

Research Article

Concept of “Proceeds of Crime” under PMLA: Scope and Ambiguities

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Abstract: The Prevention of Money Laundering Act, 2002 (PMLA) was enacted as a robust legislative measure to combat the growing menace of money laundering in India. It aims to prevent the circulation of assets derived from unlawful activities and to provide mechanisms for their detection, attachment, and confiscation. Central to the PMLA is the concept of “proceeds of crime”, which serves as the legal basis for enforcement actions, including investigation, prosecution, and asset recovery. This term encompasses any property obtained, directly or indirectly, through scheduled offences, and extends to assets transformed or invested to conceal their illicit origin. Despite its significance, the definition and scope of “proceeds of crime” remain ambiguous, creating challenges for regulators, law enforcement agencies, and the judiciary. Issues arise in determining the directness of the link between property and criminal activity, the inclusion of digital and intangible assets, and the treatment of third-party claims. Additionally, overlaps with other financial, criminal, and tax laws further complicate enforcement. This paper critically examines the legal framework, explores the scope and limitations of the concept, analyses judicial interpretations, and identifies the practical and policy implications of these ambiguities. The study also proposes recommendations to clarify and strengthen the application of the concept in India’s fight against money laundering.

Keywords: Prevention of Money Laundering Act (PMLA), Proceeds of Crime, Money Laundering, Asset Confiscation, Scheduled Offences, Judicial Interpretation, Financial Crime, Asset Tracing, India etc.

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INTRODUCTION

Money laundering represents one of the most significant threats to the integrity, stability, and transparency of financial systems worldwide. It allows individuals and organizations to conceal the origins of illicitly obtained assets, often generated from corruption, drug trafficking, tax evasion, fraud, or other criminal activities. By disguising the source, ownership, or use of illegal funds, money laundering undermines economic growth, encourages organized crime, and erodes public trust in financial institutions.

The Prevention of Money Laundering Act, 2002 (PMLA) was enacted by the Indian Parliament to address these concerns. The Act provides a comprehensive framework for detecting, investigating, and penalizing money laundering. Key enforcement mechanisms under the PMLA include:

- Attachment of property suspected to be derived from criminal activities;
- Investigation and prosecution of persons involved in money laundering; and
- Confiscation of illicit assets upon conviction or adjudication.

At the core of the Act lies the concept of “proceeds of crime”, which determines the scope of investigation, attachment, prosecution, and eventual confiscation. Section 2(1)(u) of the PMLA defines it as:

“any property derived or obtained, directly or indirectly, by any person from criminal activity relating to a scheduled offence.”

This definition establishes a direct link between property and the underlying criminal activity, ensuring that only assets connected to unlawful acts are subject to the provisions of the PMLA. However, the statutory language leaves several ambiguities regarding the nature, derivation, and extent of such property:

- Direct or indirect derivation: The Act captures both property obtained directly from criminal activity and property acquired indirectly, including investments, profits, or transformed assets.
- Scope of property: The term “property” is broadly defined to include movable and immovable assets, tangible and intangible property, and even digital assets, though some categories remain uncertain in judicial practice.
- Causal link: Determining the strength of the connection between criminal activity and the property can be complex, particularly when the property has undergone multiple transformations or transactions.

Thus, while the definition is expansive and allows enforcement agencies to pursue sophisticated money laundering schemes, it also creates challenges in interpretation, application, and litigation. Understanding the scope and limitations of “proceeds of crime” is crucial for effective enforcement and fair adjudication under the PMLA.

LEGAL FRAMEWORK

The legal framework of the Prevention of Money Laundering Act, 2002 (PMLA) is designed to ensure the identification, tracing, attachment, and confiscation of assets derived from criminal activity. The concept of “proceeds of crime” operates within a structured statutory scheme that connects criminal offences with financial investigation and asset recovery mechanisms.

