

**MONEY LAUNDERING & TERRORISM FINANCING:
THE NATIONAL & INTERNATIONAL LEGAL CONTROL.**

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1. Introduction:

Corruption, which can be broadly defined as the abuse of organization power for personal interests, undermines democracy and the rule of law because it engenders among the public a loss of trust in public institutions. It distorts the economy, discourages investment, including foreign investment, and hampers both the internal market and international trade.¹

Money-laundering is the process by which criminal proceeds are 'cleaned' so that their illegal origins are hidden.² It is the criminal practice of filtering ill-gotten gains or “dirty” money through a series of transactions, so that the funds are “cleaned” to look like proceeds from legal activities.³ Money laundering is driven by criminal activities and conceals the true source, ownership, or use of funds. The International Monetary Fund has stated that the aggregate size of money laundering in the world could be somewhere between 2 and 5 percent of the world’s gross domestic product, about \$800 billion - \$2 trillion in current US dollars.⁴

There have been a number of developments in the international financial system during recent decades that have made the three F's-finding, freezing and forfeiting of criminally derived income and assets-all the more difficult. These are the *dollarization*⁵ of black markets, the general trend towards financial deregulation, and the progress of the Euro market and the proliferation of financial secrecy havens.⁶

¹*Chasing white collar crime across the European Union single market.* Available at http://ec.europa.eu/justice_home/fsj/crime/economic/fsj_crime_economic_en.htm. Accessed on 5th November, 2008.

²*EU putting a stranglehold on dirty money.* Available at http://ec.europa.eu/justice_home/fsj/crime/laundrying/fsj_crime_laundrying_en.htm. Accessed on 5th November, 2008.

³ *Money Laundering: A Banker’s Guide to Avoiding Problems.* Office of the Comptroller of the Currency, Washington DC December 2002.

⁴ *Money Laundering: A Banker’s Guide to Avoiding Problems.* Office of the Comptroller of the Currency, Washington DC December 2002.

⁵ The use of the United States dollar in transactions.

⁶ *Money Laundering and Globalisation,* Available at <http://www.unodc.org/unodc/en/money-laundering/globalization.html>. Accessed on 15th October, 2008.

Fuelled by advances in technology and communications, the financial infrastructure has developed into a perpetually operating global system in which *megabyte money*⁷ can move anywhere in the world with speed and ease.⁸

Because they deal with other people's money, financial institutions rely on a reputation for probity and integrity. A financial institution that is revealed to have assisted in the laundering of money will be shunned by legitimate enterprise. An international financial centre that is used for money-laundering can become an ideal financial haven.⁹ Developing countries that attract "dirty money" as a short-term engine of growth can find it difficult, as a consequence, to attract the kind of solid long-term foreign direct investment that seeks stable conditions, good governance and which can help them sustain development and promote long-term growth. Money-laundering can erode a nation's economy by changing the demand for cash, making interest and exchange rates more volatile, and by causing high inflation in countries where criminal elements are doing business.¹⁰

Most disturbing of all, money-laundering empowers corruption and organized crime. Corrupt public officials need to be able to launder bribes, kick-backs, public funds and, on occasion, even development loans from international financial institutions. Organized criminal groups need to be able to launder the proceeds of drug trafficking and commodity smuggling. Terrorist groups use money-laundering channels to get cash to buy arms. The social consequences of allowing these groups access to the capacity to launder money can be disastrous. Taking the proceeds of their crimes from corrupt public officials, traffickers and organized crime groups is one of the best ways to stop them in their tracks.¹¹

In recent years, the international community has become more aware of the dangers that money-laundering poses in all these areas, and many governments and jurisdictions have

⁷ Money in the form of symbols on computer screens.

⁸ *Money Laundering and Globalisation*, Available at <http://www.unodc.org/unodc/en/money-laundering/globalization.html>. Accessed on 20th October, 2008.

⁹ *Introduction to Money-Laundering*. Available at <http://www.unodc.org/unodc/en/money-laundering/introduction.html>. Accessed on 1st November, 2008.

¹⁰ *Introduction to Money-Laundering*. Available at <http://www.unodc.org/unodc/en/money-laundering/introduction.html>. Accessed on 1st November, 2008.

