

**CLUSTER 13**

**The Prevention of Money Laundering Act, 2002**

1. Explain the term 'Offence of Money Laundering' within the meaning of the Prevention of Money Laundering Act, 2002.

OR

'Money Laundering does not mean just siphoning of fund. Comment on this statement explaining the significance and aim of the Prevention of Money Laundering Act, 2002.

OR

Explain the meaning of the term "Money Laundering".

Ans.

**Money-laundering [Section 2(1)(p) & 3]**

Money-laundering has the meaning assigned to it in Section 3 [Section 2(1)(p)]

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 including its concealment, possession, acquisition or use and projecting or claiming it as untainted property shall be guilty of offence of money laundering [Section 3].

**Money laundering vis-a-vis siphoning of funds;**

Mere earning of money or income or deriving any property by committing a crime does not amount to money laundering, though it may mount to siphoning of funds. Deriving or obtaining any property by committing a crime which amounts to a Scheduled offence, and then projecting such property as untainted property amounts to money laundering.

2. Define the term 'Payment System' under the provisions of the Prevention of Money Laundering Act, 2002.

**Ans. Payment system [Section 2(1)(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 purpose of this clause, payment system includes the systems enabling credit card operations, debit card Operations, smart card operations, money transfer operations or similar operations.

3. Explain the meaning of the term 'Property' under the Prevention of Money Laundering Act, 2002.

**Ans.** 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. 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.

4. State the punishment for the offence of money laundering.

**Case I - Z, a Known smuggler, was caught in transfer of funds illegally exporting narcotic drugs from India to some countries in Africa. State the maximum punishment that can be awarded to him under Prevention of Money Laundering Act, 2002.**

**Case II - SohanLal a farmer, was found involved in embezzlement of opium cultivated by him. State the punishment that can be awarded to him under the Prevention of Money Laundering Act, 2002.**

**Case III - 'Mr. Honest, a notorious, was caught in possession of Counterfeit Currency Notes, an offence specified under Part A - paragraph 1 of the Schedule of the Prevention of Money Laundering Act, 2002, State the Punishment that can be awarded to him under the above Act. Also identify the punishment for the offence specified under Part A -**

**Paragraph 2 of the Schedule of the prevention of money Laundering Act, 2002.**

**Case IV- Mr. Raja was arrested for counterfeiting Two Thousand Rupees Notes. State the maximum punishment that can be awarded to him under Prevention of Money Laundering Act, 2002.**

**Ans.** The punishment for money-laundering is contained in section 4 of the Prevention of Money-Laundering Act, 2002, as explained below:

**Imprisonment up to 7 years and fine (Section 4) »**

Any person who commits the offence of money-laundering shall be punishable with rigorous imprisonment for a term which shall not be less than 3 years but which may extend to 7 years; and fine (without any limit). Imprisonment up to 10 years and fine (Proviso to Section 4)

If the proceeds of crime involved in money laundering relates to Paragraph 2 of Part A (viz. any offence specified under the Narcotic Drugs and Psychotropic Substances Act, 1985), then, the punishment shall be –

(a) rigorous imprisonment for a term which shall not be less than 3 years but which may extend to 10 years

(b) fine (without any limit)

**Case I**

Z is caught transferring the funds illegally and exporting narcotic drugs from India to some countries in Africa. This offence is punishable under section 23 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (As per Section 23, Illegal import into India, export from India or trans-shipment of narcotic drugs and psychotropic substances is a punishable offence). Further this offence is a scheduled offence as contained in Paragraph 2 of Part A of the Schedule.

Therefore, the punishment for Z for committing the offence of money-laundering shall be

**Case II**

SohanLal has been found guilty of embezzlement of opium cultivated by him. This offence is punishable under section 19 of the Narcotic Drugs and Psychotropic Substances Act, 1985. Further, this offence is a scheduled offence as contained in Paragraph 2 of Part A of the Schedule.

