

**THOUGHTS ON THE ROLE OF CHARTERED ACCOUNTANTS IN
COMBATING ECONOMIC OFFENCES: PROFESSIONAL EXPERTISE
AND OPPORTUNITIES**

CA. (Dr.) Adukia Rajkumar Satyanarayan

Mob: 98200 61049

Email: rajkumar@cadrrajkumaradukia.com

ABSTRACT - THE CHARTERED ACCOUNTANT IN THE FIGHT AGAINST CRIME

Chartered Accountants bring specialized financial and legal expertise that can significantly enhance efforts to combat economic offenses. By offering advisory services throughout investigations, assisting in data analysis, guiding legal processes, and ensuring proper disbursement of funds, they play a crucial role in protecting economic integrity. Their involvement not only helps the authorities identify and prosecute offenders but also ensures that victims of such crimes are compensated and that the financial system remains secure. With their diverse skill set, CAs are essential partners in the fight against economic crime.

CONCEPT OF MONEY LAUNDERING- THREE STAGE PROCESS

The money laundering cycle can be broken down into three distinct stages; however, it is important to remember that money laundering is a single process. The stages of money laundering include the :-

A). Placement Stage

B). Layering Stage

C). Integration Stage

The Placement Stage

This is the movement of cash from its source. On occasion the source can be easily disguised or misrepresented. This is followed by placing it into circulation through financial institutions, casinos, shops, bureau de change and other businesses, both local and abroad. The process of placement can be carried out through many processes including:

- *Currency Smuggling*– This is the physical illegal movement of currency and monetary instruments out of a country.
- *Bank Complicity*– This is when a financial institution, such as banks, is owned or controlled by unscrupulous individuals suspected of conniving with drug dealers and other organised crime groups. This makes the process easy for launderers. The complete liberalisation of the financial sector without adequate checks also provides leeway for laundering.
- *Currency Exchanges*– In a number of transitional economies the liberalization of foreign exchange markets provides room for currency movements and as such laundering schemes can benefit from such policies.
- *Securities Brokers*– Brokers can facilitate the process of money laundering through structuring large deposits of cash in a way that disguises the original source of the funds.
- *Blending of Funds*– The best place to hide cash is with a lot of other cash. Therefore, financial institutions may be vehicles for laundering. The

alternative is to use the money from illicit activities to set up front companies. This enables the funds from illicit activities to be obscured in legal transactions.

- *Asset Purchase*– The purchase of assets with cash is a classic money laundering method. The major purpose is to change the form of the proceeds from conspicuous bulk cash to some equally valuable but less conspicuous form[vii].

The Layering Stage

The purpose of this stage is to make it more difficult to detect and uncover a laundering activity. It is meant to make the trailing of illegal proceeds difficult for the law enforcement agencies. The known methods are:

a). Cash converted into Monetary Instruments – Once the placement is successful within the financial system by way of a bank or financial institution, the proceeds can then be converted into monetary instruments. This involves the use of banker's drafts and money orders.

b). Material assets bought with cash then sold – Assets that are bought through illicit funds can be resold locally or abroad and in such a case the assets become more difficult to trace and thus seize.

After placement comes the layering stage. The layering stage is the most complex and often entails the international movement of the funds. The primary purpose of this stage is to separate the illicit money from its source. This is done by the sophisticated layering of financial transactions that obscure the audit trail and sever the link with the original crime

The Integration Stage

This is the movement of previously laundered money into the economy mainly through the banking system and thus such monies appear to be normal business earnings. This is dissimilar to layering, for in the integration process detection and identification of laundered funds is provided through informants. The known methods used are:

a). Property Dealing – The sale of property to integrate laundered money back into the economy is a common practice amongst criminals. For instance, many criminal groups use shell companies to buy property; hence proceeds from the sale would be considered legitimate.

b). Front Companies and False Loans – Front companies that are incorporated in countries with corporate secrecy laws, in which criminals lend themselves their own laundered proceeds in an apparently legitimate transaction.

CASE STUDIES

- ***RUSSIAN MONEY LAUNDERING SCANDAL***

This scandal became public during the summer of 1999, with media reports of \$7 billion in suspect funds moving from two Russian banks through a U.S. bank to thousands of bank accounts throughout the world. Two Russian banks deposited more than \$7 billion in correspondent bank accounts at a New York bank. After successfully gaining entry for these funds into the U.S. banking system, the Russian banks transferred amounts from their New York bank correspondent accounts to commercial accounts at the bank that had been opened for three shell corporations.

In February 2000, guilty pleas were submitted by a bank employee and spouse and the three corporations for conspiracy to commit money laundering, operating an unlawful banking and money transmitting business in the United States.

