CHAPTER - 7

CONCLUSIONS & SUGGESTIONS

7.1 Conclusions

Successful AML law effectively severs the link between the criminal, the crime and the illicit wealth. Money laundering counter measures must thus be balanced as protecting in an indirect way the interests which are perceived to be threatened by organized crime and terrorism. Internationalization of money laundering has been facilitated by a number of factors, such as growth of stock markets, large scale privatization, diversification of financial instruments. One of the main reason is the speculative nature of the global economy. A truly global AML regime is still far from reality. 827

At the political level money laundering threatens to undermine the principles associated with a free, fair, and transparent democratic society since it empowers criminals to wash off, or at least minimize the taint of illegality with which the money derived from their criminal or unlawful activities is discernible. Therefore giving room for criminals to profit from their crimes, is to demoralize the process of justice to which society adheres. Further such an atmosphere in a society enable criminals to accumulate wealth while shirking social responsibilities such as paying tax to governments. Informal economic activity is not taxed because it often takes place beyond the control of government, thereby reducing the revenue, often leading to deficit budgetary situation. Allowing criminal organizations to infiltrate into the informal economy through corruption, bribery and other detrimental practices, would undermine the rule of law and transparency of the society. Jail sentence of few moths or years of incarceration will not deter criminals from their pursuit of crime and money, as long as laundering of proceeds continue to happen. Only stricter penalties and early confiscation regime will

827 supra note 70; p95
discourage the launderers. If the predicate crimes, the resultant money laundering and terrorist financing is left unchecked it may lead to criminals amassing wealth, power and influence which in turn may undermine the rule of law leading to a corrosive, corrupt effect on society and economy as a whole.

It is indeed a matter of concern, to observe the tendency of most jurisdictions to overlook white collar crimes, when compared to other felonies. The dirty money generated by criminal organization has seen new heights resulting in huge financial flows from formal to informal economy. Combination of factors such as mispricing, dummy corporations, tax havens, secrecy jurisdictions, flee clauses, and the whole gamut of techniques and structuring which ultimately support dirty money in a system which allows criminals to get away with subterfuge, disguise and theft. The outcome is legitimization of illegitimacy. Starting from demand side strategies and requirements that help to expose and prosecute money laundering have on the supply side led to more sophisticated operations to circumvent and avoid discovery. Money is neither clear nor dirty per se but becomes tainted as it moves from the legal economy across legal-illegal boundary into the underground economy. What of course motivates and directs this movement are the decisions made by individuals. Criminals are not the only group of people contributing to the massive flow of dirty money into the economy. For that matter every individual who has reasons to fear that his or her illicit wealth or assets might be frozen or confiscated, will try to conceal the true origin of its source or the identify of its beneficial owner. As most crime is motivated by profit, the pursuit for recovery of the proceeds of crime can make a significant contribution to crime reduction and the creation of a safe and just society.

Though the menace of money laundering is there for more than four decades, there is no authentic data or knowledge about the size and development of money laundering or organized crime, as no serious attempt is made by international organizations, regional groupings, enforcement agencies, expert groups, intelligence units. Neither the FATF, the US administration nor the FIU have invested their mite to analyze information about money laundering and organized crime, and to come out with a proven scientific data. Though it is extremely difficult to access the nature and amount
of inflows of illicit and tainted money, the inherent lack of knowledge about money laundering is matched by a lack of unity and transparency.

There appears to be a disjunction between the legal construction of money laundering, which includes modest acts such as placing of proceeds of crime in a bank account in one’s own name, and the analytical construct of laundering wherein the proceeds of crime are sanitized so that it can be spent as though acquired legitimately. Invariably one must be vary of the political, philosophical, moral, ethical and other arguments advanced by academics, jurists and legislators, as the principles enunciated today may change tomorrow as the law needs to constantly adapt to social change.\textsuperscript{828} Increasing awareness is being heightened to the extent that more people are realizing that the laundering of dirty money is often the lubricant of crime.

A French banker put it succinctly “Politicians think nationally. Criminals think globally. They win. We lose” (Author Interview). Globe is the playground for criminals who deal in dirty money, while for nations their borders are a major limitation. The case against dirty money is complicated due to intermix of geographies, economies and legal systems.\textsuperscript{829} Use of criminal law has been the option favored by most countries, where sound economic rationale exist and the choice supersede alternative forms of legal action. Use of criminal law is certainly appropriate for money laundering activities related to the narcotics trade, human slave trade, terrorism etc. However with regard to less serious crimes alternative to use the criminal law needs to be considered, as from the huge list of predicate offences adopted by various country reveal some crimes of lesser nature. As such civil standards of liability ought to be developed in more detail and the problems that currently exist with respect to how the civil and criminal law interface need to be resolved, by respective jurisdictions. Civil law can be tried especially to combat white collar crime, such as fiscal offences. Criminal law is one of the last areas of law which is subjected to internationalization. Its internationalization will have significant consequences for the substance of the law, for the persons accused, and relation between states. Money laundering is not merely about criminal conspiracies

\textsuperscript{828} supra note 5; p-104
\textsuperscript{829} supra note 153;p-48
to be controlled through criminal law. Strategies require integrated approach of individual, civil, legal, economic and other rights. Within EU and USA laws are drafted in a manner that they are wide in scope and application. Alternative to use of criminal law, a doctrine of civil money laundering liability to be considered.

There is no part of the formal financial system that cannot be used to handle unaccounted income with sufficient effort. Therefore if a society wants to eliminate black money, it has to abolish money or taxation, and both the choices are not possible to run a civilized society, and would lead to a stone age society. Return of investment is always a secondary goal to money launderers, whose primary goal is to protect their criminal proceeds. Economically speaking laundered money is like a diluted drop of ink in the financial flow. Hidden from official data, and is therefore difficult to spot. One way to tackle this problem is to mirror balances, by looking into the outflow of a country with the inflows. Ability of money to move within markets and countries have brought benefits such as flexible finances, generation of infrastructure and employment. While so such benefits have also brought inherent risks as corrupt officials, suspected corporate, unscrupulous entrepreneurs and criminals have started abusing the financial system. There are many business areas and industry which are still ignorant about money laundering. It is exactly this ignorance which is exploited by launderers and criminals.

