

Anti-money laundering measures in India- Issues and Challenges

¹ Prof.Dr.R.Thilagaraj, ² Dr. Geni Philipose

¹ Director (Academic).Centre for Excellence in Digital Forensics, Perungudi, Chennai, India,

²Advocate, High court of Madras

Email - ¹ rthilagaraj@gmail.com , ² genijayashima@gmail.com

Abstract: Money laundering has become a major threat to the society as it has become a monster which has to be controlled very quickly. Rapid developments in financial information, technology and communication allow money to move anywhere in the world with speed and ease. This makes the task of combating money-laundering more urgent than ever. The threat of money laundering as a tool to finance terrorism has made it a direct threat to world peace and the onus lies upon the governments and FIUs of the world to develop better regulatory and physical barriers to prevent any such practices. Money Laundering threatens national governments and international relations between them through corruption of officials and legal systems. India has taken note of the threats the money laundering causes to the security and economy of the country. India has enacted the UAPA, 1967 and PMLA, 2002 to control and prevent money laundering and terrorism financing. However there has challenges as the law involves detecting and punishing criminals based on the financial intelligence.

Key Words: Money laundering, PMLA, 2002, issues, challenges.

1. INTRODUCTION:

According to UNODC money laundering is the method by which criminals disguise the illegal origins of their wealth and protect their asset bases, so as to avoid the suspicion of law enforcement agencies and prevent leaving trail incriminating evidence. Jeffrey Robinson (1998) described money laundering as Money is put through a cycle of transactions, or washed, so that it comes out the other end as legal, or clean, money. In other words, the source of illegally obtained funds is obscured through a succession of transfers and deals in order that those same funds can eventually be made to reappear as legitimate income. Money laundering has been called the world's third largest industry according to IMF and World Bank, and is associated with all manner of crime. People become money launderers either by having possession of the proceeds of a crime or assets that represent the proceeds of crime. Some class of money launderers helps to create the scheme, even if he does not actually take part in it. Money laundering generally called as a victimless crime as it does not involve any of the drama associated with the common crimes such as robbery, theft, or murder. It also does not create any violent crime imprints on the psyche of the people. There are several reasons why people launder money. These include hiding wealth, avoiding prosecution, evading taxes and increasing profits.

It is evident from various studies that there is a clear link between the organised crimes, financing terrorism and money laundering. The international efforts to control and prevent money laundering started in drug trafficking context and then in terms of organised crimes. But after September 11 attack on US by terrorists changed the entire spectrum of fight against money laundering and FATF which is the intergovernmental organisation responsible for the fight against money laundering bought in nine special recommendations in addition to 40 recommendations and included terrorism financing as one of the sectors to be acted upon by the authorities. Various organisations came into existence to fight the money laundering such as The Egmont Group, FATF style regional bodies and Wolfsberg Group of Banks. World Bank and IMF projected that 2-5 percentage of world's GDP is laundered. However the figures are speculative as there are lot of unaccounted money and due to complexity of transactions.

The international efforts to control and prevent money laundering led to criminalisation of money laundering. The criminalisation of money laundering paved the way for penalising the crime of money laundering. The penalising involved four aspects such as predicate crime, proceeds out of the predicate crime, the necessary mental element required to constitute money laundering offence and the act or conduct in the commission money laundering offence. The member countries are urged to follow the components as well as the guidance and definitions framed by various conventions of the UN especially Vienna Convention, while framing definition for their country. According to Gerald Moebius there a lot of money laundering systems existing and all are variations of the same theme. The launderers search for weak anti-money laundering systems and the criminals use the technology to their stride and invent new ways to launder their illicit money.

2. THE ISSUE OF MONEY LAUNDERING IN INDIA:

Money-laundering fuels corruption and organized crime. Corrupt public officials need to be able to launder bribes, kick-backs, public funds and, on occasion, even development loans from international financial institutions. Organized criminal groups need to be able to launder the proceeds of drug trafficking and commodity smuggling. Terrorist groups use money-laundering channels to get cash to buy arms. The social consequences of allowing these groups to launder money can be disastrous. Taking the proceeds of crimes from corrupt public officials, traffickers and organized crime groups is one of the best ways to stop criminals in their tracks (UNODC). The use of the internet and online banking has made it an uphill task for banking companies to track the ever increasing volume of transactions carried out over the internet. Terrorist financing is another major hurdle that seems almost impossible to track and apprehend since most of these transactions are in cash and no banks are involved in the process.

Alternative Remittance System i.e. “Hundi” or “Hawala” is a way to transfer funds through informal channels. Hundi means “trust” and Hawala means “transfer related to money.” These are also often referred to as “underground banking system” or “parallel banking system” or “informal money transfer system.” Alternative remittance systems are financial services, traditionally operating outside the conventional financial sector, where value or funds are moved from one geographic location to another.¹ There exists a sizeable and demonstrated informal sector that is operating illegally known as Hawala / Hundi². There is no authentic method to estimate the correct size and scope of these type of payment systems as it not accounted or documented formally .