¹¹ *Introduction to Money-Laundering*. Available at <http://www.unodc.org/unodc/en/money-laundering/introduction.html>. Accessed on 1st November, 2008.

committed themselves to taking action. The United Nations and the other international organizations are committed to helping them in any way they can.¹²

Indian government and economy is deeply infested with corruption and crime. Adding to this is the menacing face of terrorism. Each of these evils are directly related to, and fuelled by money laundering. In the current scenario, it is imperative for India to develop a stringent legal and regulatory mechanism. The study of the public policy and regulatory regime in India is a matter of interest for jurists and economists alike.

The paper gives a brief overview of the public policy and legal framework of the UN, the EU and also discusses the laws and role of enforcement agencies in the UK and the US. Further, the recent Prevention of Money Laundering Act of 2002 is discussed and a critical analysis of the powers and functions of the Financial Intelligence Unit are also looked into.

2. International Legal and Regulatory Regime:

Money Laundering is an increasingly international phenomenon. There have been efforts by the UN and the EU to regulate and curb money laundering and financial crimes.

2.1 UN

The Anti-Money-Laundering Unit (AMLU) of the United Nations Office on Drugs and Crime (UNODC) is responsible for carrying out the Global Programme against Money-Laundering (GPML), established in 1997 in response to the mandate given by the 1988 Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. The Unit's mandate was strengthened in 1998 by the Political Declaration and Action Plan against Money-Laundering of the UNGASS (United Nations General Assembly Special Session), which broadened its remit beyond drug offences to all serious crime. GPML's broad objective is to strengthen the ability of Member States to implement measures in anti-money- laundering and countering the financing of terrorism (AML/CFT) and to assist them in detecting, seizing and confiscating illicit proceeds, as required under UN related instruments and worldwide accepted standards by providing

¹² *Introduction to Money-Laundering*. Available at <http://www.unodc.org/unodc/en/money-laundering/introduction.html>. Accessed on 1st November, 2008.

relevant and appropriate technical assistance upon request from States.¹³ GPML encourages AML/CFT policy development, monitors and analyses the problems and responses, raises public awareness about money-laundering and financing of terrorism, and acts as a coordinator of joint AML/CFT initiatives by the United Nations with other international organizations.¹⁴

Member states should criminalize money laundering on the basis of the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (the Vienna Convention) and the 2000 United Nations Convention on Transnational Organized Crime (the Palermo Convention).¹⁵

They must also apply the crime of money laundering to all serious offences, with a view to including the widest range of predicate offences. Predicate offences may be described by reference to all offences, or to a threshold linked either to a category of serious offences or to the penalty of imprisonment applicable to the predicate offence¹⁶, or to a list of predicate offences, or a combination of these approaches.¹⁷

Three further Conventions have been adopted / specify provisions for AML/CFT related crimes:

1. International Convention for the Suppression of the Financing of Terrorism (1999),
2. UN Convention against Transnational Organized Crime (2000), and
3. UN Convention against Corruption (2003).

Also, the UN Security Council Resolutions 1267(1999), 1373(2001), 1540(2004), 1566(2004), and 1624(2005) call on UN Member States to combat terrorism, including financing of terrorism. The Security Council stated that it, “Strongly urges all Member States to implement the comprehensive, international standards embodied in the Financial

¹³ For details see <http://www.unodc.org/unodc/en/money-laundering/index.html>. Accessed on 10th October, 2008/

¹⁴ *Objectives of the Global Programme against Money-Laundering (GPML)*, Available at <http://www.unodc.org/unodc/en/money-laundering/programme-objectives.html>. Accessed on 12th October, 2008.

¹⁵ *An Overview of the UN Conventions and Other International Standards Concerning Anti-Money Laundering and Countering the Financing of Terrorism*, UN Office on Drugs and Crime. Vienna, January 2007.

¹⁶ Threshold approach

¹⁷ *An Overview of the UN Conventions and Other International Standards Concerning Anti-Money Laundering and Countering the Financing of Terrorism*, UN Office on Drugs and Crime. Vienna, January 2007.

