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Bringing Art into Frame: A Case for Including Art Market Participants under the PMLA

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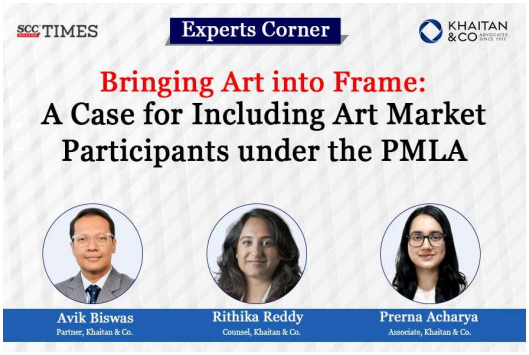

Introduction

Earlier this year, the esteemed India Art Fair opened to an overwhelming turnout in Delhi. Ever since it first opened its doors in 2008, the fair has seen exponential growth with each passing year. This year's edition was the largest one yet, with 118 exhibitors, including 78 galleries and leading art institutions. Industry experts have stated that the market has grown by more than 250% in the past decade alone. In fact, 2023 saw Amrita Sher-Gil's painting "The Story Teller" sell for a record INR 61.8 crores (approximately USD 7.2 million) albeit through a different platform — India's leading auction house, Saffronart. Interestingly, Tyeb Mehta's painting "Trussed Bull" also sold for INR 61.8 crores (approximately USD 7.2 million) through the same auction house two years later.

The record held by Amrita Sher-Gil was toppled on 20-3-2025 by the sale of legendary artist M.F. Husain's painting "Gram Yatra", which fetched a whopping USD 13.8 million (approximately INR 119 crores) at a Christie's auction in New York. Although the auction house did not disclose the identity of the buyer, it is widely believed to have been purchased by a prominent Indian industrialist. We would be remiss if we failed to mention other renowned Indian artists such as Manjit Bawa, S.H. Raza and Raja Ravi Varma, whose works routinely cross the USD million-dollar mark.

Given the recent boom in the Indian art space, and the increasing value that the global audience sees [illegible], one does wonder what protections are in place to ensure that these works of arts are not purchased with "black money". While the sophisticated world of art seems far removed from the Indian underground economy, such concerns are not entirely misplaced. Recently, an art dealer and gallery owner, Oghenochuko Ojiri, in the United Kingdom (UK)

pled guilty to terrorist financing charges. He was held for selling art works worth Great Britain Pound (GBP) 1,40,000 (approximately INR 1.2 crores) to Nazem Ahmed, a known financier of Hezbollah, who has been sanctioned by the UK Government.

Ojiri was charged under Section 21-A of the Terrorism Act, 2000[1] for failing to make disclosures as required of a regulated business (art dealers and all art market participants have been notified as regulated businesses in UK since 2020). It was argued that Ojiri was aware of Nazem Ahmed's links to terrorist groups and yet facilitated the transaction, a fact that was proven.

This trial highlighted the UK Government's commitment to preventing artworks from being used to fund illicit activities. It also underscored the need for greater oversight and compliance requirements in the global art market — including the burgeoning one in India.

The two-tiered world of art transactions

The art market is divided into two parts — primary and secondary. The primary art market comprises art works being sold for the first time, by the artist or the representative of the artist. In these transactions, the buyer is scrutinised likely because the purchase is intertwined with the reputation of the artist, which is built on who owns their works or where they are displayed. For instance, M.F. Husain's reputation was such that when Bill Clinton visited India he was personally asked by the then President of India, K.R. Narayanan, to compose a painting of Gandhi, which could be gifted to his United States (US) counterpart. This illustrates how the primary art market often involves direct commissions and personal acquisitions which are inevitably transparent in nature.

In the secondary art market, the art works are sold by art market participants (AMPs) (galleries, art dealers, etc.) who lack the incentive to scrutinise the intention behind purchase and may not have reputational concerns, with the primary motive being profit. This leads to a potential gateway for money laundering. Hence, the focus of the regulatory efforts is largely consumed by the secondary art market.

In India, the secondary art market is seeing a significant amount of growth and is at a fascinating point in its transformation, drawing eyes from within and outside India. Coupled with the Indian economy's growth, leapfrogging other nations, there is a growing desire to acquire art works, both Indian and international.

Use of art as a conduit for money laundering

"Money laundering" refers to the process of making money generated through illegal activities (such as drug trafficking or terrorist funding) appear to have been generated from a legitimate source. This typically occurs through three steps: (*i*) placement; (*ii*) layering; and (*iii*) integration. "Placement" refers to inserting the illegitimate funds into the legitimate financial system, while "layering" refers to the obfuscating the true source of the funds. The last step "integration" occurs when the funds in question re-enter the mainstream financial system as a legitimate transaction.

