

PREVENTION OF MONEY LAUNDERING ACT, 2002 **(AS AMENDED BY THE AMENDMENT ACT, 2009)**

21.0 INTRODUCTION

Prevention of Money Laundering Act, 2002 or more commonly known as PMLA 2002 (an abbreviation for Prevention of Money Laundering Act, 2002) came into force w.e.f 1st July 2005. It extends to the whole of India. It aims at combating channelling of money into illegal activities, provides for attachment and seizure of property and records, stringent punishment, including rigorous imprisonment of upto 10 years and fine of upto Rs. 5 lakh. The Act, in line with India's commitment to fight all forms of economic crimes

The preamble to the Act provides that it aims to prevent money-laundering and to provide for confiscation of property derived from, or involved in money-laundering and for matters connected therewith or incidental thereto. The legislation is a result of the Political Declaration and Global Programme of Action, annexed to the resolution S-17/2 which was adopted by the General Assembly of the United Nations at the 17th special session on 23rd February, 1990 and the Political Declaration adopted by the Special Session of the United Nations General Assembly held on 8th – 10th June, 1998. The legislation is very recent and most essential provisions have been discussed herein below so that the ethos behind the work is well understood, instead of simply reading the legislation for the purpose of reading it only. PMLA will certainly have a far reaching impact. The fact that such legislation has been drafted, passed and notified indicates the desire of the system to become neat and clean.

In order to further strengthen the existing legal framework and to effectively combat money laundering, terror financing and cross-border economic offences, an amendment Act, 2009 was passed by the Parliament which was notified on 3rd June, 2009. The new law seeks to check use of black money for financing terror activities. Financial intermediaries like full-fledged money changer, money transfer service providers such as credit card operators have also been brought under the ambit of The Prevention of Money-Laundering Act. Consequently, these intermediaries, as also casinos, will be brought under the reporting regime of the enforcement authorities. It would also check the misuse of promissory notes by FIIs, who would now be required to furnish all details of their source. The new law would check misuse of "proceeds of crime" be it from sale of banned narcotic substances or breach of the Unlawful

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Activities (Prevention) Act. The passage of the Prevention of Money Laundering (Amendment), 2009 will enable India's entry into Financial Action Task Force (FATF), an inter-governmental body that has the mandate to combat money laundering and terrorist financing.

21.1 DEFINITIONS

Major Definitions

- (a) Money – Laundering
- (b) Proceeds of crime
- (c) Property
- (d) Payment System (as introduced by the Amendment Act, 2009)**
- (e) Scheduled Offence

Actually to understand the meaning of money – laundering it is essential to define proceeds of crime, property and scheduled offence. And infact, all the above definitions have to be read together.

Clause (p) of sub section 1 of Section 2 provides that "money-laundering" has the meaning assigned to it in section 3. Moving to Section 3, it is observed that whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime and projecting it as untainted property shall be guilty of offence of money laundering.

Section 2(1)(u) defines "proceeds of crime" as any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property.

In terms of Clause (v) of sub – section (1) of Section 2, "property" means any property or assets of every description, whether corporeal or incorporeal, movable or immovable, tangible or intangible and includes deeds and instruments evidencing title to, or interest in, such property or assets, wherever located.

In terms of clause (rb) of section 2 "payment system" means a system that enables payment to be effected between a payer and a beneficiary, involving clearing, payment or settlement service or all of them. It includes the systems enabling credit card operations, debit card operations, smart card operations, money transfer operations or similar operations;

The term "scheduled offence" has been defined in clause (y) of sub-section (1) of Section 2 of the Act. Accordingly it means –

- (a) the offences specified under Part A of the Schedule; or
- (b) the offences specified under Part B of the Schedule if the total value involved in such offences is thirty lakh rupees or more.

The Schedule to the Act gives a list of all the above offences. The Schedule is divided into two parts. Part A and Part B which are as follows:-

PART A

Paragraph 1 - Offences under the Indian Penal Code (Part A)

- (a) Section 121 - Waging, or attempting to wage war, or abetting waging of war, against the Government of India.
- (b) Section 121A - Conspiracy to commit offences punishable by section 121 against the State.
- (c) 489A Counterfeiting currency notes or bank notes.
- (d) 489B Using as genuine, forged or counterfeit currency notes or bank notes.

