

Origin and Evolution of Money Laundering Law (PMLA-2002) in India

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India is vulnerable to money laundering because of certain factors such as, large scale, informal, transnational money transfers across borders, tax avoidance, India's recent emergence as *regional financial center* etc. From the historical point of view, India geographically, physically located in the '*Golden Triangle* and *Golden Crescent* more specifically between the heroin-producing countries. Therefore, India is still continues to be a drug-transit country. Few common sources of origin of illegal proceeds in India come from narcotic trade, unlawful trade in wildlife (in endangered state), Selling Gems unlawfully (especially the diamonds), smuggling, human trafficking, corruption etc.

India is found vulnerable to illicit financial and money laundering activities, identified to be in high risk zone. Hence, there is an immediate need to curb the rampant money laundering activities across the country. There have been startling revelations on improper and illegal financial flows and mindboggling money laundering activities, found, which are authenticated by official records of the State.

Money Laundering Risk Score- Position of India

According to '*Basel Index Report, 2018*' on Anti-Money Laundering (AML), India's risk score stands at 5.28 (with addition of + 0.38) indicates that, the risk factor is on the rise. In fact, globally, around 2/3rd of listed countries (i.e. 64% of state economies) have a risk score of 5.0, as per 2018 rankings and classification with significant risk of money laundering and terrorist activities. Only very less number of countries improved their scores like Ghana, Bolivia, Tanzania, Trinidad and Tobago. Only 17% (i.e. 21 out of 129) countries recorded improvement in their score by 1%, but the trend of degeneration is more striking. 42% nations were found to be showing most disappointing scores

during 2017 and 2018, whereas 37% of States indicated worst risk score. The highest risk score stood between 8.55 and 8.6 during the period 2012 and 2018. Sadly, India is marked in the '*high risk zone*' in respect of 'money laundering' activities.

The *A.M.L. Index Report(2018)*, clearly indicated the apparent low level of enforcement measures of AML/CFT. This prompted the "*Financial Action Task Force*"(FATF)' to improvise the methodology in compliance of its Mutual Evaluation Reports on legal and institutional frameworks, their implementation by the member States. These reformulated measures are designed to ensure effectiveness of AML/CFT systems rather than a mere technical compliance show. Majority countries are assessed with updated methodology of FATF. Money laundering in India is an emerging problem today.

India systematically maintained a strong Anti-Money laundering(AML) system, through rigid laws on foreign exchange and requirement of transaction reporting such as, '*Know Your Customer policy(KYC)*' etc, which seriously interrogated/grilled the criminals and fraudsters, using financial institutions for money laundering purposes. Huge quantity of illegal money are laundered through alternate remittance system known as "*Hawala*" or "*Hundi.*" in India, certain sectors such, narcotic-trafficking, illegal trade endangering wildlife, illicit trade practices of precious gems and stones, human trafficking, smuggling, tax evasion and corruption etc, became the fertile grounds for money laundering activities.

Beginning of 'Money Laundering' - '*Hawala*'

The word 'Money Laundering' was not known and not much popular till three decades ago. But now, it has become a household phenomenon. Interestingly, scientific advancement and technological

development, a boon became a curse now. The impetus of science and technology, particularly Communications and Internet, facilitated the illicit flow of funds by the economic offenders freely to the longer distances. Many books, journals that published enticing criminal plots and stories and hot action, Bollywood movies also popularized 'money laundering' even the children now understand "S" for Swiss Bank and "B" for black money in their vocabulary. Innovative techniques and multiple methods of creating criminal proceeds through antiques theft and sale, illegal export of animal flesh, skin and human organs etc.

Money laundering has been, known as '*Hawala*', an informal transaction. This was popular in 1990's since many political leaders names were exposed in connection with the *Hawala* activities. 'Money-laundering in India' has to be perceived from two different angles.

- 1 'Money laundering' within the state territories, i.e, within India
- 2 'Money Laundering' across the state territory i.e, on international fora

Due to stricter and rigorous Indian economic regulatory laws, certain informal transactions like *Hawala*, suffered severe setback in carrying out illicit trade transactions. The traditional exchange laws and foreign currency regulations further tightened the illegal activities. Money-laundering's cross-border character, at the international forum has been effectively controlled by the India's strict reporting norms and rigid legislations pertaining to foreign exchange. But, still, there is a threat from 'Hawala, transactions'.

The fund transfers through *hawala* would be around 30-40% of the formal markets,. Still, India stands number one in receiving money transfers via *hawala* methods from North America, middle East countries, due to the fact that more number of NRIs reside there. China and Mexico stands 2nd and 3rd places in receiving *hawala* money transfers after India.