In principle financial institutions should refrain from carrying out transactions which they know or suspect are related to money laundering, or until they have apprised the authority responsible for combating money laundering which may in turn instruct them not to execute the transaction. It is clear that neither the government working with penal law instruments nor the financial institutions can separately tackle the problem of money laundering effectively. This is an area in which one cannot do without the other. The policy of the government will therefore often not be directed primarily against the financial institutions, unless they have trespassed the regulations and limits. Secrecy may be badge of fraud and financial services may shelter unlawful activity, but still the financial service industry is generally used for lawful business and legitimate purposes. It is further pointed out that AML law comes at a cost, and it impacts negatively on the
efficiency of the banks. Money Laundering is a source of un-systemic risk and for regulatory agencies it raises potential concerns about integrity of financial markets.

Most law enforcement techniques are reactive, a response to crimes that have already been committed. But in some respects, the money laundering control is proactive in the sense that it is aimed at imposing obligations for the prevention and detection of this activity. Powerful enforcement is essential to curtail money laundering. Convictions and prison sentence are not enough to deter crime, if criminals and organizations are able to keep their gains, and hence a powerful confiscation system is required.

An estimated 50 percent of all global commerce passes through tax havens and secrecy jurisdictions at some point between seller and buyer, and much of this global trade is falsely priced.\(^{830}\) If the wire transfer data is followed meticulously it would reveal a number of red flags indicating suspicious activity. Red flags include transactions between totally unrelated industries with no legitimate reasons, transfer of unusually high amounts, transfers involving tax haven and off shore centers. Obvious red flags are contained in the data itself, such as empty data fields, unusual entries, repetition of suspicious names etc and transactions with known laundering entities.

Money launderers escape due to discrepancies in the legal structure which exist between countries. Countries with strong regulatory capabilities and resources take control of the crime, while countries with less regulation and resources view compliance issues with less zeal, allowing launderers to take advantage. Therefore the application field of the incrimination of money laundering should include as many predicate offences as possible. Much emphasis on powers of enforcement and is in favor of criminalization of offences, better confiscation rules and increased international cooperation, as powerful enforcement is essential to curtail money laundering. Many countries have not criminalized feeder activities to money laundering as offence.

Despite the fact that legislation varies between countries, it is important to find a common definition of money laundering. For measuring money laundering one needs a clear definition which includes or covers all predicate crimes. The FATF has indeed

\(^{830}\) supra note 153;p-134
made great efforts to define the term clearly. However these efforts which have been aimed at achieving an international standard, nevertheless conceals the existence of national variations in legal definitions. It seems important to have an international and interdisciplinary debate on what money laundering is, what it includes and what it excludes. To control money laundering a wide rightly woven legal net is needed. Countering money laundering and other financial crimes requires not only knowledge of laws and regulations, but also of banking, finance, accounting and other related economic activities. It is seen that though many laws are drafted with draconian words, but still the enforcement is week leading to lesser punishment and conviction. Across the globe various definitions of crime and legal and penal definitions of money laundering lead to a complex situation. The UN has therefore sought for steps to reduce this ambiguity and inconsistencies.831

The expressed global interest in tackling proceeds of crime has not translated into effective national counter initiatives. An overview of various domestic money laundering legislation reveal that most legislators have adopted legal equivalent of the word ‘carpet bombing’, as almost every activity that may be construed for the purpose of laundering has been criminalized. This broad character of money laundering legislation is subject to challenges at time, but the reasons are attributed to treaty requirements. 832

The area which requires more specific legislation is confiscation, as there are marked differences across national legislation on the powers to confiscate the proceeds from criminal activities. Convictions and prison sentence are not enough to deter crime, if criminals and organizations are able to keep their gains, and hence a powerful confiscation system is required

Regardless of the criminal policy a jurisdiction may adopt with respect to money laundering, legislation should sanction any kind of money laundering and permit confiscation of the proceeds of any kind of crime. A question may arise as to what results the international efforts in the past four decades in AML regime has achieved.

831 supra note 157; p6
832 supra note 70; p-127

282
The concern is mainly on the impact on such of those crimes which are yet to be included in the legislation of US and EU and others, and the role of those crimes in accumulation of criminal, corrupt and commercial dirty money. At juridical level money laundering undermines rule of law. Money laundering promotes bribery and corruption, which in turn subverts rules which govern transparent decision making process. Further, coercion and intimidation forces individuals to take decisions contrary to their option. We have to ponder seriously as to how despite prevalent of all laws and regulations, trillion dollars of illicit money annually move freely around the globe.833

Experience has shown that to achieve a successful AML strategy within any jurisdiction the following factors must be present. (i) effective legislation and obligation to criminalize money laundering (ii) comprehensive definition of financial sector and its risk assessment (iii) a supportive enforcement structure based on central reporting, trained financial investigators, confidentiality, feedback from law enforcement agencies (iv) political will to tackle serious crimes and associated laundering of proceeds of crime (v) international cooperation 834

There may be crudities and inequalities in complicated experimental economic legislation, and the legislature can always step in and enact suitable amendatory legislation. Howsoever the care bestowed on its framing it is difficult to conceive a legislation which is not capable of being abused by perverted human ingenuity835 From a law enforcement point of view the broad category of anti-money laundering law is necessary to respond to the varied and shifting nature of the phenomenon of money laundering. However from the defendant’s point of view the broad character of the legislation may be viewed as problematic, as it may lead to vagueness. This allegedly vague character could be an easy ground to challenge the AML regime as violating the legality principle. The nullum crimen sine lege principle not only imposes a ban on retroactive introduction of legislation but also implies that the law should be sufficiently

833 supra note 153; p-180
834 supra note 21; p-31
835 See Apex Court judgment in the case of R.K Garg Vs UOI (1982 (1) SCR 947 SC)
clear and precise so that citizens can know in advance as to what type of conduct is considered criminal.\textsuperscript{836}

Many countries have not criminalized feeder activities to money laundering as offence. The area which requires more specific legislation is confiscation, as there are marked differences across national legislation on the powers to confiscate the proceeds from criminal activities. As long as a country takes the benefit from crime, by accepting the money from laundering but keeping the crime abroad, it free rides on crimes committed in other countries. Though this situation economically speaking may not be incorrect, but still morally incorrect.\textsuperscript{837} Use of criminal law must be balanced against practical considerations and alternative methods of social sanctions Criminal law is one of the last areas of law which is subjected to internationalization. Its internationalization will have significant consequences for the substance of the law, for the persons accused, and relation between states.\textsuperscript{838} Many countries have opted for a reverse process regulation whereby any crime in another country automatically is covered in the domestic AML law. A far sighted criminal may have a mixture of lawful and unlawful income. If he used the unlawful income to pay those bills or expenses which cannot be traced or will not attract suspicion, then he can use lawful income to discharge liabilities which are more closely scrutinized. Money laundering is an ancillary offence which occurs after commission of primary offence. It is always not clear as to what interests are protected by criminalizing money laundering \textit{per se}, as the issue whether all laundering offences are geared towards sustaining a criminal organization, is a debatable one. For instance, the \textit{actus reus} of the offence may cover ordinary and legitimate behavior which may not even be connected to the predicate offence. From the procedural point of view the presumption of innocence is threatened by the tendency to reverse the burden of proof so that knowledge or suspicion of money laundering is proven by the defendant. The initiatives of various international and regional bodies involved in the AML movement could be viewed as a worldwide

