

**DE JURE NEXUS LAW JOURNAL**

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**MONEY LAUNDERING IN INDIA****ABSTRACT –**

*Our father of nation Mahatma Gandhi believed that money is not an evil in itself, it is when it has evil use that makes it wrong. He was also of the belief that possession of undue wealth by individual should be held as a crime against Indian humanity.*

*Money laundering is seen to be one of the greatest social, political and economic evil which is not only seen and prevalent in India but also all over the world. Playing its role as a part of the parallel economy, it not only deteriorates a country's economy but also affects the common man through various scheduled crimes which takes place to collect illegal money. Various laws are in existence to curb this menace both in India and for whole world but with changing time and changing in methods of crime, the laws also need to be upgraded.*

Keywords – undue wealth, laundering, economy, illegal, laws

**INTRODUCTION –**

Money is an accepted commodity which is used by general consent as a medium of exchange. It is a kind of liquid asset which is used for the purpose of transaction and that transaction involves exchange or transfer of goods or services from one person to another. It is in the form of coins or bank notes which has got authorization or which is backed by the central bank of India which is Reserve Bank of India. The coins or bank notes gives people the power of purchasing things. Laundering is a term used most commonly in relation to cloths. It is an

activity by which clothes which are dirty are made useful. In other words, by laundering one can make a thing ready for use which he cannot use openly in public, by washing and cleaning that thing. Money laundering is also a similar type of activity by which a person can launder or clean his large amount of money which is earned by illegal means to make it useful in public.

Money laundering is the illegal process of making large amounts of money generated by criminal activities such as drug trafficking, terrorist funding, money earned through corruption, appear to have come from a legitimate and legal source to prevent the person from the eyes of the investigating agencies. By this process the criminals disguise the original ownership of the proceeds of the crime and move the money earned from that crime from various stages to make it undetectable for the government and agencies.

### **REASON OF MONEY LAUNDERING –**

The activity of laundering is done because the money earned from illegal sources cannot be used in public openly. The person who earns such kind of money fears of government agencies who are responsible for tracing and capturing any kind of illegal money flowing in the economy. If the money is traced and the person in possession of that money or who owns that money is found then he can undergo punishment which can be 6-7 years of imprisonment and fine which has no limits. The money on which the person earning it pays regular tax to the government can be termed as legitimate money because while paying tax the government has the complete information of the sources from which the money is earned. Since on the money which is illegally earned, no tax is paid to the government, that money is termed as black money. The process of money laundering has been evolved to make this black money white so that the black money can again be brought into the main economy and then can be used by the main source without any fear.

### **WAYS OF MONEY LAUNDERING –**

There are different ways by which the process of money laundering is done. With the changing of time and technology, the methods of converting black money into white is also evolving. For example, a criminal could use a large number of complex wire transfers to disguise the illegal origin of the funds. The criminal could also go into a casino, exchange the funds for chips, gamble for some time, and cash-out. Some other methods of laundering money are<sup>1</sup> –

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<sup>1</sup> Available at [www.indiaforensic.com](http://www.indiaforensic.com) (last visited on 1 Dec, 2021)

