India and Anti Money Laundering Measures: A Critical Study of Legislation & Its Enforcement

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ABSTRACT
Money laundering is the process that criminals use to erase the connection between the crime and the money concealing the criminal source of the funds. The money laundering process has three stages viz., **(a) placement, (b) layering and (c) integration**. In the initial **placement stage**, the launderer produces its legal profits into financial system by breaking up large amounts of cash into unsuspicious smaller sums. In the **layering stage**, the launderer engages in a series of conversions or movements of the funds to distance those from their original source. After successful processing of criminal profits through first two phases, the launderer moves those to **integration stage**, so that the funds enter the legitimate economy. Money laundering has a very bad impact not only on the national financial infrastructure but it also crumbles the international financial system.
This paper aims to analyse the current state of money laundering laws in India, offer a critical assessment of the enforcement machinery, investigate whether the laws as written correspond to the actual situation on the ground, and determine the amount of work needed to implement the necessary changes so that the legislation can be effectively enforced.

Keywords: PMLA, ED, Money laundering

Introduction:
"Capital as such is not evil; it is its wrong use that is evil. Capital in some form or other will always be needed.[1]"

- Mohandas K. Gandhi

This line accurately capture the function of money in society: it is the fundamental building block for society's smooth operation, and a means of exchange for commodities and services. If money is in the wrong hands, it may be used for unimaginable crimes, yet in its purest form, money is not bad. Since money's main purpose is to be a means of trade, it is accepted without inquiry when used to pay for products or services or to settle debts in full. Money also influences the core nature of human beings, as it can be best described by these lines:
"Sir, money, money, the most charming of all things; money, which will say more in one moment than the most elegant lover can in years. Perhaps you will say a man is not young; I answer he is rich. He is not genteel, handsome, witty, brave, good-humoured, but he is rich, rich, rich, rich, and rich— that one

[1] Mohandas K. Gandhi (1869–1948), Indian political and spiritual leader. Harijan (28 July 1940)

word contradicts everything you can say against him."[2]

Also, money has been associated with evil from the dawn of time, and the reason behind is the greed of humans to acquire more and more of it by any means necessary, people go to great lengths to acquire money. But, in modern times when everything is becoming digitized and there are statutes and regulations for accounting and controlling for the generation of money, the issue does not end at acquiring it by illegal means, as it can be traced back to the crime and will link the criminal to the said crime from which the money is generated and will make the wrongdoer liable for punishment. Therefore, criminals have came up with many ingenious ways to hide the illicit origin of money and in nutshell this process of hiding the illicit money and introducing it as legally obtained one, is known as money laundering.

The act of converting or "laundering" money that was gained unlawfully to make it seem as though it came from a legitimate source is known as money laundering. Launderers all across the world use money laundering to cover up related crimes including extortion, terrorism, and the trafficking of drugs and weapons. According to Robinson "Money laundering is called what it is because that perfectly describes what takes place – illegal, or dirty, money is put through a cycle of transactions, or washed, so that it comes out the other end as legal, or clean money. In other words, the source of illegally obtained funds is obscured through a succession of transfers and deals in order that those same funds can eventually be made to appear as legitimate income."

"The conversion of property, knowing that such property is derived from serious crime, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the committing of such an offence or offences to evade the legal consequences of his action, and the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, knowing that such property is derived from serious crime,"[3] is how the European Community Directive's Article 1 defines "money laundering."

Therefore, money laundering is not an independent crime; rather, it is based on another crime, known as a predicate offence, the profits of which are the source of the money laundering. From the legal point of view, the Achilles' heel in defining and criminalizing money laundering relates to the so-called 'predicate offences' understood as the criminal offences which generated the proceeds thus making laundering necessary. Thus, what precisely qualifies as money laundering, as well as what behaviors and individuals are subject to prosecution, mostly depend on what qualifies as a predicate crime for the purpose of money laundering.[4]

The Process of Money Laundering:

Money laundering is not a single act, but rather a process that is completed in three main phases, as listed below:

1. Placement: "Placement" refers to the physical disposal of large sums of money obtained via unlawful conduct. This is the initial step in the money laundering process, and the ultimate goal of this phase is to remove the cash from the point of acquisition in order to prevent discovery by authorities. This is accomplished by putting illicit proceeds into the legal financial system by transferring the funds into a bank account opened in the names of unidentified people or entities.[5]

