

Money Laundering Laws and Practice in Nepal

*Laxmi Narayan Dhungel**

1. Introduction

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 a trail of incriminating evidence. Terrorists and terrorist organizations also rely on money to sustain them and to carry out terrorist activities. Money for terrorists is derived from a wide variety of sources. While terrorists are not greatly concerned with disguising the origin of money, they are concerned with concealing its destination and the purpose for which it has been collected. Terrorists and terrorist organizations therefore employ techniques similar to those used by money launderers to hide their money.

The ability to prevent and detect money laundering is a highly effective means of identifying criminal and terrorists and the underlying activity from which money is derived. The application of intelligence and investigative techniques can be one way of detecting and disrupting the activities of terrorists and terrorist organizations. Because they deal with other people's money, financial institutions rely on a reputation for probity and integrity. A financial institution found to have assisted in laundering money will be shunned by legitimate enterprises. An international financial centre that is used for money laundering can become an ideal financial haven. Developing countries that attract dirty money, as a short-term engine of growth can find it difficult, as a consequence, to attract the kind of solid long-term foreign direct investment that is based

* Associate Professor, Former Asst. Campus Chief, Nepal Law Campus, Tribhuvan University

on stable conditions and good governance, and that can help them sustain development and promote long-term growth. Money laundering can erode a nation's economy by changing the demand for cash, making interest and exchange rates more volatile, and by causing high inflation in countries where criminals are doing business.

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. In recent years, the international community has become more aware of the dangers that money laundering poses in all these areas and many governments and jurisdictions have committed themselves to taking action. The United Nations and other international organizations are committed to helping them in any way they can. Criminals are now taking advantage of the globalization of the world economy by transferring funds quickly across international borders.

2. Meaning of Money Laundering

Money laundering is a truly global phenomenon, helped by the international financial community which is a twenty four hours a day business. When one financial centre closes business for the day, another one is opening or open for business. Laundering means to wash, to make something clean, to abolish mark or stain by the process of laundering one from of objectives can easily be transferred, changed and converted into another. Money laundering is the process of washing, cleaning, converting, criminally earned money into legal from, it is a process by which illegality obtained, earned; received money is transferred into white money. It decorates the illegal proceed with the veil of legitimate source. Generally the source of money laundered is believed to legitimate source. Source of money laundered are believed to be from trafficking, drugs dealing, bribery and corruption, smuggling of gold, economic seam, organized crime, tax evasion, trafficking of women and child, credit card frauds, counterfeiting of goods and currencies and so on. It process by which large amounts of illegally obtained money is given the appearance of having originated from a legitimize source. There are various definitions' to

describe the phrase 'Money Laundering' it is not possible to write all of them, some of them are as follows-

Laymen offer a definition of useful conciseness- "The term money laundering refers to the transformation of illegally obtained currency to that which appears legitimate. In addition, it is the concealment of the illegal source of the income or its application"¹ US custom service in their evidence to their group of seven international task force- "The process whereby proceeds, reasonably believed to have been derived from criminal activity are transported, transferred, transformed, converted or intermingled with legitimate funds, for the purpose of concealing or disguising the true nature, sources, disposition movement or ownership of those proceeds. The goal of the money laundering process is to make funds derived from or associated with illicit activity appear legitimate"² Robinson defines "Money laundering is called what it is because that perfectly describes what takes place – illegal, or dirty money is put through a cycle of transaction, or washed, so that it comes out the other ends as legal or clean money. In other words, the source of illegally obtained funds is obscured through a succession of transfers and deal in order that those same funds can eventually be made to appear as legitimate income"³

European communities directives of march 1990 defines it as ; The concession or transfer of property, knowing that such property is derived from serious crime, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in committing such an offence or offences to evade the legal consequences of his action, and the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, knowing that such property is derived from serious crime.⁴ According to Black law Dictionary "Money laundering is the act of transferring illegally obtained money through legitimate people or accounts so that original source cannot be traced."⁵

United Nations convention against illicit Trafficking in Narcotic Drugs and Psychotropic substance (Vienna Convention 1988) has given internationally accepted definition of money laundering, Article 3 of the convention states

¹ <http://www.fatf-gaaf.org/document/29/0.en> (Retrieved on 4 august, 2016)