The money laundering cases in India has been on the rise recently in India due to high levels of corruption and the proceeds are being laundered. According to property recovery based model developed on the data by NCRB, the total amount of recovery from the crime proceeds is Rs 190 Crores (Rs 1.90 billion). In total 70,773 cases were investigated between 2000 and 2009 , the total loss to the Indian economy due to the various crimes including commercial fraud, smuggling, drug trafficking, bank frauds, tax evasion and corruption was pegged at 225.28 billion, the study said, citing its second model to ascertain the size of corruption. According to studies conducted by International Monetary Fund, it was estimated that the quantum of money laundered is approximately 2 to 5 per cent of GDP of the world. A study 'Ascertaining size of corruption in India with respect to money laundering' was conducted by India forensic.³ The study, based on GDP model, estimated that Rs 18,86,000 Crores is quantum of money laundering using corrupt ways, citing international standards. According to India Forensic if we consider that 5 per cent of the amount equivalent to the size of GDP is laundered then it is possible to conclude that the size of money laundered is Rs 18, 86,000 Crores and the corruption in India could be more than Rs 15, 55,000 Crores. And as "the total population of India has grown up from 1.016 billion to 1.155 billion in the last decade, corruption has grown up from Rs 836 per person per year to Rs 2,218 per person per year".⁴

According to a report of Global Financial Integrity (GFI) a Washington-based research and advocacy organisation, India ranked fifth largest exporter of illicit money between 2002-2011, with a total of \$343.04 billion and in 2011 it was placed third when \$84.93 billion was sent abroad, according to a new report. Crime, corruption and tax evasion drained \$946.7 billion from the developing world in 2011, up more than 13.7 per cent from 2010 - when illicit financial outflows totalled \$832.4 billion, according to the report titled 'Illicit Financial Flows from Developing Countries: 2002-2011'. In the last 10 years, China topped the list with \$1.08 trillion in black money outflow, followed by Russia (\$880.96 billion), Mexico (\$461.86 billion) and Malaysia (\$370.38 billion).⁵

3. ANTI-MONEY LAUNDERING MEASURES IN INDIA

India has taken note of the threats the money laundering causes to the security and economy of the country. India has framed the UAPA, 1967 and PMLA, 2002 to control and prevent money laundering and terrorism financing.

The Unlawful Activities (Prevention) Act, 1967

¹ FATF (2003) Combating the abuse of Alternative Remittance System

<http://www.fatf->

[gafi.org/media/fatf/documents/recommendations/10%20FATF%20SRIX%20BPP%20SRVI%20June%202003%202012%20cover.pdf](http://www.fatf-gafi.org/media/fatf/documents/recommendations/10%20FATF%20SRIX%20BPP%20SRVI%20June%202003%202012%20cover.pdf)

² **Hawala** (Arabic), also known as **hundi**, is an informal value transfer system based on the performance and honour of a huge network of money brokers, which are primarily located in the Middle East, North Africa, the Horn of Africa, and the Indian subcontinent. It is basically a parallel or alternative remittance system that exists or operates outside of, or parallel to traditional banking or financial channels.

³ Pune based company, which has pioneered in fraud examination, security, risk management and forensic accounting research regarding corruption and money laundering.

⁴ <http://www.rediff.com/money/slide-show/slide-show-1-rs-1886000-crore-laundered-out-of-india-in-10-years/20110718.htm>

⁵ <http://www.businessworld.in/news/economy/india/india-5th-largest-exporter-of-dirty-money-report/1185133/page1.html#sthash.wSf2oopd.dpuf>

The Unlawful Activities (prevention) Act, 1967 is an Act to provide for the more effective prevention of certain unlawful activities of individuals and associations and for dealing with terrorist activities and for matters connected therewith.

The legislative measures for combating financing of terrorism in India are contained in the Unlawful Activities (Prevention) Act, 1967 (UAPA) and it was further amended in 1969, 2004, 2008 and more recently in 2012. UAPA criminalizes terrorist acts and providing funds for terrorist acts. According to the statement of objects and reasons, the Bill amends the Unlawful Activities (Prevention) Act, 1967 to make it more effective in preventing unlawful activities, and meet commitments made at the Financial Action Task Force.

This law is now the main anti-terrorism law in India. Major changes were made to it in 2008 after the Mumbai attacks⁶, creating new offences related to terrorism. This law also allows the government to declare that a group is an 'unlawful association' or a 'terrorist organisation', and make membership or support of that group a crime.⁷ The unlawful activities constitute, encouraging separatism from India, damaging India's status as a sovereign nation in any way and causing hatred against India. The Supreme Court, in the context of sedition, has explained that an element of violence or encouraging violence must be present in this type of crime.⁸

The punishment for such an offence is death or imprisonment for life, if the terrorist act results in death of a person. The punishment is imprisonment for not less than 5 years but may extend to imprisonment for life. UAPA may extend to imprisonment for life. UAPA also makes the act of raising funds for a terrorist organization an offence liable for punishment with imprisonment up to 14 years. The scope of terrorist financing under UPA includes the act of raising or collecting funds or providing funds to any person or attempting to provide funds to a person to commit/attempt to commit a terrorist act.

The Unlawful Activities (Prevention) Act, 1967 has been strengthened by amendments in 2013 which inter-alia includes enlarging the scope of proceeds of terrorism to include any property intended to be used for terrorism, enlarging the scope of Section 17 relating to punishment for raising funds for terrorist act by including within its scope, raising of funds both from legitimate or illegitimate sources by a terrorist organization, terrorist gang or by an individual terrorist, and includes within its scope offences by companies, societies or trusts.⁹

Prevention of Money Laundering Act (PMLA), 2002

India has worked to implement an effective AML / CFT regime. Prevention of Money Laundering Act, 2002 (PMLA) came into force with effect from July 1, 2005. Prevention of Money laundering Act (PMLA) was enacted to prevent money laundering and provide for confiscation of property derived from, or involved in, money laundering. It is administered by Financial Intelligence Unit (FIU) and Enforcement Directorate. The Government of India (GOI) made significant changes to its legal framework to bring it into compliance with international standards. Prevention of Money laundering Act (PMLA) enacted in 2002 was amended thrice 2005, 2009 and then 2012. The PMLA (Amendment) Act, 2012 has enlarged the definition of money laundering by including activities such as concealment, acquisition, possession and use of proceeds of crime as criminal activities. Money laundering offences, big or small, will now be taken up for investigation. Rigorous imprisonment of at least 3 years and up to 7 years and no upper limit on fines was some of the important features of amendment. India has adopted a multi-pronged approach.

