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Money Laundering in India

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ABSTRACT

The menace of Money laundering has been a global challenge throughout history and thus India, just like other western countries have been a victim of these financial malpractices. There are several activities involved under the ambit of money laundering which includes activities such as gambling, counterfeiting of documents and currencies, investing in mobile valuable communities that can easily be transferred to other jurisdictions such as money exchange services and other private business entities and many more. This paper seeks to highlight on the several legislations that have been put in place in an effort to minimize these financial frauds in India which includes the Anti-money laundering laws, the prevention of, money laundering Act 2002 and other provisions in the Indian Penal Code 1860. These laws include specific offences related to money laundering, penalties for the same and procedural laws involved in tackling these offences.

Keywords: Money-laundering, Offences, laws, punishment.

I. INTRODUCTION

Money laundering has been a global challenge throughout history and thus India, just like other western countries have been a victim of these financial malpractices. There are several activities involved under the ambit of money laundering which includes activities such as gambling, counterfeiting of documents and currencies, investing in mobile valuable communities that can easily be transferred to other jurisdictions such as money exchange services and other private business entities and many more.

To tackle this financial malpractice, the government of India had enacted the Prevention of Money Laundering Act in 2002 and the same took effect on 1st July, 2005. This Act defined Money laundering as “An Act of concealing or disguising the proceeds of crime nor possession, acquisition or use of such proceeds or projecting it as untainted property”. The primary objective of this enactment is to prevent and control money laundering in all its kinds in India and where necessary to other countries that shares territorial nexus with India through multinational corporations and other international economic engagements.

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II. A BRIEF HISTORY OF PREVENTION OF MONEY LAUNDERING ACT, 2002

Money laundering in its natural form is not a new phenomenon in India and thus this form of crimes have been prevalent in India throughout ages. However, Money laundering became more vivid in other parts of the world in the 20th century due to the increase in organized crimes in the west. People engaged in illegal activities such as terror actions, human trafficking, and easily transferable money exchange services with the intention of illegally acquiring money to improve their investments and gain wealth. Criminals further owned Laundromats and engaged in other legitimate businesses in order to mix their illegally acquired earnings with the legitimately acquired finances to actually conceal the identity of the initial source of their illegal incomes.

Whereas in India, there has been the Hawala system which existed as early as the 8th century. It involved individual intermediaries transfer money across countries without physically moving money. This practice further involved money mule, individuals who transfer money from one party to another knowingly, unknowingly or actively as a job. The money mule is paid commission for his services by the criminals.

(A) Definition

Therefore, The Prevention of Money laundering Act, 2002 defines Money Laundering as an act directly or indirectly attempting to indulge or knowingly or knowingly being a party or actually involved in concealing, possessing, acquiring, using, projecting as untainted property or claiming as untainted property, in any manner whatsoever, the proceeds of crime.

The same Act states that the crime of money laundering is a continuing offence and continues until a person is directly or indirectly involved in concealing, possessing, acquiring or projecting it as untainted property in any manner whatsoever.

(B) Stages of money laundering

- Placement.
- Layering.
- Integration.

(C) Key Provisions of the PMLA, 2002

The prevention of Money Laundering Act, 2002 provides for certain essential objectives and procedures of operation, identifies certain offences which are categorically crimes under the definition of Money Laundering. These essential provisions includes the following:

1. Attachment and confiscation of illegally acquired property: - The Prevention of Money Laundering Act, 2002 provides for forfeiture of property acquired through the proceeds of money laundering. Such acquisitions are subject to punishment as per the terms provided by the said legislation.

2. Punishment of offenders under money laundering: -The Prevention of Money Laundering Act, 2002 provides for rigorous imprisonment for terms of ranging between three (3) to seven (7) years and with fine. This punishment can be extended to ten (10) years rigorous imprisonment when the offence comprise of more than one (1) crore.²

3. International cooperation:-The Prevention of Money Laundering Act, 2002 also provides for international cooperation between India and other countries in investigation and prosecution of culprits involved in the offence of money laundering. The government of India can treatise with other countries such as extradition treaties which helps facilitate return of the criminals from other foreign countries for trials in the place of incidence.

4. Reporting obligations attached on various entities such as banks and other financial institutions:-The prevention of Money laundering Act, 2002 further lays obligations on banks and other financial institutions to report offenders involved in money laundering to the Financial intelligence Unit for further investigations and prosecution of potential offenders in this act.

5. The Know Your Customer (KYC) services: - This service is aimed at ensuring that banks and financial institutions work in direct coordination with their customers in matters of financial dealings. The same has been made a legally acceptable service by the Prevention of Money Laundering Act, 2002.

