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## **PMLA AT A CROSSROADS: LEGAL FRAMEWORK, JUDICIAL REVIEW, AND REFORMABLE SAFEGUARDS**

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### **ABSTRACT**

From a policy and doctrinal point of view, this article examines the Prevention of Money Laundering Act, 2002 (PMLA), laying out its fundamental structure, recent legislative amendments, and notable judicial involvement. First discussed is the legal definition of money laundering under Section 3, together with the enforcement structure emphasizing on the Enforcement Directorate, Adjudicating Authority, and Special Courts. By looking at significant procedural techniques, including provisional attachment, adjudication, confiscation, and statutory presumptions that shift evidentiary burdens, the essay positions reporting-entity responsibilities within India's financial intelligence ecosystem. It assesses the results of the Supreme Court's combined review in *Vijay Madanlal Choudhary* as well as the changes made in 2019 and 2022 on the criteria for bail, the scope of planned crimes, and apparent evidentiary reversals. Emphasizing the possibility of institutional overreach, the policy assessment contrasts the effectiveness of enforcement with issues about civil liberties and draws parallels between FATF and global AML practice. The essay ends with particular steps to preserve investigatory effectiveness while recovering openness and procedural safeguards.

**KEYWORDS:** Money Laundering, PMLA, Enforcement Directorate, Reverse Burden of Proof, *Vijay Madanlal Choudhary* Judgment

### **INTRODUCTION**

Money laundering destroys the rule of law and threatens the financial system's integrity by letting criminals hide illicit revenues as legal assets. India's major legal reaction is the Prevention of Money-Laundering Act, 2002 (PMLA), which defines actual offenses, enforcement power, and repair mechanisms for finding, arresting, and seizing the proceeds of criminal activity. The PMLA teams with a controlled reporting system and prosecutorial framework designed to comply with and fight complex, often international financial crimes. with global AML (AML) rules.

### **BRIEF MONEY LAUNDERING HISTORY IN INDIA**

International tools and standards, as well as national policy, need to fight tax evasion, organized financial crime, and corruption, especially the recommendations made by the Financial Action Task Force (FATF). Making money laundering unlawful and codifying reporting duties, the PMLA sought to address identification, reporting, and asset recovery gaps from the early 2000s. granting certain agencies unique investigating and adjudicative authority. The statute and its supporting rules created an institutional infrastructure, including unique tribunals charged with implementing AML law, judiciary bodies, the Enforcement Directorate (ED), and the Financial Intelligence Unit—India (FIU-IND).<sup>1</sup>

### **DEVELOPMENT OF THE PMLA AND ITS GOALS**

Stopping money laundering, seizing and confiscating illegally obtained assets acquired via predetermined predicate offenses, and providing procedural avenues for are the chief objectives of the PMLA. Prosecution and inquiry of comparable offenses. Since its enactment, the Act has been changed at the legislative and regulatory levels to expand meanings, including those of "proceeds of crime" and the offense in Section 3, as well as to extend the scope of the statute. The timetable of predicate offenses includes the new attachment, adjudication, and forfeiture processes as well as the more stringent reporting and record-keeping requirements. Having explored the limits of the

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<sup>1</sup> Prevention of Money-Laundering Act, No. 15 of 2002 (India), IndiaCode, [https://www.indiacode.nic.in/handle/123456789/2036?sam\\_handle=123456789/1362](https://www.indiacode.nic.in/handle/123456789/2036?sam_handle=123456789/1362)

Constitution and established the practical features of the Act, judicial review culminates in a single judgment by the Supreme Court.<sup>2</sup>

## **KEY PROVISIONS OF THE PMLA**

### **SECTION 3 DEFINES MONEY LAUNDERING**

The crime of money laundering is defined in Section 3 as any action that involves the "proceeds of crime," such as hiding, owning, obtaining, utilizing, or portraying such proceeds as legitimate property. The law language purposefully covers the main stages of money laundering—placement, layering, and integration—by tying the offense to its underlying planned predicate offenses. In order to prevent circumvention of the statute's objective of denying offenders of unlawful earnings, judicial interpretation has placed an emphasis on a purposive reading.<sup>3</sup>

