MONEY LAUNDERING INTERNATIONAL AND NATIONAL LEGAL CONTROL MECHANISM:
A CRITICAL EVALUATION

SUMMARY

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SUMMARY OF THE THESIS

It will be my humble endeavour to chalk out here that the whole thesis has been presented schematically into seven detailed chapters as follows:

Although the term "money laundering" is common in the parlance of law enforcement communities, the words themselves do not accurately convey the extent and degree of sophistication associated with the crime that it purports to describe. In its simplest incarnation, money laundering is "an activity aimed at concealing the unlawful source of sums of money. . . ." In effect, money laundering serves as the manner in which criminals attempt to thwart law enforcement's ability to track the success of a criminal venture by disguising the proceeds of that venture to make the proceeds appear lawful or to make them unidentifiable. Money laundering serves to rid the currency of the criminal enterprise of its illegal taint and, once funds are laundered, allows for the proceeds to be used by the enterprise for its various activities, both lawful and unlawful.

Therefore, the journey of the research starts with the present chapter first ‘Introduction’. The theme of the topic is being discussed in this chapter. The researcher is introducing the topic in this chapter. This chapter throws light on the general speculation about the word “money laundering”. The lack of awareness about the problem of money laundering is also discussed. The chapter also explain how money laundering is the world's third largest criminals’industry and how criminals succeed in money laundering activities by thwarting law enforcement agencies.
The second chapter is on “Money Laundering”. Money laundering as an expression is one of fairly recent origin. Money laundering is a sophisticated crime not to be taken very seriously at the first glance by anyone in the society as compared to street crimes. It is a modern crime. At times people also refer to it as a victimless crime but the reality is that it is not a crime against a particular individual, but it is a crime against nations, economies, government, rule of law and world at large. Money laundering has become a world wide menace. The goal of a large number of criminal acts is to generate profit for the individual or group that carries out the act and then hide either the source or the destination of money. Money laundering is the processing of these criminal proceeds to disguise their illegal origin. This process is of critical importance, as it enables the criminal to enjoy these profits without jeopardizing their source.

Some of the crimes like illegal arms sales, smuggling, corruption, drug trafficking and the activities of organized crime including tax evasion generate huge sums. Insider trading, bribery and computer fraud schemes also produce large profits and create the incentive to legitimize the ill-gotten gains through money laundering.

Although the phenomenon of money laundering has attracted increasing attention, the concept is yet a subject of controversy in criminal-logical parlance. This is so because there is no consensus on the definition of money laundering.

In this chapter all 18 varied definitions have been collected from varied sources to make a complete research. The eighteen definitions use
different words and have different meanings. These definitions show how these different definitions have become an impediment in controlling money laundering, without definitions, study of the topic will be incomplete.

The researcher has tried to classify the definitions according to three aspects, which they all seem to share: an activity, a subject and a goal.

In order to construct a universal definition of money laundering, the researcher has collected the definitions used by different scientists, International organizations and legislations and compared them with one another. It reveals that what might constitute money laundering in India might not amount in United Nations.

The chapter also covers meaning of money laundering, significance of money laundering has also been discussed. Origin of word ‘money laundering’ has also been brought within this chapter. The impact of money laundering on the economy of the country has negative effects on economic development. Money laundering constitutes a serious threat to national economies and respective governments. The negative effects of money laundering activities may be on financial sector, real sector of formal agents such as state, financial institutions and banking sector which have been discussed in detail in this chapter.

The third chapter is on “Money Laundering and Its Criminal Sources”. In this chapter, four major criminal sources of money laundering has been discussed in detail. The criminal sources have been divided
into four parts-A-Corruption,B-Drug Trafficking,C-Smuggling and,D-Terrorism.

