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Prasanna S,

Chairman of Institute of Legal Education

No. 08, Arul Nagar, Seera Thoppu,

Maudhanda Kurichi, Srirangam,

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Phone : +91 73059 14348 – info@iledu.in / Chairman@iledu.in



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THE OFFENCE OF MONEY LAUNDERING IN INDIA THROUGH THE LENS OF THE PREVENTION OF MONEY-LAUNDERING ACT, 2002

AUTHOR – MR. KRISHNAKANTH REDDY B, CHRIST (DEEMED TO BE UNIVERSITY), BENGALURU

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ABSTRACT

Money laundering represents one of the most pervasive and sophisticated financial crimes undermining the integrity of national economies and democratic institutions. In India, the Prevention of Money-Laundering Act, 2002 (PMLA) serves as the primary legislative instrument to combat this menace, establishing a comprehensive framework for the definition, detection, prosecution, and prevention of money laundering offences. This paper critically examines the offence of money laundering as defined and operationalized under the PMLA, tracing its evolution through successive legislative amendments, analysing the enforcement mechanisms vested in the Directorate of Enforcement, and evaluating landmark judicial pronouncements that have shaped the contours of the law. Special attention is devoted to contested aspects of the legislation, including the reverse burden of proof under Section 24, the twin conditions for bail under Section 45, and the broad powers of attachment and arrest. The paper argues that while the PMLA represents a necessary and largely effective tool against financial crime, certain provisions require recalibration to ensure conformity with constitutional guarantees of personal liberty, due process, and the presumption of innocence. The paper concludes with recommendations for reform aimed at strengthening the anti-money laundering framework while preserving fundamental rights.

Keywords: *Money Laundering, PMLA, Directorate of Enforcement, Proceeds of Crime, Scheduled Offence, Bail, Attachment, Reverse Burden*

I. INTRODUCTION

Money laundering—the process by which illegally obtained funds are made to appear legitimate—poses a formidable threat to the stability of financial systems, the efficacy of governance, and the rule of law. Globally, it is estimated that between two and five percent of the world's gross domestic product is laundered annually, amounting to trillions of dollars circulating through complex networks of shell companies, offshore accounts, and layered transactions.¹³²¹ For developing economies like India, this phenomenon is particularly

damaging, draining resources that could otherwise fuel poverty alleviation, infrastructure development, and social welfare programmes.¹³²²

India's legislative response to this challenge has evolved considerably over the past two decades. Prior to the enactment of the PMLA, the anti-money laundering legal landscape was fragmented, relying on scattered provisions within statutes such as the Foreign Exchange Management Act, 1999,¹³²³ the Narcotic Drugs and Psychotropic Substances Act, 1985,¹³²⁴ and

¹³²¹Financial Action Task Force (FATF), 'International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation' (FATF, 2012, updated 2023).

¹³²²United Nations Office on Drugs and Crime (UNODC), 'Money Laundering' <<https://www.unodc.org/unodc/en/money-laundering/overview.html>> accessed 5 March 2026.

¹³²³Foreign Exchange Management Act, No. 42 of 1999, India.

¹³²⁴Narcotic Drugs and Psychotropic Substances Act, No. 61 of 1985, India.

the Indian Penal Code, 1860.¹³²⁵ This patchwork approach proved inadequate in the face of increasingly sophisticated money laundering operations, necessitating a dedicated, comprehensive legal framework.

The Prevention of Money-Laundering Act, 2002¹³²⁶—which came into force on 1 July 2005—was enacted to fulfil India's obligations under international instruments, including the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988, and the recommendations of the Financial Action Task Force (FATF). Since its enactment, the PMLA has undergone several significant amendments, most notably in 2009, 2012, and 2013, reflecting the legislature's intent to continuously strengthen the anti-money laundering apparatus. This paper critically examines the offence of money laundering through the lens of the PMLA, analysing its definitional framework, enforcement machinery, judicial interpretation, and constitutional implications.¹³²⁷

II. DEFINING THE OFFENCE: THE ANATOMY OF MONEY LAUNDERING UNDER THE PMLA

A. The Core Offence Under Section 3

Section 3 of the PMLA defines the offence of money laundering in expansive terms. A person is guilty of money laundering if they are directly or indirectly involved in any process or activity connected with the 'proceeds of crime' and project such proceeds as untainted property.¹³²⁸ The phrase 'directly or indirectly' reflects the legislature's intent to capture the entire spectrum of participation in the laundering process, encompassing not only the principal launderer but also accessories, facilitators, and financiers.

