
EXPANDING THE DEFINITION OF MONEY LAUNDERING: A STUDY OF SUBSTANTIVE VS. CLARIFICATORY AMENDMENTS IN THE PMLA

Saksham Sharma, Vivekananda Institute of Professional Studies (VIPS-TC), Pitampura,
New Delhi

ABSTRACT

This research paper examines the constitutional bar against retrospective application of penal laws, with a focus on Section 3 of the Prevention of Money Laundering Act, 2002 (PMLA). The amendments of 2013 and 2019 significantly expanded the scope of money laundering by incorporating additional activities and explanations into the definition of the offence. These legislative developments have given rise to questions of retrospectivity and their interplay with Article 20(1) of the Constitution, which prohibits ex post facto criminal liability. Through an analysis of statutory interpretation principles, constitutional safeguards, and judicial precedents, this paper explores whether the enlarged definition of money laundering under Section 3 can be applied to acts committed prior to these amendments. The study highlights the doctrinal distinction between substantive and procedural changes, the presumption against retrospective operation of penal statutes, and the Supreme Court's evolving approach in treating money laundering as a continuing offence. It concludes by underlining the constitutional limits of retrospective criminalization while situating the PMLA amendments within this legal framework.

I. Introduction to Money Laundering

What is Money Laundering?

Money laundering is the process of concealing or disguising the origins of illegally obtained money, typically by means of transfers involving foreign banks or legitimate businesses. It enables criminals to enjoy the profits of their illegal activities without jeopardizing their source or risking detection by authorities.

In India, money laundering is governed by the Prevention of Money Laundering Act, 2002 (PMLA). The Act was enacted to combat the growing threat of economic offences and to fulfill India's international obligations, particularly those under the Financial Action Task Force (FATF) recommendations. The PMLA came into force on 1st July 2005 with the primary objectives of:

- Preventing and controlling money laundering,
- Confiscating and seizing the property obtained from laundered money, and
- Dealing with other issues connected with money laundering.

Section 3 of the PMLA defines the offence of money laundering. Initially, the provision was narrowly construed, focusing primarily on projecting or claiming proceeds of crime as untainted property. However, subsequent amendments, particularly those of 2013 and 2019, expanded its scope by expressly including activities such as concealment, possession, acquisition, and use of proceeds of crime, while also introducing an Explanation that characterizes money laundering as a continuing offence. These changes have widened the ambit of criminal liability under the statute, but they have simultaneously raised serious constitutional concerns regarding retrospectivity.

At the heart of this debate lies Article 20(1) of the Indian Constitution, which enshrines the principle that no person can be convicted of an offence except for violation of a law in force at the time of its commission. The central question, therefore, is whether the broadened definition of money laundering can be retrospectively applied to acts that occurred prior to the amendments. This inquiry necessitates an examination of constitutional safeguards, interpretative principles governing retrospective operation of statutes, and judicial precedents

which have consistently cautioned against retroactive penal liability.

This paper seeks to address these concerns by analyzing the legislative evolution of Section 3, judicial interpretation of retrospectivity in penal statutes, and the tension between the doctrine of continuing offence and constitutional guarantees under Article 20(1).

I. Key provisions in the PMLA

As per **Section 2(1)(p)**, PMLA

“money-laundering has the meaning assigned to it in Section 3.”

Section 3 of the Act defines the offence of money laundering and Section 4 prescribes the punishment for it. The Act has undergone several amendments (notably in 2009, 2013, and 2019) to expand the scope of scheduled offences and clarify the process constituting laundering, often raising questions about retrospective application.

Section 3 of the Act was amended by Prevention of Money-Laundering (Amendment) Act, 2013 (hereinafter referred to as the Amendment Act of 2013) with effect from 3rd January, 2013. Prior to the said amendment, Section 3 of the Act read as under: -

I.I Pre-Amendment

“Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected it as untainted property shall be guilty of offence of money-laundering.”

The Amendment Act of 2013 was sought when India became a signatory to the Financial Action Task Force and Asia Pacific Group on money-laundering, which are committed to the effective implementation and enforcement of internationally accepted standards against money-laundering and the financing of terrorism. As a result, clause 3(c) of the Amendment Act, 2012, underlying the Statement of Object of the Amendment Act, 2013 clearly specifies that the amendment to Section 3 of the PMLA is sought to enlarge the definition of offence of money-laundering to include therein the activities like concealment, acquisition, possession and use of proceeds of crime as criminal activities.

