

THE PREVENTION OF MONEY-LAUNDERING ACT, 2002

(Act 15 of 2003, dt. 17-1-2003)

[As amended by

The Jan Vishwas (Amendment of Provisions) Act, 2023

(18 of 2023), dt. 11-8-2023, w.e.f. 13-8-2024 vide SO 3453(E), dt. 13-8-2024]

An Act to prevent money-laundering and to provide for confiscation of property derived from, or involved in, money-laundering and for matters connected therewith or incidental thereto.

Whereas the Political Declaration and Global Programme of Action, annexed to the resolution S-17/2 was adopted by the General Assembly of the United Nations at its seventeenth special session on the twenty-third day of February, 1990;

And whereas the Political Declaration adopted by the Special Session of the United Nations General Assembly held on 8th to 10th June, 1998 calls upon the Member States to adopt national money-laundering legislation and programme;

And whereas it is considered necessary to implement the aforesaid resolution and the Declaration.

Be it enacted by Parliament in the Fifty-third Year of the Republic of India as follows:

COMMENTS

Preamble

The preamble to the Act states the object and purpose of the law. The "Statement of Objects and Reasons" which was appended to the Bill as introduced in the Lok Sabha on 29th October, 1999 reads as under:—

"Statement of Objects and Reasons

It is being realised, world over, that money-laundering poses a serious threat not only to the financial systems of countries, but also to their integrity and sovereignty. Some of the initiatives taken by the international community to obviate such threat are outlined below:

- (a) The United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, to which India is a party, calls for preventing of laundering of proceeds of drug crimes and other connected activities and confiscation of proceeds derived from such offence.
- (b) The Basle Statement of Principles, enunciated in 1989, outlined basic policies and procedures that banks should follow in order to assist the law enforcement agencies in tackling the problem of money-laundering.
- (c) The Financial Action Task Force held in Paris from 14 to 16 July, 1989, to examine the problem of money-laundering has made forty recommendations, which provide the foundation material for comprehensive legislation to combat the problem of money-laundering. The recommendations were classified under various heads. Some of the important heads are—

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- (i) declaration of laundering of monies earned through serious crimes, a criminal offence;
 - (ii) to work out modalities of disclosure by financial institutions regarding reportable transactions;
 - (iii) confiscation of the proceeds of crime;
 - (iv) declaring money-laundering to be an extraditable offence; and
 - (v) promoting international co-operation in investigation of money-laundering.
- (d) The Political Declaration and Global Programme of Action adopted by United Nations General Assembly by its Resolution No. S-17/2 of 23rd February, 1990, *inter alia*, calls upon the member States to develop mechanism to prevent financial institutions from being used for laundering of drug related money and enactment of legislation to prevent such laundering.
- (e) The United Nations in the Special Session on Countering World Drug Problem together concluded on 8 to 10 June, 1998, has made another declaration regarding the need to combat money-laundering. India is a signatory to this declaration.

In view of an urgent need for the enactment of a comprehensive legislation *inter alia*, for preventing money-laundering and connected activities, confiscation of proceeds of crime, setting up of agencies and mechanisms for co-ordinating measures for combating money-laundering, etc., the Prevention of Money-laundering Bill, 1998 was introduced in the Lok Sabha on the 4th August, 1998. The Bill was referred to the Standing Committee on Finance, which presented its report on the 4th March, 1999 to the Lok Sabha. The recommendations of the Standing Committee accepted by the Central Government are that :

- (a) the expressions 'banking company' and 'person' may be defined;
- (b) in Part I of the Schedule under Indian Penal Code, the word, 'offence' under section 477A relating to falsification of accounts should be omitted;
- (c) 'knowingly' be inserted in clause 3(b) relating to the definition of money-laundering;
- (d) the banking companies, financial institutions and intermediaries should be required to furnish information of transactions to the director instead of Commissioner of Income-tax;
- (e) the banking companies should also be brought within the ambit of clause II relating to obligations of financial institutions and intermediaries;
- (f) a definite time-limit of 24 hours should be provided for producing a person about to be searched or arrested before the gazetted officer or Magistrate;
- (g) the words 'unless otherwise proved to the satisfaction of the authority concerned' may be inserted in clause 22 relating to presumption on inter-connected transactions;
- (h) vacancy in the office of the Chairperson of the Appellate Tribunal, by reason of his death, resignation or otherwise, the seniormost member shall act as the Chairperson till the date on which a new Chairperson appointed in accordance with the provisions of this Act to fill the vacancy, enters upon his office;
- (i) the appellant before the Appellate Tribunal may be authorised to engage any authorised representative as defined under section 288 of the Income-tax Act, 1961;
- (j) the punishment for vexatious search and for false information may be enhanced from three months imprisonment to two years imprisonment, or fine of rupees ten thousand to fine or rupees fifty thousand or both;
- (k) the word 'good faith' may be incorporated in the clause relating to bar of legal proceedings. The Central Government have broadly accepted the above recommendations and made provisions of the said recommendations in the Bill.

In addition to above recommendations of the Standing Committee, the Central Government purposes to:

- (a) relax the conditions prescribed for grant of bail so that the Court may grant bail to a person who is below sixteen years of age, or woman, or sick or infirm;
- (b) levy of fine for default of non-compliance of the issue of summons, etc.
- (c) make provisions for having reciprocal arrangement for assistance in certain matters and procedure for attachment and confiscation of property so as to facilitate the

transfer of funds involved in money-laundering kept outside the country and extradition of the accused persons from abroad.

The Bill seeks to achieve the above objects.

From the above, it is clear that the law seeks to prevent money-laundering which in plain terms means the preventing legitimising of the money earned through illegal and criminal activities by investments in movable and immovable properties. The need for a law on the subject has been the focus of the Government world over in recent times and that of the U.N. also, because the scourge of money-laundering has threatened to wreck the foundations of the States and undermine their sovereignty even. The terrorist outfits and smuggling gangs have been depending upon money laundering to finance their operations and it is known that money for such operations are arranged through laundering. Many such illegal outfits have set up ostensibly legal front organisations. The money generated through illegal activities is ultimately inducted and integrated with legitimate money and its species like movable and immovable property. Thus certain economic offences, commercial frauds, crimes like murder, extortion have contributed to money-laundering in a significant manner. The perpetrators of such heinous crimes should not be allowed to enjoy the fruits of the money that passed under the activity and therefore the present enactment is intended to deprive the property which is related to the proceeds of specific crimes listed in the Schedule to the Act.

CHAPTER I

PRELIMINARY

1. Short title, extent and commencement

(1) This Act may be called the Prevention of Money-laundering Act, 2002.

(2) It extends to the whole of India.

(3) It shall come into force on such date¹ as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

2. Definitions

(1) In this Act, unless the context otherwise requires,—

(a) “Adjudicating Authority” means an Adjudicating Authority appointed under sub-section (1) of section 6;

(b) “Appellate Tribunal” means the Appellate Tribunal²[referred to in] section 25;

(c) “Assistant Director” means an Assistant Director appointed under sub-section (1) of section 49;

(d) “attachment” means prohibition of transfer, conversion, disposition or movement of property by an order issued under Chapter III;

³[(da) “authorised person” means an authorised person as defined in clause (c) of section 2 of the Foreign Exchange Management Act, 1999 (42 of 1999);]

(e) “banking company” means a banking company or a co-operative bank to which the Banking Regulation Act, 1949 (10 of 1949), applies and includes any bank or banking institution referred to in section 51 of that Act;

¹ W.e.f. 1-7-2005 vide GSR No. 436(E), dt. 1-7-2005.

² Substituted for “established under” by Finance Act, 2016 (28 of 2016), dt. 14-5-2016, w.e.f. 1-6-2016.

