

Analysis on Money Laundering; “National Security Saboteur”

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Abstract

Money laundering is an unscrupulous, cross-border crime, often with multiple perpetrators. The crime is not restricted to the street, making white-collar criminals guilty. Laundering money is a multi-tiered process, due to this complexity, ascertaining who is liable for which crime is a strenuous task. Money Laundering is detrimental to national security. In light of that, the research will deal with whether Sri Lanka’s present legal regime is adequate to combat and mitigate money laundering and inquire whether current anti-money laundering laws can ensure the national security of Sri Lanka. Research is secondary research, where existing sources are perused and analyzed strategically. Research has attempted to prove that money laundering is a saboteur of national security. Consequently, research has provided recommendations.

Keywords- *Legal Regime, Money Laundering, national Security, Sri Lanka*

Introduction

Financial Action Task Force (FATF) defines the term Money Laundering as “the processing of criminal proceeds to disguise their illegal origin to legitimize the ill-gotten gains of crime.” The money Laundering process has three stages. Namely, Placement, Layering and finally, Integration. In the stage of money, laundering, ill-gotten money is placed in the legitimate financial system. In the process of layering, the placed money is broken into several transactions. The complexity results in difficulty to ascertain the money trail and its perpetrators. As a result, ascertaining the owner becomes an arduous task. The final stage is “integration”; here the ill-gotten money is laundered and mixed with the legitimate money. In past, money laundering was often discussed as generated by drugs. However, presently the predicate offences are wide-ranging. Such predicate offences include tax evasion, bribery, fraud, human smuggling and weapon trade.

Methodology

The research is to recognize money laundering as a saboteur to national security. Therefore, to analyze and gather details research has

utilized doctrinal research methodology, where existing sources are analyzed. By doing that, research has arrived at findings, aftermath recommendations are provided. In legal academia, Doctrinal (or black letter") methodology refers to a way of conducting research that is usually thought of as "typical legal research". A doctrinal research approach will focus on case law, statutes and other legal sources. It differs from other methodologies in that it looks at the law within itself; a purely doctrinal approach does not attempt to look at the effect of the law or how it is applied but instead examines law as a written body of principles that can be discerned and analyzed using only legal sources. "In this research, findings will showcase the strengths and weaknesses in the Prevention of Money Laundering Act and case studies in Sri Lanka, Consequentially, it will prove the need to strengthen anti-money laundering laws to prevent and mitigate national security threats. Finally, the research will provide recommendations.

Results and Discussion

Prevention of Money Laundering Act No 05 of 2006 and amendments (PMLA)

This is the main law that deals with the prevention of money laundering. Section 02 of the Act states that (a) a person who commits an offence under the provisions of this Act whilst being resident in Sri Lanka; (b) an Institution that is used for the commission of an offence under the provisions of this Act, which Institution is carrying on business in Sri Lanka and is either incorporated or registered in Sri Lanka or is either incorporated or registered as a or registered outside Sri Lanka;(c) an Act which constitutes an offence and branch of a bank incorporated er this Act, which is committed in Sri Lanka. This Act applies to natural persons including an individual or a body of persons also financial institutions, which are juridical. Furthermore, Act surpasses the domestic boundaries, which means it is extra-territorial in nature. A similar position is in other countries as well. For instance, In the case of *R V Rogers [2014] EWCA Crim 1680* "Where the conduct occurred outside the UK and there was no allegation of money laundering against the defendant there, Act was sufficiently expansive to confer jurisdiction The court deemed that 'the offence of money laundering is par excellence an offence which, in effect, has no national boundaries".

Section 3 of the Act is on money laundering, provision mentions that (1) Any person, who engages directly or indirectly in any transaction in relation to any property which is derived or realized directly or indirectly,

from any unlawful activity or from the proceeds of any unlawful activity; receives, possesses, conceals, disposes of, or brings into Sri Lanka, transfers out of Sri Lanka, or invests in Sri Lanka, any property which is derived or realized, directly or indirectly, from any unlawful activity or from the proceeds of any unlawful activity, knowing or having reason to believe that such property is derived or realized, directly or indirectly from any unlawful activity or from the proceeds of any unlawful activity, shall be guilty of the offence of money laundering. The Act not only criminalizes the Act. It also criminalizes the mens rea or the guilty mind. In Sri Lanka, the cases of Podi Lassi and Makadure Madush are examples where spouses/ family are arrested for knowing the crime being committed by the offender.

Nonetheless, the offence of conspiracy is not included, which is a deficiency in the present legal regime. Regardless, the law in Proceeds of Crime Act, United Kingdom, and (PCA/UK) defines money laundering as an act, which constitutes an offence under sections 327-962 and includes attempt, conspiracy, aiding, abetting, counseling and procuring the commission of the offence, which are called the United Kingdom, principal offences. In addition, there exist non-reporting offences and tipping-off offences under the Act".

Sri Lanka is still restricted it does not include such a spectrum of elements.

