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**STANDING COMMITTEE
ON FINANCE
(1998-99)**

TWELFTH LOK SABHA

**MINISTRY OF FINANCE
(DEPARTMENTS OF ECONOMIC AFFAIRS
AND REVENUE)**

**THE PREVENTION OF MONEY
LAUNDERING BILL, 1998**

TWELFTH REPORT



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NEW DELHI

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January, 1999/Pausa, 1920 (Saka)

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MINISTRY OF FINANCE
(DEPARTMENTS OF ECONOMIC
AFFAIRS & REVENUE)

THE PREVENTION OF MONEY-
LAUNDERING BILL, 1998

Presented to Lok Sabha on 4 MAR 1999
Laid in Rajya Sabha on 8 MAR 1999 ..



LOK SABHA SECRETARIAT
NEW DELHI

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STANDING COMMITTEE ON FINANCE BRANCH

Corrigenda to 12 th Report

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COMPOSITION OF THE STANDING COMMITTEE
ON FINANCE (1998-99)

Shri Murli Deora — *Chairman*

MEMBERS

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4. Shri Haribhai Parathibhai Chaudhary
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45. Shri Suresh A. Keswani

SECRETARIAT

- | | | |
|---------------------------|---|-----------------------------|
| 1. Dr. A.K. Pandey | — | <i>Additional Secretary</i> |
| 2. Dr. (Smt.) P.K. Sandhu | — | <i>Director</i> |
| 3. Shri S.B. Arora | — | <i>Under Secretary</i> |
| 4. Shri Srinivasulu Gunda | — | <i>Executive Officer</i> |

INTRODUCTION

1. the Chairman of Standing Committee on Finance having been authorised by the Committee to submit the Report on their behalf present this Twelfth Report on the Prevention of Money Laundering Bill, 1998.

2. The Bill was introduced in Lok Sabha on 4 August, 1998. The Hon'ble Speaker referred the Bill to the Standing Committee on Finance for examination and report thereon on 5 August, 1998.

3. The Committee at their sitting held on 25 August, 1998 decided to issue press communique for inviting suggestions/views/memoranda from the Individuals, experts, Chambers of Commerce and Industry and interested organisations/parties on the Bill.

4. At their sitting held on 22 September, 1998, the Committee heard the views of representatives of Confederation of Indian Industry (CII), Federation of Indian Chambers of Commerce and Industry (FICCI), PHD Chambers of Commerce and Industry (PHDCCI) and Associated Chambers of Commerce and Industry (ASSOCHAM) on the provisions contained in the Bill.

5. The Committee at their sittings held on 22 September and 13 October, 1998 took the oral evidence of experts on various provisions contained in the Bill.

6. The Committee took the evidence of representatives of Reserve Bank of India, Ministry of Finance (Deptt. of Economic Affairs and Revenue) on 23 September, 1998 and also on 20 November, 1998 alongwith representatives of Legislative Deptt. under the Ministry of Law, Justice and Company Affairs.

7. The Committee considered and adopted the draft report at their sitting held on 7 January, 1999.

8. The Committee wish to express their thanks to representatives of CII, FICCI, ASSOCHAM and PHDCCI, S/Shri S. Venkitaramanan,

Ashok Desai, Bibek Debroy, B.K. Pal, R. Venkataraman, Prof. Prabhat Patnaik and Prof. Kamal Nayan Kabra and officers of Ministry of Finance (Deptts. of Economic Affairs and Revenue) and Ministry of Law, Justice and Company Affairs (Legislative Department) for cooperation extended in placing before them their considered views and perceptions on the subject and for furnishing written notes and information that the Committee had desired in connection with the examination of the Bill.

9. For facility of reference, recommendations/observations of the Committee have been printed in thick type.

NEW DELHI;
28 January, 1999

8 Magha, 1920 (S)

MURLI DEORA,
Chairman,
Standing Committee on Finance.

REPORT

Background

1. The process of money laundering involves cleansing of money earned through illegal activities like extortion, drug trafficking and gun running etc. The tainted money is projected as clean money through intricate processes of placement, layering and laundering. The serious threat posed by money laundering to the financial systems and sovereignty was being progressively realized by various countries of the world. As a consequence of this realization. The international community took the following initiatives to curb the menace of money-laundering:—

- (i) The 1998 United Nations Convention against illicit traffic in Narcotic Drugs and Psychotropic Substances (Vienna Convention of 1998), provided a comprehensive legal definition of money laundering. This definition has formed the basis of subsequent legislations on Money Laundering Laws of various countries;
- (ii) The Basle statement of principles, enunciated in 1989, outlined basic policies and procedures that banks should follow in order to assist the law enforcement agencies in tackling the problem of money laundering; and
- (iii) The Financial Action Task Force on money laundering (FATF), 1989 made 40 recommendations, which provide the foundation for comprehensive legislation to combat the problem of money laundering. The recommendations were classified under various heads. Some of the important heads are:—
 - (a) Declaration of laundering of moneys earned through serious crimes should be treated a criminal offence;
 - (b) to work out modalities of disclosure by financial institutions regarding suspicious transactions;
 - (c) Confiscation of the proceeds of crime;

- (d) declaring money laundering to be an extraditable offence; and
 - (e) promoting international cooperation in investigation of money laundering.
- (iv) Political Declaration and Global Programme of Action adopted by UN General Assembly by its Resolution No. S 17/2 of 23rd February, 1990 *inter alia* resolved the developing mechanism to prevent using of financial institutions from being used for laundering of drug related money and enactment of legislation to prevent such laundering.

2. The Ministry of Finance had appointed an inter-ministerial Committee to look into all aspects of money laundering and to suggest suitable legislation, if necessary. The Committee in their report pointed out that money laundering was posing serious threat to the financial systems of our country. Drug traffickers, smugglers and other undesirable elements have amassed huge wealth, which was being used to undermine the stability of financial institutions and social order. The Committee submitted its report to the Ministry in July, 1997, wherein they suggested enactment of a comprehensive legislation to deal with this problem.

3. The Report of the Committee and the draft legislation were discussed in the Ministry. The matter was also discussed with the Ministry of Law. On the basis of these discussions, Ministry came to the conclusion that the money laundering is posing threat to the financial systems and social order and integrity of the country and the same needs to be tackled by way of a separate legislation in view of the very fact that no comprehensive legislation is in force at present which can effectively deal with the problem. Accordingly, it was decided to introduce the proposed Bill.

4. The salient features of the Bill are that it proposes to define the terms "money-laundering", "proceeds of crime" and "scheduled offence" which are important for the purposes of the Bill. The term "money laundering" means acquiring, owning, possessing or transferring any proceeds of crime or engaging directly or indirectly in a transaction or a series of transactions including possessing, concealing, transferring, converting, carrying or disposing of any property which is or represents in any manner the proceeds of crime.

The term 'proceeds of crime' is sought to be defined to mean any property derived directly or indirectly by any person as a result of criminal activity relating to a scheduled offence. The term "scheduled offence" is sought to be defined in terms of serious crimes under the Indian Penal Code, 1860, the Prevention of Corruption Act, 1988, the Narcotic Drugs and Psychotropic Substances Act, 1985, the Arms Act, 1959 and the Immoral Traffic (Prevention) Act, 1956. It is proposed to narrate the specific crimes under these acts, being the crimes which lead to generation of large illegal funds.

5. The Bill seeks to prohibit any act of money laundering committed after the commencement of the Act or any such act committed prior to such commencement if it continues after the commencement of the Act. It has also been proposed to set up a separate authority in order to check the money laundering activities comprising of Director, Additional Director, Joint Director, Deputy Director or Assistant Director etc. The officers under the proposed Bill have been conferred powers of arrest, survey, search and seizure. A separate Adjudicating Authority has also been proposed. The Adjudicating Authority is to adjudicate in a quasi-judicial manner and ascertain whether the property is involved in money laundering or not. The machinery is set in motion on a complaint filed by the Director or any other officer before the Adjudicating Authority. The property can be attached and confiscated. Stringent punishment has been provided in the case of an accused which includes imprisonment for a term which is not less than three years but not more than seven years in the case of the offences mentioned under Part I, II, III and V of the Schedule and ten years in the case of the offences mentioned under Part IV of the Schedule. The bail provisions have been made stringent as per clause 44 of the proposed Bill.

6. Another notable feature of the Bill is that it has been proposed that the financial institutions and intermediaries shall also report all transactions whether comprising a single transaction or a series of transactions which take place within a month exceeding twenty five lakh rupees to the Commissioner of Income Tax having jurisdiction in respect of such institutions or intermediaries. With a view to have an expeditious disposal of the cases it has also been proposed to set up special Courts in consultation with the respective Chief Justice of the High Court.

7. With a view to having an expert opinion on the provisions of the Bill, the Committee sought memoranda from several experts and Chambers of Commerce. In order to seek clarification, the Committee also took evidence of the representatives of Chambers of Commerce and Industry on 22 September, 1998, experts on 22 September and 13 October, 1998 and representatives of Reserve Bank of India, Ministry of Finance (Departments of Economic Affairs and Revenue) on 23 September, 1998 and also on 20 November, 1998 alongwith the representatives of Legislative Department under the Ministry of Law, Justice and Company Affairs.

8. The Committee examined the provisions of the Bill clause-wise and after having been convinced of the need and the objectives of the Bill, the Committee approve the same for enactment by Parliament with certain modifications/recommendations which are dealt in detail in the succeeding paragraphs of the Report.

Clause 2—Definition of Banking Company

9. The Committee note that under clause 2 where different definitions have been given, the banks (scheduled as well as non-scheduled) have not been included. The Committee were informed by the representatives of the Ministry of Finance that it was on account of an inadvertent omission that the banks have been left out from the purview of the definition. The Committee, therefore recommend that a new sub-clause may be inserted after clause 2(d) which should read as under:

“Banking Company means a banking company as defined under sub-section (a) of Section 45A of reserve Bank of India Act, 1934.”

10. The Committee suggest that in view of the change in the definition suggested above, wherever the words ‘financial institution or intermediary’ occurs the words ‘banking company, financial institution or intermediary’ may be substituted.

Clause 2 : Definition of Cash Transaction

11. In view of the change suggested in Clause 11 of the Bill, the Committee are of the view that the term ‘Cash Transaction’ also

needs to be defined. They therefore suggest that the same may be defined as under:

“ ‘Cash Transaction’ means deposit or withdrawal of funds in cash”.

Clause 2 (o): Definition of proceeds of crime

12. Clause 2(o) defines proceeds of crime as any property derived or obtained directly or indirectly by any person as a result of criminal activity relating to a scheduled offence or the value of any such property. However, the word ‘person’ has not been defined. Hence, the Committee suggest that a sub-clause should suitably be inserted under clause 2(o) defining the word ‘person’ as mentioned below:

“person includes—

- (i) an individual,**
- (ii) a Hindu undivided family,**
- (iii) a company,**
- (iv) a firm,**
- (v) an association of persons or a body of individuals, whether incorporated or not,**
- (vi) every artificial judicial person, not falling within any of the preceding sub-clauses, and**
- (vii) any agency, office or branch owned or controlled by such person.**

Clause 2(s) : Definition of Schedule

13. It is seen that the schedule to this Act consists of various offences under the Indian Penal Code 1860, the Immoral Traffic (Prevention) Act, 1959, the Arms Act, 1959, the Narcotic Drugs and Psychotropic Substances Act, 1985 and the Prevention of Corruption Act, 1988.

14. The Committee are astonished to find that the nature of crimes under different Acts which are sought to be included in the

schedule for the purposes of the Act is so wide that even the crimes like falsification of accounts and imitation of fire arms find their place in the schedule.

The Committee are of the opinion that only those crimes namely drug trafficking, terrorist activities and some serious provisions contained in the Indian Penal Code 1860, and the Arms Act, 1959, which are of serious nature and pose serious threat not only to the stability of the financial system but also to the sovereignty and integrity of the country should be retained and the rest of the offences should be omitted. Accordingly, the Committee suggest the following modifications:

"In part I under Indian Penal Code only offences under Section 477A relating to falsification of Accounts should be omitted and all the other remaining sections should be retained.

Part II and V containing offences under Immoral Traffic (Prevention) Act, 1956 and the Prevention of Corruption Act, 1988 respectively may be deleted.

In Part III, the offences mentioned under the following sub-sections of section 25 of the Arms Act, 1959 should be retained and the remaining sections from 26 to 30 may be deleted.

"25(1)(a)—to manufacture, sell, transfer, convert, repair, test, or prove, or expose or offer for sale or transfer, or have in his possession for sale, transfer, conversion, repair, test or proof, any arms or ammunition in contravention of section 5 of the Arms Act, 1959."

"25(1B)(c)—to sell or transfer any firearm which does not bear the name of the maker, manufacturer's number or other identification mark stamped or otherwise shown thereon as required by sub-section (2) of section 8 or does any act in contravention of sub-section (1) of that section".

"25(1B)(f)—to bring into, or take out of India, any arms or ammunition in contravention of section 10"

Consequently, Part III may be numbered as Part II and Part IV may be numbered as Part III.

It is also suggested that in the proposed Bill wherever the word 'Part III' occurs, it may be read as 'Part II' and wherever the word 'Part IV' occurs, it may read as 'Part III'.

Clause 3 : Definition of money-laundering

15. Clause 3 which defines money-laundering reads as under:

Whoever—

- (a) acquires, owns, possesses or transfers any proceeds of crime; or
- (b) enters into any transaction which is related to proceeds of crime either directly or indirectly; or
- (c) conceals or aids in the concealment of the proceeds of crime, commits the offence of money-laundering.

16. The Committee are of the view that the above clause 3(b) is particularly very harsh and it can lead to a situation where anybody dealing with any person who has committed an offence of money-laundering can unwittingly and unknowingly be brought within the ambit of the Act. In order to obviate such a situation, the Committee recommend that the word 'knowingly' be inserted in clause 3(b) so that the same reads as follows:

"3(b) knowingly enters into any transaction which is related to proceeds of crime either directly or indirectly; or"

Clause 6 : Appointment of Adjudicating Authority

17. Clause 6 of the Bill reads as under:

- "6. (1) The Central Government shall, by notification, appoint one or more persons not below the rank of Joint Secretary to the Government of India as Adjudicating Authority or Adjudicating Authorities to exercise the jurisdiction, powers and authority conferred on an Adjudicating Authority by or under this Act.
- (2) The Central Government shall also specify in the notification referred to in sub-section (1) the matters and places in relation to which the Adjudicating Authority may exercise jurisdiction."

18. The Committee are of the view that the Adjudicating Authority should be independent of the executive, having legal/

judicial background. They therefore suggest that Clause 6 should be made to read as under:

"The Central Government shall, by notification appoint one or more persons as Adjudicating Authority or Adjudicating Authorities to exercise jurisdiction, powers and authority conferred on an Adjudicating. Authority by or under this Act. A person shall, however, not be qualified for appointment as an Adjudicating Authority unless he—

- (a) is or has been a judge of any District Court; or**
- (b) has been a member of the Indian Legal Service and has held a post in Grade I of that service for at least three years."**

Clause 7—Adjudication

19. The Committee note that under this clause the Adjudicating Authority has been empowered to ascertain whether any property is involved in money-laundering and in case, he is satisfied that the property is involved in money-laundering, he can by an order in writing confirm the attachment of the property made under sub-clause (1) of Clause 5. However, sub-clause (4) under this Clause reads as under:

"(4) Where the provisional order of attachment made under sub-section (1) of section 5 has been confirmed under sub-section (3), the Director or any other officer authorised by him in this behalf shall forthwith take the possession of the attached property."

20. The Committee are of the view that unlike the provisions contained in sub-clause (3) of clause 5, under which a person continues to enjoy the property even when it is provisionally attached, under this sub-clause even when the case has not been finally decided by the court of law and the attachment order has not become final, a person loses his right to enjoy his property. This provision, therefore, seems to be rather harsh. The Committee, therefore, recommend that sub-clause (4) may be deleted and the subsequent sub-clauses may be renumbered accordingly.

Clause 11—Maintenance of records by Financial Institutions and intermediaries

21. This clause which proposes obligatory reporting and maintaining the records of all transactions or series of interconnected transactions by every financial institution and intermediary beyond a certain monetary limit reads as under:

“(1) Every financial institution and intermediary shall—

- (a) maintain a record of all transactions, whether such transaction comprise of a single transaction or a series of transactions integrally connected to each other, where such series of transactions take place within a month, exceed the value of twenty-five lakh rupees;
- (b) furnish information of transactions referred to in clause (a) to the Commissioner of income-tax having jurisdiction in respect of such financial institution or the intermediary, as the case may be;
- (c) verify and maintain the records of the identity of all its clients, in such manner as may be prescribed.

(2) The records referred to in sub-section (1) shall be maintained for a period of five years from the date of cessation of the transactions between the clients and the financial institution or intermediary, as the case may be.”

22. As it is evident from above, Clause 11 makes it a statutory obligation for all institutions and intermediaries to maintain and furnish the records of all transactions including single as well as a series of transactions exceeding Rupees Twenty Five Lakhs in value within a month to the Commissioner of Income Tax. The Committee were however informed that in USA also there is a system of compulsory reporting of transactions exceeding US \$ 10,000 which is only in the case of cash transactions. The Committee, however, note that the above clause covers all sorts of transactions including cheque payments, cash payments, deposits and withdrawals etc. The Committee are of the view that in the present form this provision will lead to not only increasing the paper work but also be impractical to implement. They are therefore of the view that a limit of Rupees Twenty Five lakhs should only be confined to cash

transactions. Besides, once an authority for money-laundering is proposed to be established under the Bill, the objective of furnishing information to the Commissioner of Income Tax is not clear and more so when the Income Tax authorities in our country are already burdened with a heavy load of work. The Committee also note that 'banking companies' have been left out of the purview of this clause. In view of the fact that these account for substantial amount of financial intermediation in the country, the Committee feel that keeping these companies out of the ambit of the Clause 11 is not going to serve the desired purpose. Hence the Committee recommend the following modifications:

"(1) Every banking company, financial institution and intermediary shall—

- (a) maintain a record of all cash transactions, whether such transaction comprise of a single transaction or a series of transactions integrally connected to each other where such series of transactions take place within a month, exceed the value of twenty five lakh rupees;**
- (b) furnish information of transactions referred to in clause (a) to the Director;**
- (c) verify and maintain the records of the identity of all its clients, in such manner as may be prescribed.**

(2) The records referred to in sub-clause (1) shall be maintained for a period of five years from the date of cessation of the transactions between the clients and the banking company, the financial institution or intermediary as the case may be."

23. Clause 15—Power of Survey

Clause 15(1) of the Bill which empowers the authority to conduct survey reads as follows:

"15. (1) Notwithstanding anything contained in any other provisions of this Act, where an authority has reason to believe that an offence under section 3 has been committed, he may enter any place...."

In the above clause unlike as provided under clause 16(1) an authority can conduct the survey even when he does not have any

information in possession. This seems to be a totally discretionary and subjective power. Notes on this clause state that this survey power is similar to the powers granted to the Income Tax authorities under Section 133A of the Income Tax Act, 1961. The Committee are however of the view that the basic object of the proposed Bill and the penal consequences are far more serious than that of Income Tax Act. Hence, a provision similar to IT Act does not seem to be justified, therefore, the Committee suggest that Clause 15(1) may be amended to read as under:

"Notwithstanding anything contained in any other provision of this Act, where an authority has reason to believe on the basis of information in his possession that an offence under Section 3 has been committed, he may enter any place..."

24. Clause 16—Search and Seizure

The Committee note that Clause 16 confers the powers of search and seizure on the Director and other officers subordinate to him, in case, the Director has reason to believe that a person has committed any act which constitutes money laundering or is in possession of any proceeds of crime involved in money laundering or in possession of any records regarding to money-laundering. However, the provisions relating to search and seizure as provided under Criminal Procedure Code have not been mentioned under this clause. The Committee, therefore, suggest that a new sub-clause may be added in this clause which should read as under:

"(3) The provisions of Criminal Procedure Code relating to search and seizure shall apply, as far as may be to search and seizure under this Clause."

