CHAPTER - 1

INTRODUCTION

1.1 Background of Study

Money laundering revolves around the proceeds of criminally derived property rather than property itself. Money laundering is an essential component of any profit generating crime, for the reason that without the laundering, crime would not pay. During 1980s sustained international efforts in money laundering and confiscation of proceeds of crime primarily in the context of drug related offences was seen notably. Many support the view that “going after the money” is the best way to tackle organized criminal activities. The first rationale is that to punish criminals confiscating their incentive is one. Second rationale is that universally, powerful criminals rarely come into contact with the illicit goods such as drugs, while they do come into contact with proceeds of crime, which often provide a paper trail or rather evidence which points to crucial connection with a violation of law. A third rationale is that by confiscating the proceeds of crime, would make law enforcement pay for itself. Money laundering is often referred to as criminal finance. It corrupts markets, shifts an unfair economic burden to the common man in the legal economy, undermines the stability of international finance, apart from raising various civil liberty issues. The primary object behind the money laundering process is to create a veil of legal cleanliness around the object. This veil allows the object’s disassociation with unlawful activity

3 Commonwealth Secretariat- January 1992 “International Efforts to Combat Money Laundering”; p-ix
from being traced and identified, but also enables the subject to be used in the legal economy with anonymity and without fear of criminal, civil or legal sanction\(^6\)

**1.2 Objectives of Study**

Money Laundering is a transnational crime. The objective of the present study is to critically analyse the Prevention of Money Laundering Act 2002 (PMLA) and to compare the legislative provisions with those of international convention/treaties such as Vienna Convention, Palermo Convention and FATF regulations, etc. and to find out whether the Act is in consonance with the criteria laid down in the above international instruments. The objects of the study among other things could be broadly classified under the following:

a) To trace the historical background in criminalizing money laundering and terrorist financing, and the concerted global fight in bringing into fore anti-money laundering law at national and international levels.

b) To elicit the basic legal principles enunciated in various international conventions, treaties, recommendations, and soft laws, including the resolutions by the United Nations.

c) To critically examine whether the provisions of PMLA 2002 are in consonance with international conventions/treaties and are in compatible with the procedure laid down therein.

d) To analyze whether the provisions of Indian legislation is sufficient to support the international efforts to combat money laundering.

e) To evaluate and compare the provisions of PMLA 2002 with those prevalent in other jurisdictions such as United States of America & United Kingdom.

\(^6\) supra note 1, p12
1.3 Statement of the Problem

A review of existing literature does not yield much empirical evidence about the volume of proceeds that are laundered, but it instead reveal various authors assumption. The international drive against laundering has led to pressure for homogenization of substantive criminal law and enforcement mechanisms as between countries, and in doing so it helped recast relationship that existed between nation-states. Sovereignty has no role for criminals, as they use borders to their advantage, knowing fully well that following the money trail is harder when more countries are involved. The money launderers do not chose jurisdiction based on the return the illicit funds could fetch, but rather chose less regulated jurisdictions. Despite the fact that criminal codes differ in various countries, it is important to find a common definition of money laundering. Loopholes through which money launderers escape continue to persist as a result of the discrepancies in the legal structures that exist between countries. The body of law surrounding laundering, however, has developed without the sort of transparent, principled public analysis, which would have been essential to the provision of rational criminal law. Research reveal that legal measures are not harmonized worldwide. It is frequently taken for granted that if laundering were to be more difficult, there would be substantially fewer predicate offences. This is by no means self-evident. Even if there were to be perfect enforcement of laundering offences, the profits to be made from drugs are such that there would still be ample incentives for dealers to simply hold the money in cash until they are ready to use it.

1.4 Hypothesis

The research is a doctrinal one, more particularly a critical study and analysis of PMLA with that of the statutory obligations laid down under international conventions as well as a simultaneous comparison of PMLA with that of provisions contained in anti money laundering laws in UK and USA. The research strives to formulate the following hypothesis:
a) whether the provisions contained in the legislation (PMLA) fulfills the international obligations cast upon India, in terms of various Conventions, treaties, recommendations, regulations and soft laws.

b) Whether the laws, regulations, institutional framework, procedures, measures, safeguards, and other guidelines, prevailing in India, are in consonance with the stringent standards and criteria laid down from time to time in various international Conventions, treaties, regulations, recommendations, and model laws under review.

c) whether the laws, provisions, framework, safeguards ad other guidelines are adequate enough to meet the global standards in regulating the offences of money laundering, or needs to be strengthened

d) whether comparative study of the legislation with those of other jurisdictions, selected for study results in meets the adequate standards or suggests any improvement.

1.5 Limitation & Scope of Study

The scope of the study is limited to the legislative aspects of Anti Money Laundering (AML) law and more particularly with reference to the principles enunciated in the Vienna Convention, Palermo Convention, and FATF Regulations, the three most important international convention/soft law relating to prevention and regulation of money laundering offences. Though the AML provisions contains various aspects such as predicate offence, offence of money laundering, criminalization of money laundering, preventive measures, laws relating to freezing, seizure and forfeiture of proceeds of crime and laundering, penalties & punishment, regulatory issues, jurisdictional aspects, co-operation and Mutual Legal Assistance, the scope of the Research has been broadly confined to predicate crimes and criminalization of money laundering as both are interlinked and money laundering being an ancillary offence of the predicate crime, and these two areas need a precise, strong, well drafted AML laws and regulations which are appropriate to the present situations. These laws are also
subject to constant revision and amendment due to every changing nature of the money laundering offence which is transnational in character, requiring changes periodically based on the typologies, requirements, change in categories of offences, and difficulties faced in the enforcement regime.

