PREVENTION OF MONEY LAUNDERING ACT, 2002 AS A PREVENTIVE DETENTION LEGISLATION: A CONSTITUTIONAL INSIGHT

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Submitted by:

Anshuman Mishra
(SM0222004)
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Supervised by:

Dr. Himangshu Ranjan Nath
Assistant Professor of Law

National Law University and Judicial Academy, Assam

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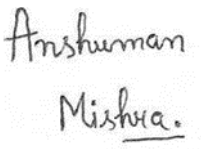


Date: June 30, 2023

ANSHUMAN MISHRA
SM0222004
LL.M. IInd Semester
National Law University and Judicial Academy, Assam

CERTIFICATE

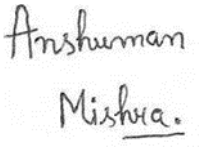
It is to certify that ANSHUMAN MISHRA is pursuing Master of Laws (LL.M.) from National Law University and Judicial Academy, Assam and has completed his dissertation titled **"PREVENTION OF MONEY LAUNDERING ACT, 2002 AS A PREVENTIVE DETENTION LEGISLATION: A CONSTITUTIONAL INSIGHT"** under my supervision. The research work is found to be original and suitable for submission.

Date: June 30, 2023

Dr. Himangshu Ranjan Nath
Assistant Professor of Law
National Law University and Judicial Academy, Assam

DECLARATION

I, ANSHUMAN MISHRA, pursuing Master of Laws (LL.M) from National Law University and Judicial Academy, Assam, do hereby declare that the present dissertation titled**"PREVENTION OF MONEY LAUNDERING ACT, 2002 AS A PREVENTIVE DETENTION LEGISLATION: A CONSTITUTIONAL INSIGHT"** is an original research work and has not been submitted, either in part or full anywhere else for any purpose, academic or otherwise, to the best of my knowledge.



Date: June 30, 2023

ANSHUMAN MISHRA
SM0222004
National Law University and Judicial Academy, Assam

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Serial No.	Abbreviation	Explanation
1.	AML	Anti-Money Laundering
2.	AMLID	Anti-Money Laundering Information Database
3.	APG	Asia Pacific Group on Money Laundering
4.	AUSTRAC	Australian Transaction Report and Analysis Centre
5.	BCCI	Bank of Credit and Commerce International
6.	BCSA	Bulk Cash Smuggling Act
7.	BIS	Bank of International Settlements
8.	BSA	Banking Secrecy Act, 1970
9.	CBDT	Central Board of Direct Taxes
10.	CBI	Central Bureau of Investigation
11.	CCE	Continuing Criminal Enterprising Statute
12.	CDD	Customer Due Diligence
13.	CEIB	Central Economic Intelligence Bureau
14.	CFATF	Caribbean Financial Action Task Force
15.	CFT	Combating the Financing of Terrorism
16.	CI	Criminal Investigation Unit- US
17.	CND	Commission on Narcotic Drugs
18.	COFEPOSA	Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974
19.	CTR	Cash Transaction Report
20.	CVC	Central Vigilance Commission
21.	DHS	Department of Homeland Security
22.	DNFBP	Designated Non-Financial Businesses and Professions
23.	DOJ	Department of Justice
24.	DOR	Department of Revenue
25.	DRI	Directorate of Revenue Intelligence
26.	DTAA	Direct Taxes Avoidance Agreement
27.	EAG	Eurasian Group to Combat Money Laundering and Terrorist Financing

28.	EC	Council of Europe
29.	ECIR	Enforcement Case Information Report
30.	ECOSOC	United Nations Economic and Social Council
31.	ED	Enforcement Directorate
32.	ESAAMLG	Eastern and Southern Africa Anti Money Laundering Group
33.	EU	European Union
34.	FATF	Financial Action Task Force
35.	FBI	Federal Bureau of Investigation
36.	FCRA	Foreign Currency Regulation Act
37.	US	United States of America

CHAPTER 1

INTRODUCTION

1.1 INTRODUCTION

The word "money laundering" first appeared in the US in the 1920s, when American police officials reportedly used it to allude to the ownership and usage of launderettes by mafia organisations. These organisations expressed a keen interest in purchasing the launderettes that were already operated by criminals since it provided them with a way to present money obtained from illicit activity as coming from a respectable source. Because the criminal organisations could claim that their revenues from illicit activity came from launderettes, the term "laundering" was said to have been created. The phrase appears to have originally been used with a legal connotation in a 1982 American judgement involving the seizure of Columbian drug proceeds that had been laundered.[1] Federal Supplement Vol. 551, South District of Florida (1982) 314, US v. $4,255,625.39 The public frequently assumes that "money laundering" has an official, legal definition because of the widespread acceptance of this informal, common term, even though this is rarely the case. The phrase is used as a shortcut to describe a difficult task.[2]

Money laundering is a crucial component of organised crime and an inevitable extension of any illegal behaviour that reaps financial gain. The term "money laundering" broadly refers to any procedure or action involving the transfer of criminal revenues to projects.[3] Crime proceeds as pristine assets. Another way to express money laundering is as a method that converts illicit inputs into purportedly legal outputs. illicit earnings Gains from crime are presented as the products of hard work by honest workers turned, for example, into expensive products, real land, or bank accounts that appear legal. Through this mechanism, criminals are able to profit from their actions and live normal lives alongside non-criminals. Laundering is typically considered to include any handling of property obtained through criminal activity, but it's crucial to note that the money must be handled in a way that makes it appear as though it was

[1] McClean D, 'Money-Laundering: A New International Law Enforcement Model'(2002) Cambridge University Press <http://dx.doi.org/10.1093/bybil/72.1.407> accessed 27 May 2023
[2] Doig A, 'European Money Trails'(2001) 41 The British Journal of Criminology 1999 <http://dx.doi.org/10.1093/bjc/41.1.206> accessed 20 April 2023
[3] United Nations (1999) Model Legislation on Money Laundering, Confiscation & International Cooperation in Relation to Proceeds of Crime; p195

obtained legitimately rather than through criminal activity.[4] The definition of "laundering offences" has become so broad that practically any financial transaction could qualify if part of the money or other assets involved have a criminal history.[5] Although criminal laws vary between nations, it is crucial to come up with a uniform definition of money laundering because the term was originally solely used to describe the laundering of drug money.[6] The measurement of money laundering requires a precise definition that takes into account the many types of criminality.[7]

Various states use one of two sorts of methodologies to define money laundering. The first one is ambiguous about just what behaviour qualifies as money laundering. However, the second group accurately reflects behaviours that qualify as money laundering. The Dutch penal code's provision "Hiding or disguising the true origin, the source, the alienation, the movement, or the place where it can be found" serves as the greatest example of this.[8] Although legally the most challenging part of determining money laundering is determining the predicate offences. If the money did not come from a primary crime, hiding or obscuring the source of the money might not be considered money laundering legally. Therefore, what precisely qualifies as money laundering, which actions fall into the category, and who can be prosecuted depend greatly on what is considered a crime with a financial motive.[9]

The definition of money laundering varies widely between nations, which is problematic given the multinational nature of the crime. Given the smaller range of predicate offences in Greece, for instance, what could constitute money laundering in Canada might not amount to the same in the latter.[10] The Vienna Convention excludes travel from its purview beyond drug-related offences and does not use the term "money laundering." Some UN members at the time were reluctant to allow the use of a then-

[4] Ashin, Paul, 'Dirty Money- Real Pain' (2012) 49 (12) Journal of Finance & Developoment< https://www.imf.org/external/pubs/ft/fandd/2012/06/ashin.htm> accessed 12 April 2023
[5] Peter Alldridge, 'Money Laundering & Globalization' (2008) 35(4) Journal of Law & Society< https://www.academia.edu/45246863/Money_Laundering_and_Globalization > accessed on 26 April 2023
[6] Ibid
[7] Unger, Brigitte & et al. (2006) "The Amounts & Effects of Money Laundering- Report for Ministry of Finance" accessed 27 May 2023
[8] Ibid
[9] Unger (n 7) 24
[10] Ibid

common colloquialism in an international convention.[11] The United Nations Convention against The concept of organised crime, which became effective on September 29, 2003, broadens The 1998 United Nations General Assembly Special Session's resolutions on a number of topics, including money laundering, are given legal weight.[12]

1.2 MONEY LAUNDERING PROCESS & METHODS

"Money laundering refers to the series of transactions that dirty money must undertake to become clean again. Money laundering is a metaphor for the possibility of contaminated funds reappearing."Due to their similarity, it is difficult to distinguish between the washing cycle and genuine financial assets. Money laundering involves transferring illegal funds or criminal proceeds into another asset, concealing the true proprietor of these proceeds, and establishing a false ownership trail.

Money laundering begins with tainted funds and ends when the contamination has been eliminated. Variables include the nature and extent of contamination, as well as the precautions required to impede and prolong the investigation. Because currency is a common component of criminal proceeds, it must infiltrate the financial system. Money laundering is a metaphor for the two activities that rely on illicit funds the most. By eradicating the money's apparent connection to the underlying crime and transforming it into a desirable medium (such as a bank balance), it can be used for legitimate purposes. Tracing occurs in accordance with common law whenever property is transferred or replaced.

Despite this, it appears that common law prohibits combining, whether in a literal bag or a metaphorical bank account. The vast majority of academics and industry professionals concur that conventional laundering techniques typically involve three phases: placement, layering, and integration.Initial integration of criminal proceeds into the financial system In the second phase, he deliberately engages in a variety of financial activities to separate the illicit funds from their source. Following the completion of the purification process, illicit funds are reinvested in the economy.

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[11] Joyce, Elizabeth, 'Expanding the International Regime on Money Laundering in Response to Transnational Organized Crime, Terrorism & Corruption' (2005) Sagar Publications accessed 12 April 2023

[12] Wouter H. Muller (Editor), Christian H. Kalin (Editor), John G. Goldsworth (Editor), Anti-Money Laundering: International Law and Practice (April 2007) accessed on 26 April 2023

In the past, it was understood that sending money into the financial system during the placement phase was a method for laundering illicit profits. The 1990 FATF40 recommendations focused on detecting money laundering at the level of currency proceeds, as evidenced by these recommendations. The anonymity and lack of paper trace associated with cash may outweigh its disadvantages. Historically, drug trafficking has been one of the most fundamental offences motivated by monetary gain. Significant financial resources are involved in the placement process. Given that the largest euro banknote is 500 euros, one million euros weighs 2.4 kilogrammes, whereas one million dollars is represented by a 10-kilogramme bill. According to specialists, money laundering is most likely to be discovered during the placement phase.

“The process begins with the introduction of illicit funds into the financial system, which is typically accomplished by depositing currency in banks through a financial institution.” Large quantities of money are divided into smaller, more manageable sums and gradually deposited into various institutions. The objective of layering illicit funds is to fragment them, create a complex organisational structure and precise documentation to impede and confound the investigation, and then falsify their source. During the layering phase, the asset owner may have the sole intention of concealing his assets, depending on a variety of factors. The second phase of money laundering is the transfer of illegally obtained funds to other institutions, which further separates them from their illegal origin. For instance, the investor's indifference to a significant investment loss, the high number of advisory fees, etc.

During the third phase, financial resources are integrated into the legal economy by investing in assets such as securities, real estate, and luxury goods. In the final phase, the money is combined with other system assets and incorporated into the legal, economic, and financial systems. The money launderer combines the purified funds by feigning that they were generated legally or legitimately. It is currently extremely difficult to distinguish between legal and illegal wealth, let alone assign a monetary value to each. As an illustration, suppose a drug dealer sells a client drugs worth $1,000. When he cashes in his currency, he instructs the casino to deposit the money into his bank account. The money is then delivered to a casino. In the event of a dispute, he can defend the credit to his bank account by citing his wagering winnings, which are likely legal in a number of jurisdictions.

With the money in his account, he purchases a pricey object, such as a moped.In the preceding example, the layering phase involves transferring casino earnings to a bank account, whereas the placement phase involves exchanging currency for casino chips. Integration is dependent on the purchase of a motorcycle with a valid title. The vendor may then use or sell the moped. The theft of currency enables money launderers to conceal all traces of the stolen funds, from their placement to their incorporation into the financial system.

The three most common and distinct phases of money laundering are not always present; some instances may involve additional phases. Nevertheless, the three-step classification provides a useful analysis of a potentially challenging procedure. Money laundering can occur without international transactions. Numerous documented instances of local money laundering exist. Techniques for money laundering can be as simple as transporting currency across international frontiers in suitcases or utilising tax havens. This is occasionally facilitated by the acquisition of high-value portable objects, such as rare stamps or diamonds. Moreover, real estate and insurance transactions can be used to conceal the source of funding. Typically, cash smuggling occurs in one of three ways: first, by transferring significant sums of cash through the same route as drug importation. Second, by hand or using a vehicle (container, ship, or lorry) to transport currency

Given that cash constitutes the majority of criminal proceeds, transporting cash is a simple method that leaves no trace for law enforcement. Occasionally, criminal funds are transported across international borders, deposited in banks, used to purchase real estate, or invested to establish enterprises. Front corporations provide perpetrators with cover and a means to accomplish their goals.Capital that originates from both legal and illegal sources is unrestricted. The greater the number of jurisdictions it traversed, the more difficult it would be to locate it. Money laundering may involve expensive real estate transactions, the purchase of jewellery and other luxury products, and an international network of both legitimate businesses and shell corporations. After the process of purging, the stolen funds must be returned to their rightful proprietor while appearing to originate from a legitimate source.

Typically, the purification process is conducted through a series of transactions on foreign soil, although it can occasionally occur on domestic property. Moreover, in

cash-based economies, currency is used to pay for living expenses because the use of other forms of payment would raise suspicions. Their partners and suppliers also require currency, so they must pay their living expenses in cash as well.Fundamental types of money laundering include manipulating turnover, combining criminal earnings with legitimate business, and claiming unlawfully obtained income is legal. Optionally, one could purchase a business that requires a substantial amount of cash and lawful currency.

Historically, the diamond industry has been cash-based, and the overwhelming majority of the market continues to operate solely with cash. This practise has decreased in recent years due to the prevalence of electronic payment and credit systems, particularly in cash-based nations like Namibia and India. As a commodity, diamonds are highly lucrative, versatile, and secure as a form of payment. Because its reputation for integrity, corporate ethics, and undocumented trading practises makes it susceptible to money laundering, anti-money laundering authorities actively monitor the diamond industry. In the diamond trade, money laundering and the laundering of criminal proceeds derived from diamonds are prevalent. The first strategy entails acquiring diamonds with illegal funds and selling them as part of a legal transaction in order to integrate the illegal funds. This is referred to as layering and placement.

Even if a criminal laundered the proceeds of two separate offences, only the first instance is commonly known as money laundering. Due to their liquid and fluid characteristics, diamonds can accumulate, transmit, and store value. They excel at transporting small quantities of incredibly valuable products. Because these markets operate on government-regulated cash and exchange-based transactions, commerce takes place there in addition to structured financial systems. A one-carat diamond may cost as much as $15,000 USD.

On the domestic and international diamond markets, frequent sales and resales present tremendous opportunities for money launderers. Within the diamond industry, it is feasible to transfer illicit funds, incorporate them into the banking system, and exchange them for tangible goods. In order to minimise export taxes or land revenue, diamonds are frequently sold at a discount across international borders. The value generated at the end of the cycle would be substantially greater than the value generated at the beginning, but in reality, the value would remain the same, with the exception of the

"mark-up" added by traders throughout the cycle. In international commerce, it is common for products to be exchanged for cash or payments in other nations. Due to their ability to reach rural areas, ethnic financial systems are extraordinarily pervasive.

"Hawala" is the Arabic and Urdu term for "reference" and "transfer," respectively. The recipient's name, address, and phone number are transmitted via facsimile, mail, or telephone to the international counterpart. “Occasionally, the serial number of a rupee note or dollar bill in the recipient's possession is transmitted for identification purposes. Hawala is characterised by trust, which enhances the efficiency of the system.

If conventional banking systems are utilised at any point during the laundering process, a paper trace is created, allowing law enforcement to detect the activity. However, alternative remittance systems, such as HOSSPs, can conceal both the sender and recipient identities of illicit funds. Popular is "cuckoo smurfing," in which the destination account is located in the same country as the source account.”

1.3 STATEMENT OF PROBLEM

A review of the literature shows that the quantity of proceeds that are laundered is largely supported by the assumptions of different authors rather than by many empirical data points. The nature of the relationship between nation-states has evolved as a result of the worldwide effort to combat money laundering, which has boosted demand for harmonising substantive criminal legislation and enforcement practises across nations. Criminals don't belong in a sovereign nation. As they take advantage of borders, they are conscious of the fact that it is more challenging to trace the money's path when more countries are involved. Money launderers think about the potential return the illicit funds could produce rather than selecting fewer controlled regions.

Despite the fact that every country has its own set of criminal laws, it's important to agree on what counts as money laundering. There are still opportunities for money launderers to elude detection because the legal systems of various nations vary. The body of law governing laundering, however, has not been developed without the kind of transparent, ethical, and open public review that would have been required for the development of a reasonable criminal statute. According to studies, legal systems around the world are not all the same. It is commonly believed that if laundering were to be more difficult, there would be significantly fewer predicate offences. This is definitely not evident. Even if laundering offences were strictly prosecuted, drug

traffickers would still have plenty of incentives to simply hold the money until they were ready to spend it. This is because selling narcotics may bring in a lot of money.

1.4 AIM

Money laundering is a global offence. The purpose of the current study is to critically evaluate the Prevention of Money Laundering Act of 2002 (PMLA) and determine whether the Act complies with the standards outlined in the aforementioned international instruments, including the Vienna Convention, Palermo Convention, FATF regulations, etc., by comparing the legislative provisions with those of these international conventions and treaties.

1.5 OBJECTIVES

Among other things, the study's objects may be broadly categorised as follows:

a) To examine the background of money laundering and terrorist funding as crimes, as well as the coordinated international effort to advance anti-money laundering legislation at the national and international levels.

b) To identify the fundamental legal concepts stated in numerous international conventions, treaties, recommendations, and "soft laws," such as United Nations resolutions.

c) To critically assess whether the PMLA 2002's provisions are in accordance with international conventions and treaties and are compatible with the procedures set forth therein.

d) To determine whether Indian law's provisions are enough to help global efforts to prevent money laundering.

b) To assess and contrast the provisions of the PMLA 2002 with those that are common in other countries, such as the United States and the United Kingdom.

1.6 SCOPE AND LIMITATIONS

The Vienna Convention, Palermo Convention, and FATF Regulations, the three most significant international conventions or soft laws relating to the prevention and regulation of money laundering, are the only legal aspects of anti-money laundering (AML) law that are the subject of this study. Despite the fact that the AML laws cover a number of topics, including predicate offences, money

laundering infraction, making money laundering a crime, and taking preventative steps.

The research has been broadly limited to predicate crimes and the criminalization of money laundering because these two areas are interconnected and require precise, strong, well-drafted AML laws and regulations. Laws relating to freezing, seizure, and forfeiture of proceeds of crime and laundering, penalties and punishment, regulatory issues, jurisdictional aspects, cooperation, and mutual legal assistance Due to the transnational nature of the money laundering offence and the ongoing need for changes based on typologies, requirements, shifting categories of offences, and challenges with the enforcement regime, these laws are also constantly being revised and amended.

Without a thorough evaluation of several fundamental legal system criteria outlined by the World Bank and IMF, a study of the legal provisions relevant to money laundering offences would be lacking. The Prevention of Money Laundering Act, 2002, which went into effect on July 1, 2005, is the legal perspective studied above with reference to the Indian situation. Based on the FATF's review of the law and in accordance with their recommendations in line with international conventions, amendments were made in 2009 and 2012. The study's breadth is further constrained by the fact that the law is still in its infancy and has not yet been thoroughly examined in quasi-judicial and judicial forums. The area of study is further constrained by the fact that there aren't many decisions available in the field to examine the legal facets of the law. As the only organisation the Enforcement Directorate restricts from sharing data or information and cases connected to money laundering violations, further limited statistics and information are available in the public domain. The USA was a leader in enacting the AML law, and it continuously strengthens its legal and enforcement framework by regularly revising regulations to reflect the shifting demands of society and the economy.

The laws of these regimes were chosen for a comparative analysis because they are similar to those of the United Kingdom and because many nations adopt their domestic laws after those of the United States or the United Kingdom. It should be noted that, in contrast to India, where the AML law is a sui generis law, the laws in the United States and the United Kingdom are dispersed throughout numerous acts and enactments that work in concert with one another. The lengthy and space-

constrained provisions of every piece of legislation cannot be examined in their entirety. Therefore, the study is limited to significant legislative components.

1.7 REVIEW OF LITERATURE

a) "Guy Stessens – Money Laundering – A New International Law Enforcement Model (2000) United Kingdom - Cambridge University Press The author has investigated whether the set of legal rules that have been put in place at domestic and international level has made effective contribution in the fight against money laundering."

b) "Jyoti Trehan – Crime & Money Laundering – Indian Perspective (2008) Oxford University Press. The author has researched the topic in Indian perspective especially its impact on national security and issues due to economi liberalization. Attempt was made to examine money laundering laws in India and initiatives at domestic level to curb money laundering."

c) "Kris Hinterseer (2002) Criminal Finance – The Political Economy of Money Laundering in a Comparative Legal Context (Kluwer Law International) The author has examined the initiatives of EU, USA, FATF and also the issues that confront financial institutions. The author has concluded that money laundering control would invariably require a coherent, comprehensive and holistic set of interlocking laws, regulations and policies."

d) "Wouter H Muller & et-all Anti-Money Laundering – International Law and Practice (2007) Joohn Wiley & Sons– The authors have in detail examined issues concerning international anti-money laundering laws and regulations, with reference to standards, education and training. Country-wise analysis of AML laws in brief was done in respect of 43 countries."

e) "Peter Lilley – Dirty Dealing- The Untold Truth About Global Money Laundering, International Crime and Terrorism (2006) Kogan Page - In this book the author exposes the awesome scale and scope of global money laundering and its infiltration into the world's legitimate business structure."

f) "R.C. H Alexander – Insider Dealing and Money Laundering in the Europea Union – Ash Gate (2007) The book mainly deals with insider trading as a predicate offence of money laundering. The Author examines the EU directive and UK response on insider trading, impact on financial services industry."

g) "James R Richards Transnational Criminal Organizations, Cybercrime, an Money Laundering – CRC Press (1999) The author examines the role of international criminal organizations, the money laundering tools and techniques, AML measures internationally and in USA, apart from the efforts taken by international organization and Treaties to curtail money laundering."

h) "International White Collar Crimes – Cases and materials – BRUC ZAGARIS - Cambridge University Press (2010) -. This author has examined transnational business crime, its procedural aspects, extra-territorial jurisdictions, and recent strategies in the United States and abroad to combat it."

i) "The Scale and Impacts of Money Laundering – Brigitte Unger – Edwar Elgar (2007) - The work by author gives an interdisciplinary overview of the state-of-the-art of money laundering as well as describing the legal problems of defining and fighting money laundering.. The book also gives an overview of techniques and potential effects of money laundering identified and measured so far in the literature."

j) "The Law on Money Laundering – Statutes and Commentary –Leonard Jason Lloyd, Frank Cass – Portland (1997) - The author has covered issues like criminal conduct, money laundering process, drug trafficking, terrorism investigation, tipping off and money laundering regulations. The author in this work feels that the statutory provisions designed to impede the laundering of money are complex and wide-ranging."

k) "Justice P. Narayana's – The Prevention of Money Laundering Act, 2002 – Central Law Agency, Hyderabad (2013) - The author in this book has covered the PMLA in detail with reference to each of the statutory provision. He has taken into account the latest amendment in 2013 to the Act."

1.8 RESEARCH QUESTIONS

The research is a doctrinal one, more particularly a critical study and analysis of PMLA with that of the statutory obligations laid down under international conventions as well as a simultaneous comparison of PMLA with that of provisions contained in anti-money laundering laws in UK and USA. The research strives to formulate the following questions:

1. Whether the provisions contained in the legislation (PMLA) fulfils the international obligations cast upon India, in terms of various Conventions, treaties,

recommendations, regulations and soft laws?

2. What are the prevalent practices of money laundering?

3. What measures have been adopted in India to combat money laundering?

4. What standard measures are recognized at the international level to control and combat money laundering?

1.9 RESEARCH METHODOLOGY

The research is mainly of a doctrinal nature. Methods including the historical method, evaluation technique, analytical method, and comparative approach are utilised as needed to support the study aim and aid the researcher. The history of money laundering law, its evolution, and its effects on both the international and domestic levels are studied using historical methods. The laws, rules, and procedures are compared and analysed using an analytical method with those found in international conventions, treaties, FATF regulations, model laws, court rulings, academic articles, reports in daily newspapers, journals, the internet, etc. To determine if the legislative branch has successfully implemented the guidelines and standards outlined in the aforementioned documents, an evaluation method is used. To conduct a comparative and global analysis, the comparative approach is used to compare legislative provisions, rules, and regulations with international instruments as well as the laws and regulations of specific countries.

