The aim of this paper is to study and evaluate the concept of money laundering in India and its law enforcement. Money laundering happens in almost every country in the world, and a single scheme typically involves transferring money through several countries in order to obscure its origins. The paper initially develops with the idea of money laundering along with the process and techniques used in it. Then it goes on to discuss the impact it has on a nation’s economy and otherwise. It then discusses the various initiatives taken to prevent money laundering with special emphasis on the Indian initiatives particularly focussing on the Prevention of Money Laundering Act, 2002. It discusses, with case references, the status and efforts put in by the law enforcement agencies and where they lack. An attempt is made to identify the problems or the loopholes in the law enforcement and thus suggestive measures are given in order to improve them. In level II analysis, the number of cases filed in the Supreme Court, High Courts and the Tribunals are depicted graphically with the help of different charts also indicating the grounds for filing the same.

INTRODUCTION

Money laundering is a process where the proceeds of crime are transformed into apparently legitimate money or other assets. It is the processing of criminal proceeds to disguise its illegal origin. In simple words, it can be defined as the act of making money that comes from one source to look like it comes from another source. INTERPOL’s definition of money laundering is: "any act or attempted act to conceal or disguise the identity of illegally obtained proceeds so that they appear to have originated from legitimate sources". The act of money laundering is done with the intention to conceal money or other assets from the State so as to prevent its loss through taxation, judgement enforcement or blatant confiscation. The criminals herein try to disguise the origin of money obtained through illegal activities to look like it was obtained from legal sources because otherwise they will not be able to use it as it would connect them to the criminal activity and the law enforcement officials would seize it.

Article 1 of EC Directive defines Money Laundering as “The conversion of property, knowing that such property is derived from serious crime, for the purpose of concealing or

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disguising the illicit origin of the property or of assisting any person who is involved in committing such an offence(s) to evade the legal consequences of his action, and the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, knowing that such property is derived from serious crime.”

The most common types of criminals who need to launder money are drug traffickers, embezzlers, corrupt politicians and public officials, mobsters, terrorists and con artists. Drug traffickers are in serious need of good laundering systems because they deal almost exclusively in cash, which causes all sorts of logistics problems. Criminal activities such as terrorism, illegal arms sales, financial crimes, smuggling, or illicit drug trafficking generate huge sums of money and criminal organizations need to find a way to use these funds without awakening suspicions about their illicit origin. ⁴

The purpose of these criminal organisations is to generate profits for the group or for one of its individual members. When a criminal activity generates substantial profits, the individual or group involved in such activities route the funds to safe heavens by disguising the sources, changing the form or moving the funds to a place where they are less likely to attract attention. The logic of controlling the drug money trial is that profit motivates drug sales, and because most sales are in cash, the recipient of cash has to find some way of converting these funds into utilizable financial resources that appear to have legitimate origins. ⁵

The objective of criminalising money laundering is to take profit out of the crime. The rationale for the creation of the offence is that it is wrong for individuals and organisations to assist criminals to benefit from the proceeds of their criminal activity or to facilitate the commission of such crimes by providing financial services to them. ⁶

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⁶ http://www.int-comp.org/what-is-money-laundering
PROCESS OF MONEY LAUNDERING

Money laundering is a single process however, its cycle can be broken down into three distinct stages namely, placement stage, layering stage and integration stage.  

Placement Stage: It is the stage at which criminally derived funds are introduced in the financial system. At this stage, the launderer inserts the “dirty” money into a legitimate financial institution often in the form of cash bank deposits. This is the riskiest stage of the laundering process because large amounts of cash are pretty conspicuous, and banks are required to report high-value transactions. To curb the risks, large amounts of cash is broken up into less conspicuous smaller sums that are then deposited directly into a bank account, or by purchasing a series of monetary instruments (cheques, money orders, etc.) that are then collected and deposited into accounts at another location.

Layering Stage: It is the stage at which complex financial transactions are carried out in order to camouflage the illegal source. At this stage, the launderer engages in a series of conversions or movements of the money in order to distant them from their source. In other words, the money is sent through various financial transactions so as to change its form and make it difficult to follow. Layering may consist of several bank-to-bank transfers, wire transfers between different accounts in different names in different countries, making deposits and withdrawals to continually vary the amount of money in the accounts, changing the money's currency, and purchasing high-value items such as houses, boats, diamonds and cars to change the form of the money. This is the most complex step in any laundering scheme, and it’s all about making the origin of the money as hard to trace as possible. In some instances, the launderer might disguise the transfers as payments for goods or services, thus giving them a legitimate appearance.

Integration stage: It is the final stage at which the ‘laundered’ property is re-introduced into the legitimate economy. At this stage, the launderer might choose to invest the funds into real estate, luxury assets, or business ventures. At this point, the launderer can use the money without getting caught. It’s very difficult to catch a launderer during the integration stage if there is no documentation during the previous stages.

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8 http://www.fatf-gafi.org/pages/faq/moneylaundering/
At each of the three stages of money laundering various techniques can be utilized. Following are the various measures adopted all over the world for money laundering, even though it is not exhaustive but it encompasses some of the most widely used methods:

1. Structuring Deposits: This is also known as smurfing, this is a method of placement whereby cash is broken into smaller deposits of money, used to defeat suspicion of money laundering and avoid anti-money laundering reporting requirements.

2. Shell companies: These are fake companies that exist for no other reason than to launder money. They take in dirty money as "payment" for supposed goods or services but actually provide no goods or services; they simply create the appearance of legitimate transactions through fake invoices and balance sheets.

3. Third-Party Cheques: Counter cheques or banker’s drafts drawn on different institutions are utilized and cleared via various third-party accounts. Third party cheques and traveller’s cheques are often purchased using proceeds of crime. Since these are negotiable in many countries, the nexus with the source money is difficult to establish.

4. Bulk cash smuggling: This involves physically smuggling cash to another jurisdiction and depositing it in a financial institution, such as an offshore bank, with greater bank secrecy or less rigorous money laundering enforcement.

