



JUDICIAL PRECEDENTS AND LEGISLATIVE MEASURES: TWIN PILLARS OF INDIA'S FIGHT AGAINST ECONOMIC CRIMES

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ABSTRACT

Economic offences, including money laundering and benami transactions, are one of the most important challenges faced in India's economic growth and stability. Though being one of the world's fastest-growing economies, India continues to struggle with financial crimes that undermine the progress of Economic Growth. The Prevention of Money Laundering Act (PMLA), 2002 and the Benami Transactions (Prohibition) Act, 1988, were enacted to eradicate and control such activities. The PMLA aims to prevent money laundering by identifying and penalising offenders, while the Benami Act targets property transactions made under false ownership to evade taxation and legal accountability. The objective of this research study is to look into the historical evolution of both acts, their legal framework, and their contribution to Indian economic development. India's PMLA has 10 chapters and 75 sections dealing with three stages of money laundering: placement, layering, and integration. The judiciary has shown its commitment to combat financial crime, and an example of this is the case of Vijay Madanlal Choudhary v. Union of India and Gautam Kundu v. Director of Enforcement. Similarly, the Benami Transactions Act has been a powerful tool against so-called 'underground' or illegal ownership of property, given the direct link with British land reforms. This is evidenced by the case K. Nagarajan v. Adjudication Authority and Union of India v. M/s. Ganpati Dealcom Private Limited.

Keywords: Economic Offences, Money Laundering, Benami Transaction, Legislative Measures, Judicial Precedent and Economic Growth.

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INTRODUCTION

India is a country that has one of the largest economies in the world, and it is the fastest developing economy in the world, but still, it is not developed because of various reasons. Economic offences are also one of the main reasons for it. In India, based on the NCRB reports, 1,93,385 cases were registered under economic offences, with an increase of

11.1 per cent from 1,74,013 cases in 2021. "Amongst three specified categories of economic offences; criminal breach of trust, FCF (forgery, cheating & fraud) and counterfeiting, FCF reported maximum of such cases with 1,70,901 cases, followed by criminal breach of trust with 21,814 cases and counterfeiting with 670 cases in the past year," so the economic offences are also rising day by day in India under which there are some officials or politicians who is falling under the economic offence of money laundering and we have the specific act which prevents the money laundering that is prevention of money laundering act,. And in India, the property earned through an illegal way was not directly under the name of the offender but in the name of a third person. So, to regulate this, we have a specific act, of Benami Transaction Act, which plays an immense role in the prevention of such activities.

HISTORICAL ANALYSIS OF LEGISLATION

When the legislations are historically analysed, both the Prevention of Money Laundering Act and the Benami Transaction Act both acts are very much connected. The practice of having Benamis existed during the Colonial period. When the British abolished the Zamindari system and fixed limits for holding land by Zamindars, they used this mechanism to escape from the ceiling fixed by the Colonial Government. So, they transferred the ownership of excess land holdings to their relatives or any other third person whom they have entrusted, so they can enjoy the possession of the property. This was the beginning of the system of Benami in India. There was no proper legal framework to expressly control and prohibit these kinds of transactions. The necessity to have legalisation for benami transactions was later acknowledged in *Gopeekrist Gosain v. Gungaperswad Gosain*, where the Privy Council noted benami transactions were a traditional and customary practice in India and had judicial recognition.¹

This case stems from the enactment of the Benami Transaction Act, and the Prevention of

¹ <https://singhania.in/blog/benami-transactions-in-india-a-historical-and-legal-perspective>

Money Laundering Act was enacted in 2002. These offences are not new to India. According to famous scholar Robinson, the process of money laundering is simply called, in simple terms, illegal, or dirty money is put through a cycle of transactions, or washed, so that it comes out as legal, or clean, money on the other end.² This act contains 75 Sections.

LEGAL STUDY ON THE PREVENTION OF MONEY LAUNDERING ACT 2002

This Act contains 10 chapters and 75 sections, and this Act mainly prevents illegal money laundering. This act helps us to know about the stages of money laundering. There are 3 main stages of money laundering, and they are-

Placement: The first stage of money laundering, where the money enters the financial system. This is often done by breaking large amounts into smaller amounts and depositing them in banks or purchasing any financial instruments that are in the form of money. Primary and most important stage where the process must be stopped at this stage itself. For instance, this money will be from any criminal activities that are used for a legitimate purpose to legalise the money they obtained from such criminal activities.

