MONEY LAUNDERING: THE DIRTY CRIME ERODING THE BANKING SYSTEM

Enakshi Jha[±]

ABSTRACT

Money laundering as a term has gained relevance in the recent past in light of the unfortunate rise in terrorism. While, history has witnessed various forms of money laundering in the past, recent structures and models of money laundering leave experts bewildered due to the swift movement of money through different networks and channels along with the ability to camouflage sources of this money using the advanced technology presented by the 21st century. Money laundering refers to disguising the original ownership of property or money and making the source of the same appear to be legitimate. In this paper the Author attempts to unravel the two ugly faces of money laundering by analyzing its impact on global crime and human rights and by addressing the same in light of the financial markets and intermediaries both at the domestic and international platform. The Author also attempts to elucidate the model of money laundering that has become infamous in its India association – the Hawala transaction and throw light on the banking regulations and their loopholes that also such laundering activities to flourish. This paper focuses on banking law internationally via Conventions and Treaties and their impact on ratification in member states to draw a conclusion regarding the status of money laundering laws at different levels. While discussing the history of money laundering in the world, the Author also attempts to show the evolution of banking laws to inhibit such transactions and then the rise of implementation loopholes that enables money laundering to flourish today. The Author has placed great importance on web transactions in money laundering and analyzed the same in great detail before concluding with recommendations that can be adopted in the current legal framework, especially in the context of Banking Regulations.

[±] 5th year student, NALSAR, Hyderabad.

I. INTRODUCTION

Money laundering refers to disguising the original ownership of property or money and making the source of the same appear to be legitimate. In light of the rise of terrorism globally, money laundering has set prominence again. The perilous cycle of criminal activities and transfer of money globally has threatened not only the criminal law system but poses a threat to the financial system and its intermediaries due to its deep roots in the world banking system. India has not remained secluded from this global menace[1].

Money laundering in the Indian context has often been equated with the Hawala system of financial transactions. The complex web of transactions in this structure epitomize the modus operandi of money laundering and have been analyzed in greater detail in the latter parts of this paper. Hawala transactions elucidate the problems with money laundering and its close nexus with criminal activities such as drug and human trafficking, terrorism funding and gambling.[2] Post the unfortunate attack on the World Trade center in 2001, global attention to money laundering activities and tracing of the origin of illegally made money has become paramount.[3]

India has also been a forerunner in the same and has set up the Financial Intelligence Unit- India (FIU-IND) authority that is responsible for cementing international and national investigative and enforcement obligations with respect to money laundering. This government agency works in collaboration with other regulatory authorities such as the SEBI and RBI to check on prevalent money laundering. This approach of applying international principles with the element of identifying India's different enforcement and regulatory agencies has been a feather in India's efforts to curb money laundering.[4]

The Prevention of Money laundering Act, 2002 is the primary legislation tackling money laundering in India and it is read with its corresponding Rules that were amended in 2013 to

---

1 BA Simmons, *International Efforts Against Money Laundering*, in D SHELTON, COMMITMENT AND COMPLIANCE: THE ROLE OF NON-BINDING NORMS IN THE INTERNATIONAL LEGAL SYSTEM, 244-263, (OXFORD UNIVERSITY PRESS; 2000 ED.).

2Dushyant Singh, *Severing the Hawala trail to and from India,* (October 2009), (Last visited on: March 11, 2016).

3 John Roth, Douglas Greenburg and Serena Wille, National Commission on Terrorist Attacks Upon the United States: Monograph on Terrorist Financing, (2005).

4Anti-Money Laundering Forum, *India,* (January 13, 2016).

meet the changing technological advances in money laundering and reporting.[5] India's progress in combating money laundering expands to an array of specific legislations such as the most recent The Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 which attempts to tax assets held abroad or attained from a foreign source without disclosing the source of such income. Such legislations are reflective of India's continued attempts to curb the menace of money laundering.[6]

This paper attempts to analyze the same and has been attempted to harmonize the national and international discourse on the same. The first chapter deals with money laundering and its history. The second chapter elucidates the basic steps involved in this complex web of transactions. The third chapter analyses international Conventions and treaties to penalize money laundering and enable cooperation and its supplemented by India's approach to the same. The last chapter puts forth loopholes in this legal framework and suggestions to plug the plaguing loopholes.