Paragraph 2 - Offences under the Narcotic Drugs And Psychotropic Substances Act, 1985

- (a) Section 15 - Contravention in relation to poppy straw.
- (b) Section 16 - Contravention in relation to coca plant and coca leaves.
- (c) Section 17 - Contravention in relation to prepared opium.
- (d) Section 18 - Contravention in relation to opium poppy and opium.
- (e) Section 19 - Embezzlement of opium by cultivator.
- (f) Section 20 - Contravention in relation to cannabis plant and cannabis.
- (g) Section 21 - Contravention in relation to manufactured drugs and preparations.";
- (h) Section 22 - Contravention in relation to psychotropic substances.
- (i) Section 23 - Illegal import into India, export from India or transshipment of narcotic drugs and psychotropic substances.
- (j) Section 24 - External dealings in narcotic drugs and psychotropic substances in contravention of section 12 of the Narcotic Drugs and Psychotropic Substances Act, 1985.
- (k) Section 25A - Contravention of orders made under section 9A of the Narcotic Drugs and Psychotropic Substances Act, 1985.
- (l) Section 27A - Financing illicit traffic and harbouring offenders.
- (m) Section 29 - Abetment and criminal conspiracy.

Paragraph 3 – Offences under the Explosive Substances Act, 1908.

- (a) Section 3 - Causing explosion likely to endanger life or property.

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- (b) Section 4 - Attempt to cause explosion, or for making or keeping explosives with intent to endanger life or property.
- (c) Section 5 - making or possessing explosives under suspicious circumstances.

Paragraph 4 - Offences under the Unlawful Activities (Prevention) Act, 1967

- (a) Section 10 read with section 3 - Penalty for being member of an unlawful association, etc.
- (b) Section 11 read with sections 3 - Penalty for dealing with funds of an unlawful and 7 association.
- (c) Section 13 read with section 3 - Punishment for unlawful activities.
- (d) Section 16 read with section 15 - Punishment for terrorist act.
- (e) Section 16A - Punishment for making demands of radioactive substances, nuclear devices, etc.
- (f) Section 17 - Punishment for raising fund for terrorist act.
- (g) Section 18 - Punishment for conspiracy, etc.
- (h) Section 18A - Punishment for organising of terrorist camps.
- (i) Section 18B - Punishment for recruiting of any person or persons for terrorist act.
- (j) Section 19 - Punishment for harbouring, etc.
- (k) Section 20 - Punishment for being member of terrorist gang or organisation.
- (l) Section 21 - Punishment for holding proceeds of terrorism.
- (m) Section 38 - Offence relating to membership of a terrorist organisation.
- (o) Section 39 - Offence relating to support given to a terrorist organization
- (p) Section 40 - Offence of raising fund for a terrorist organization.

PART B

Paragraph 1 - Offences under the Indian Penal Code

- (a) Section 120B - Criminal conspiracy.
- (b) Section 255 - Counterfeiting Government stamp.
- (c) Section 257 - Making or selling instrument for counterfeiting Government stamp.
- (d) Section 258 - Sale of counterfeit Government stamp.
- (e) Section 259 - Having possession of counterfeit Government stamp.
- (f) Section 260 - Using as genuine a Government stamp known to be counterfeit.
- (g) Section 302 - Murder.

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- (h) Section 304 - Punishment for culpable homicide not amounting to murder.
- (i) Section 307 - Attempt to murder.
- (j) Section 308 - Attempt to commit culpable homicide.
- (k) Section 327 - Voluntarily causing hurt to extort property, or to constrain to an illegal act.
- (l) Section 329 - Voluntarily causing grievous hurt to extort property, or to constrain to an illegal act.
- (m) Section 364A - Kidnapping for ransom, etc.
- (n) Section 384 to 389 - Offences relating to extortion.
- (o) Section 392 to 402 - Offences relating to robbery and dacoity.
- (p) Section 411 - Dishonestly receiving stolen property.
- (q) Section 412 - Dishonestly receiving property stolen in the commission of a dacoity.
- (r) Section 413 - Habitually dealing in stolen property.
- (s) Section 414 - Assisting in concealment of stolen property.
- (t) Section 418 - Cheating with knowledge that wrongful loss may ensue to person whose interest offender is bound to protect.
- (u) Section 419 - Punishment for cheating by personation.
- (v) Section 420 - Cheating and dishonestly inducing delivery of properties.
- (w) Section 421 - Dishonest or fraudulent removal or concealment of property to prevent.
- (x) Section 422 - Dishonesty or fraudulently preventing debt being available for creditors.
- (y) Section 423 - Dishonest or fraudulent execution of deed or transfer containing false statement of consideration.
- (z) Section 424 - Dishonest or fraudulent removal or concealment of property.
- (aa) Section 467 - Forgery of valuable security, will, etc.
- (bb) Section 471 - Using a genuine a forged document or electronic record.
- (cc) Section 472 and 473 - Making or possessing counterfeit seal, etc with intent to commit forgery.
- (dd) Section 475 and 476 - Counterfeiting device or mark.
- (ee) Section 481 - Using a false property mark.
- (ff) Section 482 - Punishment for using a false property mark.
- (gg) Section 483 - Counterfeiting a property mark used by another.
- (hh) Section 484 - Counterfeiting a mark used by a public servant.