III. CHALLENGES INVOLVED IN IMPLEMENTING THE PREVENTION OF MONEY LAUNDERING IN INDIA

There are several challenges that have been encountered in the effort to eradicate the crimes of money laundering in all its forms in India and these includes:

1. Lack of resources: - There are insufficient resources to effectively tackle the offences of money laundering in India. There are lack of modern technologies such as digital record systems and digital investigation systems to effectively eradicate money laundering in India. This is due to the developing nature of India whose financial resources are spread to multiple

²The prevention of money laundering Act, 2002-wikipedia, Prevention of money laundering act – UPSC Notes, introduction-and-overview-of-pmla.pdf – WIRC of ICAI, Prevention of money laundering Act – Drishti IAS.

sectors leading to inadequate financing for this crime.

2. Burden of proof: - During proceedings involving money laundering, the burden of prove lies with the prosecution which is very difficult to prove and the ability of the defendants to hire expensive lawyers to avoid these charges.

3. Low conviction rate: - There is low rates of conviction in India in regards to crimes involving money laundering. This can be inferred to the lack of evidences, and the long procedural stages involved in litigation. Limited human resources in the domain of money laundering in instigating litigations and carrying out investigation in pursuant to eliminating this crime has altogether slowed this effort.

4. Political interferences: - The rampant political interferences in the judicial process tend to decline the efforts of the independent judiciary in performing their duties of discharging their services in regards to money laundering. This is because certain offenders are politicalofficials and thus threatens the efficacy of the independent judiciary in India.

5. Complex legal frame work: - The Indian Judicial system is one of the most complex judiciaries in the world. It comprise of several procedural stages involved ranging from institution of First Information Reports, investigations and other procedures of litigation up to the final adjudication process. The judicial frame work have also been aligned in specific jurisdictions and overlapping of cases is completely prohibited making it highly in effective in curbing money laundering in India.

6. Nature of complicated offences in money laundering:- The offences of money laundering includes intermediaries called money mules who further complicate the process of investigation and thus making it difficult to adjudicate of such intermediaries in deciding whether they are actually party to the whole offence of money laundering.

7. Limited knowledge of law among people: - It is equally apparently visible that there is a very high sense of illiteracy about the law in India due to the average 60% of the total population living in rural areas. This has made it a challenge in recognition of such potential offences as well as reporting to the Financial Intelligence Unit for proper government actions.

IV. PROSECUTOR INVOLVEMENT IN PREVENTION OF MONEY LAUNDERING ACT 2002

The Prosecutor involvement in money laundering suit is critical and thus has the burden of prove for two major standards which includes the following:

1. The prosecutor must prove that either by direct circumstantial evidences that the

defendant knew that the property involved was the proceeds of any felony under state, federal or foreign law. The prosecutor must prove that the defendant knew the specific crime from which the proceeds were derived and thus the property was derived through an illegal manner inconsistent to the money laundering Act 2002.

2. The prosecutor also must prove that the defendant initiated or concluded or participated in the conclusion of the illegal transaction involving money laundering and thus inconsistent to the provisions of the Money Laundering Act, 2002.

The prosecutor in proving these two points must verify that the defendant participated in such illegal activities with any of the following four intentions:

- a) Intent to promote the carrying on of specified unlawful activity.
- b) Intent to engage in tax evasion or tax fraud.
- c) Knowledge that the transaction was designed to conceal or the nature, location, source or ownership of form of the acquisition of such illegal monetary transactions for the assumed performance of the activity or course of action taken from such transactions.
- d) Knowledge that the transaction was designed to conceal or prevent reporting under the local/state or federal laws which is inconsistent with section 31 of the Money laundering Act, 2002.

However, the punishment for money laundering depends on the number of separate offences, the value amount of financial transactions and the defendant's prior conviction records. A conviction for only one offence in money laundering may result into imprisonment in county jail or state jail for up to one year term and several convictions for offences related to money laundering shall result into other forms of long term imprisonments.

V. CASE FILING IN PREVENTION OF MONEY LAUNDERING

The Enforcement Directorate is empowered to primarily enforce two major laws: The Foreign Exchange Management Act (FEMA), 1999 and the Prevention of Money Laundering Act, 2002 in India.

