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Evasion of the Proceeds of the Crime: An Evaluation of PMLA 2002

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ABSTRACT

This paper focus on the problem which is facing by the whole world that is Money laundering. Money laundering means converting black money into white money. This paper focuses on the cycles, processes in which this illicit trail took place. It also discuss about the scope of the money laundering and later on the way by which the problem of money laundering can be tackled by the police officials.

Keywords: Money laundering, illicit, licit, PMLA, Tax evasion.

I. INTRODUCTION

Tax evasion is the way toward disguising the wellspring of cash acquired by illegal methods. It is the interaction of making the appearance that a lot of cash got from genuine violations, for example, drug dealing or fear-based oppressor action, started from a genuine source. Illegal tax avoidance permits wrongdoing to pay by ²allowing lawbreakers to stow away and legitimize continues determined from criminal operations. In a simple word's money laundering is a process of converting illegal money (black money) to legal money (white money). This laundering of money is done through various way like placement, layering integration. Money laundering is attached to various global phenomenon. This process includes various methods, cycles, effects, punishment of money laundering which will be discussed in the later part of the paper.

(A) Literature review

Paridhi Saxena, Money Laundering in India the paper is written by Paridhi Saxena a student of NLU the author discussed about how the laundering of the money took place in the countries, what is its origin, the ways by which it can be controlled.

Enakshi Jha, Money Laundering: The Dirty Crime Eroding the Banking System the author discuss about how money laundering is affecting the country and increasing crime.

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² Enakshi Jha, Money Laundering : The Dirty Crime Eroding The Banking System,2,HNLU,1,5-6(2016).

(B) Research Methodology

This paper is based in the doctrinal research methodology which will consists of legal proposition by studying the legal provision and case laws. I will undergo secondary sources of law which will includes legislation, judgements, text books, academic writings, reports.

II. PREVENTION OF MONEY LAUNDERING ACT, 2002³

The history of money laundering is interlinked with the history of trade, commerce and banking institutions. Illegal tax avoidance has been utilized to move cash coming out because of wrongdoing, to cover up and move it out of the reach of government. One of the manners of avoiding illegal money is by the option of buying apparently real organizations what's more, to blend their unlawful profit in with the genuine income they got from these organizations.

In order to stop the transaction of the illegal money in the country. Government came up with the legislation Prevention of money laundering Act in order to impose restrictions, confiscation of illegal property, prevent the use of banking channel for tax evasion and to punish the people who commit this offence. So, I have described above money laundering is the process of converting tainted money to untainted money by various process and cycles.

(A) Cycle

In order to convert tainted money to untainted money the tax avoider use various cycles and process which are as follows-

The cycle of doing money laundering consist of three steps-

1. **Placement-** the initial stage of tax envision is the actual removing of the money from the individual and infecting the crime money into the financial system. The situation is refined by keeping the crime money in the banks which is done by breaking down the large sum of money into less obvious modest totals that can be consider safer.
2. **Layering-** the second step is layering which means distribution of money through numerous transactions in several accounts in order to make its source difficult to locate and catch. It is most global and complex stage of the crime money in the form of funds rotate internationally in one form or another. The invaders purposely choose the countries who less tax imposition and are keen in keeping the information of client in secrecy it turns out to be a golden opportunity for the tax invasions. For example- someone transfer the money from one country into other by the method of electronic way and then they transfer it to other one which offer customer secrecy and then to the

³ The Prevention of Money Laundering Act, 2002

main target by such a way that it will look legal. Each transaction makes it more complex and difficult for the police to check them.

3. **Integration**- money enters with such a technique that any relation with crime is abolish. The money enters into monetary framework with such a technique it seems as legal trade. The launderer takes the way of various legal trade like they use the countries which are tax havens.

Tax havens means the country or jurisdiction where the interest rate on money is almost zero. This are the countries who have thousands of small banks. The sole purpose of these banks is to convert black money into white money. These countries bank secrecy laws which means the banks in these countries have the policy of not disclosing their client personal details even to the police officials. So, their money is safe there.

Most of the time the banks in these tax havens countries are not even legal. The owner of the bank itself deposit the money in these banks by someone else identity or take loan from these banks and deposit back on time and took advantage of the timely payment of the money. These types of banks are easily purchasable in those countries they have banks in almost every street.