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9 Smurfs - A popular method used to launder cash in the placement stage. This technique involves the use of many individuals (the "smurfs") who exchange illicit funds (in smaller, less conspicuous amounts) for highly liquid items such as traveller cheques, bank drafts, or deposited directly into savings accounts. These instruments are then given to the launderer who then begins the layering stage. For example, ten smurfs could "place" $1 million into financial institutions using this technique in less than two weeks.


IMPACT OF MONEY LAUNDERING

Launderers are continuously looking for new routes for laundering their funds. Economies with growing or developing financial centres, but inadequate controls are particularly vulnerable as established financial centre countries implement comprehensive anti-money laundering regimes. Differences between national anti-money laundering systems will be exploited by launderers, who tend to move their networks to countries and financial systems with weak or ineffective countermeasures.¹⁴

The possible social and political costs of money laundering, if left unchecked or dealt with ineffectively, are serious. Organised crime can infiltrate financial institutions, acquire control of large sectors of the economy through investment, or offer bribes to public officials and indeed governments. The economic and political influence of criminal organisations can weaken the social fabric, collective ethical standards, and ultimately the democratic institutions of the society. In countries transitioning to democratic systems, this criminal influence can undermine the transition.

If left unchecked, money laundering can erode a nation’s economy by changing the demand for cash, making interest and exchange rates more volatile, and by causing high inflation in countries where criminal elements are doing business. The draining of huge amounts of money a year from normal economic growth poses a real danger for the financial health of every country which in turn adversely affects the global market.¹⁵ Most fundamentally, money laundering is inextricably linked to the underlying criminal activity that generated it. Laundering enables criminal activity to continue.

Thus, the impact of money laundering can be summed up into the following points:

→ Potential damage to reputation of financial institutions and market
→ Weakens the “democratic institutions” of the society
→ Destabilises economy of the country causing financial crisis
→ Give impetus to criminal activities
→ Policy distortion occurs because of measurement error and misallocation of resources
→ Discourages foreign investors

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→ Causes financial crisis
→ Encourages tax evasion culture
→ Results in exchange and interest rates volatility
→ Provides opportunity to criminals to hijack the process of privatisation Contaminates legal transaction.\textsuperscript{16}

PREVENTION OF MONEY LAUNDERING – GLOBAL INITIATIVES

Since money laundering is an international phenomenon, transnational co-operation is of critical importance in the fight against this menace. A number of initiatives have been taken to deal with the problem at the international level. The major international agreements addressing money laundering include the United Nations Convention against Illicit Trafficking in Drugs and Psychotropic Substances, popularly known as the Vienna Convention and the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime. The role of financial institutions in preventing and detecting money laundering has also been the subject of pronouncements by the Basle Committee on Banking Regulation Supervisory Practices, the European Union and the International Organization of Securities Commissions.

➢ THE VIENNA CONVENTION

It was the first major initiative in the prevention of money laundering held in December 1988. This convention laid down the groundwork for efforts to combat money laundering by obliging the member states to criminalize the laundering of money from drug trafficking. It promotes international cooperation in investigations and makes extradition between member states applicable to money laundering. The convention also establishes the principle that domestic bank secrecy provisions should not interfere with international criminal investigations.18

➢ THE COUNCIL OF EUROPE CONVENTION

This convention in 1990 establishes a common policy on money laundering. It sets out a common definition of money laundering and common measures for dealing with it. The Convention lays down the principles for international cooperation among the member states, which may also include states outside the Council of Europe. One of the purpose of this convention is to facilitate international cooperation as regards investigative assistance, search, seizure and confiscation of the proceeds of all types of criminality, particularly serious crimes such as drug offences, arms dealing, terrorist offences etc. and other offences which generate large profits.

17 The Vienna Convention – 19th December 1988. A delegation of 106 States participated in the Convention. Mr. Guillermo Bedregal Gutiérrez (Bolivia) was elected President of the Convention. As of 24 March 2003, there were 167 parties and 87 signatories to this convention. (http://untreaty.un.org/english/treatyevent2003/Treaty_7.htm)
BASLE COMMITTEE’S STATEMENT OF PRINCIPLES

In December 1988, the Basle Committee on Banking Regulations and Supervisory Practices issued a statement of principles which aims at encouraging the banking sector to adopt common position in order to ensure that banks are not used to hide or launder funds acquired through criminal activities. The Statement of Principles does not restrict itself to drug-related money laundering but extends to all aspects of laundering through the banking system, i.e. the deposit, transfer and/or concealment of money derived from illicit activities whether robbery, terrorism, fraud or drugs. It seeks to deny the banking system to those involved in money laundering by the application of the four basic principles namely, identifying the customer, compliance with the laws, cooperation with Law Enforcement Agencies and adherence to the Statement.

THE FINANCIAL ACTION TASK FORCE (FATF)

The FATF is an inter-governmental body established at the G7 summit at Paris in 1989 with the objective to set standards and promote effective implementation of legal, regulatory and operational measures to combat money laundering and terrorist financing and other related threats to the integrity of the international financial system.19

The FATF has developed a series of Recommendations that are recognised as the international standards for combating money laundering and the financing of terrorism. They form a basis for a co-ordinated response to these threats to the integrity of the financial system and help ensure a level playing field. In April 1990, it issued a report containing a set of Forty Recommendations, which were intended to comprehensive plan of action needed to fight against money laundering. In October 2001, it issued the Eight Special Recommendations to deal with the issue of terrorist financing. In October 2004, it published a Ninth Special Recommendation, further strengthening the agreed international standards for combating money laundering and terrorist financing.20

20 Ibid.
GPML was established in 1997 with a view to increase effectiveness of international action against money laundering through comprehensive technical cooperation services offered to Governments. The programme encompasses following 3 areas of activities, providing various means to states and institutions in their efforts to effectively combat money laundering:

1. Technical cooperation is the main task of the Programme. It encompasses activities of creating awareness, institution building and training.

2. The research and analysis aims at offering States Key Information to better understand the phenomenon of money laundering and to enable the international community to devise more efficient and effective countermeasure strategies.

