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Prevention of Money Laundering Act 2002: Its Implications & Challenges in India

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Throughout the world, the issue of money laundering has affected not just the financial systems of India and many other countries, and it continues to constitute a severe danger to the integrity and sovereignty of those countries. In order to counter such threats, the parliament enacted an all-encompassing statute, which includes provisions for combating money laundering and associated activities, such as the confiscation of proceeds of crime, the establishment of agencies, and measures to prevent it from occurring in the first place. The PML Act also intends to confiscate and take any assets obtained by the laundering of money, as well as to deal with any other unspecified matters. This article focuses on the most common problem which is faced by every country that is money laundering. The article tells about money laundering, tax heaven countries, FATF. India has its act which is the prevention of money laundering Act, 2002: its objective, features, and scenario in India. The article also talks about the cases which occurred in India and the role of RBI to prevent money laundering.

Keywords: FATF, bank, money.

INTRODUCTION

As time has progressed, humans have started to get innovative techniques to launder their money. Money laundering is a process in which individuals convert their illegally earned money to legitimate use. In India, if an individual earns more than 5 Lakhs per annum they

have to pay a certain amount of tax to the government. There are two categories of tax i.e. G.S.T. and Income-tax. If a person does not pay any tax to the Government it can be said that the income of the individual is black and to convert this black money into legitimate use they use the procedure of Money laundering. Money laundering is a felony that is employed by white-collar and street-level criminals. Most financial companies possess anti-money laundering policies that are used to detect and prevent such activities. It is used on a worldwide basis and every individual is making a major amount of profits by not providing tax to the government. There are some countries which are known as tax heaven countries that have rules not to disclose any details of the transactions which are made, including Switzerland, Mauritius, and Cayman island.

A comprehensive study has stated that there are several short and long-term effects of this process. In the study, Indians are assumed to have kept almost 9,395 corers in a Swiss bank and other bodies which are used to launder the money. This statistic was provided in the release of the white paper by The Government of India in 2012. However, an expert like John Walker and the UNDOC (United Nations on Office Drug Control) claim that the information is nowhere near the actual amount and the figure is closer to 40% of India's GDP. This money is mostly used for criminal activities like terrorism, narcotics smuggling, organized criminal rings, weakened banking system, and weapon findings. To prevent such criminal activities Anti-Money laundering legislation has been in force around the world.

To keep an eye over this issue the Financial Action Task Force (F.A.T.F) was established by the G-7 summit in Paris in 1989. The FATF is a global money laundering and terrorist financing watchdog. They aim to stop these illegal activities and the harm they cause to society. As a policy-making body, the FATF works to produce the necessary political will to bring about national legislation and reforms in these areas. With 200+ countries and the jurisdictions committed to using them, the FATF has developed recommendations and standards which ensure to co-ordinate globally to stop organized crime, corruption, and terrorism. The FATF also works to stop funding for various weapons which are used for mass destruction. India became the observer in 2006. As of June 25, 2010, India is a full-fledged member of the FATF.

India has its action to prevent money laundering cases that is The prevention of Money Laundering Act, 2002.

THE PREVENTION OF MONEY-LAUNDERING ACT, 2002

The Prevention of Money Laundering Act, 2002(PMLA)was enacted by the NDA Government to put a stop to money laundering cases. The act and rules come into force on July 1, 2005, and they are notified there under imposed restrictions on banking companies, financial institutions, and intermediaries to verify the identity of all the clients, maintain their records, and furnish information in the ordered form to Financial intelligence unit of India. In the Axis bank case,¹the Enforcement Directorate (ED)received the power to freeze all the bank accounts if they find something illegal under the Prevention of Money Laundering Act, 2002. The major objectives of PMLA were to tackle money laundering in India:

- It Helps to Administer and put a stop to money laundering.
- It also holds onto the property got by the laundering of cash.
- And to manage other sorts of issues connected with illegal tax avoidance.

FEATURES OF THE PMLA

Punishment of Money-laundering: The Act endorses that any individual seen as liable for Money-laundering will be culpable with thorough detainment from three years to seven years and where the proceeds of crime involved relate to any offence under paragraph 2 of Part A of the Schedule (Offences under the Narcotic Drugs and Psychotropic Substance Act, 1985)², the greatest discipline may stretch out to 10 years rather than 7 years.

Powers of Attachment of Tainted Property: With the authority of the director, all the Directors or officers above the rank of Deputy Director can temporarily join property accepted to be "continues of wrongdoing" for 180 days. Such a request is needed to be confirmed by an autonomous Adjudicating Authority. The Central Government delegate an authority known as Adjudicating Authority, through notifications to exercise authority, powers, and authority

¹ *OPTO Circuit India Ltd. v Axis Bank* (2021) SCC OnLine SC 55

² Narcotic Drugs and Psychotropic Substance Act, 1985

conferred under PMLA. It chooses whether any of the property joined or seized is engaged in money laundering. The Adjudicating Authority will not be limited by the strategy set somewhere near the Code of Civil Procedure, 1908, yet will be guided by the standards of characteristic equity and subject to different arrangements of PMLA. The Adjudicating Authority has the power to regulate its procedure.