The effective supervision of financial institutions operating in India is one of the important aspects of controlling money laundering as most of the money laundering transactions takes place through banks and financial institutions. The RBI and SEBI are entrusted with the task of supervision of banking and financial services.

The Preamble of the ACT states the Object of the Act as, "An Act to prevent money-laundering and to provide for confiscation of property derived from, or involved in, money-laundering and for matters connected therewith or incidental thereto."

Section 2(1) (p) of Prevention of Money Laundering Act, 2002 defines Money laundering, and meaning of it is assigned in Section 3.

⁶ The **2008 Mumbai attacks** were a series of attacks that took place in November 2008, when 10 members of Lashkar-e-Taiba, an Islamic militant organisation based in Pakistan, carried out a series of 12 coordinated shooting and bombing attacks lasting four days across Mumbai, India. The attacks, which drew widespread global condemnation, began on Wednesday, 26 November and lasted until Saturday, 29 November 2008, killing 164 people and wounding at least 308. Eight of the attacks occurred in South Mumbai: at Chhatrapati Shivaji Terminus, the Oberoi Trident, the Taj Palace & Tower, Leopold Cafe, Cama Hospital, the Nariman House Jewish community centre, the Metro Cinema, and in a lane behind the Times of India building and St. Xavier's College. There was also an explosion at Mazagaon, in Mumbai's port area, and in a taxi at Vile Parle. https://en.wikipedia.org/wiki/2008_Mumbai_attacks

⁷ <http://nyaaya.in/law/359/the-unlawful-activities-prevention-act-1967/#section-1>

⁸ Balwant Singh And Anr vs State Of Punjab on 1 March, 1995

⁹ <http://pib.nic.in/newsite/PrintRelease.aspx?relid=132881>

a) Definition of Money Laundering:

Section 3 of the PMLA, 2012 defines Money Laundering as whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime, including its concealment, possession, acquisition or use and projecting or claiming it as untainted property shall be guilty of offence of money laundering. (as amended in PMLA amendment Act 2012).

b) Punishment

Section 4 provides that the punishment for anyone found guilty under Section 3 shall be rigorous imprisonment of not less than 3 years, extendable up to 7 years. (as amended in PMLA amendment Act 2012). The proviso to the section states that in case, money-laundering relates to any offence specified under Paragraph 2 of Part A of the Schedule, the imprisonment term shall be extendable up to 10 years. The type of punishment depends on the seriousness of the offence committed by the offender. The Act envisages attachment of the tainted property as the first step towards adjudication and confiscation of the property of the offender which is obtained from the proceeds of crime.

c) Attachment and Confiscation

The Act authorizes the officers to attach the property pending decision of adjudication and confiscation.¹⁰

Section 8(6) authorizes the adjudication authority to make the order of confiscation.

S.8 (6) enacts thus: “Where the attachment of any property or retention of the seized property or record becomes final under clause (b) of sub-section (3), the Adjudication Authority shall, after giving an opportunity of being heard to the person concerned, make an order confiscating such property.”

The Act vests adequate power with the Central Government. The officers of the directorate are empowered to act as civil courts for the purpose of production of documents and collection of evidence.¹¹ Section 10 obligates the banking companies to survey details of transactions. S.12A/12B specifically deals with the requirements to be satisfied by the banking companies. Failure on the part of the companies to comply with the instructions may invite imposition of fine by the directorate.¹²

d) Surveys, Searches and Seizures

The directorate has power to make surveys, searches and seizures for the collection of materials. The directorate can also conduct the search of a person. Power for making arrest has also been given. The Directorate should report the arrest. The arrested person will have to be produced before the Magistrate within 24 hours (Section 9). Provisions enabling retention of property and records exists in the Act. The authorities are also enabled by way of provisions in Section 22 and 23, which allow presumption as to records, and interconnected transactions in certain cases.

e) Burden of Proof

Section 24 categorically declares that the burden of proof lies with the accused. It enacts thus: Burden of proof-when a person is accused of having committed the offence under section 3, the burden of proving that proceeds of crime are untainted property shall be on the accused.

In cases involving economic offences it becomes difficult for the prosecution to prove the cases beyond reasonable doubt. It is only fair that in offences involving money-laundering committed in secrecy the burden of proof is shifted on to the accused.

f) Authorities

The Act presents machinery blending executive and judicial functions with respective wings. The Directors, Additional Directors, Deputy Directors, Assistant Directors are the executive authorities who are to initiate steps for adjudication, confiscation and prosecution in the special courts established for the purpose. There could be an appeal from the adjudication authority’s decision to the appellate authority. And beyond the appellate authority the High Court can exercise appeal and provisional jurisdiction.