A study of the legal provisions relating money laundering offences would be incomplete without broadly reviewing certain basic legal system requirements identified by World Bank and IMF. The study of legal perspectives as above is with reference Indian scenario, namely the Prevention of Money Laundering Act, 2002 which came into force on 1st July 2005. Amendments have been carried out in 2009 and 2012 based on the Review of the law by FATF, and in confirming with the suggestions in line with the international Conventions. The scope of study is further limited due to the fact that the law is still in the nascent stage, and the soundness of the same is not tested fully before the appropriate quasi-judicial and judicial forum. Only a few decisions are available in the domain to study the legal aspects of the law, which further limits the scope of study. Further limited statistics and information is available in the public domain as the sole agency the Enforcement Directorate is restricting in sharing the data or information and cases relating to money laundering offences USA is pioneer in bringing the AML law into force and is constantly strengthening its legal and enforcement measures, by frequently amending laws to the changing needs of society and economy. Similarly United Kingdom has a strong AML regime in force, and many countries follow the provisions of USA or UK in their domestic regime, and hence the laws of these regime were chosen for a comparative study. It is to be pointed out that unlike in India where the AML law is a sui-generis legislation, the laws in USA and UK is spread over various statutes and enactments which compliment each other. Due to paucity of space it is also not possible to examine the entire provisions of all the legislation, which are also lengthy. Hence the study is restricted to important legislative aspects.
1.6 Methodology
The research work is primarily doctrinal in nature. In order to supplement the object of the research, and to assist the researcher, methods such as Historical Method, Evaluation Method, Analytical Method, and Comparative Method are used wherever required. Historical Method is used to trace the origin, development and impact of money laundering jurisprudence globally and nationally. Analytical method is adopted to compare and analyze the laws, regulations and procedures with those of international Conventions, treaties, FATF regulations, model laws, judicial decisions, scholarly articles, reports in dailies, journals, internet etc. Evaluation Method is adopted to elicit whether the parameters and standards laid down in the above instruments have been effectively implemented by the legislature. Comparative method is used to compare the legislative provisions, rules and regulations with international instruments and also the laws and regulations of select jurisdictions, to have a comparative and international analysis.

1.7 Review of Literature

a) Jyoti Trehan – “Crime & Money Laundering – Indian Perspective” (2008) Oxford University Press. The author has researched the topic in Indian perspective especially its impact on national security and issues due to economic liberalization. Attempt was made to examine money laundering laws in India and initiatives at domestic level to curb money laundering.

b) Guy Stessens – “Money Laundering – A New International Law Enforcement Model” (2000) United Kingdom - Cambridge University Press. The author has investigated whether the set of legal rules that have been put in place at domestic and international level has made effective contribution in the fight against money laundering.

c) Kris Hinterseer (2002) “Criminal Finance – The Political Economy of Money Laundering in a Comparative Legal Context” (Kluwer Law International) The author has examined the initiatives of EU, USA, FATF and also the issues
that confront financial institutions. The author has concluded that money laundering control would invariably require a coherent, comprehensive and holistic set of interlocking laws, regulations and policies.

d) **Wouter H Muller & et-all “Anti-Money Laundering – International Law and Practice” (2007) John Wiley & Sons** – The authors have in detail examined issues concerning international anti-money laundering laws and regulations, with reference to standards, education and training. Country-wise analysis of AML laws in brief was done in respect of 43 countries.


g) **James R Richards “Transnational Criminal Organizations, Cybercrime, and Money Laundering” – CRC Press (1999)** The author examines the role of international criminal organizations, the money laundering tools and techniques, AML measures internationally and in USA, apart from the efforts taken by international organization and Treaties to curtail money laundering.

h) **International White Collar Crimes – Cases and materials – BRUCE ZAGARIS - Cambridge University Press (2010)** - This author has examined transnational business crime, its procedural aspects, extra-territorial jurisdictions, and recent strategies in the United States and abroad to combat it.

i) **“European Money Trails” – Ernesto U. Savona - Harwood Academic Publishers, Netherlands (1999)** - The author has explored the geography of organized criminal activity, the ways in which illegal proceeds are
generated, the methods of laundering them, and the international and regional framework, with reference to certain EU countries.

j) The Scale and Impacts of Money Laundering – Brigitte Unger - Edward Elgar (2007) - The work by author gives an interdisciplinary overview of the state-of-the-art of money laundering as well as describing the legal problems of defining and fighting money laundering. The book also gives an overview of techniques and potential effects of money laundering identified and measured so far in the literature.

k) “The Law on Money Laundering – Statutes and Commentary” – Leonard Jason Lloyd, Frank Cass – Portland (1997) - The author has covered issues like criminal conduct, money laundering process, drug trafficking, terrorism, investigation, tipping off and money laundering regulations. The author in this work feels that the statutory provisions designed to impede the laundering of money are complex and wide-ranging.

l) Sanjiv Srivatsava & Dr Anoop Swaroop “The World of Money Laundering – Financial Crimes & Commercial Frauds” – (2006) Sagar Publications - The authors have examined the universal nature of money laundering and its international repercussions, and efforts taken by international groups.

m) Sandeep Savla – “Money Laundering & Financial Intermediaries” - (2001) Kluwer Law International - The author has examined money laundered through financial intermediaries in United Kingdom, with reference to issues such as criminal liability of intermediaries.

n) M.R. Venkatesh – “Sense, Sensex and Sentiments – The Failure of India’s Financial Sentinels” (2011) KW Publishers - The author has explored the symbolic link between issues such as global regime of tax havens, national economies and corruption, corruption and money laundering, money laundering and economics of tax haven, and hawala.


q) Tushar V Shah – “Commentary on The Prevention of Money Laundering Act, 2002” – Current Publications, Mumbai (2009) - The author has examined the provisions of PMLA in detail while writing this commentary, and had attempted to simplify the provisions of the Act, by explaining them with reported decisions of similar enactments.


s) Dough Hopton “ A concise Guide for All business” Grower Publishing (2006) – In this book the Author initially addresses the international development of AML law, and also traces the original and development of AML law in USA and UK
Reports/Publications

1) Mutual Evaluation Report – Anti Money Laundering and Combating the Financing of Terrorism – India — APG (Asia/Pacific Group) on Money Laundering – FATF- 25th June 2010 - The evaluation of AML/CFT was based on Forty Recommendations 2003 and Nine Special Recommendations on Terrorist Financing -2001 of the FATF. The evaluation conducted by FATF and APG experts provides a summary of the AML/CFT measures in place in India, and the level of compliance with the FATF 40+9 Recommendations and provides recommendations on how certain aspects of the system could be strengthened.

2) Global Money Laundering & Terrorist Financing – Threat Assessment – FATF Report – July 2010 - This report presents a global overview of the systemic money laundering and terrorist financing threats and ultimate harms that they may cause. This report provides a view of the most prevalent ML/TF threats which have been identified over the years as causing harm.

3) Anti-money Laundering and terrorist financing measures & Financial inclusions – FATF Guidance Report – June 2011 - This paper reviews different steps of the AML/CFT process such as Customer Due Diligence, Record Keeping, reporting of suspicious transactions, use of agents, internal controls etc and presents how the standards can be read and interpreted to support financial inclusion.

4) FATF Report – Laundering the Proceeds of Corruption – July 2011 - The study had examined in depth the most common methods used to launder proceeds of grand corruption, and the vulnerabilities leading to increased risk of laundering proceeds of corruption.

