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**CRITICAL ANALYSIS OF PREVENTION OF MONEY LAUNDERING
ACT, 2002 & PREVENTION OF CORRUPTION ACT**

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Introduction

Money laundering is a criminal offence in India and is prohibited by both the Prevention of Money Laundering Act (PMLA) and the Narcotic Drugs and Psychotropic Substances Act (NDPS). The NDPS Act's money laundering provisions are limited to drug-related crimes, while the PMLA covers a wider range of underlying offences, including narcotics. According to the NDPS Act, drug-related offences are only applicable to offences committed within India. This is because Section 8A (c) of the NDPS Act does not mention drug offences committed in other countries, nor does it include a provision that extends the Act's jurisdiction to offences committed outside of India. Since PMLA has incorporated drug-related predicate offences under the NDPS Act and has jurisdiction beyond national borders, the provisions outlined in Section 8A of the NDPS Act have become unnecessary. However, they have not yet been abolished. The offence of money laundering under the PMLA applies to anyone who knowingly participates in the laundering of proceeds from a crime, including the person who committed the underlying offence. On the other hand, the money laundering provision under the NDPS Act applies to any person without any exceptions. In addition, there is no legal principle in India that prohibits the use of ML provisions for the predicate offender.⁴⁵ On December 9th, 2005, India signed the UN Convention against corruption, which is also referred to as the Merida Convention. Money laundering is often associated with corruption as it is considered to be one of the predicate offences.

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The primary goal of introducing such legislation was to combat the crime of legalising financial earnings from illicit sources. The Indian Government and police officials are authorised by this Act to confiscate any property that has been determined to have been obtained through illegal means or by engaging in unlawful activities.

The PML Act was created with the purpose of preventing or impeding the occurrence of money laundering, as its name implies. Additionally, the intention was to confiscate any assets acquired through the commission of money laundering and for related matters pertaining to such an offence.

Key Provisions Of The Prevention Of Money Laundering Act, 2002 Objectives Of The Act:

The Prevention of Money Laundering Act, 2002, was established to address the problem of money laundering. A few of its objectives include:

1. To address and manage the problem of money laundering.
2. The act of seizing or detaining any assets that are suspected to be linked to money laundering or have been obtained through such illegal means.
3. To punish those who commit the crime of money laundering.
4. For choosing the tribunal and adjudicating body that will handle money laundering related cases.
5. It is proposed to mandate banking companies, financial institutions, and intermediaries to maintain records or documents pertaining to financial transactions.
6. To address any additional concerns pertaining to the act of money laundering.

SCHEDULE OF OFFENCES:

According to the Prevention of Money Laundering Act (PMLA), committing any offence listed in Part A or Part C of the PMLA Schedule will result in the application of PMLA provisions. Below are some examples of acts and offences that may result in PMLA charges.

1. Part A provides a list of offences that are covered under different acts, including the Indian Penal Code, Narcotics Drugs and Psychotropic Substances Act, Prevention of Corruption

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Act, Antiquities and Art Treasures Act, Copyright Act, Trademark Act, Wildlife Protection Act, and Information Technology Act.

2. Part B outlines offences that are categorised as Part A offences, but the amount involved in these offences is equal to or greater than Rs 1 crore.

3. Part C focuses on transnational crimes and demonstrates a commitment to combat money laundering on a global scale.

“PROCEEDS OF CRIME” U/S 2, PMLA, 2002:

The newly inserted section defines "proceeds of crime" as any property that a person has acquired, either directly or indirectly, through criminal activity related to a scheduled offence. This includes the value of the property, even if it is held outside of the country. If the property is held abroad, its equivalent value held within the country is also considered.

According to Section 2(u) of the PMLA, the phrase 'proceeds of crime' refers to any asset obtained by an individual, either directly or indirectly, through the commission of a crime related to a scheduled offence. It also includes the monetary value of such assets. If the assets are held outside the country, then the equivalent value of those assets held within the country is also considered. Subsequent changes were implemented to the Section, which included the inclusion of the phrase 'or abroad' to the explanation of 'proceeds of crime'.

Additionally, to prevent any inconsistencies, an explanation is provided that defines 'proceeds of crime' as not only property obtained from the scheduled offence, but also any property that may be acquired directly or indirectly as a result of any criminal activity related to the scheduled offence.

