

LAWS AND REGULATION ON PREVENTION OF MONEY LAUNDERING IN INDIA

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ABSTRACT

Money laundering as an offense is of ongoing starting point and has now risen as a genuine danger to society all in all in view of its effect and connection with different genuine offenses. Before taking upon conversation on money laundering and related offenses, it would not be strange to comprehend wrongdoing when all is said in done. All social orders have certain standards, convictions, customs and conventions which are verifiably acknowledged by its individuals as helpful for their prosperity and sound advancement. Encroachment of these esteemed standards and customs is censured as hostile to social conduct lawfully, „crime“ is any type of lead which is proclaimed to be socially unsafe in a State and all things considered prohibited by law under agony of some discipline. Consequently, Tappan has characterized wrongdoing as, “an intentional act omission in violation of criminal law committed without any defence or justification and penalized by the law as felony or misdemeanor”

Keyword: Money laundering, conversation, offenses, lawfully, endeavors, constitutional

1. INTRODUCTION

The term “money laundering” has undertones of washing something which is grimy. The term was first utilized with regards to Mafia packs working in the USA during the 1930s. These posses, which made enormous benefits through the unlawful production and offer of alcohol during Prohibition during the 1930s, needed to represent this riches. In this manner, the mafia posses opened launderettes or dry-cleaning shops which were helpful in clarifying the proceeds of wrongdoing regarding their retail business, even idea there was almost no laundry occurring. Criminals need to launder their money or cause it to seem authentic for a few reasons. As a matter of first importance, authenticity empowers the criminals to appreciate the products of wrongdoing in an unrestricted manner. These illicit proceeds can likewise be used by criminals to make really genuine endeavors. Based on these authentic endeavors, the criminal families can turn out to be profoundly decent inside two or three ages, in light of the fact that their criminal past for the most part gets obscured. Hence, the relatives of these criminal can proceed to lead ordinary and good lives as citizenry.

Money laundering as a wrongdoing just stood out during the 1980s, basically inside a medication dealing setting. It was from an expanding consciousness of the tremendous benefits produced from this crime and a worry at the huge medication misuse issue in western culture which made the driving force for governments to act against the street

pharmacists by making enactment that would deny them of their illegal increases. Governments additionally perceived that criminal associations, through the tremendous benefits they earned from drugs, could sully and degenerate the structures of the state at all levels.

Money laundering is the procedure by which huge measure of wrongfully got money (from tranquilize dealing, fear based oppressor action or different genuine crimes) is given the presence of having begun from the Legitimate source. Money laundering assumes a principal job in encouraging the aspirations of the medication dealer, the psychological oppressor, the sorted out lawbreaker, the insider seller, the expense dodger just as the numerous other people who need to maintain a strategic distance from the sort of consideration from the specialists that abrupt riches brings from criminal operations. At times people additionally allude to it as a harmless wrongdoing however actually it's anything but a wrongdoing against a specific individual, yet it is a wrongdoing against countries, economies, government, rule of law and world at large .Some of the crimes like-illicit arms deals, pirating, debasement, medicate dealing and the exercises of sorted out wrongdoing including tax avoidance create enormous entreties. Insider exchanging, remuneration and PC misrepresentation plots additionally produce enormous benefits and make the motivation to legitimize the badly gotten increases through money laundering. At the point when a crime produces significant benefits, the individual or gathering

included must figure out how to control the assets without standing out to the fundamental action or the people in question. Criminals do this by masking the sources, changing the structure, or moving the assets to a spot where they are less inclined to stand out. Else, they can't utilize the money since it would associate them to the crime, and law authorization authorities would hold onto it. Whenever done effectively it permits the criminals to keep up command over their proceeds and at last to give real cover to their wellspring of income. Where criminals are permitted to utilize the proceeds of wrongdoing, the capacity to wash such proceeds makes wrongdoing increasingly alluring.

2. PREVENTION OF MONEY LAUNDERING ACT, 2000:

The PMLA 2002 was enacted in 2003 and brought into force on 1st July 2005 to forestall money laundering and to accommodate connection, seizure and appropriation of property got or inferred, legitimately or in a roundabout way, from or associated with money laundering and for issues associated therewith or coincidental there. The issue of money-laundering is never again limited to the geo-political limits of any nation. It is a worldwide hazard that can't be contained by any country alone. Taking into account this, India has become an individual from the Financial Action Task Force (FATF) and Asia Pacific Group on money-laundering, which are focused on the viable execution and enforcement of globally acknowledged gauges against money-laundering and the financing of psychological warfare.