The last decade alone has been rife with instances of art money laundering and related terrorist funding. In 2020, Facebook published new community guidelines that aimed to arrest the sale of stolen artifacts on its platform. In fact, the Islamic State in Iraq and Syria (ISIS) has been known to fund itself through looting of artifacts from territories under their control. In India, similar operations were conducted by Subhash Kapoor, a celebrated art dealer based in New York. Although Kapoor was not a terrorist, he was responsible for operating a complex network that was ultimately held responsible for looting temples in Tamil Nadu, India, and selling and/or gifting the resulting artifacts and antiquities to prestigious museums and collectors. A raid at one of Kapoor's warehouses in New York revealed stole[illegible]t over USD 100 million (approximately INR 835 crores). Both these examples illustrate how art itself is used to generate ill-begotten funds.

There are, however, plenty of examples where funds generated through other illegal activities are "washed" through the purchase of art. The now infamous Jho Low used funds transferred from the 1Malaysia Development Berhad Fund (a Malaysian sovereign wealth fund) to purchase various art works worth approximately USD 137 million (approximately INR 1176 crores), including works by Mark Rothko, Vincent van Gogh and Claude Monet. In July 2020, the US Senate Permanent Subcommittee on Investigations released a report which found that Russian oligarchs were able to circumvent sanctions by using art intermediaries to purchase more than USD 18 million (approximately INR 150 crores) of various art works in the United States. Specifically, the Sub-Committee found that a complex network of shell companies connected to the sanctioned Russian oligarchs were used to facilitate these purchases.

These incidents beg the question; what makes art an appealing conduit for money laundering?

(*i*) The global art market has historically valued privacy and discretion, partly to protect buyers from risks such as theft or robbery, but also, enabling art to be used sometimes for illicit purposes.

(*ii*) While some reliance can be placed on the provenance (documented ownership) of an artwork, the documentation provided can be easily forged and verifying the paperwork can be a time-consuming and complex process.

(*iii*) Use of freeports is an increasingly common method to house vast art collections. Anyone who has watched Christopher Nolan's "Tenet" will remember how the protagonist paid a visit to the "freeport" at Oslo Airport to steal a forged Goya painting. A "freeport" or "free trade zone" is a designated area within a country where goods can be imported or stored without being subject to a country's custom duties. They are often maximum-security locations and are known to house some of the most expensive art collections in the world. In fact, the Geneva and Zurich freeports could give public museums a run for their money. While one individual can purchase and store a multi-million dollar work of art in a freeport, that same artwork can change hands and be sold to another individual without being physically moved.

(*iv*) Additionally, the global art market lacks predictable and objective pricing standards, making it susceptible to exploitation. Remember the iconic "Trussed Bull" painting we mentioned at the beginning of this article? The 1956 painting's value was originally valued at a meagre INR 5 to 7 lakhs (approximately USD 6000) by the auction house.

Put simply, the foregoing factors not only reinforce the adage that beauty lies in eyes of the beholder, but also in the blind spots of regulation. The question, then, is not just why art is used for laundering, but how often it goes unnoticed.

Need for regulation in the Indian art market

India's art market is presently largely unregulated. Some art works are covered under the Antiquities and Art Treasures Act, 1972[2] (AAT Act) however, this is mostly limited to antiquities which have been in existence for over a 100 years, manuscripts or other documents having scientific, historical, literary or aesthetic value which have been in existence for not less than 75 years, or art treasures which are declared so by the Government. In fact, the Government has notified works by 9 artists, sometimes referred to as the "Navaratnas", as "art treasures".[3] Consequently, the complete body of work of these nine eminent artists, and any other "antiquity" as defined under the statute, cannot be taken outside India without the express permission of the Government. Furthermore, if the Government feels that their works need to be preserved in a public place, then the Government can compulsorily acquire their works. Whilst this meets the intended purpose of protecting indigenous artwork, it does not solve for their potential misuse. Beyond this, there are no regulations for contemporary or modern artwork, leaving ample scope for utilising art works as a money laundering channel.

We try to make a case here for the inclusion of AMPs, which includes artists, art dealers, art galleries, intermediaries, freeport operators, etc. as "reporting entities" under the Prevention of Money-Laundering Act, 2002[4] (PMLA), India's primary money laundering statute. This inclusion would make AMPs responsible for inter alia due diligence and reporting of suspicious transactions, making the system less susceptible to being used for illegal gains. The inclusion of AMPs would also bring India at par with jurisdictions like the European Union (EU) and UK in the fight against corruption, money laundering and terrorism.