3. The commitment to support the establishment of financial investigation services for raising the overall effectiveness of law enforcement measures.
PREVENTION OF MONEY LAUNDERING – INDIAN INITIATIVES

In India, before the enactment of Prevention of Money Laundering Act, 2002 (PMLA) the major statutes that incorporated measures to address the problem of money laundering were:

→ The Income Tax Act, 1961
→ The Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (COFEPOSA)
→ The Smugglers and Foreign Exchange Manipulators Act, 1976 (SAFEMA)
→ The Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPSA)
→ The Benami Transactions (Prohibition) Act, 1988
→ The Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988
→ The Foreign Exchange Management Act, 2000, (FEMA)

During the second half of the 20th century, with the increasing threat of modern and sophisticated forms of transnational criminal activity, concern has arisen over the lack of effective national laws to combat organized crime and the laundering of its proceeds. India has had separate laws to deal with smuggling, narcotics, foreign trade violations, foreign exchange manipulations etc, and also special legal provisions for preventive detention and forfeiture of property etc, which were enacted over a period of time to deal with such serious crimes. However, the provisions under one of the Indian laws, namely, the Foreign Exchange Regulation Act, 1973 (FERA) were considered to be ‘draconian’ and it was repealed making foreign exchange violations civil offences under a new law called the Foreign Exchange Management Act (FEMA).21

PREVENTION OF MONEY LAUNDERING ACT, 2002

In view of an urgent need for the enactment of a comprehensive legislation for preventing money laundering and connected activities, confiscation of proceeds of crime, setting up of agencies and mechanisms for coordinating measures for combating money laundering etc., the Prevention of Money Laundering Bill 1998 was introduced in Parliament on 4th August, 1998. The Bill received the assent of the President and became Prevention of Money Laundering Act, 2002 on 17th January 2003. The Act has come into force with effect from 1st July 2005. It has been amended in 2005, 2009 and recently in 2012. The objective of the Act

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is to prevent money-laundering and to provide for confiscation of property derived from, or involved in, money-laundering and for matters connected therewith or incidental thereto.

**SCHEME OF THE ACT**

The Act consists of 10 chapters containing 75 sections and 1 schedule divided in 5 parts. Chapter I contain section 1 and 2 which deals with short title, extent and commencement and definitions. Chapter II contain section 3 and 4 which provide for offences and punishment for money laundering. Chapter III has sections 5-11 which provide for attachment of property, adjudication and confiscation. Chapter IV has sections 12-15 which deals with obligations of banking companies, financial institutions and intermediaries. Chapter V has sections 16-24 which relates to summons, searches, seizures, retention, presumptions etc. Chapter VI has sections 25-42 which deals with the establishment, composition, qualifications, powers and procedures etc of the Appellate Tribunal. Chapter VII has sections 43-47 which deal with Special Courts and Chapter VIII has sections 48-54 which provide for various authorities under the Act their appointment, powers, jurisdiction etc. Chapter IX has sections 55-61 which deals with reciprocal arrangement for assistance in certain matters and procedure for attachment and confiscation of property. Chapter X has sections 62-75 which deals miscellaneous provisions including punishments, cognizance of offences, offences by companies etc.

**SALIENT FEATURES OF THE ACT**

1. **Offence of Money Laundering and its punishment**

An offence of money laundering is said to be committed when a person in any way deals with the proceeds of crime. The proceeds of the crime referred above include the normal crimes and the scheduled crimes. The prescribed punishment is 3-7 years rigorous imprisonment for an offence of money laundering with fine. In case of an offence mentioned under Part A, imprisonment would extend up to 10 years.

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22 Section 2(u) of the Act: any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property or where such property is taken or held outside the country, then the property equivalent in value held within the country.

23 Crimes which are not mentioned specifically in the schedule of the Act.

24 The crimes which are mentioned in the Part A and Part B and now Part C (added in PML Bill -08) of the Schedule attached to the Act, if the total value involved in such offences is thirty lakh rupees or more (this limit has also been removed under PML Bill 08)

25 Section 3 of the PMLA.

26 Section 4 of the PMLA.

27 These deal with the offences under the Narcotic Drugs and Psychotropic Substances Act, 1985, Sections 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25A, 27A, 29.
II. Attachment, Adjudication and Confiscation

The confiscation of the property under the Act is dealt with in accordance with the chapter III of the said Act. An official not below the rank of Deputy Director can order attachment of proceeds of crime for a period of 180 days, after informing the Magistrate. Thereafter he will send a report containing material information relating to such attachment to the Adjudicating Authority. Section 8 details the procedure of adjudication. After the official forwards the report to the Adjudication Authority, this Authority should send a show cause notice to concerned person(s) within 30 days. After considering the response and all related information, the Authority can give finality to the order of attachment and make a confiscation order, which will thereafter be confirmed or rejected by the Special Court.

III. Obligations of Banking Companies, Financial Institutions and Intermediaries

The reporting entity is required to keep a record of all material information relating to money laundering and forward the same to the Director. Such information should be preserved for 5 years. The functioning of the reporting entity will be supervised by the Director who can impose any monetary penalty or issue warning or order audit of accounts, if the entity violates its obligations. The Central Government, after consulting the Reserve Bank of India is authorised to specify rules relating to managing information by the reporting entity.

IV. Enforcement Paraphernalia

- **Adjudicating Authority** - The Act empowers the Central Government to constitute an Adjudicating Authority having a Chairman and 2 members and define their scope of functioning and other terms of service. The Adjudicating Authority will operate through a Single or Division bench. The Authority has been given autonomous powers to regulate its adjudicating procedure.

- **Administrator** - The property laundered will be taken care of i.e. managed after confiscation by an Administrator who will act in accordance with the instructions of the Central Government.

- **Appellate Tribunal** - All appeals from an order made by the Adjudicating Authority will lie to an Appellate Tribunal constituted by the Central Government.
consist of 2 members headed by a Chairman. An official can resign by sending his resignation to the Central Government thereby giving a 3 months’ notice. He can also be removed by an order made by the Central Government on the grounds of misbehaviour or incapacity.

- **Special Courts** - the Central Government, after consulting the High Court is empowered to designate Court of Sessions as Special Courts. The Special courts can try all scheduled offences and that under section 4 and also offence under section 3, but after the authority requests in this behalf.