II. WHAT IS MONEY LAUNDERING?

In the present age money laundering has posed to be a conundrum globally. Money laundering has caught the attention of the global media, recovery agencies, banks and the common man. Money laundering has been maligned for an array of issues ranging from corruption to funding of illegal terrorist activities across the world. While the definition of money laundering forms the basis of this activity, different definitions have been adopted across the world.[7]

However, all definitions contain the same elements and comprise of disguising the original ownership of property or money and making the source of the same appear to be legitimate. Such conversion or ownership is usually made via criminal or illegal activities, thereby

5 *See* Prevention of Money Laundering Act, 2002.

6 *See* The Undisclosed Foreign Income and Assets (Imposition of Tax) Bill, 2015 at: http://www.prsindia.org/billtrack/the-undisclosed-foreign-income-and-assets-imposition-of-tax-bill-2015-3697/

7 V. Kumar Singh, *Controlling Money Laundering in India– Problems and Perspectives*, 11th Annual Conference on Money and Finance in the Indian Economy, (January 23-24, 2009).

mandating the need for disguising its illegitimate source. The ownership is concealed and used like it flows from a legitimate original source. [8]

In the United States of America money laundering has been defined as the process of concealing the source of the money involved when it is earned via activities that are criminal in nature.[9] Article 1 of the European Commission Directive defines money laundering similarly and extends to aiding in such concealment of the source, its nature, and movement.[10] In India Section 2(1) read with Section 3 of the Prevention of Money Laundering Act, 2002 defines money laundering to any direct or indirect efforts of concealing the source of proceeds or property that is achieved via the means of committing crime. It includes both direct and indirect attempts and extends to extending aide to enable money laundering. [11] The International Monetary Fund has studied the impact of money laundering globally to state that 2 to 5 percent of the World's GDP in laundered due to its illegal source of emergence.[12]

In light of this pressing need to identify and curb money laundering it is essential for us to recognize the channels of this movement of illegally attained money. Most often banks, non banking channels and capital markets transactions are used to ensure money is transferred multiple times, making it difficult to trace the origin of the money or proceed. What remains essential to constitute money laundering is the requirement for the money obtained to be received via a criminal offence and this necessity makes it essential for such criminal offences to be clearly defined.[13] Often such crime occurs in the form of organized crime. Organized crime arises from repetition of criminal activities and the supply of money is therefore continuous and not sporadic, unlike in a one off criminal act.

---

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

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

10 Sara De Vido, *Anti-Money Laundering Measures Versus European Union Fundamental Freedoms and Human Rights in the Recent Jurisprudence of the European Court of Human Rights and the European Court of Justice*, German Law Journal, Volume 16, No. 5, 1272-1280, (2015).

11 *See* Section 2 and 3 of the Prevention of Money Laundering Act, 2002.

12 FATF, *FAQ about Money Laundering,* http://www.fatf-gafi.org/faq/moneylaundering/, (Last visited on: March 15, 2016).

13 MICHAEL, *Supra* n. 8.

This is usually seen in the form of profits from global organized crime activities such as drugs smuggling, human trafficking and illegal sale of explosives and ammunition. Such transactions rely heavily on liquids cash as a medium of money laundering due to the ease in liquid cash exchanging hands, making it tougher to identify the origin of the money and making it easier to use it as an investment, transfer it to banks that mandate disclosure on source of money or sending such money to tax havens that have greater privacy controls for their clients. [14] This powerful cycle between organized crime and money laundering is catalyzing a vicious cycle of corruption within States and the elected representatives as the lines of transparency are blurred, leading to rampant corruption at all levels of the government. This interface and the attempts to check the same have been addressed in the latter chapters of this paper.