The term 'proceeds of crime' is defined under Section 2(1)(u) as any property derived or

obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence.¹³²⁹ This definition was substantially broadened by the Finance Act, 2019, to include property equivalent in value held within India or abroad where proceeds cannot be found or seized domestically.¹³³⁰ This amendment considerably expanded the reach of the Enforcement Directorate (ED) and has been a source of significant controversy, as it effectively allows the agency to attach property even in the absence of a direct nexus with the criminal activity, raising legitimate concerns about proportionality and fairness.

B. The Scheduled Offence Requirement

A foundational requirement under the PMLA is that money laundering must be predicated upon a 'scheduled offence'—an enumerated list of predicate crimes set out in the Schedule appended to the Act.¹³³¹ The Schedule is divided into three Parts: Part A contains offences under specific central statutes; Part B contains offences under additional statutes where the value involved exceeds thirty lakh rupees; and Part C contains offences with cross-border implications. The breadth of the Schedule has expanded through successive amendments. The 2012 Amendment Act¹³³² and the 2013 Amendment Act¹³³³ significantly widened the predicate offences to include corruption, forgery, counterfeiting, environmental crimes, and human trafficking, among others. This expansive approach aligns India with FATF Recommendation 3, which calls for states to criminalise money laundering in connection with the widest possible range of predicate offences.¹³³⁴

The nexus between the scheduled offence and the money laundering charge is legally critical. Indian courts have consistently held that the ED

¹³²⁵Indian Penal Code, No. 45 of 1860, India (now subsumed under the Bharatiya Nyaya Sanhita, 2023).

¹³²⁶Prevention of Money-Laundering Act, No. 15 of 2003, India (hereinafter 'PMLA').

¹³²⁷Reserve Bank of India, 'Annual Report on Banking Regulation' (RBI, 2023) <<https://www.rbi.org.in>> accessed 5 March 2026.

¹³²⁸PMLA, s 3.

¹³²⁹Ibid, s 2(1)(u).

¹³³⁰PMLA, s 2(1)(y) (definition of 'proceeds of crime' as amended by Finance Act 2019).

¹³³¹PMLA, s 2(1)(u), Schedule.

¹³³²Prevention of Money-Laundering (Amendment) Act, No. 22 of 2012, India.

¹³³³Prevention of Money-Laundering (Amendment) Act, No. 2 of 2013, India.

¹³³⁴FATF (n 2) Recommendation 3.

must demonstrate, at minimum, a prima facie case that a scheduled offence has been committed and that the property in question constitutes the proceeds thereof. The absence of a scheduled offence—or the discharge or acquittal of the accused in respect of the predicate offence—has significant implications for the viability of the money laundering prosecution, a question that the Supreme Court has addressed with increasing nuance in recent years.

C. The Three Stages of Money Laundering

Money laundering is classically understood to occur in three distinct stages: placement, layering, and integration. During the placement stage, illicit proceeds are introduced into the legitimate financial system—through cash deposits, purchase of assets, or currency smuggling. The layering stage involves the complex process of distancing the funds from their criminal origin through a series of financial transactions—wire transfers, offshore accounts, nominee arrangements, and shell companies. Finally, integration involves the reinvestment of the laundered proceeds into the legitimate economy in a form that appears indistinguishable from lawful wealth.

The PMLA's definition of money laundering under Section 3 expressly captures all three stages by covering 'concealment, possession, acquisition, or use' of proceeds of crime as well as 'projecting or claiming' such proceeds as untainted property. This comprehensive formulation ensures that no stage of the laundering process falls outside the statutory net. The ED's prosecution strategy typically seeks to establish each stage through documentary evidence, financial records, and electronic data, making financial forensics central to PMLA proceedings.