¹⁰ Please see Prevention of Money-laundering (the manner of forwarding a copy of the order of Retention of seized property along with the material to the Adjudication Authority and the period of its Retention) Rules, 2005 and S.5 of PML Act 2002 which signify the safeguards the enforcement officers have to take before the property is attached/confiscated.

¹¹ See Sections 10 and 11

¹² The international legal regime requires the banking companies and financial institutions to cooperate with the authorities in keeping them with information and keeping a watch on their customer’s business practices. See FATF 40 Recommendations and the Guidelines and notifications issued by the Reserve Bank of India entitled know your customer.

g) Scheduled Offences:

Every Scheduled Offence¹³ is a Predicate Offence. The Scheduled Offence is called Predicate Offence and the occurrence of the same is a prerequisite for initiating investigation into the offence of money laundering. The Schedule to the Act consists of 2 Parts, A & B. Part A is further divided into 2 Paragraphs¹⁴ and Part B was divided into 25 Paragraphs.¹⁵ (This is omitted in amendment 2012). Each of the Paragraphs relate to offences under the various Acts which prevent different criminal activities. Any offence of money laundering shall be deemed to be a more serious offence if it proceeds of any of the criminal activities mentioned in the schedule. An important point here is that an offence shall only be recognized under, if the total value involved is equal to or greater than Rupees 10 Lakhs.¹⁶

h) Reporting Entities

The reporting entities in India include banking companies, financial institutions, intermediaries and DNFBPs. Chapter IV of the Act requires every banking company, financial institution and intermediary to maintain a record of all transactions and report to the FIU all information relating to:

- i) All cash transactions of the value of more than rupees ten lakhs or its equivalent in foreign currency;
- ii) All series of cash transactions integrally connected to each other which have been valued below rupees ten lakhs or its equivalent in foreign currency where such series of transactions have taken place within a month;
- iii) All cash transactions, where, forged or counterfeit currency notes or bank notes have been used as genuine.¹⁷
- iv) All suspicious transactions whether or not made in cash.

Banks have also been advised by Reserve Bank of India to ensure that a proper policy framework on 'Know Your Customer' and Anti-Money Laundering measures is formulated and put in place with the approval of their respective Boards so that banks are fully compliant with the provisions before December 31, 2005. Banks have already taken steps in this direction so as to avoid money laundering related frauds.

4. THE INSTITUTIONAL FRAMEWORK FOR COMBATING THE MONEY LAUNDERING AND TERRORIST FINANCING IN INDIA:

The institutional framework consists of three different wings which include Policy agencies, Ministries and Committees, Criminal Justice and Operational Agencies consists of Enforcement Directorate and Financial Sector Agencies.

The policy agencies, Ministries and Committees consist of one Committee and or seven departments which included The Inter-Ministerial Coordination Committee on Combating Financing of Terrorism and Prevention of Money Laundering (IMCC), The Ministry of Finance (MOF) which includes the departments like The Department of Economic Affairs (DEA), The Department of Revenue (DOR) and The Department of Financial Services (DFS), The Ministry of Home Affairs (MHA), The Ministry of External Affairs (MEA), The Ministry of Law and Justice (MLJ), The Ministry of Corporate Affairs (MCA) and The Serious Frauds Investigation Office (SFIO).

i) Criminal Justice and Operational Agencies consists of departments like Enforcement Directorate, The Financial Intelligence Unit-India (FIU-IND), The Central Economic Intelligence Bureau (CEIB), The National Investigation Agency (NIA), The Central Bureau of Investigation (CBI) and The State Police

The Directorate of Enforcement (ED): Directorate of Enforcement is a multidimensional agency has currently been entrusted with the investigation and prosecution of money laundering offences and attachment / confiscation of the proceeds of crime under the PMLA. It is also responsible for enforcement of the Foreign Exchange Management Act, 1999 (FEMA). The officers of the ED undertake multifaceted functions of collection, collation and development of intelligence and investigation into suspected cases of money laundering, attachment / confiscation of the assets acquired from the commission of scheduled offences, and the criminal prosecution of the offenders in the court of law (Mutual Evaluation Report of India, 2010). The main functions of ED are to undertake survey, search, seizure, arrest,

¹³ Indian Penal Code, 1860; NDPS Act, 1985; Unlawful Activities (Prevention) Act, 1967; Prevention of Corruption Act, 1988; Customs Act, 1962; SEBI Act, 1992; Copyright Act, 1957; Trade Marks Act, 1999; Information Technology Act, 2000; Explosive Substances Act, 1908; Wild Life (Protection) Act, 1972; Passport Act, 1967; Environment Protection Act, 1986; Arms Act, 1959.

¹⁴ Para 1: Offences under the Indian Penal Code, § 121 and 121A. Para 2: Offences under the Narcotic Drugs and Psychotropic Substances Act, 1985.

¹⁵ Para 1: IPC, § 302, 304, 307, 308, etc. For full list refer to the Act. Available at <http://fiuindia.gov.in> Para 2: Arms Act, 1959, Para 3: Wildlife Protection Act, 1972, Para 4: Immoral Traffic Prevention Act, 1956, Para 5: Prevention of Corruption Act, 1988.

¹⁶ Section 2(y)(ii) of the PMLA, 2002.

