

Bill No. XXXI of 2008

THE PREVENTION OF MONEY-LAUNDERING (AMENDMENT)
BILL, 2008

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BILL

further to amend the Prevention of Money-laundering Act, 2002.

BE it enacted by Parliament in the Fifty-ninth Year of the Republic of India as follows:—

1. (1) This Act may be called the Prevention of Money-laundering (Amendment) Act, 2008.

Short title and
commence-
ment.

5 (2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

15 of 2003.

2. In section 2 of the Prevention of Money-laundering Act, 2002 (hereinafter referred to as the principal Act), in sub-section (1),—

Amendment
of section 2.

(i) after clause (d), the following clause shall be inserted, namely:—

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‘(da) “authorised person” means an authorised person as defined in clause (c) of section 2 of the Foreign Exchange Management Act, 1999, and includes a person who has been authorised or given general or special

42 of 1999.

permission by the Reserve Bank of India and overseas principals with whom the person so authorised or having general or special permission conducts a service involving international money transfer;';

(ii) after clause (j), the following clause shall be inserted, namely:—

'(ja) "designated business or profession" means carrying on activities for playing games of chance for cash or kind, and includes such activities associated with casino or such other activities as the Central Government may, by notification, so designate, from time to time;';

(iii) in clause (l), for the words "a non-banking financial company", the words "an authorised person, a payment system operator and a non-banking financial company" shall be substituted;

(iv) in clause (q), after the words and figures "Reserve Bank of India Act, 1934", the words "and includes a person carrying on designated business or profession" shall be inserted;

(v) after clause (r), the following clauses shall be inserted, namely:—

'(ra) "offence of cross border implications", means—

(i) any conduct by a person at a place outside India which constitutes an offence at that place and which would have constituted an offence specified in Part A, Part B or Part C of the Schedule, had it been committed in India and if such person remits the proceeds of such conduct or part thereof to India; or

(ii) any offence specified in Part A, Part B or Part C of the Schedule which has been committed in India and the proceeds of crime, or part thereof have been transferred to a place outside India or any attempt has been made to transfer the proceeds of crime, or part thereof from India to a place outside India.

Explanation.—Nothing contained in this clause shall adversely affect any investigation, enquiry, trial or proceeding before any authority in respect of the offences specified in Part A or Part B of the Schedule to the Act before the commencement of the Prevention of Money-laundering (Amendment) Act, 2008.;

(rb) "payment system operator" means any person, who operates, maintains, facilitates or sustains a payment system involving the use of credit card or any other similar card or system, which enables payment to be effected between a payer and a beneficiary;.

(vi) in clause (y), for sub-clause (ii), the following clauses shall be inserted, namely:—

"(ii) the offences specified under Part B of the Schedule if the total value involved in such offences is thirty lakh rupees or more; or

(iii) the offences specified under Part C of the Schedule."

Amendment
of section 5.

3. In section 5 of the principal Act, in sub-section (l),—

(a) for the words "ninety days", the words "one hundred and fifty days" shall be substituted;

(b) for the proviso, the following proviso shall be substituted, namely:—

"Provided that no such order of attachment shall be made unless, in relation to the scheduled offence, a report has been forwarded to a Magistrate under section 173 of the Code of Criminal Procedure, 1973, or a complaint has been filed by a person authorised to investigate the offence mentioned in the

Schedule, before a Magistrate or court for taking cognizance of the scheduled offence, as the case may be;".

4. In section 6 of the principal Act,—

Amendment
of section 6.

(i) in sub-section (1), for the words "one or more Adjudicating Authorities", the words "an Adjudicating Authority" shall be substituted;

(ii) in the proviso to sub-section (8), for the word "sixty-two", the word "sixty-five" shall be substituted.

5. In section 12 of the principal Act, for sub-section (2), the following sub-section shall be substituted, namely:—

Amendment
of section 12.

"(2)(a) The records referred to in clause (a) of sub-section (1) shall be maintained for a period of ten years from the date of transactions between the clients and the banking company or financial institution or intermediary, as the case may be;

(b) the records referred to in clause (c) of sub-section (1) shall be maintained for a period of ten years from the date of cessation of transactions between the clients and the banking company or financial institution or intermediary, as the case may be."

6. In section 17 of the principal Act, in sub-section (1), for the proviso, the following proviso shall be substituted, namely:—

Amendment
of section 17.

"Provided that no search shall be conducted unless, in relation to the scheduled offence, a report has been forwarded to a Magistrate under section 157 of the Code of Criminal Procedure, 1973, or a complaint has been filed by a person authorised to investigate the offence mentioned in the Schedule before a Magistrate or court for taking cognizance of the scheduled offence, as the case may be."

2 of 1974.

7. In section 18 of the principal Act,—

Amendment
of section 18.

