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Deciphering the legal maze: Unravelling judicial interpretations of the prevention of money laundering Act, 2002

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Abstract
The Prevention of Money Laundering Act, 2002 (PMLA) stands as a pivotal legislation in combating financial crimes and safeguarding the integrity of the financial system in India. Over the years, judicial interpretation of the PMLA has played a crucial role in shaping its implementation and efficacy. This paper delves into the evolving landscape of judicial interpretation surrounding the PMLA, analyzing key cases and their implications. Through a comprehensive review, this study highlights the nuanced approaches taken by the judiciary in interpreting and applying the provisions of the PMLA, addressing issues of due process, constitutional validity, and the balance between individual rights and public interest. By examining the judicial discourse surrounding the PMLA, this paper aims to shed light on the dynamic interplay between legislative intent, judicial scrutiny, and the pursuit of justice in the realm of financial regulation and anti-money laundering efforts.

Keywords: Prevention of money laundering Act 2002, judicial interpretation, financial crimes, anti-money laundering and legal implications

Introduction

Money laundering–An illicit financial practice

The covert practice of hiding the source of funds obtained illegally—usually through drug trafficking, corruption, fraud, or organized crime—is known as money laundering. It entails several intricate financial manoeuvres and transactions intended to hide the money's illegal source and give the impression that it is legitimate. Money laundering's main goal is to incorporate illegal gains into the legal economy to conceal their true source and enable criminals to profit from their activities without raising the ire of the authorities.

Three steps are usually included in the money laundering pr ocess: placement, layering, and integration. Illicit money is injected into the financial system through a variety of channels including wire transfers, investments and cash deposits during the placement stage. The money is often put under a number of transactions and accounts to hide and cut off its trail or connections to its illicit source. This process is referred to as layering. Finally, the amount is reintroduced into the system as a supposedly legitimate asset in the final integration stage making it difficult to track down their illegal origins.

Globally, money laundering has a significant impact on cultures, economies, and the rule of law. It erodes public confidence and distorts market dynamics by allowing illegal money to enter legal channels, undermining the integrity of the financial system. Due to the possibility of systemic crises, lower investor confidence, and increased volatility, this poses dangers to financial stability. Money laundering plays a prime role in feeding organized crime and corruption by sustaining the criminal cycle eroding accountability and transparency. Additionally, money laundering makes economic inequality worse by taking funds away from necessary services and profitable ventures and placing them in the hands of criminal activity. This causes economic development to be hampered, governments lose income, and poverty and inequality are made worse—especially in developing nations where resources are limited.

Addressing money laundering to promote sustainable development

Money laundering poses significant challenges to sustainable development goals [1] by fuelling corruption, organized crime, economic inequality, and environmental degradation. Illicit funds generated through corrupt practices, such as bribery and embezzlement, often find their way into the global financial system through laundering techniques. Corruption siphons resources away from essential services like healthcare, education, and infrastructure, exacerbating poverty and inequality and impeding progress towards SDG 1 (No Poverty), SDG 4 (Quality Education), and SDG 16 (Peace, Justice, and Strong Institutions). Money laundering fuels organized crime and illicit activities, including drug trafficking, human trafficking, and terrorism which undermine public safety, destabilize communities, and perpetuate violence, posing significant obstacles to achieving SDG 16 (Peace, Justice, and Strong Institutions) and SDG 8 (Decent Work and Economic Growth). Illicit financial flows drain resources from developing countries, depriving them of much-needed investment in critical sectors such as healthcare, education, and infrastructure. This hampers efforts to reduce poverty, promote economic empowerment, and achieve SDG 10 (Reduced Inequality) and SDG 8 (Decent Work and Economic Growth). Money laundering undermines environmental sustainability by facilitating illegal activities such as wildlife trafficking, illegal logging, and pollution which affects the progress towards SDG 13 (Climate Action), SDG 14 (Life Below Water), and SDG 15 (Life on Land) by exacerbating biodiversity loss, deforestation, and climate change. Thus, addressing money laundering is essential for achieving the SDGs and building a more just, equitable, and sustainable world.

