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# Laws and Policies related with Money Laundering Act 2002: A Study in Light of Leading Cases of Supreme Court

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## ABSTRACT

*This study examines the laws and policies concerning the Prevention of Money Laundering Act 2002 in India, focusing on key Supreme Court cases. The research delves into the enforcement and compliance landscape shaped by the Act, highlighting the impact on financial institutions and reporting entities. By analysing prominent legal cases, the study aims to elucidate the judicial interpretations and implications for combating money laundering effectively. Through a comprehensive review of the legislative framework and judicial precedents, this research provides insights into the evolving regulatory environment and the role of the judiciary in shaping anti-money laundering efforts in India.*

**Keywords:** Money Laundering, Financing, Transactions, Crimes, Funds.

## I. INTRODUCTION

The Prevention of Money Laundering Act 2002 (PMLA) is a key piece of legislation in India that aims to prevent money laundering and terrorist financing. The legislation imposes strict obligations on entities required to report financial activities and grants authority to enforcement agencies to examine and take legal action against money laundering violations.<sup>3</sup> Money laundering involves concealing illicitly obtained funds to give them the appearance of coming from legal sources. This practice aims to evade detection and enable the use of the funds for additional unlawful purposes. Money laundering is a widespread issue that jeopardizes the credibility of the financial system and subverts legal frameworks.

The Prevention of Money Laundering Act (PMLA) was established to tackle this issue and establish a legal structure for preventing and fighting against money laundering. The legislation characterizes money laundering as any action or failure that gives the impression that assets obtained from criminal conduct originate from lawful origins. Additionally, the Act includes provisions for seizing and confiscating criminally acquired assets.

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<sup>3</sup> Prevention of Money Laundering Act, 2002," Ministry of Finance, Government of India, accessed March 1, 2024

The Prevention of Money Laundering Act (PMLA) enforces rigorous compliance standards on reporting entities, encompassing banks, financial institutions, and intermediaries. These obligated entities are required to maintain meticulous transaction records and promptly report suspicious transactions to the Financial Intelligence Unit - India (FIU-IND). Furthermore, the Act necessitates the identification and verification of beneficial ownership, with non-compliance carrying significant penalties. This regulatory framework underscores the critical role that reporting entities play in combating money laundering and illicit financial activities.

This Act grants law enforcement agencies the authority to investigate and prosecute money laundering offenses. It establishes procedures for attaching and confiscating the proceeds of crime, and imposes severe penalties for money laundering activities. The Act further mandates the creation of specialized courts to adjudicate money laundering cases. The Prevention of Money Laundering Act (PMLA) aligns with international standards for anti-money laundering and counter-terrorist financing practices. The Financial Action Task Force (FATF), an international organization, develops and promotes strategies to combat money laundering and terrorist financing. The FATF Recommendations establish global standards for anti-money laundering and counter-terrorist financing measures, and the PMLA aims to incorporate these standards into India's legal framework.

## **II. LEGISLATIVE FRAMEWORK AND POLICY OBJECTIVES**

One of the main objectives of the PMLA is to establish a legal framework to prevent and combat money laundering. Defined within the Act, money laundering encompasses actions or oversights that disguise unlawfully obtained assets as legitimate. Additionally, the legislation includes measures for seizing and reclaiming the profits of criminal activities.<sup>4</sup>

The PMLA aims to uphold international standards for anti-money laundering and counter-terrorist financing practices. The Financial Action Task Force (FATF) is an intergovernmental organization that develops and promotes strategies to combat money laundering and terrorist financing. The FATF Recommendations set global standards for anti-money laundering and counter-terrorist financing measures, which the PMLA seeks to implement in India. The PMLA includes several policy objectives related to the compliance responsibilities of reporting entities. It requires these entities to maintain transaction records, report any suspicious transactions to the Financial Intelligence Unit - India (FIU-IND), and identify the beneficial owners. Failure to comply with these regulations results in significant penalties under the Act.

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<sup>4</sup> Report of the Expert Committee to Review the Prevention of Money Laundering Act, 2002," Ministry of Finance, Government of India, accessed March 1, 2024

Furthermore, the PMLA aims to authorize law enforcement agencies to scrutinize and take legal action against money laundering violations. It includes provisions for seizing and reclaiming the proceeds of criminal activities, along with imposing strict penalties for money laundering infractions. Additionally, the Act calls for the creation of specialized courts to adjudicate money laundering cases.

