

Constitutional Perspective on Money Laundering Act: Impact and Implication

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ABSTRACT

This article explains the effects and validity of the money laundering act, the act prevention of money laundering act was first enacted in 2002 and came into force in 2005. The act was enacted to find out the illegally obtained money i.e. money laundering in which origin of the money is concealed. This process of obtaining money from illegal sources and making it legal income was going on until the act was enacted.

KEYWORD

Prevention of Money Laundering Act (PMLA), Constitutional Validity, Enforcement Directorate (ED), Burden of Proof, Article 20(3), Article 300A, Confiscation of Property, Customer Due Diligence (CDD), Suspicious Transaction Reporting (STR), Money Laundering Stages (Placement, Layering, Integration), Financial Crimes.

INTRODUCTION

Money laundering is a serious crime that impacts society because it allows the criminal to make a profit without any fear and even can't be detected easily¹. The Principle motive of the act is to erase the illegal point of origin of obtaining money and to clear loopholes in our financial system, this act was recently amended in 2022². **PMLA (Prevention of money laundering Act):**

This Act was introduced by the NDA government to prevent money laundering and to enhance power to seize suspicious property. The said act was enacted in 2002 and came into force on 1st July 2005. The act was twice amended in 2009 and 2012 to improve its effectiveness and strengthened its provision.

The PMLA is defined as, The process of concealing the true nature or source or location or deposition or movement, or ownership of property or the proceed of crime to avoid the legal consequence of the unlawful activity that gave rise to the property¹.

The act complies with financial institutions the following obligation

- To detect the customer intention and to keep a record of their customers

- To report if any suspicious transaction found
- To comply with the PMLA rules and guidelines

The PMLA has been praised by international organization such as the FATF (financial action task force), this international body give a standard for combating money laundering and terrorism funding. The PMLA has investigated huge defects and caught scams such as the 2G spectrum scam and the coal block allocation scams. The PMLA is effectively criminalizing the accused by properly investigating their transaction.

AMENDMENT IN PMLA

- 1) The Prevention of money laundering (amendment) Act, 2005 in which different offences were included with punishment, also the investigating power of enforcing authority has been enhanced.
- 2) The Prevention of Money Laundering (Amendment) Act, 2009 in which regulation and provision which makes obligation to follow was added, such as customer due diligence (CDD) and suspicious transaction reporting (STR)
- 3) The Prevention of Money Laundering (Amendment) Act, 2012 in which power to seize property was added and penalties relating to money laundering was increase.
- 4) The Prevention of Money Laundering (Amendment) Act, 2015 in this amendment the scope of PMLA is enhanced in which the non-government organizations and trusts has been included.
- 5) The Prevention of Money Laundering (Amendment) Act, 2023 in this amendment the new definition of the word 'group' is added which define that the different entities under common control will be wholly responsible i.e. group for the financial statement.

IMPLICATION OF PMLA

POSITIVE IMPLICATION:

The PMLA has helped to reduce the illegal way of income such as the act helped to improve relations between the government and organizations or institutions

The PMLA Act also helped the financial system of India by protecting it by convicting criminals and penalizing them in the form of seizure of their property. The PMLA Act made it more difficult for money laundering to obtain money illegally through the Indian financial system. The PMLA has raised awareness about money laundering in the Indian financial system through. this has helped to prevent the public from indirectly facilitating money laundering activities

The PMLA act has also enhanced due diligence and reasonable care required in Indian financial institution which include verification of the identity of customers and sources of funds which have helped to detect the fraud and origin of illegal money².

The PMLA has increased its report related to the suspicious transaction which makes alert the enforcing authorities (ED) to take a further step to take action against the accused. also, the penalties have been increased relating to the money laundering act in which the accused can be convicted for up to 7 years and a fine this made money laundering more risky for the criminals to commit.

NEGATIVE IMPLICATIONS

The act has been criticized by the court for its complexity, which grants the executive branch more power than is necessary. This has led to concerns that the power may be abused by authorities.

However, the PMLA has been effectively controlling money laundering in India still, there is requirement for more improvement to prevent money laundering because the criminal is constantly updating themselves by finding loopholes. The PMLA has imposed a number of rules and guidelines to maintain records of business transactions to find out fraud, but this compliance makes the work costly to the authorities¹.

Role of Financial institution to prevent money laundering: Financial institution plays a vital role to continue the transaction with legality. They are the main component that finds out the illegality of transactions. The introduction of money laundering starts with this institution carrying money around and integrating it.

Role of law enforcement in money laundering: These enforcing authorities play a vital role to break down the chain of money laundering, these authorities investigate the transaction and thus find out the illegality, the enforcing authorities also have the power to prosecute the criminal in the act of money laundering offenses. While the authorities are also aware of the public, preventing their activities indirectly helps in money laundering.

Role of the Public to prevent money laundering: The general public also plays a vital role in combating money laundering, the suspicious transaction can be reported to the enforcing authorities by simply informing letters thus the general public can help to enforce Authorities to crack down on launderers and prosecute them.

