A STUDY ON THE PREVENTION OF MONEY LAUNDERING ACT, 2002 WITH SPECIFIC REFERENCES TO JUDICIAL DECISIONS

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ABSTRACT :
A legislation that forbids money laundering and provides guidelines for the confiscation of assets acquired through money laundering. In 2002, the government of the National Democratic Alliance passed the Prevention of Money Laundering Act, which became effective in 2005. Its main objective was to stop money laundering by penalising individuals who commit money laundering offences and allowing for the seizure of assets obtained from or used in money laundering. With the Act, India sought to join international efforts to reduce the amount of money obtained from drug trafficking and its use to support terrorist operations. Countries were urged to enact national measures to tackle the threat of drug trafficking by the Vienna Convention of 1988. The goal was to prevent the purchase of real estate with money obtained via such illicit means. According to the statute, money laundering is broadly defined as any procedure or action used to give legitimacy to revenues gained unlawfully, including those that result from criminal conduct. The statute makes money laundering illegal and imposes severe punishments on those found guilty of such crimes, including jail time and fines. The Enforcement Directorate (ED) is in charge of leading the coordination of enforcement of the PMLA among other entities. The task of looking into and prosecuting violations of the legislation falls to the ED. Exploring the complex domain delineated by the PMLA brings us to a domain where financial rules, criminal justice concepts, and ethical issues come together. The goal of this research is to discuss money laundering as a concept, as well as its methods and the Indian Anti-Money Laundering Act.
Key Words: Legislation, Prevention of Money Laundering, Enforcement Directorate, National measures, Vienna Convention, Criminal Justice.

INTRODUCTION :

As the term money laundering implies, it involves either disclosing or clearing funds obtained from illicit sources. According to law, money laundering is the act of processing funds gained by dubious methods and sending them to a foreign bank or corporation so that, upon their return, no one would be able to determine that they were obtained unlawfully. Money obtained by illicit means, such as extortion, drug trafficking, the sale of firearms, organised crime, etc., is cleaned up throughout the money laundering process.Money laundering is defined as "anyone who directly or indirectly attempts to indulge or knowingly assists or is a party or is 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." This is stated in Section 3 of the Prevention of Money Laundering Act, 2002. As of February 15, 2013, the PMLA, 2012 has broadened the definition of money laundering as a criminal. The unlawful activities of hiding, obtaining, keeping, and using the proceeds of crime are included therein. Eliminate the present Act's Rs. 5 lacs fine limit. The act of concealing financial assets to enable their use without drawing attention to the illegal activity that generated them is known as money laundering. By using money laundering, the launderer transforms the proceeds of illicit activity into money from an apparent lawful source. Money laundering is defined as any attempt, direct or indirect, to engage in, assist with, actively participate in, or be a party to any procedure or action involving the proceeds of crime while disguising it as clean property. This is in accordance with section 3 of the PMLA. According to the Financial Action Task Force (FATF) on Money Laundering, money laundering is "the processing of criminal monies to conceal their illicit source and legitimise the illicitly obtained proceeds of criminal activity."

The act of making revenues obtained unlawfully also known as "dirty money" look legitimate sometimes known as "clean" is known as money laundering, according to the US Treasury Department. Three phases are usually involved: integration, layering, and placement. First, the illegal money is sneakily injected into the banking system that is authorised. The funds are then transferred or wired between many accounts in an attempt to cause confusion. After a few more transactions, the "dirty money" is finally incorporated into the financial system and appears "clean." To put it simply, money laundering is the process of cleaning money obtained from illicit activities such as drug trafficking, gun running, and extortion. Through a complex process of placement, stacking, and laundering, the polluted money is portrayed as clean.

According to Black's Law of Lexicon, the phrase "laundering" refers to the investment or other movement of funds into lawful channels from sources such as drug sales, racketeering, and other illicit activities so that the original source of the funds cannot be determined. Money launderers come from various areas of life, and many of them do so while functioning completely lawfully. However, in most countries, anybody who assists a criminal in hiding the proceeds of their crime is also considered a money launderer. This implies that anybody who permits their company to be used by another to launder the proceeds of a crime qualifies as a money launderer, including bankers, attorneys, accountants, auto dealers, and others. Money launderers are also those who own assets obtained from the profits of criminal activity.

