



# The Indian Journal for Research in Law and Management

Open Access Law Journal – Copyright © 2025

Editor-in-Chief – Dr. Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896

This is an Open Access article distributed under the terms of the Creative Commons Attribution- Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium provided the original work is properly cited.

## DEMYSTIFYING THE PREVENTION OF MONEY LAUNDERING ACT: BETWEEN ENFORCEMENT AND RIGHTS

*Ahana Basu*

### ABSTRACT

Money laundering poses a serious threat to the integrity of financial systems and democratic institutions, especially in developing economies like India. The Prevention of Money Laundering Act, 2002 (PMLA)<sup>1</sup>, enacted in line with India's obligations under the Financial Action Task Force (FATF)<sup>2</sup>, forms the backbone of the country's anti-money laundering regime. This article examines the evolution of the PMLA, analysing its core provisions, enforcement mechanisms, and judicial interpretations through landmark cases such as *Vijay Madanlal Choudhary v. Union of India*<sup>3</sup> and *Nikesh Tarachand Shah v. Union of India*<sup>4</sup>. It critically evaluates the reversal of the burden of proof, stringent bail provisions, and expanding powers of the Enforcement Directorate (ED). The article also explores procedural challenges in prosecuting predicate offences and tracking proceeds of crime in light of emerging threats like cryptocurrency and cross-border flows. It concludes by emphasising the need to balance effective enforcement with constitutional safeguards and global best practices.

### INTRODUCTION

The Evolution of money laundering trace back to ancient China, where merchants routed profits through alternate enterprises to evade state restrictions. The term gained notoriety during the U.S. Prohibition era, with figures like Al Capone allegedly disguising illicit earnings through laundromats. Recognising its global threat, the Financial Action Task Force (FATF)

---

<sup>1</sup> PMLA, No. 15 of 2003, Acts of Parliament, 2002 (India)

<sup>2</sup> Financial Action Task Force (FATF), International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation (The FATF Recommendations), FATF (2012), <https://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%202012.pdf>.

<sup>3</sup> *Vijay Madanlal Choudhary v. Union of India*, (2022) 10 SCC 1.

<sup>4</sup> *Nikesh Tarachand Shah v. Union of India*, (2018) 11 SCC 1.

was formed in 1989 to standardise anti-money laundering measures. India responded with the Prevention of Money Laundering Bill in 1998, which, after parliamentary scrutiny, became law in 2003. The Act came into force on July 1, 2005, marking a critical step in aligning India with global AML frameworks.

Money laundering poses a serious and persistent threat to global financial integrity, national security, and democratic governance. In India, this risk is heightened by a \$1.2 trillion<sup>5</sup> informal economy, tax evasion, and entrenched practices such as hawala networks, which bypass regulated channels to the movement of approximately \$10–15 billion annually. These shadow financial systems, coupled with widespread unaccounted wealth estimated at 10–12% of the nation's GDP, create fertile ground for laundering illicit proceeds from crimes including terrorism, trafficking, and corruption. To counter this systemic threat, India enacted the Prevention of Money Laundering Act (PMLA), 2002, which came into effect from July 1<sup>st</sup> 2005. The Act was a significant legislative response influenced by global obligations, particularly under the Financial Action Task Force (FATF) recommendations. It criminalised the act of laundering money, defined mechanisms for attaching and confiscating tainted assets, and empowered enforcement bodies like the Enforcement Directorate (ED)<sup>6</sup> and the Financial Intelligence Unit – India (FIU-IND)<sup>7</sup> to investigate and prosecute offenders. However, despite FATF-compliant reforms and frequent amendments such as those addressing cryptocurrency risks in 2023, the law's enforcement continues to face structural and procedural challenges. Only a minuscule 0.2% of suspicious transaction reports (STRs) lead to conviction, and India lags behind global asset confiscation benchmarks. The jurisdiction of special courts, stringent bail restrictions, and the reversal of the burden of proof under Section 45 of the PMLA have drawn significant judicial scrutiny.

The process of money laundering usually unfolds in three stages :

1. **Placement:** This is the initial stage where illicit cash is introduced into the financial system, often by depositing it into banks or routing it through businesses like casinos or car dealerships to avoid suspicion.

