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The Interconnected Roles of PMLA, 2002 and FATF: Combating Laundering of Money & Countering Capitalizing the Terrorism

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ABSTRACT

This research paper offers a comprehensive analysis of the clauses within the Prevention of Money Laundering Act, 2002 (PMLA), specifically in their harmony with international agreements and pacts designed to counter the laundering of money and the capitalizing the terrorism. Furthermore, it evaluates how Indian laws effectively contribute to worldwide efforts to combat financial offenses. Additionally, this research delves deeply into a meticulous examination of the modifications brought about by the Finance Act of 2019, which aimed to address uncertainties present in the prevailing PMLA provisions. The research recognizes India's increased focus on addressing money laundering and related offenses since the mid-2000s. Nonetheless, it highlights persistent legal challenges, such as those related to the threshold conditions for domestic predicate offenses, which continue to pose obstacles to the efficacy of the PMLA. The absence of convictions for money laundering under the PMLA further raises concerns regarding the regulatory framework's effectiveness.

India's commitment to countering terrorism in all its manifestations is duly acknowledged, particularly evident in its proactive approach to investigating the financial dimensions of terrorism. However, the study underscores the inconsistent translation of this commitment into actual convictions and the establishment of well-defined case law. In response to the rising incidence of financial crimes and prominent cases, the Finance Act of 2019 aimed to strengthen existing provisions for monitoring and detecting suspicious financial transactions within the sector.

The researcher utilizes the doctrinal research approach, employing an examination of numerous international agreements and legislations to assess the effectiveness of India's system for combating the laundering of money and capitalizing the terrorism. Primary sources of information include existing literature, encompassing books, journal articles,

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and newspaper reports. Empirical research was not conducted due to constraints on resources and time.

Keywords: *Terrorism, Prevention of Money Laundering, Financial Crimes, FATF.*

I. INTRODUCTION

Laundering of money and capitalizing the terrorism represent significant financial crimes with far-reaching economic consequences. They not only jeopardize a nation's financial sector but also its overall stability, both domestically and on a global scale. Consequently, addressing these issues is not only a moral duty but also an essential economic imperative. Recognizing the intricacy of the challenges associated with money laundering and terrorist financing is crucial for effectively managing the risks they pose to national security. In response to these challenges, various regional and international organizations, such as the International Monetary Fund (IMF), United Nations (UN), and Asian Development Bank (ADB), have actively engaged in initiatives aimed at combating these interconnected problems.

Illicit financial flows have adverse consequences for all countries, but they can be especially devastating for developing nations, where fragile economies often lack adequate oversight. Simultaneously, within societies heavily dependent on cash-based dealings, both formal and informal money transfers serve as vital mechanisms for broadening the reach of financial services and fostering development. Financial intermediaries, especially those active in the informal economy, play a significant part in facilitating these financial transactions. However, they can also unintentionally facilitate or become conduits for money laundering and associated illicit activities.

The adoption of global standards to combat financial misconduct has led to the implementation of new or revised laws, procedures, and institutions in countries, both in the developing and more stable sectors. These measures are designed to enhance the efforts against money laundering and other financial crimes.

India, a nation grappling with widespread corruption and crime issues, faces an additional challenge in the form of terrorism, which is closely linked to money laundering. In light of the current situation, India must establish a robust legal framework under the PMLA Act of 2002, drawing inspiration from international agreements on Anti-Money Laundering (AML) and Countering the Financing of Terrorism (CFT).

This article aims to provide a brief overview of the collaboration between the Financial Action Task Force (FATF) and India's PMLA of 2002, along with exploring the 2019 Finance Act's

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amendments to the PMLA.