Black Money - '*Ilegal Drug Trade*' - a major Source
One of the notorious criminal enterprises generating large scale illicit income in India is illegal drug trade across the borders. Border States are used as facilitating centers to transport and distribute drugs,

narcotics to the European and North American markets. Generation of this black money is seriously impacting the economic, social and political sectors.

The main source for black money in India come from '*illegal drug trade*' with massive hidden networks drains the economy of the nation. The fact of existence and prevalence of drug trafficking, coupled with other crimes when the scandal was exposed by media, wherein involvement of huge quantum of illicit money generated through drug trafficking sometimes, beyond the reach of investigators.

While the newly formed Independent India was seriously engaged in reconstruction of industrial and economic growth, by 1970 sadly India was afflicted with major illegal drug-transits, because huge sums generated by illegal drug trafficking formed the major share of money laundered in India. The annual world turnover of laundered cash in Asian countries were calculated to be around \$ 500 Million and therefore the major share is generated from narcotic illegal trades.

Black Money-Historical Legacy of Money Laundering

The '*Wanchoo Committee*' in 1972 cautioned that, the cancerous growth of black money within the country's economy would lead to destruction, if left unchecked in time and the situation, as predicted, got worsened in the following years.

The '*Central Vigilance Commissioner*' estimated (in 2000) large scale prevalence of black money i.e. touching 40% of the GDP of the country which was Rs. 70 to 80 thousand crore, and International Monetary Fund (KPMG report) projected a whopping amount US\$ 590 billion to US\$.5 trillion as the money laundered annually through international economy that comes to 2 to 5% of the global GDP; and 30% of India. India and Asian nations figure in a very list of 77 countries are of "primary concern" in terms of "major cash laundering" activities. America's black money was about US\$ 500 billion, 5% of GDP, double the size of India's black money. Corruption, in every field of the economy, is nurtured to glorify black-money. The mushroom growth of chit fund companies, the sources of black money generation are known for manipulating accounts, known as '*Window Dressing*'.

Black Money Deposits in the Foreign Banks

The depositing wealth by Asian nations in Swiss banks has been under intense discussion in India. As per information furnished by the Central Banking Authority of Switzerland (Swiss National Bank) in 2014, the money belonging to Indians declined by 10% to about \$1.98 billion or Rs. 12, 615 crores, stated to be the direct consequence of the action taken by the Indian Government recently.

India recently enacted a new legislation, "*Fugitive Economic Offenders Act 2018*" according to which, all illicit funds stashed into foreign banks as well as Swiss banks would face severe penal action, i.e. 10 years of imprisonment and a penalty of 90% of funds and 30% tax levy additionally. Prior to enactment of this legislation, the India offered a single window system benefit to the public to declare voluntarily their foreign assets before a specified date, (i.e., September 30, 2015) which was responded by a mere Rs 4,147 Crores from 638 disclosures.

Legislations before 'PMLA-2002

Before passing "*Prevention of Money Laundering Act, 2002*" (PMLA2002) there existed certain laws and provisions, which taken care of money laundering issue. In latter part of 20th century, in the light of faster growth of transnational, techno crimes, serious concern arose on absence of strong domestic laws to deal with organized crimes and their proceeds.

There have been 12 major statutes in India which addressed the "money laundering" issue in India.'

- 1 *"The Income Tax Act, 1961.*
- 2 *The Customs Act, 1962.*
- 3 *The Code of Criminal Procedure, 1973.*
- 4 *The Indian Penal Code, 1860.*
- 5 *The Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974(COFEPOSA)*
- 6 *The Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976(SAFEMA)*
- 7 *The Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPSA)*
- 8 *The Benami Transactions (Prohibition) Act, 1988.*
- 9 *The Prevention of Illicit Traffic in Narcotic Drugs & Psychotropic Substances Act, 1988.*

10 *The Foreign Exchange Management Act, 2000, (FEMA).*

11 *The Prevention of Terrorism Act, 2002 (POTA)"*

In the past, India had separate legislations to deal with the narcotics, issues of imports, FOREX manipulations and violations of foreign trade etc., Further there were also exclusive legislations on Preventive detention, Seizures and Property forfeitures to deal with such serious crimes. The legal provisions under FERA were felt draconian, hence repealed and in its place "*Foreign Exchange Management Act*" 2000 was passed to deal with the forex violations etc.