25. Clause 17—Search of persons

Clause 17 proposes to confer the power of search of a person on an officer authorised in this behalf by the Central Government, if he has reason to believe that such person is in possession of or has secreted about his person any document, money, bullion, etc., which will be useful for any proceeding under the proposed legislation.

Sub-clause (2) provides that where an authority is about to search any person, he shall, if such person so requires, take him to the nearest Gazetted officer superior in rank to him or a Magistrate.

Sub-clause (3) authorises the authority to detain the person about to be searched until he can bring him before the Gazetted officer superior in rank to him or a Magistrate as required under sub-section (2).

It is seen that both these sub-clauses do not specify the time limit within which a person or a detained person is to be brought before a Gazetted Officer superior in rank to the authority authorised for the purpose by the Central Government or a Magistrate as referred to in Sub-clauses (2) and (3). The Committee believe that such open ended clauses might result in avoidable delays. The Committee, therefore, recommend that there should be definite time-limit within which a person or the detained person is to be brought before the Gazetted Officer or the Magistrate. Accordingly, the Committee suggest redrafting of the clauses as mentioned below:

"17(2) Where an authority is about to search any person, he shall, if such person so requires, take such person within twenty-four hours to the nearest Gazetted officer superior in rank to him or a Magistrate.

17(3) If the requisition under sub-clause (2) is made the authority shall not detain the person for more than twenty-four hours prior to bringing him before the Gazetted Officer superior in rank to him or the Magistrate referred to in sub-section (2)."

Clause 18—Power to arrest

26. Clause 18 of the Bill reads as under:

"If the Director, Deputy Director, Assistant Director, or any other officer authorised in this behalf by the Central Government by general or special order, has reason to believe that any person has been guilty of an offence punishable under this Act, he may arrest such person and shall, as soon as may be, inform him of the grounds for such arrest.

(2) Every person arrested under sub-section (1) shall without unnecessary delay, be taken to a Judicial Magistrate or a Metropolitan Magistrate, as the case may be having jurisdiction."

The Committee feel that there should be a definite time limit for producing the arrested person before the Magistrate. Accordingly, they recommend the following modification in sub-clause (2):

“(2) Every person arrested under sub-section (1) shall within 24 hours of such arrest be taken to a Judicial Magistrate or a Metropolitan Magistrate, as the case may be, having jurisdiction.”

Clause 22—Presumption in inter-connected transactions

27. The clause seeks to provide presumption that where money laundering involves two or more inter-connected transactions and one or more such transaction is proved to be involved in money laundering, then for the purposes of adjudication or confiscation, it shall be presumed that remaining transactions form part of such inter-connected transactions.

It reads as under:

“Where money-laundering involves two or more inter-connected transactions and one or more such transactions is or are proved to be involved in money-laundering, then for the purposes of adjudication or confiscation under section 7, it shall be presumed that remaining transactions form part of such inter-connected transactions.”

28. The Committee are of the view that in case a particular transaction is involved in money-laundering, it may not be necessary that the other inter-connected transactions are also involved in money-laundering and the presumption that the other transactions are involved in money-laundering may lead to causing avoidable harassment. Moreover, to do away with the possibility of wrongly mixing the genuine transaction with tainted ones, the Committee recommend the following modification:

“Add the words ‘unless otherwise proved to the satisfaction of the authority concerned’ after the words ‘it shall be presumed’.”

Clause 23—Presumption of culpable mental state

29. Clause 23 reads as under:

“(1) In any prosecution for any offence under this Act which requires a culpable mental state on the part of the accused, the court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

Explanation—In this sub-section, “culpable mental state” includes intention, motive, knowledge of a fact and belief in, or reason to believe, a fact.

(2) For the purpose of this section, a fact is said to be proved only when the court believes it to exist beyond reasonable doubt and not merely when, its existence is established by a preponderance of probability.”

30. The above Clause, seeks to provide the presumption regarding the existence of ‘mens-rea’ being culpable mental state of the accused. Further, the accused person is required to establish absence of a culpable mental state beyond reasonable doubt and not merely establish the balance of probability, meaning thereby that the burden of proof of innocence is on the accused. The Committee are of the view that this provision is against the cardinal principle of criminal jurisprudence according to which a person is supposed to be innocent till he is proved guilty. Besides, under the proposed Bill which confers vast powers on the enforcement agencies and entails severe punishment to the accused, such a provision appears to be rather stringent. The Committee, therefore, suggest that this clause may be deleted.

Clause 25—Appeals to Appellate Tribunal

31. Clause 25(6) which deals with disposal of appeals by the ‘Appellate Tribunal’ reads as under:

“(6) The appeal filed before the Appellate Tribunal under sub-section (1) or sub-section (2) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal finally within six months from the date of filing of the appeal.”

The Committee are of the opinion that in the absence of explicit time limit within which the appeal should be disposed of, the words 'as expeditiously as possible', 'endeavour' and 'finally' do not serve the desired purpose.

It is, therefore, suggested that this clause should be amended to read as under:

"The appeal filed before the Appellate Tribunal under sub-section (1) or sub-section (2) shall be disposed of within a period of twelve months from the date of the receipt of the appeal."

Clause 27—Qualifications for Appointment

32. Clause 27 reads as under:

"(1) a person shall not be qualified for appointment as Chairperson unless he is or has been a Judge of the Supreme Court or of a High Court.

(2) a person shall not be qualified for appointment as a Member unless he—

- (a) is or has been a Judge of a High Court; or
- (b) has been a Member of the Indian Legal Service and has held a post in Grade-I of that Service for at least three years; or
- (c) has been a member of the Indian Revenue Service and has held the post of Commissioner of income-tax or equivalent post in that Service for at least three years; or
- (d) has been a member of the Indian Economic Service and has held the post of Joint Secretary or equivalent post in that Service for at least three years.

(3) No sitting Judge of the Supreme Court or of a High Court shall be appointed under this section except after consultation with the Chief Justice of India."

33. The Committee note that the qualifications prescribed for the chairperson as well as the members is the same i.e. a person

who is or has been a Judge of the High Court is qualified for appointment as Chairperson as well as a member. The Committee are of the view that in the case of the Chairperson, the qualifications should be higher than those prescribed for a member. They, therefore, suggest that 27(1) may be amended to read as under:

“(1) a person shall not be qualified for appointment as Chairperson unless he is or has been a Judge of the Supreme Court.”

Clause 32—Member to act as Chairperson in certain circumstances

“32(1) In the event of the occurrence of any vacancy in the office of the Chairperson by reason of his death, resignation or otherwise, such one of the Members as the Central Government may, by notification, authorise in this behalf shall act as the Chairperson until the date on which a new Chairperson, appointed in accordance with the provisions of this Act to fill such vacancy, enters upon his office.

(2) When the Chairperson is unable to discharge his functions owing to absence, illness or any other cause, such one of Members as the Central Government may, by notification, authorise in this behalf, shall discharge the functions of the Chairperson until the date on which the Chairperson resumes his duties.”

35. The Committee apprehend that enabling the Government to appoint such one of the members of the Tribunal as Chairperson in the event of occurrence of a vacancy on account of any of the reasons mentioned under sub-clause (1) and (2) might result in causing delays in making such appointments, thereby affecting severely the functioning of the Appellate Tribunal. The Committee, therefore, recommend that both the sub-clauses may be amended to read as under:

“(1) In the event of occurrence of any vacancy in the office of the Chairperson by reason of his death, resignation or otherwise, the senior most Member shall act as the Chairperson till the date on which a new Chairperson, appointed in accordance with the provisions of this Act, to fill the vacancy, enters upon his office.

- (2) When the Chairperson is unable to discharge his functions owing to absence, illness or any other cause, the senior most Member shall discharge the functions of the Chairperson till the date on which the Chairperson resumes his duties."

Clause 38—Right of the Appellant to take assistance of legal practitioner

36. This clause seeks to grant the right to the appellant to either appear in person or take the assistance of a legal practitioner of his choice to present his case before the Appellate Tribunal. In the light of the fact that a number of persons are designated as authorised representatives under Section 288 of the Income Tax Act, 1961, the Committee are of the view that under this clause a person should be authorised to engage any of such authorised representatives which includes the Chartered Accountants and Legal Practitioners also. The Committee, therefore, recommend the following modification in this clause:

"(1) A person preferring an appeal to the Appellate Tribunal under this Act may either appear in person or take the assistance of an authorised representative of his choice, as authorised under Section 288 of the Income Tax Act, 1961, to present his case before the Appellate Tribunal."

Clause 52—Empowerment of certain officers

37. Clause 52 reads as under :

"The Central Government may, by a special or general order, empower any officer of the Central Government or of a State Government to act as an authority under this Act."

In the light of the fact that sweeping powers are proposed to be given to the authorities under the proposed legislation, the Committee are of the opinion that authorities above specified level only should be empowered to act as an authority under this Act. The Committee, therefore, recommend the following modification:

"After the words 'State Government' add the words 'not below the rank of Assistant Director or equivalent'."

Clause 54—Punishment for vexatious search

38. Clause 54 reads as under:

“Any authority or officer exercising powers under this Act or any rules made thereunder, who—

- (a) without reasonable ground of suspicion, searches or causes to be searched any building or place; or
- (b) vexatiously detains or searches or arrests any person, shall for every such offence be liable on conviction for imprisonment for a term which may extend to three months or fine which may extend to ten thousand rupees or both.”

39. The Committee are of the opinion that the proposed punishment for imprisonment upto three months or a fine which may extend to ten thousand rupees or both is far lesser than the extent of damage which may be inflicted on an individual/corporate by such search and seizure. They are, therefore, of the view that with a view to cause a deterrent effect on the authorities concerned who may tend to abuse the powers conferred on them, the punishment should be enhanced. The Committee, therefore, recommend the following modification :

For

“be liable on conviction for imprisonment for a term which may extend to three months or fine which may extend to ten thousand rupees or both.”

Substitute

“be liable on conviction by a court for imprisonment for a term which may extend to two years or fine which may extend to fifty thousand rupees or both.”

Clause 55—Punishment for false information

Clause 55 reads as under:

40. “Any person wilfully and maliciously giving false information and so causing an arrest or a search to be made under this Act shall on conviction be liable for imprisonment for a term which may extend

to three months or fine which may extend to ten thousand rupees or both."

The Committee are of the opinion that the prescribed punishment to those people who intend to abuse the provisions is too low to have any deterrent effect. The Committee, therefore, recommend following modification:

For

"be liable for imprisonment for a term which may extend to three months or fine which may extend to ten thousand rupees or both."

Substitute

"be liable for imprisonment for a term which may extend to two years or fine which may extend to fifty thousand rupees or both."

Clause 56—Cognizance of offences

41. Clause 56 reads as under:

"No court shall take cognizance of any offence under section 54 or section 55 except with the previous sanction of the Central Government."

The Committee does not find any logic for seeking prior sanction of the Central Government for taking cognizance of any offence under clauses 54 and 55 by the Court. It also negates the operation of clauses 54 and 55. They, therefore, recommend that clause 56 may be deleted. Consequently, subsequent clauses may be renumbered accordingly.

Clause 59—Bar of legal proceedings

42. The Clause which stipulates bar of legal proceedings reads as under:

"No suit, prosecution or other legal proceeding shall lie against the Central Government or any authority or any other person exercising any power or discharging any functions or performing

any duties under this Act for anything which is done or intended to be done under this Act or any rule or instruction or direction made thereunder."

The Committee find that the clause does not contain the words 'good faith'. They, therefore, recommend the incorporation of the same in the clause as mentioned below:

"No suit, prosecution or other legal proceedings shall lie against the Central Government or any authority or any other person exercising any power or discharging any functions or performing any duty under this Act for anything which is done in good faith or intended to be done in good faith under this Act or any rule or instruction or direction made thereunder."

Clause 62—Offences by companies

43. The clause proposes that where the offence under the proposed Act is committed by a company, every person who at the time of contravention was in charge and was responsible to the company for the conduct of the business of the company shall be deemed to be guilty of the contravention and shall accordingly be liable to be proceeded against and punished accordingly. Proviso to the clause provides that no such person can be punished if he proves that the contravention took place without his knowledge or that he exercised 'all' due diligence to prevent such contravention.

The Committee are of the view that the word 'all' would increase the onus manifold. They, therefore, recommend that the word 'all' appearing in the proviso to clause 62 should be omitted.

NEW DELHI;
28 January, 1999
8 Magha, 1920 (S)

MURLI DEORA,
Chairman,
Standing Committee on Finance.

NOTES OF DISSENT

Shri Rupchand Pal, MP

1. Page 5 of the Draft Report:

Clause 2 (S) : Definition of Schedule

The Schedule as given in the Original Bill (page 23—25) should be kept intact and no changes or modifications should be made in the Schedule.

2. Page 8 of Draft report:

Clause 11 (i) (a) : Line 16 of the Original Bill after “all transactions” to add “including electronic transactions”.

3. Clause 11 (2) Page 6 chapter 4 of Original Bill line 25 the words ‘a period of five years’ to be replaced ‘a period of 20 years’.

4. Draft report, Page 11 : No modification or change is to be made.

5. Clause 23 of the Original Bill should be kept intact and no modifications or changes should be made.

6. Clauses 54, 55, & 56 of the Original Bill should be kept intact and no changes or modifications should be made.

7. Clause 62 of the original act should be kept intact and no changes or modifications should be made.

Explanation

Definition of Schedule:

The changes as suggested in the Draft Report for deletion of the provisions of the Prevention of Corruption Act, 1988 will virtually allow a large chunk of the people involved in Money Laundering out of the purview of the Bill because in the Indian context Money Laundering involves money generated through corruption at different levels and corruption in public life as also corrupt practices of people

in business and public servants and people in high places have assumed such dimensions and proportions that it has become a matter of national concern and deletion of the provisions of Prevention of Corruption Act, 1988 will make this important piece of legislation toothless and useless in the matter of prevention of money laundering.

Also, a particular mention may be made here regarding falsification of accounts by companies which has become a major instrument for money laundering activities.

Interconnected transactions in the matter of money laundering is very much in practice and hence any modification to clause 22 may cause dilution to the already inadequate framework for prevention of money laundering.

Clause 23 : the deletion of clause 23 in the name of 'cardinal principle of criminal jurisprudence' as observed in the Draft Report is to supposedly help the accused as in Indian accepted system of Criminal Jurisprudence the burden of proof of innocence is always on the accused and he has to plead 'not guilty'.

In this particular Bill there cannot be any exception to the usual accepted framework otherwise it may seem that the offender is being protected.

Clause 54, 55, & 56: In the Draft Report stringent measures have been proposed for abuse of powers conferred on concerned authorities.

As suggested in the Draft Report it seems that the committee is concerned more about the protection of the offender than those who is in the process of implementation of the law have been taking measures which in the eye of the accused may seem to be abuse of power.

If there is any abuse of authority, remedy can be sought by the affected persons in various ways in our existing legal framework. Hence the modifications in Clause 54, 55 & 56 are redundant and should not be accepted and the clauses will be kept intact with the Original Bill.

Clause No. 62 of the Original Bill:

The modifications as suggested on Page 26 of the Draft Report is not acceptable, because the words 'all due diligence' ensures that the

person concerned has done everything at his disposal to prevent contravention of any of the provisions of the Act. Such guarantee is essential in the given Indian situation. In addition to the above I would also like to add the following:

Original Bill Page 3 Chapter II (offence of Money Laundering)
Clause 3 to add the following:

3(c) Line 16 of the Original Bill after the 'proceeds of the crime' the following sentence to be added "Any person who attempts or who aids, abets, counsels, or procures the commission of or who conspires to commit the offense of, money laundering is guilty of an offence.

3(d) Engage, directly or indirectly in a transaction that involves property that is proceeds of crime.

3(e) receive possess conceal disguise transfer convert, dispose off remove from or bring into the country any property that is proceeds crime derive or realise directly or indirectly any property from some form of unlawful activity.

3(f) without reasonable failure to take reasonable support whether or nor the property directly or indirectly from some form unlawful activity. In the case of a financial institution or bank failure to implement or applied procedures and controlled to combat money laundering is also be considered as offensive.

(g) Mingling of lawful property with unlawful property, mingling of legally held property with property from the proceeds of unlawful activity will also be covered by this Bill. Clause. 11(i) (d) To add: "a financial institution as soon as the suspicion hereinafter referred to is formed, report to the Money Laundering Authority, any business transactions where the identity of the persons involved, the transaction or any other circumstances concerning that business transaction gives any officer or employee of the financial institution reasonable grounds to suspect that the transaction involves proceeds of crime;"

Sd/-
Rupchand Pal

NOTE OF DISSENT

Dr. Biplab Dasgupta, MP

The Standing Committee report on the Money-laundering Bill (MLB) has, I feel, vindicated my original position, while discussing FEMA, that drafts for both FEMA and Money-laundering bills should have been examined together. In Fema violation of foreign exchange rules has been made a civil offence, in contrast with Fera where it was a criminal offence. It was expected that MLB would provide adequate safeguards to ensure that serious offenders would not escape the net of criminal offences. Unfortunately, that expectation has not been fulfilled. Worse, whatever safeguards were there in the original bill seem to be taken away by the amendments suggested by the draft report.

1. Major issues

I agree with the majority of the members that MLB should have a clear focus, and its impact should not be diluted and diffused by bringing in everything under the sun within the scope of this bill. I also agree that it was right to examine the Schedule closely in order to weed out the less important and low priority ones. There was also a broad agreement in the committee that there has to be some checks to ensure that, rather than submitting to the law of the country, the offenders do not become the pray of blackmailing by unscrupulous officials who gain access to confidential information in their official capacity. That this happens in a big way is known but given the vulnerability of both the parties—the blackmailing official and the offender under tax or foreign exchange laws—this issue is seldom brought to surface, analysed and legal remedies are suggested. Further, seldom distinction is made between small and big offences relating to the foreign exchange of the country.

However, I strongly disagree with the view that the item on 'falsification accounts', given in part I of the schedule should be omitted. Falsification of accounts is the essence of money laundering, and I do not see how it can be omitted. Obviously, one has to distinguish between minor accounting lapses and the major ones that can be labeled as money laundering, but it is for the lawyers to find

those safeguards for the minor offenders and incorporate those in the legislation. Nor do I agree with the omission of offences under immoral traffic (prevention) act of 1956 and those under the prevention of corruption Act of 1988. Omission of these two vital areas would make the legislation ineffective. I, however, agree with the narrowing down of offences under Arms Act of 1959, for inclusion in this legislation, to those relating to 'manufacture, sell, transfer, convert' etc.

My main objection is also with what has not been included in this legislation. The objective of this legislation should not be confined to meeting international obligations under UN General Assembly resolution of 23rd February, 1990, to handle criminal acts relating to drug and arms trafficking and terrorism. It should also respond to people's sensitivities and concern regarding money laundering. Over the past two years two major issues have rocked the country and have become subject of intense public debate, both having bearing on the Money-laundering bill we are discussing—Bofors and Hawala, the two issues that have also been linked with money used for terrorism and drug-trafficking. We can not pass a bill on money laundering that does not take into account the issues raised by those two controversies.

In case of Bofors no one has denied that bribe had been paid and that the proceeds of that illegal transaction had been laundered through a chain of fictitious accounts in the names of a large number of 'shell' companies that had no other existence but to make such money-laundering possible. To identify the ultimate recipients one has to trace this chain of shell companies from the source of money to the ultimate destination. This exercise, being so complicated and involving knowledge about foreign banking and trade and the mode of functioning of the multinational companies, can only be done a specialised agency that can be set up under this bill. As we all know, Bofors was not an exception, and a large number of defence contracts have been subjected to similar suspicion. Nor is Bofors a typical Indian affair—in fact it is a part of the practices of many large multinational companies (e.g., Lockheed) to bribe in order to get contract. Globalisation has widened the scope of such practices.