Current legislative framework in India

In India, the PMLA constructs a framework to deal with special fiscal offences and illicit financial flows. It comprises both penal and regulatory provisions. India has time and again made active efforts to bring the PMLA framework in line with the mandates and recommendations of the Financial Action Task Force (FATF) which has recognised the art market as a high-risk business sector.[5]

The PMLA prescribes punishment for money laundered by way of any of the "predicate offences" listed in the Schedule[6] to the PMLA. Certain offences under the AAT Act are classified as predicate offences under the PMLA. Hence, the Indian legal framework recognises that illicit trade in the art market is not merely a cultural issue, but a significant channel for laundering criminal proceeds. However, as discussed above, this coverage is limited to a narrow set of indigenous art works and antiquities in India. To ensure that the entire art market and all AMPs are covered, they must be notified as reporting entities under the PMLA.

Section 2(*wa*)[7] of the PMLA defines "reporting entities" to mean a "banking company, financial institution, intermediary or a person carrying on a designated business or profession". The Government has from time-to-time notified businesses and professions (real estate, dealers in precious metals and gems, etc.).

These reporting entities are required to make certain declarations and disclosures. The various declarations, disclosures and reporting measures put in place by Sections 11-A, 12, 12-A and 12-AA of the PMLA[8] read with the Prevention of Money-Laundering (Maintenance of Records) Rules, 2005[9] are aimed towards discovery and prevention of fraudulent and suspicious transactions. The level of diligence and reportage varies for different entities based on the money laundering risk they face. Some of the general reporting obligations of the reporting entities have been listed below:

(*i*) maintaining records of all transactions (single or series) exceeding such value, as may be prescribed, to enable the reconstruction of individual transactions;

(*ii*) furnishing information of such transactions, especially suspicious transaction reports, to the Financial Intelligence Unit — India (FIU-IND);

(*iii*) verifying identity of clients using know your customer (KYC) procedures;

(*iv*) identifying the beneficial owner and determining the source of funds; and

(*v*) maintaining records of documents related to identity and beneficial ownership.

These provisions enable authorities to detect patterns of suspicious financial flows and actaccordingly. In fact, in its last annual report, FIU-IND illustrated how these suspicious transaction reports (STRs) are an effective tool to curtail money laundering. In one incident, STRs were filed by the reporting entity, which related to 38 proprietorship firms engaged in high-value complex transactions amounting to more than INR 200 crores (approximately USD 23 million). This was followed by high value cash withdrawals by various entities that claimed to be involved in the agricultural sector. An investigation uncovered that there were 27 bogus firms responsible for issuing invoices without the supply of goods which led to the evasion of INR 107 crores (approximately USD 12 million) in goods and services tax. This shows that there is a robust mechanism in place for preventing money laundering.

As designated business and professions notified by the Government (like casinos, real estate agents, gem dealers, etc.) have market qualities similar to the art market, the inclusion of AMPs would allow for a more holistic preventive approach to money laundering.

Legislative framework in the EU, UK and US

European Union

The 5th Anti-Money Laundering Directive (Directive (EU) 2018/843) (5th Directive) promulgated by the EU extends anti-money laundering obligations to entities in the art sector, specifically to those trading or acting as intermediaries in art

transactions exceeding EUR 10,000 (approximately INR 10 lakhs) including art galleries and auction houses. It also applies to activities within freeports under similar conditions. This aims to enhance transparency and prevent money laundering through high-value art transactions. The EU issues directives to harmonise the municipal laws of its member nations.

Under the 5th Directive, the regulated entities are required to perform enhanced due diligence, verify client identities, and disclose ultimate beneficial ownership, implement a risk-based anti-money laundering (AML)/combating the financing of terrorism (CFT) program, submit suspicious activity reports to the authorities, etc. adding a new layer of transparency to an industry historically seen as opaque across Europe.

United Kingdom

In UK, the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations, 2017[10] (MLRs) impose anti-money laundering and compliance requirements on financial institutions and the businesses, which was amended in 2020 to categorically include AMPs. It defines AMPs to mean a firm or sole practitioner who — is involved in the sale or purchase of art works or a freeport operator who stores art works, where the value of the transaction, or a series of linked transactions, amounts to EUR 10,000 (approximately INR 10 lakhs) or more. This is in line with the 5th Directive, which has been adopted by the UK, despite leaving the EU.

The MLRs have "relevant institutions" similar to the "reporting entities" under the PMLA. The MLRs require relevant institutions to undertake an assessment of the money laundering risks posed by their business and to have in place policies controls and procedures proportionate to those risks. Some of the activities required by the MLRs of the relevant institutions are similar to the reporting requirements in India. The failure to meet such reporting requirements is a criminal offence.

