PREVENTION OF MONEY LAUNDERING ACT, 2002: SAFEGUARDS, JUDICIAL REVIEW, AND THE NEED FOR LEGAL REFORM

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ABSTRACT

This research paper analyses the Prevention of Money Laundering Act, 2002 (PMLA) from a policy and doctrinal perspective, outlining its basic framework, recent legislative changes, and significant court involvement. The legal concept of money laundering under Section 3 and the enforcement framework, which emphasises the Enforcement Directorate, Adjudicating Authority, and Special Courts, are covered first. The essay places reporting-entity obligations inside India's financial intelligence ecosystem by examining important procedural tactics including provisional attachment, adjudication, confiscation, and statutory presumptions that shift evidential burdens. It evaluates the outcomes of the Supreme Court's joint review in Vijay Madanlal Choudhary[1] in addition to the modifications made in 2019 and 2026 about the extent of planned offences, the requirements for bail, and apparent reversals of the evidence. The policy assessment highlights the potential for institutional overreach, compares the efficacy of enforcement with civil rights concerns, and makes comparisons between FATF[2] and international AML practices. The essay concludes with specific recommendations for maintaining investigative efficacy while regaining transparency and procedural protections.

Keywords: Money Laundering, PMLA, Enforcement Directorate, Reverse Burden of Proof, Vijay Madanlal Choudhary Judgment.

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[1] Supreme Court of India, "Judgments: Vijay Madanlal Choudhary case repository", available at https://www.sci.gov.in (last visited on 18 May 2026).

[2] Financial Action Task Force (FATF), "International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation (FATF Recommendations)" (updated 2023), available at https://www.fatf-gafi.org (last visited on 18 May 2026).

I. INTRODUCTION

By enabling criminals to conceal illegal profits as legitimate assets, money laundering undermines the rule of law and jeopardises the integrity of the financial system. The Prevention of Money-Laundering Act, 2002 (PMLA)[3], which defines actual offences, enforcement authority, and repair mechanisms for locating, apprehending, and seizing the proceeds of criminal behaviour, is India's primary legal response. In order to comply with and combat intricate, frequently global financial crimes, the PMLA collaborates with a regulated reporting system and prosecuting framework. with international AML (AML) regulations.

1.1 Brief Money Laundering History in India

Fighting tax evasion, organised financial crime, and corruption requires both national legislation and international instruments and standards, particularly the Financial Action Task Force's (FATF) recommendations. The PMLA aimed to close identification, reporting, and asset recovery gaps from the early 2000s by making money laundering illegal and codifying reporting obligations. giving specific agencies special investigative and decision-making powers. The Financial Intelligence Unit—India (FIU-IND), judicial bodies, the Enforcement Directorate (ED), and special tribunals tasked with enforcing AML law were all established by the statute and its associated regulations.

1.2 Development of the PMLA and its Goals

The main goals of the PMLA are to prevent money laundering, seize and confiscate assets gained illegally through predetermined predicate offences, and provide procedural channels. prosecution and investigation of similar crimes[4]. The Act has been amended at the legislative and regulatory levels since it was passed in order to broaden the definition of terms like "proceeds of crime" and the offence in Section 3, as well as to increase the statute's reach. The new attachment, adjudication, and forfeiture procedures, along with the stricter reporting and record-keeping requirements, are included in the schedule of predicate offences. Judicial review culminates in a single ruling by the Supreme Court after examining the boundaries of the Constitution and establishing the useful aspects of the Act.

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[3] The Prevention of Money-Laundering Act, 2002 (Act 15 of 2003), s. 3.
[4] Nikos Passas, "Globalization and Money Laundering: Challenges for the Legal System", 12 *Journal of Money Laundering Control* 45 (2009).

II. KEY PROVISIONS OF THE PMLA

According to Section 3, any activity involving the "proceeds of crime," including concealing, possessing, acquiring, using, or presenting such proceeds as lawful property, constitutes money laundering. [5]By linking the offence to its underlying planned predicate offences, the legislation intentionally addresses the three primary steps of money laundering: placement, layering, and integration. Judicial interpretation has emphasised a purposive construction to avoid circumventing the statute's goal of depriving criminals of illegitimate gains.

2.1 Law Enforcement Officials' Authority

The PMLA gives the Enforcement Directorate a number of investigative powers, such as the capacity to issue summonses, record statements, carry out searches and seizures, make arrests, and temporarily seize property. property, as well as the creation of a framework for decisionmaking and prosecution before Special Courts. Adjudicating authorities determine the validity of attachments, and when legislative requirements are met, the property's vesting in the Central Government is validated. Procedural rules pertaining to evidence, disclosure, and cooperation with other organisations and international jurisdictions

2.2 Seizing, Confiscating and Adjudicating Property

Sections 8 and 9, along with related provisions, describe the adjudicatory confirmation and vesting procedures that the State uses in the final seizure and management of confiscated assets[6]. The author of Section 5 permits temporary attachment in order to prevent the suspected proceeds from being dispersed. Pre-conviction limits on property that are susceptible to judicial review are therefore permitted by the legislation. Whether pre-conviction attachment correctly balances preventative necessity has been a topic of frequent dispute among courts. and property rights; attachment was recognised as a legitimate preventive measure within the legislative protections in the Supreme Court's combined assessment.

