

Bill No. C of 2022

THE PREVENTION OF MONEY LAUNDERING (AMENDMENT)
BILL, 2022

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further to amend the Prevention of Money Laundering Act, 2002.

BE it enacted by the Parliament in the Seventy-third Year of the Republic of India as follows:—

1. (1) This Act may be called the Prevention of Money Laundering (Amendment) Act, 2022. Short title, and commencement.

5 (2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

15 of 2003. 2. In section 3 of the Prevention of Money Laundering Act, 2002 (hereinafter referred to as the principal Act), Amendment of section 3.

(i) for the Explanation, the following Explanation shall be substituted, namely,— 5

“*Explanation.*—For the removal of doubts, it is hereby clarified that, the process or activity connected with proceeds of crime is a continuing activity and continues till such time a person is directly or indirectly enjoying the proceeds of crime by its concealment or possession or acquisition or use or projecting it as untainted property or claiming it as untainted property in any manner whatsoever.”; 10

(ii) after the Explanation, the following proviso shall be inserted, namely,—

“Provided that no complaint for an offence of money laundering shall be entertained by the Court unless the concerned officer as may be appointed for the purpose or someone authorized by him establishes that the proceeds of crime have been generated from a scheduled offence and that a First Information Report has already been filed for a scheduled offence in the concerned police station.”. 15

Amendment
of section 5.

3. In section 5 of the principal Act—

(i) in sub-section (1), for clause (a), the following clause shall be substituted, namely— 20

“(a) any person is in possession of any proceeds of a crime for which a First Information Report has been filed; and”;

(ii) in sub-section (1), the second proviso shall be omitted;

(iii) after sub-section (2), the following proviso shall be inserted, namely—

“Provided that the Adjudicating Authority shall furnish a copy of such order to the accused.”; and 25

(iv) after sub-section (5), the following proviso shall be inserted, namely—

“Provided that the Director or the officer concerned shall furnish a copy of such complaint to the accused.”.

Amendment
of section 17.

4. In section 17 of the principal Act—

(i) in sub-section (1), in clause (f), the word “on oath” shall be omitted; 30

(ii) in sub-section (2),

(a) the words “or upon issuance of a freezing order” shall be omitted;

(b) the words “in a sealed envelope” shall be omitted;

(iii) after sub-section (2), the following proviso shall be inserted, namely— 35

“Provided that the Adjudicating Authority shall furnish a copy of such reasons to the accused.”;

(iv) in sub-section (3), the proviso shall be omitted; and

(v) for sub-section (4), the following sub-section shall be substituted, namely—

“The authority seizing any record or property under sub-section (1) shall, within a period of thirty days from such seizure, file an application, requesting for retention of such record or property seized under sub-section (1), before the Adjudicating Authority.”. 40