I.II Post-Amendment

Section 3, Prevention of Money Laundering Act, 2002

“Offence of money-laundering.—Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming it as untainted property shall be guilty of offence of money-laundering.

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.”

Section 5, Prevention of Money Laundering Act, 2002:

Section 5 empowers the Director or an authorized officer (not below the rank of Deputy

Director) to provisionally attach property suspected to be involved in money laundering. This can be done if there is a recorded reason to believe, based on evidence, that a person possesses proceeds of crime and that these proceeds may be concealed, transferred, or otherwise dealt with in a way that could hinder confiscation proceedings.

Attachment can last up to 180 days, and certain legal preconditions must be met—such as a police report or complaint being filed in relation to the scheduled offence. However, in urgent cases where delay could frustrate proceedings, the property may be attached immediately. If any High Court stay affects the process, that period is excluded from the 180 days, with an additional 30 days allowed once the stay is lifted.

After the attachment, the officer must promptly send the order and supporting material to the Adjudicating Authority in a sealed manner. The attachment ceases either after 180 days or when the Adjudicating Authority makes a decision under Section 8(3), whichever is earlier. The section also clarifies that individuals with a legitimate interest in immovable attached property can still enjoy it. Lastly, within 30 days of the attachment, a complaint detailing the facts must be submitted to the Adjudicating Authority.

The main objective of this provision- to prevent the accused from disposing of or hiding assets that are potentially linked to money laundering while the investigation is ongoing.

Therefore, in a nutshell, the PMLA underwent amendments as follows:

- Pre-Amendment Provision (2002): Section 3 defined money laundering narrowly, focusing on projection or claiming the proceeds of crime as untainted.
- Post-2009 Amendment: Expanded scheduled offences to include IPC offences like Sections 120B, 420, 411, and 471 and the Prevention of Corruption Act.
- 2013 Amendment: Widened the scope of Section 3 by including concealment, possession, acquisition, or use of proceeds of crime directly as laundering acts.
- 2019 Amendment: Introduced “Explanation” to Section 3, stating that the offence of money laundering is a continuing offence, thus suggesting possible prospective or retrospective implications.

II. Constitutional Safeguards to Retrospective effect of Penal Laws

The Constitution of India explicitly prohibits the retrospective application of criminal law through **Article 20(1)**. This guarantees that a person cannot be prosecuted or punished under a law that did not exist at the time the alleged act was committed. It enshrines the principle of '*nullum crimen sine lege*' (no crime without law) and is fundamental to the protection of civil liberties in criminal jurisprudence. Any law that attempts to impose criminal liability retroactively is therefore unconstitutional unless it is procedural in nature and does not impose new penalties.

Article 20(1) of the Constitution:

Protection in respect of conviction for offences. —

(1) No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.

This is a fundamental right enshrined in Part III of the Indian Constitution which bars the conviction of any person for any offence except for violation of a law in force at the time of the commission of the act charged as an offence.

II.I Precedents

The constitutional safeguard under Article 20(1) establishes a clear prohibition against retrospective criminal liability. The principle is that no individual can be convicted for an act which was not an offence under the law in force at the time of its commission, nor subjected to a greater penalty than what the law then prescribed. Courts have consistently drawn a distinction between substantive elements of an offence and procedural requirements: while procedures for investigation and prosecution may be applied subsequently, the essential ingredients constituting an offence must exist on the date of the act itself.

This protection ensures that subsequent legislative amendments creating new offences, expanding the scope of existing offences, or altering their essential ingredients cannot

be applied to acts committed prior to their enactment. The determination of criminal liability must therefore be confined to the law as it stood on the date of the alleged offence, and not by reference to later statutory changes.

In the context of statutes like the PMLA, this means that if an alleged act or investigation predates an amendment which broadens the scope of the offence, only the unamended provision can be applied.

In *State of Telangana v. Managipet*¹, there was amendment in criminal statute concerned *i.e.* Prevention of Corruption Act, 1988, subsequent to commission of alleged crime. It was held that amended provisions cannot be taken recourse to, to determine offence under that statute. It is the law as it stood on the date of the alleged crime that will apply.

