



**THE SOCIETY FOR ADVANCEMENT OF CRIMINAL JUSTICE DIGITAL
LECTURE SERIES**

3rd Digital Lecture organised by SACJ

Date: 19.06.2020

Speaker: Mrs Geeta Luthra, Senior Advocate

Topic: Prevention of Money Laundering Act: 2019 Amendments and SFIO

Moderator: Mrs Vaneeta Patnaik

Rapporteur: Akanksha Vashistha

OPENING REMARKS FOR THE SESSION

The speaker for this session was Mrs Geeta Luthra, a senior advocate at the Supreme Court and the Vice President of the Indian Council of Arbitration at the Federation of Indian Chamber of Commerce and Industries. The guest after being welcomed by the host Deepanshu Agarwal (Convenor, SACJ) and the moderator Mrs Vaneeta Patnaik (Assistant Professor at NUJS and an expert in money laundering laws) commenced the session by reflecting upon the significance the Prevention of Money Laundering Act (PMLA) holds in present times. She went on to clarify the intent with which the Act was instituted in the year 2002. As per her, the main intention of this Act was to prevent money laundering and to provide confiscation of property derived from money laundering, but things have went upside down by the inclusion of a multitude of other acts in the ambit of PMLA. She highlighted the dire urgency of maintaining this balance with the economy that gets gravely affected because of money laundering and frauds. Furthermore, the speaker tried to build on the idea of interrelation between corporate law jurisprudence and criminal law jurisprudence. In this light, the speaker restricted her approach towards analysing the latest amendments to the PMLA in the year 2019 bypassing of the Finance Act.

FUNDAMENTAL ISSUES AND CHALLENGES



- The problem of Economic Offenders who become fugitives after not being able to repay the loans.
- Section 45- Bail provisions in PMLA
- Assessing the balance of the rule of law-
 - i. Under-trials in the context of PMLA
 - ii. Section of 24- Reverse burden of proof
- The process as per PMLA under civil and criminal law-
 - i. Viability of double jurisprudence in a predicate of offence.
- Lack of co-operation among independent investigating agencies.
- Section 50- Statements made to police not admissible but the same doesn't apply to ED
- Filing of supplementary complaints by ED
- The claims of Third-party to their rights in case of PMLA fraud.

VIABLE RECOMMENDATIONS AND SOLUTIONS

- Spirit of co-operation internationally after the introduction of FATF
- Section 45 weakens the effect of 437, 438, and 439 of CrPC which deal with granting of bail. According to the speaker, this goes against the tenets of Article 21 and Article 14 of the Constitution. She supports the judgement of *Nikesh Tarachand Shah v The Union of India*. The 2019 amendment reintroduces the strict bail provision.
- Courts have tried to interpret Section 24 as that it is a rebuttable presumption and accused can show a probable defence. The speaker is not a proponent of such an interpretation. However, heinous bail should be considered.
- According to courts, the predicate offence is mandatory.
- The speaker advocates against accepting confessions made to ED as similar to the police, there are high probabilities of subjecting accused to custodial pressure. However, this has been made admissible in the Dalmia judgement.
- Although one can file supplementary complaints under section 173(8) but this is permitted only under reasonable circumstances. Frequent filing of such complaints has been prohibited by the court.



- Third party's claim to their right, ought to be preserved if they have acted in a bonafide manner. This has been held in a landmark judgement of Delhi High Court.

CONCLUSION

The Prevention of Money Laundering Act is a perfect example of an inter-relation between commercial jurisprudence and criminal jurisprudence. PMLA has gone a long way from dealing with serious economic crimes to expanding its ambit to those which have a much lesser magnitude. This inclusiveness compels us to critique the nuances of the Act, especially when the provisions are stringent in nature. Many a time, it is noticed that the provisions of the special acts come in contradiction with the bare acts and the basic tenets of the Constitution. The bail provisions of PMLA and a presumption against the innocence of accused are such provisions which violate several fundamental rights attributed to citizens by the Constitution. This compels the courts to intervene in order to protect the rights of the citizens, leading to a collision with the intent of the government.

PMLA is one such Act that tends to protect the economy from the frauds by big corporates or money launderers who tend to aid terrorist groups. However, given its broader ambit and inclusivity, the government ought to balance the interests of the state and the interests of its citizens. The introduction of such stringent provisions, do not leave space for the victim to claim his right.

QUESTIONS

The following questions were raised by the participants to which the speaker responded:

1. How does the PMLA apply when the offence includes the jurisprudence of different nations if the offender becomes a fugitive?

If the offence involves the laws of another country when the offender becomes fugitive, generally we follow the extradition procedure. This works when the Act is also an offence in the country that has served as a haven for the offender. However, if the refuge providing country doesn't recognise the Act as a crime, extradition law possibly, wouldn't apply.



In this line, we have the Fugitive Economic Offenders Act for such purposes and is a much serious act than PMLA. Section 2R (a) deals with cross border implications. Further, the Fugitive Economic offenders Act allows for the seizure of properties abroad.

2. Whether PMLA protects a genuine transaction?

This is similar to the Axis Bank case, where the third party transaction would be preserved if they have acted bonafide. However, according to the speaker, the circumstances may be different if the third part is a bank or an individual. In the latter case, the court may require meticulous scrutiny of facts to ensure that that there is a complete disconnect of the third party from the offence.

3. What relief can one get in case of a shoddy investigation by the investigation agency?

According to the speaker, an investigation by the police is comparatively better than that carried out by the investigation agency, owing to their training etc.

There can be the adoption of the European method of having a magistrate supervise an investigation. However, there is some assurance provided to the victim. The investigating authority must not go on an ex-parte way. Besides, the investigation should consider both sides of the case.

4. Can you please elaborate on the controversy surrounding section 45 of the PMLA.

The provision intends to nullify the effects of Nimesh Tarachand, which was a beacon of light amidst the strict bail provisions Section 45 lays down.

5. What is the significance of setting up a ministerial committee under Section 72 of the Act? Won't it lead to unnecessary politicisation?

The only advantage of a ministerial committee is that they have a sense of balance. However, if the Bill is introduced after proper elaborations and technical discussions, then the need for a ministerial committee is reduced. The speaker favoured setting up a parliamentary committee rather than a ministerial committee which will only comprise of members of the cabinet.