INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 3 | Issue 5

2020

Prevention of Money Laundering Act 2002: An Analysis from Lens of Principles of Law of Evidence

SNEHA HOODA[1]

ABSTRACT

Money laundering has become the major cause of concern for the national economy in India. The prime legislation dealing with such activities is Prevention of Money Laundering Act 2002. Although the Act provides strict provisions for curbing the menace of routing illegal money, it also encroaches upon the rights of the alleged offenders. Seeking justice is every man's legitimate right and any barrier in this journey demands analytical attention. This paper critically analyses the provisions of the Act in light of the principles of law of evidence. It engages in highlighting the inconsistencies between the evidence aspect of the Act with the well settled principles of law of evidence. Questions such as Whether Section 24 of the Act renders the principle of presumption of innocence ineffective or Whether evidentiary value attached to evidence under the Act is same as that under Indian Evidence Act, 1872 or Whether the statement recorded before the Investigating Officer under the Act is admissible evidence under the law, are taken up to find answers with an inquiry-based temperament. The analysis helps in understanding the need of amendments in the concerned Act to maintain interest of the society alongwith upholding general principles of criminal law jurisprudence especially with regard to the accused.

Keywords: *Money laundering, Evidence, Evidentiary value, Burden of Proof*

I. INTRODUCTION

The goal of a large number of criminal acts is to generate a profit for the individual or group that carries out the act. The Financial Action Task Force or FATF, a global money laundering watchdog, defines money laundering as the processing of these criminal proceeds to disguise their illegal origin.[2] In other words, money laundering is the process of converting money gained from illegal activities into legitimate money through various methods. The Prevention of Money Laundering Act, 2002 (*hereinafter alternatively referred as* 'the PMLA' or 'the Act') does not define 'money laundering' as such but it penalises the offence of money laundering

[1] Author has pursued LL.M. at National Law University, Delhi

[2] *What is Money Laundering?* FINANCIAL ACTION TASK FORCE available at https://www.fatf-gafi.org/faq/money laundering/.

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under Section 3.[3] When a person indulges or assists or gets involved in any activity connected with proceeds of crime including its concealment, possession, acquisition or use and then claims it as untainted property, the offence of money laundering is said to be committed.[4] The 'proceeds of crime' is any property derived or obtained by any person as a result of criminal activity relating to a scheduled offence under the Act.[5] The offence is committed only when such money is claimed as untainted property i.e. claims are made to the effect that money is generated through legitimate source, independent of any predicate offence. Once an offence is reported to the police, an investigation as per the provisions of the Code of Criminal Procedure, 1973 (*hereinafter referred as* 'the CrPC') is conducted and if during such investigation it is found that any amount of money or property was generated, due to illegal activities being part of the offence under investigation, and it corresponds with the scheduled offence, then the officials of the Enforcement Directorate (*hereinafter referred as* 'the ED'), Department of Revenue Intelligence, Ministry of Finance are informed. Thereafter, the investigation into matters of money laundering is conducted by concerned authorities of the ED.

The relation between provisions of the PMLA and those of the Indian Evidence Act, 1872 (*hereinafter referred as* 'IEA') is reflected from the dependency of the former on the latter during trial of the offender for offence of money laundering. It must be noted that although Section 3 of the PMLA has made money laundering as an individual offence but its existence without predicate offence is not possible in practical terms. Therefore, such dependency is significant in understanding the difference between evidentiary value of statements and collected records during both investigations and their subsequent trials. Another perspective that demands attention in this context is following the money trail in order to nab the original source i.e. the root cause of such generation of proceeds of crime.

