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# EVOLUTION AND DEVELOPMENT OF MONEY LAUNDERING LAWS IN INDIA

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## THE DOCTRINE OF EXPROPRIATION IN INVESTMENT DISPUTES

### 2.1 Early Efforts and International Commitments

Indian anti-money laundering laws start early with attempts at implementing legislation to regulate financial crime. Though not an attempt to regulate money laundering as such, these efforts helped to identify suspicious transactions and levy financial penalties. Global instruments and agreements to which India became a signatory also aided the anti-money laundering (AML) framework. Early Legislative Attempts in India

**1. The Income Tax Act, 1961**

The Income Tax Act, 1961 was the first legislative step in India that indirectly dealt with money laundering operations. Even though the primary intention of the Act was to regulate taxation and curb tax evasion, provisions under it were effective in identifying suspicious financial transactions. Under Section 132 of the Act, the agencies were authorized to carry out search and seizure operations, which led to the identification of unexplained assets that could be traced back to illegal financial transactions. The Act also provided directions for tracing unexplained cash credits (Section 68), unexplained investments (Section 69), and unexplained expenditure (Section 69C),which enhanced financialsurveillance.

**2. The Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (COFEPOSA)**

The COFEPOSA Act, 1974 was legislated with the aim of preventing illegal capital formation through foreign exchange malpractices and smuggling operations. Although not specifically designed to prevent money laundering, the Act did much to prevent criminal proceeds arising out of cross-border trade mispricing and smuggling. The Act empowered the authorities to arrest people who were suspected of engaging in activities adverse to the economic stability of India.

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**3. Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act)**

Recognizing the link between drug trafficking and illicit money flows, the NDPS Act, 1985 introduced strict provisions to prevent the accumulation and circulation of illicit drug money. The Act criminalized the acquisition, possession, and utilization of proceeds of narcotics offenses. Section 68-E of the NDPS Act provided that the enforcement agencies could freeze and seize the properties linked with drug trafficking and thereby indirectly discouraged money laundering in drug organizations.

**India's Compliance with International Initiatives**

India's compliance with the war against money laundering increased through its active involvement in landmark international initiatives. These initiatives imposed additional pressure within India's legislative environment and aligned its policies with internationally-accepted Anti-Money Laundering standards.

**1. Financial Action Task Force (FATF)**

India became a full member of the Financial Action Task Force (FATF) in June2010, showing adherence to global AML and counter-terrorist financing (CTF) standards. The FATF 40 Recommendations provide general standards for the prevention of money laundering with stringent requirements for the implementation of preventive policy, strengthening financial reporting systems, and ensuring effective investigation and prosecution. India, as a member, restructuring its law, i.e., the Prevention of Money Laundering Act, 2002, onFATF lines.

**2. United Nations Conventions**

India signed several international agreements that played an important role inshaping its AML regime:

The United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988 (Vienna Convention) required the signatory nations to criminalize money laundering proceeds of drug trafficking. The United Nations Convention against Transnational Organized Crime, 2000(Palermo Convention) committed states to criminalizing money laundering of organized crime proceeds and ensuring effective financial monitoring systems. The International Convention for the Suppression of the Financing of Terrorism, 1999, committed signatories to freeze, seize, and confiscate property for terrorist use.

**3. Basel Committee on Banking Supervision**

The Basel Committee on Banking Supervision has made several guidelines on enhanced banking regulation and avoidance of financial institution misuse for money laundering. India adopted these recommendations in the Reserve Bank of India's (RBI) policy of regulation by forcing the banks to comply with Know Your Customer (KYC) norms and maintain unblemished records of financialdealings.

**4. Egmont Group**

India's Financial Intelligence Unit (FIU-IND) joined the Egmont Group in2007, thus facilitating international collaboration to prevent money laundering. With the Egmont Group, member countries can collaborate by sharing information, exchanging best practices, and promoting international efforts against illicit financial flows. Early Indian legislation and compliance with international conventions formed the basis for the introduction of a formal AML system. The legislation eventually resulted in the enactment of the Prevention of Money Laundering Act, 2002, as a key anti-financial-crime legislation and a way of placing India'slegalsystem in line with international AML standards.

