



सत्यमेव जयते

PARLIAMENT OF INDIA

Compendium on Parliamentary Enactments

The Prevention of Money Laundering (Amendment) Act, 2012



**RAJYA SABHA SECRETARIAT
NEW DELHI
2020**

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**The Prevention of Money
Laundering (Amendment) Act, 2012**



**RAJYA SABHA SECRETARIAT
NEW DELHI
2020**

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PREFACE

The Constitution of India has envisaged a detailed architecture of legislative mechanisms delineating the powers and functions of different legislative authorities besides determining the scope of legislative competence between the Centre and the States. It has also laid down the procedures in the sphere of law making to be followed by each House of Parliament in pursuant to their respective legislative roles and responsibilities. The Rules of Procedure and Conduct of Business in both Rajya Sabha and Lok Sabha provide details regarding the procedures to be followed in each House at the time of introduction of a Bill; reference to and examination of the Bill by the Select Committee of the House/Joint Committee of the Houses or the concerned Department-related Standing Committee; and final consideration and passage of the Bill by each House. During various stages of legislative process, the Bills are discussed thoroughly and, if necessary, suitably amended before these are passed.

A volume containing all important documents can facilitate easy and quick access to material which are critical to understanding the evolution of legislative proposals from the Bill to the Acts of Parliament. As such, an important objective of legislative research is to have a permanent and authentic resource-base of the documents in respect of the Bills passed by both the Houses.

This compendium on parliamentary enactment on the Prevention of Money Laundering (Amendment) Act, 2012 contains all primary documents such as the Bill as introduced, the Report of the Department-related Parliamentary Standing Committee on Finance on the Bill, a synopsis of debates of both Houses of Parliament and the Bill as passed by both Houses with a comprehensive executive summary. A select reading list is also enclosed.

I acknowledge with thanks the contribution made by all concerned Sections of the Rajya Sabha Secretariat and particularly the services rendered by the officers of the Library, Reference, Research, Documentation and Information Service (LARRDIS) who were entrusted with the task of compiling this Compendium. I also appreciate the work done by the Printing and Publications Service.

This publication is fourth in the series of compendiums on parliamentary enactments brought out on selected Bills passed by both Houses for the benefit of Members of Parliament, researchers, legal fraternity and also the public at large.

NEW DELHI;
January, 2020

Desh Deepak Verma
Secretary-General

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THE PREVENTION OF MONEY-LAUNDERING (AMENDMENT) ACT, 2012

Executive Summary

Money laundering is the method by which criminals disguise the illegal origins of their wealth, making those appear to have been derived from a legitimate source. It has the potential to destabilise economies and facilitate accumulation of black money, besides boosting corruption. It gives organised crime syndicates requisite funds to further expand their criminal activities. Money laundering has emerged as a global menace commending a concerted global action.

The sheer scale of money laundering necessitates measures at the national and international level to prevent, detect and put an end to this criminal activity. In India, the first seminal legislation, namely, the Prevention of Money-Laundering Act, 2002 was brought out in 2002, which has been amended thrice ever since, first in 2005, then in 2009 and the last time in 2012. The latest amendment was made through the Prevention of Money Laundering (Amendment) Bill, 2011 which was introduced in the Lok Sabha on 27 December, 2011. It was then referred to the Standing Committee on Finance on 5 January, 2012 which presented its 56th report on the Bill on 9 May, 2012. Based on the recommendations made by the Committee, official amendments were moved in the Lok Sabha. The Lok Sabha considered and passed the Bill on 29 November, 2012. The motion for consideration of the Bill as passed by the Lok Sabha was moved in the Rajya Sabha on 17 December 2012 and the Bill was passed the same day. The Prevention of Money Laundering (Amendment) Bill, 2012 received the President's assent on 3 January 2013 and came into effect from 15 February 2016.

Introduction

Money laundering is a generic term used to describe the process by which large amounts of illegally acquired money is given the appearance of having originated from a legitimate source. In other words, the ways to convert the black money or money obtained from serious crimes such as drug trafficking or terrorist activity into white money and obscure their origin and destination constitute money laundering. It is said that in practice almost all serious crimes, be it arms trafficking, bribery and corruption, are capable of predicated money laundering.

Money laundering has the potential to undermine and destabilise the financial and political establishment of countries and facilitate crime, corruption and black money. Developing countries often bear the brunt of money laundering as the

regulatory regime in the financial sectors of these countries is either weak or non-existent.

Money laundering is fostered through many criminal activities such as terrorism, drug trafficking, human trafficking, illegal arms sale, etc. It is a global menace. The techniques used by money launderers are numerous and very sophisticated. The perpetrators operate through cross border conduits and they take advantage of the technological advances in e-commerce, the global diversification of financial markets and new financial product developments to launder illegal profit and obscure the money trail.

Prevention of the Money Laundering Act, 2002

In view of the gravity and scope of the money laundering problem, a need was felt worldwide to take legal measures to prevent and detect money laundering. Accordingly, in India, the Prevention of Money-Laundering Bill, 1998 was introduced in the Lok Sabha on 4 August 1998. It was a focused legislation for preventing money laundering and connected activities, confiscation of proceeds of crime, setting up of agencies and mechanism for coordinating measures for combating money laundering etc. The Bill was referred to the Department-related Standing Committee on Finance, which presented its 12th Report on 4 March 1999 to the Lok Sabha. After incorporating the recommendations of the Standing Committee, the Government introduced the Prevention of Money-Laundering Bill, 1999 in the Lok Sabha on 29 October 1999. It was considered and passed in the Lok Sabha and the Rajya Sabha on 12 February 1999 and 25 July 2002, respectively. The Prevention of Money Laundering Bill, 2002 as passed by both Houses received the assent of the President on 17 January 2003 (**Annexure-I**). It finally came into force on 1 July 2005. The Prevention of Money-Laundering Act, 2002 (PMLA) forms the core of the legal framework to combat the growing menace of money laundering.

Amendments to the Prevention of the Money Laundering Act, 2002

The PMLA 2002 was amended thrice, first in 2005, then in 2009 and then in 2012.

In order to overcome some of the difficulties that were being faced in its enforcement and increase the coverage of the 2002 Act to include payment system **the Prevention of Money-Laundering (Amendment) Bill, 2005** was introduced in the Lok Sabha on 29 April 2005. It was considered and passed in the Lok Sabha and the Rajya Sabha on 6 May 2005 and 11 May 2005 respectively. It received the assent of the President on 21 May 2005 (**Annexure-II**).

To further strengthen India's anti Money Laundering/Countering Financing of Terrorism (AML/CFT) legal framework **the Prevention of Money-Laundering (Amendment) Bill, 2008** was introduced in the Rajya Sabha on 17 October 2008 and was referred to the Standing Committee on Finance on 31 October 2008 for examination and report thereon. The Committee presented its 80th Report on the same on 19 December 2008. Based on the recommendations of the Committee the Government moved some amendments to the Bill. The Bill as amended was passed by the Rajya Sabha on 19 February 2009 and the same was considered and passed by the Lok Sabha on 24 February 2009. The Bill received the assent of the President on 6 March 2009 (**Annexure-III**).

The Prevention of Money-Laundering (Amendment) Bill, 2011

The problem of money laundering has emerged as a serious global issue, adversely affecting national economies. It is not restricted to any particular country or a few countries but covers the whole globe. To address this problem, India became a member of the Financial Action Task Force (FATF)¹ and the Asia/Pacific Group on Money Laundering², which are committed to effective implementation and enforcement of internationally accepted standards. Consequent to the submission of an Action Plan to the FATF to bring anti-money laundering legislation of India at par with the international standards and to obviate any of the deficiencies in the Act, that have been experienced by the implementing agencies, the need to amend the Prevention of Money-Laundering Act, 2002 became imperative. Thus, **the Prevention of Money-Laundering (Amendment) Bill, 2011** was introduced in the Lok Sabha on 27 December 2011 (**Annexure-IV**). It was then referred to the Department-related Standing Committee on Finance on 5 January 2012 for examination and report. The Committee presented its 56th report on the Bill on 9 May 2012 (**Annexure-V**).

¹ The Financial Action Task Force (FATF) is an inter-governmental body established in 1989 by the Ministers of its Member jurisdictions. The objectives of the FATF are to set standards and promote effective implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing and other related threats to the integrity of the international financial system. The FATF is therefore a "policy-making body" which works to generate the necessary political will to bring about national legislative and regulatory reforms in these areas.

² The Asia/Pacific Group on Money Laundering (APG) is an autonomous and collaborative international organisation founded in 1997 in Bangkok, Thailand consisting of 41 members and a number of international and regional observers, who are committed to the effective implementation and enforcement of internationally accepted standards against money laundering and the financing of terrorism.

Key Recommendations of the 56th Report of the Standing Committee on Finance

1. The Committee expressed serious concern over multi-layering of transactions across countries. It recommended the Government to take concrete steps to mitigate the risks posed by such multi jurisdictional entities and their transactions. The enforcements mechanism was also required to be sensitised for this purpose.
2. The Bill provided that if a criminal court outside India under the corresponding law of any other country finds that the offence of money laundering has not taken place or the property in India is not involved in money laundering, the designated Special Court in India shall on an application moved by the concerned official, order release of such property. The Committee felt that this amounted to abridgement of powers of the local court in India. It, therefore, recommended that the provision be suitably redrafted so as to restore the power of the local court to decide matters on its merits, even when the person is acquitted by an overseas court.
3. Participatory Notes issued by Foreign Institutional Investors (FIIs) were being regulated by Securities and Exchange Board of India (SEBI) and issued to regulated entities only. However, other investments in the stock market including foreign currency flows by both individual and institutional investors were not being monitored by SEBI. The Committee recommended the SEBI to set up a coordination mechanism in this regard with RBI so that funds flow into the domestic stock/securities markets was properly monitored. It further recommended that all regulatory and intelligence agencies including the Reserve Bank of India (RBI), SEBI, Financial Intelligence Unit (FIU (IND)), the Enforcement Directorate, the Directorate of Revenue Intelligence and Investigation Wing of Income Tax Department should also set up a monitoring/coordination mechanism for this purpose.
4. Despite efforts by the Department of Revenue to check tax evasion, the Committee felt widespread tax avoidance and evasion leading to large scale generation of unaccounted money in the economy. Tax-GDP ratio had also been stagnating and incidence of under-reporting of production levels as well as under-invoicing of exports and over-invoicing of imports further led to generation of unaccounted money. Thus, the Committee recommended concerted planning and coordinated enforcement action on the part of all the enforcement agencies functioning under the Department to check this.

The Committee also suggested that there should be a status report on the existing framework, its efficacy and measures taken by the Department of Revenue in this regard.

5. The Committee recommended that the Department of Revenue should take into reckoning and incorporate incidence of trade based money laundering which was not considered as a money laundering offence so far. Further, the Department should also maintain a comprehensive data-base in this regard, which will enable them to tap trade-based offences.
6. The Bill provided that in any proceedings relating to proceeds of crime under PMLA, unless the contrary is proved, it shall be presumed that such proceeds of crime is involved in money laundering. By virtue of this provision, the burden of proof would not only be on the accused but on anyone who is in possession of the proceeds of crime. The Committee recommended that this clause should be subject to adequate safeguards to protect the innocent.
7. In the Bill, “beneficial owner” is an individual who ultimately owns or controls a reporting entity or the person on whose behalf the transaction is being conducted. The responsibility is on the reporting entity to ascertain beneficial ownership but not on the clients. The Committee recommended that clients may also declare beneficial ownership while undertaking a transaction.
8. The Committee recommended that the definition of ‘reporting entities’ may be widened so as to include categories such as travel agents, vehicle sellers/dealers etc. who deal in large value case transactions.
9. The Committee suggested that necessary changes be made in the Bill to exclude any obligation on the part of Banks to verify contents of the safe deposit lockers to satisfy themselves that they are not proceeds of crime. It recommended that an appropriate declaration from the customer may be secured in this regard by the banks.
10. The Committee suggested that instead of conducting a fresh audit under the anti-money laundering law, Banks should also be checked for compliance under this law in the course of the regular audit and inspection of their records by the Statutory Auditors and the RBI.
11. The Bill sought to empower the authorities to give directions/warning and impose fines on the directors and employees of the reporting entities. However, the Committee felt that the said clause did not make any distinction

between Directors who are in charge of and responsible to the company for the conduct of its business and other Directors (Independent Directors, Nominee Directors etc). It would, therefore, be desirable to limit the ambit to Directors and employees who are responsible and entrusted with the conduct of the day to day business of the reporting entity and who are entrusted with the task of complying with the provisions of PMLA.

12. Clause 9 of the Bill provided for maintenance of records for a period of 10 years from the date of the transaction between the client and the reporting entity. The Committee suggested that if the business relationship between the client and the entity has ended, then the records may be maintained for a period of five years. So, the Committee recommended that the said clause may be modified accordingly.
13. The Committee recommended that all agencies entrusted with key responsibilities under PMLA, especially the FIU-IND and the Enforcement Directorate should be adequately staffed with requisite skills to meet their operational requirements. They should also be provided professional training in line with international standards.
14. The Committee felt that the volume of financial data required under money laundering will be very large and hence unmanageable. It recommended that certain thresholds could be stipulated so that the focus is on larger cases and on categories prone to laundering. It also suggested that a comprehensive data-base would be useful to analyse the inter-relationship between transactions and entities and their trend over time.
15. The Committee felt that the investigations under this Act should not become open ended without any concrete outcomes. It, therefore, recommended that time lines should be prescribed for completing the investigative process.

Based on the recommendations made by the Standing Committee the Government moved amendments which were considered and adopted by the Lok Sabha. The Lok Sabha considered and passed the Bill on 29 November, 2012 (**Annexure-VI**). The motion for consideration of the Bill as passed by Lok Sabha (**Annexure-VII**) was moved in and passed by the Rajya Sabha on 17 December 2012 (**Annexure-VIII**). The Prevention of Money Laundering (Amendment) Bill, 2012 received President's assent on 3 January 2013 and the new law came into effect from 15 February 2016 (**Annexure-IX**).

Key features of the Act

The Prevention of Money-Laundering (Amendment) Act, 2012—

- amends the Prevention of Money-Laundering (Amendment) Act, 2002;
- introduces the concept of ‘corresponding law’ to link the provisions of Indian law with the laws of foreign countries and provides for transfer of the proceeds of the foreign predicate offence in any manner in India;
- introduces the concept of ‘reporting entity’ to include therein a banking company, financial institution, intermediary or a person carrying on a designated business or profession;
- enlarges the definition of offence of money-laundering to include therein the activities like concealment, acquisition, possession and use of proceeds of crime as criminal activities;
- imposes a fine upto Rs. 5 lakhs to anyone who committed a crime of money laundering. This Act removed this upper limit;
- makes provision for attachment and confiscation of the proceeds of crime, for a period not exceeding 180 days from the date of order;
- confers power upon the Director to call from any reporting entities for records of transactions or any additional information that may be required for the purposes of investigation and also to make inquiries of non-compliance by the reporting entities;
- provides that in any proceedings relating to proceeds of crime under the aforesaid Act, unless the contrary is proved, it shall be presumed that such proceeds of crime is involved in money-laundering; and
- provides for the process of transfer of the cases of Scheduled offences pending in a court, which had taken cognizance of the offence, to the Special Court for trial of offence of money-laundering and also provides that the Special Court shall, on receipt of such case proceed to deal with it from the stage at which it is committed.

**THE PREVENTION OF MONEY-
LAUNDERING ACT, 2002**



भारत का राजपत्र The Gazette of India

असाधारण

EXTRAORDINARY

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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

MINISTRY OF LAW AND JUSTICE

(Legislative Department)

New Delhi. the 20th January, 2003/Pausa, 30, 1924 (Saka)

The following Act of Parliament received the assent of the President on the 17th January, 2003, and is hereby published for general information:—

THE PREVENTION OF MONEY-LAUNDERING

ACT, 2002

No. 15 OF 2003

[17th January 2003.]

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:—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Prevention of Money-laundering Act, 2002. Short title, extent, and commencement.

(2) It extends to the whole of India.

(3) It shall come into force on such date 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. (1) In this Act, unless the context otherwise requires,— Definitions.

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

(b) “Appellate Tribunal” means the Appellate Tribunal established under 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;

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

(f) “Bench” means a Bench of the Appellate Tribunal;

(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.

(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.

(j) “Deputy Director” means a Deputy Director appointed under sub-section (1) of section 49;

(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;

(l) “financial institution” means a financial institution as defined in clause (c) of section 45-I

2 of 1934. of the Reserve Bank of India Act, 1934 and includes a chit fund company, a co-operative bank, a housing finance institution and a non-banking financial company;

(*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;

(*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;

(*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;

(*r*) “notification” means a notification published in the Official Gazette;

(*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;

(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;

(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;

(w) “records” include the records maintained in the form of books or stored in a computer or such other form as may be prescribed;

(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 involved in such offences is thirty lakh rupees or more:

(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.

CHAPTER II

OFFENCE OF MONEY-LAUNDERING

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

Offence of money-laundering.

4. Whoever commits the offence of money-laundering shall be punishable with rigorous imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine which may extend to five lakh rupees:

Punishment for money-laundering.

Provided that where the proceeds of crime involved in money-laundering relates to any offence specified under paragraph 2 of Part A of the Schedule, the provisions of this section shall have effect as if for the words “which may extend to seven years”, the words “which may extend to ten years” had been substituted.

CHAPTER III

ATTACHMENT, ADJUDICATION AND CONFISCATION

5. (1) Where the Director, or any other officer not below the rank of Deputy Director authorised by him

Attachment of property involved in

money-
laundering.

for the purposes of this section, has reason to believe (the reason for such belief to be recorded in writing), on the basis of material in his possession; that—

(a) any person is in possession of any proceeds of crime;

(b) such person has been charged of having committed a scheduled offence; and

(c) such proceeds of crime are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceedings relating to confiscation of such proceeds of crime under this Chapter,

he may, by order in writing, provisionally attach such property for a period not exceeding ninety days from the date of the order, in the manner provided in the Second Schedule to the Income-tax Act, 1961 and the Director or the other officer so authorised by him, as the case may be, shall be deemed to be an officer under sub-rule (e) of rule 1 of that Schedule: 43 of 1961.

Provided that no such order of attachment shall be made unless, in relation to an offence under—

(i) Paragraph 1 of Part A and Part B of the Schedule, a report has been forwarded to a Magistrate under section 173 of the Code of Criminal Procedure, 1973; or 2 of 1974.

(ii) Paragraph 2 of Part A of the Schedule, a police report or a complaint has been filed for taking cognizance of an offence by the Special Court constituted under sub-section (1) of section 36 of the Narcotic Drugs and Psychotropic Substances Act, 1985. 61 of 1985.

(2) The Director, or any other officer not below the rank of Deputy Director, shall, immediately after attachment under sub-section (1), forward a copy of

the order, along with the material in his possession, referred to in that sub-section, to the Adjudicating Authority, in a sealed envelope, in the manner as may be prescribed and such Adjudicating Authority shall keep such order and material for such period as may be prescribed,

(3) Every order of attachment made under sub-section (1) shall cease to have effect after the expiry of the period specified in that sub-section or on the date of an order made under sub-section (2) of section 8, whichever is earlier.

(4) Nothing in this section shall prevent the person interested in the enjoyment of the immovable property attached under sub-section (1) from such enjoyment.

Explanation.—For the purposes of this sub-section, “person interested”, in relation to any immovable property, includes all persons claiming or entitled to claim any interest in the property.

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

6. (1) The Central Government shall, by notification, appoint one or more Adjudicating Authorities to exercise jurisdiction, powers and authority conferred by or under this Act.

Adjudicating
Authorities,
composition,
powers. etc.

(2) An Adjudicating Authority shall consist of a Chairperson and two other Members:

Provided that one Member each shall be a person having experience in the field of law, administration, finance or accountancy.

(3) A person shall, however, not be qualified for appointment as Member of an Adjudicating Authority,—

(a) in the field of law, unless he—

(i) is qualified for appointment as District Judge; or

(ii) has been a member of the Indian Legal Service and has held a post in Grade I of that service:

(b) in the field of finance, accountancy or administration unless he possesses such qualifications, as may be prescribed.

(4) The Central Government shall appoint a Member to be the Chairperson of the Adjudicating Authority,

(5) Subject to the provisions of this Act,—

(a) the jurisdiction of the Adjudicating Authority may be exercised by Benches thereof;

(b) a Bench may be constituted by the Chairperson of the Adjudicating Authority with one or two Members as the Chairperson of the Adjudicating Authority may deem fit;

(c) the Benches of the Adjudicating Authority shall ordinarily sit at New Delhi and at such other places as the Central Government may, in consultation with the Chairperson, by notification, specify;

(d) the Central Government shall, by notification, specify the areas in relation to which each Bench of the Adjudicating Authority may exercise jurisdiction.

(6) Notwithstanding anything contained in subsection (5), the Chairperson may transfer a Member from one Bench to another Bench.

(7) If at any stage of the hearing of any case or matter it appears to the Chairperson or a Member that the case or matter is of such a nature that it ought to be

heard by a Bench consisting of two Members, the case or matter may be transferred by the Chairperson or, as the case may be, referred to him for transfer, to such Bench *as* the Chairperson may deem fit.

(8) The Chairperson and every Member shall hold office as such. for a term of five years from the date on which he enters upon his office:

Provided that no Chairperson or other Member shall hold office as such after he has attained the age of sixty-two years.

(9) The salary and allowances payable to and the other terms and conditions of service of the Member shall be such *as* may be prescribed:

Provided that neither the salary and allowances nor the other terms and conditions of service of the Member shall be varied to his disadvantage after appointment.

(10) If, for reasons other than temporary absence, any vacancy occurs in the office of the Chairperson or any other Member, then, the Central Government shall appoint another person in accordance with the provisions of this Act to fill the vacancy and the proceedings may be continued before the Adjudicating Authority from the stage at which the vacancy is filled.

(11) The Chairperson or any other Member may, by notice in writing under his hand addressed to the Central Government, resign his office:

Provided that the Chairperson or any other Member shall, unless he is permitted by the Central Government to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is the earliest.

(12) The Chairperson or any other Member shall

not be removed from his office except by an order made by the Central Government after giving necessary opportunity of hearing.

(13) In the event of the occurrence of any vacancy in the office of the Chairperson by reason of his death, resignation or otherwise, the senior-most Member shall act as the Chairperson of the Adjudicating Authority until the date on which a new Chairperson, appointed in accordance with the provisions of this Act to fill such vacancy, enters upon his office.

(14) When the Chairperson of the Adjudicating Authority is unable to discharge his functions owing to absence, illness or any other cause, the senior-most Member shall discharge the functions of the Chairperson of the Adjudicating Authority until the date on which the Chairperson of the Adjudicating Authority resumes his duties.

(15) The Adjudicating Authority shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice and, subject to the other provisions of this Act, the Adjudicating Authority shall have powers to regulate its own procedure. 5 of 1908.

Staff of
Adjudicating
Authorittes.

7. (1) The Central Government shall provide each Adjudicating Authority with such officers and employees as that Government may think fit.

(2) The officers and employees of the Adjudicating Authority shall discharge their functions under the general superintendence of the Chairperson of the Adjudicating Authority.

(3) The salaries and allowances and other conditions of service of the officers and employees of the Adjudicating Authority shall be such as may be prescribed.

Adjudication.

8. (1) On receipt of a complaint under sub-section (5) of section 5, or applications made under sub-section

(4) of section 17 or under sub-section (10) of section 18, if the Adjudicating Authority has reason to believe that any person has committed an offence under section 3, it may serve a notice of not less than thirty days on such person calling upon him to indicate the sources of his income, earning or assets, out of which or by means of which he has acquired the property attached under sub-section (1) of section 5, or, seized under section 17 or section 18, the evidence on which he relies and other relevant information and particulars, and to show cause why all or any of such properties should not be declared to be the properties involved in money-laundering and confiscated by the Central Government:

Provided that where a notice under this sub-section specifies any property as being held by a person on behalf of any other person, a copy of such notice shall also be served upon such other person:

Provided further that where such property is held jointly by more than one person, such notice shall be served to all persons holding such property.

(2) The Adjudicating Authority shall, after—

(a) considering the reply, if any, to the notice issued under sub-section (1);

(b) hearing the aggrieved person and the Director or any other officer authorised by him in this behalf; and

(c) taking into account all relevant materials placed on record before him,

by an order, record a finding whether all or any of the properties referred to in the notice issued under sub-section (1) are involved in money-laundering:

Provided that if the property is claimed by a person, other than a person to whom the notice had been

issued, such person shall also be given an opportunity of being heard to prove that the property is not involved in money-laundering.

(3) Where the Adjudicating Authority decides under sub-section (2) that any property is involved in money-laundering, he shall, by an order in writing, confirm the attachment of the property made under sub-section (1) of section 5 or retention of property or record seized under section 17 or section 18 and record a finding to that effect, such attachment or retention of the seized property or record shall—

(a) continue during the pendency of the proceedings relating to any scheduled offence before a court; and

(b) become final after the guilt of the person is proved in the trial court and order of such trial court becomes final.

(4) Where the provisional order of attachment made under sub-section (1) of section 5 has been confirmed under sub-section (3), the Director or any other officer authorised by him in this behalf shall forthwith take the possession of the attached property.

(5) Where on conclusion of a trial for any scheduled offence, the person concerned is acquitted the attachment of the property or retention of the seized property or record under sub-section (3) and net income, if any, shall cease to have effect.

(6) Where the attachment of any property or retention of the seized property or record becomes final under clause (b) of sub-section (3), the Adjudicating Authority shall, after giving an opportunity of being heard to the person concerned, make an order confiscating such property.

property shall vest absolutely in the Central Government free from all encumbrances:

Provided that where the Adjudicating Authority, after giving an opportunity of being heard to any other person interested in the property attached under this Chapter, or seized under Chapter V, is of the opinion that any encumbrance on the property or lease-hold interest has been created with a view to defeat the provisions of this Chapter, it may, by order, declare such encumbrance or lease-hold interest to be void and thereupon the aforesaid property shall vest in the Central Government free from such encumbrances or lease-hold interest:

Provided further that nothing in this section shall operate to discharge any person from any liability in respect of such encumbrances which may be enforced against such person by a suit for damages.

10. (1) The Central Government may, by order published in the Official Gazette, appoint as many of its officers (not below the rank of a Joint Secretary to the Government of India) as it thinks fit, to perform the functions of an Administrator.

Management of properties confiscated under this Chapter.

(2) The Administrator appointed under sub-section (1) shall receive and manage the property in relation to which an order has been made under sub-section (6) of section 8 in such manner and subject to such conditions as may be prescribed,

(3) The Administrator shall also take such measures, as the Central Government may direct, to dispose of the property which is vested in the Central Government under section 9.

11. (1) The Adjudicating Authority shall, for the purposes of this Act, have the same powers as are vested in a civil court under the Code of Civil

Power regarding summons, production of

documents
and evi-
dence, etc.

Procedure, 1908 while trying a suit in respect of the following matters, namely:—

(a) discovery and inspection;

(b) enforcing the attendance of any person, including any officer of a banking company or a financial institution or a company, and examining him on oath;

(c) compelling the production of records;

(d) receiving evidence on affidavits;

(e) issuing commissions for examination of witnesses and documents; and

(f) any other matter which may be prescribed.

(2) All the persons so summoned shall be bound to attend in person or through authorised agents, as the Adjudicating Authority may direct and shall be bound to state the truth upon any subject respecting which they are examined or make statements, and produce such documents as may be required.

(3) Every proceeding under this section shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the Indian Penal Code.

45 of 1860.

CHAPTER IV

OBLIGATIONS OF BANKING COMPANIES, FINANCIAL INSTITUTIONS AND INTERMEDIARIES

Banking
companies,
financial
institutions
and inter-
mediaries to
maintain re-
cords.

12. (1) Every banking company, financial institution and Intermediary shall—

(a) maintain a record of all transactions, the nature and value of which may be prescribed, whether such transactions comprise of a single transaction or a series of transactions integrally connected to each other, and where such series of transactions take place within a month;

(b) furnish information of transactions referred to in clause (a) to the Director within such time as may be prescribed;

(c) verify and maintain the records of the identity of all its clients, in such manner as may be prescribed:

Provided that where the principal officer of a banking company or financial institution or intermediary, as the case may be, has reason to believe that a single transaction or series of transactions integrally connected to each other have been valued below the prescribed value so as to defeat the provisions of this section, such officer shall furnish information in respect of such transactions to the Director within the prescribed time.

(2) The records referred to in sub-section (1) shall be maintained for a period of ten years from the date of cessation of the transactions between the clients and the banking company or financial institution or intermediary, as the case may be.

13. (1) The Director may, either of his own motion or on an application made by any authority, officer or person, call for records referred to in sub-section (1) of section 12 and may make such inquiry or cause such inquiry to be made, as he thinks fit.

Powers of Director to impose fine.

(2) If the Director, in the course of any inquiry, finds that a banking company, financial institution or an intermediary or any of its officers has failed to comply with the provisions contained in section 12, then, without prejudice to any other action that may be taken under any other provisions of this Act, he may, by an order, levy a fine on such banking company or financial institution or intermediary which shall not be less than ten thousand rupees but may extend to one lakh rupees for each failure.

(3) The Director shall forward a copy of the order

passed under sub-section (2) to every banking company, financial institution or intermediary or person who is a party to the proceedings under that sub-section.

No civil proceedings against banking companies, financial institutions, etc., in certain cases.

Procedure and manner of furnishing information by banking company, financial institution and intermediary.

14. Save as otherwise provided in section 13, the banking companies, financial institutions, intermediaries and their officers shall not be liable to any civil proceedings against them for furnishing information under clause (b) of sub-section (1) of section 12.

15. The Central Government may, in consultation with the Reserve Bank of India, prescribe the procedure and the manner of maintaining and furnishing information under sub-section (1) of section 12 for the purpose of implementing the provisions of this Act.

CHAPTER V

SUMMONS, SEARCHES AND SEIZURES, ETC.

Power of survey.

16. (1) Notwithstanding anything contained in any other provisions of this Act, where an authority, on the basis of material in his possession, has reason to believe (the reasons for such belief to be recorded in writing) that an offence under section 3 has been committed, he may enter any place—

(i) within the limits, of the area assigned to him; or

(ii) in respect of which he is authorised for the purposes of this section by such other authority, who is assigned the area within which such place is situated,

at which any act constituting the commission of such offence is carried on, and may require any proprietor, employee or any other person who may at that time and place be attending in any manner to, or helping in, such act so as to,—

(i) afford him the necessary facility to inspect such records as he may require and which may be available at such place;

(ii) afford him the necessary facility to check or verify the proceeds of crime or any transaction related to proceeds of crime which may be found therein; and

(iii) furnish such information as he may require as to any matter which may be useful for, or relevant to, any proceedings under this Act.

Explanation.—For the purposes of this sub-section, a place, where an act which constitutes the commission of the offence is carried on, shall also include any other place, whether any activity is carried on therein or not, in which the person carrying on such activity states that any of his records or any part of his property relating to such act are or is kept.

(2) The authority referred to in sub-section (1) shall, after entering any place referred to in that sub-section immediately after completion of survey, forward a copy of the reasons so recorded along with material in his possession, referred to in that sub-section, to the Adjudicating Authority in a sealed envelope, in the manner as may be prescribed and such Adjudicating Authority shall keep such reasons and material for such period as may be prescribed.

(3) An authority acting under this section may—

(i) place marks of identification on the records inspected by him and make or cause to be made extracts or copies therefrom,

(ii) make an inventory of any property checked or verified by him, and

(iii) record the statement of any person present in the place which maybe useful for or relevant to, any proceeding under this Act.

Search and seizure.

17. (1) Where the Director, on the basis of information in his possession, has reason to believe (the reason for such belief to be recorded in writing) that any person—

(i) has committed any act which constitutes money-laundering, or

(ii) is in possession of any proceeds of crime involved in money-laundering, or

(iii) is in possession of any records relating to money-laundering,

then, subject to the rules made in this behalf, he may authorise any officer subordinate to him to—

(a) enter and search any building, place, vessel, vehicle or aircraft where he has reason to suspect that such records or proceeds of crime are kept;

(b) break open the lock of any door, box, locker, safe, almirah or other receptacle for exercising the powers conferred by clause (a) where the keys thereof are not available;

(c) seize any record or property found as a result of such search;

(d) place marks of identification on such record or make or cause to be made extracts or copies therefrom;

(e) make a note or an inventory of such record or property;

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

Provided that no search shall be conducted unless, in relation to an offence under—

2 of 1974. (a) Paragraph 1 of Part A and Part B of the Schedule, a report has been forwarded to a Magistrate under section 173 of the Code of Criminal Procedure, 1973; or

61 of 1985. (b) Paragraph 2 of Part A of the Schedule, a police report or a complaint has been filed for taking cognizance of an offence by the Special Court constituted under sub-section (1) of section 36 of the Narcotic Drugs and Psychotropic Substances.

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

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

Provided that no authorisation referred to in sub-section (1) shall be required for search under this sub-section.

(4) The authority, seizing any record or property under this section, shall, within a period of thirty days from such seizure, file an application, requesting for retention of such record or property, before the Adjudicating Authority.

18. (1) If an authority, authorised in this behalf by the Central Government by general or special order, has reason to believe (the reason for such belief to be recorded in writing) that any person has secreted about

Search of persons.

his person or in anything under his possession, ownership or control, any record or proceeds of crime which may be useful for or relevant to any proceedings under this Act, he may search that person and seize such record or property which may be useful for or relevant to any proceedings under this Act.

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

(3) Where an authority is about to search any person, he shall, if such person so requires, take such person within twenty-four hours to the nearest Gazetted Officer, superior in rank to him, or a Magistrate:

Provided that the period of twenty- four hours shall exclude the time necessary for the journey undertaken to take such person to the nearest Gazetted Officer, superior in rank to him, or Magistrate's Court.

(4) If the requisition under sub-section (3) is made, the authority shall not detain the person for more than twenty-four hours prior to taking him before the Gazetted Officer, superior in rank to him, or the Magistrate referred to in that sub-section:

Provided that the period of twenty-four hours shall exclude the time necessary for the journey from the place of detention to the office of the Gazetted Officer superior in rank to him, or the Magistrate's Court.

(5) The Gazetted Officer or the Magistrate before whom any such person is brought shall, if he sees no reasonable ground for search, forthwith discharge such person but otherwise shall direct that search be made.

(6) Before making the search under sub-section (1) or sub-section (5), the authority shall call upon two or more persons to attend and witness the search, and the search shall be made in the presence of such persons.

(7) The authority shall prepare a list of record or property seized in the course of the search and obtain the signatures of the witnesses on the list.

(8) No female shall be searched by anyone except a female.

(9) The authority shall record the statement of the person searched under sub-section (1) or sub-section (5) in respect of the records or proceeds of crime found or seized in the course of the search:

Provided that no search of any person shall be made unless, in relation to an offence under—

(a) Paragraph 1 of Part A or Paragraph 1 or Paragraph 2 or Paragraph 3 or Paragraph 4 or Paragraph 5 of Part B of the Schedule, a report has been forwarded to a Magistrate under section 173 of the Code of Criminal Procedure, 1973; or

2 of 1974.

(b) Paragraph 2 of Part A of the Schedule, a police report or a complaint has been filed for taking cognizance of an offence by the Special Court constituted under sub-section (1) of section 36 of the Narcotic Drugs and Psychotropic Substances Act, 1985.

61 of 1985.

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

19. (1) If the Director, Deputy Director, Assistant Director or any other officer authorised in this behalf

Power to arrest.

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

(2) The Director, Deputy Director, Assistant Director or any other officer shall, immediately after arrest of such person under sub-section (1), forward a copy of the order along with the material in his possession, referred to in that sub-section, to the Adjudicating Authority in a sealed envelope, in the manner, as may be prescribed and such Adjudicating Authority shall keep such order and material for such period, as may be prescribed.

(3) Every person arrested under sub-section (1) shall, within twenty-four hours, be taken to a Judicial Magistrate or a Metropolitan Magistrate, as the case may be, having jurisdiction:

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

Retention of
Property.

20. (1) Where any property has been seized under section 17 or section 18, and the officer authorised by the Director in this behalf has, on the basis of material in his possession, reason to believe (the reason for such belief to be recorded by him in writing) that such property is required to be retained for the purposes of adjudication under section 8, such property may be retained for a period not exceeding three months from the end of the month in which such property was seized.

(2) The officer authorised by the Director immediately after he has passed an order for retention of the property for purposes of adjudication under section 8 shall forward a copy of the order along with

the material in his possession, referred to in sub-section (1), to the Adjudicating Authority, in a sealed envelope, in the manner as may be prescribed and such Adjudicating Authority shall keep such order and material for such period as may be prescribed.

(3) On the expiry of the period specified in sub-section (1), the property shall be returned to the person from whom such property was seized unless the Adjudicating Authority permits retention of such property beyond the said period.

(4) The Adjudicating Authority, before authorising the retention of such property beyond the period specified in sub-section (1), shall satisfy himself that the property is *prima facie* involved in money-laundering and the property is required for the purposes of adjudication under section 8.

(5) After passing the order of confiscation under sub-section (6) of section 8, the Adjudicating Authority shall direct the release of all properties other than the properties involved in money-laundering to the person from whom such properties were seized.

(6) Notwithstanding anything contained in sub-section (5), the Director or any officer authorised by him in this behalf may withhold the release of any property until filing of appeal under section 26 or forty-five days from the date of order under sub-section (5), whichever is earlier, if he is of the opinion that such property is relevant for the proceedings before the Appellate Tribunal.

21. (1) Where any records have been seized, under section 17, or section 18, and the Investigating Officer or any other officer authorised by the Director in this behalf has reason to believe that any of such records are required to be retained for any inquiry under this Act, he may retain such records for a period not

Retention of records.

exceeding three months from the end of the month in which such records were seized.

(2) The person, from whom records were seized, shall be entitled to obtain copies of records retained under sub-section (1).

(3) On the expiry of the period specified under sub-section (1), the records shall be returned to the person from whom such records were seized unless the Adjudicating Authority permits retention of such records beyond the said period.

(4) The Adjudicating Authority, before authorising the retention of such records beyond the period mentioned in sub-section (1), shall satisfy himself that the records are required for the purposes of adjudication under section 8.

(5) After passing of an order of confiscation under sub-section (6) of section 8, the Adjudicating Authority shall direct the release of the records to the person from whom such records were seized.

(6) Notwithstanding anything contained in sub-section (5), the Director or any officer authorised by him in this behalf may withhold the release of any records until filing of appeal under section 26 or after forty-five days from the date of order under sub-section (5), whichever is earlier, if he is of the opinion that such records are relevant for the proceedings before the Appellate Tribunal.

Presumption as to records or property in certain cases.

22. (1) Where any records or property are or is found in the possession or control of any person in the course of a survey or a search, it shall be presumed that—

(i) such records or property belong or belongs to such person;

(ii) the contents of such records are true; and

(iii) the signature and every other part of such records which purport to be in the handwriting of any particular person or which may reasonably be assumed to have been signed by, or to be in the handwriting of, any particular person, are in that person's handwriting, and in the case of a record, stamped, executed or attested, that it was executed or attested by the person by whom it purports to have been so stamped, executed or attested.

(2) Where any records have been received from any place outside India, duly authenticated by such authority or person and in such manner as may be prescribed, in the course of proceedings under this Act, the Special Court, the Appellate Tribunal or the Adjudicating Authority as the case may be, shall—

(a) presume, that the signature and every other part of such record which purports to be in the handwriting of any particular person or which the court may reasonably assume to have been signed by, or to be in the handwriting of, any particular person, is in that person's handwriting; and in the case of a record executed or attested, that it was executed or attested by the person by whom it purports to have been so executed or attested;

(b) admit the document in evidence, notwithstanding that it is not duly stamped, if such document is otherwise admissible in evidence.

23. Where money-laundering involves two or more inter-connected transactions and one or more such transactions is or are proved to be involved in money-laundering, then for the purposes of adjudication or confiscation under section 8, it shall, unless otherwise proved to the satisfaction of the Adjudicating Authority, be presumed that the remaining transactions form part of such inter-connected transactions.

Presumption in inter-connected transactions.

Burden of Proof.

24. When a person is accused of having committed the offence under section 3, the burden of proving that proceeds of crime are untainted property shall be on the accused.

CHAPTER VI

APPELLATE TRIBUNAL

Establishment of Appellate Tribunal.

25. The Central Government shall, by notification, establish an Appellate Tribunal to hear appeals against the orders of the Adjudicating Authority and the authorities under this Act.

Appeal to Appellate Tribunal.

26. (1) Save as otherwise provided in sub-section (3), the Director or any Person aggrieved by an order made by the Adjudicating Authority under this Act, may prefer an appeal to the Appellate Tribunal.

(2) Any banking company, financial institution or intermediary aggrieved by any order of the Director made under sub-section (2) of section 13, may prefer an appeal to the Appellate Tribunal.

(3) Every appeal preferred under sub-section (1) or sub-section (2) shall be filed within a period of forty-five days from the date on which a copy of the order made by the Adjudicating Authority or Director is received and it shall be in such form and be accompanied by such fee as may be prescribed:

Provided that the Appellate Tribunal may, after giving an opportunity of being heard, entertain an appeal after the expiry of the said period of forty-five days if it is satisfied that there was sufficient cause for not filing it within that period.

(4) On receipt of an appeal under sub-section (1) or sub-section (2), the Appellate Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.

(5) The Appellate Tribunal shall send a copy of every order made by it to the parties to the appeal and to the concerned Adjudicating Authority or the Director, as the case may be.

(6) The appeal filed before the Appellate Tribunal under sub-section (1) or sub-section (2) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal finally within six months from the date of filing of the appeal.

27. (1) The Appellate Tribunal shall consist of a Chairperson and two other Members.

Composition,
etc., of
Appellate
Tribunal.

(2) Subject to the provisions of this Act,—

(a) the jurisdiction of the Appellate Tribunal may be exercised by Benches thereof;

(b) a Bench may be constituted by the Chairperson with one or two Members as the Chairperson may deem fit;

(c) the Benches of the Appellate Tribunal shall ordinarily sit at New Delhi and at such other places as the Central Government may, in consultation with the Chairperson, by notification, specify;

(d) the Central Government shall, by notification, specify the areas in relation to which each Bench of the Appellate Tribunal may exercise jurisdiction.

(3) Notwithstanding anything contained in sub-section (2), the Chairperson may transfer a Member from one Bench to another Bench.

(4) If at any stage of the hearing of any case or matter it appears to the Chairperson or a Member that the case or matter is of such a nature that it ought to be heard by a Bench consisting of two Members, the case or matter may be transferred by the Chairperson or, as

the case may be, referred to him for transfer, to such Bench as the Chairperson may deem fit.

Qualifications
for appoint-
ment.

28. (1) A person shall not be qualified for appointment as Chairperson unless he is or has been a Judge of the Supreme Court or of a High Court.

(2) A person shall not be qualified for appointment as a Member unless he—

(a) is or has been a Judge of a High Court; or

(b) has been a member of the Indian Legal Service and has held a post in Grade I of that Service for at least three years; or

(c) has been a member of the Indian Revenue Service and has held the post of Commissioner of Income-tax or equivalent post in that Service for at least three years;

(d) has been a member of the Indian Economic Service and has held the post of Joint Secretary or equivalent post in that Service for at least three years; or

(e) has been a member of the Indian Customs and Central Excise Service and has held the post of a Joint Secretary or equivalent post in that Service for at least three years; or

(f) has been in the practice of accountancy as a chartered accountant under the Chartered Accountants Act, 1949 or as a registered accountant under any law for the time being in force or partly as a registered accountant and partly as a chartered accountant for at least ten years:

38 of 1949.