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- (ii) Section 485 - Making or possession of any instrument for counterfeiting a property mark.
- (jj) Section 486 - Selling goods marked with a counterfeit property mark.
- (kk) Section 487 - Making a false mark upon any receptacle containing goods.
- (ll) Section 488 - Punishment for making use of any such false mark.

Paragraph 2 - Offences under the Arms Act, 1959

- (a) Section 25 –
 - (i.) To manufacture, sell, transfer, convert, repair or test or prove or expose or offer for sale or transfer or have in his possession for sale, transfer, conversion, repair, test or proof, any arms or ammunition in contravention of section 5 of the Arms Act, 1959.
 - (ii.) To acquire, have in possession or carry any prohibited arms or prohibited ammunition in contravention of section 7 of the Arms Act, 1959. Contravention of section 24A of the Arms Act, 1959 relating to prohibition as to possession of notified arms in disturbed areas, etc.
 - (iii.) Contravention of section 24B of the Arms Act, 1959 relating to prohibition as to carrying of notified arms in or through public places in disturbed areas.
 - (iv.) Other offences specified in section 25
- (b) Section 26 - To do any act in contravention of any provisions of section 3, 4, 10 or 12 of the Arms Act, 1959 in such manner as specified in sub-section (1) of section 26 of the said Act. To do any act in contravention of any provisions of section 5, 6, 7 or 11 of the Arms Act, 1959 in such manner as specified in sub-section (2) of section 26 of the said Act. Other offences specified in section 26.
- (c) Section 27 - Use of arms or ammunitions in contravention of section 5 or use of any arms or ammunition in contravention of section 7 of the Arms Act, 1959.
- (d) Section 28 - Use and possession of fire arms or imitation fire arms in certain cases.
- (e) Section 29 - Knowingly purchasing arms from unlicensed person or for delivering arms, etc., to person not entitled to possess the same.
- (f) Section 30 - Contravention of any condition of a licence or any provisions of the Arms Act, 1959 or any rule made thereunder.

Paragraph 3 - Offences under the Wild Life (Protection) Act, 1972

- (a) Section 51 read with section 9 – hunting of wild animals.
- (b) Section 51 read with section 17A - Contravention of provisions of Section 17A relating to prohibition of picking, uprooting, etc., of specified plants

- (c) Section 51 read with section 39 - Contravention of provisions of Section 39 relating to wild animals, etc., to be Government property.
- (d) Section 51 read with section 44 - Contravention of provisions of Section 44 relating to dealings in trophy and animal articles without licence prohibited
- (e) Section 51 read with section 48 - Contravention of provisions of Section 48 relating to purchase of animal, etc., by licensee.
- (f) Section 51 read with section 49B - Contravention of provisions of Section 49B relating to prohibition of dealings in trophies, animal articles, etc., derived from scheduled animals

Paragraph 4 - Offences under the Immoral Traffic (Prevention) Act, 1956

- (a) Section 5 - Procuring, inducing or taking person for the sake of prostitution.
- (b) Section 6 - Detaining a person in premises where prostitution is carried on.
- (c) Section 8 - Seducing or soliciting for purpose of prostitution.
- (d) Section 9 - Seduction of a person in custody.

Paragraph 5 - Offences under the Prevention Of Corruption Act, 1988

- (a) Section 7 - Public servant taking gratification other than legal remuneration in respect of an official act.
- (b) Section 8 - Taking gratification in order, by corrupt or illegal means. to influence public servant.
- (c) Section 9 - Taking gratification for exercise of personal influence, with public servant.
- (d) Section 10 - Abetment by public servant of offences defined in section 8 or section 9 of the Prevention of Corruption Act, 1988.
- (e) Section 13 – Criminal misconduct by a public servant.

Paragraph 6 - Offences under the Explosives Act, 1884

- (a) Section 9B - Punishment for certain offences
- (b) Section 9C - Offences by companies.

Paragraph 7 - Offences under the Antiquities and Treasures Act, 1972

- (a) Section 25 read with section 3 - Contravention of export trade in antiquities and art treasures.
- (b) Section 28 - Offences by companies.

Paragraph 8 - Offences under the SEBI Act, 1992

- (a) Section 12A read with section 24 - Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control.

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Paragraph 9 - Offences under the Customs Act, 1962

- (a) Section 135 - Evasion of duty or prohibitions.

Paragraph 10 – Offences under the Bonded Labour System (Abolition) Act, 1976

- (a) Section 16 - Punishment for enforcement of bonded labour.
- (b) Section 18 - Punishment for extracting bonded labour under the bonded labour system.
- (c) Section 20 - Abetment to be an offence.

