

# An analysis of globalization and money laundering

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Received: January 08, 2019

Accepted: February 18, 2019

**ABSTRACT:** Money laundering is a crime of many approaches, and a host of different laws, as countries do not always have consistent approaches. Combating money laundering, therefore, requires consideration of issues of national and international jurisdiction. The countries world-wide face the greatest challenge of protecting their economy from the menace of money laundering as it seriously affects the economic growth and has the potential to upset the programmes of the economic planners. Banks are used as an important channel by money launderers for transmission of illegal money known as 'Black Money' to different entities across the globe. Thus, the main objective of this article is to: Firstly to trace the historical background and the working of money laundering and, secondly the nexus money laundering has with globalization. This article would also be to analyze whether the provisions of Indian legislation is sufficient to support the international efforts to combat money laundering.

**Key Words:** money laundering, globalization.

## INTRODUCTION

Money laundering has become one of the great moral panics of our day. A range of sources, including mass media, emphasize that it is bad, very interesting, and slightly daring, but do not deal so much with what it is, how it is done, or why (otherwise than as a form of complicity in some previous offence) it is so damaging. One of the elements of the Westphalian conception of sovereignty is the power of each nation-state to write and enforce its distinct criminal laws. That power was one of the last to be swept away by globalization.<sup>1</sup> Other specific crimes have been of focus from time to time such as sex tourism<sup>2</sup> bribery of foreign officials,<sup>3</sup> and terrorism offences, but this article will suggest that money laundering, more than any other, is the crime that reflects about globalization, and that it seeks attention in that context.<sup>4</sup>

Money laundering is the process of concealing the source of money obtained illegally by passing it through a complex sequence of transfers or commercial transactions.<sup>5</sup> Money laundering revolves around mainly the criminally acquired property rather than property itself.<sup>6</sup> Money laundering is an essential component of any profit generating crime, for the reason that without the laundering, crime would not pay.<sup>7</sup> Many support the view that "going after the money" is the best way to tackle organized criminal activities.

Corruption and money laundering typically occur along, with the presence of one reinforcing the other. Corruption generates billions of dollars of funds that will need to be hidden through the money laundering process. At the same time, corruption contributes to money laundering activity through payment of bribes to persons who are accountable for the operation of Anti-money laundering AML systems. The close linkage between corruption and money laundering suggests that policies that are designed to combat each

<sup>1</sup>E. Nadelmann, 'Global Prohibition Regimes: The Evolution of Norms in International Society' (1990) 44 *International Organization* 479.

<sup>2</sup>World Tourism Organization, a specialized agency of the United Nations, defines sex tourism as "trips organized from within the tourism sector, or from outside this sector but using its structures and networks, with the primary purpose of effecting a commercial sexual relationship by the tourist with residents at the destination"

<sup>3</sup>OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (in force 1999).

<sup>4</sup>R. HUIsse, 'Creating Demand for Global Governance: The Making of a Global Money-laundering Problem' (2007) 21 *Global Society* 155.

<sup>5</sup>"Money laundering". Oxford English Dictionary (3rd ed.). Oxford University Press. September 2005.

<sup>6</sup> Scott, Paul Alan (2006) "Reference Guide to Anti-Money Laundering & Combating Financing of Terrorism" – Washington DC, *World Bank/International Monetary Fund*

<sup>7</sup> IMF, "Anti-Money Laundering & Combating Financing of Terrorism inclusion in surveillance and financial stability assessments – Guidance Note" – December 2012.

crime will be more productive. Global and electronic financial services are allowing world-wide transfers of money in seconds. In addition, international communications are easier and less expensive than ever. Criminals have adapted to new means of communication and have taken advantage of facsimile transmissions, mobile encrypted telephones, and the Internet faster than most law enforcement agencies. Not only do we no longer live in a world where not to be a gentleman was a withering criticism; we also live in a world of euphemisms, such as money laundering itself. As a subject of regulation, it leads our eyes away from the immediate sources of serious crime to their mediated proceeds.<sup>8</sup>