II. THE LEGAL & INSTITUTIONAL FRAMEWORK OF INDIA IN CONJUNCTION WITH FATF

The Financial Action Task Force (FATF) came into being as an intergovernmental organization following its establishment during the G7 summit held in Paris back in 1989. Its central mission revolves around formulating standards and advocating for the effective adoption of legal, regulatory, and operational measures designed to combat money laundering, terrorist financing, and other threats to the integrity of the global financial system. In essence, the FATF's objectives can be summed up as follows: "To establish standards and encourage the successful implementation of legal, regulatory, and operational measures dedicated to eradicating money laundering, terrorist financing, and associated risks that undermine the integrity of the international financial framework." The FATF functions as a policymaking body, working diligently to promote national-level legislative and regulatory improvements in these critical areas.

In its 2008 report on terrorist financing, the FATF outlined the requirements for combating terrorist financing in two broad categories. These categories include funding the specific operations of terrorists on one side and dealing with the wider financial needs associated with establishing and maintaining the infrastructure of a terrorist group, as well as promoting its ideological goals, on the other side.

Money laundering has become a significant concern in India[3], especially given its status as one of the world's rapidly growing economies. This issue is further exacerbated by a wide range of illegal activities both within the country and beyond its borders. These activities encompass activities like drug trafficking, fraudulent schemes, counterfeiting of Indian currency, transnational organized crime, human trafficking, and widespread corruption, all contributing to the money laundering landscape in India.

In the context of domestic criminal activities, typical techniques employed for money laundering encompass the establishment of numerous bank accounts, blending illegally acquired funds with legitimately earned assets, acquiring bank checks with cash, and routing money through intricate legal entities.

In the context of transnational organized crime, individuals often employ sophisticated tactics

[3] *MUTUAL EVALUATION REPORT*. (2010). FATF Secretariat. http://www.fatf-gafi.org/media/fatf/documents/reports/mer/MER%20India%20full.pdf

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to conceal the illicit origins of their funds. This includes using offshore corporations and engaging in trade-based money laundering. Additionally, terrorists also make use of hawala, an illicit method for transferring money within and across borders.

At the Plenary Meeting held in June 2013, the FATF concluded that India had attained a "satisfactory level" of adherence to all core and key recommendations. As a result, India was exempted from routine follow-up assessments, acknowledging the country's substantial commitment to probing money laundering and terrorist funding. Nevertheless, the 8th Follow-Up Report (Mutual Evaluation of India), issued in June 2013, pointed out that the rate of convictions in money laundering cases continued to be relatively modest.

Regarding prosecutions, the FATF observed an increase in cases from six as of December 31, 2009, to 36 by March 31, 2011. However, this figure only saw a slight rise to 42 by November 30, 2012. As of March 2013, seven new prosecution complaints had been filed. Concerning individuals accused of terrorist financing and ongoing investigations, there was an upward trajectory, with 470 accused and 143 cases reported between 2006 and March 31, 2013. Nevertheless, convictions for terrorist financing remained limited, with only five individuals convicted between 2006 and March 2013.

In a report titled 'Terrorist Financing,' presented to G20 leaders in November 2015, the FATF revealed that India had seized assets worth 3 lakh Euros (equivalent to over 2.12 crore INR) from 37 entities as of August 2015.

Highlighting the factors of inter-agency settlement is essential when addressing the challenges of money laundering and terrorist financing, especially in the development of Counter Financing of Terrorism (CFT) standards and policy responses. This collaborative effort is essential for supporting and overseeing the implementation of measures. In this context, both the Finance ministry and the RBI, the country's central banking institution, regularly issue updated circulars and notifications. These documents assess financial risks, including those related to laundering assets and terror funding, and suggest strong measures to prevent criminals from exploiting the banking and financial systems.

To strengthen the impact of FATF initiatives in India, government agencies initiated a National Risk Assessment exercise in January 2016. The primary goal of this exercise is to identify sectors particularly susceptible to money laundering and terrorist funding activities and address any identified shortcomings in line with FATF guidelines. Additionally, Indian agencies have received a custom self-assessment software tool from the World Bank. This tool focuses on key aspects of money laundering, especially the risks associated with terrorist financing, and aids in

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pinpointing vulnerabilities across different sectors.