Paragraph 11 – Offences under the Child Labour) Prohibition and Regulation) Act, 1986

- (a) Section 14 - Punishment for employment of any child to work in contravention of the provisions of section 3.

Paragraph 12 - Offences under the Transplantation of Human Organs Act, 1994

- (a) Section 18 - Punishment for removal of human organ without authority.
- (b) Section 19 - Punishment for commercial dealings in human organs.
- (c) Section 20 - Punishment for contravention of any other provision of this Act.

Paragraph 13 - Offences under the Juvenile Justice (Care and Protection of Children) Act, 2000

- (a) Section 23 - Punishment for cruelty to juvenile or child.
- (b) Section 24 - Employment of juvenile or child for begging.
- (c) Section 25 - Penalty for giving intoxicating liquor or narcotic drug or psychotropic substance to juvenile or child.
- (d) Section 26 - Exploitation of juvenile or child employee.

Paragraph 14 - Offences under the Emigration Act, 1983

- (a) Section 24 - Offences and penalties.

Paragraph 15 - Offences under the Passports Act, 1946

- (a) Section 12 - Offences and penalties.

Paragraph 16 - Offences under the Foreigners Act, 1946

- (a) Section 14 - Penalty for contravention of provisions of the Act, etc.
- (b) Section 14B - Penalty for using forged passport.
- (c) Section 14C - Penalty for abetment.

Paragraph 17 - Offences under the Copyright Act, 1957

- (a) Section 63 - Offence of infringement of copyright or other rights conferred by this Act.
- (b) Section 63A: Enhanced penalty on second and subsequent convictions.

- (c) Section 63B: Knowing use of infringing copy of computer programme.
- (d) Section 68A: Penalty for contravention of section 52A.

Paragraph 18 - Offences under the Trade marks Act, 1999

- (a) Section 103 - Penalty for applying false trade marks, trade descriptions, etc.
- (b) Section 104 - Penalty for selling goods or providing services to which false trademark or false trade description is applied.
- (c) Section 105 - Enhanced penalty on second or subsequent conviction.
- (d) Section 107 - Penalty for falsely representing a trade mark as registered.
- (e) Section 120 - Punishment of abetment in India of acts done out of India.

Paragraph 19 – Offences under the Information Technology Act, 2000

- (a) Section 72 - Penalty for breach of confidentiality and privacy.
- (b) Section 75 - Act to apply for offence or contravention committed outside India.

Paragraph 20 – Offences under the Biological Diversity Act, 2002

- (a) Section 55 read with section 6 - Penalties for contravention of section 6, etc.

Paragraph 21 – Offences under the protection of Plant Varieties and Farmers' Rights Act, 2001

- (a) Section 70 read with section 68 - Penalty for applying false denomination, etc.
- (b) Section 71 read with section 68 - Penalty for selling varieties to which false denomination is applied.
- (c) Section 72 read with section 68 - Penalty for falsely representing a variety as registered.
- (d) Section 73 read with section 68 - Penalty for subsequent offence.

Paragraph 22 – Offences under the Environment Protection Act, 1986

- (a) Section 15 read with section 7 - Penalty for discharging environmental pollutants.
- (b) Section 15 read with section 8 - Penalty for handling hazardous substance.

Paragraph 23 – Offences under the Water (Prevention and Control of Pollution) Act, 1974

- (a) Section 41(2) - Penalty for pollution of stream or well.
- (b) Section 43 - Penalty for contravention of provisions of section 24.

Paragraph 24 – Offences under the Air (Prevention and Control of Pollution) Act, 1981

- (a) Section 37 - Failure to comply with the provisions for operating industrial plant.

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Paragraph 25 – Offences under the Suppression of Unlawful Acts against Safety of Maritime Navigation and Fixed Platforms on Continental Shelf Act, 2002

- (a) Section 3 - Offences against ship, fixed platform, cargo of a ship, maritime navigational facilities, etc.”,

21.2 PUNISHMENT FOR THE OFFENCE OF MONEY LAUNDERING

Chapter II comprises of Sections 3 and 4. Section 3 deals with the offence of money laundering which has been discussed in the definition part above. Section 4 provides for the punishment for Money-Laundering. Whoever commits the offence of money-laundering shall be punishable with rigorous imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine which may extend to five lakh rupees. But where the proceeds of crime involved in money-laundering relates to any offence specified under paragraph 2 of Part A of the Schedule, the maximum punishment may extend to ten years instead of seven years.

