Tackling of Money Laundering.

Mains: *GS III – Money-Laundering and its prevention*

Why in News?

Recently, a report submitted by the Finance Minister in the Rajya Sabha states that Enforcement Case Information Reports (ECIRs) have been issued to initiate proceedings under the Prevention of money laundering act (PMLA) 2002.

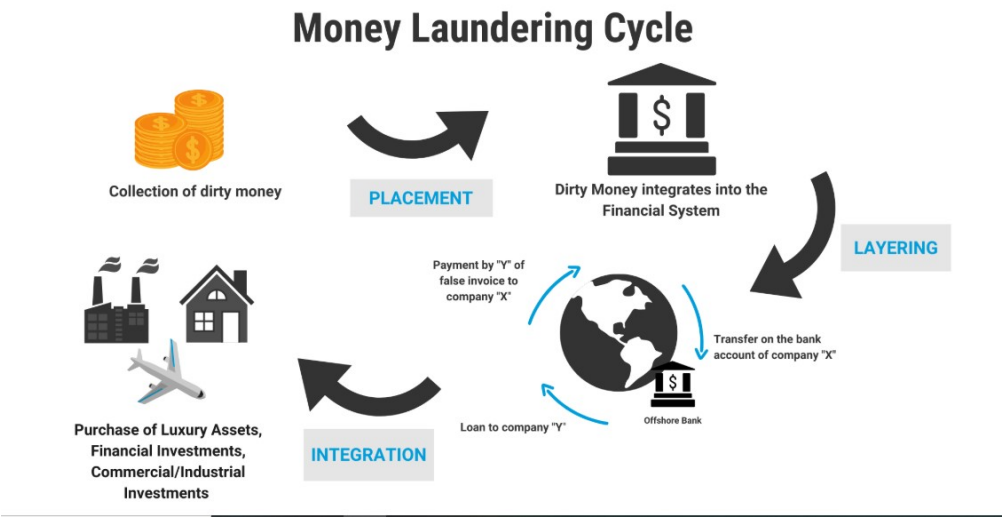
What is Money laundering?

- **Definition** – It is defined under *Section 3 of PMLA*, as an action through which processes or activities connected to the *proceeds of crime are concealed, possessed, acquired,* or used and projected as untainted property or claiming to be untainted property.
- **Origin** – The term money laundering is said to have its origins from the mafia's ownership of *Laundromats in the US* in the 1920's and 1930's for their crimes and under-the-table dealings.
- **Laundromats** – A laundromat is an all-purpose financial vehicle.
- It may be *set up by a bank or any other company* engaged in providing financial services.
- However, it can also help clients launder the proceeds of crime, hide ownership of assets, *embezzle funds from companies, evade taxes or currency restrictions and move money offshore.*
- The term is said to have originated from the use of laundromats by organised crime syndicates in the U.S. as cover

How is money laundered?

- **Placement** – It is the first stage where the launderer introduces money into the financial system which might be done by smurfing.

  Smurfing *is a process which involves breaking up large amounts of cash into smaller sums*



- **Layering** – Money is shifted to other locations through investments and transactions.
- **Integration** – The laundered money is brought into the financial system through real estate, business or asset formation etc.

What are the effects of money laundering?

- **Affects the sovereignty** – The Supreme Court in P. Chidambaram versus Enforcement Directorate (2019) held that money laundering affects the financial system and also the sovereignty and integrity of the nation.
- **Promotes terrorism** – Money laundering is a serious offence as it has a direct linkage with terror activities and is a major source of terror financing.
- **Expands money supply** – This might prove detrimental to monetary stability of the country ultimately impacting inflation.



- **Affects trading** – According to the Financial Action Task Force (FATF), money laundering severely affects both the domestic and international trade.

What are the steps taken by India?

- **Double Taxation Avoidance Agreement (DTAA)** – India has signed this with about 85 countries, which helps to check money laundering.
- These agreements *promote the exchange of financial and tax-related information* between tax authorities of participating countries.
- This facilitates the enforcement of tax regulations and helps prevent illegal activities like tax evasion and money laundering.
- **PMLA, 2002** – The act was enacted to prevent money laundering and to confiscate the property involved or obtained.
- It was enacted in line with the UN Political Declaration and Global Programme of Action (adopted by the UN General Assembly in February 1990).
- The most significant part of the statute is that the burden of proof is on the accused.

  *The **burden of proof** in law refers to the responsibility of a party in a legal case to prove their claims.*

- Under the act *Enforcement Case Information Reports (ECIRs)* will be been issued to initiate proceedings.

Enforcement Case Information Reports (ECIRs)
• **ECIR** - It is a document created by the Enforcement Directorate (ED) • It is similar to a First Information Report (FIR). • It is considered an internal document and is not mandatorily shared with the accused • **Aim** – To initiate investigations into suspected money laundering • **Issues under** – The Prevention of Money Laundering Act (PMLA). • **Features** – It is sufficient to initiate proceedings • It has also been reiterated by the Supreme Court in Vir Bhadra Singh versus ED (2017), that no FIR is required to initiate proceedings under the Act. • The only requirement as per the top court was that a scheduled offence (offence against the state) be essential for the offence of money laundering.

What are the Challenges in tackling money laundering?

- **Increasing cases** – The number of money laundering cases is seriously increasing, questioning the efficacy of the implementation of the law.
- **Abuse of law** – On many occasions, the law has been abused by authority which has been seen and referred to by the Supreme Court as well.
    - ***For Instance,** In Vijay Madanlal Chaudhury versus Union of India (2022) the Court held that to initiate prosecution under Section 3 of the PMLA, registration as scheduled offence is a pre requisite but for initiating attachment of property under Section 5, there need not be a pre-registered criminal case.*
- This view has been very often misused by authorities with politically motivated intentions.
- **Less conviction rate** – The number of convictions vis-a-vis total cases is far from

satisfactory.
    - About 5,892 cases were taken up by the Enforcement Directorate (ED since 2015, only 15 convictions have yet been ordered by special courts.

What lies ahead?

- Authorities *could follow the recommendations of the FATF* and ensure that money laundering cases are handled with care and caution.
- The *misuse of law could be checked*, and genuine cases reported and investigated properly to enhance the rate of conviction.
- Instead of political motives, *the law could be used to address the issues* and concerns involved in a sincere manner.

Reference

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