Provided that one of the members of the Appellate Tribunal shall be from category mentioned in clause (f); or

(g) has been a member of the Indian Audit and Accounts Service and has held the post of Joint

Secretary or equivalent post in that Service for at least three years.

(3) No sitting Judge of the Supreme Court or of a High Court shall be appointed under this section except after consultation with the Chief Justice of India.

29. The Chairperson and every other Member shall hold office as such for a term of five years from the date on which he enters upon his office:

Term of office

Provided that no Chairperson or other Member shall hold office as such after he has attained,—

(a) in the case of the Chairperson, the age of sixty-eight years;

(b) in the case of any other Member, the age of sixty-five years.

30. The salary and allowances payable to and the other terms and conditions of service of the Chairperson and other Members shall be such as may be prescribed:

Conditions of service.

Provided that neither the salary and allowances nor the other terms and conditions of service of the Chairperson or any other Member shall be varied to his disadvantage after appointment.

31. If, for reason other than temporary absence, any vacancy occurs in the office of the Chairperson or any other Member, then the Central Government shall appoint another person in accordance with the provisions of this Act to fill the vacancy and the proceedings may be continued before the Appellate Tribunal from the stage at which the vacancy is filled.

Vacancies.

32. (1) The Chairperson or any other Member may, by notice in writing under his hand addressed to the Central Government, resign his office:

Resignation and removal.

Provided that the Chairperson or any other Member shall, unless he is permitted by the Central Government

to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office. whichever is the earliest.

(2) The Chairperson or any other Member shall not be removed from his office except by an order made by the Central Government on the ground of proved misbehaviour or incapacity, after an inquiry made by a person appointed by the President in which such Chairperson or any other Member concerned had been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

Member to act as Chairperson in certain circumstances.

33. (1) In the event of the occurrence of any vacancy in the office of the Chairperson by reason of his death, resignation or otherwise, the senior-most Member shall act as the Chairperson until the date on which a new Chairperson, appointed in accordance with the provisions of this Act to fill such vacancy, enters upon his office.

(2) When the Chairperson is unable to discharge his functions owing to absence, illness or any other cause, the senior-most Member shall discharge the functions of the Chairperson until the date on which the Chairperson resumes his duties.

Staff of Appellate Tribunal.

34. (1) The Central Government shall provide the Appellate Tribunal with such officers and employees as that Government may think fit.

(2) The officers and employees of the Appellate Tribunal shall discharge their functions under the general superintendence of the Chairperson.

(3) The salaries and allowances and other conditions of service of the officers and employees of the Appellate Tribunal shall be such as may be prescribed.

- 5 of 1908. **35.** (1) The Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice and, subject to the other provisions of this Act, the Appellate Tribunal shall have powers to regulate its own procedure. Procedure and powers of Appellate Tribunal.
- 5 of 1908. (2) The Appellate Tribunal shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit, in respect of the following matters, namely:—
- 1 of 1872. (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of documents;
- (c) receiving evidence on affidavits;
- (d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872, requisitioning any public record or document or copy of such record or document from any office;
- (e) issuing commissions for the examination or witnesses or documents;
- (f) reviewing its decisions;
- (g) dismissing a representation for default or deciding it *ex parte*;
- (h) setting aside any order of dismissal of any representation for default or any order passed by it *ex parte*; and
- (i) any other matter, which may be, prescribed by the Central Government.
- (3) An order made by the Appellate Tribunal under this Act shall be executable by the Appellate Tribunal as a decree of civil court and, for this purpose, the

Appellate Tribunal shall have all the powers of a civil court,

(4) Notwithstanding anything contained in sub-section (3), the Appellate Tribunal may transmit any order made by it to a civil court having local jurisdiction and such civil court shall execute the order as if it were a decree made by that court.

(5) All proceedings before the Appellate Tribunal shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal Code and the Appellate Tribunal shall be deemed to be a civil court for the purposes of sections 345 and 346 of the Code of Criminal Procedure, 1973. 45 of 1860.
2 of 1974.

Distribution of business amongst Benches.

36. Where any Benches are constituted, the Chairperson may, from time to time, by notification, make provisions as to the distribution of the business of the Appellate Tribunal amongst the Benches and also provide for the matters which may be dealt with by each Bench.

Power of Chairperson to transfer cases.

37. On the application of any of the parties and after notice to the parties, and after hearing such of them as he may desire to be heard, or on his own motion without such notice, the Chairperson may transfer any case pending before one Bench, for disposal, to any other Bench.

Decision to be by majority.

38. If the Members of a Bench consisting of two Members differ in opinion on any point, they shall state the point or points on which they differ, and make a reference to the Chairperson who shall either hear the point or points himself or refer the case for hearing on such point or points by one or more of the other Members of the Appellate Tribunal and such point or points shall be decided according to the opinion of the majority of the Members of the Appellate Tribunal who have heard the case, including those who first heard it.

39. (1) A person preferring an appeal to the Appellate Tribunal under this Act may either appear in person or take the assistance of an authorised representative of his choice to present his case before the Appellate Tribunal.

Right of appellant to take assistance of authorised representative and of Government to appoint presenting officers.

Explanation.—For the purposes of this sub-section, the, expression “authorised representative” shall have the same meaning as assigned to it under sub-section (2) of section 288 of the Income-tax Act, 1961.

43 of 1961.

(2) the Central Government or the Director may authorise one or more authorised representatives or any of its officers to act as presenting officers and every person so authorised may present the case with respect to any appeal before the Appellate Tribunal.

40. The Chairperson, Members and other officers and employees of the Appellate Tribunal, the Adjudicating Authority, Director and the officers subordinate to him shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

Members, etc., to be public servants.

45 of 1860.

41. No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Director, an Adjudicating Authority or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

Civil court not to have jurisdiction.

42. Any person aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the High Court within sixty days from the date of communication of the decision or order of the Appellate Tribunal to him on any question of law or fact arising out of such order:

Appeal to High Court.

Provided that the High Court may, if it is satisfied that the appellant was prevented by sufficient cause

from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days.

Explanation.— For the purposes of this section, “High Court” means—

(i) the High Court within the jurisdiction of which the aggrieved party ordinarily resides or carries on business or personally works for gain; and

(ii) where the Central Government is the aggrieved party, the High Court within the jurisdiction of which the respondent, or in a case where there are more than one respondent, any of the respondents, ordinarily resides or carries on business or personally works for gain.

CHAPTER VII

SPECIAL COURTS

Special Courts. **43.** (1) The Central Government, in consultation with the Chief Justice of the High Court, shall, for trial of offence punishable under section 4, by notification, designate one or more Courts of Session as Special Court or Special Courts for such area or areas or for such case or class or group of cases as may be specified in the notification.

Explanation.— In this sub-section, “High Court” means the High Court of the State in which a Sessions Court designated as Special Court was functioning immediately before such designation,

(2) While trying an offence under this Act, a Special Court shall also try an offence, other than an offence referred to in sub-section (1), with which the accused may, under the Code of Criminal Procedure, 1973, be charged at the same trial. 2 of 1974.

Offences
triable by
Special
Courts.

44. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973,— 2 of 1974.

(a) the scheduled offence and the offence punishable under section 4 shall be triable only by the Special Court constituted for the area in which the offence has been committed:

Provided that the Special Court, trying a scheduled offence before the commencement of this Act, shall continue to try such scheduled offence; or

(b) a Special Court may, upon perusal of police report of the facts which constitute an offence under this Act or upon a complaint made by an authority authorised in this behalf under this Act take cognizance of the offence for which the accused is committed to it for trial.

2 of 1974. (2) Nothing contained in this section shall be deemed to affect the special powers of the High Court regarding bail under section 439 of the Code of Criminal Procedure, 1973 and the High Court may exercise such powers including the power under clause (b) of subsection (1) of that section as if the reference to “Magistrate” in that section includes also a reference to a “Special Court” designated under section 43.

2 of 1974. **45.** (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973,—

Offences to be cognizable and non-bailable.

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for a term of imprisonment of more than three years under Part A of the Schedule shall be released on bail or on his own bond unless—

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release; and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are

reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail:

Provided that a person, who is under the age of sixteen years, or is a woman or is sick or infirm, may be released on bail, if the Special Court so directs:

Provided further that the Special Court shall not take cognizance of any offence punishable under section 4 except upon a complaint in writing made by—

(i) the Director; or

(ii) any officer of the Central Government or a State Government authorised in writing in this behalf by the Central Government by a general or special order made in this behalf by that Government.

(2) The limitation on granting of bail specified in clause (b) of sub-section (1) is in addition to the limitations under the Code of Criminal Procedure, 1973 or any other law for the time being in force on granting of bail. 2 of 1974.

Application of Code of Criminal Procedure, 1973 to proceedings before Special Court.

46. (1) Save as otherwise provided in this Act, the provisions of the Code of Criminal Procedure, 1973 (including the provisions as to bails or bonds), shall apply to the proceedings before a Special Court and for the purposes of the said provisions, the Special Court shall be deemed to be a Court of Session and the persons conducting the prosecution before the Special Court, shall be deemed to be a Public Prosecutor. 2 of 1974.

Provided that the Central Government may also appoint for any case or class or group of cases a Special Public Prosecutor.

(2) A person shall, not be qualified to be appointed as a Public Prosecutor or a Special Public Prosecutor under this section unless he has been in practice as an advocate for not less than seven years, under the Union or a State, requiring special knowledge of law.

2 of 1974. (3) Every person appointed as a Public Prosecutor or a Special Public Prosecutor under this section shall be deemed to be a Public Prosecutor within the meaning of clause (u) of section 2 of the Code of Criminal Procedure, 1973 and the provisions of that Code shall have effect accordingly.

2 of 1974. **47.** The High Court may exercise, so far as may be applicable, all the powers conferred by Chapter XXIX or Chapter XXX of the Code of Criminal Procedure, 1973, on a High Court, as if a Special Court within the local limits of the jurisdiction of the High Court were a Court of Session trying cases within the local limits of the jurisdiction of the High Court. Appeal and revision.

Chapter VIII

AUTHORITIES

48. There shall be the following classes of authorities for the purposes of this Act, namely:— Authorities under Act.

(a) Director or Additional Director or Joint Director,

(b) Deputy Director,

(c) Assistant Director and

(d) such other class of officer as may be appointed for the purposes of this Act.

49. (1) The Central Government may appoint such persons as it thinks fit to be authorities for the purposes of the Act. Appointment and power of authorities and other officers.

(2) Without prejudice to the provisions of sub-section (1), the Central Government may authorise the Director or an Additional Director or a Joint Director or a Deputy Director or an Assistant Director appointed under that sub-section to appoint other authorities below the rank of an Assistant Director.

(3) Subject to such conditions and limitation as the

Central Government may impose, as authority may exercise the power and discharge the duties conferred or imposed on it under this Act.

Powers of authorities regarding summons, production of documents and to give evidence, etc.

50. (1) The Director shall, for the purposes of section 13, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit in respect of the following matters, namely:—

5 of 1908.

(a) discovery and inspection;

(b) enforcing the attendance of any person, including any officer of a banking company of a financial institution or a company, and examining him on oath;

(c) compelling the production of records;

(d) receiving evidence on affidavits;

(e) issuing commissions for examination of witnesses and documents; and

(f) any other matter which may be prescribed.

(2) The Director, Additional Director, Joint Director, Deputy Director or Assistant Director shall have power to summon any person whose attendance he considers necessary whether to give evidence or to produce any records during the course of any investigation or proceeding under this Act.

(3) All the persons so summoned shall be bound to attend in person or through authorised agents, as such officer may direct, and shall be bound to state the truth upon any subject respecting which they are examined or make statements, and produce such documents as may be required.

(4) Every proceeding under sub-sections (2) and (3) shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the Indian Penal Code.

45 of 1860.

(5) Subject to any rules made in this behalf by the Central Government, any officer referred to in sub-section (2) may impound and retain in his custody for such period, as he thinks fit, any records produced before him in any proceedings under this Act:

Provided that an Assistant Director or a Deputy Director shall not—

(a) impound any records without recording his reasons for so doing; or

(b) retain in his custody any such records for a period exceeding three months, without obtaining the previous approval of the Director.

51. (1) The authorities shall exercise all or any of the powers and perform all or any of the functions conferred on, or, assigned, as the case may be, to such authorities by or under this Act or the rules framed thereunder in accordance with such directions as the Central Government may issue for the exercise of powers and performance of the functions by all or any of the authorities.

Jurisdiction
of authori-
ties.

(2) In issuing the directions or orders referred to in sub-section (1), the Central Government may have regard to any one or more of the following criteria, namely:—

(a) territorial area;

(b) classes of persons;

(c) classes of cases; and

(d) any other criterion specified by the Central Government in this behalf.

52. The Central Government may, from time to time, issue such orders, instructions and directions to the authorities as it may deem fit for the proper administration of this Act and such authorities and all

Power of
Central
Government
to issue dire-
ctions etc.

other persons employed in execution of this Act shall observe and follow such orders, instructions and directions of the Central Government:

Provided that no such orders, instructions or directions shall be issued so as to—

(a) require any authority to decide a particular case in a particular manner; or

(b) interfere with the discretion of the Adjudicating Authority in exercise of his functions.

Empowerment of certain officers.

53. The Central Government may, by a special or general order, empower an officer not below the rank of Director of the Central Government or of a State Government to act as an authority under this Act:

Provided that the Central Government may empower an officer below the rank of Director if the officer of the rank of the Director or above are not available in a particular area.

Certain officers to assist in inquiry, etc.

54. The following officers are hereby empowered and required to assist the authorities in the enforcement of this Act, namely:—

(a) officers of the Customs and Central Excise Departments;

(b) officers appointed under sub-section (1) of section 5 of the Narcotic Drugs and Psychotropic Substances Act, 1985; 61 of 1985.

(c) income-tax authorities under sub-section (1) of section 117 of the Income-tax Act, 1961; 43 of 1961.

(d) officers of the stock exchange recognised under section 4 of the Securities Contracts (Regulation) Act, 1956; 42 of 1956.

(e) officers of the Reserve Bank of India constituted under sub-section (1) of section 3 of the Reserve Bank of India Act, 1934; 2 of 1934.

- (f) officers of Police;
- 40 of 1999. (g) officers of enforcement appointed under sub-section (1) of section 36 of the Foreign Exchange Management Act, 1999;
- 15 of 1992. (h) officers of the Securities and Exchange Board of India established under section 3 of the Securities and Exchange Board of India Act, 1992;
- (i) officers of any other body corporate constituted or established under a Central Act or a State Act;
- (j) such other officers of the Central Government, State Government, local authorities or banking companies as the Central Government may, by notification, specify, in this behalf.

CHAPTER IX

RECIPROCAL ARRANGEMENT FOR ASSISTANCE IN CERTAIN MATTERS AND PROCEEDURE FOR ATTACHMENT AND CONFISCATION OF PROPERTY

55. In this Chapter, unless the context otherwise requires,— Definitions.

(a) “contracting State” means any country or place outside India in respect of which arrangements have been made by the Central Government with the Government of such country through a treaty or otherwise;

(b) “identifying” includes establishment of a proof that the property was derived from, or used in the commission of an offence under section 3;

(c) “tracing” means determining nature, source, disposition, movement, title or ownership of property.

56. (1) The Central Government may enter into an Agreements

with foreign countries. agreement with the Government of any country outside India for—

(a) enforcing the provisions of this Act;

(b) exchange of Information for the prevention of any offence under this Act or under the corresponding law in force in that country or investigation of cases relating to any offence under this Act,

and may, by notification in the Official Gazette, make such provisions as may be necessary for implementing the agreement.

(2) The Central Government may, by notification in the Official Gazette, direct that the application of this Chapter in relation to a contracting State with which reciprocal arrangements have been made, shall be subject to such conditions, exceptions or qualifications as are specified in the said notification.

Letter of request to a contracting State in certain cases.

57. (1) Notwithstanding anything contained in this Act or the Code of Criminal Procedure, 1973 if, in the course of an investigation into an offence or other proceedings under this Act, an application is made to a Special Court by the Investigating Officer or any officer superior in rank to the Investigating Officer that any evidence is required in connection with investigation into an offence or proceedings under this Act and he is of the opinion that such evidence may be available in any place in a contracting State, and the Special Court, on being satisfied that such evidence is required in connection with the investigation into an offence or proceedings under this Act, may issue a letter of request to a court or an authority in the contracting State competent to deal with such request to—

(i) examine facts and circumstances of the case,

(ii) take such steps as the Special Court may specify in such letter of request, and

(iii) forward all the evidence so taken or collected to the Special Court issuing such letter of request.

(2) The letter of request shall be transmitted in such manner as the Central Government may specify in this behalf.

(3) Every statement recorded or document or thing received under sub-section (1) shall be deemed to be the evidence collected during the course of investigation.

58. Where a letter of request is received by the Central Government from a court or authority in a contracting State requesting for investigation into an offence or proceedings under this Act and forwarding to such court or authority any evidence connected therewith, the Central Government may forward such letter of request to the Special Court or to any authority under the Act as it thinks fit for execution of such request in accordance with the provisions of this Act or, as the case may be, any other law for the time being in force.

Assistance to a contracting State in certain cases.

59. (1) Where a Special Court, in relation to an offence punishable under section 4, desires that—

Reciprocal arrangements for processes and assistance for transfer of accused persons.

(a) a summons to an accused person, or

(b) a warrant for the arrest of an accused person, or

(c) a summons to any person requiring him to attend and produce a document or other thing or to produce it, or

(d) a search warrant,

issued by it shall be served or executed at any place in any contracting State, it shall send such summons or warrant in duplicate in such form, to such Court, Judge or Magistrate through such authorities, as the Central Government may, by notification, specify in this behalf

and that Court, Judge or Magistrate, as the case may be, shall cause the same to be executed.

(2) Where a Special Court, in relation to an offence punishable under section 4 has received for service or execution—

(a) a summons to an accused person, or

(b) a warrant for the arrest of an accused person, or

(c) a summons to any person requiring him to attend and produce a document or other thing, or to produce it, or

(d) a search warrant,

issued by a Court, Judge or Magistrate in a contracting State, it shall, cause the same to be served or executed as if it were a summons or warrant received by it from another Court in the said territories for service or execution within its local jurisdiction; and where—

(i) a warrant of arrest has been executed, the person arrested shall be dealt with in accordance with the procedure specified under section 19;

(ii) a search warrant has been executed, the things found in this search shall, so far as possible, be dealt with in accordance with the procedure specified under sections 17 and 18:

Provided that in a case where a summon or search warrant received from a contracting State has been executed, the documents or other things produced or things found in the search shall be forwarded to the Court issuing the summons or search-warrant through such authority as the Central Government may, by notification, specify in this behalf.

(3) Where a person transferred to a contracting State pursuant to sub-section (2) is a prisoner in India,

the Special Court or the Central Government may impose such conditions as that Court or Government deems fit.

(4) Where the person transferred to India pursuant to sub-section (1) is a prisoner in a contracting State, the Special Court in India shall ensure that the conditions subject to which the prisoner is transferred to India are complied with and such prisoner shall be kept in such custody subject to such conditions as the Central Government may direct in writing.

60. (1) Where the Director has made an order for attachment of any property under section 5 or where an Adjudicating Authority has made an order confirming such attachment or confiscation of any property under section 8, and such property is suspected to be in a contracting State, the Special Court, on an application by the Director or the Administrator appointed under sub-section (1) of section 10, as the case may be, may issue a letter of request to a court or an authority in the contracting State for execution of such order.

Attachment, seizure and confiscation, etc., of property in a contracting State or India.

(2) Where a letter of request is received by the Central Government from a court or an authority in a contracting State requesting attachment or confiscation of the property in India, derived or obtained, directly or indirectly, by any person from the commission of an offence under section 3 committed in that contracting State, the Central Government may forward such letter of request to the Director, as it thinks fit, for execution in accordance with the provisions of this Act.

(3) The Director shall, on receipt of a letter of request under section 58 or section 59, direct any authority under this Act to take all steps necessary for tracing and identifying such property.

(4) The steps referred to in sub-section (3) may include any inquiry, investigation or survey in respect

of any person, place, property, assets, documents, books of account in any bank or public financial institutions or any other relevant matters.

(5) Any inquiry, investigation or survey referred to in sub-section (4) shall be carried out by an authority mentioned in sub-section (3) in accordance with such directions issued in accordance with the provisions of this Act.

(6) The provisions of this Act relating to attachment, adjudication, confiscation and vesting of property in the Central Government contained in Chapter III and survey, searches and seizures contained in Chapter V shall apply to the property in respect of which letter of request is received from a court or contracting State for attachment or confiscation of property.

Procedure in respect of letter of request.

61. Every letter of request, summons or warrant, received by the Central Government from, and every letter of request, summons or warrant, to be transmitted to a contracting State under this Chapter shall be transmitted to a contracting State or, as the case may be, sent to the concerned Court in India and in such form and in such manner as the Central Government may, by notification, specify in this behalf.

CHAPTER X

MISCELLANEOUS

Punishment for vexatious search.

62. Any authority or officer exercising power under this Act or any rules made thereunder, who, without reasons recorded in writing,—

(a) searches or causes to be searched any building or place; or

(b) detains or searches or arrests any person,

shall for every such offence be liable on conviction for imprisonment for a term which may extend to two years or fine which may extend to fifty thousand rupees or both.

63. (1) Any person wilfully and maliciously giving false information and so causing an arrest or a search to be made under this Act shall on conviction be liable for imprisonment for a term which may extend to two years or with fine which may extend to fifty thousand rupees or both.

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

(2) If any person,—

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

(b) refuses to sign any statement made by him in the course of any proceedings under this Act, which an authority may legally require to sign; or

(c) to whom a summon is issued under section 50 either to attend to give evidence or produce books of account or other documents at a certain place and time, omits to attend or produce books of account or documents at the place or time,

he shall pay, by way of penalty, a sum which shall not be less than five hundred rupees but which may extend to ten thousand rupees for each such default or failure.

(3) No order under this section shall be passed by an authority referred to in sub-section (2) unless the person on whom the penalty is proposed to be imposed is given an opportunity of being heard in the matter by such authority.

64. (1) No court shall take cognizance of any offence under section 62 or sub-section (1) of section 63 except with the previous sanction of the Central Government.

Cognizance of offences.

(2) The Central Government shall, by an order, either give sanction or refuse to give sanction within ninety days of the receipt of the request in this behalf.

- Code of Criminal Procedure, 1973 to apply. **65.** The provisions of the Code of Criminal Procedure, 1973, shall apply, in so far as they are not inconsistent with the provisions of this Act, to arrest, search and seizure, attachment, confiscation, investigation, prosecution and all other proceedings under this Act. 2 of 1974.
- Disclosure of information. **66.** The Director or any other authority specified by him by a general or special order in this behalf may furnish or cause to be furnished to—
- (i) any officer, authority or body performing any functions under any law relating to imposition of any tax, duty or cess or to dealings in foreign exchange, or prevention of illicit traffic in the narcotic drugs and psychotropic substances under the Narcotic Drugs and Psychotropic Substances Act, 1985; or 61 of 1985.
- (ii) such other officer, authority or body performing functions under any other law as the Central Government may, if in its opinion it is necessary so to do in the public interest, specify, by notification in the Official Gazette, in this behalf, any information received or obtained by such Director or any other authority, specified by him in the performance of their functions under this Act, as may, in the opinion of the Director or the other authority, so specified by him, be necessary for the purpose of the officer, authority or body specified in clause (i) or clause (ii) to perform his or its functions under that law.
- Bar of suits in civil courts. **67.** No suit shall be brought in any civil court to set aside or modify any proceeding taken or order made under this Act and no prosecution, suit or other proceeding shall lie against the Government or any officer of the Government for anything done or intended to be done in good faith under this Act.
- Notice, etc., not to be **68.** No notice, summons, order, document or other proceeding, furnished or made or issued or taken or

invalid on certain grounds.

purported to have been furnished or made or issued or taken in pursuance of any of the provisions of this Act shall be invalid, or shall be deemed to be invalid merely by reason of any mistake, defect or omission in such notice, summons, order, document or other proceeding if such notice, summons, order, document or other proceeding is in substance and effect in conformity with or according to the intent and purpose of this Act.

43 of 1961.

69. Where any fine imposed on any person under section 13 or section 63 is not paid within six months from the day of imposition of fine, the Director or any other officer authorised by him in this behalf may proceed to recover the amount from the said person in the same manner as prescribed in Schedule II of the Income-tax Act, 1961 for the recovery of arrears and he or any officer authorised by him in this behalf shall have all the powers of the Tax Recovery Officer mentioned in the said Schedule for the said purpose.

Recovery of fines.

70. (1) Where a person committing a contravention of any of the provisions of this Act or of any rule, direction or order made thereunder is a company, every person who, at the time the contravention was committed, was in charge of, and was responsible to the company, for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly:

Offences by companies.

Provided that nothing contained in this sub-section shall render any such person liable to punishment if he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention.

(2) Notwithstanding anything contained in sub-section (1), where a contravention of any of the provisions of this Act or of any rule, direction or order

made thereunder has been committed by a company and it is proved that the contravention has taken place with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officer of any company, such director, manager, secretary or other officer shall also be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

(i) “company” means any body corporate and includes a firm or other association of individuals; and

(ii) “director”, in relation to a firm, means a partner in the firm.

Act to have overriding effect.

71. The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

Continuation of proceedings in the event of death or insolvency.

72. (1) Where—

(a) any property of a person has been attached under section 8 and no appeal against the order attaching such property has been preferred; or

(b) any appeal has been preferred to the Appellate Tribunal, and—

(i) in a case referred to in clause (a), such person dies or is adjudicated an insolvent before preferring an appeal to the Appellate Tribunal; or

(ii) in a case referred to in clause (b), such person dies or is adjudicated an insolvent during the pendency of the appeal,

then, it shall be lawful for the legal representatives of such person or the official assignee or the official

receiver, as the case may be, to prefer an appeal to the Appellate Tribunal or as the case may be, to continue the appeal before the Appellate Tribunal, in place of such person and the provisions of section 26 shall so far as may be, apply, or continue to apply, to such appeal.

(2) Where—

(a) after passing of a decision or order by the Appellate Tribunal, no appeal has been preferred to the High Court under section 42; or

(b) any such appeal has been preferred to the High Court,—

then—

(i) in a case referred to in clause (a), the person entitled to file the appeal dies or is adjudicated an insolvent before preferring an appeal to the High Court, or

(ii) in a case referred to in clause (b), the person who had filed the appeal dies or is adjudicated an insolvent during the pendency of the appeal before the High Court;

then, it shall be lawful for the legal representatives of such person, or the official assignee or the official receiver, as the case may be, to prefer an appeal to the High Court or to continue the appeal before the High Court in place of such person and the provision of section 42 shall so far as may be, apply, or continue to apply, to such appeal.

(3) The powers of the official assignee or the official receiver under sub-section (1) or sub-section (2) shall be exercised by him subject to the provisions of the Presidency-towns Insolvency Act, 1909 or the Provincial Insolvency Act, 1920, as the case may be.

3 of 1909.

5 of 1920.

Power to
make rules.

73. (1) The Central Government may, by notification, make rules for carrying out the provision of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the form in which records referred to in this Act may be maintained;

(b) the manner in which the order and the material referred to in sub-section (2) of section 5 to be maintained;

(c) matters in respect of experience of Members under sub-section (3) of section 6;

(d) the salaries and allowances payable to and other terms and conditions of service of Members of the Adjudicating Authority under sub-section (9) of section 6;

(e) the salaries and allowances payable to the other terms and conditions of service of the officers and employees of the Adjudicating Authority under sub-section (3) of section 7;

(f) the manner in which and the conditions subject to which the properties confiscated may be received and managed under sub-section (2) of section 10;

(g) the additional matters in respect of which the Adjudicating Authority may exercise the powers of a civil court under clause (f) of sub-section (1) of section 11;

(h) the nature and value of transactions in respect of which records shall be maintained under clause (a) of sub-section (1) of section 12;

(i) the time within which the information of transactions under clause (b) of sub-section (1) of section 12 shall be furnished;

(j) the manner in which records shall be verified and maintained by banking companies, financial institutions and intermediaries under clause (c) of sub-section (1) of section 12;

(k) the procedure and the manner of maintaining and furnishing information under sub-section (1) of section 12 as required under section 15;

(l) the manner in which the reasons and the material referred to in sub-section (2) of section 16 shall be maintained;

(m) the rules relating to search and seizure under sub-section (1) of section 17;

(n) the manner in which the reasons and the material referred to in sub-section (2) of section 17 shall be maintained;

(o) the manner in which the reasons and the material referred to in sub-section (2) of section 18 shall be maintained;

(p) the manner in which the order and the material referred to in sub-section (2) of section 19 shall be maintained;

(q) the manner in which records authenticated outside India may be received under sub-section (2) of section 22;

(r) the form of appeal and the fee for filing such appeal, under sub-section (3) of section 26;

(s) the salary and allowances payable to and the other terms and conditions of service of the Chairperson and other Members of the Appellate Tribunal under section 30;

(*t*) the salaries and allowances and the conditions of service of the officers and employees of the Appellate Tribunal under sub-section (3) of section 34;

(*u*) the additional matters in respect of which the Appellate Tribunal may exercise that powers of a civil court under clause (*i*) of sub-section (2) of section 35;

(*v*) the additional matters in respect of which the authorities may exercise powers of a civil court under clause (*f*) of sub-section (1) of section 50;

(*w*) the rules relating to impounding and custody of records under sub-section (5) of section 50;

(*x*) any other matter which is required to be or may be, prescribed.

Rules to be laid before Parliament.

74. Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Power to remove difficulties.

75. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as may appear to be necessary for removing the difficulty:

Provided that no order shall be made under this section after the expiry of two years from the commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

THE SCHEDULE

[See section 2(y)]

PART A

PARAGRAPH 1

OFFENCES UNDER THE INDIAN PENAL CODE

Section	Description of offence
121	Waging, or attempting to wage war or abetting waging of war, against the Government of India.
121 A	Conspiracy to commit offences punishable by section 121 against the State.

PARAGRAPH 2

OFFENCES UNDER THE NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT, 1985

Section	Description of offence
15	Contravention in relation to poppy straw.
18	Contravention in relation to opium poppy and opium.
20	Contravention in relation to cannabis plant and cannabis.
22	Contravention in relation to psychotropic substances.
23	Illegal import into India, export from India or transshipment of narcotic drugs and psychotropic substances.
24	External dealings in narcotic drugs and psychotropic substances in contravention of section 12 of the Narcotic Drugs and Psychotropic Substances Act, 1985.
25A	Contravention of orders made under section 9A of the Narcotic Drugs and Psychotropic Substances Act, 1985.
27A	Financing illicit traffic and harbouring offenders.
29	Abetment and criminal conspiracy.

PART B

PARAGRAPH 1

OFFENCES UNDER THE INDIAN PENAL CODE

Section	Description of offence
302	Murder.
304	Culpable homicide not amounting to murder, if act by which the death is caused is done with the intention of causing death.
307	Attempt to murder.
308	Attempt to commit culpable homicide.
327	Voluntarily causing hurt to extort property, or a valuable security, or to constrain to do anything which is illegal or which may facilitate the commission of the offence.
329	Voluntarily causing grievous hurt to extort property, or a valuable security, or to constrain to do anything which is illegal or which may facilitate the commission of the offence.
364A	Kidnapping for ransom, etc.
384 to 389	Offences relating to extortion.
392 to 402	Offences relating to robbery and dacoity.
467	Forgery of a valuable security, will or authority to make or transfer any valuable security, or to receive any money, etc.
489A	Counterfeiting currency notes or bank notes.
489B	Using as genuine, forged or counterfeit currency notes or bank notes.

PARAGRAPH 2

OFFENCES UNDER THE ARMS ACT, 1959

Section	Description of offence
25	To manufacture, sell, transfer, convert, repair or test or prove or expose or offer for sale or transfer or have in his possession for sale, transfer,

conversion, repair, test or proof, any arms or ammunition in contravention of section 5 of the Arms Act, 1959.

To acquire, have in possession or carry any prohibited arms or prohibited ammunition in contravention of section 7 of the Arms Act, 1959.

Contravention of section 24A of the Arms Act, 1959 relating to prohibition as to possession of notified arms in disturbed areas, etc.

Contravention of section 24B of the Arms Act, 1959 relating to prohibition as to carrying of notified arms in or through public places in disturbed areas.

Other offences specified in section 25.

26 To do any act in contravention of any provisions of section 3,4, 10 or 12 of the Arms Act, 1959 in such manner as specified in sub-section (1) of section 26 of the said Act.

To do any act in contravention of any provisions of section 5, 6,7 or 11 of the Arms Act, 1959 in such manner as specified in sub-section (2) of section 26 of the said Act.

Other Offences specified in section 26.

27 Use of arms or ammunitions in contravention of section 5 or use of any arms or ammunition in contravention of section 7 of the Arms Act, 1959.

28 Use and possession of fire arms or imitation fire arms in certain cases.

29 Knowingly purchasing arms from unlicensed person or for delivering arms, etc., to person not entitled to possess the same.

30 Contravention of any condition of a licence or any provisions of the Arms Act. 1959 or any rule made thereunder.

PARAGRAPH 3

OFFENCES UNDER THE WILD LIFE (PROTECTION) ACT, 1972

Section	Description of offence
51 read with section 17A	Contravention of provisions of section 17A relating to prohibition of picking, uprooting, etc., of specified plants.
51 read with section 39	Contravention of provisions of section 39 relating to wild animals, etc., to be Government property.

51 read with section 44	Contravention of provisions of section 44 relating to dealings in trophy and animal articles without licence prohibited.
51 read with section 48	Contravention of provisions of section 48 relating to purchase of animal, etc., by licensee.
51 read with section 49B	Contravention of provisions of section 49B relating to prohibition of dealings in trophies, animal articles, etc., derived from scheduled animals.

PARAGRAPH 4

OFFENCES UNDER THE IMMORAL TRAFFIC (PREVENTION) ACT, 1956

Section	Description of offence
5	Procuring, inducing or taking person for the sake of prostitution.
6	Detaining a person in premises where prostitution is carried on.
8	Seducing or soliciting for purpose of prostitution.
9	Seduction of a person in custody.

PARAGRAPH 5

OFFENCES UNDER THE PREVENTION OF CORRUPTION ACT, 1988

Section	Description of offence
7	Public servant taking gratification other than legal remuneration in respect of an official act.
8	Taking gratification, in order, by corrupt or illegal means, to influence public servant.
9	Taking gratification; for exercise of personal influence with public servant.
10	Abetment by public servant of offences defined in section 8 or section 9 of the Prevention of Corruption Act, 1988

K. N. CHATURVEDI,
Additional Secy. to the Govt. of India.

**THE PREVENTION OF MONEY-
LAUNDERING (AMENDMENT) ACT, 2005**



सत्यमेव जयते

भारत का राजपत्र The Gazette of India

असाधारण

EXTRAORDINARY

भाग II — खण्ड 1

PART II — Section 1

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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

MINISTRY OF LAW AND JUSTICE

(Legislative Department)

New Delhi. the 24th May, 2005/Jyaistha, 03, 1927 (Saka)

The following Act of Parliament received the assent of the President on the 21st May, 2005, and is hereby published for general information:—

THE PREVENTION OF MONEY-LAUNDERING (AMENDMENT)

ACT, 2005

No. 20 OF 2005

[21th May, 2005.]

An Act to amend the Prevention of Money-laundering Act, 2002.

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

CHAPTER I

PRELIMINARY

Short title
and com-
mencement

1. (1) This Act may be called the Prevention of Money-laundering (Amendment) Act, 2005.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different provisions of this Act.

Amendment
of section 2.

2. In section 2 of the Prevention of Money-laundering Act, 2002 (hereinafter referred to as the principal Act), after clause (n), the following clause shall be inserted, namely:—

‘(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;’.

Amendment
of section 28.

3. In section 28 of the principal Act,—

(a) in sub-section (1), for the words “High Court”, the words “High Court or is qualified to be a Judge of the High Court” shall be substituted;

(b) after sub-section (3), the following sub-section shall be inserted, namely:—

“(4) The Chairperson or a Member holding a post as such in any other Tribunal, established under any law for the time being in force, in addition to his being the Chairperson or a Member of that Tribunal, may be appointed as the Chairperson or a Member, as the case may be, of the Appellate Tribunal under this Act.”.

Omission of
section 29.

4. Section 29 of the principal Act shall be omitted.

5. In section 30 of the principal Act, for the words “terms and conditions of service”, at both the places where they occur, the words and brackets “terms and conditions of service (including tenure of office)” shall be substituted. Amendment of section 30.

6. In section 44 of the principal Act, in sub-section (1), in clause (b), the words “upon perusal of police report of the facts which constitute an offence under this Act or” shall be omitted. Amendment of section 44.

7. In section 45 of the principal Act,— Amendment of section 45.

2 of 1974.

(a) in sub-section (1), for the portion beginning with the words and figures “Notwithstanding anything contained in the Code of Criminal Procedure, 1973” and ending with the words “on his own bond unless -”, the following shall be substituted, namely:—

2 of 1974.

“Notwithstanding anything contained in the Code of Criminal Procedure, 1973, no person accused of an offence punishable for a term of imprisonment of more than three years under Part A of the Schedule shall be released on bail or on his own bond unless—”;

(b) after sub-section (1), the following sub-section shall be inserted, namely:—

2 of 1974.

“(1A) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, or any other provision of this Act, no police officer shall investigate into an offence under this Act unless specifically authorised, by the Central Government by a general or special order, and, subject to such conditions as may be prescribed.”;

(c) in sub-section (2), the words, brackets and letter “clause (b) of” shall be omitted.

Amendment
of section 73.

8. In section 73 of the principal Act, in sub-section (2),—

(a) in clause (s), for the words “terms and conditions of service”, the words and brackets “terms and conditions of service (including tenure of office)” shall be substituted;

(b) after clause (u), the following clause shall be inserted, namely:—

“(ua) conditions subject to which a police officer may be authorised to investigate into an offence under sub-section (IA) of section 45;”.

Z.S.NEGI,
Additional Secy. to the Govt. of India.

**THE PREVENTION OF MONEY-
LAUNDERING (AMENDMENT) ACT, 2009**



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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

MINISTRY OF LAW AND JUSTICE

(Legislative Department)

New Delhi, the 6th March, 2009/Phalguna, 15, 1930 (Saka)

The following Act of Parliament received the assent of the President on the 6th March, 2009, and is hereby published for general information:—

THE PREVENTION OF MONEY-LAUNDERING (AMENDMENT)

ACT, 2009

No. 21 OF 2009

[6th March, 2009.]

An Act further to amend the Prevention of Money-laundering Act, 2002.

BE it enacted by Parliament in the Sixtieth Year of the Republic of India as follows:—

Short title
and com-
mencement.

1. (1) This Act may be called the Prevention of Money-laundering (Amendment) Act, 2009.

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

Amendment
of section 2.

2. In section 2 of the Prevention of Money-laundering Act, 2002 (hereinafter referred to as the principal Act), in sub-section (1),—

(i) after clause (d), the following clause shall be inserted, namely:—

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

(ii) after clause (j), the following clause shall be inserted, namely:—

‘(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;’;

(iii) in clause (l), for the words “a non-banking financial company”, the words “an authorised person, a payment system operator and a non-banking financial company” shall be substituted;

(iv) in clause (q), after the words and figures “Reserve Bank of India Act, 1934”, the words “and includes a person carrying on designated business or profession” shall be inserted;

(v) after clause (r), the following clauses shall be inserted, namely:—

“(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 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;

(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;’;

(vi) in clause (y), for sub-clause (ii), the following sub-clauses shall be substituted, namely:—

“(ii) the offences specified under Part B of the Schedule if the total value involved in such offences is thirty lakh rupees or more; or

(iii) the offences specified under Part C of the Schedule.”.

Amendment
of section 5.

3. In section 5 of the principal Act, in sub-section (1),—

(a) for the words “ninety days”, the words “one hundred and fifty days” shall be substituted;

(b) for the proviso, the following provisos shall be substituted, namely:—

2 of 1974.

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

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

4. In section 6 of the principal Act,—

Amendment
of section 6.

(i) in sub-section (1), for the words “one or more Adjudicating Authorities”, the words “an Adjudicating Authority” shall be substituted;

(ii) in the proviso to sub-section (8), for the word “sixty-two”, the word “sixty-five” shall be substituted.

5. In section 8 of the principal Act, in sub-section (1), for the words and figure “offence under Section 3”,

Amendment
of section 8.

the words and figure “offence under section 3 or is in possession of proceeds of crime” shall be substituted.

Amendment
of section 12.

6. In section 12 of the principal Act, for sub-section (2), the following sub-section shall be substituted, namely:—

“(2)(a) The records referred to in clause (a) of sub-section (1) shall be maintained for a period of ten years from the date of transactions between the clients and the banking company or financial institution or intermediary, as the case may be.

(b) The records referred to in clause (c) of sub-section (1) shall be maintained for a period of ten years from the date of cessation of transactions between the clients and the banking company or financial institution or intermediary, as the case maybe.”.

Amendment
of section 17.

7. In section 17 of the principal Act, in sub-section (1),—

(i) in the opening portion, for the words “the Director”, the words “the Director or any other officer not below the rank of Deputy Director authorised by him for the purposes of this section,” shall be substituted;

(ii) for the proviso, the following proviso shall be substituted, namely.—

“Provided that no search shall be conducted unless, in relation to the scheduled offence, a report has been forwarded to a Magistrate under section 157 of the Code of Criminal Procedure, 1973, or a complaint has been filed by a person, authorised to investigate the offence mentioned in the Schedule, before a Magistrate or court for raking cognizance of the scheduled offence, as the case may be.”.

8. In section 18 of the principal Act,—

Amendment
of section 18.

(i) in sub-section (1), the following proviso shall be inserted, namely:—

2 of 1974.

“Provided that no search of any person shall be made unless, in relation to the scheduled offence, a report has been forwarded to a Magistrate under section 173 of the Code of Criminal Procedure, 1973, or a complaint has been filed by a person authorised to investigate the offence mentioned in the Schedule, before a Magistrate or court for taking cognizance of the scheduled offence, as the case may be.”;

(ii) in sub-section (9), the proviso shall be omitted.

9. In section 28 of the principal Act, in sub-section (2), clause (a) shall be omitted.

Amendment
of section 28.

10. In section 32 of the principal Act, in sub-section (2), the following proviso shall be inserted, namely:—

Amendment
of section 32.

“Provided that the Chief Justice of India shall be consulted before removal of the Chairperson or a Member who was appointed on the recommendation of the Chief Justice of India.”.

11. In section 38 of the principal Act, for the words “one or more of the other Members”, the words “third Member” shall be substituted.

Amendment
of section 38.

12. In section 60 of the principal Act, after sub-section (6), the following sub-section shall be inserted, namely:—

Amendment
of section 60.

“(7) When any property in India is confiscated as a result of execution of a request from a contracting State in accordance with the provisions of this Act, the Central Government may either return such property to the requesting State or compensate that State by disposal of such property on mutually agreed terms

that would take into account deduction for reasonable expenses incurred in investigation, prosecution or judicial proceedings leading to the return or disposal of confiscated property.”.

Amendment
of Schedule.

