



## Juxtaposition of Black Money Undisclosed Assets Act Vis a Vis Prevention of Money Laundering Act

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### ABSTRACT

Money which has been the most common medium of exchange and is accepted as a final discharge of debts or payments of goods or services rendered has now become the root cause for corruption. Due to increase in standard of living of the individual, the quest for money has also increased in order to satisfy the increasing needs. So now the individual had to gather money no matter from whichever source it came and so they opted to corrupt means. This is where the concept of “Money Laundering” lies. As because the black money generated from illegal sources have to be shown as if it was generated from legitimate means. This seminar paper will start with the brief introduction of the topic and the method used for the research. Further we will discuss in detail money laundering, PMLA, IPC, FEMA. We will also discuss other Indian statutes which deal with money laundering. It would be supplemented by the discussing the objectives, causes and effects of money laundering. Then we shall discuss some recent judicial pronouncements by Indian Courts on money laundering. It will be further followed by some suggestion as to how to curb money laundering. Then we shall draw a conclusion on the above discussed topic.

**Keywords:** Money laundering, Black money, corruption, PMLA, IPC, FEMA

### INTRODUCTION

Money which has been the most common medium of exchange and is accepted as a final discharge of debts or payments of goods or services rendered has now become the root cause for corruption. Due to increase in standard of living of the individual, the quest for money has also increased in order to satisfy the increasing needs. So now the individual had to gather

money no matter from whichever source it came and so they opted to corrupt means. This is where the concept of “Money Laundering” lies. As because the black money generated from illegal sources have to be shown as if it was generated from legitimate means.

So Money Laundering can be defined to include a series of financial transactions that are intended to transform ill gotten gains into legitimate money or assets. This practice of dealing in the financial transactions is to the hide the source of these financial assets. This practice is being employed by launderers to conceal criminal activity associated with drug/arms trafficking, terrorism, financial frauds, prostitution rings, extortion, embezzlement, insider trading etc. Due to its liquid form money laundering is not limited to a single nation or group of nations rather it is affecting the whole economy of the world.

To curb this menace globally Financial Action Task Force was established in 1989 for setting global standards on anti money laundering. Since Government of India is also committed towards tackling money laundering, it has been a part of many initiatives at international level and the same was done by it at the national level when it passed the Prevention of Money Laundering Act in 2002, which got further amended in 2012 also. The act was passed with the object to prevent money-laundering and to provide for confiscation of property derived from, or involved in, money-laundering. Under this act penal provisions are provided for this offence. It has also provided for the manner of search and seizure. The act also gave the responsibility to the financial institutions and banks to maintain a record of all the transactions, the nature and value of which has been prescribed in the Rules

notified under the PMLA and also detailed information relating to it such as identity of the client. In this project we will discuss the roles of these financial institutions and the features of the PMLA along with the current judgements of the Supreme Court on this issue.

### ***Legal Position in India***

Though there were few statutes which insufficiently dealt with money laundering, but due to increasing number of cases a full-fledged statute was needed to prevent this practice. So the Parliament enacted a legislation known as Prevention of Money Laundering which came into force from 1<sup>st</sup> July, 2005. The act in Section 3 defined the term money laundering Section 3 as an offence done by party or entity which is directly or indirectly linked with activities like concealment, acquisition, possession, and use in the procedure of proceeds of crime and projects an untainted property, such party entity shall be guilty of money laundering. Section 4 provides for punishment for the offence. A rigorous imprisonment of 3 to 7 years has been prescribed. The upper limit of fine which was fixed at 5 Lakhs Rupees has been removed by the amendment of 2012.

Section 5 deals with attachment of property which has been illegally obtained for a maximum period of 180 days. There is also a provision of adjudicating authorities under Section 8 which shall hear the cases relating to the offence. The Central Government under Section 9 has been vested with total rights free from all encumbrances of all the confiscated property. Section 10 provides for the management of the sequester property.

Since in the offence of money laundering the role of banks and financial institutions is very critical, therefore the act has prescribed an obligations on the bank, financial institutions and intermediaries to maintain certain records detailing the nature and value of the transaction as prescribed under the act and also to verify and maintain the records of the identity of all its clients and also to verify the records of the clients from time to time (Section 12).

The act also provides for the power of search and seizure. The search can be carried out in the premises where there is reason to believe that the offence of money laundering has been committed (Section 16). There can also be seizure of the records or property found relating to money laundering (Section 17). The authorities have been also entrusted with the power to arrest (Section 19). The authorities authorising the

search and seizure and those asking for production of documents and evidences have been entrusted all the power of the civil court as provided under the civil procedure code.