1.10 CHAPTERISATION

In order to carry out an effective and comprehensive study on the topic "Prevention of Money Laundering Act, 2002 as a Preventive Detention Legislation: A Constitutional Insight", the researcher has planned the research design in the following manner:

Chapter 1: The chapter provides the meaning of money laundering law, money laundering process and methods.

In addition to this it also includes, statement of problems, review of literature, hypothesis, aims and objectives, scope and limitations alongwith research questions and research methodology. The chapter is termed as "Introduction."

Chapter 2: In this chapter researcher covers the global legal initiatives for anti-money laundering laws. History and evolution of anti-global money laundering laws, how different treaties, conventions, arrangements, contracts, etc., contributed

towards the development of Anti-money laundering laws, rules & regulations Thus this chapter is termed as "Anti Money-Laundering: Global legal initiatives."

Chapter 3: The researchers of this chapter covers the Indian Anti-Money laundering Regime with the help of different laws enacted in India from time to time to make Anti-Money laundering provision more and more rigorous and more punishable. Thus this chapter is termed as "Anti Money-Laundering in India: Conceptual and Jurisprudential analysis."

Chapter 4: In the following chapter researcher does the critical analysis of the Prevention of Money laundering act by its various provisions of the act, landmark and recent precedents.

Thus, this chapter is termed as "Critical Analysis of the Prevention of Money Laundering Act, 2002."

Chapter 5: In this chapter researcher focusses on the comparative analysis of money laundering legislation in US and UK and includes the overview of money laundering legislation in US and anti-money laundering legislation in UK. Thus, this chapter is termed as "Comparative study of money laundering legislations of US and UK."

Chapter 6: The following chapter contains at last researcher comes to several findings of the research topic after doing a thorough study of national and global anti-money laundering laws and finally concludes the research with conclusion and suggestions.

Thus, this chapter is termed as "Conclusion, Findings and Suggestions.

CHAPTER 2

ANTI MONEY LAUNDERING: GLOBAL LEGAL INITIATIVES

2.1 HISTORY & EVOLUTION OF GLOBAL ANTI-MONEY LAUNDERING LAW:

The phrase "money laundering" now has a new meaning due to unmistakable transnational connections and global work environments. In any event, the fundamentals of an almost exact analysis of several groups remain the same. "INTERPOL" (International Police), the General Police screening dog, defines "money laundering" as "any display or effort to mask or cover up the characteristics of a mistaken individual." The United Nations Office on Drugs and Crime (UNODC) defines "money laundering" as the "process by which the perpetrators conceal the illegal origin of their wealth and protect their asset bases, in order to maintain a fundamental separation from the insecurity of the legislation, needs working en masse. The very large organisation that founded the Financial Action Task Force on Money Laundering (FATF) in 1989 offered coordination among the nations participating in the management of this possibility of money laundering. To stop money laundering, however, a number of activities were carried out in close cooperation. Money laundering is defined by the FATF as "preparing a criminal to continue to voile its unlawful inception, thereby empowering the criminal to value the benefits without risk." The FATF is the authoritative body established to set forth principles and advance sensible implementation in the fight against money laundering, mental oppressor financing, and other associated risks to the tolerability of general money related nature.

When the United Nations approved the Vienna Convention against the Illegal Trade in Narcotic Drugs and Psychotropic Medicines (the "Vienna Convention") in 1988, money laundering was viewed as a generally reprehensible practise. Despite the Preamble to the Convention's recommendation that "illegal traffic produces immense monetary benefits and abundance in a transnational criminal relationship in order to enter, debase, and degenerate the plans," which is that "illegal traffic produces immense monetary benefits and abundance in a transnational criminal relationship," the Convention was adopted by 171 countries worldwide and further completed by 168 of them. "Certified industry and money-based enterprise and culture at all stages" and "to deprive the rewards of their criminal conduct to individuals engaged in illegal traffic and to carry

out their crucial sparkle to do so" demonstrate the neighbourhood's reliability going forward.

The Financial Action Task Force was established in 1989 in Paris by the heads of state of seven major industrial countries and the President of the European Union in an effort to combat money laundering, which by that time had become a significant issue for the world's developing and provincial nations. In April 1990, the effect of the challenge provided a study with a wide-ranging programme of forty proposals to strengthen the overall public legislative plans, modernise the monetary area, and expand cooperative efforts in the war against money laundering. All FATF members accepted the study in May 1990 after it was approved by financial clergy or other clever clergymen. Starting now and for a considerable period of time, the FATF was a high-level "technique-making agency" seeking to make the basic political will to bring about public administrative and definitive improvements to money laundering. In addition, the recommendations were further revised in 1996, 2001, 2003, and 2012 to ensure a resurrected and far-reaching agreement directly for the part-state. Shortly after the 9/11 attacks on the World Trade Centre in New York, the world became aware of the connection between money laundering and funding for psychiatric mistreatment. In a similar vein, the United Nations Security Council, which is made up of the most powerful economies in the world, recognised Resolution No. 1373 as contradicting and hiding the financing of mental oppressive acts, the criminalization of related unlawfully threatening activities, and the blueprint for assassination.

The UN Conventions against Transnationally Facilitated Crime and Corruption, which raised the stakes of money laundering by including the benefits of all authorised incursions, independent of the benefits of illegal drug supervision. Different actions have been taken at the international level to manage money laundering, including the review of the European Union Convention on the Laundering, Searching, Seizure, and Confiscation of Crime Proceeds; the relationship to the Economic Cooperation Treaty; and the conferences, in the same way, unexpectedly requiring the creation of money-related information units.

Generally, attempts to control money-laundering and funding of illicit attacks are the impression of a way of thinking based on, from one point of view, targeting the money-related consequences of criminal or mental oppressor affiliations and undermining them

by maintaining their income from, or using, illegitimate continuity and, evidently, blocking the evil effects of criminals. The 1988 United Nations Convention against the Illegal Trade of Narcotic Narcotics and Psychotropic Medications is the key overall legislative instrument to define the money-laundering aspect of this modern framework and is comparatively fundamental in general. The United Nations Convention against Transnational Composed Crime and the United Nations Convention against Corruption came into force autonomously in September 2003 and December 2005, respectively. The two instruments within the level of the money-laundering crime, by conveying that they should not refer only to the benefits of an illegal remedy overseeing, should at any rate cover comparatively the benefits of each authentic horrible behaviour.

The two Conventions require States to establish financial intelligence units (FIUs) and to provide a thorough, close-by administrative and administrative structure for banks and non-bank financial foundations, including the management of the mill and legitimate persons, in contrast to some substances that are particularly helpless against being linked to the money-laundering plan.

Following is a detailed discussion of the aforementioned conventions as well as a few others:

2.2 United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988) (Vienna Convention)

The United Nations entered the above convention, also known as the Vienna Convention, to combat money laundering offences such as drug management and the illicit use of sedative for general use. Any tangible or intangible property derived from or acquired by direct or indirect means, as well as any legal documents or instruments that show little or no interest in such assets. Money laundering was defined in Article 4, Paragraph 1, of the Convention as:

"Knowing that such property is the result of any offence or offences, conversion, or transfer of property for the purpose of concealing or displacing the illicit origin of the property, or assisting any person involved in the commission of such an offence or offences to evade the consequences of his actions.

The Convention does not portray proceeds with a general definition since it cautiously considers proceeds as those that are gotten from or gained, directly or indirectly, from the prescription. The European Commission, Financial Action Task Force (FATF), and other overall instruments have expanded the Vienna Convention's importance of predicate offences to include other genuine infringements. The Parties to this Convention are significantly stressed by the size of and rising example of the unlawful production of, interest in, and traffic in narcotic medications and psychotropic substances, which address a genuine peril to the prosperity and government help of individuals and inimically impact the financial, social, and political foundations of society. This is a careful, effective, and usable worldwide convention that is expressly against unlawful traffic. It considered the various pieces of the issue with everything taken into account, specifically those points not envisioned in past settlements in the field of narcotics medications and psychotropic substances.[13]

Parties must adopt basic steps, including final and administrative actions, to fulfil their commitments under the Convention in accordance with the core plans of their various local authorities. The purpose of this Convention is to encourage cooperation among the Parties so that they may address each of the various pieces of illicit traffic in narcotic medications and psychotropic substances with an overall estimation.[14]

2.3 The United Nations Convention Against Transnational Organized Crime and the Protocols Thereto (2000) (Palermo Convention)

The United Nations Convention against Transnational Organised Crime, also known as the Palermo Convention because it was signed there in 2000 and entered into force on September 29, 2003, discusses money laundering in Articles 6 and 7. Article 6 defines money laundering as the deliberate alteration or transfer of property with the understanding that such alteration or transfer will conceal the true owner of the property.The following are the key points about this convention:

(a) The Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, was adopted by General Assembly Resolution 55/25 and entered

[13] "United Nations: Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances" (1989) 28 International Legal Materials 493 <http://dx.doi.org/10.1017/s0020782900021756> accessed on 08 June 2023
[14] Ibid

into force on December 25, 2003. It is the primary international legal instrument with a consensus definition of human trafficking. Another goal of the Protocol is to identify and assist those who are victims of human trafficking while taking into account their fundamentalrights.

(b) The Protocol against the Smuggling of Migrants by Land, Sea, and Air, approved by General Assembly Resolution 55/25, entered into force on January 28, 2004, and it deals with the problem of organised criminal groups that smuggle migrants, occasionally at great risk to the travellers and at exceptional benefit to the violators. The Protocol aims at thwarting and engaging the passing on of vagrants, as well as promoting easier cooperation among States Parties, while guaranteeing the benefits of passed-on wayfarers and thwarting the most unimaginably horrific types of their abuse that frequently depict the stealing cycle.

(c) The Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components, and Ammunition was embraced by General Assembly Target 55/255 of May 31, 2001. It went into power on July 3, 2005. The target of the Protocol, which is the essential legitimately keeping instrument on little arms that has been gotten at the general level, is to advance, empower, and stimulate collaboration among States Parties to prevent, battle, and murder the unlawful social affair of and overseeing weapons, their parts and segments, and ammo. By supporting the Protocol, states make a pledge to acknowledge the development of awful conduct control measures and execute them in their nearby legitimate requests for three blueprints of overseeing approaches: the first identifies with the foundation of criminal offences identified with unlawful social occasion of, and overseeing, weapons reliant on the Protocol fundamentals and definitions; the second to a strategy of government support or permitting wanting to guarantee veritable gathering of, and overseeing, guns; and the third to the checking and following of guns.[15]

2.4 The United Nations Convention against Corruption (2003) (Merida Convention)

It was decided that a global instrument freed from the United Nations Convention against Transnational Composed Crime was necessary to curtail the threat of

[15] "United Nations Convention against Transnational Organized Crime" (United Nations : Office on Drugs and Crime) <//www.unodc.org/unodc/en/organized-crime/intro/UNTOC.html> accessed on 19 May 2023

corruption. Accordingly, in 2003, the ad hoc board established for the explanation supported the show, and it was included in the overall social affair in October 2003. A significant political gathering was held in Merida to sign the U.N. Convention. The Merida Convention entered into force on 14 December 2005.

2.5 The United Nations Action to Counter Terrorism (2011)

Since 9/11, the offence of unlawful terrorism has been one of the United Nations' most serious concerns; as a result, the organisation established a regular strategy dubbed the United Nations

Global Counter Terrorism Strategy.

(1) Fighting psychological oppression and preventing it;

(2) Increasing Member States' capacity to prevent and combat psychological oppression and strengthening this aspect of the UN system;

(3) Making sure that law and order are respected for everyone is the main motivation for preventing psychological warfare addressing the circumstances that encourage the spread of psychological oppression;

2.6 The Council of Europe Convention on Laundering (1990) (Warsaw Convention)

The Warsaw Convention, which provided a comprehensive game plan of rules for managing money laundering searches, seizures, and seizures with continued bad conduct, was adopted by the major collection of Europe in 1990. The Convention lays out the full strategy of evaluation and the essential control part to prevent offenders from suffering the consequences of their criminal actions.

In like manner, the Convention demands signatories orchestrate measures requiring monetary establishments to give up records in conditions where money laundering is suspected. Furthermore, bank secret laws are to be disposed of as a guard for refusal to agree with these guidelines. It was also expected that any new law would need systems made accessible in nearby laws that could be utilised to enhance the overall co-activity. Separate bits directed districts like smart help, fleeting measures, seizure, refusal and deferment of co-activity, notice, and affirmation of outcasts' benefits. In 1997, the EU included it as one of a fated number of multilateral conventions fundamental to the

battle against encouraged awful conduct. Notwithstanding, the Convention disregarded certain cardinal areas; for example, it didn't make a promise to guarantee that affiliations and other legal people can be depended upon to expect obligations for money laundering. As such, there was a discussion with respect to whether there was a need for an extra dose of the 1990 substance.

2.7 The Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (2005)

The Council of Europe decided that the 1990 Convention should be able to control illegal threats through money laundering as well as those financed by legitimate activities. This is the primary overall strategy covering both contradiction and control of money laundering and financing of mental battling. It was assumed that the best way to manage and stop illegal threats is to have ideal data on assets held by criminal organisations, and that the most effective way to manage this is through the use of technology.[16]

Terms for the justifications for this Convention are defined in Article 1. For example, (a) The term "returns" refers to any pecuniary benefit resulting directly or indirectly from illegal activity.

(b) The term "property" encompasses all types of property, including tangible and intangible, mobile and permanent, as well as legal documents or instruments proving ownership of or premium on such property;

(c) "instrumentalities" refers to any items used, or intended to be used, in any way, fully or partially, to carry out a criminal offence or offences;

(d) "seizure" refers to a sanction or action that a court mentions as a result of techniques connected to a crime or crimes that result in the final difficulty of property;
(e) "Predicate offence" refers to any criminal offence from which money was obtained and which may later become the focus of an offence as defined in Article 9 of this convention.
(f) "Monetary knowledge unit" refers to a central, public office that is responsible for

[16] Beare ME, “North America: A Perspective on the Globalisation of Organised Crime” (1998) 6 Journal of Financial Crime 81 <http://dx.doi.org/10.1108/eb025868> accessed on 05 May 2023

tolerating (and, as allowed, referring), inspecting, and disseminating financial information to knowledgeable subject matter experts.

(g) "freezing" or "seizure" refers to unexpectedly prohibiting the trade, pulverisation, alteration, disposition, or improvement of property or temporarily anticipating guardianship or control of property in response to a request made by a court or other competent position;

(h) The phrase "financing of mental fighting" refers to the performances mentioned in Article 2 of the above-mentioned International Convention for the Suppression of the Funding of Terrorism.

(i) in regards to associated proceeds and the financing of unlawful terrorism, or (ii) as needed by an open institution or rule in order to combat money laundering and the funding of mental abuse.[17]

2.8 The Inter-American Convention against Terrorism (2002)

The primary goals of this convention were to combat mental abuse and acquire measures that would facilitate the pursuit of the aforementioned goals. The programme typically covers the following:

(1) To ratify the Inter-American Convention against Terrorism and make it available for the member states to sign.

(2) To compel party states to immediately ratify the Convention in accordance with their cherished ideologies.

(3) To ask the Secretary General to present a report on the steps taken to bring the Convention into power to the General Assembly at its thirty-third regular meeting.

[17] "Council of Europe: Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime" (1991) 30 International Legal Materials 148 <http://dx.doi.org/10.1017/s002078290001785x> accessed on 08 May 2023

2.9 The Council of Europe's Convention on Cybercrime (2001) (Budapest Convention)

The Council of Europe's Convention on Cybercrime was passed in 2001, and the fundamental purpose of the Convention was to set out an average criminal framework to protect society against cybercrime. The Convention went through awful practises, including such exercises as hacking, youth sexual delight, IPR infringement, and so forth. The Convention looked for overall composed exertion and required each state to have unlimited authority to check cybercrimes. At last, the Convention required signatory states to give overall interest to the "most extricated up degree conceivable" for evaluations and strategies concerning criminal offences identified with PC frameworks and information, or for the assortment of confirmation in electronic sort of a criminal offence. Law's essential working environments are to help police from other nations take an interest in sorting out their "typical help demands." The arrangement unequivocally pardoned twofold responsibility as a key to shared help concerning the empowered security of put-to-side PC information. Twofold fault, in which two nations have covering objectives denying a tantamount criminal lead, was a progress all around perceived for its presentation of adaptability into the sensibly unwieldy improvement of clearing settlements. Notwithstanding, the strategy contained an electable reservation permitting it to drive forward through a twofold fundamental shortcoming. The drafters of the course of action ensured the dismissal of the twofold issue fundamental by battling that sped-up safeguarding is basic to managing the disguised conditions of PC-related terrible conduct. Moreover, there is acceptable freedom to fix a disruption of procedural guidelines after the information has been gotten and before it has been made a beeline for referring to subject matter experts.[18]

2.10 The International Convention for the Suppression of the Financing of Terrorism(1999)

The General Assembly got the above show in 1999. The central clarification behind the convention was to bring certain assets and continues inside the significance of bad behaviour, for example, assets of any sort, liberal or irrelevant, advantageous or enduring, or continuing from any records derived unmistakably or by implication

[18] Paterson M, “Sovereignty” (1997) 7 Global Environmental Change 175 <http://dx.doi.org/10.1016/s09593780(96)00049-0> accessed on 18 May 2023

through the commission of any offence out of the state or government office. The individual introducing any of the offences is made dedicated under the Convention. Whatever other show is needed to make passing or verifiable extensive injury a standard inhabitant or any individual other than the hostiles is similarly communicated as an offence. The Convention isn't material if the offence is committed inside a solitary state or if the responsible party is a citizen of the state and present in the region of the genuine state. Show will not affect the different rights, duties, and responsibilities of states and people under general law; unequivocally, the motivations driving the Charter of the United Nations, International Humanitarian Law, and other critical Conventions Show doesn't qualify a state party for an attempt in the area of another state party to develop a district or execute cutoff points, which are only set aside for the specialists of the other state party by its neighbourhood law.

2.11 Basel Committee on Banking Supervision (BCBS) Statement of Principles (1988)

(1) Sharing data on monetary zone and financial sector advancements to identify new or developing hazards for the entire financial system

(2) Exchanging authoritative concerns, methods, and tactics to increase cross-line collaboration and uphold norms

(3) Setting and advancing general guidelines for the regulation and supervision of banks in a manner comparable to that of norms and ethical conduct

(4) Addressing managerial and regulatory gaps that endanger the strength of the financial system

(5) Encouraging the best, consistent, and compelling execution of BCBS rules by keeping a close eye on how they are used in some nations today and in the past.
(6) Consulting with public banks and non-BCBS members who are authoritative bank figures in order to gain from their adherence to the BCBS system definition measure and advance the adoption of BCBS standards, norms, and good practises outside of BCBS member nations

(7) Coordinating and supporting other international organisations and regional standard-setters in the field of money, especially those concerned with increasing financial security,

In 1998, the G-10 Basel Committee on Financial Oversight held a meeting on banking's definitive issue to update the administrative issue and banking oversight globally. It provided general guidelines to support the standard of banking, the load-up, and financial strength.

2.12 The European Union Fourth Anti-Money Laundering Directive (2005)

All EU member states should be complying with the new regulations by June 26, 2017 under the Threatening Money Laundering Directive, which was approved in 2005 to replace the previous Third Directive. It seeks to monitor the following goals: (1) Tax evasion, financing of mental oppression, and creating bad behaviour remain fundamental issues that should be addressed at the union level. Streams of illicit money can harm the legitimacy, strength, and reputation of the financial sector and affect the internal market of the Union in a manner comparable to overall unanticipated events. (2) The efforts of scalawags and their helpers to cover up criminal activity or to channel legal or illegal funds for fear-based oppressor purposes could seriously jeopardise the sufficiency, integrity, and security of credit foundations and financial affiliations, as well as trust in the monetary system overall.

(3) The assessments received by the union in that field ought to be sensible with, and at any rate as rigid as, the different activities embraced in overall forums. (3) Money laundering and controller financing are done as regularly as possible in a general setting. Measures embraced exclusively at the public or even at the union level without considering general coordination and speculation would have a staggeringly limited impact.

For the purpose of clarification, this Directive defines any change or move of property obtained from bad behaviour, concealment of the real pith of property, and moving in any such action as an offence. The fundamental characteristic of this directive is to

combat the utilisation of the Union's monetary construction with a specific goal of combating tax evasion and fear-based oppressor financing.

According to this Directive, "terrorist financing" refers to the plan or collection of resources used in any way, whether explicitly or implicitly, with the intention of using them—or with knowledge that they will be used—to commit any of the offences covered by the scope of Articles 1 through 4 of the Council Framework Decision.[19]

2.13 The Resolution of the International Organization of Securities Commissions (1992)

A working social gathering of the Consultative Committee of the International Organisation of Securities Commission (IOSCO) has been established to gather information from IOSCO members self-regulatory affiliations and exchanges on their endeavour to urge their own people to combat illicit tax evasion. In October 1992, the International Organisation of Securities Commission (IOSCO) adopted a report and goal requesting that its members devise core measures to combat illicit tax evasion in the assurances and possibilities markets.

2.14 The Egmont Group (1996)

The Egmont Group, as described by the Egmont Group in 1996, was established in 1995 by specific government work environments and generally affiliated organisations to handle the problem of illegal tax avoidance and the methods to manage it globally. A central government agency tasked with gathering, destroying, and disseminating financial information disclosures to knowledgeable subject experts

(a) in relation to ongoing bad behaviour and potential funding of mental illness, or (b) mandated by an open foundation or rule in order to combat illegal tax avoidance and the financing of terrorist threats.[20]

The Assembly of FIU heads, the Plenary, the Egmont Group Committee, the Legal Working Group, the Outreach Working Group, the Information Technology Working

[19] Dumbacher J, “The Fight against Money Laundering” (1995) 30 Intereconomics 177 <http://dx.doi.org/10.1007/bf02928089> accessed on 19 May 2023

[20] Aurasu A and Abdul Rahman A, “Forfeiture of Criminal Proceeds under Anti-Money Laundering Laws” (2018) 21 Journal of Money Laundering Control 104 <http://dx.doi.org/10.1108/jmlc-04-2017-0016> accessed on 20 May 2023

Group, the Training Working Group, the Operational Working Group, and the Permanent Management Assistance (Secretariat) are all included in the Egmont Group.

The Egmont Cash Related Information Units (FIUs) of 116 countries and spaces as of September 10, 2010 were interested in exploring ways to collaborate with one another. The FIU thought has made it all the way through the long stretch and is eventually a tremendous section of the general neighbourhood to oversee fighting illegal tax avoidance and mental attacker financing. FIUs should be unified organisations.

The Egmont Group is a global affiliation designed to strengthen relationships between FIUs in the areas of communication, information sharing, and planning coordination. The group's goal is to provide a forum for FIUs worldwide to improve support for their respective governments in the fight against illegal tax avoidance, fear-based oppressor financing, and other financial encroachments.

To assist the Egmont Group, Fin-CEN maintains the Egmont Secure Web (ESW). The Egmont Group is continuously planning to address the challenges of the volume of enrollment and its obligations. The Egmont Secure Web allows people to chat with each other through secure email, refer to and share case data, as well as post and evaluate data on typologies, smart devices, and creative new turns of events.[21]

2.15 The Asia/Pacific Group

The Asia-Pacific Group on Money Laundering (APG) is an open and welcoming global alliance founded in 1997 in Bangkok, Thailand, with the participation of 41 people and numerous local, national, and international observers.

1. Standard tests: summarise conformity by APG individuals with the usual AML/CFT standards through a normal assessment (peer survey) programme;
2. Technical assistance and planning: promote bi-equivalent and provider office-specific assistance and training in the Asia/Pacific region to increase compliance by APG members with the overall AML/CFT rules;

[21] "The Egmont Group of Financial Units: Operational FIUs" (1999) 4 Trends in Organized Crime 67 <http://dx.doi.org/10.1007/s12117-999-1047-9> accessed on 13 May 2023

3. Typologies research: direct study and appraisal into tax evasion and financing methods for mental oppressors to even more quickly inform APG members and the general public about models, strategies, threats, and weaknesses of the financial and non-financial domains to this intrusion;

4. Development of the global framework: contribute to and enhance method improvement of the generally accepted AML/CFT principles by exemplary support in the general relationship of FSRBs; and

The APG further urges its kin to create public coordination parts for all the practically certain usage resources for the fight against future tax evasion and fear-based oppressor financing.