Indian legislative framework on anti-money laundering

The Prevention of Money Laundering Act (PMLA) is a crucial legislation in India aimed at combating money

laundering and related offenses. Enacted in 2002, the PMLA primarily aims to prevent money laundering and provide for the confiscation of property derived from or involved in money laundering. It establishes various mechanisms for the detection and prevention of money laundering activities, including the establishment of a specialized enforcement agency, the Enforcement Directorate (ED), tasked with investigating and prosecuting offenses under the Act. With the Act set in place to address money laundering in India, it is pertinent to note the pivotal role of the Indian judiciary in interpreting and applying the provisions of the PMLA to ensure its effective implementation and upholding the rule of law in combating money laundering. The Act has led to significant unearthing of instances of money laundering and conviction of the offenders. The 2G scam, [2] discovered in 2008, involved the fraudulent allocation of 2G spectrum licenses at low prices, causing a loss of 176,000 crores, as estimated by the CAG. A Raja and others were accused of allocating licenses in exchange for bribes. In 2012, the Supreme Court cancelled all 122 licenses issued in 2008, deeming the allocation process unconstitutional. In 2017, a special CBI Court acquitted all accused, including A Raja, but the CBI's appeal against the verdict is pending in the Delhi High Court. The scams exemplify major corruption and malpractice, leading to significant financial losses and legal proceedings implicating prominent figures in Indian politics and business.

On similar grounds, the Satyam scam [3] of 2009 involved B. Ramalinga Raju's manipulation of Satyam Computer Ltd.'s financial figures, amounting to 7,000 crores. Raju and his company misrepresented revenues, profits, and cash balances to attract investors. The scam was exposed amidst the recession, leading to Raju's confession and imprisonment on charges of criminal conspiracy, breach of trust, and forgery. PricewaterhouseCoopers (PwC), Satyam's auditor, was also implicated, with its license cancelled for two years. These cases highlight significant instances of corporate malfeasance, resulting in financial losses, legal repercussions, and damaged reputations for the individuals and companies involved. The Commonwealth Games (CWG) scam [4] of 2010 involved misappropriation of funds totalling 70,000 crores during the Delhi Commonwealth Games. Only half of the allocated funds were utilized for Indian sportspersons, while the remainder was diverted into the accounts of individuals with authority. The Saradha Group financial scandal [5] of 2013 was a Ponzi scheme orchestrated by Sudipto Sen, promising high returns to investors. The scheme amassed 2500 crores from over 1.7 million investors. Celebrities endorsed the scheme, which used cultural events and sports sponsorships for publicity. Sen and his associates, including Kunal Ghosh and Madan Mitra, faced allegations. Sen confessed to TMC politicians' involvement, including Mamata Banerjee. The Supreme Court transferred investigations to the CBI in 2014. Sen has served over 8 years in jail with 98 cases pending against him, while Debjani Mukherjee remains in CBI custody. Both cases highlight significant financial irregularities and political entanglements. The Indian coal allocation scam, or the Coalgate scam, [6] occurred in 2012-13, involving the illicit allocation of coal blocks by the government, causing a loss of 185,591 crores. The Comptroller and Auditor General of India (CAG) revealed that 194 coal blocks were allocated improperly between 2004 and 2009, without auctioning them. The Supreme Court annulled all 214 coal block allocations since 1993. Individuals and companies like Naveen Jindal, Kumaramangalam Birla, and Vijay Darda were accused. The trial involved sections of the IPC and the Prevention of Corruption Act, with accused individuals securing interim bail from the Supreme Court.

