

**Anti-Money Laundering Law**  
**(A brief analysis of money laundering and organized crime vis-à-vis the MLPA)©**

By  
K.S.RAVI SHANKAR, LL.B., FCA, Advocate©

***MONEY MAKES THE BLIND SEE AND THE LAME WALK!!!***

**A. Introduction:**

A.1. This paper outlines the need for and intent of legislation to combat the dangerous and anti-national activity of money laundering. It is not exhaustive, and as far as practicable nuances of the statute, viz. the MLPA, 2002 (Money Laundering Prevention Act, 2002) have been consciously omitted, but the paper focuses on the segments of the economy and society which are affected and the likes of people who resort to the activity of laundering money, which is a disease of cancerous nature that can consume the economy and society.

A.2. Money is honey my little sonny the rich man's words are funny! is an old adage. When money in the form of currency replaced the barter system of payment for value received, counterfeiting was resorted to and deception and illegal gains resulted. But when currency itself has been replaced by instruments of different types, including securities and valuable documents, such as bank notes, pay orders, cheques, drafts, letters of credit and other negotiable instruments, counterfeiting is a piffling and trifling mechanism resorted to by fraudsters and hooligans, and sophisticated forms of receipt and payment routed through the banking system have replaced the traditional money robbing. Banking transactions are common in national and international trade, and transfer of funds intra-national and international has become speedier after the advent of money transfer systems through the satellite modes and internet as also telecommunication channels. These latter developments intended for legitimate transactions, have been many a time misused by crooks to transfer proceeds of criminal activity to various zones, and to siphon away illegal gains to places where they are least questioned.

A.3. Tax evasion is only one angle from which money laundering activity can be looked at but punishment under tax law of persons who are found to be indulging in tax evasion having laundered money is an insufficient deterrent and therefore stringent punishments through special courts with heavy punitive inflictions and physical confinement for specified periods in the form of imprisonments appear to be the solution, for which reason anti-money laundering laws have been enacted across the world by many developed countries.

**B. Money- general discussion and types:**

B.1. The word *money* signifies a commodity generally accepted by consent as a medium of economic exchange. It is the medium to express prices and values. It circulates from person to person and country to country facilitating trade and is the principal measure of

wealth. However, when the value of money falls, it is treated as mere paper and in such situations costly or scarce commodities may be used as a substitute as for instance expensive goods which are also scarce such as cigarettes and cognac were the medium of exchange during the 2<sup>nd</sup> world war years in Germany. In countries with a high inflationary rate, stable foreign currencies may become the medium of exchange for international transactions, and when full convertibility is allowed even for domestic transactions.

B.2. Many items have been historically used as *money*, for instance shells, beads, whale's teeth, tobacco, stone discs, cigarettes, wine and cattle. The word *pecuniary* comes from *pecus* meaning cattle (from the original *pashu* = cattle in Sanskrit). Metallic money became common and the highest value was attributed to the costliest metal, e.g. gold, silver, copper, nickel denoting the descending order of the cost and value. In the 17<sup>th</sup> and 18<sup>th</sup> centuries, paper money and banknotes spread widely. After abolition of the international gold-standard, which wavered after the world wars, emergence of a unified currency area based on reserves of bullion in that area substituted gold as a medium of settlement of international transactions.

B.3. Electronic money prevents stealth of currency and forgery and facilitates anonymity. Therefore this has now come to substitute hard currency transactions, through the banking cum telecommunication medium, with the rapid advancement of technology. Electronic Fund Transfer or EFT through teller machines for withdrawing money from banks, smart cards or stored value cards, debit and credit cards while making or receiving payments and automated clearinghouses increase the speed of regular payments and settlements.

### **C. Laundering - meaning of:**

C.1. The word "laundry" has its etymological origin in the word *lavender* or *lava* i.e. to colour. To launder is to colour or change the colour. *Lavo* or *lavare* in Latin, means to wash, bathe, wet, drench, wash away the dirt. A laundry is a place where clothes are washed. A laundryman is one whose business is to wash clothes. The term, however, does not include persons who merely receive and collect soiled clothes to be washed, acting as agents of those engaged in the laundry business, and receiving by way of compensation a discount from the price charged from the price charged from the general public.

