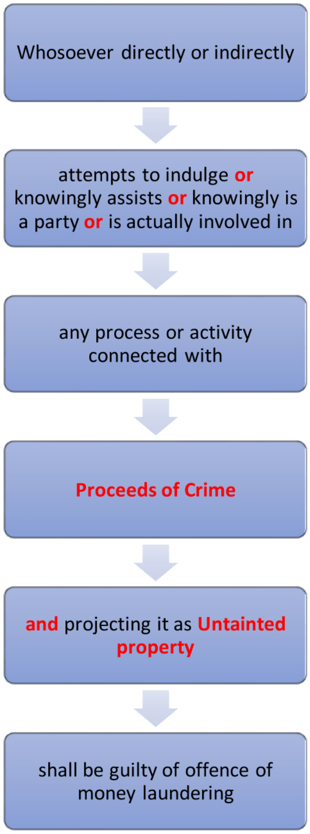
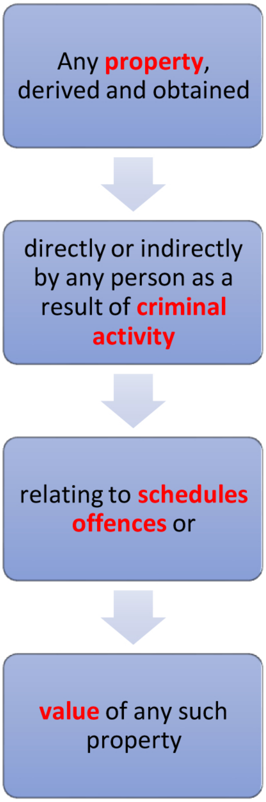
Summary of Important topics of PMLA, 2002

1. DEFINITIONS

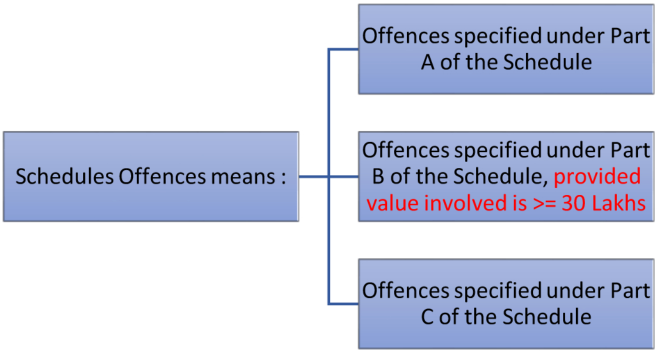
a) Money Laundering (Sec 2(1)(p) + Sec 3)



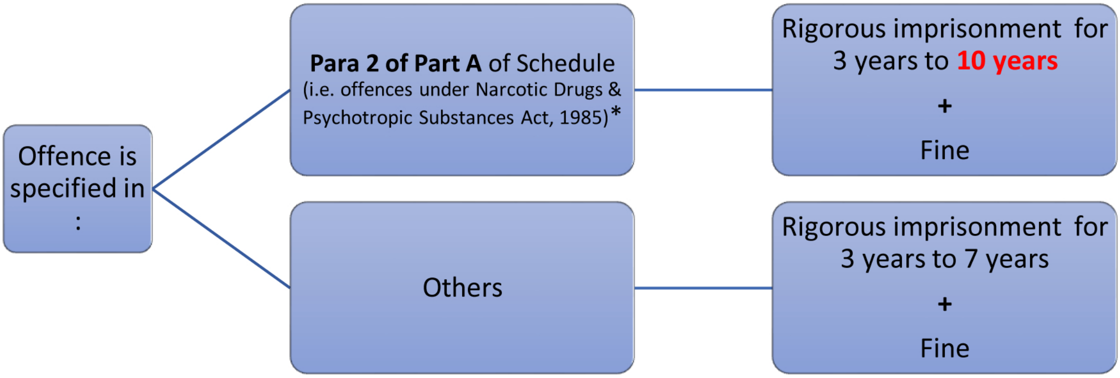
b) Proceeds of Crime (Sec 2(1)(u))



c) Scheduled Offence (Sec 2(1)(y)