5. Private domain duty: provide information to the private area to even more likely brief them regarding general types of progress in AML/CFT and give them a gathering to join with the APG.[22]

2.16 The Financial Action Task Force (FATF)

The FATF proposal proposed a comprehensive and systematic list of actions that nations should take to address illegal tax evasion and the financing of mental oppressors, as well as the financing and improvement of weapons of mass destruction. The FATF is an NGO that develops and implements methods to prevent unlawful tax evasion, the funding of mental oppressors, and the financing of the development of weapons of mass destruction.

The FATF proposals propose a comprehensive and constant growth of activities that nations should recognise in order to combat illegal tax avoidance and controller funding, as well as the financing of weapons of mass destruction research. In a similar vein, the FATF works with other global partners to detect faults at the public level in order to defend the entire system against exploitation.

[22] "Asia / Pacific Group On Money Laundering" (Asia / Pacific Group On Money Laundering, June 14, 2001)<https://www.apgml.org/> accessed on 26 May 2023

The FATF ideas set an overarching norm that nations should implement through measures catered to their particular conditions, as states have coordinated legislative, regulatory, and operational developments as well as specialised cash-related designs.

The FATF recommendation oversees primarily:

(1) recognising threats, advancing tactics, and in-house coordination;

(2) pursuing money laundering, financing of expansion, and finance based on fear of oppressors;

(3) Taking preventative action in the financial area and other designated areas;

(4) Establishing forces and responsibilities for the competent specialists;

(5) Making the profitable responsibility of legitimate people and plans more transparent and available;

(6) Enabling worldwide involvement

The FATF issued 40 recommendations to address various aspects of tax evasion, and nine excellent ways to address fear-based oppressor financing were then offered.

2.17 European Union Convention-

It is emphasised that tax avoidance has a direct relationship with bad practises that impart enormous benefits in verifiable cash, such as managing pharmaceuticals, guns, and people, as well as intimidation. The European Union (the "EU") defines money laundering as the process by which criminal proceeds are "cleaned" for their illegal causes to be concealed.

In response to tax evasion concerns, the European Parliament and the Council of the European Union approved a Council Directive on the balance of monetary framework usage, with the express goal of preventing illicit tax evasion. It required Member States to prohibit illicit tax evasion and to require the financial sector, including credit foundations and a wide range of other financial relationships, to recognise their clients, keep accurate records, develop and implement appropriate internal controls, and implement appropriate external controls.

internal policies and procedures to train workers on preventing tax evasion and to report any indications of it to qualified, prepared professionals.

The Third Directive, which was received on October 26, 2005, tripled the value of the Directive and defined the following situations as tax evasion:

1. Changing or moving property while knowing that it was acquired through dishonest means or as a result of expressing interest in such action in order to hide or camouflage the illegal origin of the property or to help anyone who is accused of carrying out such an action avoid the proper repercussions of his or her actions;

2. Disguising or hiding the genuine nature, source, zone, air, improvement, rights in, or responsibility with the knowledge that such property was acquired by improper conduct or by showing support for such a movement;

3. acquiring, using, or being in possession of property while knowing, at the time of receipt, that such property was acquired through unethical activities or by demonstrating an interest in such behaviour;

4. having an interest in, a connection to, or efforts to submit, as well as helping, encouraging, and coordinating the execution of any of the acts described in the preceding centre interests;

5. Activities that transferred the property to be cleaned but were finished in a different member state or in a third nation.The European Union's law enforcement agency, Europol, has a broad mandate in relation to combating tax evasion and provides Member States with data and criminological assistance to obstruct and battle overall illegal tax avoidance schemes. The policy objective of pursuing illegal assets and illegal tax avoidance is to:identify the offenders mentioned; anger their compatriots;pocket the money earned from their infringement. Through its decentralised and current PC affiliation, the Financial Intelligence Unit ('FIU') of Europol, FIU.net, aids the FIUs in the European Union in their fight against unlawful tax avoidance and the funding of mental abuse.

2.18 OECD Convention-

The Oslo Meeting, also known as the OECD First Forum on Tax and Crime, was held in March 2011 with the aim of assisting nations in fending off threats through increased transparency, more effective data collection, and updates in cooperative development between governments and nations to prevent, detect, and investigate crimes, charge offenders, and recover the proceeds of their illegal activities. The G20 leaders (at the Saint Petersburg Summit) highlighted how cross-border charge evasion, tax evasion, mental battling financing, and contamination undermine freely accessible information, obstruct cash-related new development and destitution reduction, and deal with cash-related strength and mischief in law and society. The second forum on tax and crime was held in Rome in June 2012 with the cooperation of the Italian Guardia di Fidanza, and the third in Istanbul, Turkey. Senior-trained experts and specialists from over seventy countries attended the social event and general contact to address the primary concerns and sponsorship needed for the long-awaited future tasks in September 2015, when the Netherlands hosted the fourth OECD Forum on Tax and Crime. The two-day discussions covered topics like the fight against fearmongering financing, arising evaluation evading opportunities in a time of more perceptible clarity, and empowering non-mechanical workers.

In the fourth meeting, the OECD Report Improving Co-activity Among Tax and Anti-Money Laundering Authorities was distributed. It outlines how the tax administration can access data held by financial intelligence units for both criminal and civil purposes. The report's main recommendation focused on the requirement that, subject to reasonable safeguards, charge affiliations be given the fullest possible consent to the suspicious transaction reports (STRs) obtained from people being mentioned by the FIUs in their areas. For this objective to be developed, the regions should not only provide an appropriate administrative structure that permits that entrance but also ensure the operational turn

The recently cited report demanded an "entire government" approach to deal with overseeing tax evasion and other financial encroachment, seeing as information limits expected to plausibly battle against these offences are regularly spread across various bodies, like cost and customs affiliations, FIUs, explicit criminal law execution

prepared experts, cash-related controllers, and the public overseer's office. The OECD Task Force on Tax Crimes and Other Crimes (TFTC) evaluated countries' policies for permitting charge affiliations accepted by STRs in 2013, and the results of that review were then updated and developed in 2014.

Three criteria can be used to categorise the various STR distribution models offered to burden organisations:

1.Unrestricted and independent access to STRs for assessment organisations 2. The Joint Financial Intelligence Unit and tax organisations' dynamic distribution of STRs, 3. The FIU's dynamic distribution of STRs.

The report describes the benefits and drawbacks of each model in light of national practises and suggests, subject to local legal system approval, that STRs be used at the commitment affiliation level for monitoring charge irregularities in the same way as for customary purposes, that is, for charge consistency. When considering the problem of portrayal and information affirmation, the report identifies three major planning obstacles: the legal framework, data security managers' practises and procedures, and identifying assurance, consistency, and endorsements to address inappropriate exposure or utilisation of data. The report also states that depending on the public area legal framework, there might be additional requirements limiting the use of STRs.

2.19 Recent global developments

The financing of such bad behaviour, including mental oppressor acts, starts with washed proceeds, for the most part in cash. However, in the present digitalized setup and mechanical levels of progress, the masked proceeds, in their most blatant form, incorporate any show that changes over cash or other property that is gained through criminal lead into cash or property that gives off the impression of being authentic, thus covering its confused source.

The traditional instances of a criminal continuing to operate within a financial or other exchange structure, layering assets to conceal their unusual source, and mixing into

certified cash-related business regions have undergone changes to further the shady nature of the real exchanges checking framework.

Some recent trades or payments that have been discovered to be ineffective are: Prepaid Value Cards: The FATF published a report in 2006 titled Global Money Laundering and Terrorist Financing Threat Assessment, which included new part systems used for legitimate financial transfers that may be abused by tax evaders. It included the expansion of non-banks in the provision of prepaid value cards, electronic sacks, minimal components, web parcel associations, and advanced important metals.

Better than ATM affiliation (which typically uses insight video), these strategies give criminals more options for avoiding contact with financial master networks that might report them to law enforcement.

Online Payment Systems: As varied as they may be, a significant portion of these cybercriminals share something significant in every practical sense. The risks of online bit frameworks, regardless of whether they are front-line money, virtual financial constructions, or different techniques, are difficult to address. The zones of the directors and regions are consistently dim, or they are set up in wards that won't be seen by the criminals.

Guardians are now a more obvious risk for tax evasion than in previous years, as they create sophisticated trusts and engage in both self-washing and unapproachable washing. The FATF considers politically exposed persons (PEPs) to be guards because they have access to properties and structures in their nation that they can manage for their own benefit.

The International Monetary Fund's (the "IMF") work investigating global and open AML/CFT systems and the correspondence of AML/CFT on contemporary issues includes virtual monetary designs, expenses of and alleviating procedures for debasement, and the withdrawal of reporter monetary relationships.

CHAPTER 3

ANTI MONEY LAUNDERING IN INDIA: CONCEPTUAL AND JURISPRUDENTIAL ANALYSIS

The international development of the anti-money laundering (AML) regime was covered in the prior chapter, along with how various treaties, conventions, agreements, contracts, etc., aided in the creation of AML laws, rules, and regulations, as well as the development of national laws, rules, and regulations in many nations, including India, in accordance with the International Standards and Obligations. With the aid of many laws that India periodically passes to make AML provisions more stringent and severe, we will analyse the Indian AML regime in this chapter.

3.1 Indian Penal Code 1860-

Serious property or human offences are a significant source of unlawful or filthy money, according to the Indian Penal Code, 1860 (IPC) [1]. The I.P.C. also highlighted the punishment for committing some infractions. Organised criminal organisations and drug traffickers make large sums of money. Trafficking in weapons, criminal intimidation, issuing false currency or banknotes, criminal misappropriation and trust violations, dacoity, robbery, extortion, ransom, kidnapping, financial crimes, deception, and cheating are just a few of the crimes covered by the I.P.C. that may also be related to money laundering offences. But the money made is "dirty money," since it has a profit-tinted flavour. Organised crime groups find little use for dirty money since it leaves a trail of damaging evidence and raises law enforcement's suspicions. Gambling, the operations of organised crime groups, and human and illegal drug trafficking were found to be the main sources of criminal proceeds in the Asia/Pacific Group (APG) region. Kidnapping, smuggling of weapons, incarceration, extortion, public corruption, terrorism, and tax evasion are a few more sources that have been identified. Additionally, the predicate offences' offenders were routinely washed.

These serious offences may be a significant source of illicit or dirty money, and the IPC penalties for committing these crimes may also have been created. The primary offences includes the following:

3.1.1 Kidnapping-

Notable businessmen and industrialists have been kidnapped on several occasions and released in exchange for significant ransom payments. Politicians and other members of the public are also kidnapped for the same reason—to profit from governmental institutions. The following sentences outline the definition of ransom kidnapping and its associated punishment:[23]

Whoever kidnaps or abducts a person, or keeps a person in detention after such kidnapping or abduction, and threatens to kill or harm that person, or by his behaviour creates a reasonable fear that such person will be killed or hurt, or causes harm to or causes the death of that person in order to compel the government or [any foreign state, international intergovernmental organisation, or any other person] to do or refrain from doing anything, or to pay a ransom, is guilty.

3.1.2 Theft

Theft is defined as the unlawful taking of any movable property from the custody of another person without that person's consent. The three-year maximum sentence for theft prescribed by Section 379 of the I.P.C. may be served with or without a fine.[24]

3.1.3 Bribery

It is a well-known truth that in Mumbai and other major cities, certain criminal gangs frequently collect money from businesspeople who need to pay it to keep their operations running smoothly. The I.P.C.'s definition of the crime of extortion is as follows:[25]

Anyone who knowingly exposes themselves or others to the risk of harm and dishonestly in stills fear that they or anyone else could get any signed or sealed goods that could be used to send someone valuable safety Extortion is a violation of Section 384 of the IPC, which states that anyone who knowingly creates a threat of harm to

[23] Indian Penal Code 1860, s 364A
[24] Indian Penal Code 1860, s 378
[25] Indian Penal Code 1860, s 383

another person or themselves and does so dishonestly is guilty of the crime. Extortion occurs when a person is coerced into giving up property, valuable securities, or anything that can be signed or sealed and turned into a valuable security.

3.1.4. Robbery

According to the I.P.C., theft and extortion incidents may qualify as "robbery" if they include a criminal motive, include efforts to inflict death or damage, involve unlawful retention during the commission of the offence, or involve immediate fear of death, harm, or reticence. Robbery is a crime punishable by a harsh penalty of up to 14 years in prison and fines in accordance with Section 392 of the I.P.C.

3.1.5 Dacoity

In terms of IPC, if five or more people jointly commit or seek a robbery, it may take the form of a "dacoity." Section 391 of the Indian Penal Code defines dacoity as an offence. According to Section 395, the sentence for it might range from a harsh ten years in prison to a life sentence.

3.1.6 Criminal misappropriation of property and criminal breach of trust

There have been instances where people knowingly misappropriate or abuse property or are permitted to use it for their own purposes while acting in the capacity of a banker, merchant, broker, etc. The crime of dishonest property misappropriation is defined in Section 403 of the IPC, and criminal trust violations are outlined in Sections 405 and 407 through 409 of the IPC.

3.1.7 Cheating

The concealment or misrepresentation of information for fraudulent or dishonest gain is cheating and disappointing. I.P.C. sections 415 through 420 cover fraud. The I.P.C.'s Section 415 provides the following definition of cheating:

"Whoever, by deceiving any person, fraudulently induces a person to deliver any property or to consent to him keeping it, or purposefully leads the deceived to do or refrain from doing anything that he or she might not otherwise do, and who does or fails to do any such thing,"

does not harm the recipient in any way and is not coerced or dishonestly induced to surrender any assets to anyone." [26]

3.1.8 Forgery

A false document, false electronic record, or part of a document or false electronic record made with the intent to cause harm to the public or to any person, to support any claim or title, to persuade someone to give up something, to enter into an express or implied contract, to commit fraud, or with the knowledge that fraud may be committed, is unlawful and punishable by law.[27]

3.1.9 Counterfeiting currency notes or banknotes

The risk of banknote fraud has grown to be a significant issue for national security. The press also said that counterfeiting banknotes helped fund some terrorist acts. The crime of forging money bills is dealt with in sections 489A through 489E of the I.P.C.

3.1.10 Criminal Intimidation

Criminal elements have exploited the threat of harm to generate illegal revenue in both corporate and social settings.[28] The I.P.C.'s [8] definition of the offence of criminal intimidation will then apply to such threats. It is known that extortion and criminal intimidation are related. While the goal of illegal intimidation is to persuade the individual to take actions that he is not legally required to take, the goal of extortion is to get money.

3.2 CODE OF CRIMINAL PROCEDURE, 1973

'Proceeds of Crime' are subject to seizure, attachment, and forfeiture. Certain provisions of the Cr.P.C. enable the court to attach and confiscate property resulting from crimes, as well as the police to seize suspicious property. Here, the importance of these illegal

[26] Indian Penal Code 1860, s 415
[27] Indian Penal Code 1860, s 463
[28] Indian Penal Code 1860, s 503

activities is greatest. In other words, it encompasses all crimes that are punishable by law in any nation.[29]

The C.R.P.C. grants the policeman the authority to seize dubious property, and the policeman must promptly notify the judicial magistrate of the seizure in order to request additional court orders on the disposition. Provisions defining the process of attachment and forfeiture of property representing the proceeds of crime are laid forth in Chapter VIIA of the Criminal Procedure Code, which contains Sections 105A to 105L.Cr.P.C. Additionally, it calls for reciprocal agreements for the attachment and forfeiture of "tainted property" in the nations with which the Indian government signs a treaty, agreement, or both.[30] By sending correspondence to the court or authority in the foreign country for the examination of people familiar with the facts and circumstances of the case, an Indian Penal Court may, at the request of an investigating officer, investigate, record its statement, obtain any document, etc.

These provisions could, if sent abroad, represent an important tool for officials who are not responsible for money laundering. Additionally, in accordance with Section 166B of the Cr.P.C., by sending their requests to Indian courts, international courts can also have investigations conducted in India.

3.3 Central Excise Act, 1944

The primary excise tax on manufactured goods is an indirect tax that eventually falls on the consumer. Producers sometimes covertly remove their goods or products from the market without paying the central excise charge, which results in tax evasion. The national exchange officer would lose a lot of money if the central excise duty was not paid since it may lead to the creation of a lot of illegal money. Worldwide, there are operations to launder money. These money laundering activities have used methods including hawala, banking, trafficking, or the control of imports and exports. We are worried about the import and export activity here. which involve the kind of money laundering through export. As a result, this Act gives central excise agents a lot of authority so that product controls can be implemented. In several ways, this Act is helpful in stopping smuggling activities.

[29] The Code of Criminal Procedure 1973, s 102
[30] The Code of Criminal Procedure 1973, ch VIIA

3.3.1 Power of summons and arrest- To stop the terrible activities of such duty evaders, the Central Excise Law gives Central Excise officers the authority to summon people to present evidence and produce papers, as well as to arrest offenders who may be punished.[31]

3.3.2 Punishment: The penalty for violating the Central Excise Act when the amount of duty evasion exceeds Rs. 1 lakh entails a fine and a jail sentence of up to seven years.[32]

3.3.3 Forfeiture: Central Excise Legislation gives the court the authority to forfeit to the state any items (together with the equipment used to make such commodities) in violation of central excise law.[33]

3.4 Income Tax Act, 1961[34]

Taxes on earnings received from all legitimate sources are covered under this law. However, if someone engages in illicit behaviour, including criminal conduct, they will never disclose their total revenue. Profiting from such acts is wrong and criminal, as they are forbidden.

Some legal requirements, such as the ones listed below, prevent people from doing unlawful or small-scale financial transactions and contain income tax evasion.

Money laundering is the process of converting illegal or untaxed money into legal currency. People who possess vast sums of money are unable to disclose their sources since they were obtained through illegal means. Because of this, even if someone wanted to pay tax on this sum, they couldn't.

Additionally, one motive or objective of money laundering is tax evasion. For this reason, they also desire to invest in real estate, etc. Numerous rules preventing money laundering have been established by this Act.

[31] Central Excise Act, 1944 s 13 14
[32] Central Excise Act, 1944 s 9
[33] Central Excise Act, 1944 s 10
[34] Income Tax Act, 1961

3.4.1 Filling of annual return- Every person whose income exceeds a specific threshold must submit an annual return detailing their earnings from the prior year to the tax authorities for assessment and verification.[35]

If a person meets any one of the following six criteria, yet their salary is below the established threshold: occupancy of a fixed asset with a floor area that exceeds the permitted limit;

possession or rental of a vehicle; membership in a phone service; incurring costs for his own or another person's travel to any foreign place; a credit card in hand; It is required for members of clubs with admission fees of $25,000 or more to file income tax returns (proviso to Section 139). A person may be required to file a tax return and identify his income and its sources if he meets the "one in six criteria" standards and has a sizable amount of available cash.

3.4.2 Acquisition of immovable properties-

The competent authority has the jurisdiction to seize immovable properties that have been sold for an apparent consideration below the property's fair market value in order to avoid paying taxes.[36]

3.4.3 Prior clearance of transfer of immovable properties-

Only after receiving approval from the Assessing Officer of the Income Tax Department is it permissible to register the transfer of immovable properties worth more than Rs. 5 lakh.[37]

3.4.4 Search, seizure, survey, etc.-

The executive officials of the Department of Income Tax are authorised to call for information, collect it, and have the authority to search, seize, survey, and inspect property for the purpose of deducting income and money.[38]

[35] Income Tax Act, 1961 s 139
[36] Income Tax Act, 1961 s 269 A to 269S
[37] Income Tax Act, 1961 s 230 A
[38] Income Tax Act, 1961 s 131 to 136

3.5 Customs Act, 1962[39]

It discusses imports and exports to and from India as well as other countries' cross-border trade. Import-export trade is heavily manipulated through illegal practises such as trafficking, under-invoicing, and over-invoicing. The Indian Customs Act provides adequate authority to forbid and halt such actions. We are aware that money laundering activities result in a significant amount of black or illegal money being converted into white money. If we examine the origins of this money, we can see that the importation of gold and other expensive commodities, the trafficking in drugs, and the trading in other valuable goods account for the majority of illicit income. As a result, the shipping container utilised for such activities may be seized, unlawfully imported, or attempted to be wrongly exported.

3.5.1 Search, seizure, and arrest[40] are provided under Chapter XIII of the Customs Act to prevent and regulate these actions. Chapter XIII gives customs officials the authority to search for suspects, locations, and people who can offer documents and evidence.

Examining people, examining things like property, records, and other things, and arresting the guilty

3.5.2 Confiscation: Chapter XIV of the Customs Act allows for the confiscation of commodities and conveyances in the event that customs laws are broken.[41] Transportation used in this operation is subject to confiscation, including any illegally imported goods or attempts to export commodities in error. This law allows for both the confiscation and the sale of illegally obtained goods.

3.5.3 Financial Penalty and Imprisonment: In addition to confiscations, customs regulations require that the adjudicating body impose financial penalties and lengthy prison terms, ranging from six months to seven years, as determined by the Court of Justice.[42]

From 314 in 2011 to 367 in 2012 and 520 in 2013, there was an increase of 16.9% in the overall number of seizures made under the Customs Act of 1962. In 2014, it dropped

[39] The Customs Act 1962
[40] The Customs Act, 1962 s 100 to 110
[41] The Customs Act, 1962 s 111 to 127
[42] The Customs Act, 1962 s 132 to 140 A

to 332, and in 2015, it dropped even more, to 274. The value of various goods confiscated between 2011 and 2015 declined from 1,561.79 crores in 2011 to 1,439.83 crores in 2015, representing a 7.8% decrease from 2011. In 2013, seizures fell to 1,862.79 crores from 2,085.47 crores in 2012, a decline of 10.7% over 2012. In 2012, seizures totaling 2,085.47 crore were made, representing an increase of 33.5% over 2011. Nevertheless, the value of seizures had climbed to 5,693.55 crores in 2013, and in 2014, it increased by 205.64% over 2013. However, compared to 2014, such seizures declined by 74.7% in 2015, with seizures totaling 1,439.83 crore. In 2015, there were approximately 4 crore seizures made every day on average. Table provides information on seizures and the value of the items confiscated for the years 2011 to 2015.[43]

Seizures made by Customs under Customs Act

Sl. No.	Year	Total no. of Seizures	Value of Seizures (` in crore)
1	2011	314	1,561.79
2	2012	367	2,085.47
3	2013	520	1,862.79
4	2014	332	5,693.55
5	2015	274	1,439.83

Type and Value of various major commodities seized under The Custom Act, 1962 by Directorate of Revenue Intelligence

S. No.	Commodities	2014	2015
1	Gold	299.79	254.70
2.	Narcotics	31.95	95.17

[43] "National Crime Records Bureau" (National Crime Records Bureau) <https://Ncrb.gov.in> accessed June19, 2023

3.	Foreign Currency	2.5351	10.99
4.	Fabrics/Yarn/Silk Yarn	6.1552	0.17
5.	Ball Bearings	0.00	0.00
6.	Machinery & Machine Parts	833.14	787.15
7.	Chemicals/Pharmaceuticals Chemicals	1.6	5.24
8.	Electronic Goods including Computers	5.3466	3.06
9	Vehicles and Vessels	4.2241	68.15
10	Misc./Others	4561.311	215.2
Value of Total Seizures		**5746.052**	**1439.83**

3.6 Smugglers and foreign exchange manipulators (forfeiture of property) Act of 1976 (SAFEMFOPA)[44] and CONSERVATION OF FOREIGN EXCHANGE AND PREVENTION OF SMUGGLING ACTIVITIES Act of 1974 (COFEPOSA)[45]:

A special law known as COFEPOSA assures that offenders who commit crimes that endanger national economic activity and national security are held in detention. Governments now have to fight not only the crimes committed against common citizens using dirty money but also the dangers that come from the laundering of those funds, which endanger trade, the integrity of financial institutions, and ultimately national security. Large-scale capital transfers from the criminal sector, particularly in small countries, have the potential to undermine a state's capacity to plan and regulate an

[44] Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act 1976
[45] The Conservation of Foreign Exchange and Prevention of Smuggling Activities Act 1974

economy.A novel COFEPOSA statute that guarantees the pre-emptive detention of criminals who carry out their crimes combats this issue.