\textsuperscript{836} supra note 70; p127
\textsuperscript{837} supra note 36; p9
\textsuperscript{838} supra note 102; p89
crusade to convert all unbelievers to the faith of effective money laundering control. It is conceded that there is no single cure for such grave criminality but essential prophylactic measures are warranted to reduce the risk of infection. 839

When the PMLA was enacted on 1st July 2005 implementing the Palermo TOC Convention, it was already clear that the scope of the law was too restrictive to withstand the test of the relevant international standards. With the extension of list of predicate offences under Schedule A and B and the addition of Schedule C offences since 1st June 2009 India has made a serious effort to bring the ML criminalization of the PMLA in line with the FATF criteria FATF has lauded India’s compliance with global standards as the regulations have reached a satisfactory level. Though the number of cases investigated has gone to 1704, the low convictions rates remains a serious issue. The money laundering investigation has increased from 758 in 2009 to 1561 in April 2013, and the terrorist financing investigation cases has risen 143 in 2006 to 470 in March 2013. In view of substantial progress shown, FATF has decided to remove India from regular follow-up process. 840

By bringing other criminal offences into the schedule of offences, money laundering provisions automatically become part of these crimes. The schedule of offences of a money laundering law also needs to be tightened or in other words made more comprehensive, to effectively deal with money laundering. Only in May 2011, India ratified Palermo Convention, along with UNCAC, 2003. India should review its ML and FT provisions to bring them in line with the relevant convention, particularly in respect of the criminalization and the implementation of preventive regime. 841

In the AML survey conducted by Basel Index in 2013, out of 140 countries studied India ranked 93rd and 70th respectively with score of 6.05 and 5.95 in 2012 and 2013 respectively, while Norway tops the study with number 1 position and a score of 6.05. Basel Index assesses a country’s risk ranking taking into account 14 indicators for assessment. The report shows India’s vulnerability to money laundering and is in the

839 supra note 208;p-269
841 supra note 746;p228
high risk zone. It is estimated that an amount of US$ 343 billion has been laundered out of India during the period 2000 to 2011.\textsuperscript{842} India’s porous borders and location between heroin-producing countries in the Golden Triangle and Golden Crescent make it a frequent transit point for drug trafficking. Proceeds from Indian-based heroin traffickers re-enter the country via bank accounts, the Hawala system, and money transfer companies. India’s economic and demographic expansion makes it both a regional financial center and an increasingly significant target for money launderers and terrorist groups. India’s extensive informal economy and remittance systems, strategic location, persistent corruption, and historically onerous tax administration contribute to its vulnerability to financial and terrorist related crimes. The 2011 INCSR report identifies money laundering priority jurisdictions and countries using three different classification jurisdiction of primary concern, jurisdiction of concern and other jurisdictions. The category ‘jurisdiction of primary concern’ where financial institutions engage in transactions involving significant amounts of proceeds from all serious crimes. India is classified under jurisdiction of Primary concern, along with UK, USA, Canada totaling 63 countries.\textsuperscript{843}

It is unfortunate that a country like India, with an acute need for capital should be one of the world’s largest exporters of illicit capital amounting to some US$ 213 billion over the period 1948-2008. The main reason is that economic models can neither capture all the channels through which illicit capital are generated nor reflect the myriad channels through which the funds are transferred. The illicit money transferred outside India may come back to India through various methods such as hawala, mispricing, Foreign Direct Investment (FDI) through beneficial tax jurisdictions, raising of capital by Indian companies through global depository receipts (GDRs), and investment in Indian stock markets through participatory notes. It is possible that a large amount of money transferred illegally or laundered outside India might actually have returned through any one of these means. In fact transfer of illicit capital through “trade

\textsuperscript{842} supra note 14

mispricing” account for 77.6% of total outflows from India over the period 1948-2008.

It is often stated that, in more developing countries money laundering takes place, aplenty. India is a regional financial center, with a rapidly growing economy and well-developed formal and informal financial systems. What has been done by India till date to combat terrorism and effectively bring in anti-money laundering regulations, is, by and large, ornamental. Much concrete work needs to be done. It is to be noted that even after so many efforts and prevailing laws, India is among six countries, being actively monitored by Interpol and International banking watchdogs after the detection of massive money laundering because of inadequate internal compliance procedures.

During the last year properties and valuable assets worth 1750 crores were seized by ED, pertaining to 127 attachment such as freezing of land, flats, fixed deposits, cash and jewelry. As a first measure the agency has decided to publish address such as location and other details of properties seized/attached, which were confirmed by adjudicating authority. The agency has launched prosecution in 48 cases between 2005-06 to 2012-13. If cumulative figures are taken for the period 2005-06 to 2013-14 assets worth 5314 crores were seized and 103 prosecution cases launched in courts.

In terms of launching prosecution Directorate Of Enforcement (DOE) tops the tally of all revenue enforcement agencies by achieving a new record. To make the public aware of attachment of properties the Directorate is planning to publish the list of properties and assets attached in print media. It has also claimed that it has wrapped up probe in as many as 1800 cases last year.

The Enforcement Directorate has been carrying out sensitive work, which requires a high degree of responsibility and confidentiality. It should get adequate resources in terms of money and manpower, technology and legal expertise, so that it can effectively fight against money laundering. In 2011, the organizational strength of the Directorate was enhanced almost three times

---

845 supra note 52:p140
846 supra note 14:p-12
848 www.taxindiaonline.com – accessed on 29th April 2014
from 745 to 2,064 to enhance its investigation. The working environment in the Directorate should be such as to encourage the best to join and work, while the officers of the Directorate should perform their duty with utmost integrity and efficiency.  

