

Overview of Money Laundering Framework in India

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Structure of Presentation

- Need for creating Anti-ML Framework
- Enactment of PMLA, 2002
- Scheme of the Anti-ML Framework

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What is Money Laundering

- What is Money Laundering?
 - The literal meaning of ‘laundering’ is ‘washing’;
 - “Money laundering” -washing of money which is tainted or earned from criminal activities.
 - Mixing up the illegitimate money with legitimate funds in such a way that the original source is concealed and it appears to be money earned from a legitimate source.
 - Exact meaning in Section 3

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Important International Conventions

- Vienna Convention, 1988: United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances
- Prevention of laundering of POC of drug crimes
- FATF Recommendations, 1989
- Palermo Convention, 2000: UN Convention Against Transnational Organized Crime, November, 15, 2001: laundering of POC generated from corruption and other serious crimes should be criminalized

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FATF-Financial Action Task Force

- Policy Making international body founded in July 1989 at the instance of G-7 to combat money laundering
- Members- 37 countries (India is a member) and 2 organizations
- 200 countries committed to adopt AML and CFT measures
- Periodic Peer Reviews to ensure compliance with international standards regarding AML and CFT
- Maintains BLACK LIST (3 countries) and GREY LIST (21 Countries)
- Peer Review of India due in 2023
- Previous Review in 2009-2010

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Mutual Evaluation of India

- 1st Mutual Evaluation took place in 2010
- 2nd evaluation in 2023
- MER adopted by FATF plenary in June 2024
- India kept in regular follow-up category
- India is 4th country after France, Italy, and the United Kingdom, to be kept in the 'regular follow-up' category
- Benefits: Stature of India and other tangible benefits

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Important recommendations of FATF

- Declaration of laundering of money carried through serious crimes a criminal offence
- To work out modalities of disclosure by financial institutions regarding reportable transactions
- Confiscation of proceeds of crime
- Declaring ML to be an extraditable offence
- Promoting International cooperation in investigation of ML

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Legislative History of ML Legislation in India

- ML Bill, which is known as Prevention of Money Laundering Bill, 1998 (PML Bill) was introduced in L.S. of Parliament on 4th August 1998
- PML Bill passed by both Houses of Parliament
- Bill received assent of the President of India on 17th Jan, 2003
- **PMLA came into force w.e.f. 1st July, 2005**
- Amended several times in order to comply with the global standards set up by international communities like FATF, Asia Pacific Group (APG), Eurasian Group (EAG) as well as to address various issues which have arisen while implementing provisions of PMLA

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Objectives of PMLA, 2002

- To prevent Money Laundering
- To provide for confiscation of property derived from or involved in ML and matters connected therewith or incidental thereto
- Setting up of agencies and mechanisms for coordinating measures for combating ML

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Administration of PMLA, 2002

- Enforcement Directorate (ED) is the only agency responsible for implementation and enforcement of PMLA. (DoR, M of Finance)
- In order to assist in collection of information, another agency, FIU-IND was created under PMLA for receiving, processing, analysing and disseminating information relating to suspicious financial transactions (Nov. 2004)

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The ACT - PMLA, 2002

- Ten Chapters
- 75 sections
- Schedule-1 {PART-A, PART-B, PART-C}
- Rules -11

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Offence of Money Laundering and Punishment

- PMLA creates offence of money laundering as defined in Section 3
- Provides for punishment for the offence of money laundering– Section 4

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The ACT - PMLA, 2002

Chapter	Sections	Topics
Chapter-I	1-2	Preliminary, Definitions
Chapter-II	3-4	Offence of Money-Laundering, Punishment
Chapter-III	5-11	Attachment, Adjudication and Confiscation
Chapter-IV	11A-15	Obligations of banking companies, financial institutions and intermediaries
Chapter-V	16-24	Summons, Searches and Seizures, etc.
Chapter-VI	25-42	Appellate Tribunal
Chapter-VII	43-47	Special Courts
Chapter-VIII	48-54	Authorities
Chapter-IX	55-61	Reciprocal arrangement for assistance in certain matters and procedure for attachment and confiscation of property
Chapter-X	62-75	Miscellaneous
		THE SCHEDULE
		Rules (11), Regulations (1) & Notifications (6)

