

Security class 02

14th March, 2024 at 1:00 PM

BRIEF OVERVIEW OF THE PREVIOUS LECTURE (01:08 PM - 01:12 PM):

- Definition of money laundering:
- It is an act of cleaning dirty money or illicit money associated with the proceeds of crime.

IMPACT OF MONEY LAUNDERING (01:12 PM):

- *Example to highlight the importance of money supply:*
- *Members of Capitol Hill came together and created "Babysitting Cooperative".*
- *This cooperative created a coupon which is equal to half an hour time.*
- *Each member will get 20 coupons when they join the cooperative.*
- *However, this system failed as the money supply was very little.*
- **Economic Impacts:**
- a) **Obfuscation of monetary policy:**
- Central banks rely on accurate data to make decisions regarding interest rates, money supply, and inflation targets.
- Money laundering can distort the effectiveness of monetary policy since it creates incentives for some cash to flow in the underground economy which is unaccounted for.
- b) **Demand and supply mismatch:**
- Money laundering has the effect of creating a demand and supply mismatch.
- For instance, in India roughly 7-8 crore people file income tax returns of which 70% are zero tax returns.
- At the same time, the real estate market has witnessed almost consistent appreciation, which is unexplainable.
- c) **It hurts the reputation of the economy:**
- Money laundering can significantly harm the reputation of an economy on the global stage.
- When a country is perceived as having weak anti-money laundering measures or carries a reputation of being a hub for illicit financial activities.
- This can discourage foreign investment.
- d) Money laundering **hurts the Balance of Payments (BOP):**
- BOP account which records a country's economic transactions with the rest of the world.
- **Political Impact (01:42 PM):**
- It breeds corruption in the political system.
- It leads to the infiltration of illicit funds into political campaigns, parties, and processes.
- **Social Impacts:**
- a) Rise in inequalities:
- Money laundering both feeds into and exacerbates inequality.
- Since it often involves the concealment of illicitly acquired wealth, contributing to the concentration of resources in the hands of a few mighty individuals.
- b) Since money laundering is correlated with the proceeds of crime, it leads to the erosion of public trust.
- When people perceive that wealthy and powerful people can act with impunity, it erodes social solidarity and diminishes a shared sense of responsibility.
- c) If money laundering continues unabated, it may lead to a general tolerance amongst members of society, so long as illicit activities don't directly impact them.

ANTI-MONEY LAUNDERING MEASURES (AML) (02:00 PM):

- **AML Measures in India:**
- **Legal:**
- **The Prevention of Money Laundering Act, 2002 (PMLA):**
- Some of the **key provisions** include:
 - a) Definition of money laundering.
 - The act defines money laundering as "whoever directly or indirectly attempts to indulge or knowingly assist or is actually involved in any process or activity connected with proceeds of crime: Concealment, Possession, Acquisition, Use, Projecting it as untainted property, and Claiming it as untainted property is guilty of the offense of money laundering.
 - b) Implementing authority - Directorate of Enforcement (It comes under the Department of Revenue, Ministry of Finance, Government Of India).
 - c) This act also prescribes punishment - 7 years of rigorous imprisonment and a fine of 5 lakhs or 3-8 of rigorous imprisonment in certain cases and a fine of 5 lakhs.
- The act gives the power of search, seizure, arrest, and confiscation to the ED (Enforcement Directorate).
- **Attachment, adjudication, and confiscation:**
- If the Officer ED has reasons to believe that the person is in possession of proceeds of crime, is charged with committing a scheduled offense, and may conceal/transfer or frustrate proceedings, he can issue a written order for provisional attachment of this property (less than, equal to 90 days)
- A copy of this order has to be sent to the adjudicating authority and the ED shall file a complaint before the adjudicating authority (the adjudicating authority is appointed by the Central Government and has the same power as that of civil court).
- After receiving the complaint if the adjudicating authority has reasons to believe that the offense of money laundering has been committed, it may serve a notice to the person to indicate sources, means, etc.
- After considering the reply of the person, hearing both parties and considering all materials, if the adjudicating authority believes that the property is involved in money laundering, it will confirm the attachment of the property which will continue till the court's proceedings are pending.
- If the guilt is proven in court, then the order becomes final and the property is confiscated.
- **The burden of proof:**
- To prove that the proceeds of crime are untainted, the burden lies on the accused.