5) FIU India – Annual Report – 2008-2009 – Ministry of Finance, Government of India - The report studies aspects such as collaboration of domestic law enforcement and intelligence agencies, international efforts against money laundering, increasing awareness of reporting entities, improving compliance to
PMLA, strengthening legislative and regulatory framework, building and strengthening organizational capacity.

6) **Financial Havens, Banking Secrecy & Money Laundering – UNODC – Global Programme against Money Laundering** - The report examines the world of offshore financial centers and bank secrecy jurisdictions in the context of the control of money laundering and financial crime.

7) **Preventing Money Laundering and Terrorist Financing - A Practical Guide For Bank Supervisors – The World Bank – (2009)** - The work is in the form of a practical guide for the purpose of resolving strategic and operational supervisory issues. It covers entire spectrum of supervision ranging from offsite inspection programs, cooperation with domestic and international AML/CFT authorities to sanction and enforcement.

8) **Dev Kar – “The Drivers and Dynamics of Illicit Financial Flows from India-1948-2008” (2010) – Global Financial Integrity:** The report studies the outflow of illicit money from Indian economy particularly after the era of deregulation and trade liberalization.

**Articles**


b) **Satapathy C - “Money Laundering – New Moves to Combat Terrorism” (2003) Vol.38-No.7 – Economic & Political Weekly** - The author has reviewed the money laundering legislation in India and has given suggestions for improvement
c) Vijay Kumar Singh – “Controlling Money Laundering in India – Problems & Perspectives” 2009 – Mumbai, IGIDR - The author in this Article, has examined various problems and loopholes in implementation of AML laws, and has reviewed the Indian enactment.

d) Aminesh Bharti – “Legislative Measures to Deal with Economic Crimes in India” www.unafei.org.jp – The author in this article has examined the trend in economic crimes by relying on empirical data and the legislative measures available to deal with such crimes in India.


Results of Review

A review of literature reveal that majority of the work is confined to anti money laundering, strategies, enforcement, scale and impact, measures taken at national and international level. Some scholarly work has researched in to the areas relating to money laundering and its link with financial markets, white collar crimes, commercial frauds, criminal finance, terrorist financing. Off-shore financial havens, tax frauds, informal remittance systems, etc no research appears to have been carried out on the topic chosen by researcher, especially a critical evaluation of Indian money laundering law with that of international conventions, treaties and soft laws. Though a few authors
have carried out research on the legislative framework and legal system requirements on AML legislation, most of them are outdated and the area needs a further study and evaluation with reference to latest trends and development of money laundering jurisprudence. Further a thorough review of PMLA 2002 and a comparative study as chosen in the research topic has not been taken up earlier.

1.8 **Origin of Money Laundering**

More than 3000 years ago, merchants of China hid their assets and profits of trade, fearing forfeiture of the same from the Rulers. The traders did so by converting their profits into readily movable assets, moved cash to outside jurisdictions, and did trade at inflated price to expatriate funds. These techniques are even now followed by sophisticated money launderers. The logic behind chasing money trail is that the drug sales mostly in cash has to be converted into utilizable financial resources appearing to have legitimate origin. Money laundering is an inherent characteristic of organized crime, because without money laundering there would be no organized crime. Money Laundering is as old as old as money itself, though prior to 1970s none looked it as a crime as such. Nation States were only bothered about the underlying crime which generated the proceeds of crime, than the crime of money laundering. It is reported that during the period of Prohibition in U.S.A, especially during 1920-1933, huge sums of money were laundered. Incidentally Al Capone the notorious gangster of USA who was indicted for first time in 1931 on a Prohibition charge (transportation of beverages with more than 0.5% alcohol content) rather than numerous committed by him and his gang. It was a time when a law enforcement (US Attorney) came closer to indicting one for the first time in money laundering offence. It was a time when police forces with guns endlessly chased these criminal gangs without success, the people behind desks without

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guns who were successful in getting the gangsters indicated and charged\textsuperscript{10}. The period of 80s were often called as decennium of ‘total greed’, and 90s the decennium of ‘clearing up’, while the new millennium has really emerged cleaning up financial world.\textsuperscript{11} Clean money is worthy than dirty money, as untainted money can be invested in profitable and legitimate activities, conspicuously without risk of recrimination\textsuperscript{12} If drug dealers even think of retaining property value whether or not related to crime, they would be unable to justify it by declaring officially earned income, more so in civil forfeiture regimes.\textsuperscript{13} It is may be extremely difficult to find out the origin of illicit money which is legally not accounted for, as in most instances it is camouflaged in propagating and nurturing global criminal activities.\textsuperscript{14}

The concept of criminal finance is much broader as it centers around profiting from or financing criminal activity.\textsuperscript{15} Far from a byzantine mystery, criminal laundering is an open secret.\textsuperscript{16} When a criminal has abundant wealth without an apparent legal source, it easily raises a suspicion. Therefore the criminals are compelled to launder their wealth to make ill gotten gains appear legally earned. The most important aspect of money laundering is disguising the link between the money and its (illegal) source.\textsuperscript{17} The proceeds of drug trafficking cannot be accounted for normally like legitimate other legitimate business, and, therefore, need to be disguised.\textsuperscript{18} Most criminal and terrorist organizations use laundering to funnel funds into legitimate businesses through illegal enterprises. These businesses act as a smokescreen to conceal the identity as well as

\textsuperscript{11} Supra Note 10; p7
\textsuperscript{12} Aldrigde, Peter “The Moral Limits of Money Laundering”; p278
\textsuperscript{13} Supra Note 8; p182
\textsuperscript{14} Malhotra, Saurab (2007) “Money Laundering & Terrorism – An Overview” Sabitha A (ed) ICFAI University Press, Hyderabad, India; p2
\textsuperscript{17} Ferwarda, Joras “Criminals Save Our Banks- The Effect of Money Laundering During Financial Crisis”; p3
\textsuperscript{18} Bantekay, Ilias & Nash, Susan (2003) “International Criminal Law” Cavendish Publishing; p54
destination of the money.\textsuperscript{19} Money \textit{per se} has to be laundered for two reasons. Firstly the money trail itself can become evidence against the perpetrators of offence and secondly illicit money with criminals can be the target of investigation and action.\textsuperscript{20} The sophisticated money launderer is like a water running downhill, both seek out the line of least resistance.\textsuperscript{21} Money laundering is as old as money generating crime itself. Successful criminals from age immemorial always have to find out a way to make their proceeds from crime look like legally obtained money\textsuperscript{22}.