The ED Hqrs last year has issued a circular communicating the instructions to be followed before registering ECIR (ED equivalent to Police FIR) The guidelines ensures quality of case is not compromised and tracing substantial proceeds of crime and where there is availability of charges by prosecution, and decision regarding ECIR to be taken by a senior officer not less than the rank of Zonal Director. This assumes significance in the backdrop of amendments to remove the threshold limit under the Act, which eventually increase the volume of investigations. With 5699 cases under Foreign Exchange Management Act, 1999 (FEMA) and 1348 cases under Prevention of Money Laundering Act, 2002 (PMLA) pending investigation, the Directorate of Enforcement is over loaded. These cases are pending as on 31st July 2011. The Government of India has therefore approved restructuring of the Directorate of Enforcement by increasing staff strength from 745 to 2064 and the number of offices of DOE from 22 to 39.

In India proceeds of economic crime are from tax evasion, but the laundered funds also consist of drug trafficking, trafficking in human being, illegal trade and corruption. Illicit funds are often laundered through real estate, charities, education program etc. According to data available the money laundering prosecution/conviction for the period April 2006 to March 2011 is NIL. Therefore it is imminent to speed up the prosecution and conviction process to ensure that the offenders and guilty are punished early, to serve as a deterrent, and to send a signal of warning to criminals and launderers in India that the enforcement regime is tough. How stronger and stricter may be a statute in force, but unless the provisions are effectively implemented the AML Statute would be one among the Statutes which is passed just to comply with an

international obligation and peer pressure. Much needs to be done in the field of investigation, prosecution, conviction, and forfeiture of proceeds. It is also seen that law enforcement start belated investigations and seldom resort to proactive and long term investigations. Though at prosecution level the focus on terrorist financing, it has to be followed diligently to conviction level.

In terms of Special Recommendation 6 of FATF, each country should take action to ensure that individuals and legal entities that provide for ‘due transmission of money or value’ are licensed and registered and are subject to same standards, that is the regulation which apply to regular financial institutions. In other words the requirements should apply to transmission on money or value through an information transfer system Known as fei ch’ien in the Far East (Which literally means ‘flying money’) or Hawala or Hundi in India and Asia, it is a system based on honor and ethnic ties between close knit groups. Although it is not formally regulated, the underground banking system are a highly efficient means to launder money Few recent studies have found that hawala transactions in India are used to launder the proceeds of trade mispricing, or that the two work in conjunction in a self-sustaining style. While the legitimate business are captured under the provisions of FEMA and Payment and Settlement System Act, 2002 (PSSA) and are now subject to provisions of PMLA there exists a sizeable and demonstrated informal sector that is operating illegally. There is no authentic method to estimate the correct size and scope of the informal hawala/hundi.

The DRI has recently unearthed a case of TBML where some importers made remittance worth crores of rupees to foreign accounts mainly located in Hong Kong on the basis of bills for consignments which never reached Indian shores, and big corporate are reported to be involved in this scam. The agency has reported to have booked 296 cases of suspected TBML during 2013-14 involving Rs 1,817 crore, while 251 such cases involving an amount of Rs 1,130 crore were detected during 2012-13. The CEIB lead agency in coordinating financial crimes is working along with DRI to

---

852 supra note 746:p30
853 supra note 21
unearth the TBML cases. The agency is also coordinating with COIN (Customs Overseas Intelligence Network) in this regard. In view of the considerable amount of proceeds laundered the enforcement and regulatory regime needs to be strengthened.

White Paper on Black Money brought in May 2012 by the Govt. of India admitted that the fight against generation and accumulation of money is far more complex requiring strong intervention of state, in developing country like ours. It requires a strong legal framework, commensurate administrative measures and finally a strong resolve to fight the menace, apart from political consensus, patience and perseverance. Control of black money is very important as money laundering and generation of black money are interrelated. While addressing the deep rooted menace of black money and illicit money flows in and out of India, the Apex Court of the Country observed as follows “..The worries of this Court are also with regard to the nature of activities that such monies may engender, both in terms of the concentration of economic power, and also the fact that such monies may be transferred to groups and individuals who may use them for unlawful activities that are extremely dangerous to the nation, including actions against the State. Large amounts of unaccounted monies, stashed away in banks located in jurisdictions that thrive on strong privacy laws protecting bearers of those accounts to avoid scrutiny, raise each and every worry delineated above. First and foremost, such large monies stashed abroad, and unaccounted for by individuals and entities of a country, would suggest the necessity of suspecting that they have been generated in activities that have been deemed to be unlawful. In addition, such large amounts of unaccounted monies would also lead to a natural suspicion that they have been transferred out of the country in order to evade payment of taxes, thereby depleting the capacity of the nation to undertake many tasks that are in public interest” 854

According to the research conducted by India forensic in 2011, the estimated size of money laundering in India was Rs 18.86 lakh crore during the period 2000-2010. The report emphasized that laundering is expected to grow in the field of digital currencies

854 Observation of Hon’ble Apex Court in the case of Ramjethmalani Vs UOI reported in http://indiankanoon.org/doc/1232445 - accessed on 10th October 2014
which are de-centralized. Though the authenticity of this data may or may not be accurate, the sheer volume of money laundering in India raises serious concerns, especially during the same period we have the AML regime in force, effective from July 2005. The data however raise alarm bell that much needs to be done in identifying the offenders who had laundered proceeds alert the respective authorities in whose jurisdiction the predicate crime falls to commence investigation and prosecution, so that the offence of money laundering can be taken up simultaneously, as under PMLA the projecting of proceeds of scheduled offence/predicate crime is a pre-condition to formally launch a ECIR before commencing investigation under the Act. Once charges are framed for the predicate as well as laundering offences, urgent efforts are requited in tracing, and freezing of proceeds of crime by resorting to provisional attachment, to avoid the proceeds escaping the long arm clutches of law.

7.2 Suggestions

1. Predicate crime – All Crimes approach: As per Regulation 1 of FATF, 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 predicate offence, or to a list of predicate offence, or a combination of these approaches. India follows a list of predicate offences which are part of Schedule to the Act, and confined to 28 statutes listed, covering around 156 predicate offences. As observed in this thesis the approach of UK is ‘all crimes” approach, and no matter how trivial the criminal activity, if there is a suspicion that it might involve property which might be laundered, there is an obligation on entities to report it. Though it may be difficult to the Indian scenario slowly the law has to be evolved to the effect that sooner or later the Statute should switch over to all crimes approach, as considering factors such as our society, economy, criminal system, regulatory, enforcement and judicial mechanism, an

---

overnight solution cannot be expected. But if the predicate offense are made broader so as to bring most of the offences following the model of USA, a stage will come when the AML legislation would have come to a stage of adopting all crimes approach. The definition of term ‘property’ under PMLA is related to scheduled offence. Sec.3 of the PMLA having not adopted an ‘all crimes’ offence, very minimum positive proof of specific predicate offence is required for conviction of self laundering or third party money laundering.