- ***OPERATION WIRE CUTTER***

The U.S. Customs Service, in conjunction with the Drug Enforcement Administration (DEA) and Colombian Departamento Administrativo de Seguridad, arrested 37 people in January 2002 as a result of a two-and-one-half-year undercover investigation of Colombian peso brokers and their money laundering organizations. These people are believed to have laundered money for several Colombian narcotics cartels. Laundered monies were subsequently withdrawn from banks in Colombia in Colombian pesos. Investigators seized more than \$8 million in cash, 400 kilos of cocaine, 100 kilos of marijuana, 6.5 kilos of heroin, nine firearms, and six vehicles.

- ***WIRE REMITTANCE COMPANY***

Both a wire remittance company and a depository institution filed SARs outlining the movement of about \$7 million in money orders through the U.S. account of a foreign business. The wire remittance company reported various persons purchasing money orders at the maximum face value of \$500 to \$1,000 and in sequential order. They received amounts ranging from \$5,000 to \$11,000. The foreign business identified by the wire remittance company also was identified as a secondary beneficiary. The money orders cleared through a foreign bank's cash letter account at the U.S. depository institution.

HOW TO COMBAT MONEY LAUNDERING?

There are five ways suggested to combat money laundering activities. They are:

1. Improve searches with technology

With the advancement of technology, such as Artificial Intelligence (AI), detect false positives and conduct searches 24/7 to lessen the burden of the anti-money laundering (AML) regulators to weed out false positives and expand searches.

2. Regular-cross communication

Constant communication among different parties, including law enforcement agencies, governments and regulators etc. Communication can keep all parties up-to-date, verify any suspicions, identify possible networks, and enhance the public-private partnership, ultimately creating a united front against money launderers.

3. Leverage data analytics to detect patterns

As there is more data available nowadays, regulators can identify and detect patterns through past data information and develop a client model to trace any suspicions.

4. System standardization

With the different anti-fraud measures in different regulatory institutions, some issues may arise from different jurisdictions using a network of legacy computer systems. Without standardization, it makes it harder to communicate and process data in a collective way with other parties and hence can hinder fraud detection.

5. Training

Having the right personnel is very important when it comes to detecting fraud. Training is essential and companies may consider people to train employees, make stakeholders aware of any suspicious activity and take

relevant action when there is any hint of fraud. It's also important to have someone in charge to stay on top of news and technological developments, and to oversee the fraud detection process.

ROLE OF CHARTERED ACCOUNTANTS IN COMBATING MONEY LAUNDERING

Economic offenses pose significant threats to the financial integrity of businesses and governments alike. We Chartered Accountants (CAs) can offer our invaluable assistance. With our specialized skills in finance, auditing, and law, we CAs are well-positioned to contribute to the identification, investigation, and resolution of economic crimes.

Below is an outline of the diverse ways in which we CAs can aid authorities in addressing these offenses:

1. Advisory Support during Investigations

- a) Chartered Accountants can provide critical advisory services throughout the investigative process to ensure efficient identification, documentation, and prosecution of offenders.
- b) **Identifying Key Stakeholders:** CAs assist in identifying directors, promoters, shareholders, and individuals who directly or indirectly control financial institutions involved in the offense.
- c) **Data Recovery:** They offer expertise in recovering crucial data, whether in digital or physical formats, essential for the investigation.

- d) Document Identification: CAs help pinpoint relevant financial records, books, and other documentation in various formats for a comprehensive analysis.
- e) Framing Interrogation Questions: They guide investigators in developing precise and targeted questions for interrogating suspects, aiding in the collection of actionable information.
- f) Document Procurement: CAs advise on the process for obtaining essential documents from both governmental and non-governmental entities, ensuring a smooth investigation.
- g) Investigation Theory Development: They assist investigative teams in formulating a coherent theory of the crime and provide orientation on how to proceed with the investigation.
- h) Training Investigators: Chartered Accountants train investigation officers on the financial dealings of commercial entities and their implications under various laws, enhancing the overall competence of the team.
- i) Keeping Stakeholders Informed: They help keep the relevant authorities, such as directors, updated on key developments and additional information needed throughout the investigation.
- j) Forensic Lab Preparation: CAs offer guidance on how to prepare forensic labs, particularly for handling electronic evidence, ensuring its integrity and admissibility.
- k) Developing Standard Operating Procedures (SOPs): They assist in drafting various SOPs crucial for streamlining the investigative process.

