



Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2021 – ISSN 2582-7820
Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

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What is Money Laundering in India?

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Received 12 June 2021; Accepted 23 June 2021; Published 25 June 2021

Money laundering is the transformation of illegitimate money, assets into legitimate sources of money, earned through crimes such as the trafficking of drugs, cash smuggling, bogus companies' stock market scam, terrorism, etc. In numerous jurisdictions, it is a crime with different meanings and different punishments. Money laundering can be accomplished in a variety of methods, but the most common is the formation of fictitious corporations, sometimes known as "shell firms." Although the 'Shell Company' appears to be a legitimate company, it does not exist in the actual world and no production takes place there. In reality, these shell firms simply exist on paper and not in reality. The clandestine economy is a major operation under the prevention of the money laundering Act and is even more dangerous than a general offense. The repression against black money by the Indian Government continues uninterrupted and in recent times proceedings were brought under the Money Laundering Act, 2002. This article attempts to explain India's money laundering statute and gives a short outline of its system and function.

Keywords: *money laundering, economy, India.*

INTRODUCTION

The Money Laundering Act of 2002 (PMLA) provides that investigations into the crime of money laundering should be related to scheduled offenses examined by the Central or State Law Enforcement Agencies involved. The PMLA system, therefore, requires collaboration amongst agencies to take effective action against those who are discovered to be engaged in

illegal activities by the Law Enforcement Agency. Such action under PMLA means that contaminated assets and persons/entities are attached and confiscated for the offense of money laundering. PMLA act extends to the whole of India **including** the state of **Jammu & Kashmir**.¹

The object of Act: It is an Act to avoid economic offense and to provide for confiscation of property obtained from, or involved in, money laundering, and to **punish those who commit the offenses of money laundering**. Cases of money laundering are investigated by the **Directorate of Enforcement** in the **Department of Revenue, Ministry of Finance**.² Financial Intelligence Unit- India (FIU-IND) under the department of revenue, Ministry of Finance is the central national agency which is responsible for receiving, processing, analyzing, and circulating information concerning suspects of financial transactions. Further, FIU-IND is also responsible for the circulation of findings to enforcement agencies and foreign FIU's.³

MONEY LAUNDERING

Money Laundering is a **white-collar** non-violent crime in nature and is dedicated to financial gain.⁴ It is the legal way through illicit assets and funds turned into white or authorized funds and assets. It is the most favorable process used by criminals to wash away their black money to make it "white money". A fundamental commercial difficulty for large, organized criminal organizations – such as drug smuggling, stock market scam, extortion operations, etc., end up with a vast sum of cash that they conceal to escape from investigations. The receiver of such a sum of money does not want to declare it as income, resulting in significant income tax liabilities. The inspiration for this crime comes, when a criminally minded person wants to make huge money over a short period or a big businessman who does not want to lose their money, property, or services or to secure their personal or business advantage.

¹ 'FAQs (Frequently Asked Questions) on The Prevention of Money Laundering Act' (*Enforcement Directorate*, 2013) <https://www.enforcementdirectorategov.in/FAQs_on_PMLA.pdf> accessed 01 June 2021

² *Ibid*

³ *Ibid*

⁴ 'White-Collar Crime' (*FBI*) <<https://www.fbi.gov/investigate/white-collar-crime>> accessed 01 June 2021

Prof. Sutherland pointed that White Collar crime is more serious than common crimes, firstly, because of bigger financial losses and secondly because of damage to public morality. He observed that, compared to those types of ordinary crimes, financial losses caused by white-collar crimes are likely higher for society than financial losses caused by burglary, robbery, and larcenies of lower-class people. In the *state of Gujrat v. Mohanlal Jitamalji Porwal and Anr*⁵, the Supreme Court of India very interestingly explained the distinction between general crime and white-collar crimes. Justice Thakker in his judgment stated that murder can be done at the heat of the moment, but these economic crimes are being perpetrated with a calm calculation and profit-gaining approach.

WHITE-COLLAR CRIME

Prof. Edwin Sutherland the American Sociologist coined the term “white collar” in 1948. This crime is perpetrated by a person of high dignity and social standing amid his employment," the white-collar crime relates to an educated and prosperous person. The "shirt and tie" group, typified by office employment and management, has historically been the white-collar workers, who did not "dilute their hands." This working-class contrasts with blue-collar⁶ workers those who wear blue shirts and work in factories, mills, and plants.

DEFINITION OF MONEY LAUNDERING

- **Section 2 of PAML Act 2002**, Money laundering is when any action or procedure in connection with proceeds of crime which involves its possession, acquisition, concealment or use and projects or claims it to be untainted property.⁷

WHO CAN BE CHARGED UNDER THE MONEY LAUNDERING ACT?