- **Appellate Tribunal (03:05 PM):**
- If either party agrees with the order of the adjudicating authority, they can file an appeal with the appellate tribunal, which is appointed by the Central Government.
- Note - Any appeal against the order of the appellate tribunal can only be filed in the High Court.
- **Special Courts:**
- The Central Government in consultation with the High Court of the State may designate any session court as a special court for the trial of both the offense of the money laundering and the scheduled offense.
- All offenses under PMLA are cognizable.
- There is a **twin condition for bail**:
- i) The public prosecutor has to be given an opportunity to oppose the bail.
- ii) When the public prosecutor opposes the bail, the court can release the accused on bail if it is satisfied that the accused is not guilty of the offense and is not likely to commit any offense while on bail.
- **Vijay Madanlal Chaudhary Case:**
- Bones of attention:
- i) The petitioner argues that projecting tainted money to be clean is an essential component of money laundering and it is not enough to have raised those proceeds or use those proceeds.
- The Supreme Court rejected this argument.
- Effectively one can now be charged with the offense of money laundering if they have merely received or used those proceeds.
- The petitioner argued that the ED has power similar to the police and hence must be governed by the same procedural standards.
- The court rejected this argument stating that inquiries under PMLA are significantly different from criminal investigations.
- Consequently, PMLA doesn't violate the right against self-incrimination.
- The court also stated that ECIR is an internal document of the ED and hence ED is not bound to share a copy of it with the accused.
- Effectively, the Supreme Court has clarified that ED has no police powers and hence, is not required to meet the same procedural requirements.
- **Other Measures/Allied Legislations:**
- Income Tax Act, 1961.
- Benami Transaction Act, 1988,.
- NDPS Act, 1985.

- **Institutional Measures (03:23 PM):**
- a) Enforcement Directorate (ED).
- b) Adjudicating Authority.
- c) Appellate Tribunal.
- d) Financial Intelligence units (FIU).
- e) The Reserve Bank of India (RBI) and The Securities and Exchange Board of India (SEBI) have also been given certain regulatory powers.
- **Compliance Measures:**
- a) Know Your Customer (KYC) norms.
- b) Banks are required to follow Chapter 4 of PMLA.
- **Global Measures:**
- **Financial Action Task Force (FATF):**
- FATF was set up in 1989 as an initiative of G-7 countries to examine and develop policies to combat money laundering.
- Since 2001, the FATF has added to its mandate the counter-financing of terror and proliferation.
- **Role/Functions of FATF:**
- a) To research evolving methods of money laundering.
- b) The FATF issues a comprehensive list of measures to help countries tackle illicit financial flows (Forty Recommendations/FATF Standards).
- c) To review the implementation of FATF standards (Peer review).
- d) Identification of high-risk jurisdictions:
- The FATF continuously monitors and identifies jurisdictions with significant weaknesses in their AML/CFT (counter-terrorist financing) measures and issues a public warning about risks emanating from these jurisdictions through its documents which are published thrice every year.
- i) **FATF Grey List:**
- These are jurisdictions under increased monitoring that is the countries that are actively cooperating with FATF.
- ii) **Black List:**
- These are high-risk jurisdictions subject to a call for action.
- For these countries, the FATF issues advise its members to enhance their due diligence.
- **Other global measures include:**
- The Asia Pacific Group on money laundering.
- The International Money Laundering Information Network (IMoLIN) Network.
- Egmont Group.
- **Questions:**
- 1) What are the challenges associated with anti-money laundering efforts in India?
- 2) Discuss the role of technology in both aiding and addressing money laundering.

THE TOPIC FOR THE NEXT CLASS - ORGANIZED CRIME AND ITS LINKAGES WITH TERRORISM.