C.2. Laundering means to pass off by fraud and deception. Launder means to transfer money or instruments deriving from illegal activity, so as to conceal the true nature and source. Laundering is a term used to describe investment or other transfer of money flowing from racketeering, drug transactions and other illegal sources into legitimate channels so that its original source cannot be traced. It is a method of disguising the origin of funds by moving them rapidly from one account or country to another. It thus becomes a complicated business to trace their origins, movements and eventual destination. Counterfeit money, stolen money or money received for illegal activity may be laundered.

#### **D. Gangsters, robbers, racketeers, financial crime and money laundering:**

D.1. Financial crime (including financial fraud) has been by and large a scenario emerging in the 20<sup>th</sup> century. It is another thing that history has witnessed open-stealth of gold and silver by powerful marauding nations and communities as for instance India was subjected to unlimited theft and robbery of bullion, precious stones, gems and valuable minerals by invading nations, including but not limited to the British. The *peacock throne* was stolen by Nadir Shah, only to land in a museum in England. In history, countries have been raped by incoming merchants who spread their tentacles of bargaining power for goods received and money spent and investment made to political power and altering the balance of power and permeating through the nation's security through military power. This rapacious tendency of imperialists is depreciable. Doing business for mutual benefit based on the theory of comparative cost and advantage is one thing, but raping a country financially and ruining its economy is another and imperialists revel in the latter activity. They also impose on weak countries sanctions and compel them to sign on dotted lines (one-way agreements), which bring the unwilling signatory to a state of economic, political and social slavery. The latter part of the discussion in this paragraph depicts laundering of another type resorted to by so-called respectable countries with an uncanny ability to deceive others and make the latter their client-states. Interventionist and expansionist policies of imperialistic states with shifting geographical and political points, has been a feature of world politics for the last two hundred or more years.

D.2. Money laundering takes place and roots in places where opportunity is available to barons of prohibited goods and services, crusaders of crime, racketeers and Mafiosi. The war on drugs has resulted in the increase of international crime, apart from illegal migration of men and women, the latter being used to satisfy the carnal appetite of many players across the world and for a consideration in money and money's worth. Gun-running, is another crime which in India is commonly called *supari killing*. That is murder for gain. There is international disorder in many countries, where political bosses who are corrupt to the core, have stashed away ill-gotten gains elsewhere through shady deals and disregarded the national debt of their own country. Looting of a nation by its national leaders has been common in Asian countries resulting in evasion, flight and fraud. Bankers are party to such transactions and the fraudsters themselves have a vested interest in banking and financial institutions and thereby facilitate commission of acts of laundering. Capital has become toxic and smuggling, violence, corruption and immoral trafficking have shown an upward trend. A new system of slavery has descended across the world, with the barons and mafia dominating many institutions. Closely knit, ethnically distinct, and ruthlessly efficient, these mafias control the drugs trade, people trafficking and other serious crimes. Multinational corporations, politicians and bureaucrats are the players in organized crime apart from accountants and lawyers. It is also said that the most mouth-watering opportunities for illegal profits are provided by corporations in thriving economies. Also human organs are now a source of business and rampant trade is prevalent. Read Woodiwiss on Gangster Capitalism.

D.3. Law enforcement agencies which are supposed to enforce law often turn a blind-eye to many crimes and selectively deal with cases, and many officials of such agencies themselves have been found operating criminal enterprises. Hospitals, educational institutions and other such organizations also profit by criminal activity, e.g. asking a patient to undergo tests unnecessary for diagnosis or treatment (for the sake of kick-backs from the referred center), pumping-in money through the medium of trusts and charitable organizations into educational and medical institutions, but control being vested in *benami* hands who are picked by the vested interests are some of the examples of money laundering.

D.4. Bootleggers, racketeers and bank robbers apart from kidnappers are players assisted by corrupt bureaucrats, corporate fraudsters and politicians apart from lawyers and accountants. Mafia families (meaning families of the latter species) have a major stake in the activity of money laundering and command tremendous influence politically and economically. Public cannot easily comprehend how criminal activity emerges in institutions and they are unable to appreciate how abuse of public interest escapes from legal jurisdiction, and they are discouraged from considering the identical impact of tax avoidance and tax evasion on national budgets for example. *Feasts of fraud* are enjoyed by what these people engage in. Read the treatise of M. Woodiwiss. The learned professor says that allowing the market mechanism to be the sole director of the fate of human beings and their natural environment.....would result in the demolition of society (quoting from Karl Polanyi – *The Great Transformation*).