In *Mahipal Singh v. CBI*,² while discussing the scope and ambit of Article 20 (1) of the Constitution has held that the ingredients of the offence must be present on the date the alleged act was committed. A person can only be convicted for violating a law that was in force at the time of the act. If the investigating agency is unaware of the exact date of commission, the date when the offence comes to its notice is relevant. Even then, the offence must be recognized under the law as it stood on that date. Events or legislative changes occurring after the act cannot be relied upon to bring that act within the scope of penal liability. While procedural requirements for prosecution can be complied with subsequently, the substantive elements of the offence must already exist when the act is committed or discovered.

Not only does this judgment refer to the bar of Article 20(1) of the Indian Constitution but also, refers to the ingredients of the offence being fulfilled on the date of commission of the crime.

In *State of Maharashtra v. Kalia Koil Subramaniam*³, huge amounts of disproportionate assets were recovered from a public servant income. While investigation was going on, clause (e) was inserted in Section 5(1) of the Prevention of Corruption Act, 1947 which provided that a public servant is said to commit the offence of criminal misconduct if he or any person on his behalf is in possession or has, at any time during the period of his office, been in possession, for which the public servant cannot satisfactorily account, of pecuniary resources or property

¹ (2019) 19 SCC 87

² (2014) 11 SCC 282

³ (1977) 3 SCC 525

disproportionate to his known sources of income. The respondent was charged with offences under Section 5(1)(a), (b), (d) and (e) of the Prevention of Corruption Act, 1947 read with subsection (2) and Sections 161 and 165 IPC. The accused was convicted, but on appeal the High Court found that there was nothing on record to show that he was in possession, or came into possession of any pecuniary resources or property disproportionate to his known sources of income after the enactment of clause (e) of Section 5(1), that there was no evidence to support the conviction under Section 5(1)(a), (b) and (d) and, therefore, acquitted the accused. The State appealed to this Court and leave was granted on the limited question whether the acquittal of the accused for the offence under Section 5(1)(e) of the Act was justified. The Supreme Court upheld the acquittal made by High Court, holding that convicting the public servant would be violative of Article 20(1).

Article 20(1), Indian Constitution clearly bars retrospective criminal liability, ensuring that no person is convicted of an offence except for violation of a law in force at the time of the commission of the act. In the case at hand, ECIR/09/HZO/2011 dated 30.08.2011 was initiated much before the Amendment Act of 2013 brought to the PMLA. Therefore, Section 3, PMLA prior to the 2013 amendment should be applicable and not the amended provision which inserted new terms along with an Explanation.

III. Interpretation Aids to Check the Retrospective Effect of Section 3, PMLA

When evaluating whether a statute or amendment operates retrospectively, courts apply the following interpretative principles:

1. **Presumption Against Retrospectivity:** Unless expressly stated or necessarily implied, statutes are presumed to operate prospectively. This is especially strict in the case of penal laws.
2. **Express Language or Necessary Intendment:** Retrospective operation must be clearly expressed or necessarily implied by the statute. Absence of such indication defaults the provision to prospective application.
3. **Substantive vs. Procedural Distinction:** Substantive laws (affecting rights, liabilities, or imposing penalties) are generally not retrospective. Procedural laws (affecting modes of procedure or court processes) can be applied retrospectively unless contrary intention

appears.

4. **Impact on Vested Rights:** If a provision affects vested rights or imposes new obligations, it will not be given retrospective effect unless explicitly provided.

In *Sree Sankaracharya University of Sanskrit v. Manu*⁴, the Supreme Court laid down clear principles to distinguish between clarificatory and substantive amendments to a statute, emphasizing that:

- Just because an amendment is called an “Explanation” or “clarification” by the legislature, does not mean it actually is. Courts are not bound by the label and must analyze its true effect (Para 50, citing Virtual Soft Systems).
- Scope Test: If the amendment expands or alters the scope of the original provision or introduces new concepts, it is substantive and hence cannot operate retrospectively (Para 51, citing Martin Lottery Agencies).
- Vagueness Test: A clarification can only be retrospective if the original law was vague or ambiguous to the extent that a reasonable interpretation was impossible without the amendment (Para 52(ii)).
- Presumption of Prospectivity: Any amendment that changes the law or introduces a new element of liability is presumed to be prospective, even if framed as a clarification (para 52(iv)).