“OFFENCE OF MONEY-LAUNDERING” UNDER SECTION 3 OF THE PMLA, 2002

The PMLA includes an Explanation in section 3 which states the following: "Explanation -" To clear up any confusion, it is stated that a person can be charged with the crime of moneylaundering if they are found to have been involved in any of the following activities related to proceeds of crime: concealment, possession, acquisition, use, presenting as clean property, or claiming as clean property, either directly or indirectly, or by knowingly assisting or being a party to it.

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The process or activity related to the profits obtained from criminal activities is an ongoing process that persists until the point where an individual is either directly or indirectly enjoying the profits by concealing, possessing, acquiring, using, or presenting it as legitimate property, or claiming it as legitimate property in any way possible.

The Supreme Court of India, in the case of S. Sundaram Pillai, Etc vs V.R. Pattabiraman⁴⁶, 1985 AIR 582, referred to previous legal decisions and concluded that an explanation added to a statutory provision should not be considered a substantive provision. This is because the explanation only serves to clarify the meaning of the provision, as the word "explanation" suggests. The purpose is simply to clarify or specify any uncertainties that may have arisen in the legal provision. The court ruled that an explanation cannot alter or affect the enactment or any of its provisions. In case of any ambiguity, the provision stated in Section 3 of the PMLA will take precedence over the explanation (i) added to it.

ATTACHMENT, ADJUDICATION AND CONFISCATION

1. SECTION 5- ATTACHMENT OF PROPERTY Section 2(v) of the PMLA, 2002 defines 'property' as "any property or assets of every description, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and includes deeds and instruments evidencing title to, or interest in, such property or assets, wherever located".⁴⁷ Also, Section 2(d) of the Act, defines the term 'attachment' as "means prohibition of transfer, conversion, disposition, or movement of property" by any direction given under the provisions of the PML Act."⁴⁸ It is important to mention that Section 5 of the PMLA grants the authority to attach assets to the director, joint director, or any deputy director. If there is reason to suspect that an individual has obtained property illegally or possesses proceeds of a crime, and they are charged with said crime, the person in authority may seize their property for a maximum of 180 days.

This is done to prevent the concealment or transfer of any potential proceeds of the crime. Additionally, it is necessary to carry out the attachment in the manner specified in the Second Schedule of the Income Tax Act, 1961. Additionally, it is necessary for the individual in a position of power to document in written form the rationale behind their belief that the property was acquired through unlawful methods. To comply with the regulations, it is necessary to submit the cause in a sealed envelope to the adjudicating authority, along with a

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duplicate of the attachment order. Once the complaint is submitted, the adjudicating authority will review it. It's important to file the complaint within 30 days of attachment.

2. SECTION 6- ADJUTICATORY AUTHORITY

According to Section 6 of the PMLA, the responsibility of appointing an adjudicating authority to carry out the jurisdiction, powers, and authority granted by or under this Act lies with the Central Government.

According to the regulations, an adjudicating authority should be composed of a panel comprising of three members. This panel should include a chairperson and two other members. One of these members must have expertise in the areas of law, administration, finance, or accountancy.

“It is important to mention that an individual cannot be appointed as a member of the adjudicating authority in the legal field unless they possess the following qualifications:

1. Has qualifications to be appointed as a judge of any district, or
2. Has been a representative member of the Indian Legal Service and has held a post in Grade I of that service.”²

An individual must possess the required qualifications to be eligible for appointment as a member of the adjudicating authority in the areas of finance, accountancy, or administration. In addition, the authority responsible for making decisions will not be required to follow the specific guidelines outlined in the Code of Civil Procedure, 1908. Instead, they will be guided by the principles of natural justice. Additionally, the authority responsible for making judgements will have the power to establish and adhere to its own set of procedures.

POWERS OF THE BENCH:

As mentioned earlier, the bench can be comprised of a chairperson along with one or two members. The adjudicating authority's panels will convene in New Delhi and other locations as designated by the Central Government and the chairperson. In addition, the Central Government has the power to specify through a notification which regions will be under the jurisdiction of the adjudicating authority bench. Additionally, the chairperson has the

² Section 6, PMLA, 2002

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responsibility to transfer a member from one bench to another and has the authority to do so. In addition, the chairperson has the authority to transfer a case to a different bench if they believe that the complexity of the case requires the involvement of two members. This can happen at any stage of the case or matter. Furthermore, the chairperson and members are appointed for a term of five years starting from the date they assume office. However, individuals who have reached the age of 65 years are not qualified to hold the position.