**2.2 Introduction of the Prevention of Money Laundering Act, 2002 (PMLA)**

**1. Definition of Money Laundering (Section 3)**

Section 3 of the PMLA defines money laundering as an endeavour directly orindirectly to derive benefits, knowingly assisting, or knowingly being a party to the concealment, possession, acquisition, or enjoyment out of the proceeds ofcrime with the intention of making such proceeds seem like clean property.

The subsection places particular emphasis on the point that mere possession of property derived from criminal conduct is not enough; there must be an intent to cover up its criminal origin. The wide definition ensures that individuals assisting in money laundering, even indirectly, are being held responsible. The overall tone of the section invokes a lot of financialtransactions tofunction, such as layering, integration, and placement methods used in typical money laundering operations.

Courts have interpreted the provision in this manner narrowly enough so as toprevent abuse. In Ratul Puri v. Directorate of Enforcement, it has been laid down by Delhi High Court that for establishing a prima facie case under Section 3, there must exist cogent material to link the accused with act of concealment or money laundering of crime proceeds as clean money.

**2. Proceeds of Crime (Section 2(1)(u))**

The implication of "proceeds of crime" in PMLA is as below:

Any property obtained or received, directly or indirectly, by any person in relation to, or as a result of, criminal activity in relation to a scheduled offence.

This definition is significant in that it includes within the PMLA illegal proceeds-based properties, wherever such properties are located, within or outside India.

The term 'proceeds of crime' includes movable and immovable properties such as real property, bank accounts, and electronic money. The definition was expanded by the 2009 Amendment to properties purchased in cross-border transactions connected with crime. In Seema Garg v. Directorate ofEnforcement, the Punjab and Haryana High Court ruled that the property neednot always be in the physical possession of the accused; indirect control overproceeds of crime will be enough for PMLA action.

**3. Seizure and Attachment of Property (Sections 5 & 8)**

The PMLA empowers the government to order provisional attachment of theproperties in connection with suspected money laundering. Section 5 providesthat the ED may order provisional attachment on a reasonable belief by theofficer that the property to be provisionally attached is proceeds of crime andshall be likely more than not to be concealed, transported, orotherwise dealtwith so as to evade action under law.

Section 8 mandates the procedure of attachment verification before theAdjudicating Authority. If the authority is satisfied that the property is reallyattached to money laundering, it can direct its confiscation. The Act providesfor preventing arbitrary confiscations. In Mohan Lal v. Directorate ofEnforcement, the Supreme Court ruled that the procedure for attachment mustbe subject to due process, wherein there should remain a scope for reasonablehearing for the accused persons in order to present their case.

**4. Investigating Authorities (Sections 48 & 49)**

The Directorate of Enforcement (ED) is the central investigating agency in thePMLA. Section 48 sets out the structure of investigating agencies, i.e., theDirector, Deputy Directors, Assistant Directors, and Enforcement Officersempowered to conduct inquiries, searches, and seizures. According to Section 49, the ED can issue attachment of assets, freeze bankaccounts, and issue summons on the suspected individuals who are involved inmoney laundering. The powers of the ED were greatly boosted with the 2019Amendment, strengthening their ability to function independent of theregistration of a specific FIR. The Bombay High Court in Hasan AliKhan v. Union of India upheld the very extensive powers of the ED by holding that theexpansive powers of the ED are beyond any reasonable doubt in harmony withIndia's international commitments pursuant to AML regimes.

**5. Reporting Entities and KYC Norms (Section 12)**

Section 12 of the PMLA requires reporting entities like banks, financialinstitutions, and intermediaries to keep records of transactions, provideinformation to the Financial Intelligence Unit-India (FIU-IND), and implementKnow Your Customer (KYC) standards.

This is to identify suspicious transactions that would typify money launderingactivities. There is a need for banks to report wire transfer, account operations,and large cash transactions inconsistent with a customer's known sources offunds. In Axis Bank v. Directorate of Enforcement, the Delhi High Court ruledthat noncompliance with obligations pursuant to Section 12attracts penaltyeven in absence of concomitant criminal intention then.

**6. Adjudicating Authority and Appellate Tribunal (Sections 6 & 25)**

The Section 6 Adjudicating Authority is a quasi-judicial forum set up with theaim of validating or disapproving provisional attachment orders granted by theED. TheAuthority will ensure due process, test evidence, andprotect propertyowners' rights.Section 25 establishes the Appellate Tribunal as the court of appeal fromAdjudicating Authority's orders. The Tribunal is capable of deciding facts andlaw of case. In R. Venkatakrishnan v. Directorate of Enforcement, it wasestablished that the Tribunal is not limited to deciding merely procedural

; it can even decide reasonableness of orders of attachment which havebeen made on the basis of substantial evidence.