### **PROCESS OF MONEY LAUNDERING**

The process of money laundering comprises three phases namely,

1. Placement
2. Layering and
3. Integration.

In placement stage, the illicit funds are infused into the financial system, or the retail economy. The placement techniques include:

- (i) Structuring, this is an act of depositing the bulk money into the bank after breaking it into numerous small amounts to avoid cash reporting requirements;
- (ii) Smurfing – the illicit money is injected into the banks with the help of third party personnel, called as smurf, who make multiple deposits into multiple accounts at any number of banks;
- (iii) Money mule transactions – the illicit money is injected into the banks with the help of third party personnel, called as money mule, who often for a receipt of certain commission payment, receives deposits through cheques or wire transfers, and then transfers these deposits into the accounts of other individuals held on behalf of the launderer;
- (iv) Alternative remittance systems such as Hawala;
- (v) Buying items of high value like diamonds, gold, vehicles, and real estate using the illegal money, often in the name of family members and close associates;
- (vi) Repayment of bank loans using the illegal money;
- (vii) Smuggling of cash, etc.

During the layering phase, the funds are distanced from its entry or placement point through a chain of complex financial transactions. It involves transfer of money among different accounts, in different names, and in different financial institutions, often in different countries by citing various financial transactions among the parties. The purpose of layering phase is to conceal the nature of funds, and the placement of funds by obscuring or breaking the money trail by creating a complex web of transactions layering one upon the other. Breaking the money trail is of utmost importance to the money launderer as it makes very difficult for the investigating authorities to establish where the illicit funds have actually ended up (Indian Institute of Banking and Finance, 2010). Electronic fund transfers, offshore banks<sup>9</sup>, correspondent banking services<sup>10</sup>, shell corporations<sup>11</sup>, trusts, repeat invoicing, resale of assets, etc. are often used for layering of funds.

Integration phase denotes the act of re-entry of laundered funds into the economy through the activities such as purchase of luxury assets, engaging in legal businesses by providing capital or loans, etc. It provides an apparently legitimate explanation for the illicit proceeds (Indian Institute of Banking and Finance, 2010). The methods adopted for laundering under these three stages of laundering varies according to the type of crime underlying the money and the country's anti-money laundering framework. The criminals are inventing new methods of laundering from time to time such as the usage of prepaid value cards, electronic payment systems and internet banking so that tracking the actual source of funds becomes very difficult.

<sup>8</sup>Mark P. Hampton and Michael Levi, "Recent Developments in Money Laundering Policies and Offshore Finance Centres," *University of Portsmouth, Department of Economics, Discussion Paper No. 126, April 1999*

<sup>9</sup>Offshore banks are banks that allow for the establishment of accounts from non-resident individuals and corporations.

<sup>10</sup>Correspondent banking is the provision of banking services by one bank (the "correspondent bank") to another bank (the "respondent bank")

<sup>11</sup>A corporation which has no physical presence and is not affiliated to any regulatory authority.

**NEXUS BETWEEN MONEY LAUNDERING AND GLOBALIZATION**

The ambit of laundering law has become wider. A common tactic in the extension of criminal law is to select 'soft targets', that is, conduct to the criminalization of which few would object, and then advance the frontiers of criminality incrementally from them outwards. Under the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (signed in 1988 and enacted two years later),<sup>12</sup> signatory states agreed to criminalize dealing in proceeds derived from drug traffic; to enable the confiscation of narcotics-linked money and property purchased therewith; and provide other signatories with the widest measure of mutual legal assistance in investigating, prosecuting, and confiscating narcotics-linked money from those who engage in acts deemed criminal under the Convention.<sup>13</sup> In an historically significant move that makes the AML movement much more difficult ever to reverse, the concerns of AML expanded from crimes to do with drugs and regulation of banks (in the 1980s and early 1990s) to organized crime and the financial sector to any acquisitive crime and the professional sector (in the 1990s) to terrorists financing (in the 2000s).