- Structuring – this is a method of placement wherein the cash deposits are divided into smaller deposits of money. Then those smaller deposits are used to do various transactions. This method is used to avoid detection and anti-money laundering reporting requirements. A sub-component of this is to use smaller amounts of cash to purchase bearer instruments, such as demand drafts, and then ultimately deposit those, again in small amounts of money. Smurfing is another variation of structuring.
- Bulk cash smuggling – in this method a huge amount of money is smuggled and transferred to another country where it is deposited in the financial institutions. It is sent generally to those countries where money laundering laws are not very stringent and also the person whose money is to be laundered has to pay less amount of tax to the government. That's why those countries are called tax heaven countries. Some examples of tax heaven countries are Singapore, Bahamas, Panama, Dubai etc. These countries have very lenient laws on the cause of money laundering and it becomes easy for the person holding huge amount of money to put it in the main economy by transferring that money in India through foreign direct investment or donation to Non-Governmental Organizations.
- Cash-intensive business – the businesses in which a large amount of fund is received in the form of cash is exploited by the launderers. Criminal uses bank accounts of cash intensive business and deposit cash proceeds of crime. Such enterprises often operate openly such as shop in a mall or a petrol station. These businesses are most of the time started for the purpose of laundering money. With the help of these businesses, one can show to the government that the money is earned through this business and there is no use of black money here. Because of intensive use of cash, it becomes a difficult task for the agencies to trace whether the money is legit or illegal. Cash revenue from legitimate business is added to the illicit cash. In such cases business will usually claim all cash received as legitimate earnings<sup>2</sup>.
- Trade-based money laundering – these methods involve under or over valuation of invoices to hide the movement of funds. For example, the art market is an ideal vehicle for money laundering. There are several unique aspects of art such as the subjective value of artworks is difficult to ascertain. The prices of artefacts are put high or low as per the need and that price is used by the buyer or seller of that artefact to launder money.

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<sup>2</sup> Supra 1

- Shell companies and trusts – shell companies are non-public entities that are formed to protect or hide another company's assets. They are present virtually on paper with no physical premises, employees, revenue or assets but they have their bank accounts and investments. These companies are not inherently illegal, they can be formed quickly and relatively inexpensively in the legitimate financial system and used as vehicles to raise funds, hold stocks, or act as limited liability trustees<sup>3</sup>. But they are widely used for the purpose of converting black money into white and legal money. The person having black money establishes a shell company or invests his money in another shell company and show it as investment and later rotates that money throughout that company to pump it in the main economy. In the same way trusts are created which are used to disguise the true owners of money. Trusts and corporate vehicles, depending on the jurisdiction, need not disclose their true owner. Sometimes referred to by the slang term rat-hole, though that term usually refers to a person acting as the fictitious owner rather than the business entity<sup>4</sup>.
- Credit card laundering – the credit cards are mostly used at the stage of layering or at the stage of integration of money laundering. For example, a person can overpay a credit card balance and then ask for a refund. In this way receiving a bank transfer from a reputed credit card company makes the fund look like a legitimate fund.
- Laundry through bank capture – in this case, launderers or criminals buy a controlling interest in a bank, preferably in a jurisdiction with weak anti money laundering controls, and then move dirty proceeds through the bank without proper scrutiny. Nauru was an island nation which distributed offshore banking licenses when its phosphate reserves depleted and the country had no source of income. This increased criminal activity in Nauru.
- Laundering in casinos – in this method the person who has a huge amount of illicit money has to take that money in a casino and purchase chips from it. He then will play for a short time and later on he encashes that money. When he encash it he is paid either in the form of cheque or at least he gets some receipt of it. In this way he can show that the cash he got is from winning the game of gambling. By this he legitimizes the illegal money into legal by using chips in casino and later converting it into cash.

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<sup>3</sup> Available at [www.complyadvantage.com](http://www.complyadvantage.com) (last visited on 1 December 2021)

<sup>4</sup> Supra 2

- Cash salaries – There is a huge market of unorganized sector in India. This sector gives employment to thousands of daily wage workers who are paid salaries in the form of cash and does not require any receipt of the payment. There is no need of government's registration here and also there are no employment contracts. So, there is large movement of cash here which can also be used to launder illicit money.
- Laundering as agriculture income – The Indian economy is largely an agrarian economy. Government gives various tax benefits to farmers on the agricultural income so that they can feel motivated to gain as much production as they can from the farming. This is exploited by the criminals who have huge amount of illegal money. They pump their money directly into the agriculture to show it as income generated from agriculture. They disclose the income, file the documents with government but under the wrong head. In the same way sometime hospital and micro finance companies are the new vehicles of layering.