2. Tax Offences - Income Tax: From a review of literature and information available the Researcher notes that tax avoidance and the proceeds of economic crimes are still the bastion of money launderers in India. Proceeds of crime shall be relatable to scheduled offence to charge a person for money laundering offence. In other words if the proceeds of crime is not related to or arising out of predicate crime, the laundering of such proceeds even if illegal or prohibited under any other law for time being in force in India, may not fall under ambit of PMLA. Therefore there is always possibility of a person if booked for an offence, while proving the onus may contend that illicit income relates to tax evasion or income derived from agricultural source. Similarly as fiscal offences such as evasion of indirect taxes under the Central Excise law (Central Excise Act, 1944) and the Service Tax law (Currently implemented through Chapter V of Finance Act, 1994) are not part of the Scheduled offences, there is every possibility of an alleged offender trying to shift the predicate crime as one related to such fiscal offences. Further in the absence of the fiscal offences not being part of Indian AML regime, the proceeds of tax evasion cannot be forfeited to government, as the respective fiscal statutes only envisage recovery of tax arrears by attachment of property which is a long drawn process, and does not permit forfeiture of proceeds of crime.

The suggestion of the researcher also coincides with the Supreme Court appointed SIT on black money suggested that tax evasion should be a predicate crime. The SIT has informed that the income tax department is examining the provisions of Income Tax Act, 1961 to apply such provisions within the ambit of PMLA. It was also suggested that to avoid harassment to small tax payers, a threshold limit of Rs.50 lakh
tax for evasion can be prescribed, under PMLA. The researcher feels that though such a threshold limit is necessary to avoid harassment to small tax payers who are the bulk of income tax assessee in India, such a move should be in compatible with FATF standards, and therefore be drafted with caution.

Presently jail term for Income Tax offenders, occur only rarely, upon completion of prosecution and conviction. However the authorities can seize assets for realization of tax dues. Another suggestion was to mention PAN in all sales involving more than Rs.1 lakh. 856 Non declaration of foreign bank accounts and assets may also be termed as criminal offence as per proposed amendment to PMLA, which may be part of forthcoming Budget measures. Concealment of income, non-disclosure of foreign assets including bank deposits, giving false evidence, non-remittance of TDS are some of the offences which are proposed to be included. 857

In view of the suggestions above coinciding with latest reports, and in view of the points deliberated in this thesis, the Researcher is of the view that direct tax offences under the Indirect Tax law, namely the Income Tax Act, 1961 be brought under the purview of PMLA without any threshold limit, preferably with a provision to safeguard small and innocent assesses.

3. **FEMA offences** : The term proceeds of crime bears direct reference to the ‘Scheduled Offence’ The Schedule does not incorporate either the violation of FEMA or contraventions of provisions of IT Act. Though the much feared and draconian law, the Foreign Exchange Regulation Act, 1973 (FERA) was repealed and in its place Foreign Exchange Management Act,1999 (FEMA) has been brought it. FEMA is more or less regulatory and enacted in the context of liberalized foreign exchange laws and regulations and to facilitate and encourage international trade. The Act does not have power of arrest except permitting civil imprisonment in case of nonpayment of penalty,

---


and also does not contain provisions for forfeiture of proceeds. Alternative Remittance System such as Hawala is predominant in India, as is often used in the placement and layering stage of money laundering process. Foreign Exchange (Forex) payments are subject only to regulation by FEMA through RBI, but field data point out huge transfer of illicit proceeds across borders, using TBML mode by making payments to fictitious invoices. Though remittance of proceeds abroad through informal banking channels or vice-versa is prohibited under the FEMA 1999 and an offender is liable for action under the Act, since the FEMA is not a scheduled offence under PMLA, it handicaps the government much in this crucial area. Therefore the Researcher suggests that the FEMA violations be brought under the ambit of PMLA by treating it as a scheduled offence.

4. **Indirect Tax Offences** : Under PMLA only fiscal offences falling under the provisions of Customs Act, 1962, that is offences under Sec.135 of Customs Act, 1962 is included in Para -12 of Schedule to PMLA. Violation under Customs Act, covers import related evasion of customs duties, such as smuggling, evasion of customs, anti-dumping duties, import mis-pricing, etc. Though the Customs Act, 1962 contains provisions for seizure and confiscation of offending goods, under Sec.124, the proceeds of smuggling can also be forfeited to government if it is proved that the offender, is having knowledge or reason to believe that the goods are smuggled. However under PMLA the violations under Customs Act has been included as a ‘predicate offence’. The other indirect tax offences namely the offences under the Central Excise Act, 1944 relating to evasion of Central Excise duty, a tax levied on goods manufactured in India, and evasion of service tax, which is a tax levied on services (other than those exempted services under Negative List) presently governed by virtue of provisions contained in Chapter V of Finance Act, 1994 is not a scheduled offence under the PMLA. The researcher feels that considering the huge violation and flow of illicit money through TBML, dummy entities, invoice manipulation, etc the offences under Central Excise Act, 1944 be brought under PMLA. Though the Central Excise law draws power from the Customs Act, 1962 as regards attachment and sale of movable and immovable properties (in terms of Sec.142 of Customs Act, 1962) the same can be enforced only to
realize tax arrears and that too only when the defaulter has movable or immovable property in his possession. There is no mechanism under Central Excise law for forfeiture of proceeds of crime and hence it is suggested that the offences under Central Excise law can be included.

Service Tax law unlike other fiscal statutes does not operated under a self contained Code, but rather continue to operate under Chapter V of Finance Act, 1994 even after two decades of its introduction. Therefore a new and independent statue need to be formulated, which may likely to happen after introduction of Goods and Service Tax (GST) regime in India. As regards the offences under service tax law, being a sector which is mostly unorganized and provisions of law itself being very complicated even to experts, and provisions often leading to disputes and litigation, inclusion of the service tax offences at this stage may be postponed.