D.5. Financial scandals such as the *Watergate*, *BCCI* i.e. *Bank of Credit and Commerce International* (founded by a Pakistani banker called Agha Hasan Abedi in 1972), *Enron*, *WorldCom* and in India the recent episode of *Satyam Computers* have brought to public notice the fact that all is not well with the much touted globalization etc. Convicted corporate executives share the prison cells with common thieves but would be reluctant to share their criminal know-how and explain where they went wrong to a new generation. The results of de-regulation and unregulated economic activity may lead to phenomenal increase in the fortune of corporate executives and breed economic inequality leading to social breakdown.

### **E. Organized crime and the crimes scheduled in the MLPA:**

E.1. The UNTOC (United Nations Convention on Transnational Organized Crime) defined an organized crime as *a structured group of three or more persons existing for a period of time and having the aim of committing one or more serious crimes or offences established in accordance with this Convention in order to obtain, directly or indirectly, a financial or other material benefit.*

E.2. Martin Short says that organized crime is a self-perpetuating, continuing criminal conspiracy for profit and power, using fear and corruption and seeking immunity from law. It is a society that seeks to operate outside the control of the public and their governments. It involves thousands of criminals, working within structures as complex as those of legitimate governments. Its actions are not impulsive but the result of

intricate conspiracies, carried on over many years and aimed at gaining control over whole fields of activity in order to amass huge profits. The core activities are supply of illegal goods and services, such as- gambling, loan-sharking, narcotics, arms, other forms of vice. The crime syndicates are also engaged in legitimate business and labor unions.

E.3. From the standpoint of the MLPA, organized crime would mean any of the scheduled offences, as per section 2(y) of the Act, viz. the following:

1. Offences under the IPC, 1860- Waging War or attempting to wage war or abetting waging of war against the government of India; Conspiracy to commit offences punishable by section 121 against the State. Criminal conspiracy, counterfeiting government stamps or sale, possession thereof or using counterfeit stamp as genuine.
2. Offences under the Narcotic Drugs and Psychotropic Substances Act, 1985 in relation to poppy straw, opium, cannabis plant, psychotropic substances, illegal import or export of such substances, financing such traffic and harbouring offenders, abetment and criminal conspiracy.
3. Offences under the IPC viz. murder, culpable homicide not amounting to murder, attempt to do either of the two preceding things, causing hurt to extort property or valuable security, kidnapping for ransom, extortion, robbery, dacoity, forgery of a valuable security or will etc., counterfeiting currency or bank notes and using as genuine, such currency or notes, offences relating to property marks, cheating by personation, offences relating to stolen property etc.
4. Offences under the arms Act, 1959 such as manufacture, sale, transfer, conversion, repair or test, proving or exposing or offering for sale arms or ammunition in contravention of the Arms Act, use of arms or ammunition in contravention of the said enactment, use of fire arms or imitation fire arms, knowingly purchasing arms from unlicensed persons or delivery to person not entitled to possess the same or contravention of any of the provisions of the Act.
5. Offences under the Wild Life (Protection) Act, 1972 such as contravention of prohibition of picking, uprooting of specified plants, contravention of provisions relating to wild animals, trophy, animal articles, purchase of animals requiring a licence to purchase and dealing in such items or animals.
6. Offences under the Immoral Traffic (Prevention) Act, 1956 (SITA) - procuring, inducing or taking person for the sake of prostitution, detaining a person in premises where prostitution is carried on, seducing or soliciting for the purpose of prostitution, seduction of a person in custody.
7. Offences under the Prevention of Corruption Act, 1988 - Public Servant taking gratification other than legal remuneration in respect of an official act, taking gratification in order, by corrupt or illegal means to influence public servant, taking gratification for exercise of personal influence with public servant, abetment by public servant of offences *supra*.
8. Offences under the Explosive Substances Act, 1908 causing explosion endangering life or property, making explosives or preparing them under suspicious circumstances.