- **Authorities under the Act** - There shall be the following classes of authorities for the purposes of this Act, namely:
  (a) Director or Additional Director or Joint Director,
  (b) Deputy Director,
  (c) Assistant Director, and
  (d) such other class of officers as may be appointed for the purposes of this Act.

V. Summons, Searches and Seizures etc.

The power of surveying and scrutinizing records kept at any place is conferred on the Adjudicating Authority. The Authority may ask any of its officials to carry on the search, collect all relevant information, place identification marks and thereafter send a report to it. The search of a person to be conducted is allowed if it is ordered by the Central Government. The authority authorized in this behalf cannot detain a person beyond 24 hours, must ensure the presence of 2 witnesses, prepare a list of things seized signed by the witnesses and forward the same to the Adjudicating Authority.

A property confiscated or frozen under this Act can be retained for 180 days. This period can be extended by the Adjudicating Authority after being satisfied of the merits of the case. The Court or the Adjudicating Authority can subsequently also order the release of such property. There shall be a presumption of the ownership of property and records recovered

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35 Section 25 of PMLA.
36 Section 27 of PMLA.
37 Section 32 of PMLA.
38 Section 43 of PMLA.
39 Section 44 of PMLA.
40 Section 48 of PMLA.
41 Section 16 of PMLA.
42 Section 18 of PMLA.
43 Retention of Property u/s 20 of PMLA.
from a person's possession.\textsuperscript{44} The burden of proof will be on the accused to prove that he is not guilty of an offence under this Act.\textsuperscript{45}

The offences under the Act are to be cognizable and non-bailable.\textsuperscript{46}

**ANTI MONEY LAUNDERING STANDARDS**

RBI issued Master Circular on Know Your Customer (KYC) norms/ Anti-Money Laundering (AML) standards/ Combating of Financing of Terrorism (CFT)/ Obligation of banks under Prevention of Money Laundering Act, 2002 and Banks were advised to follow certain customer identification procedure for opening of accounts and monitoring transactions of a suspicious nature for the purpose of reporting it to appropriate authority. These KYC guidelines have been revisited in the context of the Recommendations made by the Financial Action Task Force (FATF) on Anti-Money Laundering (AML) standards and on Combating Financing of Terrorism (CFT). Banks have been advised to ensure that a proper policy framework on KYC and AML measures with the approval of the Board is formulated and put it place.

The Objective of KYC Norms/ AML Measures/ CFT Guidelines is to prevent banks from being used, intentionally or unintentionally, by criminal elements for money laundering or terrorist financing activities. KYC procedures also enable banks to know/ understand their customers and their financial dealings better which in turn help them manage their risks prudently.

**OBLIGATION OF BANKS**

Banks should keep in mind that the information collected from the customer for the purpose of opening of account is to be treated as confidential and details thereof are not to be divulged for cross selling or any other like purposes. Banks should, therefore, ensure that information sought from the customer is relevant to the perceived risk, is not intrusive, and is in conformity with the guidelines issued in this regard. Any other information from the customer should be sought separately with his/her consent and after opening the account.

Banks should ensure that any remittance of funds by way of demand draft, mail/ telegraphic transfer or any other mode and issue of traveller’s cheques for value of Rupees fifty thousand

\textsuperscript{44} Presumption as to records or property in certain cases u/s 22 PMLA.

\textsuperscript{45} Section 24 of PMLA.

\textsuperscript{46} Section 45 of PMLA.
and above is effected by debit to the customer’s account or against cheques and not against cash payment.

Banks should ensure that provisions of Foreign Contribution (Regulation) Act, 1976 as amended from time to time, wherever applicable are strictly adhered to.

**KYC Policy**

Banks should frame their KYC policies incorporating the following four key elements:

- Customer Acceptance Policy;
- Customer Identification Procedures;
- Monitoring of Transactions; and
- Risk Management.

For the purpose of KYC policy, a ‘Customer’ is defined as:

- A person or entity that maintains an account and/or has a business relationship with the bank;
- One on whose behalf the account is maintained (i.e. the beneficial owner);
- Beneficiaries of transactions conducted by professional intermediaries, such as Stock Brokers, Chartered Accountants, Solicitors etc. as permitted under the law; and
- Any person or entity connected with a financial transaction which can pose significant reputational or other risk to the bank, say, a wire transfer or issue of a high value demand draft as a single transaction.

**THE FINANCIAL INTELLIGENCE UNIT - INDIA (FIU-IND)**

While the Prevention of Money Laundering Act (PMLA) 2002, forms the core framework for combating money laundering in the country, The Financial Intelligence Unit - India (FIU-IND) is the nodal agency in India for managing the AML ecosystem and has significantly helped in coordinating and strengthening efforts of national and international intelligence, investigation and enforcement agencies in pursuing the global efforts against money laundering and related crimes. These are specialized government agencies created to act as an interface between financial sector and law enforcement agencies for collecting, analysing and disseminating information, particularly about suspicious financial transactions.

In terms of the PMLA Rules, banks are required to report information relating to cash and suspicious transactions and all transactions involving receipts by non-profit organizations of
value more than rupees ten lakh or its equivalent in foreign currency to the Director, FIU-IND in respect of transactions.

It receives prescribed information from various entities in financial sector under the Prevention of Money Laundering Act 2002 (PMLA) and in appropriate cases disseminates information to relevant intelligence/ law enforcement agencies which include Central Board of Direct Taxes, Central Board of Excise & Customs Enforcement Directorate, Narcotics Control Bureau, Central Bureau of Investigation, Intelligence agencies and regulators of financial sector. FIU-IND does not investigate cases.47

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JUDICIAL PRONOUNCEMENTS

➢ THE FAKE STAMP PAPER OR TELGI SCAM

The syndicate led by Abdul Karim Telgi used the chemically washed stamps and thus reintroduced the used stamp papers back into the system simply by washing them in the chemicals so as to remove the original contents. This was made possible because of the loophole in the system where there was no branding of new stamps and the used stamp papers were not cancelled. Also, the receipt used by Central Stamp Office does not have any security features so his allowed the accused to replicate them and show them as a genuine copy in order to convince the customers. Additionally, he cultured officials at the Security Press in Nashik, where stamp papers were printed. With their participation he used government machinery to print stamp paper and eventually bought some of the machinery and started counterfeiting on his own.