## PROCESSES OF MONEY LAUNDERING

The process of money laundering takes place generally through three steps –

1. Placement – the activity of money laundering involves huge amount of illegal cash which is earned from various illegal activities like sale of drugs, illegal firearms, prostitution or human trafficking etc. The money collected from these activities needs to be disposed of immediately to prevent the person from the detection of authorities. Some method of doing it is to deposit it in the financial institutions, spending in retail economy, and involvement in a business or acquisition of an expensive property/asset or smuggled out of the country<sup>5</sup>. This stage generally serves two purposes: (a) it relieves the criminal of holding and guarding large amounts of bulky of cash and, (b) it places the money into the legitimate financial system. It is during the placement stage that money launderers are the most vulnerable to being caught. This is due to the fact that placing large amounts of money into the legitimate financial system may raise suspicions of officials<sup>6</sup>.
2. Layering – this is also sometimes referred as structuring. This is the most complex stage in laundering and involves international movements of funds. The primary purpose of

<sup>5</sup> Available at [www.civilserviceindia.com](http://www.civilserviceindia.com) (last visited on 2 December 2021)

<sup>6</sup> Available at [www.moneylaundering.ca](http://www.moneylaundering.ca) (last visited on 2 December 2021)

this stage is to separate the illicit money from its source which is done by extensive layering of the transactions so that its audit becomes difficult. During this stage, the launderers may begin by moving funds electronically from one country to another, then divide them into investments placed in advanced financial options or overseas markets, constantly moving them to prevent them from detection and exploring loopholes in legislation and taking advantage of delays in judicial or police cooperation.

3. Integration – it is at this stage where money is returned to the criminal from what seem to be legitimate sources. Since the cash is layered through a number of financial transactions so the criminal proceeds are now fully integrated into the financial system and can be used for any purpose. The money is integrated to the financial system by methods like purchase of property, art work, jewelry, or high end automobiles etc.

### **IMPACT OF MONEY LAUNDERING**

Money laundering damages financial sector institutions which are critical for economic growth, promotes crime and corruption that slows economic growth, reduce efficiency in the real sector of the economy. It creates unpredictable changes in money demand, as well as causing large fluctuations in international capital flows and exchange rates<sup>7</sup>. Some other impacts are –

- Effect on money demand – in economies where there are no regulations on laundering, where there is a system that stores bank or customer information, where banking secrecy is strictly enforced, the informal economy ratio to the national economy is high. The cash inflows and outflows are easy for launderers. With the rapid and uncontrolled inflow of money to the country, the consumption rates and especially luxury consumption are increase. However, there may be significant increases in exports, imports, foreign payments deficit, inflation, interest, and unemployment rates. These instabilities in demand for money caused by black money will naturally affect the monetary policy negatively<sup>8</sup>.
- Effect on growth rates – it is not easy to attract foreign investors to the country where money laundering takes place very frequently. It is because the price instability caused by black money in the financial system will affect the credibility of the economy in the external environment, rational entrepreneurs will find it inconvenient to invest in the country because they will also consider the country's risk while investing. If the legal

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<sup>7</sup> Available at [www.sanctionsscanner.com](http://www.sanctionsscanner.com) (last visited on 2 December 2021)

<sup>8</sup> Supra 7

money escapes from entering the country, it will result in investment rates not increasing. So, there will occur a long term sustainable growth decline. Countries with a high volume of money are considered risky places for investors<sup>9</sup>.

- Effect on tax revenues – the most important component of money laundering is black money which is called black because it is earned through illegal activities and there is no tax paid to the government on it. It causes a huge loss of revenue to the government because revenue from taxes has the most significant share in public revenues.
- Increase in rates of crime – the money that is used in laundering is largely earned from the illegal activities like extortion, trafficking, drug smuggling, terrorism etc. The money collected from them is later again used to fund these kinds of activities like terrorist attacks, riots, child trafficking etc.
- Social effect – committing crime of money laundering transfers of economic power from the right people to the wrong. The good citizens and the government are dispossessed from their right, making the criminals take the benefit to flourish in their criminality. Money laundering damages the financial institution which is an important factor in the economic development of nation.