2. Post-Investigation Data Analysis

- a) Once the data has been collected, Chartered Accountants play a pivotal role in analyzing it to trace financial misconduct and identify fraudulent activities.
- b) **Tracking the Money Trail:** They analyze financial records to determine the actual utilization of funds generated from deposits, ensuring transparency in fund management.
- c) **Asset Identification:** CAs identify any unreported assets of key promoters or partners to facilitate the recovery of mobilized deposits.
- d) **Expenditure Review:** They scrutinize large expenditures to trace their financial origins and verify their legitimacy.
- e) **Loan Movement Analysis:** Chartered Accountants investigate large or small unsecured loans that have been distributed to multiple individuals or entities, looking for patterns of financial misconduct.
- f) **Undisclosed Transactions:** They help uncover related party transactions that have not been disclosed in financial records, potentially indicating fraudulent activities.
- g) **Identifying Unusual Transactions:** CAs review any significant transactions that appear irregular or suspicious in nature.
- h) **Debt Analysis in Associated Companies:** They examine substantial debts raised in sister or associated companies, ensuring proper accounting and compliance, especially when secured by promoters' assets.
- i) **Promoter Contributions:** CAs trace the source of funds contributed by promoters or partners, analyzing equity and debt infusions to understand financial flows.

j) Forensic Report Review: They provide insights into reports and data obtained from forensic labs to support the investigation.

3. Advisory Services During Charge Sheet Drafting

a) Chartered Accountants offer crucial guidance when authorities begin preparing charge sheets against the accused, ensuring that the evidence is thoroughly correlated and legally sound.

b) Evidence Correlation: CAs assist in aligning the collected evidence with the alleged charges, ensuring all documentation supports the case.

c) Interpretation of Legal Violations: They provide insights into the violation of laws by the accused, helping legal teams interpret complex financial data and its connection to the offense.

4. Court Testimony and Deposition

a) Chartered Accountants may be called upon to provide expert testimony in court. They offer critical analysis and explanations of financial data and the intricacies of economic offenses, presenting their findings before the court.

5. Accounting and Refund Advisory During Disbursement

a) In cases where the disbursement of funds to investors is required, Chartered Accountants play an essential role in ensuring accurate and transparent accounting procedures.

- b) **Depositor Identification:** They help identify the rightful depositors and verify their outstanding amounts by reviewing available documents and KYC data.
- c) **Refund Policy Formulation:** CAs assist in formulating fair and effective policies for refunding each category of depositor or investor, ensuring that all funds are disbursed appropriately.
- d) **Claim Process Guidance:** They offer advisory support throughout the process of refund claims, ensuring that the system is efficient and compliant.
- e) **Accounting for Refunds:** CAs oversee the maintenance of accurate accounts related to the refund process, ensuring transparency and accountability.
- f) **Bank Reconciliation:** They also assist in performing bank reconciliations for the refund transactions, ensuring that all deposits are accurately accounted for.

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GLOABAL PERSPECTIVE

The magnitude of money laundering activities and the amount of money laundered each year is gauged by way of the estimations issued by various government and

non-government financial research entities. Although, various estimates of the scale of global money laundering are sometimes repeated often enough to make some people regard them as factual — no researcher has overcome the inherent difficulty of measuring an actively concealed practice. Regardless of the difficulty in measurement, the amount of money laundered each year is in the billions of US dollars and poses a significant policy concern for governments.

Some of such risks and concerns are of the following nature:

- Reputational risk;
- Loss of revenue required to sustain governance and fund public welfare projects;
- War on Drugs
- Terror Funding

As a result, governments and international bodies have undertaken efforts to deter, prevent, and apprehend money launderers. Financial institutions have likewise undertaken efforts to prevent and detect transactions involving dirty money, both as a result of government requirements and to avoid the reputational risk involved. Issues relating to money laundering have existed as long as there has been large scale criminal enterprises.

The Financial Action Task Force (on Money Laundering)

Formed in 1989 by the G7 countries, the FATF is an intergovernmental body with an aim to develop and promote international response to combat money laundering.

FATF's three primary functions with regard to money laundering are

- Monitoring members' progress in implementing anti-money laundering measures,
- Reviewing and reporting on laundering trends, techniques, and Monitoring members' progress in implementing anti-money laundering measures, Reviewing and reporting on laundering trends, techniques, and countermeasures, and
- Promoting the adoption and implementation of FATF anti-money laundering standards globally. The FATF currently comprises 34 member jurisdictions and 2 regional organisations, representing most major financial centres in all parts of the globe.

The FATF Secretariat is housed at the headquarters of the OECD in Paris. In October 2001, FATF expanded its mission to include combating the financing of terrorism. FATF is a policy-making body that brings together legal, financial, and law enforcement experts to achieve national legislation and regulatory AML and CFT reforms. As of 2016, its membership consists of 35 countries and two regional organizations. FATF works in collaboration with a number of international bodies and organizations. These entities have observer status with FATF, which does not entitle them to vote, but permits them full participation in plenary sessions and working groups.