The counter money laundering administrative structure of the nation has been assessed by the Financial Action Task Force (FATF), a between Governmental body, for improvement and advancement of arrangements to battle money laundering and fear monger financing. A far reaching assessment of the country's authoritative and regulatory structure for anticipation of money laundering and countering financing of dread was made by the FATF in November/December, 2009. The common assessment report arranged after the extensive assessment distinguished a few inadequacies in the current regulatory and authoritative structure to deal with exercises identified with anticipation of money laundering. An action plan was set up by the Government of India, which was submitted to FATF. This action plan records different present moment and medium-term estimates which are required to be taken. This action plan likewise imagines a few revisions in the Prevention of Money Laundering Act so the authoritative and managerial structure of the

nation to forestall money laundering and countering financing of dread turns out to be progressively powerful and fit for taking care of the new advancing dangers. The changes proposed are stated to be put together not just with respect to the shared assessment report of the FATF yet additionally the Governments claim encounters in the execution of the Prevention of Money Laundering Act.

Section 3 of PMLA, defines Money Laundering as an offence. It states that any party who has been indirectly or directly involved in any process connected with concealment, possession, acquisition or use of proceeds of crime (any property derived out of criminal activity) shall be guilty of money laundering. This offence is punishable as under Section 4 of PMLA, 2000. The punishment stated is rigorous imprisonment for a term not less than 3 years but may extend up-to 7 years and a fine.

There have been debates on the constitutional validity of Section 2(1)(4) of the PMLA, 2000, which defines proceeds of the crime. In the case of B. Rama Raju v Union of India and OR's, the constitutional validity of the section was challenged in the Andhra Pradesh High Court. The Andhra Pradesh High Court saw that object of PMLA is to forestall money laundering and associated exercises and appropriation of 'proceeds of wrongdoing' and forestalling legitimization of the money earned through illicit and crimes by interest in moveable and immoveable properties. Along these lines, to accomplish this goal the articulation 'proceeds of wrongdoing' has been characterized expansively and accordingly Section 2 (1) (4) of the PMLA, 2002 is constitutionally valid.

3. MONEY LAUNDERING AND OTHER OFFENCES:

The offense of money laundering is straightforwardly connected with different offenses which we call predicate offenses. A predicate offense is a wrongdoing that is a segment of an increasingly genuine criminal offense. For instance, delivering unlawful assets is the principle offense and money laundering is the predicate offense. For the most part, the expression "predicate offense" is utilized in reference to fundamental money laundering and additionally psychological oppressor account activity. The meaning of money laundering in Section 3 of the PMLA 2002 and meaning of 'Proceeds of Crime' in Section 2 (1) (u) allude to Scheduled Offenses. The scheduled offense is characterized in Section 2 (y). The schedule all things considered has under gone revisions in 2009, 2012 and 2015 a clarified in the first section. At present there are 157 scheduled offenses under Penal Statutes.

The PMLA Schedule is isolated into three parts. According to definition in Section 2 (1) (y) (I) there is no edge limit for offenses under Part An of the Schedule. Section 2 (1) (y) (ii) endorses edge breaking point of Rs. One crore or more for offenses indicated in Part B of the Schedule. The Section 2 (1) (y) (iii) alludes to Part C of the Schedule, which thus alludes to offenses of Cross Border suggestions. The Statutes and offenses in the schedule are talked about as under:

PMLA: SCHEDULE PART A:

In Part An of the Schedule to PMLA there are reformatory Statutes given in isolated sections, with indicated offenses there under. A short review of these are given as under:

(1) The Indian Penal Code, 1860: In passage one of Part An, under Indian Penal Code, the offenses identifying with criminal intrigue; the offenses against the State under Section 121 A; predetermined offenses identifying with coin and Government Stamps; indicated offenses influencing Human Body; determined offenses against property; cheating; offenses of deceitful mien of property; imitation; indicated offenses identifying with reports and property imprints; and offenses of cash notes and monetary certificates have been incorporated. These offenses are treated as scheduled offenses with no limit esteem. Right now offenses of Theft, Dishonest, Misappropriation of Property, Criminal Breach of Trust, Mischief and Criminal Trespass are excluded however these are additionally part of the Chapter XVII of offenses against property. Anyway all offenses under XVII of the Indian Penal Code are remembered for Part 'C' of the schedule, which alludes to offenses of Cross Border Implications. In implies if any offense against property under Chapter XVII of Indian Penal Code is of Cross Border suggestion then it will be treated as predicate offense.