SALARY OF THE BENCH:

The salary, allowances, and terms of service for the bench and other members will be in accordance with the prescribed guidelines. However, there will be no disadvantage to the members after their appointment.

VACANY:

If there are any vacancies for the position of chairperson or any other member in the office, the Central Government has the authority to appoint a suitable candidate as per the guidelines mentioned in the Act. Additionally, the proceedings will begin from the point at which the vacancy was filled.

RESIGNATION, DEATH OR ILLNESS OF ANY MEMBER:

In order to resign from the office, the chairperson or any other member must submit a formal written application. The appropriate recipient for the application would be the Central Government. Once the application is submitted, the member is required to serve a notice period of three months, unless a replacement is appointed or they are granted permission by the Central Government to resign earlier than the prescribed period. If the chairperson of the office resigns, passes away, or becomes ill, the next most senior member will take over as chairperson until a replacement is appointed to fulfil the role.

DISMISSAL OF ANY MEMBER

The Central Government is the only authority that can remove the chairperson or any other member from their position. The principle of audi alteram partem requires that the party be given a chance to speak before being dismissed.

3. SECTION 8- ADJUDICATION

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In case of a complaint filed under Section 5(5) or an application made under Section 17(4) or Section 18(10), the person accused of money laundering will receive a notice of at least 30 days. The notice will require them to provide evidence of the sources of their income, earnings, or assets and a valid explanation as to why their property should not be seized.

Once the adjudicating authority has heard from both sides, they will make a determination as to whether any of the properties in question were involved in money laundering. If the authority responsible for making a decision determines that the property in question is linked to money laundering, they must provide a written explanation and confirmation of the property's attachment. If the property has already been attached, this attachment will remain in place until the trial order is finalised. If the court finds the person guilty, the attached property will become the property of the Central Government.

“OFFENCES TO BE COGNIZABLE AND NON- BAILABLE” – SECTION 45(2), PMLA, 2002

An Explanation has been added to section 45 of the PMLA after sub-section (2). The Explanation is as follows:

“Explanation -- For the removal of doubts, it is clarified that the expression "Offences to be cognizable and non-bailable" shall mean and shall be deemed to have always meant that all offences under this Act shall be cognizable offences and non-bailable offences notwithstanding anything to the contrary contained in the Code of Criminal Procedure, 1973 (2 of 1974), and accordingly the officers authorised under this Act are empowered to arrest an accused without warrant, subject to the fulfilment of conditions under section 19 and subject to the conditions enshrined under this section.”³

This explanation resolves a longstanding dispute, as there were conflicting rulings from different High Courts regarding whether the crime of money laundering is considered a cognizable and non-bailable offence or a non-cognizable and bailable offence.

According to the recent ruling in the case of *Chhagan Chandrakant Bhujbal v. Union of India*⁴ by the Division Bench of the Bombay High Court, the nature of the offence under

³ Section 45, PMLA, 2002

⁴ *Chhagan Chandrakant Bhujbal v. Union of India*, Writ Petition No 23 of 2014

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PMLA being cognizable or non-cognizable does not affect the power of arrest granted under Section 19 of the PMLA

The Indian Government has made significant changes to the PMLA through the Finance Act of 2019. However, they did not follow the usual process of introducing the amendment bill in both houses of Parliament. It is evident that the recent changes made to the PMLA will result in numerous legal disputes and obstacles regarding the interpretation and implementation of these provisions. In recent decades, various measures have been implemented to combat money laundering through the adoption of anti-money laundering policies. Governments and financial institutions are always seeking innovative ways to combat money laundering.

SECTIONS 17(1) AND SECTION 18(1) OF THE ACT

The provision that has been removed from Sections 17(1) and 18(1) of the PMLA is as follows:-

“Provided that no search shall be conducted unless, in relation to the scheduled offence, a report has been forwarded to a Magistrate under section 157 of the Code of Criminal Procedure, 1973(2 of 1974), or a complaint has been filed by a person, authorized to investigate the offence mentioned in the Schedule, before a Magistrate or court for taking cognizance of the scheduled offence, as the case may be, or in cases where such report is not required to be forwarded, a similar report of information received or otherwise has been submitted by an officer authorized to investigate a scheduled offence to an officer not below the rank of Additional Secretary to the Government of India or equivalent being head of the office or Ministry or Department or Unit, as the case may be, or any other officer who may be authorised by the Central Government, by notification, for this purpose.”⁵

Removing the proviso from Sections 17(1) and 18(1) of the PMLA means that the authorised officer under the PMLA has the power to conduct search and seizure on any property and person, even if there has been no report of a scheduled offence to a Magistrate or court for taking cognizance of the offence, or to the head of the office, ministry, department, or unit.