In case of Jain Hawala case, the link between money-laundering and terrorism was established, as also the fact that hush money was paid to many important individuals, though the evidence contained in the diary could not be corroborated by other evidence. CBI, more interested in public relations exercise and busier in addressing press conferences, did not carry out the necessary investigative homework

before or after preparing the charge sheets. As a result, the guilt of those named could not be proved. The questions that arise from this episode are (i) how to evaluate documents such as Jain diary as an important pieces of evidence, and how to differentiate those from concocted diaries prepared to mislead the investigation, and (ii) what should be the nature of corroboration, if need be, in this kind of case, from a purely legal point of view.

(a) The third kind of issue arises from the need to bring over-invoicing and under-invoicing, widely resorted to by businessmen dealing with foreign companies, within the fold of this bill on money-laundering. The over-invoicing by a foreign company, when selling to an Indian company allows for transfer of the excess, that is the difference between the figure quoted and the actual price, to foreign accounts in the names of those Indians, which they use when going abroad. Similar use is made of the under-invoicing by an Indian company for commodities sold to a foreign company. While it is known that such malpractice is widespread, eradicating those is not easy. What is 'over-invoicing' and what is 'under-invoicing' can only be established by way of knowledge of the global market and its prices at a particular time and place. This too is a highly specialised activity and should be the task of a separate, independent agency of experts set up for this purpose.

Unless the bill addresses to these types of money-laundering a chain of shell companies to conceal the origin and the destination of ill-gotten money, the issue of evaluating evidence providing accounts of bribes etc., and over-and-under invoicing, it would be infructuous and pointless. Keeping this in mind.

2. Clause-wise comments

Clause 3. I agree with the amendment proposed on clause 3, to bring in the subjective element, in order to exclude the innocents who unknowingly got involved in the crime web.

Clause 6. I am not happy with the naming of the body as 'adjudicating authority', under Clause 6. What the body should do is far beyond the scope of the word 'adjudication', which is somewhat mild. There should be also a condition that the persons appointed to that authority would never take employment under private companies.

Clause 11. I do not agree with the change suggested by the draft report, making the Rs. 25 lakh in a month threshold only applicable in case of cash transactions, while the bill covers all transactions. The argument given—about too much of paper work—does not make sense in this age of computer. Further 'cash transactions' have not been defined in the report. If it means 'currency notes' carried in a suitcase and handed over at the bank counter, only a fool (and money-launderers are not fools) would be engaged in such acts. If it also means 'bearer cheques', these are transferable and are as good as cash. I do not see what objection there could be to report 'all' transactions, when in many countries such provisions exist and are implemented.

Further, the provision in the subclause (2) of Clause 11 that records of such transactions would be maintained only for five years is not acceptable. The Jain Diary was unearthed in 1991, but it did not come to the court until early 1995. Bank documents supporting or falsifying such allegations should be maintained for 20 years, and this too is not a difficult exercise in this age of computer. Obviously, the other side of it is the development of healthy banking norms and practices that respect privacy when no crime is involved, and in case of crime does not allow the bank officials to profit from blackmailing.

Clause 15. I do not understand the logic of the argument that while the right to conduct survey even when there was no specific evidence was acceptable under section 133A of the Income Tax Act of 1961, it was not under this Act which deals with more serious crimes, as admitted by the report itself, and with more unknowns.

Clauses 16-19 I agree with the amendment suggested in the report.

Clause 23. I am in two minds on this issue. I agree that the presumption of the existence of 'mens rea' is a serious violation of a cardinal principle in criminal jurisprudence that a person is innocent unless found guilty. On the other hand, in the case of money laundering the investigating agencies are operating in an unknown territory. A man with his hand in the till or with a smoking gun in his hand, probably has the responsibility to explain how his hand got into the till or how he got to have such gun in his possession. He can not simply plead ignorance or remain silent in this case. May be the lawyers can find a solution to this dilemma—of not letting him remain

silent (as almost all the accused in the Hawala case did) and forcing him to explain his involvement, while at the same time not presuming that he is guilty.

Clause 25. While I agree with the sentiment expressed in the report, I doubt whether there are many tribunals that dispose of the appeals within one year. The time limit should be two years.

Clause 27. I agree with the amendment and also wish to add that such person should agree not to take up any employment under a private company after he ceased to be the chairman.

Clauses 28, 38, 52, 54, 55, 56, 59. I agree with the suggested amendments.

Clause 62. I do not agree with the suggested amendment.

5

Sd/-
Biplab Dasgupta

NOTE OF DISSENT

Shri Jaipal Reddy, MP

"Since the first day on which the talk of amending FERA in the liberal direction was started, FEMA and Money-Laundering Bill have been discussed in the same breath. But a surgical break between the two Bills has now been effected. I would not be opposed to this break if the majority report submitted on FEMA had not completely decriminalised violations of foreign exchange law or if the majority report on Money-Laundering Bill has treated violation of foreign exchange law as a cognisable offence.

Since I am on the Money-Laundering Bill in this note. I suggest that such provisions may be inserted as to treat violation of foreign exchange law as a criminal offence.

In support of my aforesaid contentions, I may state on record that the Enforcement Director specifically suggested that infraction of foreign exchange restrictions should entail criminal liability either under FEMA or under Money-Laundering Bill, if not in both. If this suggestion is not acted upon, those who maintain illegal foreign accounts either through over-invoicing of imports or under-invoicing of exports or through proceeds of bribe can not be properly tackled. In fact, even the professional operators of hawala transactions will go scot-free as there is no other law under which they can be brought to book."

Sd/
Jaipal Reddy

MINUTES OF THE THIRTEENTH SITTING OF THE STANDING
COMMITTEE ON FINANCE HELD ON 25 AUGUST, 1998

The Committee sat on Tuesday, 25 August, 1998 from 1500 hrs. to
1645 hrs.

PRESENT

Shri Murli Deora — *Chairman*

MEMBERS

Lok Sabha

2. Shri Girdhari Lal Bhargava
3. Shri Bhagwan Shanker Rawat
4. Shri Rayapati Sambasiva Rao
5. Shri Kavuru Sambasiva Rao
6. Shri Prithviraj D. Chavan
7. Shri Magunta Sreenivasulu Reddy
8. Shri Rupchand Pal
9. Shri Varkala Radhakrishnan
10. Shri Tathagata Satpathy
11. Dr. Bikram Sarkar
12. Shri Joachim Baxla
13. Shri Buta Singh

Rajya Sabha

14. Dr. Manmohan Singh
15. Shri N.K.P. Salve
16. Shri M. Rajsekara Murthy

17. Shri O.P. Kohli
18. Shri Raghavji
19. Dr. Biplab Dasgupta
20. Shri C. Ramachandraiah
21. Shri Prem Chand Gupta
22. Shri R.K. Kumar
23. Shri Gurudas Das Gupta
24. Shri Suresh A. Keswani

SECRETARIAT

1. Dr. (Smt.) P.K. Sandhu — *Director*
2. Shri S.B. Arora — *Under Secretary*
3. Shri N.S. Hooda — *Assistant Director*

2. At the outset the Chairman welcomed the Members to the sitting of the Committee and invited their suggestions with regard to the modalities to be adopted for examining the Bills referred to the Committee for detailed examination.....

3. The Committee after deliberations, desired that since each of the Bills referred to the Committee required in-depth examination, detailed preliminary/background material may be procured from the respective Ministries. With regard to the Narcotic Drugs and Psychotropic Substances (Amendment) Bill, 1998 as well as the other two Bills *i.e.* (i) The Prevention of Money Laundering Bill, 1998 and (ii) The Foreign Exchange Management Bill, 1998; the Committee desired that the details of the legal provisions which are prevalent in different countries may also to be procured from the Ministry of Finance for the use of the Committee. They further desired that deliberations which have taken place from time to time in the United Nations convention against illicit traffic in Narcotic Drugs and Psychotropic Substances should also be made available to the Committee. In order to have the benefit of wide ranging views on various provisions of (i) The Foreign Exchange Management Bill, 1998, (ii) The Prevention of Money Laundering Bill, 1998 and (iii) The Securities Contracts (Regulation) Amendment Bill, 1998 the Committee decided to issue a

Press Communique for inviting suggestions/views/memoranda from the public, experts, Chambers of Industry and interested Organisations/ Parties/individuals on these Bills. It was also decided that in order to save time the Members of the Committee desirous of giving their suggestions with regard to the provisions of the Bill may send the same to the Secretariat.

4.The Committee also decided to take oral evidence of the representatives of Chambers of Business and Commerce, professional bodies such as the Institute of Chartered Accountants of India, experts and representatives of Ministry of Finance on (i) The Foreign Exchange Management Bill, 1998, (ii) The Prevention of Money Laundering Bill, 1998. It was decided to convene a meeting for examining these Bills on 22 and 23 September, 1998.

5. The Committee decided unanimously that so far as the examination of (i) Narcotic Drugs and Psychotropic Substances (Amendment) Bill, 1998 (ii) The Foreign Exchange Management Bill, 1998, (iii) The Prevention of Money Laundering Bill, 1998 are concerned, these should be examined by the entire Committee. However, for the other two Bills they were of the view that Sub-Committees might be constituted. The Chairman, however, apprised the Members that in view of the shortage of the staff in the Secretariat which is assisting this Committee it will not be feasible to constitute the Sub-Committees.

6.	**	**	**	**	**
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7.	**	**	**	**	**
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The Committee then adjourned.

MINUTES OF THE SIXTEENTH SITTING OF THE STANDING
COMMITTEE ON FINANCE HELD ON 22 SEPTEMBER, 1998

The Committee sat on Tuesday, 22 September, 1998 from 1100 hrs.
to 1300 hrs. and again from 1500 hrs. to 1730 hrs.

PRESENT

Shri Murli Deora — *Chairman*

MEMBERS

Lok Sabha

2. Shri Mohanbhai Sanjibhai Delkar
3. Shri Haribhai Parathibhai Chaudhary
4. Shri Uttam Singh Pawar
5. Shri Girdhari Lal Bhargava
6. Shri Bhagwan Shanker Rawat
7. Shri T. Subbarami Reddy
8. Shri Kavuru Sambasiva Rao
9. Shri Sandipan Bhagwan Thorat
10. Shri Praful Manoharbai Patel
11. Shri Prithviraj D. Chavan
12. Shri R.L. Jalappa
13. Shri Magunta Sreenivasulu Reddy
14. Shri Varkala Radhakrishnan
15. Shri Beni Prasad Verma
16. Shri S. Murugesan
17. Shri S. Jaipal Reddy
18. Shri Joachim Baxla
19. Shri Buta Singh

Rajya Sabha

20. Dr. Manmohan Singh
21. Shri N.K.P. Salve
22. Shri Narendra Mohan
23. Shri O.P. Kohli
24. Shri Raghavji
25. Dr. Biplab Dasgupta
26. Shri C. Ramachandraiah
27. Shri Amar Singh
28. Shri Prem Chand Gupta
29. Shri R.K. Kumar
30. Shri Satishchandra Sitaram Pradhan
31. Shri Suresh A. Keswani

SECRETARIAT

1. Dr. A.K. Pandey — *Additional Secretary*
2. Dr. (Mrs.) P.K. Sandhu — *Director*
3. Shri S.B. Arora — *Under Secretary*

WITNESSES

Associated Chambers of Commerce and Industry (ASSOCHAM)

1. Shri Anil K. Agarwal — **Member, Managing Committee, and Co-Chairman, International Trade Committee**
2. Shri Mukesh M. Patel — **Member, Managing Committee and Chairman, Direct Taxes Committee**
3. Shri T.G. Keshwani — **Secretary**

Federation of Indian Chambers of Commerce and Industry (FICCI)

1. Shri K.K. Modi — President
2. Shri J.B. Dadachanji — Member
3. Shri B.A. Ranganathan — Member
4. Shri Vikram Kapoor — Co-Chairman, Banking & Finance Committee
5. Shri Y.P. Srivastava — Deputy Secretary General

Confederation of Indian Industry (CII)

1. Shri Rajesh Shah — President
2. Shri Arun Bharat Ram — Chairman (NR)
3. Shri Bishwajit Bhattacharya — Advocate, Supreme Court
4. Mrs. M. Roy — Deputy Director General

PHD Chamber of Commerce and Industry (PHDCCI)

1. Shri O.P. Vaish — President
2. Shri C.K. Hazari — Past President
3. Shri K.S. Mehta — Member, Managing Committee and Chairman Finance and Banking Committee
4. Shri S.K. Sarkar — Member, Finance and Banking Committee
5. Shri S. Kapoor — Secretary
6. Shri Ashwani Kumar — Special Invitee

EXPERTS

1. Shri S. Venkitaramanan — Former Governor, RBI
2. Shri Ashok Desai — Former Attorney General
3. Shri Bibek Debroy — Director-Research, Rajiv Gandhi Foundation
4. Shri B.K. Pal — Former Executive Director, RBI

2. At the outset, Chairman welcomed the representatives of Federation of Indian Chambers of Commerce and Industry (FICCI), Confederation of Indian Industry (CII), Associated Chambers of Commerce and Industry (ASSOCHAM) and PHD Chambers of Commerce and Industry (PHDCCI) and invited their attention to the provisions contained in Direction 55 of the Directions by the Speaker.

3. The Committee then heard the views of representatives of FICCI, CII, ASSOCHAM and PHDCCI on the provisions contained in the Foreign Exchange Management Bill, 1998 and the prevention of Money Laundering Bill, 1998.

4. The Committee, thereafter, asked the representatives of the above mentioned Chambers to send their clause-wise suggestions on the FEMA Bill, 1998 and the Prevention of Money Laundering Bill, 1998 in writing to the Committee for their consideration.

5. A verbatim record of proceedings has been kept.

(The witnesses then withdrew).

The Committee then adjourned to meet at 1500 hours.

PART II

2. The Chairman welcomed S/Shri S. Venkitaramanan, former Governor, RBI, Ashok Desai, former Attorney General, B.K. Pal, former Executive Director, RBI and Bibek Debroy, Director-Research, Rajiv Gandhi Foundation and invited their attention to the provisions of Direction 55 of the Directions by the Speaker.

3. The Committee then heard the views of the above mentioned experts on the provisions contained in the Foreign Exchange Management Bill, 1998 and the Prevention of Money Laundering Bill, 1998.

4. The Committee, thereafter, requested the experts to furnish their views in writing to the Committee for their consideration.

5. A verbatim record of proceedings has been kept.

(The witnesses then withdrew).

The Committee then adjourned to meet again on 23 September, 1998.

MINUTES OF THE SEVENTEENTH SITTING OF THE STANDING
COMMITTEE ON FINANCE HELD ON 23 SEPTEMBER, 1998

The Committee sat on Wednesday, 23 September, 1998 from
1030 hrs. to 1300 hrs. and again from 1430 hrs. to 1700 hrs.

PRESENT

Shri Murli Deora — *Chairman*

MEMBERS

Lok Sabha

2. Shri Dhirendra Agarwal
3. Shri Haribhai Parathibhai Choudhary
4. Shri Uttam Singh Pawar
5. Shri Girdhari Lal Bhargava
6. Shri Chetan Chauhan
7. Shri Bhagwan Shanker Rawat
8. Shri Rayapati Sambasiva Rao
9. Shri Praful Manoharbai Patel
10. Shri Prithviraj D. Chavan
11. Shri R.L. Jalappa
12. Shri Magunta Sreenivasulu Reddy
13. Shri Varkala Radhakrishnan
14. Shri Beni Prasad Verma
15. Shri Tathagata Satpathy
16. Shri S. Jaipal Reddy
17. Shri Joachim Baxla

Rajya Sabha

18. Dr. Manmohan Singh
19. Shri N.K.P. Salve
20. Shri M. Rajsekara Murthy
21. Shri Narendra Mohan
22. Shri O.P. Kohli
23. Shri Raghavji
24. Shri Biplab Dasgupta
25. Shri C. Ramachandraiah
26. Shri Amar Singh
27. Shri Prem Chand Gupta
28. Shri Gurudas Das Gupta
29. Shri Suresh A. Keswani

SECRETARIAT

1. Dr. (Mrs.) P.K. Sandhu — *Director*
2. Shri S.B. Arora — *Under Secretary*

WITNESSES

Representatives of Reserve Bank of India (RBI)

1. Shri Jagdish Capoor — *Deputy Governor*
2. Shri Khizer Ahmed — *CGM*
3. Shri V.D. Pandse — *GM*
4. Shri S.R. Kolarkar — *GM*

Representatives of Ministry of Finance (Department of Economic Affairs)

1. Shri Vijay Kelkar — *Finance Secretary*
2. Shri Shankar N. Acharya — *Chief Economic Adviser*
3. Shri J.S. Mathur — *AS (Budget)*

4. Shri Arvind Virmani — Senior Economic Adviser
5. Shri Gajendra Haldea — JS (ADB&I)
6. Shri S.P. Singh — Director (EC)

Department of Revenue

1. Shri J.A. Choudhary — Revenue Secretary
2. Shri Ravi Kant, Chairman — CBDT
3. Shri A. Balasubramanian — Member (L)
4. Shri V.B. Srinivasan — Member (Inv.)
5. Shri A.N. Prasad — Joint Secretary (TPL-I)
6. Shri B.D. Vishnoi — Deputy Secretary (TPL-III)
7. Shri M.S. Kaushik — Deputy Secretary (Inv.)

Enforcement Directorate

1. Shri M.K. Bezboruah — Director
2. Shri M. Joshi — Special Director
3. Shri Abhijit Chakravarty — Addl. Director
4. Shri T.K. Gadoo — Legal Adviser
5. Dr. Shamshuddin — Deputy Legal Adviser
6. Shri Arun Sharma — Asstt. Director
7. Shri G.S. Sud — Asstt. Director

2. At the outset, the Chairman welcomed the Deputy Governor, Reserve Bank of India and his colleagues and invited their attention to the provisions contained in the Direction 55 of the Directions by the Speaker.

3. The Committee then heard the views of representatives of RBI on the provisions contained in the Foreign Exchange Management Bill, 1998 and the Prevention of Money Laundering Bill, 1998. The Committee, thereafter, requested them to furnish a written note on certain points raised by the Members during the discussion.

4. The evidence was inconclusive.

PART II

2. The Chairman welcomed the Finance Secretary, Secretary, Deptt. of Revenue and their colleagues and invited their attention to the provisions contained in Direction 55 of the Directions by the Speaker.

3. The Committee then heard the views of representatives of Ministry of Finance (Deptts. of Economic Affairs and Revenue) and RBI on the provisions contained in the above mentioned two Bills. The Committee, thereafter requested the representatives of Ministry of Finance (Deptts. of Economic Affairs and Revenue) to furnish written notes on some of the points raised by the Members during the discussions.

4. A verbatim record of the proceedings has been kept.

The evidence was inconclusive.

(The witnesses then withdrew).

The Committee then adjourned.

MINUTES OF THE EIGHTEENTH SITTING OF THE STANDING
COMMITTEE ON FINANCE HELD ON 13 OCTOBER, 1998

The Committee sat on Wednesday, 13 October, 1998 from 1100 hrs.
to 1300 hrs. and again from 1500 hrs. to 1700 hrs.

PRESENT

Shri Murli Deora — *Chairman*

MEMBERS

Lok Sabha

2. Shri Dharendra Agarwal
3. Shri Uttam Singh Pawar
4. Shri Girdhari Lal Bhargava
5. Shri Chetan Chauhan
6. Shri T. Subbarami Reddy
7. Shri Sandipan Bhagwan Thorat
8. Shri Praful Manoharbai Patel
9. Shri Prithviraj D. Chavan
10. Shri Magunta Sreenivasulu Reddy
11. Shri Rupchand Pal
12. Shri Varkala Radhakrishnan
13. Shri Beni Prasad Verma
14. Shri S. Murugesan
15. Shri Tathagata Satpathy
16. Dr. Bikram Sarkar
17. Shri Joachim Baxla
18. Shri P. Chidambaram
19. Shri Buta Singh

Rajya Sabha

20. Dr. Manmohan Singh
21. Shri Krishna Kumar Birla
22. Shri N.K.P. Salve
23. Shri M. Rajsekara Murthy
24. Shri Narendra Mohan
25. Shri O.P. Kohli
26. Shri C. Ramachandraiah
27. Shri Amar Singh
28. Shri Prem Chand Gupta
29. Shri R.K. Kumar
30. Shri Gurudas Das Gupta
31. Shri Suresh A. Keswani

SECRETARIAT

1. Dr. (Mrs.) P.K. Sandhu — *Director*
2. Shri S.B. Arora — *Under Secretary*

2. At the outset, the Chairman welcomed the Members of the Committee and invited their suggestions on the provisions contained in the Foreign Exchange Management Bill, 1998.