⁵ *State of Gujarat v Mohanlal Jitamalji Porwal* AIR 1987 SC 1321

⁶ Julia Kagan, 'Blue Collar' (Investopedia, 8 February 2021)

<<https://www.investopedia.com/terms/b/bluecollar.asp>> accessed 02 June 2021

⁷ Prevention of Money-Laundering Act 2002

- **Section 3 of PAMLA 2002**, A person who is involved in any process or activity concerning the commencement of crime, its acquisition, concealment, and possession to show it as untainted property shall be guilty and charged under PMLA.

PROCESS INVOLVED IN MONEY LAUNDERING THE USUAL MODUS OPERANDI

- **Placement** - Is the first stage of money laundering. It is the process through which the tainted money received from any unlawful activity is introduced in the financial system. This introduced large sum of money can be deposited in a bank by series of instruments like Bank Draft, Cheque, etc. later these cheques and bank draft are placed into one or more location in one or more bank accounts.⁸

Example: A licit restaurant business is owned by a criminal or criminal organization. Money derived from the unlawful activity is placed through the restaurant gradually into the bank. The restaurant reports cash sales every day significantly higher than they do.

Take for instance Rs 20,000 in cash in a restaurant in a single day. Add to this sum an extra Rs 20,000, money from criminal operations, and the restaurant reports falsely that it used to sell Rs 40,000 a day in cash. The money is now placed into the legitimate bank account of the restaurant and is a regular restaurant deposit.

- **Layering** - Layering is the second stage of money laundering. This stage involves movements or conversion of funds in the banking and/or financial system to hide the true origin of funds from the criminal source. This is done through series of Bank Accounts, spreading of funds across the globe, and in those jurisdictions where anti-Money Laundering investigation does not take place.

Example: The restaurant management may transfer the illegal funds into different channels for the circulation of funds through various bank accounts.

- **Integration** - On successful completion of the above stages, now the launderer moves to the third stage where the unlawful money or funds earned through the source of crime

⁸ Enforcement Directorate (n 1)

are inseparably mixed with lawful money. Now money launderers can use this converted tainted money into real estate, business ventures & luxury assets, etc.⁹

Example: The money will be deposited in legal companies or personal interests in the last stages of money laundering – integration. It may be used to buy luxury products of high quality such as jewelry or cars. It can also be used to build another corporation to launder future quantities of unlawful money.

At this level, the money was perfectly laundered enough to be freely used by the criminal without recourse to any illicit measures. The money is then often invested or swapped properly for luxury property.

DOES MONEY LAUNDERING MEAN SIPHONING OF FUNDS?

Money laundering not only means siphoning of funds, but it covers a broader concept which involves the entire process by which money is introduced from crime such as **laundering via Real Estate, cash smuggling, Kidnapping, Stock Market Scams, Drug Trafficking, Bribery Creating Bogus companies, Corruption and Extortion, etc.** The money earned from the above criminal activities is covered by the inflow of series of transactions which makes the origin look legitimate. **Financial Action Task Force (FATF)** is an international governing body against economic crimes. India criminalizes money laundering after the recommendation received by **FATF**.

PROCEEDS OF CRIME

- Whosoever directly or indirectly obtains property out of any criminal activity which is specially mentioned under scheduled offenses (section 2(1)(y) of PMLA) or worth of such property which may be taken or held outside the country then the property equivalent to the same value will hold in-country or abroad under (section 2(1)(u)).

PROCESS OF APPEALS

⁹ *Ibid*

- Any person or The Director who is aggrieved by any order made by the Adjudicating Authority may prefer to Appeal against the order to the Appellate Tribunal within 45 days accompanied by such fee prescribed. Any delay may be condoned by the Appellate Tribunal in the availability of sufficient cause. However, before granting such action, an opportunity of being heard must be given, the said appeal shall be disposed of within 60 days. Appellate Tribunal may confirm/modify/set aside the order. Further, an Appeal against the order of the Appellate Tribunal may be filled to High Court within 60 days of communication of the decision of the Appellate Tribunal. The appeal to High Court may be filed in any case of the question of law or facts. High Court may condone the delayed maximum by further 60 days.

SCHEDULED OFFENSES

Under section 2(1)(y) of PMLA 2002, scheduled offenses are enlisted. It means:

- offenses mentioned under part A of the Schedule are enlisted under several acts like IPC, SEBI act 1992, Narcotic Drugs & Psychotropic Substance, explosive substance offense, etc.
- If the total value involved in the offense is **One Crore Rupees** or more then this will fall under the part B of the Scheduled
- Money laundering committed across international boundaries is enlisted under part C of the Scheduled.
- Every **Scheduled offense** is called a **Predicate offense**. The occurrence of predicate offense is a precondition for starting an investigation under money laundering.