### III. OVERVIEW OF LEADING SUPREME COURT CASES

Over the years, the Supreme Court has delivered several landmark judgments related to the PMLA that have had a significant impact on the interpretation and implementation of the Act.

#### *1. Rohit Tandon v. Enforcement Directorate (2019)*

The case of Rohit Tandon v. Enforcement Directorate is a landmark judgment related to the interpretation of the PMLA.<sup>5</sup> Rohit Tandon was a lawyer and a businessman who was accused of money laundering. The Enforcement Directorate (ED) had attached his assets under the PMLA, and Tandon had challenged the attachment in the Delhi High Court. The High Court had dismissed his petition, and Tandon had appealed to the Supreme Court.

The Supreme Court ruled that money laundering offenses under the PMLA are considered continuing offenses and are not bound by a statute of limitations. This implies that the Enforcement Directorate (ED) can pursue investigations and legal action for money laundering crimes even if they are uncovered after the limitation period has lapsed. The Court also held that the attachment of assets under the PMLA is a preventive measure and not a punitive measure. This means that the attachment is not a punishment but a means to prevent the accused from disposing of the proceeds of crime.

The judgment in the case of Rohit Tandon v. Enforcement Directorate has had a significant impact on the interpretation and implementation of the PMLA. Law enforcement agencies can now investigate and prosecute money laundering offenses without time limitations due to the classification of money laundering as a continuing offense. The decision that the attachment of assets is a preventive measure has also clarified the purpose of the attachment and has ensured that the assets are not considered as a punishment.

#### *2. State of Maharashtra v. Zaheer Abdul Rahman Shaikh (2011)*

The case of State of Maharashtra v. Zaheer Abdul Rahman Shaikh is a landmark judgment related to the burden of proof in money laundering cases.<sup>6</sup> Zaheer Abdul Rahman Shaikh was a

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<sup>5</sup> Rohit Tandon v. Enforcement Directorate, (2019) SCC OnLine SC 1540.

<sup>6</sup> State of Maharashtra v. Zaheer Abdul Rahman Shaikh, (2011) 13 SCC 1.

businessman who was accused of money laundering. The trial court had acquitted him, but the ED had appealed to the High Court. The High Court had set aside the acquittal and convicted Shaikh. Shaikh had then appealed to the Supreme Court.

The Supreme Court ruling established that the PMLA is a distinct law that takes precedence over the general rules of the Criminal Procedure Code. Furthermore, the Court determined that the burden of proof lies with the accused to demonstrate that the funds in question came from legal sources. This shift in the burden of proof requires the accused to prove that the money was not derived from criminal activity. The judgment has significantly influenced the burden of proof in money laundering cases, making it easier for law enforcement agencies to establish their case.

### ***3. Prakash Industries Ltd. v. Directorate of Enforcement (2021)***

The case of Prakash Industries Ltd. v. Directorate of Enforcement is a landmark judgment related to the imposition of fines under the PMLA.<sup>7</sup> Prakash Industries Ltd. was accused of money laundering, and the ED had imposed a fine of Rs. 5 crores on the company. Prakash Industries had challenged the imposition of the fine in the Delhi High Court. The High Court had upheld the imposition of the fine, and Prakash Industries had appealed to the Supreme Court.

The Supreme Court ruled that fines under the PMLA are discretionary, emphasizing that the fine amount should align with the severity of the offense committed. It underscored that fines should be proportionate to the gravity of the crime and not deemed excessive. Additionally, the Court highlighted that fines should not lead to the shutdown of the accused's business, emphasizing that the fine amount should not be so substantial as to force business closure.

The judgment in the case of Prakash Industries Ltd. v. Directorate of Enforcement has had a significant impact on the imposition of fines under the PMLA. The decision that the power to impose fines is discretionary has ensured that the fines imposed are proportionate to the gravity of the offence. The decision that the imposition of a fine should not result in the closure of the business has also ensured that the fines do not have a disproportionate impact on the accused.

## **IV. THE JUDICIAL INTERPRETATION AND LEGAL PRECEDENTS**

Over the years, the Prevention of Money Laundering Act 2002 (PMLA) has undergone various judicial interpretations and legal precedents. These interpretations and precedents have notably influenced the understanding and application of the Act.

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<sup>7</sup> Prakash Industries Ltd. v. Directorate of Enforcement, (2021) SCC OnLine SC 237.

