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National Herald: Analysing Transactions of Three Entities

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ABSTRACT

The National Herald Case, in recent times, has gained a lot of attention from the media, and everyone is wondering if it is a case of money laundering. The Gandhi family has been questioned several times by authorities but has consistently denied the claims levelled against them. The case was brought up in 2012 by BJP leader Subramanian Swami, who filed a complaint against Gandhi alleging them of corruption and falsely acquiring property worth crores in their name by illegal means. The entities in question are the AJL (Associate Journal Limited), a Private Ltd. company and the other two entities are the Indian National Congress(INC) and Young India Limited (YIL) both run as not-for-profit. This paper aims at analysing how the three entities were involved in some transactions, which are being claimed as money laundering by one party and the other party argues it as a transaction that does not provide any sort of personal advantage to them, thus denying any case of money-laundering or corruption.

I. THE CASE OF THE NATIONAL HERALD

The ramifications of money laundering do not remain to one party or person but have a far-reaching impact on the economy and the legal structure working in the state.² The National Herald Case which is “*Lis Penden*” and might be a great example of how money laundering can have much more impact on the nation and its people.

In this case, the Gandhi’s from the INC are said to have committed the offense of money laundering, as they acquired AJL, a public limited corporation founded in 1937 to produce publications such as the National Herald. After shutting down the actual presses of the National Herald Newspaper, INC provided AJL with unsecured and interest-free loans totalling Rs 90.25 crores.³ Young Indian Ltd is a non-profit, philanthropic organization founded in 2010. Its board of directors includes Sonia Gandhi and Rahul Gandhi, who are also substantial stockholders at the company holding 76% of the shares combined by Mr. Rahul Gandhi & Mrs. Sonia

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² FATF. (2009). *Money Laundering - Financial Action Task Force (FATF)*. Fatf-Gafi.org. <https://www.fatf-gafi.org/faq/moneylaundering/>

³ *National Herald case: Rs 90-cr loan claim is focus of ED probe.* (2022, June 21). The Indian Express. <https://indianexpress.com/article/india/national-herald-case-rs-90-cr-loan-claim-is-focus-of-ed-probe-7983039/>

Gandhi.⁴When a firm closes, it generally sells all of its assets to pay off its debt, but in this case, the reality was slightly different, even though the AJL had assets worth crores that could be liquidated to pay off INC's debt.⁵ The facts of this case are also somewhat disturbing in nature, as soon after Gandhi's became the head of the company, they paid 50lac to the INC, and took over the loan worth 90cr, this means that after these transactions of just 50 lac, the AJL was now supposed to pay the loan to YIL and not to INC, later all the assets worth crores were transferred to YIL and the shareholders of the YIL, named Mr. Rahul Gandhi(38%), Mrs. Sonia Gandhi(38%), Mr. Motilal Vohra(12%) & Mr. Oscar Fernandes(12%) became the owner of the AJL.⁶ The topic to consider is how the same group of individuals who headed all three institutions changed the property from one business to another due to systemic issues in the legal proposals. The question here is when Congress, led by Mrs. Sonia Gandhi, an entity that granted 90cr. Loan, later when YIL was established became the biggest shareholder, and levied the 90cr loan by giving 50lac to congress, at a time when YIL itself was in debt from a Kolkata-based business 'DOTEX' for 1cr. Later it was disclosed by "Many shareholders, including former law minister Shanti Bhushan and former chief justices of the Allahabad and Madras High Courts Markandey Katju, claimed that they were not notified when YIL 'took over' AJL and that their fathers' shares were transferred to AJL without their consent in 2010."⁷ Nothing would have gone wrong if this had gone unnoticed, but Mr. Swami from the BJP filed a PIL against them, and even the metropolitan magistrate mentioned that "Young India Limited was created as a sham or a cloak to convert public money for personal use,"⁸ thus proceeding with the case and finding the case to be prima-facie of money-laundering and embezzlement. Later in 2016, when the Gandhi's went to the Supreme court to get the case quashed, the plea was rejected by the court⁹ and the investigation is still being done.

The case is still being heard by the adequate jurisdiction courts and commenting further on whether or not the party has committed the offense, might as well affect the one right to a fair

⁴ Aug 6, P. T. / U., 2022, & Ist, 09:03. (n.d.). *ED considering fresh questions for Gandhi's* / India News - Times of India. The Times of India. Retrieved September 20, 2022, from <https://timesofindia.indiatimes.com/india/ed-considering-fresh-questions-for-gandhis/articleshow/93380374.cms>

⁵ *Subramanian Swamy Exposed Sonia and Rahul Gandhi* | National Herald Case. (n.d.). Wwww.youtube.com. Retrieved September 20, 2022, from <https://www.youtube.com/watch?v=YsWFpiUn3No>