India is a large country with a population of over a billion people. It is the second most populous in the world after China. It is one of the fastest growing economies in the world and is attracting huge investments from developed countries. In spite of the healthy growth indices, a vast population still lives in poverty and does not have access to basic sanitation, healthcare and education. A huge part of the funds that are being sanctioned for different social welfare policies are absorbed in the system before even reaching the targeted beneficiaries. The country’s progress is seriously hampered by all pervasive corruption. It is preventing the benefits of development from reaching the deprived sections of society. Corruption is a machine that generates black money. Black money is the oxygen for corruption. Corruption is the oxygen for black money. Money laundering becomes lucrative and links are established between corruption and organized crime. In this part-A, Corruption as a source for money laundering has been discussed in detail. Meaning and definition of corruption has been mentioned in this chapter. Forms of corruption, such as bribery, extortion, embezzlement, nepotism, political patronage, fraud has been well explained. Causes of corruption, social roots of corruption, cultural factors, have also been discussed in detail. Impact of corruption, the black economy problem, social and cultural consequences, magnitude of corruption, Indian corruption study, ranking of states, monetary value of corruption, estimates of corruption, have been covered in detail. The researcher has also incorporated endless scams and scandals in the chapter. World map of the 2010 Corruption Perceptions Index by Transparency Inter-
national which measures "the degree to which corruption is perceived to exist among public officials and politicians has also been presented in this chapter.

Part-B, Drug Trafficking, another criminal source which generate money. Drug trafficking is the most serious organized crime problem in the world today. The drug trade generates billions of dollars for organized crime each year, imposing incalculable costs on individuals, families, communities, and governments worldwide. Therefore, this part has covered definition of drug and drug trafficking, types of drugs and psychotropic substances in this chapter in detail. Historical factors that shape today’s drug trafficking has also been incorporated in the chapter. The chapter has also brought different sources for illicit drug trafficking, drug trafficking scenario in India, dynamics of drug trafficking and its modus operandi in detail. International operation, purity and price, price in various locations, street level drug dealing, alternate trafficking methods, structure of groups and profiles involved, involvement in drug trade, structure at grass root level, drug trafficking in Mumbai, distribution and street sale profits, prohibition of drugs in Islam. The implications and effects of drugs are also discussed in detail. Tangible effects, economically, financially, socially and health wise, the environment impact, in education, crime, the legal system, threat to rule of law has been covered in the chapter. The chapter also discusses socio-cultural and religious reasons for drug use, role of drug enforcement agencies, seizures of various drugs, corruption in enforcement agencies in detail. Latest data has been incorporated in this chapter. To be precise, Part-C, Terrorism has been covered in this chapter. Terrorist financing is considered by many to be just part of money
laundering. Therefore, the chapter discusses the tactics of terrorists, terrorism in India and the world, funding of terrorism in detail.

The last Part-D Smuggling. Smuggling is an important catalyst in stimulating the underground economy. It encourages existing criminal gangs and helps new ones to become established. Smugglers resort to several means to convert their black money into white money. In terms of sums of money involved, the figure would perhaps run into *hundred of billions of dollars* (excluding drug smuggling and smuggling in arms and explosives). This chapter covers its trends, smuggling—a big money spinner and the items favoured by smugglers in detail.

The chapter four is on “*Money Laundering and its Modes*”. Today, a criminal considers the world as his field of operation. He commits a crime in one country, deposits the money derived from criminal activities in an offshore bank in another country and takes refuge in yet another country. The widespread political, economic, social and technological changes as well as variations in legislation, procedures and policies in different countries on mutual assistance in criminal matters have allowed organized crime groups to become increasingly active in the international arena. International criminal organizations are taking full advantage of globalization of world markets, dismantling of trade barriers, the increased ease of international travel, liberalized emigration policies, high-tech communications equipment and sophisticated money laundering techniques to enhance and further their criminal efforts and to forge alliances with other criminal groups. They are engaged in such felonious activities as illicit drug trafficking, money laundering, the use of violence and extortion, acts of corruption,
trafficking in women and children, illicit manufacturing of and trafficking in firearms, environmental crime, credit card fraud, computer related crime, illegal trafficking of stolen vehicles, etc.