3. Thereafter Members discussed amongst themselves upto clause 16 of the Foreign Exchange Management Bill, 1998.

4. The discussion was inconclusive.

5. The Committee then adjourned to meet again in the afternoon for taking evidence of Experts on the Foreign Exchange Management Bill, 1998 and the Prevention of Money Laundering Bill, 1998.

PART II

2. The Chairman welcomed Dr. Prabhat Patnaik, Professor of Economics, JNU, Dr. Kamal Nayan Kabra, Professor of Economics, Indian Institution of Public Administration, Delhi and Shri R. Venkataraman, Senior Advocate, Supreme Court of India to the sitting and invited their attention to the provisions contained in direction 55 of the Directions by the Speaker.

3. The Committee then heard the views of the above mentioned experts on the provisions contained in the Foreign Exchange Management Bill, 1998 and the Prevention of Money Laundering Bill, 1998.

4. A verbatim record of proceedings was kept.

The witnesses then withdrew.

The Committee adjourned to meet again on 6 November, 1998.

MINUTES OF THE TWENTIETH SITTING OF STANDING
COMMITTEE ON FINANCE HELD ON 20 NOVEMBER, 1998

The Committee sat on 20 November, 1998 from 1100 hrs. to
1330 hrs.

PRESENT

Shri Murli Deora — *Chairman*

MEMBERS

Lok Sabha

2. Shri Uttam Singh Pawar
3. Shri Girdhari Lal Bhargava
4. Shri Chetan Chauhan
5. Shri Bhagwan Shanker Rawat
6. Shri Rayapati Sambasiva Rao
7. Shri Kavuru Sambasiva Rao
8. Shri Praful Manoharbhai Patel
9. Shri Prithviraj D. Chavan
10. Shri Rupchand Pal
11. Shri Varkala Radhakrishnan
12. Shri Beni Prasad Verma
13. Kum. Kim Gangte
14. Dr. Bikram Sarkar
15. Shri S. Jaipal Reddy
16. Shri Joachim Baxla

Rajya Sabha

17. Dr. Manmohan Singh
18. Shri N.K.P. Salve
19. Shri Narendra Mohan
20. Shri O.P. Kohli
21. Shri Prem Chand Gupta
22. Shri R.K. Kumar
23. Shri Suresh A. Keshwani

SECRETARIAT

1. Dr. (Mrs.) P.K. Sandhu — Director
2. Shri S.B. Arora — Under Secretary

WITNESSES

Representatives of Ministry of Finance Department of Economic Affairs

1. Shri Vijay Kelkar, Finance Secretary
2. Dr. S.N. Acharya, Chief Economic Adviser
3. Shri Inderjit Khanna, SS (EF)
4. Shri R.S. Sharma, Joint Secretary
5. Shri S.P. Singh, Director (AC & EC)

Department of Revenue

1. Shri J.A. Chowdhury, Secretary
2. Shri Ravi Kant, Chairman, CBDT
3. Shri A. Balasubramanian, Member (L), CBDT
4. Shri V.B. Srinivasan, Member (Inv.), CBDT
5. Dr. G.C. Srivastava, Additional Secretary (Admn.)
6. Shri A.N. Prasad, Joint Secretary (TPL-I), CBDT
7. Smt. Deepa Krishnan, Director (TPL-I), CBDT

Enforcement Directorate

1. Shri M.K. Bezboruah, Director
2. Shri M.C. Joshi, Special Director
3. Shri Abhijit Chakraverthy, Additional Director

Reserve Bank of India (RBI)

1. Shri Jagdish Capoor, Deputy Governor
2. Shri Khizer Ahmed, Executive Director
3. Shri V.D. Pendse, General Manager

*Representatives of the Ministry of Law, Justice and Company Affairs
Legislative Department*

1. Dr. Raghubir Singh, Law Secretary
2. Shri T.K. Viswanathan, Additional Secretary
3. Shri S.R. Dhaleta, Deputy Legislative Counsel
4. Dr. S.D. Singh, Deputy Legislative Counsel

2. At the outset, the Chairman welcomed the Secretaries of Ministry of Finance (Depts. of Economic Affairs and Revenue), Secretary (Ministry of Law, Justice and Company Affairs—Legislative Department) and Deputy Governor, RBI and invited their attention to the provisions contained in the Direction 55 of the Directions by the Speaker.

3. The Committee then heard the views of representatives of Ministry of Finance on provisions contained in the Foreign Exchange Management Bill, 1998 and the Prevention of Money Laundering Bill, 1998.

4. Thereafter, the Committee sought clarifications from the Law Ministry officials on some of the provisions contained in the Foreign Exchange Management Bill, 1998.

5. The evidence was concluded.

6. A verbatim record of proceedings has been kept.

(The witnesses then withdrew.)

The Committee adjourned to meet again at 1530 hours.

MINUTES OF THE TWENTY FIFTH SITTING OF THE
STANDING COMMITTEE ON FINANCE
HELD ON 7 JANUARY, 1999

The Committee sat on Thursday, 7 January, 1999 from 1100 hrs. to 1400 hrs.

Shri Murli Deora — *Chairman*

MEMBERS

Lok Sabha

2. Shri Dharendra Agarwal
3. Shri Haribhai Parathibhai Chaudhary
4. Shri Uttam Singh Pawar
5. Shri Girdhari Lal Bhargava
6. Shri Chetan Chauhan
7. Shri Rayapati Sambasiva Rao
8. Shri Kavuru Sambasiva Rao
9. Shri Magunta Sreenivasulu Reddy
10. Shri Rupchand Pal
11. Shri Varkala Radhakrishnan
12. Shri Beni Prasad Verma
13. Shri Tathagata Satpathy
14. Kum. Kim Gangte
15. Shri S. Jaipal Reddy
16. Shri Joachim Baxla
17. Shri P. Chidambaram
18. Shri Buta Singh

Rajya Sabha

19. Dr. Manmohan Singh
20. Shri N.K.P. Salve
21. Shri O.P. Kohli
22. Dr. Biplab Dasgupta
23. Shri Prem Chand Gupta
24. Shri R.K. Kumar
25. Shri Satishchandra Sitaram Pradhan
26. Shri Suresh A. Keswani

SECRETARIAT

1. Dr. A.K. Pandey — *Additional Secretary*
2. Dr. (Smt.) P.K. Sandhu — *Director*
3. Shri S.B. Arora — *Under Secretary*

2. At the outset, the Chairman welcomed the Members. Thereafter, the Committee took up for consideration the draft report on the Prevention of Money Laundering Bill, 1998. The Committee, after deliberation, adopted the draft report with modifications/amendments as shown in the Annexure.

3. As some Members were not in agreement with some of the recommendations contained in the draft report, they desired to give notes of dissent. The Chairman informed them that they could give their notes of dissent within fifteen days.

4. The Committee authorised the Chairman to finalise the Report in the light of the amendments suggested as also to make consequential verbal changes and present the same to Parliament.

5. The Chairman, thereafter, informed the Members that Insurance Regulatory Authority Bill (IRA), 1998 has been referred to the Committee for examination and report thereon by the Hon'ble Speaker. In this connection he requested the Members to give their suggestions as to which of the trade unions were to be called for evidence on the Bill. After consultation, it was decided to invite a representative each

from major national trade unions *viz.* Indian National Trade Union Congress (INTUC), All India Trade Union Congress (AITUC), Centre of Indian Trade Unions (CITU) and Bhartiya Mazdoor Sangh (BMS), Employees'/officers' unions of LIC and GIC, Policyholders Association, Actuaries Association. It was also decided to invite eminent economists, bankers, experts, etc. for soliciting their views on the Insurance Regulatory Authority (IRA), Bill, 1998.

6. The Committee, then congratulated Shri Jaipal Reddy, MP and Member of the Standing Committee on Finance who was conferred with 'The Outstanding Parliamentarian Award, 1998'.

7. Thereafter, the Committee adjourned to meet again on 18 and 19 January, 1999.

MODIFICATIONS/AMENDMENTS

Page 4, Para 9

Add the following para after the last sub-para:—

“The Committee suggest that in view of the change in the definition suggested, wherever the words ‘financial institutions or intermediary’ occurs the words ‘banking company, financial institution or intermediary’ should be substituted.”

Page 4, Para 9

The Committee recommended that the term ‘cash transactions’ should be defined and inserted after clause 2(e).

The Chairman opined that the term ‘cash transactions’ shall suitably be defined in consultation with the Reserve Bank of India.

Page 4, Para 10

Delete para 10 of the draft report containing recommendation of the Committee on widening of the definition of the financial institution as to include public financial institutions as defined in section 4-A of the Companies Act.

Consequently, renumber the subsequent paragraphs accordingly.

Page 5, Para 12

For “In part I under Indian Penal Code except offences under Section 121 and 121A dealing with waging/ attempting to wage or abetting waging of war against the Government of India, the rest of the offences mentioned therein shall be omitted.

- Substitute "In part I under Indian Penal Code, offences under section 477A relating to falsification of Accounts should be omitted."
- For "In Part III which contains offences under the Arms Act, 1959, Sections 27 to 30 should be deleted and consequently, Part III should be numbered as Part II and Part IV may be numbered as Part III."
- Substitute "In Part III, the offences mentioned under section 25 of the Arms Act, 1959 should be modified/ amended as under:—
- 25(1) (a) "to manufacture, sell, transfer, convert, repair, test, or prove, or expose or offer for sale or transfer, or have in his possession for sale, transfer, conversion, repair, test or proof, any arms or ammunition in contravention of section 5 of the Arms Act, 1959."
- 25 (1B) (c) "to sell or transfer any firearm which does not bear the name of the maker, manufacturer's number or other identification mark stamped or otherwise shown thereon as required by sub-section (2) of section 8 or does any act in contravention of sub-section (1) of that section."
- 25 (1B) (f) "to bring into, or take out of India, any arms or ammunition in contravention of section 10."

"Offences under sections 26-30 mentioned therein should be deleted and consequently, Part III should be numbered as Part II and Part IV as Part III."

Page 6, Para 13

- For "3(b) enters into any transaction knowingly which is related to proceeds of crime either directly or indirectly; or
- Substitute "3(b) knowingly enters into any transaction which is related to proceeds of crime either directly or indirectly; or

Clause 7

Clause 7(4) which reads as under should be deleted:—

“7(4) where the provisional order of attachment made under sub section (1) of section 5 has been confirmed under sub-section (3), the Director or any other officer authorised by him in this behalf shall forthwith take the possession of the attached property.”

Page 8, Para 15

Delete “and public financial institutions namely, IDBI, ICICI Ltd., IFCI Ltd.”

“Including Public Financial Institution.”

APPENDIX

AS INTRODUCED IN LOK SABHA

Bill No. 91 of 1998

THE PREVENTION OF MONEY-LAUNDERING BILL, 1998

ARRANGEMENT OF CLAUSES

CHAPTER I

PRELIMINARY

CLAUSES

1. Short title, extent and commencement.
2. Definitions.

CHAPTER II

OFFENCE OF MONEY-LAUNDERING

3. Offence of money-laundering.
4. Punishment for money-laundering.

CHAPTER III

ATTACHMENT, ADJUDICATION AND CONFISCATION

5. Attachment of property involved in money-laundering.
6. Adjudicating Authority.
7. Adjudication.
8. Vesting of property in Central Government.
9. Management of properties confiscated under this Chapter.
10. Power regarding summons, production of documents and to give evidence, etc.

CHAPTER IV

OBLIGATIONS OF FINANCIAL INSTITUTIONS AND INTERMEDIARIES

11. Financial institutions and intermediaries to maintain records.
12. Powers of Director to impose fine.
13. No civil proceedings against financial institutions, etc., in certain cases.
14. Procedure and manner of furnishing information by financial institution and intermediary.

CHAPTER V

SUMMONS, SEARCHES AND SEIZURES, ETC.

15. Power of survey.
16. Search and seizure.
17. Search of persons.

CLAUSES

18. Power to arrest.
19. Retention of property.
20. Retention of records.
21. Presumption as to records or property in certain cases.
22. Presumption in inter-connected transactions.
23. Presumption of culpable mental state.

CHAPTER VI

APPELLATE TRIBUNAL

24. Establishment of Appellate Tribunal.
25. Appeals to Appellate Tribunal.
26. Compositions, etc., of Appellate Tribunal.
27. Qualifications for appointment.

28. Term of office.
29. Conditions of service.
30. Vacancies.
31. Resignation and removal.
32. Member to act as Chairperson in certain circumstances.
33. Staff of Appellate Tribunal.
34. Procedure and powers of Appellate Tribunal.
35. Distribution of business amongst Benches.
36. Power of Chairperson to transfer cases.
37. Decision to be by majority.
38. Right of appellant to take assistance of legal practitioner and of Government, etc., to appoint presenting officers.
39. Members, etc., to be public servants.
40. Civil court not to have jurisdiction.
41. Appeal to High Court.

CHAPTER VII

SPECIAL COURTS

42. Special Courts.
43. Offences triable by Special Courts.
44. Offences to be cognizable and non-bailable.
45. Application of the Code of Criminal Procedure, 1973 to proceeding before Special Court.
46. Appeal and revision.

CHAPTER VIII

AUTHORITIES

CLAUSES

47. Authorities under the Act.
48. Appointment and powers of authorities and other officers.

- 49. Power of authorities regarding summons, production of documents and to give evidence, etc.
- 50. Jurisdiction of authorities.
- 51. Power of Central Government to issue directions, etc.
- 52. Empowerment of certain officers.
- 53. Certain officers to assist in inquiry, etc.

CHAPTER IX

MISCELLANEOUS

- 54. Punishment for vexatious search.
- 55. Punishment for false information.
- 56. Cognizance of offences.
- 57. Code of Criminal Procedure, 1973 to apply.
- 58. Disclosure of Information.
- 59. Bar of legal proceedings.
- 60. Notice, etc., not to be invalid on certain grounds.
- 61. Recovery of fines.
- 62. Offences by companies.
- 63. Act to have overriding effect.
- 64. Continuation of proceedings in the event of death or insolvency.
- 65. Power to make rules.
- 66. Laying of rules.
- 67. Removal of difficulty.

THE SCHEDULE.

THE PREVENTION OF MONEY-LAUNDERING BILL, 1998

A

BILL

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.

WHEREAS the 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 the twenty-third day of February, 1990;

AND WHEREAS 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 programmes;

AND WHEREAS it is considered necessary to implement the aforesaid resolution and the Declaration;

BE it enacted by Parliament in the Forty-ninth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Prevention of Money-laundering Act, 1998.

short title,
extent and
commence-
ment.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different provisions of this Act.

and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

Definitions.

2. (1) In this Act, unless the context otherwise requires.—

(a) "Adjudicating Authority" means an Adjudicating Authority appointed under sub-section (1) of section 6;

(b) "Appellate Tribunal" means the Appellate Tribunal established under section 24;

(c) "Assistant Director" means an Assistant Director appointed under sub-section (1) of section 48;

(d) "attachment" means prohibition of transfer, conversion, disposition or movement of property by an order issued under Chapter III;

(e) "Bench" means a Bench of the Appellate Tribunal;

(f) "Chairperson" means the Chairperson of the Appellate Tribunal;

(g) "Deputy Director" means a Deputy Director appointed under sub-section (1) of section 48;

(h) "Director" or "Additional Director" or "Joint Director" means a Director or Additional Director or Joint Director, as the case may be, appointed under sub-section (1) of section 48;

(i) "financial institution" shall have the same meaning as assigned to it under

2 of 1934. clause (c) of section 45-I of the Reserve Bank of India Act, 1934;

(j) "intermediary" means a stock-broker, sub-broker, share transfer agent, banker to an issue, trustee to a trust deed, registrar to an issue, merchant banker, underwriter, portfolio manager, investment adviser and any other intermediary associated with securities market and registered under section 12 of the Securities and Exchange Board of India Act, 1992;

(k) "Member" means a Member of the Appellate Tribunal and includes the Chairperson;

(l) "money-laundering" has the meaning assigned to it in section 3;

(m) "notification" means a notification published in the Official Gazette;

(n) "prescribed" means prescribed by rules made under this Act;

(o) "proceeds of crime" means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offense or the value of any such property;

(p) "property" means any property or assets of every description, whether corporeal or incorporeal, movable or immovable, tangible or intangible and includes deeds and instruments evidencing title to, or interest in, such property or assets, wherever located;

(q) "records" include the records maintained in the form of books or stored in a computer or such other form as may be prescribed;

(r) "Schedule" means the Schedule to this Act;

(s) "scheduled offence" means an offence specified in the Schedule;

(t) "Special Court" means a Court of Session designated as Special Court under sub-section (1) of section 42;

(u) "transfer" includes sale, purchase, mortgage, pledge, gift, loan or any other form of transfer of right, title, possession or lien;

(v) "value" means the fair market value of any property on the date of its acquisition by any person, or if such date cannot be determined, the date on which such property is possessed by such person.

(2) Any reference, in this Act or the Schedule, to any enactment or any provision thereof shall, in relation to an area in which such enactment or such provision is not in force, be construed as a reference to the corresponding law or the relevant provisions of the corresponding law, if any, in force in that area.

CHAPTER II

OFFENCE OF MONEY-LAUNDERING

Offence of
money-
laundering.

3. Whoever—

(a) acquires, owns, possesses or transfers any proceeds of crime; or

(b) enters into any transaction which is related to proceeds of crime either directly or indirectly; or

(c) conceals or aids in the concealment of the proceeds of crime,

commits the offence of money-laundering.

4. Whoever commits the offence of money-laundering shall be punishable with rigorous imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine which may extend to five lakh rupees:

Punishment
for money-
laundering.

Provided that where the proceeds of crime involved in money-laundering relates to any offence specified in Part IV of the Schedule, the provisions of this section shall have effect as if for the words "which may extend to seven years", the words "which may extend to ten years" had been substituted.

CHAPTER III

ATTACHMENT, ADJUDICATION AND CONFISCATION

5. (1) Where the Director or any other officer not below the rank of Deputy Director authorised by him for the purposes of this section, has reason to believe, on the basis of material in his possession, that—

Attachment
of property
involved in
money-
laundering.

(a) any person is in possession of any proceeds of crime;

(b) such person has been charged of having committed a scheduled offence; and

(c) such proceeds of crime are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceedings relating to confiscation of such proceeds of crime under this Chapter,

he may, by order in writing, provisionally attach such property for a period not exceeding ninety days from the date of the order, in the

manner provided in the Second Schedule to the Income-tax Act, 1961 and the Director or the other officer so authorised by him, as the case may be, shall be deemed to be an officer under clause (e) of rule (1) of that schedule : 43 of 1961.

Provided that no such order of attachment shall be made unless, in relation to an offence under—

(i) Part I, Part II, Part III or Part V of the Schedule, a report has been forwarded to a Magistrate under section 173 of the Code of Criminal Procedure, 1973; or 2 of 1974.

(ii) Part IV of the Schedule, a police report or a complaint has been filed for taking cognizance of an offence by the Special Court constituted under sub-section (1) of section 36 of the Narcotic Drugs and Psychotropic Substances Act, 1985. 61 of 1985.

(2) Every order of attachment made under sub-section (1) shall cease to have effect after the expiry of the period specified in that sub-section or on the date of an order made under sub-section (2) of section 7, whichever is earlier.

(3) Nothing in this section shall prevent the person interested in the enjoyment of the immovable property attached under sub-section (1) from such enjoyment.