Money laundering cases present several complexities due to the nature of illicit financial activities and the sophisticated methods employed to conceal the origins of illicit funds. The famous Kingfisher Airlines case, [7] spanning from 2007 to 2017, involved Vijay Mallya's mismanagement of Kingfisher Airlines, resulting in debts of 9,900 crores. Mallya acquired Air Deccan, facing financial losses due to rising oil prices, exacerbating Kingfisher's financial troubles. Loans were allegedly diverted to overseas tax havens through inactive companies, while employees went unpaid for over 15 months. Mallya fled to the UK in 2016, facing extradition requests from India. In 2022, the Supreme Court sentenced Mallya to four months in prison for bank loan defaults, with a fine of ₹2000. Similarly, the Punjab National Bank (PNB) [8] Fraud case, spanning from 2007 to 2017, stands as one of India's most notorious financial scandals. Orchestrated by diamantaires Mehul Choksi and Nirav Modi, the scam involved over 50 employees from PNB's Mumbai branch. They exploited the banking system by utilizing fake Letters of Undertaking (LoUs) to secure billions in foreign credit, totalling around 11,400-13,500 crores. Both perpetrators fled India to avoid legal repercussions, with Modi awaiting extradition trial in London and Choksi residing in Cuba as a declared fugitive economic offender. Other cases on the line include ABG Shipyard case, [9] ICICI Bank-Videocon case, [10] Yes Bank-DHFL case [11] and INX Media case [12].

Indian judiciary on money laundering–legal precedents and prosecutions

Money laundering laws and regulations are often complex and subject to interpretation, requiring specialized expertise in financial crimes and regulatory compliance to navigate effectively. Money laundering investigations require significant resources, including skilled personnel, technological infrastructure, and financial resources, to effectively combat sophisticated criminal networks. Determining jurisdiction and securing cooperation between different law enforcement agencies and judicial systems, especially in cases involving multiple countries, can be challenging and time-consuming. Collecting admissible evidence in money laundering cases can be challenging, particularly when dealing with clandestine activities and complex financial transactions that leave little paper trail. Thus, prosecution under the Act is often tedious, complex and cumbersome. The litigation often takes years to complete with many meanders to be solved. The Indian Judiciary has played a pivotal role through its judicial pronouncements by clarifying ambiguities in the law, resolving conflicting interpretations, and enhancing the effectiveness of anti-money laundering measures.

Constitutional validity of the PMLA

In the earlier years, the judiciary took a subtle view when dealing with cases under the PMLA. As discussed above, in a majority of the cases, the courts always faced procedural difficulties in prosecution due to the complexity of the crime involved. The real test on the application of the Act to certain offences was raised in Nikesh Tarachand Shah v.

Union of India [13]. The case concerns the constitutional validity of Section 45(1) of a law related to the prevention of money laundering Act, 2002. Originally, the clauses in the Prevention of Money Laundering Bill, 1998, which became Section 44 and 45 in the Act, applied only to offences under the Act itself. However, upon enactment, Section 45(1) was expanded to cover offences listed in Part A of the Schedule. The 2012 Amendment further widened its applicability by transferring all offences from Part B to Part A of the Schedule. This expansion rendered Section 45(1) arbitrary and unreasonable, as it denied bail based on charges of scheduled offences, even if they were unrelated to the Act's primary purpose of combating money laundering. The classification of offences based solely on imprisonment terms lacked a reasonable nexus to the Act's objectives. Moreover, applying Section 45(1) to punish offences from other Acts undermined the Act's original purpose. It violated the principle of 'innocent until proven guilty', as the provision shifted the burden of proof onto the accused without justification. This contravened Articles 14 (Right to Equality) and 21 (Right to Life and Personal Liberty) of the Indian Constitution, which uphold the principle of 'bail, not jail' in the criminal justice system. Consequently, the court held Section 45(1) unconstitutional and struck it down. Pending bail applications affected by its conditions were to be reconsidered based on the principles outlined in the judgment. This ruling reaffirmed the importance of fundamental rights in the criminal justice system and emphasized the need for laws to be consistent with constitutional principles.

