

COMBATTING THE PROBLEM OF MONEY LAUNDERING

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ABSTRACT

Criminal Law is a domain of States in common parlance, but it is changing these days. There are international laws coming up dealing with multiple issues. With the advent of Globalization human actions have crossed borders and further continue to cross borders with much ease than earlier. This has caused a substantial increase in Trade, exchange of culture, technological development, etc., which are the positive aspects of globalization. But these are not the only outputs of the process. Crime has also crossed borders and have become globalized and hence there is need for International measures against it.

Keyword: Money Laundering, Criminalization.

INTRODUCTION

Due to Economic globalization cross border capital movements increased substantially which required an international financial system to deal with. Further this International financial system was aided with latest technology making it possible for people to transfer money from one jurisdiction to another within seconds. Definitely the commerce has benefitted largely because of these developments, but it has also engendered crime like money laundering at an international plane. It is only because of the existence of International Financial System, that money laundering at International Level is possible.[1]

It is realized by the international community that to deal with such crimes domestic laws are not going to suffice and hence there is a need of uniform system at international level to address the issue. Multiple measures have been taken to address the issue in order to increase cooperation amongst the nations, in order to combat money laundering which has essentially become a Transnational Crime.

Definition of Money Laundering

According to Section 3 of Prevention of Money Laundering Act, 2002: “Whosoever directly or indirectly attempts to indulge or knowingly assist or knowingly is the party or is actually involved

in any process or activity connected with the [proceeds of crime including the concealment, position, acquisition or use and projecting or claiming] it as untainted property shall be guilty of offence of money laundering.”[2]

Money Laundering is the process in which illegitimately obtained money is circulated through a series of transactions which can be divided into three stages i.e. Placement, Layering and Integration, in order to make its source untraceable and further bringing it to legitimate use.”

Indian Legislation: Prevention of Money Laundering Act, 2002

Until 1990 India followed the policy of Import substitution to improve the economy of the nation. But it was realized later in the 1990 that without globalization the economy would collapse. Integration of India with global economy only started in 1990 with the structural adjustment of India's economy. Such structural adjustment was the result of globalization, privatization and liberalization of Indian economic setup. With this movement towards global economic and financial integration India also became vulnerable to the international money laundering activities. India realized in the year 2002 that a comprehensive legislation is must in this globalized world to Prevent money laundering. The Indian government was also being pressurized for a domestic legislation against money laundering as it was a signatory to the Vienna Convention, Palermo Convention, and Global Programmed against money laundering by the UN, etc. [3]

- Criminalization of Offence of Money Laundering:

As per Recommendation No. 3 of the FATF, countries should criminalize money laundering on the basis go Vienna Convention and the Palermo Convention. Countries should apply the crime of money laundering to all serious offences, with a view to including the widest range of predicate offences. A list is to be made referring the predicate offences or a threshold approach may be taken by linking the predicate offence to the category of serious offences under the national law or on the basis of penalty imprisonment applicable. The offence of money laundering should extend to property any nature irrespective of its value. Such property must directly or indirectly represent the proceeds of crime. Conviction of the person accused in the predicate offence shall not be necessary to prove the property as proceeds of crime.[4]

Countries are supposed to ensure that the intention or Mens rea in the offence may be inferred from the objective factual circumstances and not on the basis of personal feeling or opinions. Further it is also important to lay down criminal liability and effective, proportionate and

dissuasive sanctions to convicted natural person. Abetment of Money laundering is also to be criminalised.

CONCLUSION

As globalization represents an international phenomenon, the international community's response to the challenge posed by money laundering has to address the financial, legal, and enforcement issues in a universal manner. Without cooperation amongst the states there can be no effective prevention of money laundering.

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