[2] Henry Fielding (1707–54), English novelist, dramatist. Mariana, in The Miser, act 3, sc. 7, the Columbia Dictionary of Quotations.
[3] EC Directive on Prevention of the use of the Financial System for the Purpose of Money Laundering, 1991
[4] Brigitte Unger, The Scale and Impacts of Money Laundering, UK: Edward Elgar Publishing, 2007, p.16
[5] https://money.howstuffworks.com/money-laundering.htm#pt3

2. Layering: "Layering" is the process of separating illegal earnings from their source through intricate financial transaction layers. Layering offers anonymity while hiding the audit trail. This is accomplished by shifting funds to offshore bank accounts held in the names of shell corporations and by buying valuable commodities like precious stones and relocating them to other countries. These days, Electronic Funds Transfer, or EFT, is a blessing for stacking exercises like these. To launder money, a variety of strategies are used, including correspondent baking, low- or no-interest loans, money exchange offices, back-to-back loans, phony sales and acquisitions, trust offices, and, more recently, Special Purpose Vehicles (SVPs).[6]
3. Integration: The term "integration" describes the process of reintroducing the proceeds of money laundering back into the economy in a way that allows them to reappear as regular business funds in the financial system. Usually, the money launderers establish anonymous organisations in countries where confidentiality is assured in order to achieve this. New business models provide a framework for integration exercises. With only a webpage, an individual may now launch a business and prove their revenues from the webpage to convert their illicit funds to lawful ones. Other options include investing in the stock markets, buying real estate, working in the catering business, and trading in gold and diamonds.[7]
In its most basic form, money laundering is the process of creating money from Source an appearance consistent with Source B.

Techniques of Money Laundering:
Investigating and evading money laundering appears to cause ongoing modifications in behaviour in both the money launderers and the authorities.[8] In response to regulation, one might see altered money laundering practices. Money launderers are always looking for new ways to get around the law. Economies with emerging or expanding financial centres that lack proper regulation are more susceptible than those with developed financial centres, which are required to have put in place extensive anti-money-laundering policies. There are several tactics that may be applied at each of the three stages of capital laundering. While it is truly impossible to include every money laundering exercise approach, the following are some examples for comprehension:
1. Hawala – A different or parallel remittance mechanism is called Hawala. It exists and functions outside of or in conjunction with "traditional" banking and financial channels. It was created in India prior to the adoption of western banking techniques, and it is presently one of the most widely utilised remittance systems globally. The money in hawala networks is not transferred physically. An example of a common hawala transaction would be when an Indian resident in the United States was conducting business and wanted to transfer money to his family in India. The individual might choose to transmit money via the hawala system or the official banking route. The commission in Hawala is lower than what banks charge, and establishing an account or visiting the bank is hassle-free.[9]
2. Structuring Deposits – This technique, which is often referred to as smurfing, comprises dividing big sums of money into smaller, less suspicious quantities. This lesser sum must fall below $10,000 in the US, which is the threshold at which US banks are required to notify the government of the transaction. Next,

[6] ibid
[7] ibid
[8] Brigitte Unger, The Scale and Impacts of Money Laundering, UK: Edward Elgar Publishing, 2007, p.107
[9] https://www.unodc.org/documents/data-and-analysis/AOTP/Hawala_Digital.pdf

either a single individual over a long period of time or a group of people (known as smurfs) transfer the money into one or more bank accounts.[10]

3. Third-Party Cheques – using banker's drafts or counter checks made on multiple institutions, which are then cleared through a variety of third-party accounts. The profits of crime are frequently used to acquire traveler's checks and third party checks. It is challenging to prove the connection between them and the source money since they are negotiable in many nations.

4. Insurance Sector – When it comes to financial services, the insurance industry is comparatively less troubled than banks and other industries. On the other hand, there has also been a steady rise in insurance-related money laundering. Insurance fraud can be of two types: internal or external. Reinsurance fraud, renting asset scams, and agent/broker premium diversion are examples of internal money laundering methods. External methods of money laundering include fraudulent insurance claims, unlicensed or offshore Internet businesses, staged car accidents, and fraudulent visa and senior settlement agreements[11].