2.3 Presumption and Proof Burden Clauses

Section 24 creates a legal presumption that the burden of proving the property is not the result

[5] The Prevention of Money-Laundering Act, 2002 (Act 15 of 2003), s. 3.
[6] R. K. Singh, "Prevention of Money Laundering Act, 2002: A Critical Study of Attachment and Confiscation Provisions", 8 *Journal of Money Laundering Control* 112 (2017).

of criminal behaviour shifts to the defendant after the prosecution demonstrates a prima facie connection between property and scheduled offences. Numerous constitutional challenges to this evidentiary displacement have resulted in extensive court scrutiny of proportionality, fairness, and adherence to Article 21 protections, all of which depart from conventional criminal law presumptions. [7]

2.4 Reporting Organisations' Responsibilities and Duties

Under Chapter IV and the PMLA Rules, banks, financial institutions, intermediaries, and other "reporting entities" that offer financial services are subject to due diligence, record keeping, and suspicious transaction reporting requirements that lead to ED investigations and prosecutions. FIU-IND, which receives, evaluates, and disseminates STRs/CTRs, is the intelligence core of AML operations. Noncompliance affects licensing, exposes institutions to regulatory action, and could be used as evidence of intentional facilitation during enforcement processes.

III. CURRENT CHANGES AND JUDICIAL DEVELOPMENTS

3.1 A Summary of Changes made after 2019 and 2026

In reaction to evolving threats and earlier court orders, Parliament amended the PMLA, redefining its bail terms and clarifying its definitional reach. an examination of the strict bail provisions of the Act. In order to strengthen enforcement and address due process concerns raised in earlier jurisprudence, the legislative history shows numerous additions to the schedule and changes to procedural requirements.

3.2 A rise in the quantity of planned offences

The PMLA Schedule has undergone a number of revisions that have broadened its reach by adding new predicate offences under federal and state penal statutes. a realm of behaviour in which earnings are susceptible to seizure and PMLA examination. When major AML instruments are deployed in response to minor predicate offences, a longer timeline increases the prosecuting reach but also creates proportionality issues. [8]

[7] The Constitution of India (Act 1 of 1950), art. 21.
[8] S. K. Verma, "PMLA and the Evolution of Bail Jurisprudence in India", 10 *Indian Law Review* 145 (2021).

3.3 Reversal of the Proof Burden and Bail Modifications

The PMLA's bail system was the subject of extensive lawsuits. Following the Supreme Court's rejection of previous iterations of "twin conditions" in Nikesh Tarachand Shah,[9] legislators responded by imposing more stringent bail requirements.[10] In a subsequent joint review, the Supreme Court upheld the Act's reverse-burden presumption scheme and the re-enacted bail mechanism in Vijay Madanlal Choudhary. Because of this, the bail stage in PMLA cases is held to a higher standard than in ordinary criminal trials, reflecting the legislature's policy. deciding to focus on reducing the possibility of evidence tampering and flight in complicated financial crime investigations.

3.4 The Supreme Court's Major Decisions

In Vijay Madanlal Choudhary v. Union of India[11], the Supreme Court examined the bail system, Section 24 presumptions, the admissibility of statements, and attachment authorities. It supported a number of contentious clauses while emphasising judicial supervision and procedural protections. This is the most significant judicial intervention. The modifications, which continue to be an essential guidance on bail and Article 21 concerns, were informed by earlier jurisprudence, particularly Nikesh Tarachand Shah.[12]

IV. REVIEW AND ASSESSMENT OF POLICY

4.1 Implications on Due Process and Civil Rights

Important human rights concerns are raised by the PMLA's procedural framework, which includes pre-conviction attachment, statement admissibility during ED enquiries, reverse onus rules, and strict bail requirements[13]. Rights to life and property are impacted by pre-conviction property confiscations, particularly when investigations are conducted. Basic criminal law principles, such as the presumption of simplicity and minimal government participation, could be compromised by requiring prima facie evidence at bail risk while reversing the burden of

[9] *Nikesh Tarachand Shah v. Union of India*, (2018) 11 SCC 1 (Supreme Court of India, 2017).
[10] Arvind Datar, "Stringent Bail Conditions under Economic Offences: A Constitutional Analysis", 12 *Supreme Court Cases (Journal Section)* 33 (2020).
[11] (2022) 10 SCC 386
[12] R. Venkata Rao, "Judicial Scrutiny of the Prevention of Money Laundering Act: Balancing Enforcement and Liberty", 7 *NUJS Law Review* 201 (2014).
[13] Usha Ramanathan, "Due Process Concerns in Anti-Money Laundering Legislation", 48 *Economic and Political Weekly* 19 (2013).