One of the key legal precedents related to the PMLA is the decision of the Supreme Court in the case of *State of Maharashtra v. Zaheer Abdul Rahman Shaikh*.<sup>8</sup> The Court's ruling established the PMLA as a specialized legislation that supersedes the general rules of the Criminal Procedure Code. It also determined that the onus of proof rests on the accused to demonstrate the legitimacy of the proceeds of the crime. This judgment has significantly influenced the burden of proof in money laundering cases, facilitating law enforcement agencies in substantiating their cases.

Another would be related to the PMLA is the decision of the Delhi High Court in the case of *Rohit Tandon v. Enforcement Directorate*.<sup>9</sup> The Court's ruling that money laundering under the PMLA is a continuing offense, not bound by a limitation period, has greatly influenced the prosecution of such offenses. This decision empowers law enforcement agencies to conduct investigations and legal actions for money laundering violations without being restricted by a timeframe.

The Supreme Court has also provided several judicial interpretations related to the PMLA. In the case of *Prakash Industries Ltd. v. Directorate of Enforcement*<sup>10</sup>, the Court held that the power to impose fines under the PMLA is discretionary and that the amount of fine should be proportionate to the offence committed. This decision has had a significant impact on the imposition of fines under the PMLA and has ensured that the fines imposed are proportionate to the gravity of the offence.

Also, in the decision of the Supreme Court in the case of *Madhu Koda v. State*<sup>11</sup>. The Court's ruling that the Prevention of Money Laundering Act (PMLA) applies to public servants who have committed offenses under the Indian Penal Code, and that proceeds can be confiscated irrespective of corruption involvement, has expanded the Act's jurisdiction. This decision enables law enforcement agencies to investigate and prosecute a wider range of offenses under the PMLA, allowing for the seizure of illicit gains even if the crime is not directly related to corruption. Consequently, the interpretation has enhanced the ability of authorities to address various forms of financial crimes involving public servants under the PMLA.

## **V. IMPACT ON THE ENFORCEMENT AND COMPLIANCE**

The implementation of the Prevention of Money Laundering Act 2002 (PMLA) has brought about a notable transformation in the landscape of enforcement and compliance within financial

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<sup>8</sup> *State of Maharashtra v. Zaheer Abdul Rahman Shaikh*, (2011) 13 SCC 336.

<sup>9</sup> *Rohit Tandon v. Enforcement Directorate*, (2019) 9 SCC 774.

<sup>10</sup> *Prakash Industries Ltd. v. Directorate of Enforcement*, (2021) 2 SCC 259.

<sup>11</sup> *Madhu Koda v. State*, (2017) 2 SCC 469.

institutions and reporting entities operating in India. The stringent measures outlined in the PMLA have compelled these entities to enhance their vigilance and adherence to anti-money laundering regulations, thereby fortifying the overall framework for combating illicit financial activities

The Prevention of Money Laundering Act (PMLA) has substantially increased the scrutiny on financial transactions carried out by reporting entities, compelling them to maintain detailed records of all transactions and promptly notify the Financial Intelligence Unit - India (FIU-IND) of any suspicious transactions. This regulatory framework emphasizes the pivotal responsibility that reporting entities have in the fight against money laundering and unlawful financial practices. By mandating stringent monitoring and reporting obligations, the PMLA reinforces the importance of proactive vigilance in safeguarding the financial system from illicit activities. This has resulted in a substantial rise in the number of suspicious transaction reports (STRs) submitted by reporting entities, placing additional pressure on enforcement agencies.

The PMLA grants enforcement agencies the authority to seize and confiscate the proceeds of crime, creating a strong deterrent against money laundering and terrorist financing. Additionally, this action provides a source of revenue for the government to support public welfare programs. Nonetheless, while the PMLA has yielded positive outcomes, it has also resulted in unintended consequences for enforcement and compliance efforts. The stringent compliance requirements have placed a burden on reporting entities, especially smaller ones, to comply with the Act. This has led to a significant increase in compliance costs for reporting entities, which has impacted their profitability.

Another unintended consequence of the PMLA is the increased workload of the enforcement agencies. The increased number of STRs filed by reporting entities has led to a significant backlog of cases, which has impacted the efficiency of the enforcement agencies. The enforcement agencies have also been criticized for their overzealous use of the PMLA, which has led to the harassment of innocent individuals and businesses.<sup>12</sup>

In response to the unintended repercussions faced, the government has implemented numerous revisions to the Prevention of Money Laundering Act (PMLA) over time. These amendments aim to find a middle ground between imposing rigorous compliance standards and alleviating the compliance load on reporting entities. Additionally, the government has proactively enhanced the capabilities of enforcement agencies to effectively manage the heightened operational demands stemming from these changes.