---

<sup>5</sup> I.J.L.M.H., The Evolution of the Prevention of Money Laundering Act, <https://ijlmh.com>

<sup>6</sup> Enforcement Directorate, Ministry of Finance, Government of India, <https://enforcementdirectorate.gov.in>

<sup>7</sup> Financial Intelligence Unit – India (FIU-IND), Ministry of Finance, Government of India, <https://fiuindia.gov.in>

2. **Layering:** This stage involves complex layers of financial transactions such as moving money between accounts, investing in assets, or using shell companies to obscure the money trail and break the connection with the original crime.
3. **Integration:** The final stage sees the laundered money entering the legitimate economy. It is invested in real estate, luxury goods, or other lawful ventures, allowing criminals to use the funds freely under the guise of legality.

These steps form a global modus operandi, and the Indian framework under the PMLA attempts to disrupt each phase to control the inflow and outflow of illicit financial activity.

### **PREVENTION OF MONEY LAUNDERING ACT, 2002**

The Prevention of Money Laundering Act, 2002 (PMLA) represents India's most robust legislative attempt to address the long-standing challenge of money laundering. Before its enactment, India relied on a patchwork of laws such as the Indian Penal Code, 1860 (IPC)<sup>8</sup>, the Code of Criminal Procedure, 1973 (CrPC)<sup>9</sup>, the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act)<sup>10</sup>, the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (COFEPOSA)<sup>11</sup>, and the Benami Transactions (Prohibition) Act, 1988<sup>12</sup>, to deal with economic and financial offences. While these statutes addressed elements of financial crime, none specifically targeted the process of money laundering itself, nor did they provide a comprehensive mechanism for asset seizure, financial surveillance, and international cooperation. The PMLA was a response to growing international pressure, especially following India's commitment to the Financial Action Task Force (FATF) recommendations and the United Nations General Assembly's 1998 Political Declaration urging member states to develop anti-money laundering legislation. It was introduced in Parliament on 4 August 1998 and, after review by the Standing Committee on Finance, passed in both Houses.

### **I. KEY PROVISIONS**

#### **1. Criminalisation of Money Laundering**

- **Section 3:** Defines money laundering as a criminal offence. It prohibits direct or indirect involvement in activities connected with the proceeds of crime.

---

<sup>8</sup> The Indian Penal Code, No. 45 of 1860, India Code (1860).

<sup>9</sup> The Code of Criminal Procedure, No. 2 of 1974, India Code (1974).

<sup>10</sup> The Narcotic Drugs and Psychotropic Substances Act, No. 61 of 1985, India Code (1985).

<sup>11</sup> The Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, No. 52 of 1974, India Code (1974).

<sup>12</sup> The Benami Transactions (Prohibition) Act, No. 45 of 1988, India Code (1988).

- **Section 4:** Prescribes penalties for money laundering, including imprisonment ranging from 3 to 10 years and monetary fines.

## **2. Preventive and Financial Measures**

- **Section 12:** Mandates banks and financial institutions to maintain records of transactions for a minimum of 5 years and report suspicious transactions to the FIU-IND (Financial Intelligence Unit – India).
- **Section 13:** Empowers regulatory bodies to conduct audits and inspections to ensure compliance.
- **Section 14:** Protects financial institutions and individuals reporting suspicious activities from legal repercussions if done in good faith.

## **3. Confiscation and Seizure of Proceeds of Crime**

- **Sections 5–8:** Empower authorities to attach, seize, and confiscate property related to money laundering even before the legal process is concluded.
- **Section 9:** Declares that confiscated assets become government property if found linked to illicit activities.
- **Section 10:** Mandates individuals to disclose ownership details of properties when required.

## **4. Strengthening International Cooperation**

- **Section 56:** Allows the government to enter into international agreements for the exchange of information and legal cooperation.
- **Section 57:** Authorises the enforcement of foreign court orders related to confiscation.
- **Section 58:** Facilitates mutual legal assistance in cross-border money laundering cases.

