



International Conventions of Money Laundering

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ABSTRACT

Money laundering is considered an “old business” with limited regulation needs until the relationship between money laundering and terrorism solidifies. For any reason that is to conceal, move or distribute money that falls outside the legal regulations of the regulatory environment of individuals associated with or located within the movement or region(s). As of 2011, money laundering is estimated to involve more than US\$1.5 trillion in illegal activity internationally.

Keywords

India, AML, Money laundering, Financing of terrorism, Conventions

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Introduction

The recent passing of the Finance Bill, 2017 has once again opened the debate about the need for introducing a law enforcing Commission to ensure that the banks and other financial institutions do not facilitate any transactions to illegal or criminal purposes. Indeed, there is no denying the fact that modern banking has been increasingly becoming an instrument of criminality – what was once a field of crime has now become a legitimate means by which to violate the law. The World Bank reported in 2014 that illicit financial outflows from developing countries are estimated at US\$ 1 trillion. India topped this list with US\$ 66 billion illegally taken away from its economy by way of bank secrecy and loopholes in regulation and supervision..

Literature Review

International efforts to combat money laundering began with the United Nations (UN) Vienna Convention in December 1988 and the Council of Europe (CoE) Convention in 1990. The 1988 Vienna Convention introduced an

obligation and expectation to criminalize the laundering of profits from the illegal market. measures initiated to expand international cooperation in narcotics and to deal with this problem. At this time, it has not been recognized by the UN that the illegal transport of people and other serious crimes is considered a threat to the international order and is vulnerable to money laundering. Article 3 and 6 of the 1988 Vienna Convention. Article 6 formed the basis of all subsequent legislation and defined money laundering as follows:

“a) Converting the property which is revenue, to conceal the illegal origin of the property or to assist any person involved in the commission from transaction to evade legal consequence
b) concealing or disguising the true nature, source, location, disposition, movement, rights or ownership of property, knowing that the property is income; and depending on its constitutional principles and fundamental concepts of the legal system;



c) the acquisition, possession or use of property knowing that it is income at the time of purchase;

d) Participation in any of the crimes established in accordance with this article, association or conspiracy, attempt to commit and aiding, abetting, facilitating and consulting. Since this convention, joint international action to combat money laundering has increased significantly.”

Global Organizations such as the World Bank, Offshore Banking Supervisors Group (OGBS), Basel Committee on Banking Supervision, Interpol, World Customs Organization (WCO), Caribbean Financial Action Task Force (CFATF), Financial Action Task Force (FATF), The Inter-American Development Bank (IDB), the United Nations Office of Drug Control and Crime Prevention (UNODCCP), the Council of Europe, the Asia Pacific Money Laundering Group (APG), the European Commission, the Egmont Group of Financial Intelligence Units, and the Organization of American States, the Americas Continental Drug Control Commission (The OAS-CICAD) are part of FATF effort and are concerned with the harmonization of the evolving rules and principles that govern money laundering. These "organizations" work together and share useful facts and data that help with money laundering and asset seizure, estimate the value of local threats, advise on specific action plans and administrative changes, and support the development of skills and logistical assistance. To fight money laundering, "Organizations" recognize that both governmental and administrative functions of political and non-political participants are necessary to prevent the worldwide threat of money laundering. These 'organizations' are defined below in chronological order of laws, contracts included for consideration.

In 1990, the Council of Europe (CoE) selected and followed the Strasbourg Convention "Convention on Laundering, Investigation,

Seizure and Confiscation of Proceeds of Crime" which briefly explains the procedures necessary to reduce incidents of money laundering. . The EC established a Committee of Selected Experts on the Evaluation of Anti-Money Laundering Measures. Following the example set by the FATF, the Selection Committee advances statistical information for the CoE and joint assessments, which produces statistical information and occasional site visits. Action often takes the form of advice to those associated with CoE to develop AML strategies. This information is then included in its annual review of its actions and recommendations to the European Committee and the Problems of Crime (CDPC).

The approach is limited; It is based on advice rather than legal requirements and is much more complex as new nations join the CoE. The Eastern European countries of the Elected Committee face challenges, fraud, the elimination of individual and corporate investment capital, income and organized crime, as they transition from system-based state ownership of capital to a system of private ownership and capital. The production and distribution of products and services take place through the free market mechanism.