Following this, the 2018 Amendment to the PMLA substituted the phrase "punishable for a term of imprisonment of more than three years under Part A of the Schedule" with "under this Act" in Section 45(1), aiming to extend bail conditions to all offences under the Act, not just limited to Section 45(1). The validity of this amendment has been contested, leading to conflicting views from different High Courts. The Kerala High Court in M Sivasankar v. Union of India (2021) [14] ruled that the bail conditions would apply post-amendment, unaffected by the Nikesh Tarachand Shah judgment. Conversely, the High Courts of Bombay (Sameer Bhujbal v. Directorate of Enforcement, Madhya Pradesh (Vinod Bhandari v. Directorate of Enforcement, 2018), and Manipur (Okram Ibobi Singh v. Directorate of Enforcement, 2020) held that since Section 45(1) had been invalidated, the 2018 Amendment did not revive bail pre-conditions. The unresolved issue primarily revolves around the burden of proof, which was the key reason for striking down Section 45(1). The amendment did not address this concern. Additionally, in August 2016, former Maharashtra Deputy Chief Minister Chhagan Bhujbal filed a writ petition challenging the constitutionality of Sections 19 and 45 of the PMLA, 2002. Following the Nikesh Tarachand Shah judgment, he was granted bail based on other requirements set by the court. This matter remains unsettled and awaits final adjudication by the courts, particularly regarding the constitutional validity of the 2018 Amendment and the unresolved issue of burden of proof in bail conditions under the PMLA, 2002.

On questions of interpretation

One of the significant contributions of the judiciary in interpreting the PMLA lies in defining the scope of money laundering activities and the criteria for establishing offenses under the Act. Courts have provided interpretations and clarifications on what constitutes 'proceeds of crime,' 'money laundering,' 'predicate offenses,' and 'beneficial ownership,' among other key concepts. These interpretations guide law enforcement agencies, prosecutors, and the legal community in understanding and applying the provisions of the PMLA effectively. The first case on the question of interpretation of section 32A of Insolvency and Bankruptcy Code, the Supreme Court clarified that Section 32A governs the reconciliation between IBC and other laws like the Prevention of Money Laundering Act (PMLA) [15]. It emphasized that the enactment of Section 32A should determine the extent to which powers under other laws, such as the PMLA, can be exercised during ongoing resolution or liquidation processes, underscoring the importance of statutory provisions in resolving such conflicts. Further in Rajiv Chakraborty Resolution Professional of EIEL v. ED [16] the apex court held that section 32A marks the threshold beyond which the powers under the PMLA are no longer applicable, creating an impassable barrier against their invocation. Thus, the non obstante clause in the IBC cannot extend beyond the limitations set by Section 32A, ensuring clarity in the hierarchy of legal provisions and their application in insolvency proceedings.

The Supreme Court's ruling in Vijay Madhalal Chaudary v. Union of India [17] clarified that while possessing unaccounted property acquired legally might constitute a tax violation, it wouldn't be considered proceeds of crime unless the concerned tax legislation categorizes it as an offense listed in the Prevention of Money Laundering Act (PMLA), specifically under Section 2(1)(u). Notably, no section of the Income-tax Act, 1961, currently appears in the PMLA schedule. Furthermore, the Court emphasized that not all properties recovered or attached by investigating agencies in connection with criminal activities would be deemed proceeds of crime under Section 2(1) (u) of the PMLA. Instead, only properties directly or indirectly derived from criminal activities related to scheduled offenses qualify as proceeds of crime. This means that there must be a clear link between the property and criminal activities specified in the scheduled offense under the PMLA. Therefore, while property used in a scheduled offense might be attached, it doesn't automatically qualify as proceeds of crime unless obtained through criminal activity related to the specific scheduled offense, as per Section 2(1) (u) of the Act. This distinction is crucial in determining the property's status as proceeds of crime under the PMLA.

In interpreting proceeds of crime, the Supreme Court clarified that money intended as a bribe only becomes tainted when handed over with corrupt intent. Without the requisite intent, it's merely an entrustment, and any subsequent misappropriation is a different offense. The key is the intent to bribe before handing over the money. If such intent exists, the person becomes involved in activities connected to "proceeds of crime." Without active participation, the money doesn't become tainted. This

underscores the importance of the term "proceeds of crime" in money laundering offenses, as it encompasses the role of individuals involved in corrupt activities [18].

