

"Understanding the Power to Freeze Bank Accounts: Legal Frameworks and Challenges"

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1. Economic offences and white-collar crimes have always been a threat to India's economic prosperity. With technological advancements in every field, we have witnessed a sudden spike in such offences as miscreants have devised ingenious ways to avoid being detected by the authorities. In response, Government has been enacting stringent legal provisions in order to give the investigating & prosecuting agencies, wide-ranging powers & wherewithal to effectively detect and prosecute cases involving complex financial transactions which cause massive loss to the exchequer. One of such powers is the power to freeze bank accounts which is technically known as Attachment of Property.
2. The most basic provision to this effect is Section 102 of erstwhile CrPC, which has been incorporated verbatim in the new BNSS as Section 106. This section empowers "Any" police officer that they "may" seize any property which "may" be alleged or suspected to have been stolen, or which may be found under circumstances which create suspicion of the commission of any offence. Similar powers have been granted to other law enforcement agencies through specific provisions in various laws, some of which are enumerated here:

a) Section 83 of CGST Act, 2017- Power of Provisional Attachment to protect revenue in certain cases

"(1) Where, after the initiation of any proceeding under Chapter XII, Chapter XIV or Chapter XV, the **Commissioner is of the opinion** that for the purpose of protecting the interest of the Government revenue it is necessary so to do, he may, **by order in writing**, attach provisionally, any property, including bank account, belonging to the taxable person or any person specified in sub-section (1A) of section 122, in such manner as may be prescribed.



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(2) Every such provisional attachment shall cease to have effect after the expiry of a period of one year from the date of the order made under sub-section (1)."

b) Section 110 (5) of Customs Act- Seizure of goods, documents and things

"(5) Where the proper officer, during any proceedings under the Act, is of the opinion that for the purposes of protecting the interest of revenue or preventing smuggling, it is necessary so to do, he may, with the approval of the Principal Commissioner of Customs

or Commissioner of Customs, by order in writing, provisionally attach any bank account for a period not exceeding six months. **Provided** that the Principal Commissioner of Customs or Commissioner of Customs may, for reasons to be recorded in writing, extend such period to a further period not exceeding six months and inform such extension of time to the person whose bank account is provisionally attached, before the expiry of the period so specified.”

c) Section 5 of the PMLA Act, 2002- Attachment of property involved in money-laundering

a. Provisional Attachment: The Director or an authorized officer (not below the rank of Deputy Director) can provisionally attach property if they have reason to believe, based on material in their possession, that:

- A person is in possession of proceeds of crime.
- These proceeds are likely to be concealed, transferred, or dealt with in a way that could frustrate confiscation proceedings.

b. Duration: The provisional attachment can last for up to 180 days from the date of the order.

c. Conditions: No attachment order can be made unless a report has been forwarded to a Magistrate under Section 173 of the CrPC, 1973/ Section 193 of the BNSS 2023, or a complaint has been filed by an authorized person before a Magistrate or court.

d. Extension: If proceedings are stayed by the High Court, the period of stay is excluded from the 180 days, and an additional period of up to 30 days can be counted after the stay is lifted

d) Section 11 (4) of the SEBI Act, 1992- Functions of Board “(4) Without prejudice to the provisions contained in sub-sections (1), (2), (2A) and (3) and section 11B, the Board may, by an order, for reasons to be recorded in writing, in the interests of investors or securities market, take any of the following measures, either pending investigation or inquiry or on completion of such investigation or inquiry, namely:- ... (e) attach, for a period not exceeding ninety days, bank accounts or other property of any intermediary or any person associated with the securities market in any manner involved in violation of any of the provisions of this Act, or the rules or the regulations made thereunder: Provided

that the Board shall, within ninety days of the said attachment, obtain confirmation of the said attachment from the Special Court, established under section 26A, having jurisdiction and on such confirmation, such attachment shall continue during the pendency of the aforesaid proceedings and on conclusion of the said proceedings, the provisions of section 28A shall apply: **Provided** further that only property, bank account or accounts or any transaction entered therein, so far as if related to the proceeds actually involved in violation of any of the provisions of this Act, or the rules or the regulations made thereunder shall be allowed to be attached.”

e) Section 281B of the Income Tax Act- Provisional attachment to protect revenue in certain cases

3. Such provisions have found their way into these legislations in order to safeguard public/investor/ revenue's interest or to prevent the suspect from alienating the property or to prevent them from creating third party interest etc. However, it is pertinent to note here that the powers of attachment bestowed on the authorities that specifically deal with revenue like GST, DGGI, DRI, SEBI, Customs & ED are much broader than that of Police. It is so because the bodies that deal with unearthing of financial crimes need such powers in order to safeguard the interest of revenue/public/investor as it is critical to the governance of our nation.