Explanation.—For the purposes of this sub-section, “person interested”, in relation to any immovable property, includes all persons claiming or entitled to claim any interest in the property.

(4) The Director or any other officer who provisionally attaches any property under sub-section (1) shall, within a period of thirty days from such attachment, file a complaint stating

the facts of such attachment before the Adjudicating Authority.

6. (1) The Central Government shall, by notification, appoint one or more persons not below the rank of Joint Secretary to the Government of India as Adjudicating Authority or Adjudicating Authorities to exercise the jurisdiction, powers and authority conferred on an Adjudicating authority by or under this Act.

Adjudicating Authority.

(2) The Central Government shall also specify in the notification referred to in sub-section (1) the matters and places in relation to which the Adjudicating Authority may exercise jurisdiction.

7. (1) On receipt of a complaint under sub-section (4) of section 5, if the Adjudicating Authority has reason to believe that any person has committed an offence under section 3, he may serve a notice of not less than thirty days on such person calling upon him to indicate the sources of his income, earning or assets, out of which or by means of which he has acquired the property attached under sub-section (1) of section 5, the evidence on which he relies and other relevant information and particulars, and to show cause why all or any of such properties should not be declared to be the properties involved in money-laundering and confiscated by the Central Government:

Adjudication.

Provided that where a notice under this sub-section specified any property as being held by a person on behalf of any other person, a copy of such notice shall also be served upon such other person:

Provided further that where such property is held jointly by more than one person, such

notice shall be served to all persons holding such property.

(2) The Adjudicating Authority shall, after—

(a) considering the reply, if any, to the notice issued under sub-section (1);

(b) hearing the aggrieved person and the Director or any other officer authorised by him in this behalf; and

(c) taking into account all relevant materials placed on record before him,

by an order record a finding whether all or any of the properties referred to in the notice issued under sub-section (1) are involved in money-laundering:

Provided that if the property is claimed by a person, other than a person to whom the notice had been issued, such person shall also be given an opportunity of being heard to prove that the property is not involved in money-laundering.

(3) Where the Adjudicating Authority decides under sub-section (2) that any property is involved in money-laundering, he shall, by an order in writing, confirm the attachment of the property made under sub-section (1) of section 5 and record a finding and such attachment shall—

(a) continue during the pendency of the proceedings relating to any scheduled offence before a court; and

(b) become final after the guilt of the person is proved in the trial court and order of such trial court becomes final.

(4) Where the provisional order of attachment made under sub-section (1) of section 5 has been confirmed under sub-section (3), the Director or any other officer authorised by him in this behalf shall forthwith take the possession of the attached property.

(5) Where on conclusion of a trial for any scheduled offence, the person concerned is acquitted, the attachment of the property under sub-section (3) shall cease to have effect.

(6) Where the attachment of any property becomes final under clause (b) of sub-section (3), the Adjudicating Authority shall, after giving an opportunity to the person concerned, make an order confiscating such property.

8. Where an order of confiscation has been made under sub-section (6) of section 7 in respect of any property of a person, all the rights and title in such property shall vest absolutely in the Central Government free from all encumbrances:

Vesting of
property in
Central
Government.

Provided that where the Adjudicating Authority, after giving an opportunity of being heard to any other person interested in the property attached under this Chapter, is of the opinion that any encumbrance on the property or lease-hold interest has been created with a view to defeat the provisions of this Chapter, it may, by order, declare such encumbrance or lease-hold interest to be void and thereupon the aforesaid property shall vest in the Central Government free from such encumbrances or lease-hold interest:

Provided further that nothing in this section shall operate to discharge any person from any liability in respect of such encumbrances which may be enforced against such person by a suit for damages.

Management
of
properties
confiscated
under this
Chapter.

9. (1) The Central Government may, by order published in the Official Gazette, appoint as many of its officers (Not below the rank of Joint Secretary to the Government of India) as it thinks fit, to perform the functions of an Administrator.

(2) The Administrator appointed under sub-section (1) shall receive and manage the property in relation to which an order has been made under sub-section (6) of section 7 in such manner and subject to such conditions as may be prescribed.

(3) The Administrator shall also take such measures, as the Central Government may direct, to dispose of the property which is vested in the Central Government under section 8.

Power
regarding
summons,
production
of
documents
and to give
evidence,
etc.

10. (1) The Adjudicating Authority shall, for the purposes of this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit in respect of the following matters, namely:—

5 of 1908.

(a) discovery and inspection;

(b) enforcing the attendance of any person, including any officer of a financial institution or a company, and examining him on oath;

(c) compelling the production of records;

(d) receiving evidence on affidavits;

(e) issuing commissions for examination of witnesses and documents; and

(f) any other matter which may be prescribed.

(2) All the person so summoned shall be bound to attend in person or through authorised agents, as the Adjudicating Authority may direct, and shall be bound to state the truth upon any subject respecting which they are examined or make statements, and produce such documents as may be required.

(3) Every proceeding under this section shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the Indian Penal Code.

45 of 1860.

CHAPTER IV

OBLIGATIONS OF FINANCIAL INSTITUTIONS AND INTERMEDIARIES

11. (1) Every financial institution and intermediary shall—

Financial institutions and intermediaries to maintain records.

(a) maintain a record of all transactions, whether such transactions comprise of a single transaction or a series of transactions integrally connected to each other, where such series of transactions take place within a month, exceed the value of twenty-five lakh rupees;

(b) furnish information of transactions referred to in clause (a) to the Commissioner of income-tax having jurisdiction in respect of such financial institution or the intermediary, as the case may be;

(c) verify and maintain the records of the identity of all its clients, in such manner as may be prescribed.

(2) The records referred to in sub-section (1) shall be maintained for a period of five

years from the date of cessation of the transactions between the clients and the financial institution or intermediary, as the case may be.

Powers of Director to impose fine.

12. (1) The Director may, either of his own motion or on an application made by any authority, officer or person, call for records referred to in sub-section (1) of section 11 and may make such inquiry or cause such inquiry to be made, as he thinks fit.

(2) If the Director, in the course of any inquiry, finds that a financial institution or an intermediary or any of its officers has failed to maintain, or, retain records in accordance with the provisions contained in section 11, then without prejudice to any other action that may be taken under any other provisions of this Act, he may, by order levy a fine on such financial institution or intermediary which shall not be less than ten thousand rupees but may extend to one lakh rupees.

(3) The Director shall forward a copy of the order passed under sub-section (2) to every financial institution or intermediary or person who is a party in the proceedings under that sub-section.

No civil proceedings against financial institutions, etc., in certain cases.

13. Save as otherwise provided in section 12, the financial institutions, intermediaries and their officers shall not be liable to any civil proceedings against them for furnishing information under clause (b) of sub-section (1) of section 11.

Procedure and manner of furnishing information by financial institution and intermediary.

14. The Central Government may, in consultation with the Reserve Bank of India, prescribe the procedure and the manner of maintaining and furnishing information under sub-section (1) of section 11 for the purpose of implementing the provisions of this Act.

CHAPTER V

SUMMONS, SEARCHES AND SEIZURES, ETC.

15. (1) Notwithstanding anything contained in any other provisions of this Act, where an authority has reason to believe that an offence under section 3 has been committed, he may enter any place—

Power of
survey.

(i) within the limits of the areas signed to him; or

(ii) in respect of which he is authorised for the purposes of this section of such other authority, who is assigned the area within which such place is situated,

at which any act constituting the commission of such offence is carried on, and may require any proprietor, employee or any other person who may at that time and place be attending in any manner to, or helping in, such act so to—

(i) afford him the necessary facility to inspect such records as he may require and which may be available at such place;

(ii) afford him the necessary facility to check or verify the proceeds of crime or any transaction related to proceeds of crime which may be found therein; and

(iii) furnish such information as he may require as to any matter which may be useful for, or relevant to, any proceedings under this Act.

Explanation.—For the purposes of this sub-section, a place, where an act which constitutes the commission of the offence is carried on, shall also include any other place, whether any

activity is carried on therein or not, in which the person carrying on such activity states that any of his records or any part of his property relating to such act are or is kept.

(2) An authority acting under this section may—

(i) place marks of identification on the records inspected by him and make or cause to be made extracts or copies therefrom,

(ii) make an inventory of any property checked or verified by him and,

(iii) record the statement of any person present in the place which may be useful for, or relevant to, any proceeding under this Act.

Search and seizure.

16. (1) Where the Director, on the basis of information in his possession, has reason to believe that any person—

(i) has committed any act which constitutes money-laundering, or

(ii) is in possession of any proceeds of crime involved in money-laundering, or

(iii) is in possession of any records relating to money-laundering.

then, subject to the rules made in this behalf, he may authorise any officer subordinate to him to—

(a) enter and search any building, place, vessel, vehicle or aircraft where he has reason to suspect that such records or proceeds of crime are kept;

(b) break open the lock of any door, box, locker, safe, almirah or other receptacle for exercising the powers conferred by clause (a) where the keys thereof are not available;

(c) seize any record or property found as a result of such search;

(d) place marks of identification on such record or make or cause to be made extracts or copies therefrom;

(e) make a note or an inventory of such record or property;

(f) examine on oath any person, who is found to be in possession or control of any record or property, in respect of all matters relevant for the purposes of any investigation under this Act:

Provided that no search shall be conducted unless, in relation to an offence under—

(a) Part I, Part II, Part III or Part V of the Schedule, a report has been forwarded to a Magistrate under section 173 of the Code of Criminal Procedure, 1973; or

20 of 1974.

(b) Part IV of the Schedule, a police report or a complaint has been filed for taking cognizance of an offence by the Special Court constituted under sub-section (1) of section 36 of the Narcotic Drugs and Psychotropic Substances Act, 1985.

61 of 1985.

(2) Where any officer subordinate to the Director, upon information obtained during survey under section 15, is satisfied that any evidence shall be or is likely to be concealed or tempered with, he may, for reasons to be recorded in writing, enter and search the

building or place where such evidence is located and seize that evidence:

Provided that no authorisation referred to in sub-section (1) shall be required for search under this sub-section.

Search of
persons.

17. (1) If an authority, authorised in this behalf by the Central Government by general or special order, has reason to believe that any person has secreted about his person or in anything under his possession, ownership or control, any record or proceeds of crime which may be useful for or relevant to any proceedings under this Act, he may search that person and seize such record or property which may be useful for or relevant to any proceedings under this Act.

(2) Where an authority is about to search any person, he shall, if such person so requires, take such person without unnecessary delay to the nearest Gazetted Officer superior in rank to him or a Magistrate.

(3) If the requisition under sub-section (2) is made, the authority may detain the person until he can bring him before the Gazetted Officer superior in rank to him or the Magistrate referred to in sub-section (2).

(4) The Gazetted Officer or the Magistrate before whom any such person is brought shall, if he sees no reasonable ground for search, forthwith discharge such person but otherwise shall direct that search be made.

(5) Before making the search under sub-section (1) or sub-section (4), the authority shall call upon two or more persons to attend and witness the search, and the search shall be made in the presence of such persons.

(6) The authority shall prepare a list of record or property seized in the course of the search and obtain the signatures of the witnesses on the list.

(7) No female shall be searched by any one excepting a female.

(8) The authority shall record the statement of the person searched under sub-section (1) or sub-section (4) in respect of the records or proceeds of crime found or seized in the course of the search:

Provided that no search of any person shall be made unless, in relation to an offence under—

2 of 1974.

(a) Part I, Part II, Part III or Part V of the Schedule, a report has been forwarded to a Magistrate under section 173 of the Code of Criminal Procedure, 1973; or

61 of 1985.

(b) Part IV of the Schedule, a police report or a complaint has been filed for taking cognizance of a offence by the Special Court constituted under sub-section (1) of section 36 of the Narcotic Drugs and Psychotropic Substances Act, 1985.

18. (1) If the Director, Deputy Director, Assistant Director, or any other officer authorised in this behalf by the Central Government by general or special order, has reason to believe that any person has been guilty of an offence punishable under this Act, he may arrest such person and shall, as soon as may be, inform him of the grounds for such arrest.

Power to arrest.

(2) Every person arrested under sub-section (1) shall without unnecessary delay, be taken to a Judicial Magistrate or a Metropolitan

Magistrate, as the case may be, having jurisdiction.

Retention
of property.

19. (1) Where any property has been seized under section 16 or section 17, and the officer authorised by the Director in this behalf has reason to believe that such property is required to be retained for the purposes of adjudication under section 7, such property may be retained for a period not exceeding three months from the end of the month in which such property was seized.

(2) On expiry of the period specified in sub-section (1), the property shall be returned to the person from whom such property was seized unless the Adjudicating Authority permits retention of such property beyond the said period.

(3) The Adjudicating Authority, before authorising the retention of such property beyond the period specified in sub-section (1), shall satisfy himself that the property is *prima facie* involved in money-laundering and the property is required for the purposes of adjudication under section 7.

(4) After passing the order of confiscation under sub-section (2) of section 7, the Adjudicating Authority shall direct the release of all properties other than the properties involved in money-laundering to the person from whom such properties were seized.

(5) Notwithstanding anything contained in sub-section (4), the Director or any officer authorised by him in this behalf may withhold the release of any property until filing of appeal under section 25 or forty-five days from the date of order under sub-section (4), whichever is earlier, if he is of the opinion that such

property is relevant for the proceedings before the Appellate Tribunal.

20. (1) Where any records have been seized under section 16 or section 17, and the Investigating Officer or any other officer authorised by the Director in this behalf has reason to believe that any of such records are required to be retained for any inquiry under this Act, he may retain such records for a period not exceeding three months from the end of the month in which such records were seized.

Retention
of records.

(2) On expiry of the period specified under sub-section (1), the records shall be returned to the person from whom such records were seized unless the Adjudicating Authority permits retention of such records beyond the said period.

(3) The Adjudicating Authority, before authorising the retention of such records beyond the period mentioned in sub-section (1) shall satisfy himself that the records are required for the purposes of adjudication under section 7.

(4) After the passing of an order of confiscation under sub-section (6) of section 7, the Adjudicating Authority shall direct the release of the records to the person from whom such records were seized.

(5) Notwithstanding anything contained in sub-section (4), the Director or any officer authorised by him in this behalf may withhold the release of any records until filing of appeal under section 25 or after forty-five days from the date of order under sub-section (4), whichever is earlier, if he is of the opinion that such records are relevant for the proceedings before the Appellate Tribunal.

Presumption
as to
records or
property in
certain
cases.

21. (1) Where any records or property are or is found in the possession or control of any person in the course of a survey or a search, it shall be presumed that—

(i) such records or property belong or belongs to such person;

(ii) the contents of such records are true; and

(iii) the signature and every other part of such records which purport to be in the handwriting of any particular person or which may reasonably be assumed to have been signed by, or to be in the handwriting of, any particular person, are in that person's handwriting, and in the case of a record, stamped, executed or attested, that it was executed or attested by the person by whom it purports to have been so stamped, executed or attested.

(2) Where any records have been received from any place outside India, duly authenticated by such authority or person and in such manner as may be prescribed, in the course of proceedings under this Act, the Special Court, the Appellate Tribunal or the Adjudicating Authority, as the case may be, shall—

(a) presume, that the signature and every other part of such record which purports to be in the handwriting of any particular person or which the court may reasonably assume to have been signed by, or to be in the handwriting of, any particular person, is in that person's handwriting; and in the case of a record executed or attested, that it was executed or attested by the person by whom it purports to have been so executed or attested;

(b) admit the document in evidence, notwithstanding that it is not duly stamped, if such document is otherwise admissible in evidence.

22. Where money-laundering involves two or more inter-connected transactions and one or more such transactions is or are proved to be involved in money-laundering, then for the purposes of adjudication or confiscation under section 7, it shall be presumed that remaining transactions form part of such inter-connected transactions.

Presumption
in inter-
connected
transactions.

23. (1) In any prosecution for any offence under this Act which requires a culpable mental state on the part of the accused, the court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

Presumption
of culpable
mental
state.

Explanation.—In this sub-section, “culpable mental state” includes intention, motive, knowledge of a fact and belief in, or reason to believe, a fact.

(2) For the purpose of this section, a fact is said to be proved only when the court believes it to exist beyond reasonable doubt and not merely when, its existence is established by a preponderance of probability.

CHAPTER VI

APPELLATE TRIBUNAL

24. The Central Government shall, by notification, establish an Appellate Tribunal to hear appeals against the orders of the Adjudicating Authority and the authorities under this Act.

Establish-
ment of
Appellate
Tribunal.

Appeals to
Appellate
Tribunal.

25. (1) Save as otherwise provided in sub-section (3), the Director or any person aggrieved by an order made by the Adjudicating Authority under this Act, may prefer an appeal to the Appellate Tribunal.

(2) Any financial institution or intermediary aggrieved by any order of the Director made under sub-section (2) of section 12, may prefer an appeal to the Appellate Tribunal.

(3) Every appeal preferred under sub-section (1) or sub-section (2) shall be filed within a period of forty-five days from the date on which a copy of the order made by the Adjudicating Authority or Director is received and it shall be in such form and be accompanied by such fee as may be prescribed:

Provided that the Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days if it is satisfied that there was sufficient cause for not filing it within that period.

(4) On receipt of an appeal under sub-section (1), or sub-section (2), the Appellate Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.

(5) The Appellate Tribunal shall send a copy of every order made by it to the parties to the appeal and to the concerned Adjudicating Authority or the Director, as the case may be.

(6) The appeal filed before the Appellate Tribunal under sub-section (1) or sub-section (2) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal finally within six months from the date of filing of the appeal.

26. (1) The Appellate Tribunal shall consist of a Chairperson and two other Members.

Composition,
etc., of
Appellate
Tribunal.

(2) Subject to the provisions of this Act,—

(a) the jurisdiction of the Appellate Tribunal may be exercised by Benches thereof;

(b) a Bench may be constituted by the Chairperson with one or two Members as the Chairperson may deem fit;

(c) the Benches of the Appellate Tribunal shall ordinarily sit at New Delhi and at such other places as the Central Government may, in consultation with the Chairperson, by notification specify;

(d) the Central Government shall, by notification, specify the areas in relation to which each Bench of the Appellate Tribunal may exercise jurisdiction.

(3) Notwithstanding anything contained in sub-section (2), the Chairperson may transfer a Member from one Bench to another Bench.

(4) If at any stage of the hearing of any case or matter it appears to the Chairperson or a Member that the case or matter is of such a nature that it ought to be heard by a Bench consisting of two Members, the case or matter may be transferred by the Chairperson or, as the case may be, referred to him for transfer, to such Bench as the Chairperson may deem fit.

27. (1) A person shall not be qualified for appointment as Chairperson unless he is or has been a Judge of the Supreme Court or of a High Court.

Qualifica-
tions for
appoint-
ment.

(2) A person shall not be qualified for appointment as a Member unless he—

(a) is or has been a Judge of a High Court; or

(b) has been a member of the Indian Legal Service and has held a post in Grade I of that Service for at least three years; or

(c) has been a member of the Indian Revenue Service and has held the post of Commissioner of Income-tax or equivalent post in that Service for at least three years; or

(d) has been a member of the Indian Economic Service and has held the post of Joint Secretary or equivalent post in that Service for at least three years.

(3) No sitting Judge of the Supreme Court or of a High Court shall be appointed under this section except after consultation with the Chief Justice of India.

Term of
office.

28. (1) The Chairperson and every other Member shall hold office as such for a term of five years from the date on which he enters upon his office:

Provided that no Chairperson or other Member shall hold office as such after he has attained,—

(a) in the case of the Chairperson, the age of sixty-eight years;

(b) in the case of any other Member, the age of sixty-five years.

Conditions
of Service.

29. The salary and allowances payable to and the other terms and conditions of service

of the Chairperson and other Members shall be such as may be prescribed:

Provided that neither the salary and allowances nor the other terms and conditions of service of the Chairperson or any other Member shall be varied to his disadvantage after appointment.