21.3 OBLIGATION OF BANKING COMPANIES, FINANCIAL INSTITUTIONS AND INTERMEDIARIES

Section 12 provides for the obligation of Banking Companies, Financial Institutions and Intermediaries of securities market. Every banking company, financial institution and intermediary shall –

- (a.) maintain a record of all transactions, the nature and value of which may be prescribed, whether such transactions comprise of a single transaction or a series of transactions integrally connected to each other, and where such series of transactions take place within a month. Such records shall be maintained for a period of ten years from the date of cessation of the transactions between the clients and the banking company or financial institution or intermediary, as the case may be.
- (b.) furnish information of the above transactions to the Director within the prescribed time.
- (c.) verify and maintain the records of the identity of all its clients, in the prescribed manner.

If the principal officer of a banking company or financial institution or intermediary, has reason to believe that a single transaction or series of transactions integrally connected to each other have been valued below the prescribed value so as to defeat the provisions of this section, such officer shall furnish information in respect of such transactions to the Director within the prescribed time.

Section 13 deals with the powers of the Director. The Director may, either of his own motion or on an application made by any authority, officer or person, call for records referred to in subsection (1) of section 12 and may make such inquiry or cause such inquiry to be made, as he thinks fit. If the Director, in the course of any inquiry, finds that a banking company, financial institution or an intermediary or any of its officers has failed to comply with the provisions of section 12, then, without prejudice to any other action that may be taken under any other

provisions of this Act, he may, by an order, levy a fine on such banking company or financial institution or intermediary which shall not be less than ten thousand rupees but may extend to one lakh rupees for each failure. [Section 13(2)]. The Director shall forward a copy of the order passed under sub-section (2) to every banking company, financial institution or intermediary or person who is a party to the proceedings under that sub-section.

Section 14 gives immunity to banking companies, financial institutions and intermediaries of securities market, etc., against civil proceedings for furnishing information under clause (b) of sub-section (1) of section 12.

Section 15 provides for prescribing the procedure and manner of maintaining and furnishing information. The Central Government may, in consultation with the Reserve Bank of India, prescribe the procedure and the manner of maintaining and furnishing information under sub-section (1) of section 12 for the purpose of implementing the provisions of this Act.

21.4 APPELLATE TRIBUNAL

Section 25 empowers the Central Government to establish an Appellate Tribunal to hear appeals against the orders of the Adjudicating Authority and the authorities under this Act.

Section 26 deals with the right and time frame to make and appeal to the Appellate Tribunal. The Director or any person aggrieved by an order made by the Adjudicating Authority under this Act or any banking company, financial institution or intermediary aggrieved by any order of the Director made under sub-section (2) of section 13 may prefer an appeal to the Appellate Tribunal within a period of forty-five days from the date on which a copy of the order made by the Adjudicating Authority or Director is received and it shall be in such form and be accompanied by such fee as may be prescribed., may prefer an appeal to the Appellate Tribunal. The Appellate Tribunal may, after giving an opportunity of being heard, entertain an appeal after the expiry of the said period of forty-five days if it is satisfied that there was sufficient cause for not filing it within that period. On receipt of an appeal under sub-section (1), or sub-section (2), the Appellate Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against. The Appellate Tribunal shall send a copy of every order made by it to the parties to the appeal and to the concerned Adjudicating Authority or the Director, as the case may be. The appeal filed before the Appellate Tribunal shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal finally within six months from the date of filing of the appeal.

Section 27 deals with the composition of the Appellate Tribunal. The Appellate Tribunal shall consist of a Chairperson and two other members. Sub-section (2) of Section 27 also provides that the jurisdiction of the Appellate Tribunal may be exercised by Benches thereof, as the Central Government may notify. Each bench may constituted by the Chairperson with one or two Members as the Chairperson may deem fit.

Section 28 deals with the qualifications for appointment to the Appellate Tribunal.

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Section 29 dealing with term of office of the Chairperson and Member of the Appellate Tribunal was omitted by the Prevention of Money-Laundering (Amendment) Act, 2005. Sections 30-37 deal with the conditions of service, vacancies, resignation and removal of the Chairperson or any Member of the Appellate Tribunal, circumstances when Member of the Appellate Tribunal can act as the Chairman, Staff of the Appellate Tribunal, Procedure and power of the Appellate Tribunal, distribution of business amongst benches, power of the Chairperson to transfer cases and decision making within the Appellate Tribunal respectively. Section 39 gives the right to the appellant to take assistance of authorised representative and of Government to appoint presenting officers. A person preferring an appeal to the Appellate Tribunal under this Act may either appear in person or take the assistance of an authorised representative of his choice to present his case before the Appellate Tribunal. The expression "authorized representative" shall have the same meaning as assigned to it under sub-section (2) of section 288 of the Income Tax Act, 1961. The Central Government or the Director may authorise one or more authorised representatives or any of its officers to act as presenting officers and every person so authorised may present the case with respect to any appeal before the Appellate Tribunal. As per Section 40 of the Act, The Chairperson, Members and other officers and employees of the Appellate Tribunal, the Adjudicating Authority, Director and the officers subordinate to him shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code, 1860. Officers of FIU IND are also covered within the purview of section. Section 41 provides that no civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Director, an Adjudicating Authority or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