Considering the amount involved in the proceeds of crime, as discussed in chapter three, it was quite logical to ask the question of how these were managed. A substantial portion of the proceeds is required for the running expenses for the criminal enterprises, a large proportion of the proceeds of crime are spent in an open manner with all the attendant risks of being caught, then there are several criminals who like to hide their wealth or secret it away in secure hiding places. However, the over-riding concern of criminals is to make their proceeds appear legal and justified. This chapter has covered techniques/typologies of money laundering at national and international level. Popular methods of money laundering in the form of hawala has been incorporated in detail. Emerging trends of money laundering and role of technology has been discussed in detail. Role of banks in promoting money laundering has been also mentioned in the chapter. Cases like Ketan Parekh, Abdul Karim Telgi, Harsha Metha, Bofor and Haridas Mundra, IDFC, Yes Bank and GTB has also been covered in this chapter. India’s ‘black money’, effects of black money, prominent tax havens, has also been covered in detail.

The case of Black Money in *R.K. Garg v. UOI*, \(^1\) the Apex Court was seized of a case wherein the constitutionality of the Special Bearer Bonds Immunities and Exemptions Act, 1981 and the preceding ordinance promulgated by the President, were questioned. The Constitution Bench speaking through *Justice P.N. Bhagwati*, made many
important observations on the phenomenon of black money *inter-alia* holding thus:

“Those who are honest and who observe the law are mulcted in paying the taxes legitimately due from them while those who have broken the law and evaded payment of taxes are allowed by the provisions of the Act to convert their black money into “white” without payment of any tax or penalty. The provisions of the Act may thus seem to be putting a premium on dishonesty and they may, not without some justification, be accused of being tinged with some immorality, but howsoever regrettable or unfortunate it may be, they had to be enacted by the Legislature in order to bring out black money in the open and canalize it for productive purposes. Notwithstanding stringent laws imposing severe penalties and vigorous steps taken by the tax administration to detect black money and despite various voluntary disclosure schemes introduced by the Government from time to time, it had not been possible to unearth black money and the menace of black money had, over the years, assumed alarming proportions causing havoc to the economy of the country and the Legislature was, therefore, constrained to enact the Act with a view to mopping up black money so that instead of remaining idle, such money could be utilized for productive purposes.”

has also been covered in the chapter.

The chapter five is on “*Money Laundering and its International Perspective*”. The present chapter attempts to highlight various international efforts to combat money laundering. There have been efforts

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1982 (133) ITR 239 (SC)
by the UN, UK, EU, USA to regulate and curb money laundering and financial crimes which have been covered in detail in the chapter. In addition, this chapter has added inter-governmental groups such as the Financial Action Task Force and its 40 recommendations which have created a general framework for countries to follow in establishing an anti-money laundering regime. Organizations such as the Basle Committee on Banking Regulations and Supervisory Practices have also aided in the international fight against money laundering by providing a framework for financial institutions to follow. This has also been given in detail. Finally, international law enforcement organizations such as the International Criminal Police Organization have proved instrumental in combating money laundering by promoting mutual legal assistance among law enforcement authorities around the world has also been studied in the chapter.

The chapter six most important, is on “Money Laundering and its National Perspective”. The present study was planned to examine the law.

At the beginning of the millennium, the fight against money laundering features very high on the national level, and in many countries, also on the domestic, political agenda. The speed with which norm makers have put in place a set of legal rules designed to fight the laundering of the proceeds, first from drug trafficking, corruption, and, later on, of the proceeds from many other criminal activities as well, is impressive. There is of course more than one explanation for the high level of attention the subject of money laundering is receiving.
Therefore, it was the burden of this chapter to investigate whether the set of legal rules that have been put in place on an domestic level to curb money laundering can indeed make an effective contribution to the fight against money laundering and, if these rules prove to be unsatisfactory, how deficiencies can be remedied. The present chapter aims to provide an extensive discussion of the legal framework for money laundering and the main legal problems that may arise in its implementation. The chief aim of this chapter was therefore, to probe into, on the one hand, the legal impediments that may hinder the fight against money laundering and, on the other hand, the legal adaptations that are required to make the fight against money laundering effective.