**7. Penalties and Sanctions (Section 4)**

The PMLA imposes stern penalties for the money laundering act. Section 4stipulates harsh imprisonment for 3-7 years, extendable up to 10 years for thecrimes ofterror or narcotic financing. Furthermore, financial penalties can becharged to forfeit ill-gotten gains.

The provision has been strictly interpreted by the courts with regards to theeconomic offenses. In Y.S. Jagan Mohan Reddy v. CBI, the Supreme Courtreaffirmed that economic offenses such as money laundering are a threat tonational security and economic stability and hence need stringent punishment.

**2.3 Key Amendments to the PMLA**

The Prevention of Money Laundering Act, 2002(PMLA) has been significantlyamended to broaden its scope, strengthen enforcement provisions, and bringIndia's legal framework in line with international standards of combatingmoney laundering. The amendments filled procedural gaps, widened the

definition of predicate offences, and conferred greater powers on theinvestigating agencies. The significant amendments are:

**1. The Prevention of Money Laundering (Amendment) Act, 2005**

The 2005 Amendment was brought in to enhance the procedural provisions ofthe PMLA and enhance enforcement powers. Some of the salient features were:

Increase in Predicate Offences: The amendment widened the scope ofscheduled offences by adding crimes under other acts like the Narcotic Drugsand Psychotropic Substances Act, 1985, and the

Customs Act, 1962.Clarifying Attachment Rules: It provided more preciserules for the temporaryattachment of suspected proceeds of crime.

Strengthening the Role of the Financial Intelligence Unit (FIU):

Reportingentities such as banks, financial institutions, and intermediaries were required toreport suspicious transactions to the FIU.

**2. The Prevention of Money Laundering (Amendment) Act, 2009**

The 2009 Amendment sought to fill gaps identified by the Financial ActionTask Force (FATF) in the anti-money laundering framework of India. The key
amendments were:

More Comprehensive Definition of 'Proceeds of Crime': The amendmentbroadened the definition to cover not only property directly obtained fromcrime but also indirectly held assets.Cross-Border Implications: The amendment gave PMLA's jurisdiction toextend to cross-border money laundering offenses. Foreign assetsoverseascould be seized if they are linked to Indian crime.

Increased Penalties: Money laundering offenses dealing with drugs were givenincreased sentences of imprisonment at 10 years.

**3. The Prevention of Money Laundering (Amendment) Act, 2012**

The 2012 Amendment introduced substantial changes to augment theinvestigation machinery and expand the list of crimes covered. The mainreforms were:

Adoption of the Notion of 'Corresponding Law': This allowed the governmentto recognize similar anti-money laundering law in overseas jurisdictions tofacilitate cross-border cooperation in investigation.

Additional Powers for the ED: More powers were bestowed on the Directorateof Enforcement (ED) for searching and seizure without prior permission of thecourts in situations requiring urgency.

Inclusion of Other Offences: The amendment added other offences to the list ofscheduled offences such as those under the Indian Penal Code (IPC), Arms Act,
and Immoral Traffic (Prevention) Act.

Power to Summon and Seize Records: The ED was authorized to summonpeople for interrogation and seize records as evidence.

**4. The Prevention of Money Laundering (Amendment) Act, 2015**

This amendment was made with a view to strengthen the ED's enforcementpowers as well as judicial proceedings. The most important changes were:

Prosecution Without Pre-Conviction: Under this amendment, authorities couldprosecute a person under the PMLA without requiring a previous conviction of
the predicate offence.

· The Prevention of Money Laundering (Amendment) Act, 2015, No. 20 of 2015.

· Simplified Adjudication Process: The amendment eased the procedure ofvalidating provisional attachment orders and thus enabled the quick recovery ofill-gotten assets.

Clarification on 'Proceeds of Crime': The definition of proceeds of crime wasmodified to include not justproperty derived from criminal conduct but alsothose listed as untainted property.