III. CONTEMPORARY INITIATIVES BY FATF IN SURVEILLANCE AND RESPONSE TO TERRORIST FINANCING

The FATF expresses profound concern and strongly condemns the violent terrorist incident that occurred in Pulwama, Jammu, and Kashmir, which tragically led to the loss of lives of at least 40 Indian security personnel. This unfortunate incident, in addition to recent attacks on educational institutions in Afghanistan and Nigeria, hotels in Kenya, places of worship in Indonesia, judicial institutions in Turkey, as well as concerts and train stations in Europe, highlights the ongoing global menace posed by terrorism. These acts of terror result in loss of life, and severe injuries, and instill fear within communities. Notably, these reprehensible acts are sustained by financial resources and the means to transfer funds among supporters of terrorism[4].

The fight against terrorism and its financial support is an ongoing and ever-changing challenge. Terrorist groups and their financiers are constantly seeking ways to find vulnerabilities and create new methods to obtain, transfer, and use funds. Many regions are facing significant obstacles in establishing robust systems to effectively combat terrorist financing. In this context, the FATF and its extensive global network are committed to leading the way in countering these emerging threats through innovative approaches and international cooperation. Our collective goal is to disrupt the flow of funds to terrorists and prevent them from accessing and exploiting the international financial system. By doing so, we aim to protect societies and citizens worldwide from the devastating consequences of terrorism.

India has been contending with concerns surrounding illicit financial flows, prompting recent efforts to align its legal and institutional framework with international anti-money laundering (AML) standards. A pivotal moment in this journey occurred in 2010 when India underwent a comprehensive evaluation of its AML and counter-terrorism financing (CFT) systems, resulting in its integration with the FATF.

From 2010 to 2013, India underwent yearly assessments to ensure it effectively implemented its action plan, followed FATF standards, and successfully integrated other FATF recommendations. In 2013, the FATF delivered a favorable evaluation, acknowledging India's substantial strides in rectifying technical shortcomings concerning the criminalization of money

[4] *THE ROLE OF HAWALA AND OTHER SIMILAR SERVICE PROVIDERS IN MONEY LAUNDERING AND TERRORIST FINANCING*. (2013). PARIS: FATF. http://www.fatf-gafi.org/media/fatf/documents/reports/Role-ofhawala-and-similar-in-ml-tf.pdf

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laundering and terrorist financing. These advancements were achieved through modifications to crucial legislative frameworks, including the PMLA Act, the Unlawful Activities (Prevention) Act (UAPA), and the Banking Laws Act.

Despite India's significant standing as an emerging market, it predominantly relies on cash transactions, and hawala channels are widely used for both legitimate and illicit fund transfers. An interesting point in the FATF assessment was that it didn't mention any laws explicitly prohibiting hawala, like the Foreign Exchange Regulation Act of 1973, which has now been replaced by the Foreign Exchange Management Act of 1999, along with subsequent amendments and regulatory actions. In the national discourse, India's media frequently highlights these laws and the multifaceted role hawala channels play in the country's economic landscape. However, it's important to stress that the impact of hawala goes beyond its financial implications, encompassing a range of additional offenses, including tax evasion, violations of customs duties, corruption, money laundering, and the financing of terrorism.

Legislations In India:

1. **Prevention of Money Laundering Act, 2002**

The preamble of the Act articulates its primary purpose as follows: "To enact legislation aimed at thwarting money laundering and establishing provisions for the seizure of assets linked to, or derived from, money laundering activities, along with related and ancillary matters." The Act's alignment with international obligations is detailed in Sections 56, 58, 59, and 60.

2. **Black Money (Undisclosed Foreign Income And Assets) And Imposition Of Tax Act, 2015**

In more recent times, the leadership of Prime Minister Narendra Modi's NDA government has spearheaded a series of initiatives aimed at tackling issues related to illicit wealth and money laundering. Among these initiatives, the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 stand out as particularly noteworthy. This legislation was enacted with the specific objective of identifying and taxing unreported foreign income and concealed assets held by Indian tax residents.