The money gained from illegal activities cannot be put directly to any profitable use because of its inability to locate itself through legitimate source. Small amounts of such income may still be used by way of cash transactions but in order to have profitable use of money investment of bigger amounts is done.[6] Any transaction of huge amounts of money requires involvement of banking and finance companies which in turn are directed to keep client profiles through Know Your Customer or KYC forms. Such companies are called reporting entities.[7] This means that to avail the facilities of such entities, the client has to give all relevant information

[3] The Prevention of Money Laundering Act, 2002. s. 3.
[4] *Id*.
[5] The Prevention of Money Laundering Act, 2002, s. 2(u).
[6] *supra note* 1.
[7] The Prevention of Money Laundering Act, 2002, s. 2 (wa).

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about the income source, his background and previous transactions details etc. Therefore, to avoid the direct contact of proceeds of crime with such entities the launderer uses following three stages to cover up the illegal tracks of the movement of such money:

1. *Placement:* The money is introduced into the financial system by various ways. One common form is to break large amount of money into smaller sums and depositing it in multiple accounts.
2. *Layering:* This makes up the most crucial stage for a launderer where the money, so introduced into financial system, is moved away from the source even further by using methods in the form of wire transfers, conversion into monetary instruments and buying material assets with cash.
3. *Integration:* This involves moving the money back into financial system appearing in the form of legitimate earnings. The difference between layering and integration is that in the latter the detection of money can be secured only through informants or by long term focussed investigations with the help of forensic accountants.

The concept of money laundering involves various aspects ranging from understanding the incorporation of it into definition of proceeds of crime to see constitutionality of various provisions under the Act. The ambit of this paper revolves around the evidentiary aspect only. Inquiry into other factors such as First Information Report (FIR) and Enforcement Case Investigation Report (ECIR), the extent of applicability of provisions of CrPC or treatment of provisions of the Act as cognisable or non-cognisable is out of the scope of this paper.

II. PRESUMPTIONS UNDER THE ACT

A constitutional bench of the Supreme Court in *Izhar Ahmad v. Union of India*, Justice Gajendragadkar observed that the term "presumption" in its largest and most comprehensive signification, may be defined to be an inference, affirmative or disaffirmative of the truth of false-hood of a doubtful fact or proposition drawn by a process of probable reasoning from something proved or taken for granted.[8] Presumptions are meant to reduce the burden of proof by shifting such onus on the other party. The IEA contains three types of presumptions:

1. Rebuttable presumptions of facts,
2. Rebuttable presumptions of law and
3. Irrebuttable presumptions.

[8] Izhar Ahmad v. Union of India, AIR 1962 SC 1052.

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While the first set of presumptions have no power to increase the burden to discharge the onus of proof but second set have the capacity to substantially increase such burden. Third set falls under category of conclusive proof where no party is allowed to give evidences in his favour unless allowed by the statute.

The PMLA does not contain the third set of presumptions but it provides other two forms. The ones relevant for the purpose of gauging their relevance under IEA are as follows:

1. Presumption as to handwriting and record being attested or stamped[9]
2. Presumption as to inter-connected transactions being part of money laundering process.[10]

A. Presumption of Handwriting

Section 22 of the Act provides presumption in case of records or property which is found after search in the possession or control or which is produced by the person. It also takes under its sweep the property or records that is seized from custody or control or is resumed from a person. The context in which presumption is made is relevant from the standpoint of handwriting along with the fact that property is seized from a person, so it must belong to the person and contents of such records as well. The presumptions as to attestation of records are also made.

The importance of such presumptions under special enactments is of great significance as it has the tendency to show the object and target of the Act. Here, the actual target is proceeds of crime and by including the presumption in favour of handwriting belonging to the person in possession, it becomes easier to pass on the burden on accused in two ways. *Firstly*, he will have to prove that property or records do not belong to proceeds of crime, thereby proving it as untainted money. *Secondly*, if he is not able to find adequate evidence to prove it untainted then the presumption as to handwriting or attestation has to be rebutted by defence.

The IEA also provides various presumptions in case of handwriting. One such presumption is provided under Section 67. It provides that in case of allegations of handwriting or signature being made by any particular person, on document, it must be proved that such handwriting or signature belongs to that person. Mere production of document is not sufficient.