30. If, for reason other than temporary absence, any vacancy occurs in the office of the Chairperson or may any Member, then the Central Government shall appoint another person in accordance with the provisions of this Act to fill the vacancy and the proceedings may be continued before the Appellate Tribunal from the stage at which the vacancy is filled. Vacancies.

31. (1) The Chairperson or any other member may, by notice in writing under his hand addressed to the Central Government, resign his office: Resignation and Removal.

Provided that the Chairperson or any other Member shall, unless he is permitted by the Central Government to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is the earliest.

(2) The Chairperson or any other Member shall not be removed from his office except by an order made by the Central Government on the ground of proved misbehaviour or incapacity, after an inquiry made by a person appointed by the President in which such Chairperson or any other Member concerned had been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

Member to
act as
Chairperson
in certain
circum-
stances.

32. (1) In the event of the occurrence of any vacancy in the office of the Chairperson by reason of his death resignation or otherwise, such one of the Members as the Central Government may, by notification, authorise in this behalf, shall act as the Chairperson until the date on which a new Chairperson, appointed in accordance with the provisions of this Act to fill such vacancy, enters upon his office.

(2) When the Chairperson is unable to discharge his functions owing to absence, illness or any other cause, such one of Members as the Central Government may, by notification, authorise in this behalf, shall discharge the functions of the Chairperson until the date on which the Chairperson resumes his duties.

Staff of
Appellate
Tribunal.

33. (1) The Central Government shall provide the Appellate Tribunal with such officers and employees as that Government may think fit.

(2) The officers and employees of the Appellate Tribunal shall discharge their functions under the general superintendence of the Chairperson.

(3) The salaries and allowances and other conditions of service of the officers and employees of the Appellate Tribunal shall be such as may be prescribed.

Procedure
and powers
of
Appellate
Tribunal.

34. (1) The Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice and, subject to the other provisions of this Act, the Appellate Tribunal shall have powers to regulate its own procedure. 5 of 1908.

5 of 1908. (2) The Appellate Tribunal shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit, in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

1 of 1872. (d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872, requisitioning any public record or document or copy of such record or document from any office;

(e) issuing commissions for the examination of witnesses or documents;

(f) reviewing its decisions;

(g) dismissing a representation for default or deciding it *ex parte*;

(h) setting aside any order of dismissal of any representation for default or any order passed by it *ex parte*; and

(i) any other matter, which may be, prescribed by the Central Government.

(3) An order made by the Appellate Tribunal under this Act shall be executable by the Appellate Tribunal as a decree of civil court and, for this purpose, the Appellate Tribunal shall have all the powers of a civil court.

(4) Notwithstanding anything contained in sub-section (3), the Appellate Tribunal may transmit any order made by it to a civil court having local jurisdiction and such civil court shall execute the order as if it were a decree made by that court.

(5) All proceedings before the Appellate Tribunal shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal Code and the Appellate Tribunal shall be deemed to be a civil court for the purposes of sections 345 and 346 of the Code of Criminal Procedure, 1973. 45 of 1860. 2 of 1974.

Distribution of business amongst Benches.

35. Where any Benches are constituted, the Chairperson may, from time to time, by notification, make provisions as to the distribution of the business of the Appellate Tribunal amongst the Benches and also provide for the matters which may be dealt with by each Bench.

Power of Chairperson to transfer cases.

36. On the application of any of the parties and after notice to the parties, and after hearing such of them as he may desire to be heard, or on his own motion without such notice, the Chairperson may transfer any case pending before one Bench, for disposal, to any other Bench.

Decision to be by majority.

37. If the Members of a Bench consisting of two Members differ in opinion on any point, they shall state the point or points on which they differ, and make a reference to the Chairperson who shall either hear the point or points himself or refer the case for hearing on such point or points by one or more of the other Members of the Appellate Tribunal and such point or points shall be decided according to the opinion of the majority of the Members of the Appellate Tribunal who have heard the case, including those who first heard it.

38. (1) A person preferring an appeal to the Appellate Tribunal under this Act may either appear in person or take the assistance of a legal practitioner of his choice to present his case before the Appellate Tribunal.

Right of appellant to take assistance of legal practitioner and of Government, etc., to appoint presenting officers, Members, etc., to be public servants.

(2) The Central Government or the Director may authorise one or more legal practitioners or any of its officers to act as presenting officers and every person so authorised may present the case with respect to any appeal before the Appellate Tribunal.

39. The Chairperson, Members and other officers and employees of the Appellate Tribunal, the Adjudicating Authority, Director and the officers subordinate to him shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

40. No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Director, an Adjudicating authority or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

Civil court not to have jurisdiction.

41. Any person aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the High Court within sixty days from the date of communication of the decision or order of the Appellate Tribunal to him on any question of law arising out of such order:

Appeal to High Court.

Provided that the High Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days.

Explanation.—For the purposes of this section, “High Court” means—

(i) the High Court within the jurisdiction of which the aggrieved party ordinarily resides or carries on business or personally works for gain; and

(ii) where the Central Government is the aggrieved party, the High Court within the jurisdiction of which the respondent, or in a case where there are more than one respondent, any of the respondents, ordinarily resides or carries on business or personally works for gain.

CHAPTER VII

SPECIAL COURTS

Special
Courts.

42. (1) The Central Government, in consultation with the Chief Justice of the High Court, shall, for trial of offence punishable under section 4 by notification designate one or more Courts of Session as Special Court or Special Courts for such area or areas or for such case or class or group of cases as may be specified in the notification.

Explanation.—In this sub-section, “High Court” means the High Court of the State in which a Sessions Court designated as Special Court was functioning immediately before such designation.

(2) While trying an offence under this Act, a Special Court may also try an offence, other than an offence referred to in sub-section (1), with which the accused may, under the Code of Criminal Procedure, 1973, be charged at the same trial.

2 of 1974.

43. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973,—

Offences
triable by
Special
Courts.

(a) the offence punishable under section 4 shall be triable only by the Special Court constituted for the area in which the offence has been committed; or

(b) a Special Court may, upon perusal of police report of the facts which constitute an offence under this Act or upon a complaint made by an authority authorised in this behalf under this Act take cognizance of the offence for which the accused is committed to it for trial.

2 of 1974.

(2) Nothing contained in this section shall be deemed to affect the special powers of the High Court regarding bail under section 439 of the Code of Criminal Procedure, 1973 and the High Court may exercise such powers including the power under clause (b) of sub-section (1) of that section as if the reference to "Magistrate" in that section includes also a reference to a "Special Court" designated under section 42.

2 of 1974.

44. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973,—

Offences to
be
cognizable
and non-
bailable.

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for a term of imprisonment of more than three years under this Act shall be released on bail or on his own bond unless—

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release; and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail:

Provided that the Special Court shall not take cognizance of any offence punishable under section 4 except upon a complaint in writing made by—

(i) the Director; or

(ii) any officer of the Central Government or State Government authorised in writing in this behalf by the Central Government by a general or a special order made in this behalf by that Government.

(2) The limitation on granting of bail specified in clause (b) of sub-section (1) is in addition to the limitations under the Code of Criminal Procedure, 1973 or any other law for the time being in force on granting of bail. 2 of 1974.

Application
of the Code
of Criminal
Procedure,
1973 to
proceeding
before
Special
Court.

45. (1) Save as otherwise provided in this Act, the provisions of the Code of Criminal Procedure, 1973 (including the provisions as to bails or bonds), shall apply to the proceedings before a Special Court and for the purposes of the said provisions, the Special Court shall be deemed to be a Court of Session and the persons conducting the prosecution before the Special Court, shall be deemed to be a Public Prosecutor. 2 of 1974.

Provided that the Central Government may also appoint for any case or class or group of cases a Special Public Prosecutor.

(2) A person shall not be qualified to be appointed as a Public Prosecutor or a Special Public Prosecutor under this section unless he has been in practice as an Advocate for not less than seven years, under the Union or a State, requiring special knowledge of law.

2 of 1974. (3) Every person appointed as a Public Prosecutor or a Special Public Prosecutor under this section shall be deemed to be a Public Prosecutor within the meaning of clause (u) of section 2 of the Code of Criminal Procedure, 1973 and the provisions of that Code shall have effect accordingly.

2 of 1974. **46.** The High Court may exercise, so far as may be applicable, all the powers conferred by Chapter XXIX or Chapter XXX of the Code of Criminal Procedure, 1973, on a High Court, as if a Special Court within the local limits of the jurisdiction of the High Court were a Court of Session trying cases within the local limits of the jurisdiction of the High Court. Appeal and revision.

CHAPTER VIII

AUTHORITIES

47. There shall be the following classes of authorities for the purposes of this Act, namely:— Authorities under the Act.

(a) Director or Additional Director or Joint Director,

(b) Deputy Director,

(c) Assistant Director, and

(d) such other class of officers as may be appointed for the purposes of this Act.

48. (1) The Central Government may appoint such persons as it thinks fit to be authorities for the purposes of this Act. Appointment and powers of authorities and other officers.

(2) Without prejudice to the provisions of sub-section (1), the Central Government may authorise the Director or an Additional Director or a Joint Director or a Deputy Director or an Assistant Director appointed under that sub-section to appoint other authorities below the rank of an Assistant Director.

(3) Subject to such conditions and limitations as the Central Government may impose, an authority may exercise the powers and discharge the duties conferred or imposed on it under this Act.

Power of
authorities
regarding
summons,
production
of
documents
and to give
evidence,
etc.

49. (1) The Director shall, for the purposes of section 12, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit in respect of the following matters, namely:— 5 of 1908.

(a) discovery and inspection;

(b) enforcing the attendance of any person, including any officer of a financial institution or a company, and examining him on oath;

(c) compelling the production of records;

(d) receiving evidence on affidavits;

(e) issuing commissions for examination of witnesses and documents; and

(f) any other matter which may be prescribed.

(2) The Director, Additional Director, Joint Director, Deputy Director or Assistant Director shall have power to summon any person whose attendance he considers necessary whether to give evidence or to produce any records during

the course of any investigation or proceeding under this Act.

(3) All the persons so summoned shall be bound to attend in person or through authorised agents, as such officer may direct, and shall be bound to state the truth upon any subject respecting which they are examined or make statements, and produce such documents as may be required.

45 of 1860. (4) Every proceeding under sub-sections (2) and (3) shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code.

(5) Subject to any rules made in this behalf by the Central Government, any officer referred to in sub-section (2) may impound and retain in his custody for such period, as he thinks fit, any records produced before him in any proceedings under this Act:

Provided that an Assistant Director or a Deputy Director shall not—

(a) impound any records without recording his reasons for so doing; or

(b) retain in his custody any such records for a period exceeding three months, without obtaining the previous approval of the Director.

50. (1) The authorities shall exercise all or any of the powers and perform all or any of the functions conferred on, or, assigned, as the case may be, to such authorities by or under this Act or the rules framed thereunder in

Jurisdiction
of
authorities.

accordance with such directions as the Central Government may issue for the exercise of powers and performance of the functions by all or any of the authorities.

(2) In issuing the directions or orders referred to in sub-section (1), the Central Government may have regard to any one or more of the following criteria, namely:—

- (a) territorial area;
- (b) classes of persons;
- (c) classes of cases; and
- (d) any other criterion specified by the Central Government in this behalf.

Power of
Central
Government
to issue
directions,
etc.

51. The Central Government may, from time to time, issue such orders, instructions and directions to the authorities as it may deem fit for the proper administration of this Act and such authorities and all other persons employed in execution of this Act shall observe and follow such orders, instructions and directions of the Central Government:

Provided that no such orders, instructions or directions shall be issued so as to—

- (a) require any authority to decide a particular case in a particular manner, or
- (b) interfere with the discretion of the Adjudicating Authority in exercise of his functions.

Empowerment
of certain
officers.

52. The Central Government may, by a special or general order, empower any officer of the Central Government or of a State Government to act as an authority under this Act.

53. The following officers are hereby empowered and required to assist the authorities in the enforcement of this Act, namely:—

Certain officers to assist in inquiry, etc.

(a) officers of the Customs and Central Excise Departments;

61 of 1985. (b) officers appointed under sub-section (1) of section 5 of the Narcotic Drugs and Psychotropic Substances Act, 1985;

43 of 1961. (c) income-tax authorities under sub-section (1) of section 117 of the Income-tax Act, 1961;

42 of 1956. (d) officers of the stock exchange which is recognised under section 4 of the Securities Contracts (Regulation) Act, 1956;

2 of 1934. (e) officers of the Reserve Bank of India constituted under sub-section (1) of section 3 of the Reserve Bank of India Act, 1934;

(f) officers of Police;

46 of 1973. (g) officers of enforcement appointed under section 4 of the Foreign Exchange Regulation Act, 1973;

15 of 1992. (h) officers of the Securities and Exchange Board of India established under section 3 of the Securities and Exchange Board of India Act, 1992;

(i) such other officers of the Central Government, State Government, local authorities or banking companies as the Central Government may, by notification, specify, in this behalf.

CHAPTER IX

MISCELLANEOUS

Punishment
for
vexatious
search

54. Any authority or officer exercising powers under this Act or any rules made thereunder, who,—

(a) without reasonable ground of suspicion, searches or causes to be searched any building or place; or

(b) vexatiously detains or searches or arrests any person,

shall for every such offence be liable on conviction for imprisonment for a term which may extend to three months or fine which may extend to ten thousand rupees or both.

Punishment
for false
information.

55. Any person wilfully and maliciously giving false information and so causing an arrest or a search to be made under this Act shall on conviction be liable for imprisonment for a term which may extend to three months or fine which may extend to ten thousand rupees or both.

Cognizance
of offences.

56. No court shall take cognizance of any offence under section 54 or section 55 except with the previous sanction of the Central Government.

Code of
Criminal
Procedure,
1973 to
apply.

57. The provisions of the Code of Criminal Procedure, 1973 shall apply, in so far as they are not inconsistent with the provisions of this Act, to arrests, searches and seizures, attachment confiscations, investigations, prosecution and all other proceedings under this Act. 2 of 1974.

Disclosure of
information.

58. The Director or any other authority specified by him by a general or special order

in this behalf may furnish or cause to be furnished to—

(i) any officer, authority or body performing any functions under any law relating to imposition of any tax, duty or cess or to dealings in foreign exchange, or prevention of illicit traffic in the Narcotic Drugs and Psychotropic Substances Act, 1985; or

61 of 1985.

(ii) such other officer, authority or body performing functions under any other law as the Central Government may, if in its opinion it is necessary so to do in the public interest, specify by notification in the Official Gazette in this behalf,

any information received or obtained by such Director or any other authority, specified by him in the performance of their functions under this Act, as may, in the opinion of the Director or the other authority so specified by him, be necessary for the purpose of the officer, authority or body specified in clause (i) or clause (ii) to perform his or its functions under that law.

59. No suit, prosecution or other legal proceeding shall lie against the Central Government or any authority or any other person exercising any power or discharging any functions or performing any duties under this Act for anything which is done or intended to be done under this Act or any rule or instruction or direction made thereunder.

Bar of legal proceedings.

60. No notice, summons, order, document or other proceeding, furnished or made or issued or taken or purported to have been furnished or made or issued or taken in pursuance of any of the provisions of this Act

Notice, etc., not to be invalid on certain grounds.

shall be invalid, or shall be deemed to be invalid merely by reason of any mistake, defect or omission in such notice, summons, order, document or other proceeding if such notice, summons, order, document or other proceeding is in substance and effect in conformity with or according to the intent and purpose of this Act.

Recovery of
fines.

61. Where any fine imposed on any person under section 12 is not paid within six months from the day of imposition of fine, the Director or any other officer authorised by him in this behalf may proceed to recover the amount from the said person in the same manner as prescribed in Schedule II of the Income-Tax Act, 1961 for the recovery of arrears and he or any officer authorised by him in this behalf shall have all the powers of the Tax Recovery Officer mentioned in the said Schedule for the said purpose.

43 of 1961.

Offences by
companies.

62. (1) Where a person committing a contravention of any of the provisions of this Act or of any rule, direction or order made thereunder is a company, every person who, at the time the contravention was committed, was in charge of, and was responsible to the company, for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to punishment if he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention.

(2) Notwithstanding anything contained in sub-section (1), where a contravention of any

of the provisions of this Act or of any rule, direction or order made thereunder has been committed by a company and it is proved that the contravention has taken place with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officer of any company, such director, manager, secretary or other officer shall also be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly.

*Explanation:—*For the purposes of this section,—

(i) “company” means any body corporate and includes a firm or other association of individuals; and

(ii) “director”, in relation to a firm, means a partner in the firm.

63. The provisions of this Act shall have effect notwithstanding anything is inconsistent therewith contained in any other law for the time being in force.

Act to have overriding effect.

64. (1) Where—

Continuation of proceedings in the event of death or insolvency.

(a) any property of a person has been attached under section 7 and no appeal against the order attaching such property has been preferred; or

(b) any appeal has been preferred to the Appellate Tribunal, and—

(i) in a case referred to in clause (a), such person dies or is adjudicated an insolvent before preferring an appeal to the Appellate Tribunal; or

(ii) in a case referred to in clause (b), such person dies or is adjudicated an insolvent during the pendency of the appeal,

then, it shall be lawful for the legal representatives of such person or the official assignee or the official receiver, as the case may be, to prefer an appeal to the Appellate Tribunal or as the case may be, to continue the appeal before the Appellate Tribunal, in place of such person and the provisions of section 25 shall, so far as may be, apply, or continue to apply, to such appeal.

(2) Where—

(a) after passing of a decision or order by the Appellate Tribunal, no appeal has been preferred to the High Court under section 41; or

(b) any such appeal has been preferred to the High Court,—

then—

(i) in a case referred to in clause (a), the person entitled to file the appeal dies or is adjudicated an insolvent before preferring an appeal to the High Court, or

(ii) in a case referred to in clause (b), the person who had filed the appeal dies or is adjudicated an insolvent during the pendency of the appeal before the High Court,

then, it shall be lawful for the legal representatives of such person, or the official assignee or the official receiver, as the case may be, to prefer an appeal to the High Court or to

continue the appeal before the High Court in place of such person and the provision of section 41 shall, so far as may be, apply or continue to apply to such appeal.

(3) The powers of the official assignee or the official receiver under sub-section (1) or sub-section (2) shall be exercised by him subject to the provisions of the Presidency-towns Insolvency Act, 1909 or the Provincial Insolvency Act, 1920, as the case may be.

5 of 1909.
5 of 1920.

65. (1) The Central Government may, by notification, make rules for carrying out the provisions of this Act.

Power to
make rules.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the form in which records referred to in this Act may be maintained;

(b) the manner in which and the conditions subject to which the properties confiscated may be received and managed under sub-section (2) of section 9;

(c) the additional matters in respect of which the Adjudicating Authority may exercise the powers of a civil court under clause (f) of sub-section (i) of section 10;

(d) the manner in which records may be verified and maintained by financial institutions and intermediaries under clause (c) of sub-section (1) of section 11;

(e) the procedure and the manner of maintaining and furnishing information under sub-section (1) of section 11 as required under section 14;

(f) the rules relating to search and seizure under sub-section (1) of section 16;

(g) the manner in which records authenticated outside India may be received under sub-section (2) of section 21;

(h) the form of appeal and the fee for filing such appeal, under sub-section (3) of section 25;

(i) the salary and allowances payable to and the other terms and conditions of service of the Chairperson and Members of the Appellate Tribunal under section 29;

(j) the salaries and allowances and the conditions of service of the officers and employees of the Appellate Tribunal under sub-section (3) of section 33;

(k) the additional matters in respect of which the Appellate Tribunal may exercise the powers of a civil court under clause (i) of sub-section (2) of section 34;

(l) the additional matters in respect of which the authorities may exercise powers of a civil court under clause (f) of sub-section (1) of section 49;

(m) rules relating to impounding and custody of records under sub-section (5) of section 49;

(n) any other matter which is required to be, or may be, prescribed.

Laying of
rules.

66. Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or

more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be, without prejudice to the validity of anything previously done under that rule.

67. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, do anything not inconsistent with such provisions of this Act for the purpose of removing the difficulty:

**Removal of
difficulty.**

Provided that no such order shall be made under this section after the expiry of two years from the commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

THE SCHEDULE

[See section 2(s)]

PART I

OFFENCES UNDER THE INDIAN PENAL CODE

Section	Description of offence
1	2
121	Waging, or attempting to wage war, or abetting waging of war, against the Government of India.
121A	Conspiracy to commit offences punishable under section 121 against the State.
302	Murder.
304	Culpable homicide not amounting to murder, if act by which the death is caused is done with the intention of causing death.
307	Attempt to murder.
308	Attempt to commit culpable homicide.
327	Voluntarily causing hurt to extort property, or a valuable security, or to constrain to do anything which is illegal or which may facilitate the commission of the offence.
329	Voluntarily causing grievous hurt to extract property, or a valuable security, or to constrain to do anything which is illegal or which may facilitate the commission of the offence.
364A	Kidnapping for ransom, etc.
384 to 389	Offences relating to extortion.

1	2
<hr/>	
392 to 402	Offences relating to robbery and dacoity.
467	Forgery of a valuable security, will or authority to make or transfer any valuable security, or to receive any money, etc.
477A	Falsification of accounts.
489A	Counterfeiting currency notes or bank notes.
489B	Using as genuine, forged or counterfeit currency notes or bank notes.

PART II

OFFENCES UNDER THE IMMORAL TRAFFIC (PREVENTION) ACT, 1956

- | | |
|---|--|
| 5 | Procuring, inducing or taking person for the sake of prostitution. |
| 6 | Detaining a person in premises where prostitution is carried on. |
| 8 | Seducing or soliciting for purpose of prostitution. |
| 9 | Seduction of a person in custody. |

PART III

OFFENCES UNDER THE ARMS ACT, 1959

- | | |
|----|---|
| 25 | To manufacture, sell, transfer, convert, repair or test or prove or expose or offer for sale or transfer or have in possession for sale, transfer, conversion, repair, test or proof, any arms or ammunition in contravention of section 5 of the Arms Act, 1959. |
| | To acquire, have in possession or carry any prohibited arms or prohibited ammunition in contravention of section 7 of the Arms Act, 1959. |
-

1

2

Contravention of section 24A of the Arms Act, 1959 relating to prohibition as to possession of notified arms in disturbed areas, etc.

Contravention of section 24B of the Arms Act, 1959 relating to prohibition as to carrying of notified arms in or through public places in disturbed areas.

26 To do any act in contravention of any provisions of section 3, 4, 10 or 12 of the Arms Act, 1959 in such manner as specified in sub-section (1) of section 26 of the said Act.

To do any act in contravention of any provisions of section 5, 6, 7 or 11 of the Arms Act, 1959 in such manner as specified in sub-section (2) of section 26 of the said Act.

27 Use of arms or ammunitions in contravention of section 5 or use of any arms or ammunition in contravention of section 7 of the Arms Act, 1959.

28 Use and possession of fire arms or imitation fire arms in certain cases.

29 Knowingly purchasing arms from unlicensed person or for delivering arms, etc., to person not entitled to possess the same.

30 Contravention of any condition of a licence or any provisions of the Arms Act, 1959 or any rule made thereunder.

PART IV

OFFENCES UNDER THE NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT, 1985

15 Contravention in relation to poppy straw.

18 Contravention in relation to opium poppy and opium.

1	2
20	Contravention in relation to cannabis plant and cannabis.
22	Contravention in relation to psychotropic substances.
23	Illegal import into India, export from India or transshipment of narcotic drugs and psychotropic substances.
24	External dealings in narcotic drugs and psychotropic substances in contravention of section 12 of the Narcotic Drugs and Psychotropic Substances Act, 1985.
25A	Contravention of orders made under section 9A of the Narcotic Drugs and Psychotropic Substances Act, 1985.
27A	Financing illicit traffic and harbouring offenders.
29	Abetment and criminal conspiracy.

PART V

OFFENCES UNDER THE PREVENTION OF CORRUPTION ACT, 1988

7	Public servant taking gratification other than legal remuneration in respect of an official Act.
8	Taking gratification in order, by corrupt or illegal means, to influence public servant.
9	Taking gratification for exercise of personal influence, with public servant.
10	Abetment by public servant of offences defined in section 8 or section 9 of the Prevention of Corruption Act, 1988.

STATEMENT OF OBJECTS AND REASONS

It is being realised, world over, that money-laundering poses a serious threat not only to the financial systems of countries, but also to their integrity and sovereignty. Some of the initiatives taken by the international community to obviate such threat are outlined below:—

- (a) The United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, to which India is a party, calls for preventing of laundering of proceeds of drug crimes and other connected activities and confiscation of proceeds derived from such offence.
- (b) The Basle statement of principles, enunciated in 1989, outlined basic policies and procedures that banks should follow in order to assist the law enforcement agencies in tackling the problem of money-laundering.
- (c) The Financial Action Task Force held in Paris from 14th to 16th July, 1989, to examine the problem of money-laundering has made forty recommendations, which provide the foundation material for comprehensive legislation to combat the problem of money-laundering. The recommendations were classified under various heads. Some of important heads are—
 - (i) declaration of laundering of monies earned through serious crimes, a criminal offence;
 - (ii) to work out modalities of disclosure by financial institutions regarding reportable transactions;
 - (iii) confiscation of the proceeds of crime;
 - (iv) declaring money-laundering to be an extraditable offence; and
 - (v) promoting international co-operation in investigation of money-laundering.

- (iv) The Political Declaration and Global Programme of Action adopted by United Nations General Assembly by its Resolution No. S-17/2 of 23rd February, 1990, *inter alia*, calls upon the member States to develop mechanism to prevent financial institutions from being used for laundering of drug related money and enactment of legislation to prevent such laundering.
- (v) The United Nations in the Special Session on Countering World Drug Problem Together concluded on 8th to 10th June, 1998 has made another declaration regarding the need to combat money-laundering. India is a signatory to this declaration.

2. In view of the above, there is an urgent need for the enactment of a comprehensive legislation providing, *inter alia*, for preventing and punishing offences relating to money-laundering and connected activities, confiscation of proceeds of crime, disclosure of such transactions by financial institutions, setting up of agencies and mechanisms for co-ordinating measures necessary for combating money-laundering, etc.

3. The Bill seeks to achieve the above objects. The Notes on clauses explain the various provisions of the Bill.

NEW DELHI;
The 28th July, 1998.

YASHWANT SINHA.

Clause 3 proposes to define the offence of money-laundering.

The term “money-laundering” is sought to be defined in an exhaustive manner. The term will mean engaging directly or indirectly in a transaction or a series of transactions including possessing, concealing, disguising, transferring, converting, carrying or disposing of any property which is or represents in any manner the proceeds or gains of a crime within India or outside India. The essential ingredients of the definitions are that,—

- (i) a crime has been committed;
- (ii) there are proceeds of or gains from the crime; and
- (iii) there is a transaction in respect of the proceeds of the gains.

Clause 4 seeks to provide punishment for money-laundering. It is proposed that the offence shall carry punishment of rigorous imprisonment for a period of not less than three years but not more than seven years and fine up to five lakh rupees. The maximum punishment may extend to ten years rigorous imprisonment instead of seven years rigorous imprisonment.

However, where the proceeds of crime involved in money-laundering relates to an offence specified in Part IV of the schedule.

Clause 5 seeks to provide for attachment of property involved in money-laundering. The Director is sought to be empowered to attach the property provided that he has reason to believe that a person is in possession of property involved in money-laundering or he is dealing in such property. The violations of the provisions of the Narcotic Drugs and Psychotropic Substances Act, 1985 constitute the most serious offences under the proposed Bill and India has international obligations in this regard. Therefore, the Director is sought to be empowered to attach the laundered property in drug related cases soon after the case regarding the offence is sent by the police officer or a complaint is filed by the designated officer before the court for taking cognizance of the offence. However, in other cases, some safeguards need to be

incorporated in the proposed legislation. It is proposed that in such cases, the attachment may be made only after, based on the outcome of the investigations, a report has been forwarded under section 173 of the Code of Criminal Procedure, 1973 before the competent Magistrate. It is proposed that the attachment shall remain in force for a period not exceeding ninety days or the period ending on the date of order of adjudication made in respect of the property representing the proceeds of crime, whichever is earlier. The attachment shall, however, not prevent the person interested in the enjoyment of the property from such enjoyment. It is also proposed that the Director or any other officer who provisionally attaches any property under the proposed Act shall within a period of thirty days from such attachment file a complaint before the Adjudicating Authority.

Clause 6 proposes to set-up Adjudicating Authorities so as to adjudicate in a quasi-judicial manner whether the attached property is involved in money-laundering or not. It is sought that the Central Government shall appoint one or more persons not below the rank of Joint Secretary to the Government of India as Adjudicating Authorities and specify the matter and places where they may exercise jurisdiction.

Clause 7 proposes to lay down the procedure for adjudication. After filing of a complaint by the Director or any other officer before the Adjudicating Authority, if the Adjudicating Authority has reason to believe that any person has committed an offence of money-laundering, he may serve a notice of minimum thirty days on such a person asking him to indicate the sources of his income, earnings, or assets by which he has acquired the attached property and to show-cause as to why all or any of such acquired properties may not be declared to be properties involved in money-laundering and confiscated by the Central Government. It is also proposed to be provided that where the attached property is held by a person on behalf of any other person then a copy of such notice shall also be served upon the other person. Where the property is held jointly by more than one person, then such notice shall be served to the person holding the property. Sub-clause (2) proposes that the Adjudicating Authority shall after considering the reply, if any, to the notice issued by it, and after hearing the aggrieved person and the Director or any other authorised officer and after taking into account all relevant materials placed on record, record a finding whether the attached properties are involved in money-laundering or not. It is sought to be provided that where the property is claimed by any other person to whom the notice is

issued then such person should also be given an opportunity of being heard to prove that the property is not involved in money-laundering. Sub-clause (3) seeks to provide that if the Adjudicating Authority adjudicates that the property is involved in money-laundering, he shall confirm in writing, the attachment. Thereafter the attachment shall continue during the pendency of the proceedings relating to any scheduled offence before a Court and shall become final after the guilt of the person is proved in the trial Court and the order of such trial Court becomes final. Sub-clause (4) seeks to provide that where the provisional order of attachment is confirmed by the Adjudicating Authority then the Director or any other authorised officer shall forthwith take the possession of the attached property. Sub-clause (5) provides that where the concerned person is acquitted on the conclusion of trial for any scheduled offence then the attachment of property shall cease to have effect. Sub-section (6) provides that once a crime relating to a property is proved in the competent court of law, the Adjudicating authority shall pass an order in writing confiscating such property after hearing the concerned persons.

Clause 8 seeks to provide that once a crime relating to a property is proved in the competent court of law, the Adjudicating Authority shall pass an order in writing confiscating such property after hearing the concerned persons. It is further sought to be provided that if the Adjudicating Authority is of the opinion that any encumbrance of the property or lease hold interest has been created with a view to defeat the provisions of Chapter III the Adjudicating Authority may declare such encumbrance or lease hold interest to be void. However, such an order may be passed only after giving the person interested in the property an opportunity of being heard. It is proposed to be further provides that nothing in clause 8 shall discharge any person from any liability in respect of such encumbrances which may be enforced against such person by a suit for damages.

Clause 9 proposes to make provisions for management of properties confiscated under the proposed Act. Sub-clause (1) seeks to authorise the Central Government to appoint by notification in the Official Gazette officers not below the rank of a Joint Secretary to the Government to perform the functions of an Administrator. Sub-clause (2) proposes that the administrator so appointed shall receive and manage the confiscated property according to conditions that may be prescribed by rules. Sub-clause (3) seeks to provide that the

Administrator shall also take such measures as the Central Government may direct to dispose of the property which is vested in the Central Government under clause 8.

Clause 10 seeks to introduce provisions conferring power regarding summons, production of documents, giving evidence, etc., on the Adjudicating authority. As per sub-clause (1), it is proposed that the Adjudicating Authority shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit in respect of discovery and inspection, enforcing the attendance of any person, compelling the production of records, receiving evidence on affidavits, issuing commissions for examination of witnesses and documents and any other matters which may be prescribed. It is proposed that the persons so summoned shall be bound to attend in person or through authorised agents and shall also be bound to state the truth upon any subject respecting which they are examined and make statement or produce the required documents. Sub-clause (3) proposes that every proceeding under this clause shall be deemed to be judicial proceedings within the meanings of section 193 and 228 of the Indian Penal Code.

Clause 11 proposes to make it obligatory for every financial institution and intermediary to maintain a record of all transactions or series of interconnected transactions exceeding the value of rupees twenty-five lakhs held within a month.

It is also proposed that they would be required to furnish information of these transactions to the Commissioner of Income-tax having jurisdiction over such financial institutions or the intermediaries. The financial institutions and intermediaries would also be required to verify and maintain the records of the identity of all its clients in the prescribed manner for a period of five years from the date of cessation of transactions between the clients and financial institutions.

Clause 12 proposes to empower the Director to impose a fine on the financial institution if the institution has failed to maintain or retain records in accordance with the provisions of clause 11. The Director may levy a fine on such financial institution of not less than rupees ten thousand but not exceeding one lakh rupees. A copy of such order levying the fine will be forwarded to every financial institution or intermediary or other person who is a party in the proceedings.

Clause 13 seeks to provide that the financial institutions, intermediaries and their offices will be provided immunity from any civil or criminal liability, under any existing law, arising out of disclosures of informations under clause 11.

Clause 14 seeks to authorise the Central Government, in consultation with the Reserve Bank of India to prescribe the procedures, etc., for reporting of the transactions.

Clause 15 seeks to empower the Assistant Director or the Deputy Director to carry out a survey of the premises in case where he has reason to believe that money-laundering is being carried on. The powers are similar to the powers granted to the Income-tax authorities under section 133A of the income-tax Act, 1961. It also seeks to empower the officer authorised to conduct the survey to require any proprietor, employee or any other person who is attending to the matters at the place of survey to assist the officer in affording him the facility to inspect the required records, to check or verify the proceeds of crime or any transactions related to the proceeds of crime which may be found at the site of survey and to furnish the required information. In these proceedings, while marks of identification may be placed on the records inspected or copies and extracts, etc., may be taken from the books and documents, and an inventory of cash and valuables may be drawn and the statements may be recorded.

Clause 16 empowers the Director to authorise search and seizure operations in a premises provided that he has reason to believe that any person has committed an act of money-laundering, or is in possession of money, bullion or valuables, etc., involved in money-laundering, or is in possession of records pertaining to money-laundering. The Director may authorise any officer subordinate to him to enter and search any building, place, vessel, vehicle or aircraft where he has reason to suspect that such records or proceeds of crime are kept, and to break open any lock where the keys are not available, to seize any record or property found as a result of such search, to place marks of identification on such records, take their extracts or copies, make a note or an inventory of such record or property and examine on oath any person who is found to be in possession or in control of any record or property.

It is further sought to be provided that such search may be authorised in drug related cases soon after the case regarding the

offence is sent by the police officer or a complaint is filed by the designated officer before the court for taking cognizance of the offence. In other cases it is proposed that search may be authorised only after, based on the outcome of the investigations, a report has been forwarded under section 173 of the Code of Criminal procedure before the competent magistrate.

It is further proposed vide sub-clause (2) that if in the course of survey it is found that evidence of money-laundering is available, which is likely to be tampered with, then the officer may seize the evidence on the footing that he has been authorised by the Director to carry out a search and seizure operation. However, he will have to record his reasons for taking this action in writing and communicate the same along with the result of search to the Director immediately after the search.

Clause 17 proposes to confer the power of search of a person on an officer authorised in this behalf by the Central Government, if he has reason to believe that such person is in possession of or has secreted about his person any document, money, bullion, etc., which will be useful for any proceeding under the proposed legislation. Sub-clause (2) proposes that where an authority is about to search any person and that person so requires, then he shall take such person without unnecessary delay to the nearest Gazetted Officer superior in rank to him or to a Magistrate. Sub-clause (3) authorises the authority to detain the person until he can bring him before the Gazetted Officer superior in rank to him or to a Magistrate. Sub-clause (4) provides that if the Gazetted Officer or the Magistrate before whom such person is brought, sees no reasonable ground or search then he may discharge such person but direct that the search may be made. Sub-clause (5) provides that before making a search of a person the authority shall call upon two or more persons to attend and witness the search. Sub-clause (6) provides that the authority shall prepare a list of records or properties seized in the course of the search and obtain the signatures of the witnesses on this list. Sub-clause (7) provides that no female shall be searched by anyone except another female.

Sub-clause (8) proposes to provide that such a search may be authorised in drug related cases soon after the case regarding the offence is sent by the police officer or a complaint is filed by the designated officer before the court for taking cognizance of the offence. In other cases it is proposed that search may be authorised only after, based on the outcome of investigations, a report has been forwarded

under section 173 of the Code of Criminal Procedure before the competent magistrate.

Clause 18 proposes to empower the Director, the Deputy Director, the Assistant Director or any other authorised officer to arrest a person if he has reason to believe that the person is guilty of an offence under the proposed legislation. Necessary safeguards such as furnishing the grounds of arrest and production before the Judicial Magistrate or a Metropolitan Magistrate without unnecessary delay are also sought to be provided.

Clause 19 proposes to make provisions regarding retention of property seized in the course of search of premises or persons. The property seized during search of premises or search of persons, if required for adjudication can, generally speaking, be retained for a period not exceeding three months. If retention is required for a longer period, specific permission of the Adjudicating Authority has to be taken. Before giving such permission the Adjudicating Authority has to satisfy himself that the aforesaid assets are involved in money-laundering and they are required for adjudication. After the date of passing of the order of confiscation, the Adjudicating Authority, shall direct the release of such assets which are not involved in money-laundering. However, the director is sought to be empowered under sub-clause (5) to retain the assets even beyond the date of order of adjudication where an appeal is filed against the order within forty-five days from the date of the order of the Adjudicating Authority.

Clause 20 proposes similar provisions in respect of retention of records seized during search under clause 16 or 17.

Clause 21 seeks to provide a presumption regarding books of account and money, bullion, etc., seized in the course of search and seizure operations. It shall be presumed that the aforesaid belong to the person from whose possession or control the books or money, etc., were seized. It shall also be presumed that the books, etc., contain the true account of the transactions mentioned therein. Further, in case a document is received in the prescribed manner from outside India, it shall be presumed that the handwriting and signatures, etc., are correct and that it has been properly, recorded and conveyed, etc.

Clause 22 seeks to provide a presumption that where money-laundering involves two or more interconnected transactions and one

or more such transaction is proved to be involved in money-laundering, then for the purposes of adjudication or confiscation, it shall be presumed that remaining transactions form part of such interconnected transactions.

Clause 23 seeks to provide the presumption regarding the existence of “mens-rea” being culpable mental state of the accused in civil and criminal proceedings but the accused will be at liberty to rebut this presumption as a defence.

Clause 24 seeks to authorise the Central Government to establish an Appellate Tribunal by notification to hear appeals against the orders of the Adjudicating Authority and the authorities under this Act.

Clause 25 seeks to provide that the Director or any person aggrieved may prefer an appeal to the Appellate Tribunal against orders of adjudication, orders levying fines and orders of retention of valuables and books, etc.

Sub-clause (2) provides that an appeal may be preferred to the Appellate Tribunal by a Financial Institution or an intermediary aggrieved by any order of the Director.

Sub-clause (3) provides that the appeal is to be filed within forty-five days of receipt of the order. However the Appellate Tribunal will be empowered to entertain an appeal beyond this statutory period on showing of good and sufficient reasons.

Sub-clause (4) proposes that the Appellate Tribunal after hearing the rival parties, may pass such orders as it thinks fit.

Sub-clause (5) proposes that the Appellate Tribunal shall send a copy of every order passed by it to the parties of the appeal and to the concerned Appellate Tribunal and the Director.

Sub-clause (6) proposes that the Appellate Tribunal shall deal with the appeal filed before it as expeditiously as possible and endeavour to dispose it in six months.