The Black Money Act introduces two key and impactful provisions. Firstly, it imposes a tax rate of 30% on undisclosed foreign income and assets, coupled with a penalty equal to three times the tax liability arising from such undisclosed wealth. Additionally, the Act stipulates stringent penalties in the form of imprisonment, ranging from three to ten years, for individuals found guilty of these financial transgressions.

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3. Criminalization Of Terrorist Financing (UAPA)

Terrorist financing represents a significant realm where illicit or laundered funds find extensive application. To address this critical issue, India has developed specialized and dedicated legislative measures. Prominent among the laws aimed at countering terrorist financing is the Unlawful Activities (Prevention) Act, of 1967 (UAPA), which has seen significant amendments, notably the Unlawful Activities (Prevention) Amendment Act of 2004 and the UAPA Amendment Act of 2008. Additionally, the law was updated in 2019 to broaden its scope and align with the requirements outlined in the United Nations Convention on the Suppression of the Financing of Terrorism. In tandem with these legal provisions, India also introduced the National Investigation Agency Act in 2008.

Through a series of amendments in 2004, 2008, and 2019, India has synchronized its counter-terrorist financing legislation with international standards. The UAPA Amendment Act of 2019, in particular, signals a transformation in how the nation deals with terrorism-related cases. The government has emphasized its dedication to fighting terrorist financing by categorizing the creation, smuggling, or dissemination of top-quality counterfeit Indian currency as a terrorist activity. Furthermore, it has expanded the interpretation of proceeds of terrorism to include any assets designated for use in acts of terrorism, underscoring a policy of zero tolerance.

By these legislative changes, the UAPA now explicitly criminalizes terrorist financing, with specific provisions outlined in Sections 17, 25, and 40 of the Act. These measures collectively underscore India's determination to confront and eradicate the financial support systems that sustain terrorism.

IV. CASE ANALYSIS

1. Hari Narayan Rai v. State of Jharkhand Directorate of Enforcement[5] -

In a significant legal development, the Special Judge presiding over cases related to the PMLA Act as well as those under the jurisdiction of the Central Bureau of Investigation's Anti-Corruption Branch (ACB) in Ranchi has handed down a conviction. The former Jharkhand Minister has been found guilty and subsequently sentenced to seven years of rigorous imprisonment. Additionally, a fine of Rs. 5 lakhs has been imposed on the convicted individual under the provisions of Sections 3 and 4 of the PMLA.

This case is linked to a money laundering investigation connected with the former Chief Minister of the state, Madhu Koda. The Enforcement Directorate brought this matter to light

[5] Cr. Appeal (S.J. No. 423 of 2017).

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back in September 2009, leading to a series of arrests and the attachment of assets valued at hundreds of crores. Specifically, the former Minister responsible for Tourism, Urban Development, and Forests in the Koda cabinet, Mr. Rai, has been convicted for his involvement in the laundering of funds totaling more than Rs. 3.72 crore. This verdict represents a significant milestone in the pursuit of justice and accountability in cases of financial impropriety and money laundering.

2. Terrorist Mohammed Koya sentenced to 7 years in jail under PMLA[6]

In a significant legal development, a court in Karnataka has handed down a seven-year prison sentence to a Pakistani terrorist in a case related to money laundering. The individual in question has been identified as Mohammed Koya. Notably, this marks the third conviction under the PMLA Act in India.

In a noteworthy legal precedent, a Karnataka court has delivered a seven-year incarceration verdict in a money laundering case involving a Pakistani terrorist. The individual in question goes by the name Mohammed Koya. It's worth highlighting that this represents the third instance of conviction under the PMLA Act within the country.