³ Inserted by Prevention of Money-Laundering (Amdt.) Act, 2009 (21 of 2009), dt. 6-3-2009, w.e.f. 1-6-2009.

- (f) "Bench" means a Bench of the Appellate Tribunal;
- ¹[(fa) "beneficial owner" means an individual who ultimately owns or controls a client of a reporting entity or the person on whose behalf a transaction is being conducted and includes a person who exercises ultimate effective control over a juridical person;]
- (g) "Chairperson" means the Chairperson of the Appellate Tribunal;
- (h) "chit fund company" means a company managing, conducting or supervising, as foreman, agent or in any other capacity, chits as defined in section 2 of the Chit Funds Act, 1982 (40 of 1982);
- ¹[(ha) "client" means a person who is engaged in a financial transaction or activity with a reporting entity and includes a person on whose behalf the person who engaged in the transaction or activity, is acting;]
- (i) "co-operative bank" shall have the same meaning as assigned to it in clause (dd) of section 2 of the Deposit Insurance and Credit Guarantee Corporation Act, 1961 (47 of 1961);
- ¹[(ia) "corresponding law" means any law of any foreign country corresponding to any of the provisions of this Act or dealing with offences in that country corresponding to any of the scheduled offences;
- (ib) "dealer" has the same meaning as assigned to it in clause (b) of section 2 of the Central Sales Tax Act, 1956 (74 of 1956);]
- (j) "Deputy Director" means a Deputy Director appointed under sub-section (1) of section 49;
- ²[xxx]
- (k) "Director" or "Additional Director" or "Joint Director" means a Director or Additional Director or Joint Director, as the case may be, appointed under sub-section (1) of section 49;
- ³[(l) "financial institution" means a financial institution as defined in clause (c) of section 45-I of the Reserve Bank of India Act, 1934 and includes a chit fund company, a housing finance institution, an authorised person, a payment system operator, a non-banking financial company and the Department of Posts in the Government of India;]
- (m) "housing finance institution" shall have the meaning as assigned to it in clause (d) of section 2 of the National Housing Bank Act, 1987 (53 of 1987);

1 Inserted by the Prevention of Money-laundering (Amdt.) Act, 2012 (2 of 2013), dt. 3-1-2013, w.e.f. 15-2-2013 vide SO 343(E), dt. 8-2-2013.

2 Omitted, *ibid.* Earlier, clause clause (ja) was inserted by Prevention of Money-Laundering (Amdt.) Act, 2009 (21 of 2009), dt. 6-3-2009, w.e.f. 1-6-2009. Prior to omission, clause (ja) read as under:
 "(ja) "designated business or profession" means carrying on activities for playing games of chance for cash or kind, and includes such activities associated with casino or such other activities as the Central Government may, by notification, so designate, from time to time;"

3 Substituted by the Prevention of Money-laundering (Amdt.) Act, 2012 (2 of 2013), dt. 3-1-2013, w.e.f. 15-2-2013 vide SO 343(E), dt. 8-2-2013. Prior to substitution, clause (l) read as under:
 "(l) "financial institution" means a financial institution as defined in clause (c) of section 45-I of the Reserve Bank of India Act, 1934 (2 of 1934), and includes a chit fund company, a co-operative bank, a housing finance institution and an authorised person, a payment system operator and a non-banking financial company."

- ¹[(n) “intermediary” means,—
- (i) a stock-broker, ²[xxx] share transfer agent, banker to an issue, trustee to a trust deed, registrar to an issue, merchant banker, underwriter, portfolio manager, investment adviser or any other intermediary associated with securities market and registered under section 12 of the Securities and Exchange Board of India Act, 1992; or
 - (ii) an association recognised or registered under the Forward Contracts (Regulation) Act, 1952 or any member of such association; or
 - (iii) intermediary registered by the Pension Fund Regulatory and Development Authority; or
 - (iv) a recognised stock exchange referred to in clause (f) of section 2 of the Securities Contracts (Regulation) Act, 1956;]
- ³[(na) “investigation” includes all the proceedings under this Act conducted by the Director or by an authority authorised by the Central Government under this Act for the collection of evidence;]
- (o) “Member” means a Member of the Appellate Tribunal and includes the Chairperson;
 - (p) “money-laundering” has the meaning assigned to it in section 3;
 - (q) “non-banking financial company” shall have the same meaning as assigned to it in clause (f) of section 45-I of the Reserve Bank of India Act, 1934 (2 of 1934) ⁴[xxx];
 - (r) “notification” means a notification published in the Official Gazette;
- ⁵[(ra) “offence of cross border implications”, means—
- (i) any conduct by a person at a place outside India which constitutes an offence at that place and which would have constituted an offence specified in Part A, Part B or Part C of the Schedule, had it been committed in India and if such person ⁶[transfers in any manner] the proceeds of such conduct or part thereof to India; or
 - (ii) any offence specified in Part A, Part B or Part C of the Schedule which has been committed in India and the proceeds of crime, or part thereof have been transferred to a place outside India or any attempt has been made to transfer the proceeds of crime, or part thereof from India to a place outside India.

Explanation: Nothing contained in this clause shall adversely affect any investigation, enquiry, trial or proceeding before any authority in respect of the offences specified in Part A or Part B of the Schedule to the Act before

1 Substituted by the Prevention of Money-laundering (Amdt.) Act, 2012 (2 of 2013), dt. 3-1-2013, w.e.f. 15-2-2013 vide SO 343(E), dt. 8-2-2013. Prior to substitution, clause (n) read as under:

“(n) “intermediary” means a stock-broker, sub-broker, share transfer agent, banker to an issue, trustee to a trust deed, registrar to an issue, merchant banker, underwriter, portfolio manager, investment adviser and any other intermediary associated with securities market and registered under section 12 of the Securities and Exchange Board of India Act, 1992 (15 of 1992);”

2 Word “sub-broker,” omitted by the Finance (No. 2) Act, 2019 (23 of 2019), dt. 1-8-2019, w.e.f. 1-8-2019.

3 Inserted by Amdt. Act, 2005 (20 of 2005), dt. 21-5-2005, w.e.f. 1-7-2005.

4 Words “and includes a person carrying on designated business profession” omitted by the Prevention of Money-laundering (Amdt.) Act, 2012 (2 of 2013), dt. 3-1-2013, w.e.f. 15-2-2013 vide SO 343(E), dt. 8-2-2013.

5 Inserted by Prevention of Money-Laundering (Amdt.) Act, 2009 (21 of 2009), dt. 6-3-2009, w.e.f. 1-6-2009.

6 Substituted for “remits” by the Prevention of Money-laundering (Amdt.) Act, 2012 (2 of 2013), dt. 3-1-2013, w.e.f. 15-2-2013 vide SO 343(E), dt. 8-2-2013.

the commencement of the Prevention of Money-laundering (Amendment) Act, 2009;

- (rb) “payment system” means a system that enables payment to be effected between a payer and a beneficiary, involving clearing, payment or settlement service or all of them.

Explanation: For the purposes of this clause, “payment system” includes the systems enabling credit card operations, debit card operations, smart card operations, money transfer operations or similar operations;

- (rc) “payment system operator” means a person who operates a payment system and such person includes his overseas principal.