**2.4 Establishment of the Financial Intelligence Unit (FIU-IND)**

The Financial Intelligence Unit – India (FIU-IND) was established in 2004 asthe central national agency responsible for receiving, processing, analyzing, and

disseminating information related to suspected financial transactions to combatmoney laundering and terrorist financing. FIU-IND operates under the Ministryof Finance, specifically within the Department of Revenue, and plays a pivotalrole in India's anti-money laundering (AML) and counter-terrorism financing(CTF)framework.

**2.4.1 Background and Rationale**

The creation of FIU-IND was a direct response to India's growing need for adedicated agency that couldeffectively track and investigate suspiciousfinancialactivities. The establishment followed India's commitment tointernational anti-money laundering standards laid down by the FinancialAction Task Force (FATF) and aligned with obligations under the United

Nations Convention against Transnational OrganizedCrime, 2000 and theUnited Nations Convention against Corruption, 2003.FIU-IND was modeled on similarinstitutions in other jurisdictions such as theFinancial Crimes Enforcement Network (FinCEN) in the United States and theSerious Organised Crime Agency (SOCA) in the United Kingdom.

**2.4.2 Functions of FIU-IND**

FIU-IND serves as a nodal agency to coordinate efforts between financialinstitutions, regulatory authorities, and law enforcement agencies. Its keyfunctions include:

Collection of Financial Information: FIU-IND receivesdata from reportingentities, including banks, financial institutions, intermediaries, and designatednon-financial businesses. These institutions are required to file:

Suspicious Transaction Reports (STRs)

Cash Transaction Reports (CTRs)

Cross-Border Wire Transfer Reports

Reports on Purchase/Sale of Immovable Property

Analysis of Financial Data: FIU-IND analyzes large volumes of financialinformation to identify suspiciouspatterns of transactions that may indicatemoneylaundering, tax evasion, or terrorist financing.

Dissemination of Information: After analyzing data, FIU-IND disseminatesintelligence reports to relevant enforcement agencies like the EnforcementDirectorate (ED), Central Bureau of Investigation (CBI), Income Tax.Department, and state law enforcement authorities for further investigation andprosecution.Compliance and Monitoring: FIU-IND monitors financial institutions' compliance with statutory reporting obligations underthe Prevention of MoneyLaundering Act, 2002 (PMLA).

International Cooperation: FIU-IND acts as India'sinterface with foreign FIUsand international AMLbodies like the FATF and the Egmont Group ofFinancial Intelligence Units to facilitate cross-border exchange of financialintelligence .

**2.4.3 Legal Framework Governing FIU-IND**

FIU-IND derives its powers from the PMLA, 2002 and operates independentlyunder the guidance of theEconomic Intelligence Council (EIC) headed by theFinance Minister of India. FIU-IND′s reportingrequirements are codified underthe PMLA (Maintenance of Records) Rules, 2005, which outline the following:

Mandatory filing of STRs, CTRs, and related records.

Maintenance of records for a minimum of five years by financial institutions.

2.4.4 Key Achievements of FIU-IND

Since its inception, FIU-IND has played a crucial role in several high-profilefinancial crime investigations. Key achievements include:Facilitating intelligence in major hawala operations, fraud cases, and moneylaundering scams.Assisting in uncovering illegal betting networks, including those linked to theIPL spot-fixing scandal.

Enhancing India's compliance with FATFrecommendations, which improvedIndia's international standing in AML efforts.

**2.4.5 Challenges Faced by FIU-IND**

Despite its successes, FIU-IND faces several challenges:

Data Overload: With the exponential increase in financial transactions,processing large volumes ofreports remains challenging.Limited Staffing and Resources: FIU-IND's workforce and technological

infrastructure require continuous upgrades to meet growing AML demands.

International Cooperation Barriers: Although FIU-IND is part of the EgmontGroup, cross-border intelligence-sharing mechanisms often face diplomatichurdles.

Digital Financial Crimes: With the rise ofcryptocurrencies and digital paymentsystems, identifying illicit transactions has become increasingly complex.

**2.5 Recent Developments in Money Laundering Laws**

India′s legal framework for combating money laundering has witnessedsignificant developments in recent years. These amendments and regulatorychanges aim to enhance compliance standards, strengthen enforcement

mechanisms, and align Indian laws with global best practices established by

organizations such as the Financial Action Task Force (FATF) and the UnitedNations Office on Drugs and Crime (UNODC). The evolving legal landscapereflects the growing complexity of financial crimes and theincreasing use ofdigital financial platforms for illicit activities.