Action Task Force's (FATF) Forty Recommendations on Money Laundering and the FATF Nine Special Recommendations on Terrorist Financing.”¹⁸

2.2 EU

While law-abiding citizens enjoy numerous benefits from the European single market, white collar criminals see advantages that they can exploit for their own selfish and anti-social behavior. Furthermore, they perceive a low risk of being caught and punished under an elaborate network of different legislative systems, which are easier to dodge than a judicial complex set up for a single nation State. Economic and financial crime has become a serious and growing threat. High priority is being given to tackling the problem.¹⁹

The Member States of the European Union have identified the fight against financial crime (money-laundering, corruption, euro counterfeiting, counterfeiting of goods, trafficking in high-value goods and serious economic crime) as a top priority.

The European Council of Tampere²⁰ was devoted to Justice and Home Affairs issues and it stated, “Money laundering is at the very heart of organized crime. It should be rooted out where ever it occurs. The European Council is determined to ensure that concrete steps are taken to trace, freeze, seize and confiscate the proceeds of crime”.²¹ Several EU Action Plans on the prevention and control of organized crime have asked the Commission and the Member States to develop a multidisciplinary approach towards the phenomenon of corruption.

Money-laundering is at the heart of practically all criminal activity. It has been given strategic priority at European Union (EU) level. A decision was adopted by the EU Council of ministers concerning arrangements for cooperation between financial intelligence units of the member states. The Europol convention was extended to money laundering in general, not just drugs related. A framework decision on money laundering, dealing with the identification, tracing, freezing and confiscation of criminal assets and

¹⁸Resolution 1617 (2005) of the UN Security Council

¹⁹ *Chasing white collar crime across the European Union single market* , Available at http://ec.europa.eu/justice_home/fsj/crime/economic/fsj_crime_economic_en.htm. Accessed on 1st November, 2008.

²⁰ 15-16 October, 1999

²¹ *EU putting a stranglehold on dirty money* , Available at http://ec.europa.eu/justice_home/fsj/crime/laundrying/fsj_crime_laundrying_en.htm. Accessed on 1st November, 2008.

the proceeds of crime has also been adopted. The EU member states have signed the protocol to the convention on mutual assistance in criminal matters between the member states. A second anti-money laundering directive was agreed, widening the definition of criminal activity giving rise to money laundering to include all serious crimes, including offences related to terrorism. A framework decision is pending on the execution in the EU of orders freezing property or evidence, the scope of which is to be extended to terrorist-related crimes.

For the first time ever, the Ministers of the EU Council of Finance and Justice and Home Affairs met at a joint meeting in October 2000 and decided on arrangements for cooperation between financial intelligence units of the Member States and a Council Act of November 2000 amending the terms of the Europol Convention to extend the competence of Europol to money-laundering in general, not just drugs-related money-laundering. Since then, the EU has been actively pursuing the war against financial crime by fostering greater cooperation and engagement of Member States and through its Directives that are obligatory for the Member States to incorporate in their local laws on money laundering and financial crime.

The European Commission is a member of the Financial Action Task Force and participates fully in international bodies such as the OECD and the Council of Europe.²² The Commission has also negotiated on behalf of the EU in respect of the relevant money-laundering provisions of the United Nations Convention on Transnational Organized Crime.²³

As a result of an integrated Europe wide framework and the ever increasing use of the internet for commercial and financial transactions, it has become imperative for the EU to track the financial transactions and bank operations of the citizens and institutions. This has led to protests from civil liberty groups, demanding removal of any infringement of their privacy. In conformity with EU Directive²⁴, all countries have legislation on

²² *The OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*, [DAFFE/IME/BR (97)20], available at [oecd.org](http://www.oecd.org). *The Council of Europe Criminal Law*, [European Treaty Series No. 173] at www.coe.int. *Civil Law Conventions on Corruption*, [European Treaty Series No. 174] at www.coe.int.

²³ *EU putting a stranglehold on dirty money*, Available at http://ec.europa.eu/justice_home/fsj/crime/laundrying/fsj_crime_laundrying_en.htm. Accessed on 1st November, 2008.