There are two steps involved in filing a complaint to the ED in regards to matters of money laundering and these includes the following;³

³Prevention of money laundering Act, 2002 – Department of Revenue|Ministry of Finance, Prevention of money laundering Act (PMLA), 2002 – ClearTax, Prevention of money laundering Act, 2002 (PMAL) – FIU-India

1. Filing Complaint to Other Agencies

If a person wants to report a matter relating to the FEMA and PMLA, they have to register their complaint with an agency or the police other than the Enforcement Directorate. Before complaining to the Enforcement Directorate, a person has to complain to any other agency or the Police after which the Enforcement Directorate will investigate the matter and identify the accused.

PMLA comprises 157 sections of offenses that relate to money laundering. If the offense registered in the complaint is one of these 157 offenses, then the Enforcement Directorate has the power to take action on the complaint directly. The Officers have the power to investigate, search, and seize the property of the person against whom the complaint is made.

2. Sending complaint to the enforcement Directorate Directly.

While a person does not have an option to approach the Enforcement Directorate Directly, they can send a complaint relating to illegalities in money laundering and foreign exchange to the following address:

Director, Enforcement Directorate, 6th Floor, LokNayakBhawan, Khan Market, New Delhi – 110003.

A person may also apply to a court for them to refer the matter to the Enforcement Directorate so that the matter can be investigated by the Enforcement Directorate Agency.

VI. LEGAL CONSIDERATIONS IN MONEY LAUNDERING

Money laundering in the recent years is a global challenge. Of recent years, money laundering and terror financing has been a great threat to the economic and political development of several countries around the world. However, the efforts in harmonizing these threats have remained a great concern for the governments in the various the independent states.

In India, the concern is referred to as the Anti-money laundering protocols which refers the set of rules and regulations that are geared towards ensuring the stopping of these disasters and thus, several laws have been legislated in the struggle to pervade this crimes in India.

These laws include:

- 1. The Prevention of Money Laundering Act, 2002:**– This was introduced as a Bill in the loksabha in 1998 and passed in 2003 and consequently came in to force in 2005. Its main objectives includes:
 - To prevent and control money laundering

- To confiscate and seize the property acquired from the laundered money
 - To deal with any other issue in relation to money laundering in India.
- 2. Benami Transaction (Prohibition) Act, 1988:-** This was the law provided by the president in the form of ordinance in 1988 to facilitate the ownership and possession of property among Indians. The word “Benami” was derived from the word “Benamidar” meaning a system of transfer of a particular property where the consideration for the transfer of such property is paid by another person and the same property is possessed and utilized by another person else. It was a form of property transfer that aimed observing the coparcenary system in India where a property secured by the Karter well belongs to the other family members known as the coparceners.

However, this law was used as a means of tax evasion by the people as they register their immovable property under someone else’s name and gain benefits of the same. And due to the need by the government to regulate unjust increment of income from such concealed sources, the same Act was amended in 2016 which prohibited the Benami transaction in totality and certain stringent punishments have been prescribed by the same. Culprits are subject to heavy fines and taxes by the government in order to eradicate this kind of transaction in India.

The Benami Transaction (Prohibition Amendment) Act, 2016 further provides for the legal procedures to be followed in the registration process of each property acquired by a citizen as well as the procedural stages for property registration.

- 3. Black money and Imposition (Undisclosed foreign income and assets) of Tax Act, 2015:-** The Black Money Act, 2015 was introduced after the already existing Income Tax Act which was prevalent in India. It was passed by both houses of the Parliament and the President assented to the same bill in 2015. Since then, the Black Money and Imposition (Undisclosed foreign income and assets) of Tax Act, 2015 was in effect.

The primary objective of this enactment was to eradicate the habit of hoarding of sources of income by the nationals both internal assets and external assets of Indian nationals. The government was informed that there have been recurring cases of disclosing potential taxable income generating property by the citizens and for that reason alone, 30% tax is levied by the government on such property for first offenders.

Meanwhile, for recurring offenders, any person who continues to default in paying tax shall be levied upon tax amount equal to the tax arrears among others.

VII. AUTHORITIES FOR INVESTIGATION

The **Enforcement Directorate** in the department of Revenue, Ministry of Finance, the government of India is responsible for the investigation of offences related to money laundering under the Prevention of Money Laundering Act 2002. This is under **the Financial Intelligence Unit – India** which is the central independent body to carry out any investigation, process such information, analyze and disseminate them to the appropriate channels so that such culprits or suspects can be brought to justice.

They carry out investigation in both international and external offences with direct effect to Indian nationals and also coordinate with international bodies in supplementing the mitigation of the offences relating to money laundering in India.