ANALOGY OF SCHEDULES AND PMLA OFFENSES

Another very important thing for understanding the crime of money laundering is reading the above definition of 'proceeds of crime', which shows that money laundering is not a sovereign crime, this is a matter influenced by several other crimes, called the '**predicate offense**' or the '**planed crime**'. Nearly all major offenses worldwide are predicate crimes with a view of expanding the area of prosecution regarding money-laundering offenses.

In *R. Subramanian v. CBI from Inspector of Police & Anr*¹⁰, the High Court in Madras reviewed whether a court case against a PMLA tribunal would overrule proceedings of a court prosecuting the predicate offenses, therefore trialing the crime of money laundering and predicate crimes. The proceedings concerning predicate offenses can move to the Special Court, carried out under the Indian Penal Code (1986) and the Corruption Prevention Act (1988). When the Madras High Court Tribunal read Section 44 of the PMLA, it held that predicate offense proceedings are independent of PMLA proceedings. Section 44 provided the Authorized Authority with the option only to apply to the Special Court, against the predicate offense. It also argued that only quick proceedings on money laundering offenses were the major purpose of establishing a Special Court. Consequently, if a charge sheet of the case has been brought before the Court dealing with the predicate crimes, it cannot be referred to the PMLA Special Court just because it was the predicate offense that formed the basis of the laundering offense. If the complaint under PMLA is filed with the Special Court, all cases related to the predicate offenses must otherwise be suspended.

TRIAL OF SCHEDULED AND PMLA OFFENSES

Since the Money Laundering offense is closely linked to the scheduled offense, in 2013, PMLA changes permit the Special Court to conduct the proceedings on a predicate offense as well as an offense punished pursuant to section 4. If the Court which has taken note of the scheduled offense, shall upon application by the authority authorized to file a complaint under this Law, bring a case concerning the scheduled crime to the Special Court. On receipt of the case, the Court of Justice which has taken note of the complaint concerning the offense of money laundering under sub-clause (b) shall, at the request of the authority authorized to file a complaint under this Act, however, should not in itself signify a joinder or a trial club. In both circumstances, the simultaneous trial by the same court is a useful way of reducing delays. Both cases in each instance are trialed and resolved independently based on the facts. The trial of the regular and PMLA offenses is solely for the sake of expediency to be carried out by the same court.

¹⁰ *R Subramanian v CBI, Inspector of Police* Criminal Revision No 124 of 2013

PUNISHMENT FOR THE OFFENSE OF MONEY LAUNDERING

- The offense of money laundering is covered under section 3 of PMLA.¹¹
- Punishment under money laundering is defined under section 4 of PMLA.¹²
- Persons found guilty of money laundering are punished for a term of a minimum of 3 years - maximum 7 years & shall be liable for a fine.
- If the proceed of crime is under paragraph 2 of Part A of the schedule (i.e., offense under the **Narcotic Drugs & Psycho Tropic Substance Act, 1985**), then maximum punishment may extend up to **TEN YEARS**.

EXTRA-TERRITORIAL APPLICATION OF PMLA

In circumstances when the offense involves cross-border offenses, the PMLA gives extra-territorial authority to prosecute money laundering. This can be done if all proceeds of crime from a predicate offense perpetrated in India have been returned, or if the predicate offense has taken place globally, and proceeds resulting therefrom may have been returned to India. In India or overseas, whenever assets constitutive of crime are removed and retained abroad and cannot be falsified, PMLA permits the attachment and seizure of analogous assets to an equal amount. PMLA authorizes the Government to make mutual arrangements with foreign nations for the enforcement of the PMLA provisions and the sharing of information on any offense under PMLA or under the relevant legislation in effect or under PMLA. Until present, the Mutual Legal Assistance Treaty (MLAT), with 39 nations, has been implemented by the Indian government.

CONCLUSION

Not only the economic system of countries but also their veracity and sovereignty are seriously endangered by a money-laundering system. Some laws, such as PMLA, have been passed to avoid these dangers. The foregoing study by PMLA shows that the Act undermines the

¹¹ NCIB (n 7)

¹² *Ibid*

essential principles of a fair trial, natural justice, and due process, even though it's well-intended. The Act transgresses core rights and freedoms with its passion for fighting illicit money. Some elements of the Act are unreasonable and fragile in law and case law and may not satisfy constitutional requirements. Given that the law is very new to the Act, it is predicted that these sections will be interpretable/strike/read down by the Hon'ble Courts in such a way that it would make the Law constitutionally compatible with the exercise of authority.