Rules- 11

- (i) The Prevention of Money-laundering (The manner of forwarding a copy of the order of PAO of property along with material, and copy of the reasons along with material in respect of survey, to the AA and its period of retention) Rules, 2005
- (ii) The Prevention of Money-laundering(Receipt and Management of Confiscated Properties) Rules, 2005
- (iii) The Prevention of Money-laundering (Maintenance of Records) Rules, 2005
- (iv) The Prevention of Money-laundering(Forms, Search and Seizure or Freezing & the manner of forwarding the reasons & Material to the Adjudicating Authority, Impounding and Custody of Records and the Period of Retention) Rules, 2005
- (v) The Prevention of Money-laundering (The Forms and the Manner of Forwarding a Copy of Order of Arrest of a Person Along with the Material to the Adjudicating Authority and its Period of Retention) Rules, 2005

Rules- 11

(vi) The Prevention of Money-laundering (The Manner of Forwarding a Copy of the Order of Retention of Seized Property along with the Material to the Adjudicating Authority and the Period of its Retention) Rules, 2005

(vii) The Prevention of Money-laundering (Manner of Receiving the Records Authenticated Outside India) Rules, 2005

(viii) The Prevention of Money-laundering (Appeal) Rules, 2005

(ix) The Prevention of Money-laundering (Issuance of Provisional Attachment Order) Rules, 2013

(x) The Prevention of Money-laundering (Taking Possession of Attached or Frozen Properties Confirmed by the Adjudicating Authority) Rules, 2013

(xi) The Prevention of Money-laundering (Restoration of property) Rules, 2016

Authorities under PMLA

- **Executive authorities:** (Sec-48, 49)
 - Director, Additional Director, Joint Director, Deputy Director, Assistant Director & others
- **Judicial authorities:**
 - Adjudicating Authority (PMLA) – Sec-6 - {Civil jurisdiction}
 - Appellate Tribunal (PMLA) – Sec-25 - {Civil jurisdiction}
 - Special Courts (PMLA) – Sec-43 - {Designated Court of Sessions – Criminal jurisdiction}
 - High Courts – {Court of Appeal – Civil (Sec-42) & Criminal (Sec-374, 378 of Cr.P.C.)}

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The 'SCHEDULE' – under PMLA

- Scheduled Offences/Predicate Offence
 - PART-A - (No monetary limit)**
- Various Offences under the provisions of:
 - Indian Penal Code, 1860
 - Narcotic Drugs and Psychotropic Substances Act, 1985
 - Unlawful Activities (Prevention) Act, 1967
 - Wildlife (Protection) Act, 1972
 - Prevention of Corruption Act, 1988
 - Customs Act, 1962
 - **Etc.**

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The 'SCHEDULE' – under PMLA

PART-B

- Earlier PART-B minimum limit was Rs. 30 Lakhs
- Omitted *vide* 2013 Amendment of PMLA by way of transferring all offences under Part-B to Part-A
- Again Insertion *vide* Finance Act, 2015
 - Only One offence u/s Section-132 under the Customs Act, 1962
 - Minimum Rs. 1 Crore limit - {Sec-2(1)(y)(ii)}