5. In section 19, of the principal Act—
- (i) after sub-section (1), the following proviso shall be inserted, namely—
- 5 “Provided that the Director, Deputy Director, Assistant Director or any other officer authorized in this behalf by the Central Government shall exercise power of arrest as provided under Chapter V of the Code of Criminal Procedure, 1973.”;
- (ii) after sub-section (2), the following proviso shall be inserted, namely—
- 10 “Provided that the Adjudicating Authority shall furnish a copy of such order along with material in possession to the accused.”.
6. For section 24 of the principal Act, the following section shall be substituted, namely—
- 15 **“24.** In any proceeding relating to proceeds of crime under this Act,—
- (a) the burden of proof shall lie on the prosecution to establish, beyond reasonable doubt, the guilt of a person accused with the offence of money laundering as provided under section 3; and
- (b) in the case of any other person, the Authority or Court, shall not presume that such proceeds of crime are involved in money-laundering, unless the prosecution establishes the contrary beyond any reasonable doubt.”.
7. In section 44, of the principal Act, in sub-section (1),—
- 20 (i) for clause (b), the following clause shall be substituted, namely—
- “(b) a Special Court after the completion of an investigation by an authority authorized in this behalf under this Act, can take cognizance of an offence under section 3;”;
- (ii) for clause (c), the following clause shall be substituted, namely—
- 25 “(c) if the Court which has taken cognizance of the scheduled offence is other than the Special Court, the trial for the scheduled offence shall continue in the concerned court where cognizance has been taken;” and
- (iii) the Explanation shall be omitted.
8. In section 45 of the principal Act, in sub-section (1), clause (ii), shall be omitted.
9. In section 50, of the principal Act,—
- 30 (i) after sub-section (3), the following proviso shall be inserted, namely—
- “Provided that such persons shall not be bound to answer the questions put to them by the officer concerned, which would have a tendency to expose them to a criminal charge or to a penalty to forfeiture.”; and
- (ii) sub-section (4) shall be omitted.
- 35 10. In section 63 of the principal Act, in sub-section (2),—
- (i) for the words “If any person”, the words, “If any person, except persons accused of offence under this Act” shall be substituted;
- (ii) for clause (a), the following clause shall be substituted, namely—
- “(a) being legally bound to state the truth of any matter relating to an offence under section 3, refuses to answer any question, other than questions which would have a tendency to expose him to a criminal charge or to a penalty to forfeiture, put to him by an authority in the exercise of its powers under this Act; or”; and
- (iii) clause (b) shall be omitted.

Amendment
of section 19.

Substitution
of section 24.
Burden of
Proof.

Amendment
of section 44.

Amendment
of section 45.

Amendment
of section 50.

Amendment
of Section 63.

STATEMENT OF OBJECTS AND REASONS

India's commitment to the Vienna Convention to combat money laundering had prompted the enactment of the Prevention of Money Laundering Act, 2002 (PMLA) with the intention of curbing the menace of money laundering and punishing the offenders by confiscating their property involved in or derived from money laundering.

2. The Ministry of Finance in its reply to the Lok Sabha stated that the Enforcement Directorate (ED) has conducted over 1,758 raids and special investigations between 2011 and 2020 under the provisions of the PMLA. The Government in its response said that between July 2005 and February 2022, the ED has been able to secure only 23 convicts for the offence of money laundering and one was discharged on the basis of merit.

3. The procedure being followed under the PMLA, is violative of the tenets of the criminal judicial system and has the potential to be violative of the rights enshrined under Part III of the Constitution, particularly under articles 14, 20 and 21. While there should be no sympathy for criminals, there has to be a dedicated effort from the end of the State to adhere to the principles of natural justice and meet the ends of criminal laws.

4. Accordingly, this Bill proposes to amend certain provision of the PMLA, as follows:—

(a) In section 3 of the Act, explanation (i) is proposed to be omitted as this provision increases the scope of judicial interpretation and limits the definition of money laundering and a proviso is proposed to be inserted to place responsibility upon the prosecution to establish the offence to make the provision in line with the basic tenets of criminal justice.

(b) In section 5 of the Act, which granted overreaching powers to the ED to attach the property of the accused without informing her or him the reasons of such attachment, amendments have been proposed to limit the powers of ED so that they be bound to serve a copy of the complaint under section 5 to the accused. Further, second proviso of section 5(I) is proposed to be deleted as it has an overriding effect over the first proviso and renders it toothless, despite the safeguard of the Code of Criminal Procedure, 1973 (CrPC) and gives unchecked powers to the ED to attach the property of the accused on flimsy grounds.

(c) In section 19 of the Act, amendments have been proposed to bind the officials by all the procedures under Chapter V of CrPC, provide additional safeguard to the accused and ensure the integration of the scheme of CrPC.

(d) In section 24, by way of amendment, the burden of proof has been shifted to the prosecution to establish the guilt of the accused beyond reasonable doubt, which is in line with the provisions of Chapter XVIII of CrPC.