SECTION 22 OF THE PMLA VIS-À-VIS SECTION 67 OF THE IEA

The requirement of presumption of handwriting under Section 22 of the Act cannot stand in

[9] The Prevention of Money Laundering Act, 2002, ss. 22 (1)(iii) & (2)(a).
[10] The Prevention of Money Laundering Act, 2002. s. 23.

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isolation. It is the rule of evidence law that such handwriting must be proved to be in the person's handwriting against whom the allegations of writing or signing the documents are made. It secures natural justice for the accused against arbitrary prosecutions and stretched litigations.

In *Ramkrishna Girishchandra Dode v. Anand Govind Kelkar,* the Bombay High Court held that the admissibility of any receipts where signatures or executions are made will be considered proper only if executants have been examined.[11] The extent of such observation signifies the importance of invoking Section 67 of the IEA.

The PMLA nowhere provides for such rule of proving the handwriting and therefore, it must be read in from Section 67 of the IEA. In case the documents are presented in the court and such allegations are made then court seeks proof under Section 67 of the IEA. It does not prescribe any particular mode of proof of signature or handwriting of a person. However, following modes are recognised by IEA to prove such handwriting or signature:

- Examination of the person who signed or wrote the document
- Examination of person in whose presence it was done
- Examination of handwriting expert under Section 45 of the IEA
- Examination of person acquainted with such handwriting under Section 47 of the IEA
- By comparison of disputed signature or handwriting under section 73 of the IEA
- By proof of statement of deceased scribe who had made such statement in ordinary course of business
- Any circumstantial evidence
- By proof of admission by person against whom the allegations are made.

Therefore, similar modes of proof will be applied under Section 22 of the Act. The expert opinion, however, is only relevant and is not considered as conclusive evidence. The credibility of expert witness depends on the reasons stated in support of his conclusions and the data material furnished which forms part of his conclusions.

SECTION 22 OF THE PMLA VIS-À-VIS SECTION 294 OF THE CRPC

It is pertinent to mention here that the procedure followed under the Act comes from the CrPC, unless its provisions are inconsistent with the Act in which case the Act must prevail. Applying

[11] Ramkrishna Girishchandra Dode v. Anand Govind Kelkar, AIR 1999 Bom 89.

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the procedure on Section 22 of the Act gives a unique position when stage of admissions and denials is reached in the proceedings in court. It is provided under Section 294 of the CrPC.

It provides that on filing of any document before court the prosecution or accused are called to admit or deny on the genuineness of that document. If such genuineness is not disputed then proof of such signature will be waived and such document can be read in evidence. But, court is given the discretion in case it seeks such proof.

On application of such admission and denial on presumptions made under Section 22 of the Act it can be observed that conflict between mandate of Section 22 and choice of Section 294 arises. If the presumption of handwriting is made then it entails absence of procedure of Section 294. This is so because Section 22 nowhere talks of the stage at which accused may be given chance to admit or deny the document or property that is produced and in reference to which his signatures are presumed. It simply represents that if in trial it is brought to attention of the accused that such presumption is drawn then he can either agree to such handwriting or may deny it. Therefore, the burden completely lies on accused to either admit the handwriting or signature or to deny it.

B. Presumption of Interconnected Transactions

Interconnected transaction means a part of the chain of various transactions that links two or more such transactions. Such transactions prove useful as connecting links between various activities. Section 23 of the Act makes presumption in case of such interconnected transactions. It says that if in the chain of transactions where interconnected transactions are involved then involvement of any of such transactions in money laundering, on being proved, will bring in the presumption of involvement of other transaction in such inter connected transaction in which money laundering is proved. To invoke the presumption under Section 23 of the PMLA, at least one of the transactions has to be proved to be the 'proceeds of crime' transaction.