In this globalized world, money economy is heavily dependent on well-functioning of monetary establishments. Financial establishments should be operational with legal, skilled, and moral standards. Reputation of integrity of monetary establishments is utmost valuable. In such integral atmosphere, if funds from illegitimate activities and money laundering activities are allowed to flow through financial organisation, it causes adverse effects on name and will get on national newspapers the next day. Though, once workers or administrators are bribed, funds arising from money laundering activities can flow through that which puts financial organisation into criminal network. Evidence of such complicity will damage integrity of financial institution. When multiple money establishments are involved in such activities, economy can be under risk, and there will be changes in money demand, exchange rates. Eventually, corruptions and crimes are rewarded. Such money laundering damages the integrity of the whole society and undermines democracy and therefore the rule of the law.

The techniques used to launder money are similar as those used to conceal the sources of, and uses for, terrorist financing.<sup>14</sup> Funds used to support terrorism may originate from legitimate sources or criminal activities. Nonetheless, disguising the source of terrorist financing is important. If the source can be concealed, it remains available for future terrorist financing activities. Therefore, for these reasons, FATF<sup>15</sup> has recommended that each country criminalize the financing of terrorism, terrorist acts and terrorist organization and designate these offences as money laundering offence.<sup>16</sup>

Traditionally, anti money laundering efforts have been a governmental role, but over the years, this responsibility has shifted as more emphasis and responsibility has been placed on the private sector. There have been variety of developments within the international financial system throughout recent decades that have created the three F's-finding, freezing and forfeiting of criminally derived income and assets-all the more difficult.

The international community became ever more aware that globalization is used not only for good but for evil as well. Perhaps the criminal components are the first to embrace globalization as a way to expand their activities all over the world. They are the first to meticulously study the new rules and laws to seek out

<sup>12</sup>U.N. Doe. E/Conf. 82/15, 20 December 1988.

<sup>13</sup>D.P. Stewart, 'Internationalising the War on Drugs: the UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances' (1990) 18 *Denver J. of International Law and Policy* 387.

<sup>14</sup> Article 2 of International Convention for the Suppression of the Financing of Terrorism held by UN (1999):

1. Any person commits an offence within the meaning of this Convention if that person by any means, directly or indirectly, unlawfully and willfully, provides or collects funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out:

(a) An act which constitutes an offence within the scope of and as defined in one of the treaties listed in the annex; or

(b) Any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act.

<sup>15</sup> Financial Action Task Force.

<sup>16</sup>Paul Allan Schott, 'Reference Guide to Anti-Money Laundering and Combating the Financing of Terrorism', Second Edition, *The World Bank*.

loopholes for their activity. In response to the monumental collective action problems related to globalization, it is turning into increasingly apparent that radical changes to world governance are required and that strong normative principles are also needed.

There are many national and global organizations which are actively trying to combat money laundering. Efforts are in place to aim increase awareness of phenomenon and to provide necessary legal or regulatory tools to the authorities. In United States, Department of Justice, State Departments, Federal Bureau of Investigation, International Revenue Service, Drug Enforcement Agencies and other regulatory agencies have divisions investigating money laundering and underlying structures that make money laundering work. Most nations have declared money laundering as crime. The global community is combating money laundering through various organizations such as Financial Action Task Force (FATF). The United Nations, the World Bank, and the International Monetary Fund also have anti-money-laundering divisions. These organizations actively monitor and enforce laws and regulations on any institution or corporation involved in money transfer. These institutions include Banks, Insurance companies, Money Serving Businesses, Asset trading businesses, etc. Besides enforcing these regulations, regulatory organizations also publish criminals publicly to avoid further future crimes.

