

Efficacy of the Prevention of Money Laundering Act 2002: A Critical Analysis in the Context of Constitutional Framework

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Abstract

The prevention of money laundering act is amongst the most debatable piece of legislation introduced in 2002 by the Indian Parliament. It was passed with an objective of complying with India's commitments under international money laundering conventions and recommendations given by the FATF. The act has therefore undergone a number of changes by way of amendments from time to time, these amendments have significantly increased the investigative and coercive powers of the enforcement agencies under the act thereby significantly reducing the protection given to the accused in conventional law.

The paper critically examines the law from three interrelated aspects that is constitutional validity of the act, judicial interpretation of key provisions, and practical efficacy of the law. It is therefore argued that though the requisite law aims to achieve a goal that is permitted by the Indian Constitution, several provisions of the act raises serious concerns under Articles 14, 20[3], 21 and 22 respectively.

Keywords: Anti-Money Laundering Law, Enforcement Powers, Constitutional Safeguards, Judicial Interpretation, Legal Effectiveness

1. Introduction

Money laundering poses a serious risk to financial systems around the world manifesting in national security issues and the rule of law being threatened, as it involves the process of disguising money obtained through illegal activities and integrating it into the legitimate economy (Financial Action Task Force [FATF], 2012).

India sought to tackle the growing challenge faced by money laundering through the enactment of the Prevention of Money Laundering Act, 2002 (PMLA), which was brought into force in the year 2005, and over the years, through a series of amendments introduced at different points in time, the scope and reach of this legislation have been steadily expanded, significantly enhancing the authority and operational capacity of the Enforcement Directorate (ED) to investigate, regulate, and take action in cases involving financial crimes of this nature (Prevention of Money Laundering Act, 2002).

Over a long period of time, Parliament has introduced several rounds of amendments, each trying to build on the previous ones. As a result, the current law has gradually become more stringent and wide-ranging in its application. One of the key changes is that it now covers a much broader set of predicate offences, meaning that a larger number of underlying crimes can trigger action under this legal framework, thereby strengthening the authorities' powers under the act to attach property, and making the conditions for

granting bail to accused increasingly restrictive more so as a privilege, thereby creating a regime that is often viewed as particularly harsh in its operation.

At the same time, the way the law operates in practice brings out a noticeable issue. On one hand, enforcement under the act has expanded significantly over the years, with a sharp increase in investigations and actions by authorities. On the other hand, the rate of convictions remains among the lowest in the Indian criminal justice system. This contrast highlights a widening gap between the broad and coercive powers given to authorities under the Act and the limited success in actually securing convictions. As a result, concerns have increasingly been raised that, in practice, the law may be operating less as an effective tool to combat financial crime and more as a means of exerting administrative pressure by the agencies concerned.

The key procedural safeguards like presumption of innocence (International Covenant on Civil and Political Rights [ICCPR], 1966), the right against self-incrimination (India Const. art. 20, cl. 3; *Selvi v. State of Karnataka*, 2010), and the need for judicial oversight during the arrest and attachment stage are examples of standard procedural safeguards that have gradually been weakened or set aside. This shift has attracted strong criticism from constitutional scholars, legal practitioners, and civil society, who view it as a departure from fundamental principles of fairness and due process.

2. Research Problem

This paper examines the tension between the PMLA's legitimate objective of tackling money laundering and its growing departure from the core principles that underpin India's criminal justice system. Although the Act tries to prevent sophisticated financial crimes, it gradually circumvents common protections under the Indian Evidence Act (1872) and the Code of Criminal Procedure (1974) by shifting the burden of proof on the accused at almost every stage of proceedings. According to critics, it establishes a "parallel criminal justice system" (*Vijay Madanlal Choudhary v. Union of India*, 2022) in which the accused is subject to serious procedural disadvantages.

Numerous structural elements exacerbate this tension. In essence, the presumption of innocence is reversed, requiring people to demonstrate the legitimacy of purported proceeds. Before a trial, courts must be convinced of the accused's innocence before granting bail, frequently without having complete access to the evidence. Section 50 permits the ED to record statements that are subsequently used as incriminating evidence, and Section 19 permits warrantless arrests without written justification. When taken as a whole, these clauses put the PMLA at the very end of the state's coercive power, casting doubt on the fairness and proportionality of the constitution (*Prevention of Money Laundering Act*, 2002).