Therefore, the Punishment for SohanLal for committing the offence of money-laundering shall be -

(a) rigorous imprisonment for a term which shall not be less than 3 years but which may extend to 10 years; and

(b) Fine (without any Limit).

**Case III**

Mr. Honest has been found guilty of possession of counterfeit Currency Notes. This offence is a scheduled offence as contained in Paragraph 1 of Part A of the Schedule.

Therefore, the punishment for Mr. Honest for committing the offence of money-laundering shall be -

(a) rigorous imprisonment for a term which shall not be less than 3 years but which may extend to 7 years; and

(b) fine (without any limit)

However, if any person is found guilty of an offence which is covered in Paragraph 2 of Part A of the schedule, the punishment shall be as follows:

(a) Rigorous imprisonment for a term which shall not be less than 3 years but which may extend to 10 years; and

fine (without any limit)

**Case IV**

Mr. Raja has been arrested for counterfeiting Currency Notes. This offence is a scheduled offence as contained in Paragraph 3 of Part A of the Schedule.

Therefore, the punishment for Mr. Raja for committing the offence of money-laundering shall be —

- (a) Rigorous imprisonment for a term which shall not be less than 3 years but which may extend to 7 years; and
- (b) fine (without any limit)

**5. Enumerate the obligations of banking companies under the Prevention of Money Laundering Act, 2002.**

OR

**The Banking Companies, Financial Institutions and Intermediaries of securities market are under some obligations under the prevention of Money Laundering Act, 2002. State, in brief, these obligations.**

Ans.

**Duties of reporting entities [Section 12(1)]**

(a) Every reporting entity shall 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.

These records shall be maintained for a period of 5 years from the date of transaction between a client and the reporting entity.

(b) Every reporting entity shall 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) Every reporting entity shall verify the identity of its clients in such manner and subject to such conditions, as may be prescribed.

(d) Every reporting entity shall identify the beneficial owner, if any, of such of its clients, as may be prescribed.

(e) Every reporting entity shall maintain a record of documents evidencing identity of its clients and beneficial owners as well as account files and business correspondence relating to its clients. These records shall be maintained for a period of 5 years after the business relationship between a client and the reporting entity has ended or the account has been closed, whichever is later

**6. PTM Limited, a banking company maintained the record of all transactions for a period of 3 years from the date of cessation of transactions between the clients and the company. Decide whether the Company has fulfilled its Obligation under the provisions of the Prevention of Money Laundering Act, 2002.**

Ans. As per section 12, the records of prescribed transactions shall be maintained for a period of 5 years from the date of such transaction (viz. the transaction between the clients and the banking company)

In the given case, PTM Limited has maintained the records of transactions only for a period of 3 years from the date of cessation of the transactions. Thus, PTM Limited has failed to maintain the records for the period of 5 years as prescribed under section 12. Therefore, PTM Limited has defaulted in compliance of section 12.

Period up to which bank is required to maintain records where a current account is closed on 30th June, 2016

**7. 'Manav 'Kalyan', a charitable organization, opened a current account with M/s ABZ Bank on 1st July 2012. This account was closed on 30th June, 2016. Referring to the obligations of banking companies under the Prevention of Money laundering Act 2002. Specify the**

**period up to which the said bank has to maintain records relating to the account of "ManavKalyan.**

**Ans.** As per section 12, every reporting entity shall maintain record of documents evidencing identity of clients and beneficial owners as well as account files and business correspondence relating to its clients. These records shall be maintained for a period of 5 years after the business relationship between a client and the reporting entity has ended or the account has been closed, whichever is later.

In the given case, ManavKalyan closed the current account with a Bank on 30th June, 2016. Thus, the Bank is required to maintain the record of documents evidencing identity of ManavKalyan and beneficial owners of Manavkalyan as well as account files and business correspondence relating to ManavKalyan upto 5 years from 30th June, 2016, viz. up to 30th June, 2021.