5. **Definition of term Property**: The words ‘wherever located’ used in the definition are very significant. Not only property of every description is intended to be covered by the definition given in the Act, further the property need not be necessarily within the geographical limits of India, and it covers property situated beyond India also. However the definition of the term ‘illegally acquired properties’ in SAFEMA and NDPS are comparatively wider as they also include such properties not only obtained or derived from but also ‘attributable’ to the illegal activity. For instance the definition of ‘illegally acquired property’ under Sec. 3 (C) of SAFEMA 1976 is very wide and extensively cover illegally acquired property of any description to enable forfeiture of such properties effective. Similarly the definition of ‘illegally acquired property’ under Sec. 68 B (g) of the NDPS Act, 1985, is wider in application. Therefore it is suggested that a similar provision be brought under PMLA

6. **Fine**: Erstwhile provisions of Sec.4 which deals with punishment for offence of money laundering, apart from a provision for rigorous imprisonment also contained a provision for imposition of fine up to five lakh rupees. The imposition of fine has been deleted by Act No.2 of 2013, and the reasons behind such a movies not known. Sec.13
(2) (e) of the Act, empowers the Director (Director of Enforcement) to impose a fine on reporting entity or any of its employees a fine not less than ten thousand rupees an upto one lakh rupees for each failure in not complying with obligations imposed under the PMLA. Similarly Sec.63 of the Act, relating to punishment for false information or failure to give information apart from a provision for imprisonment of a term which may extend to 2 years,. Sec. 63 (2) also contain provisions for imposition of fine from rupees five hundred to ten thousand INR. (Indian Rupee) As per Sec. 69, the fine can be recovered by Tax Recovery Officer, in terms of the provisions contained in Income Tax Act, 1961. There shall be a mechanism for imposing fine, on launderers, abettors and other offenders who are involved in money laundering offence, including the financial institutions and other entities. as certain situations and circumstances warrant its imposition. Government cannot be content with forfeiture of proceeds alone, as fines and penalties help in regulatory and enforcement atmosphere much effectively. It is therefore suggested that a mechanism of imposing hefty fine should be brought into force like the one prevalent in USA and UK as the minimum fine would not be a deterrent to offenders.

7. **Punishment for dealing with illegal properties under NDPS** : The sanction for money laundering under PMLA are “rigorous” imprisonment for three to seven years, while narcotic offences carry a maximum penalty of 10 years imprisonment. On the other hand where the ML offences relate to a drug offence under the NDPS Act it comes under the general sanction provision under Sec.32 which imposes a standard penalty for all offences in the act which do not have a sanction specified, as in the case of Sec.8A which deals with prohibition of certain activities relating to property derived from offence, , read with Sec. 32 (Punishment for offence for which no punishment is provided . Consequently the maximum penalty for money laundering under the NDPS Act is only six months regardless of the amount laundered. Though the imprisonment term under PMLA is wider, and the Act has overriding effect, it is suggested this area needs to be reviewed.
8. **Criminalization**: The FATF during its mutual evaluation report in the year 2010 reported that criminalization of money laundering provisions and the seizure/confiscation regime show some deficiencies as follows: (1) the conduct of concealment or acquisition or possession and use of criminal proceeds are not fully covered under PMLA (Art. 3 (b) (ii) and (c) (i) of Vienna Convention, Art. 6.1 (a) (ii) and b (ii) of the TOC Convention) (2) the seizure/confiscation proceeds are restricted (Art 5 of Vienna Convention and Art 12 of TOC Convention) (3) the fines imposed on legal persons are not consistent (Art. 10.4 of Vienna Convention) (4) regulatory and supervisory regime is not fully and effectively implemented (Art. 7.1 (a) of TOC). It was further pointed out by the Expert Group of FATF as to why the Indian legislature failed to adopt the approach under NDPS Act, to define money laundering, but instead chose to simply incorporate the relevant Convention language. With an independent approach, Sec.3 of PMLA introduced a new concept of defining money laundering, differing from a comprehensive adopted under Sec.8A of NDPS Act, which was not repealed, resulting in co-existence of two divergent drug related money laundering offence. As observed already by the Researcher though overriding provision exist under PMLA to take care of corresponding provision under NDPS Act, and though Sec.3 has to an extent incorporated suggestion in amending the wording during February 2013, a broad approach as suggested above may be adopted to have stringent anti-money laundering provisions.

9. **Confiscation**: There has been no reported case of conviction for money laundering under PMLA, and no property has been confiscated under this Act. However, as per the information available and furnished to FATF during the course of Mutual Evaluation in 2010, since 2006, the adjudicating authority has confirmed 40 orders of provisional attachment. The absence of a regulation when the defendant has died may have a negative impact on the effectiveness of the confiscation regime in place in India. The effectiveness of confiscation provisions under PMLA, NDPS and the UAPA could not be assessed by FATF due to the low numbers of confiscation under these Acts. However confiscation of proceeds derived from predicate offences are
frequent under the IPC and other laws. The predicate offence conviction condition creates fundamental difficulties when trying to confiscate the proceeds of crime in the absence of a conviction of predicate offence particularly in a stand-alone ML case, where the laundered assets become the *corpus delicti* and should be forfeitable as such also could not be studied in the absence of convictions and its consequent challenges before appropriate judicial forum. It is suggested that the Confiscation regime needed to be strengthened as even after 5 years of mutual evaluation by FATF, no reported confiscation of proceeds under PMLA has taken place which does not reflect a good regulatory and enforcement regime.

10. **Safe harbor provisions**: The PMLA does not contain any protection (safe harbor provisions) from criminal liability for the reports filed with the FIU. An indirect protection is available under Sec. 76 of IPC which states that no criminal offence can occur with regard to an act done by a person who is either legally bound to do it, or who believes in good faith that he/she is legally bound by law to do it.\(^858\) The legislature should also consider inserting a safe harbor provision for those filing STR in good faith, as provided under Sec. 314 (b) of USA PATRIOT Act, which protects financial institutions including brokers and dealers, from certain liabilities in connection with sharing certain AML related information.

11. **Parallel Adjudication**: Another feature of the Act which is subject matter of controversy is that it provides for parallel avenues of adjudication. The provision for making Special courts as trial courts for offences committed under this Act, and having separate quasi-judicial channels for attachment and confiscation, might be considered by the trial courts as derogatory in the sense that sufficient confidence has not been reposed in them. Trial courts and Special courts have important task in trying the offences under PMLA, the adjudicating authority takes care of issue of notice of provisional attachment, confirmation of attachment, confiscation and release which are all subject to the result of the decision of the Trial Court/Special court in the predicate

\(^858\) supra note 746;p-143
offence and money laundering offence. There are no reported decisions, and hence conflict of interest could not be examined. It is suggested that a review of the functioning of the quasi judicial authorities and Trial courts be studied.