3. Research Objectives

The main goals that are pursued in this paper are - First, to offer a thorough examination of the constitutional framework that must be used to evaluate the PMLA's provisions. This framework is derived from Articles 14, 20(3), 21, 22, and 300A (*Vijay Madanlal Choudhary v. Union of India*, 2022). Second, to critically analyse the Act's main provisions in order to determine which pass constitutional muster and which raise unanswered questions. Third, to track and assess the development of judicial interpretation of the PMLA, paying special attention to the seminal rulings of *Vijay Madanlal Choudhary v. Union of India* (2022) and *Nikesh Tarachand Shah v. Union of India* (2017). Fourth, to evaluate the Act's actual effectiveness as a law enforcement tool in relation to its declared goal of stopping and regulating money laundering.

4. Research Questions

1. Under Articles 14, 20(3), 21, and 22 of the Indian Constitution, are the main PMLA provisions such as the burden of proof, bail, arrest, and property attachment constitutional?
2. To what extent have Indian courts, particularly the apex court of the country, interpreted the provisions of the act in a manner that balances the need for effective enforcement with the preservation of the rule of law and the protection of individual rights?
3. What changes or reforms are needed to make the current act both constitutionally sound and practically effective, and how far has the act actually succeeded in preventing and controlling money laundering in India?

5. Research Hypothesis

This paper contends that although the act was introduced with a valid and necessary purpose that to establish a robust legal mechanism to tackle money laundering its gradual expansion over time by way of key amendments has tilted the balance too heavily in favour of the executive and enforcement authorities. In doing so, it has, at several points, come at the cost of adequately protecting the fundamental rights and personal liberties of those subject to its provisions.

Over the years, a series of amendments by the Parliament have gradually diluted a number of procedural safeguards. This evolving framework, along with the Supreme Court's decision in *Vijay Madanlal Choudhary v. Union of India* (2022), brings into focus the continuing tension between the wide-ranging powers granted to enforcement agencies under the act and the imperative to protect individual rights.

As a consequence, the law raises important concerns about fairness and proportionality in its implication. When viewed from constitutional, judicial, and practical perspectives, this paper argues that the Act needs substantial reform so that the pursuit of enforcement is more carefully balanced with the protection of individual rights.

6. Research Methodology

This paper adopts a doctrinal method, involving a close reading and interpretation of key legal sources such as the Indian Constitution, the Prevention of Money Laundering Act along with its subsequent amendments, related legislation, and important judicial decisions from both Indian and international courts. At the same time, the paper goes beyond a purely descriptive analysis by incorporating a normative dimension. In doing so, the study evaluates the law not only in terms of what it currently provides, but also in light of how it should ideally operate, particularly when assessed against broader principles of human rights, the rule of law, and constitutional values.

The study also draws on the legal frameworks of countries like the United States and the United Kingdom to offer a comparative perspective. This helps in identifying both the strengths and the gaps within the Indian money laundering system.

To strengthen the analysis, the study relies mainly on a broad set of secondary materials, including books, academic writings, parliamentary reports, FATF assessments, and reports of the Comptroller and Auditor General of India (CAG, 2019). Drawing on these sources helps ensure that the discussion remains thorough, balanced, and well-informed.

7. Background: Conceptual and Legislative Framework

In essence, money laundering is the process of making money that is obtained through illicit activities

look legitimate so that criminals can use it without being caught by the enforcement agencies. The Financial Action Task Force (FATF), which was made in 1989 for this very purpose released some important recommendations that many nations adopted which significantly influenced the international framework to fight it. As a result, the PMLA was passed in India and went into effect on July 1st, 2005. In order to fulfil international commitments under agreements like the Vienna Convention (United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988), the Palermo Convention (United Nations Convention against Transnational Organized Crime, 2000), and FATF standards, the said law was introduced.

The PMLA's scope has therefore been expanded through multiple amendments in 2009, 2012, 2015, 2018, and 2019. The amendment done in 2012 separated money laundering from the earlier simple definition of crime. The concept of the "value of proceeds of crime," which was introduced by the 2019 amendment, permits authorities to seize assets of comparable value even in cases where the actual proceeds are not discovered. Crimes under more than thirty laws have been added to the list of predicate offenses over time. Participation in handling or passing off illegal money as legal property is covered by Section 3 of the offense.

The Ministry of Finance's Enforcement Directorate is primarily responsible for enforcing the PMLA. Additionally, it has a distinct system that uses the Appellate Tribunal and the Adjudicating Authority to handle civil cases like attachment and confiscation. Special Courts established under Section 43 hear criminal cases. Furthermore, the Act mandates that "reporting entities," including banks, financial institutions, and intermediaries, maintain records and notify the Financial Intelligence Unit (FIU-IND) of any suspicious transactions (Prevention of Money Laundering Act, 2002, s. 12).