The historical origins of the practice of money laundering does not find its roots in ancient history, but is actually more recent and was first noted in the infamous Watergate Scandal in 1973 to 1975. The Watergate scandal is synonymous with the notorious gangster Al Capone and can be tracked to the United States of America, where a local gangster ran an extremely successful organized crime cartel. The group undertook smuggling of alcohol, drugs and protection and made huge profits that needed to be channeled. [15]

To enable the same, it was essential for such gangsters to show that the source of the profits earned was legitimate. As a result of the same they would mix the profits from illegal activities with those of commercial operations that were run as successful and legal operations. Al Capone was consequently tried and punished for such money laundering and played a big piece in the puzzle of President Nixon's resignation. However, the real value of this arrest was its ability to identify the structured modus operandi of money laundering activities and the need to check the same. [16]

---

[14] Friedrich Schneider, *Money Laundering and Financial Means of Organized Crime: Some Preliminary Empirical Findings*, (February 2010), https://www.diw.de/documents/publikationen/73/diw_01.c.354167.de/diw_econsec0026.pdf, (Last visited on: March 15, 2016).

[15] Paul Bauer, *Understanding the Wash Cycle,* Economic Perspectives, Volume 6, 19-20, (May 2001).

[16] JOHN MADINGER, MONEY LAUNDERING: A GUIDE FOR CRIMINAL INVESTIGATORS, THIRD EDITION, 11-12, (2011, 3RD ED.).

III. MODUS OPERANDI OF MONEY LAUNDERING

Money laundering is a complex and multi tiered process of using illegally obtained money and camouflaging its origins to make the source seem authentic. While this process seems easier to understand, in reality it consists of three basic steps of concealment that make money laundering possible. The requisite for this procedure is earning money from illegal activities or profits arising from organized criminal activities over a period of time. Thereafter the need to launder such money arises.

It begins with the first stage of Placement. Money obtained from illegal activities is mostly liquids cash in nature and due to the nature of the activity it is always obtained in huge amounts. The first stage addresses this problem by taking the money away from its source of origin, where investigative authorities or the eyes of the law can track it. [17]This money is then moved away and divided into multiple smaller sums and pushed into the legal system of financial savings and investments.

Usually banks and capital markets are utilized for this purpose. Placement is hence an essential step to money laundering and legal authorities have identified this mechanism across the world leading to greater reliance and enforcement of Know Your customer norms on banks. Banks have been mandated to ask for the source of the money being used via different mechanisms that are addressed in the latter Chapter of this paper.[18] Often, currency exchanges are used as a means of converting such profits as the world has moved to a global one. International Regulatory authorities have attempted to check the same by advancing vigorous foreign exchange conversion, however this continues to exist in the black market. Another common mechanism used in placement is purchase of luxury items, especially Art and forms of aesthetic design[19].

The second process implemented is "Layering". Layering is the process of creating multiple and complex layers of transactions (financial steps) to ensure that the origin of the money is not traced. Layering ensures a separation between the source and the proceeds of the

---

17 *Supra* n. 4.

18 FAUSTO MARTIS DE SANCTIS, MONEY LAUNDERING THROUGH ART: A CRIMINAL JUSTICE PERSPECTIVE, 97-102, (2013 ED.).

19 FRIEDRICH, *Supra* n. 14.

cash attained by illegal means such that no auditor or investigative authority is able to track back the path of the money. Such layering often occurs in two methods. The first is converting the liquid cash into monetary instruments such as money orders after the first stage of placement in a financial institute such as a bank is completed.

The second common used method is buying of assets and reselling the same so that the original ownerships and capital used for the sale cannot be traced. Often money is sent abroad to bank accounts that lie offshore and held in the form of shell companies.[20] Mauritius has been criticized for enabling such transactions. Special Purpose Vehicles are another easily available tool for such layering. Special purposes vehicles can be private in nature and their auditing can be made off balance sheet, forming an easy gateway to illicit money holding financial instruments. They are held in complex webs where the parent company and the subsidiary are separated by a complex web of Special Purpose Vehicles making layering extremely convenient and untraceable.[21]

A recent addition to this process of layering includes Electronic Funds Transfers. In a day a huge number of legitimate electronic funds transfers are undertaken. Using this quantum often layering is done by transferring money in and out of shell banks accounts or accounts belonging to fictitious individuals so that the money cannot be traced and is lost in the mixture of clean and dirty money being transferred.[22]

