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## FROM CRIME TO COMPLIANCE: DECODING THE PMLA FRAMEWORK

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### INTRODUCTION

The Prevention of Money Laundering Act (PMLA) is a pivotal development of India's legal framework, designed to combat money laundering and related financial crimes. Money laundering is a process where illicit financial gains are disguised to appear legitimate. This involves concealing the origins and identities associated with illegally obtained money to facilitate its integration into the legal economy. Given that financial institutions often serve as conduits for laundering activities, efforts to combat money laundering focus heavily on regulating the financial sector through both national and international anti-money laundering (AML) regulations.

The term gained prominence with the activities of organised crime figures such as Al Capone, who allegedly bought laundromats to mix illicit earnings from illegal operations with legitimate business income, thereby obscuring the money's criminal origins<sup>1</sup>. According to the U.S. Customs Service, money laundering is the procedure by which criminals disguise the origins of illicit funds, often involving complex transactions to make the money appear to come from a legal source<sup>2</sup>.

International efforts to combat money laundering have significantly shaped national policies. The Financial Action Task Force (FATF), established at the G7 Summit in 1989, has been instrumental in setting global standards for AML regulations. The FATF's guidelines are designed to help countries develop effective systems to detect and deter money laundering activities.

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<sup>1</sup> <https://kyc-chain.com/the-history-of-money-laundering/>

<sup>2</sup> <https://www.unodc.org/e4j/en/organized-crime/module-4/key-issues/money-laundering.html>

In India, it was enacted by the National Democratic Alliance government in 2002 and came into force in 2005. The Act aims to prevent money laundering, facilitate the confiscation of property derived from such activities, and punish offenders. It mandates that banks, financial institutions, and intermediaries maintain detailed records and report suspicious transactions. Key features of the PMLA include strict bail conditions, broad definitions of money laundering and proceeds of crime, and the admissibility of statements made during investigations as evidence.

Over the years, the PMLA has undergone several amendments to enhance its effectiveness. For instance, the 2019 amendment aimed to close gaps in the earlier provisions and clarify the definition of ‘proceeds of crime’<sup>3</sup>. These changes have strengthened the regulatory framework, making it more robust in identifying and prosecuting questionable transactions.

The enforcement of the PMLA is primarily handled by the Enforcement Directorate (ED), which has the authority to investigate, search, seize, and attach properties involved in money laundering. The ED's role is crucial in ensuring compliance with the Act and in bringing offenders to justice. The Supreme Court has upheld the ED's extensive powers under the PMLA, reinforcing the Act's authority in combating financial crimes<sup>4</sup>.

## PREVENTION OF MONEY LAUNDERING ACT, 2002

The Prevention of Money Laundering Act (PMLA) in India seeks to prevent the illegal process of converting illicit gains into seemingly legitimate funds through various financial transactions. By imposing stringent reporting and record-keeping requirements on financial institutions and intermediaries, the Act aims to create transparency and accountability in the financial system, thereby deterring criminals from exploiting it for their illicit activities.

### · Definitions Under the PMLA Act

The PMLA includes several key definitions that are crucial for understanding its scope and application:

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<sup>3</sup>[https://enforcementdirectorate.gov.in/sites/default/files/Act%26rules/pml\\_%28restoration\\_of\\_confiscated\\_property%29\\_amendment\\_rules%2C\\_2019.pdf](https://enforcementdirectorate.gov.in/sites/default/files/Act%26rules/pml_%28restoration_of_confiscated_property%29_amendment_rules%2C_2019.pdf)

<sup>4</sup> <https://www.thehindu.com/news/national/scs-three-judge-bench-to-hear-pmla-judgment-review-pleas-from-october-18/article67349465.ece>

- Money Laundering: As per Section 3 of the PMLA, money laundering is defined as the process of projecting or claiming tainted property as untainted property. This includes activities like concealment, possession, acquisition, or use of the proceeds of crime.
- Proceeds of Crime: Defined in Section 2(u) as any property derived or obtained, directly or indirectly, by any person as a result of criminal activity related to a scheduled offence.
- Scheduled Offence: These are the predicate offences listed in the schedule to the PMLA, which includes a range of serious crimes under various statutes.
- Attachment: The prohibition of transfer, conversion, disposition, or movement of property by an order issued under Chapter III of the Act.