In *S. Sundaram Pillai v. V.R. Pattabiraman*⁵, the court clarified that any legislative provision implying retrospectivity must be expressly stated or necessarily implied, which is not the case with the 2013 and 2019 amendments to the PMLA. An ‘Explanation’ cannot travel beyond the ambit of the principal provision itself.

Therefore, to sum up the issue of retrospective effect in terms of the rules of interpretation as enumerated by the Hon’ble Supreme Court of India, we may infer as follows:

⁴ 2023 SCC OnLine SC 640

⁵ (1985) 1 SCC 591

1. Substantive vs Clarificatory Nature:

If a new explanation alters or adds to the scope of the original section, then it is substantive, not clarificatory. A clarificatory explanation simply explains an existing ambiguity; it does not change the law. If it creates new rights, obligations, liabilities, or penalties, it is substantive and thus cannot operate retrospectively.

2. Presumption Against Retrospectivity:

Courts presume that a statute (or any provision therein) is prospective, unless there is clear legislative intent or necessity that it should be retrospective. Especially in penal statutes, Article 20(1) of the Constitution prohibits retrospective criminal liability.

To test the insertion of new terms and 'Explanation' introduced to the Section 3, PMLA by 2019 Amendment Act against the tests laid down in Sundaram Pillai:

Was this Explanation needed to clarify an ambiguity?

Before 2019, several High Courts (e.g., Arun Kumar Mishra, Obulapuram Mining) held that money laundering involved the act of projecting or claiming proceeds as untainted. The 2019 Explanation reverses that interpretation. In my opinion, the insertion of this Explanation by way of an amendment to the PMLA has not really acted to clarify any ambiguity but has rather widened the scope of application of the Act.

It broadens the offence to include mere possession, without the need for projecting it as clean. Even the Statement of Object and Reasons to the 2013 Amendment Act says that the Section 3 is to be widened by the said amendment. This significantly enlarges the definition of the offence under Section 3.

Does it impose new liabilities or penal consequences?

Yes. It subjects more acts (such as passive holding of tainted property) to prosecution, which were not previously punishable under the judicial interpretation of the pre-amendment Section 3.

Therefore, the amendments made in the PMLA are substantive amendments and not merely clarificatory. The effect of a substantive amendment or a provision is that they operate

prospectively that is from the date such a provision or amendment and comes into force and not cannot be used to penalise for offences committed before that amendment was brought into force.

III. Judicial precedents that have been decided in the light of retrospective effect of PMLA

In *Arun Kumar Mishra v. Directorate of Enforcement*⁶, the petitioner, Arun Kumar Mishra, was implicated in a money laundering case under the Prevention of Money Laundering Act, 2002 (PMLA), based on predicate offences allegedly committed between November 2005 and December 2006. These predicate offences were only later included in the PMLA's schedule by an amendment that came into effect on June 1, 2009. The petitioner challenged the Enforcement Directorate's proceedings on the ground that the law could not be applied retrospectively. Whether the PMLA, specifically provisions introduced via amendment in 2009 (such as including offences under Section 120B IPC and Section 13 of the Prevention of Corruption Act in the schedule), could be applied to acts committed in 2005–2006, before those provisions were part of the PMLA. The Delhi High Court held that the retrospective application of penal provisions is impermissible. It noted in para 19 that money laundering under Section 3 of the PMLA must be intentional and tied to the timing of the actual transaction. Since the scheduled offences forming the basis of the ECIR were added to the Act only in 2009, they could not apply to alleged acts committed earlier. In para 21, the Court reaffirmed this principle, citing Article 20(1) of the Constitution, which bars ex-post facto criminal laws—meaning no person can be prosecuted for an act which was not a criminal offence under the law at the time it was committed.