9. Offences under the Unlawful Activities Prevention Act, 1967 viz., being members of an unlawful association, terrorism, recruiting people for terrorist activities, organizing camps for them, supporting them, being a member of such organization, conspiring with them, raising funds for them, harbouring them, and related offences.
10. Offences under the Explosives Act, 1884, Antiquities and Arts Treasures Act, 1972, SEBI Act, 1992- pertaining to manipulation and deception, insider trading and contravention of substantial acquisition of securities regulations.
11. Evasion of customs duty under Customs Act, 1962.
12. Offences under the Bonded Labour System Abolition Act, 1976 for enforcing bonded labor, extracting bonded labour or abetment thereof.
13. Offences under the Child Labour Prohibition and Regulation Act, 1986 by employing any child to work in contravention of the said Act.
14. Offences under Transplantation of Human Organs Act, 1994 by removal of human organs without authority, dealing in such organs.
15. Offences under the Juvenile Justice Act, 2000 – cruelty to juvenile or child, employing such persons for begging, giving intoxicating liquor or narcotic drugs etc., to such persons, exploitation of such persons.
16. Offences under the Emigration Act, 1983, the Passports Act, 1967, the Foreigners Act, 1946, the Copyright Act, 1957, the Trade Marks Act, 1999, the Information Technology Act, 2000, the Biological Diversity Act, 2002, the Protection of Plant Varieties and Farmers' Rights Act, 2001, the Environment Protection Act, 1986, the Water Pollution Act, 1974, Air Pollution Act, 1981, Suppression of Unlawful Acts Against Safety of Maritime Navigation etc., on Continental Shelves Act, 2002.

E.4. There are totally 25 paragraphs containing lists of scheduled offences under the Act. Therefore, the MLPA fundamentally deals with proceeds of crime, derived or obtained from activities of *organized crime* under the scheduled laws.

#### **F. Why MLPA was enacted:**

F.1. The Act, i.e. MLPA received Presidential assent on 20.1.2003, as Act No. 15 of 2003 vide Gazette of India notification (E) No.16 dt.20.1.2003 Pt. II Section 1. The Act came into force from 1.7.2005 as per Notification No. GSR 436 (E) dt.1.7.2005. Initially the Bill for enactment of a law was introduced in Parliament on 4.8.1998 and was discussed and debated, and passed only in the Winter Session of Parliament in 2002. The attack on the Indian Parliament on 13.12.2001 was a very serious affront to the national integrity, the democratic structure of and sovereignty of India and the previous year's attacks at Bombay (Nov. 2008) by terrorists taking several people hostage apart from killing of innocents shows that activities such as these, which are enacted on Indian soil by non-Indian agencies or elements, cannot but happen without the involvement of several players who are networked intricately across the seas.

F.2. The UN General Assembly during June 1998 adopted a resolution against illegal drug trafficking and members resolved to adopt a comprehensive legislation. Apart

from the above, the FATF on Money Laundering (Financial Action Task Force) made as many as forty recommendations to provide the basis for a law against the offence of money laundering and there was consensus in the form of Political Declaration and Global Programme of Action adopted by the UN General Assembly in Feb. 1990 for members to develop a mechanism to prevent the financial institutions from being used for laundering of money and to enact a law to prevent such acts.

F.3. The countries of the world are economically and socially characterized as developed, developing and undeveloped. The sizes of these countries vary as also their economic and social problems. Internal and external threats, tax rates etc. are reasons for money being transferred into or outside the country apart from funding of operations of covert nature involving conspiracies to destabilize the countries. There are very small countries (nation-states) which have thousands in population but hundreds in banks. Funneling of funds into and out of countries where questions are not asked about the legitimacy of the source, the purpose of transfer of funds and absence of tax rates and maintenance of secrecy by the bankers are reasons why money is parked in such countries and with banks therein. Illegal funds obtained from organized crime, or proceeds of crime (as defined in MLPA) are kept in secretly coded accounts and operations clandestinely done by the holders of accounts. The purpose of transfer of funds outside such accounts may be legitimate, but the source illegal. The source of the funds in some cases may be legitimate but the purposes of intended use illegal. Funding of arms building by insurgents, drug trafficking, immoral activity, murder for gain, dealing in prohibited substances and pay-offs to bureaucrats and politicians are all made from such accounts by transfer of funds.