3.6.1 Preventive Detention/Imprisonment: As the COFEPOSA Preamble notes, large-scale, highly organised, covert activities include smuggling and currency bridging. This law gives the federal government and the states the authority to order the arrest and/or detention of persons who engage in such acts as a preventive measure, effectively stopping such behaviour.[46]

3.6.2 Proclamation for absconding person and attachment of property- The Act gives the appropriate court the authority to declare the person in whose case the warrant has been issued a proclaimed offender and to begin the process for attaching his property in accordance with the provisions of sections 82 to 85 of the Criminal Procedure Code. The execution of the warrant is authorised by law for that person.[47]

3.6.3 Advisory Board: The government is required to recommend the order of detention to the Advisory Board within five weeks of the date the person was placed in custody. One chairman and two other members make up the advisory board. The other members must be active or retired judges from any high court, and the chairman must be a serving judge of the relevant high court.[48] The maximum term for which a person who smuggles goods into or out of a "highly vulnerable area" or who is likely to do so can be imprisoned is two years, provided that the Advisory Board confirms the imprisonment.[49]

3.6.4 SAFEMFOPA

The law known as SAFEMFOPA allows for the seizure of "illegal property of smugglers and manipulators of foreign exchanges." Anyone involved in illegal activities like currency exchange, smuggling, or racketeering shall forfeit their illegally obtained income, according to the preamble of the law. Additionally, it is stated in the prologue that these individuals are amassing their wealth by evading taxes and other regulations and working in the shadows. These people frequently own their properties on behalf of their spouses, family, and trustees.

[46] The Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 s 3
[47] The Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 s 7
[48] The Constitution of India, 1950 a 22(4)
[49] The Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 s 9 10

If a criminal is found guilty of a crime under the Customs Act or Foreign Exchange Regulation Act (FERA) involving a sum or value greater than Rs. 1 lakh, the provisions of this act would be in effect. Regardless of the number of criminals who had previously been found guilty under these laws or who had been imprisoned under COFEPOSA, the provisions of SAFEMFOPA would apply.

3.6.4 Illegally acquired property: The definition of "illegally purchased property" under Section 3(1)(c) of the Act is that it is referred to as such when a person's property results from any conduct that is prohibited by any law.

3.6.5 Forfeiture: This Act expressly forbids anyone to whom it refers from owning any property that was obtained illegally, whether in that person's name or that of another. If such property is owned by the person, their family, or friends, it can be forfeited without having to pay a fine to the federal government.[50]The transfers would be regarded as void if the SAFEMFOPA forfeiture proceedings were to begin while the property was being transferred.[51]

3.7 Prevention of Corruption Act, 1988[52]

Corruption in public offices is a major source of illegal or dirty money in developing nations like India. Public servants misuse their authority to pursue illicit satisfaction. Criminals carry out their crimes with the help of the police, politicians, and other officers; therefore, this Act is very useful in restraining them. Let's now examine the key clauses of the Act.

3.7.1 Punishment and Persecution for taking illegal gratification- This law exposes public employees who are corrupt by getting illicit gratification to punishment of six months to five years in jail.In law, the term "public servant" has a somewhat broad definition. The definition of "public servant" in Section 2(c) of this Act is so inclusive that it includes nearly everyone who is required to perform any public duty.[53] Whether they are employees of a registered cooperative organisation that receives state funding,

[50] Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 s 6
[51] Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 s 11
[52] Prevention of Corruption Act 1988
[53] Prevention of Corruption Act, 1988 s 7

a municipal authority, a government authority, a firm, or an educational institution that receives funding from any state or public government.[54] However, this law places a restriction on prosecution in court, stating that the court will only take cognizance of corruption charges after receiving prior approval to prosecute from the relevant government entity with the jurisdiction to remove the public servant.[55]

Details of Cases Registered and Persons Arrested under the Prevention of Corruption Act during 2011 - 2015

Sl. No.	Years	No. of Vigilance Cases Registered by		Persons Arrested by	
		CBI	States/UTs	CBI	States/UTs
1	2011	600	3,613	56	4,062
2	2012	703	3,531	166	4,324
3	2013	649	4,246	141	4,345
4	2014	611	4966	663	6597
5	2015	617	5250	434	6223

Details of Public Servants Involved in Corruption Cases (Cases Investigated by the CBI)[56]

Sl. No.	Year	Persons Reported for Regular Dept. Action	Persons Reported for Suitable Action by Dept.	Departmental Punishment				Categories of Public Servants Involved in Regular Dept. Action	
				Dismissal	Removal	Major Penalty	Minor Penalty	Gazetted Officers #	Non Gazetted Officers

[54] Prevention of Corruption Act, 1988 s 7 10 11 13 15
[55] Prevention of Corruption Act, 1988 s 19
[56] "National Crime Records Bureau" (National Crime Records Bureau) <https://Ncrb.gov.in> accessed June 19, 2023

1	2011	268	48	-	-	-	-	656	417
2	2012	441	127					581	884
3	2013	335	81	-	-	-	-	601	896
4	2014	335	81	-	-	-	-	442	695
5	2015	272	17	-	-	-	-	1376	1239

This include Gazetted Officers & other Public Servants of equivalent status " - " means data not available

Details of Public Servants Involved in Corruption Cases in the States / UTs (Cases Investigated by the State / UT Vigilance Bureaux)[57]

Sl. No.	Year	Persons Reported for regular deptt. action	Persons reported for suitable action by deptt.	Departmental Punishment				Categories of public servants involved in regular Deptt. Action		
				Dismissal	Removal	Major Penal-ty	Minor Penal-ty	Gazetted officers Group 'A' & 'B' *	Non-Gazetted officers	Pvt. persons involved
1	2011	1,083	637	98	24	98	94	1,056	2,886	1,064
2	2012	1,490	702	88	15	121	158	1,202	2,996	1,044
3	2013	1,202	556	126	47	114	118	2,274	3,317	1,071
4	2014	1569	925	50	410	59	164	1538	3541	1211
5	2015	770	228	101	81	106	149	1474	3621	1261

*This column represent sum of group 'A' and 'B' Gazetted officers involved during the year. Hence, figure of previous years, however, changed accordingly.

[57] Ibid

3.8 Benami Transaction (Prohibition) Act, 1988[58]

Benami transactions are to be outlawed, and property that has been kept in benami is to be retrieved. Benami transactions are those that are carried out in the false name of an individual or entity (either genuine or imagined), without payment of any compensation, and with no real stake in the outcomes of the transactions. The individual who is the real power behind these transactions and who has paid for them holds the legitimate title. Therefore, the actual recipient is this individual. Benami transactions aim to frustrate creditors and the public purse while avoiding legal repercussions.

In India, it is widely accepted that criminals possess benami properties that house their illicitly generated dirty money and black money. Transfer of ownership of the property to one party in exchange for payment from another party. Investing in real estate falls under the category of money-laundering activities. Masking people's identities and financial sources is crucial to the money laundering process. What do criminals do then? When they make illicit gains from Benami properties, the Act's provisions help to stop these kinds of business dealings.

A benami transaction is described as follows in Section 2(a) of this Act: Any transaction in which property is given to a person in exchange for payment or the provision of compensation by another person is referred to as a "benami transaction" under Section 2(a).

Benami transactions are expressly forbidden under Section 3 of this Act, which states: "No person shall enter into any benami transaction." Additionally, it states that anyone who engages in any benami transactions may be sentenced to up to three years in prison and/or a fine.

This Act's Section 4 forbids the power to reclaim property that has been held benami. Furthermore, the state may acquire benami properties without having to make any compensation, thanks to Section 5 of the Act. It is believed that even though this Act

[58] Benami Transaction (Prohibition) Act, 1988, Act No 45 of 1988.

has been part of the statute book since 1988, it has not been able to significantly curtail the country's use of benami transactions. It is well known that in India, criminals and individuals who possess black money store their illicitly made funds in the form of benami properties.

3.9 Foreign Exchange Management Act, 1999 (FEMA)-[59]

Cross-border transactions and currency exchange manipulation account for a large portion of money laundering. Abuse of import/export transactions or any other export promotion programmes is used to send illegal money abroad and bring it back home. FEMA is an effort to guide cross-border trade in manipulative and illegal exchange activities [what would replace the current law, the Foreign Exchange Regulation Act of 1973 (FERA)]. The previous FEMA law was intrinsically criminal. While the new FEMA legislation is civil in nature, foreign exchange offenders could be detained in accordance with FERA. FEMA forbids arrest for violations of foreign exchange. Although it was sometimes referred to as harsh, the old law, FERA, had a more dissuasive effect on hawala rackets. It should be noted that the FEMA preamble makes no mention of controlling or regulating foreign exchange. According to the study, FEMA was established "to ease.To encourage international trade and payments as well as the steady growth and maintenance of India's foreign exchange market.

Here are a few different meanings that have been linked to money laundering: One of these is:

(a) manipulating money from illegal sources in a way that makes it seem like it came from a lawful source.

(b) The sale or conversion of property with the intent to conceal, discredit, or otherwise assist any person involved in the commission of a crime or crimes in order to shield them from the consequences of their acts under the law The property's transfer must also be taken into account.

(c)While knowing that such property is the result of a crime the receiving of property knowing it was obtained through a crime or from an act of participation in a crime at

[59] Foreign Exchange Management Act 1999

the time of purchase, possession, or usage. The movement of funds by organised crime organisations from their unlawful activities to a partially legal business, which is then reinvested into a legitimate business until the evidence of its criminal origin is removed and the same profits are once again available to organised crime groups.

(d) Criminals who want to profit from widespread crime must remain hidden to avoid becoming the target of their illicit gains. In a broader sense, it may be considered money laundering.

In light of the definition, we can therefore assert that FEMA has established stringent guidelines for the supervision of money laundering operations.

The following are significant FEMA provisions that relate to money laundering:

i. Prohibition to deal in foreign exchange and foreign security-

No one may trade or engage in securities or foreign exchange without first receiving general or specific authorization from the Reserve Bank of India .[60] To trade in foreign currencies, foreign securities, or in any other manner, one must be an approved dealer, money changer, or offshore banking unit.[61]

ii. Restriction on acquisition, holding, etc. of foreign exchange/security-

No resident of India may buy, hold, own, own, or transfer any foreign currency, foreign securities, or immovable property located outside of India, unless expressly permitted by FEMA.[62]

iii. Allowing foreign exchange for current account transactions-

In the case of transactions involving current accounts, anyone may sell to or buy foreign currency from the authorised individual. However, in accordance with the RBI, the central government may impose reasonable restrictions on some current account activity.[63]

iv. Restriction on Foreign exchange for capital account transactions-

[60] Foreign Exchange Management Act, 1999 s 3
[61] Foreign Exchange Management Act, 1999 s 10
[62] Foreign Exchange Management Act, 1999 s 4
[63] Foreign Exchange Management Act, 1999 s 5

Significant restrictions have been placed on the sale and purchase of foreign currency for capital account transactions, and RBI/Central Government approval is now required.[64]

v. Furnishing value etc. of export goods/services-

Every exporter of products and services must provide genuine and correct material information as well as the export or payment value for such goods and services. The RBI may order any exporter to repatriate the export value or payment for exported products or services within a specific amount of time.[65]

vi. Realization and repatriation of export proceeds-

Each exporter has a duty to do all in their power to realise and repatriate the export revenues owed within the specified time frame.[66]

vii. Penalty for contraventions-

FEMA violations may call for fines up to three times the amount involved if the amount can be measured or is less than or equal to Rs. 2 lakh. An extra fine of $5,000 may also be levied for every subsequent infraction.[67]

viii. Civil imprisonment-

An offender faces civil imprisonment if they don't pay the fine that was put in place. The ability to search, seize, survey, etc.The executive officers (assistant director and above) for the FEMA Enforcement Directorate have been granted the same search, seizure, survey, questionnaire, inspection, etc. powers as granted to income tax officers in order to successfully conduct investigations into cases involving FEMA.

ix. Power to search, seizure, survey, etc.-

Calling and recollecting the relevant information together with search, seizure, survey, questionnaire, inspection, etc. powers as granted to income tax officers have been given the executive officers (assistant director and above) for FEMA Enforcement Directorate

[64] Foreign Exchange Management Act, 1999 s 6
[65] Foreign Exchange Management Act, 1999 s 7
[66] Foreign Exchange Management Act, 1999 s 8
[67] Foreign Exchange Management Act, 1999 s 13

so that investigations into FEMA-treated cases can be carried out in a successful manner.

Money laundering 2008 - 2012 (Cases under FERA & FEMA)

Sl. No.	Year	No. of		Currency seized (In Indian ` in crore)		Currency confiscated (In Indian ` in crore)		Fines (in Indian ` in crore)	
		Searches /Raids	Seizures/ Recoveries	Indian	Foreign	Indian	Foreign	Imposed	Realised
1	2011*	72	59	18.3	7.27	2.27	27.8	323.45	15.78
2	2012	18	18	3.7	0.9	1.37	0.37	8.61	0.58
3	2013	81	81	5.45	2.10	3.65	0.80	18.48	7.18
4	2014	80	65	16.7	7.62	6.20	0.65	42.53	5.4
5	2015	90	69	36.09	5.62	610.7	1.25	102.83	42.89

***Cases under FEMA**

3.10 Both the PREVENTION OF ILLICIT TRAFFIC IN NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT, 1988 (PITNDPSA) and the NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT, 1985 (NDPSA) :[68]

One of the most prominent means of making illegal money is through the trafficking of drugs and other comparable goods. According to this Act, trafficking in narcotics and psychotropic substances, as well as their use, is strictly prohibited.The drug trade is one of the sources of filthy money, as is common knowledge. Significant amounts of the illicit money that criminals possess are produced by drug traffickers. Trafficking in

[68] Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act 1988

illegal drugs is an international crime. The current law was passed to stop drug trafficking because it has grown so quickly over the past ten years. Let's now go over some of the pertinent provisions of this Act.

In this sense, the NDPS Act includes a number of particular provisions, including: 1. Cocaine, opium poppy, and cannabis plant cultivation are only permitted with a particular licence and under state supervision.[69]

1. Dealing in narcotics or psychotropic substances has been outlawed unless expressly permitted by the state. This includes manufacture, manufacturing, possession, sale, purchase, transit, warehousing, use, exporting, importation, etc.[70]
2. It is forbidden to deal with (acquire, hold, use, convert, or transfer) any property generated from a crime involving the illegal use of narcotics or psychoactive substances.[71]
3. Importing, exporting, and dealing in narcotics and psychotropic substances without authorization is illegal and punishable by a severe prison sentence of 10 to 20 years and a fine of 1 lakh to 2 lakh rupees.[72]
4. The competent authority has the ability to seize, freeze, and forfeit property that was obtained unlawfully and used to deal in prohibited amounts of narcotics and psychoactive substances.[73]
5. The Act also provides for the establishment of the National Fund for Control of Drug Abuse to cover costs associated with, among other things, the actions taken to: Combat illicit traffic in narcotic drugs, psychotropic substances, or controlled substances; Control abuse of narcotic drugs and similar substances; Prevent drug abuse; and Educate the public against drug abuse.[74]

[69] Narcotic Drugs and Psychotropic Substances Act, 1985 s 8
[70] Ibid
[71] Narcotic Drugs and Psychotropic Substances Act, 1985 s 8A
[72] Narcotic Drugs and Psychotropic Substances Act, 1985 s 23 24
[73] Narcotic Drugs and Psychotropic Substances Act, 1985 s 68F 68 I
[74] Narcotic Drugs and Psychotropic Substances Act, 1985 s 7A

PITNDPSA[75]

In a fashion that was handled earlier by COFEPOSA in 1974, this law was passed. It expressly permits the imprisonment or detention of any individual (even a foreigner) in order to stop him from engaging in the trafficking of illegal drugs and psychoactive substances.[76] Each detention order must be approved by the advisory board, and the maximum incarceration period is two years from the date of arrest.[77]

3.11 The POTA, or the Prevention of Terrorism Act of 2002,[78]

POTA is a unique statute designed to combat terrorism. According to POTA, using firearms, fatal weapons, poisons, etc. to terrorise the populace is considered terrorism. It is emphasised once more that terrorists frequently use other serious crimes as cover for their own activities. As a result, there is a direct connection between terrorism and serious crimes like drug trafficking, kidnapping, murder, etc.

Otherwise, huge crimes might fuel terrorism, or vice versa. Organised crimes like terrorism and money laundering are victim-focused in India.The Indian border crimes and terrorist threats to the nation's capital and largest cities serve as a realistic illustration of the threat posed by the Dawood Gang Terror Club, Bin Laden's Al Qaeda, the Liberation Tigers in Tamil Eelam (LTTE), and the United Liberation Front of Assam (ULFA).

3.11.1 Terrorism and acts of terrorism: According to POTA, terrorism and terrorist acts are defined as follows: Whoever-[79]

"with intent to threaten the unity, integrity, security or sovereignty of India or to strike terror in the people or any section of the people does any act or thing by using bombs, ……. or detains any person and threatens to kill or injure such person in order to compel the Government or any other person to do or abstain from doing any act."[80]

Explanation: For the purposes of this sub-section, "a terrorist act" shall include the act of raising funds intended for the purpose of terrorism.

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[75] Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act 1988
[76] Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 s 3
[77] Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 s 9 11
[78] Prevention of Terrorism Act, 2002
[79] Prevention of Terrorism Act, 2002 s 3(1)
[80] Ibid

Under POTA terrorist activities invite punishment ranging from imprisonment of five years or for life along with fine to penalty of death depending on the severity of facts

3.11.2 Possession of arms/ammunition and hazardous explosives - As per section 4 of POTA possession of arms, ammunition in a notified area and also the possession of bombs, dynamite or hazardous explosives or the lethal weapons capable of mass destruction or biological (chemical substances of warfare) in any area has been termed as a terrorist act punishable with imprisonment which can extend up to whole life with or without fine up to Rs. 10 lakhs.

3.11.3 Forfeiture of proceeds of terrorism- In particular, POTA bars anybody from holding terrorist proceeds. The state shall be liable to forfeit all terrorist proceeds possessed by anyone.[81] The transfer of property which is 'terrorist proceeds' cannot happen; that transfer shall be considered to be null and illegal in accordance with POTA rules.[82] "Terrorism proceeds" include all forms of properties derived or acquired by commission of terrorist acts, or earned by money plotted for a terrorist act, including cash, regardless of who is the holder of the proceeds or the holder of the proceeds.[83]

3.11.4 Forfeiture of proceeds of terrorism- For attachment of the properties belonging to the accused of terrorism; and later if they are convicted of any offence under POTA, their properties stand forfeited to the State.[84]

3.11.5 Terrorist Organization- When the organization is involved in preparation, promotion, encouragement, participation or commission of terrorism, the Union government can declare an organization as a terrorist organization.[85] Twenty-five organizations are designated in the schedule for the POTA as terrorist organizations. POTA also outlaws and prescribes penalties for any support for a terrorist organization, including the raising of funds.[86]

[81] Prevention of Terrorism Act, 2002 s 6 8
[82] Prevention of Terrorism Act, 2002 s 15
[83] Prevention of Terrorism Act, 2002 s 2(c)
[84] Prevention of Terrorism Act, 2002 s 16
[85] Prevention of Terrorism Act, 2002 s 18
[86] Prevention of Terrorism Act, 2002 s 21 22

A table listing various economic offences, the relevant legislation and concerned enforcement authorities are given below.

Sl. No.	Economic crimes	Acts / Legislation	Enforcement authorities
1	Tax evasion	Income Tax Act	Central Board of Direct Taxes
2	Illicit trafficking in contraband goods (smuggling)	Customs Act 1962 COFEPOSA, 1974	Collectors of Customs
3	Evasion of Excise Duty	Central Excise Act, 1944	Collectors of Central Excise
4	Cultural object's theft	Antiquity and Art Treasures Act, 1972	Police/State CB-CID/CBI
5	Money laundering	Foreign Exchange Regulations Act, 1973; Money Laundering Act, 2002	Directorate of Enforcement
6	Foreign contribution manipulations	Foreign Contribution (Regulation) Act, 1976;	Police/CBI
7	Land grabbing/Real estate frauds	IPC	Police/State CB-CID/CBI
8	Trade in human body parts	Transplantation of Human Organs Act, 1994	Police/State CB-CID/CBI
9	Illicit drug trafficking	Narcotic Drugs and Psychotropic Substances Act 1985 & NDPS Act, 1988	NCB/ Police/State CB-CID/CBI
10	Fraudulent bankruptcy	Banking Regulation Act, 1949	Police, CBI
11	Corruption and bribery of public servants	Prevention of Corruption Act, 1988	State/Anti Corruption Bureaux/ Vigilance Bureaux/CBI

12	Bank frauds	IPC	Police/State Vigilance/CB-CID/CBI
13	Insurance rrauds	IPC	Police/State Vigilance/CB-CID/CBI
14	Racketeering in employment	IPC	Police/State CB-CID/CBI
15	Illegal foreign trade	Import & Export (Control) Act,1947	Directorate General of Foreign Trade/CBI
16	Racketeering in false travel documents	Passport Act, 1920/IPC	Police/State CB-CID/CBI
17	Credit cards fraud	IPC	Police/State CB-CID/CBI
18	Terrorist activities	IPC & related Acts	Police/State CB-CID/CBI
19	Illicit trafficking in arms	Arms Act,1959	Police/State CB-CID/CBI
20	Illicit trafficking in explosives	Explosives Act, 1884 & Explosive Substances Act, 1908	Police/State CB-CID/CBI
21	Theft of intellectual property	Copyright Act, 1957 (Amendments 1984 & 1994)	Police/State CB-CID/CBI
22	Computer crime/software piracy	Copyright Act, 1957/I.T.Act, 2000	Police/State CB-CID/CBI
23	Stock market manipulations	IPC	Police/State CB-CID/CBI
24	Company frauds	Companies Act, 1956/IPC MRTP Act, 1968	Police/CBI/SFIO

Source- NCRB (National Crime Records Bureau) [87]

[87] "National Crime Records Bureau" (National Crime Records Bureau) <https://Ncrb.gov.in> accessed June 19,2023

The Income Tax Law of 1961 provides a foundation for combating money laundering domestically through the criminalization of tax evasion practises. Contrary to customs law, income tax crimes only carry civil liabilities, allowing for a more reasonable hearing for the offender. The Income Tax Act allows for the prosecution of offences like disclosure, fraudulent removal, transfer, or delivery of property for tax evasion, intentional withholding of accounts and documents, erroneous statements made during delivery or verification, voluntarily failing to file a return of income, etc. Provisions of the Excise and Sales Tax Acts, which in turn limit the scope of money laundering operations, combat tax evasion from industrial activity. FEMA, Customs, and Income Tax Acts all play a crucial role in limiting transfer conduits to detect the potential movement of money coming from illegal and illegitimate sources, even though they are strictly speaking not actual counterparts of laws intended to pursue money laundering offences. Additional laws, such as the Law on Arms and the Act on Narcotics and Psychotropic Substances, impose strong limitations on various methods of money laundering.

In the domestic business sector, the regulatory body, the Ministry of Corporate Affairs, oversaw the application of the Company Law of 1956 and the Law against Monopolies and Restrictive Practises of 1969. The development and defence of strict corporate governance standards are the main objectives of these acts. It covers a variety of topics, including membership, capital expenditures, asset charges, meetings, the way accountabilities are handled, the conduct of audits, and the completion of processes. It also covers issues like firm marketing and training. Aside from the circumstances outlined in the Act, businesses may suffer harm if their operations are carried out with the intention of deceiving their members or creditors or in order to commit fraud or violate the law. Since then, the penalties for breaking the Act's rules have grown by roughly ten times thanks to the Companies (Amendment) Act of 2000. The new Act also makes it necessary to acquire the Regional Director's approval before moving the company's registered office within the same state. As a result, better tracking of any corporation in question's activity and location would be possible. The proceeds of crimes involving bribery, trust, and fraud that were confiscated by an attachment order can be acquired by prosecuting agencies, per Criminal Law Amendment Ordinance XXXVIII of 1944. After the proceeds have been used up, the prosecution may ask the court for a forfeiture order. The order addresses offences like fraud, trust violations, and corruption that are not entirely covered by the Indian Penal Code.

CHAPTER 4

CRITICAL ANALYSIS OF THE PREVENTION OF MONEY LAUNDERING ACT, 2002

The General Assembly of the United Nations adopted the Political Declaration and Global Programme of Action annexed to the Resolution S-17/2[88] at its 17th Special Session on 23 February 1990. Further, Political Declaration adopted by the Special Session of the United Nations General Assembly held on 8–10 June 1998[89] called upon the member states to adopt the national money-laundering legislation and programme.

Pursuant to its commitment to the international community to address the issue money laundering through a legislation, India introduced the Bill namely, "The Prevention of Money-Laundering Bill in 1998 ('PML Bill, 1998')". The Lok Sabha referred the PML Bill, 1998 to the Standing Committee of Finance. The Standing Committee submitted its Report on the PML Bill, 1998 to the Lok Sabha with certain recommendations. After taking note of the recommendations of the Standing Committee and making requisite changes to the PML Bill, 1998, the Lok Sabha sent it to the Rajya Sabha. The Rajya Sabha again referred the Bill to the Select Committee, which gave an unanimous report on 20 July 2000. It was only in 2002 that the Bill was passed by both the Houses of the Parliament. The PML Bill, 1998 eventually received the assent of the President on 17 January 2003 and was passed as The *Prevention of Money Laundering Act, 2002* (PMLA) (which came into force on 1 July 2005).