MONEY LAUNDERING IN INDIA

The term “money laundering” is generally attributed to the collective of procedures involved in legitimising assets amassed by means which may not be have been legitimate. Described otherwise, it involves the transmutation of ill-gotten proceeds into ostensibly legitimate assets, and sometimes into businesses developed as means

to generate more revenues to finance the very ill-means from where the proceeds were generated in the first place.

In India, before the enactment of the Prevention of Money Laundering Act 2002 (PMLA), a number of statutes addressed scantily the issue in question. These statutes were:

- *The Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974,*
- *The Income Tax Act, 1961,*
- *The Benami Transactions (Prohibition) Act, 1988,*
- *The Indian Penal Code and Code of Criminal Procedure, 1973,*
- *The Narcotic Drugs and Psychotropic Substances Act, 1985,*
- *The Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988.*

Anti-Money Laundering (AML) seeks to deter criminals by making it harder for them to hide ill-gotten money. Criminals use money laundering to conceal their crimes and the money derived from them. AML regulations require financial institutions to monitor customers' transactions and report on suspicious financial activity.

Few scams in past years:

Kingfisher Airlines case: Enforcement Directorate filed a case of money laundering against the liquor tycoon Vijay Mallya as he allegedly sent abroad approximately ₹900 crore (US\$130 million) which loaned to his airline. Various Indian banks had given him a loan of about Rs 9,000 crore, which he has allegedly routed to gain a majority stake. He escaped from India and has been living in a

self-imposed exile in Britain since March 2016. He was also named in the Panama Paradise Papers and Panama Papers as he leaked sensitive documents relating to investments done offshore and was also declared as a "proclaimed offender by PMLA court. Hence person with dual citizenship must be keenly monitored.

Commonwealth Games scam: A pilferage of Rs 70,000 crore, one of the major scams witnessed by Delhi in 2010 was of Commonwealth games. The accused were booked under sections of Prevention of Corruption Act as the scandal involved cheating and criminal conspiracy. Due to this money laundering and corruption act, India lost its reputation in front of the world and was banned from Olympics, impacting the future tournaments of Indian players. Possible ways to avoid such cases is regular auditing of income and expenses for an international game tournaments and Background check of the officials to handle the responsibility.

ANTI-MONEY LAUNDERING REGULATORS IN INDIA & FINANCIAL CRIMES

The key financial crime offences applicable to companies, its directors and other company personnel who are considered liable, and the respective governing laws and regulations in India are:

- Fraud: Companies Act, 2013
- Money-laundering: Prevention of Money Laundering Act, 2002
- Bribery and corruption: Prevention of Corruption Act, 1988

- Direct and Indirect Tax evasion and income-tax fraud: Income Tax Act, 1961, Central Goods and Services Act, 2017, Customs Act, 1962 and related tax laws
- Falsification of accounts, criminal misappropriation of property and criminal breach of trust: Bharatiya Nyaya Sanhita, 2023 (BNS) (previously governed by Indian Penal Code, 1860)
- Insider trading: Securities and Exchange Board of India (SEBI) (Prevention of Insider Trading) Regulations, 2015
- Fraudulent and unfair practices of market manipulation by influencing price of securities: SEBI (Prohibition of Fraudulent and Unfair Trading Practices relating to Securities Market) Regulations, 2003
- Anti-competitive practices including bid rigging and cartelisation: Competition Act, 2002
- Unauthorized or unreported foreign exchange transactions: Foreign Exchange Management Act, 1999 (FEMA) and rules thereunder.
- Laws relating to investment scams – these are covered under multiple laws, including the Companies Act, certain SEBI regulations, BNS and certain state-specific enactments.

There are various authorities functioning at central government and state government level which investigate and prosecute financial crimes. In the recent past, investigative agencies have been quite active in investigating and prosecuting cases of financial crimes including corporate misconduct, financial irregularities and economic offences. Various high-profile scams have been uncovered and prosecuted over the last decade and multiple arrests have been made in relation to corruption, corporate fraud and money laundering.

FIU-IND Financial Intelligence Unit [FIU-IND] was set by the Government of India, on 18 November 2004, as the central national agency responsible for receiving, processing, analysing, and disseminating information relating to suspect financial transactions. The FIU-IND is also responsible for coordinating and strengthening efforts of national and international intelligence, investigation, and enforcement agencies in pursuing the global efforts against money laundering and related crimes. FIU-IND is an independent body reporting directly to the Economic Intelligence Council (EIC) headed by the Finance Minister.