PENALTY OF MONEY-LAUNDERING

⁵ Section 17(1), PMLA, 2002

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According to the Act, individuals convicted of money-laundering may face imprisonment ranging from three to seven years. If the proceeds of the crime are related to offences listed under paragraph 2 of Part A of the Schedule (Offences under the Narcotic Drugs and Psychotropic Substance Act, 1985), the maximum punishment may be extended to 10 years instead of 7 years.

MEASURES THAT CAN BE TAKEN AGAINST INDIVIDUALS INVOLVED IN MONEY LAUNDERING

1. The act of seizing or freezing property and records, as well as attaching property that was obtained through criminal activity.
2. Anyone found guilty of the crime of money laundering faces the following penalties:
 - a) Rigorous imprisonment for a minimum term of three years and this may extend up to seven years.
 - b) Fine (without any limit).

In recent decades, various measures have been implemented to combat money laundering through the implementation of anti-money laundering policies. Governments and financial institutions are always seeking innovative ways to combat money laundering.

Financial crime is greatly influenced by the actions of banks and financial institutions. It is crucial to ensure that individuals receive adequate training on how to detect and manage instances of money laundering. Training in anti-money laundering is provided to nearly all bank employees, and financial institutions and banks are obligated by law to report any suspicious activity. Financial crime is greatly impacted by the involvement of banks and financial institutions. It is crucial to ensure that individuals receive adequate training on how to recognise and manage instances of money laundering.

Most bank employees undergo training on how to prevent money laundering, and financial institutions and banks are obligated by law to report any suspicious activity. Thanks to technological advancements like specialised compliance platforms, businesses can now conduct thorough research on their customers and verify that they are not engaging in any illegal activities.

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Amendments To PMLA, 2002

In November/December of 2009, the FATF conducted a comprehensive assessment of a country's legislative and governmental framework to prevent money laundering and combat the financing of terrorism. The PMLA underwent amendments in 2005, 2009, and 2013 to address enforcement challenges and align with global standards.

The PMLA has undergone significant changes with the implementation of the Prevention of Money-Laundering (Amendment) Act, 2012. The crime of money-laundering has been expanded to include hiding, owning, obtaining, or utilising profits obtained through illegal activities. The offence not only includes concealing the profits of criminal activity as legitimate assets but also involves asserting that the profits of criminal activity are legitimate assets.

The 2012 amendment to the Prevention of Money-Laundering Act eliminates the maximum fine limit and grants the authority to impose an unrestricted fine.

Below are some of the significant amendments that have been made in the Prevention of Money Laundering Act (PMLA).⁶

1. The definition of the offence of Money Laundering has been expanded to include criminal activities such as concealment, possession, acquisition, and use of the proceeds of crime. This is in accordance with the Palermo Convention.
2. The consequences for committing money laundering now include a fine that is based on the severity of the crime, with no maximum limit. Furthermore, it has been established that the trial or conviction of a legal entity should not be contingent upon the trial or conviction of any individual.
3. Removing the monetary threshold for investigating an offence. The offences listed in Part B of the schedule, which previously had a monetary threshold of 30 lakh rupees, have now been included in Part A, which has no monetary limit.
4. Section 12 has now made it clear that reporting entities have certain obligations to fulfil. These include keeping records of all transactions reported to FIU-IND, identifying the

⁶ Substituted by the Prevention of Money-Laundering (Amendment) Act, 2012 (2 of 2013), s.3, for the words "proceeds of crime and projecting" (w.e.f. 15th February, 2013)

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beneficial owner of their customers, maintaining records of the identity of such beneficial owners, and keeping all recorded, supplied or confirmed information confidential.

5. The PMLA now includes additional entities from the financial sector, which are as follows:

- a) Entities regulated by the Forward Market Commission (Commodity Exchange)
- b) Members of Commodity Exchanges (Commodity Brokers)
- c) Entities regulated by the Pension Funds Regulatory Authority (Pension Funds)) d) Recognized stock exchanges under Securities Contracts (Regulation) Act
- e) India Post, which provides a number of financial services

6. A new category of entities called "person carrying on designated business or profession" has been created to include additional non-financial businesses and professions. This category covers the following entities.