### **THE AUTHORITY OF LAW ENFORCEMENT OFFICIALS**

The Enforcement Directorate is granted a variety of investigative authorities under the PMLA, including the ability to issue summons, record statements, conduct searches and seizures, make arrests, and provisionally attach property. property, and the establishment of an adjudicating and prosecuting system before Special Courts. The legitimacy of attachments is decided by adjudicating authorities, and where statutory tests are satisfied, the vesting of the property in the Central Government is confirmed. These powers are complemented by procedural regulations covering evidence, disclosure, and collaboration with other organizations and international jurisdictions.<sup>4</sup>

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<sup>2</sup> The Prevention of Money-Laundering Act, 2002 (consolidated Act & rules), Enforcement Directorate (India), <https://enforcementdirectorate.gov.in/sites/default/files/Act&rules/THE%20PREVENTION%20OF%20MONEY%20LAUNDERING%20ACT,%202002.pdf>.

<sup>3</sup> PMLA § 3 (Offence of money-laundering) and subsequent Explanation (2019 Explanation to § 3) (text and amendments), Prevention of Money-Laundering Act, No. 15 of 2002 (India), IndiaCode, <https://www.indiacode.nic.in/bitstream/123456789/15402/1/moneylaunderingact2002.pdf>.

<sup>4</sup> - FIU-India, Prevention of Money-Laundering Act 2002 (text and reporting obligations), [https://fiuindia.gov.in/pdfs/downloads/PMLA\\_2002.pdf](https://fiuindia.gov.in/pdfs/downloads/PMLA_2002.pdf).

### **SEIZING, CONFISCATING, AND ADJUDICATING PROPERTY**

The author of Section 5 gives permission for temporary attachment in order to stop the suspected proceeds from being dissipated; Sections 8 and 9, along with associated provisions, outline the adjudicatory confirmation and vesting procedures, which are in by the State in the last seizure and management of confiscated assets. As a result, the legislation permits pre-conviction restrictions on property that are subject to judicial review. Courts have often debated whether pre-conviction attachment appropriately balances preventative necessity. and property rights; the Supreme Court's consolidated review approved attachment as a valid preventative measure within the statutory protections.<sup>5</sup>

### **CLAUSES ABOUT PRESUMPTION AND BURDEN OF PROOF**

After the prosecution establishes a prima facie relationship between property and scheduled offenses, Section 24 establishes a legal presumption that the burden shifts to the defendant. to prove the property is not the product of criminal activity. This evidentiary displacement has been the subject of several constitutional challenges, which have led to significant judicial examination of proportionality, fairness, and compliance with Article 21 safeguards, all of which deviate from traditional criminal law assumptions.

### **THE DUTIES AND RESPONSIBILITIES OF REPORTING ORGANIZATIONS**

The due diligence, record keeping, and suspicious transaction reporting requirements placed on banks, financial organizations, intermediaries, and other "reporting entities" that provide financial services are established under Chapter IV and the PMLA Rules. intelligence that prompts ED investigations and prosecutions. The intelligence core of AML operations is made up of FIU-IND, which receives, analyzes, and distributes STRs/CTRs. Noncompliance puts institutions at risk of

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<sup>5</sup> PMLA § 5 (Provisional attachment of property), § 8 (Adjudication and confirmation; possession), § 9 (Vesting in Central Government), § 24 (Burden of proof), § 45 (Bail conditions), Prevention of Money-Laundering Act, No. 15 of 2002 (India), IndiaCode,

<https://www.indiacode.nic.in/bitstream/123456789/15402/1/moneylaunderingact2002.pdf>

regulatory action, has an impact on licenses, and may be used as proof of deliberate facilitation during enforcement procedures.<sup>6</sup>

## **CURRENT CHANGES AND JUDICIAL DEVELOPMENTS**

### **CHANGES MADE AFTER 2019 AND 2022 ARE SUMMARIZED HERE.**

Parliament made changes to the PMLA in response to changing dangers and previous judicial decisions, including revisions that clarified its definitional scope and re-framed its bail provisions in light of judicial rulings. a review of the Act's rigorous bail requirements. The legislative history reveals repeated additions to the schedule and revisions to procedural provisions to bolster enforcement while addressing due process issues brought up in prior jurisprudence.