² <http://www.fatf-gaaf.org/document/29/0,zn> (Review,1990-1149,Retrieved on 4 August,2016 from Police)

³ Ibid

⁴ EUROPEAN COMMUNITIES CONVENTION

⁵ BLACK'S LAW DICTIONARY (8th ed.), 1027, (2004).

money laundering means the following conduct when committed internationally⁶

- The convention or transfer of property knowing that , such property is derived from criminal activity or from an act of participation in such activity for the purpose of disguising or concealing the illicit origin of the property or for assisting any person who is the commission of such activity the legal consequences of this action.
- The concealment or disguise of the true nature, source location, disposition, movements, right with respect to or ownership of property knowing that such property is derived from criminal activity or form an act of participation is such activity:

Vienna Convention has focused its attention towards the funds derived from a drug trafficking offence. But money laundering phrase has not limited application only to such crime, with the changing society the nature, means techniques are rapidly growing. Therefore, at present time, international standard expands the scope of money laundering to funds derived from any serious crime.

UN defines it as “Money Laundering is a process which disguises illegal profit without compromising the criminals, who wish to benefit from the proceeds. It is a dynamic three stage process that requires; first moving the funds from direct association with the crime, second disguising the trail (evidence) or foil purist; and the third, and making the money available to the criminal once again with the occupational and geographic origins hidden from view⁷ Money laundering usually refers to a process through which criminal attempts to hide the true origin and ownership of the proceeds of criminal activities. Successful money laundering implies that the ill gotten money loses its criminal identity and appears legitimate. Money laundering activities are typically associated with organized crime and tackled through anti money laundering legislation, such as national laws inspired by, e.g. the Financial Action Task Force- 40 recommendations⁸ Money laundering refers to activities intended to conceal or disguise the origins of the proceeds of crime. Terrorism

⁶ Training Course Work Book, “*Effects on Economic Development and International Standard*,” USA International Bank for Reconstruction and Development, The World Bank, at 58, (2005).

⁷ BRETT F WOODS, THE ART AND SCIENCE OF MONEY LAUNDERING, Colorado, Paladin Press gun barrel Teach center. at 56, (2003).

⁸ Training Course Work-Book, “*Effects on Economic Development and International Standard*” USA, (2005)

Financing involves the raising and processing of funds to supply terrorist with resources to carry out their attacks. While the phenomena differ in key ways, they often exploit the some vulnerability in financial systems that allow for an inappropriate level of anonymity and non transparency in the execution of financial transaction. If money laundering and terrorist financing left unchecked that can enable criminals to amass wealth, power and influence which in turn undermine the rule of law and can have a corrupting effect on society and the economic system.

Money laundering activities imply and necessitate interaction with the legitimate economy and thus have been described as the ‘Achilles heel’⁹ identity, sources, and destination of money. It involves and complex and multiple transactions so that the source of income and destination of illegally proceeds could be either concealed or diverted. The player’s mix-up the proceeds of artfully that it is finally presented as earned from white sources.¹⁰

In US law” Money laundering is the practice of engaging in financial transaction to conceal the identity, source or destination of illegally gained money.” In UK law, the common law definitions wider than other countries law, in UK “ Taking any action with property of any from which is either wholly or in part of the proceeds of a crime that will disguise the fact that, that property is the proceeds of a crime or obscure the beneficial ownership of said property.”¹¹ In the past, the term money laundering was applied only to financial transaction related to organize crime, today its definition is often expanded by government and international regulators such as the US office of the comptroller of the currency to mean any financial transaction which generates an asset or a value as the result of an illegal act, which may involve actions such as tax evasion or false accounting ... As a result, the illegal activity of money laundering is now recognized as potentially practiced by individuals, small and large business, corrupt state, through a complex network of shall companies and trusts based in offshore tax havens.¹²

Money Laundering is the process of converting black money/property into white. Any property that is originated from illegal or criminal activities is black or illegal. People try to clean such money by finding multiple fake

⁹ Froomkin, “*S.M. Offshore centers and Money Laundering*” JOURNAL OF MONEY LAUNDERING CONTROL, Vol.1 No. 2, at 167,(2007)

¹⁰ Jyoti Pandey, A Critical Study on Money Laundering as on Organized Crime In Nepal