- a) "Registrar of Sub-Registrar appointed under section 6 of the Registration Act, 1908, b) Real estate agents,
- c) Dealers in precious metals, precious stones and other high value goods and,
- d) Person engaged in safekeeping and administration of cash and liquid securities on behalf of other persons."

7. To ensure compliance, the FIU has been granted additional powers such as the ability for the Director of FIU-IND to request transaction records or other relevant information. The reporting entity is required to keep these requests confidential. Sanctions can now be imposed on Designated Directors or employees of the reporting entity, and the range of sanctions available has been expanded.

8. The directors and employees of a reporting entity are safeguarded from any criminal or civil charges for revealing information to FIU-IND.

9. Agencies that can aid in enforcing: The list of officers who will assist the authorities in enforcing the law includes the following departments/organizations:

- a) The Insurance Regulatory and Development Authority
- b) The Department of Post

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- c) The Pension Funds Regulatory and Development Authority
- d) A Registrar or Sub-Registrar (authorised under section 6 of the Registration Act, 1908)
- e) A Registering authority with the power to register motor vehicles
- f) A Recognised Stock Exchange
- f) The Institute of Chartered Accountants of India
- g) The Institute of Cost and Works Accountants of India
- h) The Institute of Company Secretaries of India.

Impacts of The 2023 PMLA Amendments on Indian Legal Landscape

The fight against money laundering in India has entered a new, revolutionary chapter with the latest modifications to the PMLA. The updated PMLA expands its scope to include 'Reporting Entities,' which includes banks, financial institutions, intermediaries, and individuals involved in certain industries and occupations, such as gambling, real estate, and the management of liquid assets and cash on behalf of others. The government can adjust the legislation to changing financial threats thanks to the flexibility to designate additional persons or activities. The Central Government took the initiative to announce their intention to increase the PMLA's coverage in order to successfully address new difficulties on May 3, 2023, and May 9, 2023. Professionals such as Cost and Management Accountants, Company Secretaries, and Chartered Accountants are now part of the PMLA as they represent clients in specific financial transactions. In order to remove any room for confusion, the precise definitions of these transactions—which cover asset management, company operations, and property transactions—require more elaboration. As a gesture of respect for the confidentiality of communications between clients and attorneys, these revisions do not apply to advocates and lawyers who deal with client funds as part of their duties. In addition, the PMLA is expanded to include "Trust and Company Service Providers" (TCSPs) in a later notice. This includes formation agents, people working for corporations, and people providing registered office addresses. However, this expansion still includes exceptions for certain certified professionals who are involved in formation activities, such as advocates and chartered accountants. Tighter due diligence procedures, more reporting demands, and reporting organizations' obligations for monitoring and record-keeping have all been imposed

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by the modifications. In order to protect sensitive information, keep track of transactions, and verify the identities of clients and beneficial owners, they need to use cutting-edge verification technologies. Certain transactions, such large cash deposits or withdrawals, require enhanced due diligence. Reporting entities are obligated to notify the Financial Intelligence Unit - India (FIU-IND) of any suspicious financial transactions. FIU-IND is the primary authority for receiving, processing, and distributing information regarding such transactions. In addition, the FIU-IND's FINNET 2.0 portal registration and the designation of relevant persons for compliance are mandatory for all reporting firms. Finally, in line with international standards and best practices, these PMLA revisions demonstrate India's resolve to strengthen its financial security and fight against money laundering. The successful execution of these substantial changes depends on providing reporting entities, professionals, and law enforcement authorities with detailed instructions, thorough training, and sufficient resources. Ensuring compliance and pinpointing areas that need improvement necessitates continuous monitoring and evaluation systems. There is an ongoing responsibility to address existing inadequacies, even if these amendments are a significant step forward.

Prevention of Corruption Act 1988

Domestic Bribery: Legal Framework

(i) Regulation of public bribery

- Among other things, the Prevention of Corruption Act 1988 (PCA) criminalizes the taking and giving of 'undue benefit' to 'public personnel,' making it the principal anti-corruption law in India. Under the PCA, both people and companies can face punishment for a violation.
- According to the PCA, an undue benefit can be defined as any form of compensation that a public worker is not legally allowed to receive from the government or any other organization they serve, regardless of whether it is monetary in nature or estimable in money. In addition, the term "public servant" encompasses a wide range of individuals who work for or receive compensation from the government, including judges, arbitrators, and staff of institutions that receive financial aid from the state. It also includes statutory corporations, government companies, and local authorities.