⁶ *National Herald case: Is there any wrongdoing by the Gandhi's? Bisbo.* (n.d.). Wwww.youtube.com. Retrieved September 20, 2022, from <https://www.youtube.com/watch?v=BR164F6DWI8>

⁷ WHAT IS NATIONAL HERALD CASE. (n.d.). *Business Standard India*. Retrieved September 25, 2022, from <https://www.business-standard.com/about/what-is-national-herald-case#collapse>

⁸ *What is the National Herald case?* (n.d.). *Financial Express*. Retrieved September 20, 2022, from <https://www.financialexpress.com/what-is/what-is-the-national-herald-case/2199705/>

⁹ Rajagopal, K. (2016, February 12). SC refuses to quash National Herald case. *The Hindu*. <https://www.thehindu.com/news/national/National-Herald-case-SC-exempts-Gandhis-from-personal-appearance/article60527781.ece>

and just trial, and might be a hindrance to the justice delivery system in India.

II. THE QUESTION OF INCOME TAX EVASION & LAWS ON IT

In the case of the National Herald, the income tax department has also played its role, they threw several questions at the INC leaders, The most fascinating question was why AJL didn't refund loans to Congress directly when they had substantial assets worth 2000cr that could have been utilized to pay off the 90cr debt through liquidation? Given the circumstances, why did YIL propose to acquire the debt at a lower interest rate, and why were assets worth a thousand crores approved to be transferred to YIL for such a small amount? YIL was subjected to a financial investigation. The concern here was why would it pay Congress 50 lakh rupees to purchase the debt since it had previously borrowed 1 crore from a company called Dotex.¹⁰ The Financial Intelligence Unit classified this transaction as "suspicious." The ITAT cancelled the tax exemption for Young Indian companies under Section 25 of the Companies Act in 2017 on the basis that there was no record of any philanthropic activity done by the firm. Young Indian Ltd benefited from the AJL takeover. This benefit qualifies as business earnings and gains under Section 28(iv) of the IT Act¹¹, and as the benefit was for fair market value, YIL will be required to pay tax. One of the suspects in the case was the late Motilal Vora, who was a key figure in the Congress, AJL, and Young Indian parties.¹² He was also AICC's treasurer. It was an unacceptable truth that Motilal was unaware of the 2000 crore assets that might be utilized to repay the 90 crore debts made by AGL to Congress.¹³ The other major question was the consent of the shareholders over the acquisition. The SC eventually permitted the IT department to re-assess Gandhi's files for 2011-12 but limited the authority to imprison the parties. The ED permanently attached properties worth INR 64 crores in May 2019.

III. CONCLUSION

National Herald is a brainchild of Pt. Nehru, the congress seemed to be an important entity that needed to be revived, therefore, they tried to make it alive again, and hence since 2016, the digital print is again started by Mr. Rahul Gandhi, but the transactions undertaken during the

¹⁰ Sri, K. (n.d.). *FIASCO Of The National Herald: A Case Study*. Lawyersclubindia. Retrieved September 25, 2022, from <https://www.lawyersclubindia.com/articles/fiasco-of-the-national-herald-a-case-study-15089.asp>

¹¹ *MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (Legislative Department)*. (n.d.). <https://eprocure.gov.in/cppp/rulesandprocs/kbadqkdcswfjdelrquehwuxcfmijmuixngudufgbuubgubfugbububjxcgfvsbdihbgfGhdfgFHtyhRtMjk4NzY=>

¹² Jun 16, P. T. / T. / U., 2022, & Ist, 13:26. (n.d.). *Rahul Gandhi: Late Motilal Vora handled YI-AJL deal, Rahul Gandhi is said to have told ED | India News - Times of India*. The Times of India. Retrieved September 28, 2022, from <https://timesofindia.indiatimes.com/india/late-motilal-vora-handled-yi-ajl-deal-rahul-gandhi-is-said-to-have-told-ed/articleshow/92239803.cms>

¹³ *Supra*, note 10.

crisis are still in question, as the judiciary, prima facie saw the case as of money laundering, and investigation is still under the legal scrutiny. It alleged that the charges of money laundering are being used as a smokescreen to hide underlying concerns like inflation and social discontent. The Congress party argues it as a pure case of political vendetta, where the BJP has fabricated the case and made it an issue just to gain political profits in the country and tarnish the image of the congress party. Congress also maintains that it was just assisting AJL in financial difficulty because of the National Herald newspaper times' long-standing relationship with AJL and that there was no commercial motive involved.¹⁴

¹⁴ National Herald case: Money-laundering law weaponised to target people, says Congress. (n.d.). *The Economic Times*. Retrieved September 25, 2022, from <https://economictimes.indiatimes.com/news/politics-and-nation/national-herald-case-money-laundering-law-weaponised-to-target-people-says-congress/articleshow/93154986.cms?from=mdr>