the combined effort initiated by the various nation in at the special session in United Nation general assembly in 1998.[15] The Supreme Court of India in *P. Chidambaram* v. *Directorate of Enforcement*[16] had recognised, as had also been recognised under "objectives and reasons" of the Prevention of Money Laundering Act, 2002, that the money laundering possesses serious threat not only to the economy of the country but also to its integrity and sovereignty.[17]

The word "proceeds of crime" is defined as "any property derived or received, directly or indirectly, by any person as a result of criminal activity pertaining to a scheduled offence or the value of any such property" under Section 2(1)(u) of the Prevention of Money Laundering Act, 2002. According to this concept, there is a loophole that arises during the trial, such as whether any innocent individual receiving laundered money is treated as a criminal? The term 'directly or indirectly' involvement actually include the innocent person in the transaction?

In the case of *B Rama Raju v Union of India*[18] the constitutional legality of Section 2(1) u of the PMLA was challenged, and the Court began its response by emphasising the second proviso to Section 5(1) of the Act, which states that "any property of any person may be attached if the stated authority therein has grounds to think that" even though Section 5(1) (b) of the Act stipulates that "proceeds of crime" must be in the possession of a person charged with committing a scheduled offence in order to initiate proceedings for attachment and confiscation, the Court stated that the second proviso to Section 5(1) makes it clear that the legislation's intent was to attach the property of those who were not charged with committing a scheduled offence.

The Finance Act of 2019 broadens the scope of PMLA section 2(1)u and the definition of proceeds of crime under the Act by adding a "Explanation" to Section 2(1)(u) of the Act, which reads: "For the avoidance of doubts, it is hereby clarified that "proceeds of crime" includes property not only derived or obtained from the scheduled offence but also any property that may directly or indirectly be derived or obtained as a result of any criminal activity relatable to the scheduled offence." As a result of this explanation, "proceeds of crime" will include property obtained from any criminal activity related to the scheduled offence, rather than only those obtained directly from the scheduled offences. This phrase 'criminal activity related to the schedule offence' has been explained by the Supreme Court in *Rohit Tondon* v. *Directorate of Enforcement*[19] that the concealment, possession, acquisition or use of the property by projecting or claiming it as untainted property and converting the same by bank drafts, would undoubtedly fall under the scope of criminal behaviour

Laundering_Proceeds_of_Crime_and_the_Financing_of_Terrorism.pdf. (last visited on: 06 -03-2022).

[13] Ronald J. Ostrow and William D. Montalbano, Drug Agents Break Global Money-Laundering System, Los Angeles Times, September 29, 1992, http://articles.latimes.com/1992-09-29/news/mn-317_1_money-laundering-system. (last visited on: 06-03-2022).

[14] R*am Jethmalani v. Union of India,* 2011(6) SCALE 691.

[15] Preamble, The Prevention of Money Laundering Act, 2002; See also, P. Chidambaram v. Directorate of Enforcement, (2019) 9 SCC 24, para 23.

[16] *P. Chidambaram v. Directorate of Enforcement*, (2019) 9 SCC 24.

[17] *P. Chidambaram v. Directorate of Enforcement*, (2019) 9 SCC 24, para 24; See also *B. Rama Raju v. Union of India*, 2011 SCC Online AP 152; See also, Nikesh Tarachand Shah v. Union of India, (2018) 11 SCC 1.

[18] *Rama Raju v. Union of India*, 2011 SCC Online AP 152.

[19] *Rohit Tondon v. Directorate of Enforcement*, (2018) 11 SCC 46.

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related to a scheduled offence. This would be a case of money laundering, as defined by Section 3 and penalised under Section 4 of the Act.[20]

Finance act, 2019 also derived money laundering as continuing offense because money laundering leads to the lots of other separate offenses. Continuing offense has been defined in *Gokak Patel Volkart Ltd.* v. *Dundayya Gurushiddaiah Hiremath*,[21] as: "*A continuing offence, such that only the last act thereof within the period of the statute of limitations need be alleged in the indictment or information, is one which may consist of separate acts or a course of conduct but which arises from that singleness of thought, purpose or action which may be deemed a single impulse*." A "continuous crime" is defined as "one consisting of a continuous series of acts that continues after the period of consummation, such as the crime of concealing weapons."