Protection of rights of individuals

Moreover, the judiciary plays a crucial role in safeguarding the rights of individuals accused of money laundering offenses. It ensures that due process rights, including the right to a fair trial, presumption of innocence, and protection against arbitrary arrest and detention, are upheld during the investigation and trial proceedings. Courts have intervened in cases where there have been allegations of procedural irregularities or violations of fundamental rights, thereby reinforcing the rule of law and protecting individual liberties. The Supreme Court in V. Senthil Balaji v. State represented by Deputy Director [19] underscored the importance of adhering to Section 19 of the PMLA, 2002, emphasizing that officers must strictly follow its provisions to ensure fairness and accountability. Before effecting an arrest, the authorized officer must assess available evidence and form a reasonable belief of guilt. Recording reasons for arrest is mandatory, and failure to comply would render the arrest invalid. Subsequently, the officer must promptly forward relevant materials to the Adjudicating Authority. Any challenge to the arrest must be raised before the jurisdictional Magistrate, as no Habeas Corpus writ is applicable at this stage. Non-compliance with Section 19 provisions benefits the arrestee, and the competent court can take action against such non-compliance under Section 62 of the PMLA, 2002. Compliance with these procedures is essential to uphold the rights of the accused and ensure legal accountability.

Similarly, in a recent division bench of the Supreme Court [20] clarified the application of the Pankaj Bansal judgment regarding the requirement to furnish grounds of arrest in writing under Section 19 of the PMLA. The term "henceforth" in the Pankaj Bansal judgment doesn't apply retrospectively, implying that the obligation to provide written grounds of arrest wasn't mandatory before the judgment. Non-furnishing of written grounds of arrest until the Pankaj Bansal judgment couldn't be deemed illegal. The court ruled that informing the accused orally about the grounds of arrest upon arrest and subsequently providing a written communication within 24 hours constitutes sufficient compliance with both Section 19 of the PMLA and Article 22(1) of the Indian Constitution.

Section 45 of the PMLA imposes stringent conditions for granting bail, requiring accused individuals to prove that they will not commit further offences. This places a significant burden on the accused, essentially requiring them to prove their innocence during bail adjudication. While aimed at ensuring compliance with legal proceedings and preventing interference with investigations, these conditions have been criticized for potentially undermining the presumption of innocence [21]. The Supreme Court deliberated on the discretionary nature of the first proviso to Section 45 of the Prevention of Money Laundering Act (PMLA), which grants Special Courts the authority to grant bail under specific conditions, such as being under the age of 16, a woman, or sick/infirm in the case of Saumya Chaursaiya v. Directorate of Enforcement [22]. It clarified that the use of the term "may be" in the proviso indicates that the court's decision to extend the benefit to individuals in these categories is not mandatory but subject to discretion based on the facts and circumstances of each case. Similar provisions exist in other laws, such as Section 437 of the Criminal Procedure Code, but they're not construed as obligatory. The court acknowledged the vulnerability of certain groups, like women and minors, to exploitation in criminal activities but also noted the potential involvement of educated and well-placed women in illegal ventures. It stressed the importance of judicious discretion, considering factors like the extent of involvement in alleged offenses and the evidence collected by investigating agencies. Ultimately, the court emphasized the need for balanced decision-making to ensure fair application of bail provisions under Section 45 of the PMLA.

Check on the enforcement directorate

Furthermore, the judiciary's role extends to scrutinizing the actions of enforcement agencies, such as the ED, to ensure they operate within the framework of the law and adhere to principles of fairness and accountability. Courts have the authority to review the legality of investigations, the admissibility of evidence, and the proportionality of penalties imposed under the PMLA. This oversight function helps maintain the integrity of the criminal justice system and prevents abuse of power by law enforcement authorities. Enforcement actions under the PMLA have been criticized for violating constitutional and legal provisions, particularly regarding the arrest of individuals. The practice of effecting arrests without providing written communication of the grounds for arrest, as mandated by Article 22(1) of the Constitution and Section 19(1) of the PMLA, has raised concerns about procedural fairness and adherence to due process. Enforcement Directorate officers have been accused of relying solely on verbal communication for arrests, disregarding legal requirements and potentially infringing upon individual rights [23].

