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THE PREVENTION OF MONEY LAUNDERING ACT

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Abstract

The Supreme Court of India has made a monumental decision to reevaluate its ruling from 27 July 2022, which reversed the presumption of innocence and gave the Enforcement Directorate the authority to make arrests without first giving a copy of the enforcement case information report. Government changes and clarifications to Section 3 of the Prevention of Money Laundering Act of 2002 were upheld by the court. Concern has been raised in recent years regarding the Enforcement Directorate's heavy reliance on this Act, particularly by the public and political parties who believe it is being used to persecute government critics. This document will go into further detail on some rules, including those pertaining to arrest and bail, attachment of property, adjudicating authority, statements made to officials from the Enforcement Directorate that may be used as evidence, etc. Attempts have been made to evaluate the national perspective in light of the international context. However, for the sake of this paper's relevancy and brevity, we will focus on the Domestic Scenario.

Keywords: Money Laundering, Prevention of Money Laundering Act, 2002, India, Crime.

Introduction

The then-ruling National Democratic Alliance passed the Prevention of Money Laundering Act (PMLA) in 2002, and it went into effect in 2005. Its principal objective was to prohibit money laundering by enforcing criminal penalties and requiring the forfeiture of assets obtained via illegal means. India enacted the Act in an effort to join international efforts to reduce the use of drug profits to fund terrorism. The Vienna Convention of 1988 urged nations to develop their own policies to tackle the dangers of drug trafficking. The goal was to prevent the 'laundering' of criminal proceeds into the legitimate real estate market. The Financial Action Task Force was set up at the 1989 G7 Summit to fight the problem of money laundering. The Palermo Convention, signed in 2002, followed suit in urging countries to pass laws making unlawful use of the profits of crime.

Multiple changes were made to the PMLA, the most recent of which occurred in 2019. The goal of this proposed change is to strengthen anti-money-laundering legislation by filling up loopholes and enhancing the ability to spot suspicious transactions. The provision was amended in order to clarify what exactly is meant by the term "proceeds of crime." With this in mind, Section 3 of the Act was expanded in the revised version.

More than two hundred and forty petitions were filed in various courts, all of which claimed that the Act's jurisdiction had been improperly expanded by modifications made in recent years. To many who opposed the PMLA changes, the process itself constituted punishment; they argued that the Enforcement Directorate's (ED) powers were analogous to those of the police and therefore should be subject to the requirements of the Code of Criminal Procedure (CrPC). It was argued that the ED is not bound by the CrPC's procedures for making arrests and conducting investigations because of the PMLA. To put it another way, it empowers the ED to function without procedural protections to protect the rights of accused individuals, so undermining basic rights as guaranteed by the Indian Constitution.

The 2019 modification that sought to define the scope of Section 3 of the Act was a key point of contention in the case. It was also stated that the Act's initial goal was to prevent the circulation of corrupted currency under the pretense that it was clean. But the ED was booking people for the initial crimes, not the money laundering, and no evidence of that was ever shown. While the PMLA was originally enacted to prevent and prosecute a limited number of crimes, most of which involved large-scale money laundering, modifications proposed by the Finance Act 2019 have placed a wide gamut of offenses within the ED's authority. The Parliament's amendments to the PMLA have thereby made it easier for the ED to utilize its powers more liberally, regardless of the seriousness of the offense. Furthermore, it has been argued that the Finance Act was used to propose the PMLA modifications in 2015, 2016, 2018, and 2019, despite the fact that these amendments do not meet the criteria for a "money bill" under Article 110 of the Constitution.

All of the petitions challenging different parts of the PMLA, a statute the opposition has long said is being used as a weapon by the government to persecute its political opponents, were heard by a three-judge panel of the Supreme Court. The Supreme Court has ruled that the ED may legally conduct searches, make arrests, attach assets, and take property without a warrant under the Electronic Frontier Act. Additionally, the Supreme Court reaffirmed that the 2019 amendment's explanation of Section 3 was only explanatory and did not broaden the scope of the original meaning. Currently, Section 3 defines money laundering as an offense by saying, among other things, "Whoever directly or indirectly attempts or indulges or knowingly assists or knowingly is a party to, 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."