13. In the principal Act, in the Schedule,—

(i) in Part A,—

(a) in Paragraph (1), after section 121 A and the entry relating thereto, the following sections and the entries shall be inserted, namely:—

Section	Description of offence
“489A	Counterfeiting currency notes or bank notes.
489B	Using as genuine, forged or counterfeit currency notes or bank notes.”;

(b) in Paragraph 2, for sections 15, 18 and 20 and the entries relating thereto, the following sections and the entries shall be substituted, namely:—

Section	Description of offence
“15	Contravention in relation to poppy straw.
16	Contravention in relation to coca plant and coca leaves.
17	Contravention in relation to prepared opium.
18	Contravention in relation to opium poppy and opium.
19	Embezzlement of opium by cultivator.
20	Contravention in relation to cannabis plant and cannabis.
21	Contravention in relation to manufactured drugs and preparations.”;

(c) after Paragraph 2, the following Paragraphs shall be inserted, namely:—

“PARAGRAPH 3

OFFENCES UNDER THE EXPLOSIVE SUBSTANCES ACT, 1908

Section	Description of offence
3	Causing explosion likely to endanger life or property.
4	Attempt to cause explosion, or for making or keeping explosives with intent to endanger life or property.
5	Making or possessing explosives under suspicious circumstances.

PARAGRAPH 4

OFFENCES UNDER THE UNLAWFUL ACTIVITIES
(PREVENTION) ACT, 1967

Section	Description of offence
10 read with section 3	Penalty for being member of an unlawful association, etc.
11 read with sections 3 and 7	Penalty for dealing with funds of an unlawful association.
13 read with section 3	Punishment for unlawful activities.
16 read with section 15	Punishment for terrorist act.
16A	Punishment for making demands of radioactive substances, nuclear devices, etc.
17	Punishment for raising fund for terrorist act.

Section	Description of offence
18	Punishment for conspiracy, etc.
18A	Punishment for organising of terrorist camps.
18B	Punishment for recruiting of any person or persons for terrorist act.
19	Punishment for harbouring, etc.
20	Punishment for being member of terrorist gang or organisation.
21	Punishment for holding proceeds of terrorism.
38	Offence relating to membership of a terrorist organisation.
105	Enhanced penalty on second or subsequent conviction.
107	Penalty for falsely representing a trade mark as registered.
120	Punishment of abetment in India of acts done out of India

PARAGRAPH 19

OFFENCES UNDER THE INFORMATION TECHNOLOGY ACT, 2000

Section	Description of offence
72	Penalty for breach of confidentiality and privacy.
75	Act to apply for offence or contravention committed outside India.

PARAGRAPH 20

OFFENCES UNDER THE BIOLOGICAL DIVERSITY ACT, 2002

Section	Description of offence
55 read with section 6	Penalties for contravention of section 6, etc.

PARAGRAPH 21

OFFENCES UNDER THE PROTECTION OF PLANT VARIETIES
AND FARMERS' RIGHTS ACT, 2001

Section	Description of offence
70 read with section 68	Penalty for applying false denomination, etc.
71 read with section 68	Penalty for selling varieties to which false denomination is applied.
72 read with section 68	Penalty for falsely representing a variety as registered.
73 read with section 68	Penalty for subsequent offence.

PARAGRAPH 22

OFFENCES UNDER THE ENVIRONMENT PROTECTION
ACT, 1986

Section	Description of offence
15 read with section 7	Penalty for discharging environmental pollutants.
15 read with section 8	Penalty for handling hazardous substance.

PARAGRAPH 23

OFFENCES UNDER THE WATER (PREVENTION AND
CONTROL OF POLLUTION) ACT, 1974

Section	Description of offence
41(2)	Penalty for pollution of stream or well.
43	Penalty for contravention of provisions of section 24.

PARAGRAPH 124

OFFENCES UNDER THE AIR (PREVENTION AND CONTROL
OF POLLUTION) ACT, 1981

Section	Description of offence
37	Failure to comply with the provisions for operating industrial plant.

PARAGRAPH 25

OFFENCES UNDER THE SUPPRESSION OF UNLAWFUL ACTS
AGAINST SAFETY OF MARITIME NAVIGATION AND FIXED
PLATFORMS ON CONTINENTAL SHELF ACT, 2002

Section	Description of offence
3	Offences against ship, fixed platform, cargo of a ship, maritime navigational facilities, etc.”;

(iii) after Part B, the following Part shall be inserted, namely:—

“PART C

An offence which is the offence of cross border implications and is specified in,—

- (1) Part A; or
- (2) Part B without any monetary threshold; or
- (3) the offences against property under Chapter XVII of the Indian Penal Code.”.

V. K. BHASIN,
Additional Secretary to the Govt. of India.

**THE PREVENTION OF MONEY-
LAUNDERING (AMENDMENT) BILL, 2011
(AS INTRODUCED IN THE LOK SABHA
ON 27 DECEMBER, 2011)**

Bill No. 133 of 2011

THE PREVENTION OF MONEY-LAUNDERING
(AMENDMENT) BILL, 2011

A

BILL

further to amend the Prevention of Money-laundering Act, 2002.

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

Short title
and com-
mencement.

1. (1) This Act may be called the Prevention of Money-laundering (Amendment) Act, 2011.

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

Amendment
of section 2.

2. In section 2 of the Prevention of Money-laundering Act, 2002 (hereinafter referred to as the principal Act), in sub-section (1),— 15 of 2003.

(i) after clause (f), the following clause shall be inserted, namely:—

‘(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;’;

(ii) after clause (h), the following clause shall be inserted, namely:—

‘(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;’;

(iii) after clause (i), the following clause shall be inserted namely:—

‘(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;

74 of 1956.

(ib) “dealer” has the same meaning as assigned to it in clause (b) of section 2 of the Central Sales Tax Act, 1956;’;

(iv) clause (ja) shall be omitted;

(v) for clause (l), the following clause shall be substituted, namely:—

2 of 1934.

‘(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;’;

(vi) for clause (n), the following clause shall be substituted, namely:—

‘(n) “intermediary” means,—

(i) 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 or any other intermediary associated with securities market and registered under section 12 of the Securities and Exchange Board of India Act, 1992; or 15 of 1992.

(ii) an association recognised or registered under the Forward Contracts (Regulation) Act, 1952 or any member of such association; or 74 of 1952.

(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;’; 42 of 1956.

(vii) in clause (q), the words “and includes a person carrying on designated business or profession” shall be omitted;

(viii) in clause (ra), in sub-clause (i), for the word “remits”, the words “transfers in any manner” shall be substituted;

(ix) after clause (s), the following clauses shall be inserted, namely:—

‘(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;

16 of 1908. (ii) a Registrar or Sub-Registrar appointed under section 6 of the Registration Act, 1908, as may be notified by the Central Government;

(iii) real estate agent, as may be notified by the Central Government;

(iv) dealer 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 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;’;

(x) after clause (v), the following shall be inserted, namely:—

‘Explanation.— For the removal or 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;

32 of 1994. (va) “real estate agent” means a real estate agent as defined in clause (88) of section 65 of the Finance Act, 1994;’;

(*xi*) after clause (*w*), the following clause shall be inserted, namely:—

‘(*wa*) “reporting entity” means a banking company, financial institution, intermediary or a person carrying on a designated business or profession;’.

Amendment
of section 3.

3. In section 3 of the principal Act, for the words “proceeds of crime and projecting”, the words “proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming” shall be substituted.

Amendment
of section 4.

4. In section 4 of the principal Act, the words “which may extend to five lakh rupees” shall be omitted.

Amendment
of section 5.

5. In section 5 of the principal Act, for sub-section (*I*), the following sub-section shall be substituted, namely:—

“(*I*) Where the Director or any other officer not below the rank of Deputy Director authorised by the Director for the purposes of this section, has reason to believe (the reason for such belief to be recorded in writing), on the basis of material in his possession, that—

(*a*) any person is in possession of any proceeds of crime;

(*b*) such proceeds of crime are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceedings relating to confiscation of such proceeds of crime under this Chapter,

he may, by order in writing, provisionally attach such property for a period not exceeding one hundred and eighty days from the date of the order, in such manner as may be prescribed:

Provided that no such order of attachment shall be made unless, in relation to the scheduled offence, a

2 of 1974. report has been forwarded to a Magistrate under section 173 of the Code of Criminal Procedure, 1973, or a complaint has been filed by a person authorised to investigate the offence mentioned in that Schedule, before a Magistrate or court for taking cognizance of the scheduled offence, as the case may be, or a similar report or complaint has been made or filed under the corresponding law of any other country:

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

6. In section 8 of the principal Act,—

Amendment
of section 8.

(i) in sub-section (1), after the words and figure “section 5, or, seized”, the words “or frozen” shall be inserted;

(ii) in sub section (3),—

(a) in the opening portion, for the words “record seized under section 17 or section 18 and record a finding to that effect, such attachment or retention of the seized property”, the words “record seized or frozen under section 17 or section 18 and record a finding to that effect, whereupon such attachment or retention or freezing of the seized or frozen property” shall be substituted;

(b) in clause (a), for the words “scheduled offence before a court; and”, the words

“offence under this Act before a court or under the corresponding law of any other country, before the competent court of criminal jurisdiction outside India, as the case may be; and” shall be substituted;

(c) for clause (b), the following clause shall be substituted, namely:—

“(b) becomes final after an order of confiscation is passed under sub-section (5) or sub-section (7) of section 8 or section 58B or sub-section (2A) of section 60 by the Adjudicating Authority”;

(iii) in sub-section (4), for the words “possession of the attached property”, the following shall be substituted, namely:—

“possession of the property attached under section 5 or frozen under sub-section (1A) of section 17, in such manner as may be prescribed;

Provided that if it is not practicable to take possession of a property frozen under sub-section (1A) of section 17, the order of confiscation shall have the same effect as if the property had been taken possession of.”;

(iv) for sub-sections (5) and (6), the following sub-sections shall be substituted, namely:—

“(5) Where on conclusion of a trial of an offence under this Act, the Special Court finds that the offence of money-laundering has been committed, it shall order that such property involved in the money-laundering or which has been used for commission of the offence of money-laundering shall stand confiscated to the Central Government.

(6) Where on conclusion of a trial under this Act, the Special Court finds that the offence of money-laundering has not taken place or the property is not involved in money-laundering, it shall order release of such property to the person entitled to receive it.

(7) Where the trial under this Act cannot be conducted by reason of the death of the accused or the accused being declared a proclaimed offender or for any other reason or having commenced but could not be concluded, the Special Court shall, on an application moved by the Director or a person claiming to be entitled to possession of a property in respect of which an order has been passed under sub-section (3) of section 8, pass appropriate orders regarding confiscation or release of the property, as the case may be, involved in the offence of money-laundering after having regard to the material before it.”.

7. In section 9 of the principal Act,-

Amendment
of section 9.

(i) in the opening portion, for the words, brackets and figures “sub-section (6) of section 8”, the words, brackets and figures “sub-section (5) or sub-section (7) of section 8 or section 58B or sub-section (2A) of section 60” shall be substituted;

(ii) in the first proviso,—

(a) for the words “Adjudicating Authority”, the words “Special Court or the Adjudicating Authority, as the case may be,” shall be substituted;

(b) after the words “or seized”, the words “or frozen” shall be inserted.

Amendment
of section 10.

8. In section 10 of the principal Act, in sub-section (2), for the words, brackets and figures “sub-section (6) of section 8”, the words, brackets and figures “sub-section (5) or sub-section (6) or sub-section (7) of section 8 or section 58B or sub-section (2A) of section 60” shall be substituted.

Substitution
of new
section for
section 12.

9. For section 12 of the principal Act, the following section shall be substituted, namely:—

Reporting
entity to
maintain
records.

“12. (1) Every reporting entity shall—

(a) maintain a record of all transactions, including information relating to transactions covered under clause (b), in such manner as to enable it to reconstruct individual transactions;

(b) furnish to the Director within such time as may be prescribed, information relating to such transactions, whether attempted or executed, the nature and value of which may be prescribed;

(c) verify the identity of its clients in such manner and subject to such conditions, as may be prescribed;

(d) identify the beneficial owner, if any, of such of its clients, as may be prescribed;

(e) maintain record of documents evidencing identity of its clients and beneficial owners as well as account files and business correspondence relating to its clients.

(2) Every information maintained, furnished or verified, save as otherwise provided under any law for the time being in force, shall be kept confidential.

(3) The records referred to in clause (a) of sub-section (1) shall be maintained for a period of ten years from the date of transaction between a client and the reporting entity.

(4) The records referred to in clause (e) of sub-section (1) shall be maintained for a period of ten years after the business relationship between a client and the reporting entity has ended or the account has been closed, whichever is later.

(5) The Central Government may, by notification, exempt any reporting entity or class of reporting entities from any obligation under this Chapter.”.

10. After section 12 of the principal Act, the following section shall be inserted, namely:—

Insertion of new section 12A.

“12A. (1) The Director may call for from any reporting entity any of the records referred to in sub-section (1) of section 12 and any additional information as he considers necessary for the purposes of this Act.

Access to information

(2) Every reporting entity shall furnish to the Director such information as may be required by him under sub-section (1) within such time and in such manner as he may specify.

(3) Save as otherwise provided under any law for the time being in force, every information sought by the Director under sub-section (1), shall be kept confidential.”.

11. In section 13 of the principal Act,—

Amendment of section 13.

(i) in sub-section (1), for the words “call for records referred to in sub-section (1) of section 12 and may make such inquiry or cause such inquiry to be made, as he thinks fit”, the words “make such inquiry or cause such inquiry to be made, as he thinks fit to be necessary, with regard to the obligations of the reporting entity, under this Chapter” shall be substituted;

(ii) after sub-section (1), the following sub-sections shall be inserted, namely:—

“(1A) If at any stage of inquiry or any other proceedings before him, the Director having regard to the nature and complexity of the case, is of the opinion that it is necessary to do so, he may direct the concerned reporting entity to get its records, as may be specified, audited by an accountant from amongst a panel of accountants maintained by the Central Government for this purpose.

(1B) The expenses of and incidental to, any audit under sub-section (1A) may be determined by the Director and shall be paid by the reporting entity and in default of such payment, shall be recoverable from such reporting entity in the manner provided in section 69.”;

(iii) for sub-section (2), the following sub-section shall be substituted, namely:—

“(2) If the Director, in the course of any inquiry, finds that a reporting entity or its designated director on the Board or any of its employees has failed to comply with the obligations under this Chapter, then, without prejudice to any other action that may be taken under any other provisions of this Act, he may—

(a) issue a warning in writing; or

(b) direct such reporting entity or its designated director on the Board or any of its employees, to comply with specific instructions; or

(c) direct such reporting entity or its designated director on the Board or any of its employees, to send reports at such interval as may be prescribed on the measures it is taking; or

(d) by an order, impose a monetary penalty on such reporting entity or its designated director on the Board or any of its employees, which shall not be less than ten thousand rupees but may extend to one lakh rupees for each failure.”;

(iv) after sub-section (3), the following *Explanation* shall be inserted, namely:—

“*Explanation.*— For the purpose of this section, “accountant” shall mean a chartered accountant within the meaning of the Chartered Accountants Act, 1949.”.

38 of 1949.

12. For section 14 of the principal Act, the following section shall be substituted, namely:—

“14. Save as otherwise provided in section 13, the reporting entity, its directors and employees shall not be liable to any civil or criminal proceedings against them for furnishing information under clause (b) of sub-section (1) of section 12.”.

Substitution of new section for section 14. No civil or criminal proceedings against reporting entity, its directors and employees in certain cases.

13. For section 15 of the principal Act, the following section shall be substituted, namely:—

“15. The Central Government may, in consultation with the Reserve Bank of India, prescribe the procedure and the manner of maintaining and furnishing information by a reporting entity under sub-section (1) of section 12 for the purpose of implementing the provisions of this Act.”.

Substitution of new section for section 15. Procedure and manner of furnishing information by reporting entities.

14. In section 17 of the principal Act,—

(i) in sub-section (1),—

(a) in clause (iii), after the word “money-laundering,”, the word “or” shall be inserted;

Amendment of section 17.

(b) after clause (iii), the following clause shall be inserted namely:—

“(iv) is in possession of any property related to crime,”

(c) in clause (d), after the words “such record or”, the words “Property, if required or” shall be inserted;

(d) for the proviso, the following proviso shall be substituted, namely:—

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

(ii) after sub-section (I), the following sub-section shall be inserted, namely:—

“(IA) Where it is not practicable to seize such record or property, the officer authorised

under sub-section (1), may make an order to freeze such property whereupon the property shall not be transferred or otherwise dealt with, except with the prior permission of the officer making such order, and a copy of such order shall be served on the person concerned:

Provided that if, at any time before its confiscation under sub-section (5) or (7) of section 8 or section 58B or sub-section (2A) of section 60, it becomes practical to seize a frozen property, the officer authorised under sub-section (1) may seize such property.”;

(iii) in sub-section (2), after the words, “immediately after search and seizure” the words “or upon issuance of a freezing order” shall be inserted;

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

“(4) The authority seizing any record or property under sub-section (1) or freezing any record or property under sub-section (1A) shall, within a period of thirty days from such seizure or freezing, as the case may be, file an application, requesting for retention of such record or property seized under sub-section (1) or for continuation of the order of freezing served under sub-section (1A), before the Adjudicating Authority.”.

15. In section 18 of the principal Act, in sub-section (1), for the proviso, the following proviso shall be substituted, namely:—

Amendment
of section 18.

“Provided that no search of any person shall be made unless, in relation to the scheduled offence, a report has been forwarded to a Magistrate under section 157 of the Code of Criminal Procedure,

1973, or a complaint has been filed by a person, authorised to investigate the offence mentioned in the Schedule, before a Magistrate or court for taking cognizance of the scheduled offence, as the case may be, or in cases where such report is not required to be forwarded, a similar report of information received or otherwise has been submitted by an officer authorised to investigate a scheduled offence to an officer not below the rank of Additional Secretary to the Government of India or equivalent being head of the office or Ministry or Department or Unit, as the case may be, or any other officer who may be authorised by the Central Government, by notification, for this purpose,”;

Substitution of new section for section 20 and section 21.

Retention of property.

16. For section 20 and 21 of the principal Act, the following sections shall be substituted, namely:—

“20. (1) Where any property has been seized under section 17 or section 18 or frozen under sub-section (1A) of section 17 and the officer authorised by the Director in this behalf has, on the basis of material in his possession, reason to believe (the reason for such belief to be recorded by him in writing) that such property is required to be retained for the purposes of adjudication under section 8, such property may, if seized, be retained or if frozen, may continue to remain frozen, for a period not exceeding one hundred and eighty days from the day on which such property was seized or frozen, as the case may be.

(2) The officer authorised by the Director shall, immediately after he has passed an order for retention or continuation of freezing of the property for purposes of adjudication under section 8, forward a copy of the order along with the material in his possession, referred to in sub-section (1), to the Adjudicating Authority, in a sealed envelope, in the manner as may be prescribed and such

Adjudicating Authority shall keep such order and material for such period as may be prescribed.

(3) On the expiry of the period specified in sub-section (1), the property shall be returned to the person from whom such property was seized or whose property was ordered to be frozen unless the Adjudicating Authority permits retention or continuation of freezing of such property beyond the said period.

(4) The Adjudicating Authority, before authorising the retention or continuation of freezing of such property beyond the period specified in sub-section (1), shall satisfy himself that the property is *prima facie* involved in money-laundering and the property is required for the purposes of adjudication under section 8.

(5) After passing the order of confiscation under sub-section (5) or sub-section (7) of section 8, the Court or the Adjudicating Authority, as the case may be, shall direct the release of all property other than the property involved in money-laundering to the person from whom such property was seized or the persons entitled to receive it.

(6) Where an order releasing the property has been made by the Court under sub-section (6) of section 8 or by the Adjudicating Authority under section 58B or sub-section (2A) of section 60, the Director or any officer authorised by him in this behalf may withhold the release of any such property for a period of ninety days from the date of such order, if he is of the opinion that such property is relevant for the appeal proceedings under this Act.

21. (1) Where any records have been seized, under section 17 or section 18 or frozen under sub-section (1A) of section 17 and the Investigating Officer or any other officer authorised by the Director in this behalf

Retention of records.

has reason to believe that any of such records are required to be retained for any inquiry under this Act, such records may if seized, be retained or if frozen, may continue to remain frozen, for a period not exceeding one hundred and eighty days from the day on which such records were seized or frozen, as the case may be.

(2) The person, from whom records seized or frozen, shall be entitled to obtain copies of records.

(3) On the expiry of the period specified under sub-section (1), the records shall be returned to the person from whom such records were seized or whose records were ordered to be frozen unless the Adjudicating Authority permits retention or continuation of freezing of such records beyond the said period.

(4) The Adjudicating Authority, before authorising the retention or continuation of freezing of such records beyond the period specified in sub-section (1), shall satisfy himself that the records are required for the purposes of adjudication under section 8.

(5) After passing of an order of confiscation under sub-section (5) or sub-section (7) of section 8, the Adjudicating Authority shall direct the release of the records to the person from whom such records were seized.

(6) Where an order releasing the records has been made by the Court under sub-section (6) of section 8 or by the Adjudicating Authority under section 58B or sub-section (2A) of section 60, the Director or any officer authorised by him in this behalf may withhold the release of any such record for period of ninety days from the date of such order. If he is of the opinion that such record is relevant for the appeal proceedings under this Act.”.

Amendment
of section 22.

17. In section 22 of the principal Act, in sub-section (1), after the words “a survey or a search,”, the words

“or where any record or property is produced by any person or has been resumed or seized from the custody or control of any person or has been frozen under this Act or under any other law for the time being in force,” shall be inserted.

18. In section 23 of the principal Act, for the words and figure “under section 8, it shall, unless otherwise proved to the satisfaction of the Adjudicating Authority”, the words “under section 8 or for the trial of the money-laundering offence, it shall unless otherwise proved to the satisfaction of the Adjudicating Authority or the Special Court” shall be substituted.

Amendment
of section 23.

19. For section 24 of the principal Act, the following section shall be substituted, namely:—

Amendment
of section 24.

“24. In any proceedings relating to proceeds of crime under this Act, unless the contrary is proved, it shall be presumed that such proceeds of crime is involved in money-laundering.”.

Burden of
Proof.

20. In section 26 of the principal Act, in sub-section (2), for the words “banking company, financial institution or intermediary”, the words “reporting entity” shall be substituted,

Amendment
of section 26.

21. In section 28 of the principal Act,—

Amendment
of section 28.

(i) in sub-section (1), for the words “he is or has been a Judge of the Supreme Court or of a High Court or is qualified to be a Judge of the High Court”, the words “he is a sitting or retired Judge of the Supreme Court or a sitting or retired Chief Justice of a High Court” shall be substituted,

(ii) for sub-section (2), the following sub-section shall be substituted, namely:—

“(2) A person shall not be qualified for appointment as a Member of the Appellate Tribunal unless he is a person of ability, integrity

and standing who has shown capacity in dealing with problems relating to handling of matters of proceeds of crime and has qualification and experience of finance, economics, taxation, accountancy, law or administration.”;

(iii) in sub-section (3), for the words “of a High Court”, the words “Chief Justice of a High Court” shall be substituted.

Substitution of new section for section 42.

22. For section 42 of the principal Act, the following sections shall be substituted, namely:—

Appeal to Supreme Court.

“42. Any person aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the Supreme Court within sixty days from the date of communication of the decision or order of the Appellate Tribunal to him on any question of law arising out of such order:

Provided that the Supreme Court may, if it is satisfied that the applicant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days.

Continuation of certain appeals before the High Court.

42A. Every appeal filed before a High Court but pending before it immediately before the commencement of the Prevention of Money-laundering (Amendment) Act, 2011 shall continue to be an appeal before the High Court and shall be dealt with by that High Court as if the Prevention of Money-laundering (Amendment) Act, 2011 had not been passed.”.

Amendment of section 44.

23. In section 44 of the principal Act, in sub-section (1),—

(i) in clause (a), in the proviso, the word “or” occurring at the end shall be omitted;

(ii) in clause (b), for the words “cognizance of the offence for which the accused is committed

to it for trial” the words “cognizance of offence under section 3, without the accused being committed to it for trial” shall be substituted;

(iii) after clause (b), the following clauses shall be inserted, namely:—

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

(d) a Special Court while trying the scheduled offence or the offence of money-laundering shall hold trial in accordance with the provisions of the Code of Criminal Procedure, 1973, as it applies to a trial before a Court of Session.”.

2 of 1974.

24. In section 50 of the principal Act, in sub-section (I), in clause (b), for the words “banking company or a financial institution or a company,”, the words “reporting entity” shall be substituted.

Amendment of section 50.

25. In section 54 of the principal Act,—

Amendment of section 54.

(i) in the opening portion, for the word “officers”, the words “officers and others” shall be substituted;

(ii) for clause (d), the following clause shall be substituted, namely:—

“(d) members of the recognised stock exchange referred to in clause (f) of section 2

and the officers of the stock exchanges recognised under section 4 of the Securities Contracts (Regulation) Act, 1956; 42 of 1956.

(iii) after clause (h), the following clauses shall be inserted, namely:—

“(ha) officers of the Insurance Regulatory and Development Authority established under section 3 of the Insurance Regulatory and Development Authority Act, 1999; 41 of 1999.

(hb) officers of the Forward Markets Commission established under section 3 of the Forward Contracts (Regulation) Act, 1952. 74 of 1952.

(hc) officers and members of the recognised association recognised under section 6 of the Forward Contracts (Regulation) Act, 1952; 74 of 1952.

(hd) officers of the Pension Fund Regulatory and Development Authority;

(he) officers of the Department of Posts in the Government of India;

(hf) Registrars or Sub-Registrars appointed by the State Governments under section 6 of the Registration Act, 1908; 16 of 1908.

(hg) registering authority empowered to register motor vehicles under Chapter IV of the Motor Vehicles Act, 1988; 59 of 1988.

(hh) officers and members of the Institute of Chartered Accountants of India constituted under section 3 of the Chartered Accountants Act, 1949; 38 of 1949.

(hi) officers and members of the Institute of Cost and Works Accountants of India constituted under section 3 of the Cost and Works Accountants Act, 1959; 23 of 1959.

56 of 1980.

(hj) Officers and members of the Institute of Company Secretaries of India constituted under section 3 of the Company Secretaries Act, 1980;”;

(iv) in clause (j) for the words “banking companies”, the words “reporting entities” shall be substituted.

26. After section 58, the following sections shall be inserted, namely:—

Insertion of new sections 58A and 58B.

“58A. Where on closure of the criminal case or conclusion of a trial in a criminal court outside India under the corresponding law of any other country, such court finds that the offence of money-laundering has not taken place or the property in India is not involved in money-laundering, the Special Court shall, on an application moved by the concerned person or the Director, after notice to the other party, order release of such property to the person entitled to receive it.

Special Court to release the property.

58B. Where the trial under the corresponding law of any other country cannot be conducted by reason of the death of the accused or the accused being declared a proclaimed offender or for any other reason or having commenced but could not be concluded, the Central Government shall, on receipt of a letter of request from a court or authority in a contracting State requesting for confiscation or release of property, as the case may be, forward the same to the Director to move an application before the Special Court and upon such application the Special Court shall pass appropriate orders regarding confiscation or release of such property involved in the offence of money-laundering.”.

Letter of request of a contracting State or authority for confiscation or release the property.

27. In section 60 of the principal Act,—

Amendment of section 60.

(i) in sub-section (1), for the words and figures

“property under section 5 or where an Adjudicating Authority has made an order confirming such attachment or confiscation of any property under section 8”, the words, figures, brackets and letter “property under section 5 or for freezing under sub-section (1A) of section 17 or where an Adjudicating Authority has made an order relating to a property under section 8 or where a Special Court has made an order of confiscation relating to a property under sub-section (5) or sub section (6) of section 8” shall be substituted;

(ii) in sub-section (2),—

(a) for the words “attachment or confiscation”, the words “attachment, seizure, freezing or confiscation” shall be substituted;

(b) for the word and figure “section 3”, the words “a corresponding law” shall be substituted;

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

“(2A) Where on closure of the criminal case or conclusion of trial in a criminal court outside India under the corresponding law of any other country, such court finds that the offence of money-laundering under the corresponding law of that country has been committed, the Adjudicating Authority shall, on receipt of an application from the Director for execution of confiscation under sub-section (2), order, after giving notice to the affected persons, that such property involved in money-laundering or which has been used for commission of the offence of money-laundering stand confiscated to the Central Government.”.

28. In section 63 of the principal Act, after sub-section (3), the following sub-section shall be inserted namely:—

Amendment of section 63.

“(4) Notwithstanding anything contained in clause (c) of sub-section (2), a person who intentionally disobeys any direction issued under section 50 shall also be liable to be proceeded against under section 174 of the Indian Penal Code.”.

45 of 1860.

29. For section 69 of the principal Act, the following section shall be substituted, namely:—

Substitution of new section for section 69.

“69. Where any fine or penalty imposed on any person under section 13 or section 63 is not paid within six months from the day of imposition of fine or penalty, the Director or any other officer authorised by him in this behalf may proceed to recover the amount from the said person in the same manner as prescribed in Schedule II of the Income-tax Act, 1961 for the recovery of arrears and he or any officer authorised by him in this behalf shall have all the powers of the Tax Recovery Officer mentioned in the said Schedule for the said purpose.”.

Recovery of fine or penalty.

43 of 1961.

30. In section 70 of the principal Act, the *Explanation* shall be numbered as *Explanation 1* thereof and after *Explanation 1* as so numbered, the following *Explanation* shall be inserted, namely:—

Amendment of section 70.

“*Explanation 2.*—For the removal of doubts, it is hereby clarified that a company may be prosecuted, notwithstanding whether the prosecution or conviction of any legal juridical person shall be contingent on the prosecution or conviction of any individual.”.

31. In section 72 of the principal Act, in sub-section (2), for the words “High Court”, wherever they occur, the words “Supreme Court” shall be substituted.

Amendment of section 72.

Amendment
of section 73.

32. In section 73 of the principal Act, in sub-section (2),—

(i) after clause (a), the following clause shall be inserted, namely:—

“(aa) the manner of provisional attachment of property under sub-section (1) of section 5;”;

(ii) after clause (e), the following clause shall be inserted, namely:—

“(ee) the manner of seizing or taking possession of property attached under section 5 or frozen under sub-section (1A) of section 17 or under sub-section (4) of section 8;”;

(iii) clause (h) shall be omitted;

(iv) in clause (i), for the words “the time within which”, the words “the nature and value of transactions and the time within which” shall be substituted;

(v) for clause (j), the following clauses shall be substituted, namely:—

“(j) the manner and the conditions in which identity of clients shall be verified by the reporting entities under clause (c) of sub-section (1) of section 12;

(jj) the manner of identifying beneficial owner, if any, from the clients by the reporting entities under clause (d) of sub-section (1) of section 12;

(jjj) the period of interval in which the reports are sent by the reporting entities or any of its employees under clause (c) of sub-section (2) of section 13;”;

(vi) after clause (p), the following clause shall be inserted, namely:—

“(pp) the manner in which the forwarding of the order for retention or continuation of freezing of the property and the period of keeping such order and material under sub-section (2) of section 20;”.

33. In the Schedule to the principal Act,—

Amendment
of the
Schedule.

(i) for the Part A, the following Part shall be substituted, namely:—

“PART A

PARAGRAPH 1

OFFENCES UNDER THE INDIAN PENAL CODE

(45 of 1860)

Section	Description of offence
120B	Criminal conspiracy.
121	Waging or attempting to wage war or abetting waging of war, against the Government of India.
121A	Conspiracy to commit offences punishable by section 121 against the State.
255	Counterfeiting Government stamp.
257	Making or selling instrument for counterfeiting Government stamp.
258	Sale of counterfeit Government stamp.
259	Having possession of counterfeit Government stamp.
260	Using as genuine a Government stamp known to be counterfeit.
302	Murder.
304	Punishment for culpable homicide not amounting to murder.
307	Attempt to murder.

Section	Description of offence
308	Attempt to commit culpable homicide.
327	Voluntarily causing hurt to extort property, or to constrain to an illegal act.
329	Voluntarily causing grievous hurt to extort property, or to constrain to an illegal act.
364A	Kidnapping for ransom, etc.
384 to 389	Offences relating to extortion.
392 to 402	Offences relating to robbery and dacoity.
411	Dishonestly receiving stolen property.
412	Dishonestly receiving property stolen in the commission of a dacoity.
413	Habitually dealing in stolen property.
414	Assisting in concealment of stolen property.
417	Punishment for cheating.
418	Cheating with knowledge that wrongful loss may ensue to person whose interest offender is bound to protect.
419	Punishment for cheating by personation.
420	Cheating and dishonestly inducing delivery of property.
421	Dishonest or fraudulent removal or concealment of property to prevent distribution among creditors.
422	Dishonestly or fraudulently preventing debt being available for creditors.
423	Dishonest or fraudulent execution of deed of transfer containing false statement of consideration.
424	Dishonest or fraudulent removal or concealment of property.
467	Forgery of valuable security, will, etc.

Section	Description of offence
471	Using as genuine a forged document or electronic record.
472 and 473	Making or possessing counterfeit seal, etc., with intent to commit forgery.
475 and 476	Counterfeiting device or mark.
481	Using a false property mark.
482	Punishment for using a false property mark.
483	Counterfeiting a property mark used by another.
484	Counterfeiting a mark used by a public servant.
485	Making or possession of any instrument for counterfeiting a property mark.
486	Selling goods marked with a counterfeit property mark.
487	Making a false mark upon any receptacle containing goods.
488	Punishment for making use of any such false mark.
489A	Counterfeiting currency notes or bank notes.
489B	Using as genuine, forged or counterfeit currency notes or bank notes.

PARAGRAPH 2

OFFENCES UNDER THE NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES

ACT, 1985

(61 of 1985)

Section	Description of offence
15	Contravention in relation to poppy straw.
16	Contravention in relation to coca plant and coca leaves.
17	Contravention in relation to prepared opium.
18	Contravention in relation to opium poppy and opium.
19	Embezzlement of opium by cultivator.

Section	Description of offence
20	Contravention in relation to cannabis plant and cannabis.
21	Contravention in relation to manufactured drugs and preparations.
22	Contravention in relation to psychotropic substances.
23	Illegal import into India, export from India to transshipment of narcotic drugs and psychotropic substances.
24	External dealings in narcotic drugs and psychotropic substances in contravention of section 12 of the Narcotics Drugs and Psychotropic Substances Act, 1985.
25A	Contravention of orders made under section 9A of the Narcotic Drugs and Psychotropic Substances Act, 1985.
27A	Financing illicit traffic and harbouring offenders.
29	Abetment and criminal conspiracy

PARAGRAPH 3

OFFENCES UNDER THE EXPLOSIVE SUBSTANCES ACT, 1908

(6 OF 1908)

Section	Description of offence
3	Causing explosion likely to endanger life or property.
4	Attempt to cause explosion, or for making or keeping explosives with intent to endanger life or property.
5	Making or possessing explosives under suspicious circumstances.

PARAGRAPH 4

OFFENCES UNDER THE UNLAWFUL ACTIVITIES (PREVENTION) ACT, 1967

(37 OF 1967)

Section	Description of offence
10 read with section 3	Penalty for being member of an unlawful association, etc.
11 read with section 3	Penalty for dealing with funds of an unlawful association.

Section	Description of offence
13 read with section 3	Punishment for unlawful activities.
16 read with section 15	Punishment for terrorist act.
16A	Punishment for making demands of radioactive substances, nuclear devices, etc.
17	Punishment for raising fund for terrorist act.
18	Punishment for conspiracy, etc.
18A	Punishment for organising of terrorist camps.
18B	Punishment for recruiting of any person or persons for terrorist act.
19	Punishment for harbouring, etc.
20	Punishment for being member of terrorist gang or organisation.
21	Punishment for holding proceeds of terrorism.
38	Offence relating to membership of a terrorist organisation.
39	Offence relating to support given to a terrorist organisation.
40	Offence of raising fund for a terrorist organisation.

PARAGRAPH 5

OFFENCES UNDER THE ARMS ACT, 1959

(54 OF 1959)

Section	Description of offence
25	To manufacture, sell, transfer, convert, repair or test or prove or expose or offer for sale or transfer or have in his possession for sale, transfer, conversion, repair, test or proof, any arms or ammunition to contravention of section 5 of the Arms Act, 1959.

Section	Description of offence
	To acquire, have in possession or carry any prohibited arms or prohibited ammunition in contravention of section 7 of the Arms Act, 1959.
	Contravention of section 24A of the Arms Act, 1959 relating to prohibition as to possession of notified arms in disturbed areas, etc.
	Contravention of section 24B of the Arms Act, 1959 relating to prohibition as to carrying of notified arms in or through public places in disturbed areas.
	Other offences specified in section 25.
26	To do any act in contravention of any provisions of section 3, 4, 10 or section 12 of the Arms Act, 1959 in such manner as specified in sub-section (1) of section 26 of the said Act.
	To do any act in contravention of any provisions of section 5, 6, 7 or section 11 of the Arms Act, 1959 in such manner as specified in sub-section (2) of section 26 of the said Act.
	Other offences specified in section 26.
27	Use of arms or ammunitions in contravention of section 5 or use of any arms or ammunition in contravention of section 7 of the Arms Act, 1959.
28	Use and possession of fire arms or imitation fire arms in certain cases.
29	Knowingly purchasing arms from unlicensed person or for delivering arms, etc., to person not entitled to possess the same.
30	Contravention of any condition of a licence or any provisions of the Arms Act, 1959 or any rule made thereunder.

PARAGRAPH 6

OFFENCES UNDER THE WILD LIFE (PROTECTION) ACT, 1972

(53 OF 1972)

Section	Description of offence
51 read with section 9	Hunting of wild animals.
51 read with section 17A	Contravention of provisions of section 17A relating to prohibition of picking uprooting, etc., of specified plants.
51 read with section 39	Contravention of provisions of section 39 relating to wild animals, etc., to be Government property.
51 read with section 44	Contravention of provisions of section 44 relating to dealing in trophy and animal articles without licence prohibited.
51 read with section 48	Contravention of provisions of section 48 relating to purchase of animal, etc., by licensee.
51 read with section 49B	Contravention of provisions of section 49B relating to prohibition of dealings in trophies, animals articles, etc., derived from scheduled animals.

PARAGRAPH 7

OFFENCES UNDER THE IMMORAL TRAFFIC (PREVENTION) ACT, 1956

(104 OF 1956)

Section	Description of offence
5	Procuring, inducing or taking person for the sake of prostitution.
6	Detaining a person in premises where prostitution is carried on.
8	Seducing or soliciting for purpose of prostitution.
9	Seduction of a person in custody.

PARAGRAPH 8

OFFENCES UNDER THE PREVENTION OF CORRUPTION ACT, 1988

(49 OF 1988)

Section	Description of offence
7	Public servant taking gratification other than legal remuneration in respect of an official act.

Section	Description of offence
8	Taking gratification in order, by corrupt or illegal means, to influence public servant.
9	Taking gratification for exercise of personal influence with public servant.
10	A betment by public servant of offences defined in section 8 or section 9 of the Prevention of Corruption Act, 1988.
13	Criminal misconduct by a public servant.

PARAGRAPH 9

OFFENCES UNDER THE EXPLOSIVES ACT, 1884
(4 OF 1884)

Section	Description of offence
9B	Punishment for certain offences.
9C	Offences by companies.

PARAGRAPH 10

OFFENCES UNDER THE ANTIQUITIES AND ARTS TREASURES ACT, 1972
(52 OF 1972)

Section	Description of offence
25 read with section 3	Contravention of export trade in antiquities and art treasures.
28	Offences by companies.

PARAGRAPH 11

OFFENCES UNDER THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992
(15 OF 1992)

Section	Description of offence
12A read with section 24	Prohibition of manipulative and deceptive devices, insider trading and substantial.
24	Acquisition of securities or control.

PARAGRAPH 12

OFFENCES UNDER THE CUSTOMS ACT, 1962
(52 OF 1962)

Section	Description of offence
135	Evasion of duty or prohibitions.

PARAGRAPH 13

OFFENCES UNDER THE BONDED LABOUR SYSTEM (ABOLITION) ACT, 1976

(19 OF 1976)

Section	Description of offence
16	Punishment for enforcement of bonded labour.
18	Punishment for extracting bonded labour under the bonded labour system.
20	Abetment to be an offence.

PARAGRAPH 14

OFFENCES UNDER THE CHILD LABOUR (PROHIBITION AND REGULATION) ACT, 1986

(61 OF 1986)

Section	Description of offence
14	Punishment for employment of any child to work in contravention of the provisions of section 3.

PARAGRAPH 15

OFFENCES UNDER THE TRANSPLANTATION OF HUMAN ORGANS ACT, 1994

(42 OF 1994)

Section	Description of offence
18	Punishment for removal of human organ without authority.
19	Punishment for commercial dealings in human organs.
20	Punishment for contravention of any other provisions of this Act.

PARAGRAPH 16

OFFENCES UNDER THE JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2000

(56 OF 2000)

Section	Description of offence
23	Punishment for cruelty to juvenile or child.
24	Employment of juvenile or child for begging.

Section	Description of offence
25	Penalty for giving intoxicating liquor or narcotic drug or psychotropic substance to juvenile or child.
26	Exploitation of juvenile or child employee.

PARAGRAPH 17

OFFENCES UNDER THE EMIGRATION ACT, 1983

(31 OF 1983)

Section	Description of offence
24	Offences and penalties.

PARAGRAPH 18

OFFENCES UNDER THE PASSPORTS ACT, 1967

(15 OF 1967)

Section	Description of offence
12	Offences and penalties.

PARAGRAPH 19

OFFENCES UNDER THE FOREIGNERS ACT, 1946

(31 OF 1946)

Section	Description of offence
14	Penalty for contravention of provisions of the Act, etc.
14B	Penalty for using forged passport.
14C	Penalty for abetment.

PARAGRAPH 20

OFFENCES UNDER THE COPYRIGHT ACT, 1957

(14 OF 1957)

Section	Description of offence
63	Offence of infringement of copyright or other rights conferred by this Act.
63A	Enhanced penalty on second and subsequent convictions.
63B	Knowing use of infringing copy of computer programme.
68A	Penalty for contravention of section 52A.

PARAGRAPH 21

OFFENCES UNDER THE TRADE MARKS ACT, 1999

(47 OF 1999)

Section	Description of offence
103	Penalty for applying false trade marks, trade descriptions, etc.
104	Penalty for selling goods or providing services to which false trade mark or false trade description is applied.
105	Enhanced penalty on second or subsequent conviction.
107	Penalty for falsely representing a trade mark as registered.
120	Punishment of abetment in India of acts done out of India.

PARAGRAPH 22

OFFENCES UNDER THE INFORMATION TECHNOLOGY ACT, 2000

(21 OF 2000)

Section	Description of offence
72	Penalty for breach of confidentiality and privacy.
75	Act to apply for offence or contravention committed outside India.

PARAGRAPH 23

OFFENCES UNDER THE BIOLOGICAL DIVERSITY ACT, 2002

(18 OF 2003)

Section	Description of offence
55 read with section 6.	Penalties for contravention of section 6, etc.

PARAGRAPH 24

OFFENCES UNDER THE PROTECTION OF PLANT VARIETIES AND FARMERS' RIGHTS ACT, 2001

(53 OF 2001)

Section	Description of offence
70 read with section 68	Penalty for applying false denomination, etc.

Section	Description of offence
71 read with section 68	Penalty for selling varieties to which false denomination is applied.
72 read with section 68	Penalty for falsely representing a variety as registered.
73 read with section 68	Penalty for subsequent offence.