¹⁷ Modified by Notification No. 4/2007 dated 24-05-2007

and prosecution action etc. against offender of PMLA offence and to provide and seek mutual legal assistance to / from contracting States in respect of attachment / confiscation of proceeds of crime as well as in respect of transfer of accused persons under PMLA. (Enforcement Directorate)

The Financial Intelligence Unit-India (FIU-IND): The FIU-IND has been designated as the central national agency for receiving, processing, analysing and disseminating information relating to suspect financial transactions as well as large cash transactions. In addition, the FIU-IND is responsible for coordinating and strengthening efforts of national and international intelligence, investigating and enforcement agencies in pursuing the global efforts against money laundering, terrorist financing and other related crimes. FIU-IND is an independent body reporting directly to the Economic Intelligence Council (EIC) headed by the Finance Minister. FIU-IND is a multi disciplinary body with a sanctioned strength of 74 personnel. These are being inducted from different organizations namely Central Board of Direct Taxes (CBDT), Central Board of Excise and Customs (CBEC), Reserve Bank of India (RBI), Securities Exchange Board of India (SEBI), Department of Legal Affairs and Intelligence agencies. (FIUIND)

The main function of FIU-IND is to receive cash/suspicious transaction reports, analyse them and, as appropriate, disseminate valuable financial information to intelligence/enforcement agencies and regulatory authorities.

FIUs exchange information with other FIUs on the basis of reciprocity or mutual agreement and consistent with procedures understood by the requested and requesting party. An FIU requesting information should disclose, to the FIU that will process the request, the minimum the reason for the request, the purpose for which the information will be used and enough information to enable the receiving FIU to determine whether the request complies with its domestic law.

PMLA and FIU-IND: Section 12 of PMLA requires every banking company, financial institution and intermediary (referred to as reporting entities) to furnish information of prescribed transactions to the Director, FIU-IND and to verify the identity of all its clients in the manner prescribed. The reporting entities are also required to maintain and preserve records of transactions and records of identity of clients for a period of ten years from the date of cessation of transactions. The rules require the maintenance of records and reports to be submitted to FIU-IND. Section 13 of PMLA empowers Director, FIU-IND to call for record maintained by a reporting entity and to enquire into cases of suspected failure of compliance with the provisions of PMLA. The Director, FIU-IND is also empowered to impose under Section 13 fine for non-compliance which shall not be less than ten thousand rupees and may extend to one lakh rupees for each failure to comply with PMLA. Section 69 of PMLA enables the recovery of fines imposed by the Director if they are not paid within six months from the date of imposition of fine and the powers of a Tax Recovery Officer under the Income-tax Act, 1961 can be exercised for this purpose. The fines so imposed are recovered in the same manner as prescribed in Schedule II of the Income-tax Act, 1961 for the recovery of arrears.(FIU India)

FIU-IND disseminates suspicious transaction reports (STRs) which are considered relevant for investigation by law enforcement / intelligence agencies based on the nature of suspicion, predicate offence involved and other relevant information linked with the STR. Meetings of analyst groups are conducted to discuss analyzed reports and decide which cases should be disseminated to which law enforcement/intelligence agencies. The dissemination of actionable and relevant financial intelligence enables FIU-IND to strengthen the work of partner law enforcement and intelligence agencies. Some of the STRs were also disseminated to financial sector regulators and foreign FIUs.

Bilateral agreements with other countries : The FIU-IND has signed bilateral Memorandum of Understanding (MOUs) with fifteen countries namely, Mauritius, Philippines, Brazil, Malaysia, Russia, Australia, Canada, USA, Sri Lanka, Georgia, San Marino, Bermuda, Nigeria, Japan and Indonesia as on May, 2011. The MOUs are to facilitate the exchanges of intelligence between the two countries for the purpose of cooperation to gather, develop and analyze information concerning financial transactions suspected of being related to money laundering and terrorist financing (FIU IND).

ii) Financial Sector Agencies

In India, different segments of the financial system are regulated by different regulators. The Reserve Bank of India (RBI), the Securities and Exchange Board of India (SEBI) and the Insurance Regulatory and Development Authority (IRDA) are the three major regulators. The regulatory structure has evolved over a period of time parallel with the Indian financial system.

The Reserve Bank of India (RBI):

While legitimate businesses are thus captured under the provisions of the FEMA and are now also subject to the provisions of the PMLA, there exists a sizeable and demonstrated informal sector that is operating illegally. There is no authentic method to estimate the correct size and scope of the informal / Hawala / Hundi¹⁸. It is illegal activity and the ED and the RBI take effective steps to identify the guilty persons and bring them to justice. However, there seems to be

¹⁸ **Hawala** (Arabic), also known as **hundi**, is an informal value transfer system based on the performance and honour of a huge network of money brokers, which are primarily located in the Middle East, North Africa, the Horn of Africa, and the Indian subcontinent. It is basically a parallel or alternative remittance system that exists or operates outside of, or parallel to traditional banking or financial channels.

some disagreement among competent authorities regarding the size and scope of the informal/Hawala/Hundi sector and the nature of the problem as it relates specifically to Money Laundering and Financing of Terrorism. RBI has taken various steps to curb money laundering and taken action against various banks for not strictly adhering to Anti-Money Laundering Measures.¹⁹

The Securities and Exchange Board of India (SEBI)

The SEBI is a statutory body constituted under the SEBI Act and is the supervisory and regulatory body for the securities sector. The market entities are also required to seek certain specific disclosures from their clients to address the concerns of money laundering and suspicious transactions. Some steps taken to check money laundering activities in the capital market include a strict KYC (Know Your Client) regime, mandatory requirement of PAN (Permanent Account Number) and in-person verification of clients. While the data for the latest fiscal is not available, 35 stock brokers had come under SEBI's scanner in the 2011-12 fiscal for possible lapses in controls related to money laundering and terror financing. (Economic times Jun 17, 2013)

5. MUTUAL EVALUATION OF INDIA'S PROGRESS IN AML MEASURES BY FATF

FATF sets global standards for Anti Money Laundering and Countering Financing of Terrorism (AML / CFT) regulations for governments across the world. India has been a member of FATF since 2010. The first Mutual Evaluation Report (MER) of India was adopted on 24 June 2010. India was placed in a regular follow-up process for mutual evaluation processes. The last FATF mutual evaluation was in June 2012 and follow up was in 2013.