Explanation: For the purposes of this clause, “overseas principal” means,—

(A) in the case of a person, being an individual, such individual residing outside India, who owns or controls or manages, directly or indirectly, the activities or functions of payment system in India;

(B) in the case of a Hindu undivided family, Karta of such Hindu undivided family residing outside India who owns or controls or manages, directly or indirectly, the activities or functions of payment system in India;

(C) in the case of a company, a firm, an association of persons, a body of individuals, an artificial juridical person, whether incorporated or not, such company, firm, association of persons, body of individuals, artificial juridical person incorporated or registered outside India or existing as such and which owns or controls or manages, directly or indirectly, the activities or functions of payment system in India;]

- (s) “person” includes—

- (i) an individual,
- (ii) a Hindu undivided family,
- (iii) a company,
- (iv) a firm,
- (v) an association of persons or a body of individuals, whether incorporated or not,
- (vi) every artificial juridical person not falling within any of the preceding sub-clauses, and
- (vii) any agency, office or branch owned or controlled by any of the above persons mentioned in the preceding sub-clauses;

- ¹[(sa) “person carrying on designated business or profession” means,—

(i) a person carrying on activities for playing games of chance for cash or kind, and includes such activities associated with casino;

²[(ii) Inspector-General of Registration appointed under section 3 of the Registration Act, 1908 (16 of 1908) as may be notified by the Central Government;]

¹ Inserted by the Prevention of Money-laundering (Amdt.) Act, 2012 (2 of 2013), dt. 3-1-2013, w.e.f. 15-2-2013 vide SO 343(E), dt. 8-2-2013.

² Substituted by the Finance (No. 2) Act, 2019 (23 of 2019), dt. 1-8-2019, w.e.f. 1-8-2019. Prior to substitution, sub-clause (ii) read as under:
“(ii) a Registrar or Sub-Registrar appointed under section 6 of the Registration Act, 1908, as may be notified by the Central Government;”

- (iii) ¹real estate agent, as may be notified by the Central Government;
 - (iv) ²dealer in precious metals, precious stones and other high value goods, as may be notified by the Central Government;
 - (v) person engaged in safekeeping and administration of cash and liquid securities on behalf of other persons, as may be notified by the Central Government; or
 - (vi) person carrying on such other activities as the Central Government may, by notification, so designate, from time to time;
- (sb) “precious metal” means gold, silver, platinum, palladium or rhodium or such other metal as may be notified by the Central Government;
- (sc) “precious stone” means diamond, emerald, ruby, sapphire or any such other stone as may be notified by the Central Government;]
- (t) “prescribed” means prescribed by rules made under this Act;
- (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 ³[or where such property is taken or held outside the country, then the property equivalent in value held within the country ⁴[or abroad];
- ⁵[*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;]
- (v) “property” means 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;
- ⁶[*Explanation* : For the removal of doubts, it is hereby clarified that the term “property” includes property of any kind used in the commission of an offence under this Act or any of the scheduled offences;
- (va) “real estate agent” means a real estate agent as defined in clause (88) of section 65 of the Finance Act, 1994;]
- (w) “records” include the records maintained in the form of books or stored in a computer or such other form as may be prescribed;
- ⁶[(wa) “reporting entity” means a banking company, financial institution, intermediary or a person carrying on a designated business or profession;]
- (x) “Schedule” means the Schedule to this Act;

1 Vide GSR 1423(E), dt. 15-11-2017, the Central Govt. hereby notifies ‘real estate agent’ who shall be deemed to be a “person carrying on designated business or profession”.

2 Vide GSR 1058(E), dt. 23-8-2017, the Central Govt. hereby notifies the dealer in precious metals, precious stones and other high value goods having a turnover of Rs. two crore in a F.Y. as a person carrying on designated business or profession.

3 Inserted by Finance Act, 2015, w.e.f. 14-5-2015.

4 Inserted by Finance Act, 2018 (Act 13 of 2018), dt. 29-3-2018, w.e.f. 19-4-2018 vide GSR 383(E), dt. 19-4-2018.

5 Inserted by the Finance (No. 2) Act, 2019 (23 of 2019), dt. 1-8-2019, w.e.f. 1-8-2019.

6 Inserted by the Prevention of Money-laundering (Amdt.) Act, 2012 (2 of 2013), dt. 3-1-2013, w.e.f. 15-2-2013 vide SO 343(E), dt. 8-2-2013.

- (y) “scheduled offence” means—
- (i) the offences specified under Part A of the Schedule; or
 - ¹[(ii) the offences specified under Part B of the Schedule if the total value involved in such offences is ²[one crore rupees] or more; or
 - (iii) the offences specified under Part C of the Schedule;]
- (z) “Special Court” means a Court of Session designated as Special Court under sub-section (1) of section 43;
- (za) “transfer” includes sale, purchase, mortgage, pledge, gift, loan or any other form of transfer of right, title, possession or lien;
- (zb) “value” means the fair market value of any property on the date of its acquisition by any person, or if such date cannot be determined, the date on which such property is possessed by such person.

(2) Any reference, in this Act or the Schedule, to any enactment or any provision thereof shall, in relation to an area in which such enactment or such provision is not in force, be construed as a reference to the corresponding law or the relevant provisions of the corresponding law, if any, in force in that area.

COMMENTS

Person carrying on designated business or profession—Section 2(1)(sa)(vi)

Vide SO 2036(E), dt. 3-5-2023, the Central Government hereby notifies that the financial transaction carried out by a relevant person on behalf of his client, in the course of his or her profession, in relation to the following activities:—

- (i) buying and selling of any immovable property;
- (ii) managing of client money, securities or other assets;
- (iii) management of bank, savings or securities accounts;
- (iv) organisation of contributions for the creation, operation or management of companies;
- (v) creation, operation or management of companies, limited liability partnerships or trusts, and buying and selling of business entities,

shall be an activity for the purposes of said sub-section.

Explanation 1 : For the purposes of this notification ‘relevant person’ includes—

- (i) an individual who obtained a certificate of practice under section 6 of the Chartered Accountants Act, 1949 (38 of 1949) and practicing individually or through a firm, in whatever manner it has been constituted;
- (ii) an individual who obtained a certificate of practice under section 6 of the Company Secretaries Act, 1980 (56 of 1980) and practicing individually or through a firm, in whatever manner it has been constituted;
- (iii) an individual who has obtained a certificate of practice under section 6 of the Cost and Works Accountants Act, 1959 (23 of 1959) and practicing individually or through a firm, in whatever manner it has been constituted.

Explanation 2 : For the purposes of this notification ‘firm’ shall have the same meaning assigned to it in sub-clause (i) of clause (23) of section 2 of the Income-tax Act, 1961 (43 of 1961).

¹ Substituted by Prevention of Money-Laundering (Amdt.) Act, 2009 (21 of 2009), dt. 6-3-2009, w.e.f. 1-6-2009.

² Substituted for “thirty lakh rupees” by Finance Act, 2015, w.e.f. 14-5-2015.

Vide SO 2135(E), dt. 9-5-2023, the Central Government hereby notifies that the following activities when carried out in the course of business on behalf of or for another person, as the case may be, as an activity for the purposes of said sub-clause, namely:—

- (i) acting as a formation agent of companies and limited liability partnerships;
- (ii) acting as (or arranging for another person to act as) a director or secretary of a company, a partner of a firm or a similar position in relation to other companies and limited liability partnerships;
- (iii) providing a registered office, business address or accommodation, correspondence or administrative address for a company or a limited liability partnership or a trust;
- (iv) acting (or arranging for another person to act as) a trustee of an express trust or performing the equivalent function for another type of trust; and
- (v) acting as (or arranging for another person to act as) a nominee shareholder for another person.

Explanation : For removal of doubts, it is clarified that the following activities shall not be regarded as activity for the purposes of sub-clause (vi) of clause (sa) of sub-section (1) of section 2 of the Act, namely:—

- (a) any activity that is carried out as part of any agreement of lease, sub-lease, tenancy or any other agreement or arrangement for the use of land or building or any space and the consideration is subjected to deduction of income-tax as defined under section 194-I of Income-tax Act, 1961 (43 of 1961); or
- (b) any activity that is carried out by an employee on behalf of his employer in the course of or in relation to his employment; or
- (c) any activity that is carried out by an advocate, a chartered accountant, cost accountant or company secretary in practice, who is engaged in the formation of a company to the extent of filing a declaration as required under clause (b) of sub-section (1) of section 7 of Companies Act, 2013 (18 of 2013); or
- (d) any activity of a person which falls within the meaning of an intermediary as defined in clause (n) of sub-section (1) of section 2 of the Prevention of Money-laundering Act, 2002 (15 of 2003).