5. Cyber Crime – These days, one must deal with hybrid crimes, or crimes having several characteristics. Money laundering and terrorist operations are increasingly linked to cybercrimes such credit card fraud, identity theft, and unauthorised email access. Nowadays, a lot of money is kept digitally. You may now transfer money to several accounts via online and electronic channels. This convergence makes it more difficult to address many concerns at once.

The list is vast, and many methods cannot be simply linked to a single laundering process. Every time a crime is reported, the strategy is adjusted to take into account the earlier discovery. The authorities seem to be nothing more than readers of study papers, while the money-launderers seem to be dedicated researchers.

Negative Effects of Money Laundering:

Unger identified 25 distinct consequences of money laundering in a thorough analysis of the literature on the subject.[12] According to the gestation time in which it manifests, Unger divides the impacts of money laundering into two main categories: short-term effects [13]and long-term effects[14] . Through the corruption of authorities and legal systems, money laundering poses a threat to national governments as well as international relations between them. By driving away the private sector and undermining free enterprise, it also jeopardises financial stability since lawful companies are unable to compete with the cheaper rates that companies employing laundered cash can provide for goods and services.[15]

[10]https://money.howstuffworks.com/money-laundering.htm#pt3

[11] https://fiuindia.gov.in/pdfs/downloads/IRDAMasterCircular.pdf

[12] Unger, see supra note 8

[13] Ibid, this typically occurs within a year or two. These include the following: lower or higher revenues for the public sector; changes in the demand for money, exchange rates, and interest rates; increased volatility of interest and exchange rates; greater availability of credit; higher capital inflows; distortion of economic statistics; and losses to the victim and gains to the perpetrator of a crime; distortion of consumption and saving; distortion of investment; artificial price increases; unfair competition; and changes in imports and exports.

[14] Ibid, this typically occurs in four years and poses a danger to privatisation; shifts in foreign direct investment; financial sector risk, solvability, and liquidity; financial sector earnings; standing of the financial industry; corruption and bribery; illicit business contaminates lawful business; adverse or advantageous impact on growth rates, threatens political institutions, thwarts the objectives of foreign policy, raises crime, and fuels terrorism.

[15] Reena Ray, KYC: Anti-Money Laundering Act and Banks, Alagiri, Dhandapani, Ed. Money Laundering: Issues and Perspectives, Hyderabad: ICFAI University Press, 2006

1. Terrorism – Terrorism is a terrible thing that impacts everyone. Money is obviously a necessary component for carrying out these attacks[16]. One significant way that terrorism is funded is through money laundering. Terrorists have demonstrated flexibility and shrewdness in obtaining the money they need. Terrorist groups obtain money from respectable sources, such as self-financing by the terrorists themselves or the misuse of charity organisations or respectable corporations. Additionally, financing for terrorists comes from a range of illicit enterprises, from low-level crimes to organised fraud or drug smuggling, as well as from state sponsors and operations in failed nations and other safe havens. Terrorists employ a broad range of techniques to transfer money both inside and between companies, such as the banking industry, the actual transfer of cash by couriers, and the exchange of items. Fund transfers by terrorists have also been concealed through the use of charities and other remittance networks.[17]

2. Threat to Banking System – As they provide a range of services and tools that may be used to hide the source of money, banks have grown to be a prominent target of financial crime and money laundering activities worldwide. In order to accomplish their goal, money launderers try to get bankers to let down their guard with their sophisticated, intelligent, and charismatic conduct. The challenge facing bankers in the context of money laundering is to separate the transactions that represent regular business and banking activity from the irregular / suspicious transactions, even though central banks around the world are enforcing norms for record keeping, reporting, account opening, and transaction monitoring in order to check the incidence of money laundering. Typically, money launderers use this channel in two steps to conceal the source of the funds: first, they introduce and legitimise their illicitly obtained funds into the financial system; second, they use a series of transactions to remove the funds from their illegal source once they are inside the banking system. The banks and other financial organisations that facilitate the laundering of "dirt money" unintentionally fall prey to this crime.

