



# The Indian Journal for Research in Law and Management

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## UNDERSTANDING THE PREVENTION OF MONEY LAUNDERING ACT

~ *Pretty Jagdish Bhatia*

Money Laundering is done on various levels but no one knows the consequences behind it and basically how it is done . This is done by criminals . The criminals obtain Money through illegal means such as terrorism , drug trafficking, corruption and tax evasion . In India later on in the year **2002 PMLA ACT WAS MADE {PREVENTION OF MONEY LAUNDERING ACT}2002** As the name suggests the purpose of introducing PMLA was to Prevent Money Laundering. And the purpose behind it was Not Just To Prevent Money Laundering But to ensure that the property which is obtained through criminal activity or through illegal means can be seized and that financial institutions & intermediaries are subject to strict regulations .Since the Enforcement of this Act was Done in the year 2005 This Act have a powerful impact and plays a crucial role in the investigation process. In This Blog we will take a closer look on how PMLA Works, Key Features Of PMLA, Recent Amendments, Case Laws and why this act

is so controversial . regardless of controversies why this Act holds a Powerful Impact In the Legal World.

### **WHAT IS THE PREVENTION OF MONEY LAUNDERING ACT ?**

THE PREVENTION OF MONEY LAUNDERING ACT ALSO KNOWN AS was enacted by the Indian Parliament in the year 2002. It was introduced to prevent Money Laundering & to ensure that the property which is obtained through criminal activity or through illegal means can be seized and that financial institutions & intermediaries are subject to strict regulations. Banks & Financial institutions & Intermediaries have to keep an eye on & report suspicious transaction.

### **OBJECTIVES OF PMLA (THE PREVENTION OF MONEY LAUNDERING ACT)**

PREVENTION OF MONEY LAUNDERING

PREVENT THE FLOW OF MONEY FROM CRIMINAL ACTIVITIES & ECONOMIC CRIMES.

PROVIDE FOR THE CONFISCATION OF PROPERTY DERIVED FROM OR INVOLVED IN MONEY LAUNDERING

### **HOW THE PMLA WORKS ?**

STEP BY STEP PROCEDURE

IDENTIFICATION OF SUSPICIOUS ACTIVITY

INVESTIGATION BY ED

ADJUDICATION PROCESS

TRIAL BY SPECIAL COURT

### **ACTIONS THAT CAN BE TAKEN AGAINST A PERSON INVOLVED IN THE MONEY LAUNDERING**

Seizure / freezing of property & records & attachment of property obtained through criminal activity.

Any person who is involved in Money Laundering is punishable by rigorous imprisonment for at least 3 years and it may extend up to seven years.

Fine (without limit).

## **COMMON FORMS OF MONEY LAUNDERING**

Bulk cash smuggling

Fictional loans

Trade based Laundering

Real Estate

Gambling

## **ADJUDICATING AUTHORITY**

Under PMLA The Central Government have the jurisdiction to appoint an Adjudicating authority to exercise the powers & authority conferred by this act.

The Adjudicating Authority consists of :-

A chairperson

Two other members , one of whom must have legal , administrative , financial or accounting experience.

A member of the Adjudicating Authority can be a qualified Judge of any district or must be a representative member of the Indian Legal Service , Holding a Grade -1 Position.

The Adjudicating Authority Bench operates In New Delhi & other Locations as decided upon by Central Government & the chairperson.

## **POWERS OF ADJUDICATING AUTHORITY**

The Adjudicating Authority will send a notification against the person who is involved in Money Laundering and against whom the complaint has been registered under the PMLA. A Notice Can be issued against such person stating that to reveal his /her source of income, his /her assets from which he /she has acquired the property attached , seized or frozen by Director appointed under this act. As well that person has to explain why the obtained property cannot be declared as money -laundering properties and confiscated by the central government.

## **OBLIGATION OF THE BANKS , FINANCIAL INSTITUTIONS , & INTERMEDIARIES TO MAINTAIN RECORDS**

Financial institutions , banks, & intermediaries contain following obligations under the PMLA  
To maintain records & transactions irrespective of whether the amount was given in one go or were they a part of series of transactions which consists of internal connection that took place within thirty days. To inform the Director appointed under the PMLA Of such transactions within specific time frame. To verify identity of the clients To maintain & track records of all documents relating to the identity of the clients & beneficial owners , as well as account files and business transactions which are related to the clients.

## **SECTION 45 OF THE PREVENTION OF MONEY LAUNDERING ACT,2002 AS AMENDED**

Section 45 of the PMLA primarily focuses on offences which are of cognizable nature & non-bailable which sets rigorous conditions for granting bail to an accused under the act. Section 45 consists of two main key provisions which are as follows:- 1 Firstly it is non bailable and sets rigorous conditions in order to grant bail this means that police can arrest a person without a warrant and that bail is not a right.2.secondly , the other condition is the most crucial condition ever which states Bail Twin conditions which states court must be convinced of the following before granting a bail:- a) The public prosecutor has been given an opportunity to oppose the bail application; b) The court must be satisfied that: There are reasonable grounds to believe that the accused is not guilty of such offence; and The accused is not likely to commit any offence while on bail. These are known as the "twin bail conditions".

## **CRITICISM & CONTROVERSIES**

While the PMLA is a crucial weapon in combating money laundering , it has received serious attention .

- THE BELIEF OF GUILT
- RIGOROUS BAIL PROVISIONS
- POOR CLARITY
- POTENTIAL POLITICAL MISUSE

## **CASES WHICH FALL WITHIN THE AMBIT OF PMLA ACT**

- Suresh Chandrasekhar – Conman Scam
- **PMLA Action:** ED attached assets and questioned celebrities.
- Yes Bank – Rana Kapoor Case
- **PMLA Action:** ED arrested Kapoor, attached multiple high-value assets.

## **REFERENCES**

- **Prevention of Money Laundering Act, No. 15 of 2003**
- **The Directorate of Enforcement website (<https://enforcementdirectorate.gov.in>)**
- **The Reserve Bank of India website (<https://rbi.org.in>)**