(2) The Narcotic Drugs and Psychotropic Act, 1985: Offenses under the Narcotic Drugs and Psychotropic Substances Act, 1985, identify with Contravention corresponding to poppy straw; negation according to coca plant; Contravention comparable to arranged opium; Contravention corresponding to opium poppy and opium; Embezzlement of opium by development; Contravention comparable to cannabis plant and cannabis; Contravention according to made medications and arrangements; Contraventions comparable to psychotropic substances; Illegal import into India, Export from India or transshipment of opiate drugs and psychotropic substances; External managing in opiate drugs and psychotropic substances disregarding limitations; Allowing premises and so on to be utilized for

commission of an offence; Contravention of requests of the Central Government; Financing Illicit Traffic and harbouring guilty parties; and abetment and intrigue are included. The NDPS Act contains stringent arrangements for control and guideline of tasks identifying with drugs and psychotropic substances. It likewise has arrangements for relinquishment of property got from or utilized in unlawful, traffic in opiate drugs and psychotropic substances to execute the arrangements of the worldwide show on Narcotic Drugs and Psychotropic Substances.

(3) Explosive Substances Act, 1908: The offenses under this Act which manage causing blast liable to imperil life or property; Attempt to cause blast or for making or keeping explosives with aim to jeopardize life or property; and Making or having explosives under suspicious conditions. Every one of these offenses are of genuine nature and could likewise be part of fear monger exercises and other sorted out crimes.

(4) The Unlawful, Activities (Prevention) Act, 1967: The section Four of the schedule incorporate - Penalty for being individual from an unlawful affiliation, and so forth.; Penalty for managing assets of an unlawful affiliation; Punishment for unlawful exercises; Punishment for fear monger, and so on.; Punishment for setting expectations of radioactive substances, atomic gadgets, and so forth.; Punishment for raising asset for psychological militant act; Punishment for scheme, and so on.; Punishment for sorting out of psychological oppressor camps; Punishment for selecting of any individual or people for psychological militant act; Punishment for harboring, and so on.; Punishment for being individual from fear monger posse or association; Punishment for holding proceeds of fear mongering; Offense identifying with participation of a psychological oppressor association; Offense identifying with help given to a fear based oppressor association; and offense of raising asset for a psychological militant association. The UAPA Act, 1967 have arrangements to adequately forestall unlawful exercises of people and affiliations and furthermore stretched out to manage fear monger exercises in 2004. Altered in 2012 it has likewise worries with monetary security including financial monitory and financial steadiness and relinquishment of proceeds of wrongdoing rebuffing for raising and gathering assets for psychological warfare.

(5) The Arms Act, 1959: Paragraph Five has offenses with deference - fabricate, selling, move, convert, fix or test or demonstrate or uncover or offer available to be purchased or move or currently possess available to be

purchased, move, transformation, fix, test or confirmation, any arms or ammo in negation of section 5 of the Arms Act, 1959; to get, have under lock and key or convey any precluded arms or disallowed ammo in contradiction of section 7 of the Arms Act, 1959; Contravention of section 24A of the Arms Act, 1959 identifying with restriction as to ownership of advised arms in upset regions, and so forth.; Contravention of section 24B of the Arms Act, 1959 identifying with preclusion as to bringing of told arms in or through open places in upset territories; Other offenses indicated in section 25; to do any demonstration in repudiation of any arrangements of section 3, 4, 10 or section 12 of the Arms Act, 1959 in such way as determined in sub-section (1) of section 26 of the said Act; to do any demonstration in negation of any arrangements of section 5, 6, 7 or section 11 of the Arms Act, 1959 in such way as indicated in subsection (2) of section 26 of the said Act; Other offenses determined in section 26; Use of arms or ammo in negation of section 5 or utilization of any arms or ammo in repudiation of section 7 of the Arms Act, 1959; Use and ownership of guns or impersonation guns in specific cases; Knowingly buying arms from unlicensed individual or for conveying arms, and so forth., to individual not qualified for have the equivalent; Contravention of any state of a permit or any arrangements of the Arms Act, 1959 or any standard made thereunder.

(6) The Wild Life (Protection) Act, 1972: The offenses identify with Hunting of wild creatures; Contravention of arrangements of section 17A identifying with forbiddance of picking, evacuating, and so forth., of determined plants; Contravention of arrangements of section 39 identifying with wild creatures, and so on., to be Government property; Contravention of arrangements of section 44 identifying with dealings in trophy and creature articles without permit denied; Contravention of arrangements of section 48 identifying with acquisition of creature, and so forth., by licensee; Contravention of arrangements of section 49B identifying with restriction of dealings in trophies, creatures articles, and so forth., got from scheduled creatures. These offenses are part of passage six of the Schedule.