The last phase of money laundering is "Integration". Integration refers to the reintroduction of money made from illegal activities into the mainstream economy. This is usually done through banking channels in order to ensure that the money can be recirculate in the economy. [23]This is usually symbolized by businesses being opened up in jurisdictions were the law for incorporation is lenient and does not trace the history or track record of those opening the company. Further, weak know your customer obligations aid this system. Real estate (land that is usurped by extortion is sold and the money received is shown to be legitimately

20 http://people.exeter.ac.uk/watupman/undergrad/ron/methods%20and%20stages.htm

21 Commonwealth Secretariat, Combating Money Laundering and Terrorist Financing, 46-47, (2006 Ed.)

22 *Id.*

23 *Money Laundering in the EU,*
http://people.exeter.ac.uk/watupman/undergrad/ron/methods%20and%20stages.htm, (Last visited on: March 18, 2016).

made and thereby gets reintroduced into the economy), transactions in gold, diamonds and other precious metals also remains a highly used option in integration due to the ease of reintroduction into the white money.[24]

IV. MONEY LAUNDERING IN INDIA – THE HAWALA ROUTE

While many methods of money laundering are exercised in India ranging from theft of third party cheques or travellers cheques and use of negotiable instruments to smurfing of bigger sums of money into multiple small quantities, the Author has chosen to analyze Hawala transactions in greater detail in the Indian context to limit the scope of research. "Hawala" is the Arabic term used for the word Trust. Similar to the system of trusts Hawala works like a parallel remittance system for money got through illegal activities in the context of money laundering.

This system of financial transacting was used in Medieval India and parts of South East Asia and it does not involve the use of modern financial institutions such as banks. Hence it has also been refereed to as " Underground Banking ".[25] It relied heavily upon the use of middlemen in the transaction who are called Hawaldars. The modus operandi of Hawala transaction is interesting as there is no real or physical transfer of the money. It is merely made possible using the services of the Hawaldar who can be contacted at the origin source of the money.

This Hawaldar then gets in touch with another Hawaldar in the area in which the money is being transferred to. The Hawaldar at the origin collects and transfers the amount to the Hawladar of the transferee and cuts a commission for himself. [26]To receive or collect the money a special password that is communicated to the transferee or his Hawaldar must be revealed and only then is the transfer complete. Hence this system relies solely on connections in business and the crux of the same in found in mutual trust. This system avoids scrutiny and

---

24 FATF, *Money Laundering and Terrorist Financing through the Real Estate Force,* (June 2007), http://www.fatf-gafi.org/media/fatf/documents/reports/ML%20and%20TF%20through%20the%20Real%20Estate%20Sector.pdf , (Last visited on: March 18, 2016).

25 Rob McCusker, *Underground Banking: Legitimate Remittance Network or Money Laundering System,* (July 2005), http://aic.gov.au/media_library/publications/tandi_pdf/tandi300.pdf, (Last visited on: March 18, 2016).

26 MAYUR JOSHI, OCCUPATIONAL FRAUDS AND MONEY LAUNDERING, 6-8, (2005 ED.)

documentation and also has tax benefits making it a popular mode of money transfer. Hence, it is used as an ideal tool for money laundering.[27]

Hawala transactions are illegal in India as they are prohibited under the Foreign Exchange Management Act, 2000 and the Prevention of Money Laundering Act, 2002. Unfortunately such transactions continue to plague in India due to the high reliance on such transactions by corrupt politicians transferring money overseas or converting currency, organized crime cartels and illegal immigrants in India who do not have access to the formal banking sector due to lack of documentation.[28] Further such transactions do not require any proof of identity or documentation and are based on trust; making them ideal methods of concealing the source of illegally obtained money. [29]

V. INTERNATIONAL MEASURES TO CURB MONEY LAUNDERING

Recognizing the pressing need to curb money laundering and the necessity to prevent illegal activities such as terrorism and illegal sales of arms, the International community has got together to impose Rules, Treaties and Regulations to counter act money laundering at the domestic and international level. A few of such efforts have been analyzed below –