As was previously mentioned, the use of the word "and" strongly implies that it is impossible to do money laundering unless dirty money is disguised as clean.

The government's argument that the word "and" in Section 3 of the Act should be interpreted as "or" was upheld by the Supreme Court, owing to a drafting mistake. The Supreme Court has

engaged in judicial legislating by changing the term "and" to "or" and therefore reinterpreting the Constitution in its own image, presumably in the name of Article 142.Experts have criticized the increase of the scope of Section 3, the central provision of the Act, without a compelling explanation for why this change was necessary.

LITREATURE REVIEW

Nwokeke, Chidera, (2022) Due to its far-reaching breadth and innovative character, the Money Laundering (Prevention and Prohibition) Act, 2022 is currently the legislation with the highest support in Nigeria. Legal professionals and laypeople alike may benefit from familiarity with The Law. This legislation has not only given sufficient disciplinary measures and containment methods against abuses and compromises, but it has also reinforced the country's Anti-Money Laundering/Combating the Financing of Terrorism (AML/CFT) framework.

Devi, naina. (2019)."Capital as such is not bad; it is its incorrect application that is terrible," Mahatma Gandhi once stated. There will always be a need for capital. There is no difference between the rich and the poor when it comes to engaging in the international crime of money laundering. In the first place, this article is an in-depth study of money laundering, mostly in the context of India and the Indian economy, with some comparisons to other countries. The first and second sections of this article will provide a broad overview of the evolution of money laundering, its prevalence in India, and the methods often used by criminals there. The final section of this study will discuss how money laundering has affected many industries in India, including the financial industry. The fourth section of this study will examine the many acts that the Indian government has enacted to combat money laundering via an examination of the prevention of money laundering statutes. Here, we'll also discuss the reforms and safeguards enacted on a global scale to combat money laundering. Fifth, this study will analyze in detail current case studies involving money laundering in India. In conclusion, this article discusses the measures and approaches India has used to implement the anti-money-laundering legislation and the adjustments that have been made throughout. It also examines domestic Indian money-laundering tactics including gold mobilization programs. A few modest suggestions for improving India's money-laundering practices are offered in the latter section of the study.

All Answers Ltd (2019) Transnational and organized criminal groups often rely heavily on money laundering to function. Money laundering, however, has negative consequences for a nation's economy, government, and society as a whole. In this post, we took a quick look at the monetary and societal consequences of money laundering. The effects of money laundering on the economy were discussed, and they included (1) damage to the legitimate private sector, (2) damage to the integrity of financial markets, (3) government incapacity to regulate the economy, (4) economic distortion and instability, (5) revenue loss, (6) privatization risks, and (7) reputation risk. Allowing drug traffickers, smugglers, and other criminals to extend operations and transferring economic power from the market, the government, and the population to criminals are examples of the social consequences of money laundering. As a last resort, money laundering may fund a coup d'état. The fight against money laundering is an essential and fruitful part of law enforcement's attempts to curb criminal activity. Worldwide, the problem of money

laundering is intricate and ever-changing. To lessen criminals' opportunities to launder money and fund further illegal activity, we need universal norms and more international collaboration.

UKEssays (2018) The crime of money laundering is the subject of this study. Title 31 and the Bank Secrecy Act will be defined, and the steps of the crime and telltale signs will be outlined so that perpetrators may be brought to justice. At the end, the detrimental effects of money laundering and the people it affects will be discussed.

A THOUGHT-PROVOKING PROBE INTO MONEY LAUNDERING

A person or group may engage in illegal activity with the intention of making money. Laundering refers to the practice of separating dirty money from its illicit origins. Large sums of money may be made via crimes like drug trafficking, prostitution networks, and even murder. Huge sums of money may be made by unlawful means including embezzlement, insider trading, bribery, etc., which in turn provides an incentive to "legitimize" the illicit earnings through money laundering. The resulting funds are unclean because of their origin. The term "money laundering" refers to the practice of making the appearance of "dirty money," or the profits of crime, to be more in line with "legal" currency.