3 Threat to Economic and Political Stability – The stability of the economy and politics may be threatened by the influx and occasionally saturation of black money into reputable financial institutions and national accounts. According to an IMF working paper, money laundering has a wide range of effects on financial behaviour and macroeconomic performance, including policy errors brought on by measurement errors in national account statistics, volatility in exchange and interest rates as a result of unexpected cross-border fund transfers, the threat of monetary instability as a result of unsound asset structures, issues with tax collection and public expenditure allocation as a result of income misreporting, and many more.[18]

Anti Money Laundering Measures In India:

The Prevention of Money Laundering Act, 2002 (hereinafter known as PMLA, 20002) was enacted in 2003 and went into effect on July 1, 2005, with the goal of preventing money laundering and providing for the attachment, seizure, and confiscation of property obtained or derived, directly or indirectly, from or involved in money laundering, as well as matters related to or incidental to money laundering. Money laundering is no longer a problem that is limited to a country's geopolitical borders. It is a worldwide threat that no single country can address alone. As a result, India has joined the Financial Action Task Force (FATF) and the Asia Pacific Group on Money Laundering, both of which are dedicated to the effective

[16]Financial Action Task Force Report on Terrorist Financing, 29th February 2008, available at https://www.fatf-gafi.org/content/dam/fatf-gafi/reports/FATF%20Terrorist%20Financing%20Typologies%20Report.pdf
[17] ibid
[18] Gururaj, B.N., Commentaries on FEMA, Money Laundering Act and COFEPOSA, Nagpur: Wadhawa, Ed. 2005

implementation and enforcement of internationally recognised standards against money laundering and terrorism financing.

The anti-money laundering legislative framework of the country has been evaluated by the Financial Action Task Force (FATF), an inter-Governmental body, for development and promotion of policies to combat money laundering and terrorist financing.[19] A comprehensive evaluation of the country's legislative and administrative framework for prevention of money laundering and countering financing of terror was made by the FATF in November/December, 2009. The mutual evaluation report prepared after the comprehensive evaluation identified several shortcomings in the existing administrative and legislative framework to handle activities related to prevention of money laundering. An action plan was prepared by the Government of India, which was submitted to FATF.[20] Money laundering is defined as an offence in **Section 3** of the PMLA 2002 as follows:

Offence of Money-Laundering – 'Anyone who directly or indirectly attempts to engage in, knowingly assists, or is actually involved in any process or activity involving the proceeds of crime, including their concealment, possession, acquisition, or use, and projecting or claiming them as untainted property, is guilty of money laundering.'

And by amendment of 2019 explanation is also added [Explanation.—For the removal of doubts, it is hereby clarified that,— (i) a person shall be guilty of offence of money-laundering if such person is found to have directly or indirectly attempted to indulge or knowingly assisted or knowingly is a party or is actually involved in one or more of the following processes or activities connected with proceeds of crime, namely:— (a) concealment; or (b) possession; or (c) acquisition; or (d) use; or (e) projecting as untainted property; or (f) claiming as untainted property, in any manner whatsoever; (ii) the process or activity connected with proceeds of crime is a continuing activity and continues till such time a person is directly or indirectly enjoying the proceeds of crime by its concealment or possession or acquisition or use or projecting it as untainted property or claiming it as untainted property in any manner whatsoever.][21]

This section refers to the phrase "proceeds of crime," which is defined as follows in **Section 2 (1) (u)** of the PMLA, 2002:

Proceeds of crime means ,'any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property 3 [or where such property is taken or held outside the country, then the property equivalent in value held within the country] [or abroad]; '

And by amendment of 2019 explanation is also added [Explanation.—For the removal of doubts, it is hereby clarified that "proceeds of crime" include property not only derived or obtained from the scheduled offence but also any property which may directly or indirectly be derived or obtained as a result of any criminal activity relatable to the scheduled offence;][22]

- **Punishment for money-laundering –** The offence of money laundering is punishable under **Section 4** of the PMLA 2002 which reads as under:

"Whoever commits the offence of money-laundering shall be punishable with rigorous imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.

[19]Aldridge Peter: MONEY LAUNDERING LAW: FORFEITURE CODIFICATION & CIVIL RECOVERY 14(2003).
[20]FATF *available at* www.fatf.org
[21] The Prevention of Money-Laundering Act, 2002,S.3 Explanation
[22] The Prevention of Money-Laundering Act, 2002,S.2(1)(u)

Provided that where the proceeds of crime involved in money laundering relates to any offence specified under paragraph 2 of Part A of the Schedule, the provisions of this section shall have effect as if for the words "which may extend to seven years", the words "which may extend to ten years" had been substituted. This means that offence of money laundering as defined in Section 3 and punishable under Section 4 of the PMLA 2002 is related or dependent upon the commission of another offence, which we refer as Predicate Offences. "

As a result, every planned offence is a predicate offence, whose commission is required before any money laundering investigation can begin.