(e) In section 45 of the Act, an amendment has been proposed to omit the contentious twin bail condition which was in contravention to the principles of criminal justice.

(f) In section 50, a proviso has been proposed to be inserted to provide additional safeguards to the accused and preserve him from self incrimination.

(g) In section 63, amendments have been proposed to limit the scope of judicial interpretation to strictly not mean any person accused under PMLA which includes accomplice or co-accused as well.

Hence, this Bill.

RAGHAV CHADHA.

ANNEXURE

EXTRACTS FROM THE PREVENTION OF MONEY-LAUNDERING ACT, 2002

(ACT NO. 15 OF 2003)

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3. Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming it as untainted property shall be guilty of offence of money-laundering. Offence of money-laundering.

Explanation.—For the removal of doubts, it is hereby clarified that,—

(i) a person shall be guilty of offence of money-laundering if such person is found to have directly or indirectly attempted to indulge or knowingly assisted or knowingly is a party or is actually involved in one or more of the following processes or activities connected with proceeds of crime, namely:—

- (a) concealment; or
- (b) possession; or
- (c) acquisition; or
- (d) use; or
- (e) projecting as untainted property; or
- (f) claiming as untainted property, in any manner whatsoever;

(ii) the process or activity connected with proceeds of crime is a continuing activity and continues till such time a person is directly or indirectly enjoying the proceeds of crime by its concealment or possession or acquisition or use or projecting it as untainted property or claiming it as untainted property in any manner whatsoever.

* * * * *

5. (1) Where the Director or any other officer not below the rank of Deputy Director authorised by the Director for the purposes of this section, has reason to believe (the reason for such belief to be recorded in writing), on the basis of material in his possession, that— Attachment of property involved in money-laundering.

- (a) any person is in possession of any proceeds of crime; and
- (b) such proceeds of crime are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceedings relating to confiscation of such proceeds of crime under this Chapter, he may, by order in writing, provisionally attach such property for a period not exceeding one hundred and eighty days from the date of the order, in such manner as may be prescribed:

Provided that no such order of attachment shall be made unless, in relation to the scheduled offence, a report has been forwarded to a Magistrate under section 173 of the Code of Criminal Procedure, 1973 (2 of 1974), or a complaint has been filed by a person authorised to investigate the offence mentioned in that Schedule, before a Magistrate or court for taking cognizance of the scheduled offence, as the case may be, or a similar report or complaint has been made or filed under the corresponding law of any other country:

Provided further that, notwithstanding anything contained in 1 [first proviso], any property of any person may be attached under this section if the

Director or any other officer not below the rank of Deputy Director authorised by him for the purposes of this section has reason to believe (the reasons for such belief to be recorded in writing), on the basis of material in his possession, that if such property involved in money-laundering is not attached immediately under this Chapter, the non-attachment of the property is likely to frustrate any proceeding under this Act:

Provided also that for the purposes of computing the period of one hundred and eighty days, the period during which the proceedings under this section is stayed by the High Court, shall be excluded and a further period not exceeding thirty days from the date of order of vacation of such stay order shall be counted.;

(2) The Director, or any other officer not below the rank of Deputy Director, shall, immediately after attachment under sub-section (1), forward a copy of the order, along with the material in his possession, referred to in that sub-section, to the Adjudicating Authority, in a sealed envelope, in the manner as may be prescribed and such Adjudicating Authority shall keep such order and material for such period as may be prescribed.

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(5) The Director or any other officer who provisionally attaches any property under sub-section (1) shall, within a period of thirty days from such attachment, file a complaint stating the facts of such attachment before the Adjudicating Authority.

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Search and seizure.