III. PUNISHMENT, ATTACHMENT, AND ENFORCEMENT UNDER THE PMLA

A. Penalties for the Offence

Section 4 of the PMLA prescribes the punishment for the offence of money

laundering. Upon conviction, the guilty person is liable to rigorous imprisonment for a term of not less than three years, extendable to seven years, together with a fine.¹³³⁵ Where the scheduled offence is under the Narcotic Drugs and Psychotropic Substances Act, 1985, the maximum term of imprisonment is extended to ten years. In 2012, the legislature introduced a minimum fine of one lakh rupees, reinforcing the economic deterrence inherent in the statutory scheme.¹³³⁶

B. Provisional Attachment of Property

One of the most potent weapons in the PMLA enforcement arsenal is the power of provisional attachment under Section 5. The Director, or any officer authorised by the Director, may, where they have reason to believe that any person is in possession of proceeds of crime and that such proceeds are likely to be concealed, transferred, or dealt with in a manner that may frustrate proceedings under the Act, provisionally attach such property for a period not exceeding one hundred and eighty days.¹³³⁷ This attachment is made without prior notice to the property holder,¹³³⁸ placing it in the nature of an ex parte, interim measure—a feature that has attracted sustained judicial and academic criticism on grounds of natural justice.

Upon provisional attachment, the matter is referred to an Adjudicating Authority—an independent quasi-judicial body constituted under Section 6—which determines whether the attached property represents proceeds of crime.¹³³⁹ If the Adjudicating Authority confirms the attachment, the property may be confiscated by the Central Government.¹³⁴⁰ The Special Court, upon conviction, may also order that the property stand confiscated to the Government.¹³⁴¹ Any property so confiscated

¹³³⁵PMLA, s 4.

¹³³⁶Ibid, s 4 (as amended by the Finance Act 2012).

¹³³⁷Ibid, s 5.

¹³³⁸Ibid, s 5(1).

¹³³⁹Ibid, s 8.

¹³⁴⁰Ibid, s 8(5), (6).

¹³⁴¹Ibid, s 9.

may be returned to the rightful claimant upon due application.¹³⁴²

C. Obligations of Reporting Entities

The PMLA imposes significant obligations on 'reporting entities'—banks, financial institutions, intermediaries, and persons carrying on designated non-financial businesses and professions—to maintain records of all transactions, report suspicious transactions, and undertake know-your-customer (KYC) verification of clients.¹³⁴³ Section 12A further mandates the maintenance of records relating to cross-border wire transfers and disclosures in prescribed circumstances.¹³⁴⁴ Non-compliance with these obligations attracts regulatory penalties under Section 13,¹³⁴⁵ as well as civil liability. These preventive obligations, enforced by the Financial Intelligence Unit–India (FIU-IND), are a cornerstone of India's anti-money laundering framework, representing the upstream prevention counterpart to the downstream prosecution function of the ED.

D. Powers of Search, Seizure, and Arrest

The PMLA confers extensive investigative powers on officers of the ED. Section 17 authorises search and seizure of records and property upon the basis of reason to believe,¹³⁴⁶ while Section 19 empowers the authorised officer to arrest any person believed to be guilty of the offence of money laundering.¹³⁴⁷ Significantly, Section 50 empowers the ED to summon persons, examine them on oath, and compel the production of documents in a manner analogous to the powers of a civil court.¹³⁴⁸ These sweeping powers, particularly the authority to examine the accused in an investigative capacity, have been the subject of sustained constitutional challenge, as they arguably engage the right against self-incrimination under Article 20(3) of the Constitution of India.

¹³⁴²Ibid, s 10.

¹³⁴³Ibid, s 12.

¹³⁴⁴Ibid, s 12A.

¹³⁴⁵Ibid, s 13.

¹³⁴⁶Ibid, s 17.

¹³⁴⁷Ibid, s 19.