The other provisions of the act provide for establishment of Appellate tribunal to hear appeals against the order passed by the adjudicating authority or by director of FIU-IND (**Chapter VI**), Special Courts to try the offences punishable under the Act (**Chapter VII**), Adjudicating Authorities essentially to confirm attachment or order confiscation of attached properties under the act (**Chapter VIII**), Reciprocal arrangement for assistance in certain matters (**Chapter IX**) and Miscellaneous provisions (**Chapter X**). The Act contains a total of 75 sections, and a Schedule, and it imposes a good deal of responsibility upon financial institutions.

### **Some of the other features include:**

#### ➤ **Reverse Burden of Proof:**

As per the act the burden of proof in the case of money laundering would be on the accused, which shall be bound to prove that the money generated or gathered has been done from a legitimate source rather than from any criminal activity.

#### ➤ **Scheduled Offences:**

The act specifically lists down the two classes of offences under the Schedule. This Schedule is divided into two parts A and B. This division is on the basis of the seriousness of the offence and the amount of money involved. Like the offences against the State and relating to Drug fall under Part A. In this punishment can be of 3-7 years. However it can extend to 10 years also.

For the offences listed under Schedule B a floor limit of 30 lakhs has been set. This floor limit has been set so as to exclude small offences and properties. But unfortunately this same limit has provided for the escape route also, as now people deal in slightly lower limit that which is fixed.

#### ➤ **Coordination with other nations:**

One of the most outstanding features of the PMLA is that it allows the Central Government to enter into agreement with other nations for the proper of exchange of information relating to the customer and also the verification of the same. The agreement would also help in the proper enforcement of the provisions of

the PMLA and which will at last help in preventing money laundering.

➤ **Position of NGOs:**

The present Act has also covered NGOs under its ambit. Earlier the politicians and the rich people used to form an Ngo or any similar organisation and they would easily convert their black money into white. But now after the passing of this act, these organisations have also to maintain of the financial transaction they have gone through. Thus now if any such organisation receives any donation also it has to maintain record relating to it. And if there arises any suspicion, the concerned authorities can conduct scrutiny of the records also. As because the aim of the act is not just only to cover income illegally generated but also to inquire into those which have been concealed from the public authorities.

**Nature of the offences under the Act:**

The offences under the Act shall be cognizable and non-bailable.

➤ **Upper limit of fine**

There is no upper limit of fine and the amount of fine shall be decided by the court from cases to cases basis and the same shall be depending on the gravity of the offence. Earlier there was an upper limit of fine of Rs. 5 lakhs but the same has been deleted by the Amendment Act of 2012.

**Other Statutes relating to money laundering:**

Before the passing of the PMLA, there were some other statutes also which addressed with the issue of money laundering though insufficiently. Some of those statutes are:

**Indian Penal Code, 1860:**

Though this Act didn't directly use the term money laundering but then also it dealt with the offences of the like nature. For e.g. it covered the offences relating to fraud, property, transfer of deed, counterfeiting, cheating etc.

**The Smugglers and Foreign Exchange Manipulations (Forfeiture of Property) Act, 1976:**

This Act basically tried to prevent the illegal acquisition of the property by the smugglers and the foreign exchange manipulators. It also covered issues covered under the Customs Act, 1962.

**Narcotic Drugs and Psychotropic Substances Act, 1985:**

This was one of the major statutes which addressed money laundering. Under this act huge power was given to the authority concerned. The authorities could seize any account if they had suspicion on the nature of transaction on the ground of illegal generation. They were bound to maintain and record detailed information and provide the same to the government.

**Financial Action Task Force (FATF):**

In order to curb the menace of money laundering, India became the 34 member of the FATF in the year 2010. By becoming a member India strengthens the level of coordination with other international organisation or institutions to prevent money laundering and terrorism financing. Not only this, the member nations should share information relating to verification of any customer and to report the same to the concerned in case of any suspicious transaction.

**FEMA (Foreign Exchange Management Act), 1999:**

This act was brought after repealing FERA. The PMLA act has close link with FEMA as violations and prosecutions under both the statutes fall under Enforcement Directorate which does the investigation and attachment of assets involved.

Apart from the above statutes, there are other statutes also which addressed the issue of money laundering though only scantily. Some of them are: **The Income Tax Act, 1961; The Benami Transactions (Prohibition) Act, 1988; Code of Criminal Procedure, 1973.**

We also have guidelines issued by **SEBI** and **IRDA** to discourage the offence of money laundering and also to identify the illegal transaction and also to stop the insurance companies in hiding or conversion of black money into white by the use of insurance policies. These guidelines are in conformity with the PMLA.

The **SEBI** guidelines also deal with preventing funds used for aiding terrorist activities. It also covers issues such as how records are to be maintained and verification of the clients and also to take note of any suspicious transactions and to monitor such transaction. The records of the clients are to be maintained for a period of 10 years and the same to be verified and updated from time to time.

Similarly the IRDA guidelines which are applicable only on the insurance companies were brought to curb the misuse of insurance policies. The guidelines require the insurance companies to maintain records of the clients and to keep a check on the clients in order to see that there is no misuse of the policy and to scrutinise the same if there arises any such misuse.