2.1 Definition of “Proceeds of Crime”

The cornerstone of the PMLA framework lies in the statutory definition of “proceeds of crime” under Section 2(1)(u). The definition is intentionally broad and inclusive to address the evolving and sophisticated nature of money laundering activities.

The term includes all forms of property, whether:

- Movable or immovable (cash, vehicles, land, buildings),
- Tangible or intangible (shares, securities, intellectual property, digital assets), and
- Directly or indirectly obtained from criminal activity linked to a scheduled offence.

Importantly, the law recognises that money laundering often involves multiple stages of financial transactions aimed at disguising the illicit origin of funds. Therefore, the definition extends beyond the original criminal proceeds to include:

- Property derived or transformed from the initial proceeds;
- Assets purchased or invested using illicit funds;
- Income or profits generated from such investments; and
- Property obtained through layered financial transactions designed to conceal the trail of illegal money.

This expansive approach ensures that offenders cannot escape liability merely by converting or transferring illicit funds into different forms of property.

2.2 Scheduled Offences

The PMLA does not operate independently; instead, it relies on the concept of predicate or scheduled offences, which are listed in the Schedule to the Act. These offences form the foundation upon which money laundering investigations are initiated.

Scheduled offences include serious crimes under various statutes, such as:

- The Bharatiya Nyaya Sanhita, 2023 (BNS) (e.g., offences relating to cheating, criminal breach of trust, forgery and economic fraud),
- The Narcotic Drugs and Psychotropic Substances Act, 1985,
- The Customs Act, 1962,
- The Income Tax Act, 1961,
- Anti-corruption and anti-terrorism laws.

By linking “proceeds of crime” to scheduled offences, the Act ensures that only property connected to criminal activity falls within its scope. This prevents arbitrary use of the law while simultaneously expanding its reach to a wide spectrum of financial and economic crimes.

The schedule has been periodically expanded to include emerging offences such as cybercrime and corporate fraud, reflecting the evolving nature of financial criminality.

2.3 Attachment and Confiscation

One of the most powerful enforcement tools under the PMLA is the attachment and confiscation of property suspected to

be proceeded of crime.

(a) Provisional Attachment – Section 5

Under Section 5, the Enforcement Directorate (ED) is empowered to provisionally attach property if there is reason to believe that:

- The property constitutes proceeds of crime; and
- The property may be concealed, transferred, or dealt with in a manner that could frustrate confiscation proceedings.

This provision reflects the preventive nature of the Act, allowing authorities to secure assets at an early stage of investigation.

(b) Adjudication and Confirmation – Section 8

After provisional attachment, the matter is referred to the Adjudicating Authority, which determines whether the property is indeed involved in money laundering. Section 8 permits confirmation of attachment even before conviction, highlighting the preventive and civil nature of asset freezing proceedings.

(c) Confiscation – Section 24

Upon completion of trial and adjudication, the property may be confiscated to the Central Government if the offence of money laundering is established. Section 24 also introduces a reverse burden of proof, requiring the accused to demonstrate that the property is not proceeds of crime.

This combination of preventive attachment and eventual confiscation demonstrates the asset-centric approach of the PMLA, which focuses not only on punishing offenders but also on depriving them of illicit gains.

AMBIGUITIES AND JUDICIAL INTERPRETATIONS

The concept of “proceeds of crime” under the PMLA has generated significant debate due to ambiguities in its definition and application. One of the major concerns relates to the distinction between direct and indirect links between property and criminal activity. Courts have often struggled to determine how remote the connection between an asset and a scheduled offence can be before it falls outside the ambit of the Act. Since money laundering typically involves multiple layers of transactions designed to disguise the origin of illicit funds, establishing a clear causal nexus between the property and the underlying crime becomes complex and contentious.

Another area of ambiguity concerns the scope of the term “property.” While the statute adopts a broad definition that includes both tangible and intangible assets, uncertainty persists regarding the treatment of modern forms of wealth such as intellectual property rights, digital assets, and cryptocurrency. The absence of explicit statutory guidance has resulted in varying interpretations, creating uncertainty for enforcement agencies and courts alike.