### **MONEY LAUNDERING IN INDIA**

Indian Mafioso principally operates in India's metro-cities and also in its various States capital cities. The two important notorious gangs comprising Indian Mafioso are the Dawood gang and the Rajan gang. The chief of these gangs is always the 'unchallengeable leader and commander' with all control power and command functions vested in him. The second rung leaders operate with a sub-group of four to five operatives in their assigned geographical areas. These operatives are assisted by foot soldiers including persons with specialized knowledge and skills. About the operations of these gangs, it has been commented that their activities seriously jeopardize the smooth functioning of the administration, and the safety of life and property of the common man causing a sense of misery and hostility among the people. At times underworld mafia push the State apparatus into irrelevance.

Certain sting operations conducted by Cobrapost<sup>17</sup> have suggested that officials of certain public sector undertakings involved in insurance and banking business and certain private sector banks were willing to facilitate money laundering in the country. The Cobrapost expose shows bankers allegedly marketing insurance products to convert black money into white. The demonetization of higher denomination notes in November 2016 by the NDA Government had opened the floodgates for money launderers. In December, 2016, two Axis bank managers were arrested in Delhi who worked in tandem with a net work of jewelers in laundering demonetized currency. In its aftermath, the Income Tax Department sung into action against those misusing to convert black money into 'white'.

Steps taken by the present government for checking black money has brought enforcement of the Prevention of Money Laundering Act into focus as there are growing efforts on the part of holders of unaccounted wealth to launder it and there has been a concerted effort by the Enforcement Directorate to counter counter such activities.<sup>18</sup>

The Black Money (undisclosed Foreign Income and Assets) Imposition of Tax Act, 2015 targets undisclosed foreign income and assets. Another important step taken by the government is to strengthen the Benami Transactions (Prohibition) Act, 1988.<sup>19</sup>

All the efforts were made in order to fight black money and in turn curb money laundering activities.

### **CONCLUSION**

Money laundering has become a quintessential problem in the current day and age, The governments worldwide collectively have acknowledged this issue and are aiming to reach practicalities in parking this issue. One of the major methods implemented to curb this issue was to build organizations or agencies specifically to fight it. Combating money laundering has become an international priority. Fighting money laundering needs help and compliance from several entities and resources concerned on the bar and detection of money launders. Prevention, detection, and reporting ought to be performed by private partners like banking establishments. Public partners such as law enforcements should be answerable for

<sup>17</sup>Delhi based online portal: [www.cobrapost.com](http://www.cobrapost.com) alleged in 2013 the money laundering by top private sector banks- HDFC bank, ICICI bank and Axis bank.

<sup>18</sup>Dr M C Mehanathan, 'Law on Prevention of Money Laundering in India', Second Edition, *Lexis Nexis*.

<sup>19</sup>*Supra*.

analytics and repression.

Complying with laws of varied countries requires further activities to be performed whereas guaranteeing efficiency in daily business operations. These can become quite expensive for financial establishments and require additional efforts from financial establishments. These efforts include maintaining special compliance department, monitoring payment messages, implementing 'know your customers' policy, identifying and implementing appropriate risk based approach, and housing appropriate technical solution to meet compliance requirements.

It is important that global citizens understand the concept of money laundering and play active role in combating it. For example, if someone offers \$1000 cash and asks for legal check worth less than cash value, it is likely that individual is trying to legalize cash holdings. Global citizens shouldn't solely stand back from such activities however additionally report to authorities. Bank secrecy act allows filing suspicious activity reports by any individual; the filer doesn't have to be financial institution. It is suggested that in any occasion citizens see any suspicious activities being offered or performed, even without citizen's involvement, suspicious activity report should be filed.

Money laundering is quite widespread and seems to find a route in most verticals. Most profit generating crime results in some form of money laundering. Eliminating money laundering could solve most tasking issues, however completely eradicating this is non-trivial. This is a global issue and it needs to be treated so, the government alone cannot be held responsible with the daunting task of eliminating money laundering. An efficient combat to money laundering depends on the joint efforts of competent authorities, banks and employees.

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