¹¹ R JAMES RECHARDS, TRANSNATIONAL CRIMINAL ORGANIZATION CYBER CRIME AND MONEY LAUNDERING, Washington DC; CRC at14, (1998)

¹² <http://www.en.wikipedia.org/wiki/money-laundering>. (Retrieved on 3 August, 2016)

sources, so that the illegal sources are hidden with a new masked origin or legitimized. They undergo placement, layering and integration in the process. The criminals basically attempt to use financial and on financial institution and trick methods to hide the legitimate source and destinations. In doing so, people try to use the products available in banks, financial institutions insurance, securities, evasions, co-operatives, real estate or also use corporate bodies or professionals like- lawyers, accountants, gate-keepers, use of legal entity and non profiting sectors like NGOs in another vulnerable sectors. Investment and trade based money laundering are the most sensitive and highest laundering machine, by which all countries are not only suffering, developing countries like Nepal are already under their cruel victim. The criminal or mafias who become successful to disguise the origin of asset save themselves from legal action from both predicate offences and money laundering and establish as ethical national or social elites by bitterly perforating the country to its worst.¹³

3. Nepalese Laws Dealing with Money Laundering

Assets (Money) Laundering Prevention Act is made by the parliament in 2008 A.D. According to this act , asset shall be supposed to have laundered in cash., any one directly or indirectly, earns from tax evasion or terrorist activities or invests in such activities or acquires holds, process or utilize asset by committing any or all offences stipulated as follows and in cash assets acquired, held or accumulated from committed any other act so as to present such assets as legally acquired or earned assets or conceal sources or origin of such asset or asset any one to transform, conceal or transform such asset with any objectives of avoiding legal action to the person having such assets.¹⁴

- Offence under the prevailing arms and ammunition laws;
- Offences under the prevailing foreign exchange regulation laws;
- Offences under the prevailing drug addiction control laws;
- Offences of murder, theft, cheating, forgery, documents, counterfeiting, kidnapping and abduction under the concerned prevailing laws;
- Offences under the prevailing national park and wild animals' conversation laws;
- Offences under the prevailing human trafficking and taking of hostage control laws;

¹³ http://antimoneylaundering.org/the_financing_of_terrorism_apex. (Retrieved on 6 August, 2016).

¹⁴ Money Laundering Prevention Act, Sec.4, (2008).

- Offences under the prevailing co-operative laws;
- Offence under the prevailing forest laws;
- Offence under the prevailing corruption control laws;
- Offence under the prevailing bank and financial institution laws; Offence under the prevailing banking crime and punishment laws;
- under the prevailing ancient monument conservation laws;
- Other offences that government of Nepal prescribes by publishing in the Nepal Gazette

Nepal government has published notice in Nepal Gazette including following offences-

- Offences under prevailing laws relating to consumer protection, black market control and competition
- Offence under prevailing law relating to company, commerce, supply, transport, business
- Offence under prevailing law relating to education, health, medicine, environment
- Offence under prevailing law relating to foreign employment
- Offence under prevailing law relating to lottery, gambling, and donation
- Offence under prevailing law relating to securities and insurance
- Offence under prevailing law relating to negotiable instruments
- Offence under prevailing law relating to election
- Offence under prevailing law relating to intellectual and industrial property
- Offence under prevailing law relating to communication, transmission, advertisement
- Offence under prevailing law relating to real estate property
- Offence under prevailing law relating to custom, revenue, tax etc
- Offence under prevailing law relating to immigration, citizenship, passport
- Offence under prevailing law relating to organization, associations

Nepal government published another notice in Nepal Gazette, including following offences also are the subjects of money laundering prevention-

- Offences within the scope of existing laws against coercive collection or provision of amount, donation or any asset or any other goods or compelling

to do so or involvement in such acts or direct or indirect assistance, financing or contribution to such acts,

- Offences within the scope of existing laws against sexual exploitation in any manner or abuse of children, women and destitute or involvement in or assistance to such acts,
- Offences within the scope of existing laws against any kind of robbery or looting of goods, direct or indirect involvement in or assistance to such acts,
- Offences within the scope of existing law against any kind of illegal profession, business or trade