Section 42 contains provisions regarding appeal to High Court. Any person aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the High Court within sixty days from the date of communication of the decision or order of the Appellate Tribunal to him on any question of law or fact arising out of such order. The High Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days. For the purposes of this section, "High Court" means-

- (i) the High Court within the jurisdiction of which the aggrieved party ordinarily resides or carries on business or personally works for gain; and
- (ii) where the Central Government is the aggrieved party, the High Court within the jurisdiction of which the respondent, or in a case where there are more than one respondent, any of the respondents, ordinarily resides or carries on business or personally works for gain.

21.5 SPECIAL COURTS

Sections 43 – 47 deals with provision relating to Special Courts. Section 43 empowers the Central Government (in consultation with the Chief Justice of the High Court) for trial of

offence of money laundering, to notify one or more Courts of Sessions as Special Court of Special Courts for such area or areas or for such cases as may be prescribed in the notification to this effect. Section 44 clearly provides for the offences triable by Special Courts. It overrides the provisions of the Code of Criminal Procedure, 1973 and provides that –

- (i) the schedule offence and the offence punishable under section 4 shall be triable only by the Special Court constituted for the area in which the offence has been committed;
- (ii) a Special Court may, upon a complaint made by an authority authorised in this behalf under this Act take cognizance of the offence for which the accused is committed to it for trial. The requirement of police report of the facts which constitute an offence under this Act is no more applicable.

The provisions of Section 44 shall not be deemed to affect the special powers of the High Court regarding bail under section 439 of the Code of Criminal Procedure, 1973 and the High Court may exercise such powers including the power under clause (b) of sub-section (1) of that section as if the reference to "Magistrate" in that section includes also a reference to a "Special Court" designated under section 43.

Section 45 provides that the offences under the Act shall be cognizable and non-bailable. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, no person accused of an offence punishable for a term of imprisonment of more than three years under Part A of the Schedule shall be released on bail or on his own bond unless-

- (i) The Public Prosecutor has been given an opportunity to oppose the application for such release and
- (ii) Where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

In case of any person who is under the age of 16 years or in case of a woman or in case of a sick or infirm person, the Special Court can direct the release of such person on bail.

The Special Court cannot take cognizance of any offence under the Act, unless a complaint in writing is made by:-

- (a) The Director or
- (b) Any officer of the Central Government or a State Government, authorised in writing in this behalf by the Central Government by a general or special order made in this behalf by that Government.

Notwithstanding anything contained in the Code of Criminal Procedure, 1973, or any other provision of this Act, no police officer shall investigate into an offence under this Act unless specifically authorised, by the Central Government by a general or special order, and, subject to such conditions as may be prescribed.

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Section 45 has been amended by the Amendment Act of 2005 and it is interesting to observe, how the law grants the right of bail to the accused but avoids the misuse of this right by providing for adequate safeguards in the Section. The suo motto authority of the police officer in investigating an offence under the Act has been done away with. An authority from the Central Government by a general or special order, and fulfillment of the prescribed conditions has been introduced by the Amendment Act - is in right spirit. There is always a fear of such powerful legislation being misused unless adequate safeguards are provided as in the instant case.

Section 46 provides that the provisions of the code of Criminal Procedure, 1973 (including the provisions as to bails or bonds) shall apply to the proceedings before a Special Court and the Special Court shall be deemed to be a Court of Session and the persons conducting the prosecution before the Special Court, shall be deemed to be a Public Prosecutor.

Section 47 empowers the High Court to exercise (so far as applicable) all the powers granted by Chapter XXIX or Chapter XXX of the Code of Criminal Procedure 1973 on Special Court within its jurisdiction

21.6 AUTHORITIES UNDER THE ACT

Section 48 – 54 deals with authorities under the Act.

Section 48 provides for the following classes of authorities for the purposes of this Act, namely:-

1. Director or Additional Director or Joint Director,
2. Deputy Director,
3. Assistant Director, and
4. such other class of officers as may be appointed for the purposes of this Act.

Section 49 provides that The Central Government may appoint such persons as it thinks fit to be authorities for the purposes of this Act. The Central Government may also authorise the Director or an Additional Director or a Joint Director or a Deputy Director or an Assistant Director appointed to appoint other authorities below the rank of an Assistant Director. An authority under the Act, may exercise the powers and discharge the duties conferred or imposed on it under this Act, subject to such conditions and limitations as may be imposed by the Central Government.

