

New Era in Economic Offences: Co-Existence of PMLA & BNS

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ABSTRACT

Money laundering represents a significant economic offense that undermines national integrity, involving the conversion of illegally obtained assets into seemingly legitimate assets. This illicit activity often underpins organized crime, drug trafficking, and terrorism. In response to the rising incidence of such crimes, India implemented the Prevention of Money Laundering Act (PMLA) in 2002, which was enforced in 2005, establishing stringent measures for law enforcement. However, the recent introduction of the Bharatiya Nyaya Sanhita (BNS) 2023 raises critical questions regarding the coexistence and compatibility of these two legislative frameworks. This article explores the historical context of money laundering in India, the implications of the PMLA, and the emerging dynamics introduced by the BNS, emphasizing the necessity for a cohesive legislative approach that effectively addresses money laundering while safeguarding individual rights within the legal system.

KEYWORDS: Money Laundering, Prevention of Money Laundering Act, Bharatiya Nyaya Sanhita, Legislative Framework

1. INTRODUCTION

Money laundering is an economic offence which is of serious nature and against national integrity. The crime on the face of it means conversion of illegally obtained assets into evidently legitimate assets. This act could be the root cause and a way of accomplishing organised crimes, drug trafficking, terrorism, etc. In response to the alarming increase of these crimes, India enacted the Prevention of Money Laundering Act, 2002² enforced in 2005 for curtailing these offences and through its stringent provisions and wide ambit it has set up the law enforcement straight.

However, with the recent implementation of the Bharatiya Nyaya Sanhita 2023³, very critical questions have been raised on their coexistence and compatibility. The present article examines the background of money laundering in India, implications of PMLA⁴, and the emerging dynamics with BNS⁵, thereby underlining the need for a cohesive legislative approach to deal effectively with

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money laundering while upholding individual rights within the legal system.

2. BACKGROUND OF MONEY LAUNDERING IN INDIA

2.1. Money laundering is concealing the means of obtaining the illicit funds and conversion of them into legitimate funds seemingly legal. The 47th law report published by the law commission of India in the year 1972 recognized economic offences as a special separate category of offences. The government of India perceived the need for special attention towards these offences which infringe the national integrity. However, the IPC⁶ did not carry amendments and give slots to such offences, it did not hold provisions which included economic offence as a specific offence. It was subsequently established in the PMLA 2002⁷ which encompassed punishments and proceeds of crime.

² Prevention of Money Laundering Act, 2002

³ Bharatiya Nyaya Sanhita 2023

⁴ Prevention of Money Laundering Act, 2002

⁵ Bharatiya Nyaya Sanhita 2023

⁶ Indian Penal Code, 1860

⁷ Prevention of Money Laundering Act, 2002

2.2. The process of money happens through different stages-

- The illicit funds are placed into the financial system by depositing them in banks under different accounts in various anonymous names and corporations, this process is called placements.
- The cash is then laundered by a series of national and international transactions between accounts in several countries, especially those with less strict anti-money laundering legislation. This also includes buying and selling negotiable assets such as expensive cars, paintings, and real estate to disguise the origin of the money. This process is called layering.
- The cash is pumped into the financial system, which emerges as "white." The funds from these "white" sources can be reinvested by the crooks into valid companies; invoices fraudulently issued; phoney charities established, putting the criminal individual in a position of power but with inflated wages. This process is addressed as integration.

Through these stages the amount extracted through illegal means is encompassed as a legal earning.

2.3. Money laundering does not pertain to a certain country or region rather it's a global issue. Multiple conventions and decisions have been made to curtail these. The Financial Action Task Force (FATF) was established in 1989 through the initiative of the G7 countries to provide international standards to combat the issue and restrict these at a higher level. It is estimated that around 800 billion USD to 2 trillion USD is being laundered every year. The Bank secrecy Act in the USA demands overwatching and supervising transactions and reporting any suspicious transactions above 10,000 USD. The USA Patriot Act further aids in tracking money laundering in a wider ambit and by investigation of organised crime and other terrorist tracking. Money laundering prevention is important for converting proceeds of illegal activities into legal form, including drug trafficking and terrorism, whose impacts are rife with deep social and economic ramifications. The lost funds are ostensibly to be recovered for the societal benefits and economic improvement. Banks become a part of this crusade through government-designed guidelines comprising Know Your Customer (KYC) and reporting of suspicious activities.

3. DELVING INTO PMLA

- 3.1. The PMLA, 2002 was implemented in the year 2005 and brought a swooping representation in the Indian criminal legislative framework by introducing financial crimes as a serious offence and enforcing the need of financial integration in the nation. The bill was introduced in the parliament in the year 1998 and after much discussion and debate it was enacted in 2003 by obtaining the President's assent and finally implemented in 2005.
 - 3.2. The Act defines money laundering under Section 3⁸ which states the wide range of acts that fall under the proceeds of crime of money laundering. Which is inclusive of concealment, possession, acquisition, and use of illicit funds. It criminalises the projection or claim of the illegal money as unattained property. The provisions bring under parties both directly and indirectly involved in the laundering and proceeds of crime so as to prosecute every single individual involved.
 - 3.3. The PMLA 2002 provides powers to law enforcement agencies especially the Director or Deputy Director or Assistant Director appointed by the central government to arrest any person if he has a reasonable suspicion by reason of material possession and ought to state the grounds of arrest. Reporting to the adjudicated authority in a sealed envelope the material in possession and the order copy is a mandate. The written documentation is necessary before performing investigation and it is the due diligence of the officer to present the suspect before judicial or metropolitan magistrate within 24 hours. Additionally, under Section 16⁹ of the act grants power of survey to the authorised personnels in areas where there is a reasonable apprehension of money laundering. They can enter, inspect the proceeds of crime, verify, record statements, create inventories and make records with information collected. They ought to finally submit all these to the adjudicated authority. Section 17¹⁰. The act establishes procedure and regulations for search and seizure.
- Moreover, to enhance the legal enforcement the individuals suspected of involvement or concealment of proceeds of crime can be investigated and searched under Section 18¹¹ of