A. THE U.N CONVENTION AGAINST ILLICIT TRAFFIC IN NARCOTICS DRUGS AND PSYCHOTROPIC DRUGS, 1998

The United Nations recognized the crucial nexus between drugs trafficking and money laundering. As a result, the first attempts to address the menace of money laundering were launched via a Convention. Member states that ratified the treaty were imposed with the obligation of criminalizing any attempts at money laundering in furtherance with drug trafficking within the domestic territory or abroad. Domestic laws were to be changed for such enforcement of anti money laundering measures.[30] Further, an essential provision for extradition

---

27 David C. Faith, *The Hawala System,* Global Security Studies, Volume 2, Issue 1, 23-25, (2011).

28 Hawala series: Tracing hawala money transactions in India, (November 20, 2014), http://www.oneindia.com/feature/tracing-hawala-money-transaction-in-india-1563538.html, (Last visited on: March 20, 2016).

29 DAVID, *Supra* n. 27, at 30.

30 WILLIAM GILMORE, DIRTY MONEY: THE EVOLUTION OF INTERNATIONAL MEASURES TO COUNTER MONEY LAUNDERING AND THE FINANCING OF TERRORISM, 83-84, (2004 ED.).

was added to ensure those guilty in other Member states could be tried according to the domestic laws in force. International cooperation and policy discussions were mandated to keep up with the changing money laundering methods.

This laid down the framework for subsequent anti money laundering efforts internationally. However, what was most remarkable was the Convention mandated international criminal investigations would be paramount to any domestic laws on bank secrecy. This ensured the argument of customer privacy and banking relationships could no longer use the defense of privity in cases where international criminal allegations or investigations were formed.[31]

B. COUNCIL OF EUROPE CONVENTION ON LAUNDERING, SEARCH, SEIZURE AND CONFISCATION OF THE PROCEEDS FROM CRIME AND ON THE FINANCING OF TERRORISM, 1990

This Convention enacted in 1990 builds a common approach and policy grounds on . It sets out a regular meaning of money laundering and normal measures for managing the same. The Convention sets out the standards for worldwide collaboration among the states that are members, and likewise incorporate states outside the European Council, making them equivalent to member states under the Convention.[32] One of the motivations behind this is to encourage universal collaboration with respect to investigative aid, seizure and appropriation of the returns of a wide range of culpability, especially genuine violations for example, drug smuggling, illegal arms trade, terrorist offenses that are illegal in nature and help in earning of a large share of profits that is laundered globally.[33]

C. BASEL COMMITTEE ON BANKING REGULATIONS AND SUPERVISORY PRACTICES

---

31 Jimmy Gurule, *The 1988 U.N. Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances –A Ten Year Perspective: Is International Cooperation Merely Illusory*?, Fordham International Law Journal, Volume22, Issue 1, 74-121,, (1998).

32 Robert Golobinek, *Financial Investigations and Confiscations from Proceeds of Crime,* (2002/03), https://www.coe.int/t/dghl/cooperation/economiccrime/specialfiles/CARPO-ManualFinInv_eng.pdf, (Last visited on: March 22, 2016).

33 PAUL ALLAN SCHOTT, REFERENCE GUIDE TO ANTI-MONEY LAUNDERING AND COMBATING THE FINANCING OF TERRORISM, 17-18, (2006 ED.)

The Basel Committee on Banking Regulations paved the way for common practices for banks across the globe by encouraging them to implement common norms for banking and privacy regulations for customers in order to prevent and check money laundering and illicit transfer of funds. [34] Unlike previous International regulatory attempts, this Committee's Principals focused upon the channels of money laundering in banks and was not restricted to a certain criminal activity such as smuggling of drugs. Its ambit also included fraud, terrorism, concealment or misrepresentation of source of money and trafficking. In furtherance of the same 4 common principles were set forth –

1. Know Your Customer (KYC) - This orders the bank to take sensible endeavors to decide their client's actual character and investigate his real identity instead of just relying on simple evidence, and have viable methods for checking the bonafide information of new clients before advancing them banking assistance. [35]

2. Consistency in compliance with the Law – Bank administration ought to guarantee high moral norms in conforming to laws and regulation and ensure to not give benefits when any money laundering action is suspected.