### **INCREASE IN THE NUMBER OF PLANNED OFFENSES**

Through several amendments, the PMLA Schedule has been expanded to include more predicate offenses under central and State penal laws, thus extending the scope of the legislation. a universe of behavior where the earnings are subject to PMLA investigation and seizure. A larger schedule extends the prosecutorial reach but also raises proportionality concerns when the deployment of significant AML tools is triggered by minor predicate offenses.

### **REVERSAL OF THE BURDEN OF PROOF AND MODIFICATIONS TO BAIL REGULATIONS**

There was a lot of litigation over the PMLA's bail system. In Nikesh Tarachand Shah<sup>7</sup>, the Supreme Court rejected earlier versions of "twin conditions," which led to legislative responses that reimposed stricter bail requirements. In a later combined review, the Supreme Court in Vijay Madanlal Choudhary confirmed the re-enacted bail system and validated the Act's reverse-burden presumption scheme. As a result, in PMLA cases, the bail stage has a higher standard than in

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<sup>6</sup> Vijay Madanlal Choudhary v. Union of India, SLP (Crl.) No. 4634 of 2014, judgment dated July 27, 2022 (Sup. Ct., India), available at CaseMine, <https://www.casemine.com/judgement/in/632e4b6466c77f7b4ff217a8>.

<sup>7</sup> Nikesh Tarachand Shah v. Union of India, (2017) AIR \_\_\_, S.C. (Nov. 23, 2017) (Supreme Court of India) (decision striking down Section 45(1) in its earlier form), full text available at IndiaKanoon, <https://indiankanoon.org/doc/117859307/> (judgment of R.F. Nariman, J.).

regular criminal trials, which reflects the policy of the legislature. choosing to concentrate on minimizing the risks of flight and evidence tampering in complex financial crime cases.

### **MAJOR DECISIONS BY THE SUPREME COURT**

The most significant judicial intervention is the combined challenge to various PMLA provisions in *Vijay Madanlal Choudhary v. Union of India*<sup>8</sup>, where the Supreme Court studied the bail system, Section 24 assumptions, the admissibility of statements, and attachment authorities, and supported several disputed clauses while highlighting judicial supervision and procedural protections. The amendments were influenced by earlier jurisprudence, most notably *Nikesh Tarachand Shah*<sup>9</sup>, and they continue to serve as a crucial guide on bail and Article 21 considerations.

### **REVIEW AND ASSESSMENT OF POLICY**

#### **CONSEQUENCES FOR CIVIL RIGHTS AND DUE PROCESS**

The PMLA's procedural system—including pre-conviction attachment, statement admissibility during ED inquiries, reverse onus provisions, and stringent bail standards—raises important civil rights issues. Pre-conviction property confiscations affect rights to life and property, especially when investigations are drawn on. Requiring prima facie evidence at bail risk while reversing the burden of proof at the adjudicatory level might undermine fundamental criminal law protections, including the presumption of simplicity and little government involvement. The Supreme Court's approval of several of these traits demonstrates judicial regard for legislative anti-money laundering goals as well as a push for procedural safeguards in actual practice.

#### **CONCERNS ABOUT THE CONSTITUTIONALISM OF OVERREACH**

Along with extensive ED powers and restricted disclosure—especially about internal Enforcement Case Information Reports, or ECIRs—the capacity for extended pre-conviction restraint is

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<sup>8</sup> - *Vijay Madanlal Choudhary v. Union of India*, case comment and paragraph analysis, Record of Law, <https://recordoflaw.in/vijay-madanlal-choudhary-v-union-of-india-2022-10-scc/>.

<sup>9</sup> □ *Nikesh Tarachand Shah v. Union of India*, (2017) (case brief and commentary), Law Times Journal, <https://lawtimesjournal.in/nikesh-tarachand-shah-vs-union-of-india/> (summary of Court's reasoning on bail and Article 21).