III. BURDEN OF PROOF UNDER THE ACT

The three cardinal principles of criminal jurisprudence are:

1. The prosecution must prove its case beyond reasonable doubt.
2. The accused must be presumed to be innocent unless proven guilty.
3. The onus of prosecution never shifts.

The second rule can be found in the Latin maxim *ei incumbit probatio qui dicit, non qui negat* i.e. the burden of proof is on the one who declares, not on one who denies. Article 11 of the Universal Declaration of Human Rights provides that, *"everyone charged with a penal offence*

has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence."[12] Viscount Sankey in *Woolmington v. Director of Public Prosecutions* while making his 'golden thread' speech observed that the principle of prosecution proving guilt of accused is part of common law and any deviation from it would not be entertained.[13] This principle became a fundamental part of criminal law in India.[14]

The Law Commission of India in its forty-seventh report titled *"The Trial and Punishment of Social and Economic offences"* observed that no rule of criminal law is of more importance than that which requires the prosecution to prove the accused's guilt beyond reasonable doubt. *Firstly*, it is for the prosecution to prove the defendant's guilt and not for the latter to establish his innocence; he is presumed innocent until the contrary is proved. *Secondly*, they must satisfy the jury of his guilt beyond reasonable doubt. But, this well-established rule of evidence is not followed while discharging burden of proof in case of accused charged with the offence of money laundering under Section 3 of the Act. The burden of proof under the Act lies on the person who claims the money or property as untainted money.

A. Section 24 of the act in light of section 4 of IEA.

Section 24 of the Act provides for two powers of presumption to the court viz. 'shall presume' and 'may presume'.[15] It provides that in the case of a person charged with the offence of money-laundering under Section 3, the Court shall, unless the contrary is proved, presume that such proceeds of crime are involved in money- laundering. While in the case of any other person, the Court may presume that such proceeds of crime are involved in money-laundering.[16] In the case of B. *Rama Raju s/o B. Ramalinga Raju v. Union of India*, it was held that Section 24 shifts the burden of proving that proceeds of crime are untainted property onto the person who is accused of having committed the offence under Section 3.[17] The person accused of having committed the offence under Section 3 must show with supporting evidence and material that he has the requisite means by way of income, earning or assets, out of which or by means of which he has acquired the property alleged to be proceeds of crime.[18] Only on such showing would the accused be able to rebut the statutorily enjoined presumption that the alleged proceeds of crime are untainted property.

[12] Universal Declaration of Human Rights, Art. 11.
[13] Woolmington v. Director of Public Prosecutions, 1935 AC 462.
[14] V. D. Jhingan Vs. State of Uttar Pradesh AIR 1966 SC 1762.
[15] The Prevention of Money Laundering Act, 2002. s. 24.
[16] *Id.*
[17] B. Rama Raju s/o B. Ramalinga Raju v. Union of India, MANU/TN/1696/2011.
[18] *Id.*

As per Section 4 of the IEA, in case of provisions where court is provided with 'shall presumption' it is equivalent to an obligation on the court to presume unless the fact is disproved. Whereas in case of 'may presumption', the court is given the choice to presume or to not presume and it is empowered to call for proof in such cases. Applying similar connotations on Section 24 of the Act it can be said that similar presumptions apply to the court under the Act. Under the shall presumption it provides that court is obligated to presume involvement of proceeds of crime in money laundering where the person is charged under Section 3 of the Act. The 'may presumption' provides that the court can decide to not make any presumptions against proceeds of crime when the person is not an accused under Section 3 of the Act.

The significance of this link lies in the consequences that it produces. It is clear from above mentioned understanding of Section 24 of the Act and section 4 of IEA that accused under PMLA has to discharge the burden of proof placed upon him due to presumption drawn by the court. The court cannot decide to not presume in such cases, thereby it puts tremendous pressure upon the defence to prove that property and money does not constitute proceeds of crime. This is against the general principle of presumption of innocence under the law of evidence. The Supreme Court in *Dayabhai Chhaganbhai Thakker v. State Of Gujarat* held that it is not at all obligatory on the accused to produce evidence in support of his defence and for the purpose of proving his version and he can rely on the admissions made by prosecution witnesses or on the documents filed by the prosecution.[19] But the presumption of Section 24 does opposite to the defence.

