CHAPTER-1

INTRODUCTION

1.1 INTRODUCTION:

Today, a criminals considers the world at large as there field of action. They commits a crime in one of the country in the world and deposits the money generated from criminal activities through offshore bank in another country and takes shelter in yet another country. The widespread changes are taken place in the field of political, economic, social and technological as well as differences in legislation, procedures and policies in different countries on mutual support in criminal matters have allowed organized crime groups to become more and more active in the international arena. Further international criminal organizations are taking full advantage of globalization of world markets, dismantling of trade barriers, and the increased ease of international travel, liberalized emigration policies, high-tech communications equipment and sophisticated money techniques to enhance and further their criminal efforts and to forge alliances with other criminal groups.

They are engaged in such criminal activities as illicit drug trafficking, *money laundering*, the use of violence and extortion, acts of corruption, trafficking in women and children, illicit manufacturing of and trafficking in firearms, environmental crime, credit card fraud, computer related crime, illegal trafficking of stolen vehicles, industrial espionage and harm, maritime piracy, etc. create large profits and create the incentive to “legitimize” the ill-gotten gains through money laundering\(^1\).

The aim of a large number of criminal acts is to produce a profit for the individual or group that carries out the act\(^2\). Money laundering is the processing of these criminal proceeds to disguise their illegal origin. This


\(^2\) The international **Financial Action Task Force**, based in Paris, France, defines *money laundering* using these words,
process is of critical importance, because it gave the benefit to the criminal to enjoy these profits without jeopardizing their source.

The problem of money laundering increases due to the rapid increase in the globalization process. It can be brought under control only if various governments coordinate their strategies and policies at the national level with the strategies, policies and regulations issued at the international level.

A few years back money laundering was thought of only petty crime, but with the changed circumstances, especially after terrorist activities after September 11, 2001 attack on World Trade Centre, it is considered as a very serious crime. Worldwide special Acts have been passed to check such activities.

The phrase "money laundering" is said to invent from Mafia possession of Laundromats in the United States. Gangsters there were earning huge sums in cash from extortion, prostitution, gambling and bootleg liquor. The huge earnings so obtained by way of such illegitimate businesses make compulsion to them to show the legitimate source. One of the ways do this was by purchasing externally legitimate businesses and to merge their illicit earnings with the legitimate earnings they received from these businesses. Laundromats were select as a face for converting the illegitimate proceeds. The reason behind this was Laundromats were cash businesses and this was an unquestionable advantage. One of the earliest names to have surfaced in relation to money laundering was that of Al Capone.

Al Capone was convicted October, 1931 for tax evasion and not on the predicate crimes which generated his illicit income. This was the time when the term money laundering emerged in the world. However, the Al Cap conviction for tax evasion may have been the prompt for getting the money laundering business off the ground.

Meyer Lansky was particularly affected by the conviction of Capone for something as palpable as tax evasion. Before the year was out he had exposed

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3 http://www.globalpolitician.com/print.asp?id=4153
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the benefits of numbered Swiss Bank Accounts. From this where the culture of money laundering has been started. Lansky was considering as one of the most dominant money launderers ever. The use of the Swiss services gave Lansky the resources to incorporate one of the first real laundering techniques, the use of the loan-back concept, which meant that hitherto illegal money could now be disguised by loans provided by compliant foreign banks, which could be declared to the revenue if necessary, and a tax-deduction obtained into the bargain.5

Money laundering is the criminal practice of filtering ill-gotten gains or dirty money though a series of transactions, so as to portray the funds as clean and look like proceeds from legal activities. Money laundering is driven by criminal activities and conceals the true source, ownership, or use of funds. The International Monetary Fund had stated that the aggregate size of money laundering in the world could be somewhere between two to five percent of the world gross domestic product whereas the World Bank has estimated money laundering to be US$ 1,000 billion enterprise.6

Money laundering refers to the process of concealing financial transactions. Various laundering techniques can be employed by individuals, groups, officials and corporations. The goal of a money laundering operation is usually to hide either the source or the destination of money. Money laundering is a diverse and often multifarious process that need not involve cash transactions. It is a three stage process. These stages can be taken at the same time in the course of a single transaction, but they can also appear in well separable forms one by one as well.

The steps are:-

- Placement;
- Layering; and
- Integration.

5 http://www.globalpolitician.com/print.asp?id=4153
6 Tehran, Jyoti, Crime and Money Laundering-The Indian Perspective, pp-99.
There are also common factors regarding the wide range of methods used by money launderers when they attempt to launder their criminal proceeds. Three common factors identified in laundering operations are:

- moving the funds from direct association with the crime;
- disguising the trail to foil pursuit; and
- making the funds again available to the instigator, with their occupational origin hidden from view.