12. **STR- Regulation**: India’s low number of money laundering convictions and the financial sector’s low number of terrorism related suspicious transactions reports (STR) are indeed not commensurate with the size of India’s economy and its apparent threat profile. The lack of severe penalties imposed by regulators against banks and financial institutions, coupled with low statistics may indicate a lack of appropriate due diligence procedure and/or weakness in the transactions monitoring system. The government therefore should ensure that reporting entities fully implement appropriate due diligence procedures, to include both computerized tracking system and active engagement by trained frontline personnel. It is not possible to launder huge volume of monies across borders without using the organized financial sector, though at times alternative remittances systems, transactions between dummy entities, shell companies, related entities and other forms of convoluted financial structures are used by launderers. As the financial system which plays its role from the placement stage to the integration, and the proceeds can be easily identified at the placement stage, this sector requires stringent and constant scrutiny. From the data available in public domain it is seen that the volume of suspicious transactions and issue of STRs are very low, compared to the size of our economy and considering the huge amount of black money and illicit flows which moves in and out of India. This raises serious concerns. STR are the basis for giving lead to paper trail of laundering offence, and hence crucial. The enforcement agency shall not always depend on the reports of other agencies which have launched a predicate offence case, and then to go after the accused in predicate crime for a laundering offence. If in the alternative a reverse investigation method is followed by tracing the proceeds to the predicate crime, it would culminate in unearthing more offences.
13. **Adjudicating Authority**: PMLA is a sui generis legislation, concerning transnational crime of a serious nature. The scheduled offence are tried by independent judiciary – Special Courts duly assisted by Counsel from both sides. Adjudicating Authority is a departmental quasi judicial mode. The example of Cex/Customs may not hold good. Bias and Bureaucracy always present. Experts not available in Adjudicating Authority.

14. **Transparency**: The Applicant in this case sought for copies of orders passed by ATF in the period 1/6/2009 to 15/8/2009 apart from details of orders reserved, date of dispatch etc., which was declined by the CPIO as there is no public interest involved, and his decision upheld by appellate authority. On appeal the CIC held that the information relates to an essential function for which public authority was constituted and there can be no reason why an information about hearing of cases, dates, reserving orders and pronouncement of orders should be declined to a Citizen ([R.K. Jain Vs CIC (2010 (252) ELT 366 CIC)](https://www.cic.nic.in/cic/366.html)) Enforcement Directorate had strenuously argued before us that they stand exempted from disclosure-obligation under RTI Act by virtue of their inclusion in the Second Schedule, under Section 24 of the RTI Act.

We would like to dwell upon this aspect of argument in the context of a proviso built into the Section-24 itself, i.e. that these exemptions are subject to their not being matters of "human rights violations" or "allegations of corruption". In our view, all matters now investigated by the Enforcement Directorate in the matter of stashing away of Indian money in foreign banks, come within the definition of allegations of corruption in Section 24. There is eminent and compelling reason why this exception must be applied in the present case. While the Enforcement Directorate may take the position that they have no way of assessing the total volume of illegally-held-money by Indians in foreign banks, they can surely provide an estimate of the total volume of such money involved in the investigations they are presently conducting. In other words, the Enforcement Directorate can let the country know as to how much is the total sum of such money they are dealing with in their current investigations. This figure can be arrived at through the simple contrivance of aggregating the sums of money in all such
investigations currently underway. The Enforcement Directorate need not disclose the nature of such investigations or the parties' names. Surely, it is within its power to disclose the total amount of monies covered by these investigations.\(^{859}\)

15. **Indian Real Estate**: The Enforcement Directorate is of the apprehension that the real estate sector in India has the maximum scope for money laundering activity, and hence there should be some regulatory mechanism in this sector. Though the real estate activity is part of PMLA in the absence of regulatory mechanism, it would be difficult to implement the AML regime. While the banking sector is supervised by RBI and lawyers come under the control of Bar Council of India, no such mechanism prevails in this sector (For example IRDA, SEBI for other sector) It was further informed that in a major money laundering scam relating to telecommunications the funds were allegedly laundered through real estate sector. In order to assist the PMLA it is suggested that a regulatory regime for real estate sector to be brought in force as such a step would also help in garnering more tax for the government.

16. **Need for Experts and Professionals**: A perusal of the Act reveal that almost half of its provisions relate to administrative, enforcement authorities, resulting in proliferation of bureaucracy. It is suggested that instead a better approach to dealing with attachment and confiscation would have been to appoint professional Chartered Accountants and financial experts to Special courts on special engagement basis to give necessary inputs and expertise.

17. **CEIB**: Hardly anything is heard about the agency CEIB which is supposed to coordinate among tax enforcement agencies, as the apex body has not taken on board other regulatory and investigating agencies such as SFIO. Sharing of information between agencies is required and in cases within a agency itself, for example the Income Tax department. It is suggested that the Government should notify in public domain the reports of investigating agencies relating to economic crimes, and modus-\(^{859}\) V.R. Chandran Vs Directorate of Enforcement – 2010-TIOL-01-CIC
operandi to create public awareness apart from encouraging whistle-blowers to come forward.

18. **Undercover Operations**: Undercover operations and electronic surveillance may be made admissible evidence it would have gone a long way to effectively counter money laundering. Some experts and authors have opined that India needs a regime of undercover operations in the lines of those provided under USA To compare US Law

19. **Risk Assessment**: FATF in their Mutual Evaluation Report in 2010 itself has indicated that the authorities have not undertaken a single risk assessment of all the financial institutions operating in India, but some assessments have been completed for individual sectors. Hence risk assessment of all the financial institutions operating in India have to be undertaken sectorwise on a war footing by taking the assistance of appropriate intelligence and regulatory agencies.

20. **Victims of offences**: While examining an issue of provisional attachment of property the Hon’ble Madras High Court had an occasion to review the scheme of the Act, especially the interesting aspect relating to the victims of money laundering offences. In the said case\(^860\), the Hon’ble Madras High Court observed that when a property purchased by an alleged accused under loan from the Bank is provisionally attached for a predicate crime/money laundering offence, and if the outcome of trial convicts the accused, the property stands forfeited to Central Government. In such a situation the Indian Bank which had given loan on the property looses its loan money and interest as the mortgage no longer stands and property vests with Government. The Hon’ble High Court referred another similar example of a victim paying ransom to kidnapper which is a predicate crime under Sec.364A of IPC as well as a scheduled offence under PMLA, and if the ransom paid by victim is forfeited as proceeds of crime, the victim stands to lose his money, and would rather settle for an arrangement with the accused to get attachment order lifted, to avoid forfeiture of his licit money (victim)The

\(^{860}\) M/s.India Bank Vs UOI – reported in http://indiankanoon.org/doc/104450191
Hon’ble Judge had therefore pondered over the issue that the provisions of Sec.8 (6) and Sec.9 which is enacted to punish criminals also punishes victims of crime, and appear to be disincentive to victims. It is suggested that this aspect needs to be examined in the light of the rights of bona fide third parties which is prevalent in other countries.