3. ED attaches assets of Jharkhand Naxal Operatives under PMLA

The Enforcement Directorate (ED) has announced the attachment of assets valued at Rs. 2.89 crore in connection with an ongoing money laundering investigation involving individuals suspected of having links to Naxal operatives in Jharkhand[7]. These assets encompass both tangible and intangible properties registered under the names of Maoists such as Binod Kumar Ganjhu, Pradeep Ram, and their respective family members.

The underlying money laundering case revolves around the illicit collection of funds from contractors and coal merchants through acts of criminal extortion and intimidation. These activities were carried out in the Magadh-Amrapali coal region within the Chatra district of Jharkhand and were attributed to members of the banned Left Wing Extremist organization known as the Tritiya Prastuti Committee (TPC). It's worth noting that the Jharkhand government has proscribed the TPC, and a significant portion of its membership comprises former members of the CPI (Maoist). The ED initiated its case based on FIRs filed by the state police against the accused individuals. In a proactive effort to combat unlawful financial activities associated with

[6] PAKISTANI TERRORIST MOHD. KOYA SENTENCED TO 7 YEARS OF JAIL UNDER PMLA. (2018, July 12). *The Economic Times*.
[7] ED ATTACHES ASSETS OF JHARKHAND NAXAL OPERATIVES UNDER PMLA. (2019, September 19). *The Economic Times*.

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extremist groups, the ED has taken these measures to secure assets and further its investigation.

V. EXTENT OF MONEY LAUNDERING OFFENSES THROUGH AMENDMENTS IN PMLA

To bolster the effectiveness of the PMLA Act in uncovering and preventing money laundering and other financial wrongdoing, the Finance Act of 2019 introduced more comprehensive and detailed reporting requirements for entities responsible for reporting. These entities are now obligated to conduct thorough verification procedures for transactions showing signs of suspicion or bearing a high risk of involvement in money laundering or terrorist financing.

Section 3 of the PMLA pertains to the "offense of money laundering." An Explanation was incorporated into Section 3 for a specific reason. This alteration was prompted by an observation from the FATF in 2010. The FATF noted that actions such as concealing, possessing, acquiring, and using proceeds obtained from criminal activities were not previously classified as criminal offenses under Section 3 of the PMLA.

With the inclusion of this Explanation, an individual can now be found guilty of money laundering if they are directly engaged in or knowingly participate in any of the following activities: (a) concealing, (b) possessing, (c) acquiring, (d) using, (e) presenting as legitimate, or (f) asserting as legitimate through any means whatsoever. Section 3 effectively criminalizes the possession or transformation of gains acquired from criminal activities, including the act of presenting or claiming that these illicit gains are legitimate. This amendment reinforces the framework for combating financial crimes and strengthens measures for preventing money laundering.

VI. LAUNDERING OF PROCEEDS OF CRIME - CONTINUING ACTIVITY

Explanation (ii) in Section 3 of the Act considers actions related to the proceeds of crime as an ongoing offense. This means that any activity associated with laundering and presenting illicit gains as legitimate property through any means is encompassed by the term 'proceeds of crime.' When combined with Section 2(1)(u) of the Act, it's clear that any process tied to the proceeds of crime continues to be an offense as long as an individual benefits from those proceeds. Essentially, the offense remains active until the person no longer benefits from the ill-gotten gains.

The concept of a 'continuing offense' has been examined by the Supreme Court in various cases under different circumstances. In the case of ***Gokak Patel Volkart Ltd. v. Dundayya Gurushiddaiah Hiremath***[8], the court determined that a continuing offense does not absolve the

[8] 1991 SCR (1) 396, 1991 SCC (2) 141

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initial guilt but rather maintains the violation, considering it active with each passing day. It's important to note that the term 'continuing offense' lacks a specific legal definition, and its categorization depends on factors such as the statutory language defining the offense, the nature of the offense, and the intended purpose behind designating it as such.