OBJECTIVES:

i. To present the money laundering-enabling social, legal, technical, political, and economic systems.
ii. To assess the negative impact this offence has on society and the financial system

REVIEW LITERATURE :

Vinod Rai, Prevention of Money Laundering Act in India: The ECIR and Presumption of Innocence 2022, the author of this article reveals that the Indian Supreme Court has chosen to examine a previous ruling it made. This had to do with reversing the presumption of innocence and granting the Enforcement Directorate the authority to make an arrest without giving them a copy of the enforcement case information report. The author said that the government's revisions to the Prevention of Money Laundering Act of 2002 and its explanations about section 3 of the Act had been upheld by the ruling. Lastly, the author stated that political parties and the public have expressed worry over the Enforcement Directorate's frequent use of this Act's provisions, claiming that they are being used to intimidate government opponents.

Jyoti Trehan, Crime & Money Laundering - Indian Perspective, the author has studied the subject from an Indian point of view, particularly how economic liberalisation has affected concerns related to national security. An investigation into Indian legislation against money laundering and domestic efforts to stop money laundering was conducted.

The Prevention of Money Laundering Act, 2002, Justice P. Narayana's in this work, the author has thoroughly discussed the PMLA, citing every legislative clause. The author has considered the most recent Act modification from 2013.

CLAUSES PERTAINING TO ARREST AND BOND:

Providing the Enforcement Case Information Report (ECIR) in copy:The ED generates an internal report known as the ECIR before to pursuing legal action against anyone engaged in activities involving the profits of crime. In the case of Vijay Madanlal Choudhary, the Supreme Court ruled that because the PMLA is a unique statute and the investigations inside are complicated, it may be justified in some circumstances to withhold the ECIR because it includes important information that if disclosed too soon might affect the investigation's conclusion. It is important to remember that while ED officials are permitted to make an arrest under Section 19(1) of the PMLA,

they are not authorised to submit a chargesheet because, according to the SC, they are not considered police officers. Section 44(1)(b) of the PMLA allows the ED officers to submit a complaint with the Special Court following an inquiry. As a result, the accused is kept in the dark about the details of the accusations against him from the time of his arrest until the complaint is filed under Section 44(1)(b) of the PMLA, all while fearing that he may impede the course of the inquiry.

The accused's capacity to build a strong defense is hampered by the lack of openness in not giving him a copy of the ECIR, which prevents him from learning the specifics of the accusations and assembling evidence to disprove them. This one-sided approach to investigations may have serious repercussions and even restrict someone's freedom. Natural justice theory is based on the idea of "audi alteram partem," which roughly translates to "let the other side be heard." The accused is effectively denied the right to a fair trial by being refused access to the ECIR, and the lack of transparency further erodes the fundamental values of natural justice and fairness that underpin our judicial system.

The enforcement of the PMLA must strike a balance with the requirements for justice and openness, even if it is an essential weapon in the battle against financial crimes. Re-examining the relevant conclusions in Choudhary's case is necessary to address the issue of withholding the ECIR from the accused. The Allahabad High Court recently noted in Saurabh Mukund v. Directorate of Enforcement, Petition u/s 482 CrPC No. 2318 of 2024, that a person summoned by ED, in whatever capacity, must obtain the substance of the accusation, if not the copy of ECIR, if the matter is not extraordinary or special.

Notifying the person being accused of the Arrest Grounds: The authorised ED officer may make an arrest and notify the subject of the reason for the arrest "as soon as may be" in accordance with Section 19(1) of the PMLA. However, the PMLA is unclear on how to tell the accused of the reason for their arrest.

JUDICIAL DECISION :

The Supreme Court ruled in the case of *Vijay Madanlal Choudhary* that, provided the accused is informed of the reasons for his arrest, Article 22(1) of the Constitution is duly fulfilled. The court did not specify how the accused should be informed of the reasons for his arrest. However, in the Pankaj Bansal case, the Supreme Court's two-judge bench made it clear that written notice of the grounds for an arrest is required; otherwise, an ED arrest is illegal because it violates the protections provided by Article 22(1) of the Indian Constitution and Section 19(1) of the PMLA. Following this, the Supreme Court decided in *Ram Kishor Arora* v. *Directorate of Enforcement* that it would be sufficient to comply with Section 19 of the PMLA and Article 22(1) of the Constitution if the person arrested by the ED is informed orally of the reasons for the arrest at the time of the arrest and receives a written communication about the reasons for the arrest as soon as possible within 24 hours of his arrest.In order to protect individual rights and stop arbitrary acts, it is important to have a clear knowledge of the reasons for arrest. Reviewing the interpretation pertaining to providing justification for an arrest under Section 19(1) of the PMLA is therefore imperative.