²⁴ Directive 95/46 /EC of 24 October 1995

personal data protection in place; they also have a supervisory authority in this field, entrusted with ensuring compliance to legislative provisions, which has the appropriate powers.²⁵

2.3 USA

Money laundering and crime have had deep roots in the United States of America. The drug culture and the mafia have generated illegal funds which are impossible to calculate. The U.S. has imposed many legislative and regulatory standards to help deter money laundering. The most significant of these are: the Bank Secrecy Act²⁶; the Money Laundering Control Act of 1986; the Anti-Drug Abuse Act of 1988; Section 2532 of the Crime Control Act of 1990; Section 206 of the Federal Deposit Insurance Corporation Improvement Act of 1991; the Annunzio-Wylie Anti-Money Laundering Act²⁷, the Money Laundering Suppression Act of 1994²⁸ and the Money Laundering and Financial Crimes Strategy Act of 1998.²⁹

After the September 11 attack in New York, the US Senate passed the Patriot Act. The official title of the USA PATRIOT Act is "Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001³⁰." The purpose of the Act is to deter and punish terrorist acts in the United States and around the world, to enhance law enforcement investigatory tools, and other purposes, some of which include:

1. To strengthen U.S. measures to prevent, detect and prosecute international money laundering and financing of terrorism;
2. To subject to special scrutiny foreign jurisdictions, foreign financial institutions, and classes of international transactions or types of accounts that are susceptible to criminal abuse;
3. To require all appropriate elements of the financial services industry to report potential money laundering; and

²⁵ *Report On Confidentiality And Data Protection In The Activity Of FIUs*, April 2008. Prepared by the EU Financial Intelligence Units' Platform

²⁶ Currency and Foreign Transactions Reporting Act of 1970

²⁷ Title XV of the Housing and Community Development Act of 1992

²⁸ Title IV of the Riegle-Neal Community Development and Regulatory Improvement Act of 1994

²⁹ *Money Laundering: A banker's guide to avoiding problems*. Office of the Comptroller of Currency, December 2002. Washington D.C.

³⁰ H.R. 3162

4. To strengthen measures to prevent use of the U.S. financial system for personal gain by corrupt foreign officials and facilitate repatriation of stolen assets to the citizens of countries to whom such assets belong.³¹

Title III of the Act, titled "International Money Laundering Abatement and Financial Anti-Terrorism Act of 2001," is intended to facilitate the prevention, detection and prosecution of international money laundering and the financing of terrorism. Title III is further divided into three subtitles which deal with strengthening banking rules specifically against money laundering on the international stage, improve communication between law enforcement agencies and financial institutions and currency smuggling and counterfeiting, including quadrupling the maximum penalty for counterfeiting foreign currency.

The Department of Treasury³², Department of Justice³³, Department of Homeland Security³⁴, Board of Governors of the Federal Reserve System and the United States Postal Service³⁵ are together responsible for checking the menace of money laundering and terrorist financing in the United States and abroad.³⁶

To be guilty of money laundering under the Money Laundering Control Act, the defendant must act with the intent to (1) promote the carrying on of a specified unlawful activity, (2) engage in tax fraud, (3) conceal or disguise the nature, location, source, ownership or control of the property, or (4) avoid a transaction reporting requirement.³⁷

Thus, this section criminalized *smurfing*.³⁸

Treasury and the federal functional regulators have greatly expanded the scope and reach of regulations under the Bank Secrecy Act since Congress passed the USA Patriot Act.³⁹

³¹ Available at http://www.fincen.gov/statutes_regs/patriot/index.html. Accessed on 2nd November, 2008.

³² Office of Terrorism and Financial Intelligence, Internal Revenue Service

³³ Federal Bureau of Investigation, Drug Enforcement Administration, Criminal Division, National Drug Enforcement Centre, Organized Crime Drug Enforcement Task Force

³⁴ Immigration and Customs Enforcement, Customs and Border Protection

³⁵ United States Postal Inspection Service

³⁶ *Money Laundering Threat Assessment*, December 2005.