India has criminalized money laundering both under PMLA and the NDPS Act. While the money laundering provisions under the NDPS Act are confined to drug related offences, the PMLA applies to a much broader range of predicate offences, including narcotics. The drug related predicate offence under NDPS Act only confine to the offences under Act committed within India, as Section 8A (c) of NDPS Act did not specifically refer to drug offences occurred in other countries, or contain a provision that the Act applies to offences committed elsewhere. As PMLA had included drug related predicate offence under NDPS Act and has extra-territorial jurisdiction, the

[88] "United Nations Digital Library System" (*United Nations Digital Library System*) <https://digitallibrary.un.org> accessed on 17 May 2023

[89] "United Nations: Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances" (1989) 28 International Legal Materials 493 <http://dx.doi.org/10.1017/s0020782900021756> accessed on 13 May 2023

provisions under the said Section 8A of NDPS Act has become redundant, but is yet to be repealed. The PMLA money laundering offence applies to "*whoever*" a term that includes a person who commits the predicate offence, if that person is knowingly involved in the laundering of proceeds of his crime., while the NDPS Act money laundering provision simply refers to "*no person*" without any exception. India has signed the UN Convention against corruption (Also known as Merida Convention) on 9th December 2005. Corruption is one of the predicate offences for money laundering.

4.1 PROCEEDS OF CRIME

The term proceeds of crime bear direct reference to the 'Scheduled Offence' The words 'as a result of criminal activity relating to a scheduled offence' are wider in effect when compared to using the words 'as a result of commission of the scheduled offence' As per the definition, even though a property is not derived from commission of the scheduled offence but if it is derived from a criminal activity relating to the scheduled offence, the same would be the 'proceeds of crime.'

4.2 PROPERTY

While defining Property –under the Act, (Section 2 (v)) the words 'wherever located' used in the definition are very significant. Not only property of every description is intended to be covered by the definition given in the Act, it further amplifies that the property need not be necessarily within the geographical limits of India, and would cover property situated beyond the territorial limits of India also. However, the definition of 'property' under PMLA is restricted to property 'related to scheduled offence."

4.3 OFFENCE OF MONEY LAUNDERING

The term 'money laundering' has not been defined directly in the Act. Sec.3 only exposes as to who would be guilty of an offence of money laundering. The definition of term money laundering does not reflect true position of the money laundering offence as cast upon under Art.3 (1) (b) of Vienna Convention 1988, and therefore the act does not follow internationally accepted concept while defiling the term.For establishing an offence of money laundering it has to be proved that attempt, assistance in commission of a scheduled offence or actual commission of scheduled offence to derive the proceeds of crime has not only been done, but the proceeds of crime are projected as

untainted property. While the definition of offence under Section 8A of NDPS Act is almost faithful transposition of the money laundering provisions contained in Vienna Convention, the PMLA adopts a broader wording taking into account the provisions under both Vienna Convention and Palermo Convention .There is no formal or express statutory conditions which require conviction of predicate offence, as a precondition to money laundering, though some experts felt that prior conviction for predicate offence would meet the evidentiary requirement for money laundering. It is to be observed that when even the projection of proceeds of crime as 'untainted' has taken place before the commencement of the provisions of the Act then the charge of an offence punishable under the Act, cannot be levelled in respect of such transactions.[90]During Mutual Evaluation of India, it was pointed out by FATF that concealment, possession, acquisition and use of the proceeds of crime are not criminalized by PMLA. Article 6 of Palermo Convention requires that such activities should also to be criminalized. Hence Section 3 of PMLA has been proposed to include these activities under offence of money-laundering.[91]

4.4 FORFEITURE/CONFISCATION

Anthony Kennedy conceptualized the civil forfeiture regime in the following words "Civil forfeiture represents a move from a crime and punishment model of justice to a preventive model of justice. It seeks to take illegally obtained property out of the possession of organised crime figures so as to prevent them, first, from using it as working capital for future crimes and, secondly, from flaunting it in such a way as they become role models for others to follow into a lifestyle of acquisitive crime. Civil recovery is therefore not aimed at punishing behaviour but at removing the 'trophies' of past criminal behaviour and the means to commit future criminal behaviour. While it would clearly be more desirable if successful criminal proceedings could be instituted, the operative theory is that 'half a loaf is better than no bread'." PMLA, UAPA, NDPS and CrPC, all the four statutes allow for attachment of property seized, subject to confiscation of the same at the culmination of proceedings. All the four statutes do not provide for issue of notice before such attachment of seized property. Properties which are seized under provisions of Sec.17 or 18 of PMLA are attached

[90] S.K. SARVARIA, *Commentary on The Prevention of Money-Laundering Act* (2nd edn, Universal Law Publishing 2017)
[91] Gururaj B.N et al., Commentary on FEMA, Money Laundering Act, and COFEPOSA (2nd edn, Wadhwa Publications 2009)

under Sec.5 of the Act. In terms of Section 68A (2) of the NDPS Act, property can be confiscated from person charged with a drug offence, their relatives or associates, or anyone who holds the property that was previously held by someone charged, unless they acquired it in good faith for adequate consideration. Similarly, Sec.24 (2) of the UAPA states that proceeds of terrorism whether held by a terrorist or terrorist organization or terrorist gang or by any other person and whether or not prosecuted or convicted shall be confiscated. Sec.33 (1) further provides for attachment of property of a person accused of an offence under Chapter V or Chapter VI of the UAPA. Section 105 A to 105J of CrPC provides for identification, attachment or seizure or confiscation of property derived or obtained directly or indirectly, by any person as a result of criminal activity. In terms of Sec.65 of PMLA, the provisions of CrPC will apply so far as they are not inconsistent with provisions of PMLA. The predicate offence conviction condition creates fundamental difficulties when trying to confiscate the proceeds of crime in the absence of a conviction of predicate offence particularly in a standalone money laundering case, where the laundered assets become the and should be forfeitable as such. In the international context the predicate conviction requirement also seriously affects the capacity to recover criminal assets where the predicate offence has occurred outside India and the proceeds are subsequently laundered in India.

4.5 CRITICAL REVIEW OF OTHER IMPORTANT PROVISIONS OF PMLA

Under the then existing provisions (prior to 15th February 2013) the offences specified in Part A of the Schedule do not prescribe any monetary threshold. Whereas the offences specified in Part B of the Schedule are considered Offence of Money laundering only if the total value involved in such offences is thirty lakhs rupees or more. The FATF standards do not envisage monetary threshold for investigating the offence of money laundering. To conform to the FATF standards it was proposed by government to move the offences listed in Part B of the Schedule to Part A.

The threshold-based exemption was justified by perseverant authorities on the ground that deleting the same would over-burden the enforcement authority who are supposed to target serious crimes. However, this provision goes against FATF standard apart from leaving a gap in the AML regime and have negative impact on deterrence. Section 2(u) proceeds of crime is analogous to Section 105 A (c) of Cr PC 1973. Proceeds of crime seems to mean in the process of unlawful activity done by person concerned directly or

indirectly some unlawful benefit monetary or non-monetary is achieved which benefit may be termed as proceeds of crime. If the proceeds of crime which has been declared as scheduled offence on the day on which the 'projection of such proceeds' as 'untainted' is attempted or undertaken, the provisions of PMLA would apply, and would not amount to retrospective operation of the legislation. It is also not violative of Art.20 of Constitution.

In Section 3 of the Act, attempt has also been criminalized. Attempt is a stage where the offence is not fully complete. In the sequence of a criminal event, 'attempt' falls between 'preparation' and 'fulfilment' of criminal activity. Fulfilment of criminal activity involves completion of scheduled offence and to derive directly or indirectly the proceeds of crime, and thereafter the attempts to project the proceeds of crime to appear as untainted property. If money laundering offence is not proved against a person, that is to say if he is not found in projecting the tainted property to appear as untainted property, even though he was found involved in drug offence and also in acquiring property from the money derived from such offence, the prosecution proceedings launched against such a person under PMLA may not culminate into a conviction.

However, for the offence of committing the crime under NDPS Act, and for acquisition of property from such crime, proceedings will necessarily be launched under NDPS Act, resulting in a dichotomy. It is felt that while framing Sec.3 and 4 of PMLA the legislature has not taken into account the overlapping areas of jurisdiction of PMLA and that of NDPS Act, which is crucial issue to be studied. The *mens rea* threshold under Section 3 of PMLA is lower than Art.6 (1)(a) of TOC Convention in that no specific purpose or intention is required. The substantive element of "projecting it as untainted property" carries the notion of knowing disguise, as required by Convention, but does not appear to cover all concealment activity such as the physical hiding of the assets. As Sec.3 of the Act does not adopt 'all crimes' approach, it is generally interpreted (in the absence of any precedent case laws) as requiring a very minimum positive proof of the predicate offence, for conviction for the laundering offence.

Under the existing provision in Section 42, an appeal against the order of the Appellate Tribunal lies before High Court within the jurisdiction of which the aggrieved party resides or carries on its business. Since the attached properties may be located in

different parts of the country in a particular case, the appeals can be filed in various High Courts in the country in the same case, leading to forum shopping. Such a provision is also likely to lead a situation where order of the Tribunal might be reversed by one High Court and upheld by another High Court.

In order to obviate this difficulty, it is proposed in section 42 that the appeal may lie before the Supreme Court. Concurrently it is also proposed in section 28 to raise the status of the Appellate Tribunal on the lines of the Appellate Tribunals under the SEBI Act. In terms of Section 43 (1) of PMLA, the Central Government in consultation with the Chief Justice of the High Court, shall for trial of offence punishable under Sec.4, designate one or more Courts of Session as Special Court or Special Courts for such area, or case, or group or class of case, as notified. In terms of Section 43 (2), while trying an offence under this Act, the Special Court shall also try an offence other than an offence referred under Section 43 (1) (offence punishable under Sec.4 of PMLA) with which the accused may under CrPC be charged at the same trial.

The rationale behind corporate criminal liability is to take care of situations where it is impossible to proceed against natural persons or in cases where the natural persons cannot be identified. The practice of making corporate criminal liability contingent upon prosecution of natural person, is a matter of concern. A difficulty may arise in the application of the provisions of this Sec.70 of PMLA while the offender is a company for which the minimum sentence as prescribed for the contravention is an imprisonment of not less than three years.

The definition of person under 2(s) of PMLA 2002 includes company. Therefore, a crucial question as to whether company can be prosecuted and punished with imprisonment may crop up. A combined reading of Section 4 and Sec.70of PMLA, with Section 38 of NDPS Act, experts feel that no charge can be brought against a company without concurrently prosecuting the natural person responsible for the act, for the laundering offence. Additional or parallel proceedings can be initiated under other relevant statutes against a legal person prosecuted under PMLA, such as confiscation of assets under Sec.388B of the Companies Act, which provides for impoverishment of managerial personnel managerial personnel of company indulging in fraudulent practices, apart from dissolution of Company by Court. The fine of rupee five lakhs for

transgression of PMLA, provided for legal persons is rather very low compared to the scale of laundering activity and financial capacity of the corporate entities.

Predicate offences are investigated by agencies such as Police, Narcotics Control Bureau, CBI, SEBI and Customs under their respective Acts. As per Sections 48 & 49 of the PMLA, the officers of the Directorate of Enforcement have been given powers to investigate cases of Money Laundering. The officers have also been authorised to initiate proceedings for attachment of property and to launch prosecution in the designated Special Court for the offence of money laundering.

4.6 REGULATION AND ENFORCEMENT UNDER PMLA

In terms of Sec.49(1) of the Act, the Central Govt by notification No. GSR 440(E) i.e., 1/7/2005 has appointed Director FIU, as Director to exercise exclusive power under Sec.12 (1) (b) and its proviso, Sec.13, Sec.26 (2), Sec.50 (1) of the Act. Director FIU is also empowered to concurrently exercise powers under Section 26 (3) and Sec.26(5), Sec.39 to Sec.42 and Sec.49 (2) and Sec.66, Sec.69 of the Act. Similarly in terms of Sec.49(1) of the Act, the Central Government by notification No. GSR 441(E) i.e., 1/7/2005 has appointed Director of Enforcement, as Director to exercise exclusive power under Sec.5, Sec.8, Sec.16 to Sec.21, Sec.26(1), Sec.45, Sec.50,57,60,62 and 63 of the Act.

The Director is also empowered concurrently powers under Sec.26 (3) to (5), Sec.39 to 42, Sec.48,49,66,69 of the Act. An Adjudicating authority has been appointed under PMLA and an Appellate Tribunal has been constituted. By various notifications 52 Courts of Sessions have been designated as Special Courts under provisions of PMLA. Whenever the predicate criminality is committed outside India, law enforcement is totally dependent on the formal and positive proof obtained from the foreign jurisdiction. Instead, the Indian enforcement authorities themselves should investigate the foreign predicate offences, considering the nature of high evidentiary requirements.

The Economic Intelligence Council (EIC) is the mechanism in place since 2003 for domestic co-operation and coordination. It is chaired by Minister of Finance and further comprises the most senior functionaries of various Ministries and intelligence agencies, and the Governor of RBI and Chairman of SEBI. The Department of Economic Affairs (DEA) has a coordinating role within the government of India regarding the FATF.

The Enforcement Directorate (ED) is the government agency which was established in 1956 and has been currently entrusted with investigation and prosecution of money laundering offences and attachment/confiscation of the proceeds of crime under the PMLA. The FIU-IND was set up in 18th November 2004 and became operational in March 2006. It has been designated as the central agency for receiving, processing, analysing, and disseminating information relating to suspect financial transactions as well as large cash transactions. It is responsible for coordinating and strengthening efforts of national and international intelligence, investigation and enforcement agencies in pursuing the global efforts against money laundering, terrorist financing and other related crimes.

The interaction between enforcement and other agencies who are engaged in prosecuting predicate offence and the money laundering offence indicate that the laundering prosecutions are delayed while the convictions for predicate offences are faster. FIU India has initiated a project titled FIN net (Financial Intelligence Network) to adopt industry best practices, and also to collect, analyse and disseminate financial information in combating money laundering and related crimes.

4.7 LANDMARK PRECEDENTS ON MONEY LAUNDERING

1. Commonwealth Games (CWG) scam 2010
Amount of money involved- 70,000 crore

Delhi, in 2010, saw one of the most notorious scams addressed as the Commonwealth Games (CWG) scam. Here, it was discovered that only half the amount received was used for Indian sportspersons, whereas, the other half was deposited in the accounts of individuals who had the power to do so. With this scandal, the Government of India is said to have incurred a loss of 70,000 crores. Under the CWG scam, the authorities hired companies that had overquoted the estimated budgets as opposed to those that had great offerings at great prices in addition to better services and equipment. Moreover, after the discovery of the scam, it was discovered that several suspicious transactions were carried on with non-existing partners, while the actual workers did not receive any timely payment, thus causing the misappropriation of funds. This scam can be said to be a planned act of corruption. Moreover, not only Mr. Suresh Kalmadia and two of his

close associates, Mr. Lalit Bhanot and V.K. Verma, but also Sheila Dixit, were part of this scandal.

The trial of all those accused in the Commonwealth Games (CWG) scam Suresh Kalamdi was detained by the CBI and served around 10 months of imprisonment. He, along with his associates, was held guilty under several sections of the IPC and the Corruption Act.[92] The most important sections of the IPC they were charged with are as follows: Section 120 (b) (criminal conspiracy),Section 420 (cheating), Section 468 (forgery), and Section 471 (Using as genuine a forged document or electronic record).

2. Saradha Group financial scandal 2013

Amount of money involved- 2500 crores

The Saradha scam, commonly known as the Saradha Group financial scandal, was a major financial scandal that took place in 2013. This scam occurred in 2013 when a Ponzi scheme by the name of Saradha Group, which was an umbrella company with a cluster of 200 private companies, broke down. In this case, a scheme was launched in the early 2000s by Sudipto Sen, promising high returns, and the amount was collected from several small investors. Agents who helped the company were paid a commission of over 25–40%, apart from other lucrative gifts. This scheme became popular because it promised high returns in a short period of time. It raised capital of around 2500 crores within a span of a few years, and the total number of investors rose as high as 1.7 million. The company, in order to gain fame and build up its brand value, used several marketing techniques, like celebrity endorsements. Further, in order to attract more investors, the company used to sponsor cultural events such as Durga Puja and invest in popular football clubs. The scheme, in no span of time, expanded to Odisha, Assam, Jharkhand, Chhattisgarh, and Tripura, and with this expansion, the number of investors increased noticeably. The investors in Saradha were rarely enlightened about the true nature of the investments. This scam worked in the form of a Ponzi scheme where one investor's principal and interest were paid to another investor as interest. However, it

[92] Suresh Kalmadi v. CBI Crl.M.C. No.2143/2015

was later discovered that the company's inflow was lower than its outflow, after which the Supreme Court of India transferred all investigations related to the case and other Ponzi schemes to the Central Bureau of Investigation (CBI) in 2014. The investigation into this multi-crore Ponzi scheme has been ongoing since it came to light in 2013.

Trial of the accused in the Saradha scam[93]

Several West Bengal residents, including Kunal Ghosh, Sudipto Sen, and Madan Mitra, are accused of participating in this Ponzi scheme. In 2013, in an 18-page confession, the founder and CEO of this scheme, Sudipto Sen, mentioned the involvement of TMC politicians in this scheme, including Mamata Banerjee. The police authorities filed several FIRs against the Saradha group, and several properties were confiscated and seized. A special SIT (Special Investigation Team) was set up by the West Bengal government for speedy investigation. Later, this case was moved to the CBI as ordered by the Hon'ble Supreme Court. Sudipto Sen has around 98 cases pending against him and has served more than 8 years in jail. Currently, Sudipto Sen and his close associate, Debjani Mukherjee, are in the custody of the CBI.

3. Indian coal allocation scam or the Coalgate scam 2012-13

Amount of money involved- 185,591 crores

The coal allocation scam, commonly known as the "Coalgate scam," was a political scam that included the illegitimate allocation of the nation's coal to public sector entities (PSEs) and private sector companies that were not a part of Coal India Ltd. and Singareni Collieries Company Limited's (SCCL) production plans by the then Prime Minister Manmohan Singh. This scam is one of the long-standing cases taken up by the CBI. It was a political scandal that engulfed the UPA (United Progressive Alliance) Government in 2012. Around 14 cases were lodged against individuals and companies, including Naveen Jindal and his company JSPL, Kumaramangalam Birla, Congress MP Vijay Darda and his brother Rajendra Darda, JLD Yavatmal Energy Limited, AMR Iron & Steel Private Limited, and Vini Iron & Steel Udyog, inter alia. This scam became apparent when the Comptroller and Auditor General of India (CAG) made a

[93] Central Bureau Of Investigation vs The State Of West Bengal & Ors CRR 2456 of 2018

statement that the Government of India allocated 194 coal blocks to public and private enterprises in an illegitimate manner between 2004 and 2009. However, these blocks were just allocated and not auctioned, causing a loss of 185,591 crores. The Supreme Court of India annulled the allocation of all 214 coal blocks given since 1993, and these blocks are to be reallocated now.

Trial of the accused in the Indian coal allocation scam[94]

The special CBI judge took cognizance of the offence under the following sections:

IPC-Sections 120-B (criminal conspiracy), and Section 409 (Criminal breach of trust by a public servant, or by banker, merchant or agent).Prevention of Corruption Act, 1988- Sections 13(1)(c) and Section 13(1)(d)(iii). The Court then issued summons to all the accused in this case, out of whom the two accused approached the Supreme Court, which granted interim bail against further proceedings. Supreme Court held that the entire allocation of Coal Blocks made between 1993 and 2011, except those which were made through competitive bidding, were invalid, unfair arbitrary and violative of Article 14 of the Constitution of India.

4. The 2G scam 2008

Amount of money involved- 176,000 crores

One of the greatest scams in the history of independent India is the 2G scam. It has also been affirmed by the Times Magazine to be the second biggest example of the abuse of executive power- just a notch below Richard Nixon's Watergate scandal. The 2G scam was discovered when the Comptroller and Auditor General (CAG) of India, in one of its reports, estimated a loss of 176,000 crores in issuing licences and allocating 2G spectrum by the Department of Telecom. CAG claimed that the government lost 176,000 crores because telecom operators were granted 2G licences at extremely low prices instead of conducting free and fair auctions. Further, the licences were granted to ineligible applicants who had repressed facts, divulged incomplete information, submitted forged documents, and used deceitful means to obtain licences and thereby gain access to the spectrum. In this scam, A Raja, along with 14 other individuals and

[94] Manohar Lal Sharma v. Principal Secretary, (2014) 9 SCC 516

three companies, namely, Swan Telecom, Reliance Telecommunications, and Uninor, were the prime accused. The primary accused, A. Raja, was said to have allocated airwaves and licences for mobile phone networks in exchange for bribes. In 2012, the Supreme Court annulled all 122 licences that were awarded in 2008, asserting that such licences must be allocated via auctions and fair bidding processes alone. The Court said this process of allotment was "unconstitutional and arbitrary."

Trial of the accused in the 2G scam[95]

In 2012, the Supreme Court, in this case, levied a fine of 5 crores on each of the three companies—Unitech Wireless, Swan Telecom, and Tata Teleservices. However, in 2017, all the accused in this scam were declared not guilty, including the lead accused, A. Raja, by a special CBI Court. Moreover, a point must be taken into consideration that the appeal by the CBI against this judgment is pending in the Delhi High Court.

5. The Kingfisher Airlines case 2007-2017

Amount of money involved- 9,900 crores

This scam started in 2007 when Vijal Mallya's company, titled Kingfisher's Airlines, purchased a low-cost carrier, Air Deccan, that had been in the state of destitute for a long time. Unfortunately, Air Deccan faced major financial losses because of the ever-increasing oil prices. So, to keep his business in the market, Vijay Mallya borrowed huge amounts of money from multiple banks; sadly, in two years, the company was in debt for around 50% of its net worth. Kingfisher Airlines faced several losses, and Mallya defaulted on loans worth 9000 crores from several banks around 2013. Further, the Serious Fraud Investigation Office (SFIO) found out that Kingfisher Airlines violated serious corporate ethics during its merger with Air Deccan. Moreover, it was found that the loans taken by Vijay Mallya were laundered overseas to various "tax havens." He would transfer the amount of the loan received to inactive companies and would appoint dummy directors to serve this purpose. These companies were in seven countries, namely: UK, US, Ireland, France, inter alia. Furthermore, it was alleged that Vijay Mallya diverted some loan money to fund his IPL cricket team- The Royal Challengers Bangalore (RCB), and his F1 racing team- Force India. All this

[95] Subramanian Swamy v. A. Raja [2012] 11 S.C.R. 873

occurred when the employees at Kingfisher were not paid their remuneration for a whopping period of over 15 months. In March 2016, Mallya escaped to the UK from India. In February 2017, an extradition request was sent to India.

Trial of the accused in the Kingfisher Airlines case[96]

In 2022, a four-month prison sentence was awarded to Vijay Mallya by the Supreme Court of India for his bank loan default case. The bench, headed by Justice U. U. Lalit, also imposed a fine of ₹2000. Now, Mallya is living in the UK and is on a bail extradition warrant, which is executed by Scotland Yard.

6. Satyam scan (Satyam computers scam) 2009

Amount of money involved- 7,000 crores

Satyam scam, commonly addressed as India's largest corporate scam or "India's Enron Scandal," revolves around B. Ramalinga Raju and his company titled "Satyam Computer Ltd.", which was the fourth largest IT software exporter in the industry after companies like TCS, Wipro, and Infosys. Satyam Computers Ltd. was founded in 1987 by two brothers- Rama Raju and Ramalinga Raju. The company started with 20 employees and later hired around 50,000 and operated in more than 60 countries. The net worth of this company was as high as one billion dollars in 2003 and went on to cross two billion dollars in 2008. The promoters of the company, in order to attract more investors, manipulated several figures relating to revenues, operating profits, interest liabilities, and cash balances. Mr. Raju, the founder, would also create a number of bank statements to exaggerate the balance sheet with cash that had no existence whatsoever. This case or scam was exposed as early as 2009, when India was already in the middle of a recession. The company and its founder confessed to misrepresenting and manipulating accounts worth 7,000 crores in front of its board, stock exchanges, investors, and other stakeholders.

Trial of the accused in the Satyam scam[97]

[96] State Bank of India v. Dr. Vijay Mallya, 2022 SCC OnLine SC 826
[97] Satyam Computer Services Ltd. v. Central Board of Direct taxes & Ors. SLP (C) No. 9590 of 2011

After Raju confessed to this scam, he was imprisoned and was further charged with the following offences: Criminal conspiracy, Breach of trust, and Forgery. Moreover, the auditor of the company- PwC, was held guilty of such a conspiracy, and his licence was cancelled for 2 years.