People throughout the world, including the domestic and international mafias and criminal, rightly know the developing countries are less know about the Anti Money Laundering and Combating Financing Terrorism, have less stringent legal, institutional, operational measures in place, so better to target such countries to launder illegal proceeds without any notice or in a disguised from. If we study Nepalese provisions of anti money laundering laws, its hardcore reality that is well reflect. Because no sector is left untouched; corruption, tax evasion, fake VAT bills, commission, extortion, Hundi, banking fraud, organized crime etc. can stand as very few examples.¹⁵ The preamble of Asset (Money) Laundering Act 2008 provides that, it is penitent to prevent money laundering of criminally earned assets; the legislature parliament has enacted this act¹⁶

4. Practice of Money Laundering Laws in Nepal

Money Laundering is new subject to criminal Jurisprudence. In Nepal, having complicated nature not so many efforts have been done and its practical part is very poor. But some remarkable practice can be found in short period of its development. Nepal faces a number of money laundering and terrorist financing risk and threats. Primary predicate crimes in Nepal are Drug trafficking, human trafficking, arms trafficking, co-operatives, counterfeit currency, tax evasion and gold smuggling etc. Significant vulnerabilities relate to the porous Indo Nepal border including terrorist activity and TF.¹⁷ If the impact given above is meditate well upon and situation of Nepal is analyzed,

¹⁵ Teller Lilley, Dirty, Dealing: the united truth about global Money Laundering, International Crime and terrorism US: kong

¹⁶ Money Laundering Prevention Act, Preamble, (2008).

¹⁷ Teller Lilley, Dirty, Dealing: The United truth about global Money Laundering, International Crime and Terrorism US: kong

it is difficult for us to find out what is not there in Nepal? Is there transparency, stability, predictability, investment security, legal action, trust, political values or any others? And if we analyzed the corner of the people who are involve in the politics, business, bureaucracy, independent professions and other sectors, does that satisfy their income or source or activity or match the tax paid to the government? Another crucial issue Is that Nepali people can not underestimate is the frequent political change, loss of life of the people for that and ever running political instability.¹⁸

Above all issues are the illegal acts for the income. Every political change with the movement of people, unfortunately, turns to a black haven. All Anti Money Laundering system is a tool to check and take action against people earning money beyond source. Our legal system and its operation are unable to track down money laundering and so fail once the Anti Money Laundering System is adopted, where we like or not, whoever or whatever is pressure is given to stop action against somebody, it may take a long time but can never can be stopped and go otherwise. This is why some people are made about anti money laundering system in Nepal is developing and arguing falsely. It is another cheating to a state and innocent people. There is more concern to save them by letting the country collapse. This activities undergoing in Nepal are prima facie evidence that Nepal has become the most sever victim of money laundering in the world. There is a feeling in Nepal that anything can be done, if anything that cuts iron is the anti money laundering system. Once financial activities are reported or blocked a Don comes down in the street unlike our traditional investigator measures to run after a person.¹⁹

In 2008 AD Nepal enacted the Assets Laundering Prevention Act and established Financial Information Unit within Nepal Rastra Bank and establishment of this FIU it has received 186 Suspected Transaction Reports within three years and has achieved one conviction for money laundering. In 2009 Anti Money Laundering Rules were issued by the government of Nepal. The Financial Information Units has also issued a number of sector-specific Anti Money Laundering and Combating Financing Terrorism related Directives covering a range of issues from Suspected Transaction Report forms, Customer Due Diligence and other preventive measures.²⁰ The formal and

¹⁸ Ibid

¹⁹ [http:// antimoneylaundering. Org./the_fanancing_ of _ terrorism.apex](http://antimoneylaundering.Org./the_fanancing_of_terrorism.apex) (Retrieved on 6 August, 2016)

²⁰ Ibid, 13

visible efforts against Money Laundering and Terrorist financing began in Nepal obtained the membership of Asia Pacific Group (APG) on Money Laundering in June 2002. Nepal ratified international legal instruments and a strong need for a comprehensive Anti Money Laundering and Combating Financing Terrorism legislation was realized. Consequently, Asset (Money) Laundering Prevention Act was enacted criminalizing the offence of money laundering and financing of terrorism and it finally came into force in 2008. The Act has been a typical piece of legislation of this kind of Nepal. Besides the criminalization of the offence, it has provided for a regime to combat the crimes. The Anti Money Laundering and Combating Financing Terrorism regime established by the Act and Rules thereof has been operational. The regime has been able to give result despite the limitations and is on continues process of gaining efficacy and maturity.²¹