B. Reverse Burden of Proof and Implications

In light of above, it can be said that Section 24 of the Act casts reverse burden of proof on the accused. There has always been raging debate in common law countries that whether reverse burden of proof is against the golden thread of common law. Similar question is raised in constitutional democracies. In the Continental Jurisprudence, various cases decided by the courts in Europe reflects that Article 6(2) of European Convention on Human Rights, though, expressed absolutely, but is still not taken as prohibition of absolute kind on provisions related to reverse burden of proof. Individual rights and those of society are equally taken care of by balancing the interests. Similarly, the British Courts also reflected the same views. Although the foundational principle was laid down in *Woolmington case* but the British Parliament through case of *R versus DPP,* observed the consistency between common law and Article

[19] Dayabhai Chhaganbhai Thakker v. State of Gujarat, 1964 AIR 1563.

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6(2). In *R versus Lambert* the House of Lords had decided that instead of legal burden of proof, evidential burden can be imposed on the accused. In plethora of other cases on similar compatibility the House of Lords consistently held that:

1. Presumptions of fact or law although not prohibited but the must be within limits of reason.
2. Reasonable balance must be held between private and societal interest,
3. There must be justification for derogating from principle of innocence.
4. The existence of some compelling reason is must along with it being reasonable and fair.
5. In cases of more serious crimes the interest of public in securing convictions increases, thereby calling for constitutional protection to accused.

Through its 178th report the Law Commission of India, gave its response on growing trend of imposing reverse burden of proof on the accused. It was observed by Law Commission that the provisions in the principal Act relating to procedure in India is the CrPC and it contained sufficient provisions for proper investigation and inquiry, including the examination of accused. Such provisions, for instance clause 2 of Section 161, clause 3 of Section 313 and clause 1 of Section 315 are in line with the constitutional mandate of protecting rights of accused as well as reaching the goals of justice. It was further observed in the report that dilution of the innocence principle is repugnant to ordinary notions of fairness. On a comparative perspective, it decried the trends of deviating from the path of settled principles in the UK and Australia and goaded the Parliament to follow the US and Canadian models.

Despite the existence of all general principles, precedents, law commission reports the reverse burden of proof had found its way and has secured its position in section 24 of the Act. One particular implication of it can be observed in light of Article 20 (3) of the Constitution of India (*hereinafter referred as* 'the Constitution').

C. Right to Silence, Testimonial Compulsion & Article 20 (3) In Light of Section 24 of PMLA

The right to remain silent sits adjacent to principle of presumption of innocence. In *Nandini Satpathy,*[20] the Supreme Court categorically asserted that right to silence is available to the accused. It means that when a person is presumed innocent then it is not obligatory for him to speak and can avail silence without drawing of any adverse presumption against him. But, in

[20] Nandini Satpathy v. P.L. Dani, AIR 1978 SC 1025.

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cases of reverse burden of proof, where accused is presumed to be involved in crime, the right to silence do not exist and it becomes a mandate upon accused to speak and discharge the burden. In such scenario if the accused chooses not to speak then it may lead the court to believe that he is guilty. Being not able to discharge the burden will automatically call for adverse inference.

In order to check the constitutionality of Section 24 of the Act, it must be observed that the right to remain silent is not available to the accused under this provision. Article 20(3) of the Constitution provides that accused cannot be compelled to be witness against himself. By putting entire burden of proof on him it seeks to ask him to provide evidences against himself by proving if the proceeds of crime came from authentic source or not. If the accused decides to not give any evidence, under fear that it will incriminate him, he will draw adverse inference and if he does provide evidence which are incriminating then it falls under category of testimonial compulsions. Such compulsions are against the mandate of Article 20(3). The Supreme Court has taken tough stand against such compulsions in *State of Bombay v. Kathi Kalu Oghad*[21], *Selvi v. State of Karnataka*[22], *State of Gujarat v. Shyamlal Mohanlal Choksi*[23].