7. Punjab National Bank Fraud case 2007-2017

Amount of money involved- around 11,400-13,500 crores

This is one of the most publicised and controversial money laundering cases in the history of India which shook the entire nation. It is by far the biggest fraud ever detected by an Indian bank. This scam was orchestrated by diamantaires Mehul Choksi and his nephew Nirav Modi, who conducted such a huge scam with the assistance of over 50 employees from the Punjab National Bank of the Brady House branch in Fort, Mumbai.

Here, bankers used fake Letters of Undertaking (LoUs) worth more than 10,000 crores, which were opened in branches of Indian banks for the purpose of importing pearls for a span of one year. The employees issued fake bank guarantees to help them secure billions in foreign credit. Nirav Modi and Mehul Choksi managed to get their first fraudulent guarantee in 2011, and from there, they got around 1200 more such fake guarantees in the next 74 months without anyone suspecting any fraudulent activity. As per these LoUs, banks were to be held liable in matters of default. In 2018, PNB filed a suit with the CBI on the charges that Nirav Modi obtained these LoUs from PNB without paying up the margin amount against the loans. Simply put, in case any of the companies failed to pay the debt, PNB would be liable to compensate for the same.

Trial of the accused in the Punjab National Bank Fraud case[98]

The Indian authorities are trying incessantly to extradite Nirav Modi and Mehul Choksi in the money laundering case, to bring back to India these businessmen who were declared fugitive economic offenders. In March 2019, Nirav Modi was spotted in London, and Choksi was seen in Cuba. Nirav Modi is said to be in south-west London awaiting his extradition trial. Currently, in December 2022, Nirav Modi is said to have lost his appeal against extradition to India. He may also return to India to face a

[98] Mehul Choksi vs Union Of India & Ors. W.P.(C) 5677/2020

trial for the charges of fraud and money laundering. However, he can now appeal to the Supreme Court against the High Court's decision in London.

8. ABG Shipyard case 2012-2017

Amount of money involved- 22,842 crores

In this case, a Gujarat-based firm, titled ABG Shipyard Ltd. (ABG SL.), was alleged to have defrauded a bank of 22,842 crores, which roughly comes to $3 billion. Around 28 banks were defrauded by this company, including the State Bank of India (SBI) and ICICI Bank. According to the CBI, ABG SL borrowed money from banks and used it for other purposes, such as investing in overseas subsidiaries and bringing assets into the name of affiliated companies. They also transferred money to numerous parties related to them or the company. However, with a forensic audit held by SBI with the assistance of Ernst and Young, it was discovered that there was a huge issue of money being laundered. They also found that such a scam took place over a period of five years, i.e., from 2012 to 2017. As per the investigation conducted by the CBI, ABG Shipyards primarily took loans from several banks and managed to divert funds that were used for other purposes, as mentioned above. Moreover, as per the audit report by the SBI, it was uncovered that the fraud took place through "diversion of funds, misappropriation, and criminal breach of trust, with an objective to gain unlawfully at the cost of the bank's funds."In the FIR filed by the CBI in 2022, ABG Shipyard and ABG International Private Ltd. were charged with owning the following amounts of money:ICICI Bank – 7,089 crores,SBI – 2,925 crores,IDBI Bank – 3,639 crores,Bank of Baroda – 1,614 crores,Punjab National Bank 1,244 crores, Exim Bank 1,327 crores, Indian Overseas Bank 1,244 crores, and Bank of India 719 crores, inter alia.Trial of the accused in the ABG Shipyard case

While the fraud came to light in June 2019 after an investigation conducted by the Fraud Identification Committee of the SBI, it was not until November 2019 that the first complaint was made to the CBI. Later, in 2022, a charge sheet was filed against Rishi Agarwal and five other accused, along with 19 companies, including three based in

Singapore. Rishi Agarwal, the former promoter of ABG Shipyard Ltd., was arrested by the CBI. But he was soon granted bail, considering the charge sheet was incomplete.[99]

9. ICICI Bank- Videocon case 2016-2022

Amount of money involved- 1,875 crores

This case revolves around Chanda Kochhar, the former MD and CEO of the ICICI Bank and her husband Deepak Kochhar. A charge sheet was filed in November 2020 by the ED for transactions between Videocon Group and NuPower Renewables Pvt. Ltd., both of which were operated by Deepak Kochhar. This fraudulent activity was discovered in 2016 when an investor named Arvind Gupta, who had invested funds in both ICICI Bank and Videocon Group, pointed out some suspicious activity between the two companies. He wrote letters to various authorities, including the Prime Minister and the Governor of the Reserve Bank of India, requesting an investigation into the conflict of interest; however, the case was not pursued until 2018, when another whistleblower raised similar allegations against Chanda Kochhar. A detailed investigation started then, and several authorities were involved in investigating the matter further. After a thorough investigation, the investigating authorities found out Chanda Kochhar had sanctioned loans worth 1,875 crores (which comes to an estimated $243 million) from ICICI Bank to Videocon Group. This was done to receive some sort of bribe from her husband's business organisations. In September 2020, Chanda Kochhar and her husband, Deepak Kochhar, were arrested under the PMLA Act. Furthermore, the ED had attached movable and immovable assets worth Rs 78 crore as part of the recovery process.

Trial of the accused in the Videocon case[100]

In February 2021, bail was granted to Chanda Kochhar by a special court in Mumbai; after this incident, Deepak Kochhar, too, was granted bail in March 2021 by the Bombay High Court. The CBI then arrested Videocon Group chairman Venugopal Dhoot for allegedly bribing Chanda Kochhar and her husband, Deepak Kochhar, in this

[99] ABG Shipyard Limited Vs. Government of India & Ors. No. 17668 of 2017
[100] Chanda Kochhar vs Icici Bank Limited Suit No.114 OF 2022

scam. In addition, the Kochhars were arrested and questioned in connection with this fraud. In addition, the Kochhars were arrested and questioned in connection with this fraud. They are currently in the custody of the CBI.

10. Yes Bank- DHFL case 2007-2017

Amount of money involved- 5,050 crore

This case is centred around Rana Kapoor, the founder and former CEO of Yes Bank, and the credit facilities provided to Dewan Housing Finance Limited (DHFL) during his tenure at Yes Bank. Moreover, DHFL promoters- Kapil Wadhawan and Dheeraj Wadhawan, amongst others, were also involved in this criminal conspiracy. While working at the bank, Rana Kapoor allegedly provided multiple credit facilities to DHFL Bank for his own economic gain. The benefits he would receive in return for this favour, inter alia, included: Receiving bribes worth 900 crores (approximately USD 116 million) from the promoter of DHFL in the form of loans to a company wholly owned by Rana Kapoor's daughters.A purchase of a bungalow in Delhi from the promoter of Avantha Group at a grossly undervalued price.

After this scam came to light, an extensive investigation was carried out, during which several abnormalities were noticed in the loans sanctioned by Kapoor for DHFL Bank. The ED affirmed that Yes Bank had bought debentures worth 3,700 crores between April 2018 and June 2018 from DHFL Bank, and the amount was transferred to DHFL. Further, DHFL sanctioned a loan of 600 crores to DOIT Urban Ventures Pvt. Ltd. (DUVPL), which was owned by Rana Kapoor and his family. This was done without adequate collateral. It was also discovered that just before sanctioning this loan, Yes Bank made investments in DHFL Bank. This clearly indicated there was a criminal conspiracy between Rana Kapoor, Kapil Wadhawan, and Dheeraj Wadhawan for receiving credit by pledging highly overvalued assets, as per the chargesheet. It was further revealed that there was no ongoing business in the DUVPL while the loan was proposed. On further investigation, it was disclosed that the entire amount was syphoned off by the Wadhawans without spending a single penny on the actual reason the loan was taken. Also, it was revealed that a major amount of money was syphoned by Rana Kapoor, who used this money to invest overseas. Consequently, in 2020, the ED attached Kapoor's properties, which were worth 2203 crores, which comes to

approximately $286 million. These properties also included the personal property of the Kapoor family. Rana Kapoor and his family have been arrested several times for further investigation into this case.

Trial of the accused in the DHFL case[101]

All the accused in this scam were charged under various sections of the PMLA Act. In 2022, Rana Kapoor and his wife were granted bail, along with Gautam Thappar, the promoter of Avantha Group. Furthermore, two builders, Avinash Bhosale and Sanjay Chhabria, who had links with this case, were taken into police custody, and their assets, worth 415 crores, were attached in this bank-loan fraud case. Presently, they are in judicial custody.

11. The National Herald case

In the National Herald case, the interim president of Congress, Sonia Gandhi, and party leader, Rahul Gandhi, among others, were accused of some economic irregularities. The ED carried out raids in 12 places in the national capital and other places in matters relating to this case. In 2012, a complaint was filed before the trial court by a leader of the Bharatiya Janata Party (BJP) and advocate, Subramanian Swamy, on the pretext that some of the leaders of the Congress party were involved in some fraud and breach of trust in the acquisition of Association Journals Ltd. by Young Indian Ltd. (YIL) and that YIL took over the assets of the National Herald in a "malicious way". Rahul Gandhi and Sonia Gandhi were summoned by the ED in a probe in relation to this case.[102] The ED is carrying out an investigation into this case. Furthermore, in 2015 in relation to Swamy's case, the Patiala House Court gave a prima facie finding on their guilt and they even had to sign a bail bond along with Motilal Vohra and Oscar Fernandes.

12. Jharkhand mining case

In the infamous Jharkhand mining case, IAS officer Pooja Singhal, the secretary of the Department of Mines and Geology and the Managing Director of Jharkhand State Mineral Development Corporation Limited (JSMDC), who is also an aide to the CM of

[101] Rana Kapoor vs Directorate Of Enforcement CRIMINAL BAIL APPLICATION NO (ST). 4999 OF 2020
[102] Rahul Gandhi vs Dr.Subramanian Swamy & Ors. CRL.M.C.3332/2014

Jharkhand, Hemant Soren, had her property raided in a money laundering case linked to the alleged embezzlement of MGNREGA funds in the state's Khunti and Chatra districts. An amount of nearly 20 crores was recovered from the officer and her Chartered Accountant, and an arrest was made against her in May 2022. Further, the ED also carried out a raid on Ranchi's Pulse Hospital, owned by her husband, Abhishek Jha. However, the 3-judge bench of UU Lalit, CJ and S. Ravindra Bhat and Sudhanshu Dhulia, has set aside the order of Jharkhand High Court, wherein the two PILs filed against Jharkhand Chief Minister Hemant Soren, were held to be maintainable and hence, it had decided to proceed in the case. The Supreme Court, however, was of the opinion that PILs were not filed with clean hands and hence, were not maintainable and were liable to be dismissed at the very threshold itself.[103]

13. School Service Commission (SSC) Recruitment scam

While carrying out an investigation, the ED recovered around 50 crores in cash, along with some jewellery, from the residence of Arpita Mukherjee, the associate of former Bengal Minister Partha Chatterjee. Following Partha Chatterjee's arrest, 21 crores in cash and jewellery were recovered from Arpita Mukherjee's home. The investigation is still being carried on in this matter, and the ED is still looking out for properties related to both the accused. Upon further investigation, Chatterjee denied his involvement in the SSC scam and affirmed that the "money does not belong to him."[104]

14. Chinese Visa case

In the Chinese Visa case, Congress MP, Karti Chidambaram, was booked by the ED for several charges relating to money laundering. This case came to light after a nationwide search was conducted by the CBI at several premises linked to P. Chidambaram and his son Karti. An FIR was lodged against them and is based on the charges that Karti accepted a bribe if 50 lakhs were accepted from Vedanta Group to facilitate visas for 300 nationals of Chinese origin for a company working together with the Vedanta subsidiary on a power project in Punjab.[105]

[103] State of Jharkhand v. Shiv Shankar Sharma, 2022 SCC OnLine SC 1541
[104] Dr Santi Prasad Sinha v. Laxmi Tunga & Ors. 2022 Live Law (Cal) 186
[105] Karti P. Chidambaram v. The Directorate of Enforcement W.P. (CRL) 739/2018

15. Patra Chawl scam

In the infamous Patra Chawl scam, Shiv Sena's MP Sanjay Raut was alleged to be guilty of economic irregularities. He has been in the custody of the ED in this money laundering case. The ED raided Raut's bungalow in Bhandup and seized approximately 11.5 lakhs from there. Further, a discovery of multiple documents and records that proved Raut paid 3 crores in cash to the seller for 10 plots of land in Alibaug was also made. The ED also alleged that Raut had tried to tamper with the evidence and influence the key witnesses in this case.[106]

16. Nawab Malik and Dawood Ibrahim's scam

Nawab Malik, Maharashtra's Minister and Nationalist Congress Party (NCP) leader, was the primary suspect in this infamous money laundering case. He was alleged to have links with fugitive gangster Dawood Ibrahim's D Company. The investigation was carried on by the ED, and a chargesheet was filed before the Special PMLA Court in Mumbai. In the complaint, the ED made mention of Malik's involvement with the D Company and affirmed he wanted to "usurp" the Goawala building compound in Kurla West in 1996. Malik is currently in the custody of the ED.[107]

17. Jammu & Kashmir Cricket Association Fund scam

In this scam, a supplementary chargesheet was filed by the ED against the former Chief Minister of Jammu and Kashmir, Farooq Abdullah. Here, there was some sort of syphoning-off of funds from the J & K Cricket Association (JKCA). This scam was carried out through multiple transactions to unidentified parties, including JKCA office bearers. These amounts were withdrawn without any reasonable justification. The ED launched an investigation based on a chargesheet filed against JKCA office bearers in 2018. After further investigations. The scam is said to be worth around 51.90 crores; however, the ED has already attached assets worth 21.55 crores.[108]

[106] Union of India v. Sanjay Raut and Ors. APPLN/340/2022
[107] Mohammed Nawab Malik vs the State of Maharashtra SLP [Crl] 6056/2023
[108] M/S Aisha Constructions vs J And K Cricket Association OWP No.1521/2018

18. Chidambaram v. Directorate of Enforcement (2019)

This case, commonly referred to as the INX Media case, refers to one of the most notorious high-profile money laundering cases. The case revolves around the economic irregularities in the foreign exchange clearance granted to INX Media Group for receiving overseas investment in 2007.Facts of the case: In March 2007, INX Media, founded by Indrani Mukherjee and Peter Mukherjee, tried to approach the Chairman of the Foreign Investment Promotion Board (FIPB) for permission for foreign direct investment (FDI) from three non-resident investors located in Mauritius. Two proposals were made, namely.To issue by way of preferential interest, non-cumulative, equitable and convertible for engaging in business for operating, creating some television channels. Moreover, the Company also required permission to make a downstream investment to the limit of 26% as well as the outstanding equity capital of M/s. INX News Private Limited.

Out of these proposals, one was approved by the FIPB, and the other was denied; however, the company fraudulently carried out the other transaction, as well. This issue came to light when the income tax department asked for justification in 2008 from INX Media, after which they approached Karti Chidambaram to leverage his family name to avoid any penalty, thus entering into a criminal conspiracy. Karti Chidambaram was said to have an economic interest worth around Rs 3.5 crore. A case known as the ECIR case, under Section 3 of the PMLA, which is punishable under Section 4 of the PMLA, was lodged by the ED. P. Chidambaram was arrested, and a bail application for the case was filed. After overturning the Delhi High Court's order, the Supreme Court granted Chidambaram bail and ordered him to pay a surety bond of Rs 2 lakh along with two other securities.[109]

19. Union of India v. Hassan Ali Khan & Ors. (2011)[110]

In this case, Hassan Ali Khan, a Pune-based businessman, was held guilty of charges of money laundering and depositing huge amounts of black money in banks of foreign origin. He was accused and arrested for having deposited around $8 billion in the Union Bank of Switzerland, amongst other Swiss banks. He was also facing allegations of

[109] P Chidambaram vs Central Bureau Of Investigation CRIMINAL APPEAL NO. 1603 of 2019
[110] CRIMINAL APPEAL NO.1883 OF 2011

owning five passports under distinct names each. He was also under the radar for any alleged terror links, as it is suspected that he had laundered money from an international arms trader Adnan Khashoggi. He filed several bail applications in several courts, including the Bombay High Court, the Hon'ble Supreme Court and the Special Court under the PMLA, but all of them were rejected. He has rejected all the allegations imposed upon him, further affirming he has no Swiss bank accounts and that some of his rivals could be behind the charges. However, he is currently in jail, considering the rejected bail applications.

20. Leading recent cases of Supreme Court on PMLA, 2002

- **Dr. Manik Bhattacharya v. Ramesh Malik**[111]

Protective order passed against one investigating agency cannot operate against another investigating agency even if there are factual similarities in allegations- Interim protection granted against coercive action by the CBI cannot operate against ED.While testing the legality of an arrest made by an agency otherwise empowered to take into custody a person against whom such agency considers subsistence of prima facie evidence of money laundering, we do not think a general protective order directed at another investigating agency could have insulated the petitioner from any coercive action in another proceeding stated by a different agency, even if there are factual similarities vis-à-vis the allegations.

- **Vijay Madanlal Choudhary v. Union of India**[112]

ECIR vis-a-vis FIR - there is no need to formally register ECIR - ECIR is internal document - there is not requirement in law to furnish copy of ECIR to accused - non-recording of ECIR does not prevent the authorities from proceeding with inquiry/investigation for attachment - it is sufficient if at the time of arrest the person is informed the grounds on which the arrest is being made; sufficient compliance of A 22(1) of the Constitution; the Court before whom the accused is produced can call ED officers for relevant records. [Para 176-179]

[111] SLP (CIVIL) NO(S). 1632516326 OF 2022
[112] WRIT PETITION (CRIMINAL) NO. 12 OF 2023

ED Manual - is internal document and in the nature of administrative orders - common public may not be entitled to access such confidential administrative instructions for internal guidance of ED - there is no investigation but inquiry akin to civil action of attachment - since the inquiry ends in identifying the offender and then they are prosecuted, Authorities can considered outlining some crucial procedures and explore the feasibility of placing document on official website of ED. [Para 180-181]

Schedule of 2002 Act - classification or grouping of offences for treating the same as relevant for constituting offence of money- laundering is a matter of legislative policy. [Para 175-175A]

Supreme Court upholds constitutionality of powers of Enforcement Directorate for arrest, search and seizure, attachment - Court upholds the constitutionality of reverse burden of proof (Section 24) and twin conditions of bail (Section 45).

Section 19 - Arrest - inbuilt stringent safeguards - power to arrest on high-ranking officers - provision to record reason regarding involvement in money-laundering - grounds of arrest to be informed to the person at the time of making arrest - copy of order along with material to be sent to Adjudicating Authority - arrested person is required to be procedure in Special Court within 24 hours of arrest. [Para 88-90]

- **J. Sekar @ Sekar Reddy v. Directorate of Enforcement**[113]

Sections 3, 4 - Even in cases of PMLA, the Court cannot proceed on the basis of preponderance of probabilities - The allegation must be proved beyond 20 reasonable doubt in the Court -It is incumbent upon the Court to look into the allegation and the material collected in support thereto and to find out whether the prima facie offence is made out. Unless the allegations are substantiated by the authorities and proved against a person in the court of law, the person is innocent. (Para 18)

[113] CRIMINAL APPEAL NO. 738 OF 2022

- **Kaushalya Infrastructure Development Corporation Limited v. Union of India[114]**

The satisfaction to be recorded by the authorised officer in terms of Section 5 of the PMLA is in two respects. The first is that the property in question had been acquired through proceeds of crime and involved in an offence of money laundering; and the second satisfaction specific in terms of Section 5(1) of the Act is that the owner/occupant of the property, who is in possession, is likely to conceal, transfer or deal with the same in any manner. This satisfaction is recorded for the purpose of interim arrangement during the pendency of the adjudication proceedings for securing the property in question. The power to provisionally attach tainted property is only of the authorised officer upon being satisfied about the existence of circumstances referred to in Section 5(1).

4.8 POSITIVE ASPECTS OF PMLA

India acceded to the Vienna Convention on 27th March 1990. The Palermo TOC was signed on 12th December 2002 but ratification is still pending. Most of the convention's provisions including the TOC convention have been implemented mainly through the NDPS act and PMLA. The international cooperation and extradition aspects are adequately covered by CrPC and the Extradition Act 1962.When PMLA came into force on 1st July 2005 in pursuance of Palermo TOC Convention, the scope of the law was too restrictive to withstand the test of international standards. However, with the extension of list of predicate offences under Schedule A and B and the addition of Schedule C offences since 1st June 2009 India has made a serious effort to bring the criminalization of money laundering under the Act, in line with the FATF criteria.

Perhaps the most revolutionary concept under the Act is to reversal of burden of proof, that is shifting the onus onto the accused to show that the property has been legally acquired. Similarly, amendments to the UAPA were enacted by Parliament on 20 December 2012 and came into force on 1 February 2013. These amendments improve India's CFT regime as follows: (i) strengthening the terrorist financing offence which addresses all of the technical deficiencies in relation to SR. II. (ii) Strengthening confiscation and provisional measures which address all of the Recommendation 3, that

[114] Special Leave to Appeal (Crl.) No(s). 565/2022

is terrorist financing related technical deficiencies. India has joined the Task Force on Financial Integrity and Economic Development in order to bring greater transparency and accountability in the financial system.

4.9 SCOPE FOR IMPROVEMENTS IN PMLA

The approach of entrusting sole jurisdiction of money laundering investigation to one agency that is Enforcement Directorate risks preventing a more mainstream response to money laundering from a wider group of law enforcement agencies. Perhaps the most scathing criticism of the Money Laundering Act is in the sphere of procedural law. The Act lays down that search, seizure and attachment can be carried out by authorities after charges have been filed in the court of law. It refers to the common phrase of locking the stable after horses have been bolted.

Moreover, considering the difficulties imposed in carrying out searches and seizures, the provision of vexatious search, under the Bill is a red-herring. The concept of stand-alone money laundering is strange in Indian context as the practitioners cannot conceive the idea of pursuing laundering offence as sui generis one, and even stress the stand that conviction of predicate offence only would meet the evidentiary requirements under PMLA effective. This attitude is due to the practice of starting money laundering investigation on the basis of a predicate offence case, though the law provides that the predicate offence and money laundering offence can be preceded concurrently.

Section 132 of the Income Tax Act does not confer any capricious power upon the revenue officers. Since by the exercise of such powers a serious invasion is made upon the rights, privacy and freedom of the tax payer, the power must be exercised strictly in accordance with the law and only for the purpose of which the law authorizes it to be exercised.

In Section 3 for the words “proceeds of crime and projecting” the words “proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming”. This is to overcome the FATF MER 2010 (Para 166- Implementation and effectiveness) Clause 2 (f) containing definition of “Financial Institution” was substituted to include an institution as defined under Sec.45-I of RBI Act, 1934, chit fund company, housing finance institution, authorized person, payment system operator, NBFC and Department of postsSec.14 is substituted to the effect that save as otherwise provided under Sec.13 of the Act, the reporting entity, its Directors and

employees shall not be liable for any civil or criminal proceedings against them for furnishing information under Sec.12(1)(b).

Sec.14 prior to amendment read as follows" save as otherwise provided under Sec.13, the banking companies, financial institutions, intermediaries and their officers, shall not be liable to any civil proceedings against them for furnishing information under Sec.12(1)(b). Though the amendment has added immunity from criminal proceedings also, the rationale behind omitting the entities and bringing Director and employees is not known, especially when the terminology is not used in banking sector and intermediaries.

India has an adequate system for freezing terrorist related assets. But it lacks in issuing proper instructions to regulated financial institutions in dealing with frozen assets, for example the affected person has no access to his funds even to meet his basic expenses. Instructions are to be issued to consider request for release of funds for basis expenses, in terms of mandate I UNSCR-1452. Individual regulatory authorities such as RBI, SEBI and IRDA have issued their own circulars. However there has been only a limited attempt to standardize the circulars, with the results that there are marginal variations in the obligations imposed on different sectors. For example, there is a range of circulars, all of which have similar messages, but which contain different language and impose marginally different obligations. While some differences may be due to different nature of business, many simply reflect different drafting style of various agencies.