(7) The Immoral Traffic (Prevention) Act 1956: The offenses under this demonstration remembered for passage Seven are - Procuring, instigating or taking individual for prostitution; Detaining an individual in premises where prostitution is continued; Seducing or requesting for reason for prostitution; Seduction of an individual in care.

(8) The Prevention of Corruption Act, 1988: In passage Eight the offenses are - Public hiring taking satisfaction other than lawful compensation in regard of an official demonstration; Taking delight all together, by degenerate or illicit methods, to impact local official; Taking satisfaction for exercise of individual impact with local official; Abetment by local official of offenses characterized in section 8 or section 9 of the Prevention of Corruption Act, 1988; Criminal unfortunate behavior by a local official. These offenses are extremely critical unlawful increase in laundered through money laundering process.

(9) The Explosives Act, 1884: Punishment for specific offenses; Offenses by organizations; culpable under Section 9 B and 9 C are remembered for passage Nine of the Schedule. This Act controls the production, import and fare of explosives. These offenses identify with contradiction of rules as for production, imports or fares, ownership use deal or transport of any blast.

(10) The Antiquities and Arts Treasures Act, 1972: Contravention of fare exchange ancient pieces and expressions fortunes; and offenses by organizations under this Act are remembered for passage 10 of the Schedule. The Act focuses on avoidance of carrying of and managing in artifacts and workmanship treasures. It likewise accommodates mandatory securing open spots.

(11) The Customs Act, 1962: Evasion of obligation or forbiddances under the Customs Act, 1962 culpable under Section 132 thereof is schedule offense under part A.

(12) The Bonded Labor System (Abolition) Act, 1976: Punishment for enforcement of reinforced work; discipline for removing fortified work under the reinforced work framework; and abetment are scheduled offenses in paragraph 13.

(13) The Child Labor (Prohibition and Regulation) Act, 1986: Punishment for work of any kid to work in repudiation of the arrangements of section 3 of the Child Labor Act is scheduled offense under passage 14.

(14) The Transplantation of Human Organs Act, 1994: The offenses of expulsion of human organ without power; discipline for business managing in human organs; and of contradiction of some other arrangement of this Act are incorporated as scheduled offenses under section 15.

(15) The Juvenile Justice (Care and Protection of Children) Act, 2000: Offense under Punishable for pitilessness to adolescent or kid; Employment of

adolescent or youngster for asking; Penalty for giving inebriating alcohol or opiate sedate or psychotropic substance to adolescent or kid; and Exploitation of adolescent or kid worker are in section 16.

(16) The Emigration Act, 1983: Offenses and punishments under Section 24 of the Emigration Act, 1983 is in paragraph 17.

(17) The Passport Act, 1967: Offenses and punishments under Section 12 of the Passport Act are remembered for passage 18.

(18) The Foreigners Act, 1946: Penalty for negation of arrangements of the Act, and so forth. Penalty for utilizing fashioned visa; and Penalty for abetment are scheduled offenses under the Foreigners Act.

(19) The Copyrights Act, 1957: Scheduled offenses under this Act are Offenses of encroachment of copyright or different rights presented by this Act; Enhanced punishment on second and consequent feelings; Knowing utilization of encroaching duplicate of PC program; and Penalty for contradiction of section 52A.

(20) The Trademarks Act, 1999: Penalty for applying bogus trademarks, exchange depictions, and so on.; Penalty for selling products or offering types of assistance to which bogus exchange check or bogus exchange portrayal is applied; Enhanced punishment on second or resulting conviction; Penalty for erroneously speaking to an exchange mark as enrolled; Punishment of abetment in India of acts done out of India are in passage 21 of the Schedule.

(21) The Information Technology Act, 2000: Penalty for break of secrecy and protection; Act to apply for offense or repudiation submitted outside India are in section 22.

(22) The Biological Diversity Act, 2002: Penalties for repudiation of section 6, and so on culpable under Section 5 read with Section 6 is a scheduled offence under passage 23.

(23) The Protection of Plant Varieties and Farmers Act, 2001: The Penalty for applying bogus group, and so on.; Penalty for offering assortments to which bogus division is applied; Penalty for erroneously speaking to an assortment as enrolled; Penalty for resulting offense are scheduled offenses under section 24.

(24) The Environment Protection Act, 1986: Penalty for releasing natural contaminations, and so on. in abundance of recommended norms; and Penalty for

taking care of perilous substances without consenting to procedural shields are in passage 25 of the schedule.

(25) The Water (Prevention and Control of Pollution) Act, 1974: Penalty for contamination of stream or well; and Penalty for repudiation of arrangements of section 24 is in passage 26 of the schedule.