In India, prevention of money laundering in the sense of seizure and confiscation of proceeds of crime is age old. This has been going unchecked for years and in fact, at times the government has helped the launderers by giving various amnesty schemes for getting rid of so-called black money and converting it into legitimate money.

Combating money laundering is a dynamic process. The criminals who launder money are continuously seeking new ways to achieve their illegal ends. Although various guidelines and legal acts formulated around the globe, including India, criminals are also trying to protect themselves from the regulatory system by innovative criminal activities to misuse the system for their purpose. Moreover, with financial innovation which usually occurred to avoid law and take the benefit of technological advancement are now used by the launderer to conceal their income from the illegal source.
The Prevention of Money Laundering Act is one of the few pieces of legislation that has been passed by the Indian Parliament pursuant to a United Nations Resolution.

However, the Act right from its inception has been centre of controversy. Since 2005, when India passed its money laundering Act till now, not a single case has finally reached conviction. The Act is in place, the prosecuting agencies are in place, the courts are ready, but only the villains are missing who are not caught and brought before the courts.

The present study addresses itself to the following fundamental questions centering of adequacy of law:

a) Has this legal framework been successful in combating or even containing this evil?

b) Why is this evil growing?

c) Is this evil not subjected to any punishment?

d) How much is this law deterrent enough?

There are the gaping loopholes which prove beneficial to the launderers who escape from the clutches of law by seeping through these holes, making anti-money laundering law ineffective. The present study concentrates of the general anatomy of law.

This chapter specifically deals with Law Of Prevention Of Money Laundering Act, 2002[hereinafter PMLA]. The present study concentrates on important provisions of PML Act, 2002 and examined various loopholes in the Act. The important provisions have been covered in
The chapter. A critical evaluation of the law have been given in the chapter. Difficulties in implementation of the Prevention of Money Laundering Act has also been examined in detail. Guidelines “Know Your Customer” norms have also been studied. Whether “Know Your Customer” norms are in place or not, has also been examined. The aim of the present study is to bring the adequate law to make this organ of state more effective and purposeful, which the law makers did not contemplate.

The chapter seven, the last chapter is based on the “Conclusions and Suggestions” of the researcher. This chapter is based on the concluding remarks of the research scholar, which include the problems which prevail in present scenario. To overcome such problems researcher has given her own suggestion to improve the law. The basic suggestion which the researcher has stressed is, the law of Prevention Of Money Laundering Act, can be a very effective tool to counter money laundering, if this law is properly conceived and enacted in the first instance.

The researcher has also concluded that the main problem is due to the fact that the law has been enacted in a half manner, is evident from the position that the Parliament enacted it in the year 2002, it took three years for the government to implement the same in the year 2005, and therefore require careful revision. Money laundering operations are obviously facilitated through loopholes in our legal system. There is a large gap between the law and enforcement. The criminals manage through accounting tricks or invoice manipulations to smuggle out or expatriate their ill-gotten wealth because of the presence of the black
holes in the laws with the complicity of their own country’s governments.

Due to the absence of the adequate and stringent laws and enforcement mechanism in place, makes it difficult to trace the source of money coming into the country and going outside the country. The current legal framework is not adequately equipped to deal with the menace of money laundering in India. The current money laundering prevention framework fails to reach its own original goal. The Prevention of Money Laundering Act has become largely a *paper tiger*.

To leave the situation as it stands is clearly a bad legal policy which will have grave consequences in the coming years. If the menace of money laundering is not controlled through effective enforcement of law, it can result in concentration of wealth in the hands of criminals and can encourage perpetrators of crime to repeat offences so as to make more money and masquerade as powerful individuals corrupting the society.