STAGES OF MONEY LAUNDERING

1) PLACEMENT: At this stage, the money is introduced into the financial system to make it legal or white currency, this process can be carried out by various types such as depositing money in a bank account, investing real estate, or buying assets such as cars and Jewellery¹. Recently the money is invested in the production of movies and this money is converted into income from the box office.

2) LAYERING: At this stage. the money is transported to different accounts so that the bulk money cannot be detected to avoid obscuring the origin of the income, the process is carried out by making a series of wire transactions, setting up shell companies, or doing complex transactions.

3) INTEGRATION: This is the stage where money is again introduced into the financial system as legitimate income

4) EXAMPLE: The black money is firstly invested into the production of movies then after the money is again used to purchase own ticket for the same movie to show that movie is being hit at the box office.

CHALLENGES ON CONSTITUTIONAL GROUND

1. The burden of proof: in this act, the burden of proof is shifted on the accused thus it was challenged that this violates the presumption of innocence which is guaranteed under article 20(3) of the Indian constitution.

2. Enforcement directorate: the ED is enforcing agency for PMLA. The authority has been questioned on the ground that the ED has wide investigating power including power to seize property, power to issue a summon, power to conduct searches, and many more.

3. Seizure of property: the PMLA allows ED to seize or confiscate the property where the doubt of money laundering occurs, and thus violates the right to property which is mentioned under article 300A of the Indian constitution.

4. CHALLENGES FACED BY ED

Some problem arises while conducting their work and issue arises in their investigation such as

- Lack of awareness: The lack of awareness about money laundering among financial institutions and intermediaries makes it difficult for them to comply with anti-money laundering regulations. This can inadvertently help money launderers.

- Lack of resources: The enforcing authorities are under-resourced which makes them difficult to investigate and prosecute criminals in money laundering offenses, the proper resources are still required to find out the money laundering and to curtail them effectively¹.

- Political interference: There has been an allegation of political interference in the investigation of enforcing authorities, where more power shall be given to authorities to curtail political interference.

the Prevention of money laundering act is a valuable piece of legislation that helped to prevent and control money laundering cases. The act is effectively working and bringing the criminal to justice.

RESTRICTION IMPOSED ON ED

The apex court has upheld the validity of the Prevention of money laundering act in many cases. The court also directed some limits and has restrain the power of enforcing authority delegated under PMLA and ordered to follow such as,

1. The ED must provide a copy of the enforcement case information report (ECIR) to the accused within the limit of 10 days before the arrest, as to allow understanding the charges charged upon him, and to give him reasonable time to prepare for their defense³.
2. The ED shall allow the accused to be heard, so that the accused interest is protected. The property of the accused cannot be seized without being heard.
3. The reason must be disclosed by the ED stating for what reason the person is arrested. The ED shall ensure that the accused is aware of the charges during the arrest.
4. The ED cannot refuse bail of the accused, and cannot curtail the rights of the accused, except if there is a chance that the accused can abscond or interfere in the investigation or if there is sufficient ground for arrest.

5.

6. OTHER GUIDELINES

1. The apex court has ruled that the ED shall not use PMLA as to target political opponents or to harass innocent public¹.
2. The court also stated that the PMLA must be used in the case where there is sufficient or reasonable ground for doubt of money laundering. Where the investigation or the inquiry shall be on genuine reasons.

IMPACT OF PMLA ON INDIAN SOCIETY

The act has helped the Indian economy by finding money laundering acts by investigating the crime and prosecuting them. The PMLA has enhanced the awareness of the money laundering offences in public domain, which has significantly impacted Indian society.

CRIME:

The offences relating to money laundering has also affected in reducing other crime such as drug trafficking, terrorism, and organized crimes. It has been more difficult for the criminal to find out loopholes to carry out money laundering. Public confidence in the Indian financial system: the effect of amendment has resulted in Indian society also has increased public confidence in Indian financial system, this has helped business to operate without fear.

LATEST TREND ON MONEY LAUNDERING

Money laundering is evolving crime that is constantly changing to take advantage of loopholes which arose in new technology and new pattern in business, which make difficult to track and penalize the money launderers. these difficulties can be minimized by enhancing the customer due diligence (CDD), suspicious transaction reporting (STR), international cooperation, and the use of technology². In addition to these it is also important to educate the public about money laundering offences, and strengthen the legal framework for combating money laundering. By taking these steps, we can make it more difficult for criminals to launder their money and help to protect the financial system from being used for criminal purposes.

CONCLUSION

The Prevention of money laundering act is a valuable piece of legislation that helped to prevent and control money laundering. The PMLA had a positive impact on the Indian economy by making it more difficult to money laundering crimes¹. The act also protects the public from the harmful effects of money laundering such as corruption, terrorism, and organized crime. However, there are some challenges in PMLA enforcing authorities that shall be curtailed. The PMLA has a positive impact on the Indian economy and affect to public greatly this act made it more difficult for a criminal to carry out their crimes. The Prevention of money laundering act has a huge power to criminalize the political person and to prevent corruption².



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