In *M/s. Mahanivesh Oils & Foods Pvt. Ltd. v. Directorate of Enforcement*⁷, the Delhi High Court addressed a challenge to a provisional attachment order under the Prevention of Money Laundering Act, 2002 (PMLA). The petitioner purchased a property in Vasant Vihar, New Delhi, on 18 March 2005, using funds allegedly linked to a scheduled offense committed by Mr. Homi Rajvansh of NAFED between 2003-2005. The Enforcement Directorate attached the property in 2014, claiming it as proceeds of crime. The petitioner argued that the PMLA, effective from 1 July 2005, could not apply retrospectively to pre-enforcement acts, citing Article 20(1) of the Constitution, which prohibits conviction under ex-post facto laws. The

⁶ 2015 SCC OnLine Del 8658

⁷ 2016 SCC OnLine Del 475

Court found that the property acquisition and alleged laundering occurred before the PMLA's enforcement, concluding no money-laundering offense under the Act could be established. It rejected the Directorate's claim of a continuing offense post-enforcement, emphasizing the PMLA's penal nature precludes retroactivity. Additionally, no evidence showed the property was likely to be concealed or transferred, failing Section 5(1) requirements. The Court quashed the attachment order on 25 January 2016, reinforcing that PMLA actions cannot target pre-2005 activities and require a direct post-enforcement link to money-laundering. This ruling clarifies the PMLA's prospective application, protecting against retrospective penal actions and ensuring procedural fairness in attachments.

In *Obulapuram Mining Company v. Joint Director, Directorate of Enforcement*⁸, Obulapuram Mining Company Pvt. Ltd. (OMC) was accused of illegal mining and export of iron ore, resulting in unlawful profits. The Directorate of Enforcement (ED) initiated proceedings under the Prevention of Money Laundering Act, 2002 (PMLA), and passed an order for provisional attachment of properties under Section 5 of the Act. OMC challenged the attachment primarily on the ground that the alleged scheduled offence took place before the relevant provisions of PMLA were brought into effect. Main issue was whether the provisions of the PMLA, particularly those dealing with attachment of property (like Section 5), can be applied retrospectively to alleged offences committed before the Act or its relevant provisions came into force. The Karnataka High Court held that the attachment under PMLA was invalid. The amended provisions of the PMLA, as amended by the Prevention of Money Laundering (Amendment) Act, 2009, would come into operation on the appointed date, that is, June 1, 2009. All the offences allegedly committed by the writ petitioner were earlier to the insertion of the provision in the schedule of the Prevention of Money Laundering (Amendment) Act, 2009, and as such, they have no application. Therefore, the Enforcement Case Information Report and the order of attachment are without jurisdiction and are liable to be quashed. Also held that, the *petitioner cannot be tried and punished for the offences under the PML Act when the offences were not inserted in the schedule of offences under the PML Act. This would deny the writ petitioner the protection provided under Clause (1) of Article 20 of the Constitution of India.*

***[However, this judgment has been challenged before the Supreme Court in Criminal Appeal No.1269 of 2017 titled as 'Directorate of Enforcement vs. Obulapuram Mining

⁸ 2017 SCC OnLine Kar 2304

Company Pvt. Ltd' and is pending before a three-judge bench to decide the matter of retrospective effect in PMLA and its subsequent amendments.]]***

In *Ajay Kumar Gupta v. Adjudicating Authority*⁹, the Madras High Court addressed a challenge to a provisional attachment order and complaint under the Prevention of Money Laundering Act, 2002 (PMLA). The petitioners, including minors, contested actions based on alleged offenses under Section 13 of the Prevention of Corruption Act, 1988, committed between 1997-2005. These pre-dated PMLA's enforcement on 1 July 2005 and the inclusion of Section 13 in PMLA's schedule on 1 June 2009. A charge sheet was filed in 2009, and properties were already in judicial custody. The Court ruled that PMLA, a penal statute, cannot apply retrospectively, citing Article 20(1) of the Constitution, which bars conviction under ex-post facto laws. The attachment lacked justification under Section 5 of PMLA, requiring a "reason to believe" properties might be concealed, especially since they were secure. On 13 July 2017, the Court quashed both the attachment order and complaint, affirming non-retroactivity of penal laws. This protects against retrospective penal actions, ensuring fairness in PMLA proceedings, and clarifies that only offenses scheduled at the time of commission can trigger PMLA actions. The ruling reinforces legal predictability and constitutional safeguards against retroactive punishment.