A vast majority of illegal acts are perpetrated to achieve one common goal - money. If money is generated by crime, it is useless until the tainted source of funds can be disguised or preferably obliterated.\textsuperscript{23} Crime can be successful only if the funds generated can be utilized without their true source being known. Laundering expands criminal activity because the washed funds are at times again reinvested in the businesses.\textsuperscript{24} "The three elements- conversion, concealment and false legitimacy – form the quintessence of money laundering"\textsuperscript{25} Money laundering, by definition, relates to acquisitive crimes, to say, the offences which produce a financial benefit.\textsuperscript{26} “Cleanliness is next to Godliness” is what the old adage, but laundering dirty money by cleansing it has rather the opposite tendency.\textsuperscript{27}

\begin{itemize}
\item \textsuperscript{19} Masciandro, Donato (2004) “Combating Black Money- Money Laundering & Terrorist Finance – International Cooperation and G8 Role”; p3
\item \textsuperscript{20} Blum A. Jack & et al. “Financial Havens, Banking Secrecy and Money Laundering” UNODC; p10
\item \textsuperscript{21} “Combating Money Laundering & Terrorist Financing- A Model of Best Practice for the Financial Sector, the Professionals and Other Designated Businesses” (2005) Commonwealth Secretariat; p151
\item \textsuperscript{22} Shcaap D. Cess (1998) “Fighting Money Laundering with comments on thee legislation of Netherlands Antilles and Aruba” Kluwer Law International; p9
\item \textsuperscript{23} Liley, Peter (2006) “Dirty Dealing- The Untold Truth About Global Money Laundering, International Crime & Terrorism” Kogan Publishing; p-xii
\item \textsuperscript{24} Ibid; p-xiii
\item \textsuperscript{25} Blickman, Tom (2007) “Money Laundering, Tax Evasion & Financial Regulation- An Introduction” Sabitha A (ed) ICFAI University Press, Hyderabad, India; p140
\item \textsuperscript{26} Trehan, Jyoti (2008) “Crime and Money Laundering- The Indian Perspective” Oxford University Press, India; p191
\item \textsuperscript{27} Keith R Fisher “In Rem Alternatives to Extradition for Money Laundering” \textit{L.A International and Comparative Law Review Vol-25}; p416
\end{itemize}
1.9 **Meaning of Money Laundering**

The term ‘money laundering’ arose in the US in 1920s, when it was apparently used by the American police officers with reference to the ownership and use of launderettes by mafia groups. These groups showed an active interest in acquiring these launderettes already owned by criminals, as this business gave them a means of giving a legitimate appearance to money derived from criminal activities. The criminal groups were able to declare their illicit proceeds as profits gained through launderettes, and hence the term ‘laundering’ was stated to be coined. The term was apparently first used with a legal meaning in an American judgment in 1982 concerning the confiscation of laundered Columbian drug proceeds\(^28\)(US Vs $ 4,255,625.39, Federal supplement Vol 551, South District of Florida (1982) 314) The widespread acceptance of this unofficial popular meaning\(^29\) often leads the public to assume that ‘money laundering’ has an official, juridical, definition, which is rarely the case. The term is a used as a shorthand phrase to define a complex process.\(^30\)

Money laundering is an inevitable extension of organized crime and an essential aspect of any profit-generating criminal activity.\(^31\) Broadly stated the term money-laundering means any process or activity connected with the conversion of proceeds of crime to project proceeds of crime as untainted property.\(^32\) Money laundering can also be explained as a process which transforms illegal inputs into supposedly legitimate outputs. Illicit proceeds gained by criminals are made to look as if they were the fruits of honest hard labor—transformed, for instance, into legitimate-looking bank accounts, real estate, or luxury goods. This process allows criminals to prosper from their crimes and allow them to lead normal life with others without looking like criminals.\(^33\)

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\(^29\) of the word “money laundering”


\(^32\) Tushar V Shah (2009) “Commentary on PMLA” Current Publications, New Delhi, India; p81

\(^33\) Ashin, Paul “Dirty Money- Real Pain” Journal of Finance & Development June 2012; p38
produced by crime, but an important point is that the money is dealt with in such a way, so as to present it as having been acquired otherwise than by crime. The term laundering offences is so wide now that almost any financial transaction is capable of being laundering, if some of the money or other property in fact has its provenance in crime. Originally, money laundering referred only to the laundering of drug money. Despite the fact that criminal codes differ in various countries, it is important to arrive at a common definition of money laundering. A clear definition that includes the types of crime is necessary for measuring money laundering.

Two types of defining money laundering methods are adopted by various States. The first one does not define exactly as to which action constitutes money laundering. The second category on the other hand exactly describes actions that constitute money laundering. The best example of this is found in the Dutch penal code “Hiding or disguising the true origin, the source, the alienation, the movement or the place where it can be found”. While legally defining money laundering the most problematic aspect relate to predicate offences. From a legal point of view, hiding/disguising the source of money may not tantamount to money laundering, unless these funds originated from a predicate crime. Therefore what exactly amounts to money laundering, which actions fall under the category, who can be prosecuted, would largely dependent on what constitutes a crime for the purpose of money laundering.

There is considerable divergences in the definition of money laundering by countries, which is problematic given the transnational character of the crime. For example what might constitute money laundering in Canada might not amount to the same in Greece given the shorter list of predicate offence in the latter. The Vienna Convention neither use the term ‘money laundering’ nor does it scope travel beyond drug relate offences. At that time some UN member states were reluctant to accept use of term which was then a

35 Ibid; p442
37 ibid p21
38 ibid p24
39 ibid p25
The UN Convention against Transnational Organized Crime, which entered into force on 29 September 2003, widens the definition of money laundering to include the proceeds of all serious crime, and gives legal force to a number of issues addressed in the 1998 United Nations General Assembly Special Session’s (UNGASS) Political Declaration.