It may be countered that simple presumption in favour of the ED cannot be stretched far enough to invoke Article 20(3) of the Constitution as accused can give exculpatory evidences by giving proof of authentic source of origin. To answer this, it must be kept in mind that in order to discharge such burden the person must have full facts and figures in his hands to rebut the presumptions. ED is under no mandate to provide copy of the report filed by it to the accused. The corresponding provision under CrPC can be found under Section 173 but it is not followed in cases under the Act. Without having clear information of charges against him, other than the predicate offence, the accused has no way to frame strong rebuttals. Even after giving documentary evidences of transactions or property there is no clarity with the defence if they are moving in right direction. Also, forcing the defence to speak is against the principles of natural justice. Therefore, Section 24 of the Act is clearly in violation of Article 20(3).

IV. EVIDENTIARY VALUE UNDER THE ACT

Evidentiary value means the capacity of evidence to stand as proof of the fact in issue. But in legal terms it is only the legal capacity that counts and none other. This legal capacity is seen from the lens of two terms: relevant and irrelevant. Relevant evidences are those which are taken in view to weigh the evidence at hand and are legally allowed to be taken into

[21] State of Bombay v. Kathi Kalu Oghad, AIR 1961 SC 1808.
[22] Selvi v. State of Karnataka, AIR 2010 SC 1974.
[23] State of Gujarat v. Shyamlal Mohanlal Choksi, AIR 1965 SC 1251.

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consideration. The legal standing of any evidence in India is checked by gauging it against the provisions of IEA. This is because it stands as a primary Act dealing with rules of procedure to be followed while dealing with evidentiary aspect in a case. Irrelevant evidences are those that have no bearing upon the adjudication process and are not considered while the decision is made.

Therefore, it becomes important to differentiate between the two by application of rules of evidence law in order to do complete justice in a case. It must be noted that evidentiary value and admissibility of evidence are different procedural requirements of the same process, where, former helps in separating grain from the chaff and latter empowers a judge to allow admission of such separated evidences based on their relation to facts that must be proved relevant as per his discretion.

The evidentiary value of any particular fact is of similar importance under the Act. This is because of the application of general rules of evidence and IEA on it. Therefore, following are the factors whose evidentiary value requires examination in light of rules of evidence law:

1. The evidence given, by summoned person, to the concerned authority under Section 50(2) of the Act which provides that 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.[24]
2. The statements given by such persons being bound to state truth under Section 50(3) of the Act which provides that 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.[25]
3. Records kept by Banking Companies under obligation as per Section 12 which provides that 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.[26]

[24] The Prevention of Money Laundering Act, 2002. s. 50(2).
[25] The Prevention of Money Laundering Act, 2002. s. 50(3).
[26] The Prevention of Money Laundering Act, 2002. s. 12.

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4. The evidence given by experts such as forensic accountants after auditing, investigating the money trail through account books.

A. Evidentiary Value of Statements to EdD Officer

Reading together of Sections 50(2) and 50(3) provides that the statement made by the person so summoned has to be truthful. Similar provisions can be found under CrPC where Section 161(2) empowers the Investigating Officer that any person acquainted with facts of the case may be examined by him orally and the person has to state the truth except giving the incriminating statements. Whereas another similar provision in IEA under Section 132 takes away this freedom as well from the person and compels him to give evidence of whatever nature, be it inculpatory or exculpatory. But the proviso of 132 gives protection to him from any legal action when such evidence is given under compulsion. So, it provides balance between compelling someone to give evidence that might incriminate him and freedom of person to not reveal incriminating circumstances.