Mutual Evaluation of India by FATF (2010)

The evaluation team reviewed the institutional framework, the relevant AML/CFT laws, regulations, guidelines and other requirements, and the regulatory and other systems in place to deter money laundering (ML) and the financing of terrorism (FT) through financial institutions and Designated Non-Financial Businesses and Professions (DNFBP), as well as examining the capacity, the implementation and the effectiveness of all these systems. FATF have concluded that since mid-2009, India has increased its focus on money laundering and the use of the ML provisions. However, there are still some important and in some instances, long-standing legal issues, such as the threshold condition for domestic predicate offences, that remain to be resolved. Effectiveness concerns are primarily raised by the absence of any ML convictions. With the exception of casinos (which operate only in the State of Goa), the Designated Non Financial Businesses and Professions sectors are not subject to the PMLA and are not regulated and supervised for AML/CFT purposes. Effectiveness concerns are primarily raised by the total absence of any ML convictions, even though the NDPS Act has been in effect since 2 October 2001 and the PMLA since 1 July 2005.

Key recommendations made to India include the need to:

- Address the technical shortcomings in the criminalization of both money laundering and terrorist financing and in the domestic framework of confiscation and provisional measures;
- Broaden the CDD obligations with clear and specific measures to enhance the current requirements regarding beneficial ownership;
- Improve the reliability of identification documents, the use of pooled accounts, PEPs, and non-face-to-face business; ensure that India Post, which recently became subject to the PMLA, effectively implements the AML/CFT requirements;
- Enhance the effectiveness of the STR reporting regime; enhance the effectiveness of the financial sector supervisory regime and ensure that India Post is adequately supervised;
- Ensure that the competent supervisory authorities make changes to their sanctioning regimes to allow for effective, proportionate and dissuasive sanctions for failures to comply with AML/CFT requirements; and
- Extend the PMLA requirements to the full range of DNFBPs, and ensure that they are effectively regulated and supervised.²⁰

While India has initiated a large number of ML investigations (798 by 31 December 2009), only six prosecutions were underway and there were no convictions so far. India is yet to achieve convictions and additional prosecutions that demonstrate the effectiveness of its inter-agency coordination and cooperation. According to FATF besides ratifying the Palermo Convention, India should review its ML and FT provisions to bring them in line with the relevant Conventions, particularly in respect of the criminalisation and the implementation of the preventive regime.²¹

¹⁹ The step taken by RBI is explained in detail under REPORTING ENTITIES pgs 134-147 in this thesis.

²⁰ <http://www.fatf-gafi.org/documents/documents/mutualevaluationofindia.html>

²¹ (Mutual Evaluation Report ,Anti-Money Laundering and Combating the Financing of Terrorism in India 25 June 2010 <http://www.fatf-gafi.org/media/fatf/documents/reports/mer/MER%20India%20full.pdf>

Mutual Evaluation of India by FATF (2012)

FATF reported that India has significantly stepped up its probes into suspected money laundering and terror funding cases, although a low conviction rate remains a matter of serious concern. The country has been removed from its regular follow-up process for determining its compliance to the global AML / CFT standards. The move would help India get greater support from international authorities in its fight against black money and check the illicit flow of funds from and to the country. FATF observed that further efforts might be required for regulating casinos and Non-profit organisations. With regard to financial services offered through a vast network of post offices, FATF said that necessary checks have to be put in place to avert any money laundering risks. The FATF said that India's compliance with global standards for AML / CFT regulations have reached a satisfactory level, but there remains an "effectiveness issue in the process that leads from accusation to conviction" in the cases of suspected money laundering and terror funding activities. The number of money laundering investigations in India has increased from 798 at the end of 2009 to 1,561 by April 2013. Besides, the number of persons accused of terror financing and the number of cases under probe has also increased and stood at 470 and 143 respectively between 2006 and March 2013.

8th FOLLOW-UP REPORT Mutual Evaluation of India (2013)

The mutual evaluation follow-up procedures indicate that, for a country to have taken sufficient action to be considered for removal from the process, it must have an effective AML/CFT system in force, under which it has implemented all core and key Recommendations at a level essentially equivalent to C or LC, taking into account that there would be no re-rating. India has made sufficient progress for all core and key Recommendations. Consequently, it was recommended that India is removed from the regular follow up progress. Overall, India has reached a satisfactory level of compliance with all of the core and key Recommendations.²²

Thus FATF through its mutual evaluations have given report that India has progressed a lot by making legislations, rules and regulations in line with core and key recommendations. Finally after the 8th follow up report, India was removed from regular follow up process.

