

# Money Laundering: A Metamorphic Study In Criminology With Emphasis On Indian Scenario

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## ABSTRACT

The topic titled as “Money Laundering: A Metamorphic Study in Criminology with Emphasis on Indian Scenario” is a topic of importance while keeping in mind the globalization and advancement of economic avenues. Money laundering is defined in three different levels- Placement, Layering and Integration. In other words we can say that the tainted money is brought as if it is legal. The concept of money laundering is not limited in the barriers of territory as it begins in one level and is continued in the other till the money’s colour which is derived by committing the offence becomes a lawful one and is acceptable in the eyes of law. In several minors, the impact of money laundering is seen which includes banned arms and drugs, terrorist activities, trafficking woman and children, procuring narcotics, and so on. The Global Legal Order has framed many conventions and guidelines in India to break the offence of money laundering. It also adopted the law, known as The Prevention of Money Laundering Act 2002. Even the law has entered into areas of bank secrecy so that any suspicious transaction can be intimated without informing its customer. Many modes have been laid down by the act for the purpose of tracing the offence, its investigation and adjudication thereafter. It also laid down the remedial measures that are provided to the aggrieved party. Even there is an opportunity for extra territoriality which can be dealt on reciprocal basis with different other countries present all over so that it may provide effective administration and also it shall prevent unjust enrichment. The research has been made by the primary and secondary source of data where to arrive at certainty where one set of data has been corroborated.

## Keywords

aggrieved party, extraterritoriality, money laundering, unjust enrichment, tainted money, trafficking, etc

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## Introduction

The process which the criminals adopt to hide the source of their earnings and the illegal activities that are performed by them is known as Money Laundering. By this process criminals find a way to convert the proceeds of the crime into monetary value which is legal in the eyes of law. And once they are succeed in doing so then the criminals have control over it. The process of this offence is really simple which is performed on both local and international level in a very sophisticated manner that it may cheat the whole international financial system. It also includes number of intermediaries of financial system. For two reasons money laundering is considered necessary- Firstly, the predicate offences are rising by the crime which shall not be connected with perpetrator and secondly, the proceeds shall be used in a way as if it is of origin which is lawful. Basically money laundering helps in hiding the unlawful origin of finance or assets so that they may be used freely. Stages of money laundering have been explained in three words: placement, layering and integration. In first step, illegal money is introduced in the world of financial system. In second step, the funds which have been introduced in the first step are taken away from its source by way of movement or conversions. In last step, the funds are shown the legitimate financial economy.

The issue of controlling the income of unlawful activities at international level came into force at the end of 1980s which was considered as the part of the fight against the trafficking of drugs. Almost at that time or may be in the end of 20th century, the issue was addressed by three conventions which

are named as: “The United Nation Convention against Illicit Traffic in Narcotics drugs and Psychotropic Substances of 1988”, in which it was considered that laundering from the activities from drug trafficking is an autonomous crime; “The Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime of 1990; and The United Nation Convention on Transnational Organized Crime of December 2000”. An intergovernmental body known as FATF was formed in 1989. It was initiated for the development of policies and their promotion so that money laundering can be combat. Many times the recommendations were revised and were formed for the purpose to stop the illegal activities and its proceeds so that it may not be used in future illegal activities and also they may not affect legitimate financial activities.

An anti money laundering strategy is set out by various instruments which consist of two main elements- (a) the criminal justice system effect shall be enhanced by making the money laundering offence as a criminal activity and shall provide with the punishment of seizure of illicit proceeds and its confiscation as well. (b) a preventive series shall be implemented in order to direct at institution of credit and finance. It shall also enhance the transparency of the operation of finance. These implementation helps the institution to enhance the rules of system like ‘know your customer’ which is for the purpose of having the full detail and identification of the customer having an account or conducting any financial transaction in any financial institution so as to avoid fraud, suspiciousness and it also creates cooperation between these institutions and national law enforcement agencies so that the investigations can

easily be implemented, when needed. In U.S., this strategy has been enacted and fully accepted. The Bank of Secrecy Act of 1970 was implemented as the first step of U.S. in order to identify the movement of cash. Another important legislation is Money Laundering Act of 1986. It made money laundering as a federal crime. Many times it got amended and it continued till it gained the form which was outlined in "title 18 of the code of U.S. (Laundering of monetary instruments) and 1957 (Engaging in monetary transactions in property derived from specific unlawful activity)." The reports of national money laundering were produced periodically by the Department of Treasury and other financial agencies as provided by The Money Laundering and Financial Crimes Strategy Act of 1998. In 1999, first report was issued, it reported the efforts which could address the issues of money laundering in a manner which was comprehensive and coordinated. The basic idea of U.S. strategy which could fight the financial crime was implemented in the late of 20th century. It helped in combating money laundering by the process of denying the access of criminals to the institution of finance and it also strengthened the efforts of enforcement to reduce the movement which may be inbound or outbound of the proceeds of criminal.