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- In *CBI v. Ramesh Gelli & Ors*, [2] the Supreme Court of India held that pursuant to certain provisions of Indian banking law, employees of banks (whether public or private) are also considered public servants under the PCA.
- The offences under the PCA include: (1) public servants obtaining any undue advantage with the intention of, or as a reward for, improperly or dishonestly performing or causing performance of a public duty; (2) public servants obtaining any undue advantage without (or for inadequate) consideration from a person concerned in proceedings or business transacted either by the public servant or by any of the public servant's superiors; (3) criminal misconduct by a public servant (which included possession of disproportionate assets); and (4) commission of any subsequent offence after being convicted previously under the PCA.
- The PCA also targets the conduct of influence peddlers or intermediaries by criminalising the act of taking any undue advantage to cause the improper or dishonest performance of a public duty. Until recently, bribe-givers were brought within the ambit of the PCA through the offence of 'abetment' of the offences mentioned above (in addition to liability for 'criminal conspiracy' under the Indian Penal Code). However, legislative changes to the PCA in 2018 have (in addition to liability for 'abetment' and 'criminal conspiracy') expressly targeted bribe-givers (including commercial organisations and their identified person in charge) by criminalising the act of providing or promising to provide a bribe to any person (regardless of whether that person is a public servant) to induce or reward a public servant to improperly or dishonestly perform public duty.
- The penalties for various offences under the PCA include imprisonment ranging from six months to 10 years and a fine (with one instance where it is imprisonment, a fine or both). Further, recent legislative changes to the PCA have also introduced provisions pertaining to attachment and confiscation of property procured by way of an offence under the PCA. It is not inconceivable for investigating authorities to allege that any advantage received by a bribe-giver through the bribery (which is an offence under the PCA) could also be subject to attachment and confiscation, and not just the property of the public servants in question. Courts are required by the PCA to make every effort to finish trials within two years, with a maximum extension of four years allowed.
- Regardless of whether the public servant actually performed their official position illegally or dishonestly, the PCA makes it clear that any attempt by a public servant to

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obtain or accept any unfair advantage is sufficient to establish an offense under the PCA. It is not essential to actually pay or receive bribes in order to be held liable under the PCA; mere attempts to do so are enough. The fact that the bribe was taken either directly or indirectly by a public worker for their personal advantage or by another person's benefit is irrelevant. State police anti-corruption units or the Central Bureau of Investigation (CBI) look into crimes committed under the PCA, depending on whether the alleged wrongdoing involves central government officials or not. Cases involving PCA are tried in dedicated courts. Keep in mind that in order to begin prosecuting public officials under the PCA, the prior approval of the government is necessary. But this protection is solely in place for cases involving current or former public officials; it does not extend to cases involving individuals accused of bribery.

- The PCA grants immunity to an individual who is suspected of supplying an unfair advantage if they were forced to do so and are prepared to disclose the incident to the appropriate authorities within seven days after it occurred.

(ii) Regulation of foreign contributions

- A person must have the permission of the central government in order to accept foreign hospitality or contributions from foreign sources according to the Foreign Contribution Regulation Act 2010 (FCRA). This includes government servants, employees of any other body owned or controlled by the government, judges, legislators, political parties, and their office-bearers. Companies based in another country, other foreign corporations, a foreign trust or foundation, or even a foreign citizen can be considered a "foreign source" under the broad definition. Charities and other non-governmental organizations (NGOs) that receive donations from outside the country must register with the FCRA and disclose the contributions. A fine of up to five years' imprisonment, or both, may be imposed for a violation of the FCRA. Members of parliament, party officials, judges, public servants, and employees of state-owned or -controlled corporations are also required by the FCRA to obtain the central government's prior approval before accepting foreign hospitality while visiting any country outside of India.

(iii) Regulation of public servants: The regulations that are relevant to public officials dictate how they are governed. So, for example, the Service Rules control those who work for the federal government and are subject to the Civil Services (Conduct) Rules 1964 and the

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All-India Services (Conduct) Rules 1968. Depending on their grade and seniority, public servants are prohibited from receiving gifts (such as travel, lodging, meals, entertainment, or other pecuniary advantage) that exceed certain thresholds, according to the Service Rules. However, social hospitality, such as a casual meal or lift, is allowed. It is also prohibited in the Service Rules for public officials to accept frequent or extravagant hospitality from private companies or individuals with whom they have business dealings. Companies doing business with Indian government employees must exercise considerable caution because, in contrast to the Service Rules, the PCA does not establish any de minimis thresholds for hospitality, gifts, meals, or entertainment.