Thus, by combining Explanation (ii) to Section 3 of the Act with Section 2(1)(u) of the Act, it can be inferred that activities involving proceeds of crime constitute a continuous offence that does not end at the stages of "placing" and "layering," but continues until the "integration" stage.

V. Problems and Loopholes in Current Laws Against Money Laundering

While national and international legislation has been drafted with instances of money laundering and their methods in mind, India's anti-money laundering efforts have yet to close gaps. The most common issue with anti-money laundering legislation is the lack of enforcement of the existing legal framework. This is particularly evident in the failure to follow Know Your Customer guidelines. While banks have been ordered to enforce rigorous KYC Norms in accordance with international legal responsibilities, the RBI is frequently unable to follow violations of the same, and penalties for violations of KYC Obligations frequently go unreported.[22] Furthermore, given the intense rivalry that commercial banks confront in India, banks frequently disregard KYC Norms as a means of enhancing efficiency. As a result, KYC Norms are equated to Stand Form Contract Clauses in the opening of new accounts. The second issue arises as a result of technological advancement. Transaction speeds have been catalysed by the expansion of e-commerce and new encryption technologies, and money crosses hands at a rapid rate, ensuring the impossibility of tracking.[23]

The expansion of Hawala Transactions in India has been ensured as a result of this. Because law enforcement agencies are frequently underfunded, they are unable to invest adequately in better technology, making it more difficult to track down the source of money in money laundering.[24] The fragmented approach in India has exacerbated the challenge of enforcement. Different law enforcement agencies have separate funding and do not collaborate in their operations, exposing a loophole in the criminal-money-laundering nexus. The large number of cases stresses enforcement organisations like the Enforcement Directorate, and better efficiency is a pressing need in India.[25]

In order to curb the problems above there must be legislative converge in the functioning of enforcement and investigative agencies in India. From a cost and efficiency standpoint, this is also the best option. Furthermore, the general public must be educated on the dangers of money laundering, as many people use Hawala transactions to avoid difficult and expensive bank transactions. Finally, the judiciary must maintain a closer check on money-laundering cases in order to set a severe precedent for India's anti-money-laundering laws.[26]

VI. Conclusion

Money laundering is a very severe criminal activity that should not be treated lightly like any other local crime. To combat this problem, India has implemented a number of anti-money laundering measures, but these measures all contain flaws and hence do not fully accomplish their objectives. The following are a few examples of such issues:

- *Growth of Technology:* Money launderers have been able to use highly upgraded computer techniques to obscure the origin of the crime. Application agencies are unable to keep up with the rapid advancement of technology.
- *Lack of awareness about the problem:* Money laundering is becoming a major issue at an

[20] *Ibid.*

[21] *Gokak Patel Volkart Ltd. v. Dundayya Gurushiddaiah Hiremath*, (1991) 2 SCC 141.

[22] RBI, Master Circular-Know Your Customer (KYC) norms/Anti-Money-Laundering (AML) standards/Combating Financing of Terrorism (CFT)/ Obligation of banks and financial institutions under PMLA, 2002, (July 2015), https://rbi.org.in/Scripts/BS_ViewMasCirculardetails.aspx?id=9848>, (last visited on 05-03-2022).

[23] Jimmy Gurule, The 1988 UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances — A Ten Year Perspective: Is International Cooperation Merely Illusory?, *Fordham International Law Journal*, Vol. 22, Issue 1, 74-121, (1998), (last visited on: 05-03-2022).

[24] PWC, Logging into Digital Banking, (2015), <https://www.pwc.in/assets/pdfs/publications/2015/logging-into-digital-banking.pdf>, (last visited on: 05-03-2022).

[25] Vijay Singh, Controlling Money-Laundering in India-Problems and Perspectives, (January 2009), <http://www.igidr.ac.in/money/mfc-11/Singh_Vijay.pdf>, (last visited on: 05-03-2022).