It must be noted here that Section 161(2) of the CrPC applies at the stage of investigation while Section 132 of IEA applies at the stage of inquiry and trials. Both these Acts are applicable to PMLA. Sections 50(2) and 50(3) of PMLA fall under the stage of investigation. Also, Section 65 of PMLA provides that if not inconsistent then provisions of the CrPC will apply on the Act. Therefore, it may be said that statements made to the officers of ED under Sections 50(2) and 50(3) will fall under the category of those made under Section 161(2) of CrPC. But, the statement so made under Section 161(2) are subjected to limitations of Section 162 which categorically provides that any statement made to the police officers cannot be used except as discovery statement under Section 27 or dying declaration under Section 32 IEA along with their usage by defence for contradiction under Section 145 IEA. Similarly, statements made under Sections 50(2) and 50(3) must also be used for such purposes. But, PMLA has empowered the concerned officers to record such statements. These statements are made admissible in evidence. This is because the ED officers are not police officers.

The Delhi High Court in *Vakamulla Chandrashekhar v. Enforcement Directorate* held that such authorities do not fall under the category of police officers. The Court reasoned that if this was the case then Parliament would not have made provisions in the form of Section 54 where police officers' assistance is made obligatory for implementation of PMLA.[27] It was held by Madras High Court in *Chief Enforcement Officer, Enforcement Directorate, Government of*

[27] Vakamulla Chandrashekhar v. Enforcement Directorate, 2017 (356) ELT 395 (Del.).

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India v. D. Uttamchand Jain that statements made to the ED are admissible evidences.[28]

CONSEQUENCES

In *A. Tajudeen v. Union of India*, the Supreme Court observed that statements made by accused to the ED officers shall have bearing upon his innocence.[29] Such statements were ordered to be treated as primary evidence but in the case of retraction they are to be corroborated as per the requirements of the case.[30] The non-inclusion of the ED officers involved in the investigation wing into the category of police officers can have serious implications. The person so summoned can be tortured by the officials in order to extract statements favourable to the case. Also, without giving the protection in the form of proviso to Section 132 of IEA, such statements become only compulsion without balancing his interest to be protected.

B. Evidentiary Value of Confessional Statements under PMLA

Confessional statements are those that are made by the person charged with an offence suggesting the inference as to the facts in issue or relevant facts. It is the rule of evidence law as per Section 25 of the IEA that such statements when made to police officials and as per Section 26 that such statements when made under police custody are inadmissible in evidence. The rationale behind such inadmissibility lies in the pressure tactics and torture that may be used by police officials to extract confessions in order to procure conviction. As the primary procedural law in relation to evidences in India is IEA, so the conclusion that similar approach must be taken under the PMLA falls in line. But, various judgements and interpretations have given the opposite view that has become the law of the land when it comes to prosecution under PMLA. Observations are primarily given from two perspectives:

1. That the person summoned under 50(2) & (3) is not an accused, and
2. That the officers are not police officers.

In relation to first perspective it was held by the Andhra Pradesh High Court in *Dalmia Cement Limited & another versus Assistant Director of Enforcement Directorate*[31], that such person is not an accused. The implication of it lies in the fact that confessional statements are made by accused only and if the person summoned is not an accused then his statements will not fall in the category of confessional statements. Also, it must be observed that if a person summoned is not an accused then his statements cannot be used for discovery under Section 27 of the IEA

[28] Chief Enforcement Officer, Enforcement Directorate, Government of India v. D. Uttamchand Jain, MANU/TN/3881/2010.
[29] A. Tajudeen v. Union of India, MANU/SC/0903/2014.
[30] *Id.*
[31] Writ Petition Nos. 36838 of 2014 & 31143 of 2015, decided on, 29 February 2016.

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as it is a requirement of the provision that such statements must come from person accused of the offence.