In the same year as the CoE convention (1990), the Financial Action Task Force (FATF) recommended that the scope of money laundering be expanded to include other drug-related crimes or all serious crimes. The recommendation was adopted by the Council of Europe Convention of 1990, which expanded the definition of money laundering to include all 'related' crimes beyond its traditional relationship to the manufacture and transport of illicit narcotics, and was adopted by the first European Union (EU) Directive on the subject. in 1991, the second in 2001 and the third in 2005. Article 5.2 of the Model Legislation on Money Laundering and Terrorist Financing (2005) is the



result of a joint effort by the United Nations Office on Drugs and Crime (UNODC) and the International Monetary Fund (IMF). Article 5.2 of the Model Legislation defines money laundering as “money laundering is the process by which a person hide the identity or origin of illegally obtained proceeds in such a way that it appears to have come from legal sources”. In addition, the regulatory model explains how money laundering “undermines international efforts to establish free and competitive markets and hinders the development of national economies”. Also, in addition to increasing the success of preventing terrorism and drug trafficking, recommended that states establish strict control and regulation to prevent further and future harm.

Also, the United Nations Office on Drugs and Crime (UNODC), established in 1997, noted that money laundering has recently become a priority for law enforcement agencies, both domestically and internationally. The actual term 'money laundering has a long history but has only recently been adopted where international cooperation is essential for success, including an international adaptation of legislation in all countries around the world. The process of concealing the origin of money has always existed in some form because 'there has been a need for political, commercial or legal reasons.' UNODC has compared money laundering to the Catholic Church's prohibition of usury. In the middle ages, merchants and moneylenders of that time developed the same practices used in money laundering today, hiding and moving money to hide the source of money. ” compares with ports that welcome pirates who spend abroad.

The UNODC noted that despite the historical precedent of money laundering, it has only recently been identified as a specific crime outside of law enforcement's focus on core activities such as terrorism and the narcotics

trade. UNODC has launched a three-year systematic investigation and global program to prevent money laundering and to support the initiative to coordinate the internationally "harmonious" interaction of AML strategies and practices. The key principles of implementing the program were to increase joint action, including by a number of organisations, to raise public awareness of the threat of money laundering and, where possible, to educate “people” on the best ways to prevent money laundering. This approach was designed to achieve international concern for money laundering through a universal practice of investigation and investigation. It also hoped to provide states with important data to develop effective AML plans. Building on these initial efforts, money laundering is now seen as a stand-alone crime with specific criminal penalties and confiscation. The general trend is to criminalize money laundering in a number of jurisdictions, but for various reasons, some areas have been slow to implement these measures. In a globalized market, cooperation among all nations is necessary if the goal of eliminating money laundering is to be achieved. However, with the difference in the implementation of money laundering regulations between rich, advanced democratic and developing countries, there are trust issues between countries.

According to the IMF, money laundering is a global crime with serious economic consequences, supported by its increasing success and prevalence due to the increasing complexity of financial systems and the methods used by organized crime/terrorism to conceal the sources of their money. financial crimes, increased embezzlement, insider trading, bribery and computer fraud⁹⁹. On September 29, 2003, and December 14, 2005, the UN Convention against Transnational Organized Crime and the UN Convention against



Corruption came into force, respectively, to further support the need to address international conditions or the need to address crime and terrorism. Both documents broadened the scope of money laundering crimes by stating that they should cover not only the proceeds from the illicit drug trade but also the proceeds of all serious crimes. Both conventions urged states to establish a comprehensive local supervisory and regulatory regime for banks and non-bank financial institutions, including natural and legal persons, and all entities particularly susceptible to involvement in money laundering schemes. Under these conventions, members are required to establish national laws covering the following criminal offences: (1) Participation in an organized crime group (2) Corruption (3) Obstruction of justice and (4) Money Laundering.

The security and integrity of a financial system are its main defence to prevent money laundering. Financial systems include not only central banks and other banks but also a range of financial products, pensions and funds, as well as markets. As the IMF noted, these institutions not only provide services to their users but also conduct monetary policy, finance investments and promote economic growth. According to the IMF and researchers such as Mojsoska, Nikolovska and Vitanova (2012), national fiscal framework vulnerabilities can lead to economic recession and destabilize the country economically, creating huge financial costs. Fiscal instability is rarely limited to one. and the interconnectedness of financial services around the world makes financial institutions resistant to financial crime an economic necessity. This means that for AML to be effective there must be a "culture of trust" and cooperation between nations. The reality is that a "culture of trust" and collaboration are often lacking, and companies' effectiveness is only as