VIII. INTERNATIONAL ORGANS AGAINST MONEY LAUNDERING

The most recently pioneering international organization in the pursuit to eradicate the hazards of money laundering is the **Global Programme against Money Laundering proceeds of crime and the financing of Terrorism (GPML)** that works towards ensuring global international cooperation among states. It also facilitates the enforcement of legal, financing, law enforcement as well as giving guidelines for the establishment of domestic authorities in order to curtail the incidences of money laundering and financing of terrorism activities in different countries.

The GPML works in accordance with the United Nations protocols and the international standards of operation. It aims to ensure regional International Cooperation in order to improve interstate investigation strategies as well as enforcing the Anti-Money laundering laws in the international arena.

The Sustainable Development Goals: -The development goal established in 2015 comprising of the 17 objective goals to be fulfilled by 2030 in its point 16 (4) emphasize the need to eliminate financial frauds and all offences related to monetary transactions in all member states. This was targeting to improve economic performance and minimize financial losses incurred by potential investors through illegal and unjustifiable means such as money laundering and to boost economic growth and development.

The Vienna Convention: -This is essentially the first enactment brought forth in 1988 in Italy. It was aimed at taking an initiative to combat money laundering and providing grounds to oblige all member states to criminalize the acts of money laundering from drug trafficking. This convention was an initiative to promote international cooperation and allowing the application

of extradition in matters related to money laundering to all member states including India.

Other regulation to curb money laundering in India includes:

- a) **The Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974.** – This was attempted to retain foreign exchange within the nation. It was established in the principle of preventive detention which apart from being a colonial legacy, is also given explicitly in the Indian Constitution as the necessary Bills and laws exist under article 22 of the same Constitution.
- b) **The Indian Penal Code 1860 and Code of Criminal Procedure, 1973** –These Acts helps as guiding principles for certain offences, punishments and the procedures to be followed by Courts in discharging their judicial services to the general public. The IPC provides and identifies certain actions and omissions as offences themselves and provides accordingly punishments for the same respectively. Meanwhile, the Code of criminal procedure acts as the procedural laws which directs how the initiated and discharge of criminal proceedings ought to take place. Section 65 of the PMLA provides for observation of the criminal procedures provided by the Code of Criminal procedures in relation to offences involving money laundering in India.
- c) **The Narcotic Drugs and Psychotropic substances Act, 1985** – This Act was intended in curbing offences relating to Narcotic drugs in India. This Act was also intended in restricting and preventing the transportation of the Narcotic Drugs substances in India and prescribes punishment for illegal practices relating to the vending of Narcotic substances within the Indian Territory.

IX. ACTIONS THAT CAN BE INITIATED AGAINST A PERSON INVOLVED IN MONEY LAUNDERING

There are several stringent actions that can be initiated against any person involved in money laundering in India and these are based on the various offences that are aligned under the prevention of the money laundering Act 2002.

These offences are provided under parts A, B and Part C of the prevention of money laundering Act 2002 as explained below:

Part A – This includes offences from several acts in India such as the Indian Penal Code, Copy rights Act, wildlife Act , protection Act, information technology Act, prevention of corruption Act and trademarks Act inter alia.

Part B – This mentions the offences outlined under Part A and the values attached to these

offences is Rs 1 crore or above.

Part C – This is concerned with trans-border crimes and reflects the dedication to deal with offences related to money laundering across international borders.

Therefore, in pursuant to the above mentioned offences under the parts A, B and Part C of the prevention of money laundering Act 2002, the following are the stringent actions that can be initiated against any person involved in the act of money laundering across India.

1. Seizure or freezing of Assets, records and subsequent attachment of property obtained with the proceeds of crimes in India.
2. The punishment under the Kaleidoscope ambit of the Act includes rigorous incarcerations for minimum term of three years which may extend up to seven years and it may also include a fine without limits.⁴

X. CONCLUSION

In summation, the Prevention of Money Laundering Act, 2002 has been so instrumental in curbing and eradicating the hazards of money laundering in all its forms across India. It provides clearly the offences which can potentially constitute money laundering and further establishes the procedural steps in dealing with such reported cases by the appropriate Courts. The Act further establishes punishments as three years rigorous imprisonment to seven years rigorous imprisonment and with fine which can be extended to ten years rigorous imprisonment for offences involving monetary values one crore and above.

Money laundering also has several demerits such as loss of revenue, reputational harms of the culprits and multi-dollar fines upon criminals. All these are disastrous to both the economic and societal development. It is therefore very essential in ensuring that the financial institutions as well as banks to cooperate with this legislation in ensuring that this threat of money laundering in all its forms are eradicated throughout India.

⁴Guide to prevention of money laundering Act| PMLA – Taxmann, Prevention of money laundering Act 2002 – IndiaFilings.

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