8. Constitutional Analysis

Articles 14, 20(3), 21, and 22, as interpreted in the seminal case of *Maneka Gandhi v. Union of India* (1978), must be used to comprehend the constitutional scrutiny of the PMLA. According to the above ruling, any measure that impacts an individual's freedom must be "fair, just, and reasonable," and since Articles 14, 19, and 21 are linked together, any act that goes against the three articles violates Article 21 must also comply with Article 14. The concept of reverse burden of proof, which places the onus on the accused to demonstrate that the purported proceeds of crime are pure and not proceeds of illicit activity, is a major source of concern.

The fundamental tenet of criminal law that the prosecution must establish guilt beyond a reasonable doubt is called into question by this. In *Noor Aga v. State of Punjab* (2008), the Supreme Court permitted such burdens only if they were commensurate with the goals of the law. Given its expansive reach, it is unclear whether Section 24 satisfies this requirement.

Pre-trial liberty is essentially the exception to Section 45's bail requirements, which complicate matters further by requiring courts to assume guilt by requiring satisfaction that the accused is "not guilty" and "not likely to commit an offence" (Prevention of Money Laundering Act, 2002, s. 45). In a similar vein, Section 19 undermines the arrested person's right to legal consultation under Article 22 by enabling arrests without warrants or immediate written grounds. Without prior judicial oversight, the Enforcement Directorate may compel statements and seize property under Sections 50 and 5. Because post-hoc review cannot completely address the absence of independent judicial scrutiny, these powers run the risk of violating both Article 20(3) against self-incrimination and Article 300A's guarantee of fair procedure in property deprivation.

Overall, a number of PMLA provisions violate people's fundamental rights, putting law enforcement goals at odds with constitutional protections.

9. Landmark Cases

9.1 Union of India v. Nimesh Tarachand Shah (2018)

Section 45(1) of the PMLA, which imposed stringent twin bail requirements on all offenses regardless of their seriousness, was overturned by the Supreme Court in this case. Justice R.F. Nariman of the Court determined that this uniform approach violated Article 21 and was arbitrary under Article 14 because it required accused people to prove their innocence without having full access to the evidence (Nimesh Tarachand Shah v. Union of India, 2018). The decision was hailed as a solid defence of constitutional rights in situations involving economic crime. In response, the Finance Act of 2018 was passed by Parliament, amending the law to link bail requirements to the nature of the offense rather than the severity of the punishment.

9.2 Union of India v. Vijay Madanlal Choudhary (2022)

A three-judge Supreme Court panel upheld the majority of the PMLA's provisions in this ruling. The Court decided that Section 50 statements are admissible, the reverse burden under Section 24 is reasonable given the public interest, and oral communication of arrest grounds satisfies Article 22. Additionally, it maintained the modified Section 45 bail requirements, setting it apart from Nimesh Tarachand Shah by linking them to the type of offense. Although High Courts and subsequent clarifications have attempted to lessen potential injustices in specific cases, critics contend the Court was unduly deferential and created a constitutional exception for money laundering cases (Vijay Madanlal Choudhary v. Union of India, 2022).

10. Comparative Analysis

An effective anti-money laundering framework depends on a very careful combination of robust enforcement mechanism, adequate procedural safeguards, and a meaningful judicial oversight. The PMLA in India gives police broad authority to seize property, make arrests, and summon people mostly without a judge's prior consent raising questions about proportionality and fairness.

The Human Rights Act of 1998 guarantees proportionality and procedural protections, while the Proceeds of Crime Act of 2002 permits asset recovery in the UK without a criminal conviction. However, all orders must be approved by the High Court. The US Supreme Court upheld proportionality under the Eighth Amendment in *United States v. Bajakajian* (1998), limiting civil forfeiture under the Bank Secrecy Act and Money Laundering Control Act.

Country	Key Law	Judicial Oversight	Procedural Requirement	Proportionality Requirement
India	PMLA	Limited scope before action.	Minimal safeguard	Not explicitly required
UK	POCA 2002	Mandatory high court approval	Right to challenge, fair hearing	Required under Human Rights Act

US	BSA 1970 MLCA 1986	Courts review civil forfeiture.	Fifth Amendment protections	Required under Eighth Amendment
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11. Literature Review

While a substantial amount of research exists on the act, much of it tends to be dispersed and somewhat fragmented focussing on specific intricacies. Most studies concentrate on particular provisions or specific clauses, rather than offering a comprehensive analysis of the legislation as a whole.

As a result, there remains a significant gap in understanding how the PMLA functions as an integrated regulatory and constitutional framework, since scholars tend to concentrate on isolated sections or particular judicial interpretations rather than exploring its broader constitutional, legal, and practical ramifications.

In his 2022 study, Chandrachud provides a critical examination of the value confiscation mechanism that are introduced by the 2019 amendment, highlighting several drafting flaws that can lead to disproportionately harsh liability for those affected under the act, and raising broader questions about the fairness and precision of the law's implementation (Chandrachud, 2022).

