



JURISTIC STUDY OF PREVENTION OF MONEY LAUNDERING ACT, 2002

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ABSTRACT

KEYWORDS:

Introduction:

The Prevention of Money Laundering Act (PMLA), 2002 was enacted in January, 2003. The Act along with the Rules framed thereunder have come into force with effect from 1st July, 2005. Sec. 3 of PMLA defines offence of money laundering as whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime and projecting it as untainted property shall be guilty of offence of money-laundering. It prescribes obligation of banking companies, financial institutions and intermediaries for verification and maintenance of records of the identity of all its clients and also of all transactions and for furnishing information of such transactions in prescribed form to the Financial Intelligence Unit-India (FIU-IND). It empowers the Director of FIU-IND to impose fine on banking company, financial institution if they or any of its officers fails to comply with the provisions of the Act indicated above.

PMLA empowers certain officers of the Directorate of Enforcement to carry out investigations in cases involving offence of money laundering and also to attach the property involved in money laundering. PMLA envisages setting up of an Adjudicating Authority to exercise jurisdiction, power and authority conferred by it essentially to confirm attachment or order confiscation of attached properties. It also envisages setting up of an Appellate Tribunal to hear appeals against the order of the Adjudicating Authority and the authorities like Director FIU-IND.

PMLA envisages designation of one or more courts of sessions as Special Court or Special Courts to try the offences punishable under PMLA and offences with which the accused may, under the Code of Criminal Procedure 1973, be charged at the same trial. PMLA allows Central Government to enter into an agreement with Government of any country outside India for enforcing the provisions of the PMLA, exchange of information for the prevention of any offence under PMLA or under the corresponding law in force in that country or investigation of cases relating to any offence under PMLA.

INDIAN LAW AND LEGAL DEFINITION OF MONEY LAUNDERING

The goal of a large number of criminal activities is to generate profit for an individual or a group. Money laundering is the processing of these criminal proceeds to disguise their illegal origin.

Illegal arms sales, smuggling, and other organized crime, including drug trafficking and prostitution rings, can generate huge amounts of money. Embezzlement, insider trading, bribery and computer fraud schemes can also produce large profits and create the incentive to "legitimize" the ill-gotten gains through money laundering. The money so generated is tainted and is in the nature of 'dirty money'. Money Laundering is the process of conversion of such proceeds of crime, the 'dirty money', to make it appear as 'legitimate' money.

In the PMLA, 2002, money laundering has been defined as "whoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming it as untainted property".

Governed by the Parliament of India, Prevention of Money Laundering Act 2002 prevents money laundering and confiscates the property, asset or money obtained from money laundering. The lower house of Parliament passed the Prevention of Money Laundering Act on 27th November, 2002. Initially the act was first introduced in the year 1998. In August 2002, the upper house of Parliament amended the bill in order to include provisions pertaining to terrorist financing.

Apart from Prevention of Money Laundering Act 2002, the following are few acts that prevent the activities of money laundering. They are as follows:

1. The Income Tax Act, 1961
2. The Indian Penal Code and Code of Criminal Procedure, 1973
3. The Benami Transactions (Prohibition) Act, 1988

4. The Narcotic Drugs and Psychotropic Substances Act, 1985

5. The Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974

Since money laundering is considered as a criminal offence in the eyes of Indian Law, it becomes essential to report it as soon as it gets noticed. It is advised to seek a corporate lawyer or a legal help/advice in order to report the case of money laundering. With PAN India presence, one can easily seek assistance in Delhi, Mumbai, Chennai, Bangalore, Hyderabad, Pune, Goa, Kolkata, Ahmedabad, Gurgaon, Noida and other places.

SCHEDULED OFFENCES WHICH ENTAIL PROCEEDINGS UNDER PMLA

The offences listed in the Schedule to the Prevention of Money Laundering Act, 2002 are scheduled offences in terms of Section 2(1)(y) of the Act. The scheduled offences are divided into two parts - Part A & Part C.

In part A, offences to the Schedule have been listed in 28 paragraphs and it comprises of offences under Indian Penal Code, offences under Narcotic Drugs and Psychotropic Substances, offences under Explosive Substances Act, offences under Unlawful Activities (Prevention) Act, offences under Arms Act, offences under Wild Life (Protection) Act, offences under the Immoral Traffic (Prevention) Act, offences under the Prevention of Corruption Act, offences under the Explosives Act, offences under Antiquities & Arts Treasures Act etc.

Part 'C' deals with trans-border crimes, and is a vital step in tackling Money Laundering across International Boundaries.

Prior to 15th February, 2013, i.e., the date of notification of the amendments carried out in PMLA, the Schedule also had Part B for scheduled offences where the monetary threshold of rupees thirty lakhs was relevant for initiating investigations for the offence of money laundering. However, all these scheduled offences, hitherto in Part B of the Schedule, have now been included in Part A of Schedule w.e.f 15.02.2013. Consequently, there is no monetary threshold to initiate investigations under PMLA.

The object of this Act is to cover not only the wealth earned through illegal means but also to bring illegal income into the purview of PMLA, that includes also the legal income that is concealed from the public authority, as per the White Paper of May, 2012 by the Ministry of Finance, Government of India.