## **5. Ensuring Compliance with Global AML Standards**

This section complements the FATF's (Financial Action Task Force) AML and CFT recommendations and mandates compliance by financial institutions and government bodies.

## **6. Preventing Terror Financing**

- **Section 17:** Authorises authorities to search and seize properties suspected to be connected with terror financing.
- **Section 18:** Allows action on intelligence reports and surprise inspections.

- **Section 20:** Permits immediate freezing of bank accounts suspected of being linked to terrorist activities.

#### **7. Burden of Proof and Presumptions**

- **Section 24:** Introduces the reverse burden of proof, the accused must prove that the assets in question are not involved in money laundering.
- **Section 23:** Establishes a presumption of guilt unless proven otherwise where proceeds of crime are found.

#### **8. Adjudicating Authority and Appellate Mechanisms**

- **Section 6:** Establishes the Adjudicating Authority to determine whether attached properties are involved in money laundering.
- **Section 25:** Provides for an Appellate Tribunal to hear appeals against decisions of the Adjudicating Authority.
- **Section 42:** Grants a further right to appeal to the High Court on questions of law.

### **II. KEY AUTHORITIES**

- 1. Enforcement Directorate (ED):** The primary agency responsible for investigating and prosecuting money laundering cases and has the power to conduct searches, seizures and arrests under PMLA provisions.
- 2. Financial Intelligence Unit – India (FIU-IND):** Collects, analyses and discriminates information on suspicious financial transactions and works in coordination with international agencies to prevent cross-border money laundering.
- 3. Adjudicating Authority:** It is responsible for deciding whether a property is involved in money laundering.
- 4. Appellate Tribunal:** This provides a mechanism for appealing decisions made under PLA provisions and ensures fairness in the enforcement of AML measures.

Through the coordination of these agencies and provisions, PMLA ensures that financial crimes are effectively investigated, prosecuted, and penalised.

### **INTERPRETATION AND JUDICIAL EVOLUTION**

#### **A. Proceeds of Crime**

The definition of “proceeds of crime” under Section 2(u) of the PMLA has been central to judicial discourse. In *Vijay Madanlal Choudhary v. Union of India*,

the Supreme Court upheld the expansive interpretation of proceeds of crime. This ruling affirmed the Enforcement Directorate's (ED) power to attach and confiscate assets beyond India's borders, raising concerns over extraterritorial overreach and evidentiary thresholds.

#### **B. Reverse Burden of Proof and Bail Jurisprudence**

Section 24 of the PMLA introduces a reverse burden of proof, shifting the onus onto the accused to prove that the assets in question are not tainted. This, coupled with the stringent twin conditions for bail under Section 45, was first struck down in *Nikesh Tarachand Shah v. Union of India*, where the Court found the provision violative of Articles 14 and 21 due to its arbitrary classification and procedural unfairness. In response, Parliament amended Section 45 in 2018 and 2019 to cure the constitutional defect.

#### **C. Deviation from Traditional Criminal Jurisprudence**

The PMLA departs significantly from the principles of conventional criminal law. The reversal of the presumption of innocence, the lack of judicial oversight in search and seizure operations under Sections 17 and 18, and the stringent bail regime under Section 45 collectively undermine due process protections enshrined under Articles 14, 21, and 22<sup>13</sup> of the Constitution. These provisions have drawn criticism for prioritising enforcement efficacy over individual liberty.

#### **D. Expanding Powers of the Enforcement Directorate**

The ED, vested with vast investigative powers, operates with minimal external oversight, raising accountability concerns. Critics argue that the PMLA has become a tool for political targeting, especially in the absence of mandatory FIRs or prior judicial scrutiny. Recent judicial observations in *Pankaj Bansal v. Union of India*<sup>14</sup> questioned the procedural lapses by the ED, particularly regarding non-compliance with arrest memo guidelines laid down in *Arnesh Kumar v. State of Bihar*<sup>15</sup>.