PARAGRAPH 25

OFFENCES UNDER THE ENVIRONMENT PROTECTION ACT, 1986

(29 OF 1986)

Section	Description of offence
15 read with section 7	Penalty for discharging environmental pollutants, etc., in excess of prescribed standards.
15 read with section 8	Penalty for handling hazardous substances without complying with procedural safeguards.

PARAGRAPH 26

OFFENCES UNDER THE WATER (PREVENTION AND CONTROL OF POLLUTION) ACT, 1974

(6 OF 1974)

Section	Description of offence
41(2)	Penalty for pollution of stream or well.
43	Penalty for contravention of provisions of section 24.

PARAGRAPH 27

OFFENCES UNDER THE AIR (PREVENTION AND CONTROL OF POLLUTION) ACT, 1981

(14 OF 1981)

Section	Description of offence
37	Failure to comply with the provisions for operating industrial plant.

PARAGRAPH 28

OFFENCES UNDER THE SUPPRESSION OF UNLAWFUL ACTS AGAINST SAFETY OF
MARITIME NAVIGATION AND FIXED PLATFORMS ON CONTINENTAL SHELF
ACT, 2002

(69 OF 2002)

Section	Description of offence
3	Offences against ship, fixed platform, cargo of a ship, maritime navigational facilities, etc.”;

(ii) in Part B, paragraphs 1 to 25 shall be omitted;

(iii) in Part C, serial number (2) and the entries relating thereto shall be omitted.

STATEMENT OF OBJECTS AND REASONS

The Prevention of Money-Laundering Act, 2002 was enacted to prevent money-laundering and to provide for confiscation of property derived from, or involved in, money-laundering and for matter connected therewith or incidental thereto. The aforesaid Act also addresses the international obligations under the Political Declaration and Global Programme of Action adopted by the General Assembly of the United Nations to prevent money-laundering. The Act was amended in the year 2005 and 2009 to remove the difficulties arisen in implementation of the Act.

2. The problem of money-laundering is no longer restricted to the geo political boundaries of any country. It is a global menace that cannot be contained by any nation alone. In view of this, India has become a member of the Financial Action Task Force and Asia Pacific Group on money-laundering, which are committed to the effective implementation and enforcement of internationally accepted standards against money-laundering and the financing of terrorism. Consequent to the submission of an action plan to the Financial Action Task Force to bring anti money-laundering legislation of India at par with the international standards and to obviate some of the deficiencies in the Act that have been experienced by the implementing agencies, the need to amend the Prevention of Money-Laundering Act, 2002 has become necessary.

3. The Prevention of Money-Laundering (Amendment) Bill, 2011, *inter alia*, seeks to—

(a) introduce the concept of ‘corresponding law’ to link the provisions of Indian law with the laws of foreign countries and provide for transfer of the proceeds of the foreign predicate offence in any manner in India;

(b) introduce the concept of ‘reporting entity’ to include therein a banking company, financial institution, intermediary or a person carrying on a designated business or profession;

(c) enlarge the definition of offence of money-laundering to include therein the activities like concealment, acquisition, possession and use of proceeds of crime as criminal activities and remove existing limit of five lakh rupees of fine under the Act;

(d) make provision for attachment and confiscation of the proceeds of crime even if there is no conviction so long as it is proved that offence

of money-laundering has taken place and property in question is involved in money-laundering;

(e) confer power upon the Director to call for records of transactions or any additional information that may be required for the purposes of the prevention of money-laundering and also to make inquiries for non-compliance of reporting obligations cast upon them;

(f) make the reporting entity, its designated directors on the Board and employees responsible for omissions or commissions in relation to the reporting obligations under Chapter IV of the Act;

(g) provide that in any proceedings relating to proceeds of crime under the aforesaid Act, unless the contrary is proved, it shall be presumed that such proceeds of crime is involved in money-laundering;

(h) provide for appeal against the orders of the Appellate Tribunal directly to the Supreme Court;

(i) provide for the process of transfer of the cases of Scheduled offence pending in a court which had taken cognizance of the offence to the Special Court for trial of offence of money-laundering and also provide that the Special Court shall, on receipt of such case proceed to deal with it from the stage at which it is committed.

(j) putting all the offences listed in Part A and Part B of the Schedule to the aforesaid Act into Part A of that Schedule instead of keeping them in two Parts so that the provision of monetary threshold does not apply to the offences.

4. The Bill seeks to achieve the above objects.

New Delhi;
The 16th December, 2011

PRANAB MUKHERJEE

Notes on Clause

Clause 1.— This clause provides for the short title and commencement of the proposed legislation.

Clause 2. — This clause seeks to amend section 2 of the Prevention of Money-Laundering Act, 2002 relating to definitions. This clause, *inter alia*, seeks to modify, amend or substitute certain definitions and to insert certain other new definitions. Sub-clause (i) seeks to insert the definition of the expression “beneficial owner” to mean 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. Sub-clause (ii) seeks to define the term “client” to mean 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. Sub-clause (iii) seeks to insert two new definitions relating to “corresponding law” to mean any law of any foreign country corresponding to any of the provisions of the Act or dealing with offences in that country corresponding to any of the scheduled offences and the definition of the term “dealer” to provide the same meaning as assigned to it in clause (b) of section 2 of the Central Sales Tax Act, 1956.

Sub-clause (v) seeks to substitute the existing definition of the expression “financial institution” to mean 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. Sub-clause (vi) seeks to substitute clause (n) of section 2 so as to substitute the expression “intermediary” to mean 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 or any other intermediary associated with securities market and registered under section 12 of the Securities and Exchange Board of India Act, 1992; or an association recognised or registered under the Forward Contracts (Regulation) Act, 1952 or any member of such association; or intermediary registered by the Pension Fund Regulatory and Development Authority; or a recognised stock exchange referred to in clause (f) of section 2 of the Securities Contracts (Regulation) Act, 1956. Sub-clause (vii) seeks to amend clause (q) to omit the words “and includes a person carrying on designated business or profession”.

Sub-clause (ix) seeks to insert certain new definitions such as,— (i) “person carrying on designated business or profession” to mean a person carrying on activities for playing games of chance for cash or kind, and includes such activities associated with casino; a Registrar or Sub-Registrar appointed under section 6 of the Registration Act, 1908; real estate agent; dealer in precious metals, precious stones and other high value goods, and any person engaged in safekeeping and administration of cash and liquid securities on behalf of other persons; or person carrying on such other activities as the Central Government may, by notification, so designate, from time to time; (ii) “precious metals” to mean gold, silver, platinum, palladium or rhodium or such other metal as may be notified by the Central Government; (iii) “precious stone” to mean diamond, emerald, ruby, sapphire or any such other stone as may be notified by the Central Government. Sub-clause (x) seeks to insert, for the removal of doubts, an *Explanation* after clause (v) of sub-section (1) of section 2, 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. Sub-clause (xi) seeks to define the term “reporting entity” to mean a banking company, financial institution, intermediary or a person carrying on a designated business or profession.

Clause 3.—This clause seeks to amend section 3 of the Act relating to offence of money-laundering. This clause seeks to include acts of concealment, acquisition, possession and use of the proceeds of crime within the provision of offence of money-laundering.

Clause 4.—This clause seeks to amend section 4 of the Act relating to punishment for money-laundering to omit the fine of five lakh rupees, since the limit of fine on legal persons under Act being very small.

Clause 5.—This clause seeks to substitute sub-section (1) of section (5) of the principal Act relating to attachment of property involved in money-laundering to facilitate attachment of proceeds of crime in all cases, irrespective of in whose possession the property is, and also provides for attachment in cases where report has been filed under the corresponding law of any other country. Further this clause seeks to increase the period of provisional attachment from existing one hundred and fifty days to one hundred and eighty days.

Clause 6.—This clause seeks to amend section 8 of the Act relating to adjudication to delink the attachment of the property to the pendency of the proceedings relating to the Scheduled offence and links it to the money-laundering offence. It further seeks to delink the attachment to conviction. It also seeks to

broaden the scope of seizing by also enabling freezing of property and documents which cannot be seized. It also seeks to take away the powers of the adjudicating authority to release the attached properties, where the scheduled offence itself is found not to have been committed or the attached property is not involved in money-laundering and vest the same with the Special Court.

Clause 7.—This clause seeks to amend section 9 of the Act relating to vesting of property in Central Government by taking away the power to confiscate the attached property from the Adjudicating Authority and vesting it with the Special Court.

Clause 8.—This clause seeks to make the consequential changes in section 10 of the Act relating to management of properties confiscated under this Chapter as the provisions relating to confiscation has been provided under some of the sub-sections of section 8.

Clause 9.—This clause seeks to substitute section 12 and to introduce the expression “reporting entity” in the place of “banking company, financial institution or intermediary” in section 12 of the Act. It also widens the scope of maintenance of record that is prescribed for reporting. This clause also seeks to omit the words “series of transactions integrally connected” in section 12.

Clause 10.—This clause seeks to insert a new section 12A relating to access to information to empower the Director to call for records of transaction or any additional information that may be required and for the power to make enquires for non-compliance of reporting entities to the obligations imposed upon such reporting entities.

Clause 11.—This clause seeks to amend section 13 of the Act relating to powers of Director to impose fine by the Director on the designated Directors and the employees of the reporting entities. It further seeks to empower the director for appointment of a chartered accountant from amongst a panel of accountants, maintained by the Central Government. It also seeks to make the designated directors on the board of a company alongwith the employees responsible for omissions or commissions of any reporting entities in their failure and to impose monetary penalty on such reporting entity, or its designated director on the Board or any of its employees, which shall not be less than ten thousand rupees but may extend to one lakh rupees for each such failure.

Clause 12.—This clause seeks to substitute new section for section 14 not to make liable to any civil or criminal proceedings against the reporting entity, its

directors and employees in certain cases for furnishing information under clause (b) of sub-section (1) of section 12.

Clause 13.—This clause seeks to substitute a new section for section 15 of the Act relating to procedure and manner of furnishing information by reporting entities. It provides that the Central Government may, in consultation with the Reserve Bank of India, prescribe the procedure and the manner of maintaining and furnishing information by a reporting entity under sub-section (1) of section 12 for the purpose of implementing the provisions of the Act.

Clause 14.— This clause seeks to amend section 17 of the Act relating to search and seizure and includes provision for freezing any property, so that it can be seized or attached and confiscated later. Sub-clause (ii) seeks to insert a new sub-section (1A) after sub-section (1) to provide that no search shall be conducted unless, in relation to the scheduled offence, a report has been forwarded to a Magistrate under section 157 of the Code of Criminal Procedure, 1973, or a complaint has been filed by a person, authorised to investigate the offence mentioned in the Schedule, before a Magistrate or court for taking cognizance of the scheduled offence, as the case may be, or in cases where such report is not required to be forwarded, a similar report of information received or otherwise has been submitted by an officer authorised to investigate a scheduled offence to an officer not below the rank of Additional Secretary to the Government of India or equivalent being head of the office or Ministry or Department or Unit, as the case may be, or any other officer who may be authorised by the Central Government, by notification, for this purpose.

Sub-clause (iv) seeks to substitute sub-section (4) with new sub-section to provide that the authority seizing any record or property under sub-section (1) or freezing any record or property under sub-section (1A) shall, within a period of thirty days from such seizure or freezing, as the case may be, file an application, requesting for retention of such record or property seized under sub-section (1) or for continuation of the order of freezing served under sub-section (1A), before the Adjudicating Authority.

Clause 15.—This clause seeks to amend section 18 of the Act relating to search of persons. It seeks to substitute the existing proviso with a new proviso in sub-section (1) of section 18 so as to provide that, no search of any person shall be made unless, in relation to the scheduled offence, a report has been forwarded to a Magistrate under section 157 of the Code of Criminal Procedure, 1973, or a complaint has been filed by a person, authorised to investigate the

offence mentioned in the Schedule, before a Magistrate or court for taking cognizance of the scheduled offence, as the case may be, or in cases where such report is not required to be forwarded, a similar report of information received or otherwise has been submitted by an officer authorised to investigate a scheduled offence to an officer not below the rank of Additional Secretary to the Government of India or equivalent being head of the office or Ministry or Department or Unit, as the case may be, or any other officer who may be authorised by the Central Government, by notification, for this purpose.

Clause 16.—This clause seeks to substitute new sections for section 20 and section 21 of the Act relating to retention of property and retention of records respectively. It proposes, *inter alia*, to increase the period of withholding of releasing of property or records, as the case may be, from the existing forty-five days to ninety days so as to allow sufficient time to the officers of Enforcement Directorate to file appeal and obtain a stay in the cases required.

Clause 17.—This clause seeks to amend section 22 of the Act relating to presumption as to records or property also to include cases such as where any record or property is produced by any person or it has been seized from the custody or control of any person or has been frozen under the Act or under any other law for the time being in force.

Clause 18.—This clause seeks to amend section 23 of the Act relating to presumption in inter-connected transactions to include the Special Court also alongwith the Adjudicating Authority for the purposes of adjudication or confiscation under section 8 or for trial of the money-laundering offence.

Clause 19.—This clause seeks to substitute section 24 of the principal Act relating to burden of proof. This clause proposes that in any proceedings relating to proceeds of crime under the proposed legislation, unless the contrary is proved, it shall be presumed that such proceeds of crime is involved in money-laundering so as to ensure the property related to the offence is not passed off to someone to avoid confiscation.

Clause 20.—This clause seeks to amend section 26 of the Act relating to Appeals to the Appellate Tribunal by replacing reference relating to “banking company, financial institution or intermediary” with the term “reporting entity”.

Clause 21.—This clause seeks to amend section 28 of the principal Act relating to qualifications for appointment of Chairperson and member of the Appellate Tribunal. Sub-clause (i) seeks to amend the sub-section (1) of section 28

to substitute the words “he is a sitting or retired Judge of the Supreme Court or a sitting or retired Chief Justice of a High Court” for the words “he is or has been a Judge of the Supreme Court or of a High Court or is qualified to be a Judge of the high Court”. Sub-clause (ii) seeks to substitute sub-section (2) of the said section to provide for qualification of appointment as a Member of the Appellate Tribunal unless such person is of ability, integrity and standing who has shown capacity in dealing with problems relating to handling of matters of proceeds of crime and has qualification and experience of finance, economics, taxation, accountancy, law or administration.

Clause 22.—This clause seeks to substitute the existing section 42 of the Act relating to Appeals to High Court with a new section relating to Appeal to Supreme Court. This clause provides that any person aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the Supreme Court within sixty days from the date of communication of the decision or order of the Appellate Tribunal to him on any question of law arising out of such order. However, the Supreme Court may, if it is satisfied that the applicant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days. This clause further provides for continuation of certain appeals filed before the High Court but pending before it immediately before the commencement of the proposed legislation to continue to be an appeal before the High Court and to be dealt with by that High Court as if the proposed legislation had not been passed.

Clause 23.—This clause seeks to amend sub-section (1) of section 44 of the Act relating to offences triable by Special Courts. Sub-clause (ii) provides that if the court which has taken cognizance of the scheduled offence is other than the Special Court which has taken cognizance of the complaint of the offence of money-laundering under sub-clause (b), it shall, on an application by the authority authorised to file a complaint under the proposed legislation, commit the case relating to the scheduled offence to the Special Court and the Special Court shall, on receipt of such case proceed to deal with it from the stage at which it is committed. Sub-clause (iii) seeks to insert a new clause (c) after clause (b) in the said section provides that a Special Court while trying the scheduled offence or the offence of money-laundering shall hold trial in accordance with the provisions of the Code of Criminal Procedure, 1973, as it applies to a trial before a Court of Session.

Clause 24.—This clause seeks to amend section 50 of the Act relating to powers of authorities regarding summons, production of documents and to give

evidence. It seeks to make a consequential amendment to substitute the words “banking company or a financial institution or a company,” with the words “reporting entity”.

Clause 25.—This clause seeks to amend section 54 of the Act relating to certain officers to assist in inquiry, etc. It seeks to provide for enlarging the scope of section 54 so as to include new set of officials and persons who will be expected to assist the authorities in the enforcement of the Act by bringing various departments, entities and members of organisations under the coverage of the Act, such as the Insurance Regulatory and Development Authority, the Department of Posts, the Forward Markets Commission, the Pension Fund Regulatory and Development Authority, the Registrar or Sub-Registrars appointed under the Registration Act, 1908, the registering Authority empowered to register motor vehicles under the Motor Vehicle Act, 1988, the recognised stock exchanges, the Institute of Chartered Accountants of India, the Institute of Cost and Works Accountants of India and the Institute of Company Secretaries of India.

Clause 26.—This clause seeks to insert new sections 58A and 58B. The proposed new section 58A relating to Special Court to release the property. This new clause provides that, if on closure of the criminal case or conclusion of a trial in a criminal court outside India under the corresponding law of any other country, such court finds that the offence of money-laundering has not taken place or the property in India is not involved in money-laundering, the Special Court shall, on an application moved by the concerned person or the Director, after notice to the other party, order release of such property to the person entitled to receive it. The proposed new section 58B relating to letter of request of contracting State or authority for confiscation or release the property provides that, if the trial under the corresponding law of any other country cannot be conducted by reason of the death of the accused or the accused being declared a proclaimed offender or for any other reason or having commenced but could not be concluded, the Central Government shall, on receipt of a letter of request from a court or authority in a contracting State requesting for confiscation or release of property, as the case may be, forward the same to the Director to move an application before the Special Court and upon such application the Special Court shall pass appropriate orders regarding confiscation or release of such properly involved in the offence of money-laundering.

Clause 27.—This clause seeks to amend section 60 of the Act relating to attachment, seizure and confiscation, etc., of property in a contracting State or India. Sub-clause (i) seeks to amend sub-section (1) of the said section to substitute

for the words and figures “property under section 5 or where an Adjudicating Authority has made an order confirming such attachment or confiscation of any property under section 8”, with the words, figures, brackets and letter “property under section 5 or for freezing under sub-section (1 A) of section 17 or where an Adjudicating Authority has made an order relating to a property under section 8 or where a Special Court has made an order of confiscation relating to a property under sub-section (5) or sub-section (6) of section 8”. Sub-clause (ii) proposes to amend sub-section (2) of the said section so as to substitute the words “attachment or confiscation”, with the words “attachment, seizure, freezing or confiscation”. Sub-clause (iii) seeks to insert a new sub-section after sub-section (2) of the said Act which provides that, if on closure of the criminal case or conclusion of trial in a criminal court outside India under the corresponding law of any other country, such court finds that the offence of money-laundering under the corresponding law of that country has been committed, the Adjudicating Authority shall, on receipt of an application from the Director for execution of confiscation under sub-section (2), order, after giving notice to the affected persons, that such property involved in money-laundering or which has been used for commission of the offence of money-laundering stand confiscated to the Central Government.

Clause 28.—This clause seeks to amend section 63 of Act relating to punishment for false information or failure to give information. It seeks to insert a new sub-section after sub-section (3) which provides that notwithstanding anything contained in clause (c) of sub-section (2), a person who intentionally disobeys any direction issued under section 50 shall also be liable to be proceeded against under section 174 of the Indian Penal Code.

Clause 29.—This clause seeks to substitute section 69 relating to recovery of fine or penalty. It provides that, if any fine or penalty imposed on any person under section 13 or section 63 is not paid within six months from the day of imposition of fine or penalty, the Director or any other officer authorised by him in this behalf may proceed to recover the amount from the said person in the same manner as prescribed in Schedule II of the Income-tax Act, 1961 for the recovery of arrears and he or any officer authorised by him in this behalf shall have all the powers of the Tax Recovery Officer mentioned in the said Schedule for the said purpose.

Clause 30.—This clause seeks to amend section 70 of the Act relating to offences by companies. It seeks to insert a new *Explanation* after the existing *Explanation* to clarify that a company may be prosecuted, notwithstanding whether

the prosecution or conviction of any legal juridical person shall be contingent on the prosecution or conviction of any individual.

Clause 31.—This clause seeks to amend section 72 of the Act relating to continuation of proceedings in the event of death or insolvency, It seeks to substitute the words “High Court”, wherever they occur, with the words “Supreme Court”. It is a consequential change in the said section.

Clause 32.— This clause seeks to amend section 73 of the Act relating to power to make rules. It proposes to insert clauses (aa), (ee) and clause (pp), to omit clause (h) and to substitute clause (j) with new clause (j), (jj) and (jjj) specifying the matters in respect of which rules may be made.

Clause 33.— This clause seeks to amend the Schedule to the Act. Sub-clause (i) seeks in substitute Part A, with new Part so as to include the existing paragraphs 1 to 25 of Part B in Part A. Sub-clause (ii) seeks to omit the paragraphs 1 to 25 and sub-clause (iii) proposes to amend Part C to omit the entries relating to serial number (2).

MEMORANDUM REGARDING DELEGATED LEGISLATION

Sub-clause (1) of clause 5 of the Bill empowers the Central Government to make rules for provisional attachment of property.

2. Clause 9 of the Bill empowers the Central Government to make rules to provide the period within which the reporting entity to furnish information to Director relating to transaction, the nature and value of such transaction; to verify the identity of its client and the identity of beneficial owner of such clients. This clause further empowers the Central Government to notify exempting any reporting entity or class of entities from the obligation.

3. Clause 11 of the Bill empowers the Central Government to make rules to provide the period of interval at which the reporting entity or its designated director on the Board or any of its employees to send reports on the measures taken by it.

4. Clause 13 of the Bill empowers the Central Government to make rules, in consultation with the Reserve Bank of India, to provide the procedure and the manner of maintaining and furnishing information by reporting entity for the purpose of implementing the provisions of the Act.

5. Clause 16 of the Bill empowers the Central Government to make rules to provide the manner in which the officer shall forward a copy of the order alongwith the materials in his possession to the Adjudicating Authority.

6. The rules as may be made by the Central Government are required to be laid before the Parliament. The matters in respect of which rules may be made by the Central Government in accordance with the provisions of the Act are matters of procedure and administrative details and it is not practical to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

ANNEXURE

EXTRACTS FROM THE PREVENTION OF MONEY-LAUNDERING ACT, 2002

(15 OF 2003)

*	*	*	*	*
Definitions.	<p>2. (1) In this Act, unless the context otherwise requires,—</p>			
*	*	*	*	*
	<p>(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 co-operative bank, a housing finance institution and an authorised person, a payment system operator and a non-banking financial company;</p>			
			2 of 1934.	
*	*	*	*	*
	<p>(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;</p>			
			15 of 1992.	
*	*	*	*	*
	<p>(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 and includes a person carrying on designated business or profession.</p>			
			2 of 1934.	
*	*	*	*	*
	<p>(ra) “offence of cross border implications”, means—</p>			
	<p>(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</p>			

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.

* * * * *

CHAPTER II

OFFENCE OF MONEY-LAUNDERING

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

Offence of money-laundering.

4. Whoever commits the offence of money-laundering shall be punishable with rigorous imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine which may extend to five lakh rupees:

Punishment for money-laundering.

Provided that where the proceeds of crime involved in money-laundering relates to any offence specified under paragraph 2 of Part A of the Schedule, the

provisions of this section shall have effect as if for the words “which may extend to seven years”, the words “which may extend to ten years” had been substituted.

CHAPTER III

ATTACHMENT, ADJUDICATION AND CONFISCATION

Attachment
of property
involved in
money-
laundering.

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

(a) any person is in possession of any proceeds of crime;

(b) such person has been charged of having committed a scheduled offence; and

(c) such proceeds of crime are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceedings relating to confiscation of such proceeds of crime under this chapter,

he may, by order in writing, provisionally attach such property for a period not exceeding one hundred and fifty days from the date of the order, in the manner provided in the Second Schedule to the Income-tax Act, 1961 and the Director or the other officer so authorised by him, as the case may, shall be deemed to be an officer under sub-rule (e) of rule 1 of that Schedule:

43 of 1961.

Provided that no such order of attachment shall be made unless, in relation to the scheduled offence, a report has been forwarded to a Magistrate under section 173 of the code of Criminal Procedure, 1973, or a complaint has been filed by a person, authorised to investigate the offence mentioned in the Schedule, before a Magistrate or court for taking

2 of 1974.

cognizance of the scheduled offence, as the case may be:

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

* * * * *

8. (1) On receipt of a complaint under sub-section (5) of section 5, or applications made under sub-section (4) of section 17 or under sub-section (10) of section 18, if the Adjudicating Authority has reason to believe that any person has committed an offence under section 3 or is in possession of proceeds of crime, it may serve a notice of not less than thirty days on such person calling upon him to indicate the sources of his income, earning or assets, out of which or by means of which he has acquired the property attached under sub-section (1) of section 5, or, seized under section 17 or section 18, the evidence on which he relies and other relevant information and particulars, and to show cause why all or any of such properties should not be declared to be the properties involved in money-laundering and confiscated by the Central Government: Adjudication.

Provided that where a notice under this sub-section specifies any property as being held by a person on behalf of any other person, a copy of such notice shall also be served upon such other person;

Provided further that where such property is held

jointly by more than one person, such notice shall be served to all persons holding such property.

* * * * *

(3) Where the Adjudicating Authority decides under sub-section (2) that any property is involved in money-laundering, he shall, by an order in writing, confirm the attachment of the property made under sub-section (1) of section 5 or retention of property or record seized under section 17 or section 18 and record a finding to that effect, such attachment or retention of the seized property or record shall—

(a) continue during the pendency of the proceedings relating to any scheduled offence before a court; and

* * * * *

(4) Where the provisional order of attachment made under sub-section (1) of section 5 has been confirmed under sub-section (3), the Director or any other officer authorised by him in this behalf shall forthwith take the possession of the attached property.

(5) Where on conclusion of a trial for any scheduled offence, the person concerned is acquitted, the attachment of the property or retention of the seized property or record under sub-section (3) and net income, if any, shall cease to have effect.

(6) Where the attachment of any property or retention of the seized property or record becomes final under clause (b) of sub-section (3), the Adjudicating Authority shall, after giving an opportunity of being heard to the person concerned, make an order confiscating such property.

Vesting of
property in
Central
Government.

9. Where an order of confiscation has been made under sub-section (6) of section 8 in respect of any property of a person, all the rights and title in such

property shall vest absolutely in the Central Government free from all encumbrances:

Provided that where the Adjudicating Authority, after giving an opportunity of being heard to any other person interested in the property attached under this Chapter, or seized under Chapter V, is of the opinion that any encumbrance on the property or lease-hold interest has been created with a view to defeat the provisions of this Chapter, it may, by order, declare such encumbrance or lease-hold interest to be void and thereupon the aforesaid property shall vest in the Central Government free from such encumbrances or lease-hold interest:

Provided further that nothing in this section shall operate to discharge any person from any liability in respect of such encumbrances which may be enforced against such person by a suit for damages.

10. (1)* * * * *

(2) The Administrator appointed under sub-section (1) shall receive and manage the property in relation to which an order has been made under sub-section (6) of section 8 in such manner and subject to such conditions as may be prescribed.

* * * * *

Management of properties confiscated under this Chapter.

CHAPTER IV

OBLIGATIONS OF BANKING COMPANIES, FINANCIAL INSTITUTIONS AND INTERMEDIARIES

12. (1) Every banking company, financial institution and intermediary shall—

(a) maintain a record of all transactions, the nature and value of which may be prescribed, whether such transactions comprise of a single transaction or a series of transactions integrally

Banking companies, financial institutions and intermediaries to maintain records.

connected to each other, and where such series of transactions take place within a month;

(b) furnish information of transactions referred to in clause (a) to the Director within such time as may be prescribed;

(c) verify and maintain the records of the identity of all its clients, in such manner as may be prescribed:

Provided that where the principal officer of a banking company or financial institution or intermediary, as the case may be, has reason to believe that a single transaction or series of transactions integrally connected to each other have been valued below the prescribed value so as to defeat the provisions of this section, such officer shall furnish information in respect of such transactions to the Director within the prescribed time.

(2)(a) The records referred to in clause (a) of sub-section (1) shall be maintained for a period of ten years from the date of transactions between the clients and the banking company or financial institution or intermediary, as the case may be.

(b) The records referred to in clause (c) of sub-section (1) shall be maintained for a period of ten years from the date of cessation of transactions between the clients and the banking company or financial institution or intermediary, as the case may be.

Powers of
Director to
impose fine.

13. (1) The Director may, either of his own motion or on an application made by any authority, officer or person, call for records referred to in sub-section (1) of section 12 and may make such inquiry or cause such inquiry to be made, as he thinks fit.

(2) If the Director, in the course of any inquiry, finds that a banking company, financial institutions or an intermediary or any of its officers has failed to comply with the provisions contained in section 12, then, without prejudice to any other action that may be taken under any other provisions of this Act, he may, by an order, levy a fine on such banking company or financial institution or intermediary which shall not be less than ten thousand rupees but may extend to one lakh rupees for each failure.

* * * * *

14. Save as otherwise provided in section 13, the banking companies, financial institutions, intermediaries and their officers shall not be liable to any civil proceedings against them for furnishing information under clause (b) of sub-section (1) of section 12.

No civil proceedings against banking companies, financial institutions, etc., in certain cases.

* * * * *

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

Search and seizure.

* * * * *

(iii) is in possession of any records relating to money-laundering, then, subject to the rules made in this behalf, he may authorise any officer subordinate to him to—

* * * * *

(d) place marks of identification on such record or make or cause to be made extracts or copies therefrom;

(e) make a note or an inventory of such record or property;

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

Provided that no search shall be conducted unless, in relation to the scheduled offence, a report has been forwarded to a Magistrate under section 157 of the Code of Criminal Procedure, 1973, or a complaint has been filed by a person, authorised to investigate the offence mentioned in the Schedule, before a Magistrate or court for taking cognizance of the scheduled offence, as the case may be. 2 of 1974.

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

* * * * *

(4) The authority, seizing any record or property under this section, shall, within a period of thirty days from such seizure, file an application, requesting for retention of such record or property, before the Adjudicating Authority.

Search of persons.

18. (1) If an authority, authorised in this behalf by the Central Government by general or special order, has reason to believe (the reason for such belief to be recorded in writing) that any person has secreted about his person or in anything under his possession,

ownership or control, any record or proceeds of crime which may be useful for or relevant to any proceedings under this Act, he may search that person and seize such record or property which may be useful for or relevant to any proceedings under this Act:

2 of 1974. Provided that no search shall be made unless, in relation to the scheduled offence, a report has been forwarded to a Magistrate under section 173 of the Code of Criminal Procedure, 1973, or a complaint has been filed by a person, authorised to investigate the offence mentioned in the Schedule, before a Magistrate or court for taking cognizance of the scheduled offence, as the case may be.

* * * * *

20. (1) Where any property has been seized under section 17 or section 18, and the officer authorised by the Director in this behalf has, on the basis of material in his possession, reason to believe (the reason for such belief to be recorded by him in writing) that such property is required to be retained for the purposes of adjudication under section 8, such property may be retained for a period not exceeding three months from the end of the month in which such property was seized.

Retention
of property.

(2) The officer authorised by the Director immediately after he has passed an order for retention of the property for purposes of adjudication under section 8 shall forward a copy of the order along with the material in this possession, referred to in sub-section (1), to the Adjudicating Authority, in a sealed envelope, in the manner as may be prescribed and such Adjudicating Authority shall keep such order and material for such period as may be prescribed.

(3) On the expiry of the period specified in sub-section (1), the property shall be returned to the person from whom such property was seized unless the

Adjudicating Authority permits retention of such property beyond the said period.

(4) The Adjudicating Authority, before authorising the retention of such property beyond the period specified in sub-section (1), shall satisfy himself that the property is *prima facie* involved in money-laundering and the property is required for the purposes of adjudication under section 8.

(5) After passing the order of confiscation under sub-section (6) of section 8, the Adjudicating Authority shall direct the release of all properties other than the properties involved in money-laundering to the person from whom such properties were seized.

(6) Notwithstanding anything contained in sub-section (5), the Director or any officer authorised by him in this behalf may withhold the release of any property until filing of appeal under section 26 or forty-five days from the date of order under sub-section (5) whichever is earlier, if he is of the opinion that such property is relevant for the proceedings before the Appellate Tribunal.

Retention
of records.

21. (1) Where any records have been seized, under section 17, or section 18, and the Investigating Officer or any other officer authorised by the Director in this behalf has reason to believe that any of such records are required to be retained for any inquiry under this Act, he may retain such records for a period not exceeding three months from the end of the month in which such records were seized.

(2) The person, from whom records were seized, shall be entitled to obtain copies of records retained under sub-section (1).

(3) On the expiry of the period specified under sub-section (1), the records shall be returned to the person from whom such records were seized unless the

Adjudicating Authority permits retention of such records beyond the said period.

(4) The Adjudicating Authority, before authorising the retention of such records beyond the period mentioned in sub-section (1), shall satisfy himself that the records are required for the purposes of adjudication under section 8.

(5) After passing of an order of confiscation under sub-section (6) of section 8, the Adjudicating Authority shall direct the release of the records to the person from whom such records were seized.

(6) Notwithstanding anything contained in sub-section (5), the Director or any officer authorised by him in this behalf may withhold the release of any records until filing of appeal under section 26 or after forty-five days from the date of order under sub-section (5), whichever is earlier, if he is of the opinion that such records are relevant for the proceedings before the Appellate Tribunal.

22. (1) Where any records or property are or is found in the possession or control of any person in the course of a survey or a search, it shall be presumed that—

Presumption as to records or property in certain cases.

(i) such records or property belong or belongs to such person;

(ii) the contents of such records are true; and

(iii) the signature and every other parts of such records which purport to be in the handwriting of any particular person or which may reasonably be assumed to have been signed by, or to be in the handwriting of, any particular person, are in that person's handwriting, and in the case of a record, stamped, executed or attested, that it was executed or attested by the person by whom it purports to have been so stamped, executed or attested.

* * * * *

Presumption in inter-connected transactions. **23.** Where money-laundering involves two or more inter-connected transactions and one or more such transactions is or are proved to be involved in money-laundering, then for the purposes of adjudication or confiscation under section 8, it shall, unless otherwise proved to the satisfaction of the Adjudicating Authority, be presumed that the remaining transactions from part of such inter-connected transactions.

Burden of proof. **24.** When a person is accused of having committed the offence under section 3, the burden of proving that proceeds of crime are untainted property shall be on the accused.

* * * * *

Appeal to Appellate Tribunal. **26. (1)*** * * * * *

(2) Any banking company, financial institution or intermediary aggrieved by any order of the Director made under sub-section (2) of section 13, may prefer an appeal to the Appellate Tribunal.

* * * * *

Qualifications for appointment. **28. (1)** A person shall not be qualified for appointment as Chairperson unless he is or has been a Judge of the Supreme Court or of a High Court or is qualified to be a Judge of the High Court.

(2) A person shall not be qualified for appointment as a Member unless he—

* * * * *

(b) has been a member of the India Legal Service and has held a post in Grade I of that Service for at least three years; or

(c) has been a member of the Indian Revenue Service and has held the post of Commissioner of Income-tax equivalent post in that Service for at least three years;

(d) has been a member of the Indian Economic Service and has held the post of Joint Secretary or equivalent post in that Service for at least three years; or

(e) has been a member of the Indian Customs and Central Excise Service and has held the post of a Joint Secretary or equivalent post in that Service for at least three years; or

38 of 1949.

(f) has been in the practice of accountancy as a chartered accountant under the Chartered Accountants Act, 1949 or as a registered accountant under any law for the time being in force or partly as a registered accountant and partly as a chartered accountant for at least ten years:

Provided that one of the members of the Appellate Tribunal shall be from category mentioned in clause (f), or

(g) has been a member of the Indian Audit and Accounts Service and has held the post of Joint Secretary or equivalent post in that Service for at least three years.

(3) No sitting Judge of the Supreme Court or of a High Court shall be appointed under this section except after consultation with the Chief Justice of India.

* * * * *

42. Any person aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the High Court within sixty days from the date of communication of the decision or order of the Appellate Tribunal to him on any question of law or fact arising out of such order:

Appeal to
High Court.

Provided that the High Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it

to be filed within a further period not exceeding sixty days.

Explanation.—For the purposes of this section, “High Court” means—

(i) the High Court within the jurisdiction of which the aggrieved party ordinarily resides or carries on business or personally works for gain; and

(ii) where the Central Government is the aggrieved party, the High Court within the jurisdiction of which the respondent, or in a case where there are more than one respondent, any of the respondents, ordinarily resides or carries on business or personally works for gain.

* * * * *

Offences triable by Special Courts.

44. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973,—

2 of 1974.

(a) The scheduled offence and the offence punishable under section 4 shall be triable only by the Special Court constituted for the area in which the offence has been committed:

Provided that the Special Court, trying a scheduled offence before the commencement of this Act, shall continue to try such scheduled offence; or

(b) A Special Court may, upon a complaint made by an authority authorised to this behalf under this Act take cognizance of the offence for which the accused is committed to it for trial.

* * * * *

Powers of authorities regarding summons,

50. (1) The Director shall, for the purposes of section 13, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908

5 of 1908.

while trying a suit in respect of the following matters, namely:—

production of documents and to give evidence, etc.

(a) Discovery and inspection;

(b) enforcing the attendance of any person, including any officer of a banking company or a financial institution or a company, and examining him on oath;

* * * * *

54. The following officers are hereby empowered and required to assist the authorities in the enforcement of this Act, namely:—

Certain officers to assist in inquiry, etc.

* * * * *

42 of 1956.

(d) officers of the stock exchange recognised under section 4 of the Securities Contracts (Regulation) Act, 1956;

* * * * *

(j) such other officers of the Central Government, State Government, local authorities or banking companies as the Central Government may, by notification, specify, in this behalf.

* * * * *

60. (1) Where the Director has made an order for attachment of any property under section 5 or where an Adjudicating Authority has made an order confirming such attachment or confiscation of any property under section 8, and such property is suspected to be in a contracting State, the Special Court, on an application by the Director or the Administrator appointed under sub-section (1) of section 10, as the case may be, may issue a letter of request to a court or an authority in the contracting State for execution of such order.

Attachment, seizure and confiscation, etc., of property in a contracting State of India.

(2) where a letter of request is received by the Central Government from a court or an authority in a contracting State requesting attachment or confiscation of the property in India, derived or obtained, directly or indirectly, by any person from the commission of

an offence under section 3 committed in that contracting State, the Central Government may forward such letter of request to the Director, as it thinks fit, for execution in accordance with the provisions of this Act.

* * * * *

Recovery of fines.

69. Where any fine imposed on any person under section 13 or section 63 is not paid within six months from the day of imposition of fine, the Director or any other officer authorised by him in this behalf may proceed to recover the amount from the said person in the same manner as prescribed in Schedule II of the Income-tax Act, 1961 for the recovery of arrears and he or any officer authorised by him in this behalf shall have all the powers of the Tax Recovery Officer mentioned in the said Schedule for the said purpose.

43 of 1961.

* * * * *

Continuation of proceedings in the event of death or insolvency.
Power to make rules.

72. (1)* * * * *

(2) Where—

(a) after passing of a decision or order by the Appellate Tribunal, no appeal has been preferred to the High Court under section 42; or

(b) any such appeal has been preferred to the High Court,—

then—

(i) in a case referred to in clause (a), the person entitled to file the appeal dies or is adjudicated an insolvent before preferring an appeal to the High Court, or

(ii) in a case referred to in clause (b), the person who had filed the appeal dies or is adjudicated an insolvent during the pendency of the appeal before the High Court,

then, it shall be lawful for the legal representatives of such person, or the official assignee or the official receiver, as the case may be, to prefer an appeal to the High Court or to continue the appeal before the High Court in place of such person and the provisions of section 42 shall, so far as may be, apply, or continue to apply, to such appeal.

73. (1)* * * * * Power to make rules.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

* * * * *

(h) the nature and value of transactions in respect of which records shall be maintained under clause (a) of sub-section (1) of section 12;

(i) the time within which the information of transactions under clause (b) of sub-section (1) of section 12 shall be furnished;

(j) the manner in which records shall be verified and maintained by banking companies, financial institutions and intermediaries under clause (c) of sub-section (1) of section 12;

* * * * *

THE SCHEDULE

[See section 2(y)]

PART A

PARAGRAPH 1

OFFENCES UNDER THE INDIAN PENAL CODE

Section	Description of offence
121	Waging, or attempting to wage war or abetting waging of war, against the Government of India.

Section	Description of offence
121A	Conspiracy to commit offences punishable by section 121 against the State.
“489A	Counterfeiting currency notes or bank notes.
489B	Using as genuine, forged or counterfeit currency notes or bank notes.”;

PARAGRAPH 2

OFFENCES UNDER THE NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT, 1985

Section	Description of offence
“15	Contravention in relation to poppy straw.
16	Contravention in relation to coca plant and coca leaves.
17	Contravention in relation to prepared opium.
18	Contravention in relation to opium poppy and opium.
19	Embezzlement of opium by cultivator.
20	Contravention in relation to cannabis plant and cannabis.
21	Contravention in relation to manufactured drugs and preparations.”;

PARAGRAPH 3

OFFENCES UNDER THE EXPLOSIVE SUBSTANCES ACT, 1908

Section	Description of offence
3	Causing explosion likely to endanger life or property.
4	Attempt to cause explosion, or for making or keeping explosives with intent to endanger life or property.
5	Making or possessing explosives under suspicious circumstances.

PARAGRAPH 4

OFFENCES UNDER THE UNLAWFUL-ACTIVITIES (PREVENTION) ACT, 1967

Section	Description of offence
10 read with section 3	Penalty for being member of an unlawful association, etc.

Section	Description of offence
11 read with sections 3 and 7	Penalty for dealing with funds of an unlawful association.
13 read with section 3	Punishment for unlawful activities.
16 read with section 15	Punishment for terrorist act.
16A	Punishment for making demands of radioactive substances, nuclear devices, etc.
17	Punishment for raising fund for terrorist act.
18	Punishment for conspiracy, etc.
18A	Punishment for organising of terrorist camps.
18B	Punishment for recruiting of any person or persons for terrorist act.
19	Punishment for harbouring, etc.
20	Punishment for being member of terrorist gang or organisation.
21	Punishment for holding proceeds of terrorism.
38	Offence relating to membership of a terrorist organisation.
39	Offence relating to support given to a terrorist organisation.
40	Offence of raising fund for a terrorist organisation.;

PART B

PARAGRAPH 1

OFFENCES UNDER THE INDIAN PENAL CODE

Section	Description of offence
120B	Criminal conspiracy.
255	Counterfeiting Government stamp.
257	Making or selling instrument for counterfeiting Government stamp.

Section	Description of offence
258	Sale of counterfeit Government stamp.
259	Having possession of counterfeit Government stamp.
260	Using as genuine a Government stamp known to be counterfeit.
302	Murder.
304	Punishment for culpable homicide not amounting to murder.
307	Attempt to murder.
308	Attempt to commit culpable homicide.
327	Voluntarily causing hurt to extort property, or to constrain to an illegal act.
392	Voluntarily causing grievous hurt to extort property, or to constrain to an illegal act.
364A	Kidnapping for ransom, etc.
384 to 389	Offences relating to extortion.
392 to 402	Offences relating to robbery and dacoity.
411	Dishonestly receiving stolen property.
412	Dishonestly receiving property stolen in the commission of a dacoity.
413	Habitually dealing in stolen property.
414	Assisting in concealment of stolen property.
417	Punishment for cheating.
418	Cheating with knowledge that wrongful loss may ensue to person whose interest offender is bound to protect.
419	Punishment for cheating by personation.
420	Cheating and dishonestly inducing delivery of properties.
421	Dishonest or fraudulent removal or concealment of property to prevent distribution among creditors.