### The History Of Criminology

If individual and social criminal actions are to be understood, then the scientific procedure to study them is criminology. This criminology study has a wide history which has changed a lot. In the late 1700's and in early 1800's, criminology is considered to begin. The founders of classical school of criminology became the theorists on crime and also on the development of punishment. Some writers were also included in these like Jeremy Bentham and Cesare Beccaria. As it could be seen that torture developed almost in all over the area of the continent that too mainly for confession and testimonies, torture was considered to be wrong according to the Classical School of Crime. According to this school, crimes are performed by free will. People were realised of their action and hence it shall be condemned of punishment for what they did. The punishment that was provided was harsh so as to deter others from doing the same. Full explanation was given for the improvement and development of the criminal justice system and hence shall be modernized drastically. Stretching, stabbing and crushing were some types of harsh punishments which were awarded at that time. By reducing and prohibiting the torture, the classical school focussed on improving the criminal justice system, which was considered as a great progress. The New Classical School of Thought was convinced by the classical school but with some revisions to it. The world was considered imperfect and hence the mistakes were the part of it according to this school. This school also gave importance to the self defence. "Famous neo-classical criminologists include Raymond Saleilles, author of the Individualization of Punishment and his teacher Gabriel Taro. Determination is the belief that all actions are pre-established in time and that free will is only an illusion. It, along with the requirement of scientific evidence for criminal conviction, falls under the positivist school of thought."

People are believed to be different by the positivists either intellectually or physically. According to the positivist school of thought, the punishment is decided by the person instead of crime. And most importantly, the treatment given to the criminals and their rehabilitation was possible but theoretically among the criminals and whose punishment cannot be fixed shall be killed. Lombroso is awarded with the name of father of criminology and also with positivist.

The thought of Chicago School was presented in 1920's by Robert E Park and Ernest Burgess through the University of Chicago. In this criminology was related to sociology and researchers was made on the topic of concentric zones or in areas people were considered to be more criminally active as compared to others. A study of new social ecology came into force when especially the research of Henry Mc Kay & Clifford Shaw was added which was made on Juvenile delinquents.

Similar theory of hedonistic was included in contemporary criminology which stated that actions and emotions can be deter by people as per the manipulation of incentives. But in today's theory of criminology, the motive of criminals has been categorized either expressive or instrumental. By instrumental motivation, it is understood that the person has more gain for committing a crime outside the act. A tangible benefit is seen, example: added incentives or gain of money is given to the contract killers. Harsh punishments are when the trees of instrumental motivation is seen as the proof for premeditation exists. When the act is the result of the motion, then it is expressive motivation and so it is different from instrumental motivation. A person gets the desired outcome for its crime. It is the outcome of feelings like anger, fear, passion, rage, jealousy, etc. this crime is committed in a moment of a person when he is overpowered by some emotion or frustration. Such crime take place between relations, friends, etc. and around 53% of homicides are based on the arguments made.

As the main aim of criminology is to prevent the crime so it is the duty of criminologists to understand the criminals and their actions that why they are doing so and then it would be easy to deal with them as to prevent crime in future by that person again.

The traces of white collar crime can be seen thousands of years ago but its word was coined in the year 1939. The crime which business man does or the crime performed by the professionals of government in their professional capacity is termed as white collar. By white collar we the collared shirts which professionals wear.

In 15th century, the first documented case of white collar was seen in England may be because England was considered as the first society which got industrialize and capitalism was considered to be developed there earlier as compared to the other places. There was a Carrier's case held in 1473, in which English carrier was hired by a Flemish merchant, which would carry bales of wool to another place known as Southampton. But that carrier took all the wool for himself and hence given the punishment of larceny but still he could not be convicted for theft as all the wool was in his possession and was given to him by that merchant only. But the judge realized through the action of that merchant could not be considered as theft but still it was against the nature laws and so this crime was said as embezzlement from this case.