Layering: It is the second stage where the dirty money will be converted to clean money. This process is done by carrying out various transactions using the money obtained from illicit or illegal means. The money is transferred to various accounts handled by various individuals or any company holdings, so that it becomes difficult to trace the origin of the money. The most common layering tactics used are Chain-hopping, Tumbling, and Cycling.

Integration: It is the final stage of money laundering, where the laundered money will be reintroduced as legal money into the economy. This is done by purchasing real estate, luxury products, etc.

If any of the acts fulfills these three stages, then the person is said to commit the offence of money laundering and is punishable under this act. The Enforcement Directorate is the competent authority to handle the case of money laundering. Punishment for the offence of money laundering is imprisonment of not less than three years and may extend to 7 years.

² <https://financialcrimeacademy.org/the-history-of-moneylaundering/#:~:text=The%20history%20of%20money%20laundering%20itself%20is%20probably%20as%20old,many%20forms%20of%20commercial%20trading.>

ROLE OF PMLA IN INDIA'S ECONOMIC GROWTH

Under PMLA, whosoever directly or indirectly attempts to indulge or knowingly assists or is a party to or is involved in any process or activity connected with the proceeds of crime, including its concealment, possession, acquisition or use and projecting or claiming it as untainted property, shall be guilty of an offence of money-laundering. Money laundering process is carried out by performing illegal undertakings such as narcotics, arms sales, human trafficking, smuggling, insider trading, bribery, embezzlement and fraud schemes via the complex process of placement, layering and laundering. Prevention of Money Laundering Act (PMLA), although enacted in 2002, came into force on July 1st, 2005.

A key function of the PMLA is to boost national security by tackling money laundering and related criminal activities. This fosters a safer environment for economic activities and promotes investor confidence. By adhering to international standards set by organisations like the Financial Action Task Force (FATF), the PMLA enhances India's global reputation and draws foreign investments.

Safeguarding financial systems: The PMLA helps protect the integrity of India's financial systems by preventing the flow of illicit money. This ensures that the financial sector remains stable and trustworthy.

Enhancing National Security: By tackling money laundering, the PMLA also targets related crimes like terrorism financing. This bolsters national security and fosters a safer environment for economic activities.

Encouraging transparency: The Prevention of Money Laundering Act helps in promoting transparency in transactions, as a result of which the investor builds confidence and encourages the economic development of the country.

Promoting economic stability: By curbing money laundering, the PMLA helps sustain economic stability. It ensures that legitimate businesses can flourish without facing unfair competition from entities engaged in illegal activities.

We have a lot of judicial precedent to interpret this act, and some of the landmark judgments are highlighted below, which show the nature and importance of this act in eradicating the

economic offences and rapid growth of the economy and such precedents are highlighted below:

Vijay Madanlal Choudhary and Others v. Union of India and Others: This case, heard by the Supreme Court of India on July 27, 2022, involved a series of writ petitions challenging various provisions of the Prevention of Money Laundering Act (PMLA), 2002. The petitioners contended that certain provisions of the PMLA were arbitrary, disproportionate, and violated the rights of accused individuals guaranteed by the Indian Constitution. The Supreme Court's judgment addressed these concerns and provided interpretations of the provisions under the PMLA.

Gautam Kundu v. Director of Enforcement: This case, heard by the Supreme Court of India on July 27, 2022, involved a series of writ petitions challenging various provisions of the Prevention of Money Laundering Act (PMLA), 2002. The petitioners contended that certain provisions of the PMLA were arbitrary, disproportionate, and violated the rights of accused individuals guaranteed by the Indian Constitution. The Supreme Court's judgment addressed these concerns and provided interpretations of the provisions under the PMLA.

Kundu's bail petition under the PMLA was a central issue in this case. The judiciary examined the provisions of the PMLA, particularly those related to the attachment of properties and the rights of the accused under this act. The court's decision highlighted the stringent nature of the PMLA and its role in curbing economic offences, ensuring the integrity of the financial system, and enhancing national security by preventing illicit activities.

This case highlighted the importance of adhering to financial regulations and the severe consequences of violating the PMLA, strengthening the act's role in maintaining economic stability and transparency in India.