1.10 Money Laundering Process & Methods

The term money laundering perfectly describes the cycle of transactions that the dirty money passes through from the one end and it comes out clear at the other end. As a metaphor the concept money laundering implies that dirty money can indeed come out after the washing cycle, whiter than white, as when it blends so smoothly with legitimate financial investments, it would be hard to tell the difference. Money laundering process can be summarized as the conversion of illicit cash or proceeds of crime to another asset, the concealment of the true source of ownership of such proceeds, and the creation of the perception of legitimacy of source and ownership. Money laundering process which begins with tainted money, comes to an end once the taint has been successfully removed. The determinants are not only the nature and intensity of the taint but safeguards required to obstruct and stall any investigation in future. Proceeds of crime often take the form of cash which therefore needs to enter the financial system by some means. The metaphor of money laundering is linked to the two process through which the crime money is rendered most useful. By converting it into a desirable medium (such as bank balance) and erasing its obvious link to the predicate crime. Common law of tracing operates whenever a property changes hands or substitution takes place. But what appears to defeat common

40 Joyce, Elizabeth, (2005) “Expanding the International Regime on Money Laundering in Response to Transnational Organized Crime, Terrorism & Corruption” Sagar Publications; p86
43 supra note 16; p434
44 Foreign Policy & Financial Secrecy Jurisdictions (1986) Inter American Law Review 18:p 34
45 supra note 5; p22
47 supra note 15; page 325
law is mixing of whether physically in a bag or metaphysically in a bank account. The traditional methods of laundering as most scholars and experts agree can be broadly categorized into three stages (i) Placement (ii) Layering and (iii) Integration

In the first stage of laundering, the launderer pumps the proceeds of crime into the financial system. In the second phase, he enters purposefully into several financial transactions to distance the illegal money from its original source. In the final stage of the laundering cycle, the ill gotten proceeds re-enter the economy.

The use of infusing cash in the financial system in the placement stage, has been identified long ago, as a form of laundering proceeds of crime. It is evident from FATF-40 recommendations issued in 1990, which focused on detecting laundering at cash proceeds stage. The anonymous nature of cash, with its lack of paper trail, is attractive and may outweigh other negatives. Some of the predicate crimes such as drug trafficking are historically cash driven business. In the placement stage the volume of currency dealt, really matters. The largest Euro note is 500 and thus one million dollars in Euro weighs 2.4 kilos compared to that the same sum in largest possible dollar note weighs 10 kilos. Experts opine that laundered money is most vulnerable to detection at the placement stage. Consequently regulators and law enforcement agencies have developed sufficient safeguards to make it difficult to place substantial amounts of cash into accounts without detection. The initial stage of process involve placement of illicit funds into the financial system, which is done normally through a financial institution by depositing cash in banks. Large amounts of cash are broken into less conspicuous amounts, and over a period of time deposited in multiple institutions.

The object behind layering illicit money is to break the money, create complicated structure and detailed paper work to confuse and frustrate the investigation,

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48 supra note 46:page 108
51 Supra note 13
and at the end create a false provenance for the source of illicit funds. Some characteristics in the layering stage may give indication that a person owning the asset may have one motive that is to disguise his funds. Like for instance lack of concern of the investor over huge loss of investment, high volume of advisory charges, etc. The second laundering stage takes place when the illicit funds in the form of securities, funds, insurance contracts are moved to other institutions separating them further from the criminal source of origin. The launderer may also disguise the transfer as payment for goods or services or transfer the funds to shell corporations.

Once funds are sufficiently layered, they are integrated into the mainstream financial system such bonds, securities, bank notes, guarantee etc. Integration involves movement of layered funds into the global financial system, to be mixed with funds of legitimate origin. The third stage involves integration of funds into the legitimate economy, which is accomplished through purchase of assets such as luxury goods, real estate or securities. Integration is the final stage of the process and at this stage the money is integrated into the into legitimate economic and financial system and is assimilated with all other assets in the system. Integration of the cleansed money is accomplished by the launderer making it appear to have been earned legitimately or legally. At this stage it is extremely difficult to distinguish or even estimate the legal and illegal wealth.

To give an example, a drug dealer sells one thousand dollar worth of narcotic drugs to a client, takes the cash to a Casino, gambles for a few minutes and while redeeming the chips at Casino, directs them to deposit the money in his bank account. In case of any query he can justify the credit in his bank account to the earnings in Casino, which may be legal in many states. With the money in his account he buys an asset for example a Moped. The predicate offence in this example is sale of narcotics, and the dealer is also culpable for the offence of money laundering, as he disguised the origin of his funds. In the above case the placement stage is exchange of cash for Casino chips,

53 Supra note 23; p50
54 Supra note 9; p25
55 supra note 1; p-I-9
56 ibid
while the layering stage is transfer of winnings from Casino to bank account. The integration stage is purchase of Moped for which a legitimate title is available, which the dealer can use or sell later.\textsuperscript{57} Smuggling of currency allows the launderer the opportunity to obscure the trail of funds completely, from the placement stage to the integration stage in the financial system.\textsuperscript{58}

Not all laundering transactions involve the three most common and distinct phases, as some may indeed involve more. Nonetheless the three-stage classification is a useful decomposition of what can sometimes be a complex process.\textsuperscript{59} Money laundering need not require international transactions. There are many instances of laundering within the domestic territory.\textsuperscript{60}

The methods of laundering can be as simple as a one from carrying money in suitcases across borders to lax jurisdictions. At times purchase of easily transportable high value goods, such as rare stamps or diamonds facilitates this process. Insurance and real estate transactions also can be used to conceal the origins of funds.\textsuperscript{61} Smuggling of cash is generally done in one of three ways. First by shipping bulk cash through the same channel used to bring in the drugs. (Container/ship/truck) Second by hand carrying cash or through courier. Third by changing cash in to NI and mailing it to foreign banks or other destinations. \textsuperscript{62} In many cases of money laundering, often the sender and the receiver of the transferred money is one and the same person, as by the laundering process the said person conceals the origin of money by resorting to several moments. \textsuperscript{63} Proceeds of crime are mostly in cash and hence smuggling of cash is an easy and simple way which do not leave trace to the authorities. At times proceeds of crime are stealthily moved across border and then deposited in banking institution, paid

\textsuperscript{57} Mark B Skerry (2013) “Financial Counter-Intelligence- How Changes to the US- AML Regime can assist US Counter Intelligence Efforts” Santa Clara Legal Review (205); P-217
\textsuperscript{58} Savona U Ernesto (1999) “European Money Trails” Harwood Academic Publishers; page15
\textsuperscript{59} Levi, Michael & Reuter, Peter “Money Laundering”; p311-312
\textsuperscript{60} ibid
\textsuperscript{61} ibid
for real estate or invested to establish companies. Front companies which are established by criminals have a legal personality, a legitimate business and operating income. However the purpose of forming a front company is not for making profit in business but to launder proceeds of crime. These front companies serve as cover for the criminals and is an excuse for them to explain the source of illicit money.