RBI is one of such authority which lays down anti-money laundering guidelines for banks and other financial institutions to adhere to. Similarly, SEBI has also prescribed certain requirements relating to Know Your Customer (KYC) norms for the financial intermediaries in securities market to follow to combat money laundering.

Further, there are law enforcement bodies like the Directorate of Enforcement and the Central Bureau of Investigation – Economic Offences Wing, dealing with money laundering issue. Further, the Income Tax Department, Government of India under the Income Tax Act, is also authorised to take steps to prevent the offence of money laundering by imposing tax on undisclosed foreign income and assets on Indian residents. This has been further augmented by enactment of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015.

Some of the key authorities and their primary responsibilities are set out below:

Federal agencies:

- The Central Bureau of Investigation (CBI) is responsible for investigating various complex crimes including offences under the PCA, financial scams and serious economic frauds.
- The Enforcement Directorate (ED) is responsible for investigating offences under FEMA and PMLA.
- The Serious Fraud Investigation Office (SFIO) is responsible for investigating offences under the Companies Act; the Ministry of Corporate Affairs (MCA) also has supervisory and investigative powers over companies and limited liability partnerships.
- The Income Tax Department (IT Authority) is responsible for investigating cases of tax evasion and income tax fraud. Further, the Directorate of Revenue Intelligence (DRI) and the Directorate General of General Goods and Services Tax Intelligence (DGGI) are tasked with detecting and combating evasion of Customs duty and other forms of taxes such as Goods and Services Tax (GST), excise duty and service tax.
- The Securities Exchange Board of India (SEBI) is responsible for investigating offences relating to securities market, involving listed entities and intermediaries in the securities market (SEBI Offences as referred above).
- The Reserve Bank of India (RBI) is responsible for prosecuting violations under FEMA (FEMA Offences as referred above).
- The Competition Commission of India (CCI) is responsible for investigating anti-competitive practices.

State agencies:

- The police departments of each state are responsible for registering complaints and investigating crimes under the BNS.

- A special branch of the police has been established, known as the Economic Offence Wing (EOW) which deals with economic offences over a certain monetary value threshold including banking crimes and corporate frauds.

THE PREVENTION OF MONEY LAUNDERING ACT 2002

The Prevention of Money Laundering Act, 2002 or the PMLA is an Act of the Parliament of India enacted to prevent money-laundering and to provide for confiscation of property derived from money-laundering.

The PMLA came into force with effect from July 1, 2005. The Act and Rules notified thereunder impose obligation on banking companies, financial institutions, and intermediaries to verify identity of clients, maintain records and furnish information in prescribed form to the competent authorities formed and appointed in that regard [e.g., Financial Intelligence Unit – India (FIU-IND)]. The Act was subsequently amended in the years 2005, 2009 and 2012, 2015 and 2018. Additionally, the Prevention of Money Laundering (Maintenance of Records) Amendment Rules, 2023, brought changes related to maintaining records and reporting obligations by reporting entities.

The PMLA seeks to combat acts pertaining to money laundering in India and in view of this, it mainly has three main objectives:

- To prevent and control money laundering
- To confiscate and seize the property obtained from the laundered money; and
- To deal with any other issue connected with money laundering in India.

The essential aspects of the Prevention of Money Laundering Act of 2002 are as follows:

- **Offenses and Penalties:** The Money Laundering Act of 2002 establishes specific offenses related to money laundering and imposes stringent penalties, including imprisonment and fines, on individuals found guilty of such crimes.
- **Attachment and Confiscation of Proceeds:** The Act empowers authorities to attach and confiscate money laundering proceeds. This provision aims to disrupt the financial gains of offenders and deter others from engaging in illicit activities.
- **Obligations on Reporting Entities:** The Act obligates reporting entities, such as banks, financial institutions, and professionals, to maintain records, report suspicious transactions, and implement robust customer due diligence measures.
- **Investigative Authorities:** The Act grants investigative agencies extensive powers to investigate money laundering cases, including conducting inquiries, search and seizure operations, and the collection of evidence.
- **International Cooperation:** The Act promotes international cooperation in the fight against money laundering. It establishes mechanisms for mutual legal assistance, extradition, and information sharing with foreign jurisdictions.
- **Adjudication and Appellate Mechanisms:** The Act establishes Adjudicating Authorities and an Appellate Tribunal to adjudicate cases related to money laundering and ensure a fair and transparent legal process.
- **Special Courts:** The Act designates Special Courts to handle money laundering cases exclusively. These courts ensure specialized expertise and expedite the trial process.