- **Constitutional Validity of S. 2 (1) (u) PMLA-**

The constitutional validity of Section 2 (1) (u) of PMLA which defines 'proceeds of crime' expansively to include property or its value, derived or obtained, directly or indirectly as a result of a criminal activity relating to scheduled offences even in the hands of a person who has no knowledge or nexus with such criminal activity allegedly committed by another was challenged before the Andhra Pradesh High Court as violative of Articles 14, 20, 21 and 300-A of the constitution as it also affects the innocent persons, in B. Rama Raju v. Union of India and Others. [23]The purpose of the PMLA, according to the Andhra Pradesh High Court, is to prevent money laundering and related activities, as well as the confiscation of "proceeds of crime" and the legitimization of money earned through illegal and criminal activities through investment in moveable and immovable properties. As a result, the term "proceeds of crime" has been interpreted broadly to meet this goal, therefore Section 2 (1) (4) of the PMLA, 2002 is constitutionally legitimate.

- **Investigation of a Money Laundering Offense:**

Under their respective Acts, agencies such as the Police, Customs, Securities Exchange Board of India (SEBI), Narcotic Control Board (NCB), and Crime Investigation Bureau (CBI) investigate the predicate offences. Money laundering, on the other hand, is examined by the **Directorate of Enforcement Officers**. These officers also have the authority to file for property attachment and begin money laundering prosecutions in designated special courts. The Central Government is in charge of enforcing the PMLA. The Act expressly states that no police officer may investigate an offence under the Act unless the Central Government has formally authorised it. [24]

As a result, the Enforcement Directorate has sole authority to investigate offences under Section 4 of the PMLA. When there is no particular allegation of money laundering, however, the offences listed in the schedule can be probed by investigators other than the Enforcement Directorate, the Supreme Court stated this in Binod Kumar v. State of Jharkhand and Others[25]. The PMLA, 2002, establishes a number of phases in the investigation of a money laundering offence, the most important of which, in connection to proceeds of scheduled offences, are:

1. Attachment of Proceeds of Crime (S.5)
2. Survey (S.16)
3. Search Seizure and Freezing (S.17)

[23]MANU/AP/0125/2011: [2011] 64, compcas 149 (AP). See also Attorney General of India and Others v. Amritlal Prajivandas and Others, (1994) 5 SCC 54(India).
[24]I The Prevention of Money Laundering Act, 2002., S. 45 (1-A)
[25] 2011 (3) SCC 463

4. Persons Search (S.18)
5. The Authority to Arrest (S.19)
6. Property Retention (S.20)
7. Record Retention (S.21)

These all powers are given to Enforcement Directorate under the Act to properly handle the investigation and to collect all the evidence required for the trial of money laundering cases and bring offender to justice.

- **Bail under the PMLA (Section 45 (1)):**

S. 45 (1) of the PMLA includes a special clause relating the grant of bail, which reads as follows:
(1) [Notwithstanding anything in the Code of Criminal Procedure, 1973 (2 of 1974), no person accused of an offence under this Act shall be released on bail or on his own bond unless—]
(i) the Public Prosecutor has been given the option to object to the release request;
(ii)When the Public Prosecutor opposes the application, the court finds that there are reasonable grounds to believe he is not guilty of the crime and that he would not commit another crime while on bail:
If the special court orders it, a person under the age of sixteen, a woman, or a sick or infirm person may be released on bail:
The Special Court shall not take cognizance of any offence punishable under section 4 unless it receives a written complaint from one of the following:
(i)the Director;
(ii)any officer of the Central Government or State Government authorised in writing in this behalf by the Central Government by a general or special order made in this behalf by that Government; or
[(1A)Notwithstanding anything in the Code of Criminal Procedure, 1973(2of1974), or any other provision of this Act, no police officer shall investigate an offence under this Act unless the Central Government has specifically authorised it by a general or special order, and only under the conditions that may be prescribed.]