Territorial jurisdiction of the Act

As per sub-section (2) of the Act, it extends to the whole of India. Since there are no qualifications attached to the said section, *ipso facto*, it extends to the State of Jammu & Kashmir also. Therefore, the provisions of the Act will comprehensively apply all over India including the State of Jammu & Kashmir.

Date of coming into force

As per sub-section (3), the provisions of the Act will come into force from such date as may be notified in the official gazette. It also provides that different provisions of the Act may be brought into effect on different dates by notification in the official gazette. Normally, unless provided otherwise, a Central Act comes into operation from the date it receives the Presidential assent and is construed as having come into operation immediately on the expiry of the date providing for its commencement. However, the provision of sub-section (3) of s. 1 is an exception to this rule and the Parliament is empowered to enact law which may come into operation in accordance with its will expressed in the statute and there is nothing to question the validity of the provisions which provides that different dates may be appointed for bringing into operation different provisions of the Act. Consequently, where different notifications are issued bringing into force different provisions of the Act or the Act as a whole as such, those provisions of the Act, as the case may be, is construed to have come into operation on the date of such notifications. It is also equally settled by the Supreme Court in *A.K. Roy v. UOI, AIR 1982 SC 710*, that the enforcement of a statute or the provisions therein is left to the discretion of the Government without laying down any objective standards and no writ of *mandamus* can be issued to the Government to enforce the statute or the provisions. However, if considerable time has elapsed since passing of the statute, a writ can be issued seeking the Government to consider the question whether the statute or any of its provisions should be brought into force or not as was held in *Altmesch Rein v. UOI, AIR 1988 SC 1768*.

Construction of statutes—General principles

It is common to find that modern statutes invariably contain a 'Definitions' chapter containing the meaning of important words used in the statute. The immediate objective of such definitions in a statute is the need to avoid frequent repetitive language describing the subject matter to which the word or expression so defined is intended to apply. The definition section is like dictionary holding the key to the meaning of certain words used in the Act. At this stage, it is relevant to understand some basic principles of interpretation of statutes. According to Salmond on Jurisprudence, the term "interpretation" or "construction" refers to a process by which courts seek to ascertain the meaning of the legislature through the medium of authoritative forms in which it is expressed. Commonly, 'interpretation' and 'construction' are understood to have the same significance without any material or significant difference though some authors differ on this point.

Legislative history

Legislative history normally is not relevant in construction of a statute and particularly the history of a statute shall not be allowed to override the plain words of the enactment—*L.T. Commissioner, Madras v. Madura Mills, AIR 1973 SC 1357*. However, in cases of ambiguity or other defects, the aid of the history of the legislation may be invoked. This is because it may be necessary to find out the meaning of the law fairly and correctly and in this exercise recourse may legitimately be had to the object of the law, the evil sought to be removed and the process by which the law evolved. The Supreme Court in *UOI v. Sankal Chand, AIR 1977 SC 2328*, held that the history of events transpiring from the process of enacting an Act has generally been the first exhaustive aid to which the courts have turned in attempting to construe an ambiguous Act. Quoting Justice Holmes, the Hon'ble Supreme Court held that "we do not enquire what the legislature meant; we ask only what the legislature meant, we ask only what the statute means and I can think of no better example of legislative history than the unedifying and unilluminating thoughts of the Act before us".

Proceedings in Parliament

Legislative proceedings cannot be referred to normally for the purpose of construction of an Act or any of its provisions nor can it be interpreted with any reference to the Bill or by any reference to its original form—*Herron v. Rathmines & Rathgar Improvement Commissioner, 1892 AC 498 (HL)*. It is equally not permissible to construe the Act by reference to the Bill, as it may have undergone radical changes during its passage through the House or the Houses—*Aswini Kumar Ghose v. Arbind Bose, AIR 1952 SC 361*. Proceedings in Parliament are scarcely a legitimate or helpful aid to the construction of the statute when the language is otherwise clear and unambiguous—*R. Narasimhan v. Union of India, AIR 1972 SC 2405*. However, where the language is not plain and clear they would become relevant for the proper understanding of the circumstances under which and the reasons which necessitated its enactment as it finally came through—*Charanjit Lal v. Union of India, AIR 1951 SC 45*. In *Udayan Chinu Bhai v. R.C. Bali, AIR 1977 SC 2319*, the Hon'ble Supreme Court went through the Objects and Reasons of the Bill, history and background of the provisions together with the recommendations of the Law Commissioner in order to understand the proper intent and purpose of the Explanation newly added to s. 12(2) of the Limitation Act, 1963. Similarly, the Statement of Objects and Reasons to the Bill is also not necessarily an aid to the construction of the statute if it is not a part of the statute. Besides, if the language of the Act is plain and leaves no room whatsoever to doubt what was meant by the legislature no reference can be made to the Statement of Objects and Reasons—*State of Haryana v. Chanan Mal, AIR 1976 SC 1654*. Normally, the courts cannot proceed to construe a provision of a statute on the basis of objects and reasons but in case of doubt, courts can refer to it for the limited purpose of ascertaining the condition prevailing at that time which actuated the need to introduce the Bill and urgency, evil which is sought to be remedied as it gives an indication as to what the legislature wanted to achieve—*State of West Bengal v. Subodh Gopal, AIR 1954 SC 92; Workmen of F.T. & R. Corporation v. Management, AIR 1973 SC 1227*. Similarly, the report of the Drafting Committee may be referred to in case of any ambiguity—*A.K. Gopalan v. State of Madras, AIR 1950 SC 270*.

Speeches made by members of the legislature in the course of debate on the statute are not admissible. It is dangerous and misleading to scourge the meaning of the word used in an

enactment merely from what was said by any speaker during the course of debate in the Parliament on the subject. Such speech cannot be used to defeat or detract from a meaning which clearly emerges from a consideration of the enactment from the words actually used. But where the Minister makes a statement while pressing for an amendment for a reason and the reason by him elucidates or is also deducible from the words used in the amended provision, there is no reason to refuse to take into consideration the said statement as an aid to correct interpretation as it harmonizes and clarifies the real intent of the words used—*Lok Siskhana Trust v. I.T. Commissioner, Mysore* AIR 1976 SC 10.

Title of the Chapter

The title of the chapter cannot be used to restrict the plain terms of an enactment—*CIT v. Ahmed Bhai* AIR 1950 SC 134.

Headings

According to *Maxwell on Interpretation of Statutes*, headings to be affixed to the sections cannot control the plain words of a statute but they may explain ambiguous words. Where there is any doubt in interpretation of the words in the section, the headings can be taken into consideration to resolve the doubt—*Frick India Ltd. v. UOI*, AIR 1990 SC 681.

Marginal notes

In *CIT v. Ahmed Bhai Umar Bhai & Co.*, AIR 1990 SC 681, it was held that marginal notes in an Indian statute, as in an Act of Parliament, cannot be referred to for the purpose of construing the statute. They cannot take away the effects of the provision contained in the Act so as to render those provisions lawfully incompetent—*Tara Prasad Singh v. UOI*, AIR 1980 SC 1682. But in ambiguous situations, the marginal notes may shed some light and therefore in such situations reliance can be placed on marginal notes—*R.S. Joshi v. Ajit Mills*, AIR 1979 SC 2279. In *S.P. Gupta and Ors. v. UOI and Ors.*, AIR 1982 SC 149, the Hon'ble Supreme Court ruled as under:—

"The court while construing a statute has to read both the marginal notes and the body of its provisions. Whether the marginal notes would be useful to interpret the provisions and if so to what extent, depends upon the circumstances of each case. No settled principles applicable to all cases can be laid down in this fluctuating state of the law as to the degree of importance to be attached to a marginal note in a statute. If the relevant provisions in the body of the statute firmly point towards a construction which would conflict with the marginal note, the marginal note has to yield. If there is any ambiguity in the meaning of the provisions in the body of the statute, the marginal note may be looked into as an aid to construction."