- **Prevention Measures:** The Act emphasizes preventive measures by mandating reporting entities to implement robust anti-money laundering policies, systems, and training programs.
- **Confidentiality and Whistleblower Protection:** The Act protects information related to money laundering cases and safeguards the identity of whistleblowers who report such offenses.

Money-laundering concept

The concept of money laundering is described under section 3 of the PMLA, in a manner to include those activities whereby there are attempts to ‘indulge or assist’ other person or become ‘involved’ in any process or activity connected with the ‘proceeds of crime’ and ‘projecting or claiming’ it as untainted property are said to be activities which may be acts of money laundering.

Proceeds of crime: This is one of the most important terms to be understood insofar as the aim is to understand the scope of the term money laundering within the PMLA. This term is defined within the PMLA to describe properties and assets acquired out of a criminal activity. ‘Proceeds of Crime’, means and includes, any property obtained or is derived directly or indirectly as a result of criminal activity relating to a Scheduled Offence or the value of any such property or where such property is taken or held outside the country, then the property equivalent in value held within the country or abroad.

Important cases with respect to this issue are:

In case of *Narendra Mohan Singh and Another vs Directorate of Enforcement*, the Hon’ble Jharkhand High Court took a strict view in respect of the applicability of

the PMLA and its various provisions regarding 'presumption'. Under Section 3 of the PML Act against the petitioners would not be maintainable as for prosecuting a person under PML Act, precondition is that one should involve himself in the process or activities connected with the proceeds of crime and the proceeds of crime be derived or obtained because of criminal activity relating to scheduled offence. But, here in the case as has been stated above, the charge upon which cognizance has been taken under the PML Act, that never form part of the charges upon which CBI has submitted charge sheet.' Merely being a director of a company is not sufficient to make the person liable under Section 141 of the Act. A director in a company cannot be deemed to be in charge of and responsible to the company for conduct of its business. The requirement of Section 141 is that the person sought to be made liable should be in charge of and responsible for the conduct of the business of the company at the relevant time.

Rama Raju, S/ o B. Ramalinga Raju Vs. Union of India (UOI), In this case, it was held that section 24 shifts the burden of proving that proceeds of crime are untainted property onto person(s) accused of having committed the offence under Section 3. In response to a notice issued under Section 8(1) and qua the legislative prescription in Section 24 of the Act the person accused of having committed the offence under Section 3 must show with supporting evidence and material that he has the requisite means by way of income, earnings or assets, out of which or by means of which he has acquired the property alleged to be proceeds of crime. Only on such showing would the accused be able to rebut the statutorily enjoined presumption that the alleged proceeds of crime are untainted property.

Burden of Proof:

The offence of money laundering as noted under section 3 of the PMLA is considered an aggravating one, and an accusation under the same shifts the onus of proof on the person accused of having committed the offence, as such. Following the provisions as noted above, In the case of ‘a person charged with the offence of money-laundering under section 3’, the Authority or Court shall, unless the contrary is proved, presume that such proceeds of crime are involved in money-laundering; and in the case of ‘any other person’ the Authority or Court, may presume that such proceeds of crime are involved in money-laundering.

Penalties under the PMLA:

The PMLA is a piece of criminal legislation, where presumption of guilt has precedence and the burden of proof lies on the person accused of a violation. Following this there are certain penalties which are prescribed within the provisions of the PMLA.

The PMLA prescribes that any person found guilty of money-laundering shall be punishable with rigorous imprisonment from three years to seven years and where the proceeds of crime involved relate to any offence under paragraph 2 of Part A of the Schedule (Offences under the Narcotic Drugs and Psychotropic Substance Act, 1985), the maximum punishment may extend to 10 years instead of 7 years. Powers of attachment of tainted property Appropriate authorities, appointed by the Govt of India, can provisionally attach property believed to be “proceeds of crime” for 180

days. Such an order is required to be confirmed by an independent Adjudicating Authority.

The Authorities – PMLA

Section 48 of the PMLA lays down the provision on the authorities holding competence under the Act. The authorities are as follows.

- Director or Additional Director or Joint Director,
- Deputy Director,
- Assistant Director, and
- such additional directors/officers whose appointment may be deemed necessary under the provisions of the PMLA.

Section 43 of Prevention of Money Laundering Act, 2002 (PMLA) says that the Central Government, in consultation with the Chief Justice of the High Court, shall, for trial of offence punishable under Section 4 of the PMLA, by notification, designate one or more Courts of Session as Special Court or Special Courts for such area or areas or for such case or class or group of cases as may be specified in the notification. Special courts formed under the provisions of the PMLA are empowered to take cognizance of complaints made by an authority authorized in this behalf under the PMLA.