¹³⁴⁸Ibid, s 50.

IV. BAIL, BURDEN OF PROOF, AND CONSTITUTIONAL TENSIONS

A. The Twin Conditions for Bail Under Section 45

Section 45 of the PMLA imposes stringent conditions upon the grant of bail to persons accused of money laundering offences. Bail may be granted only if the Public Prosecutor has been given an opportunity to oppose the application and the court is satisfied that there are reasonable grounds for believing that the accused is not guilty and is not likely to commit any offence while on bail.¹³⁴⁹ These 'twin conditions'—mirroring the bail provisions of the NDPS Act—effectively impose a near-presumption of guilt at the pre-trial stage, significantly restricting the liberty of the accused.

The constitutional validity of Section 45 was directly challenged before the Supreme Court in *Nikesh Tarachand Shah v Union of India*,¹³⁵⁰ where a three-judge bench unanimously struck down the twin conditions as unconstitutional, holding that they were arbitrary and violated Articles 14 and 21 of the Constitution. The Court reasoned that the conditions, as they then stood, applied to persons accused of money laundering irrespective of the nature of the predicate scheduled offence, leading to manifest arbitrariness. Parliament swiftly responded through the Finance Act, 2018, re-enacting the twin conditions with minor modifications to address the court's concerns regarding the classification of scheduled offences. The reinstated provisions have since faced fresh challenge.

In *Vijay Madanlal Choudhary v Union of India*,¹³⁵¹ a three-judge bench of the Supreme Court upheld the constitutional validity of the reinstated twin conditions under Section 45(1),¹³⁵² along with several other contested provisions of the PMLA, including the powers of

¹³⁴⁹Ibid, s 45.

¹³⁵⁰*Nikesh Tarachand Shah v Union of India* (2018) 11 SCC 1.

¹³⁵¹*Vijay Madanlal Choudhary v Union of India* (2022) SCC OnLine SC 929.

¹³⁵²PMLA, s 45(1) (as restored by the Finance Act 2018).

arrest, attachment, and the reverse burden of proof. The judgment, delivered in July 2022, represents the most comprehensive judicial endorsement of the PMLA's framework to date, though its reasoning has attracted considerable scholarly criticism for its deferential approach to executive power and its interpretation of procedural guarantees.¹³⁵³

Subsequent decisions have introduced some moderation. In *Pavana Dibbur v Enforcement Directorate*,¹³⁵⁴ the Supreme Court held that the twin conditions under Section 45 must be read contextually, and that prolonged incarceration without trial could itself constitute a violation of the right to speedy trial under Article 21. In *Rohit Tandon v Directorate of Enforcement*,¹³⁵⁵ the Court reiterated that bail could not be routinely refused simply because the statutory conditions had not been satisfied by the accused; the test was one of prima facie satisfaction, not guilt beyond reasonable doubt.

B. The Reverse Burden of Proof Under Section 24

Section 24 of the PMLA creates a statutory presumption that fundamentally alters the ordinary criminal law burden of proof. Once the prosecution establishes that the alleged offence of money laundering involves proceeds of crime, the burden of proving that the property is not proceeds of crime and that the accused was not involved in money laundering shifts to the accused.¹³⁵⁶ This reverse burden—standard in regulatory and fiscal legislation globally—departs radically from the fundamental common law presumption of innocence that underpins criminal proceedings.

The Supreme Court in *Vijay Madanlal Choudhary* upheld Section 24 as constitutionally valid, reasoning that the presumption was rebuttable, that the evidential burden on the prosecution to establish the predicate facts was not trivial, and that

regulatory offences involving complex financial crimes justifiably warranted departure from ordinary evidentiary rules. Critics, however, contend that this reasoning inadequately engages with the Maneka Gandhi standard¹³⁵⁷ of substantive due process and the right to privacy¹³⁵⁸ as recognised in *K.S. Puttaswamy*, arguing that the practical difficulty of discharging the reverse burden in complex money laundering cases renders the presumption of innocence hollow.¹³⁵⁹