---

<sup>13</sup> India Const. art. 14,21,22

<sup>14</sup> *Pankaj Bansal v. Union of India*,(2023) SCC OnLine SC 1246

<sup>15</sup> *Arnesh Kumar v. State of Bihar* (2014) 8 SCC 273

## **MONEY LAUNDERING CASES IN INDIA**

India's tryst with money laundering is marked by numerous high-profile cases that exposed the deep nexus between financial fraud, corruption, and systemic loopholes. The following major cases have significantly influenced the country's legislative and regulatory landscape:

- 1. Telgi Stamp Paper Scam (2003)<sup>16</sup>** : Abdul Karim Telgi orchestrated the largest counterfeit stamp paper racket across several states using a wide nexus of officials, bankers, and hawala operators. It spotlighted the vulnerabilities of the financial system and helped usher in stronger anti-money laundering measures.
- 2. Hawala Scandal (2005)<sup>17</sup>**: This case revealed the use of illegal hawala channels for political funding and tax evasion, implicating several bureaucrats and businessmen. It showed how the informal transfer system undermines regulatory authorities and national security.
- 3. 2G Spectrum Scam (2010)<sup>18</sup>**: This is arguably one of the biggest corruption cases in India, which featured the undervalued allocation of telecom licenses, resulting in large losses for the exchequer. Investigations revealed instances of kickbacks routed through shell companies, implicating many under the PMLA.
- 4. Panama Papers Leak (2016)<sup>19</sup>**: Following the leak of 11.5 million documents from Panamanian law firm Mossack Fonseca, several Indian entities were investigated for owning offshore companies and laundering black money.
- 5. Nirav Modi–PNB Scam (2018)<sup>20</sup>** : Nirav Modi, along with his uncle Mehul Choksi, allegedly defrauded Punjab National Bank of over ₹13,000 crore through fake Letters of Undertaking. The Enforcement Directorate (ED) launched money laundering charges under PMLA.

---

<sup>16</sup> VASUDHA MUKHERJEE, "Scam 2003: Who was Abdul Karim Telgi, and what was the Stamp Paper Scam?" (2023), [https://www.business-standard.com/india-news/scam-2003-who-was-abdul-karim-telgi-and-what-was-the-stamp-paper-scam-123080800309\\_1.html](https://www.business-standard.com/india-news/scam-2003-who-was-abdul-karim-telgi-and-what-was-the-stamp-paper-scam-123080800309_1.html)

<sup>17</sup> India's underground money movers, BBC News (Feb. 16, 2005), <https://www.bbc.com>.

<sup>18</sup> HT correspondent, "2G spectrum allocation scam: A timeline of how the case progressed", <https://www.hindustantimes.com/india-news/2g-spectrum-allocation-scam-a-timeline-of-how-the-case-progressed/story-LM3YfIZiC9BEQlafiPRHmL.html>

<sup>19</sup> Ritu Sarin & Jay Mazoomdaar, Panama Papers expose offshore holdings of over 500 Indians, The Indian Express (Apr. 4, 2016), <https://indianexpress.com>.

<sup>20</sup> Nirav Modi scam explained, The Economic Times (Feb. 2018), <https://economictimes.indiatimes.com>.

6. **2019 Amendments to the PMLA**<sup>21</sup>: These amendments expanded the scope of “proceeds of crime” and empowered ED to conduct search and seizure without prior court permission, showing the state’s evolving stance on tightening financial scrutiny.
7. **Cryptocurrency Concerns**: As India explores crypto regulation, authorities worry about its misuse for laundering funds. The ED has investigated several exchanges for possible violations of PMLA, indicating the increasing relevance of digital currencies in financial crimes.<sup>22</sup>

### **INDIA’S GLOBAL ENGAGEMENT UNDER THE PMLA**

India’s anti-money laundering (AML) regime under the Prevention of Money Laundering Act, 2002 (PMLA) has evolved significantly in response to both domestic challenges and global expectations. While originally enacted to combat home-grown financial crimes, the PMLA has progressively aligned with international standards, especially those mandated by the Financial Action Task Force (FATF), which has issued 40 recommendations forming the backbone of global AML regimes. India’s legal amendments, such as the 2023 inclusion of cryptocurrencies and virtual digital assets under regulatory oversight, mark a pivotal move toward aligning with international efforts to combat digital finance risks. Sections 56, 57, and 58 of the PMLA enable India to enter into reciprocal arrangements with other countries for mutual legal assistance, information exchange, and confiscation of proceeds of crime held abroad. This underscores India’s commitment to transnational cooperation, vital in a world where illicit money flows seamlessly across borders.