**2.5.1 The Prevention of Money Laundering (Amendment) Act, 2019**

The 2019 Amendment introduced key changes that strengthened theinvestigative powers of enforcement agencies and broadened the scope of thePrevention of Money Laundering Act, 2002 (PMLA). Notable changes include:

Widened Definition of Proceeds of Crime: The term "proceeds of crime" wasexpanded to include property and assets derived from any criminal activityrelated to scheduled offences, even if they are held outside India.

Attachment of Properties: The Enforcement Directorate (ED) was empoweredto seize and attach properties even before the registration of a scheduledoffence.

Increased Compliance Burden: Reporting entities such as banks, financialinstitutions, and intermediaries are now required to conduct enhanced duediligence on politically exposed persons (PEPs) and other high-risk clients.

**2.5.2 The Finance Act, 2019 and Expanded Definition of Reporting Entities**

The Finance Act, 2019 introduced critical changes by expanding the scope ofreporting entities under the PMLA. As a result:Chartered Accountants (CAs), Company Secretaries (CSs), and CostAccountants are now required to report suspicious transactions if they areinvolved in activities such as fund management,

investment advice, or trustservices.

Enhanced due diligence obligations were introduced for digital paymentoperators and fintech entities.

This expansion was a response to emerging moneylaundering threats in thedigital economy and aimed to prevent professionals from inadvertentlyfacilitating financial crimes.

**2.5.3 Inclusion of Cryptocurrency Under PMLA (2023)**

In March 2023, the Indian government brought Virtual Digital Assets (VDAs)such as cryptocurrencies and NFTs (Non-Fungible Tokens) under the ambit of
the Prevention of Money Laundering Act, 2002. Key provisions include:

Cryptocurrency exchanges, wallet providers, and entities facilitating virtualasset transactions are now designated as reporting entities under the PMLA.

These entities must maintain transaction records, conduct KYC (Know YourCustomer) checks, and report suspicious transactions to FIU-IND.

This move was a significant step towards regulating the rapidly growing digitalasset sector, which had been exploited for illicit activities due to its anonymityfeatures.

**2.5.4 Supreme Court's Ruling on PMLA Provisions (2022)**

In the landmark case of Vijay Madanlal Choudhary v. Union of India, theSupreme Court of India upheld the constitutional validity of severalcontroversial provisions of the PMLA. Key observations included:

The Court affirmed the ED's broad investigative powers, including the power toconduct searches, seizures, and arrest individuals without prior approval from amagistrate.The judgment confirmed that the stringent bail conditions under Section 45 ofthe PMLA are valid, reinforcing the tough stance on financial crimes.While the ruling was criticized for potentially violating
fundamental rights, itunderscored India's strong commitment to AML standards.

**2.5.5 Introduction of Fugitive Economic Offenders Act, 2018**

The Fugitive Economic Offenders Act, 2018 wasintroduced to preventeconomic offenders from evading prosecution by fleeing the country. The lawallows the ED to:

Confiscate properties of individuals declared as fugitive economic offenders.Conduct trials in absentia for high-profile offenders like Vijay Mallya andNirav Modi.

This legislation was a crucial response to high-profile financial scandals thatexploited gaps in India′s enforcement framework.

**2.5.6 Strengthening of Cross-Border Cooperation**

India has intensified its cooperation with global agencies such as:Financial Action Task Force (FATF) – India is an active member, implementing FATF recommendations for combating money laundering and terrorist financing.

Interpol – India actively collaborates with Interpol′s Financial Crime and Anti-Corruption Centre (IFCACC) to trace and recover assets linked to cross-border money laundering networks.

**2.5.7 Enhanced Role of Technology in AML Enforcement**

Recent years have seen greater reliance on advanced technologies such as:

AI-driven transaction monitoring systems to detect suspicious patterns.Blockchain analysis tools to track illicit cryptocurrency transactions.Strengthened FIU-IND data infrastructure to manage vast volumes of financialdata more effectively.These technological advancements aim to improve the detection and preventionof complex financial crimes.

The recent developments in India′s money laundering laws reflect the country'sproactive stance instrengthening its financial regulatory framework. With
enhanced reporting obligations, stricter enforcementmeasures, and digital assetregulation, India is aligning itself with global AML standards. However,effective implementation and collaboration between regulatory bodies remaincrucial to combating the evolving threats posed by financial crimes.