In the Proceeds of Crime Act of 2002 (PMLA), money laundering is defined as "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."

It is "the conversion or transfer of property, knowing that such property is derived from serious crime, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in committing such an offence or offences to evade the legal consequences of his action and the concealment or disguise of the true nature, source, location, disposability of such property," as stated in Article 1 of the proposed European Communities (EC) Directive from March 1990."

(A) Development of Money Laundering

There are three stages to the money-laundering process:

1) Placement is the initial step in the money-laundering process. It's the act of hiding away cash or money gained dishonestly. The launderer does this to deposit his illegal gains into the economy. You may do this by putting the money in domestic banks or other official or informal financial organizations. This may be accomplished in a number of ways, including the purchase of a succession of monetary instruments (cheques, money orders, etc.) or the division of the total amount of cash (which is generally enormous) into smaller, less noticeable quantities that are subsequently placed straight into a bank account. The funds are then either sent to offshore accounts or physically moved across borders in the form of artwork, airplanes, or precious metals and stones before being sold for cash.

2) Layering is the second step in the process of laundering money. During this phase, the launderer engages in a series of moves or transactions with the monies to conceal their true origin. The money may be moved between several accounts at various financial institutions, or invested in bonds, equities, and even traveler's checks. This occurs in tax havens, which are countries that refuse to participate with anti-money-laundering investigations. A common method used by money launderers is to make their transactions seem like they were made in exchange for products or services. To totally conceal the unlawful gains from their genuine source and to deceive the investigating authorities in case of an inquiry into the same, a number of rotations to slush funds are supplied via banks and this complicated layer of financial transactions is carried out. The funds obtained from the resale of these items are invested in real estate and other respectable enterprises, with a focus on the hospitality and tourist sectors. "Shell businesses," sometimes known as paper firms or phony corporations, are often used for this purpose. These "Shell" companies are registered in tax havens where international anti-money-laundering treaties are not enforced, and they are used as a cover for illegal activities. Countries with no or little corporate tax rates and governments that make no effort to trace the origin of multinational corporations' profits are sometimes referred to as "Tax Havens." In the process of building up layers, shell corporations are often used.

3) Integration This is the last step in the process, during which the money is transformed into legal tender in the economy before being extracted. It may be used to buy shares in a firm, real estate, high-end consumer products, etc. This is the last step in the money-laundering process. The launderer "cleans" the money by making it seem like it came from legitimate sources, and then reintroduces it into the system. It's now quite hard to tell the difference between legitimate and illicit cash. Making money from crime seem like it came from a respectable source.

No Equivalence between ECIR and FIR

The ED files something called an Enforcement Case Information Report (ECIR), which is analogous to a First Information Report (FIR) in the criminal justice system. The FIR is shared with the accused, but the ECIR is kept secret, ostensibly because it is an internal document and not meant for public consumption. The ED's ability to make an arrest based on an ECIR without first providing the suspect with a copy of the document was another reason for the challenge before the Supreme Court. When a person is seeking bail without any court monitoring, the individual is often uninformed of the allegations against them.

Since a FIR must be filed and provided to the accused, the Supreme Court ruled that the ECIR could not be considered equivalent. It argued that requiring people to disclose ECIRs would run counter to the Act's goals, such as making it harder to attach assets. Disclosure of information included in the ECIR prior to the inquiry or investigation might compromise the results of either. As a result, the court ruled that a lack of access to ECIR, which is basically an internal document of the ED, cannot be used to claim a breach of constitutional rights.

Some have voiced concern that if an inquiry is opened into a person, he need not be told of the basis for the probe, or that only hazy reasons could be disclosed. It's possible the guy has no idea

whether he's being called as a witness or an accused. The Supreme Court must be convinced that he is not likely to commit an offense while on bail, and he must also meet the "dual criteria" of hearing the prosecution and establishing innocence. This is worrisome since it contradicts one of the cornerstones of criminal law: the defendant's assumption of innocent unless proved guilty. It is a harsh aspect of the law that an individual may be arrested without being informed of the reasons for their detention, that bail may be difficult to obtain, and that property can be seized until the accused's innocence being proven in court. The lingering nature of these situations for years in India is devastating under these circumstances.