6. CHALLENGES IN FIGHTING MONEY LAUNDERING:

- i. DNFBPs conducting business in India include casinos, lawyers, real estate agents, accountants, company secretaries, gold dealers, and dealers in precious metals and stones. With the exception of casinos (which only operate in the State of Goa), these businesses are not subject to the PMLA provisions.
- ii. The NPO sector plays a vital social role in Indian society. Statistics on the number of registered NPOs under the various statutes are not generally available in India. However, by government estimates, there are approximately two million foreign and domestic NPOs operating in India. Except under the Income Tax Act and the Foreign Contribution (Regulation) Act (FCRA), the NPO sector is subject to limited or no monitoring and supervision, but the NPOs registered under these Acts only account for a small number of entities within the sector²³
- iii. The most important is the lack of necessary political will and support, especially when the investigation appears to show connections between the politicians, foreign PEP and senior officials in the government where investigation is taking place. Obviously, the inability to obtain required information or to obtain it in a timely manner from foreign counterparts also hinders the successful completion of such investigations.
- iv. Co-ordination between the investigating agencies and shortage of skilled manpower is faced by the agencies when investigating the money trail involved in money laundering.
- v. Another challenge is that PMLA is a new legislation which is linked with predicate offences and if the predicate offences are not proved then there can be no conviction. The investigation of cases based on the financial intelligence and financial information is new and the investigation agencies and judiciary are taking time to understand the financial information flow and decide the cases based in the information available.
- vi. The new payment methods like wire transfers offers the money launderer opportunities to exploit national differences in security standards and oversight rules to conceal the movement of illicit funds. This is a challenge while investigating the money trail in money laundering investigations.

7. CONCLUSION:

India has grown as a regional economic power and financial centre. As a leader among the emerging economies in Asia with a strongly growing economy and demography, India faces a range of money laundering and terrorist financing risks. The main sources of money laundering in India result from a range of illegal activities committed within and outside the country, mainly drug trafficking; fraud; counterfeiting of Indian currency;

²² Mutual Evaluation of India: 8th Follow-up report (2013)

²³ Mutual Evaluation Report of India – Executive Summary (2010)

transnational organised crime; human trafficking and corruption. Its rapidly growing economy has both formal and informal financial systems. High-level corruption generates and conceals criminal proceeds. Illicit funds are often laundered through real estate, educational programs, charities, and election campaigns. India has realized the threat and has taken various measures for controlling and preventing money laundering. As mentioned in the previous section India is member of the Financial Action Task Force, Asia Pacific Group on Money Laundering and the Egmont Group. A large framework has been established for combating Money Laundering because of the pressures from international organisations. But the effective functioning and coordination between the ministries, departments and agencies is much needed to combat the menace of money laundering. Many cases are reported under PMLA 2002, but there are very few convictions. It undermines free enterprise and threatens financial stability by crowding out the private sector, because legitimate businesses cannot compete with the lower prices for goods and services that businesses using laundered funds can offer. Thus, the need is not only for leak proof legislations but also for a robust implementation mechanism to check the growth and spread of money laundering. India has realized it a bit late but the foundations have finally been laid and it is only a concerted and collaborative effort that will bear fruit.

REFERENCES:

Books

1. FAQ on *Prevention of Money–Laundering Act*. Directorate of Enforcement. Ministry of Finance:Government of India.
2. Paul Allan Schott, (2006).Reference Guide to Anti-Money Laundering and Combating the Financing of Terrorism. Second ED. IMF. Washington DC.
3. Robinson, &Jeffrey,(1998).*The Laundrymen*, London: Simon, &Schuster., p. 3,15.
4. Zaidi,S.S.A.,(2013). *Anti money laundering/Anti –Terrorism Financing and Know Your Customer*(4th Ed). Snow White Publications Pvt Ltd, India. p. 9-12,187-196.

Legislations

1. The unlawful activities (prevention) act, 1967
2. Prevention of Money Laundering Act, 2002
3. The Foreign Exchange Management Act, 2000, (FEMA)
4. Foreign Exchange Regulation Act, 1973 (FERA)
5. Narcotic Drugs and Psychotropic Substances Act, 1985
6. Indian Penal Code, 1860
7. Prevention of corruption Act, 1988
8. Securities Exchange board of India (SEBI) Act, 1992
9. Reserve Bank of India (RBI) Act, 1934

Online resources

1. FIU-IND.(2012).AML/CFT Regime, The Indian Response. FIU-IND Financial Intelligence Unit-India, Ministry of Finance, Government of India. Retrieved on 2013, August 20thfrom website: <http://www.rsec.co.in/cms/uploads/AMLCFT%20Regime%20The%20Indian%20Response.pdf>FATF.(2013). 8th Follow Up Report: Mutual Evaluation of India. Retrieved on 2014,February 12th,from website: http://www.fatf-gafi.org/media/fatf/documents/reports/mer/India_FUR8_2013.pdf
2. FATF.(2006).Combating the abuse of Alternative Remittance System Retrieved on 2013, October 10th from website: http://www.fatfgafi.org/media/fatf/documents/reports/Trade_Based_ML_APGReport.pdf
3. Paul Allan Schott,(2006). Reference guide to anti-money laundering and combating the financing of terrorism, second edition, World Bank website: http://siteresources.worldbank.org/extaml/resources/3965111146581427871/reference_guide_amlcft_2ndsupplement.pdf
4. Document on the U. N. Global Programme Against Money Laundering, UN Office for Drug Control and Crime Prevention, (UN-ODCCP). Vienna, Austria, (1999). Retrieved on 2013, march 6th from website: www.un.org/esa/socdev/geneva2000/text-version/follow.../ODCCP.doc
5. Model Provisions on Money Laundering, Terrorist Financing, Preventive Measures & Proceeds of Crime for common law legal systems Retrieved (2013, May 7th).from website:http://secretariat.thecommonwealth.org/files/189839/FileName/AMLCFTFinal_ModelProvisions_24March2009.pdf (UNODC, 2009)
6. *International Monetary Fund and World Bank: Enhancing contributions to combating money laundering. (2001).Retrieved on 2013, April 3rd from website: www.imf.org/external/np/ml/2001/eng/042601.pdf.*
7. International Monetary Fund and World Bank: Financial System Abuse, Financial Crime & Money Laundering. (2001). website: <https://www.imf.org/external/np/ml/2001/eng/021201.pdf>.
8. APGML.(2012). Typological report on Trade based Money laundering.Retrieved on 2013, October 7thfrom website: www.fatfgafi.org/media/fatf/.../reports/Trade_Based_ML_APGReport.pdf
9. FATF.(2010).Money laundering Through Money Remittance & Currency Exchange Providers.p.8, p.22,24.