Punctuation

When a statute is carefully worded and there is doubt about its meaning, weightage should undoubtedly be given to punctuation. In *A.K. Gopal v. State of Madras*, AIR 1950 SC 27, assistance was derived in interpreting Article 22(7)(a) of the Constitution from punctuation used therein. Though this view was overruled in *Sanguna Sattar v. State of West Bengal*, AIR 1973 SC 1425, in subsequent case *Mohammed Shabbir v. State of Maharashtra* AIR 1979 SC 564, the Supreme Court did give proper weightage to punctuation in interpreting the provision in the Drugs & Cosmetics Act. In *M.K. Salpedkar v. Sunil Kumar Shyam Sunder Choudhary*, AIR 1988 SC 1841, in construing the C.P. and Bearar Letting of Houses and Rent Control Order, the Supreme Court placed reliance on punctuation in interpreting a provision of the Act.

Illustrations

Illustrations are appended to modern statutes and they are of relevance and value and they should not be rejected as repugnant to the section—*Murlidhar Chatterjee v. International Film Co.*, AIR 1943 PC 34. However, illustrations cannot have effect of modifying the language of the section and cannot either curtail or explain the ambit of the section which alone forms the enactment. In construing the provisions of the Indian Contract Act and the Indian Succession Act for instance, the Supreme Court has placed reliance on illustrations—*Murlidhar Chatterjee v. International Film Co.*, AIR 1943 PC 34.

Restrictive definitions

Where the definition of a word in the statute uses the expression "means" such definition is *prima facie* restrictive and exhaustive—*Vancouver Fire & General Insurance Co., Madras v. Fraser & Ross*, AIR 1950 SC 971.

Extensive definitions

Where the word is defined to "include" certain things/persons etc., the definition is *prima facie* extensive—*Municipal Corporation of Greater Bombay v. IOC, AIR 1991 SC 686*. Where the definition uses the expression "means and include", the definition would again be exhaustive—*Billworth v. Commissioner of Stamps, 1899 AC 99*.

Proviso

The function of a proviso is to except something different of the enactment or to clarify something enacted therein which but for the provision would be within the provision of the enactment—*Kedarnath Jute Mfg. Co. Ltd. v. CTO, AIR 1966 SC 12*. As a general rule, a proviso is added to an enactment to clarify or create an exception to what is in the enactment and ordinarily a provision is not interpreted as stating general rule—*Shah Bhojraj Kuverji Oil Mills and Ginning Factory v. Subhash Chandra Yograj Sinha, AIR 1961 SC 1596*.

A proviso differs from an exception or a saving clause according to Horace (Goods and materials on legislation-2nd edition) in which it is stated that "Explanation is intended to restrain the enacting clause to particular cases; proviso is used to remove such cases from the general enactment and provide for them specially; saving clause is used to preserve from destruction rights, remedies or privileges already existing.

Explanation

An explanation added to a section is part and parcel of the enactment—*Bengal Immunity Co. Ltd. v. State of Bihar, AIR 1955 SC 661*. Explanation can explain a part of the section in which case it is applicable only to that part of the section to which it relates. In a case where a provision deals with two categories of cases i.e. residential and non-residential accommodation and there was an Explanation only to residential accommodation, it was held that it cannot have effect on the scope of the section with reference to the second category viz., non-residential accommodation—*Dr. M.K. Salpekar v. Sunil Kumar Shyam Sunder Chaudhary, AIR 1998 SC 1851*.

There can even be a negative Explanation to exclude certain types or category from the ambit of an enactment.

Schedules

Schedules appended to a statute are parts of the statute—*Ujagar Prints v. UOI AIR 1989 SC 516*. The purpose of giving a schedule is to avoid ambiguity from the main sections in the statute with matters of excessive details and they even contain Rules and forms for working out the policy behind the provisions of a statute. The schedule can also contain provisions which are purely transitory in nature. In other words, the division of a Schedule to sections is more a matter of convenience and in this sense Schedule may also contain a substantive law as was held in *Ujagar Prints (supra)*. Where there is a conflict between the body of an enactment and the Schedule, it is the Act which will prevail and not the Schedule.

Reference to other statutes

An enactment can borrow meanings and expressions given in any other enactment. Depending upon the context, a reference can be taken either as legislation by incorporation or as legislation by reference. In an incorporation, the provision of the referred statute is deemed to be incorporated and accordingly if the referred statute undergoes any subsequent changes it will not have any effect. On the other hand, where the legislation is by reference to another statute and the latter undergoes changes or repeal, the amended referred statute will have relevance while interpreting the provision of the Act.

Normally, statutes which are *pari materia* to each other are taken into consideration while interpreting the enactment. In other words, where the statutes are materially similar, an interpretation given to a provision in a statute materially similar, can be read into the other.

Dictionary meanings

When a word is not defined in a statute, it is permissible to refer to the dictionary to find out the general sense in which that word is understood in common parlance.—*CIT A.P. v. Taj Mahal Hotel AIR 1972 SC 168; Star Paper Mills Ltd. v. CCE, Meerut AIR 1989 SC 2066*. However, the dictionary gives different shades of meaning and therefore regard shall be had only to the context

in which an expression has been used in the Act. If the context makes the meaning of a word very clear, it becomes unnecessary to search for and select a particular meaning out of the diverse meanings a word is capable of according to Lexicographers.—*Mangu Singh v. Election Tribunal, Bareilly AIR 1957 SC 871*.

Non-obstante clause

A *non-obstante* clause is used in a section with a view to give the enacting part of the section, in case of conflict, an overriding effect over the provision or Act mentioned in the *non-obstante* clause.—*UOI v. G.M. Kokil AIR 1984 SC 1022*. *Non-obstante* clause can cover all other statutes also generally.

Legal Fiction

A legal fiction is employed in order to deem certain things/acts which in fact and in truth may not amount to such acts or things. In construing a Legal Fiction or a deemed provision it must be ensured that the provision is not extended beyond the purpose for which it is created.—*CIT, Bombay v. Ahmed M. Saraf AIR 1963 SC 1448*. Lord Asquith facetiously stated with reference to deeming provisions as under in *East End Welding Co. Ltd. v. Finsbury Borough Council 1951 2 AER 587 (HL)*:

“If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real, the consequences and things which, if the putative state of affairs it undergo existed, must inexplicably have flowed from or accompanied it. The statute says that you must imagine a certain state of affairs; it does not say that having done so, you must cause or permit your imagination to boggle when it comes to the unavoidable corollaries of that state of affairs.”

Mandatory and Directory provisions

The use of the expression ‘shall’ in a section invariably indicates that, it is a mandatory provision and the use of the expression ‘may’ indicates that it is discretionary or directory in nature. However, there may be cases where the mandatory provision may be read as directory provision and *vice versa*. In *State of U.P. v. Mangodhan Lal Srivastav AIR 1957SC 912*, it was held that the question as to whether a statute is mandatory or directory depends upon the intent of the legislature and not upon the language in which the intent is couched. The meaning and intention of legislature must govern and these are to be ascertained not only from the phraseology of the provision but also by studying its design and the consequences which should follow from construing it the one way or the other. Generally, in matters of observance of procedure, courts have shown a tendency to regard them as directory and not mandatory and have held that such procedural provisions if substantially complied with, would be sufficient.