[26] Nikos Passas, Informal Value Transfer Systems, Terrorism and Money-Laundering, (January 2005), <https://www.ncjrs.gov/pdf files1/nij/grants/208301.pdf>, (last visited on: 06-03-2022).

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alarming rate. Their widespread ignorance is a roadblock to the adoption of effective anti-money laundering measures. Instead of long bureaucratic transactions in banks, poor and illiterate individuals prefer the Hawala system, which has less complexity and formality, little or no documentation, lower rates, and also provides security and anonymity. This is mostly because due to the fact that these people do not know the seriousness of this crime and are unaware of their negative side effects.

- *Non-fulfillment of the purpose of KYC Norms:* The RBI issued the KYC requirements policy in order to prevent criminals from using banks to launder money or finance terrorism. However, because the RBI is unable to regulate Hawala transactions, it does not stop or refrain from addressing the issue. Furthermore, because the implementing agencies are unconcerned, these rules are a farce. Furthermore, as the market becomes more competitive, banks are being forced to reduce their security, making it simpler for money launderers to utilize them illegally to advertise their criminal activities.
- *The widespread act of smuggling:* In India, there are several black market avenues for selling commodities that supply many imported consumer goods, such as food, gadgets, and other items that are normally offered. Color traders swap cash and dodge customs charges, allowing them to offer lower pricing than ordinary traders. Even while this problem has been decreased as a result of government liberalisation, it has not been totally removed and continues to pose a threat to a nation's economy.
- *Lack of comprehensive enforcement agencies:* Money laundering is no longer limited to a single field of business, but has widened its scope of applicability to encompass a wide range of activities. Money laundering, cyber-crime, terrorist crimes, economic crimes, and other crimes are all dealt with by various groupings of law enforcement agency in India. There is a lack of coordination among these agencies. Money laundering is a world without boundaries, as we've seen, yet these agencies are nonetheless bound by state laws and processes.

Money laundering is a dynamic crime, and criminals participating in it are always looking for new ways to execute it and gain their illicit goals. Furthermore, as a result of multiple nations adopting numerous accords and conventions to enhance their anti-money laundering measures, money launderers are targeting and exploiting jurisdictions that are weak and lack adequate laws to combat the crime. A clear policy to combat money laundering is critical. The crooks in charge of these operations do not follow a specific plan, instead employing a variety of tactics.

India has taken a number of steps to address the issue of money laundering. Since there is a Department of Compliance that handles all money laundering cases and related investigations in the country, a financial information unit that tracks and analyses the risk of money laundering through the agencies that regularly update the legislative framework through proposed changes. However, more application is required, as well as more stringent penalties for those who break them. Financial institutions must also establish additional degrees of control in areas like transaction monitoring, annual reviews, and periodic account updates, among others. Furthermore, the cost factor also plays a very important role in having an effective regime against money laundering as high costs and low budgets can lead to lower concentration and, therefore, to greater risks.

a) Suggestions

As you can see, money laundering involves activities that are international level; therefore, in order to have a significant impact, all countries must enforce the same laws as rigorously as possible, to the extent that money recyclers have nowhere to go to launder their proceeds of crime due to a lack of jurisdiction or the like. There is no consensus on international harmonization efforts to prevent money laundering because states are not required to identify which crimes should be deemed factors of money laundering. As a result, enlisting similar offences to handle the problem on a global scale is necessary, especially considering the multinational nature of the money laundering crime. In addition, ensuring financial confidentiality in other nations is a challenge. States are unwilling to engage in this type of privacy protection. It's important to establish a distinction between these financial confidentiality regulations and the fact that certain financial institutions have become money laundering havens. Aside from that, it is vital to educate and create awareness among public and create a sense of alertness in the face of money laundering instances. This would also help to strengthen law enforcement because it would be scrutinized by the public.

Furthermore, appropriate coordination between the Center and the State is required in order to establish efficient anti-money laundering procedures. The conflict between the two must be ended for this to happen. The laws must not just be the responsibility of the federal government, but also of the states. The better the law is, the more decentralised it is. As a result, in order to create a successful anti-money laundering system, one must consider at the regional, national, and global levels.

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