⁸ Prevention of Money Laundering Act, 2002, s3

⁹ Prevention of Money Laundering Act, 2002, s16

¹⁰ Prevention of Money Laundering Act, 2002, s17

¹¹ Prevention of Money Laundering Act, 2002, s18

PMLA 2002. The convicts of money laundering face a serious rigorous imprisonment under Section 4¹² of the act extending from 3 to 7 years along with appropriate fines.

- 3.4. Over the years, the PMLA has gone through multiple amendments, namely in 2009, 2012, 2015, 2018, 2019, and 2023. This reflects India's strong commitment toward a paradigm shift in its legal framework to deal with illicit financial flows more effectively. These amendments undoubtedly strengthened this Act, furthered the mechanism for enforcement and prosecution, and reflected the determination of the government in dealing with the emerging challenges thrown up by money laundering. In short, the PMLA is no legal machinery; rather, it forms part of the comprehensive strategy that India as a nation has adopted in protecting her economy and promoting a culture of transparency and accountability in all financial transactions.

4. STANCE OF MONEY LAUNDERING IN BNS

- 4.1. There is no particular section in the new Bharatya Nyaya Sanhita, 2023 explicitly stating money laundering but it is well established under the newly introduced offence of Organized Crime under Section 111¹³. Under clause 1 sub clause 3 the economic offence is defined to include criminal breach of trust, forgery, counterfeiting of currency-notes, bank-notes and Government stamps, 'hawala transaction', mass-marketing fraud or running any scheme to defraud several persons or doing any act in any manner with a view to defraud any bank or financial institution or any other organisation for obtaining monetary benefits in any form. The exhaustive definition points to the intention of the legislature to permit the police to bring within its scope other sophisticated crimes which are economic in nature. The IPC had no provisions for organised crimes or money laundering though there existed state legislations such as the MCOCA a more nationalised legislation was required to control this menace.
- 4.2. The BNS now has now ensured the organised crime to be non-bailable offence, but the MCOCA has granted exceptions where one can get bail. In the landmark SC judgement

*Prem Prakash v. UOI*¹⁴, it was held that bail is the rule and jail is the exception even for money laundering cases and hence its a bailable offence. The BNS, 2023 and PMLA have contrasting provisions in respect to the bail and onus probandi, the burden of proof traditionally lies with the prosecution to prove the accused guilty. Under the new BNS 2023 justice has been upheld as the most important and presumption of innocence is endorsed until proven guilty and hence, even for money laundering act the burden of proof is placed the traditional way. Whereas the burden of proof under PMLA lies with the accused and he ought to prove that he is innocent, this provision under the PMLA diverges from the orthodox practice. The issue now raised is which act will prevail? According to '*generalia specialibus non-derogant*' special laws prevail over general ones and applying this logic here the provisions of BNS 2023 will be undermined and defining economic activities under it would become nugatory.

- 4.3. The judgement of *Vijay Madanlal Choudhury v. UOI*¹⁵, upheld all the stringent provisions of PMLA, by stating that the ED needn't prepare an ECIR, distinguishing them from the normal set of police officers, the judgement also exempted them from certain CrPC provisions and upheld the draconian bail conditions. Such landmark SC judgements make it difficult to interpret both the acts coextensively. It is yet unknown if the BNS is a subsidiary act or complementary one and there is a need to throw some light through judicial interpretation.

5. CONCLUSION

The evolution of the legislative framework regarding the economic offences happening in India have come a long way in combatting accountability, financial stability and national integrity. The PMLA act has helped in curtailing the offence at a larger stance and the judicial precedents have set up a good stage to handle these crimes and curtail them and it was a smooth way of handling since no acts were in competition to the PMLA. With the introduction of new criminal laws, the Bharatya Nyaya Sanhita, 2023 the coexistence of these laws are in question. It is important for the legislators to clarify the synergistical co-existence of both these laws rather than any opposition. The protection of the integrity of the legal system has to be prioritised along with the preservation of the rights of the accused. The need for refining the bail provisions and strengthening the

¹² Prevention of Money Laundering Act, 2002, s4

¹³ Bharatiya Nyaya Sanhita, 2023, s111

¹⁴ Prem Prakash vs Union Of India Through The Directorate

¹⁵ Vijay Madanlal Choudhary vs Union Of India

principle of 'presumption of innocence' can be done. Public debates and expert opinions can be invited for more transparency in the legal regime, which would,

in turn, make the attempt at money laundering and organised crime control more effective in India.

