MONEY LAUNDERING

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Money laundering poses a serious threat not only to the financial systems of the countries but also to the integrity and sovereignty. Some of the initiatives taken by international community to obviate such threat are as follows:-

(a) The United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, to which India is a party, calls for prevention of laundering of proceeds of drug crimes and other connected activities and confiscation of proceeds derived from such offence.

(b) The Basic Statement of Principles, enunciated in 1989, outlined basic policies and procedures that banks should follow in order to assist the law enforcement agencies in tackling the problem of money laundering.

(c) The Financial Action Task Force established at the summit of seven major industrial nations, held in Paris from the 14th to the 16th July 1989, to examine the problem of money-laundering has made 40 recommendations, which provide the foundation material for comprehensive legislation to combat the problem of money laundering. The recommendations were classified under various heads. Some of the important heads are—

(i) declaration of laundering of money carried through serious crimes a criminal offence;

(ii) to work out modalities of disclosure by financial institutions regarding reportable transactions;

(iii) confiscation of the proceeds of crime;

(iv) declaring money-laundering to be an extraditable offence, and

(v) promoting international co-operation in investigation of money-laundering.

(d) The Political Declaration and Global Programme of Action adopted by the United Nations General Assembly by its Resolution No.S-17/2 of 23rd February 1990, *inter-alia,* calls upon the member States to develop mechanism to prevent financial institutions from being used for laundering of drug related money and enactment of legislation to prevent such laundering.

(e) The United Nations in the Special Session on countering World Drug Problem Together concluded on the 8th to the 10th June 1998 has made another declaration regarding the need to combat money-laundering. India is a signatory to this declaration.

Ministry of Finance, Government of India, appointed an Inter-Ministerial Committee in 1996 to look into all aspects of money laundering and to suggest suitable legislation, if necessary. The Committee in its report suggested enactment of comprehensive legislation to deal with this problem. Accordingly, the Prevention of Money-Laundering Bill, 1998 was introduced in the 12th Lok Sabha on the 4th August 1998. The Bill was referred by the Hon'ble Speaker to the Department-related Parliamentary Standing Committee of Finance on the 5th August 1998 for examination and report. The Standing Committee in its report dated the 28th January 1999 recommended certain modifications in the Bill and before the revised Bill could be submitted for consideration, the 12th Lok Sabha was dissolved and the Bill lapsed.

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Subsequently, a new Bill incorporating the recommendations of the Parliamentary Standing Committee was introduced in the 13th Lok Sabha on the 29th October 1999. After the Bill was passed by the Lok Sabha on the 2nd December 1999, the Bill was referred by the Chairman of the Rajya Sabha to a Select Committee of the Rajya Sabha on the 8th December 1999 for their examination. The Select Committee presented its report on the 24th July 2000.

The Parliament has enacted the said legislation to give effect to the Resolution adopted by the General Assembly of the United Nations on the Political Declaration and Global Programme of Action in February 1990 which calls upon the Member States to enact money-laundering legislation and programmes.

The salient futures of the Act which came into force on the 1st July 2005 are as follows:-

Section 3 of the Act defines the offence of money laundering.

The ingredients of the offence of money laundering are as follows:

Indulging in or assisting any person in processing or activity connected with the proceeds of crime and projecting it as untainted property.

Section 2(1)(u) defines all proceeds of crime like money, any property derived or obtained directly or indirectly by any person as the result of criminal activity relating to a scheduled offence or the value of any such property.

Section 4 prescribes that the offence of money laundering shall be punished with imprisonment for a term of not less than three years and up to 7 years and a fine which may extend up to 5 lakh rupees. The proviso to the said section provides for enhancement of punishment up to ten years if the specified offences under para 2 of part (a) of the schedule.

Section 5 provides for attachment of property adjudication and confiscation. Since ill-gotten money vanishes within short period of time, it is essential to empower the authorities to freeze and attach properties so that the accused person may be brought to trial.

Section 6 provides for creation of adjudicatory authorities to adjudicate on the legality of attachment.

Section 22 provides for presumption as to records of property in certain cases and section 23 provides for presumption and interconnected transactions. These two sections are essential for establishing the involvement of accused persons in the offence of money laundering. Section 24 provides for the burden of proof that shall be upon the accused persons.

Chapter VI provides for an elaborate machinery in the form of an appellate tribunal which can hear appeals of any person aggrieved by the order of the adjudicating authority. Chapter VII provides for speedy trial of money-laundering offences which shall be heard by Special Courts. Chapter VII contains a very important provision for reciprocal arrangements for assistance in matters of adjudication and confiscation of property. Since money laundering is not confined to single jurisdiction, it is essential that we should have a machinery to seek assistance from various governments for attachment and seizure of proceeds of crime.

Chapter IV imposes obligation on banking companies, financial institutions and intermediaries to maintain records of all transactions. The nature and value may be prescribed by rules and also to furnish such information to the Director, etc. The obligation extends to a period of ten years from the date of cessation of the transactions between the clients and the banking companies. Section 13 imposes fine which may extend to one lakh rupees but it shall not be less than 10,000 rupees for failure to maintain such records.

The most crucial part of the Act lies in the schedule which defines the schedule of offences. Section

2(y) defines a schedule of offence to mean-offences specified under part (a) of the schedule or offences specified under part (b) of the schedule where the value of the offences exceeds 30 lakh rupees or more. Part (a) offences are offences of section 121 and section 121A of the IPC, certain offences under NDPS Act, 1986. Part (b) offences include offences like murder, culpable homicide etc., under IPC, offences under Arms Act, offences under Wildlife Protection Act, 1972, Immoral Traffic Prevention Act, 1956 and Prevention of Corruption Act, 1988.

The Act has been recently brought into force and in the process of being enforced. Meanwhile certain cases have come to the notice of the Government and proceedings have been initiated under the Act. The Act is the first step in a series of measures that the government is contemplating to combat illegal money.

The Act is indeed a comprehensive one making provisions for the scrutiny of the functioning of financial institutions. Which have a major role. It also envisages dealing with the activities of criminals located outside the country. In the process of its implementation it may need a re-look and revision as the offence of money laundering has the tendency of manifesting in different forms and increasing in volume.