Section	Description of offence
422	Dishonestly or fraudulently preventing debt being available for creditors.
423	Dishonest or fraudulent execution of deed of transfer containing false statement of consideration.
424	Dishonest or fraudulent removal or concealment of property.
467	Forgery of valuable security, will, etc.
471	Using as genuine a forged document or electronic record.
472 and 473	Making or possessing counterfeit seal, etc., with intent to commit forgery.
475 and 476	Counterfeiting device or mark.
481	Using a false property mark.
482	Punishment for using a false property mark.
483	Counterfeiting a property mark used by another.
484	Counterfeiting a mark used by a public servant.
485	Making or possession of any instrument for counterfeiting a property mark.
486	Selling goods marked with a counterfeit property mark.
487	Making a false mark upon any receptacle containing goods.
488	Punishment for making use of any such false mark.” ;

PARAGRAPH 2

OFFENCES UNDER THE ARMS ACT, 1959

Section	Description of offence
25	To manufacture, sell, transfer, convert, repair or test or prove or expose or offer for sale or transfer or have in his possession for sale, transfer, conversion, repair, test or proof, any arms or ammunition in contravention of

Section	Description of offence
	<p data-bbox="442 283 1092 425">section 5 of the Arms Act, 1959, To acquire, have in possession or carry any prohibited arms or prohibited ammunition in contravention of section 7 of the Arms Act, 1959.</p> <p data-bbox="442 460 1092 566">Contravention of section 24A of the Arms Act, 1959 relating to prohibition as to possession of notified arms in disturbed areas, etc.</p> <p data-bbox="442 596 1092 702">Contravention of section 24B of the Arms Act, 1959 relating to prohibition as to carrying of notified arms in or through public places in disturbed areas.</p> <p data-bbox="442 733 889 758">Other offences specified in section 25.</p>
26	<p data-bbox="442 793 1092 935">To do any act in contravention of any provisions of section 3, 4, 10 or 12 of the Arms Act, 1959 in such manner as specified in sub-section (1) of section 26 of the said Act.</p> <p data-bbox="442 970 1092 1075">To do any act in contravention of any provisions of section 5, 6, 7 or 11 of the Arms Act, 1959 in such manner as specified in sub-section (2) of section 26 of the said Act.</p> <p data-bbox="442 1106 889 1132">Other offences specified in section 26.</p>
27	<p data-bbox="442 1166 1092 1272">Use of arms or ammunitions in contravention of section 5 or use of any arms of ammunition in contravention of section 7 of the Arms Act, 1959.</p>
28	<p data-bbox="442 1306 1092 1365">Use and possession of fire arms or imitation fire arms in certain cases.</p>
29	<p data-bbox="442 1399 1092 1505">Knowingly purchasing arms from unlicensed person or for delivering arms, etc., to person not entitled to possess the same.</p>
30	<p data-bbox="442 1539 1092 1645">Contravention of any condition of a licence or any provisions of the Arms Act, 1959 or any rule made thereunder.</p>

PARAGRAPH 3

OFFENCES UNDER THE WILD LIFE (PROTECTION) ACT, 1972

Section	Description of offence
¹ [51 read with section 9	Hunting of wild animals.]
51 read with section 17A	Contravention of provisions of section 17A relating to prohibition of picking, uprooting etc., of specified plants.
51 read with section 39	Contravention of provisions of section 39 relating to wild animals, etc., to be Government property.
51 read with section 44	Contravention of provisions of section 44 relating to dealings in trophy and animal articles without licence prohibited.
51 read with section 48	Contravention of provisions of section 48 relating to purchase of animal etc., by licence.
51 read with section 49B	Contravention of provisions of section 49B relating to prohibition of dealings in trophies animal articles, etc., derived from scheduled animals.

PARAGRAPH 4

OFFENCES UNDER THE IMMORAL TRAFFIC (PREVENTION) ACT, 1956

Section	Description of offence
5	Procuring, inducing or taking person for the sake of prostitution.
6	Detaining a person in premises where prostitution is carried on.
8	Seducing or soliciting for purpose of prostitution.
9	Seduction of a person in custody.

PARAGRAPH 5

OFFENCES UNDER THE PREVENTION OF CORRUPTION ACT, 1988

Section	Description of offence
7	Public servant taking gratification other than legal remuneration in respect of an official act.

Section	Description of offence
8	Taking gratification in order, by corrupt or illegal means, to influence public servant.
9	Taking gratification for exercise of personal influence, with public servant.
10	Abetment by public servant of offences defined in section 8 or section 9 of the Prevention of Corruption Act, 1988.
² [13	Criminal misconduct by a public servant.]

“PARAGRAPH 6

OFFENCES UNDER THE EXPLOSIVES ACT, 1884

Section	Description of offence
9-B	Punishment for certain offences.
9-C	Offences by companies.

“PARAGRAPH 7

OFFENCES UNDER THE ANTIQUITIES AND ARTS TREASURES ACT, 1972

Section	Description of offence
25 read with section 3	Contravention of export trade in antiquities and art treasures.
28	Offences by companies.

“PARAGRAPH 8

OFFENCES UNDER THE SECURITIES AND EXCHANGES BOARD OF INDIA ACT, 1992

Section	Description of offence
12A read with section 24	Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control.

“PARAGRAPH 9

OFFENCES UNDER THE CUSTOMS ACT, 1962

Section	Description of offence
135	Evasion of duty or prohibitions.

“PARAGRAPH 10

OFFENCES UNDER THE BONDED LABOUR SYSTEM (ABOLITION) ACT, 1976

Section	Description of offence
16	Punishment for enforcement of bonded labour.
18	Punishment for extracting bonding labour under the bonded labour system.
20	Abetment to be an offence.

“PARAGRAPH 11

OFFENCES UNDER THE CHILD LABOUR (PROHIBITION AND REGULATION) ACT, 1986

Section	Description of offence
14	Punishment for employment of any child to work in contravention of the provisions of section 3.

“PARAGRAPH 12

OFFENCES UNDER THE TRANSPLANTATION OF HUMAN ORGANS ACT, 1994

Section	Description of offence
18	Punishment for removal of human organ without authority.
19	Punishment for commercial dealings in human organs.
20	Punishment for contravention of any other provision of this Act.

¹[PARAGRAPH 13

OFFENCES UNDER THE JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN)
ACT, 2000

Section	Description of offence
23	Punishment for cruelty to juvenile or child.
24	Employment of juvenile or child for begging.

Section	Description of offence
25	Penalty for giving intoxicating liquor or narcotic drug or psychotropic substance to juvenile or child.
26	Exploitation of juvenile or child employee.]

¹[PARAGRAPH 14

OFFENCES UNDER THE EMIGRATION ACT, 1983

Section	Description of offence
24	Offences and penalties.]

¹[PARAGRAPH 15

OFFENCES UNDER THE PASSPORTS ACT, 1967

Section	Description of offence
12	Offences and penalties.]

¹[PARAGRAPH 16

OFFENCES UNDER THE FOREIGNERS ACT, 1946

Section	Description of offence
14	Penalty for contravention of provisions of the Act, etc.
14B	Penalty for using forged passport.
14C	Penalty for abetment.]

¹[PARAGRAPH 17

OFFENCES UNDER THE COPYRIGHT ACT, 1957

Section	Description of offence
63	Offence of infringement of copyright or other rights conferred by this Act.
63A	Enhanced penalty on second and subsequent convictions.
63B	Knowing use of infringing copy of computer programme.
68A	Penalty for contravention of section 52A.]

¹[PARAGRAPH 18

OFFENCES UNDER THE TRADE MARKS ACT, 1999

Section	Description of offence
103	Penalty for applying false trade marks, trade descriptions, etc.
104	Penalty for selling goods or providing services to which false trade-mark or false trade description is applied.
105	Enhanced penalty on second or subsequent conviction.
107	Penalty for falsely representing a trade mark as registered.
120	Punishment of abetment in India of acts done out of India.]

“PARAGRAPH 19

OFFENCES UNDER THE INFORMATION TECHNOLOGY ACT, 2000

Section	Description of offence
72	Penalty for breach of confidentiality and privacy.
75	Act to apply for offence or contravention committed outside India.

“PARAGRAPH 20

OFFENCES UNDER THE BIOLOGICAL DIVERSITY ACT, 2002

Section	Description of offence
55 read with section 6	Penalties for cotravention of section 6, etc.

“PARAGRAPH 21

OFFENCES UNDER THE PROTECTION OF PLANT VARIETIES AND FARMERS’ RIGHTS
ACT, 2001

Section	Description of offence
70 read with section 68	Penalty for applying false denomination, etc.
71 read with section 68	Penalty for selling varieties to which false denomination is applied.

Section	Description of offence
72 read with section 68	Penalty for falsely representing a variety as registered.
73 read with section 68	Penalty for subsequent offence.

“PARAGRAPH 22

OFFENCES UNDER THE ENVIRONMENT PROTECTION ACT, 1986

Section	Description of offence
15 read with section 7	Penalty for discharging environmental pollutants.
15 read with section 6	Penalty for handling hazardous substance.

“PARAGRAPH 23

OFFENCES UNDER THE WATER (PREVENTION AND CONTROL OF POLLUTION)
ACT, 1974

Section	Description of offence
41(2)	Penalty for pollution of stream or well.
43	Penalty for contravention of provisions of section 24.

PARAGRAPH 24

OFFENCES UNDER THE AIR (PREVENTION AND CONTROL OF POLLUTION) ACT, 1981

Section	Description of offence
37	Failure to comply with the provisions for operating industrial plant

PARAGRAPH 25

OFFENCES UNDER THE SUPPRESSION OF UNLAWFUL ACTS AGAINST SAFETY OF
MARITIME NAVIGATION AND FIXED PLATFORMS ON CONTINENTAL SHELF ACT, 2002

Section	Description of offence
3	Offences against ship, fixed platform, cargo of a ship, maritime navigational facilities, etc.”;

“PART C”

An Offence which is the offence of cross border implications and is specified in:—

- (1) Part A; or
- (2) Part B without any monetary threshold; or
- (3) the Offences against property under Chapter XVII of the Indian Penal Code,”.

LOK SABHA

A

BILL

further to amend the Prevention of Money-laundering Act, 2002.

(Shri Pranab Mukherjee, Minister of Finance)

**REPORT OF THE DEPARTMENT
RELATED STANDING COMMITTEE ON
FINANCE ON THE PREVENTION OF
MONEY-LAUNDERING (AMENDMENT)
BILL, 2011 (PRESENTED IN THE
LOK SABHA ON 9 MAY, 2012)**

FIFTY-SIXTH REPORT

STANDING COMMITTEE ON FINANCE
(2011-2012)

(FIFTEENTH LOK SABHA)

MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

THE PREVENTION OF MONEY LAUNDERING
(AMENDMENT) BILL, 2011

Presented to Lok Sabha on 9 May, 2012

Laid in Rajya Sabha on 9 May, 2012



सत्यमेव जयते

LOK SABHA SECRETARIAT
NEW DELHI

May, 2012/Vaisakha, 1934 (*Saka*)

COMPOSITION OF STANDING COMMITTEE ON FINANCE
(2011-12)

1. Shri Yashwant Sinha — *Chairman*

MEMBERS

LOK SABHA

2. Shri Shivkumar Udasi
3. Shri Jayant Chaudhary
4. Shri Harishchandra Deoram Chavan
5. Shri Bhakta Charan Das
6. Shri Gurudas Dasgupta
7. Shri Nishikant Dubey
8. Shri Chandrakant Khaire
9. Shri Bhartruhari Mahtab
10. Shri Anjan Kumar Yadav M.
11. Shri Prem Das Rai
12. Dr. Kavuru Sambasiva Rao
13. Shri Rayapati S. Rao
14. Shri Magunta Sreenivasulu Reddy
15. Shri Sarvey Sathyanarayana
16. Shri G.M. Siddeswara
17. Shri N. Dharam Singh
18. Shri Yashvir Singh
19. Shri Manicka Tagore
20. Shri R. Thamaraiselvan
21. Dr. M. Thambidurai
- *22. Smt. Renuka Chowdhury
- *23. Shri Ravi Shankar Prasad
24. Shri Vijay Jawaharlal Darda
25. Shri Piyush Goyal

-
- *26. Shri P. Rajeeve
 - 27. Shri Satish Chandra Misra
 - *28. Dr. Mahendra Prasad
 - 29. Dr. K.V.P Ramachandra Rao
 - 30. Shri Yogendra P. Trivedi
 - 31. Vacant

SECRETARIAT

- 1. Shri A.K. Singh, *Joint Secretary*
- 2. Shri R.K. Jain, *Director*
- 3. Shri Ramkumar Suryanarayanan, *Deputy Secretary*

INTRODUCTION

I, the Chairman of the Standing Committee on Finance, having been authorized by the Committee, present this Fifty-sixth Report on the Prevention of Money Laundering (Amendment) Bill, 2011.

2. The Prevention of Money Laundering (Amendment) Bill, 2011 introduced in Lok Sabha on 27 December, 2011, was referred to the Committee on 5 January, 2012 for examination and report thereon, by the Speaker, Lok Sabha under rule 331E of the Rules of Procedure and Conduct of Business in Lok Sabha.

3. The Committee obtained written information on various provisions contained in the aforesaid Bill from the Ministry of Finance (Department of Revenue).

4. Written views/memoranda were received from the Indian Banks' Association (IBA), Securities and Exchange Board of India (SEBI), Reserve Bank of India (RBI) and Federation of Indian Chamber of Commerce and Industry (FICCI).

5. The Committee, at their sitting held on 9 April, 2012 took evidence of the representatives of the Ministry of Finance (Department of Revenue).

6. The Committee, at their sitting held on 08 May, 2012 considered and adopted the draft report and authorized the Chairman to finalise the same and present it to the Parliament.

7. The Committee wish to express their thanks to the officials of the Ministry of Finance (Department of Revenue) for appearing before the Committee and furnishing the requisite material and information which were desired in connection with the examination of the Bill.

8. The Committee also wish to express their thanks to the Indian Banks' Association (IBA), Securities and Exchange Board of India (SEBI), Reserve Bank of India (RBI) and Federation of Indian Chamber of Commerce and Industry (FICCI) for placing before them their considered views on the Bill in the form of memoranda.

9. For facility of reference, the observations/recommendations of the Committee have been printed in thick type in the body of the Report.

NEW DELHI;
8 May, 2012

18 Vaisakha, 1934 (*Saka*)

YASHWANT SINHA,
Chairman,
Standing Committee on Finance.

REPORT

Introduction

The Prevention of Money Laundering Act, 2002 (PMLA) was enacted in 2003 and brought into force on 1st July 2005 to prevent money laundering and to provide for attachment, seizure and confiscation of property obtained or derived, directly or indirectly, from or involved in money laundering and for matters connected therewith or incidental thereto. The PMLA was brought into the statute to implement the resolution and declaration made under the Political Declaration and Global Programme of Action against Money Laundering adopted by the General Assembly of the United Nations in 1998. The PMLA has been amended first in 2005 and thereafter in 2009 subsequent to the presentation of Report by the Standing Committee on Finance on 19 December, 2008 to overcome some of the difficulties that were being faced in its enforcement and to increase the coverage of the Act to include payment system operators, etc.

The problem of money-laundering is no longer restricted to the geo-political boundaries of any country. It is a global menace that cannot be contained by any nation alone. In view of this, India has become a member of the Financial Action Task Force (FATF) and Asia Pacific Group on money-laundering, which are committed to the effective implementation and enforcement of internationally accepted standards against money-laundering and the financing of terrorism.

The anti-money laundering legislative framework of the country has been evaluated by the Financial Action Task Force (FATF), an inter-Governmental body, for development and promotion of policies to combat money laundering and terrorist financing. A comprehensive evaluation of the country's legislative and administrative framework for prevention of money laundering and countering financing of terror was made by the FATF in November/December, 2009. The mutual evaluation report prepared after the comprehensive evaluation identified several shortcomings in the existing administrative and legislative framework to handle activities related to prevention of money laundering. An action plan was prepared by the Government of India, which was submitted to FATF. This action plan lists various short-term and medium-term measures which are required to be taken. This action plan also envisages several amendments in the PMLA so that the legislative and administrative framework of the country to prevent money laundering and countering financing of terror becomes more effective and capable of handling the new evolving threats. The amendments proposed are stated to be

based not only on the mutual evaluation report of the FATF but also the Government's own experiences in the implementation of the PMLA. Accordingly, the Prevention of Money Laundering (Amendment) Bill, 2011 was introduced in Parliament and subsequently referred by the Hon'ble Speaker, Lok Sabha to the Standing Committee on Finance of Parliament on 5 January, 2012 for examination and Report thereon.

II. Salient features of the Amendment Bill

1. Amendments and insertions in the definition: Certain new definitions have been proposed to be incorporated in section 2 of the Act, provisions relating to which have been made in the Bill. They are namely- 'beneficial owner', 'client', 'dealer', 'precious metal', 'precious stone', 'real estate agent'.

2. Changing the definition of offence of money-laundering: During Mutual Evaluation of India, it was pointed out by FATF that concealment, possession, acquisition and use of the proceeds of crime are not criminalized by PMLA. Article 6 of Palermo Convention requires that such activities should also be criminalized. Hence Section 3 of PMLA has been proposed to include these activities under offence of money-laundering.

3. Punishment for money-laundering: FATF Recommendation requires that "legal persons" also (and not just "natural persons") should be subject to effective, proportionate and dissuasive criminal, civil or administrative sanctions for money laundering. In PMLA the punishment prescribed in section 4 is rigorous imprisonment not less than 3 years but which may extend to 7 years and also fine which may extend to Rs. 5 lakh. This amount appears disproportionately low, given the gravity of the offence of money laundering. It has therefore been proposed to amend Section 4 so as to provide for imposition of fine proportionate to the gravity of the offence which will be determined by the court. The limit of Rs. 5 lakh is therefore proposed to be deleted altogether. Further an explanation has been inserted in Section 70 that the prosecution or conviction of any legal juridical person shall not be contingent on the prosecution or conviction of any individual.

4. Amendment in provisions implemented by FIU:

- (i) Sec. 12 prescribes obligation of banks, Financial Institutions and intermediaries for verification of identity of clients, maintenance of records of transactions and identity and furnishing STRs, CTRs etc. to the Financial Intelligence Unit-India (FIU-IND). The proposed

legislation includes the following new reporting entities: Department of Posts, Commodity Exchanges and brokers, Stock Exchanges, Entities registered with PFRDA, entities who can be included when notified by the Government -Real estate agents, sub-registrars (registering property), dealers in precious metals/stones, high value goods and safe deposit keepers.

- (ii) Director, FIU-IND is proposed to be empowered by insertion of a new Section 12A in the PMLA so that he may call for records of transactions or any additional information that may be required for the purposes of the PMLA and also the power to make inquiries for non-compliance of reporting entities to the obligations cast upon them.

Strengthening of KYC and reporting obligation:

- Know Your Customer (KYC) obligations-In the proposed legislation the reporting entity has to identify “beneficial owner” during KYC.
- Reporting obligations— It is proposed in the legislation that reporting entity has to report even an attempted transaction.
- Reference to “integrally connected transactions” is deleted.

The proposed changes will be reflected in the amended Section 12 (1).

- (iii) **Record keeping obligation:** KYC documents to be maintained for 10 years after “the business relationship has ended” [proposed sec. 12(4)] instead of “after cessation of transactions”, as at present. “Account files and business correspondence” also needs to be retained for 10 years [proposed sec. 12(3)], information about “attempted transactions” reported to FIU also needs to be retained.
- (iv) An exemption clause has also been proposed to exempt any class of reporting entities from any of the obligations to identify clients, maintain records and send reports to FIU.
- (v) **Measures for effective compliance:**
- (a) In the proposed legislation Director, FIU-IND can refer special audit of a reporting entity with regard to their obligations [sec.

13(1A)]. Expenses of such audit can be recovered from the reporting entity [sec.13(1B)].

- (b) Graded penalty is proposed for failures. Such as written warning, directions to comply, direction to send reports and finally, fine [sec. 13(2)].
- (c) Penalty can also be imposed on “designated director on the Board” and “employees” of reporting entities, in place of only “officers” at present.

5. Amendment in provisions implemented by Enforcement Directorate:

- (i) *Attachment of property:* The present Act in section 5 stipulates that the person from whom property is attached must “have been charged of having committed a scheduled offence”. It is proposed to be deleted as property may come to rest with someone, who has nothing to do with the scheduled offence or even the money-laundering offence. Procedure for attachment is at present done as provided in the Second Schedule to the Income Tax Act, 1961. Now it is proposed in section 5(1) that the procedure will be prescribed separately. Time for Adjudicating Authority to confirm attachment of property by ED has been proposed to be increased from 150 days to 180 days.
- (ii) *Freezing of property:* At present PMLA provides for attachment of property after charge sheet u/s 173 CrPC has been filed in scheduled offence case and seizure of property after FIR u/s 157 CrPC has been filed in scheduled offence case. However, in a number of situations it may not be practicable to seize a record or property. In such cases, there has to be a provision for freezing such property, so that it can be seized or attached and confiscated later. The new sub-section 17(1A) is proposed to be added for this purpose. Consequential changes are also proposed in a number of places in the Act, where “seizure” under section 17 or 18 is referred to.

At present under PMLA search and seizure can be done only after FIR u/s 157 CrPC has been forwarded to a Magistrate (in scheduled offence cases where FIRs are required). However, in cases where FIR is not required (*e.g.*, Forest Act violation, Copyrights Act violation), search and seizure can take place only after charge sheet is filed. This

may happen after a prolonged gap and chances of disappearance of proceeds of crime cannot be ruled out. To obviate this problem it is now proposed in the proviso to section 17(1) to undertake search and seizure in such cases (where there is no requirement to file FIR) after the investigating officer files a report (similar to FIR) to a superior officer.

- (iii) *Making confiscation independent of conviction:* At present attachment of property becomes final under section 8(3) “after the guilt of the person is proved in the trial court and order of such trial court becomes final”. Problems are faced in such cases where money-laundering has been done by a person who has not committed the scheduled offence or where property has come to rest with someone who has not committed any offence. Therefore, it is proposed to amend section 8(5) to provide for attachment and confiscation of the proceeds of crime, even if there is no conviction, so long as it is proved that predicate offence and money-laundering offence have taken place and the property in question (*i.e.*, the proceeds of crime) is involved in money-laundering.
- (iv) *Amendment relating to the procedure of confiscation:* PMLA provides for confiscation of attached property to be ordered by Adjudicating Authority, after conviction in the scheduled offence case. Appeals to such orders lie with Appellate Authority, then High Court and Supreme Court, which implies that there can be another set of appeals after confiscation. To streamline the process, power to confiscate attached property is proposed to be given to the Special Court, who shall pass the order to confiscate or release the attached property, along with judgment in the predicate offence/money-laundering case.

A new sub section 7 is proposed to be inserted in section 8 to address confiscation or release of property by the Special Court when a trial cannot take place in a case on account of death or accused being declared proclaimed offender or for any other reason.

A new sub-section 60(2A) has been added to address the issue when trial takes place outside India or the case initiated abroad is closed and the property is to be confiscated.

- (v) *Retention and presumption provisions:* In the existing Act, section 20 relates to retention of “property” and section 21 to “records”. It is

now proposed to combine these 2 sections to cover retention of both property and records. Further the time limit for retention is proposed to be increased from 3 months to 6 months, that is, 180 days in line with the extension of time limit for attachment under section 5.

- (vi) Presumption that records or property (sec. 22) found in possession of person who is searched or surveyed that it belongs to the person, contents are true, signature is correct, etc. is proposed to be extended when such record or property is produced by a person before an investigating officer, or has been resumed or seized from the custody of a person by LEA in course of investigation in the predicate offence under the provisions of any other Act.

6. Burden of Proof: The existing provision in section 24 reads as— ‘When a person is accused of having committed the offence under section 3, the burden of proving that proceeds of crime are untainted property shall be on the accused.’ There can be situations where the accused may cleverly pass off the property to someone to avoid confiscation. To take care of these eventualities section 24 is proposed to be amended as below:-

Section 24: In any proceedings relating to proceeds of crime under this Act, unless the contrary is proved, it shall be presumed that such proceeds of crime is involved in money-laundering.

7. Committing of cases to Special Court: Presently PMLA requires under sections 43(1) and 44(1) that trial for both the predicate offence and the money-laundering offence to take place in the Special Court (Sessions Court). When ED files a charge sheet under money-laundering case, the court where the scheduled offence trial is taking place has to commit that case to the Special Court and to obviate any problem it is specifically mentioned that the Special Court shall, on receipt of such case proceed to deal with it from the stage at which it is committed.

8. Officers empowered and required to assist: New officers are being added to sec. 54, who are “empowered and required to assist authorities in enforcement of the Act”.

9. Appeal against the order of Appellate Tribunal to lie in the Supreme Court: Under the existing provision in section 42, an appeal against the order of the Appellate Tribunal lies before High Court within the jurisdiction of which the aggrieved party resides or carries on its business. Since the attached properties may be located in different parts of the country in a particular case, the appeals

can be filed in various High Courts in the country in the same case. Hence, such provision is likely to lead a situation where order of Money Laundering Tribunal might be reversed by one High Court and upheld by another High Court. In order to obviate this difficulty, it is proposed in section 42 that the appeal may lie before the Supreme Court. Concurrently it is also proposed in section 28 to raise the status of the Appellate Tribunal on the lines of the Appellate Tribunals under the SEBI Act.

10. Removing monetary threshold for investigating the offence of money laundering: Under the current provisions the offences specified in Part A of the Schedule do not prescribe any monetary threshold. However the offences specified in Part B of the Schedule are considered Offence of Money-laundering only if the total value involved in such offences is thirty lakhs rupees or more. The FATF standards do not envisage monetary threshold for investigating the offence of money-laundering. To conform to the FATF standards, it has been proposed to move the offences listed in Part B of the Schedule to Part A.

III. FINANCIAL ACTION TASK FORCE (FATF)

The Financial Action Task Force (FATF) is an inter-governmental body that works for the development of standards for combating money-laundering and terrorist financing. It also ensures adherence to its standards by making sure that countries across the world bring about legislative and regulatory reforms in these areas. It further monitors the progress of the anti-money laundering efforts of its members. Forty plus nine recommendations of FATF are considered as global standards on anti-money laundering and combating of financing of terrorism.

Benefits of implementing the FATF Recommendations:

The benefits of implementing the FATF recommendations have been stated to be as under:-

1. *Securing a more transparent and stable financial system that is more attractive to foreign investors:* Corrupt and opaque financial systems are inherently unstable. Excessive money laundering can cause increased volatility of international capital flows and exchange rates, market disparities, and distortions of investment and trade flows.
2. *Ensure that financial institutions are not vulnerable to infiltration or abuse by organised crime groups:* Financial institutions that are exploited in this manner are exposed to reputational risk, financial

instability, diminished public confidence, threats to safety and soundness and other losses.

3. *Build the capacity to fight terrorism and trace terrorist money:* Terrorists need money to finance attacks. Tracing this money is one of the few preventive tools that governments have against terrorism.
4. *Meet binding international obligations, and avoid the risk of sanctions or other action by the international community:* The international community-through numerous international treaties, United Nations Security Council Resolutions and best practices-has endorsed the FATF Recommendations at the highest political level.
5. *Avoid becoming a haven for criminals:* Countries with weak AML/CFT systems are attractive to criminals because they provide an environment in which criminals can enjoy the profits of their crimes and finance their illicit activities with little fear of facing punishment.

Membership of India: Pursuant to the decision of the Core Group on Security, India submitted its application for the membership of FATF in 2003. India was accorded the status of an ‘observer’ by the FATF in the year 2006. As part of technical procedure to qualify for membership, India underwent a mutual evaluation process. A FATF Mutual Evaluation (ME) Team visited India in December 2009 for on-site discussions and evaluation of Indian legislative, regulatory and institutional framework for AML/CFT against each of the 40+9 recommendations of FATF. The Mutual Evaluation Report pointed out the deficiencies in AML/CFT framework of India. Subsequently, India has suggested an Action Plan with short, medium and long term objectives to address the specific issues raised in the Mutual Evaluation Report that includes proposed amendments in the PMLA. With these amendments, it is believed that PMLA would largely conform to the global standards and help in strengthening and coordinating efforts of national and international intelligence, investigation and enforcement agencies in combating money laundering and terrorist financing.

After submission of India’s Action Plan with an assurance of Finance Minister that India will bring about changes in legislations, regulatory and institutional framework to conform to FATF standards, membership was granted to India in June, 2010.

IV. MUTUAL EVALUATION OF INDIA BY FATF

The evaluation of the anti-money laundering (AML) and combating the

financing of terrorism (CFT) regime of India in terms of the Forty Recommendations and the Nine Special Recommendations on Terrorist Financing of the Financial Action Task Force (FATF) was carried out by FATF during 2009 and 2010. The FATF team of experts reviewed the institutional framework, the relevant AML/CFT laws, regulations, guidelines and other requirements, and the regulatory and other systems in place to deter money laundering and financing of terrorism through financial institutions and Designated Non-Financial Businesses and Professions (DNFBP), as well as assessed the capacity, the implementation and the effectiveness of all these systems. The Mutual Evaluation Report (MER) of FATF was released in June, 2010, which was discussed and adopted in the June Plenary of FATF at Paris. India was admitted as a member of FATF based on the findings of MER.

However, the MER 2010 highlighted certain deficiencies in the AML legislation which adversely affected the ratings on a few FATF recommendations. The areas are broadly summarized below:-

- (a) Commodities market out of the ambit of PMLA.
- (b) DNFBP sector not subjected to PMLA (except Casino).
- (c) Effectiveness concerns due to absence of ML conviction.
- (d) Identification and verification of beneficial ownership of legal persons.
- (e) Ineffective sanctions regime for non-compliance. India has suggested an Action Plan with short, medium and long term objectives to address the specific issues raised in the MER 2010 that includes proposed amendments in the PMLA.

V ROLE OF FINANCIAL INTELLIGENCE UNIT-INDIA (FIU-IND)

Financial Intelligence Units (FIUs) are specialized government agencies created to act as an interface between financial sector and law enforcement agencies for collecting, analysing and disseminating information, particularly about suspicious financial transactions.

Financial Intelligence Units-India (FIU -IND) was set up by the Government of India on 18th November, 2004 as an administrative FIU *i.e.*, a central national agency responsible for receiving, analyzing and disseminating information related to suspicious financial transactions. It receives prescribed information from various entities in financial sector under the Prevention of Money Laundering Act 2002 (PMLA) and in appropriate cases disseminates information to relevant intelligence/

law enforcement agencies which include Central Board of Direct Taxes, Central Board of Excise and Customs, Enforcement Directorate, Narcotics Control Bureau, Central Bureau of Investigation, Intelligence agencies and regulators of financial sector. FIU-JND does not investigate cases. It is an independent body reporting to the Economic Intelligence Council headed by the Finance Minister. For administrative purposes, FIU-IND is under the control of Department of Revenue, Ministry of Finance. FIU-IND is headed by the Director, who is of the rank of Joint Secretary to the Government of India.

Section 12 of PMLA requires every banking company, financial institution and intermediary (referred to as reporting entities) to verify the identity of all its clients in the manner prescribed, maintain records of transactions and identity of clients and furnish information of prescribed transactions to the Director, Financial Intelligence Unit-India.

VI. ROLE OF DIRECTORATE OF ENFORCEMENT

The Directorate of Enforcement is statutorily notified for investigating the offence of money laundering under PMLA and to take the consequential actions of attaching the proceeds of crime involved in money laundering and for prosecuting the persons. The Directorate of Enforcement has the powers to carry out survey, searches, seizures and arrest besides attachment and confiscation of proceeds of crime or property involved in money laundering.

The Directorate is presently headed by the Director, a Special Secretary level officer who is appointed as per Section 25 of the CVC Act, 2003. The Legal wing is headed by the Additional Director (Prosecution) assisted by Deputy Legal Advisor and Assistant Legal Advisor.

Presently, PMLA has 156 sections covering 28 acts as scheduled offences.

The following enforcement actions can be taken under PMLA for preventing money laundering:-

- (i) Provisional attachment of property derived or obtained as result of criminal activity relating to a scheduled offence. The same may be confiscated and vested with Central Government free from all encumbrances once the guilt of the accused person for the scheduled offence is proved in the Trial Court and the conviction attains finality.

- (ii) Persons found guilty of an offence of Money Laundering are punishable with rigorous imprisonment for a term which shall not be less than three years but may extend up to seven years and shall also liable for fine up to Rs. 5 lakhs. In the case of scheduled offence under NDPS Act, the punishment may extend up to ten years.

The scheduled offences are investigated by various Law Enforcement Agencies such as State Police, NCB, CBI, Customs, SEBI and other Central and State Agencies. As per scheme of the Act, at present, the confiscation of property is linked with conviction in trial of scheduled offence. In case the accused is acquitted and the acquittal attains finality, the attachment of properties shall cease to have effect.

The provisional attachment of proceeds of crime as well as property involved in money laundering is made by the authorised officers of the Directorate as per the provisions contained under Section 5 of PMLA.

ISSUES RELATING TO AMENDMENT BILL

Several pertinent issues relating to the Amendment Bill were raised by the Committee and discussed with the representatives of Ministry of Finance (Department of Revenue). These included suggestions received from organisations/institutions such as IBA, RBI, SEBI and FICCI. Written information/replies was also obtained from the Ministry.

VII. TRAILING THE FLOW OF MONEY

- (a) Multi-layered transactions and round-tripping

7 (a) During the oral evidence tendered by the representatives of the Department of Revenue, the Committee desired to know whether there was a way the layering transactions across several countries be limited so that it was easier to trail the flow of money and whether the FATF could be sensitized of the numerous layers through which transactions were routed so that a standard in this regard could be formulated by it.

The Ministry have *inter-alia* submitted in this regard that the FATF has issued recommendations that takes into account the risk posed by such multi-jurisdictional entities and have recommended measures to mitigate the risk in their revised recommendations issued in Feb., 2012.

The Committee further desired to know about the method to detect the

round tripping of black money from India through the Foreign Investment and whether the new Amendment would help in that regard.

The Ministry have replied as below:—

“As per the scheme of the PMLA, the Directorate of Enforcement initiates investigations on registration of FIR for a scheduled offence by the concerned law enforcement agency. However, evasion of income tax, which leads to generation of black money, is not a scheduled offence under PMLA. It may be mentioned that in certain cases where charge sheets have been filed by CBI concerning scheduled offences under IPC and Prevention of Corruption Act, the Directorate of Enforcement is conducting investigations under PMLA.”

The Committee, while expressing their serious concern over multi-layering of transactions across countries including the round-tripping of unaccounted money generated from India, would recommend that the Government should take concrete steps to mitigate the risks posed by such multi-jurisdictional entities and their transactions. The enforcement mechanism requires to be sensitized for this purpose.

In this context, the Committee note that Clause 58A of the Bill provides that where on conclusion of trial in a criminal court outside India under the corresponding law of any other country, such court finds that the offence of money-laundering has not taken place or the property in India is not involved in money-laundering, the designated Special Court shall on an application moved by the concerned official, order release of such property.

It has been pointed out that the above provision is drafted in such a manner as to make it mandatory on the part of the Special Court to release the property, in case the person is acquitted by the corresponding law of any other country. This amounts to abridgement of powers of local court. The Committee would recommend that Clause 58A may be suitably re-drafted so as to restore the power of the local court in India to decide matters on its merits, even when the person is acquitted by an overseas court.

(b) Participatory Notes and Stock Markets Role of SEBI :

The Committee during the oral evidence also enquired as to what steps SEBI was taking to stop generation of Black Money through Participatory Notes.

The Ministry in their post-evidence reply have elaborated as under:—

“With a view to regulate issuance of Participatory Notes (PNs) with Indian underlying securities, the SEBI (FII) Regulations, 1995 was amended in January, 2004, by inserting Regulation 15A, which requires that PNs can be issued only to those entities which are regulated by the relevant regulatory authority in the countries of their incorporation and are subject to compliance of “Know-Your-Client” norms. Further, downstream issuance or transfer of the instruments can be made only to a regulated entity.

The FIIs who issue PNs against underlying Indian securities are required to report issued and outstanding PNs to SEBI in a prescribed format. In the year 2003, Regulation 20(A) was inserted in the SEBI (FII) Regulations which obligates FIIs to fully disclose information concerning off-shore derivative instruments issued by them, as and when and in such form as the Board may require.

As per the extant regulatory structure, FIIs, which are registered with SEBI and are issuing PNs are required to submit to SEBI a monthly report in a prescribed format. As per the format, FIIs report the following information:—

- Name and Location of the person to whom the PNs are issued.
- Type of the investor.
- Name and jurisdiction of the Regulator by whom the person holding the PNs is regulated.
- Nature of Underlying security.
- Quantity and Value of PNs issued/redeemed/outstanding.

Further, FIIs can issue PNs to regulated entities only and are further required to submit an undertaking which states that they have not issued PNs to Resident Indians/NRIs.

The PN issuing FIIs are also required to provide the following undertaking along with the monthly report:

“We undertake that the beneficial owner and the person(s) to whom the Off-shore Derivative Instrument is issued in compliance with Regulation 15A of SEBI (FII) Regulations. We also undertake that the KYC compliance norms have been followed for the beneficial owner of the Off-shore Derivative Instrument.”

As per our records, the FIIs issuing PNs are regularly submitting the reports with the requisite information and undertakings.

Further, elaborating on this issue, the Ministry have submitted that:—

“Based on reports being filed with SEBI, it may be stated that out of the 1765 FIIs registered with SEBI as of March 2012, 30 FIIs are issuing PNs. Of these, about 8 FIIs account for the bulk of PNs being issued. The PN issuing entities are large sized reputed Financial Institutions with presence in a host of markets globally. They issue PNs directly or indirectly through global financial centers such as London, Hong Kong, Singapore etc. which have Anti-Money Laundering (AML) and Combating Financing of Terrorism (CFT) regulations in place. Additionally, FII investments into India are also subject to Indian Anti-Money Laundering laws. As stated above, SEBI, on its part, has mandated that PNs with Indian underlyings can only be issued to regulated entities subject to ‘Know-Your-Client’ norms.

Investment in the stock market by individual investors as well as by institutional investors takes place by the use of funds channelised through bank accounts. Banks maintain details of each account holder in accordance with the Know-Your-Customer norms which have been put in place by the banking regulator. The foreign currency/monetary flows in India’s domestic market is not monitored by SEBI. It is monitored by Reserve Bank of India.”

The Committee further enquired as to what steps SEBI has taken to stop infusion of black money in secondary market.

The Ministry have submitted as follows:—

“SEBI has been continuously taking steps to prevent money laundering. Some of the major initiatives taken by SEBI in this regard are as follows:—

- I. SEBI has issued a master circular on anti-money laundering in line with the FATF recommendations and PMLA Act, 2002. In terms of this circular, intermediaries in securities market are required to frame policies and procedures to effectively manage the risks based on categorization of clients as low, medium or high risk. The circular also gives an illustrative list of clients belonging to high risk category and high risk geographies. Intermediaries are required to carry out higher due diligence process in respect of clients of high risk category. Intermediaries are required to report cash

transaction reports and suspicious transaction reports to Financial Intelligence Unit (FIU).

- II. FATF through its public statements inform the specific lists of geographies and jurisdictions of higher risk. This list of high risk jurisdictions as received from the Ministry of Finance is regularly communicated to the intermediaries. The intermediaries are required to carry out enhanced due diligence of clients from these high risk jurisdictions.
- III. Because of constant monitoring and inspections, as mentioned above, the compliance level of the intermediaries has improved considerably. As a result, during inspections no serious violations are observed. Wherever necessary, monetary penalties are also imposed.

All transactions in securities market are required to be carried out through banking channels. Money invested through stock exchanges is required to come from the client's own account only.

The Committee enquired whether the amended PMLA would be an answer to the rampant money laundering taking place through the stock market by allowing/facilitating huge overseas funding of Indian companies, the sources of which are not clear from doubts and whether this Act was going to only harass small people or can catch hold of big corporate.

The Ministry have *inter-alia* submitted as under:—

“The offences under section 12-A read with section 24 (Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control) of the Securities and Exchange Board of India Act, 1992 are already covered in the Schedule of offences under PMLA. Further, section 70 of PMLA provides for imposition of fine on companies for the offence of money laundering as well as on every person who, at the time the contravention was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, if on completion of the trial for prosecution, the guilt of the company and its officers is established. As per the Amendment Bill, section 4 of PMLA is being amended to remove the maximum limit of fine of Rs. 5 lacs and it is being left for the trial Court to adjudge the quantum of fine having regard to the gravity of the offence of money laundering committed by the company or any individual”.

The Committee have been informed that the Participatory Notes (PNs) being issued by FIIs are being regulated by SEBI and that the PNs can be issued to regulated entities only. However, the Committee are surprised to learn that other investments in the stock market including foreign currency flows by both individual and institutional investors are not being monitored by SEBI. The Committee would like the SEBI to set up a coordination mechanism in this regard with RBI so that funds flow into the domestic stock/securities markets is properly monitored.

In the Committee's view, scrutiny of fund flows into the markets cannot be left to individual banks, as tainted money flowing into markets remains a distinct possibility. Suitable amendments may therefore be made in the Bill to monitor and curb possible money laundering taking place through stock/securities markets. All the regulatory and intelligence agencies including the RBI, SEBI, FIU (IND), the Enforcement Directorate, the Directorate of Revenue Intelligence and Investigation Wing of Income Tax Department should set up a monitoring/coordination mechanism for this purpose, while remaining alert to such financial flows.

VIII. MONEY-LAUNDERING AND GENERATION OF UNACCOUNTED MONEY

The Committee specifically sought to know whether PMLA amendments will address black money generated through the illegitimate mining and sale of iron ore and other minerals and illegal land acquisition in the real estate sector and whether the proposed amendment would provide mechanism to trace the money trail of mining related transactions.

The Ministry have replied in their post-evidence note that:—

“Cases of illegal mining of iron ore in the States of Karnataka and Andhra Pradesh, based on the charge sheet filed by CBI for the scheduled offence, is currently under investigation by the Directorate of Enforcement under PMLA”.

The Committee further enquired on the issue of sources of money-laundering and desired to know as to which authority was mandated to determine whether the correct production level is reported or not.

The Ministry have submitted in their reply that Central Excise now acts on self assessment and self removal basis. If there is any complaint with regard to goods being moved without any payment or under reporting of production, the Excise Department takes care of it.

In this connection, the Committee also desired to know the details of cases detected by the Intelligence wing of the Income Tax Department and whether there were enough personnel in the Deptt. to handle this.

The Ministry have explained the position as below:—

“The Income Tax Department takes action against tax evasion based on information/complaints, which are processed and verified. Information technology tools are used appropriately for processing and verification of such information. During the last three financial years, unaccounted assets worth Rs. 2,620 crore, including cash amounting to Rs. 1,235 crore, have been seized and undisclosed income of Rs. 28,040 crore has been detected by the Investigation Directorates of the Central Board of Direct Taxes. Besides, during income tax assessment proceedings also, under-reported or misreported incomes are detected and brought to tax”.

On the manpower side, they have submitted that:—

“There is acute shortage of both manpower and budgetary resources in the Income Tax Department, particularly in the Investigation Directorates. Increasing number of taxpayers, processing of large quantum of data collected, new responsibilities, and increasing expectations of taxpayers for international quality services have necessitated increase in manpower resources of the Department. The Department has, accordingly, submitted a proposal for cadre restructuring seeking about 20,000 additional manpower in different grades. Complementary budgetary resources will be required to fund the expenditure for hiring, training, equipping and meeting employment expenses of this additional manpower. It is also to be noted that as against the average global cost of 1 % - 1.5 %, the cost of collection of the Income Tax Department is less than 0.58 %, indicating shortage of resources.”