F.4. The economy gets devoured by the activities of money launderers. Black money is not the same as laundered money. Parallel economies thrive in countries across the world, where untaxed funds account for major chunk of the activities in society and that would not mean that untaxed money is laundered. However, laundered money may percolate into capital of an economy in the form of ostensible investment by seemingly legitimate groups of persons or firms and the returns thereof re-fuelled into gainful and seemingly lawful economic activity.

### **G. Black Money – R.K.Garg decision of Apex Court:**

G.1. In R.K.Garg v. UOI, 1982 (133) ITR 239 (SC), the apex court was seized of a case wherein the constitutionality of the Special Bearer Bonds Immunities and Exemptions Act, 1981 and the preceding ordinance promulgated by the President, were questioned. The Constitution Bench speaking through Justice Bhagwati, made many important observations on the phenomenon of black money inter-alia holding thus:

*“Those who are honest and who observe the law are mulcted in paying the taxes legitimately due from them while those who have broken the law and evaded payment of taxes are allowed by the provisions of the Act to convert their black money into “white” without payment of any tax or penalty. The provisions of the*

*Act may thus seem to be putting a premium on dishonesty and they may, not without some justification, be accused of being tinged with some immorality, but howsoever regrettable or unfortunate it may be, they had to be enacted by the Legislature in order to bring out black money in the open and canalize it for productive purposes. Notwithstanding stringent laws imposing severe penalties and vigorous steps taken by the tax administration to detect black money and despite various voluntary disclosure schemes introduced by the Government from time to time, it had not been possible to unearth black money and the menace of black money had, over the years, assumed alarming proportions causing havoc to the economy of the country and the Legislature was, therefore, constrained to enact the Act with a view to mopping up black money so that instead of remaining idle, such money could be utilized for productive purposes.”*

G.2. Black money is an expression which was used inter-alia in the Wanchoo Committee report and it was pointed out therein that black money was a serious threat to the national economy and it was an undisputed fact that there was considerable black money in circulation, which was unaccounted or concealed and outside the disclosed trading channels, largely the product of black market transactions and tax evasion. There was a parallel economy which had grown in size and dimension and even on a conservative estimate ran into thousands of crores (when the Report was made). The abundance of such money gave rise to a parallel economy operating simultaneously and competing with the official economy, which menace had reached staggering proportions and posed a serious threat to the fulfillment of the objects of the Constitution. The high rates of taxation, economy of shortages resulting in hoarding and corruption, license-permit system, donations of black money encouraged by political parties to fund elections, payment of secret commission as corrupt business practices, bribes, pugree money, ineffective administration of tax laws, deterioration in moral standards of tax payers, who no longer considered tax evasion as immoral or unethical. Refer 133 ITR 239 (SC) *ibid*.

G.3. The Swadeshi Jagaran Manch (SJM), has conducted a detailed study as per which some seventy or more territories in different locations of the world seek to attract investment from outside their borders, offering financial secrecy laws as an incentive, and are known as *tax havens* and impose little or no tax on income from outside sources, and are ideal lodges for black money of many countries. Switzerland is the major tax haven with more than a third of global private funds. India has done very little to prevent flight of capital to tax havens and secret banks. The issues raised by the SJM are of paramount importance to India, the volatility of the stock markets in India are due to the inflow and outgo of foreign money and it is feared that such flows may be of ill-gotten gains / wealth of Indians kept overseas in tax havens or domestic funds sent out and brought back to facilitate some activities. The estimate of Indian money in tax havens varies from 500 billion USD to 1.4 trillion USD.

G.4. Laundered money is not the same as black money. Laundered money stems from proceeds of crime, arising as a result of participating directly or indirectly in criminal activity of the schedule types in the MLPA. The Act (MLPA) seeks to trap such money

or property derived as a result of investing such money and the punishing the offender who launders the money. It has nothing to do directly with taxation.

G.5. The MLPA was amended on 6.3.2009 after the 2008 Bombay terrorist attack incident, as a consequence of which Offences under the Unlawful Activities Prevention Act and Explosive substances Act were introduced.