17. (1) Where the Director or any other officer not below the rank of Deputy Director authorised by him for the purposes of this section, on the basis of information in his possession, has reason to believe (the reason for such belief to be recorded in writing) that any person—

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- (i) has committed any act which constitutes money-laundering, or
- (ii) is in possession of any proceeds of crime involved in money-laundering, or
- (iii) is in possession of any records relating to money-laundering, or
- (iv) is in possession of any property related to crime, then, subject to the rules made in this behalf, he may authorise any officer subordinate to him to—

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(f) examine on oath any person, who is found to be in possession or control of any record or property, in respect of all matters relevant for the purposes of any investigation under this Act:

* * * * *

(2) The authority, who has been authorised under sub-section (1) shall, immediately after search and seizure or upon issuance of a freezing order, forward a copy of the reasons so recorded along with material in his possession, referred to in that sub-section, to the Adjudicating Authority in a sealed envelope, in the manner, as may be prescribed and such Adjudicating Authority shall keep such reasons and material for such period, as may be prescribed.

(3) Where an authority, upon information obtained during survey under section 16, is satisfied that any evidence shall be or is likely to be concealed or tampered with, he may, for reasons to be recorded in writing, enter and search the building or place where such evidence is located and seize that evidence:

Provided that no authorisation referred to in sub-section (I) shall be required for search under this sub-section.

(4) The authority seizing any record or property under sub-section (I) or freezing any record or property under sub-section (IA) shall, within a period of thirty days from such seizure or freezing, as the case may be, file an application, requesting for retention of such record or property seized under sub-section (I) or for continuation of the order of freezing served under sub-section (IA), before the Adjudicating Authority.

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19. (I) If the Director, Deputy Director, Assistant Director or any other officer authorised in this behalf by the Central Government by general or special order, has on the basis of material in his possession, reason to believe (the reason for such belief to be recorded in writing) that any person has been guilty of an offence punishable under this Act, he may arrest such person and shall, as soon as may be, inform him of the grounds for such arrest. Power to arrest.

(2) The Director, Deputy Director, Assistant Director or any other officer shall, immediately after arrest of such person under sub-section (I), forward a copy of the order along with the material in his possession, referred to in that sub-section, to the Adjudicating Authority in a sealed envelope, in the manner, as may be prescribed and such Adjudicating Authority shall keep such order and material for such period, as may be prescribed.

(3) Every person arrested under sub-section (I) shall, within twenty-four hours, be taken to a Special Court or Judicial Magistrate or a Metropolitan Magistrate, as the case may be, having jurisdiction:

Provided that the period of twenty-four hours shall exclude the time necessary for the journey from the place of arrest to the Special Court or Magistrate's Court.

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24. In any proceeding relating to proceeds of crime under this Act,— Burden of proof.

(a) in the case of a person charged with the offence of money-laundering under section 3, the Authority or Court shall, unless the contrary is proved, presume that such proceeds of crime are involved in money-laundering; and

(b) in the case of any other person the Authority or Court, may presume that such proceeds of crime are involved in money-laundering.

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44. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),— Offences triable by Special Courts.

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(b) a Special Court may, upon a complaint made by an authority authorised in this behalf under this Act take cognizance of offence under section 3, without the accused being committed to it for trial:

Provided that after conclusion of investigation, if no offence of money-laundering is made out requiring filing of such complaint, the said authority shall submit a closure report before the Special Court; or

(c) if the court which has taken cognizance of the scheduled offence is other than the Special Court which has taken cognizance of the complaint of the offence of money-laundering under sub-clause (b), it shall, on an application by the authority authorised to file a complaint under this Act, commit the case relating to the scheduled offence to the Special Court and the Special Court shall, on receipt of such case proceed to deal with it from the stage at which it is committed.

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Punishment
for false
information
or failure to
give
information,
etc.

63. * * * * *

(2) If any person,—

(a) being legally bound to state the truth of any matter relating to an offence under section 3, refuses to answer any question put to him by an authority in the exercise of its powers under this Act; or

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further to amend the Prevention of Money Laundering Act, 2002.

(Shri Raghav Chadha, M.P.)