(26) The (Air Prevention and Control of Pollution) Act, 1981: The offense identifying with Failure to conform to the arrangements for working modern plant is remembered for section 27 of the schedule.

(28) The Suppression of Unlawful Acts against Safety of Maritime Navigation and Fixed Platforms on Continental Shelf Act, 2002: The offenses regarding Offenses against transport, fixed stage, payload of a boat, oceanic navigational offices, and so on are remembered for section 28 of the schedule.

PMLA SCHEDULE PART B:

Part B of the PMLA schedule is intended for offenses which are scheduled offenses with a limit sum as endorsed in Section 2 (1) (y) (ii). In the first Act the edge sum was Rs. 30 lac or more. Be that as it may, through 2002 corrections of PMLA, all offenses in Part B of the schedule were converged with Part B for example with no edge limit against through Finance Act, 2015 revision an offense under Section 132 of the Customs Act, 1962 has been remembered for Part B with a recommended edge breaking point of Rs. One crore or increasingly under Section 2 (1) (y) (ii) as changed in 2015. The offense identifies with bogus affirmation and bogus reports and so on.

PMLA SCHEDULE PART C:

The section C was embedded through 2009 alteration of PMLA to manage offenses of cross fringe suggestions. Whereby all offenses in Part A just as Part B of cross fringe suggestion are to be treated as scheduled offenses, inspite of edge limit as recommended around then (Rs. Thirty lac) for Part B offenses. Since the 2012 change blended the Part B offenses with Part A the necessity of Rs. 30 lac edge stopped to apply, and waiver of limit proviso (2) was overlooked from Part C of the Schedule. Offenses against Property under Chapter XVII of IPC: The 2012 Amendment of PMLA presented a statement (3) in part C of the Schedule giving that all offenses against property under Chapter XVII of the Indian Penal Code, 1860, if have trans-fringe suggestion will be scheduled offenses. All offenses under Chapter VII of the Indian

Penal Code, with the exception of offenses relating to robbery of property; Dis-legitimate Misappropriation of property; criminal break of trust; evil; and criminal trespass are there in part An of the Schedule. In this manner offenses of robbery of property; Dishonest misappropriation of property; Criminal rupture of trust; Mischief and criminal trespass will likewise be scheduled offenses of these are of cross fringe suggestion.

Offenses u/s 51 of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015: Further the Finance Act, 2015 incorporated the offense of persistent endeavor to dodge any assessment, punishment or premium alluded in Section 51 of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015. Therefore this offense will likewise be a scheduled offense when it has the cross the fringe suggestion.

From the previously mentioned conversation plainly scope of offenses under various statutes have been incorporated as scheduled offenses under three parts of the schedule to PMLA. Laundering of proceeds of these offenses is culpable as an offense of money laundering under PMLA. The PMLA schedule is unmistakable when it alludes to scheduled offenses. Still there are other act and exercises by which illegal money is produced by abusing other administrative and administrative structure. In the second spot there is a need to go to the underlying drivers of different predicate offenses which should be annihilated to check the age of proceeds of wrongdoing. A portion of these issues like defilement in open life, tax avoidance, dark money, underestimate of land transactions, benami transactions, consumption on races, pirating, illegal progression of assets over the outskirts have been independently talked about in Chapter V.

4. CONCLUSION

The money laundering is anything but another wonder however it has drawn more consideration of the administrators and the law enforcement offices in view of its developing linkage with genuine crimes. These days such crimes are not kept to national fringes yet have universal reunification. Also, the criminals engaged with such exercises are progressively sorted out and work at an enormous scope. Further improvement is the contribution of psychological militant and fear based oppressor associations in money and security transactions.

Taking into account the need to control money laundering unique exertion has been made to perceive money laundering as a particular offense. The individual nations have been encouraged to institute law to manage this wrongdoing. Since the offense of money laundering must be connected to the source of proceeds of wrongdoing, subsequently explicit wrongdoing which are alluded as predicate offenses have been distinguished. The Prevention of Money Laundering Act, 2002 remembers for its Schedule 29 Statutes and 157 Offenses as Scheduled Offenses. There are a lot more acts and exercises which are connected with money laundering.

The schedule to PMLA has been changed and re-composed through revisions in 2009, 2013 and 2015 so as to adjust to global enemy of money laundering parameters and to grow the ambit of money laundering offense. Still there can be further extent of consideration of more acts and exercises inside the domain of the PMLA as the rundown of scheduled offenses isn't comprehensive.

Along these lines, to battle money laundering a complete methodology is required to comprehend the wrongdoing and guiltiness in the offense of money laundering as well as those related crimes, the proceeds of which are engaged with money laundering.

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