Section 6 of the PMLA states that the Central Government shall, by notification, appoint an Adjudicating Authority to exercise jurisdiction, powers and authority conferred by or under this Act.

Section 26 of the PMLA lays down the procedures pertaining to the filing of appeals to appellate tribunals. The provisions therein specifically permit a ‘person aggrieved by an order made by the Adjudicating Authority under this Act, may prefer an appeal to the Appellate Tribunal’.

The offences under the PMLA are to be treated as cognisable and non-bailable. The specific provisions in relation thereto occur under section 45 of the PMLA.

Adjudicating Authority Under PMLA:

The Adjudicating Authority is the authority appointed by the central government. It decides whether any of the property attached or seized is involved in money laundering. The Enforcement Directorate (ED) carries out investigations. The ED is also empowered to attach property of entities involved in money laundering. The investigation begins with filing an Enforcement Case Information Report (ECIR), which is comparable with an FIR. The Adjudicating Authority under PMLA then decides whether the attachment is valid or not. The courts take the final call on punishment and confiscation of property from the money launderers.

In terms of sub-section (1) of section 6 of Preventions of Money Laundering Act, 2002, an Adjudicating Authority under PMLA has been constituted to exercise jurisdiction, powers and authority conferred by or under the said Act.

The Adjudicating Authority shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice and subject to the other provisions of PMLA. The Adjudicating Authority shall have powers to regulate its own procedure. Presumption in inter-connected transactions Where money laundering involves two or more inter-connected

transactions and one or more such transactions is or are proved to be involved in money laundering, then for the purposes of adjudication or confiscation, it shall be presumed that the remaining transactions form part of such inter-connected transactions.

Scheduled Offence

Under PMLA, the commission of any offence, as mentioned in Part A and Part C of the Schedule of PMLA will attract the provisions of PMLA. The offences listed in the Schedule to the Prevention of Money Laundering Act, 2002 are scheduled offences in terms of Section 2(1)(y) of the Act.

The scheduled offence thus means (i) the offences specified under Part A of the Schedule; or (ii) the offences specified under Part B of the Schedule if the total value involved in such offences is one crore rupees or more; or (iii) the offences specified under Part C of the Schedule. Part A comprises of offences under various pieces of legislations and enlists offences under various acts such as: Indian Penal Code, Narcotics Drugs and Psychotropic Substances Act, Prevention of Corruption Act, Antiquities and Arts Treasures Act, Copyright Act, Trademark Act, Wildlife (Protection) Act, Information Technology Act etc. Part B specifies offences that are Part A offences, but the value involved in such offences is Rs.1 crore or more. Part 'C' deals with trans-border crimes, and is a vital step in tackling Money Laundering across International Boundaries.

Reporting Entities

The PMLA further has provisions pertaining to certain units known as 'reporting entities' within its ambit. Within clause (wa) of section 2(1), reporting entities include banking company, financial institution, intermediary or a person who may be carrying out a business or profession specifically designated within the PMLA.

Within the ambit of the PMLA, certain businesses and professions and the persons associated therewith are also included within the meaning of a 'reporting entity'. Under Section 2(1)(sa) of the PMLA, "person carrying on designated business or profession" means -

- (i) A person carrying on activities for playing games of chance for cash or kind, and includes such activities associated with casino;
- (ii) Inspector-General of Registration appointed under section 3 of the Registration Act, 1908 (16 of 1908) as may be notified by the Central Government;
- (iii) real estate agent, as may be notified by the Central Government;
- (iv) dealer in precious metals, precious stones and other high value goods, as may be notified by the Central Government;
- (v) person engaged in safekeeping and administration of cash and liquid securities on behalf of other persons, as may be notified by the Central Government; or
- (vi) person carrying on such other activities as the Central Government may, by notification, so designate, from time to time;

Obligations of the Reporting Entities

The reporting entities are tasked under the provisions of the PMLA to perform the major activities mandated by the law. In their specific capacities are obligated to perform certain functions, which concisely include the followings:

1. Maintenance of records;
2. Furnish information pertaining to such records;
3. Verification of identity of its clients by carrying out due diligence procedures;
4. Identification of beneficial owner, in respect of the transactions undertaken with its various clients.

The Director may, make an inquiry, as he thinks fit to be necessary, with regard to the obligations of the reporting entity. If the Director having regard to the nature and complexity of the case, is of the opinion that it is necessary to do so, he may direct the concerned reporting entity to get its records, as may be specified, audited by a Chartered Accountant from amongst a panel of accountants, maintained by the Central Government for this purpose.

In addition to the above-mentioned obligations, it is also the duty of the reporting entities to provide access to necessary information as and when called for by a Director (appointed under the provisions of the PMLA). The necessary provisions in this regard occur under section 12A of the PMLA.