effective as the AML legislation in each country. FATF observed that laundering of illicit funds resulted in seeking new ways to hide them creatively, exploiting jurisdictional differences between legislation, and national political reluctance to prevent money laundering resulted in identifying and exploiting vulnerabilities in systems. The FATF contends that professional investigations can discover illicit funds and grant investigative powers to state law enforcement agencies to secure the seizure of illicit funds and reduce attempted crime. tracing, seizing and confiscating criminal assets. The costs and responsibilities of managing these activities are not specified or supported by the FATF, and while the FATF rates countries for their contribution to legislation and the prevention of money laundering and other crime, success is country-specific. However, the FATF states that the use of AML task forces and other FIUs (Financial Research Units) can increase anti-money laundering success by providing the country with responsible units trained to recognize anomalies in money transactions or the movement of goods. stones and metals) and investigative measures to uncover the truth of sources to provide international support for money laundering.

The FATF recommends that countries, depending on circumstances, national laws and political aspirations, can and will exchange information that can be used to determine the outcome of international money laundering cases. During the OAS/CICAD debate on joint action to prevent the production and distribution of drugs, the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions is an important example. Also, the purpose of the FATF is to foster the growth of FATF-style regional groups that are already part of the FATF or to establish new organizations to fill



gaps in areas of need. Organization of the Drug Control Council of American States (OAS-CICAD), FATF, Council of Europe, and the Asia-Pacific Group on Money Laundering (APG) are other examples of the growing interest in AML and taking into account the regional conditions and distinctiveness of the regional states concerned, To guide and assist their good planning and implementation. Legislation is drafted by each government; however, the intent is for FATF and other international standards to provide guidance to governments in these areas. To assist governments, FATF uses recommendations and assessments that provide clear guidelines for future activities, programs or issues that need to be addressed for each country.

Evaluations regarding AML/CFT regulations are completed within the scope of FATF methods for determining the country's strengths and weaknesses. Although the FATF publishes these assessments after they are complete, they are not conducted annually, and assessors develop assessments through interactions with the various government and law enforcement agencies that enforce legislation and regulation. However, in countries where there is limited access to raters or where documents and statistics are not available, raters should develop assessments without this knowledge, and this may adversely affect scores. In countries such as India, statistical evidence of implementation is less available than in larger countries, either because legislation and regulation are new or partially due to limited database infrastructures to support clarity in implementation. In addition, countries may have trouble enforcing laws when there is little cooperation between government agencies or where the authority to enforce the law is not clear.

As Braithwaite and Drahos observe, while international banking standards have for some

time been determined primarily by the financial sector, the recognition of the link between money laundering and criminal practices such as narcotic dealing has made this issue a political issue (see the section for political opinion). in (India), with governments setting increasingly demanding legislation for the financial sector. This is demonstrated by the Basel Committee, which sets international banking standards. Developed by the Committee on Banking Supervision, Basel III aimed to strengthen the regulation, supervision and risk management of the international banking sector. As the Bank for International Settlements states, the mission of the 'Bank for International Settlements (BIS) is to serve central banks in their pursuit of monetary and financial stability, to promote international cooperation in these areas, and to act as a bank for central banks. .'

Shehu (2012) considered financial inclusion as an important element for countries to consider, as banks, governments, and citizens benefit from their ability to guarantee financial transactions and the security and support of these transactions by being included in international financial security. Compliance with these standards is defined to include:

- “AML/CFT measures should be tailored to the local environment and local risks related to money laundering and terrorist financing (ML/CF).
- AML/CFT controls must be appropriate to actual or potential risks.
- AML/CFT obligations must be compatible with the capacities of both public and private institutions.
- Where institutional capacity is lacking, a plan should be developed to improve capacity and staging in AML/CFT obligations as institutional capacity grows.
- Law enforcement should be kept as the primary responsibility of the state and law enforcement responsibility should not be



unnecessarily transferred to private institutions”.

The compilation of the Basel documents is defined as soft law that does not “bind neither explicit remedies nor enforcement mechanisms” as states incorporate reforms into their domestic legislation. One of the benefits of this "soft law" is that it provides speed and flexibility to deal with complex issues that arise, such as money laundering. The FATF also instructed governments on best practices for anti-money laundering, financial institutions that are expected to provide customer due diligence, and reporting of suspicious transactions, including information gathering, mutual monitoring by government-controlled entities, and 'naming and shaming' sanctions; Sanctions are recommended for states that do not comply with these legal measures. These are important expectations that any developing country with a financial sector like India should achieve.