#### **H. Important concepts under MLPA:**

1. The MLPA intends to punish those who deal in proceeds of crime, by enacting in section 3 that those who attempt to indulge or knowingly assist or are party or actually involved in any process or activity connected with the proceeds of crime and project the same as untainted property, shall be guilty of money laundering.
2. Money laundering therefore means dealing in proceedings of crime in the manner envisaged in section 3. The expression *proceeds of crime* is defined in section 2(u) to denote any property derived or obtained directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property.
3. Thus, not only the criminal who obtains property or derives property as a result of criminal activity is punishable, but those who aid, assist or abet in the laundering of such proceeds of crime are also made punishable. Laundering is the act of projecting criminal proceeds as untainted property.
4. The person is punished under section 4 with rigorous imprisonment for a period of not less than three years, but which may extend to seven years and fine upto five lakh rupees. However in certain cases the punishment may extend in the form of imprisonment upto ten years, i.e. cases relating to drug-offences. It may be noted that *rigorous imprisonment* shall have the meaning assigned to it in the Indian Penal Code, which according to section 53 means *hard labour*.
5. The offender is therefore punished under the concerned laws, apart from which a parallel punishment is meted out under the MLPA. This is not double jeopardy as per the Constitution of India. Refer *Thomas Dana v. State of Punjab*, AIR 1959 SC 375. The punishment under MLPA is in addition and without prejudice to the punishment(s) under the other laws.
6. The proceeds of crime, i.e. the property relating to the crime is first attached under section 5 of the Act, and thereafter upon adjudication the provisional attachment of property is confirmed by confiscating the same under section 8. The confiscated property shall vest in the Central Government. The principles of natural justice shall inform the proceedings under section 8.
7. The guilt of the person when proved in the trial court and order of the trial court attaining finality shall result in the attachment or retention of property becoming final. The proceedings under the respective laws for trial and prosecution are independent of trial under the MLPA. That is to say, parallel proceedings may go on in various courts and before various authorities and tribunals in respect of the offences committed and the laundered money.
8. The word *property* has a wide meaning- and brings within its purview property or assets of every description, whether corporeal or incorporeal, movable or

- immovable, tangible or intangible and includes deeds and instruments evidencing title to, or interest in, such property or assets, wherever located.
9. The word *person* is defined in section 2(s) to include individuals, HUF, company, firm, AOP, BOI, artificial juridical person, agency, office or branch owned or controlled by any person. The word *value* means the fair market value of any property on the date of its acquisition by any person, or if such date cannot be determined, the date on which such property is possessed by such person.
  10. Appointment and powers of adjudicating authorities and their composition and powers are governed by section 6 and 11 (including power of summons, production of documents and evidence). Staff of such authorities under section 7.
  11. The manner of managing properties confiscated under the Act by the Central Government shall be as per the Act by an administrator appointed by it.
  12. Banks, financial intermediaries, financial institutions such as banking companies etc., shall be obliged to act in accordance with section 12 and furnish information and records of transactions of the prescribed types for the purpose of ensuring compliance with the requirements of the Act. The RBI and Central Government have issued / framed several rules and regulations under the Act.
  13. Power of survey is governed by section 16, search and seizure by section 17, search of person by section 18.
  14. Persons whom the authorized officers have reason to believe are guilty of offences under the Act, are liable to be arrested and section 19 deals with the manner of treating and producing them before the Magisterial authorities. Seized property shall be retained in accordance with section 20. Records should be retained as per section 21.
  15. The provisions relating to presumption as to records or property and interconnected transactions are laid down in sections 22 and 23 and the burden of proof that proceeds of crime are not tainted property shall be on the accused vide section 24. Culpable mental state is presumed under the Act, like the earlier FERA, 1973.
  16. A Tribunal shall be established as per section 25, to hear appeals against adjudication orders in accordance with section 26. The composition of members and chairperson of the tribunal shall be as per section 27 and the qualifications of the appointee to the tribunal are envisaged in section 28 and the conditions of their service under section 30. There are other provisions relating to the tribunal in sections 32 to 40. Section 41 bars the civil courts to entertain matters under the Act and ousts the jurisdiction of such courts. An appeal to the High Court is provided for on any question of fact or law arising out of an order of the Tribunal under section 42.
  17. Special courts shall be established as per section 32, to try the offence of money laundering. The trials shall be tried in accordance with sections 44 read with the Code of Criminal Procedure, 1973 (section 46). The offences under the Act are cognizable and non-bailable - section 45. An appeal lies against the order of the special court to the High Court as per the Cr. PC, 1973.
  18. The authorities who investigate offences under the Act are in the rank of director, additional director, joint director, deputy director and assistant director. There may in addition be such other class of officers as may be appointed by the Central