The Committee, while further probing the issue of large unaccounted money leading to money-laundering activities, asked as to what effective infrastructure has been put in place to de-accelerate the generation of black money.

The Ministry on this point have explained as under:—

“The Income Tax Department has set up an Integrated Taxpayer Data Management System (ITDMS) to electronically collate information collected

from various sources, *i.e.* Tax Returns, TDS returns, Annual Information Returns, information collected by the Central Information Branches (CIB), etc. The same is utilized for investigation of tax evasion information/complaints, including for developing cases for search and seizure action. Information received from Financial Intelligence Unit (FIU-IND) regarding suspicious transactions from various banks and financial institutions are also investigated by the Income Tax Department.”

While elaborating on the efforts made by the Department to augment revenue, the Ministry have submitted that persistent efforts made by the Income Tax Department and its investigative machinery have resulted in substantial increase in Direct Tax revenue collections, indicating increased voluntary compliance and reduction of black money and tax evasion.

The Department of Revenue have submitted that the Income Tax Department has set up an Integrated Taxpayer Data Management System (ITDMS) to electronically collate information collected from different sources and that “the efforts made by the Department have resulted in substantial increase in direct tax revenue, indicating increased voluntary compliance and reduction of black money and tax evasion”. The Committee, however, do not share the optimism of the Department on the revenue front, as there is widespread perception of tax avoidance and evasion leading to large-scale generation of unaccounted money in the economy. Tax-GDP ratio has also been only stagnating. Incidence of under-reporting of production levels as also under-invoicing of exports and over-invoicing of imports are also major factors behind generation of unaccounted money, which eventually leads to money-laundering. Thus, the Government, specially the Department of Revenue, must always remain alive to the sources engendering unaccounted money in the country, if they have to counter the menace of money-laundering. Needless to emphasise, this requires concerted planning and coordinated enforcement action on the part of all the enforcement agencies functioning under the Department. The Committee desire a status report on the existing framework, its efficacy and measures taken by the Department of Revenue in this regard. The Committee would also expect the Department to plug loopholes in the existing framework including related enactments, taking into account all the aspects engendering generation of unaccounted money.

IX. TRADE-BASED MONEY-LAUNDERING

The Committee sought to know as to how many cases were registered

involving trade-based money-laundering (TBML) and as to how PMLA would deal with trade-based money-laundering.

In their post-evidence submission, the Ministry stated as below:—

“Trade based money-laundering has not been distinguished from other forms of money-laundering as a distinct offence. Hence, no separate data is available showing the number of TBML cases. Whenever proceeds of crime generated out of offences listed in the Schedule to PMLA are laundered through trade, the necessary action of attachment of such proceeds and further legal proceedings under PMLA are initiated. In addition, offences under section 135 of the Customs Act, 1962 is also a scheduled offence under PMLA. As and when the Customs Department launches prosecution in cases of evasion of customs duties, the Directorate of Enforcement takes up investigation in such cases under PMLA.”

The Committee would like the Department of Revenue to take into reckoning and incorporate incidence of trade-based money laundering, which has not been distinguished so far as a money-laundering offence. The Department also requires to maintain a comprehensive data-base in this regard, which will enable them to tap trade-based offences.

X. ONUS OF PROOF-DISTINCTION BETWEEN *BONAFIDE* AND *MALAFIDE* TRANSACTION

The Committee expressed their concern that the onus of proof that the property is not proceeds of crime being on the accused was rather stringent.

The Ministry clarified their position as under:-

“As per existing section 24 of PMLA, already there is a provision that when a person is accused of having committed the offence of money-laundering under section 3, the burden of proving that proceeds of crime are untainted property shall be on the accused. This section is being amended to provide that in any proceedings relating to proceeds of crime under PMLA, unless the contrary is proved, it shall be presumed that such proceeds of crime is involved in money-laundering. By virtue of this amendment, the burden of proof would not only be on the accused but on anyone who is in possession of the proceeds of crime.”

In this context, the Committee desired a specific clarification as to whether this Act can distinguish between *bonafide* and *malafide* transactions of property

so that innocent persons, who end up with any property, are not penalized.

The Ministry have sought to clarify that:—

“Section 8 of PMLA adequately safeguards the interests of persons who are not found to be involved in the offence of money laundering,”

The Committee recommend that the prescribed onus of proof that the property in question is not out of proceeds of money-laundering crime, being not only on the accused but also on anyone who is in possession of the proceeds of crime, should be subject to adequate safeguards to protect the innocent.

XI. BENEFICIAL OWNERSHIP

Clause 2 (i) (fa) reads as:—

“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.”

The proposed amendment contemplates that identification of the beneficial owners is to be done by the reporting entity in respect of such clients as may be prescribed. The Central Government will specify the categories of customers in respect of whom banks will be required to verify the beneficial owner. It has been pointed out that even if such requirement may be restricted to certain specified clients, ascertaining beneficial owners will be extremely difficult task for the banks.

On this issue, the Ministry have stated their position as below:—

“PMLA in present form imposes obligation on the reporting entities and does not impose obligation on clients. This is in conformity with the FATF standards which do not impose any direct obligation on clients to declare beneficial ownership while undertaking transaction with the bank.”

They have further added that:—

“FATF standards also mention that “where the financial institution is unable to comply with the applicable requirements, it should be required not to open the account, commence business relations or perform the transaction; or should be required to terminate the business relationship; and should consider making a suspicious transactions report in relation to the

customer.” Thus there is distinct obligation not to open account if the beneficial ownership cannot be ascertained. This aspect which has been mentioned in the circulars of the regulators, should address the concern of the banks.”

The Committee note that the anti money-laundering law in its present form does not impose any obligation on clients, but it casts responsibility on the reporting entities only to ascertain ‘beneficial ownership’. According to the Ministry, FATF standards do not impose any direct obligation on clients to declare beneficial ownership while transacting with the bank. The reporting entities are also required to make a suspicious transactions report in relation to their customer. Further, there is distinct obligation not to open account, if the beneficial ownership cannot be ascertained. The Committee are, however, of the view that clients as well may be required to declare ‘beneficial ownership’ while undertaking transaction with the bank. Further, the Committee believe that considering the large volume of transactions, which banks are required to deal with, it may not be possible for the banks to ascertain “the beneficial owners” involved in all such transactions. Therefore, the Committee would recommend appropriate parameters clearly defining the nature and scope of “suspicious transactions” and its “beneficial ownership”, enabling their systematic sifting from general transactions, so that these transactions are reported by banks only after *prima facie* examination based on such parameters/guidelines.

XII. PERSONS CARRYING ON DESIGNATED BUSINESS OR PROFESSION

Clause 2 (ii)(ha) reads as:—

“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.

It has been suggested that in the definition of “reporting entities”, travel agents, vehicle sellers who deal in large value cash transactions, may also be included.

The Ministry have however submitted that the Government does not agree with the suggestion.

The Committee would recommend that the definition of ‘reporting entities’ may be widened so as to include categories such as travel agents, vehicle sellers/dealers etc., who deal in large value cash transactions.

XIII. PERSONS ENGAGED IN SAFE KEEPING AND ADMINISTRATION OF CASH AND LIQUID SECURITIES ON BEHALF OF OTHER PERSONS

Clause 2 (ix)(sa)(V) reads as:—

“person engaged in safekeeping and administration of cash and liquid securities on behalf of other persons, as may be notified by the Central Government”.

It has been suggested that necessary changes may be made in the proposed amendments to exclude any obligation on the part of banks to verify contents of the safe deposit lockers to satisfy themselves that they are not proceeds of crime. The Ministry have again submitted that the Government does not agree with the suggestion.

Banks, as represented by the IBA, have submitted that it will be very difficult for the banks to examine and verify each transaction carried out by their clients, especially in the case of safe deposit lockers, which is a safety facility extended to the general public. The Committee would recommend that an appropriate declaration from the customer may be secured in the case of safe deposit lockers maintained by banks, so that the ordinary bank customer is not inconvenienced.

XIV. AUDIT

Clause 11 (ii) (1 A) reads as:—

“(1A) If at any stage of inquiry or any other proceedings before him, the Director having regard to the nature and complexity of the case, is of the opinion that it is necessary to do so, he may direct the concerned reporting entity to get its records, as may be specified, audited by an accountant from amongst a panel of accountants, maintained by the Central Government for this purpose.”

It is proposed to amend section 13 of the PMLA Act making provision enabling the Director to cause an inquiry to be made with regard to the obligations of the reporting entity (Banks and Financial Institutions) and also cause an audit of the records of the reporting entity by an accountant from amongst a panel of accountants maintained by the Central Government for this purpose, As far as the

banks are concerned, they are already subject to audit by the Statutory Auditors as well as annual inspection by the Reserve Bank of India. In the course of such audit and inspection the records of the banks are verified to check whether all the requirements under the PMLA Act have been complied with the banks. The banks as represented by the IBA are, therefore, of the view that there is no need for one more audit to be conducted by the auditors appointed by the Central Government. If the Director is of the view that the records of a particular bank are not being maintained or there are any other non-compliances, the same can be reported to the Reserve Bank of India who can do the necessary verification during the annual inspection or by conducting a special inspection, if necessary.

The Ministry have however not agreed to this suggestion.

The Committee are of the view that causing an additional audit of the banks to be conducted under the proposed Bill may only create duplication and put needless burden on the banks, as they are already subject to audit by the Statutory Auditors as well as annual inspection by the RBI. The Committee would, therefore, suggest that in the course of such audit and inspection, the records of the banks can be mandated to be verified for their compliances under the anti-money laundering law as well. Necessary instructions in this regard may be issued separately.

XV. IMPOSITION OF FINE

Clause 4 reads as:—

“In Section 4 of the principal Act, the words “which may extend to five lakh rupees” shall be omitted.”

It has been suggested that there may be an upper limit for the fine. Moreover, a percentage of the amount of money laundered may be considered as the fine. It has also been suggested that since the proposed amendment to impose fine on the entity does not make any distinction between Directors who are in charge of and responsible to the company for the conduct of its business and other Directors like Independent Directors, nominee Directors, etc., it would be desirable to limit the ambit of the Clause only to Directors and employees entrusted with the day-to-day conduct of business.

The Ministry have submitted their comments as follows:—

“Recommendation 17 of FATF prescribes that countries should ensure that effective, proportionate and dissuasive sanctions on natural or legal persons

who fail to comply with anti-money laundering or terrorist financing requirements, is imposed. As per the existing provisions in Section 4, the fine cannot exceed Rs. 5 lakh. This amount appears disproportionately low, given the gravity of the offence of money laundering and particularly so for a legal person. It has therefore been proposed to amend section 4 so as to provide for imposition of fine proportionate to the gravity of the offence which will be determined by the court. It needs to be left to judgment of the court to decide the quantum of fine”.

The proposed amendments seek to empower the authorities to give directions/warnings and impose fines on the Directors and employees of the reporting entities. The Committee, however, find that this does not make any distinction between Directors who are in charge of and responsible to the company for the conduct of its business and other Directors (Independent Directors, Nominee Directors etc.). It would therefore be desirable to limit the ambit to Directors and employees who are responsible and entrusted with the conduct of the day-to-day business of the reporting entity and who are entrusted with the task of complying with the provisions of PMLA.

XVI. MAINTENANCE OF RECORDS

Clause 9 (sub-clause 3 and 4) reads as:—

“(3) The records referred to in clause (a) of sub-section (1) shall be maintained for a period of ten years from the date of transaction between a client and the reporting entity.

(4) The records referred to in clause (e) of sub-section (1) shall be maintained for a period of ten years after the business relationship between a client and the reporting entity has ended or the account has been closed, whichever is later.”

It has been pointed out that from the proposed amendments it appears that even documents related to transactions would have to be maintained till ten years from the date of cessation of business relationship or the closing of the account, whichever is later. This implies that if the customer in case of banking account does not close his account, such documents will become permanent documents and have to be maintained forever.

The Ministry’s submission on this issue is as follows:-

“FATF standards require maintenance of records of transactions for at least five years. In case of records obtained through CDD measures etc., they

have to be maintained for at least five years after the business relationship has ended. This period under PMLA is ten years. The assumption that ‘even documents related to transactions would have to be maintained till ten years under the PMLA reporting framework so that attention is focused on larger cases.

The Ministry’s reply in this regard is re-produced as under:—

“Under the FATF standards, two kinds of reports are required to be filed with FIU- (1) STRs, which are irrespective of any monetary value, and (2) threshold based report *e.g.* Cash Transaction Reports (CTRs). In terms of numbers, CTRs constitute the bulk of financial information received in FIU. In some major countries the reporting threshold for CTR is at the level of \$ 10,000. In India, this threshold is Rs.10 lakh, which is substantially higher than \$ 10,000 and therefore raising it further only to reduce the volume of financial data may not be desirable.

FIU-IND is in advanced stage of rolling out Project FINnet which has been designed with the objective to adopt industry best practice and appropriate technology to collect, analyse and disseminate financial information. Project FINnet would harness data mining and business intelligence tools for identifying actionable cases from the financial data received from the reporting entities”.

The Committee believe that the volume of financial data required under PMLA may become very unwieldy and hence unmanageable. It would also require large number of staff which Government may not be able to provide. The Committee would, therefore, suggest that certain parameters/ thresholds may be stipulated so that all kinds of data are not processed. The proposed framework should thus focus on larger cases and laundering-prone categories/sectors. In this context, the Committee would suggest that a comprehensive data-base would be useful for analyzing the complex inter-relationship among the transactions and entities and their trend and pattern over time.

XVII. FAST-TRACKING OF CASES

On the question of expediting the cases, the Committee desired to know whether this law brings about fast-tracking of cases and speed in investigation.

The Ministry have explained that:—

“With the sanction of additional manpower to the Directorate of Enforcement,

the investigations under PMLA are expected to be conducted expeditiously. Secrecy in concerned matters is being maintained. Further, section 43 of PMLA provides for designating Courts of Session as Special Courts for trial of the offence of money laundering punishable under section 4 *ibid.*”

The Committee would not like the enquiries under PMLA to become open-ended without any concrete outcomes. It is, therefore, necessary that time-lines are prescribed for completing the investigative process. If fruitful action has to be taken against money-laundering, it is important that cases are fast-tracked, the culprits punished and the proceeds confiscated without any delay. Special courts, being set up to decide cases of money-laundering should be geared up to help achieve this objective without any hitch.

With the modifications and amendments suggested by the Committee, it is expected that the PMLA would substantially conform to the global standards and help in strengthening and coordinating efforts of both national and international intelligence, investigation and enforcement agencies in combating money laundering and terror-financing. In this context, the Committee would like to once again emphasise that the anti-money laundering law should seek to tighten any laxity in the existing enforcement mechanism and secure speedier convictions in a stipulated time-frame.

New Delhi;
8 May, 2012

18 Vaisakha, 1934 (Saka)

YASHWANT SINHA,
Chairman,
Standing Committee on Finance.

**SYNOPSIS OF THE DEBATE ON THE
PREVENTION OF MONEY-LAUNDERING
(AMENDMENT) BILL, 2011 IN THE
LOK SABHA ON 29 NOVEMBER, 2012)**

LOK SABHA
SYNOPSIS OF DEBATES*

November 29, 2012

**THE PREVENTION OF MONEY-LAUNDERING
(AMENDMENT) BILL, 2011**

THE MINISTER OF FINANCE (SHRI P. CHIDAMBARAM) moving the motion for consideration of the Bill said: The Prevention of Money Laundering Act, 2002 was enacted in 2003 and brought into force on 1st July 2005 to prevent money laundering and to provide for attachment, seizure and confiscation of property obtained or derived, directly or indirectly from or involved in money laundering and for matters connected therewith or incidental thereto. I may clarify that the money-laundering used in a colloquial sense is not the money-laundering that has been referred to in the Act. There must be proceeds of a crime and anyone who deals with the proceeds of a crime is guilty of the offence of money laundering.

This Act was passed in 2003. The Act also addresses the international obligations under the Political Declaration and Global Programme of Action adopted by the General Assembly of the United Nations to prevent money laundering. The Act was amended in the year 2005 and 2009 to remove the difficulties arisen in implementation of the Act.

The problem of money-laundering is no longer restricted to the geo political boundaries of any country. It is a global menace that cannot be contained by any nation alone. In view of this, India has become a member of the Financial Action Force, which is a global body, and the Asia Pacific group on money-laundering, which are committed to the effective implementation and enforcement of internationally accepted standards against money-laundering and the financing of terrorism. Consequent to the submission of an action plan to the Financial Action Task Force to bring anti money-laundering legislation of India at par with the international standards and to obviate some of the deficiencies in the

*This Synopsis is not an authoritative record of the proceedings of the Lok Sabha. For the complete version of the debate refer <http://164.100.47.194/Loksabha/Debates/textofdebate.aspx?tab=1&lsno=15>

Act that have been experienced by the implementing agencies, the need to amend the Prevention of Money-Laundering Act, 2002 has become necessary. Hence, the Prevention of Money-Laundering (Amendment) Bill, 2011 was introduced in Lok Sabha on 27/12/2011.

The Prevention of Money Laundering (Amendment) Bill, *inter alia*, seeks to introduce the concept of 'corresponding law' to link the provisions of Indian law with the laws of foreign countries. There are amendments to some other provisions with regard to reporting entities, attachment of property, trial in the special courts etc., which have also been included in the Bill to make the Anti Money-Laundering law more effective.

The Bill was referred to the Standing Committee on Finance for examination and report thereon. The Standing Committee on Finance has presented its 56th Report on Prevention of Money Laundering (Amendment) Bill, 2011 to the Lok Sabha and laid in the Rajya Sabha on 09.05.2012. The Standing Committee on Finance has made 18 recommendations, and I am happy to say that all the recommendations have been accepted by the Government. I am very happy that there is complete unanimity on the Bill as well as amendments to the Bill. The consequential changes required thereby have been proposed through a list of official amendments, which is placed before the House for consideration.

SHRI NISHIKANT DUBEY initiating said: Right now, the hon'ble Minister has said that the Government has accepted all the recommendations of the Standing Committee. The Government deserves to be congratulated for this. It is a matter, which shows before the entire country that both the Government and the opposition make concerted efforts for the progress of the country and they are not merely bent upon fighting with each other. Today, what is the situation in the country? Today the situation in the country is that our fiscal deficit and Current Account deficit have increased. Where is our infrastructure heading? What is the state of investment and inflation in the country? There is a need for you to explain it to the nation as to in which direction our country will go after the remedial measures taken by the Government to address these issues. Today, we do not have good relations with any of our neighbouring countries. Counterfeit currency is coming into the country from Nepal. Similarly terrorism is also filtering from Nepal. What has been happening in our neighbours like Pakistan, Bangladesh, Myanmar and China? If we take a view on it, then the proposed amendments in the PMLA assumes a lot of importance. This question

also arises as to how much generation of black money and money laundering we have been able to prevent since the establishment of the FIU in the year 2005. In this context, I would like to know as to what action is being taken by the Financial Intelligence Unit (FIU) and the Enforcement Directorate in this respect. I would also like to know as to what provisions have been made in this PMLA for the prevention of human trafficking and checking the smuggling of drugs and arms. I feel that this amendment bill has somehow missed the mark on the issue of corruption and bribery. Similarly, piracy is also a very big problem. This bill is silent on this issue. Then, there is a very important subject of extortion and the insider trading. We have not made any provision in the bill to address these issues. Recently a statement was made by the Prime Minister in regard to the agitation held to oppose the setting up of nuclear power plant wherein it was stated by him that external agencies are funding NGOs for such agitations. I would like to know as to what provision has been made in PMLA to address such issues? The Government has set up FIU and enforcement directorate and it is well within the knowledge of the Government that several question marks were raised by the then National Security Adviser on the issue of P-Notes. I would like the hon'ble Minister to apprise the Parliament as to whether the Government has convened any meeting of SEBI, FIU, ED, Directorate of Revenue Intelligence and investigation agency of CBDT over the issue of money coming into our share market through P-Notes, trafficking, terrorist money, drug money, black money or in nutshell whatever round tripping of money is taking place whether it is taking place through Mauritius route or any other tax haven? Have you developed any mechanism through which these kind of things could be prevented? I am also unable to find any clarity in the bill to identify about the beneficial owners of the benami property and also as to how that property will be attached because several definitions have been given under the Act. I would like to know from the hon'ble Minister and also apprise the Parliament about the same that why the hon'ble Minister has not extensively dealt with the issue of politically exposed persons in the bill about which FTF is very serious. Then, there is a need to apprise the country about the manner in which we will be able to do away with the secrecy clause of the various agreements with the financial institutions and how will we be able to overcome this jinx? There is also a need to clearly define as to what punishment can be meted out to the persons involved in pumping the counterfeit currency into our country, be it from Nepal, Pakistan or Bangladesh. I am of the opinion that we need a new and strong law to deal

with terrorism, checking counterfeit currency and prevention of money laundering and we need to do much more than what the Government is doing?

SHRI SANJAY NIRUPAM: All the 18 recommendations of the Standing Committee have been accepted. Corruption, black money and terrorism are three main challenges before our country as well as the whole world. Corruption and black-money are widely discussed topics in our country. Slogans are shouted and the government is accused for inaction. The truth is that many things are being done. The agreements are signed with many countries. India became the member of FATF in 2010 which is an inter-government body of 180 countries and aims to check the practices of corruption and black money. The decisions of FATF have been incorporated in the Bill. The concept of reporting entities introduced in the Bill includes many institutions alongwith the banks. But there is no clarity about the foreign branches of the foreign banks. Earlier people dodged us by committing crimes under the law of foreign countries and for this the provision to link ourselves with the corresponding law of other countries is made. These foreign banks are alleged of committing the crime of money laundering. What is the provision to check such crimes? Many companies with fake names are investing in stock market and their earning is being used for terror funding. If the stock market is brought under the ambit of reporting entities, then it might serve the purpose well. The Bill proposed to abolish the higher limit of penalty of Rs. 5 lakh, but a new upper limit has not been fixed. A person, who commits crime by taking money from bank, is punished for the crime but the bank, of which money was utilized does not get back the money. The proposed law is silent to return the money to such institutions/agencies. Earlier, a person convicted and punished for money laundering was entitled to appeal against the order of Appellate Authority in High Court. Now, the proposed amendment authorizes such person to appeal directly in Supreme Court. FATF has special focus on politically exposed persons and it needs to provide legal framework. Bribery is a crime and should be under PMLA. We are committed to fight such crimes and the proposed Bill is brought to fulfill the commitment.

SHRI SHAILENDRA KUMAR: The earlier Finance Minister promised to bring black money back, to issue white paper and to disclose the name of persons having black money. Nothing concrete was done except telling the figure of black money. Such persons have withdrawn their money since then. The fine to be imposed for crime should have been increased. There are provisions for attachment and acquisition and to make appeal in Appellate tribunal as well

as in Supreme Court. Real estate agents and persons carrying the business of gems and jewellery and other precious metals are brought under the proposed Bill. I humbly suggest that non-financial professionals should also be brought under the net. The suggestion to monitor the flow of black money by RBI, SEBI, Enforcement Directorate and Intelligence agencies should be accepted and implemented. A better coordination between income tax investigation agencies and intelligence agencies have to be established. The terrorists have their money invested in share market. Black money is widely used in real estate and elections. Election Commission should be given more power to check the use of black money. Today, credit card holders are being intimidated. We have not yet devised any concrete method to unearth black money. There is need to confiscate the Benami properties. It would be better to investigate the foreign funding of NGOs. Terrorists are making investments in casinos. We have not been able to check the flow of fake currency notes from Pakistan, Nepal and Bangladesh till date. We have to monitor the use and source of money invested in IPL matches and film industry.

SHRI BHUDEO CHOUDHARY: Money Laundering Prevention (Amendment) Bill was introduced to implement the resolution and declaration made under World Action Programme to prevent money laundering decided in the UN General Assembly in 1998. Black Money has been discussed here for last many years but to no avail. Barring 5-10 years, the Congress Party has ruled the country for last 58 years. Yet it has not been able to control corruption, terrorism and black money. The people in rural areas are still poor and helpless. On the other hand, lakhs and crores of rupees of handful of persons are deposited as black money abroad. Today there is wide circulation of fake notes. It is shattering our economy. Money is coming from abroad. There are certain religious organizations where money is invested secretly. It needs to be investigated and ascertain the source of such money. Black money should be discussed seriously and money deposited abroad should be brought back to our country.

PROF. SAUGATA ROY: We oppose in this House the proposal to bring 51 per cent foreign direct investment in multibrand retail, we shall oppose increase of foreign investment in pension fund, we shall support all measures taken to handle corruption, we shall support all measures against terrorism, we shall support all measures to preserve unity and integrity of the country. The Bill tightens the screw of money laundering. It steps up a mechanism for transfer

of proceeds in India. It enlarges the money laundering definition. But the flow relates to a time barring provision in the legislation to prevent money laundering. It can aid offenders and cause huge losses to the exchequer. The deadline that is given should be extended. But there should be a provision under which the Chairman of the authority is allowed to extend it under unusual circumstances. I want to draw the attention of the Finance Minister to a very good book 'World of Money Laundering', written by Shri Sanjiv Srivastava and Dr. Anup Swarup. The book describes the law against money laundering in different countries. The United States has several laws. Compared to that, we do not have too many laws, neither in terms of quantity nor in terms of strictness, against money laundering. The sources of money laundering are mainly from drugs and narcotics, financial fraud, and smuggling of people and goods. The wealth of the country is being looted. While a lot of people remain in poverty, money from India is going abroad. It has been alleged that the HSBC is keeping in Geneva accounts by Indians. There is an allegation that the HSBC is facing a fine of nearly \$1.5 billion in the US for breaking the money laundering rules. Also, in the UK, the British tax authorities launched an investigation into the allegations of money laundering by HSBC following claims. This is a Bank which has been accused of keeping money of Indians in Geneva. The Finance Minister must assure the House as to what action is being taken against the HSBC. A news item has appeared that the Indian Ambassador in Bern has been there from 2008. Normally, the tenure is for three years. She is still there and prolonging. Is there any connection between the Ambassador's continuing and the Indian money kept in Switzerland? This is something which is to be investigated. Our Home Minister has alleged that this laundered money is being used in the building trade. What step has been taken by the Finance Minister about stopping this laundered money coming into the building business? Terror funds are coming to the Indian stock market. The Finance Minister, with the SEBI in his hands which is something to control the companies, must act. We are not against this Bill but we have our own reservations. We want laws against black money, against money laundering to be made the strictest possible.

SK. SAIDUL HAQUE: Money laundering has been globally recognized as one of the largest threat posed to the financial system of a country. The Bill also expands the definition of offence under money laundering to include activities like concealment, acquisition, possession and use of proceeds of crime. I would like to say that the Bill should be amended in such a way that the Clause be

redrafted so that the local courts have the power to decide even when the person is acquitted in a case outside India. The criminal court outside India, under the corresponding law finds that the offence of money laundering has not taken place, the local court has nothing to do, and that should and must be stopped. Another important thing is that all regulatory and intelligence agencies should set up a monitoring and coordination mechanism to curb money laundering taking place through stock and securities markets. SEBI has already identified 35 cases, where the stock brokers have misused the Money-Laundering Act. Another important thing is the unaccounted money. The Government has been promising for the last few years that we shall bring back the black money bring to book the culprits but so far the Government has not been able to take action. So, bringing back money and also punishing the culprits should be taken immediately. Another important thing is the Mauritius route. With Mauritius, we have agreement of Double Tax Avoidance. Mauritius has no tax on capital gains. Naturally, the person who starts business in Mauritius, he is not required to pay taxes in Mauritius and also in India. Naturally, he gains money. Three things happen - one is revenue loss to the Government; another is money laundering is taking place; and the third is black money becomes white money. So, the agreement with Mauritius should be immediately reviewed by the Government so that money laundering does not happen through the Mauritius route. The Department of Revenue should take into account the incidence of trade based on money laundering which is not considered as a money laundering offence so far. If the Finance Minister does not look into it, then we cannot be faithful in the implementation. Another important thing to be noted here is that it is essential for the Finance Ministry to prescribe a strict time-limit for cases and completing the investigation process. Otherwise, if it goes on for years together, nothing will happen and so, in order to implement the Prevention of Money Laundering Act properly, the Government should be faithful to the recommendations made by the Standing Committee HSBC is having international presence and it is allowed to transfer funds from one country to another. The Government should come forward and immediately take action against HSBC because HSBC has a number of hidden accounts. The Reebok fraud has already come to our notice wherein more than Rs.870 crore has been brought in this sports company business by Reebok India. Mahindra Satyam is very well known to everybody. Trafficking of women and children also happens through money laundering business. The Government should take serious note of these things and stop money laundering.

SHRI BHARTRUHARI MAHTAB: This Bill proposes to introduce the concept of corresponding law to link the provisions of Indian law with the laws of foreign countries. The Bill expands the definition of offence under money laundering. The PMLA has been amended first in 2005 and thereafter in 2009. This is the third amendment that is taking place today. The problem of money laundering is global menace. There are two parts to the black money menace. One is the money sent out in the past or is being sent out today because of high tax rates and the cumbersome tax law that is prevalent today in the country. The other component which is a large part of that unaccounted money or black money abroad is possibly the larger part has been generated by blatant criminal activities like political bribery, drug money, proceeds from smuggling, etc. The past is best addressed by a one-time amnesty scheme which encourages people to just pay the tax and legitimize that money. The approach to the second part of black money or unaccounted money, the one generated by thieves, by criminals, by terrorists has to be different. I would like to understand from the Government how many disclosure pacts have been signed with foreign countries. There is an urgent need to detect this money and take every legally permitted action against the criminals. The National Security Advisor, Mr. Narayanan, in 2007 raised an alarm on terror money in stock markets. I would like to know what steps the Government has taken since then. Terror fund is also flowing into the real estate sector. NGOs play a vital role in nation's economy and social development. The ongoing global campaign against terror financing has unfortunately demonstrated that terrorists and unlawful organizations are exploiting the vulnerability of this sector to raise and move funds, provide logistical support, encourage terrorist recruitment or otherwise support terrorist organizations and operations. Due to deficiencies in its monitoring mechanisms for exports the RBI inadvertently is abetting the creation of black money outside the country. These deficiencies have been pointed out but have not been addressed to. The Standing Committee on Finance had suggested certain measures to be taken. The Committee recommended that all regulatory and intelligence agencies should set up a monitoring and coordination mechanism to curb money laundering taking place through stock and security markets. Secondly, the Committee suggested that there should be a status report based on the existing framework, its efficacy and measures taken by the Department of Revenue to check the generation of unaccounted money. Thirdly, the Committee also recommended that the Department of Revenue should take into account the incidence of trade based money laundering which is not considered as a money

laundering offence so far. I would be educated if the Hon. Finance Minister will throw some light on this subject as these three aspects do not find place in those amendments.

DR. M. THAMBIDURAI: Due to more circulation of black money our economy is affected. The price rise and everything is only because of black money. Unless the Government will take serious measures to control this black money, it is very difficult for the economy to survive. The tax evasion, terrorism, drug trafficking, counterfeit money and *hawala* money are the factors existing in the form of black money in our country. By two ways they are converting their black money into legal money. My second concern is regarding the real estate. This is the sector where they are converting this black money into white money. Real estate business is a big business going on in this country. I would like to know as to what measures the Government is going to take to control this real estate business. Even in cinema business, they are putting crores of rupees in the form of black money. Even many corporate companies are cheating the country, and in the name of deposit, they are collecting a lot of money. They are not maintaining proper accounts also. Like that, corporate companies are taking money in some other form and using that money for building the factories, and they are also not accounting this money properly. That is also money-laundering. So, we are seeing several ways of money-laundering that is taking place in this country. I would request the hon. Finance Minister and the Government to take stringent measures to prevent money-laundering. Some more amendments to this Act and also some more legislation have to be brought for preventing this kind of money-laundering that is taking place in the country.

SHRI PRABODH PANDA: What is the backdrop of bringing in such a Bill? The backdrop is that India happens to be the member of the Financial Action Task Force and also happens to be the Chairman of the Asia/Pacific Group on Money Laundering. So, under compulsion, as one of the signatories of the countries, this Government is bringing the Prevention of Money-Laundering (Amendment) Bill. So, they are not concerned about money-laundering, the degree of money-laundering that is going on not only at the global scale but also in our country itself. I do agree that this Bill is going to expand the definition of money-laundering. But I think that this Bill is not comprehensive. The Government should ponder over it and bring a comprehensive Bill in this respect not only keeping in mind what the global situation is but also keeping in mind

how serious situation is there in our own country itself. I do not know whether the Government has any idea about all sources of illegal activities, which bring sudden money attributed to the money laundering. So, all aspects should be taken up together.

SHRI PRASANTA KUMAR MAJUMDAR*: Money Laundering is a global issue. It is a process by which illegally accumulated black money is converted into white by dubious means. This is a kind of criminal activity. Money Laundering takes place through various means, the businessmen do not reveal their profits to the government and transfer the money to foreign banks *via* Hawala. In this manner black money accumulated in banks which is unaccounted money and that in turn is invested in Indian economy through different channels. Stringent action must be taken against the tax evaders and corrupt companies. Though additional courts have been set up, cases remain pending for a long time thus rendering the laws ineffective. Foreign money and influence is highly active and visible in the Indian economy. Therefore the country has to take strong action in this regard. We must plug the loopholes and take the violators to task by imposing heavy penalties on them. I am glad that all the members of Parliament have decided unanimously on this issue as it is a very serious matter.

DR. RAGHUVANSH PRASAD SINGH: The Money-laundering Act was passed in 2002. Amendments were brought to this Act in 2005 and 2009 and again amendments have been brought to this Act this time around for the third time. I want to know whether the Government has given any assurance that these amendments will put an end to money-laundering in the country but the Government has not given any such assurance. Therefore, there is a need to bring in a comprehensive Bill to check money-laundering. There are different figures as to how much black money Indians have stashed in Swiss Bank. The Government is keeping mum on this. That means all the existing legislations have failed to check money-laundering. The Government is acting in a half-hearted manner in this regard. This has created a doubt in the minds of people that the members of the Government might also have stashed black-money abroad. Therefore, the Government should act in a transparent manner to put a complete check on money laundering. The Government should also take action to bring back the blackmoney stashed abroad. Besides, the Government should also take action to prevent the financial assistance being provided to terrorists in the form of black-money.

*Original in Bengali

SHRI NRIPENDRA NATH ROY: The entire world including India is facing the problem of black-money. Our country is facing the problems of corruption and poverty besides black-money. The Government will have to act fast to grapple with these problems. We are against the FDI because black-money might be routed in our country through FDI and this would affect the poor and farmers adversely. The people of this country want to know about people who have stashed black-money abroad. But, neither the people of this country nor this House has been informed about this. The Government has set up many commissions on the issue of black-money and we are holding talks with foreign countries also on this issue but nothing concrete has come out of it. 7600 cases of money-laundering are filed in the country but in how many cases decision has been taken. Why there is delay in disposing of these cases? The people of the country want to know about this. Besides, the Government should check the entry of counterfeit currency in the country.

SHRI AJAY KUMAR: I have a couple of observations to make. First, the report by the Financial Action Task Force has said that since 2006 there has not been a single prosecution. Despite the Financial Intelligence Unit being set up, the number of cases which are being filed is very small. The other thing which the hon. Minister brought to the attention was that there are non-profit organizations and NGOs whose funding comes through various mechanisms. So, they must also be put under this ambit for the simple reason that it will become a transparent process because lot of money is involved. There is a Mukhopadhyay Committee Report which says that the tax due was around Rs.7000 crore. So, I would request the Hon. Minister to set up a mechanism where the government can continuously evaluate the tax authorities and their capability to prosecute people who are involved in money laundering.

SHRI P. CHIDAMBARAM replying said: Following the Standing Committee's Report, we are moving 12 official amendments. Firstly, the Act defines money laundering. Anyone who deals with the proceeds of the crime should be prosecuted, and that offence is called money laundering. Money laundering is not the same as generation of black money. Many cases of black money will indeed come under money laundering, but there will be many cases of black money, which will not come under money laundering. The crucial difference is that in the case of money laundering there must be a predicate crime or a crime as defined in the Schedule of the Act. All the suggestions made by the Standing Committee have been accepted. We will take administrative

action on the suggestions which do not require official amendments to the Bill. Every single piece of information received from a foreign Government regarding accounts purportedly held in a foreign bank is being investigated and action has been taken and more action will be taken. The other suggestion made by the Standing Committee is to maintain a comprehensive data base to enable tapping of trade based offences. All cases of violation of Section 135 of the Customs Act will automatically be included in the data base. There will be prosecutions for money laundering. The Schedule to the Act lists the offences which are crimes for the purpose of money-laundering.

The Bill, as amended, was passed.

**THE PREVENTION OF MONEY-
LAUNDERING (AMENDMENT) BILL,
2012 (AS PASSED BY LOK SABHA ON
29 NOVEMBER, 2012)**

Bill No. 133-C of 2011

THE PREVENTION OF MONEY-LAUNDERING
(AMENDMENT) BILL, 2012

A

BILL

further to amend the Prevention of Money-laundering Act, 2002.

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

1. (1) This Act may be called the Prevention of Money-laundering (Amendment) Act, 2012.

Short title and commencement.

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

15 of 2003.

2. In section 2 of the Prevention of Money-Laundering Act, 2002 (hereinafter referred to as the principal Act), in sub-section (1),—

Amendment of section 2.

(i) after clause (f), the following clause shall be inserted, namely:—

‘(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;’;

(ii) after clause (h), the following clause shall be inserted, namely:—

‘(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;’;

(iii) after clause (i), the following clause shall be inserted, namely:—

‘(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.

(iv) clause (ja) shall be omitted;

(v) for clause (l), the following clause shall be substituted, namely:—

‘(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,

2 of 1934.

a non-banking financial company and the Department of Posts in the Government of India;’;

(vi) for clause (n), the following clause shall be substituted, namely:—

‘(n) “intermediary” means,—

(i) 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 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;’;

(vii) in clause (q), the words “and includes a person carrying on designated business or profession” shall be omitted;

(viii) in clause (ra), in sub-clause (i), for the word “remits”, the words “transfers in any manner” shall be substituted;

(ix) after clause (s), the following clauses shall be inserted, namely:—

‘(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;

(ii) a Registrar or Sub-Registrar appointed under section 6 of the Registration Act, 1908, as may be notified by the Central Government; 16 of 1908.

(iii) real estate agent, as may be notified by the Central Government;

(iv) dealer 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;’;

(x) after clause (v), the following shall be inserted, namely:—

‘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;’;

(*xi*) after clause (*w*), the following clause shall be inserted, namely:—

‘(*wa*) “reporting entity” means a banking company, financial institution, intermediary or a person carrying on a designated business or profession;’.

3. In section 3 of the principal Act, for the words “proceeds of crime and projecting”, the words “proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming” shall be substituted. Amendment of section 3.

4. In section 4 of the principal Act, the words “which may extend to five lakh rupees” shall be omitted. Amendment of section 4.

5. In section 5 of the principal Act, for sub-section (*I*), the following sub-section shall be substituted, namely:— Amendment of section 5.

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

(*a*) any person is in possession of any proceeds of crime; and

(*b*) such proceeds of crime are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceedings relating to confiscation of such proceeds of crime under this Chapter,

he may, by order in writing, provisionally attach such property for a period not exceeding one hundred and eighty days from the date of the order, in such manner as may be prescribed:

Provided that no such order of attachment shall be made unless, in relation to the scheduled offence, a

report has been forwarded to a Magistrate under section 2 of 1974. 173 of the Code of Criminal Procedure, 1973, or a complaint has been filed by a person authorised to investigate the offence mentioned in that Schedule, before a Magistrate or court for taking cognizance of the scheduled offence, as the case may be, or a similar report or complaint has been made or filed under the corresponding law of any other country:

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

Amendment
of section 8.

6. In section 8 of the principal Act,—

(i) in sub-section (1), after the words and figure “section 5, or, seized”, the words “or frozen” shall be inserted;

(ii) in sub section (3),—

(a) in the opening portion, for the words “record seized under section 17 or section 18 and record a finding to that effect, such attachment or retention of the seized property”, the words “record seized or frozen under section 17 or section 18 and record a finding to that effect, whereupon such attachment or retention or freezing of the seized or frozen property” shall be substituted;

(b) in clause (a), for the words “scheduled offence before a court; and”, the words

“offence under this Act before a court or under the corresponding law of any other country, before the competent court of criminal jurisdiction outside India, as the case may be; and” shall be substituted;

(c) for clause (b), the following clause shall be substituted, namely:—

“(b) become final after an order of confiscation is passed under sub-section (5) or sub-section (7) of section 8 or section 58B or sub-section (2A) of section 60 by the Adjudicating Authority”;

(iii) in sub-section (4), for the words “possession of the attached property”, the following shall be substituted, namely:—

“possession of the property attached under section 5 or frozen under sub-section (IA) of section 17, in such manner as may be prescribed;

Provided that if it is not practicable to take possession of a property frozen under sub-section (IA) of section 17, the order of confiscation shall have the same effect as if the property had been taken possession of.”;

(iv) for sub-sections (5) and (6), the following sub-sections shall be substituted, namely:—

“(5) Where on conclusion of a trial of an offence under this Act, the Special Court finds that the offence of money-laundering has been committed, it shall order that such property involved in the money-laundering or which has been used for commission of the offence of money-laundering shall stand confiscated to the Central Government.

(6) Where on conclusion of a trial under this Act, the Special Court finds that the offence of money-laundering has not taken place or the property is not involved in money-laundering, it shall order release of such property to the person entitled to receive it.

(7) Where the trial under this Act cannot be conducted by reason of the death of the accused or the accused being declared a proclaimed offender or for any other reason or having commenced but could not be concluded, the Special Court shall, on an application moved by the Director or a person claiming to be entitled to possession of a property in respect of which an order has been passed under sub-section (3) of section 8, pass appropriate orders regarding confiscation or release of the property, as the case may be, involved in the offence of money-laundering after having regard to the material before it.”.

Amendment
of section 9.

7. In section 9 of the principal Act,-

(i) in the opening portion, for the words, brackets and figures “sub-section (6) of section 8”, the words, brackets and figures “sub-section (5) or sub-section (7) of section 8 or section 58B or sub-section (2A) of section 60” shall be substituted;

(ii) in the first proviso,—

(a) for the words “Adjudicating Authority”, the words “Special Court or the Adjudicating Authority, as the case may be,” shall be substituted;

(b) after the words “or seized”, the words “or frozen” shall be inserted.

8. In section 10 of the principal Act, in sub-section (2), for the words, brackets and figures “sub-section (6) of section 8”, the words, brackets and figures “sub-section (5) or sub-section (6) or sub-section (7) of section 8 or section 58B or sub-section (2A) of section 60” shall be substituted.

Amendment of section 10.

9. For section 12 of the principal Act, the following section shall be substituted, namely:—

Substitution of new section for section 12.

“12. (1) Every reporting entity shall—

Reporting entity to maintain records.

(a) maintain a record of all transactions, including information relating to transactions covered under clause (b), in such manner as to enable it to reconstruct individual transactions;

(b) furnish to the Director within such time as may be prescribed, information relating to such transactions, whether attempted or executed, the nature and value of which may be prescribed;

(c) verify the identity of its clients in such manner and subject to such conditions, as may be prescribed;

(d) identify the beneficial owner, if any, of such of its clients, as may be prescribed;

(e) maintain record of documents evidencing identity of its clients and beneficial owners as well as account files and business correspondence relating to its clients.

(2) Every Information maintained, furnished or verified, save as otherwise provided under any law for the time being in force, shall be kept confidential.