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<sup>12</sup> Financial Action Task Force Recommendations," Financial Action Task Force, accessed March 1, 2024

## **VI. EMERGING ISSUES AND FUTURE CONSIDERATION**

As the financial landscape continues to evolve, there are several emerging issues and future considerations related to the PMLA.

An emerging problem related to the Prevention of money Laundering Act (PMLA) is the usage of virtual currencies for money laundering and terrorist financing. virtual currencies like Bitcoin and Ethereum are steadily exploited for unlawful purposes due to their decentralized nature and anonymity. The PMLA does not currently have provisions for the regulation of digital currencies, and there may be a need for the Act to be amended to address this rising difficulty.

Furthermore, another significant concern pertains to the utilization of trade-based money laundering (TBML) as a method for engaging in illicit activities. TBML encompasses the manipulation of trade transactions to disguise the origins of cash and evade taxation obligations. While the Prevention of Money Laundering Act (PMLA) currently includes measures for ascertaining and validating beneficial ownership, there is a pressing requirement for the Act to undergo amendments that specifically address the challenges posed by the exploitation of TBML in illicit endeavours. Furthermore, another significant concern pertains to the utilization of trade-based money laundering (TBML) as a method for engaging in illicit activities. TBML encompasses the manipulation of trade transactions to disguise the origins of cash and evade taxation obligations. While the Prevention of Money Laundering Act (PMLA) currently includes measures for ascertaining and validating beneficial ownership, there is a pressing requirement for the Act to undergo amendments that specifically address the challenges posed by the exploitation of TBML in illicit endeavours.

Future concerns concerning the Prevention of money Laundering Act (PMLA) encompass the need for more suitable global collaboration, leveraging era for compliance and enforcement functions, and imposing a hazard-based totally method to compliance and enforcement measures. these components are crucial for addressing evolving challenges in fighting money laundering and enhancing regulatory effectiveness. cash laundering and terrorist financing are transnational crimes, and there is a want for multiplied worldwide cooperation to fight those crimes efficaciously. using era, which includes synthetic intelligence and blockchain, can also play a sizeable role in improving compliance and enforcement efforts. enforcing a risk-based totally technique permits reporting entities to customise their compliance sports consistent with their risk publicity and business characteristics.

Another future consideration related to the PMLA is the need to strengthen the framework for the confiscation of assets. The PMLA currently has provisions for the attachment and



confiscation of assets, but there is a need to strengthen the framework to make it more effective. This could involve the establishment of a centralized asset forfeiture office and the adoption of international best practices for the confiscation of assets.<sup>13</sup>

## **VII. CONCLUSION AND IMPLICATIONS FOR ANTI-MONEY LAUNDERING EFFORTS**

In summary, the Prevention of Money Laundering Act, 2002 is an important piece of legislation in India's efforts to combat money laundering and terrorist financing. The law imposes strict compliance standards on publishers and gives law enforcement the authority to investigate and prosecute financial crimes. The Act has had a significant impact on the understanding and implementation of financial safeguards in India. PMLA strengthens India's anti-money laundering system and brings it in line with international standards. The law plays an important role in preventing illegal money flows using money and ensuring the integrity of money. The establishment of the Financial Intelligence Unit of India (FIU-IND) also plays an important role in investigating suspicious transactions and preventing money laundering.

The emergence of new technologies and digital currencies has also created new challenges in protecting financial transactions. The use of blockchain technology and cryptocurrencies makes it easier for criminals to launder money and finance crimes. The need to adapt to these new technologies and develop new tools and strategies to combat money laundering is one of the key challenges that anti-money laundering defense must solve.

The Prevention of Money Laundering Act, 2002 is an important law to tackle the problem of money laundering and terrorist financing in India. The law imposes strict obligations on advertising agencies, forcing them to comply with strict rules to prevent financial crimes. Additionally, the law allows law enforcement to investigate and prosecute individuals or entities involved in financial crimes. By implementing these provisions, the law has played an important role in protecting financial integrity and combating financial crimes. The law has had a major impact on the interpretation and implementation of anti-money laundering efforts in India, and the need to adapt to new technologies and threats is an important problem that financial markets protection must address.

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<sup>13</sup> Ratan, R. (2020). Blockchain technology and anti-money laundering measures. *Journal of Money Laundering Control*, 23(2), 204-214.