## Evolution Of White Collar Crime

The research of Sutherland on white collar crime was made at the depressing years of 1930s. "The first public treatment of the subject occurred when Sutherland titled his presidential address to the American Sociological Society in 1939 'The White Collar Criminal'. He was apparently drawn to the topic in his search for a general theory of crime. The usual explanations in his day (and often today) stressed poverty and other pathological social conditions, but, argued Sutherland, these factors could not be general cause of crime if crimes are also committed by persons of respectability and high social status. In the book length version of speech, which appeared a decade later, Sutherland aimed simultaneously to weaken theories depending on the behaviour of the deprived and depraved, and to provide support for his own social learning approach to crime causation-the theory of differential association."

## Relation Between Money Laundering And Other Crimes

A major crime of finance known as money laundering is gaining profit or earnings through illegal means and pretends as if it is legitimate. Many techniques have been adopted to perform the offence of money laundering and these techniques get modified with the advancement of technology. This offence has negatively affected the economy. Very tough rules and laws have been made in order to prevent money laundering activities at international and local level as well.

Money laundering is not one offence but it is connected with many crimes like it has been connected to human trafficking, smuggling, bribery, corruption, green crime, cyber crime and illegal wildlife trade.

## Money Laundering And Trafficking

Different types of trafficking can be mentioned like arms smuggling, tax evasion, drugs and tobacco smuggling, human trafficking and alcohol smuggling. All these activities are highly connected with huge funds which are obtained through unlawful means, hence it cause lot of loss in country's economy and it is affected negatively. And if the criminal uses money obtained through illegal means as it is, without converting, then the chance of being caught increases and so they convert the money laundered and uses it.

The money laundered goes through different small transactions so as to convert it into legitimate funds by scattering the money into many accounts. Many techniques like currency exchange, remittances and mule accounts are used to transport the money in different places across borders. So we can say that money laundering methods and techniques are used to launder the money obtained through smuggling for using it and from preventing themselves from being caught.

## Money Laundering And Corruption

As we all know corruption is highly linked with laundering the money. When we listen to the name corruption, a money crime is to be there behind it. It facilitates many crimes like prostitution, smuggling, trafficking. And secondly the techniques of money laundering make the people comfortable for performing corruption. These all are so connected that it is impossible to detect each and every crime conducted.

## Money Laundering And Cybercrime

Illegal crimes like fraud, identity theft are also taking place through electronic devices and system which is termed as cybercrime. As the technology is being advanced, the crime is also increasing at a rapid state. System of financial institutions are being hacked and many money laundering activities are done by the criminals through cyber means. Out of which some are not prepared to prevent themselves from such crimes. Internet mechanism is used by cyber criminals for the purpose of converting their unlawful money into clean money. Online gambling and sites of game also methods for such criminals to make money as digital payment methods are used.

## Money Laundering And Green Crime

Some of the crimes also threaten biodiversity and natural resources by illegal activities. This type of crime is known as green crime. The crime which creates pollution to the environment are fishing, illegal mining and logging and these are the examples of green crime. This type of crime is seen growing up to 5-7% of range every year, which is affecting our global economy drastically. And these crimes are performed by criminals and they show this income as legitimate by laundering the income earned from such activities.

## Money Laundering And The Illegal Wildlife Trade (Iwt)

A threat is growing towards the biodiversity of nature known as The Wildlife Trade. It has become illegal trade which is of great value. As compared to other crimes, the impact of this crime is really high on the economy. The criminals of IWT are engaged in high funds like billions. "Financial Action Task Force (FATF) published the report on money laundering and illegal wildlife trafficking in June 2000. In the FATF report, he generally evaluated how FATF standards should be applied to combat IWT. According to the FATF report, as estimated \$7 to 23 billion in illegal wildlife trade per year. The methods of money laundering used to clear these revenues exploit the official financial sectors."

## Bribery And Corruption

Very high risk of corruption is faced by the companies who were planning to invest in India. Though many hard steps have been taken by the government to stop or prohibit

corruption still bribery or red tape were being spread all over. Public sectors, Judiciary, police were highly involved in corruption. The legal framework which focussed on the wrongdoings and corruption in public sector was The Prevention of Corruption Act. Legislation covered active and passive bribery as well and the gifts which were acceptable by the public official was of nominal value.