3. Participation with Law Enforcement Agencies- This Principal was similar with those laid down in prior anti money laundering Conventions.

4. Adherence to the Statement of the Convention.[36]

D. FINANCIAL ACTION TASK FORCE

This body was formed by the governments of the G-7 countries in 1989 with the primary objective of addressing money laundering and the rise in global terrorism. In furtherance of the same, 40 recommendations were released. They structure a premise for a co-ordinated reaction to these dangers to the respectability of the monetary and financial

[34] DOUG HOPTON, MONEY LAUNDER: A CONCISE GUIDE FOR ALL BUSINESS, 8-9, (2006 ED.)

[35] Bank for International Settlements, *Core Principles for Effective Banking Supervision,* (September 2012),

[36] UNITED NATIONS, FINANCING FOR DEVELOPMENT: A CRITICAL GLOBAL COLLABORATION, 60-61, (2004 ED.).

framework globally and guarantee a level playing field. [37] In April 1990, it issued a report containing a set of Forty Recommendations, which were expected to exhaustive arrangement of activity expected to battle against money laundering. In October 2001, it issued the Eight Special Recommendations to manage financing of terrorist activities and outfits. In October 2004, it distributed a Ninth Special Recommendation, further fortifying the concurred universal gauges for fighting laundering and terrorist financing.[38]

E. WOLFSBERG AML PRINCIPLES

While these principles are non binding in nature, they set out 8 golden principles to fight money laundering and have great relevance for the private banking sector. The significance of these standards is because of the way that it originates from activity of the private players, usually banks.[39] Regularly, most activities to date have been driven by governments and their administrative and law requirement offices, or by government agents acting through worldwide structures, for example, the Financial Action Task Force (FATF) and the Basel Committee of Bank Supervisors. The Wolfsberg Principles are a unique set of best practice rules administering the foundation of connections between bankers and their clients.[40]

Hence, the attempts of addressing the issue of money laundering has been taken seriously at the global level, with countries pledging their obligations to cooperation and imposing greater criminal sanctions for money laundering along with strengthening their investigative authorities to track down such laundering. The next Chapter analyses the same in the Indian context.

---

[37] MARY ALICE YOUNG, BANKING SECRECY AND OFFSHORE FINANCIAL CENTERS: MONEY LAUNDERING AND

[38] Sean Hagan, *Revisions to the Financial Action Task Force (FATF) Standard—Information Note to the Executive Board*, (July 2012), http://www.imf.org/external/np/pp/eng/2012/071712a.pdf, (Last visited on: March 23, 2016).

[39] Gemma Aiolfi and Hans-Peter Bauer, *The Wolfsberg Group,* http://www.wolfsberg-principles.com/pdf/home/The-Wolfsberg-Group.pdf, (Last visited on: March 23, 2016).

[40] Tsingou, Eleni. *Building a Global Anti-Money Laundering Regime: The Many Faces of Legitimacy*, ISA Annual Convention, (2006).

VI. MONEY LAUNDERING AND ITS DISCOURSE WITH INDIAN LAW

A. STATUTORY INTENT AND THE MEASURES OF LIMIT MONEY LAUNDERING

Money laundering has plagued into at two levels. The first is at the international level. This has been attempted to be checked via India's foreign exchange Laws and it extremely relevant in the context of Hawala transactions. The second level if of domestic money laundering. Such transactions have been addressed by several legislations such as the Benami Transactions (Prohibition) Act, 1988, the Income Tax Act, 1961, the Narcotic Drugs and Psychotropic Substances Act, 1985, the Indian Penal Code and the Criminal Procedure Code. [41]However, the existing legislations were unable to fight with the evolving strategies of money laundering in India and abroad.