The "*Code of Criminal Procedure, 1973*" was the basic legislation to comprehend and confiscate illegal proceeds. The "*Smugglers and Foreign Exchange Manipulators Act (SAFEMA)*" conjointly permits Seizure and Asset forfeitures, prohibits their transfer coupled with Customs Act violations. The Competent Authority (CA) under Finance Ministry administers both the NDPS and SAFEM legislations, which authorizes to seize any asset involved in narcotic trafficking immediately upon the arrest of the offender. "*The Foreign Exchange Management Act (FEMA)*" of 2000', is the basic and significant law to contain the issue of laundering of money.

Another relevant legislation is "*the Conservation of Foreign Exchange and Prevention of Smuggling Act*" which deals with *preventive* detention in respect of foreign exchange violations. The Directorate under the Finance Ministry implement both "*FEMA and COFEPOSA*". The '*Reserve Bank of India*' has the utmost responsibility with regard to the regulation, supervision and controlling the transactions related to foreign exchange.

The Government of India took initiatives to enact a significant enactment for money laundering prevention to comply with global obligations. Accordingly an '*Inter-Ministerial Committee*' was created to examine and analyze money laundering dimensions of all kinds and to advise appropriate legislations.

The Committee felt that, a comprehensive legislation was an immediate remedy to balance social interests and economic integrity of the State. The "*Prevention of Money Laundering Act, 2002*" (PMLA) is designed to fight the problem of money laundering. It is the core and comprehensive legislation to check illicit flow of funds affecting the national economy. Other

legislative tools like “Narcotic Drugs and Psychotropic Substances Act,”1985, “Banking Regulations Act, 1949” “Chit Funds Act, 1982” “R.B.I. Act, 1934” “SEBI Act, 1992” etc. ultimately formed the potential force to wage war against the menace of money laundering and other related economic crimes.

The Indian government with a strong commitment to eliminate the money laundering activities and being signatory nation to certain United Nations Conventions, provided legal framework to check the problem effectively. In response/compliance to the “Political Declaration adopted by Special Session of the United Nations General Assembly (UNGASS-1998)” organized on 8-10 June 1998, wherein the member countries were asked to adopt anti Money Laundering laws and measures. India also enacted a special law known as “Prevention of Money Laundering Act, 2002” (PMLA-2002. The PMLA and the Rules were notified. This Act was amended 3 times so far i.e, 2005 and 2009 by enlarging its scope and amended further in 2012 \

The Prevention of Money Laundering Act, 2002
An Overview

The “Prevention of Money Laundering Act, 2002” and the subsequently notified ‘Rules’ forms the core legislative base to fight money laundering in India. The Indian Anti-Money Laundering legislation, i.e, PMLA-2002 is enacted with 3 important objectives.

- 1 Preventing and controlling money laundering
- 2 Confiscating the property acquired through Illegal money
- 3 Dealing with any other issues, related to Indian money laundering

Contents of PMLA 2002

Ch.	Sections	Title of the Chapter
1	1-2	“Preliminary”
2	3-4	“Offence of Money Laundering”
3	5-11	“Attachment, Adjudication and Confiscation”
4	12-15	“Obligation of the Banks, Financial Institutions and Intermediaries”
5	16-24	“Summons, Searches And Seizures, etc”
6	25-42	“Appellate Tribunal”
7	43-47	“Special Courts”
8	48-54	“Authorities”
9	55-61	“Reciprocal, arrangements for assistance in certain matters and procedure for confiscation of property”
10	62-75	“Miscellaneous Schedule”

Object of the Act

Preventing money laundering and Confiscation of illegal properties connected with money laundering (i.e. to seize the illegal proceeds) are the two prime goals of the legislation. It is enacted to comply with the international obligations contained in the declarations

The international community appreciated the imminent dangers due to money laundering affecting the financial integrity and sovereignty of the States. Efforts were made by the international community to prevent harms to the national and international economic integrity.

Certain Conventions and Principles such as, a) “The UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988) b) The Principles of Basel Statement of 1989 and c) FATF 40+9 recommendations,” etc, formed the basis to initiate strong fight against money laundering. In tune with the international policies, the PMLA, provided for

- 1 Declaring money laundering as crime
- 2 Laying down methods for disclosure of reportable transactions by the financial institutions
- 3 Providing for seizure/confiscation of criminal proceeds
- 4 Declaring money laundering as an offence, extraditable and
- 5 Providing for global co-operation in containing the offences of ‘money laundering’

The Act also included recommendations of the “Parliamentary Standing Committee on Finance” pertaining to certain definitions such as, ‘banking, company’, ‘person’ and other procedural, appeal related matters. The above legislative framework indicates the strong determination to prevent laundering the tainted money, through unlawful activities and also by investing in both movable and immovable properties. It was also ensured that, such illegal criminal proceeds should not contribute to the enjoyment of the perpetrators of the money laundering crimes.