Nepal is in the initial phases of Anti Money Laundering and Combating Financing Terrorism Implementation. The Assets (Money) Laundering Prevention Act was enacted in 2008 and since then a number of important institutional Anti Money Laundering and combating Financial Terrorism measures have taken place including following-

- Establishment of a National Coordination Committee with policy oversight for Anti Money Laundering and combating Financial Terrorism;
- Establishment of the Financial Information Unit in the Nepal Rastra Bank;
- Designation of the Department of Revenue Investigation as the Provisional Anti Money Laundering Investigation Department;
- Designation of Special Court as the adjudication authority of Money Laundering and Terrorist Financing offences;
- Issuance of anti money laundering prevention rules;
- Issuance of specific Financial Information Units and Anti Money Laundering Directives.

With being fully committed to control this crime, secretary of Finance sent commitment letter to ICRG on stating that all international standards are fulfilled by 3, Dec. 2009. The FATF president asked political level commitment response stating that all strategic deficiencies will be completed within 2010 on Feb. 10, 2010. Within the stipulated time these commitments were not fulfilled and FATF warned Nepal to become cautions. There was threat for

²¹ Ibid, 19

being blacklisted to escape from such situation. Nepal made two ordinances: Mutual Legal Assistance ordinance and Extradition Ordinance to curb problem property and effectively. These two ordinances cover range of legal measures to investigate and prosecute such crime. By making these two ordinances it is hoped that criminal will not get chance of escape from trial. However Nepal failed to promulgate another legal measure on organized crime which directly relate to Money Laundering and Financing of Terrorism. However Nepal is trying her best to combat Money Laundering, International society is not satisfied with Nepal's slow progress to combat this crime. Financial Action Task Force,(FATF) had warned Nepal to frame some legal framework for proper combating of this crime. Proper Implementation of the Asset (Money) Laundering Prevention Act will result perfect controlling of such crime, so, proper implementation without any hindrance is necessary condition.

Government of Nepal has prescribed following Department and Offices as the government body for the purpose of section 2 (n) of Asset (Money) Laundering Prevention Act, 2008.

- Custom Department and offices subordinate to it,
- Inland Revenue Department and Offices subordinate it,
- Immigration Department and Offices subordinate to it,
- Department of Transport Management and Offices subordinate to it,
- Postal Department and Offices subordinate to it,
- Department of cooperative and Offices subordinate to it,
- Department of commerce and Offices subordinate to it,
- Department of Industries and Offices subordinate to it,
- Department for Education and Offices subordinate to it

5. Conclusion

Money laundering is financial crime, with the aim of making illegal money into legal nature. It involves a method of hiding, layering and converting the money generate from criminal activities. It is five dimensional crimes that include assisting another to retain the benefit for crime, acquiring, possession and use of criminal proceeds, concealing or transferring proceeds to avoid prosecution or a confiscation order, failure to disclose knowledge or suspicion or money laundering; tipping of. Money laundering does the impact on socio-political situation, impact on Marco economy, impact on financial system, impact on Financial Institution, impact on economic liberalization, impact on criminal legal system are major.

The techniques of money laundering are retail business, charity shows, lottery tickets, casinos, property dealing, securities market and stock exchange, insurance sector, asset purchase bending of funds, bank involvement, use of false accounts, shell corporation, establishment of companies, false export-import involves, underground banking, electronic transfer etc. Money Laundering and Terrorist Financing are directly related each other. The laundered money flows to the terrorist activities and some time money generated by terrorist activities needs to be laundered. In the short time criminals can pass their illegal proceed from one country to another. The international community has identified these problems and made so many instruments to check or counter money laundering and financing of terrorism. The United Nations Convention 1988, against the illicit traffics in narcotics drugs and psychotropic substances is the first international legal instrument; besides this there are various international instruments to combat. Money Laundering and Financial Action Task Force 40 recommendations special recommendation and Basel Committee recommendations are the main principle to Anti Money Laundering.

□□