- In addition to not being able to engage in any kind of employment, the Service Rules forbid public servants from holding elective office, soliciting votes for candidates for elective office or for private businesses, being involved in the registration, promotion, or management of any bank, company, or cooperative society for profit, unless it's for official duties, and taking part in sponsored private media programs. Also, government employees can't just sit on their hands and speculate on the stock market or any other investment vehicle; they have to have official approval before they may even participate sometimes through registered brokers. That being said, the Service Rules do not apply to engaging in "commercial activities" such as amateur sports, literary, artistic, or scientific endeavors, or participating in honorary social or charity activity. An offence punishable by up to one year in simple jail, a fine, or both is defined by Section 168 of the Indian Penal Code 1860, which states that public servants are not to engage in any trade, business, profession, or occupation that is forbidden from doing so. as a result, participating in illegal business activities may potentially subject a public worker to criminal liability. Temporary or contract workers for the government are often free to pursue other interests; this includes senior physicians who consult for public hospitals and state-employed attorneys.

(iv) Regulation of private bribery Although the Indian Penal Code and other general criminal statutes may make it illegal to bribe private businesses, the Companies Act (discussed below) and other company policies may make it illegal to do so, and there may not be any overall laws in India that ban private commercial bribery like the PCA. The Companies Act 2013 (the Companies Act) is India's corporate law that defines fraud as "any

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act, omission, concealment of any fact or abuse of position committed by any person with intent to deceive, to gain undue advantage from, or to injure the interests of, the company or its shareholders or its creditors or any other person" (without requiring a wrongful gain or wrongful loss). The Companies Act has strict provisions regarding fraud. Companies can face fines and prison terms of six months to ten years for acts of private bribery (and concealment thereof). However, if the amount of fraud is below a certain limit 1 million rupees or 1% of the company's turnover, whichever is lower and does not involve public interest, the punishment can be up to five years in prison, a fine of up to five million rupees, or both. The Companies Act requires directors to include relevant confirmations in their directors' responsibility statement, and they must also disclose any fraud discovered by auditors, unless the fraud is required to be reported to the federal government. The Companies Act further mandates that auditors, cost accountants, and company secretaries report any suspicion of fraud to the central government. A vigilance structure for reporting concerns and safeguards for whistle-blowers must be established by all listed firms and some types of unlisted companies. The auditor's report includes a mechanism for disclosing fraud to all companies and, in some cases, to stock exchanges where the company is listed.

Judicial Pronouncements In Relation To PMLA, 2002 & Prevention Of Corruption Act 1988

It is commendable how the Indian court system has played a crucial role in promoting legal integration among countries worldwide. The courts play a crucial role in enabling the implementation of a universal anti-money laundering (AML) system, which allows countries to work together towards this global initiative.

In *Ram Jethmalani & Others v. Union of India*,⁷ the Supreme Court of India issued a ruling. The Court has directed the formation of a Special Investigation Team (SIT) to investigate and prosecute cases related to the concealment of unaccounted money in foreign banks by Indians or entities operating in India. The SIT will be responsible for conducting investigations and initiating appropriate criminal or civil proceedings. The court has ordered that the High-Level Committee formed by the Indian government should be appointed as a Special Investigation Team (SIT) without any delay. The SIT should consist of the Director of Research and

⁷ Ram Jethmalani & Ors. V. Union of India, Supreme Court Writ Petition (Civil) No. 176 of 2009; dated 04 July 2011

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Analysis Wing. The Hon'ble Supreme Court has directed that the SIT should be led by two former distinguished judges of the Supreme Court, namely Mr. Justice B.P. Jeevan Reddy as Chairman and Mr. Justice M.B. Shah as Vice-Chairman. The Central Government has formed a Special Investigation Team to carry out the Supreme Court's decision. This team has suggested that steps should be taken to prevent money laundering. The topic of money laundering has been explored through previous legal cases and related laws.