### **Role of Financial Intelligence Unit- India**

Financial Intelligence Unit – India (FIU-IND) which is a specialised government agency was set up by the Government of India in the year 2004. The agency is an independent body and is under the control of Department of Revenue, Ministry of Finance and is responsible collecting, analysing, and disseminating information, particularly about suspicious financial transactions.

The FIU-IND performs many functions such as collection of information, analysing of information, sharing of information and also to co-ordinate the collection and sharing of information with other intelligence units effective at national, global level so as to prevent money laundering. The FIU-IND is not a regulatory agency rather it has to work in close coordination with RBI, SEBI, and IRDA and to gather and share financial intelligence

The Director of the FIU-IND is empowered under the PMLA to impose fine on financial institutions or banking companies if they fail to observe the provisions of the Act.

The three strategic objectives of the FIU-IND to prevent money laundering and terrorist financing are as under:

- To prevent money laundering and other economic offences.
- Deterring money laundering and financing terrorism.
- Making strong the organisational capacity.

### **Causes of Money Laundering:**

There are many causes of money laundering. One of the most important is the lust of the individual to generate huge money in less span of time. Other causes of money laundering are:

- **Lack of proper legislation** – Absence of legislation to deal with money laundering provides an opportunity to criminals.

- **Evasion of tax** – One of the other causes behind money laundering is to evade tax. This is generally done by not showing the actual property and assets possessed.
- **Conversion of money-** Since in the offence of money laundering black money is generated and there is always threat of being caught, so the money is converted into white. This is done to show that money was generated from a legitimate source.

### **Effect of Money Laundering:**

The effect of money laundering is very extensive. The effect can also be for a very long term if the money involved is large. Some of the most prominent effects of money laundering is stated below:

- It distorts capital and trade flow.
- It increases corruption and provides a way to crime.
- It destroys the reputation of the country or financial institution.
- It leads to evasion of tax.

### **Cases of Money Laundering in India:**

- **B. Rama Raju s/o B. Ramalinga Raju vs. Union Of India<sup>1</sup> (Satyam Scam):**

The Satyam scandal is one of the biggest corporate frauds which took place in India. The company was earlier considered as an ideal in the IT sector in terms of profit making. The scam was about maintenance of false records, practicing false audit. There was concealment of basic information such as revenues, profits which company earned, interests, liabilities. The relevant information was hidden just to show that the company is in good health and even the independent directors were not given correct information and were kept in dark as to the actual work of the company. The scam was of over 8,000 crore and it shocked the whole nation. The money earned through the scam was used to purchase thousand acres of land in Andhra Pradesh and also was used to purchase two infrastructure companies.

The accused in the scam were charged under various offences such as cheating, criminal conspiracy, and forgery, breach of trust, faking accounts and violating number of income tax laws. The Special CBI court found Ramalinga Raju and nine other guilty of many



offences and so it convicted all the accused.

### **Arun Kumar Mishra vs. Directorate Of Enforcement**

The case relates to five employees of Punjab National Bank who are said to maintain five different fake accounts in name of non-existent persons and using this account for deposit and withdrawal purposes. By doing this the five persons misappropriated the funds of PNB from which they gained profit and in turn it leads to loss to the concerned bank.

The above offence was committed in the year 2005 and it is said that the offence is against the Section 13 of Prevention of Corruption Act, Section 120B of Indian Penal Code and Section 3 of the PMLA. However on the applicability of PMLA it was argued that the particular provision of the PMLA came into effect from in the year 2009 and so it can't be made applicable retrospectively. Also Article 20(3) bars ex post facto application of law.

On the basis of the arguments the court stated that disposed of the case stating that it would be against Part III of the Constitution. Hence the Directorate of Enforcement is free to initiate fresh proceeding as per the law thereafter if the offence of money laundering is established against the accused.

### **CONCLUSION**

Money Laundering is a global challenge and it has changed the nature of business around the world. Many initiatives have been taken to curb this menace both at international and national level. However in the implementation of these laws sometimes innocent business get into trap and suffer the trouble. The effect of money laundering is sometimes so harsh that it can become the reason for economic instability of a country.

This research has dealt with the legal aspect of money laundering at the national level along with the international aspect and has tried to scrutinise that how effective these legislations have been to curb the this menace and prevent money laundering and terrorism financing.

In India though we have a specific law dealing with money laundering but it should be implemented in its spirit also. The Act contains provisions dealing with nearly all the aspects required to prevent the offence. But there should be regular amendment in it so that it is able to deal with the new methods adopted to commit

money laundering. However if there comes a uniform international law to deal with money laundering, then it would become hard for launders to escape and at the same time it would also become easy to prevent money laundering. With this type of concerted efforts from all, we can hope to put a check and prevent money laundering.

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