Section 50 envisages the powers of the authorities regarding summons, production of documents and to give evidence etc. The Director shall, for the purposes of section 13 supra, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit in respect of the following matters, namely:-

- (a) discovery and inspection;

- (b) enforcing the attendance of any person, including any officer of a banking company, financial institution or a company, and examining him on oath;
- (c) compelling the production of records;
- (d) receiving evidence on affidavits;
- (e) issuing commissions for examination of witnesses and documents; and
- (f) any other matter which may be prescribed

The Director, Additional Director, Joint Director, Deputy Director or Assistant Director shall have power to summon any person whose attendance he considers necessary whether to give evidence or to produce any records during the course of any investigation or proceeding under this Act. [Section 50(2)]. All the persons so summoned shall be bound to attend in person or through authorised agents, as such officer may direct, and shall be bound to state the truth upon any subject respecting which they are examined or make statements, and produce such documents as may be required. [Section 50(3)]. Every proceeding under sub-sections (2) and (3) shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code, 1860. Any officer referred to in sub-section (2) may impound and retain in his custody for such period, as he thinks fit, any records produced before him in any proceedings under this Act, in accordance with the rules framed by the Central Government in this regard. [Section 50(5)]. However, an Assistant Director or a Deputy Director shall not -

- (a) impound any records without recording his reasons for so doing; or
- (b) retain in his custody any such records for a period exceeding three months, without obtaining the previous approval of the Director. [proviso to Section 50(2)]

Section 51 explains that the authorities under the Act shall exercise all or any of the powers and perform all or any of the functions conferred on, or assigned to them by or under this Act or the rules framed thereunder in accordance with the directions issued by the Central Government. It further provides that the Central Government may have regard to any one or more of the following criteria, at the time of issuing the directions to the authorities under the Act:-

- (a) Territorial area
- (b) Classes of persons
- (c) Classes of cases and
- (d) Any other criterion specified by the Central Government in this behalf.

Section 52 further provides that the Central Government shall have the power to issue from time to time, such orders, instructions and directions to the authorities as it may deem fit for the proper administration of this Act and such other authorities and all other persons employed in execution of this Act shall observe and follow such orders, instructions and directions issued by the Central Government. Section 53 allows the Central Government to empower an officer,

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not below the rank of a Director of the Central Government or of a State Government to act as an authority under the Act, either by a special order or by a general order. But if such an officer (rank of the Director or above) is not available in a particular area, the Central Government can appoint an officer below such rank.

Section 54 provides that the following officers are empowered and required to assist the authorities in the enforcement of this Act, namely:-

- (a) officers of the Customs and Central Excise Departments;
- (b) officers appointed under sub-section (1) of section 5 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985);
- (c) income-tax authorities under sub-section (1) of section 117 of the Income-tax Act, 1961
- (d) officers of the stock exchange recognised under section 4 of the Securities Contracts (Regulation) Act, 1956
- (e) officers of the Reserve Bank of India constituted under sub-section (1) of section 3 of the Reserve Bank of India Act, 1934
- (f) officers of Police;
- (g) officers of enforcement appointed under sub-section (1) of section 36 of the Foreign Exchange Management Act, 1973
- (h) officers of the Securities and Exchange Board of India established under section 3 of the Securities and Exchange Board of India Act, 1992
- (i) officers of any other body corporate constituted or established under a Central Act or a State Act
- (j) such other officers of the Central Government, State Government, local authorities or banking companies as the Central Government may, by notification, specify, in this behalf.

The Central Government, has specified the Director, Financial Intelligence Unit, India, under the Ministry of Finance, Department of Revenue, as Director vide notification of the Government of India, in the Ministry of Finance (Department of Revenue) number G.S.R. 440(E), dated the 1st July, 2005 or any other authority specified by him by a general or special order may furnish or cause to be furnished the information received or obtained by such Director or such authority, to the authority or body specified hereunder for the purpose of performing its functions :-

1. Directorate of Enforcement under the Ministry of Finance, Department of Revenue;
2. Cabinet Secretariat (Research and Analysis Wing);
3. Ministry of Home Affairs or National Security Council Secretariat or Intelligence Bureau;
4. Economic Offences Wing of Central Bureau of Investigation;

5. Chief Secretaries of the State Governments;
6. Reserve Bank of India;
7. Department of Company Affairs, Government of India;
8. Securities and Exchange Board of India;
9. Insurance Regulatory and Development Authority of India

21.7 RECIPROCAL ARRANGEMENT FOR ASSISTANCE IN CERTAIN MATTERS AND PROCEDURE FOR ATTACHMENT AND CONFISCATION OF PROPERTY

Section 56 provides for agreements with foreign countries so that there is proper exchange of information with them.