(3) The records referred to in clause (a) of sub-section (1) shall be maintained for a period of five years from the date of transaction between a client and the reporting entity.

(4) The records referred to in clause (e) of sub-section (1) shall be maintained for a period of five years after the business relationship between a client and the reporting entity has ended or the account has been closed, whichever is later.

(5) The Central Government may, by notification, exempt any reporting entity or class of reporting entities from any obligation under this Chapter.”.

Insertion of new section 12A.

10. After section 12 of the principal Act, the following section shall be inserted, namely:—

Access to information.

“12A. (1) The Director may call for from any reporting entity any of the records referred to in sub-section (1) of section 12 and any additional information as he considers necessary for the purposes of this Act.

(2) Every reporting entity shall furnish to the Director such information as may be required by him under sub-section (1) within such time and in such manner as he may specify.

(3) Save as otherwise provided under any law for the time being in force, every information sought by the Director under sub-section (1), shall be kept confidential.”.

Amendment of section 13.

11. In section 13 of the principal Act,—

(i) in sub-section (1), for the words “call for records referred to in sub-section.(1) of section 12 and may make such inquiry or cause such inquiry to be made, as he thinks fit”, the words “make such inquiry or cause such inquiry to be made, as he thinks fit to be necessary, with regard to the obligations of the reporting entity, under this Chapter” shall be substituted;

(ii) after sub-section (1), the following sub-sections shall be inserted, namely:—

“(IA) If at any stage of inquiry or any other proceedings before him, the Director having regard to the nature and complexity of the case, is of the opinion that it is necessary to do so, he may direct the concerned reporting entity to get its records, as may be specified, audited by an accountant from amongst a panel of accountants, maintained by the Central Government for this purpose.

(IB) The expenses of, and incidental to, any audit under sub-section (IA) shall be borne by the Central Government.”;

(iii) for sub-section (2), the following sub-section shall be substituted, namely:—

“(2) If the Director, in the course of any inquiry, finds that a reporting entity or its designated director on the Board or any of its employees has failed to comply with the obligations under this Chapter, then, without prejudice to any other action that may be taken under any other provisions of this Act, he may—

(a) issue a warning in writing; or

(b) direct such reporting entity or its designated director on the Board or any of its employees, to comply with specific instructions; or

(c) direct such reporting entity or its designated director on the Board or any of its employees, to send reports at such interval as may be prescribed on the measures it is taking; or

(d) by an order, impose a monetary penalty on such reporting entity or its

designated director on the Board or any of its employees, which shall not be less than ten thousand rupees but may extend to one lakh rupees for each failure.”;

(iv) after sub-section (3), the following *Explanation* shall be inserted, namely:—

“*Explanation.*:— For the purpose of this section, “accountant” shall mean a chartered accountant within the meaning of the Chartered Accountants Act, 1949.” 38 of 1949.

Substitution of new section for section 14.

12. For section 14 of the principal Act, the following section shall be substituted, namely:—

No civil or criminal proceedings against reporting entity, its directors and employees in certain cases.

“14. Save as otherwise provided in section 13, the reporting entity, its directors and employees shall not be liable to any civil or criminal proceedings against them for furnishing information under clause (b) of sub-section (1) of section 12.”.

Substitution of new section for section 15.

13. For section 15 of the principal Act, the following section shall be substituted, namely:—

Procedure and manner of furnishing information by reporting entities.

“15. The Central Government may, in consultation with the Reserve Bank of India, prescribe the procedure and the manner of maintaining and furnishing information by a reporting entity under sub-section (1) of section 12 for the purpose of implementing the provisions of this Act.”.

Amendment of section 17.

14. In section 17 of the principal Act,—

(i) in sub-section (1),—

(a) in clause (iii), after the word “money-laundering,”, the word “or” shall be inserted;

(b) after clause (iii), the following clause shall be inserted, namely:—

“(iv) is in possession of any property related to crime,”

(c) in clause (d), after the words “such record or”, the words “property, if required or” shall be inserted;

(d) for the proviso, the following proviso shall be substituted, namely:—

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

2 of 1974.

(ii) after sub-section (I), the following sub-section shall be inserted, namely:—

“(IA) Where it is not practicable to seize such record or property, the officer authorised

under sub-section (1), may make an order to freeze such property whereupon the property shall not be transferred or otherwise dealt with, except with the prior permission of the officer making such order, and a copy of such order shall be served on the person concerned;

Provided that if, at any time before its confiscation under sub-section (5) or (7) of section 8 or section 58B or sub-section (2A) of section 60, it becomes practical to seize a frozen property, the officer authorised under sub-section (1) may seize such property.”;

(iii) in sub-section (2), after the words, “immediately after search and seizure” the words “or upon issuance of a freezing order” shall be inserted;

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

“(4) The authority seizing any record or property under sub-section (1) or freezing any record or property under sub-section (1A) shall, within a period of thirty days from such seizure or freezing, as the case may be, file an application, requesting for retention of such record or property seized under sub-section (1) or for continuation of the order of freezing served under sub-section (1A), before the Adjudicating Authority.”.

Amendment
of section 18.

15. In section 18 of the principal Act, in sub-section (1), for the proviso, the following proviso shall be substituted, namely:—

“Provided that no search of any person shall be made unless, in relation to the scheduled offence, a report has been forwarded to a Magistrate under section 157 of the Code of Criminal Procedure,

1973, or a complaint has been filed by a person, authorised to investigate the offence mentioned in the Schedule, before a Magistrate or court for taking cognizance of the scheduled offence, as the case may be, or in cases where such report is not required to be forwarded, a similar report of information received or otherwise has been submitted by an officer authorised to investigate a scheduled offence to an officer not below the rank of Additional Secretary to the Government of India or equivalent being head of the office or Ministry or Department or Unit, as the case may be, or any other officer who may be authorised by the Central Government, by notification, for this purpose,”;

16. For section 20 and 21 of the principal Act, the following sections shall be substituted, namely:—

Substitution of new section for section 20 and section 21.

“20. (1) Where any property has been seized under section 17 or section 18 or frozen under sub-section (1A) of section 17 and the officer authorised by the Director in this behalf has, on the basis of material in his possession, reason to believe (the reason for such belief to be recorded by him in writing) that such property is required to be retained for the purposes of adjudication under section 8, such property may, if seized, be retained or if frozen, may continue to remain frozen, for a period not exceeding one hundred and eighty days from the day on which such property was seized or frozen, as the case may be.

Retention of property.

(2) The officer authorised by the Director shall, immediately after he has passed an order for retention or continuation of freezing of the property for purposes of adjudication under section 8, forward a copy of the order along with the material in his possession, referred to in sub-section (1), to the Adjudicating Authority, in a sealed envelope, in the manner as may be prescribed and such

Adjudicating Authority shall keep such order and material for such period as may be prescribed.

(3) On the expiry of the period specified in sub-section (1), the property shall be returned to the person from whom such property was seized or whose property was ordered to be frozen unless the Adjudicating Authority permits retention or continuation of freezing of such property beyond the said period.

(4) The Adjudicating Authority, before authorising the retention or continuation of freezing of such property beyond the period specified in sub-section (1), shall satisfy himself that the property is *prima facie* involved in money-laundering and the property is required for the purposes of adjudication under section 8.

(5) After passing the order of confiscation under sub-section (5) or sub-section (7) of section 8, the Court or the Adjudicating Authority, as the case may be, shall direct the release of all property other than the property involved in money-laundering to the person from whom such property was seized or the persons entitled to receive it.

(6) Where an order releasing the property has been made by the Court under sub-section (6) of section 8 or by the Adjudicating Authority under section 58B or sub-section (2A) of section 60, the Director or any officer authorised by him in this behalf may withhold the release of any such property for a period of ninety days from the date of such order, if he is of the opinion that such property is relevant for the appeal proceedings under this Act.

Retention of records.

21. (1) Where any records have been seized, under section 17 or section 18 or frozen under sub-section (1A) of section 17 and the Investigating Officer or any other officer authorised by the Director in this behalf

has reason to believe that any of such records are required to be retained for any inquiry under this Act, such records may if seized, be retained or if frozen, may continue to remain frozen, for a period not exceeding one hundred and eighty days from the day on which such records were seized or frozen, as the case may be.

(2) The person, from whom records seized or frozen, shall be entitled to obtain copies of records.

(3) On the expiry of the period specified under sub-section (1), the records shall be returned to the person from whom such records were seized or whose records were ordered to be frozen unless the Adjudicating Authority permits retention or continuation of freezing of such records beyond the said period.

(4) The Adjudicating Authority, before authorising the retention or continuation of freezing of such records beyond the period specified in sub-section (1), shall satisfy himself that the records are required for the purposes of adjudication under section 8.

(5) After passing of an order of confiscation under sub-section (5) or sub-section (7) of section 8, the Adjudicating Authority shall direct the release of the records to the person from whom such records were seized.

(6) Where an order releasing the records has been made by the Court under sub-section (6) of section 8 or by the Adjudicating Authority under section 58B or sub-section (2A) of section 60, the Director or any officer authorised by him in this behalf may withhold the release of any such record for a period of ninety days from the date of such order, if he is of the opinion that such record is relevant for the appeal proceedings under this Act.”.

17. In section 22 of the principal Act, in sub-section (1), after the words “a survey or a search,”, the words

Amendment
of section 22.

“or where any record or property is produced by any person or has been resumed or seized from the custody or control of any person or has been frozen under this Act or under any other law for the time being in force,” shall be inserted.

Amendment of section 23.

18. In section 23 of the principal Act, for the words and figure “under section 8, it shall, unless otherwise proved to the satisfaction of the Adjudicating Authority”, the words “under section 8 or for the trial of the money-laundering offence, it shall unless otherwise proved to the satisfaction of the Adjudicating Authority or the Special Court” shall be substituted.

Amendment of section 24.

19. For section 24 of the principal Act, the following section shall be substituted, namely:—

Burden of Proof.

“24. In any proceedings relating to proceeds of crime under this Act,—

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

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

Amendment of section 26.

20. In section 26 of the principal Act, in sub-section (2), for the words “banking company, financial institution or intermediary”, the words “reporting entity” shall be substituted.

Amendment of section 44.

21. In section 44 of the Act, in sub-section (J),—

(i) for clause (a) the following clause shall be substituted, namely:—

“(a) an offence punishable under section 4 and any scheduled offence connected to the offence under that section shall be triable by the Special

Court constituted for the area in which the offence has been committed;

Provided that the Special Court, trying a scheduled offence before the commencement of this Act, shall continue to try such scheduled offence; or”

(ii) in clause (b), for the words “cognizance of the offence for which the accused is committed to it for trial”, the words “cognizance of offence under section 3, without the accused being committed to it for trial” shall be substituted;

(iii) after clause (b), the following clauses shall be inserted, namely:—

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

(d) a Special Court while trying the scheduled offence or the offence of money-laundering shall hold trial in accordance with the provisions of the Code of Criminal Procedure, 1973, as it applies to a trial before a Court of Session.”.

2 of 1974.

22. In section 50 of the principal Act, in sub-section (1), in clause (b), for the words “banking company or a financial institution or a company,”, the words “reporting entity” shall be substituted.

Amendment of section 50.

23. In section 54 of the principal Act:—

Amendment of section 54.

(i) in the opening portion, for the word

“officers”, the words “officers and others” shall be substituted;

(ii) for clause (d), the following clause shall be substituted, namely:—

“(d) members of the recognised stock exchange referred to in clause (f) of section 2 and the officers of the stock exchanges recognised under section 4 of the Securities Contracts (Regulation) Act, 1956; 42 of 1956.

(iii) after clause (h), the following clauses shall be inserted, namely:—

“(ha) officers of the Insurance Regulatory and Development Authority established under section 3 of the Insurance Regulatory and Development Authority Act, 1999; 41 of 1999.

(hb) officers of the Forward Markets Commission established under section 3 of the Forward Contracts (Regulation) Act, 1952; 74 of 1952.

(hc) officers and members of the recognised association recognised under section 6 of the Forward Contracts (Regulation) Act, 1952; 74 of 1952.

(hd) officers of the Pension Fund Regulatory and Development Authority;

(he) officers of the Department of Posts in the Government of India;

(hf) Registrars or Sub-Registrars appointed by the State Governments under section 6 of the Registration Act, 1908; 16 of 1908.

(hg) registering authority empowered to register motor vehicles under Chapter IV of the Motor Vehicles Act, 1988; 59 of 1988.

(hh) officers and members of the Institute of Chartered Accountants of India constituted

38 of 1949. under section 3 of the Chartered Accountants Act, 1949;

23 of 1959. (hi) officers and members of the Institute of Cost and Works Accountants of India constituted under section 3 of the Cost and Works Accountants Act, 1959;

56 of 1980. (hj) officers and members of the Institute of Company Secretaries of India constituted under section 3 of the Company Secretaries Act, 1980;”;

(iv) in clause (j), for the words “banking companies”, the words “reporting entities” shall be substituted.

24. After section 58, the following sections shall be inserted, namely:—

Insertion of new sections 58A and 58B.

“58A. Where on closure of the criminal case or conclusion of a trial in a criminal court outside India under the corresponding law of any other country, such court finds that the offence of money-laundering has not taken place or the property in India is not involved in money-laundering, the Special Court may, on an application moved by the concerned person or the Director, after notice to the other party, order release of such property to the person entitled to receive it.

Special Court to release the property.

58B. Where the trial under the corresponding law of any other country cannot be conducted by reason of the death of the accused or the accused being declared a proclaimed offender or for any other reason or having commenced but could not be concluded, the Central Government shall, on receipt of a letter of request from a court or authority in a contracting State requesting for confiscation or release of property, as the case may be, forward the same to the Director to move an application before the Special Court and upon such application the Special Court shall pass appropriate

Letter of request of a contracting State or authority for confiscation or release the property.

orders regarding confiscation or release of such property involved in the offence of money-laundering.”.

Amendment
of section 60.

25. In section 60 of the principal Act,—

(i) in sub-section (1), for the words and figures “property under section 5 or where an Adjudicating Authority has made an order confirming such attachment or confiscation of any property under section 8”, the words, figures, brackets and letter “property under section 5 or for freezing under sub-section (1A) of section 17 or where an Adjudicating Authority has made an order relating to a property under section 8 or where a Special Court has made an order of confiscation relating to a property under sub-section (5) or sub section (6) of section 8” shall be substituted;

(ii) in sub-section (2),—

(a) for the words “attachment or confiscation”, the words “attachment, seizure, freezing or confiscation” shall be substituted;

(b) for the word and figure “section 3”, the words “a corresponding law” shall be substituted;

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

“(2A) Where on closure of the criminal case or conclusion of trial in a criminal court outside India under the corresponding law of any other country, such court finds that the offence of money-laundering under the corresponding law of that country has been committed, the Adjudicating Authority shall, on receipt of an application from the Director for execution of confiscation under sub-section (2), order, after

giving notice to the affected persons, that such property involved in money-laundering or which has been used for commission of the offence of money-laundering stand confiscated to the Central Government.”.

26. In section 63 of the principal Act, after sub-section (3), the following sub-section shall be inserted, namely:—

Amendment of section 63.

“(4) Notwithstanding anything contained in clause (c) of sub-section (2), a person who intentionally disobeys any direction issued under section 50 shall also be liable to be proceeded against under section 174 of the Indian Penal Code.”.

45 of 1860.

27. For section 69 of the principal Act, the following section shall be substituted, namely:—

Substitution of new section for section 69.

“69. Where any fine or penalty imposed on any person under section 13 or section 63 is not paid within six months from the day of imposition of fine or penalty, the Director or any other officer authorised by him in this behalf may proceed to recover the amount from the said person in the same manner as prescribed in Schedule II of the Income-tax Act, 1961 for the recovery of arrears and he or any officer authorised by him in this behalf shall have all the powers of the Tax Recovery Officer mentioned in the said Schedule for the said purpose.”.

Recovery of fine or penalty.

43 of 1961.

28. In section 70 of the principal Act, the *Explanation* shall be numbered as *Explanation 1* thereof and after *Explanation 1* as so numbered, the following *Explanation* shall be inserted, namely:—

Amendment of section 70.

“*Explanation 2.*—For the removal of doubts, it is hereby clarified that a company may be prosecuted, notwithstanding whether the prosecution or conviction of any legal juridical

person shall be contingent on the prosecution or conviction of any individual.”.

Amendment
of section 73.

29. In section 73 of the principal Act, in sub-section (2),—

(i) after clause (a), the following clause shall be inserted, namely:—

“(aa) the manner of provisional attachment of property under sub-section (1) of section 5;”;

(ii) after clause (e), the following clause shall be inserted, namely:—

“(ee) the manner of seizing or taking possession of property attached under section 5 or frozen under sub-section (1A) of section 17 or under sub-section (4) of section 8;”;

(iii) clause (h) shall be omitted;

(iv) in clause (i), for the words “the time within which”, the words “the nature and value of transactions and the time within which” shall be substituted;

(v) for clause (j), the following clauses shall be substituted, namely:—

“(j) the manner and the conditions in which identity of clients shall be verified by the reporting entities under clause (c) of sub-section (1) of section 12;

(jj) the manner of identifying beneficial owner, if any, from the clients by the reporting entities under clause (d) of sub-section (1) of section 12;

(jjj) the period of interval in which the reports are sent by the reporting entities or any of its employees under clause (c) of sub-section (2) of section 13;”;

(vi) after clause (p), the following clause shall be inserted, namely:—

“(pp) the manner in which the forwarding of the order for retention or continuation of freezing of the property and the period of keeping such order and material under sub-section (2) of section 20;”.

30. In the Schedule to the principal Act,—

Amendment
of the
Schedule.

(i) for Part A, the following Part shall be substituted, namely:—

“PART A

PARAGRAPH 1

OFFENCES UNDER THE INDIAN PENAL CODE

(45 OF 1860)

Section	Description of offence
120B	Criminal conspiracy.
121	Waging or attempting to wage war or abetting waging of war, against the Government of India.
121A	Conspiracy to commit offences punishable by section 121 against the State.
255	Counterfeiting Government stamp.
257	Making or selling instrument for counterfeiting Government stamp.
258	Sale of counterfeit Government stamp.
259	Having possession of counterfeit Government stamp.
260	Using as genuine a Government stamp known to be counterfeit.
302	Murder.
304	Punishment for culpable homicide not amounting to murder.

Section	Description of offence
307	Attempt to murder.
308	Attempt to commit culpable homicide.
327	Voluntarily causing hurt to extort property, or to constrain to an illegal act.
329	Voluntarily causing grievous hurt to extort property, or to constrain to an illegal act.
364A	Kidnapping for ransom, etc.
384 to 389	Offences relating to extortion.
392 to 402	Offences relating to robbery and dacoity.
411	Dishonestly receiving stolen property.
412	Dishonestly receiving property stolen in the commission of a dacoity.
413	Habitually dealing in stolen property.
414	Assisting in concealment of stolen property.
417	Punishment for cheating.
418	Cheating with knowledge that wrongful loss may ensue to person whose interest offender is bound to protect.
419	Punishment for cheating by personation.
420	Cheating and dishonestly inducing delivery of property.
421	Dishonest or fraudulent removal or concealment of property to prevent distribution among creditors.
422	Dishonestly or fraudulently preventing debt being available for creditors.
423	Dishonest or fraudulent execution of deed of transfer containing false statement of consideration.
424	Dishonest or fraudulent removal or concealment of property.
467	Forgery of valuable security, will, etc.

Section	Description of offence
471	Using as genuine a forged document or electronic record.
472 and 473	Making or possessing counterfeit seal, etc., with intent to commit forgery.
475 and 476	Counterfeiting device or mark.
481	Using a false property mark.
482	Punishment for using a false property mark.
483	Counterfeiting a property mark used by another.
484	Counterfeiting a mark used by a public servant.
485	Making or possession of any instrument for counterfeiting a property mark.
486	Selling goods marked with a counterfeit property mark.
487	Making a false mark upon any receptacle containing goods.
488	Punishment for making use of any such false mark.
489A	Counterfeiting currency notes or bank notes.
489B	Using as genuine, forged or counterfeit currency notes or bank notes.

PARAGRAPH 2

OFFENCES UNDER THE NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT, 1985

(61 OF 1985)

Section	Description of offence
15	Contravention in relation to poppy straw.
16	Contravention in relation to coca plant and coca leaves.
17	Contravention in relation to prepared opium.
18	Contravention in relation to opium poppy and opium.
19	Embezzlement of opium by cultivator.

Section	Description of offence
20	Contravention in relation to cannabis plant and cannabis.
21	Contravention in relation to manufactured drugs and preparations.
22	Contravention in relation to psychotropic substances.
23	Illegal import into India, export from India to transshipment of narcotic drugs and psychotropic substances.
24	External dealings in narcotic drugs and psychotropic substances in contravention of section 12 of the Narcotics Drugs and Psychotropic Substances Act, 1985.
25A	Contravention of orders made under section 9A of the Narcotic Drugs and Psychotropic Substances Act, 1985.
27A	Financing illicit traffic and harbouring offenders.
29	Abetment and criminal conspiracy.

PARAGRAPH 3

OFFENCES UNDER THE EXPLOSIVE SUBSTANCES ACT, 1908

(6 OF 1908)

Section	Description of offence
3	Causing explosion likely to endanger life or property.
4	Attempt to cause explosion, or for making or keeping explosives with intent to endanger life or property.
5	Making or possessing explosives under suspicious circumstances.

PARAGRAPH 4

OFFENCES UNDER THE UNLAWFUL ACTIVITIES (PREVENTION) ACT, 1967

(37 OF 1967)

Section	Description of offence
10 read with section 3	Penalty for being member of an unlawful association, etc.

Section	Description of offence
11 read with section 3	Penalty for dealing with funds of an unlawful association.
13 read with section 3	Punishment for unlawful activities.
16 read with section 15	Punishment for terrorist act.
16A	Punishment for making demands of radioactive substances, nuclear devices, etc.
17	Punishment for raising fund for terrorist act.
18	Punishment for conspiracy, etc.
18A	Punishment for organising of terrorist camps.
18B	Punishment for recruiting of any person or persons for terrorist act.
19	Punishment for harbouring, etc.
20	Punishment for being member of terrorist gang or organisation.
21	Punishment for holding proceeds of terrorism.
38	Offence relating to membership of a terrorist organisation.
39	Offence relating to support given to a terrorist organisation.
40.	Offence of raising fund for a terrorist organisation.

PARAGRAPH 5

OFFENCES UNDER THE ARMS ACT, 1959

(54 OF 1959)

Section	Description of offence
25	To manufacture, sell, transfer, convert, repair or test or prove or expose or offer for sale or transfer or have in his possession for sale, transfer, conversion, repair, test or proof, any arms or ammunition to contravention of section 5 of the Arms Act, 1959.

Section	Description of offence
	To acquire, have in possession or carry any prohibited arms or prohibited ammunition in contravention of section 7 of the Arms Act, 1959.
	Contravention of section 24A of the Arms Act, 1959 relating to prohibition as to possession of notified arms in disturbed areas, etc.
	Contravention of section 24B of the Arms Act, 1959 relating to prohibition as to carrying of notified arms in or through public places in disturbed areas.
	Other offences specified in section 25.
26	To do any act in contravention of any provisions of section 3, 4, 10 or section 12 of the Arms Act, 1959 in such manner as specified in sub-section (1) of section 26 of the said Act.
	To do any act in contravention of any provisions of section 5, 6, 7 or section 11 of the Arms Act, 1959 in such manner as specified in sub-section (2) of section 26 of the said Act.
	Other offences specified in section 26.
27	Use of arms or ammunitions in contravention of section 5 or use of any arms or ammunition in contravention of section 7 of the Arms Act, 1959.
28	Use and possession of fire arms or imitation fire arms in certain cases.
29	Knowingly purchasing arms from unlicensed person or for delivering arms, etc., to person not entitled to possess the same.
30	Contravention of any condition of a licence or any provisions of the Arms Act, 1959 or any rule made thereunder.

PARAGRAPH 6

OFFENCES UNDER THE WILD LIFE (PROTECTION) ACT, 1972

(53 OF 1972)

Section	Description of offence
51 read with section 9	Hunting of wild animals.
51 read with section 17A	Contravention of provisions of section 17A relating to prohibition of picking, uprooting, etc., of specified plants.
51 read with section 39	Contravention of provisions of section 39 relating to wild animals, etc., to be Government property.
51 read with section 44	Contravention of provisions of section 44 relating to dealings in trophy and animal articles without licence prohibited.
51 read with section 48	Contravention of provisions or section 48 relating to purchase of animal, etc., by licensee.
51 read with section 49B	Contravention of provisions of section 49B relating to prohibition of dealings in trophies, animals articles, etc., derived from scheduled animals.

PARAGRAPH 7

OFFENCES UNDER THE IMMORAL TRAFFIC (PREVENTION) ACT, 1956

(104 OF 1956)

Section	Description of offence
5	Procuring, inducing or taking person for the sake of prostitution.
6	Detaining a person in premises where prostitution is carried on.
8	Seducing or soliciting for purpose of prostitution.
9	Seduction of a person in custody.

PARAGRAPH 8

OFFENCES UNDER THE PREVENTION OF CORRUPTION ACT, 1988

(49 OF 1988)

Section	Description of offence
7	Public servant taking gratification other than legal remuneration in respect of an official act.
8	Taking gratification in order, by corrupt or illegal means, to influence public servant.
9	Taking gratification for exercise of personal influence with public servant.
10	Abetment by public servant of offences defined in section 8 or section 9 of the Prevention of Corruption Act, 1988.
13	Criminal misconduct by a public servant.

PARAGRAPH 9

OFFENCES UNDER THE EXPLOSIVES ACT, 1884

(4 OF 1884)

Section	Description of offence
9B	Punishment for certain offences.
9C	Offences by companies.

PARAGRAPH 10

OFFENCES UNDER THE ANTIQUITIES AND ARTS TREASURES ACT, 1972

(52 OF 1972)

Section	Description of offence
25 read with section 3	Contravention of export trade in antiquities and art treasures.
28	Offences by companies.

PARAGRAPH 11

OFFENCES UNDER THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992

(15 OF 1992)

Section	Description of offence
12A read with section 24	Prohibition of manipulative and deceptive devices, insider trading and substantial.
24	Acquisition of securities or control.

PARAGRAPH 12

OFFENCES UNDER THE CUSTOMS ACT, 1962

(52 OF 1962)

Section	Description of offence
135	Evasion of duty or prohibitions.

PARAGRAPH 13

OFFENCES UNDER THE BONDED LABOUR SYSTEM (ABOLITION) ACT, 1976

(19 OF 1976)

Section	Description of offence
16	Punishment for enforcement of bonded labour.
18	Punishment for extracting bonded labour under the bonded labour system.
20	Abetment to be an offence.

PARAGRAPH 14

OFFENCES UNDER THE CHILD LABOUR (PROHIBITION AND REGULATION) ACT, 1986

(61 OF 1986)

Section	Description of offence
14	Punishment for employment of any child to work in contravention of the provisions of section 3.

PARAGRAPH 15

OFFENCES UNDER THE TRANSPLANTATION OF HUMAN ORGANS ACT, 1994

(42 OF 1994)

Section	Description of offence
18	Punishment for removal of human organ without authority.
19	Punishment for commercial dealings in human organs.
20	Punishment for contravention of any other provisions of this Act.

PARAGRAPH 16

OFFENCES UNDER THE JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2000
(56 OF 2000)

Section	Description of offence
23	Punishment for cruelty to juvenile or child.
24	Employment of juvenile or child for begging.
25	Penalty for giving intoxicating liquor or narcotic drug or psychotropic substance to juvenile or child.
26	Exploitation of juvenile or child employee.

PARAGRAPH 17

OFFENCES UNDER THE EMIGRATION ACT, 1983
(31 OF 1983)

Section	Description of offence
24	Offences and penalties.

PARAGRAPH 18

OFFENCES UNDER THE PASSPORTS ACT, 1967
(15 OF 1967)

Section	Description of offence
12	Offences and penalties.

PARAGRAPH 19

OFFENCES UNDER THE FOREIGNERS ACT, 1946
(31 OF 1946)

Section	Description of offence
14	Penalty for contravention of provisions of the Act, etc.
14B	Penalty for using forged passport.
14C	Penalty for abetment.

PARAGRAPH 20

OFFENCES UNDER THE COPYRIGHT ACT, 1957
(14 OF 1957)

Section	Description of offence
63	Offence of infringement of copyright or other rights conferred by this Act.

Section	Description of offence
63A	Enhanced penalty on second and subsequent convictions.
63B	Knowing use of infringing copy of computer programme.
68A	Penalty for contravention of section 52A.

PARAGRAPH 21

OFFENCES UNDER THE TRADE MARKS ACT, 1999

(47 OF 1999)

Section	Description of offence
103	Penalty for applying false trade marks, trade descriptions, etc.
104	Penalty for selling goods or providing services to which false trade mark or false trade description is applied.
105	Enhanced penalty on second or subsequent conviction.
107	Penalty for falsely representing a trade mark as registered.
120	Punishment of abetment in India of acts done out of India.

PARAGRAPH 22

OFFENCES UNDER THE INFORMATION TECHNOLOGY ACT, 2000

(21 OF 2000)

Section	Description of offence
72	Penalty for breach of confidentiality and privacy.
75	Act to apply for offence or contravention committed outside India.

PARAGRAPH 23

OFFENCES UNDER THE BIOLOGICAL DIVERSITY ACT, 2002

(18 OF 2003)

Section	Description of offence
55 read with section 6.	Penalties for contravention of section 6, etc.

PARAGRAPH 24

OFFENCES UNDER THE PROTECTION OF PLANT VARIETIES AND FARMERS' RIGHTS ACT, 2001
(53 OF 2001)

Section	Description of offence
70 read with section 68	Penalty for applying false denomination, etc.
71 read with section 68	Penalty for selling varieties to which false denomination is applied.
72 read with section 68	Penalty for falsely representing a variety as registered.
73 read with section 68	Penalty for subsequent offence.

PARAGRAPH 25

OFFENCES UNDER THE ENVIRONMENT PROTECTION ACT, 1986
(29 OF 1986)

Section	Description of offence
15 read with section 7	Penalty for discharging environmental pollutants, etc., in excess of prescribed standards.
15 read with section 8	Penalty for handling hazardous substances without complying with procedural safeguards.

PARAGRAPH 26

OFFENCES UNDER THE WATER (PREVENTION AND CONTROL OF POLLUTION)
ACT, 1974
(6 OF 1974)

Section	Description of offence
41(2)	Penalty for pollution of stream or well.
43	Penalty for contravention of provisions of section 24.

PARAGRAPH 27

OFFENCES UNDER THE AIR (PREVENTION AND CONTROL OF POLLUTION) ACT, 1981
(14 OF 1981)

Section	Description of offence
37	Failure to comply with the provisions for operating industrial plant.

PARAGRAPH 28

OFFENCES UNDER THE SUPPRESSION OF UNLAWFUL ACTS AGAINST SAFETY OF
MARITIME NAVIGATION AND FIXED PLATFORMS ON CONTINENTAL SHELF
ACT, 2002

(69 OF 2002)

Section	Description of offence
3	Offences against ship, fixed platform, cargo of a ship, maritime navigational facilities, etc.”;

(ii) in Part B, paragraphs 1 to 25 shall be omitted;

(iii) in Part C, serial number (2) and the entries relating thereto shall be omitted.

LOK SABHA

A

BILL

further to amend the Prevention of Money-laundering Act, 2002.

(As passed by Lok Sabha)

**SYNOPSIS OF THE DEBATE ON THE
PREVENTION OF MONEY-LAUNDERING
(AMENDMENT) BILL, 2012 IN THE
RAJYA SABHA ON 17 DECEMBER, 2012)**

RAJYA SABHA
SYNOPSIS OF DEBATE*

December 17, 2012

The Prevention of Money-Laundering (Amendment) Bill, 2012

THE MINISTER OF FINANCE (SHRI P. CHIDAMBARAM), moving the motion for consideration-of the Bill, said: The Prevention of Money-Laundering Act, 2002 was enacted in 2003 and brought into force 1st July, 2005. The Act was amended in the year 2005 and in the year 2009. The problem of money-laundering is no longer restricted to the geo-political boundaries of any country. The Bill seeks to introduce the concept of ‘corresponding law’ to link the provisions of Indian law with the laws of foreign countries. It seeks to make provision for attachment and confiscation of the proceeds of crime if it is proved that offence of money-laundering has taken place and property in question is involved in money-laundering. The Standing Committee on Finance has made 18 recommendations and all of them have been accepted by the Government. Lok Sabha considered and passed the Bill on 29th November, 2012. I would request the hon. Members to support the Bill.

SHRI PRAKASH JVADEKAR: This Bill has been brought to stop the bungling of black money. I am happy that majority of the recommendations of the Standing Committee have been accepted by the Ministry. The Committee suggested that under-invoicing of exports and over-invoicing of imports are also major factors contributing to money-laundering. The Committee recommended that clients may also declare beneficial ownership while undertaking transactions. Appropriate declaration from the customers holding the safe-deposit lockers in banks may also be secured. The French Government gave complete list of the names of 700 account holders to the Government of India whose accounts were in HSBC bank of Geneva. But the Government of India is hiding these names in the name of confidentiality clause. In America, HSBC had done similar type of mistake but America acted strongly and HSBC agreed to pay 12 thousand crore rupees *i.e.* 1.9 billion dollars as penalty. We are blindly allowing the foreign banks in our country.

* This Synopsis is not an authoritative record of the proceedings of the Rajya Sabha. For the complete version of the debate refer <http://hdl.Handle.net/123456789/617020> and <http://hdl.handle.net/123456789/617022>

What action you took against HSBC? The former director of I.B. has said that the black money of India which is in other countries and which is used for money-laundering is 500 billion dollars.

Hon. Home Minister has said that the money of terrorists is invested in the share market. It is a very serious matter. I want specific answer to that because this is an important concern.

If there is an issue of black money or money laundering even for a penny, you can investigate into it. The country expects much from the SEBI that it should take notice of such things. There is a proposal that cash transaction above Rs. 5000 or 10,000 should be done by cheque. I have raised this issue because it involves huge amount of money. I want to ask as to where is the money involved in the issue of bribery relating to this sum of Rs. 30,000 crore? You went into only one file of insecure loan and closed it. This is not a fight against the money laundering. If at all you want to fight against money laundering, the entire inquiry into all the scams should be of money trail. Hand over this work to the Enforcement Directorate. Check the PN route. Its amount has been invested in real estate. Make us aware of your action plan in this regard. If you want to make a start, start with the HSBC bank and prove it that India too can take such a step.

PROF. SAIF-UD-DIN SOZ: This august House, this Parliament must rise to the occasion that we must punish the people who spoil the life of the law abiding citizens. It is a laudable and positive measure to punish money launderers. No country of the world can fight this menace single handedly. The definition has been expanded to include various activities. So, nobody can hide anything. Now, no money launderer can evade punishment. The current Bill has removed the upper limit of fine. The another measure is provisional confiscation of property of any person for 180. days. If a person is guilty in the eye of the law enforcing machinery, that person is going to be convicted. Then any information can be sought for investigation. When a tribunal decides that the appeal will not lie with the high court, the appeal will lie directly with the Supreme Court of India. That will save time and the offenders will be punished. There is a provision for special courts for speedy disposal of cases. The Bill proposes to bring all offences under Part A, irrespective of whatever the monetary limit is.

SHRI SATISH CHANDRA MISRA: Our party is whole-heartedly supporting the concept that money laundering should be stopped by all means and black money should be traced, confiscated and brought into the Government's fold. So, there should be all precautions taken for this purpose while thinking of

implementing such provisions. Now the word 'accused' has been substituted by the word 'person charged' but charged under what? So, this will have to be explained and clarified. They may be misused by police authorities or other authorities. Finance Minister may clarify or may explain as to how this is required and what is the purpose behind this and why there is Clause (a) and Clause (b) over there.

SHRI K.N. BALAGOPAL: I am not 100 per cent sure that even after the introduction of this Bill and after passing of this Bill whether the Government is successful in doing with this Act to prevent money laundering in this country. I Will seek some clarifications from the hon. Minister about some of the provisions. A new clause has been introduced. It is a corresponding provision by which the Bill tries to equate or connect with corresponding foreign law with Indian law. If a money laundering case is tried in India, and, at the same time, some other country is trying the same case and that particular court in that country acquitted the accused, then, under this provision, will he be acquitted here? If there is such provision in the Bill, it is dangerous. So, clarification on this is needed. Then, in the name of chit funds and private financial institutions, there are mushrooming of companies and thousands of crores are involved in this. I think, these have come under this. 45 per cent of the FDI coming into the country is through Mauritius. The Government has also accepted that FDI is also coming through Mauritius. To avoid double taxation we are allowing FDI through Mauritius route. Even after passing the Bill and even after notifying all the provisions of the Bill, the people, who are getting the benefit, are very secretly swallowing every benefit.

SHRI N.K. SINGH: We fully support the measures which the Government intends to take to strengthen the ambit and the application of the original Money-Laundering Act. But, at the same time, I have some concerns. There are no steps credibly being taken to mitigate the impact of round-tripping. The other point is the multiplicity of agencies involved in the issues of money-laundering. Is there any thinking on having a coordinated entity for pooling of these multiple information sources to be able to have a coherent action. Then, the issue of under-invoicing and over-invoicing via the trade route is an issue which deserves to be carefully monitored. This Bill is certainly a forward step in strengthening amplitude of the implementation of the Money Laundering Act. But, there are issues on which we would like to have greater comfort and greater clarification.

SHRI D. BANDYOPADHYAY: I rise to support the Bill in principle. But I have some concerns on certain other matters. The initiation of all the money-

laundering takes place because we generate black money which is almost equivalent to white money. Unless we do not deal with the black money, dealing with other things is cosmetic-like; we cannot really eliminate them. My other point is about a corresponding law to link the provisions of the Indian law with other foreign laws. To link our law with a corresponding law elsewhere looks like surrendering our sovereignty to some other country.

PROF. RAM GOPAL YADAV: Whenever strict laws have been brought in the country to check the economic offences or other offences, they have always been misused. I have an apprehension that this Act can also be misused. The limit fixed in the Schedule (a) has been removed, in Schedule (b) the limit is fixed at Rs. 30 lakhs, but in Schedule (a) its amount has been reduced. It can also be misused. It is a non-bailable offence. Whenever this kind of laws are enacted, there should be some safeguards so that an innocent person is not jailed.

DR. K. P. RAMALINGAM: Money laundering is a serious crime in which it is very difficult to trace and keep track of the flow of money because it involves multijurisdictional entities and involvement of various layers of transactions across several countries. This Act is very categorical in saying that proceeds out of the crime will be treated as money laundering. There is always an apprehension in the minds of the people that proceeds of the crime are entering India through stock exchange. With a view to mitigate the fear and also instill confidence in the minds of people, SEBI has been roped in as reporting entities and their valuable information will be used. The concept of corresponding law links the Indian laws with the laws of foreign countries. It will now become easy to trail the flow of money and conviction will be ensured. The proposed sections, 58A and 58B, make the release of seized and confiscated properties very difficult and it is the need of the hour to ensure powers to the local courts in India.

SHRI D.P. TRIPATHI: Those who are indulging in money-laundering are not merely prevented but are also punished. There should not be any vagueness in defining the charges, accusations and the proper, legal and judicial procedure. The rules, laws have to be specific about punishing anybody in any economic offence, and, especially, money-laundering. We should not make those kind of laws or rules which are made to be broken. We should try to simplify the laws so that these are implemented. How you balance the Indian laws and the laws of other countries and execute them to punish the guilty. The punishment has to be quick and we should ensure that it doesn't take a long time. So, this amendment tries to make certain provisions to quicken this process and to try and punish the

guilty as soon as possible, as effectively as possible. Therefore, on behalf of my Party, I support this amendment Bill.

SHRI RABINARAYAN MOHAPATRA: This amendment Bill has been brought to remove the difficulties arising in the implementation of the Act. The question now is whether this Amendment Bill of 2012 would remove the difficulties which have arisen in the implementation of the Act or we need some more amendments. The Government has not been able to keep its promises on bringing black money deposited illegally in foreign banks back into the country. The Government should define 'black money' on the floor of this House. In my opinion, the definition of 'money laundering' should be enlarged to include concealment, acquisition, possession and use of proceeds of crime.

I am aware that there is a crucial difference between money laundering and black money. The legislative intention of the Government should be to combat tax evasion as tax evasion is a criminal offence, and those acts should be included in the Schedule of the Money Laundering Act, 2012, in the wake of the financial crisis being faced in India. This Bill needs amendment to punish criminals generating black money in sectors like real estate, manufacturing, mining, education and hospitals. This Bill needs amendment to improve monitoring mechanism in the shape of coordination mechanism between SEBI and RBI to monitor the funds flow in the stock market. I urge upon the Government that India should take a lead on a more transparent global financial system for the sake of not only its citizens but also for all developing nations. So, I support the Bill.

The Hon'ble Minister, replying to the debate, said: Money-laundering is more than simply converting black money into white or white money into black. And anyone who directly or indirectly indulges or assists or is involved in any process or activity connected with the proceeds of crime and projects it as untainted property is guilty of offence of money laundering. So, money-laundering is a very technically-defined offence. Initially the thinking was unless a person was convicted of the predicate offence, you cannot convict him of money-laundering. The Financial Action Task Force (FATF) has now come around to the view that if the predicate offence has thrown up certain proceeds and you dealt with those proceeds, you could be found guilty of offence of money-laundering. We are trying to make this law on lines of laws that are commended by FATF. This Bill was passed in 2002. We amended it in 2005 and 2009. We are amending it in 2012. All I am trying to say is that this is an evolutionary process.

We have made a distinction in the ‘burden of proof’ so that it does not fall heavily on persons who are not charged with offence of money-laundering. We have now toned down this provision. In (a), there is a person charged with the offence of money-laundering - the principal offence under the Act. In (b), it is any other person who is brought before the Court. So, we have now made a distinction between a person charged with the main offence of money-laundering, and persons who are charged with other offences because, as you know, under sections 43 and 44, all other offences shall be tried by the same court which tries offence of money laundering.

We have lifted 25 paragraphs under Part B and added it in Part A. Part B has been left blank. In case the Parliament wishes to add any other offence, we can still add the same in Part ‘B’. FATF requires that you must prosecute every person for money-laundering irrespective of the value of the proceeds of the crime. Today, even if the value of the proceeds is five lakhs or ten lakhs of rupees, as long as a predicate offence is presented, he has to be charged with the offence of money laundering. It is intended mainly to fight the menace of terrorism. This money today is the money that funds terrorism.

If anyone violates Section 135 of the Customs Act, either by over-invoicing or by under-invoicing, it is a predicate offence and the proceeds of that crime would be a crime of money-laundering. I request the House to pass the Bill. But we cannot equate every section in our law with a section in the other law. So, if there is a corresponding law, and, one has been prosecuted in other country, and, the matter comes before our court, the court will look at that law and our law, and, find out as to which is the section in that law which corresponds to our law.

The motion for consideration of the Bill, was adopted Clauses etc. were adopted. The Bill was passed.

**THE PREVENTION OF MONEY-
LAUNDERING (AMENDMENT) ACT, 2012**



भारत का राजपत्र The Gazette of India

असाधारण

EXTRAORDINARY

भाग II — खण्ड 1

PART II — Section 1

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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

MINISTRY OF LAW AND JUSTICE

(Legislative Department)

New Delhi, the 4th January, 2013/Pausa, 14, 1934 (Saka)

The following Act of Parliament received the assent of the President on the 3rd January, 2013, and is hereby published for general information.