4. Legislature while entrusting such powers to the authorities, intended these powers to be used sparingly. However, on a lot of occasions, unsuspecting businesses/ people find themselves at the receiving end of the excesses of these investigating agencies. Innumerable cases have come to light where authorities have mechanically frozen bank accounts thereby crippling operation of businesses. Often businesses dealing with sensitive items like gold jewellery & bullions, precious stones, fall prey to this departmental high-handedness. It is precisely for such cases; various instructions have been issued from time to time by the Authorities. For instance, CBIC vide their Instructions dated 23.02.2021, have formulated Guidelines on Provisional Attachment of Property under GST so that the process is streamlined and undue hardship is not caused to the assesses. However, more often than not, such instructions are lost in translations and are neither followed in letter, nor in spirit.

5. In the event of non-adherence to these instructions by the authorities, certain remedial provisions have been incorporated in the statutes so as to provide a remedy to such people whose accounts have been frozen by authorities. Persons aggrieved by such orders can either avail the remedy of appeal before the appropriate authority or invoke the writ jurisdiction of constitutional courts, or can apply for provisional release of goods/ properties, as the case may be.

6. Jurisprudence on the subject has also developed with various authoritative pronouncements by Supreme Courts & High Courts wherein courts have on several occasions interpreted provisions to maintain checks and balances and to curtail the indiscriminate use of these powers by the state.

- Hon'ble Supreme Court in the case of **Radha Krishan Industries Versus State of Himachal Pradesh** has observed that it becomes necessary to emphasize that before the Commissioner can levy a provisional attachment, there must be a formation of "the opinion" and that it is necessary "so to do" for the purpose of protecting the interest of the Government revenue. The power to levy a provisional attachment is draconian in nature. By the exercise of the power, a property belonging to the taxable person may be attached, including a bank account – An attachment which is contemplated in Section 83 is, in other words, at a stage which is anterior to the finalization of an assessment or the raising of a demand. Conscious as the Legislature was of the draconian nature of the power and the serious consequences which emanate from the attachment of any property including a bank account of the taxable person, it conditioned the exercise of the power by employing specific statutory language which conditions the exercise of the power.

- The language of the statute indicates first, the necessity of the formation of opinion by the Commissioner; second, the formation of opinion before ordering a provisional attachment; third the existence of opinion that it is necessary so to do for the purpose of protecting the interest of the government revenue; fourth, the issuance of an order in writing for the attachment of any property of the taxable person; and fifth, the observance by the Commissioner of the provisions contained in the rules in regard to the manner of attachment. Each*

of these components of the statute are integral to a valid exercise of power. In other words, when the exercise of the power is challenged, the validity of its exercise will depend on a strict and punctilious observance of the statutory pre-conditions by the Commissioner.

- Hon'ble High Court of Bombay in the case of **Chokshi Arvind Jewellers Versus Union of India** held that where proper officer had not passed any order in writing recording opinion of proper officer before provisionally attaching bank accounts of *Petitioner gold bullion trader*, provisional attachment of its bank account was illegal and contrary to provisions of Section 110 (5) of Customs Act, 1962 - Provisional attachment of Bank Accounts is quite drastic or coercive in nature attracting civil consequences; therefore, each of ingredients of Section 110 (5) of Customs Act, 1962 must be strictly complied with before provisional attachment on property of an assessee can be levied; further, order directing provisional attachment should be served in writing not only on bank but also on bank account holder.

7. As has been correctly observed by the courts, the power to freeze bank accounts is draconian in nature because it is in essence a pre-adjudicatory punishment. Although there is a time limit for which an account can be attached/ frozen, it is undue harassment nonetheless because freezing of bank accounts creates impediments not only in smooth functioning of a business but also in the livelihood of many who are associated with that business. Now, the time is ripe for the authorities to formulate internal code of conducts and restrictions. Similarly law makers ought to amend these provisions and censor such sweeping powers and fix accountability so that, more businesses do not suffer merely because an officer was "of the opinion" or "had a reason to believe" on a misplaced facts.