**8. The Adjudicating Authority appointed under the Prevention of Money Laundering Act, 2002 issued an order attaching certain properties of XYZ limited alleged to be involved in money laundering for a specified period. The company aggrieved by the order of the Adjudicating Authority seeks your advice about the remedy that is available under the Act. Advice explaining the relevant provisions of the Prevention of Money Laundering Act, 2002.**

**Ans:**

1. Section 8 empowers the Adjudicating Authority to pass an order attaching any property suspected of being involved in money laundering.
2. As per Section 26, where any order attaching any property is passed by the Adjudicating Authority, any person aggrieved by an order of the Adjudicating Authority may prefer an appeal to the Appellate Tribunal.
3. As per Section 25, the Appellate Tribunal for the purpose of hearing appeals against the orders of the Adjudicating Authority means the Appellate Tribunal constituted under sub-section (1) of section 12 of the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976.
4. As per Section 26, XYZ Limited may prefer an appeal to the Appellate Tribunal as follows:
5. The Appeal shall be filed within a period of 45 days from the date on which a copy of the order made by the Adjudicating Authority or Director is received. The appeal shall be in the prescribed form and shall be accompanied by prescribed fees.
6. The Appellate Tribunal may entertain an appeal after the expiry of the said period of 45 days if it is satisfied that there was sufficient cause for not filing the appeal within that period. Before granting such extension, the Appellate Tribunal shall give an opportunity of being heard to the parties.
7. The Appellate Tribunal may pass such orders as it may think fit. The Appellate Tribunal may confirm, modify or set aside the order appealed against. Before passing any order, the Appellate Tribunal shall give an opportunity of being heard to the parties to the appeal.
8. The Appellate Tribunal shall send a copy of every order made by it to the parties to the appeal.
9. The Appellate Tribunal shall endeavour to dispose of the appeal within 6 months.
10. If XYZ Limited is aggrieved by any order of the Appellate Tribunal, it may file an appeal to the High Court, within 60 days from the date of communication of the order of the Appellate Tribunal. The appeal to the High Court may be filed on any question of law or of fact.

9. An Appellate Tribunal consisting of two members was formed to hear the appeal preferred by Mr. Hari, Being aggrieved by an order made by the adjudicating Authority under the Prevention of Money Laundering Act, 2002. Two members of the Bench differ in their opinion on a particular point referred in the appeal. Explain the next course of action to be followed by the Bench members under the said Act.

**Ans.** The given problem relates to section 38 of the Prevention of Money-Laundering Act, 2002.

**Provisions**

As per section 38, if the members of a Bench consisting of 2 Members differ in opinion on any point, the following procedure shall be adopted;

- a) The Members shall refer the point or points on which they differ, to the Chairperson.
- b) The Chairperson 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.
- c) Such point or points shall be decided according to the opinion of the majority of the Members of the Tribunal who have heard the case, including those who first heard it.

**Analysis and Conclusion**

- a) Mr. Hari preferred an appeal to the Appellate Tribunal against an order passed by the Adjudication Authority. The said appeal is heard by a Bench consisting of 2 members. The two members of the Bench differ in their opinion on a particular point.
- b) The two members of the Bench shall refer the point on which they differ, to the Chairperson.
- c) The Chairperson shall either hear the point himself or refer the case for hearing on such point by one or more of the other Members of the Appellate Tribunal.
- d) Such point shall be decided according to the opinion of the majority of the Members of the Appellate Tribunal who has heard the case, including the two members who first heard it.

10. How a trial under the prevention of Money Laundering Act, 2002 is conducted in Special Courts?

**Ans.** The trials under the Prevention of Money-Laundering Act, 2002 are conducted in accordance with the provisions contained in sections 43 and 44 of the Act, as explained below:

**1. Conduct of trial by Special Court (Section 43)**

- a) The Trial of any offence punishable under section 4 (viz, punishment for money-laundering) shall be conducted by the Special Court constituted for the area in which the offence has been committed.
- b) While conducting the trial of the offence under section 4, the Special Court shall also conduct the trial of the scheduled offence with which the accused has been charged.
- c) The Central Government is empowered to designate one or more Courts of Session as Special Court (s) by issuing a notification.
- d) The jurisdiction of every Special Court shall be specified in the notification. The jurisdiction shall extend to such area or areas or for such case or class or group of cases as may be specified in the notification.
- e) Before designating any Court of Session as a Special Court, the Central Government shall consult the Chief Justice of the High Court.