Unlike in Sri Lanka, other jurisdictions include conspiracy, also, as an act of committing money laundering. In the case of *US v. Flores, 454 F.3d 149, 155-156 (3d Cir. 2006)* an attorney who was willfully blind to the illegal source of the client's money was convicted of conspiring with the client to commit money laundering by opening bank accounts and conducting financial transactions for the client.

In the case of *R v Joseph Ashman and others (2016)* "The wife and sister of a prolific drug smuggler, who was responsible for importing 4.5 tonnes of cannabis resin into the UK, have been convicted of laundering more than £300,000 proceeds of crime."

One of the strengths of the Act is the ability to apprehend predicate offences as well. In the case of *Director of Public Prosecutions v Elladius Cornelio Tesha and others [2016]*, The Courts settled, "It is permissible to charge both money laundering and its predicate offending". The position is the same in Sri Lanka. However, this also has a detrimental effect, the reason is, that the offender may be convicted of the predicate offence rather than money laundering which is hard and seldom established.

As stipulated in PMLA section 3 of Sri Lanka, The penalty for laundering money is, a fine not less than the value of the property in respect

of which the offence is committed and not more than three times the value of the property in respect of which the offence is committed or to rigorous imprisonment for a period of not less than five years and not exceeding twenty years, or to both such fine and imprisonment. *The State v Arthur Chikukwa [2016]* court decided that “there was no duplication of punishment in charging an accused with both fraud and money laundering arising out of the fraud, the accused was guilty of both fraud and money laundering”.

It is not only the money generated from deceitful means but also property acquired from money laundering, that can be confiscated. For any proceedings under this Act, it shall be deemed until the contrary is proved, that any movable or immovable property acquired by a person has been derived or realized directly or indirectly from any unlawful activity, or are the proceeds of any unlawful activity, if such property—(a) being money, cannot be or could not have been—(I) part of the known income or receipts of such person; or (ii) money to which his known income or receipts has or had been converted. The presumption of the Act is any Property derived from Unlawful activity (b) being property other than money, cannot be or could not have been (I) property acquired with any part of his known income or receipts; and (ii) property which is or was part of his known income or receipts; and (iii) property to which is any part of his known income or receipts has or had been converted Property derived from unlawful activity any “property”, currency or asset of any kind whether movable, immovable, tangible or intangible, whether situated in Sri Lanka or elsewhere.

Moreover, the Act includes legal documents or instruments in any form whatsoever including electronic or digital form, evidencing title to or interest in such assets. Acts of money laundering are committed by a body of persons. In the event, every director or other officers of that body shall be guilty of money laundering. Every partner every member of an unincorporated body, such as an association or club. defense committed without his knowledge and that he exercised all due diligence to prevent the commission of the offence. The assets of any person found guilty of the offence of money laundering shall be liable to forfeiture in terms of for the commission of the unlawful activity".This is witnessed in Sri Lanka, especially with underworld goons and drug kingpins, where assets are frozen of the surviving spouse or other family members. Makadure Madush case and Wele Suda's case are such examples.

As per section 7, whenever the Police have reasonable grounds that a person has accrued wealth that cannot be justified by his or her know, a Police Officer not below the rank of Superintendent Police could issue a “freezing order” on his own prohibiting any transactions in relation to such person’s bank accounts, property and investments. Order only lasts for 7-days. The said prosecuting officers could make further applications before the High Court and confirm the aforesaid freezing order in terms of section 8 of the Act for an additional period. However, such confirmation could also extend up to 1-year. Amidst such a freezing order operates the Police via Hon. Attorney General should prosecute against the said offenders if there are satisfactory grounds for framing a charge sheet. A similar position is witnessed in other countries as well, one of the interesting stances in the case of *Hajiyeva v National Crime Agency [2020] EWCA Civ 108 (05 February 2020)* is the Unexplained Wealth Order which amounted to and was upheld by the Court of Appeal as money that is laundered.

Section 16 is on Secrecy obligation overridden. - The duty of a banker concerning the secrecy of its customers Act shall have effect notwithstanding any obligation as to secrecy or other restriction upon the disclosure of information imposed by any law, and accordingly, any disclosure of information in compliance with the provisions of the Act shall be deemed not to be a contravention of such obligation or restriction. Know Your Customer (KYC) and suspicious transaction report are important practices that should be utilized by financial institutions. Whereas, there are lapses in implementation in the Sri Lankan context.

a. Institutional framework for anti money laundering regime in Sri Lanka

- Attorney General’s Department
- Central Bank of Sri Lanka (CBSL)- Department of Banking Supervision, Department of Supervision of Non-Bank Financial Institutions
- Commission to Investigate Allegations of Bribery or Corruption
- Department of Cooperative Development, within the Ministry of Food Security
- Department of Immigration and Emigration:
- Department of Inland Revenue,
- Insurance Board of Sri Lanka
- Ministry of Foreign Affairs
- Ministry of Finance and Planning Sri Lanka Customs
- Ministry of Justice