Conjunctive and distinctive words

Generally the use of the word “and” in a statute refers to its use in a conjunctive sense and the use of the word “or” is to be taken as distinctive. But seen in the context of a particular provision, “or” is to be read as “and” in a statute and *vice versa*.

Analysis of definitions contained in section 2

Adjudicating Authority [Section 2(1)(a)]

The term “Adjudicating Authority” has been defined as Adjudication Authority appointed under section 6 of the Act. In terms of Section 6, the appointment has to be made by a notification by the Central Government.

Appellate Tribunal [Section 2(1)(b)]

‘Appellate Tribunal’ means the Appellate Tribunal established under section 25 of the Act. The appointment of the Tribunal is to be made by the Central Government by notification.

Assistant Director [Section 2(1)(c)]

The term ‘Assistant Director’ has been defined as an Assistant Director appointed under section 49(1) of the Act. In terms of section 49(1), the Central Government is empowered to appoint various authorities for the purposes of the Act.

Attachment [Section 2(1)(d)]

This definition is an exhaustive definition. It means prohibition of transfer, conversion, deposition or movement of property by an order issued under Chapter III of the Act. Chapter III of the Act is exclusively devoted attachment adjudication and confiscation, that is, three different but connected subject matters in all.

It is important to note that the definition covers four types of prohibitions within the scope of the term 'attachment'. The first is prohibition of transfer. "Transfer" as commonly understood means an act or transaction in which property of one person is vested in another. It refers to conveyance, which means passing on of the right of one person over to another. According to Law Lexicon by P. Ramanathan Iyer (Second Edition), transfer means "to convey; to make over from one to another; to remove; Document whereby one person transfers property, securities or rights to another." From the context of the definition in the Act prohibition of transfer applies of all property, movable as well as immovable.

The term "conversion" means transformation of one species of property into another such as land into money, money into land, money into securities gold and *vice versa*, etc. Since the definition lays emphasis on property, conversion will always be with reference to conversion of one form of property into another form of property. Therefore, if any property is attached, the prohibition will extend to the conversion of that property. It will include even converting wrongfully someone else's property.

The term "deposition" refers to giving a way or giving-up by a person of something which is not his own.—*Collector of Estate Duty v. Kancharia Kesava Rao AIR 1973 (SC) 2484*. In *Goli Eswariah v. Gift Tax Commissioner AIR 1970 (SC) 1722*, it was held that the term 'deposition' is not term of law and it has no precise meaning. Its meaning has to be gathered from the context in which it is used. It may refer to bilateral act or multi-lateral act. It is quite possible that such a deposition requires to be made by any deed or will or under a decree or an order of a Court. Even where a property is settled in such a way that someone has to pay annuity to the settler of a fixed sum, it will amount to a settlement. Creation of a charge on the rent received from a property will also be a deposition. Even the entry of a person's name to be entitled to any benefit under an insurance policy or any other scheme of pension etc. would amount to a deposition.

Prohibition on 'movement of property' is also covered within the definition. In its ordinary sense, prohibition on movement of property can apply only to movable property; it does not apply to immovable property which in its very nature is not movable. Since movable property consists of articles or things, chattel or goods or merchandise 'attachment' would refer to a restriction on movement of such goods, chattel etc. In other words, once the movable property is attached, it has to lie in state in the same condition and cannot be moved so long as the prohibition under the Act continues.

Authorised person [section 2(1)(da)]

This term has been defined in section 2(c) of FEMA, 1999

Banking Company [Section 2(1)(e)]

This term has been defined to mean a Banking Company or a Cooperative Bank to which the Banking Regulation Act, 1949 applies and also includes a Bank or Institution refers to under section 51 of the Act. Under Banking Regulation Act, the following definition of Banking Company exists:

"banking company" means any company which transacts the business of banking in India.'

Bench [Section 2(1)(f)]

The term 'Bench' means Bench of the Appellate Tribunal which is constituted/established under section 25 of the Act.

Chairman [Section 2(1)(g)]

The term refers to the Chairman of the Appellate Tribunal constituted/established under section 25 of the Act.

Chit fund company [Section 2(h)]

This term has been defined with reference to chits defined in the Chit Funds Act, 1982. In terms of section 2(6) of the Chit Funds Act, Chit means a transaction whether called chit, chit fund, chitty, kuri or by any other name by or under which a person enters into an agreement with a specified number of persons that every one of them shall subscribe a certain sum of money (or a certain quantity of grain instead) by way of periodical instalments over a definite period and that each such subscriber shall, in his turn, as determined by lot or by auction or by tender or in such other manner as may be specified in the chit agreement, be entitled to the prize amount.

Explanation : A transaction is not a chit within the meaning of this clause, if in such transaction,—

- (i) some alone, but not all, of the subscribers get the prize amount without any liability to pay future subscriptions; or
- (ii) all the subscribers get the chit amount by turns with a liability to pay future subscriptions.

Cooperative Bank [Section 2(i)]

It has the meaning assigned to it under the Deposit Insurance and Credit Guarantee Corporation Act, 1961.

Deputy Director [Section 2(j)]

This term refers to a Deputy Director appointed under sub-section (1) of section 49, in terms of which Central Government has powers to appoint different authorities for the purposes of the Act.

Designated business or profession [Section 2(1)(ja)]

This term has been defined in Amendment Act, 2009 to mean carrying on activities for playing games of chance for cash or kind, and includes such activities associated with casino or such other activities as the Central Government may, by notification, so designate, from time to time.

Director/Additional Director/Joint Director [Section 2(1)(k)]

These terms will respectively mean a Director, Additional Director or Joint Director, as the case may be, appointed under sub-section (1) of section 49 of the Act which confers specific powers to Central Government in regard to making of such appointments.

Financial Institution [Section 2(1)(l)]

This section consists of two parts, in the first part of financial institutions as defined in clause (e) of section 45-I of the Reserve Bank of India Act, 1934 have been included within the fold of the definition. In addition, a Chit Fund Company, a Cooperative Bank, a Housing Financial Institution and an authorised person, a payment system operator and a Non-Banking Financial Company have also been included in the definition. Thus, this section is a very extended definition, the section is wider in its scope and applicability.

Housing Financial Institution [Section 2(m)]

This term has been given the meaning assigned to it in the National Housing Bank Act, 1987 [under section 2(1)(d)] which reads as under:—

"Housing finance institution" includes every institution, whether incorporated or not, which primarily transacts or has as one of its principal objects, the transacting of the business of providing finance for housing, whether directly or indirectly."

Intermediary [Under section 2(1)(n)]

This term has been defined in an exhaustive manner to mean a stock broker, sub-broker, share transferrer, agent, banker to an issue, trustee of trust deed, registrar to an issue, merchant banker, underwriter, portfolio manager, investment advisor and any other intermediary associated with the securities market and registered under section 12 of the SEBI Act, 1992. Virtually all intermediaries who operate in the securities market and are subject to regulation under the SEBI Act, are covered by this definition.

Member [Section 2(1)(o)]

'Member' has been defined to mean a member of the Appellate Tribunal including the Chairperson established under section 25 of the Act. Therefore, except where the context otherwise requires, reference to member would include the reference to the Chairperson of the Tribunal also.

Money laundering [Section 2(1)(p)]

The term 'money laundering' has not been defined in the traditional sense in which statutes contain normally a definition. Section 3 of the Act describes what will constitute money laundering. For detailed analysis reference may be made to notes under section 3.

Non-banking financial company [Section 2(1)(q)]

This term has been defined to have the same meaning as assigned to it in Reserve Bank of India Act, 1934 and includes a person carrying on designated business or profession. As per clause (f) of Section 45 of the said Act, non-banking financial company has been defined as under:—

"Every Director or other officer of a banking company which is being wound up shall give such assistance to the official liquidator as he may reasonably require in connection with the realisation and distribution of the property of the banking company."