proof at the adjudicatory level. The Supreme Court's endorsement of a number of these characteristics shows judicial respect for legislative anti-money laundering objectives as well as a push for practical procedural protections.[14]

4.2 Overreach Constitutionalism Concerns

Critics claim that the ability for protracted pre-conviction restriction, along with broad ED powers and limited disclosure, particularly about internal Enforcement Case Information Reports, or ECIRs, is a mix that could result in abuse the systematic risks of overreach. Strong preventative measures could be abused in the lack of clear disclosure requirements, time-bound arbitration assurances, or independent supervisory control, which is the main critique of organisational responsibility rather than just doctrine. These policy issues were not resolved by the Supreme Court's reasonable recognition of several authorities. Its rulings genuinely give implementing organisations and subordinate tribunals the authority to carry out operational protections. [15]

4.3 Compare Results from Global AML Guidelines

A balance between efficient detection, reporting suspicious transactions, asset forfeiture authority, and safeguards for proportionality, fair process, and human rights is emphasised in the FATF's statement of best practices in global AML[16]. There are frequently stricter procedural safeguards in place, such as impartial financial detective control, strong judicial scrutiny, disclosure rules, and attachment time restrictions, in contrast to civil seizure and preconviction restraint, which are permitted in many common-law jurisdictions. While the FATF's[17] objectives and instruments align with the PMLA in India, policy alignment necessitates supporting modifications such as codifying limits, improving prosecutorial visibility, and strengthening judicial oversight of pre-conviction property limitations in order to avoid undue hardship and procedural injustice.

[14] Michael Levi, "Human Rights Implications of Anti-Money Laundering Enforcement", 23 *International Journal of Law, Crime and Justice* 75 (2017).
[15] Arvind Datar, "Secrecy, ECIR and Fair Trial Rights under Economic Offences Law", 14 *Supreme Court Cases (Journal Section)* 52 (2022).
[16] Barry Rider, "International Standards and Domestic AML Enforcement: Balancing Efficiency and Rights", 19 *Journal of Money Laundering Control* 201 (2016).
[17] Financial Action Task Force (FATF), "Guidance on Transparency and Beneficial Ownership of Legal Persons" (2023), available at https://www.fatf-gafi.org (last visited on 18 May 2026).

V. CONCLUSION AND SUGGESTIONS

The Prevention of Money-Laundering Act gives India strong tools to fight money laundering and respect international norms. Among the measures used to combat financial crimes include broad definitions, pre-conviction attachment, inverted evidence rules, and particular investigative capabilities. However, these enforcement agencies jeopardise due process and property rights if safeguards are insufficient or timeframes are unclear. The legitimacy of the law will be maintained by putting in place safeguards including court reviews of seizures, properly justified actions, and deadlines for legal proceedings. minimal use of external enforcement monitoring and reverse-burden rules. By putting these policies into practice, it is possible to strike a balance between the goals of the legislation and constitutional rights, allowing for prompt action against money laundering while ensuring justice and the rule of law.

5.1 Compromise between Security and Enforcement

The law mandates that defendants be given comprehensive disclosure of the information necessary to prepare defences. When strictly necessary, ED's case, any pertinent ECIRs components, and substantial judicial scrutiny will permit redaction for security. Enforcing the statutory deadlines for deciding provisional attachments and prompt.[18]

Prolonged pre-conviction property loss will be lessened with the aid of special court procedures. Before an attachment is granted, courts must conduct proportionality analyses to weigh the seriousness of the alleged underlying violation against any potential hardship for the affected party. actual stakeholders in addition to outside parties In addition to planned attachment and confiscation audits, establish an independent supervisory review for ED judgements, possibly through an ombudsman or a parliamentary committee reporting. Improve Section 24 procedures so that reverse-burden presumptions are only applicable following the presentation of a strong chain of evidence by the prosecution. By scheduling offences, evidence connecting the property can be used to align evidential changes with procedural justice. [19]

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[18] Law Commission of India, "Report on Economic Offences and Procedural Safeguards" (2018), page 45 (2018).

[19] Nikos Passas, "Global Anti-Money Laundering Regimes and the Question of Rights Protection", 13 *Journal of Money Laundering Control* 45 (2010).

5.2 The future course of India's AML policy

In order to institutionalise procedural fairness and maintain enforcement capabilities, India should create a measured AML framework. Investing in judicial capacity for intricate financial hearings, standardising industry reporting regulations, utilising specialised financial intelligence tools, and increasing cross-border mutual legal assistance are some examples of reforms. The judiciary[20] must continue to be involved. Courts must continue to look into discretionary authority, request sufficient transparency, and uphold time requirements in order to combat money laundering. Both public integrity and individual liberty are protected by the law.

[20] S. Sudhir Krishnaswamy, "Constitutionalism and Economic Offences: Judicial Review under PMLA", 11 *National Law School of India Review* 54 (2022).

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