21. **ED Single Agency**: In terms of PMLA, a single Agency for investigation, prosecution, seizure,, freezing and confiscation of proceeds, namely the Enforcement Directorate is assigned. Absolute and unfettered power may often be subject to abuse. There is no mechanism for having control over ECIR, which is the basis of commencement of a laundering investigation, and for this reason there is a direction for the Special Director to formally give approval at ECIR stage to avoid harassment and frivolous issues. Shortage of man power staff and expertise may result in delay in conducting investigation. Simultaneous trial is to be taken care before Special Court for predicate offence and offence of ML under PMLA. Though the ED may be conversant with PMLA the predicate crime offences will be handled by other agencies who had filed charge sheet. ED is a central agency while many of the prosecuting agencies would be under State, resulting in lack of co-ordination and cooperation. As conviction for predicate crime is a pre-condition for confiscation of proceeds, it creates further difficulty, as the main aim of PMLA, apart from a conviction for laundering offence is confiscation of proceeds of crime or properties under Sec.8,Sec.52B and Sec.60 (2A) of the Act.

22. **Conviction**: There is no reported case on conviction of predicate crime, and then conviction of laundering offence resulting in confiscation of proceeds. It appears that many cases are in the trial stage. Due to confidentiality and the fact the Agency is protected under RTI, and lack of sharing data or information such as charges framed under PMLA, basis of such charge, etc could not be examined with provisions of PMLA. It is almost a decade since the PMLA has come into force but it is really unfortunate that there is not a single reported cases of conviction or confiscation. Even in the initial stages of combating money laundering in USA and UK there are huge
volume of conviction and confiscation of proceeds, as reports indicate. Though an adequate legal regime with international standards is in place, absence of conviction or confiscation of proceeds of laundered crime will only send a wrong signal to the criminals and launders that they can easily get away with the slow enforcement mechanism. It is often said that however rigid may be the statute, there may be some unintended drafting error which often results in convict escaping the clutches of law, especially in cases relating to economic crimes. But still to test the soundness and efficacy of PMLA, no reported case laws are available in the field, except those which relate to challenge of provisions at summons, arrest, bail, pre-trial, and provisional attachment. Even as reported case laws are presently available, it should be made available in the public domain in order to test the efficacy of the law and the soundness of the provisions.

23. **Benami Transactions**: As observed in this research that the much proclaimed Benami Transaction Act, 1988 has lost its sheen and vigor as no concrete action has been taken even after three decades to implement the statute effectively. The government therefore proposed important amendments to change the Act to present scenario by moving Benami Transactions Regulation Bill, 2011, and due to political and other constraints the bill could not be passed and has lapsed. Therefore urgent needs are required to re-instate the Bill again, and only when the parent Act is amended, it will aid and assist the PMLA. Once a stringent law is brought in force, it is suggested that Benami Transactions Prohibition Act is therefore amended and simultaneously the offences under the Act is also included in Schedule to PMLA to strengthen the efforts of government to forfeit proceeds of predicate crime held in the name of benamis.

24. **Formation of TTU**: The Special Investigation Team (SIT) appointed by Hon’ble Supreme Court to examine the black money issue, also suggested for starting a TTU (Trade Transparency Unit) in the lines of USA to study mismatch between import and export date between various countries and India. This observation assumes importance in the context of the research which points out huge accumulation of illicit
money and laundering of proceeds of economic and fiscal offences by adopting trade mispricing, trade based money laundering, using SEZ for transfer of illicit proceeds, foreign exchange law violations, export and import violations. As the FIU is mainly concerned with analyzing the financial data, especially the STR received from institutions and the sole investigating agency the ED is already over burdened with limited men and material at their disposal a starting of TTU in the lines of USA, preferably under the umbrella of CEIB or FIU may be considered.

25. **Sec.8A of NDPS Act**: Sec. 4 of PMLA and Sec.8A of NDPS Act both provide for imprisonment and fine. The provisions under PMLA are considered effective, dissuasive and proportionate, it is not so in the case of NDPS Act relating to drug trafficking offences, which contains provisions of undefined fine and lesser term of imprisonment of only 6 months. The provisions of Sec.8A of NDPS has now become redundant as the PMLA covers drug related offense also, including the NDPS Act. Though Sec. 71 of PMLA has overriding effect, it is suggested that the redundant provision of Sec.8A of NDPS Act be deleted to have clarity on the issue.

26. **Amendment of Error**: Sec. 2 (y) of PMLA defines the term “scheduled offence” and it mentions those offences listed under Part A, B and C. Part B list of offences stands deleted from the Act after amendment by Act 2 of 2013 with effect from 15th February 2013. In spite of its omission Part B still is part of Sec 2(y) and this error needs to be rectified. Similarly the definition of term ‘offences of cross border implications’ under Sec.2 (ra) of the Act also refers to Part B in main provision and Explanation clause, and needs rectification.

27. **Appeal before Supreme Court**: In terms of provisions contained in Section 42, an appeal against the order of the Appellate Tribunal lies before High Court within the jurisdiction of which the aggrieved party resides or carries on its business. Since the attached properties may be located in different parts of the country in a particular case, the appeals can be filed in various High Courts in the country in the same case, leading
to forum shopping. Such a provision is also likely to lead a situation where order of the Tribunal might be reversed by one High Court and upheld by another High Court. In order to obviate this difficulty, it is proposed by Lok Sabha Standing Committee in 2012 to incorporate provision in section 42 that the appeal may lie before the Supreme Court. Concurrently it is also proposed in section 28 to raise the status of the Appellate Tribunal on the lines of the Appellate Tribunals under the SEBI Act. This suggestion has not been taken not of, due to certain administrative and other difficulties to agencies as well as litigants in providing appeal remedy to Supreme Court, in the alternative it is suggested that an appropriate provision be incorporated under the Act to take care of multi jurisdiction cases to be tried in a single jurisdiction.