(B) Hawala system

⁴Hawala system had been used from many years people consider it a safe manner s compare to electronic manner. In hawala system works on trust and associations. Client's trust hawala "financiers" or "administrators" who utilize their associations with encourage cash development around the world. They work legitimate transfer without leaving clue of illegal transactions. The work in this system is mostly done in code language.

Money can be laundered through many methods such as crime like kidnapping, smuggling, through bogus best method nowadays use is through real estate and then structuring.

In order to prevent money laundering there are provision in PMLA and rules which came into effect by this-

- Count the strategy for attachment of property,
- count the receipt and the board of seized resources
- identifying with legitimate commitments of announcing Entities.

The act gives the power to the appropriate authority to search, seizure and attach the property.

India has a huge problem of drug supply to the other countries. There is huge amount of plantation in the eastern and western part of the India and these drugs specially from Delhi and

⁴ Praveen Kumar, Money Laundering in India: Concepts, Effects and Legislation3,IJRHS,51,52-53(2015).

Mumbai gets export to mainly European countries. the transfer is done by the means of water transport in order to have less chances of getting caught as police force and protection on the land is strict as compare to the water⁵.

III. SCOPE OF MONEY LAUNDERING

According to the report of the “United Nations International Drug control programme” states that the illegal drug laundering is around \$400 billion which is almost double the revenue of the world wide global pharmaceutical industry.

Money launderers are taking advantage of the globalisation and they using the advancement in technology as their new weapon. As most of the money laundering now a days in taking place through the electronic transaction’s they do hundreds of transactions everyday through these channels. They choose to do the electronic transactions from the countries which have bank secrecy laws or the countries who does not ask any question regarding the flow the money. These banks want to just invest in them and as they laundered money with bank secrecy the trail of the convert illicit money into licit money get lost in the way and police officials are unable to track the records⁶.

Money laundering also connect itself to the terrorism as some of the illegal money is used in buying weapons in some way. Money laundering also have connection with the drug trails. Free trade zone is also a reason of laundering of money in the country.

IV. PUNISHMENT

The punishment for the money laundering offences have been stated in the “Prevention of Money Laundering Act”. A person who commits the offence under the act will get the imprisonment of minimum 3 years up to maximum of 7 years and shall liable for the fine also.

In the case of narcotic drug cases the person who commit the offence will get the imprisonment of minimum 3 years to maximum 10 years and shall also liable for the fine.

In Order to reduce the crime, the PMLA have sanctioned some guidelines to the banking institutions, companies

- To maintain and check the records regularly.
- To verify the information of the clients and employee.
- Report when the transaction of cash exceeds the amount of 10 lakhs took place.

⁵ Brian Seymour, Global Money Laundering, 12 oct 2018

⁶ SABRINA ADAMOLI, MONEY LAUNDERING, *ENCYCLOPAEDIA BRITANNICA*, 13 FEB. 2020

- The records should contain all the information of the client including name, address, occupation, amount, transaction patterns.

V. JUDICIAL PRONOUNCEMENT

*(A) Abdul Karim Telgi and Sohail Khan vs. Union of India*⁷

The accused had factories to make the duplicate stamp paper and sold them as original which cause huge loss to the government. Trial court held the defendant guilty he later appeal in high court, court gave the verdict against Abdul and accused him guilty and consider him as “white collar criminal”

VI. CONCLUSION

Money laundering is severe and threatening problem in all over the world which leads to fall in the monetary framework of the country and put a huge impact to the economic conditions and growth of the country. Controlling it has become top most priority because it is interlinked with the terrorist act in the country in national and international level. We need to comprehend that it is issue for the public authority of the nation as well as for individuals on the loose. Public mindfulness is fundamental as masses don't comprehend the difficult itself. There should be a cautious component and our legal executive requirements to rebuff these white-collar criminals early to convey a message to tax laundered.

⁷ Abdul Karim Telgi and Sohail Khan vs. Union of India, through CBI, 2014(2)JLJ136

VII. REFERENCES

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(B) Legislation

- The Prevention of Money Laundering Act, 2002

(C) Case law

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