Union of India v. Varinder Singh @ Raja and Anr. This case was heard by the Supreme Court of India on July 21, 2017. The Union of India challenged the bail granted to Varinder Singh @ Raja by the High Court. The Supreme Court determined that the High Court had not adhered to the requirements of Section 45 of the Prevention of Money Laundering Act (PMLA) in granting bail. Specifically, the High Court failed to meet the conditions outlined in Section 45(ii) of the PMLA.

The Supreme Court emphasised the stringent nature of the PMLA and its vital role in

combating economic offences and money laundering. The court highlighted that money laundering poses a significant threat to the national economy and interests, and therefore, the provisions of the PMLA must be strictly enforced.

LEGAL STUDIES OF BENAMI TRANSACTION IN INDIA

Benami transactions are those transactions that involve holding property in one person's name while another person provides the payment. This has raised significant issues in India. These transactions are particularly controversial due to their association with money laundering and tax evasion. The term "Benami" originates from Urdu and translates to "without name" or "no name". The Hon'ble Supreme Court of India has laid down key criteria to determine whether a transaction qualifies as a Benami transaction or not. These criteria include the source of funds, possession of the property, the underlying motive, the relationship and roles of the involved parties, who holds the title deeds, and the conduct after the sale. A crucial part in identifying Benami transactions is the source of the purchase money and the motive behind the deal. Although these factors guide the courts, they are not exhaustive, and each case is evaluated based on its specific facts and circumstances. Recent judgments have emphasised the significance of these factors in determining the true nature of property transactions. And they have listed below:

In the case of **K. Nagarajan v. Adjudication Authority**, the court checked the validity of provisional attachments under the Benami Transactions (Prohibition) Amendment Act, 2016, even for transactions that took place before the amendment's implementation.

In the case of **Mangathai Ammal v. Rajeswari**, the Court highlighted the importance and the necessity of establishing Benami transactions through evidence of intention and relevant circumstances. Additionally, it clarified the retrospective applicability of specific provisions.

In the landmark case of **Union of India v. M/s. Ganpati Dealcom Pvt. Ltd.**, the court mentioned the necessity for the presence of mens rea (criminal intent) in Benami transactions and invalidated certain provisions as unconstitutional. The judgment also addressed the issue of retroactive application of the law.

ROLE OF THE BENAMI TRANSACTIONS PROHIBITION ACT 1988 IN INDIA'S ECONOMIC GROWTH

The Act defines what a Benami transaction and Benami property are and what the components in it are, while also specifying exclusions and transactions that do not fall under the Benami category. It outlines the consequences of engaging in prohibited Benami transactions and establishes the procedure for determining such transactions and the related penal consequences.

The Amendment Act of 1988 Act, introduces certain specific exceptions to the definition of Benami transactions under Section 2(9). The following categories of property holders are exempted from being considered as involved in Benami transactions, thus offering relaxations for certain types of transactions:

- A Karta or a member of a Hindu undivided family, provided the property is held for their benefit or the benefit of other family members.
- A person acting in a fiduciary capacity for the benefit of another individual.
- An individual purchasing property in the name of their spouse or child.
- Any person holding property in the name of their brother, sister, or lineal ascendant or descendant.

CONCLUSION

Economic offences, including money laundering and benami transactions, are significant challenges and a threat to India's economic growth and stability. Despite being one of the world's fastest-growing economies, India continues to struggle with financial crimes that undermine its progress. The Prevention of Money Laundering Act (PMLA), 2002 and the Benami Transactions (Prohibition) Act, 1988, were enacted to curb such activities. The PMLA aims to prevent money laundering by identifying and penalising offenders, while the Benami Act targets property transactions made under false ownership to evade taxation and legal accountability. The objective of this research study is to investigate the historical evolution of both acts, their legal framework, and their contribution to Indian economic development. India's PMLA has 10 chapters and 75 sections of law dealing with the three stages of money laundering: placement, layering, and integration. The judiciary has shown its commitment to combat financial crime, and an example of this is the case of Vijay Madanlal Choudhary v.

Union of India and Gautam Kundu v. Director of Enforcement. Similarly, the Benami Transactions Act has been a powerful tool against so-called ‘underground’ or illegal ownership of property, given the direct link with British land reforms. This is evidenced by the case K. Nagarajan v. Adjudication Authority and Union of India v. M/s. Ganpati Dealcom Private Limited.