According to the Supreme Court's ruling in *Nikesh Tarachand Shah* v. *Union of India* (2018) 11 SCC 1, Section 45(1) of the PMLA, 2002 is unconstitutional since it breaches Articles 14 and 21 of the Indian Constitution by imposing two conditions for release on bail. In the process, the Supreme Court made the observation that Section 45 is an extreme clause that violates the presumption of innocence, which is detrimental to everyone who is charged with a crime. However, in Vijay Madanlal Choudhary's ruling, the Supreme Court ruled that the ruling in Nikesh Tarachand's case was not a good law. He noted that the twin requirements set forth in Section 45 of the PMLA, as they apply following the 2018 amendment, are reasonable and directly relate to the goals and objectives of the PMLA, which are to combat the threat of money laundering that has transnational ramifications that affect financial systems, national sovereignty, and integrity.

Though the SC cited the Financial Action Task Force (FATF) recommendations, the legislative assembly debates, the Preamble and the Statement of Objects and Reasons to the PMLA, and the FATF's recommendations in reaching its conclusion, it is important to note that the Parliament did not address concerns about the severity of Section 45, arguing that it was implemented in order to comply with the FATF's recommendations. Nevertheless, even though the FATF recommendations were given a lot of weight in the ruling, Section 45 of the judgement in Choudhary's case does not reflect any FATF guideline that would have imposed strict dual restrictions on bail. Therefore, it is imperative to reevaluate whether India's unique foreign obligations led to the inclusion of the dual criteria for release on bail under Section 45 of the PMLA. If so, a further assessment of the twin requirements' reasonableness is required. The current Supreme Court ruling demonstrates a pattern of bailment notwithstanding the two requirements. It is regrettable, therefore, that the accused must go to the SC in order to receive relief. The aforementioned facts show that Choudhary's ruling has created an urgent need to reexamine the conclusions about the arrest and bail rules since they have a substantial influence on people's rights, procedural justice, and the harmony between civil liberties and law enforcement. The Supreme Court can provide uniformity, transparency, and protection against capricious conduct under the PMLA by re-examining how the clauses were interpreted in Vijay Madanlal Choudhary's ruling.

In *Manish Sisodia* v. *Union of India*, AIR 2023 INSC 956, a panel of judges led by Justices Sanjiv Khanna and SVN Bhatti denied Manish Sisodia bail. The decision was full of generalisations but devoid of specific recommendations. Section 45 of the Prevention of Money Laundering Act presents a hurdle in that it requires the Court to conduct a preliminary review of the material in the file in order to determine whether there is a prima facie case against the accused. One significant feature of the Manish Sisodia case is that the court denied bail in spite of the fact that the accused contested the majority of the accusations brought forth by the Directorate of Enforcement and the Central Bureau of Investigation during the prima facie. Although there is no definitive proof of the exchange of bribes or harm to the public exchequer, this judgement was based on the discovery that some private spirits wholesale distributors had profited from the change in the excise policy. A thorough review of the available evidence, the development of a strong prima facie case, and a methodical investigation of the facts should all be considered before denying bail. The important question of whether the decision may serve as a dependable precedent for other courts across the country in handling bail-related situations is raised if the court's discussion indicates that there is insufficient evidence to warrant a future conviction. This is a problem that perplexes everyone.

The Supreme Court's decision in *Vijay Madanlal Choudhary* v. *Union of India* 2022 Live Law (SC) 633 The judgement, delivered on July 27, 2022, maintained the constitutionality of several contested sections pertaining to the Directorate of Enforcement's powers of arrest, attachment, search, and seizure under the Prevention of Money Laundering Act, 2002. Among other concerns, the Supreme Court ruled that the ED is not required to send a copy of the Enforcement Case Information Report to the accused at the time of arrest. This judgement has drawn criticism since it may make it more difficult for the accused to contest the start of the proceedings. Examining the nuances of the historic ruling by the Supreme Court in the case of Vijay Madanlal Choudhary and considering the pressing need for a reassessment of its consequences for the PMLA's bail and arrest processes are crucial.Even the Supreme Court agreed that two aspects of the ruling in Vijay Madanlal Choudhary required reconsideration when it issued notice of *Karti P Chidambaram* v. *Directorate of Enforcement R.P.* (Crl.) No. 219/2022 on August 25, 2022, a petition seeking review of the judgement passed. These aspects were the reversal of the presumption of innocence and the requirement that the accused not provide the ECIR. The review petitions in question have not yet been considered and are scheduled for hearing in July 2024. The procedure pertaining to arrest and bail under the PMLA has been significantly affected by the delay in hearing the review petition because of the uncertainty caused by the Supreme Court's contradictory interpretations.