- Retrieved on 2014, March 5th from website: <http://www.fatf-gafi.org/media/fatf/ML%20through%20Remittance%20and%20Currency%20Exchange%20Providers.pdf>
10. FATF.(2007). Money Laundering & Terrorist financing through the real estate sector. Retrieved on 2013, February 12th from (2007, June 29th). FATF. p. 7-21,38-40.
 11. FATF. (2010).Money Laundering Using New Payment Methods. Retrieved on 2014, April 13th from website: www.fatf-gafi.org/.../ML%20using%20New%20Payment%20Methods.pdf
 12. Asia Pacific Group on Money Laundering. (2012).Typologies. Retrieved on 2012, October 5th from website: <http://www.apgml.org/framework>
 13. World Bank Institute. (2002).Anti Money Laundering Literature Search Organized Crime. Retrieved on 2012,October 30thfromwebsite:http://www.aml_organized-crime_world_bank.pdf
 14. FATF.(2012). FAQ: Money Laundering. Retrieved on 2012, September 25th from website:<http://www.fatf-gafi.org/pages/faq/moneylaundering>
 15. Times of India. (2011).India seeks global ties to curb money laundering. Retrieved on 2012, October 10thfromwebsite: http://articles.timesofindia.indiatimes.com/2011-0719/india/29790686_1_money-laundering-act
 16. EGMONT. (2009). AboutRetrieved on 2013, July12th fromwebsite: <http://egmontgroup.org/about>
 17. APG.(2013). About Retrieved on 2013, July 20th fromwebsite:<http://www.apgml.org/about-us/page.aspx?p=91ce25ec-db8a-424c-9018-8bd1f6869162>
 18. Enforcement Directorate. (2006).Organisational setup. Retrieved on 2013, August 5thfromwebsite:<http://www.enforcementdirectorate.gov.in/>
 19. Know Your Country. India AML Report(Online) Retrieved on 2013, July 15th from website: <http://www.knowyourcountry.com/india1111.html>
 20. Wikipedia.(2013). Egmont_Group_of_Financial_Intelligence(online)Retrieved on2013, July 20th fromwebsite: http://en.wikipedia.org/wiki/Egmont_Group_of_Financial_Intelligence_Units
 21. Gaps in India's money laundering fight addressed: Financial Action Task Force. (2013). Retrieved on 2013, August 15thfrom website: <http://www.dnaindia.com/india/1853478/report-gaps-in-india-s-money-laundering-fight-addressed-financial-action-task-force>
 22. Economic Times.(2013).Sebi finalising new anti-money laundering guidelines. Retrieved on 2013, August10th from website: http://articles.economictimes.indiatimes.com/2013-06-17/news/40027523_1_aml-cft-money-laundering-market-entities
 23. Bussiness World (2014)India largest exporter of dirty moneyretrieved on 2014 April 5 from <http://www.businessworld.in/news/economy/india/india-5th-largest-exporter-of-dirty-money-report/1185133/pagehtml#sthash.wSf2oopd.dpuf>
 24. UNODC (2014) Introduction to Money Laundering Retrieved on 15th may 2014 from <https://www.unodc.org/unodc/en/money-laundering/introduction.html>

Reports

1. Methodology for Assessing Compliance with the FATF 40 Recommendations and the FATF Special Recommendations. Anti-Money Laundering/ Combating Terrorist Financing Methodology 2004 (Updated as of 2009, February). p. 3-5.
2. Mutual Evaluation Report, Anti-Money Laundering and Combating the Financing of Terrorism in India 2010, June 25th<http://www.fatf-gafi.org/media/fatf/documents/reports/mer/MER%20India%20full.pdf>.
3. Mutual Evaluation Report of India – Executive Summary (2010)
4. FATF methodology, assessing technical compliance with theFATF recommendations and the effectiveness of aml/cft systems [gafi.org/media/fatf/documents/methodology/FATF%20Methodology%2022%20Feb%20201.pdf](http://www.fatf-gafi.org/media/fatf/documents/methodology/FATF%20Methodology%202022%20Feb%20201.pdf).
5. FATF on Money Laundering, Report on Money Laundering Typologies (2003-04) p.19, 22 https://www.imolin.org/pdf/imolin/FATF_Typologies_Rpt_2003-04.pdf.
6. FATF report, the role of hawala and other similar service providers in money laundering and terrorist financing October(2013)p. 10, 25.<http://www.fatf-gafi.org/media/fatf/documents/reports/Role-of-hawala-and-similar-in-ml-tf.pdf>.