V. ENFORCEMENT LANDSCAPE: DATA AND INSTITUTIONAL FRAMEWORK

The Directorate of Enforcement, functioning under the Department of Revenue in the Ministry of Finance, is the primary investigative and prosecutorial agency under the PMLA. The ED's operational reach has expanded dramatically over the past decade. According to its Annual Report for 2022–23, the Directorate registered 5,297 Enforcement Case Information Reports (ECIRs) under the PMLA, conducted searches at 3,010 premises, issued provisional attachment orders in 2,143 cases, and filed 1,105 prosecution complaints before Special Courts.¹³⁶⁰ Significantly, assets worth over one lakh crore rupees have been attached since the Act's commencement, demonstrating the scale of the enforcement effort.¹³⁶¹

The Special Courts constituted under Section 43 of the PMLA exercise exclusive jurisdiction over money laundering offences. These courts—designated from among Sessions Courts—are intended to ensure expeditious trial of what are often complex, document-intensive cases. In practice, however, the sheer volume of cases and the complexity of financial evidence have led to significant backlogs, with many trials pending for years, raising concerns about the practical efficacy of the system and the

¹³⁵³*Vijay Madanlal Choudhary v Union of India* (2022) SCC OnLine SC 929, para 285.

¹³⁵⁴*Pavana Dibbur v Enforcement Directorate* (2023) SCC OnLine SC 1586.

¹³⁵⁵*Rohit Tandon v Directorate of Enforcement* (2018) 11 SCC 46.

¹³⁵⁶PMLA, s 24.

¹³⁵⁷*Maneka Gandhi v Union of India* AIR 1978 SC 597.

¹³⁵⁸*K.S. Puttaswamy v Union of India* (2017) 10 SCC 1.

¹³⁵⁹Shyam Divan and Arghya Sengupta, 'Constitutional Challenges to PMLA Provisions' (2023) 58 Economic and Political Weekly 22.

¹³⁶⁰Enforcement Directorate, 'Annual Report 2022-23' (Ministry of Finance, Government of India, 2023).

¹³⁶¹*Ibid*, 14–18.

prolonged incarceration of undertrial prisoners pending trial.

The intersection of the PMLA with other anti-corruption and economic crime statutes—particularly the Prevention of Corruption Act, 1988,¹³⁶² the Companies Act, 2013,¹³⁶³ and the Fugitive Economic Offenders Act, 2018¹³⁶⁴—has created a multi-layered enforcement ecosystem. The FEOA, in particular, complements the PMLA by enabling the confiscation of the entire property of economic offenders who flee Indian jurisdiction, thereby addressing the lacuna exposed by high-profile fugitive cases such as those involving Vijay Mallya and Nirav Modi.

VI. INTERNATIONAL DIMENSIONS AND INDIA'S COMPLIANCE OBLIGATIONS

India is a member of the Financial Action Task Force and the Asia/Pacific Group on Money Laundering (APG). Its anti-money laundering framework is periodically evaluated against the FATF's Forty Recommendations, which set the global standard for AML/CFT (anti-money laundering and countering the financing of terrorism) compliance. The FATF's 2024 Mutual Evaluation Report on India assessed the country's technical compliance and effectiveness in combating money laundering and terrorist financing, acknowledging significant improvements in the legislative and institutional framework while identifying areas requiring further attention, particularly in relation to non-financial sectors and beneficial ownership transparency.¹³⁶⁵

India has also entered into Mutual Legal Assistance Treaties (MLATs) with numerous countries, including the United States,¹³⁶⁶ to facilitate cross-border cooperation in the investigation and prosecution of money laundering offences. The Financial Intelligence Unit-India is a member of the Egmont Group of

Financial Intelligence Units,¹³⁶⁷ enabling the exchange of financial intelligence with counterpart agencies globally. These international linkages are essential in an era when money laundering frequently involves multiple jurisdictions, offshore financial centres, and sophisticated use of digital assets including cryptocurrency.