**2. Cognizance of offences (Section 44)**

- a) A Special Court may take cognizance of offence upon receipt of a complaint made by an authority authorised in the behalf.
- b) If the court which has taken cognizance of the scheduled offence is other than the Special Court, it shall transfer the case to the Special Court. On receipt of such a case, the Special Court shall proceed to deal with it from the stage of which it is transferred.

- c) A special Court while trying the scheduled offence or the offence of money laundering shall conduct the trial in accordance with the provisions of the Code of Criminal Procedure, 1973.
- d) The trial of an offence punishable under section 4 and any scheduled offence shall be conducted by the Special Court constituted for the area in which the offence has been committed

**11. Mr. Fraudulent has been arrested for a cognizable and non-bailable offence punishable for a term of imprisonment for more than three years under the prevention of Money Laundering Act, 2002. Advise, as to how can he be released on bail in this case?**

OR

**Mr. Gambler has been arrested for a cognizable and non-bailable offence punishable for a term of imprisonment for more than three years under the prevention of Money Laundering Act, 2002, He seeks your advise as to how can he be released on bail. Advise him.**

**Ans.** The given problem relates to section 45 of the Prevention of Money-Laundering Act, 2002.

As per section 45, no person accused of an offence under this Act shall be released on bail or on his own bond unless –

- a) The Public Prosecutor has been given an opportunity to oppose the application for such release; and
- b) Where the Public Prosecutor opposes the application for such release; and
- c) 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.

However, if a person is under the age of 16 years, or is a woman or is sick or is infirm or is accused either on his own or along with other co-accused of money-laundering a sum of less than Rs. 1 crore, he may be released on bail, if the special court so directs.

On the given case, Mr. Fraudulent has been arrested for a cognizable and non-bailable offence punishable for a term of imprisonment of more than 3 years. As per section 45, he may be released on bail only after an opportunity to oppose the application for his release is given to the public prosecutor, and if the Public Prosecutor opposes his application, the Court shall not grant the bail unless the Court is satisfied that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

However, if Mr. Fraudulent is under the age of 16 years, or is sick, or is infirm or is accused either on his own or along with other co-accused of money-laundering a sum of less than Rs. 1 crore, he may be released on bail, if the special court so directs i.e., without giving any opportunity to the Public Prosecutor to oppose the bail application.

**12. Mr. Narayan willfully gives false information, refuses to give evidence and to sign statement made by him in the course of proceedings under the provisions of Prevention of Money Laundering Act, 2002. Explain the mode of recovery of fine or penalty enumerated under the said Act.**

OR

**Mr. JJ found guilty by the authorities under section 13 of the Prevention of Money Laundering Act, 2002 and monetary penalty was levied on Mr. JJ. But Mr. JJ could not pay the penalty amount. What is the mechanism to recover the fine or monetary penalty proposed on any person by the authorities under section 13 or section 63 of the Prevention of Money Laundering Act, 2002?**

**Ans:**

**Punishment for false information or failure to give information, etc. (Section 63)**

**1. Punishment for wilfully and maliciously giving false information resulting in arrest or search  
[Section 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 2 years or fine which may extend to Rs. 50,000 or both.

**2. Punishment for refusing to produce books, sign any statement, answer any question etc.  
[Section 63(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 questions 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 such place or time, he shall pay, by way of penalty, a sum which shall not be less than Rs. 500 but which may extend to Rs. 10,000 for each such default or failure.
- d) No order levying the penalty shall be passed by any authority 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.

**3. Punishment for intentionally disobeying any direction**

If, a person to whom summon is issued under section 50 either to attend to give evidence or produce books of account for other documents at a certain place and time, intentionally disobeys such direction, he shall also be liable to be proceeded against under section 174 of the Indian Penal Code.