In *Prakash Industries Ltd. & Anr. v. Directorate of Enforcement*¹⁰, the Delhi High Court addressed whether the allocation of a coal block, later cancelled by the Supreme Court, could trigger proceedings under the Prevention of Money Laundering Act, 2002 (PMLA). The petitioners challenged the Enforcement Directorate's actions, arguing that the coal block allocation on 04 September 2003 did not constitute "proceeds of crime" under Section 2(1)(u). The Court agreed, ruling that the allocation itself was merely a right to apply for a mining lease, not generating monetary gains, and only subsequent activities (e.g., coal extraction) could potentially yield proceeds of crime. The first chargesheet, covering post-allocation acts, was quashed in 2014, and the second chargesheet was limited to pre-allocation events, showing no proceeds by that date. On retrospectivity, the Court held that PMLA does not apply retrospectively based on the predicate offense's date but on when money laundering occurs, though this was irrelevant here as no proceeds arose from the allocation. Properties attached, acquired before and after PMLA's enforcement (01 July 2005), were not linked to untraceable

⁹ 2017 SCC OnLine Mad 37651

¹⁰ 2022 SCC OnLine Del 2087

tainted assets, invalidating the attachment. The Court quashed the PMLA proceedings, including attachment orders and notices, clarifying that mere resource allocation, without subsequent criminal proceeds, falls outside PMLA's scope. This judgment protects against baseless PMLA actions and emphasizes the need for a clear link to proceeds of crime.

IV. Apex Court on the retrospective effect

In the landmark decision of *Pradeep Nirankarnath Sharma v. Enforcement Directorate*¹¹, the Supreme Court reaffirmed its position from *Vijay Madanlal Choudhary v. Union of India*¹², stating that money laundering is a continuing offence. The Court clarified that the offence does not conclude with the commission of a scheduled offence but continues as long as the proceeds of crime are possessed, used, or concealed. This view implies that even if the predicate offence occurred before its inclusion in the PMLA schedule, continued handling of the proceeds thereafter can attract PMLA liability.

The appellant, a former IAS officer, was accused of approving unlawful land allotments and accepting bribes between 2003–2009, before key offences were included in the PMLA Schedule. He was prosecuted under PMLA on the basis that he continued to possess and benefit from the proceeds of crime even after the Act came into force. Issue involved was whether the PMLA could be applied to acts committed before its enforcement or before the relevant predicate offences were included in its Schedule, and if such application would amount to retrospective criminalization. The Supreme Court held that money laundering under Section 3 of the PMLA is a continuing offence, and liability arises as long as the proceeds of crime are being possessed, concealed, or projected as untainted. The Court ruled that the application of PMLA in this case was valid, as the accused continued to deal with proceeds of crime after the law's enactment. It upheld that this does not violate Article 20(1) of the Constitution since it pertains to ongoing conduct, not retrospective punishment. The Court dismissed the appeal and allowed the trial to proceed.

The Court also noted that retrospective application of penal provisions is impermissible, aligning with Article 20(1) of the Constitution. However, it upheld that the application of PMLA in cases where the laundering acts continued post-enforcement of relevant amendments

¹¹ 2025 SCC OnLine SC 560

¹² (2023) 12 SCC 1

is valid, distinguishing between retroactive criminalization and ongoing criminal conduct.

Furthermore, in *ED v. Obulapuram Mining Company Pvt. Ltd.*¹³, criminal appeal that is currently pending, the question of whether scheduled offences added after 2009 can justify PMLA charges for acts committed prior to their inclusion is under examination. Until that decision, the Vijay Madanlal Choudhary and Pradeep Sharma cases remain controlling authority, affirming the doctrine of continuing offence.

V. Conclusion

Section 3 of the PMLA, especially post-2013 and 2019 amendments, has undergone significant changes like inclusion of terms, substantive explanation to Section 3 etc. While such amendments if applied retrospectively would be unconstitutional and against the principles of interpretation of law, the Supreme Court in the recent judgment of *Pradeep Nirankarnath Sharma*¹⁴ has termed such retrospective operation of PMLA to be within the ambit of a continuing offence as is the scheme of the legislation.

While the Explanation to Section 3, PMLA attempts to clarify and possibly broaden the scope, it cannot override Article 20(1), Constitution of India. Judicial pronouncements have uniformly emphasized that PMLA provisions can only be invoked if the predicate offence was scheduled at the time of commission and if the laundering activity itself occurred post-enforcement.

In my considered view, any prosecution under Section 3 of the PMLA must establish that both the scheduled offence and laundering activity occurred after the relevant dates of notification/amendment and attempting to apply these provisions retrospectively would be unconstitutional.

¹³ Criminal Appeal No. 1269 of 2017

¹⁴ *supra*