VII. CRITICAL APPRAISAL AND REFORM RECOMMENDATIONS

A holistic assessment of the PMLA reveals both its considerable strengths and its unresolved tensions. The Act has undeniably provided India with a sophisticated, internationally compliant framework for combating money laundering, equipped the enforcement agencies with necessary investigative tools, and generated substantial asset recoveries. At the same time, certain features of the legislation remain constitutionally and practically problematic.

First, the expansive definition of 'proceeds of crime' following the Finance Act, 2019 amendment—extending to equivalent property—has created a risk of disproportionate attachment in the absence of a direct evidential nexus. The PMLA's provisional attachment regime, operating *ex parte*,¹³⁶⁸ has resulted in cases where entire businesses have been paralysed pending adjudication, causing irreversible economic harm before any determination of guilt. Reform is needed to introduce a proportionality test at the attachment stage and to mandate expedited adjudication to prevent indefinite asset freezing.

Second, the twin conditions for bail under Section 45—even in their reinstated, modified form—continue to operate harshly in practice. The legislative and judicial response to Nikesh Tarachand Shah has not fully resolved the tension between robust crime control and the presumption of innocence.¹³⁶⁹ A rights-consistent approach would be to make the twin

¹³⁶²Prevention of Corruption Act, No. 49 of 1988, India.

¹³⁶³Companies Act, No. 18 of 2013, India.

¹³⁶⁴The Fugitive Economic Offenders Act, No. 17 of 2018, India.

¹³⁶⁵FATF, 'Mutual Evaluation Report: India' (FATF, 2024).

¹³⁶⁶India-USA Mutual Legal Assistance Treaty (MLAT), signed 17 October 2001.

¹³⁶⁷Egmont Group of Financial Intelligence Units, 'Annual Report 2023' (Egmont Group, 2023).

¹³⁶⁸PMLA, s 5(1) proviso.

¹³⁶⁹Priya Chandra, 'Twin Conditions Under PMLA: A Critical Analysis' (2022) 34 National Law School of India Review 45, 52.

conditions applicable only to cases involving a minimum threshold of alleged money laundering, rather than uniformly to all scheduled offences.

Third, the power of the ED to record statements under Section 50—which are treated as admissible evidence under Section 50 itself—conflicts uneasily with the protection against self-incrimination. While the Supreme Court in *Vijay Madanlal Choudhary* held that Section 50 does not violate Article 20(3) because the accused is not formally in custody when the statement is recorded, critics argue that the practical reality of ED summons, attended by the threat of arrest, makes the voluntary nature of such statements illusory.

Fourth, the Law Commission of India in its 262nd Report¹³⁷⁰ recommended strengthening the institutional independence of the Adjudicating Authority and Special Courts, improving legal aid mechanisms for accused persons, and introducing sunset clauses for provisional attachment. These recommendations have yet to find legislative expression and deserve urgent attention to ensure that the PMLA serves as an instrument of justice rather than a tool of arbitrary state power.

VIII. CONCLUSION

The Prevention of Money-Laundering Act, 2002 occupies a central place in India's legal architecture for combating financial crime. Through its broad definitional framework, powerful enforcement mechanisms, and international alignment, the PMLA has transformed India's capacity to detect, prosecute, and recover the proceeds of money laundering. Landmark judicial decisions—particularly *Nikesh Tarachand Shah*, *Vijay Madanlal Choudhary*, and *Pavana Dibbur*—have progressively shaped the contours of the law, resolving some constitutional tensions while leaving others unresolved.

The challenge ahead lies in recalibrating the PMLA to ensure that its formidable enforcement machinery operates within constitutional limits and respects the fundamental rights of individuals. A law that is effective but arbitrary is ultimately unsustainable; only a framework that is both effective and just can command lasting legitimacy in a constitutional democracy. Measured legislative reforms—targeting the proportionality of attachment, the rigidity of bail conditions, and the admissibility of compelled statements—would go a long way towards achieving this balance. As India's financial system grows in complexity and as the menace of money laundering evolves in sophistication, the PMLA must continue to adapt—not only to stay ahead of criminals, but to remain worthy of the constitutional ideals it is meant to uphold.

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