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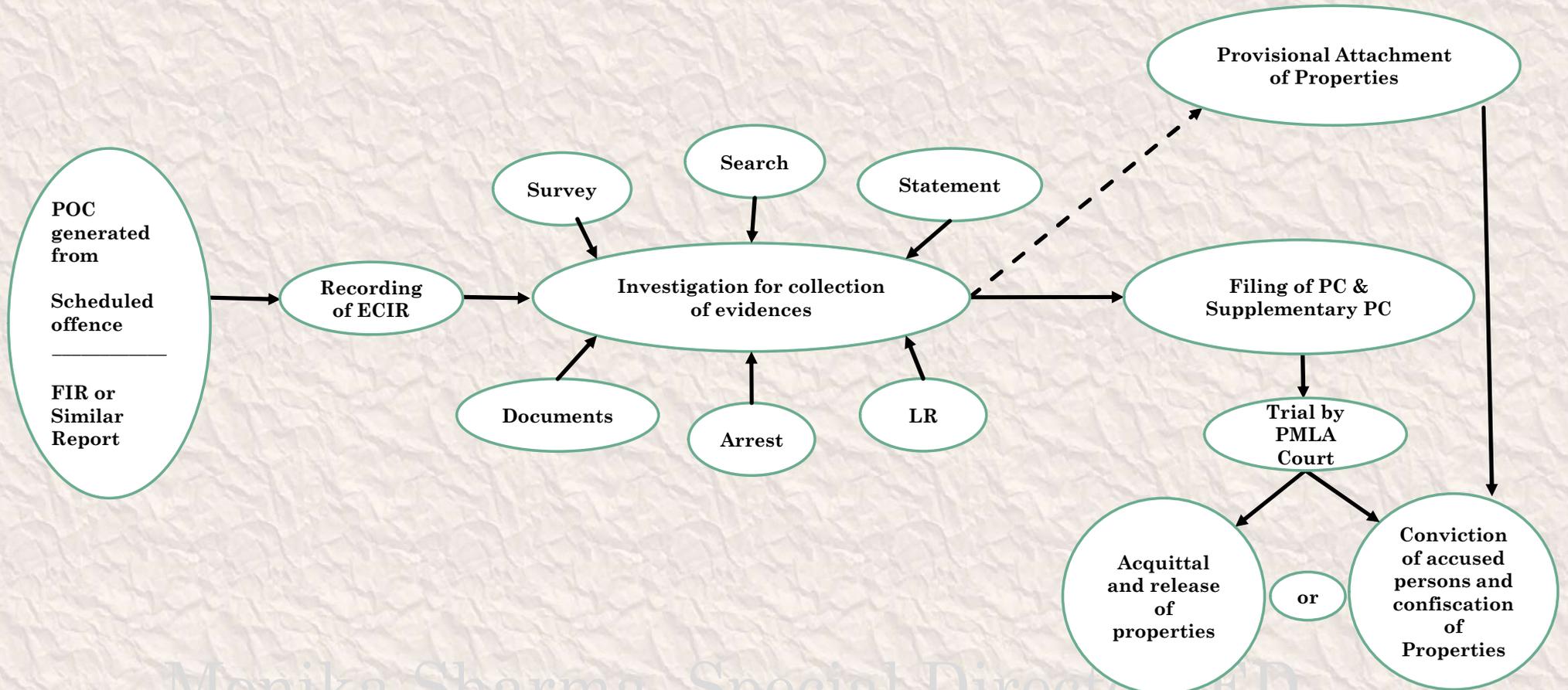
The 'SCHEDULE' – under PMLA

PART-C

- An offence of **cross border** implications (Sec-2(1)(ra))and specified in:-
 - Part A - (162 Sections) ; or
 - The offences against property Chapter XVII of the Indian Penal Code
 - The offence of wilful attempt to evade any tax, penalty or interest referred to in section 51 of the **Black Money** (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 – (w.e.f. 01.07.2015)*

Total – 30 different domestic Laws & 221 different sections are covered under the PMLA Schedule as Scheduled Offence

Scheme of PMLA



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Schedule & Scheduled offences

- (x) “Schedule” means the Schedule to this Act;
- (y) “scheduled offence” means:-
 - (i) the offences specified under Part A of the Schedule; or
 - (ii) the offences specified under Part B of the Schedule if the total value in such offences is one crore rupees or more; or
 - (iii) the offences specified under Part C of the Schedule.

Importance of Schedule & Scheduled offences

- To define the ambit of PMLA, 2002
- Laundering of Proceeds of Crime derived only from listed offences liable for punishment under PMLA
- Offence of money laundering is committed when Proceeds of crime (POC) derived or obtained as a result of scheduled offence are concealed, acquired, used etc
- Scheduled offence- offence listed in the Schedule appended to PMLA
- Scheduled Offences also called Predicate Offences
- Commission of Scheduled offences prerequisite to ML (Schedule B offence:1 Crore threshold)

Proceeds of Crime

(u) “proceeds of crime” means

-any property derived or obtained,

-directly or indirectly,

-by any person

-as a result of criminal activity relating to a scheduled offence

-or the value of any such property

-or where such property is taken or held outside the country, then the property equivalent in value held within the country or abroad.

Proceeds of Crime

- *Explanation.—For the removal of doubts, it is hereby clarified that "proceeds of crime" include property not only derived or obtained from the scheduled offence*
- *but also any property which may directly or indirectly be derived or obtained as a result of any criminal activity relatable to the scheduled offence.*

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Proceeds of Crime (POC)

- Proceeds of Crime of three kinds:-
 - Property derived directly or indirectly as a result of criminal activity relating to the scheduled offence (**Direct POC**)
 - Value of any such property (**Equivalent Value in general cases**)
 - Where such property is taken outside the country then property of equivalent value held in the country or abroad (**Equivalent Value when POC taken outside the country**)

The definition of ML

Section 3 Offence of Money-Laundering.-

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.