The Presumption in Inter-connected Transactions: Where money laundering includes at least two between associated transactions and at least one such exchange is or is end up being engaged with illegal tax avoidance, at that point for the motivations behind mediation or confiscation, it will be assumed that the leftover transaction structure part of such between associated transaction.

- To control and put a stop to money laundering.
- To seize the property obtained by the laundering of money.
- To deal with another type of issue linked with money laundering.

The burden of Proof: If an individual is accused of having committed the offence of money laundering, needs to prove his claimed proceeds of crime are legal property. The Government of India delegated an Appellate Tribunal, which gives them the power to hear appeals against the sets of the Adjudicating Authority and some other authority under the Act.

Special Court: Prevention of Money Laundering Act, 2002 (PMLA), Section 43 says that the Central Government, in meeting with the Chief Justice of the High Court, will, for preliminary of offence culpable under Section 4, by warning, assign at least one Courts of Session as Special Court or Special Courts for such region or regions or for such case or class or gathering of cases as might be determined in the notice.

THE SCENARIO OF MONEY LAUNDERING IN INDIA

Section 3 of this act covers those persons who are directly or indirectly linked with any money laundering activities or knowingly get indulged with these activities the such persons will be charged

under the money laundering act. In the P. Chidambaram case,³ the former Finance Minister P. Chidambaram was booked under section 3 of PMLA for laundering foreign funds. He applied for bail but it get rejected.

Section 4⁴ tells about the punishment of the committing of this act with rigorous imprisonment which will be not less than three years and can be extended till seven years and the fine will be imposed which can be more than five lakh or above.

Section 12(1) advise the banks, intermediaries, and financial institutions to maintain all the records of the transactions which are prescribed, it should look after that the transactions are single or series transactions that may be connected and whether such transaction took place within a month, sub-clause (b) ordered to provide all transaction information to the directors within the time prescribed. Subsection (c) advises to maintain and verify all the records and identity of all its client in a manner prescribed in this act. As per the provision which is mentioned in this act all the banks, intermediaries (includes stockbroker, sub-broker, trustee, registrar, merchant bankers, etc mentioned in section 12 of SEBI Act⁵) and financial institutions (include chit- fund company, co-operative bank, non-banking financial company, etc.) they have to maintain all the records of the transaction; The nature and value of rules are prescribed under PMLA. Such transaction Includes:

- All the cash transactions which are made above 10 lakhs in the foreign countries.
- All the series transactions are connected and have a sum value over 10 lakh and which are made within the one-month interval.
- All the suspicious transactions which are made inter alia, debits, and credits into from non-monetary accounts such as Demat account and security account.
- For suspicious transactions, all the transactions which are remotely connected shall be considered.

³ *P. Chidambaram v Directorate of Enforcement* (2019)

⁴ Prevention of Money Laundering Act, 2002

⁵ Securities and Exchange Board of India, 1992

In the case of D.K. Shivakumar⁶ a large amount of Indian currency was restored from his house by the income tax raid which occurred in his house and then sent to Tihar jail.

ROLE OF RBI

The Reserve Bank of India time by time passed various orders and circulars and brought various entities under the provisions of this Act⁷. It is noticeable that all the money changers who deal with foreign currency on regular basis have a high chance to get exposed to money laundering. The RBI has made some norms by providing guidelines. The purpose of stating Anti Money Laundering guidelines is to put a stop at Authorised Money Changers who deal with the buying and selling of foreign currency notes which can be used for money laundering. Therefore Anti Money laundering Guidelines includes:

- Identify the customer under the “know your customer” norm.
- Recognizing, monitoring, handling, and disclosing all suspicious transactions.
- Appointment of Money Laundering Reporting Officer.
- Training of staff.
- Maintain of record.
- Audit of transaction.

Another method to fight against money laundering is to create an internal system of checks and balances within financial institutions. An MLRO is appointed for monitoring the transactions and ensuring compliance with the AML guidelines issued by the Reserve Bank of India time by time. If any suspicious transaction is recorded by the MLRO he will provide the details to Financial Intelligence Unit (FIU). The MLRO shall have reasonable access to gather all the information which would help him to discharge his responsibilities. To stop all suspicious transactions it should be reported to MLRO before they take place. Full details of transactions should be reported, in writing, to the MLRO. Any transaction which looks suspicious can be taken down only with the approval of MLRO. If MLRO is fully satisfied with

⁶ *D.K. Shivakumar v Enforcement of Directorate* (2019)

⁷ Prevention of Money laundering Act, 2002

the transaction report which can be resulted in money laundering he should make a report and send it to FIU.

CONCLUSION

Money laundering has been a major issue in most countries. Criminals are committed to three basic types crime of passion, violence, and economic. Whenever money laundering occurs they would like to move it away as far as possible against the authorities to follow them. They are notified that under imposed restrictions on banking companies, financial institutions, and intermediaries to verify the identity of all the clients, maintain their records, and furnish information in the ordered form to the Financial intelligence unit of India. The Act endorses that any individual seen as liable for Money-laundering will be culpable with thorough detainment from three years to seven years. All Banks, financial institutions, intermediaries must follow the law on monitoring possible money laundering transactions. FATF and PMLA are major aspects to which money laundering has been monitored properly. RBI has also played a vital role to stop money laundering.