(i) in sub-section (1), the following proviso shall be inserted, namely:—

"Provided that no search of any person shall be made unless, in relation to the scheduled offence, a report has been forwarded to a Magistrate under section 173 of the Code of Criminal Procedure, 1973, or a complaint has been filed by a person authorised to investigate the offence mentioned in the Schedule, before a Magistrate or court for taking cognizance of the scheduled offence, as the case may be.";

2 of 1974.

(ii) in sub-section (9), the proviso shall be omitted.

8. In section 28 of the principal Act, in sub-section (2), clause (a) shall be omitted.

Amendment
of section 28.

9. In section 32 of the principal Act, in sub-section (2), the following proviso shall be inserted, namely:—

Amendment
of section 32.

"Provided that the Chief Justice of India shall be consulted before removal of the Chairperson or a Member who was appointed on the recommendation of the Chief Justice of India."

10. In section 38 of the principal Act, for the words "one or more of the other Members", the words "third Member" shall be substituted.

Amendment
of section 38.

11. In section 60 of the principal Act, after sub-section (6), the following sub-section shall be inserted, namely:—

Amendment
of section 60.

"(7) When any property in India is confiscated as a result of execution of a request from a contracting State in accordance with the provisions of this Act, the

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Central Government may either return such property to the requesting State or compensate that State by disposal of such property on mutually agreed terms that would take into account deduction for reasonable expenses incurred in investigation, prosecution or judicial proceedings leading to the return or disposal of confiscated property."

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Amendment
of Schedule.

12. In the principal Act, in the Schedule,—

(i) in Part A,—

(a) in Paragraph 1, after section 121A and the entry relating thereto, the following sections and the entries shall be inserted, namely:—

Section	Description of offence	10
"489A	Counterfeiting currency notes or bank notes.	
489B	Using as genuine, forged or counterfeit currency notes or bank notes.";	

(b) in Paragraph 2, for sections 15, 18 and 20 and the entries relating thereto, the following sections and the entries shall be substituted, namely:— 15

Section	Description of offence	
"15	Contravention in relation to poppy straw.	
16	Contravention in relation to coca plant and coca leaves.	
17	Contravention in relation to prepared opium.	
18	Contravention in relation to opium poppy and opium.	20
19	Embezzlement of opium by cultivator.	
20	Contravention in relation to cannabis plant and cannabis.	
21	Contravention in relation to manufactured drugs and preparations.";	

(c) after Paragraph 2, the following Paragraphs shall be inserted, 25
namely:—

PARAGRAPH 3

OFFENCES UNDER THE EXPLOSIVE SUBSTANCES ACT, 1908

Section	Description of offence	
3	Causing explosion likely to endanger life or property.	30
4	Attempt to cause explosion, or for making or keeping explosives with intent to endanger life or property.	
5	Making or possessing explosives under suspicious circumstances.	

PARAGRAPH 4

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OFFENCES UNDER THE UNLAWFUL ACTIVITIES (PREVENTION) ACT, 1967

Section	Description of offence	
10 read with section 3	Penalty for being member of an unlawful association, etc.	
11 read with sections 3 and 7	Penalty for dealing with funds of an unlawful association.	40
13 read with section 3	Punishment for unlawful activities.	

	Section	Description of offence
	16 read with section 15	Punishment for terrorist act.
	17	Punishment for raising fund for terrorist act.
	18	Punishment for conspiracy, etc.
5	19	Punishment for harbouring, etc.
	20	Punishment for being member of terrorist gang or organisation.
	21	Punishment for holding proceeds of terrorism.
10	38	Offence relating to membership of a terrorist organisation.
	39	Offence relating to support given to a terrorist organisation.
	40	Offence of raising fund for a terrorist organisation.";

15 (ii) in Part B,—

(a) for Paragraph 1, the following Paragraph shall be substituted, namely:—

"PARAGRAPH 1

OFFENCES UNDER THE INDIAN PENAL CODE

	Section	Description of offence
20	120B	Criminal conspiracy.
	255	Counterfeiting Government stamp.
	257	Making or selling instrument for counterfeiting Government stamp.
25	258	Sale of counterfeit Government stamp.
	259	Having possession of counterfeit Government stamp.
	260	Using as genuine a Government stamp known to be counterfeit.
	302	Murder.
30	304	Punishment for culpable homicide not amounting to murder.
	307	Attempt to murder.
	308	Attempt to commit culpable homicide.
35	327	Voluntarily causing hurt to extort property, or to constrain to an illegal act.
	329	Voluntarily causing grievous hurt to extort property, or to constrain to an illegal act.
	364A	Kidnapping for ransom, etc.
	384 to 389	Offences relating to extortion.
40	392 to 402	Offences relating to robbery and dacoity.
	411	Dishonestly receiving stolen property.
	412	Dishonestly receiving property stolen in the commission of a dacoity.