The temporal scope of the definition also remains unclear. The PMLA does not explicitly address whether property acquired before the enactment of the Act or before the inclusion of a particular offence in the schedule can be attached and confiscated if it is later found to relate to criminal activity. This has raised concerns regarding retrospective application and potential conflicts with constitutional protections.

Judicial decisions have attempted to clarify these ambiguities while maintaining a balance between effective enforcement and protection of individual rights. In *Shiv Kumar v. Enforcement Directorate*, the Delhi High Court emphasized the necessity of establishing a clear and demonstrable link between the property and the scheduled offence before invoking the provisions of the PMLA. Similarly, in *Enforcement Directorate v. Amardeep Singh*, the court recognized that property indirectly derived from criminal activity may fall within the definition of proceeds of crime if it can be traced back to the original unlawful activity. At the same time, courts have cautioned against excessively broad interpretations, noting that disproportionate attachment and confiscation of property may violate constitutional protections, particularly the principles of proportionality, protection against retrospective punishment under Article 20(1), and the right to property under Article 300A of the Constitution of India.

Together, these judicial developments illustrate the ongoing effort to interpret the concept of “proceeds of crime” in a manner that balances strong anti-money-laundering enforcement with the preservation of fundamental rights.

COMPARATIVE ANALYSIS

A comparative examination of international anti-money-laundering frameworks helps in understanding the strengths and limitations of the Indian approach to the concept of “proceeds of crime.” In the United States, the Money Laundering Control Act, 1986 adopts a broad definition of proceeds but places significant emphasis on the existence of a financial transaction involving illicit funds. This requirement ensures that prosecution focuses on the process of disguising or transferring illegal money through financial systems, thereby linking criminal liability closely with financial activity. In

the United Kingdom, the Proceeds of Crime Act, 2002 (POCA) provides an even more comprehensive framework by recognizing property derived from unlawful conduct and granting courts considerable discretion in tracing and recovering assets through complex financial structures. The UK model also emphasizes civil recovery mechanisms, enabling authorities to confiscate property even in the absence of criminal conviction in certain circumstances.

These comparative frameworks demonstrate the importance of clear tracing mechanisms, judicial discretion, and well-defined evidentiary standards in identifying and confiscating illicit assets. They highlight the need for clarity in distinguishing legitimate wealth from illegal gains and offer valuable insights for strengthening the interpretation and enforcement of the concept of “proceeds of crime” under the PMLA.

Implications

1. **Enforcement Challenges:** Ambiguities create scope for litigation and delay in attachment proceedings.
2. **Compliance Burden:** Businesses and financial institutions must adopt rigorous reporting to avoid inadvertently handling proceeds of crime.
3. **Constitutional Concerns:** Overly broad attachment powers may raise issues of natural justice, particularly for third-party claimants.
4. **Technological Complexity:** With digital currencies and complex corporate structures, tracing proceeds of crime becomes increasingly challenging.

Recommendations

1. **Statutory Clarification:** Amend Section 2(1)(u) to explicitly include digital assets and clarify indirect acquisition thresholds.
2. **Judicial Guidelines:** Develop clear judicial tests for establishing the nexus between property and criminal activity.
3. **Capacity Building:** Enhance ED and agency capabilities for forensic accounting and tracing complex financial transactions.
4. **Periodic Review of Scheduled Offences:** Ensure the schedule remains updated with emerging crimes.

CONCLUSION

The concept of “proceeds of crime” under PMLA is pivotal for curbing money laundering in India. Its broad and flexible nature allows authorities to tackle diverse criminal strategies. However, ambiguities in definition, scope, and judicial interpretation create enforcement challenges and potential conflicts with fundamental rights. Clarity through statutory amendment, judicial guidance, and capacity building is essential to strike a balance between effective enforcement and protection of individual rights.

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