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## PREVENTION OF MONEY LAUNDERING ACT, 2002; A CRITICAL OVERVIEW OF ENFORCEMENT AND PROSECUTION OF ECONOMIC OFFENCES IN INDIA.

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### ABSTRACT

India's struggle to combat the increasing trends of economic offences and financial fraud has been very challenged from the day of its entry into global politics. Financial crimes do not only strangle the economy it also abuses the country's financial sector and present its vulnerabilities to other crimes. Economic abuse and financial crimes have devastating, far-reaching consequences, causing severe financial hardship like debt, homelessness and poverty, deep mental and physical health issues such as anxiety, depression, stress-related illness, increased suicide risk and societal breakdown by eroding trust, weakening institutions, and fostering inequality, ultimately trapping victims and undermining economic stability.

Judicial delays, systemic corruption and low conviction rate are challenges which curbs India's struggle to combat economic crimes, cross-border cooperation, and the evolving nature of sophisticated financial crimes that exploits regulatory gaps have impacted the country's efforts to fight against financial crimes. A major step in combating financial crimes was India's commitment to enacting the Prevention of Money Laundering Act (PMLA), 2002 prompted by global concerns over drug trafficking and organized crimes, India's commitment to international anti-money laundering efforts led to the UN Conventions and the formation of the Financial Action Task Force (FATF). The PMLA combat the menace of illicit funds, especially from drugs smuggling, by confiscating crime proceeds. The Act came into force in 2005 after parliamentary review and several legislative steps. This has since been the country's primary legislation which investigates, prosecutes and punishes financial crimes.

### KEYWORDS

Economic Crimes, Financial System Abuse, Money Laundering, Enforcement Directorate, Financial Intelligence Unit (FIU).

## **INTRODUCTION**

The concept of Money Laundering came from a string of laundering used by an American convict named Don Al Capone who was convicted in 1931 for 1 million tax invasions, to fund his illegal business in the United States. Al Capone used a chain of cash -intensive laundromats to blend his illegal profits from bootlegging and other crimes with legitimate revenue, making the illicit funds appear clean. From this activity, came the concept of money laundering. Thus, any transaction of money gained from illegitimate businesses or unethical ways into legitimate money or the conversion of such money into legitimate financial systems or assets is termed as money laundering.

Money laundering destabilizes financial systems by eroding trust, distorting markets, fueling crimes like terrorism and trafficking, and increases compliance costs for legitimate businesses and hinders economic growth by diverting resources from productive uses, leading to instability, social inequality, and political corruption. It creates unfair competition for legitimate businesses and can give governments a twisted view of their economy, making sound policymaking difficult. The *Prevention of Money Laundering Act, 2002* defines money laundering as “*any process or activity connected with the proceeds of crimes including its concealment, possession, acquisition or use and projecting or claiming it as untainted property*”<sup>1</sup>.

## **RESEARCH METHODOLOGIES**

This paper is expository in nature as it describes, analyzes and explains the Prevention of Money Laundering law in India including its enforcement mechanisms. The paper makes use of both primary and secondary sources for authenticity and credibility. Primary sources like statutory legislations, constitutional provisions and landmark judgements are incorporated as well as sources from reputable journals, blogs and articles were relevant in this research studies.

## **REVIEW OF LITERATURE**

India’s Prevention of Money Laundering Act stems from global efforts to combat drug trafficking and illicit financial flows, leading to India’s commitments under the United Nations

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<sup>1</sup> Prevention of Money Laundering Act, 2002 (Act No. 15 of 2003) Section 3

conventions, specifically the *Vienna Convention of 1988*<sup>2</sup>. The 2002 enactment came into force in 2005 driven by the threat of “dirty money” to national economies, recommendations from committees like the Narasimham’s and the creation of the Financial Action Task Force (FATF) to address this menace. Being a signatory to the United Nations Conventions, India needed domestic law to curb drug money laundering which was a threat exacerbated by its location between the Golden Crescent and Triangle. The establishment of the Financial Action Task Force in 1989 spurred international action as India adopted its recommendations wherein, the *Narasimham Committee in 1998*<sup>3</sup> highlighted the need for anti-money laundering legislation within India’s financial system.

### **KEY ENFORCEMENT COMPONENTS OF THE PMLA, 2002**

The PMLA was introduced as a bill in 1998 but faced severe delay until being passed in 2002 by Parliament of India after critical scrutiny and later received Presidential assent on January 17, 2003. It became operational on July 1, 2005 and empowered units like the Financial Intelligence Unit-India (FIU-IND), Enforcement Directorate (ED), the Central Bureau of Investigation (CBI), the Customs Department and the SEBI which basically investigates the scheduled offences triggering PMLA investigation.

### **ENFORCEMENT OF PMLA AND INVESTIGATIVE MECHANISMS**

*Section 4 of the PMLA* criminalizes the offence of money laundering by stipulating rigorous imprisonment from three years up to seven years (or even 10 years for certain serious offences like drug trafficking) and a fine for anyone convicted of money laundering, aiming to deter such crimes by linking them to proceeds from underlying scheduled offences. It further criminalizes the concealment, possession, acquisition, use, or projection of proceeds of crime as untainted. Several authorities have been empowered by for the enforcement and adjudication of the PMLA using multi-pronged approach involving financial entity obligations like KYC and record-keeping and is primarily investigated by the Enforcement Directorate (ED) which

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<sup>2</sup> Chapter VI, Narcotic Drugs and Psychotropic Substances; 19 United nations Convention against Illicit Trafficking in Narcotic Drugs and Psychotropic Substances  
Vienna, 20 December 1988  
<https://treaties.un.org/pages/viewdetails.aspx?src=treaty>

<sup>3</sup> Narasimham Committee on Banking Sector Reforms: A Second expert Committee of 1998 appointed by the Government of India focusing on Second Generational Banking Sectoral Reforms chaired by M. Narasimham who reported the Narasimham Committee II of 1998  
<https://www.scribd.com/document/94632222/Narasimham-Committee-on-Banking-Sector-Reforms>

traces and attaches proceeds of crimes that are then adjudicated by an Adjudicating Authority (AA) which confirms confiscation and entertain trials in Special Courts and coordinates with the Financial Intelligence Unit (FIU-IND) and other relevant international bodies for asset recovery and information sharing.