CHAPTER 5

COMPARATIVE STUDY OF MONEY LAUNDERING LEGISLATIONS OF US & UK

5.1 Overview of Money laundering legislation in US

Three important statutes were passed in the US during the year 1970. First BSA codified at 31 USC ss 5311-5322 required certain banks and other financial and NBFC to retain records and report certain financial transactions over $10,000. Secondly Congress passed the RICO statute which included both civil and criminal forfeiture provisions. Thirdly congress directed attention to major drug trafficking organizations by passing Continuing Criminal Enterprising Statute (CCE) codified at 21USC ss848 as part of Controlled Substances Act, 1970.[115]

5.1.1 Banking Secrecy Act (BSA)

Until the year 1960 the annual income return was the only source of information for American authorities about the citizens. In 1970 BSA was enacted which in spite of its name is a disclosure law defining the circumstances that allow the lifting of banking secrecy rules. Title I of the Act provides for number of record keeping duties and for an obligation to ask for the customers fiscal identification number. The most important feature of the Act is however contained in Title II which authorizes the secretary of the Treasury to lay down reporting duties. American financial institutions should file CTRs every time they carry out transaction above US$ 10,000 (31USC 5313). These threshold based reports should be filed with the FinCEN.[116]

BSA the first AML in US created financial reporting requirements to broad group of entities including banks, life issuers, money service business, security brokers, credit card firms etc. It put in place paper trail regime for law enforcement officials.[117] The Currency and Foreign Transaction Reporting Act of 1970 which is known as Banking Secrecy Act (BSA) attempted to curtail money laundering efforts by introducing a

[115] James R. Richards (1999) "*Transnational Criminal Organizations, Cybercrime & Money Laundering – A Handbook for Law Enforcement Officers, Auditors and Financial Investigators*" CRC Press
[116] McClean D, "Money-Laundering: A New International Law Enforcement Model. By GUY STESSENS.Cambridge: Cambridge University Press, 2000. Xxvi + 460 Pp. 50" (2002) 72 British Yearbook o International Law 407 <http://dx.doi.org/10.1093/bybil/72.1.407> accessed on 15 May 2023
[117] Asheesh Goel, et al. "International AML Enforcement Trends & Developments", Ropes and Gray

concept called 'Currency Transaction Reports' (CTR). However criminals found out an easier way to avoid detection through CTR by paying off bank officials.[118] The irony of the name (BSA 1970) as frequently noted, the statute was intended to limit rather than protect bank secrecy. Banks acquired an affirmative duty to provide transaction details to Treasury. With a thrust towards regulation BSA only criminalized failure to report, and not the provision of services to facilitate criminal act.[119] Though the BSA did not directly criminalize the act of money laundering, it rather sought to use the records to prosecute the underlying criminal activity inherent in money laundering. BSA has been amended continuously since its enactment. Even after more than four decades of its enactment, and revised a number of times, the BSA still provides one of the most commonly used tool in fighting money laundering, that is imposition of still penalties for failure to follow regulations.[120]

BSA focuses its attention at the placement stage of money laundering process on the assumption that at this stage only the taint associated with illegal money is strongest. The legislation helps investigations to reconstruct a paper trail and to map the movement of funds associated with illegal activity. It operates as a potential warning system alerting the investigation and enforcement agencies about suspicious transactions requiring investigation. BSA does not create a money laundering offence in its own right.[121]

BSA is aimed at creating and conserving documentary evidence and establishes flow of financial information from financial institutions to law enforcement authorities. The BSA also prohibited structuring transactions of more than US$ 10000 to avoid reporting requirements to target "smurfs" hired by launderers to make multiple deposits or purchase of cashiers cheque in amounts below the US$10000 threshold.[122] The Bank Secrecy Act originally did not include laws that were targeted to prevent terrorist financing by way of money laundering which was overcome after passing of USPATRIOT Act 2001 The act included provisions on counterfeiting, information

[118] Honors Project overview (2006) "Tax Fraud, Money Laundering and the Financing of Organized Crime" <http://digitalcommons.ric.edu/honors_projects/26; p13-15> accessed on 28 May 2023

[119] Levi M and Reuter P, "Money Laundering" (2006) 34 Crime and Justice 289 <http://dx.doi.org/10.1086/501508> accessed on 07 May 2023

[120] Paul Fagyal (2005), "The Anti-Money Laundering Provisions of The Patriot Act: Should they be allowed to Sunset?" 50 St. Louis U. L.J. 1361 2005-2006; p1369,1373

[121] Hinterseer K, "The Wolfsberg Anti-Money Laundering Principles" (2001) 5 Journal of Money Laundering Control 25 <http://dx.doi.org/10.1108/eb027291> accessed on 19 May 2023

[122] Paul Bauer (2001), " Understanding the Washing Cycle", *Economic Perspectives* Vol-2 No.6 *An Electroni Journal of US Dept of State*; p20

gathering and sharing, victims, and bribery of a public official. This law also made laundering money through a foreign bank a criminal offence. Although noncompliance with the duties imposed under BSA can be criminally and civilly enforced (31 USC 5321, 5322) merely transacting or transporting monies is not incriminating as such.
The BSA has been subject to challenges and criticism also. First the compliance cost it brings with it. Second it infringes on Fourth Amendment protection of US Constitution against unreasonable search and seizure, and the Fifth Amendment protection against self-incrimination. During the early years of existence of BSA it was largely ignored, as it contained a loophole known as structured transaction or 'smurfing' loophole which enabled launderers to easily bypass the legislation. Further some financial institutions were willing to accept cash deposits from clients, and gradually deposited the same later in to clients accounts.

5.1.2 The Racketeering Influenced and Corrupt Organization Act 1970 (RICO)

The Racketeering Influences and Corrupt Organization Act (RICO) was one of the first instruments through which US sought to tackle the financial elements of crime. The purpose of RICO is twofold. First it sought to limit the expansion of existing criminal trades by preventing the reinvestment of revenue into the underlying trade or into any other trade whether lawful or unlawful. Secondly the Statute sought to capture significant players, namely the kingpins of crime. It was one of the first US statutes to resurrect criminal forfeiture, a doctrine banished from American criminal law almost a century earlier.[123] It is one of the most important legal weapon in America's hand to fight organized crime and money laundering. RICO makes four types of activity unlawful. First, to use income derived from racketeering activity to acquire an interest in, or to establish an enterprise engaged in interstate commerce. Second to acquire any enterprise involved in interstate commerce through a pattern of racketeering activity. Third to operate any enterprise engaged in interstate commerce through a pattern of racketeering activity. Fourth to conspire to violate any of the above provisions. The statute is both civil and criminal in nature and has four main sections. Section 1961 defines 'racketeering' concerning money laundering predicate offences, 'enterprise', 'racketeering activity' and 'pattern' . This Act like MLCA provides that at least one of

[123] Gallant M, "Tax and the Proceeds of Crime: A New Approach to Tainted Finance?" (2013) 16 Journal of Money Laundering Control 119 <http://dx.doi.org/10.1108/13685201311318476> accessed on 23 May 2023

the specified predicate offence must have been committed before a racketeering charge is brought. Sec.1962 defines prohibited activities. The predicate offences are listed in Section 1961 (1) and two substantive offences are created under Sec.1962 (a) and Section 1962 (b).

Use of the word 'unlawful' highlights the fact that the statute has both civil and criminal consequences. Most of the cases are brought under purview of Section 1962 (c) which makes it a criminal offence not only to acquire but also to conduct the affairs of an enterprise in a manner that involves a pattern of racketeering activity. In support of RICO the Comprehensive Forfeiture Act, 1984 was introduced to expand the scope of civil and criminal forfeiture. It was accompanied by inserting Sec.1963 (a) (B-20/P-215) The important aspect in ROCI is forfeiture involves civil procedures and standards of proof, and hence safeguards exist to protect the rights of defendants as the same are less rigorous than a criminal law. From a law enforcement perspective the RICO is a disappointment in the first 10 years as between 1971 to 1981 on an average only 30 cases of RICO indictments were filed each year. Certainly for some law enforcement agencies RICO has been seen as a tool to generate money, support their budget and help them achieve their statistics and targets.

5.1.3 Money Laundering Control Act, 1986 (MLCA)

Driven in large part by the explosive growth of the international drug trade in the 1980's, efforts to combat the problem generally expanded proportionately. For example, the United States passed the Money Laundering Control Act of 1986,Later amendments and expansions of the provisions of the Money Laundering Control Act followed in 1990,1992,1994and 1996.[124]

In the US during 70s a shift I strategy occurred as focus was on how to deprive the criminals and their organizations, the tools of trade. Forfeiture was therefore used to seize instruments of crime. For the narcotic smugglers not only the raw materials but also the equipment used to manufacture and transport drugs were subject to seizure. During 80s the shift was on the profits generated by crime. To quote Senator Joseph Biden Jr when he introduced MLCA 1986 "Regrettably every dollar laundered meas another dollar available in support of new supplies of cocaine and heroin on the streets

[124] Welling SN and Todd D, "International Strategies to Combat Money Laundering" (1996) 7 Criminal Law Forum 703 <http://dx.doi.org/10.1007/bf02197826> accessed on 19 May 2023

of the country". The government must prove four elements to obtain a conviction under the Act: (i) knowledge, (ii) the existence of proceeds derived from a specified unlawful activity, (iii) the existence of a financial transaction, and (iv) intent.[125]

As the Congress felt that BSA has not been effective in controlling money laundering, it enacted MLCA as part of Anti-Drug Abuse Act 1986. MLCA went one step further by actually criminalizing the act of money laundering. MLCA brought in safe harbor provisions by protecting financial institutions from civil liability for providing information to government.[126]Before the Money Laundering Act 1986 came into force the defendants have to be prosecuted under respective Statutes for the 'underlying unlawful activity' which has resulted in money laundering, such as fraud, bribery, tax evasion, conspiracy etc. From a monetary perspective life for alleged violators gets nasty when the forfeiture laws are applied. Under the Civil Asset Forfeiture Reform Act of 2000, the U.S. government to seize assets, must show probable cause that the property is from criminal activity. For civil forfeiture case has to be proved by preponderance of evidence, and for criminal forfeiture the case has to be proved beyond reasonable doubt. Forfeited assets may be shared with all law enforcement agencies involved in obtaining a conviction, a policy that has been particularly effective in obtaining cooperation from some foreign law enforcement agencies.

Under its sentencing guidelines, money laundering is punished more severely than the underlying offence. Congress wanted it to have extra territorial effect. The MLCA broadly criminalizes all types of transactions involving any item of value and any movement/concealment of funds if the item of value stems from criminal offences specified. The Act gives prosecutors a tool to reach public/private conduct anywhere in the world, when a person is suspected of entering into monetary transactions knowing well that the funds were derived from unlawful activity.[127] Specific provisions of money laundering Act are structured in to three parts namely, transaction clause, transportation clause, and the sting clause. The first two clauses forms part of the crime, while the third clause – sting clause allows for prosecution of a case where government official only represent the items to be proceeds of relevant predicate crimes. The Act is framed

[125] Driggers, Anna (2011), "Money Laundering" 48 *Am. Crim. L. Rev*. 929 2011

[126] Gittleman CS and Sacks RD, "Anti-money Laundering Regulations: Treasury Department Enacts Final Rules Implementing Section 312 of the PATRIOT Act Relating to Foreign Correspondent Accounts and Private Banking Accounts" (2005) 6 Journal of Investment Compliance 1 <http://dx.doi.org/10.1108/15285810510681865> accessed on 16 May 2023

[127] Gray J, "New Light on Green Developments" (1992) 2 Trends in Cell Biology 57 <http://dx.doi.org/10.1016/0962-8924(92)90164-i> accessed on 06 May 2023

broadly, criminalizing all types of transactions involving any item of value, generally movement or concealment of funds, where the item of value stems from any one of a wide range of criminal offences. Although the process of laundering money involves multiple steps, the government needs to show sufficient evidence regarding only one of these steps to prove the crime of money laundering under the Money Laundering Act. In other words, while the process of laundering the money may occur in multiple steps, the crime of money laundering is committed by involvement or participation in any one of the steps. To put it simply a single step of laundering is enough to press for a conviction.[128]

5.1.4 Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (US PATRIOT Act, 2001)

After the 11thSeptember 2001 attacks the government was able to overrule industry concerns and introduce elementary requirements of identification of beneficial owners especially the source of funds. Some of the provisions enacted in the AML legislation were pending considerations for quiet a long time, and after the 9/11 attacks US Congress speedily enacted a tough new law. Even before new regime came into force the President of US used the International Emergency Powers Act to block all property controlled by foreign persons, ad groups linked to terrorism.[129] US Patriot Act is an extremely wide ranging act which include provisions on criminal laws, transporting hazardous materials, money laundering and counterfeiting, investigations and information sharing, federal grants, victims, immigration and US domestic security.[130] US PATRIOT Act made around 52 amendments to the existing BSA 1970, touching every financial institutions and business in the US as well as around the world. In a matter of weeks after the September 11 attacks virtually all the proposals of AML legislation under debate for months and years were passed as part of the The Uniting and Strengthening America Act by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act, otherwise known as the US Patriot Act. It also clears up

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[128] Ibid

[129] Cassella SD, "Money Laundering, Terrorism, Regulation, Laws and Legislation" (2003) 7 Journal of Money Laundering Control 92 <http://dx.doi.org/10.1108/13685200410809814> accessed on 10 May 2023

[130] Forman MM, "Combating Terrorist Financing and Other Financial Crimes through Private Sector Partnerships" (2006) 9 Journal of Money Laundering Control 112 <http://dx.doi.org/10.1108/13685200610645265> accessed on 18 May 2023

the confusion as to whether laundering money through a foreign bank is an offence. Section 318 makes it a crime to launder money through foreign banks by expanding the MLCA to include financial transactions conducted through foreign banks. It does this by expanding the definition of 'financial institution' to include 'any foreign bank', as defined in Section 1 of the International Banking Act of 1978. This, of course, means that it is now an offence under US law to launder money exclusively through a foreign bank.[131]

The US in terms of Sec.311 of US PATRIOT Act is empowered to designate a foreign jurisdiction, institution, class of transaction or type of account to be treated as 'primary money laundering concern' and impose special measures to those jurisdictions or institutions as the case may be. In coordination with other FATF countries this provision allows US to apply pressure on non-cooperation jurisdictions.[132]

One of the most contentious parts of this Act is Section 317, which gives US Federal Courts jurisdiction over any foreign bank that maintains a bank account at US financial institution. Under this provision even if the transaction was carried out entirely outside US, since the foreign institution holds a bank account at US financial institution, it would be subject to jurisdiction of US Federal courts. This Section 317 is clearly an effort by US government to put pressure on foreign financial institutions seeking access to US financial systems and markets to enhance their AML policies and to reduce the risks that may arise if their funds with the US financial institutions are seized.[133]

Section 319 of the US PATRIOT Act permit US authorities to seize foreign banks inter bank account to reach tainted money deposited in the foreign bank outside the jurisdiction of US. This provision is helpful in countries who do not have treaty with US or do not extend cooperation. Further the authorities in US are not required to show that the funds in any inter bank account are related to the tainted funds at issue, to enforce Section 319. Although a powerful tool, this provision has raised diplomatic controversies with countries whose banks have been affected.[134] According to Sec.329

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[131] Hopton D, "Prevention of Money Laundering: The Practical Day-to-Day Problems and Some Solutions" (1999) 2 Journal of Money Laundering Control 249 <http://dx.doi.org/10.1108/eb027190> accessed on 17 May 2023

[132] Edward J. Krauland And Aaron R. Hutman (2004), "Money Laundering Enforcement and Policy" *The International Lawyer*, Vol. 38, No. 2, International Legal Developments in Review:2003 (Summer 2004), pp. 509-519 American Bar Association

[133] Asheesh (n 174)

[134] Ching C, "Recent Developments in Taiwan's Anti-money Laundering and Anti-terrorism Work" (2004) 7 Journal of Money Laundering Control 308 <http://dx.doi.org/10.1108/13685200410810029> accessed on 03 May 2023

it is a federal crime to engage in corruption while administering the AML scheme, and offenders are liable for imprisonment upto 15 years and fine not exceeding more than 3 times of the value of bribe.[135]

5.1.5 Comparative Analysis and Conclusion

Money laundering was reported to be first criminalized in the US as a 'ancillary offence'. They are identified by conduct involved in commission of substantive offence or which resulted in the aftermath of a primary harm crime (Abrahams-1989-2) In view of this there can be no money laundering offence without a predicate offence.[136] It is useful to think of the regime as having two basic pillars, prevention and enforcement is present. The prevention pillar deters criminals from using the financial institutions to launder proceeds of crime, and by also putting in place sufficient transparency to deter the willingness of institutions to launder. If despite the preventive efforts if the criminals have laundered successfully, then the enforcement pillar takes steps to punish them. The prevention pillar has four key elements, CDD, Reporting, Regulation & Supervision, Sanctioning. The enforcement pillar similarly has four elements predicate crime, investigation, prosecution & punishment and confiscation.[137]Due to emergence of increasingly complex, inter-reliance criminal syndicates in 90s a time had come for committed response from government. With a gap of every 2 years, a combination of new task forces, laws, and agencies were formed. The FinCEN was established to co-ordinate the efforts to detect financial crimes in US by using the existing laws. Though FinCEN was initially formed as a research wing, its responsibilities were expanded to receive and analyze all CTR, CMIR and FBAR and also to develop new tools to ensure compliance with AML laws. Until 1986 drug dealers, when apprehended, were able to retain the proceeds of their crimes, and perhaps were also able to enjoy its fruits, after return from the prisons. Now not only are they not allowed to keep the proceeds, but attacks are being made upon all of the principal mechanism by which they conceal their links to the money.[138]

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[135] Madsen W, "US Patriot Act II — More Snooping Powers" (2002) 2002 Network Security 2 <http://dx.doi.org/10.1016/s1353-4858(02)11002-6> accessed on 17 May 2023

[136] Nguyen Le C, "The Growing Threat of Money Laundering to Vietnam" (2013) 16 Journal of Money Laundering Control 321 <http://dx.doi.org/10.1108/jmlc-05-2013-0014> accessed on 23 May 2023

[137] Levi M and Reuter P, "Money Laundering" (2006) 34 Crime and Justice 289 <http://dx.doi.org/10.1086/501508> accessed on 12 May 2023

[138] Lusty D, "Civil Forfeiture of Proceeds of Crime in Australia" (2002) 5 Journal of Money Laundering Control 345 <http://dx.doi.org/10.1108/eb027317> accessed on 12 May 2023

US as reported earlier, is among the foremost in the world to enact a legal regime toward combating money laundering, the term which incidentally was also coined in the context of US. Starting in 70s it is the only country in the world which periodically updates and revises its AML regime in response to global changes. In the last decade or so it has brought in a number of statutory amendments and structural changes. In 90s itself he US has brought in a strong FIU network. Though the AML regime was initially governed through various Acts like the UK, the induction of PATRIOT Act brought out stringent measures to support the US Code, Banking Secrecy law, and strengthened the efforts of law enforcement in prevention of terrorist financing. PATRIOT Act also brought in hefty civil and criminal penalties, apart from change in imprisonment for laundering related offences. On the whole the US has put in place a strong and well structured AML system in terms of both men and material, and experts agree that on the whole the implementation process of Treaties and Conventions in US is very high, when compared to other jurisdictions. In contrast in India the AML legislation is a sui-generis one, the Prevention of Money Laundering Act, 2002, which came into force on 1st July 2005. Unlike the US regime, India follows a predicate crime based laundering offences, which forms part of the Schedule to the Act. takes into account the offences committed under 28 different enactments. In other words if the predicate crime is one which is covered under the Schedule to PMLA, or in the sense it is an offence in terms of the provisions relating to the said 28 statutes, and if a person is alleged to be engaged in laundering the proceeds of such offence, then he is liable under the PMLA. The predicate offences under PMLA are not broader unlike the US which covers all the 20 designated categories of offences listed by FATF, and follows a all-crimes approach, while in India several offences are yet to be included. As far as fines and penalties are concerned they are negligible in India, when compared to stringent penalties, and needs improvement. The term of imprisonment though not high in India as compared to the US, considering other criminal enactment, and the law being in nascent stage, and the offences one of economic nature, the terms prescribed appears to be satisfactory.

5.2. Anti-Money Laundering Legislation in UK

Many factors including the volume of legitimate transactions taking place in financial sector daily in UK, makes it attractive for those who are engaged in concealing illegal origin of funds. UKs connection with Commonwealth countries and off-shore centres, are important reasons for the country to take a lead position in acting against dirty

money.[139]The policy of UK towards AML are dictated by three basic objectives. (a) to deter – through enforceable safeguards and supervision (b) to detect using financial intelligence by identifying and targeting launderers and (c) to disrupt- by maximizing the use of available penalties such as prosecution or asset seizures.[140]

5.2.1 Drug Trafficking Offence Act, 1986 (DTOA 1986)

Though DTOA 1986 was restricted to drug related money laundering, it was the first time in UK when financial institutions are required to report when they suspect drug trafficking or have knowledge about the same. A situation may arise that a financial institution may be genuinely suspicious about a transaction or a customer, but may not have enough information or knowledge to come to a conclusion that the funds are from drug trafficking.[141]

The DTOA 1986 is considered as a landmark piece of legislation. It contained provisions to strip drug traffickers of proceeds of crime through confiscation orders. In conjunction with Criminal Justice (International Cooperation) Act 1990 the Act created five money laundering offences., strengthened by Part of Criminal Justice Act, 1993.[142] Though there has been specific AML obligation in UK since passing of DTOA 1986, there has been no attempt to regulate money laundering in financial services sector. Historically the financial services industry is littered with scandals of money laundering. Financial regulatory bodies have not been given sufficient enforcement powers or a clear legislative mandate to tackle money laundering.[143]Whilst the offences in the DTOA could be committed by any person, the legislations greatest impact was on the banking sector as this segment was the first port of call for drug traffickers.

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[139] Transparency International (2009) UK, "*Combating Money Laundering & Recovery Looted Gains – Raising the UK's Game*"; p40

[140] Ibid; p16

[141] Hopton D, "Prevention of Money Laundering: The Practical Day-to-Day Problems and Some Solutions" (1999) 2 Journal of Money Laundering Control 249 <http://dx.doi.org/10.1108/eb027190> accessed on 19 May 2023

[142] Leonard Jason Lloyd (1997), *The Law on Money Laundering – Statutes and Commentary*, Frank Cass, Portland; p4

[143] Rickett CEF, "The Frontiers of Liability. Volume 1. Edited by Peter Birks. [Oxford: Oxford University Press 1994. Xvii and 203pp. Paperback. £25.00 Net. ISBN 1–19–825902–6.] - The Frontiers of Liability. Volume 2. Edited by Peter Birks. [Manchester and New York: Manchester University Press. 1994. Xxiii and 226pp. Paperback. £30.00 Net. ISBN 0–19–825951–4.]" (1995) 54 The Cambridge Law Journal 447 <http://dx.doi.org/10.1017/s0008197300083720> accessed on 19 May 2023

5.2.2 Drug Trafficking Offence Act, 1994 (DTOA 1994)

The 1986 Act has subsequently been replaced by the DTA 1994. Further anti-money laundering provisions appeared in a range of legislation, including the Criminal Justice Act, 1993 which took account of the Council Directive 91/308/EEC.[144] A person is deemed to have violated DTOA when suspecting or knowing someone else is a drug trafficker, either holds or controls the illicit proceeds or provides the trafficker with any assistance in investing the funds. Sec.24 of the Act creates a criminal offence out of assisting a drug trafficker in retaining proceeds of the crime. Similar to Sec.24 of DTOA, under Sec.50 of DTA 1994 any one who enters into an arrangement to facilitate another's retention of drug money, and who knows or suspects that the individual is someone benefiting from drug trafficking is guilty of an offence.[145] Sec.51 of the DTA 1994 establishes the offence of knowingly acquiring or possessing property derived from drug trafficking. As a result, criminal liability is extended to those who know that a particular person is involved in drug trafficking and acquires or uses property which represents the proceeds of the drug trafficking. Under Sec.52 (1) the mere knowledge that an individual is or may be involved in laundering the proceeds of drug trafficking in certain cases is a criminal offence.

The DTA, 1994 was passed which consolidated all the existing laws pertaining to drug trafficking offences previously held within the Drug Traffic Offences Act, 1986 the Criminal Justice (International cooperation) Act 1990, and the Criminal Justice Act, 1990.

5.2.3 Criminal Justice Act, 1993 - CJA 1988/1993

The CJA 1988 is designed to act against all serious crimes, except drug trafficking or terrorism which are subject matters of other legislation, and it applies to such crimes have a significant organized element in their commission. However, no money laundering offences were introduced by the 1988 Act with regard to 'relevant criminal conduct'.