(2) The restrictions on bail imposed by subsection(1) are in addition to any restrictions imposed by the Code of Criminal Procedure, 1973 (2of1974) or any other law in force at the time. Explanation.—For the removal of doubts, it is clarified that the expression "Offences to be cognizable and non-bailable" shall mean and shall be deemed to have always meant that all offences under this Act shall be cognizable offences and non-bailable offences notwithstanding anything to the contrary contained in the Code of Criminal Procedure, 1973 (2 of 1974), and accordingly the officers authorised under this Act are empowered to arrest an accused without warrant, subject to the fulfillment of conditions under section 19 and subject to the conditions enshrined under this section.[26]
Constitutional Validity of section 45 of PMLA:
The Supreme Court was asked in Gautam Kundu v. Manoj Kumar [27]whether the provisions of section 45 of the PMLA, 2002 are obligatory on the High Court when evaluating a bail plea under section 439 of the CrPC, 1973. The criminal appeal was filed after the High court denied the appellant's bail plea for money laundering. According to the Supreme Court, **"**Section 45 of the PMLA begins with a non obstante phrase, indicating that in the event of a disagreement, the provisions of Section 45 of the PMLA will have overridding effect on the general rules of the Code of Criminal Procedure. Section 45 of the PMLA

[26] The Prevention of Money Laundering Act, 2002, S. 45(1)
[27] AIR 2016 SC 106 (India)

imposes the following two conditions for the grant of bail to any person accused of an offence punishable by a term of imprisonment of more than three years under Part-A of the PMLA's Schedule:
(i) the prosecutor must be given an opportunity to oppose the application for bail; and
(ii) the Court must be satisfied that there are reasonable grounds for believing that the accused person is not guilty of such offence and is not likely to compel him to do so.
As a result, the Supreme Court saw no basis to overturn the High Court's decision to deny the accused's bail application. It indicates that the restrictions in Section 45 PMLA apply even when the High Court exercises extraordinary competence to grant being under Section 439 of the Code."
But in the case of Nikesh Tarachand Shah v. Union of India and Anr.[28] here in this case - The constitutionality of Section 45 of the Prevention of Money Laundering Act was contested in an appeal. Two requirements are imposed by Section 45 before the bond can be issued.
i) The court must be satisfied that the prisoner was not guilty of such a crime and that he would not conduct any crimes while on release.
ii) Additionally, the prosecution must have the opportunity to oppose any motion for bail.
The senior advocate, Shri Mukul Rohatgi, argued that Section 45 of the PMLA is manifestly arbitrary, discriminatory, and in violation of the petitioner's fundamental rights under Article 14 read with Article 21 of the Constitution when it imposes two additional conditions prior to the granting of the bond. He further stated that the goal was not to refuse bail to people charged with the offences listed in Part B above and that doing so would be discriminatory and a violation of Article 14 of the Constitution because it would amount to treating non-equals identically.
S.C. held that, "insofar as it sets two additional conditions for release on bail, Section 45(1) of the Prevention of Money Laundering Act, 2002 was deemed to be 'unconstitutional as it breaches Articles 14 and 21 of the Constitution of India.' The Supreme Court stated that 'indiscriminate execution of the provisions of Section 45 will surely violate Article 21 of the Constitution' and that Section 45 is a radical measure which flips on its head the presumption of innocence which is fundamental to a person accused of any act." By this judgment Supreme Court unconstitutionalised the twin condtions for bail under Section 45 of PMLA,2002.
To override this parliament by Finance act, 2018 introduced in the amended provision, the words "imprisonment for a terms of imprisonment of more than three years under Part A of the schedule" has been substituted with "accused of an offence under this Act……"[29] The major provision of the act is again challenged in Vijay Madanlal Chaudhary vs Union of India July 27, 2022.[30] S.C. observed that
"395. … we do not agree with the observations suggestive of that (sic) the offence of money laundering is less heinous offence than the offence of terrorism sought to be tackled under the TADA Act [Terrorist and Disruptive Activities (Prevention) Act, 1987] or that there is no compelling State interest in tackling offence of money laundering. The international bodies have been discussing the menace of money laundering on regular basis for quite some time; and strongly recommended enactment of stringent legislation for prevention of money laundering and combating with the menace thereof including to prosecute the offenders and for attachment and confiscation of the proceeds of crime having direct impact

[28] (2018) 11 SCC 1 (India)
[29] livelaw available at https://www.livelaw.in/news-updates/section-45-pmla-twin-conditions-for-bail-revived-2018-amendment-act-jharkhand-high-court198104#:~:text=The%20twin%20conditions%20for%20bail,offence%20and%20that%20he%20is
[30] Vijay Madanlal Choudhary case, 2022 SCC OnLine SC 929

on the financial systems and sovereignty and integrity of the countries. That concern has been duly noted even in the opening part of the introduction and Statement of Objects and Reasons, for which the 2002 Act came into being."