Section 3 of Money Laundering Act says, Whoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime including its concealment possession, acquisition or use and projecting or claiming it as untainted property shall be guilty of offence of Money Laundering.

In **Binod Kumar Sinha vs. State of Jharkhand** through Directorate of Enforcement.

"Keeping in view the provision as is enshrined in Section 3 postulating therein that

- *whoever is connected with the proceeds of the crime*
- *projecting it as untainted property*

would be committing offence of Money Laundering Act, and further that

- *the proceeds of crime must have been derived or obtained, directly or indirectly by any person*
- *as a result of criminal activity*
- *relating to scheduled offence in terms of sub-section (u) of Section 2 of the Prevention of Money Laundering Act"*

From the bare reading of the above section and judgment, it is apparent that the offence of money laundering is only committed on fulfilment of 2 conditions:

- *Firstly, a person should be involved in any activity relating to the concealment, possession, acquisition or use of the proceeds of crime,*

AND

- *Secondly, that person should project or claim such proceeds of crime as untainted property.*

The Hon'ble Supreme Court in the case of **State of Bihar v. Deokaran Nenshi & Anr.**, while dealing with the term "continuing offence", held as under:

"A continuing offence is one which is susceptible of continuance and is distinguishable from the one which is committed once and for all. It is one of those offences which arises out of a failure to obey or comply with a rule or its requirement and which involves a penalty, the liability for which continues until the rule or its requirement is obeyed or complied with. On every occasion that such disobedience or non-compliance occurs and recurs, there is the offence committed. The distinction between the two kinds of offences is between an act or omission which constitutes an offence once and for all and an act or omission which continues and therefore, constitutes a fresh offence every time or occasion on which it continues. In the case of a continuing offence, there is thus the ingredient of continuance of the offence which is absent in the case of an offence which takes place when an act or omission is committed once and for all."

ACTIONS INITIATED AGAINST PERSON LAUNDERING MONEY

Person against whom the action is initiated under this Act will be liable under sections 4, 5, 17 and 18.

Steps taken against that person will be:

- Attachment of Property.
- Seizure/Freezing of Property and records.
- Persons (Individuals and/or juristic person such as a Company etc) found guilty of an offence of Money Laundering are punishable with imprisonment for a term which shall not be less than three years but may extend up to seven or even ten years (depending on circumstances) and

shall also be liable to fine (no upper limits).

ATTACHMENT OF PROPERTY

Section 5 authorises the director or any other officer not below the rank of Deputy Director to attach the property. If the authority has the reason to believe that any person is in possession of any proceeds of crime and 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.

If the above conditions are satisfied then the authority may order in writing for the Attachment of Property within 180 days from the date of order.

The person aggrieved by the Attachment of Property has the remedy to file the objections before the adjudicating authority. An order without jurisdiction or suffering from any jurisdictional error may be challenged directly before the High Court by invoking Article 226 of the Constitution. The Courts have held that a mere mechanical noting that the property in question is likely to be concealed, transferred or dealt-with would not meet the requirements of Section 5(1) of the Act and such a non speaking order by a Director can be set aside in writ proceedings by the High Court if it is devoid of strong and cogent reasons.

SEIZURE OF PROPERTY AND RECORDS

If the investigating authority has a reason to believe that a person has secreted about his possession, ownership or control, proceeds of crime, in that case the person can be searched. Before the search of a person, as per his wish, the authority shall take the said person before a Gazetted officer superior in rank to the authority or a Magistrate within 24 hours excluding the time of journey. This is the safeguard laid down in S. 18(4) of the PMLA, however, strangely there is no corresponding obligation on the investigating agency to inform the person about to be searched of this valuable right. Something akin to a Miranda warning will be apposite here. The property seized has to be forwarded to the adjudicating authority for further orders.

CONCLUDING REMARKS

The activities pertaining to money laundering have been rampant in the Indian society, despite best efforts of the government to stop such practices. Through legislation and administrative bodies and efficient regulators who work tirelessly in this regard, the war on money laundering activities continues to go on. However, it may be noted that although such activities may be put in check at a domestic level, it may be taken note of that such practices are never restricted to the confines of a single jurisdiction. Restrictions at a particular jurisdiction, encourage launderers to shift base to another jurisdiction which may provide a hospitable environment for their activities to thrive. It may be noted that funds brought in by illicit means, for legitimisation may, once legalised, be then again used for vested interests of the beneficiaries,

who may not always have good intentions in mind. Crime can only beget more crime – and the vicious circle would only continue. And therefore, one of the better ways to stop money laundering practices may be for governments to take such legitimate interests into confidence and provide them protection and certain benefits, which may altogether stop people from engaging in money laundering activities altogether. Tax reforms could be one such step in the right direction.

It is to be noted that even after so many efforts and prevailing laws, India is among six countries being actively monitored by Interpol and International banking watchdogs after the detection of massive money-laundering because of inadequate internal compliance procedures.

Even though enactment of Prevention of Money Laundering Act is a landmark step towards carving out the illegal pocketing of money especially by government officers, this Act has some limitations. This Act was not accepted with open heart and this is evident from the fact that the Bill passed in the year 1999 but the Act was enacted in 2002 and it took further 3 years for Parliament to implement the same and that too with the Amendment Act, 2005.

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