Banks, Financial Institutions and other intermediaries are obligated to verify client identities, maintain transaction records and report suspicious activities to the Financial Intelligence Unit. Upon receiving complaints of suspicious transactions from banks or other entities, the FIU collects data including Cash Transaction Reports (CTRs) and Cross Border Wire Transfer Reports (CBETRs) if any, and analyzes such data to identify possible money laundering patterns and shares the resulting intelligence with the national law enforcement agencies like the Enforcement Directorate (ED), the Central Bureau of Investigation (CBI) and the Income Tax Department where relevant and some foreign FIUs to combat illicit cash flows in case of Cross Border Wire Transfers.

### **FINANCIAL INTELLIGENCE UNIT AND ENFORCEMENT DIRECTORATE**

The Director of the Financial Intelligence Unit may conduct inquiries into the obligations of reporting entities and may impose monetary penalties ranging from 10, 000/- to 1000, 000/- for each failure, or for non-compliance with PMLA regulations such as failing to maintain records or reports suspicious transactions as provided *under section 13* of the Act<sup>4</sup>.

The Enforcement Directorate is empowered with an extensive wide-ranging power to investigate and prosecute money laundering offences as the primary enforcement agency. The ED can initiate proceedings by registering an Enforcement Case Information Report (ECIR) upon receiving intelligence or based on a “scheduled offence” registered by another agency. The ED is empowered to inspect, investigate and take legal actions involving economic crimes, money laundering, corruption, and breaches of foreign exchange laws. Its main goals are to stop the generation and transfer of black money, as well as to ensure that foreign exchange regulations are complied with and money laundering is avoided<sup>5</sup>. The Enforcement Directorate can conduct searches and seizures of property and records without prior notice or a warrant. It also has the power to summon any person to record statements under oath, which are admissible

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<sup>4</sup> Penalties for Non-Compliance with FIU-IND Rules, Consultancy, December 15, 2025

<https://finlaw.in/blog/penalties-for-non-compliance-with-fiu-ind-rules>

<sup>5</sup> Lloyd Law College; The Role of Enforcement Directorate (ED), February 24, 2024

<https://www.lloydawcollege.edu.in/blog/role-of-enforcement-directorate.html>

in court proceedings. Properties believed to be “proceeds of crime” are provisionally attached for up to 180 days to prevent its disposal. This order is subject to confirmation by an independent Adjudicating Authority.

## **ARREST, PROSECUTION AND CONFISCATION OF PROPERTIES AND PERSONS**

The Enforcement Directorate has the authority to arrest individuals without a warrant if it has reasons to believe they are guilty of a money laundering offense. The accused must be informed of the reason of his arrest at the time of effectuating the arrest, the accused persons then face stringent bail conditions under section 45, which are reversed burden of proof and is then prosecuted before a Special PMLA Court. Strict procedures are outlined under section 19 of the PMLA requiring presentation of accused persons to a magistrate within 24 hours of arrest and this is consistent with constitutional rights, the Hon’ble Supreme Court in the case of *Pankaj Bansal v. Union of India*<sup>6</sup> underscored the mandatory obligation of investigating authorities to furnish written grounds for arrest and subsequent judicial interpretations has oscillated between prospective applications that relies on the term and henceforth the broader constitutional spirit of *Article 22(1)*<sup>7</sup> and under *section 50 of the Criminal Procedure Code (CrPC) 1973* now under *section 47 of the BNS, 2023*. The burden of proof is then shifted to the accused to dispel suspicion of money laundering. Judicial scrutiny of the ED ensures fair trials and evidence standards.

In terms of confiscation of properties, if the Special Court finds the accused guilty as charged, the attached property is confiscated by the Central Government. The ED collaborates with international agencies and foreign governments through Mutual Legal Assistance Treaties (MLATs) and the Financial Action Task Force (FATF) framework to trace and recover illicit assets held abroad.

## **CONCLUSION**

The Prevention of Money Laundering Act of 2002 has been an essential instrument for promoting economic and social equality by directly attacking financial foundations of serious crimes, ensuring economic stability, and preventing ill-gotten wealth from distorting society and the economy. By preventing the generation and circulation of “black-money” which often evades taxation, and bringing illicit funds into the formal economy or confiscating them can help in maintaining financial transparency and regulatory compliance. The Act establishes a

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<sup>6</sup> Pankaj Bansal vs. Union of India, (2024) 7 SCC 576

<sup>7</sup> Article 22(1) Constitution of India; (the Right to be Informed and the Right to a Legal Counsel)

strong legal framework and specialized investigative agencies such as the Enforcement Directorate (ED) to ensure that offenders are prosecuted. This reinforces the principle that no one is above the law, thereby strengthening public trust in the legal and financial systems and fostering a sense of justice. Furthermore, by mandating obligations on financial institutions like banks and other intermediaries to maintain records and report suspicious transactions, ensures greater transparency and accountability in all monetary dealings. This helps prevent the misuse of formal financial system by criminals and ensures a level playing field for law-abiding citizens and businesses.

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