The High Court of Andhra Pradesh heard a writ petition challenging some provisions of the Prevention of Money Laundering Act, 2002, including its amendments, in *B. Rama Raju, S/o B. Ramalinga Raju v. Union of India (UOI)*⁸ and *Centre for Public Interest Litigation v. the Union of India*.⁹ The question at hand was whether assets belonging to someone other than the individual accused of a scheduled offence could be seized and confiscated, and if so, whether Section 2(1)(u) was lawful. The purpose of the Act is to stop money laundering and related activities, as well as to seize the profits obtained from criminal acts. It aims to prevent the legitimization of illegally earned money through investments in movable and immovable properties, which often involves the use of multiple transactions to conceal the origin of the funds. The Act has a broad definition of the term "proceeds of crime" in order to achieve its overall goals. According to Chapter III, any property owned or possessed by an individual, other than someone accused of committing a scheduled offence, could be subject to attachment and confiscation proceedings.

The case of *Hari Narain Rai v. Union of India*¹⁰ established that the act committed is subject to punishment under Sections 3 and 4 of the PMLA, 2002. According to the High Court, it is evident that the accused's offence under the Act will persist as long as they possess the proceeds of crime and engage in activities related to it, while presenting it as legitimate property. In this particular case, the accused has been trying to convert and portray the proceeds of crime as untainted property. Moreover, enough evidence was gathered during the investigation to establish the culpability of the petitioner. According to Section 45 of the Act, the Appellate Court can grant bail only if they are convinced that there are valid reasons to believe that the accused is innocent of the alleged crime and that they will not engage in any

⁸ *B. Ramalinga Raju v. Union of India*, [2011] 108 SCL 491 (AP)

⁹ *Centre for Public Interest Litigation v. Union of India*, (2011) 1 SCC 560

¹⁰ *Hari Narain Rai v. Union of India*,

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criminal activity while out on bail. The petitioner's request for bail was denied due to the severity of the allegations against him and the substantial evidence that had been presented.

The Court made a definitive ruling in the case of Nimesh Tarachand Shah v. Union of India,¹¹ stating that Section 45(1) of the PMLA, 2002 is unconstitutional as it violates Articles 14 and 21 of the Constitution of India by imposing two additional conditions for release on bail. In essence, the reason for the denial of bail is due to the twin conditions outlined in Section 45. As a result, those who were denied bail will need to return to the courts that made the decision. The orders were overturned by the Court and the cases were sent back to their respective Courts to be heard based on their merits, without applying the two conditions outlined in Section 45 of the 2002 Act. It is important to address the cases of individuals who are currently in jail and whose personal freedom is at stake. Therefore, the courts should prioritise these matters and make prompt decisions.

On 27th July 2022, the Apex Court made a significant ruling stating that the Enforcement Directorate (ED) has the legal authority to investigate individuals, carry out searches and raids, and even detain citizens under the strict provisions of the Prevention of Money Laundering Act (PMLA).¹² The court rejected the petitioners' claim that Section 3's money laundering offence only applies if the property is presented as clean. Instead, the court interpreted the "and" in Section 3 as "or" and concluded that the section has a broad scope, encompassing all activities related to money laundering, not just the final act. The court also noted that possessing the proceeds of a crime can also be considered money laundering under the section. According to the petitioners, the law violates their fundamental rights to liberty and protection against self-incrimination as stated in Article 20 and Article 21. The individuals had raised concerns about the excessive authority granted to the Enforcement Directorate and the broad interpretation of the law that allows any crime to be classified as a money-laundering offence. According to the Supreme Court, the power of the ED to arrest, conduct search and seizure operations, and issue summons to individuals is constitutional.

The court also stated that these provisions are not arbitrary. The statement mentioned that the law has enough measures in place to prevent the agency from abusing its authority, so it cannot be considered as arbitrary. Under the PMLA, the ED has the authority to arrest

¹¹ Nimesh Tarachand Shah v. Union of India, LSI 86 SC 2017

¹² Vijay Mandalal Chowdhary v. Union of India, CrI.A. No. 391-392/2018

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individuals without being required to provide them with a copy of the Enforcement Case Information Report (ECIR). According to the Supreme Court, an ECIR is an internal document of the agency and is not mandatory to be provided to the accused. This provision has been upheld. The petitioners challenged a provision that allowed for the non-supply of ECIR to the accused. ECIR is similar to a First Information Report (FIR) as it contains allegations made against the accused. The challenge was based on principles of natural justice.

According to criminal procedure, an accused person has the right to receive a copy of the FIR. Having a copy of the FIR allows the accused to protect themselves by providing a means to defend against the accusations. According to the Evidence Act of 1972, any confession made by an accused individual to a police officer cannot be used as evidence in court. In addition, the Constitution's Article 20 ensures the fundamental right to protection against self-incrimination. According to PMLA regulations, any statement given to an ED official can be used as evidence in a case against the accused.

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