Money is not truly laundered unless it is made to appear sufficiently legitimate that it can be used openly, precisely what the final stage of the process is designed to achieve. Money laundering is an unlawful bustle through which illegitimate proceeds take on the outward appearance of legitimacy. It is an essential sustenance activity practiced by virtually all profit-producing criminal organizations.

Placement is the first stage in the money laundering process. Physical currency is made to enter into the financial system during this stage; it is here that the illegitimate and illegal proceeds are most vulnerable to detection. The use of illicit proceeds to purchase money orders is an example of placement. Layering describes an activity intended to obscure the trail which is left by illegitimate proceeds. In the course of this stage, a launderer may conduct a series of financial transactions in order to build layers between the funds and their illicit source. For example, a series of bank-to-bank funds transfers would constitute layering. Activities of this nature, particularly when they involve funds transfers between tax haven and bank secrecy jurisdictions, can make it very difficult for investigators to follow the trail of money. Integration, the final stage of the money laundering process requires the illicit funds to be integrated with proceeds from legitimate commercial activities as they enter the mainstream economy. The illicit funds thus take on a legitimate appearance. Laundering is a physical endeavour, an art of concealing the existence, the illegal source, or illegal application of income and to make it

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appear legitimate. It is imperative that the launderer find ways to physically transport hard cash without attracting superfluous attention and alerting Government agencies in the countries of operation. The launderers may accomplish this purpose by finding a bank in a country with less stringent banking laws, strike an understanding with the bank officials and purchase some property inconspicuously and begin to launder. There are many tax-haven countries indicating that it has soft banking system and no tax or low tax regime. These institutions provide great impetus and are a strengthening pillar of the crime of money laundering. The physical world of money laundering has begun to erode; the tendency to use electronic transfers to avoid detection is fast gaining ground. Electronic transfers of funds are known as wire transfers. Wire transfer systems allow criminal organizations, as well as legitimate businesses and individual banking customers to enjoy a swift and nearly peril free channel for moving money between countries. In Asian countries launderers use legal "underground banking" because it leaves no paper trail. The laundering process in countries such as India and Pakistan do not require for the money to enter the formal banking system but is instead transmitted through alternative banking systems such as the Hawala. These parallel banking systems are based on family or gang alliances and reinforced with an unspoken covenant of retributive violence. It is in this context the provisions of IPC have been included in the schedule of crime. This system generally involves depositing money in one country in exchange for a "chit" or "chop" and the remittance of this money in another country on presentation of the chit. Considering the major role played by banks in the laundering process, it is mandatory to note that money laundering can greatly be checked if all banks file appropriate reports in time. Bank's role in preventing money laundering begins with Know Your Customer (KYC) and to watch activities inconsistent with customer's business. It must be born in mind that illegal

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8 Tehran, Jyoti, Crime and Money Laundering: The Indian Perspective, pp-94.
money can be moved by all manners of means. Criminal groups may deposit heavy cash by cheque in some account and withdraw it by debit cards or wire transfers.

In an effort to curtail the activities related to money laundering, the banks must closely observe the transactions being carried out by suspect customers. Money laundering involves hiding, moving, and investing the proceeds of criminal conduct. The degree of organization that is displayed in money laundering is of particular concern due to its scale, its capacity to exploit and influence the legitimate business world and its capacity for internationalization. There is a continuous growing apprehension about the extent that money laundering is interlinked with organized crime. The huge profits that accrue to these criminals from such areas as drug trafficking, international fraud, advance fee fraud, long firm fraud, arms dealing, trafficking in human organs and tissue, etc., are used not only to strengthen and fortify ongoing operations, but to consolidate the wealth, prestige and respectability of the true criminals responsible for the crime of money laundering.
1.2 OBJECT AND SCOPE OF STUDY:

When a study is conducted in our country they tried to focus on various issues of Money Laundering like - How its done, Who does it & What bankers need to know about Money Laundering in the Banking Sector. Money Laundering is generally characterized by the intensity of fluctuations affecting the price in financial markets and generation of illegal money and a facilitator breaching terrorism in the long run. Instability in the markets due to money laundering is generally perceived as a measure of risk and uncertainty, and is also tradable market instrument in itself. In case of high instability, regulation and financial supervision become paramount.

The prime object behind conducting the study on this relevant topic is to make the people understand: The different aspects of International Money Laundering i.e. size, dimensions, effects and various steps taken internationally to control it.

This study explores in details the legislation on money laundering in India.

How the banks can protect their interests for being excessively used in money laundering estimated to be one trillion annually worldwide, threatening their survival.