The Terrorism Act, 2000, among other things, provides for offences of terrorist financing also created a "laundering of terrorist property" offence if a person enters an arrangement that facilitates the retention or control by or on behalf of another person of terrorist property. It also requires, as discussed above in Ojiri's case, certain disclosure requirements, of regulated businesses, failure of which is a crime.

Recently, the Office of Financial Sanctions Implementation (OFSI) in the UK has expanded its definition of "relevant firms" to capture high-value dealers and art market participants, effective from 14-5-2025. The relevant firms are required to inform OFSI as soon as possible if they know or have reasonable cause to suspect a person is a designated person (i.e. sanctioned by the OFSI) or has committed breaches under the Sanctions and Anti-Money Laundering Act, 2018[11]. OFSI has, in June 2025, also issued an official guidance to help its implementation.

United States

In the United States, the Bank Secrecy Act, 1970[12] (BSA) is the centrepiece of the framework to combat money laundering. The BSA requires financial institutions, such as banks, money services businesses and casinos, to take steps to prevent, detect and report money laundering activity, like the reporting entities in India. While comprehensive, the BSA, notably excludes the art market.

The Anti-Money Laundering Act of 2020[13] extended BSA provisions to antiquities dealers but not the art market. The US Department of Treasury in its 2022 Report titled the "Study of the Facilitation of Money Laundering and Terror Finance Through the Trade in Works of Art" concluded that while the art market is vulnerable to money laundering, further regulations are not required until other sectors such as real estate, shell companies, etc. are covered.[14]

How to cover AMPs under the PMLA

From the laws in the EU, UK and even the US (which does not regulate the art market under money laundering laws) there is recognition of the fact that it is an area that is at high risk for being used as a channel for money laundering.

Whilst countries in the EU and the UK have implemented stringent procedures, their implementation continues to challenge the AMPs and enforcement authorities. There has been criticism that such heavy compliance requirements overburden a market in which new players lack resources. Critics often point to Mexico as an example of how stringent regulations could hurt the art sector significantly. In 2012, Mexico had passed a law limiting the use of cash and requiring businesses to provide more information to the Government about their customers. This was alleged to have affected institutions such as art galleries significantly, with some experts estimating that sales dipped almost 70% in less than a year. However, potential declines in sales should not be an excuse to avoid regulating this space, and it is increasingly clear that regulation of the art market is no longer a question of "if", but "when."

In India, to achieve this purpose, the Government should consider amending Section 2(1)(*wa*) of the PMLA to include persons and entities engaged in the trade of art, antiquities, or other high-value cultural assets. As in other jurisdictions, India could also impose a monetary threshold for the reportage of transactions.

At present, the only requirement for making purchases of art works valued over INR 2 lakhs is the submission of permanent account number (PAN) card details (a unique ID issued by the Indian income tax authorities). However, this alone is insufficient for high-value art transactions, which demand greater scrutiny and more comprehensive documentation. Further, even if AMPs are included under the definition of reporting entities, effective compliance and enforcement will depend on a combination of awareness-building initiatives and the imposition of meaningful penalties for non-compliance.

If the art world is to maintain its cultural and economic value, it must also uphold transparency and accountability. Regulation is not a threat, but a necessary step towards integrity.

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1. Terrorism Act, 2000, S. 21-A.
2. Antiquities and Art Treasures Act, 1972.
3. The "Navaratnas" are Rabindranath Tagore, Amrita Sher-Gil, Jamini Roy, Nandalal Bose, Raja Ravi Varma, Gaganendranath Tagore, Abanindranath Tagore, Sailoz Mookherjea and Nicholas Roerich.
4. Prevention of Money-Laundering Act, 2002.
5. Financial Action Task Force, Money Laundering and Terrorist Financing in the Art and Antiquities Market (February 2023) 40.
6. Prevention of Money-Laundering Act, 2002, Schedule.
7. Prevention of Money-Laundering Act, 2002, S. 2(wa).
8. Prevention of Money-Laundering Act, 2002, Ss. 11-A, 12, 12-A and 12-AA.
9. Prevention of Money-Laundering (Maintenance of Records) Rules, 2005.
10. Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations, 2017 (GB).
11. Sanctions and Anti-Money Laundering Act, 2018 (GB).
12. Bank Secrecy Act, 1970 (US).
13. Anti-Money Laundering Act, 2020 (US).
14. United States Department of the Treasury, Study of the Facilitation of Money Laundering and Terror Finance Through the Trade in Works of Art (February 2022) 35, available at <https://home.treasury.gov/system/files/136/Treasury_Study_WoA.pdf>