Low percentage of those tried and found guilty

The number of persons who have been successfully prosecuted under the PMLA is an important factor to consider when evaluating the Act's effectiveness. As of the end of March 2022, the ED had documented 5,422 instances under the PMLA, had seized assets totaling around 1.05 trillion (S$18.5 billion), and had filed prosecution complaints (charge sheets) in 992 cases. According to Union Minister of State for Finance Pankaj Chaudhary's written statement in the Lok Sabha, 86.9 billion (S$1.5 million) was confiscated and 23 accused were convicted as a consequence of these cases. To put it another way, this means that the remaining 1.04 trillion (S$18.3 billion) in unlawfully attached assets must be returned. This means that less than half of those charged under PMLA are ultimately found guilty. Many people are worried that the ED won't exercise its authority under the Act effectively because of the low conviction rate. It has been used as a tool to silence those who speak out against the status quo.

The Political Aspect

Even if people on opposite sides of the political spectrum have commented on the Supreme Court's decision, it's important to remember that everyone has a hand in shaping the law and making it stricter. Nobody was eager to give up the state's right to use force at will. Of course, it's also true that the number of legal interventions has climbed considerably during the last eight years.

Although numerous laws have been approved by Parliament that seemed to infringe on the basic rights of the citizen, it has always been the Supreme Court that has emerged as the defender of such rights and deemed such laws to be in violation of fundamental rights. In its ruling in July 2022, the Supreme Court seems to have reduced the standard, allowing the state to infringe upon a citizen's basic rights, according to legal experts.

The Decision to Review its Earlier Verdict

The Supreme Court issued a notice on a petition seeking review of its 27 July judgment that upheld the ED's power of arrest, attachment, search, and seizure, conferred on it by the PMLA, on 25 August 2022, taking these petitions into consideration. The petition was filed, among others, by Congress Member of Parliament Karti P Chidambaram. Two sections of the ruling that upheld the PMLA were deemed to be questionable on first glance by a bench presided over by the then Chief Justice N V Ramana. The first provision is that the accused need not be given a

copy of the ECIR. Whether an individual who has been arrested may be prevented from receiving a copy of the ECIR (the equivalent of a FIR in a criminal case) on the grounds that it is only an internal record of the ED. The second clause addresses whether or not the presumption of guilt may be assigned to an accused person, in contrast to the fundamental premise of common law that everyone is presumed innocent unless proved guilty.

Arrest & Bail

Section 19 contains the requirements for making an arrest. A person may be arrested if they are a Director, Deputy Director, Assistant Director, or any other official authorized in this regard by the Central Government. Crimes that fall within the scope of this Act are Cognizable and Non-Bailable as stated in Section 45. Further, it details what must be done to qualify for Bail and release from jail. According to Section 45(b), a person accused of committing an offense punishable by more than three years in jail under Part-A of the Schedule shall only be released if:

- The Public Defender has the right to file an objection to the Bail Application.

- Upon hearing the Public Prosecutor's opposition to the bail application, the Court must be convinced that the defendant is innocent and would not re-offend while out on bail.

The problematic bail requirements of this statute prioritize the court's belief above the facts presented.

Conclusion

It's worth noting that under normal circumstances, a Supreme Court decision is irrevocable. In any case, the Supreme Court has the authority to review its own rulings under Article 137 of the Constitution. The deadline for filing a petition to review an order is 30 days from the date of the original order. Judges often assess requests for a rehearing by discussing them between themselves in private. As this is a matter of public interest, the bench has chosen to hold the hearing in open court, where arguments from attorneys for both sides were presented. Many people are waiting breathlessly for the Supreme Court's decision when it has finished reviewing the cases described above.

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