In addition to the aforementioned, the Supreme Court heavily relied on the goals and objectives of the PMLA, the FATF's recommendations, and India's international duties in affirming the constitutional legitimacy of the "twin conditions." Considering this, the Supreme Court decided as follows:

"387. … The twin conditions are that there are reasonable grounds for believing that the accused is not guilty of offence of money laundering and that he is not likely to commit any offence while on bail. Considering the purposes and objects of the legislation in the form of 2002 Act and the background in which it had been enacted owing to the commitment made to the international bodies and on their recommendations, it is plainly clear that it is a special legislation to deal with the subject of money-laundering activities having transnational impact on the financial systems including sovereignty and integrity of the countries. This is not an ordinary offence….

405. … Instead, we hold that the provision in the form of Section 45 of the 2002 Act, as applicable post-amendment of 2018, is reasonable and has direct nexus with the purposes and objects sought to be achieved by the 2002 Act to combat the menace of money laundering having transnational consequences including impacting the financial systems and sovereignty and integrity of the countries."

So, by this decision S.C. overruled its earlier decision of Nikesh Tarachand Shah case, and upheld the constitutional validity of twin conditions.

Critical Analysis of implementation of Anti Money Laundering laws in India:

It is evident from the discussion above that India has highly strict money laundering laws in theory. More authority than any other investigative body has been granted to the Enforcement Directorate, which may even examine money laundering crimes without being constrained by drawn-out legal procedures. However, the actual situation is very different. According to statistics, the Enforcement Directorate is still unable to provide meaningful outcomes, even when a great authority granted to it, as depicted below:

S. NO.	DESCRIPTION	TOTAL NO. / AMOUNT(AS ON 31.01.2023
1.	Number of ECIR recorded	5906
2.	Number of ECIR in which search has been conducted	531
3.	Percentage of ECIR in which search warrants issued out of total ECIR recorded	8.99%
4.	Number & percentage of ECIR recorded against existing and Ex MPs, MLAs & MLCs	176 (2.98%)
5.	Number of persons arrested	513
6.	Number of Prosecution Complaints filed	1142

7.	Number of cases in which trial completed under PMLA	25
8.	Number of trial cases resulted in conviction under PMLA	24
9.	Percentage of conviction	96%

Table - KEY DETAILS OF PMLA CASES UP TO 31.01.2023 [31]

The data given above makes it clear that the ED has received about 6000 complaints under the PMLA, 2002. Nonetheless, since the ED was given the authority to look into significant financial crimes around 18 years ago, more than 500 arrests have been made, but only 25 cases reached to the conclusion stage and only 45 persons have been found guilty of money laundering by courts .

Even with the ED being granted such extensive powers, there is still a significant discrepancy between the number of cases that are filed and cases that are settled. The following factors may be the cause of this total breakdown of the administrative machinery:

1. Lack of Political Will: India began its efforts to combat money laundering in 1998. While this was a good beginning, the issue was not adequately addressed, and enforcement did not begin for another seven years until 2005. There were several developments in those seven years that the Act did not address, thus when the Act with revisions in 2005 went into effect, it was inherently flawed. The need for more changes was then realised, as was evident. The parliament is presented with the PML Bills in 2008,2012,2018,2019, and changes were brought into the Act to cover up lacunas. But, it seems like the time it takes to plug one hole another opens up. Hopefully, the legislature will move more quickly this time.

2. Growth of Technology: India is not an exception to the rule that the advancement of technology has benefited money-launderers just as much as it has benefited the average person. The idea of cyber finance is expanding in this emerging market. The feeble state of cybercrimes serves as a clear example of how the enforcement authorities are not keeping up with the rapid advancement of technology.

3. Unawareness about the Problem: A robust AML system is hampered by the general public's ignorance of the issue of money-laundering. Many Indians still do not trust banks, especially the poor and uneducated ones, and would rather not deal with the copious paperwork needed to make a money transfer through a financial institution. Even though the digitization of banking system and UPI have brought tremendous changes in financial market, still the problem is quite persistence. The hawala system offers them the same remittance service as banks, but at reduced costs, with little to no verification requirements. It also offers security and anonymity. This is a result of the fact that many people do not view this as a crime and are ignorant of its negative consequences.