The trial court held that evidences show that Abdul Karim Telgi hired an office at City Centre, Indore and he also took apartment on rent and was carrying on business of sale of fake Government revenue papers causing loss to the Government and corresponding gain to himself. The Court thus, found the accused guilty of the offences and sentenced him to various terms of imprisonment.

The accused filed an appeal to the High Court against the order of the Trail Court. While dismissing the appeal the Court held that considering the making out of a consummate crime and resultant loss caused to the public revenue by sale of fake, counterfeit stamp papers, adhesive stamps, non-judicial stamp papers, Appellant has caused substantial loss to the Government and corresponding gain to himself by his 'white collar' crime. It was an economic crime which has cascading effect. This is one of those exceptional cases where the law should come down with heavy hands to deal such kind of persons who are a menace to the Society.

Observation: The Court does not blindly follows the provisions of the Act but look into the depth of the activities of the accused, the loss and damages caused to the Government and the public; and gives punishment which is proportional to the criminal act.

48 Abdul Karim Telgi and Sohail Khan vs. Union of India, through CBI, 2014(2)JLJ136
PAREENA SWARUP vs. UNION OF INDIA, 49

In this case, the Supreme Court has determined the constitutionality of the Adjudicating Authorities and the Appellate Tribunal under the PMLA, 2002. A Public Interest Litigation was filed under Article 32 of the Constitution seeking to declare various sections of the Act such as Section 6 which deals with adjudicating authorities, composition, powers etc., Section 25 which deals with the establishment of Appellate Tribunal, Section 27 which deals with composition etc. of the Appellate Tribunal, Section 28 which deals with qualifications for appointment of Chairperson and Members of the Appellate Tribunal, Section 32 which deals with resignation and removal, Section 40 which deals with members etc. as ultra vires of Articles 14, 19(1)(g), 21, 50, 323B of the Constitution of India. It was also pleaded that these provisions are in breach of scheme of the Constitutional provisions and power of judiciary.

The Court said that it is necessary to draw a line which the executive may not cross in their misguided desire to take over bit by bit and judicial functions and powers of the State exercised by the duly constituted Courts. While creating new avenue of judicial forums, it is the duty of the Government to see that they are not in breach of basic constitutional scheme of separation of powers and Independence of the judicial function. The Court agreed that the provisions of Prevention of the Money Laundering Act are so provided that there may not be independent judiciary to decide the cases under the Act but the Members and the Chairperson to be selected by the Selection Committee headed by Revenue Secretary. Thus, the Court found merit in the arguments of the Petitioner and ordered to implement amended rules in the Act which can be seen by way of amendment of 2008 in the Act. 50

Observation: The Court maintained the basic structure of the Constitution which includes separation of powers and independence of judiciary and did not allow the Executive to act beyond their powers curbing the judicial powers.

50 Ibid.
The allegation against the accused is that they have committed an offence punishable under Section 4 of the Prevention of Money Laundering Act, 2002. The said case has been registered on the basis of a complaint filed by the Deputy Director, Directorate of Enforcement on the basis of the Report based on certain information and documents received from the Income Tax Department.

An investigation was also conducted under the Foreign Exchange Management Act, 1999, (‘FEMA’). Show-cause notices were issued to the accused for alleged violation of Sections 3A and 4 of FEMA for dealing in and acquiring and holding foreign exchange to the extent of Rs.36,000 crores approximately in Indian currency, in his account with the Union Bank of Switzerland. Inquiries also revealed that Shri Hassan Ali Khan had obtained at least three Passports in his name by submitting false documents, making false statements and by suppressing the fact that he already had a Passport.

Based on the aforesaid material, the Directorate of Enforcement arrested the accused and produced him before the Special Judge, PMLA and was remanded in custody which was rejected and the accused was released on bail. The Union of India thereupon filed Special Leave Petition and upon observing that the material made available on record prima facie discloses the commission of an offence by the accused punishable under the provisions of the PMLA, the Supreme Court disposed of the appeal as well as the Special Leave Petition and set aside the order of the Special Judge, PMLA and directed that the accused be taken into custody. Thereafter, the accused was remanded into custody from time to time.

Observation: The offence of money laundering is an offence of a grave nature. A person indulged in it cannot escape from the hands of the law. If such an offence is committed, strict actions will be taken.

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ANOSH EKKA vs. CENTRAL BUREAU OF INVESTIGATION

In this case, after the accused became M.L.A. and then the Minister, he acquired enormous moveable and immovable assets in his own name and in the name of his family members within a short period of three years. By his influence he got the works allotted in the name of his fictitious construction Company. Apart from that he also indulged in Money Laundering. Absolutely evasive replies were given by him and his wife about the assets. The CBI is collecting materials from different parts of the country and from outside the country also.

Bail of the accused was earlier rejected twice upto the Supreme Court. However, liberty was given to renew the prayer if there is inordinate delay in completing the investigation. But from the records, it appeared that the accused himself was responsible for delaying the investigation/the trial on one pretext or the other. The supposed ground of sickness was taken on number of dates to avoid appearance in court and for remaining in hospitals for long periods. Prima facie, the accused, who claimed to be a public representative, was involved in looting and laundering enormous public money. He has not only tampered with the evidences but has been also abusing the process of law and is making contempt of the justice delivery system.

Observation: The accused cannot take advantage of the wrong done by him.

HARI NARAYAN RAI vs. THE UNION OF INDIA

The offence committed is punishable under Section 3 and 4 of the Prevention of Money laundering Act, 2002. The High Court held that it was clear that the offence under the said Act would continue till the accused continues to hold proceeds of crime and got himself involved in the process and activity connected with the proceeds of crime projecting the same as untainted property and in the present case, the accused had been attempting to convert and project the proceeds of crime in the aforesaid manner. Further, sufficient material had been collected during investigation to prove the guilt of petitioner. Section 45 of the Act provides that bail was to be granted by the Appellate Court only on the satisfaction that there were reasonable grounds for believing that the Petitioner was not guilty of such offence and that he was not likely to commit any offence while on bail. But since the allegations against the petitioner were very serious and sufficient material had come up against him, his prayer for bail was rejected.
Observation: Though Section 45 of PMLA gives a provision to grant bail if the Court is satisfied that the accused is not likely to commit any act in furtherance of the offence, but it can be rejected looking into the seriousness of the offence and the material collected against the offender during investigation.