According to critics, a combination that might lead to abuse—overreach's systematic hazards—  
The major criticism is one of organizational responsibility rather than only doctrine; strong  
preventative steps may be misused in the absence of explicit disclosure requirements, time-bound  
arbitration guarantees or independent supervisory oversight. The Supreme Court's reasonable  
acknowledgment of multiple authorities did not settle these policy questions. Its judgments  
actually empower lower tribunals and implementing bodies to execute operational protections.

### **COMPARE FINDINGS FROM WORLDWIDE AML GUIDELINES (E.G., FATF).**

The FATF's statement of best practices in global AML stresses a balance between effective  
detection, dubious transaction reporting, asset forfeiture authority, and protections for  
proportionality, fair process, and human rights Unlike civil seizure and pre-conviction restraint,  
which are allowed in many common-law jurisdictions, there are often more rigorous procedural  
safeguards in place including impartial financial detective control, strong judicial review,  
disclosure guidelines, and attachment time constraints. Although the goals and tools of the FATF  
coincide with the PMLA in India, policy alignment calls for supporting adjustments like codifying  
limits, enhancing prosecutorial visibility, also on enhancing judicial oversight on pre-conviction  
limitations on property to prevent undue hardship and procedural injustice.<sup>10</sup>

### **CONCLUSION AND SUGGESTIONS**

India has powerful weapons under the Prevention of Money-Laundering Act to combat money  
laundering and uphold international standards. Broad definitions, pre-conviction attachment,  
reversed evidence rules, and specific investigatory capabilities, among other tools, assist in  
fighting financial crimes. Still, if protections are inadequate or deadlines are ambiguous, these  
enforcement authorities risk property rights and due process. Establishing protections like clearly  
justified actions, timeframes for legal processes, and judicial reviews of seizures will help preserve  
the law's legitimacy. little application of reverse-burden regulations and outside enforcement  
monitoring. Implementing these policies lets one balance the objectives of the law with

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<sup>10</sup> FATF, The FATF Recommendations (International Standards on Combating Money Laundering and the Financing  
of Terrorism and Proliferation), as adopted 2012 and updated (accessible consolidated version), Financial Action  
Task Force, <https://www.fatf-gafi.org/en/publications/Fatfrecommendations/Fatf-recommendations.html>.

constitutional rights, therefore enabling quick action against money laundering while guaranteeing fairness and the rule of law.

## **SUGGESTIONS ON HOW TO FIND A COMPROMISE BETWEEN SECURITY AND ENFORCEMENT**

- Law requires defendants to receive extensive disclosure of the facts supporting the preparation of defenses, thereby enabling it. ED's case and any relevant elements of ECIRs<sup>11</sup>, along with significant judicial review, will allow for redaction for security where strictly required.
- Enforcement of statutory time limits for the adjudication of provisional attachments and quick Special Court processes will help to reduce prolonged pre-conviction property loss.
- Proportionality examinations are mandated by courts before attachment is ordered in light of the seriousness of the claimed underlying offence against any possible suffering for the party impacted. real stakeholders as well as third parties
- Create an autonomous supervisory review for ED decisions—either by means of an ombudsman or a parliamentary committee reporting—along with scheduled attachment and confiscation audits.
- Refine the processes of Section 24 to make reverse-burden assumptions relevant only after the prosecution has presented a robust chain of evidence. In order to align evidential changes with procedural justice by scheduling offenses, evidence linking the property:

## **INDIA'S FUTURE PATH FOR ITS AML POLICY**

India should establish a measured AML framework that institutionalizes procedural justice while still keeping enforcement ability. Reforms might include investing in judicial capacity for complex financial hearings, harmonizing industry reporting rules, using targeted financial intelligence tools, and boosting cross-border mutual legal help. Involvement of the judiciary is still essential. To fight money laundering, courts have to keep investigating discretionary authority, asking for adequate

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<sup>11</sup> Enforcement Directorate, “Enforcement Case Information Report (ECIR)” practice notes and public guidance (official ED resources and consolidated Act), Enforcement Directorate (India), <https://enforcementdirectorate.gov.in/> (see Act & Rules and ED public materials).

disclosure, and maintaining time standards. Law helps to safeguard individual liberties as well as public integrity.<sup>i</sup>

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