³⁷ 18 U.S.C. 1956

³⁸ The practice of intentionally structuring transactions to avoid reporting requirements by splitting the total amount of funds available for deposit into amounts below the \$10,000 reporting threshold

³⁹ *A Report to Congress In Accordance With § 356(c) of the USA PATRIOT Act*, Submitted by the Secretary of the Treasury, the Board of Governors of the Federal Reserve System, The Securities and Exchange Commission, December 31, 2002

Thus, the USA has in place a well organized legal and enforcement mechanism, although the Patriot Act has faced severe criticism for privacy infringement and providing unchecked powers to law enforcement agencies in certain cases.

2.4 UK

Home Office research has estimated that organized crime generates over £20 billion of social and economic harm in the UK each year. This represents not just the cost of prevention and insurance, but the cost of the impact of crime (such as theft or physical harm to victims) and the costs of the response, such as running the criminal justice system.⁴⁰

The following forms the current legislative framework in the UK:

1. Money Laundering Regulations 2003: These set out the scope of the regulated sector and the preventive measures that they must take and also the powers of the supervisor for money service businesses and high value dealers;
2. The Proceeds of Crime Act 2002, as amended by the Serious Organized Crime and Police Act 2005: This set out the principal money laundering offences and reporting obligations; and
3. The Terrorism Act 2000 in relation to terrorism financing.

Sections 327 to 340 of the Proceeds of Crime Act 2002, and all of the Money Laundering Regulations upto 2007, is wide-ranging. Concealment encompasses mere concealment of criminal or terrorist property as well as its disguising, converting, transfer and removal,⁴¹ and includes concealing or disguising its nature, source, location, disposition, movement or ownership or any rights with respect to it⁴². A person may also be punished for arrangement if he enters into or becomes concerned in an arrangement which he knows or suspects facilitates (by whatever means) the acquisition, retention, use or control of criminal property by or on behalf of another person.⁴³ This provision is a threat for lawyers and other professionals who act for clients involved in money laundering. Even

⁴⁰ *Money Laundering Regulations 2007: Regulatory Impact Assessment*. July 2007

⁴¹ UK Proceeds of Crime Act, 2002. Section 327(1)

⁴² UK Proceeds of Crime Act, 2002. Section 327(3)

⁴³ UK Proceeds of Crime Act, 2002. Section 328(1)

acquisition, use or mere possession of criminal property is punishable, with some exceptions such as acquisition for proper consideration, etc.⁴⁴

An important fact in the UK legislation was that the lower limit of the value of a suspicious transaction was not provided, making the law even more rigorous and a problem for the persons and institutions who had to disclose. This provision was relaxed by the Amendment of 2005 to allow banks and financial institutions to proceed with low value transactions involving suspected criminal property without requiring specific consent for every transaction.

There were about 200,000 suspicious activity reports made in the year 2006 and about £ 165m of assets were recovered in 2005.⁴⁵ The large number of reports has been attributed to the wide range of the Act.

The UK is also under the obligation to update its laws with every EU directive. The Money Laundering Regulations 2007 have been issued, implementing the Directive on the Prevention of Money Laundering and Terrorist Financing (2005/60/EC).

3. India:

India has realized that the threat of money laundering and consequent terrorist financing has strong and surreptitious ties to foreign lands and that with the advancement of technology and development of newer methods of laundering money it is imperative for the government to frame laws and regulatory mechanisms which shall not only check the menace at the domestic level but shall also forge strong ties with foreign countries and organizations. Although a member of the Asia Pacific Group on Money Laundering and of the Egmont Group, India is still not a member of the Financial Action Task Force. It is working towards the membership of the FATF and became an FATF Observer in February 2007.⁴⁶

The Prevention of Money Laundering Bill 1998 was introduced in the Parliament on 4th August, 1998. The Bill was referred to the Standing Committee on Finance, which

⁴⁴ UK Proceeds of Crime Act, 2002. section 329

⁴⁵ Page 8, *Money Laundering Regulations: RIA* July, 2007

⁴⁶ *Member Countries and Observers FAQ*. Available at - http://www.fatf-gafi.org/document/5/0,3343,en_32250379_32236869_34310917_1_1_1_1,00.html. Accessed on 25th October, 2008.

presented its report on the 4th of March, 1999 to Lok Sabha. After incorporating the recommendations of the Standing Committee, the Government introduced the Bill in October 1999. It received the assent of the President and became Prevention of Money Laundering Act, 2002 (PMLA) on 17th January 2003. It came into force with effect from July 1, 2005.