The Central Government may enter into an agreement with the Government of any country outside India for-

- (a) enforcing the provisions of this Act;
- (b) exchange of information for the prevention of any offence under this Act or under the corresponding law in force in that country or investigation of cases relating to any offence under this Act.

and may, by notification in the Official Gazette, make such provisions as may be necessary for implementing the agreement.

The Central Government may, by notification in the Official Gazette, direct that the application of this Chapter in relation to a contracting State with which reciprocal arrangements have been made, shall be subject to such conditions, exceptions or qualifications as are specified in the said notification.

21.8 DISCLOSURE OF INFORMATION

The Director or any other authority specified by him by a general or special order in this behalf may furnish or cause to be furnished to-

- (i) any officer, authority or body performing any functions under any law relating to imposition of any tax, duty or cess or to dealings in foreign exchange, or prevention of illicit traffic in the narcotic drugs and psychotropic substances under the Narcotic Drugs and Psychotropic Substances Act, 1985 or
- (ii) such other officer, authority or body performing functions under any other law as the Central Government may, if in its opinion it is necessary so to do in the public interest, specify by notification in the Official Gazette in this behalf, any information received or obtained by such Director or any other authority, specified by him in the performance of their functions under this Act, as may, in the opinion of the Director or the other authority so specified by him, be necessary for the purpose of the officer, authority or body specified in clause (i) or clause (ii) to perform his or its functions under that law

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21.9 RECOVERY OF FINES

Where any fine imposed on any person under section 13 or section 63 is not paid within six months from the day of imposition of fine, the Director or any other officer authorised by him in this behalf may proceed to recover the amount from the said person for the recovery of arrears and he or any officer authorised by him in this behalf shall have all the powers of the Tax Recovery Officer mentioned in the said Schedule for the said purpose.

21.10 POWER TO REMOVE DIFFICULTIES

As we have observed that the objective of the Act, tries to hit at the criminal activities rightly at the most desirable point – funding. Hence there may be difficulties in executing the theory lying behind various sections of the Act. Taking care of this aspect, Section 75 of the Act provides that, If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as may appear to be necessary for removing the difficulty. However two years time period, has been considered as sufficient for the Government to put the framework in place and hence no order shall be made under this section after the expiry of two years from the commencement of this Act. Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

21.11 CONCLUSION

Now that we have read all the above definitions, it is the right time to duly understand money – laundering. All the activities mentioned above (scheduled offences) appear to be extremely anti-social, illegal, immoral and in fact treated as heinous by the Society. What has money – laundering to do with it? Does money laundering mean siphoning of fund. No, not just siphoning of fund. It actually refers to a whole process or an entire system by which money is actually generated from serious crimes as listed above, but they are given such shape (by disguising its origin into a series of transactions) that it looks like it has originated from legitimate sources. The point to note is that the volume of money generated by above activities is also very huge. But the fact remains how does it effect us. The answer lies in observing the continuous increase in terrorist or militant or other criminal activities worldwide (wide spreading global network of terrorists and others who deal in above crimes) and we cannot be ignorant to the fact that such activities need huge funding and they generate large volume of money. To curb the criminal activities, one needs to follow and hit at this generation and utilization of revenue. PLMA, 2002 aims to achieve this. So, money laundering is simply giving shape to the financial structure required and generated from serious crimes as listed above. For example, a criminal may deposit all his money into a bank account or purchase a fixed deposit or even buy a property. But sudden appearance of such a transaction, invites the attraction of one and all. Hence he may resort to money laundering by making cash purchases from the market and then selling the goods in the legal manner and at the end create an

impression that the money has come from the sales and not from the criminal activities. So the money has been disguised by entering into a series of transactions and its origin now looks legitimate. India has followed the recommendations of FATF and criminalized money laundering. FATF refers to the Financial Action Task Force which is an international government body. It was formed by the G7 at Paris in the year 1989. Asia Pacific Group (APG) is the regional body of FATF and India is also an active participant in APG deliberations. Financial Intelligence Unit of India (FIU_IND) was also set up at New Delhi with an objective to coordinate and strengthen the collection and sharing of financial intelligence through an effective national, regional and global network to combat money laundering and all the related crimes. The subject is a major issue of concern at the international level and all sectors of business across the globe, like insurance, retail, real-estate, stock –market, entertainment – just to name a few are getting flooded with money and more money and at this stage we can certainly doubt, that it might be a case of money – laundering. Hence the need, significance and scope of operation of Prevention of Money Laundering Act, 2002. So it becomes, interesting now.

21.12 SELF EXAMINATION QUESTIONS

1. What is money laundering?
2. What are the obligations of The Banking Companies, Financial Institutions and Intermediaries under the Prevention of Money Laundering Act, 2002.