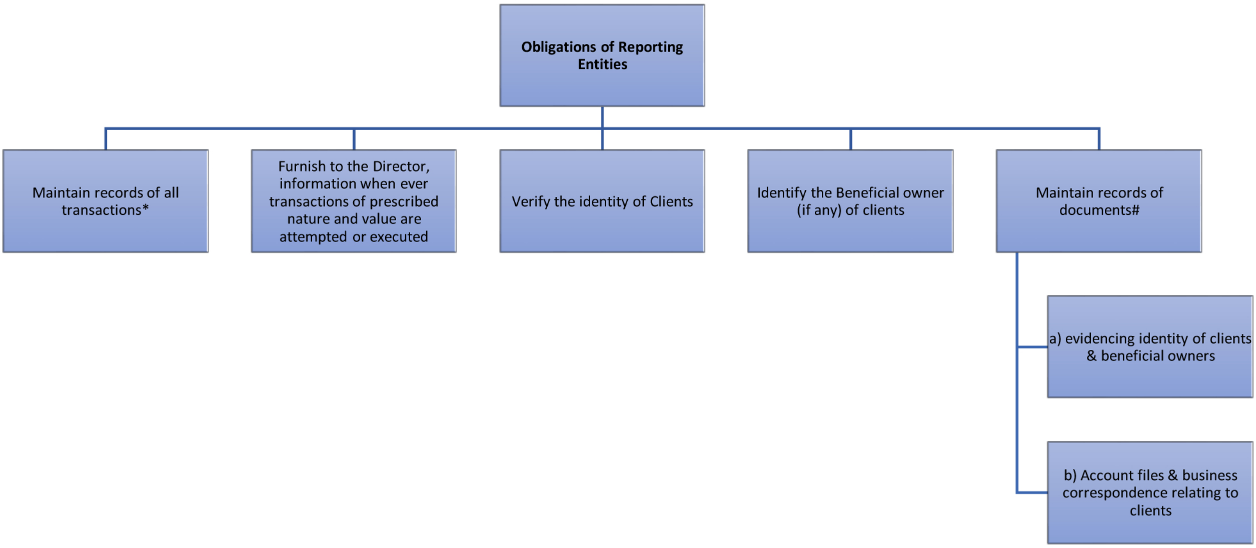


2. **Punishment** for money-laundering (Sec 4)



*Any contravention in relation to poppy straw, coca leaves, opium, cannabis etc is covered in Para 2 of Part A of Schedule

3. **Section 12 – Obligations of Banking Companies, Financial institutions & Intermediaries of securities market**



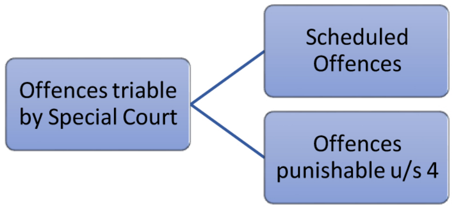
*The record of transactions is required to be maintained for **5 years from the date of transaction**

The records are to maintained for **5 years** after the business relationship between client & the reporting entity has ended or the account has been closed, **whichever is later**

4.) **Provisions relating to Special Court (Section 43-45)**

a) <u>Section 43</u> – Power of CG to designate/notify court of sessions as Special Court in consultation with Chief Justice of HC

b) <u>Section 44</u> –



Special Court takes cognizance of offence on written complaint by authorised authority. So no requirement of police report of facts.

c) **<u>Section 45</u>** - **Offences to be cognizable & non-bailable**

No person accused of offence punishable for a term of imprisonment of **more than 3 years** under Part A of the Schedule shall be released on bail or on his own bond unless:

1) The public prosecutor has been given an opportunity to oppose the application for such release; and
2) Court is satisfied that there are reasonable ground for believing that he is not guilty of the offence and he is not likely to commit any offence while on bail
3) Person < 16 years, women or sick person can be released on bail on directions of Special Court

5.) **Remedies available to person aggrieved by order of Adjudicating Authority under the Act (Section 25,26 & 42)**

Section 25 & 26 : Appeal to Appellate Tribunal within 45 days
Appeal to Appellate Tribunal constituted under Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 against the orders of the AA & the other authorities

Section 42: Appeal to HC within 60 days against the order of AT

6.) **Prevention of Money-laundering (Amendment) Act 2009**

- Enabled India's entry into FATF
- **Objective** : To Strengthen existing legal framework & to effectively combat
  - ✓ Terror Financing
  - ✓ Cross border economic offences
  - ✓ Money laundering
- **Implications**: Full fledged money-lenders, Money transfer service providers, credit card operators, casinos brought under the ambit of PMLA & need to report to the authorities
- It also keeps a check on misuse of Promissory Notes by FIIs who would now be required to furnish all details of their source

7.) **Difference between Siphoning of Funds & Money Laundering**

- Merely obtaining money or income or deriving property by committing a crime amounts to Siphoning of fund.
- Whereas Money Laundering is moving illegally acquired cash through financial system so that it appears to be legally acquired. It is conversion of illegally obtained money.