THE PREVENTION OF MONEY-LAUNDERING

(AMENDMENT) ACT, 2012

(No. 2 OF 2013)

[3rd January, 2013.]

An Act further to amend the Prevention of Money-laundering Act, 2002.

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

Short title and commencement.

1. (1) This Act may be called the Prevention of Money-laundering (Amendment) Act, 2012.

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

Amendment of section 2.

2. In section 2 of the Prevention of Money-laundering Act, 2002 (hereinafter referred to as the principal Act), in sub-section (1),— 15 of 2003.

(i) after clause (f), the following clause shall be inserted, namely:—

‘(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;’;

(ii) after clause (h), the following clause shall be inserted, namely:—

‘(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;’;

(iii) after clause (i), the following clause shall be inserted namely:—

‘(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

74 of 1956. to it in clause (b) of section 2 of the Central Sales Tax Act, 1956;’;

(iv) clause (ja) shall be omitted;

(v) for clause (l), the following clause shall be substituted, namely:—

2 of 1934. ‘(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;’;

(vi) for clause (n), the following clause shall be substituted, namely:—

‘(n) “intermediary” means,—

15 of 1992. (i) 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 or any other intermediary associated with securities market and registered under section 12 of the Securities and Exchange Board of India Act, 1992; or

74 of 1952. (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

42 of 1956. (iv) a recognised stock exchange referred to in clause (f) of section 2 of the Securities Contracts (Regulation) Act, 1956;’;

(vii) in clause (q), the words “and includes a person carrying on designated business or profession” shall be omitted;

(viii) in clause (ra), in sub-clause (i), for the word “remits”, the words “transfers in any manner” shall be substituted;

(ix) after clause (s), the following clauses shall be inserted, namely:—

‘(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;

(ii) a Registrar or Sub-Registrar appointed under section 6 of the Registration Act, 1908, as may be notified by the Central Government; 16 of 1908.

(iii) real estate agent, as may be notified by the Central Government;

(iv) dealer 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;’;

(x) after clause (v), the following shall be inserted, namely:—

‘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;

32 of 1994.

(va) “real estate agent” means a real estate agent as defined in clause (88) of section 65 of the Finance Act, 1994;’;

(xi) after clause (w), the following clause shall be inserted, namely:—

‘(wa) “reporting entity” means a banking company, financial institution, intermediary or a person carrying on a designated business or profession;’.

3. In section 3 of the principal Act, for the words “proceeds of crime and projecting”, the words “proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming” shall be substituted.

Amendment of section 3.

4. In section 4 of the principal Act, the words “which may extend to five lakh rupees” shall be omitted.

Amendment of section 4.

5. In section 5 of the principal Act, for sub-section (1), the following sub-section shall be substituted, namely:—

Amendment of section 5.

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

(a) any person is in possession of any proceeds of crime; and

(b) such proceeds of crime are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceedings relating to confiscation of such proceeds of crime under this Chapter,

he may, by order in writing, provisionally attach such property for a period not exceeding one hundred and eighty days from the date of the order, in such manner as may be prescribed:

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

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

Amendment
of section 8.

6. In section 8 of the principal Act,—

(i) in sub-section (1), after the words and figure “section 5, or, seized”, the words “or frozen” shall be inserted;

(ii) in sub section (3),—

(a) in the opening portion, for the words and figures “record seized under section 17 or section 18 and record a finding to that effect, such attachment or retention of the seized property”, the words and figures “record seized or frozen under section 17 or section 18 and record a finding to that effect, whereupon such attachment or retention or freezing of the seized or frozen property” shall be substituted;

(b) in clause (a), for the words “scheduled offence before a court; and”, the words “offence under this Act before a court or under the corresponding law of any other country, before the competent court of criminal jurisdiction outside India, as the case may be; and” shall be substituted;

(c) for clause (b), the following clause shall be substituted, namely:—

“(b) become final after an order of confiscation is passed under sub-section (5) or sub-section (7) of section 8 or section 58B or sub-section (2A) of section 60 by the Adjudicating Authority”;

(iii) in sub-section (4), for the words “possession of the attached property”, the following shall be substituted, namely:—

“possession of the property attached under section 5 or frozen under sub-section (1A) of section 17, in such manner as may be prescribed:

Provided that if it is not practicable to take possession of a property frozen under sub-section (1A) of section 17, the order of confiscation shall have the same effect as if the property had been taken possession of.”;

(iv) for sub-sections (5) and (6), the following sub-sections shall be substituted, namely:—

“(5) Where on conclusion of a trial of an offence under this Act, the Special Court finds that the offence of money-laundering has been committed, it shall order that such property involved in the money-laundering or which has been used for commission of the offence of money-laundering shall stand confiscated to the Central Government.

(6) Where on conclusion of a trial under this Act, the Special Court finds that the offence of money-laundering has not taken place or the property is not involved in money-laundering, it shall order release of such property to the person entitled to receive it.

(7) Where the trial under this Act cannot be conducted by reason of the death of the accused or the accused being declared a proclaimed offender or for any other reason or having commenced but could not be concluded, the Special Court shall, on an application moved by the Director or a person claiming to be entitled to possession of a property in respect of which an order has been passed under sub-section (3) of section 8, pass appropriate orders regarding confiscation or release of the property, as the case may be, involved in the offence of money-laundering after having regard to the material before it.”.

Amendment
of section 9.

7. In section 9 of the principal Act,-

(i) in the opening portion, for the words, brackets and figures “sub-section (6) of section 8”, the words, brackets, figures and letter “sub-section (5) or sub-section (7) of section 8 or

section 58B or sub-section (2A) of section 60” shall be substituted;

(ii) in the first proviso,—

(a) for the words “Adjudicating Authority”, the words “Special Court or the Adjudicating Authority, as the case may be,” shall be substituted;

(b) after the words “or seized”, the words “or frozen” shall be inserted.

8. In section 10 of the principal Act, in sub-section (2), for the words, brackets and figures “sub-section (6) of section 8”, the words, brackets, figures and letters “sub-section (5) or sub-section (6) or sub-section (7) of section 8 or section 58B or sub-section (2A) of section 60” shall be substituted.

Amendment of section 10.

9. For section 12 of the principal Act, the following section shall be substituted, namely:—

Substitution of new section for section 12.

“12. (1) Every reporting entity shall—

Reporting entity to maintain records.

(a) maintain a record of all transactions, including information relating to transactions covered under clause (b), in such manner as to enable it to reconstruct individual transactions;

(b) furnish to the Director within such time as may be prescribed, information relating to such transactions, whether attempted or executed, the nature and value of which may be prescribed;

(c) verify the identity of its clients in such manner and subject to such conditions, as may be prescribed;

(d) identify the beneficial owner, if any, of such of its clients, as may be prescribed;

(e) maintain record of documents evidencing identity of its clients and beneficial owners as well as account files and business correspondence relating to its clients.

(2) Every Information maintained, furnished or verified, save as otherwise provided under any law for the time being in force, shall be kept confidential.

(3) The records referred to in clause (a) of sub-section (1) shall be maintained for a period of five years from the date of transaction between a client and the reporting entity.

(4) The records referred to in clause (e) of sub-section (1) shall be maintained for a period of five years after the business relationship between a client and the reporting entity has ended or the account has been closed, whichever is later.

(5) The Central Government may, by notification, exempt any reporting entity or class of reporting entities from any obligation under this Chapter.”.

Insertion of new section 12A.

Access to information

10. After section 12 of the principal Act, the following section shall be inserted, namely:—

“12A. (1) The Director may call for from any reporting entity any of the records referred to in sub-section (1) of section 12 and any additional information as he considers necessary for the purposes of this Act.

(2) Every reporting entity shall furnish to the Director such information as may be required by him under sub-section (1) within such time and in such manner as he may specify.

(3) Save as otherwise provided under any law for the time being in force, every information sought by the Director under sub-section (1), shall be kept confidential.”.

11. In section 13 of the principal Act,—Amendment
of section 13.

(i) in sub-section (1), for the words, brackets and figures “call for records referred to in sub-section (1) of section 12 and may make such inquiry or cause such inquiry to be made, as he thinks fit”, the words “make such inquiry or cause such inquiry to be made, as he thinks fit to be necessary, with regard to the obligations of the reporting entity, under this Chapter” shall be substituted;

(ii) after sub-section (1), the following sub-sections shall be inserted, namely:—

“(1A) If at any stage of inquiry or any other proceedings before him, the Director having regard to the nature and complexity of the case, is of the opinion that it is necessary to do so, he may direct the concerned reporting entity to get its records, as may be specified, audited by an accountant from amongst a panel of accountants, maintained by the Central Government for this purpose.

“(1B) The expenses of, and incidental to, any audit under sub-section (1A) shall be borne by the Central Government.”;

(iii) for sub-section (2), the following sub-section shall be substituted, namely:—

“(2) If the Director, in the course of any inquiry, finds that a reporting entity or its designated director on the Board or any of its employees has failed to comply with the obligations under this Chapter, then, without prejudice to any other action that may be taken under any other provisions of this Act, he may—

(a) issue a warning in writing; or

(b) direct such reporting entity or its designated director on the Board or any of its employees, to comply with specific instructions; or

(c) direct such reporting entity or its designated director on the Board or any of its employees, to send reports at such interval as may be prescribed on the measures it is taking; or

(d) by an order, impose a monetary penalty on such reporting entity or its designated director on the Board or any of its employees, which shall not be less than ten thousand rupees but may extend to one lakh rupees for each failure.”;

(iv) after sub-section (3), the following *Explanation* shall be inserted, namely:—

“*Explanation.*— For the purpose of this section, “accountant” shall mean a chartered accountant within the meaning of the Chartered Accountants Act, 1949.”.

38 of 1949.

Substitution of new section for section 14.

12. For section 14 of the principal Act, the following section shall be substituted, namely:—

No civil or criminal proceedings against reporting entity, its directors and employees in certain cases.

“14. Save as otherwise provided in section 13, the reporting entity, its directors and employees shall not be liable to any civil or criminal proceedings against them for furnishing information under clause (b) of sub-section (1) of section 12.”.

Substitution of new section for section 15.

13. For section 15 of the principal Act, the following section shall be substituted, namely:—

Procedure and manner of furnishing

“15. The Central Government may, in consultation with the Reserve Bank of India,

prescribe the procedure and the manner of maintaining and furnishing information by a reporting entity under sub-section (1) of section 12 for the purpose of implementing the provisions of this Act.”.

information
by reporting
entities.

14. In section 17 of the principal Act,—

Amendment
of section 17.

(i) in sub-section (1),—

(a) in clause (iii), after the word “money-laundering,”, the word “or” shall be inserted;

(b) after clause (iii), the following clause shall be inserted namely:—

“(iv) is in possession of any property related to crime,”;

(c) in clause (d), after the words “such record or”, the words “property, if required or” shall be inserted;

(d) for the proviso, the following proviso shall be substituted, namely:—

“Provided that no search shall be conducted unless, in relation to the scheduled offence, a report has been forwarded to a Magistrate under section 157 of the Code of Criminal Procedure, 1973, or a complaint has been filed by a person, authorised to investigate the offence mentioned in the Schedule, before a Magistrate or court for taking cognizance of the scheduled offence, as the case may be, or in cases where such report is not required to be forwarded, a similar report of information received or otherwise has been submitted by an officer authorised to investigate a scheduled offence to an officer not below the rank of Additional Secretary

to the Government of India or equivalent being head of the office or Ministry or Department or Unit, as the case may be, or any other officer who may be authorised by the Central Government, by notification, for this purpose.”;

(ii) after sub-section (1), the following sub-section shall be inserted, namely:—

“(1A) Where it is not practicable to seize such record or property, the officer authorised under sub-section (1), may make an order to freeze such property whereupon the property shall not be transferred or otherwise dealt with, except with the prior permission of the officer making such order, and a copy of such order shall be served on the person concerned:

Provided that if, at any time before its confiscation under sub-section (5) or sub-section (7) of section 8 or section 58B or sub-section (2A) of section 60, it becomes practical to seize a frozen property, the officer authorised under sub-section (1) may seize such property.”;

(iii) in sub-section (2), after the words, “immediately after search and seizure” the words “or upon issuance of a freezing order” shall be inserted;

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

“(4) The authority seizing any record or property under sub-section (1) or freezing any record or property under sub-section (1A) shall, within a period of thirty days from such seizure or freezing, as the case may be, file an application, requesting for retention of such record or property seized under sub-section (1)

or for continuation of the order of freezing served under sub-section (1A), before the Adjudicating Authority.”.

15. In section 18 of the principal Act, in sub-section (1), for the proviso, the following proviso shall be substituted, namely:—

Amendment of section 18.

2 of 1974.

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

16. For section 20 and 21 of the principal Act, the following sections shall be substituted, namely:—

Substitution of new sections for section 20 and section 21.

“20. (1) Where any property has been seized under section 17 or section 18 or frozen under sub-section (1A) of section 17 and the officer authorised by the Director in this behalf has, on the basis of material in his possession, reason to believe (the reason for such belief to be recorded by him in writing) that such property is required to be retained for the purposes of adjudication under section 8, such property may, if seized, be retained or if frozen, may continue to remain frozen, for a period

Retention of property.

not exceeding one hundred and eighty days from the day on which such property was seized or frozen, as the case may be.

(2) The officer authorised by the Director shall, immediately after he has passed an order for retention or continuation of freezing of the property for purposes of adjudication under section 8, forward a copy of the order along with the material in his possession, referred to in sub-section (1), to the Adjudicating Authority, in a sealed envelope, in the manner as may be prescribed and such Adjudicating Authority shall keep such order and material for such period as may be prescribed.

(3) On the expiry of the period specified in sub-section (1), the property shall be returned to the person from whom such property was seized or whose property was ordered to be frozen unless the Adjudicating Authority permits retention or continuation of freezing of such property beyond the said period.

(4) The Adjudicating Authority, before authorising the retention or continuation of freezing of such property beyond the period specified in sub-section (1), shall satisfy himself that the property is *prima facie* involved in money-laundering and the property is required for the purposes of adjudication under section 8.

(5) After passing the order of confiscation under sub-section (5) or sub-section (7) of section 8, the Court or the Adjudicating Authority, as the case may be, shall direct the release of all property other than the property involved in money-laundering to the person from whom such property was seized or the persons entitled to receive it.

(6) Where an order releasing the property has been made by the Court under sub-section (6) of

section 8 or by the Adjudicating Authority under section 58B or sub-section (2A) of section 60, the Director or any officer authorised by him in this behalf may withhold the release of any such property for a period of ninety days from the date of such order, if he is of the opinion that such property is relevant for the appeal proceedings under this Act.

21. (1) Where any records have been seized, under section 17 or section 18 or frozen under sub-section (1A) of section 17 and the Investigating Officer or any other officer authorised by the Director in this behalf has reason to believe that any of such records are required to be retained for any inquiry under this Act, such records may if seized, be retained or if frozen, may continue to remain frozen, for a period not exceeding one hundred and eighty days from the day on which such records were seized or frozen, as the case may be.

Retention of records.

(2) The person, from whom records seized or frozen, shall be entitled to obtain copies of records.

(3) On the expiry of the period specified under sub-section (1), the records shall be returned to the person from whom such records were seized or whose records were ordered to be frozen unless the Adjudicating Authority permits retention or continuation of freezing of such records beyond the said period.

(4) The Adjudicating Authority, before authorising the retention or continuation of freezing of such records beyond the period specified in sub-section (1), shall satisfy himself that the records are required for the purposes of adjudication under section 8.

(5) After passing of an order of confiscation under sub-section (5) or sub-section (7) of section 8, the Adjudicating Authority shall direct the release of the records to the person from whom such records were seized.

(6) Where an order releasing the records has been made by the Court under sub-section (6) of section 8 or by the Adjudicating Authority under section 58B or sub-section (2A) of section 60, the Director or any other officer authorised by him in this behalf may withhold the release of any such record for period of ninety days from the date of such order, If he is of the opinion that such record is relevant for the appeal proceedings under this Act.”.

Amendment
of section 22.

17. *In* section 22 of the principal Act, in sub-section (1), after the words “a surveyor or a search,”, the words “or where any record or property is produced by any person or has been resumed or seized from the custody or control of any person or has been frozen under this Act or under any other law for the time being in force,” shall be inserted.

Amendment
of section 23.

18. In section 23 of the principal Act, for the words and figure “under section 8, it shall, unless otherwise proved to the satisfaction of the Adjudicating Authority”, the words and figure “under section 8 or for the trial of the money-laundering offence, it shall unless otherwise proved to the satisfaction of the Adjudicating Authority or the Special Court” shall be substituted.

Amendment
of section 24.

19. For section 24 of the principal Act, the following section shall be substituted, namely:—

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

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

(b) in the case of any other person the Authority or Court, may presume that such

proceeds of crime are involved in money-laundering.”.

20. In section 26 of the principal Act, in sub-section (2), for the words “banking company, financial institution or intermediary”, the words “reporting entity” shall be substituted. Amendment of section 26.

21. In section 44 of the principal Act, in sub-section (1),— Amendment of section 44.

(i) for clause (a) the following clause shall be substituted, namely:—

“(a) an offence punishable under section 4 and any scheduled offence connected to the offence under that section shall be triable by the Special Court constituted for the area in which the offence has been committed:

Provided that the Special Court, trying a scheduled offence before the commencement of this Act, shall continue to try such scheduled offence; or”;

(ii) in clause (b), for the words “cognizance of the offence for which the accused is committed to it for trial”, the words and figure “cognizance of offence under section 3, without the accused being committed to it for trial” shall be substituted;

(iii) after clause (b), the following clauses shall be inserted, namely:—

“(c) if the court which has taken cognizance of the scheduled offence is other than the Special Court which has taken cognizance of the complaint of the offence of money-laundering under sub-clause (b), it shall, on an application by the authority authorised to file a complaint under this Act, commit the case relating to the scheduled offence to the Special

Court and the Special Court shall, on receipt of such case proceed to deal with it from the stage at which it is committed.

(d) a Special Court while trying the scheduled offence or the offence of money-laundering shall hold trial in accordance with the provisions or the Code of Criminal Procedure, 1973, as it applies to a trial before a Court of Session.”.

2 of 1974.

Amendment of section 50.

22. In section 50 of the principal Act, in sub-section (1), in clause (b), for the words “banking company or a financial institution or a company,”, the words “reporting entity” shall be substituted.

Amendment of section 54.

23. In section 54 of the principal Act,—

(i) in the opening portion, for the word “officers”, the words “officers and others” shall be substituted;

(ii) for clause (d), the following clause shall be substituted, namely:—

“(d) members of the recognised stock exchange referred to in clause (f) of section 2 and the officers of the stock exchanges recognised under section 4 of the Securities Contracts (Regulation) Act, 1956;

42 of 1956.

(iii) after clause (h), the following clauses shall be inserted, namely:—

“(ha) officers of the Insurance Regulatory and Development Authority established under section 3 of the Insurance Regulatory and Development Authority Act, 1999;

41 of 1999.

(hb) officers of the Forward Markets Commission established under section 3 of the Forward Contracts (Regulation) Act, 1952;

74 of 1952.

(hc) officers and members of the recognised association recognised under

74 of 1952. section 6 of the Forward Contracts (Regulation) Act, 1952;

(*hd*) officers of the Pension Fund Regulatory and Development Authority;

(*he*) officers of the Department of Posts in the Government of India;

16 of 1908. (*hf*) Registrars or Sub-Registrars appointed by the State Governments under section 6 of the Registration Act, 1908;

59 of 1988. (*hg*) registering authority empowered to register motor vehicles under Chapter IV of the Motor Vehicles Act, 1988;

38 of 1949. (*hh*) officers and members of the Institute of Chartered Accountants of India constituted under section 3 of the Chartered Accountants Act, 1949;

23 of 1959. (*hi*) officers and members of the Institute of Cost and Works Accountants of India constituted under section 3 of the Cost and Works Accountants Act, 1959;

56 of 1980. (*hj*) officers and members of the Institute of Company Secretaries of India constituted under section 3 of the Company Secretaries Act, 1980;”;

(*iv*) in clause (*j*), for the words “banking companies”, the words “reporting entities” shall be substituted.

24. After section 58, the following sections shall be inserted, namely:—

Insertion of new sections 58A and 58B.

“58A. Where on closure of the criminal case or conclusion of a trial in a criminal court outside India under the corresponding law of any other country, such court finds that the offence of

Special Court to release the property.

money-laundering has not taken place or the property in India is not involved in money-laundering, the Special Court may, on an application moved by the concerned person or the Director, after notice to the other party, order release of such property to the person entitled to receive it.

Letter of request of a contracting State or authority for confiscation or release the property.

58B. Where the trial under the corresponding law of any other country cannot be conducted by reason of the death of the accused or the accused being declared a proclaimed offender or for any other reason or having commenced but could not be concluded, the Central Government shall, on receipt of a letter of request from a court or authority in a contracting State requesting for confiscation or release of property, as the case may be, forward the same to the Director to move an application before the Special Court and upon such application the Special Court shall pass appropriate orders regarding confiscation or release of such property involved in the offence of money-laundering.”.

Amendment of section 60.

25. In section 60 of the principal Act,—

(i) in sub-section (1), for the words and figures “property under section 5 or where an Adjudicating Authority has made an order confirming such attachment or confiscation of any property under section 8”, the words, figures, brackets and letter “property under section 5 or for freezing under sub-section (1A) of section 17 or where an Adjudicating Authority has made an order relating to a property under section 8 or where a Special Court has made an order of confiscation relating to a property under sub-section (5) or sub section (6) of section 8” shall be substituted;

(ii) in sub-section (2),—

(a) for the words “attachment or

confiscation”, the words “attachment, seizure, freezing or confiscation” shall be substituted;

(b) for the word and figure “section 3”, the words “a corresponding law” shall be substituted;

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

“(2A) Where on closure of the criminal case or conclusion of trial in a criminal court outside India under the corresponding law of any other country, such court finds that the offence of money-laundering under the corresponding law of that country has been committed, the Adjudicating Authority shall, on receipt of an application from the Director for execution of confiscation under sub-section (2), order, after giving notice to the affected persons, that such property involved in money-laundering or which has been used for commission of the offence of money-laundering stand confiscated to the Central Government.”.

26. In section 63 of the principal Act, after sub-section (3), the following sub-section shall be inserted, namely:—

Amendment of section 63.

“(4) Notwithstanding anything contained in clause (c) of sub-section (2), a person who intentionally disobeys any direction issued under section 50 shall also be liable to be proceeded against under section 174 of the Indian Penal Code.”.

45 of 1860.

27. For section 69 of the principal Act, the following section shall be substituted, namely:—

Substitution of new section for section 69.

“69. Where any fine or penalty imposed on any person under section 13 or section 63 is not paid within six months from the day of imposition of

Recovery of fine or penalty.

fine or penalty, the Director or any other officer authorised by him in this behalf may proceed to recover the amount from the said person in the same manner as prescribed in Schedule II of the Income-tax Act, 1961 for the recovery of arrears and he or any officer authorised by him in this behalf shall have all the powers of the Tax Recovery Officer mentioned in the said Schedule for the said purpose.” 43 of 1961.

Amendment
of section 70.

28. In section 70 of the principal Act, the *Explanation* shall be numbered as *Explanation 1* thereof and after *Explanation 1* as so numbered, the following *Explanation* shall be inserted, namely:—

“*Explanation 2.*—For the removal of doubts, it is hereby clarified that a company may be prosecuted, notwithstanding whether the prosecution or conviction of any legal juridical person shall be contingent on the prosecution or conviction of any individual.”

Amendment
of section 73.

29. In section 73 of the principal Act, in sub-section (2),—

(i) after clause (a), the following clause shall be inserted, namely:—

“(aa) the manner of provisional attachment of property under sub-section (1) of section 5;”;

(ii) after clause (e), the following clause shall be inserted, namely:—

“(ee) the manner of seizing or taking possession of property attached under section 5 or frozen under sub-section (1A) of section 17 or under sub-section (4) of section 8;”;

(iii) clause (h) shall be omitted;

(iv) in clause (i), for the words “the time within which”, the words “the nature and value of

transactions and the time within which” shall be substituted;

(v) for Clause (j), the following clauses shall be substituted, namely:—

“(j) the manner and the conditions in which identity of clients shall be verified by ‘the reporting entities under clause (c) of sub-section (1) of section 12;

(jj) the manner of identifying beneficial owner, if any, from the clients by the reporting entities under clause (d) of sub-section (1) of section 12;

(jjj) the period of interval in which the reports are sent by the reporting entities or any of its employees under clause (c) of sub-section (2) of section 13 ;”;

(vi) after clause (p), the following clause shall be inserted, namely:—

“(pp) the manner in which the forwarding of the order for retention or continuation of freezing of the property and the period of keeping such order and material under sub-section (2) of section 20;”.

30. In the schedule to the principal Act,—

Amendment
of the
Schedule.

(i) for Part A, the following part shall be substituted, namely:—

“PART A

PARAGRAPHS

OFFENCES UNDER THE INDIAN PENAL CODE

(45 OF 1860)

Section	Description of offence
120B	Criminal conspiracy.

Section	Description of offence
121	Waging or attempting to wage war or abetting waging of war, against the Government of India.
121A	Conspiracy to commit offences punishable by section 121 against the State.
255	Counterfeiting Government stamp.
257	Making or selling instrument for counterfeiting Government stamp.
258	Sale of counterfeit Government stamp.
259	Having possession of counterfeit Government stamp.
260	Using as genuine a Government stamp known to be counterfeit.
302	Murder.
304	Punishment for culpable homicide not amounting to murder.
307	Attempt to murder.
308	Attempt to commit culpable homicide.
327	Voluntarily causing hurt to extort property, or to constrain to an illegal act.
329	Voluntarily causing grievous hurt to extort property, or to constrain to an illegal act.
364A	Kidnapping for ransom, etc.
384 to 389	Offences relating to extortion.
392 to 402	Offences relating to robbery and dacoity.
411	Dishonestly receiving stolen property.
412	Dishonestly receiving property stolen in the commission of a dacoity.
413	Habitually dealing in stolen property.

Section	Description of offence
414	Assisting in concealment of stolen property.
417	Punishment for cheating.
418	Cheating with knowledge that wrongful loss may ensue to person whose interest offender is bound to protect.
419	Punishment for cheating by personation.
420	Cheating and dishonestly inducing delivery of property.
421	Dishonest or fraudulent removal or concealment of property to prevent distribution among creditors.
422	Dishonestly or fraudulently preventing debt being available for creditors.
423	Dishonest or fraudulent execution of deed of transfer containing false statement of consideration.
424	Dishonest or fraudulent removal or concealment of property.
467	Forgery of valuable security, will, etc.
471	Using as genuine a forged document or electronic record.
472 and 473	Making or possessing counterfeit seal, etc., with intent to commit forgery.
475 and 476	Counterfeiting device or mark.
481	Using a false property mark.
482	Punishment for using a false property mark.
483	Counterfeiting a property mark used by another.
484	Counterfeiting a mark used by a public servant.
485	Making or possession of any instrument for counterfeiting a property mark.
486	Selling goods marked with a counterfeit property mark.
487	Making a false mark upon any receptacle containing goods.

Section	Description of offence
488	Punishment for making use of any such false mark.
489A	Counterfeiting currency notes or bank notes.
489B	Using as genuine, forged or counterfeit currency notes or bank notes.

PARAGRAPH 2

OFFENCES UNDER THE NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES

ACT, 1985

(61 OF 1985)

Section	Description of offence
15	Contravention in relation to poppy straw.
16	Contravention in relation to coca plant and coca leaves.
17	Contravention in relation to prepared opium.
18	Contravention in relation to opium poppy and opium.
19	Embezzlement of opium by cultivator.
20	Contravention in relation to cannabis plant and cannabis.
21	Contravention in relation to manufactured drugs and preparations.
22	Contravention in relation to psychotropic substances.
23	Illegal import into India, export from India to transshipment of narcotic drugs and psychotropic substances.
24	External dealings in narcotic drugs and psychotropic substances in contravention of section 12 of the Narcotics Drugs and Psychotropic Substances Act, 1985.
25A	Contravention of orders made under section 9A of the Narcotic Drugs and Psychotropic Substances Act, 1985.
27A	Financing illicit traffic and harbouring offenders.
29	Abetment and criminal conspiracy

PARAGRAPH 3

OFFENCES UNDER THE EXPLOSIVE SUBSTANCES ACT, 1908

(6 OF 1908)

Section	Description of offence
3	Causing explosion likely to endanger life or property,
4	Attempt to cause explosion, or for making or keeping explosives with intent to endanger life or property.
5	Making or possessing explosives under suspicious circumstances.

PARAGRAPH 4

OFFENCES UNDER THE UNLAWFUL ACTIVITIES (PREVENTION) ACT, 1967

(37 OF 1967)

Section	Description of offence
10 read with section 3	Penalty for being member of an unlawful association, etc.
11 read with section 3	Penalty for dealing with funds of an unlawful association.
13 read with section 3	Punishment for unlawful activities.
16 read with section 15	Punishment for terrorist act.
16A	Punishment for making demands of radioactive substances, nuclear devices, etc.
17	Punishment for raising fund for terrorist act.
18	Punishment for conspiracy, etc.
18A	Punishment for organising of terrorist camps.
18B	Punishment for recruiting of any person or persons for terrorist act.

Section	Description of offence
19	Punishment for harbouring, etc.
20	Punishment for being member of terrorist gang or organisation.
21	Punishment for holding proceeds of terrorism.
38	Offence relating to membership of a terrorist organisation.
39	Offence relating to support given to a terrorist organisation.
40.	Offence of raising fund for a terrorist organisation.

PARAGRAPH 5

OFFENCES UNDER THE ARMS ACT, 1959

(54 OF 1959)

Section	Description of offence
25	<p>To manufacture, sell, transfer, convert, repair or test or prove or expose or offer for sale or transfer or have in his possession for sale, transfer, conversion, repair, test or proof, any arms or ammunition to contravention of section 5 of the Arms Act, 1959.</p> <p>To acquire, have in possession or carry any prohibited arms or prohibited ammunition in contravention of section 7 of the Arms Act, 1959.</p> <p>Contravention of section 24A of the Arms Act, 1959 relating to prohibition as to possession of notified arms in disturbed areas, etc.</p> <p>Contravention of section 24B of the Arms Act, 1959 relating to prohibition as to carrying of notified arms in or through public places in disturbed areas.</p> <p>Other offences specified in section 25.</p>
26	To do any act in contravention of any provisions of section 3, 4, 10 or section 12 of the Arms Act, 1959 in such manner as specified in sub-section (1) of section 26 of the said Act.

Section	Description of offence
	To do any act in contravention of any provisions of section 5, 6, 7 or or section 11 of the Arms Act, 1959 in such manner as specified in sub-section (2) of section 26 of the said Act.
	Other offences specified in section 26.
27	Use of arms or ammunitions in contravention of section 5 or use of any arms or ammunition in contravention of section 7 of the Arms Act, 1959.
28	Use and possession of fire arms or imitation fire arms in certain cases.
29	Knowingly purchasing arms from unlicensed person or for delivering arms, etc., to person not entitled to possess the same.
30	Contravention of any condition of a licence or any provisions of the Arms Act, 1959 or any rule made thereunder.

PARAGRAPH 6

OFFENCES UNDER THE WILD LIFE (PROTECTION) ACT, 1972

(53 OF 1972)

Section	Description of offence
51 read with section 9	Hunting of wild animals.
51 read with section 17A	Contravention of provisions of section 17A relating to prohibition of picking, uprooting, etc., of specified plants.
51 read with section 39	Contravention of provisions of section 39 relating to wild animals, etc., to be Government property.
51 read with section 44	Contravention of provisions of section 44 relating to dealing in trophy and animal articles without licence prohibited.
51 read with section 48	Contravention of provisions of section 48 relating to purchase of animal, etc., by licensee.
51 read with section 49B	Contravention of provisions of section 49B relating to prohibition of dealings in trophies, animals articles, etc., derived from scheduled animals.

PARAGRAPH 7

OFFENCES UNDER THE IMMORAL TRAFFIC (PREVENTION) ACT, 1956

(104 OF 1956)

Section	Description of offence
5	Procuring, inducing or taking person for the sake of prostitution.
6	Detaining a person in premises where prostitution is carried on.
8	Seducing or soliciting for purpose of prostitution.
9	Seduction of a person in custody.

PARAGRAPH 8

OFFENCES UNDER THE PREVENTION OF CORRUPTION ACT, 1988

(49 OF 1988)

Section	Description of offence
7	Public servant taking gratification other than legal remuneration in respect of an official act.
8	Taking gratification in order, by corrupt or illegal means, to influence public servant.
9	Taking gratification for exercise of personal influence with public servant.
10	Abetment by public servant of offences defined in section 8 or section 9 of the Prevention of Corruption Act, 1988.
13	Criminal misconduct by a public servant.

PARAGRAPH 9

OFFENCES UNDER THE EXPLOSIVES ACT, 1884

(4 OF 1884)

Section	Description of offence
9B	Punishment for certain offences.
9C	Offences by companies.

PARAGRAPH 10

OFFENCES UNDER THE ANTIQUITIES AND ARTS TREASURES ACT, 1972

(52 OF 1972)

Section	Description of offence
25 read with section 3	Contravention of export trade in antiquities and art treasures.
28	Offences by companies.

PARAGRAPH 11

OFFENCES UNDER THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992

(15 OF 1992)

Section	Description of offence
12A read with section 24	Prohibition of manipulative and deceptive devices, insider trading and substantial.
24	Acquisition of securities or control.

PARAGRAPH 12

OFFENCES UNDER THE CUSTOMS ACT, 1962

(52 OF 1962)

Section	Description of offence
135	Evasion of duty or prohibitions.

PARAGRAPH 13

OFFENCES UNDER THE BONDED LABOUR SYSTEM (ABOLITION) ACT, 1976

(19 OF 1976)

Section	Description of offence
16	Punishment for enforcement of bonded labour.
18	Punishment for extracting bonded labour under the bonded labour system.
20	Abetment to be an offence.

PARAGRAPH 14

OFFENCES UNDER THE CHILD LABOUR (PROHIBITION AND REGULATION) ACT, 1986

(61 OF 1986)

Section	Description of offence
14	Punishment for employment of any child to work in contravention of the provisions of section 3.

PARAGRAPH 15

OFFENCES UNDER THE TRANSPLANTATION OF HUMAN ORGANS ACT, 1994

(42 OF 1994)

Section	Description of offence
18	Punishment for removal of human organ without authority.
19	Punishment for commercial dealings in human organs.
20	Punishment for contravention of any other provisions of this Act.

PARAGRAPH 16

OFFENCES UNDER THE JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2000

(56 OF 2000)

Section	Description of offence
23	Punishment for cruelty to juvenile or child.
24	Employment of juvenile or child for begging.
25	Penalty for giving intoxicating liquor or narcotic drug or psychotropic substance to juvenile or child.
26	Exploitation of juvenile or child employee.

PARAGRAPH 17

OFFENCES UNDER THE EMIGRATION ACT, 1983

(31 OF 1983)

Section	Description of offence
24	Offences and penalties.

PARAGRAPH 18

OFFENCES UNDER THE PASSPORTS ACT, 1967

(15 OF 1967)

Section	Description of offence
12	Offences and penalties.

PARAGRAPH 19

OFFENCES UNDER THE FOREIGNERS ACT, 1946

(31 OF 1946)

Section	Description of offence
14	Penalty for contravention of provisions of the Act, etc.
14B	Penalty for using forged passport.
14C	Penalty for abetment.

PARAGRAPH 20

OFFENCES UNDER THE COPYRIGHT ACT, 1957

(14 OF 1957)

Section	Description of offence
63	Offence of infringement of copyright or other rights conferred by this Act.
63A	Enhanced penalty on second and subsequent convictions.
63B	Knowing use of infringing copy of computer programme.
68A	Penalty for contravention of section 52A.

PARAGRAPH 21

OFFENCES UNDER THE TRADE MARKS ACT, 1999

(47 OF 1999)

Section	Description of offence
103	Penalty for applying false trade marks, trade descriptions, etc.

Section	Description of offence
104	Penalty for selling goods or providing services to which false trade mark or false trade description is applied.
105	Enhanced penalty on second or subsequent conviction.
107	Penalty for falsely representing a trade mark as registered.
120	Punishment of abetment in India of acts done out of India.

PARAGRAPH 22

OFFENCES UNDER THE INFORMATION TECHNOLOGY ACT, 2000

(21 OF 2000)

Section	Description of offence
72	Penalty for breach of confidentiality and privacy.
75	Act to apply for offence or contravention committed outside India.

PARAGRAPH 23

OFFENCES UNDER THE BIOLOGICAL DIVERSITY ACT, 2002

(18 OF 2003)

Section	Description of offence
55 read with section 6.	Penalties for contravention of section 6, etc.

PARAGRAPH 24

OFFENCES UNDER THE PROTECTION OF PLANT VARIETIES AND FARMERS' RIGHTS ACT, 2001

(53 OF 2001)

Section	Description of offence
70 read with section 68	Penalty for applying false denomination, etc.
71 read with section 68	Penalty for selling varieties to which false denomination is applied.

Section	Description of offence
72 read with section 68	Penalty for falsely representing a variety as registered.
73 read with section 68	Penalty for subsequent offence.

PARAGRAPH 25

OFFENCES UNDER THE ENVIRONMENT PROTECTION ACT, 1986

(29 OF 1986)

Section	Description of offence
15 read with section 7	Penalty for discharging environmental pollutants, etc., in excess of prescribed standards.
15 read with section 8	Penalty for handling hazardous substances without complying with procedural safeguards.

PARAGRAPH 26

OFFENCES UNDER THE WATER (PREVENTION AND CONTROL OF POLLUTION)

ACT, 1974

(6 OF 1974)

Section	Description of offence
41(2)	Penalty for pollution of stream or well.
43	Penalty for contravention of provisions of section 24.

PARAGRAPH 27

OFFENCES UNDER THE AIR (PREVENTION AND CONTROL OF POLLUTION) ACT, 1981

(14 OF 1981)

Section	Description of offence
37	Failure to comply with the provisions for operating industrial plant.

PARAGRAPH 28

OFFENCES UNDER THE SUPPRESSION OF UNLAWFUL ACTS AGAINST SAFETY OF
MARITIME NAVIGATION AND FIXED PLATFORMS ON CONTINENTAL SHELF
ACT, 2002

(69 OF 2002)

Section	Description of offence
3	Offences against ship, fixed platform, cargo of a ship, maritime navigational facilities, etc.”;

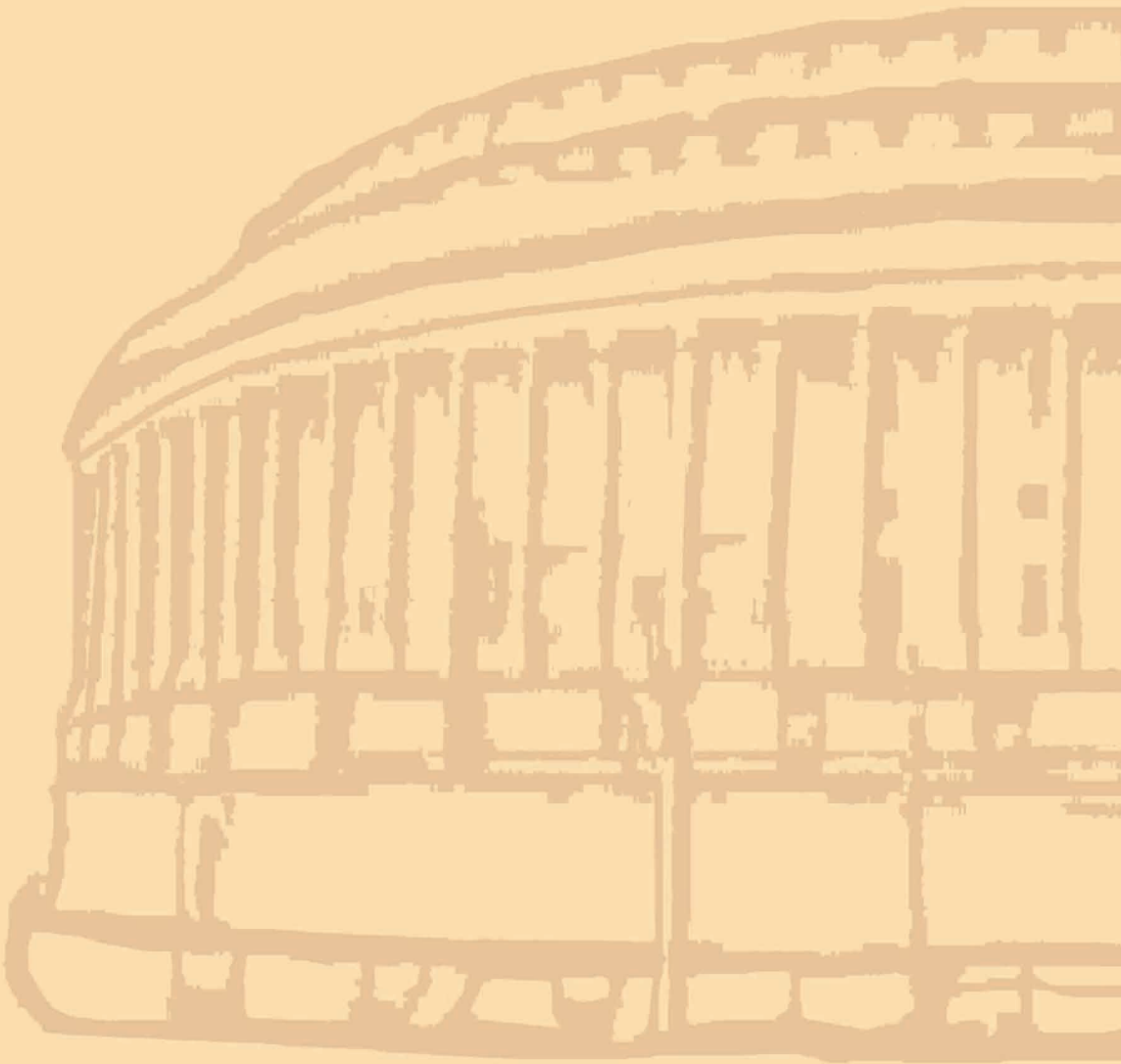
(ii) in Part B, paragraphs 1 to 25 shall be omitted;

(iii) in Part C, serial number (2) and the entries relating thereto shall be omitted.

P.K. MALHOTRA
Secy. to the Govt. of India.

Reading List

- Sanjay Singh Somwanshi, Prevention of Money Laundering Act, 2002: An overview
(<http://www.legalserviceindia.com/articles/mlau.htm>)
- Paridhi Saxena, Money Laundering In India -National Judicial Academy, Raipur (http://www.nja.nic.in/4.1.%20Paper-%20Money%20Laundering_1_%20Paridhi%20Saxena.pdf)
- Rajkumar S. Adukia, Hand Book On The Prevention of Money-Laundering Act, 2002 (<http://www.caaa.in/Image/pmla122014.pdf>)
- Prevention of Money Laundering Act being amended, *The Hindu*, 20 July 2011
- FAQs Frequently Asked Questions On The Prevention Of Money Laundering Act (http://www.enforcementdirectorate.gov.in/faqs_on_pmla.pdf)
- The Growing Threat of Money Laundering
(https://www.capgemini.com/resource-file-access/resource/pdf/The_Growing_Threat_of_Money_Laundering.pdf)
- Money Laundering and Financial Crimes Country Database, June 2015, United States Department of State Bureau for International Narcotics and Law Enforcement Affairs
(<http://www.state.gov/documents/organization/239329.pdf>)



**RAJYA SABHA SECRETARIAT
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