- Non-Government Organizations Secretariat
- Office of the Chief of National Intelligence
- Registrar of Companies/Registrar General Department
- Secretary to the Ministry for Defence
- Sri Lanka Police -Criminal Investigation Division, Terrorist Investigation Division, Police Narcotic Bureau, Interpol Bureau. Human Trafficking/People Smuggling Division.

b. Gaps, Loopholes and Weaknesses

In addition to the drawbacks mentioned in the afore section, there are many factors that hinder the justice process. There is a visible lack of quality intelligence and due to limited available information criminalizing and finding perpetrators is a strenuous task. Police still use age-old information gathering procedures and there is only restricted obtainable information, if special investigatory mechanisms are furnished there will be many convictions. It is also important to extend confiscation measures to third parties. Presently, confiscation is impossible if the wrongdoer is dead. Furthermore, insufficient resources, trained personnel, lack of competency and technological know-how affect detrimentally. In addition, the lack of adequate and updated research and training hinders the justice and effectiveness of the anti-money laundering regime.

Politicization is another prevalent drawback. The public has lost faith in the justice system when influential figures are capable of meddling in decisions. One of the key drawbacks is nonprofit organizations go unregulated and unsupervised. Due to unsupervised funds and lack of beneficial ownership, ascertaining the owner is grueling. Similarly, the informal value transfer system is a major hardship. Hawala Banking system is such an instance.

c. Money Laundering and Sri Lankan experience

Money laundering is not an unexplored concept in Sri Lanka. Various drug kingpins, underworld goons, religious extremists and terrorists are laundering money on a larger scale. Sri Lankan government militarily defeated the Liberation Tigers of Tamil Eelam (LTTE) and irrespective of Sri Lanka's victory; LTTE's international networks remains intact. It is important to mention that, LTTE and its front, cover and sympathetic organizations are still being tried and convicted for money laundering. As reported in (Swiss prosecutor takes Tamil investigation abroad, 2022), "Between 1999 and 2009, they allegedly created a complex fundraising

structure that involved coaxing members of the Tamil diaspora to obtain loans from banks. To raise higher amounts, the WTCC was accused of creating fictitious companies in the name of borrowers that issued fake salary certificates. "This showcases the prevailing national security menace to Sri Lanka, where terrorism can occur at any time.

Furthermore, Easter Sunday Attack 2019 was funded by laundered money. According to, (Subramanian, 2020) "Zaharan was both a beneficiary and an agent of a well-studied trend that has, for a couple of decades, been shaping Sri Lankan Islam. From Saudi Arabia, rich patrons send money and clerics to build new mosques and seed Wahhabism (Subramanian,2020) goes on to mention that, "Zaharan had possibly received an education in terrorism in India; that he had set up safe houses in Sri Lanka to train his men; that the money for at least one such house came from Inshaf. This house, near Wanathavilluwa, was disguised as a poultry farm. "There was a lagoon on one side," the intelligence official said. "A direct run from South India. All these explosives and chemicals could have come through that sea route." The property and assets brought by dirty money are a fine portrayal of property accumulated by gains, which have a dirty source.

d. Money Laundering and National Security

Unlike in past, national security is not restricted to militaristic aspects. Money laundering is destructive to all security facets, including, political, economic and social as well as human security. Ascertaining perpetrators as well as following the money trail is an uphill task because crime is extra-territorial in nature.

Challenges and threats to national security occur by various means. Sri Lanka's strategic location makes Sri Lanka more vulnerable since there is a greater tendency to commit predicate offences, such as illegal firearm trade, human smuggling and narcotics trade. Furthermore, virtual currency, bank complexity, Front Companies & Front Loans, False Import/Export Invoices, Privileged relationships and Politicization. When perusing all this, it is evident that money laundering is a saboteur to the security of Sri Lanka.

Conclusion and Recommendations

It is crystalline that money laundering is detrimental to all security spheres which has been locomoted from militaristic aspects to nontraditional security threats. Sri Lanka has a satisfactory legal regime to combat and minimize money laundering. Yet, there is room for development

to dissuade and thwart national security threats. In light of that, several recommendations can be made.

Sri Lanka must align its anti-money laundering framework with international standards. Thus, Act must be progressive since money laundering is an offence that is constantly altering. Adding burden, with technological competence and virtual currency, the money trail cannot be hunted. To eliminate and mitigate these barriers it is pivotal to have an interagency platform consisting of relevant ministries, security forces as well as private entities as deemed fit. In addition, there should be mutual legal assistance with other countries, to share expertise and experience. Information exchange will be a prudent choice to prevent and mitigate money laundering. Another imperative step is to create public awareness of money laundering and its repercussions of it. By doing that, public will refrain from committing money laundering. Government must allocate resources sufficiently and invest in research and development in addition, to conducting, training programs for officers. Moreover, it is noteworthy to regulate and supervise nonprofit organizations to verify beneficial ownership. Introducing legislation for asset recovery is imperative; finally, Designated Non-Financial Businesses and Professions should be taken under the purview of the anti-money laundering framework.

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