A pressing need for specific money laundering prevention legislation was felt. Further, liberalization in the securities market and economy of India catalyzed this demand to check money laundering via a specialized legislation leading to the passing of the Prevention of Money Laundering Act 2002. The Act was further amended recently in 2008, to keep up with the evolving strategies of money laundering, especially in the context of advancing technology. Section 2(u) specifies that money laundering is said to be carried out when a man in any capacity financially transacts with proceeds earned from a crime[42]. Such violations are further categorized as Normal crimes under Section 3 or Scheduled crimes under Section 4. The punishment awarded for the same is 3-7 years rigorous imprisonment for any offense of money laundering. For any occurrence of an offense specified under Part A, paragraph 2 , imprisonment can be stretched out up to 10 years. [43] Attachment of the property in question has been authorized under Chapter III of the Act.[44]

Section 12 of the PMLA imposes obligations on Banks, Financial Institutions and Intermediaries mandating them to keep an entry of all material information on money laundering activities for a period of 5 years and forward the same to the Enforcement

---

41 AMIT KASHYAP, INDIAN BANKING: CONTEMPORARY ISSUES IN LAW AND CHALLENGES, 87-88, (2014 ED.).

42 *See* Section 2(u) of the Prevention of Money Laundering Act 2002.

43 *See* Section 3 and Schedules of the Prevention of Money Laundering Act 2002.

44 *See* Chapter III of the Prevention of Money Laundering Act 2002.

Directorate. [45]A monetary penalty can be imposed upon the entity if this obligation is not met under Section 13 of the Act, thereby giving teeth to Section 12. These sections ensure greater compliance in transparency norms for Banks, Financial Institutions and Intermediaries.[46]

The power of analysis and investigating records is given to the Adjudicating Authority under Section 16. The Adjudicating Authority comprises of one Director and 2 officials and has autonomous powers on the adjudication proceedings under Section 10. The Authority might solicit any from its authorities any search inquiry, gather all pertinent data, and place recognizable proof there after in a report to the Adjudicating Authority.. The search for a man is permitted only by an Order made by the Central Government. Further, the power approved for this benefit can't confine a man or detain him beyond a period of 24 hours.[47]

Under Section 18, two witnesses must guarantee any seizures made, set up a rundown of things seized marked by the witnesses and forwarded to the Adjudicating Authority. Such seized property can be held for a maximum of 180 days and can be extended by the Adjudicating authority if the merits of the case demand the same.[48] Further, all offences under the PMLA and non-bailable and cognizable highlighting their severity and the legislative intent of penalizing money laundering in India. There should be an assumption of the responsibility for property in a man's possession and any records recouped from a man's possession. The weight of evidence will be on the denounced to demonstrate that he is not guilty and cannot be charged for an offense under this Act. [49]

B. OBLIGATIONS ON BANKS AND THE NEED FOR KYC NORMS

Banks must always remember that the data gathered from the client for the reason of opening of a new account is private and any disclosed details thereof are not to be uncovered for cross selling or some similar purposes. Banks ought to, in this manner, guarantee that data

---

45 *See* Section 12 of the Prevention of Money Laundering Act 2002.

46 *See* Section 13 of the Prevention of Money Laundering Act 2002.

47 *See* Section 20 of the Prevention of Money Laundering Act 2002.

48 *See* Section 18 of the Prevention of Money Laundering Act 2002. 49 *See* Section 24 of the Prevention of Money Laundering Act 2002.

looked received from the client is important to the risk of money laundering being perceived and does not intrude upon the customer's personal information and privacy. [50]

Banks must guarantee that any remittance of assets or funds by method for interest draft, telegraphic exchange or travelers cheques for INR fifty thousand or more in valuation is affected by charge to the client's record or against checks and not against actual payment of cash. Furthermore, Banks must follow the provisions of the Foreign Contribution (Regulation) Act, 1976. [51]These are the check against invasion of privacy in the name of money laundering investigations.

However, they are balanced by Know your customer (KYC Norms), that help banks verify the identity of a new account holder and the source of the money being deposited in the bank. [52]The Reserve Bank of India via its Master Circulars issues KYC Norms. Such norms have 4 basic criteria that must be inquired of by the Bank. This consists of Customer Identification Procedures, Customer Acceptance Policy, Risk Management and Monitoring of transactions.[53]

Further, the definition of "customer" under KYC norms has been kept wide in order to allow banks to check money laundering at its roots. This definition includes personal accountholders, beneficial owners, beneficiaries to transactions that professional intermediaries such as stock exchanges conduct and any such persons who conduct high-risk transactions that can hurt the reputation of the bank. These KYC norms attempt to help in identification of money laundering attempts, making it tougher to conceal the source of illegally attained money.