In relation to the second perspective in *Vakamulla case*[32] it was observed by the Delhi High Court that since the ED officers are not police officers so statements of confessional nature will also be admissible. Similarly, Supreme Court held in *Francis Stanly versus Intelligence Officer, Narcotic Control Bureau, Thiruvananthapuram*[33] that NDPS officers are not police officers hence statements will not fall under Section 25 of IEA. By drawing analogy it can be said ED officers are also similarly situated, therefore, any confessional statement made to them is admissible in evidence.

Consequences

Although the Supreme Court has held that confessional statements must be subjected to fulfilment of requirement under Section 24 of the IEA[34] but allowing admission of statements made to investigating officers certainly gives an upper hand to such agencies where statements can be twisted to secure conviction.

V. CONCLUSION

The prime objective of the Prevention of Money Laundering Act, 2002 is to track down proceeds of crime and prevent such activities from happening. As already discussed, the principles of law of evidence enshrined under the Indian Evidence Act, 1872 are applicable during the prosecution of a person for the offence of money laundering. The provisions of the PMLA should be read and applied in light of the provisions of the IEA. While examining the relationship between the two legislations, it was found out that there are loopholes in the PMLA which goes against the interest of the accused. Also, the provisions of this special legislation are not in consonance with the scheme of the CrPC and IEA. For instance, while it is provided by the Act that the CrPC would be applicable in case of no inconsistencies but the applicability of Section 27 of IEA, as is allowed by Section 162(2) of CrPC, is not applicable on such statements made to the ED officers under Section 50(2) and 50(3). Such interpretation is laid down by various courts on two basic premises. *Firstly*, that the person is not an accused and *secondly*, that the ED officers are not police officers, as is the requirement for the application of Section 27 of IEA. This renders the confessional statements admissible for all purposes, although subjected to limitation of Section 24, but put the accused and persons summoned at

[32] Vakamulla Chandrashekhar v. Enforcement Directorate, 2017 (356) ELT 395 (Del.).
[33] Francis Stanly v. Intelligence Officer, Narcotic Control Bureau, Thiruvananthapuram, AIR 2007 SC 794.
[34] K.T.M.S Mohd. v. Union of India, (1992) 3 SCC 178.

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the crossroads and intersections of various laws dealing with same situation but with different approach. Such, background opens up the field for possibilities in the form of coercion, torture and unnecessary harassment of the summoned persons. One of the major drawbacks of the Act lies in section 24 where basic principles of criminal justice system are flouted and burden of proof is upon the accused.

The scheme of the Act is in light of evidentiary aspects is not strong. The cracks in the form of section 24 encroaching upon persons right against self-incrimination are a major concern. The requirement of record keeping by reporting entities is an appreciable provision as it will help in tracking the movement of money but it must be kept in mind that there is a major portion of proceeds of crime that are not put into use via such entities, but are still present in the economy and finds its way to further the interests of antisocial elements.

VI. SUGGESTIONS

The provisions of the Act need overhaul and must be done in light of ever-changing forms of crime. The business which was run by cash transactions in the past has switched to online platforms. The old ways of hawala channels have been replaced with its newer refined versions in the form of real estate investments, crypto currencies, increasing numbers of shell companies, etc. Considering such aspects, the government must bring in some amendments to the Act where instead of encroaching upon the rights of the accused, the concerned agencies and adjudicatory bodies are given statutes without ambiguous provisions that are solely dependent upon the interpretations and precedents. Long term investigations and proactive analysis shall be conducted especially where predicate offences are not clear. The concerned ministry must conduct half yearly training for registered CAs interested to work as Forensic accountants in order to assist the ED officers while conducting investigations.

It must be reiterated by the legislators that the end goal of the Act is to curb money laundering and find the proceeds of crime to locate the source, so that the base operations can be acted upon to prevent future happenings. By doing so, the authorities and officers can be prevented from exploiting the provisions of the Act to their advantage. The legislators can play their role by organising annual conferences, seminars and meeting with concerned departments.

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 [ISSN 2581-5369]