- Procedures Under the PMLA Act

The Prevention of Money Laundering Act (PMLA) in India establishes a comprehensive procedural framework for the investigation and prosecution of money laundering offences. The Act mandates that reporting entities, including banks, financial institutions, and intermediaries, maintain detailed records of transactions and report any suspicious activities to the Financial Intelligence Unit (FIU-IND). Upon receiving information about suspicious transactions, the primary enforcement agency responsible for investigating money laundering cases is the Enforcement Directorate (ED).

During the course of an investigation, the ED has the authority to provisionally attach properties believed to be connected to money laundering for a period not exceeding 180 days. Once the investigation is completed, an Adjudicating Authority is appointed to confirm the attachment of properties and determine whether they are indeed involved in money laundering.

Finally, cases related to money laundering offences are tried in special courts designated under the PMLA. These specialised courts are tasked with expediting proceedings to ensure timely justice.

- Penalties under PMLA

The Prevention of Money Laundering Act (PMLA) in India imposes stringent penalties and punishments on individuals and entities found guilty of money laundering offences. Upon conviction, offenders face severe consequences aimed at deterring such illicit activities and upholding the integrity of the financial system. The Act stipulates rigorous imprisonment for a term not less than three years, which may extend up to seven years, and in certain cases, up to

ten years. Offenders may be liable to pay fines, with penalties extending up to five lakh rupees. The Act empowers authorities to confiscate properties involved in money laundering, thereby depriving offenders of their ill-gotten gains.

## LANDMARK CASES

- Manish Sisodia v. Union of India<sup>5</sup>

The denial of bail to Manish Sisodia in the case has sparked legal debates. Section 45 of the Prevention of Money Laundering Act, (PMLA), was the central issue, which requires the court to establish a prima facie case. Despite contesting charges by the CBI and ED, Sisodia was denied bail. The court's decision rested on alleged benefits to liquor distributors from an altered excise policy, despite lacking conclusive evidence of wrongdoing. This case underscores the need for thorough examination of facts and evidence in bail decisions, raising questions about its precedent-setting implications.

- Anoop Banarwal v. Dy. Director Enforcement<sup>6</sup>

Here, the Supreme Court clarified two important aspects of the Prevention of Money Laundering Act (PMLA). First, the prosecution must demonstrate that the accused had knowledge of their involvement with the proceeds of crime to file a complaint under the PMLA. And second, offences related to money laundering under Section 45(1) of the PMLA are considered cognizable and non-bailable, irrespective of any provisions to the contrary in the Code of Criminal Procedure Code, 1973.

- Pankaj Bansal v. Union of India<sup>7</sup>

In this case, the Supreme Court made pivotal rulings concerning the Enforcement Directorate's procedures. It mandated that the grounds of arrest must be provided to the accused in writing, prohibited arrests based solely on non-cooperation with summons, and invalidated subsequent remand orders if the initial arrest was found invalid. This decision had immediate implications, prompting the Delhi High Court to draw parallels between different legal provisions<sup>8</sup>.

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<sup>5</sup> Manish Sisodia v. Union of India, AIR 2023 INSC 956

<sup>6</sup> Anoop Banarwal v. Dy. Director Enforcement, SLP (Crl.) No. 2397-2398 of 2019

<sup>7</sup> Pankaj Bansal v. Union of India, AIR 2023 INSC 866

<sup>8</sup> <https://www.scconline.com/blog/post/2024/05/15/supreme-court-sets-aside-arrest-remand-newslick-chief-editor-prabir-purkayastha-uapa-case/>

## CONCLUSION

In conclusion, the Prevention of Money Laundering Act stands as a pivotal instrument in India's legal arsenal against financial crimes. Through its stringent provisions and enforcement mechanisms, the PMLA aims to combat money laundering and associated offenses. Recent judicial pronouncements, underscore the judiciary's commitment to upholding the rule of law and protecting individual rights in the face of evolving legal challenges. While the PMLA continues to play a crucial role in tackling illicit financial activities, ongoing scrutiny and refinement are essential to ensure its effectiveness while upholding fundamental principles of justice and fairness.