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[144] Ambos K, "Current Issues in International Criminal Law" (2003) 14 Criminal Law Forum 225 <http://dx.doi.org/10.1023/b:cril.0000037067.63289.a6> accessed on 16 May 2023

[145] Harris D and Hellman S, "Cayman Islands: Anti Money-Laundering Legislation — The Proceeds of Criminal Conduct Law 1996" (1997) 1 Journal of Money Laundering Control 104 <http://dx.doi.org/10.1108/eb027127> accessed on 19 May 2023

These were later introduced through CJA 1993.[146]The UK government after some time recognized that distinguishing drugs from non-drugs proceeds was artificial, which resulted in new offences introduced into the CJA 1988 by the CJA 1993 which applied to the proceeds of indictable non drug offences Separate offences relating to terrorist money laundering were created by Prevention of Terrorism (Temporary Provisions) Act 1989. The offences in each Act were broadly similar though they contained important differences.[147]

Despite the provisions empowering criminal confiscation under the DTA 1994 and the CJA, it was still possible for organized criminal gangs to benefit from ill-gotten gains, even after conviction of serious crimes. In June 2000 a Cabinet Office report suggested for consolidation of existing money laundering and confiscation laws into a single piece of legislation, known as POCA, which eventually broadened the scope of legislation relating to seizure of cash by adopting an all-crimes approach. It also increased the investigative agencies' powers of restraint and simplified the confiscation procedure. POCA contains detailed procedures for the recovery of the proceeds of crime in the UK after a criminal conviction. Confiscation according to the Act not only relate to benefits from specific crime for which conviction has been secured, but also of other assets if it is established that the defendant has 'criminal life style', which of course is presumed under certain circumstances, including the offence of money laundering.. Confiscation proceedings are carried out with civil standard proof.[148]The Proceeds of Crime Act, 2002 which came into force in February 2003 consolidates the existing confiscation provisions relating to drug-trafficking and other criminal offences and creates new powers of civil forfeiture without conviction.[149]The Act also introduces specific coercive powers to assist with investigations in money laundering. These powers are more intrusive than were previously available in an investigation into the proceeds of crime and have been justified on the ground that the government is committed not only to prosecuting crime bt also to confiscating proceeds of crime. Part 1 of the Proceeds

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[146] Ibid

[147] International Monetary Fund, "Australia: Mutual Evaluation Report: FATF Recommendations for Anti Money Laundering and Combating the Financing of Terrorism" (2006) 06 IMF Staff Country Reports 1 <http://dx.doi.org/10.5089/9781451802153.002>. accessed on 09 May 2023

[148] International Monetary Fund, "Austria: Detailed Assessment Report on Anti-Money Laundering and Combating the Financing of Terrorism" (2009) 09 IMF Staff Country Reports 1 <http://dx.doi.org/10.5089/9781451802481.002> accessed on 18 May 2023

[149] Bohlander, "Book Review: International Criminal Law, Ilias Bantekas/SUSn Nash and Mark Mackarel."(2002) 2 International Criminal Law Review 409 <http://dx.doi.org/10.1163/156753602761061833>

of Crime Act, 2002 deals with creation of Asset Recovery Agency which is a major innovation in UK laws. Money laundering is criminalised in the UK by virtue of the Proceeds of Crime Act 2002 (POCA 2002) as amended by the Serious Organised Crime and Police Act 2005 (UK). Under POCA a person is deemed to have committed an offence by concealing, disguising, transferring or converting criminal property or by removing criminal property from UK. Under the Act it is an offence for entering into, or becoming concerned with an arrangement known or suspected to facilitate acquisition use, retention or control of criminal property.[150]

The UK through Proceeds of Crime Act, 2002 introduced an 'all crimes' approach to predicate offences to money laundering. POCA marked a decisive shift away from viewing money laundering as an ancillary offence to other crimes and to recognize it as a complex crime in its own right. The all-crimes approach in the Act is supported by Terrorism Act, 2000. The English courts, in their interpretation and application of POCA have further refined and clarified the scope of the civil and criminal offences.[151]The widening of the scope of legislation to apply to the proceeds of all criminal activity marked a key point in the development of the UK anti-money laundering regime. The implementation of the Proceeds of Crime Act 2002 ("POCA") as the first UK statute to deal with money laundering specifically marked a decisive shift away from viewing money laundering as an ancillary offence to other crimes, to recognizing it as a complex crime in its own right. The "all crimes" approach of POCA is further supported by the Terrorism Act 2000 which tackles money laundering in the context of terrorism. The introduction of the TA illustrates how UK legislators will adapt and respond to new money laundering threats.[152] POCA widens the previously existing money laundering offences. PCA expresses the money laundering offences in very simple terms. As per Section 340 (11) of PCA it is an act which (i) constitutes an offence under PCA Sec.327, 328 or Sec.329 (ii) constitute an attempt, conspiracy or incitement to commit one of those offences (iii) constitutes aiding, abetting, counseling or procuring the commission of one of those offences (iv) would constitute any of the above offence if done in UK Part 7 of the POCA 2002, that is Section 327 to Section

[150] Punch M and Beare M, "Critical Reflections on Transnational Organized Crime, Money Laundering and Corruption" (2005) 30 Canadian Journal of Sociology / Cahiers canadiens de sociologie 227 <http://dx.doi.org/10.2307/4146133> accessed on 04 May 2023

[151] Gray J, "New Light on Green Developments" (1992) 2 Trends in Cell Biology 57 <http://dx.doi.org/10.1016/0962-8924(92)90164-i> accessed on 08 May 2023

[152] Ibid

340 contains provisions to tackle the government's will to fight organized crime. The definition of 'criminal property' is sufficiently wide enough to include the merest of transgressions. The Act focuses on seeking to disrupt the ease with which it is possible to clean tainted funds, through three-pronged strategy. First the Act penalizes those who attempt to assist, agree to assist, or do in fact assist in laundering criminal property. Secondly the act enforces disclosure regime for those in the 'regulated sector' who come across suspicious transactions in the course of their business or professional activities. Thirdly the Act assists the investigation by penalizing those who warn the money launderers of any proposed investigation by the agencies. The POCA consolidates the money laundering offense in an attempt to simplify the framework by creating three principal offense of 'concealing criminal property' u/s 327, 'facilitating the retention or control of criminal property' u/s 328 and 'possessing criminal property' u/s 329 punishable by 14years imprisonment. In addition two ancillary offences are created of 'failure to disclose regulated sector' u/s 330 and 'tipping off' u/s 333 both punishable by 5 years imprisonment on conviction on indictment[722].The offences under POCA are, money laundering, which may be committed by (a) (i) concealing, disguising, converting or transferring criminal property, or removing criminal property from the UK (See Sec.327) (a) (ii) entering into or becoming concerned with an arrangement and knowing[153] The POCA money laundering provisions are also directed towards detecting criminal proceeds through three types of individuals. First types is those who 'benefit' from 'property' which is derived from 'criminal conduct'. Second ones are those who 'use' and the third category is those persons who come into possession of 'property' which is derived from 'criminal conduct'. These terms are defined in the Act in similar terms, particularly in the context of criminal confiscation and civil recovery.[154]

or suspecting that the arrangement facilitates (by whatever means) the acquisition, retention, use or control of criminal property, by or on behalf of another person (See Sec.328) and (a) (iii) acquiring, using, or possessing criminal property (See Sec.329) It also covers(b) failing to disclose money laundering to the authorities, (c) tipping-off a third party that a disclosure has been made to the authorities, or making a disclosure

[153] Bell RE, "Discretion and Decision Making in Money Laundering Prosecutions" (2001) 5 Journal of Money Laundering Control 42 <http://dx.doi.org/10.1108/eb027292> accessed on 03 May 2023

[154] Rees, Edward QC, et al. (2008), *BlackStone's Guide to the Proceeds of Crime Act, 2002" 3rd edition* ,OUP; p130

that is likely to prejudice an investigation. Falsifying concealing or destroying evidence will also constitute an offence.[155]

5.2.4 Money Laundering Regulations (MLR)

It is worth to emphasize that money laundering regulations (MLR) are secondary legislation and have the force of law. FSA rules are also enforceable as breach of any of the rules may attract sanctions. The Money Laundering Regulations 2003, came into effect on 1 March 2004 to implement the Second EU Money Laundering Directive. They also replaced, consolidated and updated the Regulations of 1993 and 2001. It was laid before Parliament on 28 November 2003, implement into UK law the requirements of the Second EU Money Laundering Directive, and came operational from 1st March 2004.The law and regulations, coupled with rules issued by regulators, are complex, to say the least, and in some ways termed as contradictory. These laws or regulations insist that one should comply without any guidance about compliance. However this is improved by guidelines of JMSLG (Joint Money Laundering Steering Group). JMSLG guidance notes which has been approved by HM Treasury have a tremendous influence on AML procedures as they have not only been used in UK but in other countries as blueprint for their guidance notes.[156] The MLR grants the FSA power to impose civil penalties against authorized firms, authorized individuals. It may impose fines in amounts it considers appropriate.[157]

In UK the 3rd Money Laundering Directive is implemented party through Money Laundering Regulations 2007 (MLR 2007) as far as relating to CDD and record keeping, and party through Part VII of POCA 2002, and Part III of Terrorism Act, 2000). It has gone beyond the minimums imposed by the directive in two ways. First, by adopting an all-crimes approach instead of referring merely to the proceeds of "serious crimes", and secondly, by imposing criminal liability for failure to comply with the AML requirements.[158]

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[155] Levi M (n 194)

[156] Hopton D, "Prevention of Money Laundering: The Practical Day-to-Day Problems and Some Solutions"(1999) 2 Journal of Money Laundering Control 249 <http://dx.doi.org/10.1108/eb027190> accessed on 23 May 2023

[157] Levi M (n 194)

[158] Miriam Goldby (2012) "Anti-Money Laundering Reporting Requirements Imposed by English Law Measuring Effectiveness and Gauging the Need for Reform"- Journal of Business Law – 2013 -J.B.L. 2013, 4, 367-397; p3

The Money Laundering Regulations 2007 (MLR 2007) implement the provisions of the money laundering directive into UK law. The Money Laundering Regulations 2007 require firms to apply customer due diligence measures on a risk-sensitive basis. The Money Laundering Regulations (MLR) place a general obligation on firms within its scope to establish adequate and appropriate policies and procedures to prevent money laundering. Failure to comply with this obligation risks a prison term of up to two years and/or a fine.

The UK money laundering regime can be divided in to two areas namely, substantive offences, administrative & regulatory requirements. The administrative requirements are set out in, Money Laundering Regulations, (MLR) and MLR 2007 apply only to the firms in regulated sector In addition financial institutions are also subject to regulation by Financial Services Authority (FSA) The substantive offences some of whom apply to regulated sector, while some apply to all persons is set out in Part VII of POCA 2002.

5.2.5 Comparative Analysis & Conclusions

Though US was first among the nations to bring out a law in the AML regime, UK also followed suit by passing Drug Trafficking Offence Act, 1986 later replaced by an Act of 1994. In UK the criminal law as regards laundering offence is taken care by the Proceeds of Crime Act, 2002 and Terrorism Act, 2000 (which exclusively deal with terrorism related offences) Over passage of time the provisions under Criminal Justice Act, 1988 and 1993 were brought under a single umbrella legislation POCA 2002. Part VII of POCA consolidates all legislation relating to money laundering, except terrorism which is governed by Terrorism Act, 2000. The provisions of POCA are compliant as regards to international conventions and FATF standards. The regulatory and administrative part of money laundering activity Is governed by Money Laundering Regulations which also imposes stiff penalties. Similar to the UK pattern India has enacted a sui-generis law, namely the PMLA, and for terrorism the Unlawful Activities Prevention Act, 1967 (UAPA) is in force.

CHAPTER 6

CONCLUSION, FINDINGS AND SUGGESTIONS

6.1 CONCLUSION

Successful AML law effectively severs the link between the criminal, the crime and the illicit wealth. Money laundering counter measures must thus be balanced as protecting in an indirect way the interests which are perceived to be threatened by organized crime and terrorism. Internationalization of money laundering has been facilitated by a number of factors, such as growth of stock markets, large scale privatization, diversification of financial instruments. One of the main reasons is the speculative nature of the global economy. A truly global AML regime is still far from reality.[159]

At the political level money laundering threatens to undermine the principles associated with a free, fair, and transparent democratic society since it empowers criminals to wash off, or at least minimize the taint of illegality with which the money derived from their criminal or unlawful activities is discernible. Therefore, giving room for criminals to profit from their crimes, is to demoralize the process of justice to which society adheres. Further such an atmosphere in a society enables criminals to accumulate wealth while shirking social responsibilities such as paying tax to governments. Informal economic activity is not taxed because it often takes place beyond the control of government, thereby reducing the revenue, often leading to deficit budgetary situation Allowing criminal organizations to infiltrate into the informal economy through corruption, bribery and other detrimental practices, would undermine the rule of law and transparency of the society.

Jail sentence of few months or years of incarceration will not deter criminals from their pursuit of crime and money, as long as laundering of proceeds continue to happen. Only stricter penalties and early confiscation regime will discourage the launderers. If the predicate crimes, the resultant money laundering and terrorist financing is left unchecked it may lead to criminals amassing wealth, power and influence which in turn may undermine the rule of law leading to a corrosive, corrupt effect on society and economy as a whole.

[159] Sansonetti R, "Switzerland: Legislation to Combat Money Laundering" (1998) 2 Journal of Money Laundering Control 82 <http://dx.doi.org/10.1108/eb027174> accessed on 23 May 2023

It is indeed a matter of concern, to observe the tendency of most jurisdictions to overlook white collar crimes, when compared to other felonies. The dirty money generated by criminal organization has seen new heights resulting in huge financial flows from formal to informal economy. Combination of factors such as mispricing, dummy corporations, tax havens, secrecy jurisdictions, flee clauses, and the whole gamut of techniques and structuring which ultimately support dirty money in a system which allows criminals to get away with subterfuge, disguise and theft. The outcome is legitimization of illegitimacy. Starting from demand side strategies and requirements that help to expose and prosecute money laundering have on the supply side led to more sophisticated operations to circumvent and avoid discovery.

Money is neither clear nor dirty *per se* but becomes tainted as it moves from the legal economy across legal-illegal boundary into the underground economy. What of course motivates and directs this movement are the decisions made by individuals. Criminals are not the only group of people contributing to the massive flow of dirty money into the economy. For that matter every individual who has reasons to fear that his or her illicit wealth or assets might be frozen or confiscated, will try to conceal the true origin of its source or the identify of its beneficial owner as most crime is motivated by profit, the pursuit for recovery of the proceeds of crime can make a significant contribution to crime reduction and the creation of a safe and just society.

According to the research conducted by India forensic in 2011, the estimated size of money laundering in India was Rs 18.86 lakh crore during the period 2000-2010. The report emphasized that laundering is expected to grow in the field of digital currencies which are decentralized[160] Though the authenticity of this data may or may not be accurate, the sheer volume of money laundering in India raises serious concerns, especially during the same period we have the AML regime in force, effective from July 2005. The data however raise alarm bell that much needs to be done in identifying the offenders who had laundered proceeds alert the respective authorities in whose jurisdiction the predicate crime falls to commence investigation and prosecution, so that the offence of money laundering can be taken up simultaneously, as under PMLA the projecting of proceeds of scheduled offence/predicate crime is a pre-condition to

[160] "Digital Currency to Abet Money Laundering: Report" (*The Indian Express*, July 21, 2013) https://indianexpress.com/article/news-archive/web/digital-currency-to-abet-money-laundering-report/accessed on 20 May 2023

formally launch a ECIR before commencing investigation under the Act. Once charges are framed for the predicate as well as laundering offences, urgent efforts are requited in tracing, and freezing of proceeds of crime by resorting to provisional attachment, to avoid the proceeds escaping the long arm clutches of law.

6.2 FINDINGS

The researcher has arrived at the following findings after a detailed and thorough investigation of the research questions.

1. Whether the provisions contained in the legislation (PMLA) fulfils the international obligations cast upon India, in terms of various Conventions, treaties, recommendations, regulations and soft laws?

- India, along with a number of other jurisdictions, such as the United States of America ("US"), the European Union ("EU") and Australia, have recognised the perils associated with money laundering and have taken steps for its prevention.
- United Nations General Assembly had held its special session in June 1998. At that session, the Member States adopted a Political Declaration. This Declaration called upon the Member States to adopt national money-laundering legislation and programme.
- The Government of India considered it necessary to implement the U.N. Political Declaration in 2001. On 17th January, 2001, the President of India gave his assent to The Prevention of Money-Laundering Act, 2002 ("PMLA"). Enactment of The Prevention of Money-Laundering Act, 2002 is rooted in the U.N. Political Declaration. Thus provisions contained in the PMLA fulfils the international obligations.

2. What are the prevalent practices of money laundering?

There are many prevalent practices of money laundering in which some can be illustrated as follows:

- Hawala: A different or parallel remittance system is hawala. It exists and functions independently from or concurrently with "traditional" banking or financial channels. The majority of money-laundering schemes use a combination of these techniques. This crime is challenging to eradicate due to the variety of tools available to money launderers.

- Smurfing: This method involves dividing large sums of money into smaller, less suspicious amounts. The money is then deposited into one or more bank accounts over time by multiple people (smurfs) or by a single person.
- Overseas banks: Money launderers frequently transfer funds through various "offshore accounts" in countries with bank secrecy laws. Hundreds of bank transfers to and from offshore banks can be involved in a complex scheme. The Bahamas, Bahrain, the Cayman Islands, Hong Kong, Panama, and Singapore are among the "major offshore centers," according to the International Monetary Fund.
- Shell companies: These are fake companies that exist solely to launder money. They accept dirty money as "payment" for ostensible goods or services but provide none; they simply create the appearance of legitimate transactions through forged invoices and balance sheets.
- Investing in legitimate businesses: Launderers will sometimes wash dirty money in otherwise legitimate businesses. They may use large businesses, such as brokerage firms, where the dirty money blends in easily, or they may use small, cash-intensive businesses, such as bars, car washes, strip clubs, or check-cashing stores. These companies could be "front companies" that provide a good or service but their true purpose is to clean the launderer's money.

3. What measures have been adopted in India to combat money laundering?

The successive governments in India, since independence, being aware of the ground realities, have been at various times, proactive in the formulation of laws and legal mechanisms to counter the effects of money laundering and break the existing networks. Before passing of PMLA Act, 2002 following legislations were there to combat money laundering in India such as:

- The Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974
- The Income Tax Act, 1961
- The Benami Transactions (Prohibition) Act, 1988
- The Indian Penal Code 1870 and Code of Criminal Procedure, 1973
- The Narcotic Drugs and Psychotropic Substances Act, 1985
- The Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988.

4. What standard measures are recognized at the international level to control and combat money laundering?

There are various measures taken at international level to control and combat money laundering such as:

- The Vienna Convention: It creates an obligation for signatory states to criminalize the laundering of money from drug trafficking.
- The 1990 Council of Europe Convention: It establishes a common criminal policy on Money Laundering.
- G-10's Basel Committee statement of principles: It issued a "statement of principles" with which the international banks of member states are expected to comply.
- The International Organization of Securities Commissions (IOSCO): It encourages its members to take necessary steps to combat Money Laundering in securities and futures markets.
- The Financial Action Task Force:

It has been set up by the governments of the G-7 countries at their 1989 Economic Summit, has representatives from

1. 24 OECD countries
2. Hong Kong
3. Singapore
4. The Gulf Cooperation Council
5. The European Commission

It monitor's members progress in applying measures to counter Money Laundering.

The famous Forty Recommendations are given by FATF

- IMF: It has pressed its 189 member countries to comply with international standards to thwart terrorist financing.
- The United Nations office on Drugs and Crime: It proactively tries to identify and stop Money Laundering.

6.3 SUGGESTIONS

After a careful consideration of the various issues pertaining to the prevention of money laundering act, the researcher would like to humbly submit the suggestions mentioned below. In the opinion of the researcher, they would be helpful in rectifying the problems created by the present money laundering act and the manner of their implementation.

1. **Definition of term Property**: The words 'wherever located' used in the definition are very significant. Not only property of every description is intended to be covered by the definition given in the Act, further the property need not be necessarily within the geographical limits of India, and it covers property situated beyond India also. However, the definition of the term 'illegally acquired properties' in SAFEMA and NDPS are comparatively wider as they also include such properties not only obtained or derived from but also attributable to the illegal activity. For instance, the definition of 'illegally acquired property' under Sec. 3 (C) of SAFEMA 1976 is very wide and extensively cover illegally acquired property of any description to enable forfeiture of such properties effective. Similarly, the definition of 'illegally acquired property' under Sec. 68 B (g) of the NDPS Act, 1985, is wider in application. Therefore, it is suggested that a similar provision be brought under PMLA.

2. **ED Single Agency:** In terms of PMLA, a single Agency for investigation, prosecution, seizure, freezing and confiscation of proceeds, namely the Enforcement Directorate is assigned. Absolute and unfettered power may often be subject to abuse. There is no mechanism for having control over ECIR, which is the basis of commencement of a laundering investigation, and for this reason there is a direction for the Special Director to formally give approval at ECIR stage to avoid harassment and frivolous issues. Shortage of man power staff and expertise may result in delay in conducting investigation. Simultaneous trial is to be taken care before Special Court for predicate offence and offence of ML under PMLA. Though the ED may be conversant with PMLA the predicate crime offences will be handled by other agencies who had filed charge sheet. ED is a central agency while many of the prosecuting agencies would be under State, resulting in lack of co-ordination and cooperation. As conviction for predicate crime is a pre-condition for confiscation of proceeds, it creates further difficulty, as the main aim of PMLA, apart from a conviction for laundering offence is

confiscation of proceeds of crime or properties under Sec.8, Sec.52B and Sec.60 (2A) of the Act.

3. **Conviction:** There is no reported case on conviction of predicate crime, and then conviction of laundering offence resulting in confiscation of proceeds. It appears that many cases are in the trial stage. Due to confidentiality and the fact the Agency is protected under RTI, and lack of sharing data or information such as charges framed under PMLA, basis of such charge, etc could not be examined with provisions of PMLA. It is almost a decade since the PMLA has come into force but it is really unfortunate that there is not a single reported cases of conviction or confiscation. Even in the initial stages of combating money laundering in US and UK there are huge volume of conviction and confiscation of proceeds, as reports indicate. Though an adequate legal regime with international standards is in place, absence of conviction or confiscation of proceeds of laundered crime will only send a wrong signal to the criminals and launders that they can easily get away with the slow enforcement mechanism. It is often said that however rigid may be the statute, there may be some unintended drafting error which often results in convict escaping the clutches of law, especially in cases relating to economic crimes. But still to test the soundness and efficacy of PMLA, no reported case laws are available in the field, except those which relate to challenge of provisions at summons, arrest, bail, pre-trial, and provisional attachment. Even as reported case laws are presently available, it should be made available in the public domain in order to test the efficacy of the law and the soundness of the provisions.

4. **Benami Transactions:** As observed in this research that the much-proclaimed Benami Transaction Act, 1988 has lost its sheen and vigor as no concrete action has been taken even after three decades to implement the statute effectively. The government therefore proposed important amendments to change the Act to present scenario by moving Benami Transactions Regulation Bill, 2011, and due to political and other constraints the bill could not be passed and has lapsed. Therefore, urgent needs are required to re instate the Bill again, and only when the parent Act is amended, it will aid and assist the PMLA Once a stringent law is brought in force It is suggested that Benami Transactions Prohibition Act is therefore amended and simultaneously the

offences under the Act is also included in Schedule to PMLA to strengthen the efforts of government to forfeit proceeds of predicate crime held in the name of benamis.

5. **Formation of TTU:** The Special Investigation Team (SIT) appointed by Hon'ble Supreme Court to examine the black money issue, also suggested for starting a TTU (Trade Transparency Unit) in the lines of US to study mismatch between import and export date between various countries and India This observation assumes importance in the context of the research which points out huge accumulation of illicit money and laundering of proceeds of economic and fiscal offences by adopting trade mispricing, trade based money laundering, using SEZ for transfer of illicit proceeds, foreign exchange law violations, export and import violations. As the FIU is mainly concerned with analysing the financial data, especially the STR received from institutions and the sole investigating agency the ED is already overburdened with limited men and material at their disposal a starting of TTU in the lines of US, preferably under the umbrella of CEIB or FIU may be considered.

6. **Appeal before Supreme Court:** In terms of provisions contained in Section 42, an appeal against the order of the Appellate Tribunal lies before High Court within the jurisdiction of which the aggrieved party resides or carries on its business. Since the attached properties may be located in different parts of the country in a particular case, the appeals can be filed in various High Courts in the country in the same case, leading to forum shopping. Such a provision is also likely to lead a situation where order of the Tribunal might be reversed by one High Court and upheld by another High Court. In order to obviate this difficulty, it is proposed by Lok Sabha Standing Committee in 2012 to incorporate provision in section 42 that the appeal may lie before the Supreme Court. Concurrently it is also proposed in section 28 to raise the status of the Appellate Tribunal on the lines of the Appellate Tribunals under the SEBI Act. This suggestion has not been taken not of, due to certain administrative and other difficulties to agencies as well as litigants in providing appeal remedy to Supreme Court, in the alternative it is suggested that an appropriate provision be incorporated under the Act to take care of multi jurisdiction cases to be tried in a single jurisdiction.

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