For all the obligations which are to be shouldered by a reporting entity, the PMLA specifically gives exclusions to reporting entities against any kind of civil or criminal proceedings. Such exclusion or exemption also extends to the directors and/or employees of the concerned reporting entity.

Monetary Penalties on Reporting Entity

Notwithstanding the protection of law according to reporting entities, it may also be noted that the reporting entities are also subject to vigilance and for obligatory violations, such reporting entities may also get penalised.

In accordance with the provisions of Section 13(2)(d), it may be noted that reporting entities may get penalised for non-maintenance of records or non-submission of information sought from such reporting entity. As such, monetary penalties can be imposed on defaulting reporting entity or its designated director on the Board or any of its employees, which shall not be less than ten thousand rupees but may extend to one lakh rupees for each instance of failure.

Arrest and Bail Provisions

The purpose of bail in our judiciary system is to confirm that the accused person will be present in the court whenever he is called for appearing for the hearing and anyone who is charged with a criminal offense can get bail by paying a specific amount. But the court before granting bail looks into various grounds and it may or may not be granted depending upon the severity of the crime.

The PMLA has stringent provisions regarding arrest and bail procedures. The officers authorized under the PMLA are empowered to arrest an accused, subject to the fulfilment of conditions under section 19 and section 45 of the Act. The accused must be informed of the grounds for arrest as soon as may be.

In the case of those who are charged with the offense of money laundering, Section 45 of the Prevention of Money Laundering Act, 2002 deals with the provision of

bail. And, the offense of money laundering is treated as a cognizable and non-bailable offense.

However, the bail can only be granted if they are not opposed by respective personnel. The following are the conditions under which bail is granted by the special court:

1. When an accused person files for bail, the public prosecutor is given an opportunity to provide arguments against the grant of the bail by the court.
2. On the discretion of the special court, person under the age of sixteen years, or a woman, sick or infirm person, or person accused either on his own or along with other co-accused of money-laundering a sum of less than one crore rupees may be released on bail.

And also those who do not fall under these criteria for bail can also get bail if the Court is satisfied that there are reasonable grounds for believing that such person is not guilty of such offence and that he is not likely to commit any offence while on bail.

The money laundering offense will not be treated as a cognizable offense until there is a written complaint received from the Director or from the central or state government. Also, there will be no investigation taking place on the part of the police until the government gives them special order to do so.

3. The time period of granting bail in case of money laundering is according to the Code of Criminal Procedure 1973.

However, for granting bail to the accused who is involved in money laundering case, the conditions are found to be violative in nature because those who are charged with this offense, they are yet to be declared guilty and before being

proved guilty they are being treated as criminal and because of which their fundamental rights are infringed under Articles 14 (Right to Equality) and Article 21 (Right to Life and Personal Liberty) of the Constitution of India, as the court followed twin test.

Section 45 of the PMLA originally imposed stringent “twin conditions” for bail, requiring the accused to prove:

1. Prima Facie Innocence: The accused must demonstrate, with evidence, that they are not guilty of the alleged offence.
2. Assurance of Non-recidivism: The accused must also convince the court that they are unlikely to commit any offence if released on bail.

In *Nikesh Tarachand Shah vs. Union of India* the question of granting bail to those who were denied to get bail from the court as per Section 45 of the PMLA, 2002 was answered. In this case, the petitioner filed a writ petition because there was a violation of his fundamental right. As those who have applied for bail even before a trial has taken place that is anticipatory bail, the court grants them bail but when a person was arrested and after that, they apply for bail, then the court follows twin-condition for granting bail which is in itself discriminatory in nature. So, with this case, the Supreme Court removed this discrimination and asked for reapplying for bail in the court from where their bail application was rejected.

In 2017, in the case of *Nikesh Tarachand Shah*, the Supreme Court declared these conditions unconstitutional, citing violations of Articles 14 and 21. However, in 2018, these conditions were reinstated through an amendment in the Finance Act. The 2022 Supreme Court ruling in *Vijay Madanlal Choudhary v. Union of India* overturned the 2017 decision, and upheld the amended Section 45, thus, reinstating the twin conditions under Section 45 of PMLA.

The PMLA is a key piece of legislation in India, aimed at combating the menace of money laundering. Moreover, the legal landscape surrounding bail under the PMLA is complex and evolving.

However, in a series of landmark rulings, the Supreme Court of India has highlighted the rights of individuals accused of money laundering, offering a nuanced interpretation of the stringent provisions under the Prevention of Money Laundering Act, 2002, particularly regarding arrest and bail procedures.