Notification [Section 2(1)(r)]

The term "notification" has been defined to mean a notification published in the official gazette. What is necessary is the publication of the notification in the official gazette. Unless a notification is shown to have been published in the official gazette, it will not constitute a notification under the Act. The question on what date the notification has been published in the official gazette is a question of fact.

Offence of cross border implications [Section 2(1)(ra)]

This term means,—

(i) any conduct by a person at a place outside India which constitutes an offence at that place and which would have constituted an offence specified in Part A, Part B or Part C of the Schedule, had it been committed in India and if such person remits the proceeds of such conduct or part thereof to India; or

(ii) any offence specified in Part A, Part B or Part C of the Schedule which has been committed in India and the proceeds of crime, or part thereof have been transferred to a place outside India or any attempt has been made to transfer the proceeds of crime, or part thereof from India to a place outside India.

Explanation : Nothing contained in this clause shall adversely affect any investigation, enquiry, trial or proceeding before any authority in respect of the offences specified in Part A or Part B of the Schedule to the Act before the commencement of the Prevention of Money-laundering (Amendment) Act, 2009.

Payment system [Section 2(1)(rb)]

A system that enables payment to be effected between a payer and a beneficiary, involving clearing, payment or settlement service and includes the systems enabling credit card operations, debit card operations, smart card operations, money transfer operations and similar operations.

Payment system operator [Section 2(1)(rc)]

A person who operates a payment system and such person includes his overseas principal.

Person [Section 2(1)(s)]

The term "person" has been defined in an inclusive sense so as to include an individual, HUF, company, firm, association of persons, artificial juridical person or any agency, office or branch owned by any of the above persons. Virtually this definition includes every type of entity from natural persons to artificial entities. This all-embracing definition has been necessitated keeping in view the fact that the proceeds of the crime can be held by not necessarily any individual but by any other entity. In order to allow the Act to have a longer reach and to achieve the objects behind the legislation, the definition of the term has been consciously given a wider meaning. Interestingly, when the Bill was originally introduced in the Lok Sabha on 4-8-1998, the term "person" was not defined and upon the recommendation of Standing Committee on Finance which was constituted to present a report in detail, the definition of the term "person" was subsequently introduced, though the term covers both natural and artificial persons, even in the absence of a definition according to the General Clauses Act. The framers of the law have found it appropriate to give the Act an element of clarity and precision in regard to the meaning of the term "person" and that too in a very expansive sense. The definition as now contained in the Act seeks to plug the evil laundring of money in its different manifestations. It is essential to note that even agency, office or branch owned or controlled by any of these specified entities in the definition will be included within the term "person". The term "controlled" used in the sub-clause (vii) of the definition connotes the opposite of 'owned' inasmuch as control can exist without ownership. Control is a matter of fact and requires to be established *defacto* with reference to documentary or other evidence. In fact, in matters relating to economic crimes, a "control" is used by the offenders to escape and keep the agency or entity out of the reach of the law rather than owning the entity. Virtually for the offender in such situations, "control" is *de facto* ownership. Therefore in consonance with the general tenor of the economic legislations, the legislature has thoughtfully employed the concept of "control"; in the case of Monopolies & Restrictive Trade Practices Act, 1969 for instance, economic power manifests in the power of control rather than patent ownership and therefore control has been appropriately employed in the law enacted to control prevention of concentration of economic power to the common detriment. The proceeds of the crime which are to be laundered may be stationed or parked with the entity which might not be necessarily owned by the persons who committed the crime but may be *defacto* controlled by them only and thereby the offenders may be enjoying the proceeds of the crime, *dehors* ownership. In order to effectively block such tendencies on the part of the offenders to have under their control the proceeds of the crime, the legislature has rightly employed the expression "controlled" so as not to leave any scope for bypassing the Act on the ground that the proceeds are not 'owned' by the offenders.

Prescribed [Section 2(1)(t)]

This term has been defined to mean as prescribed by rules made under the Act. A look at the law suggests that u/s 73 of the Act Central Government is empowered to make rules for carrying out for various purposes of the Act. Even in other sections of the Act there are many details which require to be so prescribed.

Proceeds of the crime [Section 2(1)(u)]

The term has been defined to mean 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. The law envisages that the proceeds of the crime described in the Schedule of the Act

may be parked in property. The proceeds of the crime may be employed or parked in a property either directly or indirectly. The term “indirectly” is very important in defining the scope and reach of the law. The proceeds of the crime may be invested through a company or a subsidiary of a company. In the case of individuals the property may be held in the name of any relative or minor or HUF. All these situations could be wrapped up by the enforcement authorities under the Act under the umbrella of the term “indirectly” used in this clause. There should only be a nexus between the criminal activity relating to the scheduled offence and the proceeds thereof in order to bring the person to book. The term “as a result of criminal activity” is very important. In other words, a clear nexus must be shown to exist between the criminal activity and the property which has been derived or obtained by any person. This is again a matter of evidence from books, account, records etc. The criminal activity must be related only to the scheduled offences and not to others.

Property [Section 2(1)(v)]

This term has again been defined in a very expansive manner to include movable, immovable, tangible, intangible, corporeal and incorporeal property and includes deeds, instruments evidencing title to or interest in such property or assets wherever located. From the definition, it is clear that the meaning of the term “property” is too wide to read any limitation into it. Even interest in the property is included within the fold of the definition. The term “interest” means concern, advantage, good, space, portion, part or participation. It is broad enough to include any right, title or asset in or lien upon real estate. One who holds a mortgage upon and it is of half of its value is commonly and truly said to be interested in it—*P. Ramanathan Iyer-Law Lexicon* 2nd edition. In *Firestone Tyre & Rubber Co. Ltd. v. Synthetics & Chemicals Ltd.*, it was held that the term “interest” is not limited to financial interest only and may include interest arising out of fiduciary duties or closeness on relationship such as father or son or daughter, husband and wife etc. In *George Wimpy & Co. v. England Revenue Commissioner 1974 2 AER 602*, it was held that an option to purchase property is an interest in property. Thus not only the title to property but also interest in property, may be in the form lien or mortgage or lease or part interest or even a contingent interest, which may come about on the happening of an event which is certain to happen though the time of its happening is not certain, will be included within the meaning of the term “interest in property” used in this Section.

Records [Section 2(1)(w)]

This term has been defined in an inclusive manner. In other words, the term “records” will have its natural meaning also read into it. In its original sense a “record” is a memorial, remembrance or an electronic testimony in writing which is generally preserved or presented as an evidence. It may be in the form of registers, account, letter, communication, memorandum, instruction or any other coded version which has a definite connotation or meaning which can be deciphered after investigation. Therefore, even coded letters or communication will form part of the records. In *Superintendent and Remembrance of Legal Forms on behalf of State of West Bengal v Sardar Bahadur Singh AIR 1969 Cal. 451*, it was held that records means amongst other information, a formal writing of any fact or proceeding, having entered in the books of accounts, especially formal statements of pleadings of parties in a litigation. The records may be in the form of books or floppy, CD or some software in computer or such other form. “Books” would include books of account. With the tremendous advance in information technology which provides for storage of data in different forms other than the traditional paper and books, the definition would encompass all records maintained in any electronic media including E-Mails, Short Messages sent through cell phones etc. In fact records relating to the proceeds of the crime are always secretive and not open, are invariably kept in coded form and may be even contained in any electronic media which will come to light after deep and incisive investigation only.

Schedule [Section 2(1)(x)]

The term "schedule" has been defined to mean Schedule to the Act. A schedule contains various offences to which the provisions of the Act are applicable and is divided mainly into Part A and Part B.