VII. PROBLEMS PLAGUING INDIA'S ANTI MONEY LAUNDERING CRUSADE AND POSSIBLE SUGGESTIONS

While the national and international legislations have been drafted keeping instances of money laundering and their modus operandi in mind, India's money laundering actions are yet

---

50 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: March 25, 2016).

51 Suresh Padmalatha, Management Of Banking And Financial Services, 108-109, (2011 Ed.).

52 Dhandapani Alagiri, , Money Laundering: Issues and Perspectives, 3-4, (2006 Ed.).

53 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: March 25, 2016).

to fill in existing loopholes. The most common problem plaguing money-laundering laws is in enforcement of the existing legal structure. This is most blatantly seen in the ignorance of Know your customer norms. While banks have been directed to impose strict KYC Norms keeping international law obligations in mind, the RBI is often unable to track the breach of the same and penalties for breaching KYC Obligations often go undetected.[54]

Further, in light of the competition faced by commercial banks in India, Banks as a mechanism of increasing efficiency often ignores KYC Norms. KYC Norms therefore become equivalent to Stand Form contract clauses in opening new accounts. The second problem exists in the evolution of technology. With the expansion of ecommerce and new technology in encryption, transaction speeds have been catalyzed and money moves hands at a metabolic pace, ensuring no tracking is possible.[55]

This has ensured the growth of Hawala Transactions in India. Enforcement agencies are often under funded ensuring inadequate investment in better technology, making it tougher to trace the source of money in money laundering. [56] This problem of enforcement is further catalyzed by the fragmented approach in India. Different enforcement agencies have separate funding and do not converge in their operation leaving a gaping hole in the nexus of criminal activities and money laundering. The high number of cases burdens agencies such as the Enforcement Directorate and greater efficiency is the demand of the hour in India. [57]

In order to curb the problems above there must be legislative converge in the functioning of enforcement and investigative agencies in India. This is also more optimum from a cost and efficiency model.[58] Further, awareness on the harms of money laundering must be educated to the common man who often indulges in petty Hawala Transactions to avoid

---

54 *Id.*

55 JIMMY, *Supra* n. 31.

56 PWC, *Logging into Digital Banking,* (2015), https://www.pwc.in/assets/pdfs/publications/2015/logging-into-digital-banking.pdf, (Last visited on: March 26, 2016).

57 VIJAY, *Supra* n. 50.

58 *Id.*

complicated and expensive bank transactions.[59] Lastly, the judiciary too must keep a stricter eye on money laundering cases to set forth a strict precedent for money laundering laws in India.

VIII. CONCLUSION

Money laundering has eroded the financial system across the world. It further cements the vicious nexus between criminal activities and the financial world, thereby threatening to question world peace, global security and stability in the world of banking and finance. While, international and national legislative attempts to identify the modus operandi of the same must be celebrated as a baby step forward it is essential to identify the gaping loopholes in their implementation.

Internationally, countries with greater customer confidentiality refuse to cooperate with fellow member states in tracing money laundering. Similarly, at the national plain the pace of technological evolution enables the same, as enforcement agencies remain two steps behind in the process of identifying money laundering. Modern day banking laws need to be tweaked to make space for such complex financial transactions that can be enabled due to this growth in technology and privacy laws globally. India, has attempted to do the same via its PMLA and its amendments.

However, implementation of the law remains challenge. Further, the lack of judicial advancement in this area of law fails to set a positive precedent. However, the approach of the Indian legislature must be celebrated in its adoption of the "one size does not fit all " policy understanding. This however is supplemented by over arching principles of transparency in money laundering laws and policies in India as imposed by the RBI, SEBI and the Central Government. Hence, we must take this forward by imposing greater penalties for acts of money laundering and plugging legislative and enforcement loopholes in the existing policy framework.

---

[59] Nikos Passas, *Informal Value Transfer Systems, Terrorism and Money Laundering,* (January 2005), https://www.ncjrs.gov/pdffiles1/nij/grants/208301.pdf, (Last visited on: March 26, 2016).