ARUN KUMAR MISHRA vs. DIRECTORATE OF ENFORCEMENT

The CBI received information that five employees of Punjab National Bank and other persons had during the period from November, 2005 to December 2006 entered into a criminal conspiracy and made false entries in the accounts of PNB allowing deposits and withdrawal from five fictitious accounts maintained in the name of non-existent persons. By doing so, said persons misappropriated the funds of PNB and also caused a pecuniary gain to themselves or any other persons and correspondingly pecuniary loss to the PNB.

The commission of the alleged offences was during the period from November, 2005 to December, 2006. Section 3 of the PMLA specifically mandates that the act of money laundering should be intentional; therefore, it has to be traced to the point of time when the actual transaction took place. The offence punishable under Section 120B IPC and Section 13 of the PC Act were inserted in the schedule of PMLA w.e.f. 01.06.2009 i.e. after the period in which the alleged offences have been committed. It is settled principle of law that the provisions of law cannot be retrospectively applied, as Article 20(1) of the Constitution bars the ex-post facto penal laws and no person can be prosecuted for an alleged offence which occurred earlier, by applying the provisions of law which have come into force after the alleged offence.

Thus, the court disposed off the case stating that if the offence of money laundering is established against the petitioner in this case, then the Enforcement Directorate shall be at liberty to initiate fresh proceedings against the petitioner in accordance with law, thereafter.

Observation: If an offence is committed under any Act and needs an action, the accused shall, in no case, be held liable under the Act by a retrospective effect as it will be violative of fundamental rights enshrined in part III of the Constitution of India. Fresh proceedings may be initiated.

52 In the High Court of Delhi (2015)
Brief facts of the case are: The petitioner lodged an F.I.R. alleging commission of certain scheduled offences, certain offences under the Prevention of Corruption Act, 1988 as well as commission of offences under Sections 3 and 4 of the Money-Laundering Act. The substance of the allegations in the FIR is that Amar Singh while holding the office of the Chairman of the Uttar Pradesh Development Council, misused his official position and awarded various Government contracts worth thousands of crores to companies owned and controlled by him and he also received kickbacks in the form of commission. It was also alleged that he indulged in Money-Laundering business by creating a web of shell companies. Thus, he was in possession of wealth disproportionate to his known sources of income and misused his position by indulging in Money-Laundering business by conspiring with other Directors, officials and statutory authorities. So far as the offences under the Money-Laundering Act are concerned the Enforcement Directorate had completed the investigation but on the basis of materials made available during investigation, the Directorate did not find anything against Amar Singh to submit a charge-sheet and therefore, the investigation has been closed but no report has been submitted in any Court.

The Court held that the Enforcement Directorate is duty bound to submit final report or charge-sheet, as the case may be, before the Court which is designated as Special Court by the Central Government in consultation with the Chief Justice of the High Court under Section 43 of the Money-Laundering Act. In the present case, admittedly after completing investigation the Enforcement Directorate has not filed the final report on the ground that there is no provision for submission of the final report under the Money-Laundering Act. Since the term 'investigation' shall also include submission of final report as defined in the Code, it was directed by the Court that if the process is issued by the Magistrate or upon a further investigation a charge-sheet is submitted in respect of any scheduled offence, the Enforcement Directorate will submit the Final Form before the designated Court so that the designated Court shall be in a position to examine the efforts made by way of investigation, the evidence collected during the investigation and find out as to whether the final report was justified or not.

53 2013 (6) ADJ 672.
Observation: The judgement in this case gives us an example that the Court keep a strict check and control over the actions of the Authorities under the PMLA and direct them to do the acts which they are duty bound to do.

> B. RAMA RAJU, s/o B. RAMALINGA RAJU vs. UNION OF INDIA

In this case, a writ petition was filed challenging certain provisions of the Prevention of Money Laundering Act, 2002 including its amendments.

The provision of attachment and confiscation under Section 2(1) of the PMLA 2002 was challenged. The issue was whether property owned by or in possession of person, other than person charged of having committed a scheduled offence is liable to attachment and confiscation proceedings and if so whether Section 2(1)(u) was invalid. It was held that object of Act is to prevent money laundering and connected activities and confiscation of "proceeds of crime" and preventing legitimizing of money earned through illegal and criminal activities by investments in moveable and immovable properties often involving layering of money generated through illegal activities. Therefore, the Act defines expression "proceeds of crime" expansively to sub-serve broad objectives of Act. Thus property owned or in possession of a person, other than a person charged of having committed scheduled offence was equally liable to attachment and confiscation proceedings under Chapter III.

Retrospective operation of section 5 of PMLA 2002 was also challenged. The issue was whether provisions of second proviso of Section 5 were applicable to property acquired prior to enforcement of this provision and if so, whether provision is invalid for retrospective penalization. It was held that huge quanta of illegally acquired wealth corrodes vitals of rule of law; fragile patina of integrity of some of our public officials and State actors; and consequently threatens sovereignty and integrity of Nation. Parliament has authority to legislate and provide for forfeiture of proceeds of crime which is a produce of specified criminality acquired prior to enactment of Act as well. It has also authority to recognise degrees of harm such conduct has on fabric of society and to determine appropriate remedy. Thus provisions of second proviso to Section 5 were applicable to property acquired even prior to coming into force of this provision and even so were not invalid for retrospective penalization.55

54 [2011] 108 SCL 491 (AP); Centre for Public Interest Litigation vs. The Union of India, (2011) 1 SCC 560

55 Ibid.
Procedure to acquisition u/s 8 of PMLA 2002 was also challenged. The issue was whether provisions of Section 8 were invalid for procedural vagueness and for exclusion of mens rea of criminality in acquisition of such property and for enjoining deprivation of possession of immovable property even before conclusion of guilt/conviction in prosecution for an offence of money laundering? It was held that considering object and scheme of Act, provisions of Section 8 could not be held invalid for vagueness; incoherence as to onus and standard of proof; ambiguity as regards criteria for determination of nexus between property targeted for attachment/confirmation and offence of money-laundering; or for exclusion of mens rea/knowledge of criminality in acquisition of such property. Section 8(4) which enjoined deprivation of possession of immovable property pursuant to order confirming provisional attachment and before conviction of accused for offence of money-laundering, was valid.