### Indian Legal Regime On Money Laundering

The specific legislation was made in India to deal with the offence of money laundering known as Prevention of Money Laundering Act, 2002 (PMLA). Following objectives were set to combat money laundering in India, they are as follows:

- Money laundering shall be prevented and controlled
- It also provided confiscation of property and its seizure as well of the property that is obtained from the offence of money laundering
- It may also deal with some other issue which is connected to the offence of money laundering.

And not only Prevention of Money Laundering Act but many various legislations are there like RBI, IRDA, SEBI and the rules and regulations of Anti Money Laundering. Central Government has also established Financial Intelligence Units which analyse the reports made by these mentioned authorities.

“The Directorate of enforcement (ED), which is under the administrative control of the Department of Revenue, the Ministry of Finance, The Indian Government and the director of the Financial Intelligence Unit (FIU) under the Department of Revenue of the Ministry of Finance have been appointed to exercise exclusive powers under specific sections of the Prevention of Money Laundering Act 2002.” Certain officers are given the power to assist authorities under section 54 of the Act.

Proceeds of crime has been defined in Prevention of Money Laundering Act as to mean some property or its value which have been either directly or indirectly obtained from any person being a result of some offence as per the statutes of Indian Penal as set in schedule of Prevention of Money Laundering Act. The explanation has cleared that the property included in the proceeds of crime in not only the property which has been obtained from the scheduled offences but also which has been gained directly or indirectly from any of the activity which is criminal and can be related to the schedule offence.

The definition of proceeds of crime has been amended by the Part XIV of the Finance Act 2018. This act came into force on 19th April 2018. The attachment of property is also extended to the property which is located outside India. Scheduled offences are termed as predicate offences for the purpose of commission of the crime of money laundering. If a transaction is not connected with scheduled offences, then the funds related or connected to those transactions would not be considered as proceeds of crime and hence will not lead to money laundering.

“Scheduled offences and the offence of money laundering are proposed to be tried together by a special court constituted by the Prevention of Money Laundering Act that has jurisdiction over the area in which the offence has been

committed. Section 43 of the act provides that the central government may, in consultation with the Chief justice of relevant High Court, designate one or more session courts as special court. Accordingly, the commission of a scheduled offence must be alleged before the special court that is trying the offence of money laundering under the Prevention of Money Laundering Act, and evidence and material relating to the scheduled offence must be placed before the special court to enable it to frame a charge in respect of the offence and try it [Hasan Ali Khan v Union of India (2012 BomCR (Cri) 807)].”

Some amendments have been introduced to the Prevention of Money Laundering Act by the Finance Act 2015. It includes the replacement of the adjudicating authority with a special court. This court was given the power to adjudicate and can give the order related to the attachment of property. A provision was added in the Prevention of Money Laundering Act which stated that the special court had the power to direct that if any property which is confiscated by the Central Government shall be restored to the person who is a claimant and he should have a legitimate interest in the property. He should be acting in good faith and had also suffered a loss in spite of taking all the precautions from the offence of money laundering. This can be even done during the trial of the offence.

“Pursuant to amendments made to the Prevention of Money Laundering Act by the Finance Act 2016, the Appellate Tribunal constituted under the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act 1976 has been deemed to the appellate tribunal for hearing appeal against the orders of the Adjudicating Authority and the director of FIU under the Prevention of Money Laundering Act.”

The punishment of around three to seven years is awarded along with the fine, if a person commits the offence of money laundering. But this punishment can also be extended to ten years if the offence of money laundering deals with the act of NDPS, which means that it relates to narcotics.

### Conclusion And Suggestion

The offence of money laundering has been seen as serious threat. It creates drastic result for financial system and also for the security of the nation. As we can see that the funds are provided for arms dealers, terrorists, drug traffickers, in other words funds are provided for criminal groups. Criminals can work through dirty money easily as they can capitalize the legal entities with the proceeds of criminals that can distort competition between illegal and legal enterprises. In spite many tough measures have been taken to combat the offence of money laundering the international and individual but still new trend of money laundering activities are upcoming and can make the old measures ineffective.

We can summarize that only legislation cannot handle the activities of money laundering. A comprehensive strategy is required to tackle the issues. Even if the confiscation of property of the criminal proceed is done then crime can be made less profitable. The offence of money laundering needs international assistance also to prohibit such a crime and holds the operation regarding it effectively.



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