## **LEGAL PROVISIONS TO PREVENT MONEY LAUNDERING**

In India, Prevention of Money Laundering Act was passed in the year 2002 for the prevention and curing the affects of this menace. In India, there were old age practices for prevention of Money laundering in the sense of seizure and repossession of proceeds of crime. The statutes predominant before passing of PMLA of 2002 are –

- Criminal Law Amendment Ordinance of 1944
- The Smugglers and Foreign Exchange Manipulators Act, 1976
- Narcotics Drugs and Psychotropic Substances Act, 1985
- And later PMLA, 2002.

The purpose of Prevention of Money Laundering Act, 2002 is to combat money laundering in India in order to prevent and control money laundering, to confiscate and seize the property obtained from laundered money, and to deal with any other issue connected with money laundering in India. The basic principle behind this law is that criminal should not be allowed to enjoy the fruits of a crime and the people at the top of a mafia group which is largely involved

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<sup>9</sup> Supra 8

in, it enjoys the real fruit, so to reach to the top, officials have to trace them financially. The major governing body to prevent money laundering activities in Enforcement Directorate. The ED gets its inputs from units like Financial Intelligence Unit and other non-designated institutions including state authorities. They analyse suspicious transactions and capture it if found anything illegal there.

There are many provisions which makes this legislation stringent. One is reverse burden of proof. The criminal law of India works on the proposition that a person is innocent till he is proven guilty and the burden of proving him guilty is on the prosecution. But as per this provision of PMLA, if investigating agencies are able to prove in the court that this particular money belongs to that person and he has proceeds of crime then that person has to prove that money does not belong to him. Also, the statements given before the investigating officers are admissible before the court in this case. This provision also talks about restoration of property to the victim i.e., adequate compensation to him and also international cooperation on money laundering activities.

At international level, there was establishment of Financial Action Task Force in 1989 by G-7 countries and it has one basic task of preventing money laundering all over the world which is later used for funding terrorism. Currently it has 39 members including India.

### **SOME CASES ON MONEY LAUNDERING**

#### *P. Chidambaram vs Directorate of Enforcement*<sup>10</sup>

In this case, the former Finance Minister of India P. Chidambaram was charged under section 3 of PMLA, 2002 for being a facilitator to INX Media foreign fund. However, he applied for anticipatory bail which was rejected on the grounds of tampering with the evidence of the case against him because of which he landed behind the bars. But later on, the High Court granted him bail<sup>11</sup>.

#### *D. K. Shivakumar vs Directorate of Enforcement*<sup>12</sup>

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<sup>10</sup> (2019) 9 SCC 63

<sup>11</sup> Available at [www.blog.ipleaders.in](http://www.blog.ipleaders.in) (last visited on 2 December 2021)

<sup>12</sup> BAIL APPLN. 2484/2019

In this case, the person was accused for holding money in cash in his premise by Income Tax Officers and because of this he was held in custody for interrogation in Tihar Jail. However, the court granted him bail<sup>13</sup>.

*E.D. vs A. Raja*<sup>14</sup>

It is also called as 2G scam case. In this case, the then Minister for Communications, Electronics & Information Technology, A. Raja was accused and booked under the PMLA,2002 for providing a letter of intent to some private companies for providing these companies with Unified Access Services License without proper guidelines and accepting bribery. But the court did not find them guilty and the court demanded all the accused persons to pay rupees 5 lacks per person along with one surety<sup>15</sup>.

## CONCLUSION

The problem of money laundering is still existent in India and to curb this menace, stringent laws and controlling measures needs to be adopted. With the changing time, the methods of laundering are also evolving so the laws also need to change continuously keeping in mind the need of the time. There are many organizations in different areas which are responsible for preventing accumulation of money and there is a need of complete and continuous cooperation among them. With the initiative of government and other organizations, this problem can definitely be curbed.

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<sup>13</sup> Supra 11

<sup>14</sup> ECIR/31/DZ/2010

<sup>15</sup> Supra 13