- Government for the purpose as per section 48. The powers of the officers are contained in section 49 as also the manner of appointing them. They have power to discover and inspect, enforce attendance of persons, compel the production of record, receive evidence on affidavits and issuing commissions for examination of witnesses and documents and incidental matters as per section 50. Jurisdiction of authorities is as per section 51. The Central Government may issue directions to the authorities under section 52, and other officers of Central / State Government to act as authority under the Act. Officers of customs, central excise, income tax, NDPS, stock exchange, RBI, SEBI, FEMA, bodies constituted or established under Central or State enactments or other officers including those of local authorities or banking companies are empowered and required to assist the authorities in the enforcement of the Act as per section 54.
19. Agreements with foreign countries may be entered into for the enforcement of the Act, exchange of information, investigation of cases and tracing or identification of property and the nature, source, disposition, movement, title or ownership of property, as per sections 55 and 56. Provisions relating to letters of request to contracting state outside India, assistance to such states and reciprocal arrangement for processes and assistance for transfer of accused persons under the MLPA to and from the contracting states are provided for in sections 57 to 59. Attachment of foreign property by Indian authorities and attachment of Indian property by foreign authorities, in respect of cases adjudicated under the Act is provided for in section 60.
  20. Offences by companies are made punishable under section 70 and manner of recovery of fines imposed is as per section 69. The Act shall override any other law notwithstanding anything inconsistent therewith contained in the other law. Continuation of proceedings in the event of death or insolvency as provided for in section 72 of the Act is permitted. The Central Government is empowered to frame rules under section 73 (which shall be laid before Parliament as per section 74). The Central Government is empowered to remove difficulties under section 75 of the Act.

#### **J. Rules and Regulations under MLPA:**

The following are some of the rules and regulations have been issued/ framed under the Act:

1. Manner of forwarding copy of order of provisional attachment of property;
2. Receipt and Management of Confiscated Property;
3. Maintenance of records and nature and value of transactions, procedure of maintaining and time for furnishing information, verification of records, identity of clients of banking companies and other financial institutions;
4. Search, seizure and manner of forwarding reasons therefore, custody of records, impounding of records;
5. Arrest of persons and forwarding copy of arrest order;
6. Forwarding of seized property order copies;
7. Manner of receiving the records authenticated outside India;
8. Appeals against the orders under the Act;

## 9. Adjudicating Authority Regulations.

### **K. Dimensions, players and the cycle of laundering:**

K.1. Money laundering has several dimensions. The actors include pimps, prostitutes, panderers, politicians, bureaucrats, liars, bankers, lawyers, accountants, fraudsters of all descriptions, racketeers, drug barons, gun-runners, smugglers, terrorists, bankers and the royalty. The game of laundering involves sporting swindlers, fakers and forgers, financial fraudsters, impish imposters, lady liars, hit-men, doctors, scanners, insurers and bankers. As long as people commit crimes motivated by greed, financial investigative techniques can be used to resolve those crimes. Crimes motivated by greed have been in existence since time immemorial, so have efforts by the criminals to conceal ill-gotten gains to launder the money. Money is the fruit of evil as often the root.

K.2. The cycle of laundering involves- placement mechanisms (placement stage) -----→ layering mechanisms (layering stage) -----→ Integration mechanisms-----→ Illicit activity and criminal organization. The stages are most sophisticated as per the FinCEN i.e. the Financial Crimes Enforcement Network.

### **L. Conclusion:**

L.1. Global economic liberalization has not been accompanied by adequate control of international financial and business transactions. Unmanaged globalization and the crime-friendly world it created tended to make the rich richer and poor more desperate. The activities of organized crime involve many ongoing conspiracies against public, using fraud and force to achieve their ends and the key actors in these activities resemble the robber barons. It is outright theft which has a world wide market, which thrives with the Third World countries opening up their markets to foreign ownership. The current world faces a choice between a return to the principles and high ideals and the destruction of democracy and freedom in a future of increasingly shameless fraud. (Ref. Prof. M. Woodiwiss).

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