Schedule offence [Section 2(1) (y)]

This term has been defined again to mean offences specified in Part A and Part B of the Act. In regard to offences mentioned in Part A, there is no monetary limit whereas in regard to offences mentioned in Part B of the Schedule, monetary limit of Rs. one crore or more has been specified. Briefly put, offences against the State or conspiracy against the State, offences relating to narcotics, financing illicit traffic and abatement, abatement in conspiracy have been included in Part A where there is no monetary limit. On the other hand, offences of a lesser intensity or magnitude such as murder, kidnapping for ransom, extortions, robbery, dacoity, financing under the Arms Act, offences under the Immoral Traffic Act and under the Prevention of Corruption Act have a monetary limit of Rs. 30 lakhs so as to fall within the scope of the law. It is clearly not understood as to why offences under the Prevention of Corruption Act and Immoral Traffic Act have been subjected to a monetary threshold of Rs. 30 lakhs, in other words, if a public servant or a person holding a public office has taken illegal gratification and the gratification amount is less than Rs. 30 lakhs which he has used in acquiring any property, he cannot be proceeded against under this Act. When the scourge of corruption is raging day by day and the ethical rules are given an easy go by, and the phenomenon is corroding the said democratic and moral fabric, it is not understood why persons guilty of corruption holding a public office should be allowed to go scot free under this Act if the extent of money generated by that corruption and the proceeds are parked in any property of the value less than Rs. 30 lakhs.

It is interesting to note that the Money Laundering Bill, 1999 as originally introduced on 20-10-1999 did not contain any monetary limitation with reference to various offences specified in the Schedule. In other words, all offences were treated alike at the bill stage. However, it appears that wisdom dawned on the legislature during subsequent discussion and passage of the Bill to provide for a monetary threshold in respect of different offences so that such offences can be taken cognizance of under this Act. With the corruption in public offices growing unabated and the proceeds of the corruption being employed brazenly in various properties or in shady forms of spending by the person taking illegal gratification, it would have been more appropriate if no monetary limit was placed at the time of passing of the Bill so that there is even a greater moral fear among those holding public offices before they accept any illegal gratification.

Special Court [Section 2(1)(z)]

Special court has been defined to mean a court or session designated as special court for exercise of powers conferred under section 43 of the Act. The Act enables the offences under the Act listed in the Schedule thereof to be tried by special courts. These special courts need not be separately established, but in consultation with the Chief Justice of the High Court, one or more courts or sessions can be notified as special courts under section 43.

Transfer [Section 2(1)(za)]

This term has again been defined in a very comprehensive and inclusive manner so as to cover sale, purchase, mortgage, pledge, gift, lien or any other form of right, title, possession or lien. 'Sale/purchase' denote transfer of ownership in both movable and immovable properties. 'Mortgage' is in relation to immovable properties giving a specified right to the mortgagee on the mortgaged property in certain contingencies. 'Pledge' is a physical bailment of goods in favour of the pledgee for consideration. 'Gift' is bailment of goods to any person gratis. 'Lien' includes an interest whether in money or in kind—*Bhaskar Rao v. Saru AIR 1978 Bom. 322*. It also includes transactions involving an agreement or bond executed in respect of past liabilities also. It is

necessary to note that the term “transfer” also covers transfer of right, title, possession or lien. Even transfers under the General or Special Power of Attorney will constitute a transfer. It would *ipso-facto* also cover a lease which is a limited transfer of possession of immovable property.

Value [Section 2(1)(zb)]

The term “value” has been defined to mean ‘fair market value’ of any property as on the date of acquisition by any person; if such date cannot be ascertained then the date on which such property is passed on by such person would be relevant. Therefore, either the date of possession or the date on which the property is acquired would be relevant in determining the fair market value. The term ‘fair market value’ has not been defined in the Act. According to Blacks Dictionary, by fair market value is meant the price in cash or its equivalent, that the property would have brought at the time of taking, considering its highest and most profitable use, if then offered for sale in the open market, in competition with other similar properties at or near the location of the property taken with a reasonable time limit to find a purchaser.

Section 2 [Sub-section (2)]

Under sub-section (2) of section 2, it is provided that a reference in the Act or Schedule in relation to an area in which such enactment or provision is not in force, shall be construed as or reference to the corresponding law or relevant provisions of the corresponding law if any in force in that area.

Under the Constitution of India, Jammu & Kashmir enjoys a special status and therefore it is quite possible that one or more of the acts mentioned in this Act or Schedule thereto may not have application to the State of Jammu & Kashmir in which case a reference has to be made to any corresponding law on the same subject matter in the State of Jammu & Kashmir. In other words, the law should provide for the same subject matter ; it refers to the law having the same purpose and objects. In *Controller Amanath Haz Mazhabai v. Wahid Khan AIR 1956 Bhopal 33*, it was held that the legal and also the ordinary meaning of the term corresponding or to correspond is not that two things must identically be the same. They would be regarded to correspond to one another if they harmonize with each other. If the law was passed with the same purpose and object then it would be a corresponding law. If there is no corresponding law, sub-section (2) will have no application.

CHAPTER II

OFFENCE OF MONEY-LAUNDERING

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 ¹[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.

²[*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

1 Substituted for “proceeds of crime and projecting” by the Prevention of Money-laundering (Amdt.) Act, 2012 (2 of 2013), dt. 3-1-2013, w.e.f. 15-2-2013 vide SO 343(E), dt. 8-2-2013.

2 Inserted by the Finance (No. 2) Act, 2019 (23 of 2019), dt. 1-8-2019, w.e.f. 1-8-2019.

- (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.]

COMMENTS

This section is the fulcrum around which all other provisions revolve. It defines what amounts to the offence of money laundering. When the Prevention of Money Laundering Bill, 1999 was introduced in Lok Sabha on 29-10-1999, the section 3 read as under:—

“Offence of Money Laundering

Whoever

- (a) acquires, owns, possesses or transfers any proceeds of crime; or
- (b) knowingly enters into any transaction which is related to proceeds of crime either directly or indirectly; or
- (c) conceals or aids in the concealment of the proceeds of crime,

commits the offence of money-laundering”

The section as is now finally enacted is different in some important respects. “Directly and indirectly” attempting to indulge in that process or activity connected with the proceeds of crime has been specifically added. Even persons who “knowingly” assist in that process are within the scope of the offence under this section. Not only that, even persons who “knowingly assist” in any process or activity connected with the proceeds of crime are within the scope of the Act. The definition as finally couched in the Act at present is much more wider in scope as can be seen from the language and syntax of the section. The term “indulge”, according to Oxford Dictionary means “take ones pleasure freely, gratify, give free course to”. Therefore, any body attempting to indulge in any process or activity connected with the proceeds of crime becomes guilty of the offence under this section. This attempt may be direct or indirect; direct attempt does not require any explanation but invariably the offence of this nature is endeavoured to be committed in an indirect manner. Therefore, the Legislature has advisedly proceeded to cover even indirect attempts. According to Law Lexicon, by P. Ramanathan Iyer, the term “indirectly” means “not directly aimed to or attained; not immediately resulting from an action or cause.” However, there must be a direct or indirect “attempt” to commit the offence. What constitutes an “attempt” is a mixed question of law and fact, depending largely on the circumstances of the particular case. “Attempt” defies a precise and exact definition to suit all situations. Broadly speaking, all crimes which consist of the commission of affirmative acts are proceeded by some covert or overt conduct which may be divided into three stages. The first stage is when the culprit first entertains the “idea” or intention to commit” an offence. In the second stage, he makes “preparations” to commit it. The third stage is reached when the culprit takes deliberate overt steps to commit the offence—that is the “attempt”. Such overt act or step in order to be “criminal” need not be the penultimate act towards the commission of the offence. It is sufficient if such act or acts were deliberately done, and manifest a clear intention to commit the offence aimed, being reasonably proximate to the commission of the offence, as pointed out in *Bhayanaand Misra v. State of Bihar, AIR 1961 S.C. 1968 (1962) S.C.R. 241*.