VII. EXPANDING THE SCOPE OF PROCEEDS OF CRIME

Section 2(1)(u) of the law defines "proceeds of crime," and the Finance Act of 2019 added an Explanation to provide clarity. This Explanation makes it clear that "proceeds of crime" not only cover property obtained directly or indirectly from the scheduled offense but also any property acquired as a result of criminal activities related to the scheduled offense. In essence, this amendment expands the definition of "proceeds of crime" to include gains obtained from criminal activities associated with the scheduled offense. This helps in comprehensively addressing the financial aspects of criminal activities.

In the case of ***Rohit Tandon v. Enforcement Directorate***[9], the Supreme Court provided a significant interpretation of this provision. The court highlighted that even though the Act doesn't specifically define "criminal activity," the actions of the accused, as described in the underlying offense, inherently involve criminal behaviour. Deliberately concealing, possessing, acquiring, or using the property by presenting it as legitimate and converting it through bank drafts undeniably falls within the category of criminal activity associated with a scheduled offense. As a result, such actions are governed by Section 3 and subject to punishment under Section 4 of the Act, constituting instances of money laundering.

This effectively fills the gap in Section 2(1)(u), enabling authorities under the Act to establish that properties have been obtained through any form of criminal activity, even if the term "any criminal activity" isn't explicitly defined in the Act. Furthermore, the government has introduced a new Sub-Section (2) to Section 66, making it mandatory for the Enforcement Directorate (ED) to share relevant information with other agencies. This move aims to facilitate efficient information sharing by the FATF recommendations.

Additional proposals include the formation of an inter-agency task force dedicated to combating money laundering and terrorism financing. Furthermore, there's a suggestion to add Section 447 of the Companies Act to the list of scheduled offenses under the PMLA. This would enable the Registrar of Companies to report suitable cases to the ED for money laundering investigations. These combined changes strengthen the nation's efforts to effectively tackle financial crimes

[9] Cr. Appeal Nos. 1878-1879 of 2017

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and money laundering.

VIII. CONCLUSION AND RECOMMENDATIONS

India has made significant strides in its battle against money laundering, but the authorities must remain vigilant and not become complacent. The methods employed by money launderers and terrorists are constantly evolving, with offenders utilizing various channels to raise funds for criminal activities in support of their causes. To establish a sustainable and effective program against money laundering and terrorist financing, it is imperative to criminalize terrorist financing, freeze the assets of terrorists, and ensure that financial intelligence units operate independently.

While India has put in place various legislative measures and established mechanisms to combat money laundering, there is still much work to be done to effectively curb this crime. A substantial amount of illegal money continues to be laundered in the Indian economy due to weak enforcement mechanisms and the failure of the existing regime to effectively combat this menace. The true test of the Black Money Act will lie in the post-compliance phase, demonstrating how effectively investigations and prosecutions can be carried out against those who still hold unaccounted money abroad. Only through effective investigation and prosecution can we deter further illicit money flows to cross-border destinations.

India has implemented various anti-money laundering measures to address these issues, but there are still some loopholes and shortcomings. Some of the identified issues include the rapid advancement of technology, lack of awareness about the problem, non-fulfilment of the intended purpose of Know Your Customer (KYC) norms, the prevalence of black-market channels, and the need for comprehensive enforcement agencies (which has been recently addressed through the Amendment of PMLA, 2019 under the Finance Act, 2019), as well as concerns about financial confidentiality.

Money laundering is an international problem with far-reaching implications, and all countries must enact stringent laws to leave no room for money launderers to exploit weak jurisdictions. There is no requirement for individual states to determine which offenses should be categorized as predicate offenses for money laundering, and there is a need for international harmonization efforts to address the global aspect of money laundering is noteworthy.

Moreover, there's a requirement for more transparency in how the PMLA Act is practically applied, especially in terms of property attachment. The Finance Act of 2019 has broadened the PMLA's reach, aiming to equip regulatory bodies to actively oversee, identify, and thwart forthcoming financial offenses by identifying suspicious transactions and clients, instead of just

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passively observing.

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