It would also discuss how criminals, politicians, bureaucrats, Industry, real estate builders, bankers, lawyers, accountants, auditors and others are involved in money laundering.

Apart from being injurious to public order and security, how money laundering can considerably compromise the economic stability of nations and, therefore the global economy as a whole.

How has the international community—especially the global financial services industry—responded to these challenges?

Various recommendations lay down by Governments and several international agencies such as the IMF, the World Bank, the United Nations, the Basel Committee on Banking Supervision and the Financial Action Task Force (FATF) to combat money laundering.
An attempt has been made to make the people understand the concept of money laundering, its overall impact on economic and the need to make some amendments in existing laws relating to money laundering.
1.3 HYPOTHESIS:

To conduct this study following hypothesis has been formulated:

Money laundering has devastating social consequences and is a threat to national security because money laundering provides the fuel for drug dealers, terrorists, arms dealers, and other criminals to operate and expand their criminal enterprises. In doing so, criminals manipulate financial systems in the India and abroad. Unchecked, money laundering can erode the integrity of a nation's financial institutions.

Due to the high integration of capital markets, money laundering can also negatively affect national and global interest rates as launderers reinvest funds where their schemes are less likely to be detected rather than where rates of return are higher because of sound economic principles.

Organized financial crime is assuming an increasingly significant role that threatens the safety and security of peoples, states and democratic institutions. Moreover, our ability to conduct foreign policy and to promote our economic security and prosperity is hindered by these threats to our democratic and free-market partners.

In recent years, crime has become increasingly international in scope and the financial aspects of crime have become more complex due to the rapid advances in technology and globalization of the financial services industry.

Money laundering can have devastating effects on financial institutions and undermine the stability of democratic nations.

The use of private banking facilities, offshore banking, wire systems, shell corporations, and trade financing all have the ability to mask illegal activities. The criminal's choice of money laundering vehicles is only limited by his or her creativity. Ultimately, this laundered money flows into global financial systems where it can undermine national economies and currencies.

International criminals know no geographic boundaries and still operate in "safe haven" jurisdictions that permit, or even encourage, this criminal
activity. Money laundering is not only a law enforcement problem but a serious national and international security threat as well.
1.4 RATIONAL OF STUDY:

If we conduct a survey in our country asking what is Money Laundering? The general guesses from most people would be that it must be something related to drying, washing or may be dry cleaning of the currency notes. This is rather the human tendency about the world's very big crime.

However common man does not pay attention because primarily it seems to be a victimless crime.

This study shows us that India's security is threatened by the spread of international crime cartel, free trade, globalization and advances in telecommunications have increased the reach of crime syndicates.

This study persuades us to be serious about our financial system of our country under the legal perspective. We as the residents of India do not care about the financial status of the banks and financial institutions in our country: the whole financial system will go bust and there will be a total disorder.

This study also shows us the importance of anti money laundering laws like prevention of money laundering Act 2002 which help financial institution both banking as well as non banking in protecting our economic.
1.5 METHODOLOGY ADOPTED:

The entire study is socioeconomic and related to legal fields a purely doctrinal method has been adopted and it mostly based on primary and secondary sources because it was not possible to study present work by experimental method.

Literature review and research through assessing hardcopy and electronic library has been the main sources of collection of information and knowledge. Primary source of relevant information is collected from various statutory enactments, published rules or National and international conventions, rules evolved by judiciary from time to time and specific case relating to money laundering. The material was also gathered electronically, while number of commentaries and articles were gathered from the library. The materials are also collected from both legal and socio-economic sources like published work, national and international Journals of repute, papers presented at various seminars and web sites on relevant topics and views express by report of FATF (Financial Action Task Force). Comparative analysis is also made of international conventions, legislations of various countries and judgment of various courts.

Second important stage was to analysis this information in the light of aims and objectives of the thesis. The approach taken in this thesis was to interpret the gathered materials from the perspective of proposing a new standard on money laundering.

The underling conceptual frame work of thesis has thus become trans-national judicial dialogue and international reports of various institutions. This conceptual frame work is justified that Money laundering is not only a law enforcement problem but a serious national and international security threat as well.
1.6 LIMITATION OF STUDY:

All the studies have inherent limitation being affected by scarcity of time and other resources. Any attempt to present a comprehensive study shall be inhibited by fast moving world of law and ongoing judicial decisions. The study involves research into an ever changing concept of Money Laundering and proactive function review. A sincerer attempt has been made to overcome these limitations.


The researcher has covered only the cases on money laundering both at national and international level and amendment up to the year 2011.