The Supreme Court emphasized the need for the Enforcement Directorate (ED) to adhere strictly to procedural mandates outlined in Section 19 of the Prevention of Money Laundering Act, 2002 in the case of Pankaj Bansal v. Union of India [24]. It was ruled that the authorized officer must provide written reasons for the belief that a person is guilty of an offense under the Act, and this written statement of grounds for arrest must be furnished to the arrested person without exception. The court criticized the ED's handling of the case, highlighting the agency's failure to operate transparently and with fairness, as expected of a premier investigating body tasked with combating economic offenses. Additionally, the court clarified that mere non-cooperation with ED summons, without sufficient evidence of guilt under the Act, does not warrant arrest under Section 19. The court condemned the inconsistent practices across different regions regarding conveying the grounds of arrest, stressing the necessity of providing written grounds uniformly nationwide. The court advocated for providing written grounds of arrest as a matter of principle for two primary reasons. Firstly, oral communication of grounds of arrest could lead to disputes, whereas providing written grounds ensures clarity and accountability. Secondly, the constitutional objective of informing the arrested person is to enable them to seek legal counsel and potentially apply for bail under Section 45. The court underscored the importance of this information for

ensuring due process and safeguarding the arrested person's rights. Therefore, the court mandated the uniform practice of furnishing written grounds of arrest to uphold transparency, fairness, and constitutional principles across all regions. This ruling serves as a directive to the ED and other law enforcement agencies to adhere strictly to procedural requirements and uphold the rights of the accused in the course of their investigations and actions.

The Supreme Court in Pavana Dibbur v. Directorate of Enforcement [25] ruled that being accused in a scheduled offense isn't necessary for being charged under Section 3 of the PMLA. An accused under PMLA benefits from acquittal or discharge of all scheduled offense accused. The first property isn't linked to proceeds of crime if the offense occurred after its acquisition. Whether the appellant used tainted money for the second property is trial-dependent. An offense under Section 120-B of the IPC becomes a scheduled offense only if it involves a conspiracy to commit an offense listed in the Schedule. This judgment clarifies the interplay between PMLA charges and scheduled offenses, ensuring fair application of the law and principles of justice. The judiciary has thus introducing safeguards against potential overreach by enforcement officers, particularly in politically sensitive cases by establishing clear guidelines for investigative methods and instituting independent oversight mechanisms. Reviewing stringent bail conditions to assess necessity and impact, considering alternatives to streamline the process.

Conclusion

From the cases discussed, the judiciary's stance on the Prevention of Money Laundering Act (PMLA) underscores its pivotal role in combating financial crimes and preserving the integrity of financial systems. The judiciary recognizes the multifaceted objectives of the PMLA, which extend beyond merely penalizing money laundering to safeguarding the stability and transparency of financial transactions. By targeting the laundering of illicit funds, the PMLA aims to disrupt criminal networks, deter illegal activities, and protect the overall economic well-being of society. Moreover, the judiciary emphasizes the importance of interpreting and applying the provisions of the PMLA in a manner that aligns with legislative intent and promotes fairness in legal proceedings. This involves carefully navigating potential conflicts or inconsistencies within the PMLA itself, ensuring that its application does not unduly impede other legal processes or violate fundamental rights. The judiciary's viewpoint reflects a commitment to upholding the rule of law and protecting the interests of all stakeholders involved in legal proceedings related to financial crimes. This includes not only holding perpetrators of money laundering accountable but also safeguarding the rights of individuals and entities subject to investigation or prosecution under the PMLA. Overall, the judiciary's approach to the PMLA underscores the importance of balance and proportionality in its enforcement, recognizing the need to combat financial crimes while also respecting due process and preserving the integrity of the legal system. By upholding the principles of fairness, transparency, and accountability, the judiciary plays a critical role in ensuring that the objectives of the PMLA are achieved effectively and following the principles of justice.

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