Presumption in respect of inter-connected transactions u/s 23 of PMLA 2002 was also challenged. The issue was whether presumption enjoined by Section 23 was unreasonably restrictive, excessively disproportionate? It was held that Section 23 enjoins a rule of evidence and rebuttable presumption considered essential and integral to effectuation of purposes of Act in legislative wisdom. Thus, validity of provision was upheld.

Shifting of burden of proof under Sections 3 and 24 of PMLA 2002 was also challenged. The issue was whether shifting/imposition of the burden of proof, by Section 24 is arbitrary and invalid and was applicable only to trial of offence under Section 3? It was held that where property is in ownership, control or possession of person not accused of having committed an offence under Section 3 and where such property is part of inter-connected transactions involved in money laundering, then and in such event presumption enjoined in Section 23 comes into operation and not inherence of burden of proof under Section 24 of Act. Therefore person other than one accused of having committed offence under Section 3 is not imposed the burden of proof enjoined by S 24. On person accused of offence under Section 3 however burden applies, also for attachment and confiscation proceedings.\(^{56}\)

\(^{56}\) Ibid.
GLOBAL MONEY LAUNDERING RING OF IQBAL MIRCHI

A full-blown investigation into suspected terror funding and hawala (illegal money transaction) operations of the infamous 'D' company has been launched with the Enforcement Directorate (ED) bringing under its scanner a Rs. 3,000 crore global money laundering ring allegedly involving family members and associates of late Iqbal Mirchi—who was a right-hand man of fugitive Pakistan-based don Dawood Ibrahim. Mirchi, who died in 2013 in the UK, is suspected to have laundered and moved funds through the hawala route to purchase a host of properties in at least 10 or more countries with the help of his associates.

The agency which has registered a case under the Foreign Exchange Management Act (FEMA) recently to probe the entire range of complex real estate transactions found that at least four buildings located in Mumbai were sold off by Mirchi’s family in 2010 by creating “fictitious identities” and front companies in “contravention of RBI guidelines and FEMA rules.” The agency has also issued notices to Mirchi’s widow, two sons, relatives, lawyers and business associates in connection with its investigation conducted under the Foreign Exchange Management Act (Fema). The agency has also contacted the Reserve Bank of India (RBI) to obtain records on Mirchi and his associates’ business and banking operations in India. The ED has handed over the investigation of the case to a special investigation team as it has identified numerous assets used to run the hawala racket.

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57 Iqbal Mohammed Memon vs. State Of Maharashtra (1996 CriLJ 2418); Hajra Iqbal Memon vs. Union of India (AIR 1999 Delhi 271)
58 Ibid.
RESEARCH ANALYSIS

Money laundering is, thus, a very serious offence and it should not be taken lightly as any other local crime. This study was supposed to be limited for money laundering in Indian perspective but could not be done so as it is neither possible nor relevant to discuss the issue of money laundering without taking its international aspect as every act of money laundering involves various transactions, national and/or international, with the aim of obscuring the origin of proceeds of crime.

India has taken up various Anti-Money Laundering measures to curb with this issue but these measures somewhere or the other have some loopholes or lacunas and thus is not fulfilling their complete purpose. Some of such problems are pointed out below:

➢ Growth of Technology: with the advent of technology at such a greater speed it has been possible for the money launderers to act on obscuring the origin of proceeds of crime by cyber finance techniques. The enforcement agencies are not able to match up with the speed of growing technologies.

➢ Lack of awareness about the problem: the issue of money laundering is growing at a very high pace. Its unawareness among the common public is an impediment for implementation of proper anti-money laundering measures. The poor and illiterate people, instead of going through lengthy paper work transactions in Banks, prefer the Hawala system where there are fewer complexities and formalities, little or no documentation, lower rates and they also provide security and anonymity. This is mainly because such people don’t know the seriousness of this crime and are not aware of its harmful after effects.

➢ Non-fulfilment of the purpose of KYC Norms: RBI has issued the policy of KYC norms with the objective to prevent banks from being used by criminals for money laundering or terrorist financing activities. However, it does not cease or abstain from the problem of Hawala transactions as RBI cannot regulate them. Further, such norms are only a mockery as the implementing agencies are indifferent to it. Also, the increasing competition in the market is forcing the Banks to lower their guards and thus facilitating the money launderers to make illicit use of it in furtherance of their crime.
➢ The widespread act of smuggling: there are a number of black market channels in India for the purpose of selling goods offering many imported consumers goods such as food items, electronics etc. which are routinely sold. The black merchants deal in cash transactions and avoid custom duties thus offering better prices than the regular merchants. After liberalization of government, though this problem has been lessened but it has not been done away with completely and still poses a threat to a nation’s economy.

➢ Lack of comprehensive enforcement agencies: the offence of money laundering is no more stuck to one area of operation but has expanded its scope include many different areas of operation. In India, there are separate wings of law enforcement agencies dealing with money laundering, cyber crimes, terrorist crimes, economic offences etc. Such agencies lack convergence among themselves. The issue of money laundering, as we have seen, is a borderless world but these agencies are still stuck with the laws and procedures of the states.

Combating the offence of money laundering is a dynamic process since the criminals involved in it are continuously looking for new ways to do it and achieve their illicit motives. Moreover, since various countries are entering into multiple agreements and conventions in order to strengthen their measures to combat money laundering, the money launderers are targeting and exploiting those jurisdictions which are weak and do not have sufficient laws to deal with such an offence. There is an urgent need for a definite policy of anti-money laundering. The criminals dealing with these activities do not have any particular pattern i.e. they have distinct patterns of operation.