The Preamble states the Object of the Act as, “*An Act to prevent money-laundering and to provide for confiscation of property derived from, or involved in, money-laundering and for matters connected therewith or incidental thereto.*”

3.1 Provisions

A. Definition of Money Laundering and Punishment:

Section 3 of the PMLA, 2002 defines Money Laundering as *whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime and projecting it as untainted property shall be guilty of offence of money laundering.*

Section 4 provides that the punishment for anyone found guilty under Section 3 shall be rigorous imprisonment of not less than 3 years, extendable up to 7 years, and a fine up to Rupees 5 lakhs. The proviso to the section states that in case money-laundering relates to any offence specified under Paragraph 2 of Part A of the Schedule, the imprisonment term shall be extendable up to 10 years.

B. Scheduled Offences:

The Schedule to the Act consists of 2 Parts, A & B. Part A is further divided into 2 Paragraphs⁴⁷ and Part B is divided into 5 Paragraphs⁴⁸. Each of the Paragraphs relate to offences under the various Acts which prevent different criminal activities. Any offence of money laundering shall be deemed to be a more serious offence if it is proceed of any of the criminal activities mentioned in the Schedule. An important point here is that an

⁴⁷ Para 1: Offences under the Indian Penal Code, § 121 and 121A. Para 2: Offences under the Narcotic Drugs and Psychotropic Substances Act, 1985.

⁴⁸ Para 1: IPC, § 302, 304, 307, 308, etc. For full list refer to the Act. Available at <http://fiuindia.gov.in>
 Para 2: Arms Act, 1959, Para 3: Wildlife Protection Act, 1972, Para 4: Immoral Traffic Prevention Act, 1956, Para 5: Prevention of Corruption Act, 1988.

offence shall be only be recognized under Part B, if the total value involved is equal to or greater than Rupees 30 lakhs.⁴⁹

C. Other Regulatory Provisions:

1. *Establishment of Adjudicating Authority:* Section 6 empowers the Central Government to appoint, by notification, one or more persons not below the rank of Joint Secretary to the Government of India as Adjudicating Authority to perform functions as mentioned in section 8 of the Act.
2. *Obligations of Banking Companies, Financial Institutions and Intermediaries:* Chapter IV of the Act requires every banking company, financial institution and intermediary to maintain a record of all transactions and report to the FIU all information relating to:
 - All cash transactions of the value of more than rupees ten lakhs or its equivalent in foreign currency;
 - All series of cash transactions integrally connected to each other which have been valued below rupees ten lakhs or its equivalent in foreign currency where such series of transactions have taken place within a month;
 - All cash transactions where forged or counterfeit currency notes or bank notes have been used as genuine or where any forgery of a valuable security or a document has taken place facilitating the transactions⁵⁰;
 - All suspicious transactions whether or not made in cash.
3. *Establishment of Appellate Tribunal:* Chapter VI provides for the establishment of Appellate Tribunal to hear appeals against the orders of the Adjudicating Authority.⁵¹

The Supreme Court recently heard a writ petition on the Constitutional validity of various sections of the Act, including Section 30 which deals with the constitution of the Appellate Tribunal and the selection committee.⁵² It was argued by the

⁴⁹ Section 2(y)(ii) of the PMLA, 2002.

⁵⁰ Modified by Notification No. 4/2007 dated 24-05-2007

⁵¹ Section 25

⁵² Pareena Swarup v. Union of India, 2008 INDLAW SC 1629

petitioners that the method of selection and constitution of the Appellate Tribunal and the Adjudicating Authority was such that it violated the freedom of judiciary, the Theory of Checks and Balances and the Theory of Separation of Powers. The Supreme Court directed the government to make suitable amendments to the Appellate Tribunal Rules, 2007.

4. *Establishment of Special Courts:* Sections 43 to 47 deal with provisions relating to Special Courts. The government is empowered to designate one or more Courts of Sessions as Special Courts, for trial of offence punishable under Section 4.