However, when compared to the multi-tiered enforcement mechanisms of the U.S. and the European Union, which feature real-time inter-agency coordination, integrated data analytics, and advanced surveillance capabilities, India faces institutional challenges. These include fragmented inter-agency coordination, gaps in technological adaptation, and inconsistent sectoral guidelines. Although bodies

---

<sup>21</sup> How govt expanded scope of PMLA through 2019 amendment, The Print (July 25, 2022), <https://theprint.in>.

<sup>22</sup> Ruchika Chitravanshi, Crypto exchanges under ED scanner for PMLA violations, Business Standard (Sep. 2022), <https://business-standard.com>.

like FIU-IND, SEBI, and RBI have made progress by issuing sector-specific AML protocols, India still lags in operational efficiency, especially in tackling emerging threats such as cryptocurrency misuse and cross-border laundering.

Therefore, rather than viewing PMLA solely in comparison with foreign regimes, a more productive framing is to assess its collaborative responsiveness, its capacity to adapt, engage, and align with global systems while maintaining constitutional safeguards. As global financial crimes grow more sophisticated, India's AML architecture must not only mirror best practices but actively participate in shaping them through reciprocal legal cooperation and policy harmonisation.

### **BALANCING ENFORCEMENT WITH RIGHTS**

In the urgency to combat economic crime, the Prevention of Money Laundering Act, 2002 (PMLA) has evolved into a formidable enforcement instrument. Yet, this evolution has featured constitutional tension, particularly in areas where executive powers have grown unchecked. While the intent of the legislation is undoubtedly justified, its implementation often raises troubling questions around due process, fair trial rights, and judicial oversight.

The expansive powers of the Enforcement Directorate (ED), from attaching properties and conducting searches to arresting without an FIR or prior court sanction, must be seen in light of Articles 14, 21, and 22 of the Constitution. These powers, though validated in *Vijay Madanlal Choudhary*, remain susceptible to misuse, especially in politically sensitive cases. A dedicated parliamentary or judicial oversight body could serve as a constitutional buffer, ensuring that the agency remains accountable and its discretion is not absolute.

Furthermore, the attachment and confiscation of property, often done pre-trial, can deprive individuals and businesses of fair representation. Mandatory judicial scrutiny at an early stage through fast-tracked hearings before special courts can restore balance to this asymmetry. Procedural safeguards must also be reinforced during searches and seizures, as the lack of transparency and absence of prior judicial approval allow for invasive actions with limited recourse. However, introducing standardised protocols, timely judicial review, and recording obligations can significantly reduce arbitrariness.

Giving extraordinary provisions a fixed lifespan, subject to renewal only after legislative or judicial appraisal, can ensure that what begins as an exception does not become the norm.

Fundamentally, effective enforcement cannot be detached from constitutional fidelity. If India's AML regime is to be both strong and just, it must equally commit to accountability, transparency, and restraint. Enforcement must not come at the cost of the very rights the Constitution seeks to protect.

### **CONCLUSION**

The PMLA embodies India's ambition to combat financial crime with credibility and rigour. Its promise lies in the creation of a structured, globally aligned legal framework capable of confronting the complex realities of money laundering. Over the years, its reach has grown, its mechanisms have become sharper, and its role in national and international finance has expanded. But with this power has come opacity, overreach, and a gradual erosion of procedural clarity. The reversal of fundamental protections, unchecked executive discretion, and limited judicial intervention have raised serious concerns not about the law's purpose, but about its method. As India continues to align with FATF standards and strengthen global cooperation, it must not forget the Constitutional ethos it has built. The future of the PMLA must involve recalibration towards proportionality, procedural fairness, and institutional transparency. Enforcement and rights should not be competing interests but complementary pillars of democratic governance. India stands at a juncture where it must demonstrate that it can fight financial crime without compromising liberty. That is not just a legal responsibility, it is a constitutional promise.