India has taken extensive measures in order to curb with the issue of money laundering. It can rightly be said that the manpower has been tripled as there is Directorate of Enforcement which leads all the money laundering cases and investigations related to it in the country; there is also Financial Intelligence Unit which tracks down and analyses the risk of money laundering through the agencies reporting to it and there is time to time upgradation of the legislative framework through the proposed changes. However, there is still a further need to increase the enforcement and take more strict actions against the persons violating them. Also, the financial institutions are required to implement additional levels of control in areas such as transaction monitoring, annual review, periodic updation of accounts etc. Moreover, cost factor also plays a very significant role in having an effective anti-money laundering regime as high costs and low budget may lead to reduced focus and thus higher risks.
SUGGESTIONS

As it can be seen that money laundering involves activities that are international in nature and are also at a greater level, therefore, to make a heavy impact it is necessary that all countries should enact strict and as far as possible same laws so that the money launderers will have no place to target in order to launder their proceeds of crime by way of weakness of jurisdiction or the like. Since the States have no obligation in deciding which offences should be considered as predicate offences to money laundering there is no consensus into the international harmonizing efforts for anti-money laundering. Thus, there is a need to enlist common predicate offences to solve the problem internationally particularly keeping in mind the trans-national character of the offence of money laundering.

Furthermore, the provision of financial confidentiality in other countries is an issue. The states are unwilling in compromising with this confidentiality. There is a need to draw a line between such financial confidentiality rules and these financial institutions becoming money laundering havens.

Apart from that, many a people are of the opinion that money laundering seem to be a victimless crime. They are unaware of the harmful effects of such a crime. So there is a need to educate such people and create awareness among them and therefore infuse a sense of watchfulness towards the instances of money laundering. This would also help in better law enforcement as it would be subject to public examination.

Moreover, to have effective anti-money laundering measures there need to be a proper coordination between the Centre and the State. For that the tussle between the two should be removed. The laws should not only be the responsibility of the Centre but it should be implemented at the State level also. The more decentralised the law would be the better reach it will have. Therefore, to have an effective anti-money laundering regime, one has to think regionally, nationally and globally.
LEVEL II ANALYSIS

SUPREME COURT & HIGH COURTS

The number of cases filed under the Prevention of Money Laundering Act, 2002 from the year 2008 till 2015 in various High Courts and the Supreme Court are:

<table>
<thead>
<tr>
<th>Year</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
<th>2012</th>
<th>2013</th>
<th>2014</th>
<th>2015</th>
</tr>
</thead>
<tbody>
<tr>
<td>No. of Cases filed</td>
<td>2</td>
<td>4</td>
<td>12</td>
<td>22</td>
<td>18</td>
<td>23</td>
<td>18</td>
<td>16</td>
</tr>
</tbody>
</table>

The table can be depicted in terms of percentage in the following chart where the total number of cases filed during the aforementioned period is 115.
The number of cases filed under the Prevention of Money Laundering Act, 2002 in various High Courts and the Supreme Court individually are:

<table>
<thead>
<tr>
<th>S. No.</th>
<th>Name of Courts</th>
<th>No. of Cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Supreme Court</td>
<td>20</td>
</tr>
<tr>
<td>2</td>
<td>Allahabad High Court</td>
<td>3</td>
</tr>
<tr>
<td>3</td>
<td>Andhra Pradesh High Court</td>
<td>13</td>
</tr>
<tr>
<td>4</td>
<td>Bombay High Court</td>
<td>13</td>
</tr>
<tr>
<td>5</td>
<td>Calcutta High Court</td>
<td>3</td>
</tr>
<tr>
<td>6</td>
<td>Delhi High Court</td>
<td>16</td>
</tr>
<tr>
<td>7</td>
<td>Gujarat High Court</td>
<td>3</td>
</tr>
<tr>
<td>8</td>
<td>Himachal Pradesh High Court</td>
<td>2</td>
</tr>
<tr>
<td>9</td>
<td>Jharkhand High Court</td>
<td>20</td>
</tr>
<tr>
<td>10</td>
<td>Karnataka High Court</td>
<td>2</td>
</tr>
<tr>
<td>11</td>
<td>Madras High Court</td>
<td>10</td>
</tr>
<tr>
<td>12</td>
<td>Orissa High Court</td>
<td>4</td>
</tr>
<tr>
<td>13</td>
<td>Patna High Court</td>
<td>1</td>
</tr>
<tr>
<td>14</td>
<td>Punjab &amp; Haryana High Court</td>
<td>1</td>
</tr>
</tbody>
</table>

The table can be depicted in the following chart:
TRIBUNALS

The number of cases filed in the Appellate Tribunal under the Prevention of Money Laundering Act, 2002 from the year 2009 till 2014 are:

<table>
<thead>
<tr>
<th>Year</th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
<th>2012</th>
<th>2013</th>
<th>2014</th>
</tr>
</thead>
<tbody>
<tr>
<td>No. of Cases</td>
<td>8</td>
<td>5</td>
<td>14</td>
<td>3</td>
<td>19</td>
<td>13</td>
</tr>
</tbody>
</table>

The table can be depicted in the following chart where the total number of cases filed during the aforementioned period is 62.
GROUND OF FILING CASES

Some of the various grounds under which the cases related to PMLA, 2002 have reached the Supreme Court, various High Courts and Tribunals are:

<table>
<thead>
<tr>
<th>S. No.</th>
<th>Grounds</th>
<th>No. of Cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Appeal</td>
<td>16</td>
</tr>
<tr>
<td>2</td>
<td>Bail Granted</td>
<td>8</td>
</tr>
<tr>
<td>3</td>
<td>Attachment of Property</td>
<td>14</td>
</tr>
<tr>
<td>4</td>
<td>Burden of Proof</td>
<td>19</td>
</tr>
<tr>
<td>5</td>
<td>Constitutionality of the Act</td>
<td>39</td>
</tr>
<tr>
<td>6</td>
<td>Public Interest Litigation (PIL)</td>
<td>20</td>
</tr>
</tbody>
</table>

This table can be depicted in terms of percentage with the help of following chart:

**Grounds for filing Cases under PMLA, 2002**