3.2 International Obligations under PMLA, 2002:

Section 56: Empowers the government to enter into an agreement with the government of any country for enforcing the provisions of the Act and for exchange of information of any offence the Act.

Section 58: It provides for assistance to contracting states upon receiving a request for investigation into an offence or proceedings under the Act from a contracting state. Such request is forwarded by the Central Government to the Special Court or suitable authority for execution.

Section 59: Sub-section (1) provides for serving of summons and processes by the Special Court to persons in contracting states. Similarly, Sub-section (2) provides for execution of summons and processes in India, served by courts of contracting states.

Section 60: Sub-section (1) provides for attachment of property, by the order of the Director, when the property is or suspected to be in a contracting state. The Director shall issue a letter of request to the authorized court in such a state for execution of such order. Likewise, when a letter of request is received by Central Government, from a contracting state, for attachment of property in India it shall be forwarded to the Director for execution.

3.3 Financial Intelligence Unit:

A financial intelligence unit (FIU) is a central agency of a government that:

1. receives financial information pursuant to country's anti-money laundering laws
2. analyzes and processes such information and
3. Disseminates the information to appropriate national and international authorities, to support anti-money laundering efforts.⁵³

FIU- IND is the central national agency of India responsible for receiving, processing, analyzing and disseminating information relating to suspect financial transactions. FIU-IND is also responsible for coordinating and strengthening efforts of national and international intelligence, investigation and enforcement agencies in pursuing the global efforts against money laundering and related crimes.⁵⁴ Thus, the role of the FIU-IND is basically that of an intermediary between banks, financial institutions, etc and the government regulatory agencies such as the RBI, SEBI, etc. Its purpose is to receive and disseminate information and to perform such other tasks, as prescribed by the Act.

FIU-IND is a multi disciplinary body with a sanctioned strength of 43 personnel. These are being inducted from different organizations namely Central Board of Direct Taxes (CBDT), Central Board of Excise and Customs (CBEC), Reserve Bank of India (RBI), Securities Exchange Board of India (SEBI), Department of Legal Affairs and Intelligence agencies.⁵⁵

The Director, FIU-IND, has been vested with certain powers by the Act, under Sections 13 and 17. These are the power to impose fine in case of failure to disclose under Section 12 and the power of search and seizure of property suspected to be a proceed of crime or related to any criminal activity respectively.

Ever since its inception, the primary objectives of the FIU have been to educate the people and the persons who are responsible for disclosure under the Act and to disseminate the intelligence to the other regulatory bodies. The FIU also desired that maximum reports be received in the electronic format so as to make handling and dissemination easier. During the year 2006-2007, the agency received 2.1 million cash transaction reports and 817 Suspicious Transaction Reports. Out of these, about 96.2% of the reports were received in the electronic format.⁵⁶ The first Annual Report of the FIU-

⁵³For details, see: <http://fiuindia.gov.in/faq-roleoffiu.htm>

⁵⁴ For details, see: <http://fiuindia.gov.in/faq-roleoffiu.htm>

⁵⁵ For details, see: <http://fiuindia.gov.in/about-organization.htm>

⁵⁶ FIU-IND Annual Report 2006-2007

IND was released in June, 2007 and deals in detail with the role and achievements of the agency in the one year of its operation.

Another important task before the agency is to forge ties with other FIUs and acquire membership of the FATF. India became a member of the Egmont Group in May 2007 and is seen as major achievement.

3.4 Amendment:

There has been much concern about the terror funds coming into country. In addition to that it is also widely believed that the stock market can also be potential investment destination for terrorist groups. In absence of the adequate laws and enforcement mechanism in place, it is difficult to trace the source of money coming into the country and going outside from the country. Given the above context, anti money laundering laws and regulations assumes utmost significance.⁵⁷

Minister of State for Finance, Pawan Kumar Bansal, on Friday (17 October, 2008) tabled a bill to amend the Prevention of Money Laundering Act, 2005 (PMLA) in Rajya Sabha.⁵⁸ The following are some of the highlights of the Bill and the changes it will bring about once enforced:

1. Payment gateways such as Visa and Master Card, money changers, money transfer service providers like Western Union Money Transfer, and casinos will come under the purview and face mandatory reporting obligations.
2. The bill incorporates provisions to combat financing of terrorism and it introduced a new category of offences which have cross-border implications.
3. The provisional attachment of property shall be increased from 90 to 150 days.
4. The legislation has also empowered the Enforcement Directorate to search premises immediately after the offence is committed. This bill also enables the Central Government to return the confiscated property to requesting country in order to implement the provisions of UN Convention Against Corruption.⁵⁹
5. New offences have been added to Part A and Part B of the Schedule.

⁵⁷ *PREVENTION OF MONEY LAUNDERING (AMENDMENT) BILL, 2008: AN ANALYSIS*, Manish Jain and Vikas Jain. Available at http://www.taxmann.net/WhatnewNews/article2310_2.pdf

⁵⁸ *Anti-money-laundering Bill introduced*, Sandeep Joshi. Available at <http://www.hindu.com/2008/10/18/stories/2008101859841600.htm>. Saturday, Oct 18, 2008

⁵⁹ *PREVENTION OF MONEY LAUNDERING (AMENDMENT) BILL, 2008: AN ANALYSIS*, Manish Jain and Vikas Jain. Available at http://www.taxmann.net/WhatnewNews/article2310_2.pdf

4. CRITICISM AND CONCLUSION:

Rapid developments in financial information, technology and communication allow money to move anywhere in the world with speed and ease. This makes the task of combating money-laundering more urgent than ever.⁶⁰ Financial Intelligence Units play a leading role in any anti-money laundering regime as they are generally responsible for receiving, processing and analyzing reports made by financial institutions or other entities according to the requirements of domestic anti-money laundering laws and regulations.

The threat of money laundering as a tool to finance terrorism has made it a direct threat to world peace and the onus lies upon the governments and FIUs of the world to develop better regulatory and physical barriers to prevent any such practices.

The aim of the paper was to study, critically, the Prevention of Money Laundering Act 2002. India has fulfilled its international obligations by setting up a legal and regulatory framework against money laundering and terrorist financing.⁶¹ The FIU-IND is actively pursuing its cause and the First Annual Report of 2007 is an evidence of the same. But there are challenges and milestones ahead.

The use of the internet and online banking has made it an uphill task for banking companies to track the ever increasing volume of transactions carried out over the internet. They also risk facing privacy law violation issues as the banking and monetary transaction of each and every individual and organization is put up in the public domain and is susceptible to misuse.

Terrorist financing is another major hurdle that seems almost impossible to track and apprehend since most of these transactions are in cash and no banks are involved in the process. The Prevention of Money Laundering Rules has been amended to include financing of activities related to terrorism under “suspicious transactions”, and the Amendment Bill of 2008 also seeks to include terrorist financing in its purview.

The FIU-IND aims to create greater awareness among the people and organizations and does this by organizing workshops, conferences and seminars on the subject. FIU-IND

⁶⁰ *Money-Laundering and Globalization*, Available at <http://www.unodc.org/unodc/en/money-laundering/globalization.html>

⁶¹ Political Declaration and Global Programme of Action, annexed to the resolution S-17/2 was adopted by the General Assembly of the United Nations at its seventeenth special session on 23rd February, 1990; and the Political Declaration adopted by the Special Session of the United Nations General Assembly held on 8th to 10th June, 1998 calls upon the Member States to adopt national money laundering legislation and programme.

participated in Joint Workshops, held in the year 2006-07, with the regulators and FIUs of Germany, Mauritius, Singapore, Turkey, USA and Israel to foster greater collaboration and help each other.

Finally, the number and quality of reports need to be improved. The FIU seeks to receive maximum reports in the electronic format and has been considerably successful. It also aims to collaborate with regulators and industry associations to develop uniform industry standards for detection of suspicious transactions.

Thus, the need is not only for leak proof legislations but also for a robust implementation mechanism to check the growth and spread of money laundering. India has realized it a bit late but the foundations have finally been laid and it is only a concerted and collaborative effort that will bear fruit.