Clause 26 details the composition of the Appellate Tribunal. It is sought to be provided that the AT shall have a Chairperson and two other members.

Sub-clause (2) proposes that the jurisdiction of the Appellate Tribunal may be exercised by its benches which may be constituted by its Chairperson with one or two members. It is proposed that the benches of the Appellate Tribunal shall ordinarily sit in New Delhi or at such other places as may be notified by the Central Government in consultation with the Chairperson. It is also sought to be provided that the Central Government may notify the area of jurisdiction of each bench of Appellate Tribunal. Sub-clause (3) proposes that the Chairman may transfer a member from one Bench to another. Sub-clause (4) proposed that if any stage of the hearing of any case it appears to the Chairperson or to the Member that the case ought to be heard by a bench consisting of two members the case may be transferred accordingly by the Chairperson.

Clause 27 proposes to detail the qualifications for appointment of Chairpersons and Members of the Appellate Tribunal. The Chairperson shall be a sitting or retired Judge of the Supreme Court or a High Court and other members shall be either a sitting or retired Judge of the High Court or a member of the Indian Legal Service who has held a post in Grade I of that Service for atleast three years, or has been a member of the Indian Revenue Service and has held the post of Commissioner of Income-tax or equivalent for atleast three years or has been a member of the Indian Economic Service and has held the post of Joint Secretary or equivalent for atleast three years. It is also proposed to be provided that no sitting Judge of the Supreme Court or a High Court shall be appointed as a Chairperson or a member of the Appellate Tribunal except after consultation with the Chief Justice of India.

Clause 28 proposes that the Chairperson or other Member shall hold office for a term of five years. However, it is provided that no Chairperson shall hold office after attaining the age of sixty-eight years and Member after attaining the age of sixty-five years.

Clause 29 proposes that the salaries and allowances and the terms and conditions of the service of the Chairperson and Members would be as prescribed. It is provided that the salary and allowances and other terms and conditions would not be varied so as to the disadvantage of such Chairperson or Member.

Clause 30 proposes that if there is a vacancy for reasons other than temporary office then the Central Government may appoint another

person as Chairperson or Member in accordance with the provisions of the proposed Act and the proceedings may be continued before the Appellate Tribunal from the State at which the vacancy is filled.

Clause 31 provides that the Chairperson or any other Member may resign his office by giving a notice in writing to the Central Government. It is also provided that such Chairperson or Member unless permitted by the Central Government to relinquish his office would continue to hold office until the expiry of three months from the date of receipt of notice or until a successor is appointed whichever is earlier. Sub-clause (2) provides that a Chairperson or any other person shall not be removed by office except by an order made by the Central Government on the grounds of proved misbehaviour or incapacity and after an enquiry made by a person appointed by the President.

Clause 32 provides for circumstances in which a Member can act as a Chairperson of the Tribunal. When there is a vacancy in the office of the Chairperson by that resignation or otherwise, the Central Government may authorise one of the members to act as a Chairperson till the new incumbent is appointed. Sub-clause (2) provides that when the Chairperson is unable to discharge his functions owing to absence illness or any other cause, the Central Government may notify one Member to discharge the functions of the Chairperson till the Chairperson resume his duties.

Clause 33 proposes to empower the Central Government to provide the officers and employees of the Appellate Tribunal who shall discharge their function under the general superintendence of the Chairperson. The salaries and allowances and other conditions of service of the officers and employees of the Appellate Tribunal shall be as prescribed.

Clause 34 seeks to provide for the procedure and power of the Appellate Tribunal.

Sub-clause (1) proposes that the Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908, but shall be guided by principle of natural justice and subject to other provisions of the Act, the Appellate Tribunal shall have powers to regulate its own procedure. Sub-clause (2) proposes that the

Appellate Tribunal shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit in respect of summoning and reporting the attendance of any person and examining him on oath, requiring the discovery and production of documents, receiving evidence on affidavits, requisitioning any public record on document, issuing commissions for the examination of witness or document, reviewing its decision, dismissing a representation for default or deciding it *ex parte*, setting aside any order or in any other matter which may be prescribed. Sub-clause (3) provides that an order made by the Appellate Tribunal under the proposed Act shall be executable by the Appellate Tribunal. As a decree of civil court and for this purpose the Appellate Tribunal shall have all the powers of a civil court. Sub-clause (4) proposes that notwithstanding the provision of sub-clause (3) the Appellate Tribunal, may transmit any order made by it to a civil court having local jurisdiction for execution of the order as if it were a decree made by that Court. Sub-clause (5) proposes that all the proceedings before the Appellate Tribunal shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal Code and the Appellate Tribunal shall be deemed to be a civil court for the purposes of sections 345 and 346 of the Code of Criminal Procedure, 1973.

Clause 35 provides that the Chairperson may by notification make provisions regarding distribution of work of the Appellate Tribunal among the Benches.

Clause 36 provides to empower the Chairperson to transfer any case pending before one Bench for disposal to another bench if any of the parties make an application in this behalf and after giving notice and hearing to the parties. The Chairperson may transfer any case from one bench to another on his own motion also.

Clause 37 provides that the decision of the Appellate Tribunal shall be by majority. It is also provided that if the Member of the Bench consisting of two Members differ in opinion then they shall state the point or points of difference and make a reference to the Chairperson who may hear the disputed points himself or make a reference to one or more other members of the Appellate Tribunal. The decision on such points shall be decided according to the opinion of the majority of the members of the Appellate Tribunal including the members who have first heard the case.

Clause 38 seeks to grant the right of appellant to either appear in person or to take the assistance of legal petitioner of his choice to present his case before the Appellate Tribunal. Sub-clause (2) authorises the Central Government of the Director to authorise one or more legal practitioner or any of its officers to act as presenting officer. Every person so authorised may present the case with respect to appeal before the Appellate Tribunal.

Clause 39 proposes that the Chairperson, Members, other officers and employees of the Appellate Tribunal, the adjudicating authority, Director and the officers subordinate to him shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

Clause 40 seeks to provide that no civil court shall have jurisdiction to entertain any suit or proceeding in respect of matter for which the Director, Adjudicating Authority, or the Appellate Tribunal is empowered under the proposed Act. It is also proposed that no injunction shall be granted by any court or any other authority in respect of action taken or to be taken in pursuance of any power conferred by or under this Act.

Clause 41 proposes that any person aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the High Court within sixty days from the date of communication of decision or order of the Appellate Tribunal on any question of law. It is proposed to be provided that the High Court may extend the period for filing the appeal. It is explained that for the purposes of this section, High Court means the High Court within the jurisdiction of which the aggrieved party ordinarily resides or carry on business or personally work for gains. Where the Central Government is the aggrieved party, then the High Court within whose jurisdiction the respondent ordinarily resides or carries on business or personally works for gain, then that High Court shall have jurisdiction.

Clause 42 seeks to provide that the Central Government shall in consultation with the Chief Justice of the High Court designate by way of notification one or more court of session as special court for trial of offences punishable under clause 4 of this proposed Act. The area and the class or group of cases in respect of which such special court shall exercise their jurisdiction would also be specified in the notification. Sub-clause (2) proposes that if the accused is charged in

respect of any other offence, then the special court may try the same as under the Code of Criminal Procedure, 1973.

Clause 43 proposes that notwithstanding anything contained in the Code of Criminal Procedure, 1973, the offence punishable under clause 4 of this Bill shall be triable only by the Special Court constituted for the area in which the offence has been committed. However, the special Court may upon perusal of the police report of the facts of the case or the complaint made by an authority take cognizance of the offence for which the accused is committed to it for trial. Sub-clause (2) proposes that this clause shall not affect the special power of the High Court regarding bail under section 439 of the Code of Criminal Procedure, 1973.

Clause 44 proposes that notwithstanding anything contained in the Code of Criminal Procedure, 1973 every offence punishable under this Act shall be cognizable and no person accused of an offence punishable for a term of more than three years imprisonment under this Act shall be released on bail or on his own bond unless the Public Prosecutor has been given an opportunity to oppose the application for such release and where the Public Prosecutor opposes the application and the Court is satisfied that there are reasonable grounds for believing that the accused is not guilty of such offence and is not likely to commit any offence while on bail. It is also proposed to be provided that the Special Court shall not take cognizance of any offence punishable under clause 4 except on a complaint in writing made by the Director or an officer authorised by the Central Government in this behalf. Sub-clause (2) specifically states that the limitation on granting of bail is in addition to the limitations under the Code of Criminal Procedure, 1973 or any other law being in force on granting of bail.

Clause 45 seeks to provide that the provisions of the Code of Criminal Procedure, 1973 shall apply to the proceedings before a Special Court and for these purposes that Special Court shall be deemed to be a Court of Session and the persons conducting the prosecution before the Special Court shall be deemed to be Public Prosecutors. This provision applies in situations save as otherwise provided in the proposed Act. It is also provided that the Central Government may appoint for any case or class of cases a Special Public Prosecutor. Sub-clause (2) proposes that to be appointed as a Public Prosecutor or a Special Public Prosecutor a person should have been in practice as an advocate for not less than seven years, under the Union or a State

requiring special knowledge of Law. Sub-clause (3) proposes that every person appointed as Public Prosecutor or a Special Public Prosecutor shall be deemed to be a Public Prosecutor within the meaning of section 2 (u) of the Code of Criminal Procedure, 1973 and the provisions of that Code shall have effect accordingly.

Clause 46 provides that High Court may exercise all the powers conferred by Chapter XXIX or Chapter XXX of the Code of Criminal Procedure, 1973 on a High Court, as if a Special Court within the local limits of the jurisdiction of the High Court were a Court of Session trying cases within its limits.

Clause 47 proposes that there will be the following classes of authority for the purposes of this legislation:—

- (i) Director or Additional Director or Joint Director
- (ii) Deputy Director
- (iii) Assistant Director
- (iv) Such other classes of officers as may be appointed.

Clause 48 proposes that the Central Government may appoint such persons as it thinks fit to be the authorities for the purpose of the proposed legislation. Sub-clause (2) proposes that the Central Government may authorise the Director or an Additional Director or a Joint Director or a Deputy Director or an Assistant Director to appoint other authorities below the rank of an Assistant Director. Sub-clause (3) proposes that subject to such conditions and limitations as the Central Government may impose, an authority may exercise the powers and discharge the duties conferred or imposed on it under the proposed Act.

Clause 49 proposes to provide that for the purposes of clause 12, the Director shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 when trying a suit in respect of discovery and inspection; enforcing the attendance of any person, including any officer of a financial institution or a company, and examining him on oath; compelling the production of records; receiving evidence on affidavits, issuing commissions for examination of witness and documents; and any other matter which may be prescribed. Sub-clause (2) seeks to provide the Director, Additional Director, Joint

Director, Deputy Director or Assistant Director with the power to summon any person whose attendance he considers necessary whether to give evidence or to produce any records during the course of any investigation or proceeding under the proposed Act. Sub-clause (3) proposes that all the persons summoned under sub-clause (3) of the proposed Act shall be bound to attend in person or through authorised agents, as such officer may direct, and they shall also be bound to state the truth upon any subject respecting which they are examined or make statements, and produce such documents as may be required. Sub-clause (4) proposes that every proceeding under sub-clause (2) and sub-clause (3) shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code. Sub-clause (5) proposes to empower any officer mentioned in sub-clause (2) to impound and retain any records produced before him in any proceedings under this Act subject to the rules made in this regard by the Central Government. It is also proposed to be provided that an Assistant Director or a Deputy Director shall not impound the records without recording the reasons in writing, and will not retain the records for more than three months without obtaining the previous approval of the Director.

Clause 50 proposes to define the jurisdiction of authorities under the Act. These authorities shall exercise powers and perform functions as assigned to them by the Central Government by way of rules. Sub-clause (2) provides that the Central Government may have regard to all or any one of the territorial area, classes of persons, classes of cases and any other criterion specified by Central Government in this behalf which in the direction or orders referred to in sub-section (1).

Clause 51 empowers the Central Government to issue directions, instructions and orders to the authorities and such authorities shall be observe and follow such orders, instructions and directions of the Central Government. It is further sought to be provided that no such orders, instruction or directions shall be issued so as to require any authority to decide a particular case in a particular manner or so as to interfere with the discretion of the adjudicating authority in the exercise of this functions.

Clause 52 proposes that the Central Government may by a special or general order, empower any officer of the Central Government or of the State Government to act as authority under the proposed Act.

Clause 53 proposes to empower and require certain officers to assist the authorities in enforcement of the proposed Act. These officers are officers of the Customs and Central Excise Departments, officers appointed under section 5 of the Narcotic Drugs and Psychotropic Substances Act, 1985, Income tax Authorities. Officers of the Stock Exchange recognised under section 4 of the Securities Contracts (Regulation) Act, officers of the Reserve Bank of India, officers of Police, officers of Enforcement appointed under section 4 of the Foreign Exchange Regulation Act, 1973, officers of the Securities and Exchange Board of India established under section 3 of the Securities and Exchange Board of India Act, 1992 and such other officers of the Central Government, State Government, Local Authorities or banking companies as the Central Government may specify by notification.

Clause 54 seeks to provide punishment in respect of Authorities and officers exercising powers under this Act if they conduct a search or arrest any person vexatiously or without reasonable ground of suspicion. For every such offence the authority or officers shall be liable on conviction for imprisonment of a term extending up to three months or fine up to ten thousand rupees or both.

Clause 55 proposes to provide for punishment in the case of person wilfully and maliciously giving false information and so causing arrest or search of a person to be made under this Act. Such a person on conviction shall be liable for imprisonment of a term extending up to three months or fine up to ten thousand rupees or both.

Clause 56 proposes that no Court shall take cognizance of any offence under clauses 54 and 55 except with the previous sanction of the Central Government.

Clause 57 seeks to provide that the provisions of the Code of Criminal Procedure, 1973 shall apply in so far as it is not inconsistent with the provisions of this Act to arrest, searches, seizures, attachments, confiscations, investigations, prosecution and all other proceedings under the proposed Act.

Clause 58 provides that the Director or any other authority specified by him may furnish information received or obtained in performance of his duties under the proposed Act to any officer, authority or body performing any function under any Law relating to imposition of any tax, duties or cess or to dealings in foreign exchange or to prevent

illicit traffic in Narcotic Drugs and Psychotropic Substances or any other officer, Authority or body notified in the Official Gazette in this behalf. Such information is to be provided if in the opinion of the Director or the other Authority it is necessary for the purpose of enabling the officer, Authority or Body to perform his or its functions under that Law.

Clause 59 provides that no suit prosecution or other legal proceeding shall lie against the Central Government for any authority exercising any power or discharging any function under the Act for anything done in good faith.

Clause 60 proposes that no notice, summons, order, document or other proceedings furnished or issued in pursuance of any provision of this Act shall be invalid or shall be deemed to be invalid merely by reasons of any mistake, defect or omission in such notice, summons, etc., if such notice summon, notice, etc., is in substance and effect in conformity with or according to the intent and purpose of the proposed Act.

Clause 61 proposes that when any fine imposed on any person under this Act is not paid within six months from the date of imposition then the Director or any other authorised officer may proceed to recover the amount from the said person as prescribed in schedule II of the Income-tax Act, 1961. The Director or authorised officer shall have all the powers of the Tax Recovery Officer mentioned in the said Schedule.

Clause 62 proposes that where the offence under the proposed Act is committed by a company, every person who at the time of contravention was in incharge and was responsible to the company for the conduct of the business of the company shall be deemed to be guilty of the contravention and shall accordingly be liable to be proceeded against and punished accordingly. It is proposed to provide that this-sub clause shall not render any such person liable for punishment, if he proves that the contravention took place without his knowledge or that he exercised due diligence to prevent such contraventions. Sub-clause (2) proposes that where a contravention of any provision of the proposed Act has been committed by a Company and it is proved that the contravention has taken place with the consent or connivance, or due to neglect on the part of any Director, Manager, Secretary or other Officer of the company, then such Director, etc.,

shall also be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly.

Clause 63 proposes that the proposed Act is to have over-riding effect over other laws that are in force for the time being.

Clause 64 provides for continuance of proceedings in the event of death or insolvency of the person whose property has been attached under clause 7.

Clause 65 empowers the Central Government to make rules by notification for the Official Gazette for carrying out the provisions of the proposed Act.

Sub-clause (2) enumerates the various matters in respect of which rules may be made.

Clause 66 seeks to provide that every rule made under the proposed Act shall be laid as soon as after it is made, before each House of Parliament.

Clause 67 proposes to empower the Central Government to remove any difficulty arising in giving effect to the provisions of the proposed Act, by way of passing an order. It is provided that no such order shall be made after the expiry of two years from the commencement of the proposed Act.

FINANCIAL MEMORANDUM

Sub-clause (1) of clause 6 empowers the Central Government to appoint one or more persons not below the rank of Joint Secretary to the Government of India as Adjudicating Authorities. Clause 24 empowers the Central Government to establish an Appellate Tribunal to hear appeals against the orders of the Adjudicating Authority. Clause 33 empowers the Central Government to provide the Appellate Tribunal with such officers and employees as the Central Government may deem fit. Sub-clause (1) of clause 48 empowers the Central Government to appoint such persons as it thinks fit to be authorities for purposes of proposed Act.

To begin with, it is proposed to constitute three Benches of the Appellate Tribunal at Delhi, Mumbai and Chennai. It is also proposed to appoint for each Bench of the Appellate Tribunal one officer to the rank of Joint Secretary to the Government of India, two Directors and four Assistant Directors with necessary staff and employees to assist such Bench. For establishing the Directorate of Money-laundering, it is proposed to appoint one Director in the rank of Special Secretary to Government of India and other authorities of appropriate ranks with necessary supporting staff and employees to assist the Director in discharge of his duties. It is also proposed to appoint four Adjudicating Authorities each in Delhi, Calcutta, Chennai and Mumbai with necessary officers, staff and employees to assist them in discharge of their duties.

The recurring expenditure for the aforesaid appointment in respect of salaries, wages and office expenses, etc., is estimated to be Rs. 14 crore per annum. The non-recurring expenditure in respect of office equipment, office furniture, electrical installation and motor vehicles, etc., is estimated to be Rs. 12 crores. The Bill does not involved any other recurring or non-recurring expenditure.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 65 of the Bill empowers the Central Government to make rules, by notification in official Gazette for carrying out the provisions of the proposed Act. Such rules may provide, *inter alia* for form in which records referred in the proposed Act may be maintained, the manner in which and the conditions subject to which the properties confiscated may be received and managed under sub-section (2) of the proposed section 9, the additional matter in respect of which the Adjudicating Authority may exercise the powers of a civil court under clause (1) of sub-section (1) of the proposed section 10, the manner in which records may be verified and maintained by financial institutions and intermediaries under clause (c) of sub-section (1) of proposed section 11, the procedure and manner of maintaining and furnishing information under sub-section (1) of section 11 as required under proposed section 14, the rules relating to search and seizure under sub-section (1) of proposed section 16, the manner in which records authenticated outside India may be received under sub-section (2) of proposed section 21, the form of appeal and the fee for filing such appeal, under sub-section (3) of proposed section 25, the salary and allowances payable to and the other terms and conditions of service of the Chairperson and other Members of the Appellate Tribunal under proposed section 29, the salaries and allowances and of the conditions of service of the officers and employees of the Appellate Tribunal under sub-section (3) of proposed section 33, the additional matters in respect of which the Appellate Tribunal may exercise the powers of a civil court under clause (i) of sub-section (2) of proposed section 34, the additional matters in respect of which the authorities may exercise powers of a civil court under clause (f) of sub-section (1) of proposed section 49, rules relating to impounding and custody of records under sub-section (5) of proposed section 49 and any other matter which is required to be or may be prescribed.

The matter in respect of which the aforesaid rules may be made are generally matters of procedure and administrative detail and it is not practicable to provide for them in the Bill itself. The delegation of legislative power is, therefor, of a normal character.

BILL

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.

(Shri Yashwant Sinha, Minister of Finance)