

CHAPTER 1

INTRODUCTION

Money laundering is a modern crime. It has social, political and economic implications. The global crimes, such as drug trafficking, organised crime and terrorism thrive on money laundering. Large scale laundering of money may cause economic and even political instability in a country. Having felt the need for effectively curbing the menace of money laundering the global community has initiated several measures including criminalization of money laundering.

Money laundering outwardly appears to be straight forward simple financial transaction. Normally it is a three stage transaction. At the first stage the criminal places the crime money into the formal financial system (Placement). At the second stage, the money which has been injected into the financial system is layered or spread out into several transactions with in the financial system with a view to getting the origin or original identity of the money lost or disappeared (Layering). At the third stage, the money gets integrated into the financial system in such a way that the original association with the crime is totally lost and the money could be used by the criminal and his accomplices who get it as clean money (Integration).

The United States of America took the initiative to fight money laundering because of the widespread use of drug money in laundering with in the country. Simultaneously, the United States of America also took several global initiatives. The United Nations through its Political Declaration and Action Plan against Money Laundering, Global Program on Money Laundering and UN Office on Drug and Crimes under took the fight at the global level. The three UN Framework Conventions on Narcotics, Organized Crimes and Corruption, therefore, contained specific provisions on money laundering and imposed obligation on member states to implement antimoney laundering measures.

To-day most of the countries have enacted laws making money laundering a crime. But for these laws money laundering may not be a crime. India in the year 2002 enacted the Prevention of Money Laundering Act, 2002 (PMLA). However, the Act had to wait three years before it came into

force on 1st July 2005. PMLA is based on the various antimoney laundering measures prescribed by the expert agencies and the UN Frame Work Conventions. PMLA is a unique piece of legislation which contains both preventive and enforcement measures. The Act lays down the broad parameters. Detailed measures have been prescribed by the Central Government and the Reserve Bank of India (RBI) and other regulatory bodies.

Banks, Non-banking Financial Companies (NBFCs) and other non-banking financial institutions are governed by the RBI Regulations. The Insurance Regulatory and Development Authority (IRDA) have laid down detailed antimoney laundering measures to be followed by the insurance sector. Similarly, the SEBI has detailed guidelines applicable to all intermediaries registered with SEBI. Banks and financial and non-financial institutions have to adhere to certain precautionary standards in their businesses and practices. They have a duty to submit to the authorities under PMLA reports of any suspicious transactions of money laundering, known as the Suspicious Transaction Report (STR). The Central Government has established Financial Intelligence Unit (FIU) for the purpose of receiving and analyzing STRs. FIU is the key authority in India which receives information on money laundering and, if necessary, exchanges the information with counterparts across the globe.

PMLA has defined the crime of money laundering in very simplistic manner as 'any process or activity connected with the proceeds of crime and projecting it as untainted property'. This simplistic definition may sometimes pose difficulties in implementation. Though the Code of Criminal Procedure governs the procedural aspects of the crime, there are marked deviations considering the special nature of the offence and its cross border character. The offence has been made cognizable and the investigation can be initiated only by persons authorized by the Central Government. The investigation is entrusted to authorities created under the Act. These authorities are empowered to carry out interim measures such as survey, search, seizure, and arrest of the accused. Similarly, an asset if it is found to be proceeds of crime could be confiscated and can be appropriated by the Government. Adjudication of disputes or made by special adjudicatory authorities under PMLA. The money laundering offences are tried by Special Courts designated by the Central Government.

PMLA also contain special provision for international cooperation in the area of mutual legal assistance and transfer of persons. It empowers Central Government to enter into agreement with Governments of other countries

for enforcing the provisions of the Act and exchange of information or investigation of the crime. Thus, investigation can be carried out in another country. The Special Court in India can request for serving processes and warrants including execution to a Court in another country. Facility is similarly provided for attachment, seizure and confiscation of property in another country.

There are arguments for and against making money laundering a crime. Questions have been raised as to the need for making money laundering a crime. The morality of making money laundering a crime has also been questioned by jurists. They say the justification for making money laundering a crime is more economical than moral. Money laundering has become a politico-economic issue in view of the reluctance of many smaller nations, which are mainly offshore financial centers, to take antimoney laundering measures. But due to international pressure they had to yield. This situation calls for serious and detailed debates and discussion in the coming years. It is sincerely hoped that this work will pave way for further research and generate healthy debates.