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Section 3: 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:—*
- (ii) concealment; or*
- (iii) possession; or*
- (iv) acquisition; or*
- (v) use; or*
- (vi) projecting as untainted property; or*
- (vii) claiming as untainted property, in any manner whatsoever;*

Offence of Money Laundering

- “*Whosoever*” directly or indirectly attempts
- Expression “*Whosoever*” implies that the Section applies to all persons whether that person is accused in scheduled offence or not (named in Fir or Charge Sheet or akin reports)
- The accused under PMLA can be and generally are different from the offenders under the accused offence

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Whosoever

- A person or entity
 - Is not named either in FIR or
 - Is not made an accused in the chargesheet for the commission of Scheduled Offence
 - Is named in the chargesheet but he has been discharged by the competent court

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Processes or Activities connected with POC

- Indicative/enumerative list of processes or activities related to Proceeds of Crime (POC):-
 - *Concealment or*
 - *possession or*
 - *acquisition or*
 - *use or*
 - *projection or*
 - *claim as untainted*

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Ingredients of offence of ML

- Knowledge of the activity or process connected with POC (Mens Rea)
- Involvement in any one activity or process
- Projection is not required to be proved
- 'And' is to be read as 'Or' in the definition

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Tools for Investigation

- Sec-16 – **Survey**; of the premises. Can be converted into search u/s 17.
- Sec-17 – **Search and seizure & freezing**; of suspected PoC involved in ML.
- Sec-18 – **Search of persons** ; seizure of relevant records and property involved in ML.
- Sec-19 – **Power to Arrest**; any person found guilty of ML.

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Tools for Investigation

- Sec-50(2) – **Power to issue summons.** Person is bound to state the truth.
- Sec-50(3) – **Recording of Statement** under summons and production of evidence/records/documents. Admissible as evidence in court.
- Sec-54 – Calling information from other agencies like IT, Customs, Registrars, Banks etc.

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International Cooperation in Investigation

- Chapter IX (Sections 55 to 61) on Mutual Cooperation
- Sec-56 – Agreements with foreign countries;
 - for enforcing provisions of the Act
 - exchange of information for prevention of offence under the Act or corresponding law in foreign country
- Sec-57 – Letter of Request (LR) to other countries to carry out investigation proceedings in their countries, including attachment of properties, collection of evidence, extradition etc.

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Provisional Attachment of POC

- Sec-5 –Provisional Attachment Order (PAO)
 - Initiated u/s 5(1)
 - Civil proceeding/executive action under PMLA
 - Issued by Deputy Director or above
 - Valid for 180 days
 - Issued based on **REASONS TO BELIEVE** on the basis of **MATERIAL IN POSSESSION** concluding that- [Section 5(1)]
 - (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

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Adjudication & Confiscation of POC

- Sec-8(3) – Confirmation Order by Adjudicating Authority (AA)
- Sec-8(4) – Taking over possession of properties confirmed by AA (Supreme Court in Vijay Madanlal Choudhary, has held that possession can be taken u/s 8 (4) only in exceptional cases and not as a matter of rule.)
- Sec-8(5) – Confiscation of property by Special Court **on conclusion of trial**
- Sec-8(7) – Confiscation of property by Special Court **on non-conclusion of trial**
- Sec-8(8) – Restoration of property by Special Court

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Trial By Special Courts

- After collection of evidences, Prosecution Complaint filed by IO
- Sessions Court designated as Special Court (PMLA) conducts trial as per Cr.P.C.
- Conviction and confiscation
or
- Acquittal and release of property

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Nature of Proceedings under PMLA

- Both civil and Criminal
- Attachment and adjudication proceedings are civil in nature
- Tools of Investigation and trial are criminal in nature

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Complete Code in Itself

- It contains definition clause
- Contains penal provisions
- Provides procedure for:
 - Investigation
 - Trial
 - Attachment
 - Arrest
 - Bail
- Presumptions

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PMLA- A Special Act

- Special law deals with specific subject
- PMLA enacted by parliament to prevent money laundering and to provide for confiscation of property involved in ML and matters connected therewith
- Creates '**Offence of Money Laundering**' as defined in Section 3 (cognizable and non-bailable)
- Provides for punishment in Section 4 (3 to 7 years, 10 years in case of NDPS)

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Thank You.



Keep Learning. Keep Smiling.

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