When the moment of capital is free, it applies to both funds of legal and illegal origin. The more the jurisdiction it flows, the harder would be the job of tracing it. One cannot visualize a single method of laundering as it can range from high value real-estate transactions to luxury items, jewelry etc., and money can pass through international web of legitimate business as well as shell companies. After the cleansing process, the illicit money should be back to the same person, but as if it originated from a legal source. The cleansing process is normally done on a foreign soil through a series of transactions, though at times it can be done with the country. Economically speaking, laundered money is diluted like a drop of ink in the flow of finance, making it difficult to detect. The recycling element is not required when the proceeds are reinvested in criminal activities. For many small time criminals the elaborate process of ‘washing’ is not at all required, as they always deal in cash and avoid financial institutions as much as possible. Further their associates and suppliers also expect cash, and so also cash is used to meet living expenses. In economies of this type where average citizen deal in cash, it will be firmly followed by dishonest citizens, as to do otherwise would invite suspicion.

The simple forms of money laundering are turnover manipulation, mixing proceeds of crime with business and declaring as income to fiscal authorities as legally

64 He, Ping (2010) “A Typological Study on Money Laundering” Emerald Journal of Money Laundering Control- Vol-13, No-1,
65 Supra note 64
66 supra note 20;p28
67 supra note 21; p8
68 supra note 52; p58
71 Supra Note 30; p190
Another method is to buy a cash intensive business wherein the illicit cash is merged with normal business. The illicit funds are disguised and reported as business turnover for tax purposes, thereby ensuring complete legitimization. It is seen that a major part of criminal money is laundered internationally on the asset markets, where fluctuations in prices facilitate money laundering, and easy integration of huge funds. Different assets with distinctive medium of exchange acts as high liquid funds in laundering. Apart from liquid cash, electronic and virtual gold currencies perform ‘store of value’ function. Gold currencies are internationally exchangeable, having current market value and can be used for payment without leaving identification trail such as bank account. In some place the enforcement agencies are noticing the use of ‘money mules’ as a new means of transferring value. Criminals who gain illegal access to deposit accounts, often recruiting innocent third parties to act as ‘money mules’. In the process an individual who may be unaware of the laundering offence, is recruited to receive and then send wire transfers from his deposit accounts to individual overseas, for which a certain commission is paid for the mule. One jurisdiction provided a detailed description of ‘cuckoo smurfing’ which uses alternative remittance system and involving innocent parties and those innocent parties accounts without their knowledge, for laundering of proceeds.

The diamond industry is historically cash driven and virtually the market functions at all stages on cash basis. This practice has however reduced in recent times as wired funds or credit system take prominence even in cash based economies such as Namibia and India. Diamonds as a commodity generate profit, retain huge value, flexible, and act as a safe mode of payment. Diamond trade is famous for its trust, business ethics coupled with un-documented trade practice, making it vulnerable for money laundering, and hence the industry is to be watched closely by anti-money

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72 Supra note 22; page-10
73 ibid
74 supra note 63; page 28
76 supra note 75; p27
77 FATF Report (2013) “Money Laundering & Terrorist Financing Through Trade in Diamonds”; p21
In the diamond trade two types of activities appear, one money laundering through diamond trade and the other laundering the diamond proceeds of crime. The first one is laundering proceeds of crime through placement and layering, by purchasing diamonds with proceeds of crime and selling it later as a legitimate transaction to integrate the illicit money. The second one is where the illicit diamonds (such as stolen diamonds) will be traded, after re-cutting and polishing, by concealing their original source. Though in both cases the criminal has laundered proceeds of crime, only the former one is commonly termed as money laundering. Diamonds have the ability to earn, move and store value, as they are liquid and transferable in nature. They have unique property of carrying high commercial value in small transportable quantities. The trade is carried out in informal markets as well as organized financial system, as they operate on cash as well as exchange based government regulated dealings. A single carat of diamond may be worth around US$ 15000. Unlike cash diamonds are often not required to be reported when moved across borders. Sale and re-sale takes place often in domestic and global diamond market, giving a wonderful opportunity for launderers. Illicit funds can be hidden, moved, infused into financial system or traded for other tangible assets within the diamond industry. Diamonds are often trade across borders at low costs to minimize export duty or land revenue. The value generated at the final stage would be extremely higher than the originating value, but in reality the value would be same, except for the ‘mark-up’ by traders in the cycle. Making payments through diamond mode is normally untraceable allowing criminals to avoid financial institutions and their KYC norms. Use of diamond as a currency in international trade is quite common which is exchanged with cash and cheque in other countries.

Alternative remittance systems being unregulated can handle large cash transactions without leaving a paper trail. Ethnic banking systems are also popular

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78 ibid; p21
79 ibid; page-27
80 ibid; p48
81 supra note 77; p27
82 ibid; p56
83 ibid; page 88
because of their ability to serve even remote locations. Ethnic bankers are often members of old, established banking families, well known, powerful, and respected within their community. Alternative remittances essentially involved one ethnic banker delivering money from his private reserve at the request of his counter part in another country, who deals with him on behalf of his client. In Urdu the term ‘hawala’ means ‘reference’ while in Arabic it means ‘transfer’. A fax, mail or a telephone call will communicate to the counterpart overseas, the amount, name address and telephone number of the recipient. At times the serial number of a rupee note/dollar in the hands of the recipient is also communicated, for a fool proof identification. Trust, a defining element of hawala, makes the system extremely efficient. Criminal HOSSPs (Hawala and Other Similar Service Providers) facilitate movement or laundering the proceeds of crime such as drug trafficking, smuggling and fraud. The existence of these groups is driven by demand of their criminal clients who wish to move funds across borders. HOSSPs are often used by criminals as they can mask the identity of the sender as well as the recipient of illicit money. One common technique adopted is ‘cuckoo smurfing’ which occurs where the destination account is the same country where surplus criminal cash originated. If conventional banking system is used at any stage in the laundering process it creates a paper trail, leaving the activity vulnerable to detection by authorities. But alternative remittance systems in contrast does not carry the risks associated with laundering through the formal financial sector. INTERPOL reports that ethnic banking in reality is not different from banking through conventional channels, as in either system money is not actually transported, only debited and credited through communication of data. The basic difference with alternative remittance is that little

84 Lisa C. Caroll “Alternative Remittance System distinguishing sub systems of ethnic money laundering in INTERPOL member countries of the Asian Continent”
85 ibid
87 FATF Report (2013) “The Role of hawala and other similar service providers in money laundering & terrorist financing”
88 ibid; p37
or no record of the communication remains, so the launderer leaves no trail.\textsuperscript{89} Trade Based Money Laundering (TBML) refers to the process wherein the proceeds of crime is disguised and moved through legitimate trade/business dealings, disguising the illegal origin of wealth. This is normally done through misrepresentation of price, which can be over invoicing or under-invoicing. The quantity traded may also be fudged to account illicit money.\textsuperscript{90}