Section	Description of offence	
413	Habitually dealing in stolen property.	
414	Assisting in concealment of stolen property.	
467	Forgery of valuable security, will, etc.	
471	Using as genuine a forged document or electronic record.	5
472 and 473	Making or possessing counterfeit seal, etc., with intent to commit forgery.	
475 and 476	Counterfeiting device or mark.	
481	Using a false property mark.	10
482	Punishment for using a false property mark.	
483	Counterfeiting a property mark used by another.	
484	Counterfeiting a mark used by a public servant.	
485	Making or possession of any instrument for counterfeiting a property mark.	15
486	Selling goods marked with a counterfeit property mark.	
487	Making a false mark upon any receptacle containing goods.	
488	Punishment for making use of any such false mark.”.	

(b) in Paragraph 3, before section 51 read with section 17A and the entry relating thereto, the following section and the entry shall be inserted, namely:— 20

Section	Description of offence	
"51 read with section 9	Hunting of wild animals.”;	25

(c) in Paragraph 5, after section 10 and the entry relating thereto, the following section and the entry shall be inserted, namely:—

Section	Description of offence	
"13	Criminal misconduct by a public servant.”;	

(d) after Paragraph 5, the following Paragraphs shall be inserted, namely:— 30

"PARAGRAPH 6

OFFENCES UNDER THE EXPLOSIVES ACT, 1884

Section	Description of offence	
9-B	Punishment for certain offences.	35
9-C	Offences by Companies.	

PARAGRAPH 7

OFFENCES UNDER THE ANTIQUITIES AND ARTS TREASURES ACT, 1972

Section	Description of offence	
25 read with section 3.	Contravention of export trade in antiquities and art treasures.	40
28	Offences by Companies.	

PARAGRAPH 8

OFFENCES UNDER THE SECURITIES AND EXCHANGE BOARD OF
INDIA ACT, 1992

	Section	Description of offence
5	12A read with section 24	Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control.

PARAGRAPH 9

OFFENCES UNDER THE CUSTOMS ACT, 1962

	Section	Description of offence
10	135	Evasion of duty or prohibitions.

PARAGRAPH 10

OFFENCES UNDER THE BONDED LABOUR SYSTEM (ABOLITION) ACT, 1976

	Section	Description of offence
15	16	Punishment for enforcement of bonded labour.
	18	Punishment for extracting bonded labour under the bonded labour system.
	20	Abetment to be an offence.

PARAGRAPH 11

20 OFFENCES UNDER THE CHILD LABOUR (PROHIBITION AND REGULATION)
ACT, 1986

	Section	Description of offence
	14	Punishment for employment of any child to work in contravention of the provisions of section 3.

25 PARAGRAPH 12

OFFENCES UNDER THE TRANSPLANTATION OF HUMAN ORGANS ACT, 1994

	Section	Description of offence
	18	Punishment for removal of human organ without authority.
30	19	Punishment for commercial dealings in human organs.
	20	Punishment for contravention of any other provision of this Act.

PARAGRAPH 13

35 OFFENCES UNDER THE JUVENILE JUSTICE (CARE AND PROTECTION OF
CHILDREN) ACT, 2000

	Section	Description of offence
	23	Punishment for cruelty to juvenile or child.
	24	Employment of juvenile or child for begging.

Section	Description of offence	
25	Penalty for giving intoxicating liquor or narcotic drug or psychotropic substance to juvenile or child.	
26	Exploitation of juvenile or child employee.	
PARAGRAPH 14		5
OFFENCES UNDER THE EMIGRATION ACT, 1983		
Section	Description of offence	
24	Offences and penalties.	
PARAGRAPH 15		
OFFENCES UNDER THE PASSPORTS ACT, 1967		10
Section	Description of offence	
12	Offences and penalties.	
PARAGRAPH 16		
OFFENCES UNDER THE FOREIGNERS ACT, 1946		
Section	Description of offence	15
14	Penalty for contravention of provisions of the Act, etc.	
14B	Penalty for using forged passport.	
14C	Penalty for abetment.	
PARAGRAPH 17		
OFFENCES UNDER THE COPYRIGHT ACT, 1957		20
Section	Description of offence	
63	Offence of infringement of copyright or other rights conferred by this Act.	
63A	Enhanced penalty on second and subsequent convictions.	25
63B	Knowing use of infringing copy of computer programme.	
68A	Penalty for contravention of section 52A.	
PARAGRAPH 18		
OFFENCES UNDER THE TRADE MARKS ACT, 1999		
Section	Description of offence	30
103	Penalty for applying false trade marks, trade descriptions, etc.	
104	Penalty for selling goods or providing services to which false trademark or false trade description is applied.	
105	Enhanced penalty on second or subsequent conviction.	35

	Section	Description of offence
	107	Penalty for falsely representing a trade mark as registered.
5	120	Punishment of abetment in India of acts done out of India.