4. KYC Norms: India now has KYC norms in place for its capital and money markets. However, because the RBI is unable to control them, these KYC norms do not stop Hawala transactions. Furthermore, the implementing authorities' lack of interest in KYC Norms makes them a laughingstock. KYC regulations are adhered to in writing, but it's also necessary to do so in spirit. The market's increased competition

[31] Data available at official website of Enforcement Directorate https://enforcementdirectorate.gov.in/statistics-0

forces and encourages banks to let their defences down. in particular, bank franchisees who have been given permission to create accounts.

5. Tax Laws: In the Commissioner v. Newman case[32], Justice Learned Hand declared, "Courts have repeatedly held that structuring one's affairs to minimise taxes is not inherently malicious. Rich or poor, everyone pays their fair share of taxes since there is no legal obligation for anybody to pay more than what is required; taxes are imposed deductions rather than voluntary contributions. It is just inane to expect more in the name of morality." The Indian Supreme Court also upheld the legitimacy of treaty shopping and referenced Lord Tomlin in IRC v. Duke of Westminster in Azadi Bachao Andolan & Anr . It's important to distinguish between tax evasion and tax avoidance. There are apprehensions that Double Taxation Treaties may lead to money laundering channel.

These are some of the main reasons that, despite the existence of such strict laws, their actual enforcement is nowhere near enough. The way these cases are handled has to be drastically changed; otherwise, the day is not far off when they will pose a severe threat to the economy of the country, from which it would take a long time to recover.

Conclusion and Suggestion:

Since those who launder money are always looking for new ways to further their illicit goals, fighting money laundering is a constant process. Furthermore, it is now clear that India lacks the ability to properly prosecute money laundering cases, and criminals have attempted to take advantage of these shortcomings in order to carry out their money laundering operations. Corruption and greed are the two main drivers of the financial frauds and instances of money laundering. When it comes to issues of money laundering, greed may be a potent weapon for upsetting economies. In addition to damaging economies by creating an unequal need for money, it also devastates the private sector by promoting ruthless competition or the stagnation of prosperous companies that double as fronts for crime.

As we have already indicated, even though our country has specific legislation to address this issue, there is a significant gap between the law and its execution. This implies that rather than being only a bark without a bite, our rules need to be more rational. Additionally, criminals are able to carry out ever-more-complicated schemes, such money laundering, thanks to the complex technological improvements in the banking sector. So, here are some suggestions to tackle these shortcomings:

1. A political will must be developed to address the issue; otherwise, many legislation will only be implemented as a showpiece for international conformity. To have an efficient AML system, the struggle between the State and the Centre must end. The purpose of the Enforcement Directorate should be to close the gap between the application of the law and its written form rather than to utilise it as a tool to attack political opposition.
2. Information must be distributed and upgraded continuously. Periodically assessing the AML tactics is necessary. It is now necessary for law enforcement authorities to put themselves in the shoes of money launderers in order to learn about their methods. Law enforcement agencies and FIUs throughout the world have come a long way in the last 20 years in figuring out how money laundering operates. Still, a lot of focus is on relatively tiny money laundering activities, which usually draw attention to the underlying or predicate crime. Although there are several government reports on this topic, but they are not able generate significant amount of attention from the general public.

[32] 159 F.2d 848 (1947)

3. There is a requirement to have a convergence of different enforcement agencies, sharing of information is necessary.
4. It is recommended that a dedicated unit for money laundering operations be established, modelled after the Economic Intelligence Council (EIC), which focuses only on AML research and development. This Special Cell ought to be connected to other international AML-related organisations like as INTERPOL. The RBI, SEBI, and other important parties ought to be involved in this.
5. The private sector has to be made more aware of their responsibility in combating money laundering. The business sector should bear some of the burden for combating money laundering as well as the government.
6. The Central Government should not be the exclusive entity responsible for enforcing the laws; State governments should also be involved. The more decentralised the law is, the greater its potential reach. Nonetheless, the Central and State agencies must to effectively coordinate with one another.
7. Programmes for public awareness should be implemented to educate the public about these laws.
8. To have an effective AML regime one has to think regionally, nationally, and globally.