The money laundering process do involve some expenses and costs in the cycle. According to British National Crime Intelligence Service expenses may be in the range of 6\% to 8\% while in some exceptional cases it may be in 10\% to 50\%, and criminals are happy if they ultimately cleanse and legalize money In the range of 30\% to 40\%\textsuperscript{91} The advancement in technology has led to a situation where millions of dollars can travel round the planet in 15\textsuperscript{th} of a second, while over $2 trillion is moved across the globe every day. The drug money from South America can move through New York, Austria, and to London in less time than you take to read this paragraph.\textsuperscript{92} At times the debts of legitimate concerns are entrusted to a launderer, who will settle the payments using value received from criminal groups located in third countries. In such circumstances the recipient company may not be aware of the origin of funds which they used in settlement of their debts.\textsuperscript{93}

\textbf{1.11 History & Evolution of Global Anti-Money Laundering Law}

Post second war period legislators started concentrating on criminal acts which do not often cause any harm to a identifiable victim, for example certain environmental, fiscal and commercial offences are victimless. In the absence of any victim the only lawful option to ensure that the offenders are deprived of their illegal profits, is confiscation of proceeds of crime. Though many of the traditional systems were familiar with confiscation of subjects of crime, they did not have means to confiscate proceeds
from crime.\textsuperscript{94} As the classic tools of criminal law failed in its fight against organized crime, legislators especially from the USA in the front, mooted for confiscation of proceeds of crime and the incrimination of money laundering as a new tool to tackle the organized crime.\textsuperscript{95} Three types of approach are adopted to identify suspicious transactions by financial institutions. The first approach adopted by US and Australia involve reporting routine currency transactions both domestic and cross border, by specified financial intermediaries. The second approach followed in Europe, Hong Kong and Japan allows intermediaries only to report suspicious transactions, rather than routine ones. The third type is adopted wherein institutions are required to report unusual transactions to a civilian body which will verify whether it is suspicious or not.\textsuperscript{96}

Beginning of the twentieth century saw international initiatives taken to control the use of drugs. Between 1912 and 1972 no less than 12 multilateral conventions were adopted with regard to the regulation of drugs. Therefore the fight against money laundering was not just a new strategy in the fight against crime, but also the fight against drug trafficking.\textsuperscript{97} In the latter part of twentieth century proceeds of crime emerged as modern evil, a plague of malevolence which started spreading through our civil society. A tranche of international and national strategies swiftly arose across the globe to counteract this spread.\textsuperscript{98} Globalization coupled with liberalization, privatization and increased deregulation has removed barriers to movement of capital, payment system and electronic transfer. Further the stupendous growth of stock market in developing countries, has created a new play field for money launderers.\textsuperscript{99}

Development of an international AML regime is not merely codification of laws at global level, or for that matter the existing national or regional norms and standards. It rather represents a major shift in the way nation States address the issue of transnational

\textsuperscript{94} supra note 70; p4
\textsuperscript{95} ibid; p9
\textsuperscript{96} supra note 8; p187-188
\textsuperscript{97} supra note 70; p10
\textsuperscript{98} Gallent, Michelle (2005) “Money Laundering & Proceeds of Crime” Edward Elgar
\textsuperscript{99} supra note 9; p19
crime. It is legislative tool designed to facilitate the drafting of specially adapted legislative provisions by countries intending to enact a law against money laundering and the financing of terrorism or to upgrade their legislation in those areas. As nations traditionally concentrated only on crimes not on proceeds, the existing laws were insufficient to trace and confiscate proceeds of crime. Legal provisions towards confiscation of proceeds of crime is the main tool in the fight against money laundering and the focus therefore should be to have a strong confiscation provisions. A strong legislative and administrative measure to be put in place to create an effective confiscation system. The international drive against laundering has brought in pressure to homogenize substantive criminal law and enforcement mechanisms between countries. This has helped in improving relationship between nation states. For nation states such harmonization is indeed a challenge as hitherto criminal law was in the domain of sovereign state. The international AML regime is, however, not universal, homogenous bloc but is instead composed of different layers of which some are universal, others regional. The most universal layer is provided by 1988 UN convention. When the concept of electronic transfers emerged in the light of growth of tax havens, the world of finance and money laundering underwent a tectonic change. The Basle Principles issued on 12th December 1988 issued by Basle Committee on Banking Regulations and Supervisory Practices, is a set of regulations devised to encourage the banking sector to adopt a common position so as to ensure that banks are not used to hide or launder funds acquired through criminal activities. It is neither a treaty in terms of international law, nor it has direct legal effect in domestic law of any country. The origin of CDD (customer due diligence) which is founded on traditional good practices, are rules framed by internal risk management within financial institutions to understand the client’s business and is the effective way of

100 supra note 40; page 80
101 “UNODC(2005)- “Model Legislation on Money Laundering & Financing of Terrorism” - IMF Publication; p4
103 supra note 70; p20
104 supra note 52; p124
105 supra note 44; pxvi
maintaining exposure for instance to the effects of accumulated risks.\textsuperscript{106} The UN Convention, 1988 in fact superseded earlier conventions signed in 1961 and 1971 and, in effect, established the framework for subsequent efforts to combat drug trafficking and money laundering.\textsuperscript{107} Though the current global regime can be attributed to a considerable extent to the initiatives of US, national regimes in many places is due to the local influences. For example in Australia the AML regime was in 90s prompted by tax evasion, rather than drug issue.\textsuperscript{108}

Initially, the international efforts to combat the growth in money laundering was addressed by banking regulations and codes of conduct rather than through legislative reform\textsuperscript{109}. International community have geared up their fight in controlling illicit financial flows and money launder at national and international level, by bringing in a number of Conventions, Resolutions, and Action Plants. Important among them are 1988 Vienna Convention, FATF Recommendations, 1988 Political Declaration and related Action Plant, Palermo Convention 2000, 2009 Political Declaration and Plant of Action on International Cooperation towards an Integrated and Balanced Strategy to counter the world drug problem, 2010 Salvador Declaration on Comprehensive Strategies for Global Challenge: Crime Prevention and Criminal Justice System and Their Development in a Changing World. The history of legislation of money laundering began with the criminalization of proceeds of drug related offences, as provided by the Vienna Drug Convention. Therefore, initially the only predicate offences for money laundering were drug-related crimes. In the inception stages only drug offenders could be prosecuted for the offence of money laundering, while attempting to launder the proceeds of drug related crime\textsuperscript{110}. An initial model law on money laundering for civil law countries was issued by the UNODC in 1999 as part of its efforts to assist States and jurisdictions prepare, or upgrade, their own legislative framework in conformity with international standards and best practices in the