REFERENCE

[1] Senior Asst.Professor, Chairman, Board of Studies in Law , Kakatiya University, Telangana, India.

- [2] Golden triangle is a tourist circuit which connects the national capital Delhi, Agra and Jaipur. The Golden Triangle is so called because of the triangular shape formed by the locations of New Delhi, Agra and Rajasthan on a map.
- [3] Golden Crescent is the name given to one of Asia's two principal areas of illicit opium production (with the other being the Golden Triangle), located at the crossroads of Central, South, and Western Asia. This space overlaps three nations, Afghanistan, Iran, and Pakistan, whose mountainous peripheries define the crescent
- [4] 'International Narcotics Control Strategy Report' by 'Bureau for International Narcotics and Law Enforcement Affairs' emphasizes India's Vulnerability to money-laundering activities. It is estimated that a total of \$343 billion has been laundered out of India during the period 2002-2011. This is a massive amount and prevention of money laundering must be a priority for the government. Out of 140 countries, India has been ranked 93rd and 70th in 2012 and 2013 respectively with a score of 6.05 in 2012 and 5.95 in 2013, as compared to Norway, which has a score of 2.36 and ranks No. 1 in the Anti Money Laundering (AML) Basel Index 2013. This clearly shows that India, in the present-day scenario, is very vulnerable to money laundering activities and is a high risk zone. India needs to curb Money laundering as the practice is rampant across the country.
- [5] 'International Narcotics Management Strategy Report' by the 'Bureau for International Narcotics and Enforcement Affairs' emphasizes India's Vulnerability to Money-Laundering activities, with its strategic regional and global role, large scale cross-border money flows, wide range of tax avoidance issues etc.
- [6] According to Indian observers
- [7] like as fraud, theft, financing of terrorism, trafficking in human beings, tax evasion, illegal diamond trade etc has been best-known to the overall public throughout the planet since 1989,
- [8] The Criminal Law Amendment Ordinance, 1944 permitted the attachment and forfeiture of money or property obtained through bribery, criminal breach of trust, corruption, or theft, and of assets that are disproportionately large in comparison to an individual's known sources of income.
- [9] The FEMA's objectives include the establishment of controls over foreign exchange, the prevention of capital flight and the maintenance of external solvency. FEMA also imposes fines on unlicensed foreign exchange dealers.
- [10] The Committee submitted its report in July 1997, underscored the point that the drug traffickers, smugglers and other undesirable elements had amassed huge wealth that was being employed to undermine the steadiness of the money establishments and social order.
- [11] Following this report and based on the discussions on the recommendations made therein, The Prevention of Money Laundering Bill was introduced in the Lok Sabha on 4 August, 1998, and passed on 17th January 2003. However, the implementation of the same did not see the light of the day until First June, 2005 when it was enforced.
- [12] International Convention for the Suppression of the Financing of Terrorism(1999) 2.UN Convention against Transnational Organised Crime(2000) and 3.UN Convention against Corruption(2003)
- [13] came into force on July 1, 2005
- [14] (w.e.f.1-6-2009)
- [15] (w.e.f.15-2-2013; In India, before the enactment of the Prevention of Money Laundering Act 2002, the following statutes addressed inadequately the issue of money laundering. 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 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. These Laws were felt to be not sufficient to tackle the growing menace of money laundering in India.
- [16] This Law contains 10 chapters, with 75 sections and 1 Schedule. It is applicable to the entire Indian territory, covering the state of Jammu and Kashmir also. PMLA as amended is having 2

schedules ie.,Part A dealing wit Offences, irrespective of the value of Schedule, Part C: dealing with Offences involving cross border transactions” and Part B: Nil Schedule

[17]Preamble of the Act 15 of 2003 clearly enunciates the object and purpose of the Act

[18]the Political Declaration and Global Program of Action, annexed to the resolution S-17/2 adopted by the General Assembly of the United Nations at its seventeenth special session on the twenty-third day of February,1990; and ii) the Political Declaration adopted by the Special Session of the United Nations General Assembly held on 8th to 10th June, 1998 calling upon the Member States to adopt national money-laundering legislation and program.

[19]The ‘Statement of the objects and Reasons’ summarized the situations and conditions.