Recently, a Special PMLA Court in Mumbai stated that fugitives from economic offences, including Mehul Choksi, Vijay Mallya, and Nirav Modi, were allowed to escape India since the investigating authorities did not apprehend them in a timely manner.Ld. SPP Mr. Sunil Gonsalves vehemently argued that if such an application is allowed, it will give rise to the situation like Nirav Modi, Vijay Mallya, Mehul Chokshi, etc. "Special Judge MG Deshpande made the following observation on May 29, 2024, in response to the Enforcement Directorate's objection to an application filed by an accused person seeking permission to travel abroad. Upon careful consideration of this reasoning, I was compelled to point out that the reason these individuals left was due to the Investigating Agencies' inability to apprehend them promptly."Additionally, the court criticized the ED for frequently neglecting to make an arrest under section 19 of the Prevention of Money Laundering Act, then relying on the court to carry out its mandate by barring the accused from leaving the country. This is only due to the fact that the ED essentially permits this individual to escape punishment without raising any concerns about him flying overseas, destroying evidence, endangering aircraft, interacting with POC, or helping with the relevant procedure, among other things. Nevertheless, all of these claims and objections startlingly surface in front of the court when such a person appears there previously. Consequently, this Court has always maintained its position that it cannot accomplish what the ED essentially failed to accomplish."

CONCLUSION :

India has developed strategies to combat the issue of money laundering through its comprehensive legal framework. In addition to allowing for the seizure and confiscation of criminal gains, it also stipulates that those who engage in money laundering may face penalties. A broad definition of money laundering has been provided in order to reduce the likelihood of any convictions being skipped. The PML Act also establishes special courts and an adjudicatory body with the ability to hear cases involving money laundering. However, even so, a great deal of work is being done to effectively implement laws against money laundering. The reason behind its continued rise on a global scale is the gaps that exist between the laws and their implementation. The enforcement authorities ought to conduct inquiries and investigations in a more stringent and routine manner. Even though it is illegal, money laundering is common. Money laundering has also been aided by the low chance of discovery brought about by technical improvements. A significant change in methodology and strategy is necessary to avoid money laundering effectively. Control processes have been developed with the aim of preventing money laundering. Regulators may be circumvented by creative money launderers, though. Adaptability will always be necessary. The measures required to stop money laundering at bank branches are becoming more urgent. The Financial Action Task Force has produced global coordination, legislation, rules, and enforcement strategies that have proven effective. What has to be done is to assess the impact of money laundering activities in spite of the developments. The financial industry is catching up to the commerce sector with the help of international standards improvement. Nowadays, money laundering is more than just a compliance manual footnote it's a vocation. Everyone acknowledges that the emergence of new digital currencies would set up the banking sector for a significant shift in the methods and strategies used to control money laundering. The amount and pace of money laundering are estimated differently.

SUGGESTIONS :

- Coordination between different law enforcement organisations have been required to facilitate information exchange. It is necessary for law enforcement agencies to converge and for information to be continuously updated.
- It is advised that a dedicated unit be set up to handle anti-money laundering initiatives, modelled after the Economic Intelligence Council (EIC), which focuses on anti-money laundering research and development. Associations to Interpol and other international

organisations addressing AML are vital for this Special Cell. This cell should include all law enforcement organisations and regulatory bodies such as the RBI, SEBI, etc.

- Anti-money laundering legislation should not just be implemented by the federal government; state governments should also make an effort to do so. Decentralisation of the legal system would enable it to more effectively address issues at their core. However, for the anti-money laundering system to be successful, there must be great cooperation between the Central and State authorities.
- States have to consider allocating a portion of the proceeds from the unlawful assets they seize to initiatives aimed at providing technical support and training in the fight against money laundering. To ensure a better and more economical expansion of knowledge and skill across the nation, additional training after the initial training and practice should be based on the "train the trainers" approach. This type of training should be offered to the law enforcement sector as well as other important sectors like the financial and legal.
- The relevance of "know your customer" (KYC) principles must be acknowledged by the whole financial industry, even though it may sound formulaic. Every worker in our nation, as well as every financial institution, ought to use greater caution while getting to know their clients. Each employee will contribute in this way to assisting the financial industry and its institute in preventing financial crimes.

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