\textsuperscript{106} Peith, Mark & Alogi, Gemma “ Anti Money Laundering – Leveling the playing field”/\textit{Basel Institute of Governance}; p8

\textsuperscript{107} Williams, Phil “ Crime, Illicit Markets and Money Laundering”

\textsuperscript{108} supra note 59; p305

\textsuperscript{109} supra note 18; p61

\textsuperscript{110} supra note 12; p24
implementation of anti-money laundering measures. The updated model law replaces the initial one. It is based, to a large extent, on the relevant international instruments concerning money laundering and the financing of terrorism and incorporates FATF 40+9 recommendations.

Money laundering regulation also involves organizations like Bank of International Settlements (BIS), OECD, G-8, G-20, Financial Stability Forum (FSF), which has resulted in plethora of bilateral, multilateral rules and agreements posing a severe challenge to all Financial Intelligence Unit (FIUs) today. UNCAS has brought into force a landmark regulation fostering international cooperation in fighting money laundering and corruption. It is stated to be first genuinely global and legally binding instrument on corruption and related issues. The instrument came into force after extensive international participation and broad consensus of signatory states including private sector and civil society organizations. Global economics is one side of the implementation coin. The order is to be found in international law and politics. Although many of the developments in the AML regime are regional, the starting point is treaties at global level. Harmonization of national and international AML regimes can be done through unilateral, bilateral or multilateral negotiations. Unilateral solution given by US provided a model AML regime which can be imitated by others. Unilateral model is effective if a leading country could provide know-how from its AML system. Bilateral regulations can be framed in case of two friendly countries having strong economic ties. Experts however feel that bilateral harmonization may encourage money laundering. The multilateral negotiations are facilitated normally by the international organizations such as IMF, World Bank, FATF, and Egmont Group.

The broad objective of GPML (Global Programme Against Money Laundering) which is based on the UN Conventions and internationally accepted standards such as FATF recommendations, is to assist all states to have in place a legislation on money laundering.

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111 supra note 36; p2
113 supra note 102; p93
laundering and to equip them with necessary knowledge, means and expertise required. It helps states with necessary legal, institutional and operational framework, apart from assisting the States from detecting, seizing and confiscating illicit proceeds.\footnote{115 supra note 41; p51} The GPML also encourages money laundering policy development, raising public awareness about money laundering, and acts as a coordinator of anti-money laundering initiatives between the United Nations and other organizations.\footnote{116 ibid} GPML has developed, in collaboration with the UNODC Legal Advisory Section, the Commonwealth Secretariat and the International Monetary Fund (IMF), model laws for both common law and civil law legal systems to assist countries in drafting AML/CFT legislation in order to be in full compliance with the applicable UN Conventions and the FATF Recommendations. The model laws serve as working tools for Member States and are constantly being revised and updated to encompass any new international standards. The model laws are drafted in such a manner to be compatible enough to adjust to the particular needs of the needs of a nation State.\footnote{117 supra note 41; p52}

Presently there is a major reform process in AML rules as authorities are tasked with new guidelines especially for the private sector. There is a fundamental shift from ‘ruled based’ to a ‘risk based’ approach in implementation of AML rules. In the last few decades several factors have contributed to increase the public awareness towards corruption and money laundering, and in fact in 90s this awareness has stimulated research on their impact on society, institution and economy.\footnote{119 Arnone, Macro & Padoan, Pier Carlo (2007) “Anti Money Laundering by International Institutions- A Preliminary Assessment” ICFAI University Press, India; p109} To ensure that the financial centres do not become ‘sinks’ in the money laundering terminology, a range of regulations have come into force to address the issue. A report from German intelligence shows that Liechtenstein is under pressure to clean up the financial dealings or close down. Similarly Panama was invaded by the US military for the reason that it has become a haven for money laundering/drug trafficking.\footnote{120 supra f2; p30} Day by day money
launderers are becoming cleverer, while they are studying the anti-money laundering regulations and devising methods of getting the money cleansed without appearing on official radar screens.121

The body of law surrounding laundering, appears to have developed without the sort of transparent, principled public analysis, which is essential factors to be considered in formation of rational criminal law.122 Global rule making on money laundering issue has in fact become something of a growth industry, as one researcher puts it (Nigel Moriss). One will find involvement of a number of inter governmental, multilateral and supra natural organization involved in framing rules and regulations. At times the analyses of these groups overlap, and have the disturbing tendency of quoting each other’s worm. It is indeed ironical that international community failed to produce a single unified test of rules to take on criminal groups who thrive on exploiting the differences and loopholes in law and regulation.123 A time has come to assess the global efforts of AML regime and its impact on money launderers and those involved in committing predicate offences. Little research has been done in the area of confiscation of proceeds and its impact on criminals, to the extent of demotivating them from crime, and turning in to law abiding citizens. The international standards of regulations/rules should be a strong deterrent for the young and potential next generation criminals.124 Occasionally government may deliberately ignore, overlook or even participate in money laundering in the nations interest. In other words there are instances where states at times wittingly or unwittingly engage in money laundering in furtherance of political objectives.125 Money laundering is facilitated by some states in its benevolent regulatory environment. Most states benefit economically by allowing off shore financial centres. Though there is consensus among states to prevent money laundering, there is lack of cooperation and laxity in domestic area, as states could still benefit from regulation elsewhere. Voluntary standards is more of a requirement globally, along with material

121 supra note 23; p-xv
122 supra note 12; p282
124 Thomas, David “The Psychology of Money Launderers”; p5
125 supra note 5; p51
sanctions for the crime.\textsuperscript{126} Sovereign states are more interested in international rule making provided they can veto any rule they dislike. The UN, WTO and the EU are facing difficulties in revising old rules, and to bring in new set of rules. Overall, international rule-makers are thus confronted with a formidable dilemma: if they chose to remain exclusive clubs, they will be undemocratic, if they chose to become inclusive forums, they will be ineffective\textsuperscript{127}

\textsuperscript{126} Hulssie, Rainer & Kerwer, Dieter “Global Standards in Action- Insight from Anti-Money Laundering Regulation”; p622
\textsuperscript{127} supra note 126; page 631