Methods

This research used a combination of methods. These

- Secondary data analysis, i.e. official crime statistics
- Analysis of legal documents
- Contracted access
- Sampling frame
- Designing an interview program
- Content analysis of interviews
- Limitations of the research
- Ethical considerations

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The Proceeds of Crime Act (POCA) (2002) redefined money laundering and money laundering crimes, created new mechanisms for the investigation and recovery of proceeds of crime, and revised and reinforced the requirements for suspected money laundering and/or whistleblowers. In addition, POCA (2002) removed the previous distinction between proceeds from the drug trade and proceeds from serious crime and expanded the definition of money laundering to cover all crimes. This change was undoubtedly a reaction to the piecemeal development of international obligations relating to the narcotics trade and money laundering. The use and continuous revision of POCA have allowed the UK to achieve higher ratings with the FATF Recommendations than many countries; however, improvements are still needed, according to the latest UK assessment.



Methodology

As with all research, a mixed method approach is considered more productive than a single method for the collection of data. Original in its aim and execution, however, this research countenanced several obstacles. These ranged from lack of research material on laws and regulations in India, limited secondary data, access to the financial sector and the politically sensitive nature of discussing past and present cases of money laundering in the India and role of the SFO and Anti Organised Crime Department (AOCD) and that empirical research is completely foreign to India and is to some extent outside the scope of their cultural traditions.

Results

However, the concept of criminal property is open to debate. Two conditions must be met in order to prove that the property is criminal property in a money laundering crime, namely "(1) it constitutes an interest arising from the crime or represents this interest (partially or completely and directly or indirectly).

The first condition is far-reaching and is a factual condition of the property of origin. However, the second factor is subjective to the intention of the person at the time of dealing with the goods. It should be noted that since the criminal property is broadly defined by POCA (2002), no distinction is made between the proceeds of the accused's own crimes and the proceeds from crimes committed by others. money, property or real estate of any kind, and other intangible or intangible property, and any interest of a person.

Thus, to secure a conviction under Section 7 of the POCA (2002) it is only necessary to prove that the laundered property was obtained as a

result of the criminal act and that the accused knew or suspected this to be the case. However, as long as it occurs after the onset of the laundering action, it does not matter who performed the act, benefited from it, and/or whether the behaviour occurred before the passing of POCA (2002).

However, Hopton argued that the definition of criminal behaviour in Section 340(1) of the POCA (2002) may pose problems in practice since criminal behaviour under this definition includes any activity that would constitute a criminal act if carried out abroad. In the UK, regardless of whether there is a crime in the country where it was actually committed. It is also of concern whether this definition of criminal behaviour covers all criminal offences. Section 413(1) of the POCA (2002) refers to "any crime". It has been argued that the term "any crime" is broad and encompasses summary crimes. Consequently, criminal conduct under POCA (2002) includes minor criminal offences as well as serious crimes. Also, there is no de minimis provision in the Proceeds of Crime Act 2002 and therefore covers all benefits or profits, no matter how petty or petty the offence may be.

As mentioned above, the criminal must "know or suspect" that the criminal property represents a benefit derived from the criminal act, by concealing, disguising, transforming, transferring or eliminating his property which is a benefit from the criminal act. Further, pursuant to Section 328(1), it is contested that a person has committed a crime if he or she enters into an arrangement that he knows or suspects facilitates the acquisition, retention, use or control (whatever the basis) of criminal property, or becomes relevant to that



agreement. on behalf of another person, regardless of the seriousness of the criminal relationship. It has been argued that it can be understood that the concept of 'entering a settlement is a broad concept and is not different from the concept of a legal conspiracy. In a sense, it must be a meeting of minds between two or more people. However, the POCA (2002) does not have a definition of 'entering a deal' for money laundering purposes. In *Bowman V Fels*, the Court of Appeal held that "Article 328 of the POC (2002) does not cover the involvement of a lawyer in the ordinary course of the case or its consensual resolution". Therefore, Section 328 does not cover or affect the ordinary course of action by lawyers, including any action taken from the subject of proceedings and securing an injunction or freezing order until its final disposal by judgment. It is not necessary to associate the proceeds or property with a particular predicate offence or to prove who committed the predicate offence that generated the proceeds. However, all offences under POCA (2002) can lead to a maximum sentence of 14 years in prison and/or a fine and confiscation or legal recovery order.

Limitations and Future Studies

All research has limits to what it can achieve. This research is no different, and so the following sections are a reflection on what the limits of this research are so that other scholars who wish to continue research and contribute to money laundering research can revise and make changes based on the research, particularly in India, due to the paucity of research in India on criminal justice issues.

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