The researcher expresses his limitation, in finding juristic writings by Indian authors. Even the case laws are more pertaining to developed countries such as US, UK, Canada. Thus the comparative study shares its constraint.

The researcher has also expresses his geographical limitation by limiting his research by considering legislation of specific countries like US, UK, European Union, Bangladesh, Afghanistan, and Canada.
1.7 SCHEME OF STUDY:

This study persuades us to be serious about our financial system of our country under the legal perspective.

This study shows us that India's security is threatened by the spread of international crime cartel, free trade, globalization and advances in telecommunications have increased the reach of crime syndicates.

Money laundering is at the centre of all criminal activity; because it is the common denominator of predominantly all other criminal acts. Since it cannot be disassociated from other forms of crime, Money laundering becomes an integral part of any transnational organized crime. The transnational criminal organizations have resorted to Money laundering in different countries in an effort to legitimize the proceeds of crime.

It needs to be emphasized that Money laundering is not a new economic, sociological or legal problem. However, geo-political developments over the last few decades, together with increased economic globalization have resulted in increased international movement of Money. The rapid expansion of international financial activity has gone hand in hand with the development of transnational organized crime, which takes advantage of political borders and exploits the differences between the legal systems in order to maximize profits. The organized criminal groups involved are genuinely multinational and pose a very serious threat to the financial stability of all economic systems viz, the underdeveloped, the developing and also the highly developed nations of the world.

Chapter-1: INTRODUCTION

This chapter deals with the general introduction of money laundering, the need, the objectives, the rationale behind the study and the overall utility of the study in brief.

The hypotheses formulated in this study are tested here.
Chapter-2: MONEY LAUNDERING: AN OVERVIEW

This chapter gives us general idea about money laundering, its definitions and its historical background. It also outlines the factors which create money laundering vulnerabilities and lastly gives us information relating to extent and the flow of money laundering around the world.

Chapter-3: THE PROCESS OF MONEY LAUNDERING: TECHNIQUES AND TRENDS

Under this chapter we can see the entire process of money laundering in detail and the techniques used for money laundering. It also highlights the need and criteria for money laundering. It also gives us information about the business area prone to money laundering and new trends in money laundering activities.

Chapter-4: THE MONEY LAUNDERING OFFENCES AND ITS NEXUS WITH CRIMINAL ACTIVITIES

This chapter deals with various money laundering offences and their nexus with criminal activities. Further it also outlines the sources of dirty money and the key features of organized crime and money laundering. Lastly it gives us information about principal transnational criminal organization involved in money laundering around the world.

Chapter-5: THE NEGATIVE EFFECTS OF MONEY LAUNDERING

This chapter shows the negative effects of money laundering on entire economic development i.e. of financial sector, real sector and on external sector. How the offshore financial centres (OFC’s) have become an increasing concern in efforts to curtail transnational money laundering activity.

Chapter-6: COMBATING MONEY LAUNDERING

This chapter deals with the legislative aspects relating to money laundering. It gives us detail understanding of various anti-money laundering legislations we have, both at national as well as international levels. Apart from these it also deals with conventions at international level and the recommendations given
by Financial Action Task Force (FATF) to curb the menace of money laundering. It also gives us information about various legislations we have to prevent those criminal activities- the proceeds of which are used in money laundering.

Chapter- 7: CONCLUSION AND SUGGESTIONS

Finally, under this chapter conclusion has been drawn about the ongoing study and some recommendations has been given to curb the menace of Money Laundering.
1.8 UTILITY OF THE STUDY:

The main purpose of this study is to understand the scale of money laundering problem. Actually, it can never be quantified. However, given the informal nature of the economy, predominance of transactions in cash, open border with other countries, instable political situation and rampant existence of predicate offenses like corruption, bribery, smuggling of goods, trafficking of human and drugs, use of counterfeit currency and of late, due to conflict situation, the extortion, lootings and illegal arms trade all have made India a fertile ground for money laundering.

Through this study we can know the entire process of money laundering i.e. (stages, process, tools used in money laundering activities etc) & the various business areas prone to money laundering.

The present study highlights the nexus of money laundering with criminal activities. How the huge amount of illegal proceeds of crime, laundered by criminals and its impact on our economy.

This study gives us information regarding various criminal groups around the world operating in money laundering activities.

Under this study reference has also been made to various legislations relating to criminal activities – the proceeds of which used in money laundering activities.

Since money laundering is an international problem, international co-operation is a critical necessity in the fight against it. The study helps us to understand numbers of initiatives have been established for dealing with the problem both at national as well as at the international level.

So by this way the present study will help us to understand the entire process of money laundering. Whereby, we can take proper steps to curb the menace of money laundering.