PARAGRAPH 19

OFFENCES UNDER THE INFORMATION TECHNOLOGY ACT, 2000

	Section	Description of offence
	72	Penalty for breach of confidentiality and privacy.
10	75	Act to apply for offence or contravention committed outside India.

PARAGRAPH 20

OFFENCES UNDER THE BIOLOGICAL DIVERSITY ACT, 2002

	Section	Description of offence
15	55 read with 6	Penalties for contravention of section 6, etc.

PARAGRAPH 21

OFFENCES UNDER THE PROTECTION OF PLANT VARIETIES AND FARMERS' RIGHTS ACT, 2001

	Section	Description of offence
20	70 read with 68	Penalty for applying false denomination, etc.
	71 read with 68	Penalty for selling varieties to which false denomination is applied.
	72 read with 68	Penalty for falsely representing a variety as registered.
25	73 read with 68	Penalty for subsequent offence.

PARAGRAPH 22

OFFENCES UNDER THE ENVIRONMENT PROTECTION ACT, 1986

	Section	Description of offence
	15 read with 7	Penalty for discharging environmental pollutants.
30	15 read with 8	Penalty for handling hazardous substance.

PARAGRAPH 23

OFFENCES UNDER THE WATER (PREVENTION AND CONTROL OF POLLUTION) ACT, 1974

	Section	Description of offence
35	41(2)	Penalty for pollution of stream or well.
	43	Penalty for contravention of provisions of section 24.

PARAGRAPH 24

OFFENCES UNDER THE AIR (PREVENTION AND CONTROL OF POLLUTION)
ACT, 1981

Section	Description of offence	
37	Failure to comply with the provisions for operating industrial plant.	5

PARAGRAPH 25

OFFENCES UNDER THE SUPPRESSION OF UNLAWFUL ACTS AGAINST SAFETY
OF MARITIME NAVIGATION AND FIXED PLATFORMS ON
CONTINENTAL SHELF ACT, 2002

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Section	Description of offence	
3	Offences against ship, fixed platform, cargo of a ship, maritime navigational facilities, etc."	

(iii) after Part B, the following Part shall be inserted, namely:—

"PART C

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An offence which is the offence of cross border implications and is specified in,—

(1) Part A; or

(2) Part B without any monetary threshold; or

(3) the offences against property under Chapter XVII of the Indian Penal Code."

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STATEMENT OF OBJECTS AND REASONS

The Prevention of Money-laundering Act, 2002 was brought into force in 2005 to prevent money-laundering and to provide for confiscation of property derived from, or involved in, money-laundering and for matters connected therewith or incidental thereto. The Act also addressed the international obligations under the Political Declaration and Global Programme of Action adopted by the General Assembly of the United Nations to prevent money-laundering. The Act was amended in 2005 to remove the difficulties in implementation of the Act.

2. The Prevention of Money-laundering (Amendment) Bill, 2008 seeks to bring certain financial institutions like Full Fledged Money Changers, Money Transfer Service Providers such as Western Union and International Payment Gateways including VISA and Master Card within the reporting regime of the Act. The Bill incorporates provisions to combat financing of terrorism and it introduces a new category of offences which have cross-border implications. The Bill seeks to amend the Act, to provide, *inter alia*, to—

(a) include institutions like Full Fledged Money Changers and Money Transfer Service Providers and to bring the business activities such as casinos under the reporting regime of the Act;

(b) make provisions for the 'offences with cross border implications' and to add new Part C in the Schedule to the Act for such offences;

(c) ensure that the investigating agency can attach any property and search a person only after completing investigation and also to enhance the period of provisional attachment of property from 90 days to 150 days;

(d) empower the Enforcement Directorate to search the premises immediately after the offence is committed and the police has filed a report under section 157 of Code of Criminal Procedure, 1973;

(e) increase the age of retirement of Chairperson and Members of the Adjudicating Authority from 62 years to 65 years;

(f) provide mandatory consultation with the Chief Justice of India before removal of the Chairperson or a Member of the Appellate Tribunal;

(g) enable the Central Government to return the confiscated property to the requesting country in order to implement the provisions of the United Nations Convention Against Corruption; and

(h) expand the scope of the Act by adding certain offences in Part A and Part B of the Schedule to the Act.

3. The Bill seeks to achieve the above objects.

NEW DELHI;
The 9th July, 2008.

P. CHIDAMBARAM.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 2 of the Bill empowers the Central Government to notify, from time to time, an activity for playing games of chance for cash or kind as 'designated business or profession' for the purpose of bringing them into the reporting regime under the Act.

2. The matters in respect of which notification may be issued are generally matters of details and administrative procedure. The delegation of legislative power is, therefore, of a normal character.