Along similar lines, Datar offers a critique of the Apex Court's decision in Vijay Madanlal Choudhary, arguing that while the Court had addressed issues under Section 50 concerning self-incrimination in a largely formalistic way, it failed to fully consider the real-world coercive power wielded by enforcement officers during investigations, leaving important questions about the protection of individual rights largely unexamined (Datar, 2022).

Mani provides an in-depth explanation of the structural and policy choices underlying the PMLA by situating the Act within the broader context of India's international obligations, while also tracing its historical development, thereby offering comprehensive understanding of the factors that shaped both its creation and implementation of the act (Mani, 2006).

Suresh investigates the political economy of enforcement, identifying trends that point to the selective targeting of opposition figures and emphasizing how the Act's wide range of discretionary powers allow for unequal application (Suresh, 2022).

The 2022 CAG Report reveals that there are important discrepancies between property attachment and verified confiscations done by enforcement agencies (CAG, 2022), while Quirk provides crucial statistical insights into global money laundering trends (Quirk, 1997).

The above researches try to highlight structural flaws in the enforcement procedures, such management of the case, evidence collection, and the difficulties in putting legal authority into practice.

There are still some gaps in this extensive body of literature. Only few studies combine practical efficacy, judicial interpretation, and constitutional analysis into a single framework. In a similar vein, there is still lack of methodical comparative analysis that benchmarks India's strategy using proportionality frameworks from other jurisdictions. The paper seeks to rectify these shortcomings.

12. Challenges

The PMLA's enforcement structure is confronted with significant obstacles on several fronts. The separation of powers and judicial independence are undermined by the Enforcement Directorate's (ED) simultaneous role as investigator, accuser, and initial adjudicator due to the absence of prior judicial oversight for arrests and provisional attachments. The ED lacks enough resources in the form of financial

investigators that are well qualified, which degrades the capacity to do investigations and lowers the possibility of successful prosecutions under the act. As a result cases stay pending for many years which leads to the extreme overcrowding in Special Courts under Section 43, which results in trials being dragged on for years. This inevitably results in a "process as punishment," where accused people face severe bail requirements, pre-trial asset attachment, and reputational harm long before their guilt is established in the court.

These problems are worsened by difficulties with regulatory oversight and evidence gathering. The prosecution's ability to obtain convictions is severely affected by the use of Section 50 statements of uncertain voluntariness in money laundering cases, which frequently involve intricate financial trails, numerous jurisdictions, and extensive records thereby making the process complicated and time taking. The lack of independent oversight by another independent body encourages selective enforcement by the enforcement agencies, with trends pointing to unlawful political targeting, thereby undermining the legitimacy of the Act and public trust.

13. Suggestions and Conclusion

This paper tries to suggest six important reforms to protect constitutional rights and strengthen the act.

1. Provisional attachment of property under Section 5 of the act should ideally be carried out by the enforcement agencies only after obtaining prior approval from a judicial authority, ensuring that such actions are not taken arbitrarily in violation of the rights. However, in situations demanding immediate intervention, the authorities may issue urgent ex parte orders without prior notice. Even in such exceptional cases, it is essential that these orders are not left unchecked by the courts and are subjected to a prompt judicial review within a period of 48 hours, so as to maintain procedural fairness and safeguard against potential misuse of power (Law Commission of India, 2018).
2. Section 19 should be interpreted or amended in such a way to mandate that, at the very moment a person is taken into custody, the authorities provide clear and written grounds for his or her arrest. This would ensure that the individual is fully informed of the reasons behind their detention in a transparent manner, thereby upholding principles of natural justice and enabling them to effectively exercise their legal rights, including the ability to challenge the arrest if necessary.
3. Section 45 should allow the judges some guided flexibility while deciding the requirements for bail, rather than tying them down with rigid conditions almost making it impossible under the act. They should be able to consider factors like how serious the offence is, how strong the evidence appears, and the personal situation of the accused before arriving at a decision on the same.
4. As per Section 50 of the act, any statement made should not be treated as admissible unless it is recorded after the person's arrest and with proper access to legal counsel, so that it is genuinely made voluntary and not influenced by pressure from the authorities.
5. Confiscation provisions under the law should clearly require a proportionality test, ensuring that any property seized must be directly connected to a proven criminal benefit. This would help prevent excessive or arbitrary confiscation and ensure that the action remains fair and justified (Prevention of Money Laundering Act, 2002).
6. There should be greater transparency in enforcement by publishing disaggregated data, along with regular review of key decisions by the courts. Any signs of selective or uneven action by the enforcement agencies should be examined by an independent oversight body to ensure accountability and fairness.

By implementing such changes into practice, a PMLA framework that successfully strikes a balance between strict enforcement and the defence of the fundamental rights would be created.

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