

# INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

---

Volume 7 | Issue 3

---

2024

© 2024 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com/>)

---

This article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in the International Journal of Law Management & Humanities after due review.

In case of **any suggestions or complaints**, kindly contact [Gyan@vidhiaagaz.com](mailto:Gyan@vidhiaagaz.com).

---

**To submit your Manuscript** for Publication in the **International Journal of Law Management & Humanities**, kindly email your Manuscript to [submission@ijlmh.com](mailto:submission@ijlmh.com).

---

# The Evolution of the Prevention of Money Laundering Act: Challenges and Adaptation

---

SHASHANK SHEKHAR CHOUDHARY<sup>1</sup> AND AMALENDU MISHRA<sup>2</sup>

## ABSTRACT

*This article examines the development of the Prevention of Money Laundering Act (PMLA) in India, focusing on the historical background of money laundering, the legislative process of the Act, and the current difficulties and adjustments in its implementation. Money laundering, an old practice that originated in China, gained significant recognition during the Prohibition era in the United States. The necessity for a strong and comprehensive legal structure to address the issue of money laundering in India became evident with the founding of the Financial Action Task Force (FATF) in 1989. The FATF established global benchmarks for implementing measures against money laundering. The legislative response of India resulted in the implementation of the PMLA in 2002, which became effective in 2005.*

*The correlation between money laundering accusations and the prosecution of predicate offences is intricate, as both crimes are interrelated but handled separately according to legal provisions. In cases of money laundering, the weight of proof is shifted, necessitating the accused to provide evidence that the funds obtained from criminal activities have not been laundered. The procedural elements of trials conducted under the Prevention of Money Laundering Act (PMLA), such as the jurisdiction of Special Courts and the strict bail restrictions, pose distinctive difficulties.*

*The application of the PMLA has been consistently influenced by judicial interpretations and changes. Notable cases, such as Vijay Mandal Chaudhary and Nikesh Tarachand Shah, have dealt with matters of the enforceability of the Code of Criminal Procedure, the validity of bail terms, and the shifting of the burden of proof. The procedural complexities of transferring cases and the jurisdictional authority of Special Courts under the PMLA are also explored.*

*Moreover, the article examines the detrimental impacts of money laundering on economies and financial institutions, highlighting the necessity for strong anti-money laundering measures. The three phases of money laundering—placement, layering, and integration—are outlined to demonstrate the intricacies involved in concealing illegal funds.*

---

<sup>1</sup> Author is a student at Law College Dehradun, Uttarakhand University, Dehradun, Uttarakhand, India.

<sup>2</sup> Author is an Assistant Professor at Law College Dehradun, Uttarakhand University, Dehradun, Uttarakhand, India.

*Ultimately, the PMLA, 2002, has made a substantial impact on combating money laundering in India by creating a structure for ensuring adherence to regulations and overseeing potentially illicit activities. However, the efficacy of the system relies on the collaboration of financial institutions and the general public in reporting and thwarting financial offences. To effectively tackle the ever-changing nature of money laundering, it is crucial to continue adapting and enforcing strict measures.*

**Keywords:** PMLA, Evolution, History.

## I. INTRODUCTION

To understand The Evolution of the Prevention of Money Laundering Act there needs to be an understanding of what money laundering is and what its history. Money Laundering predates its name as it is a practice that has been used by Chinese merchants as early as early 2000 BCE, the wealthy merchants of China used to move their profits from trade outside of China and reinvest it in other enterprises as the government did not support commercial trading. This process of turning illegally obtained money into legal money according to rumors got its name as Money Laundering in the alcohol prohibition era of The United States of America, it is said that mob boss Al Capone used to obtain money from selling alcohol in the prohibition era and used to filter the money using his laundromats and showing it as profit from the same. The Evolution of the Prevention of Money Laundering Act in India dates back to 1989 when The Financial Action Task Force (FATF) was established in June of 1989 in Paris. The Financial Action Task Force was established with the aim to study money laundering and to develop countermeasures against it and also to create international standards for the same. The General Assembly of The United Nations in its 17th special session held on February 23, 1990, adopted the Political Declaration and Global Program of Action annexed to the resolution S-17/2. From June 08 to June 10, 1998, The Political Declaration Adopted by the Special Session of the United Nations General Assembly called upon the member states to adopt national money Laundering Legislation and Programs. On August 4 1998 the bill was introduced in Parliament with the aim of achieving the objective of Preventing Money Laundering. The bill was then referred to the standing committee of Finance and on March 4th,1999 the committee presented its report to the Lok Sabha. The Prevention of Money Laundering Bill passed both houses of the Parliament and got the assent of the President on January 17th, 2003. On July 1st, 2005 it came on the statute book as the Prevention of Money Laundering Act, 2002, and came into force from July 1st,2005.

## II. THE RELATIONSHIP BETWEEN MONEY LAUNDERING CHARGES AND THE PROSECUTION OF THE UNDERLYING OFFENCE

A prerequisite for Money Laundering is the commission of a scheduled offence. Thus in case a predicate offence is committed by a person which results in the proceeds of a crime and such proceeds are thereafter laundered two offences would be committed namely (i) The Predicate Offence and (ii) the offence of Money Laundering. It has now been settled by Judicial Pronouncements that offence of money laundering is a separate and independent offence, and that the condition of double jeopardy given in Article.20(2) of the Constitution of India<sup>3</sup> is not applicable.

The prosecution and trial of such offence is supposed to be conducted by the same court as both offences are intertwined in such a manner that offence of money laundering is directly derived from the predicate offence. Under the provisions of Section.44 of the Prevention of Money Laundering Act<sup>4</sup>, it has been provided that if the trial of a predicate offence is being conducted under another court it shall commit the trial to the special money laundering court. Therefore doubt would arise as to whether these trials being conducted together, are joint trials or not. It has been clarified through the amendment which was brought in section.44 of the act via the 2019 amendment act which added an explanation reading as, 'the jurisdiction of the Special Court while dealing with the offence under this Act, during investigation, enquiry or trial under this Act, shall not be dependent upon any orders passed in respect of the scheduled offence, and the trial of both sets of offences by the same court shall not be construed as joint trial'. The combined reading of both provisions mentioned makes it apparent that money laundering is an independent offence.

To better understand refer to the decision of the Hon'ble Supreme Court in the case of *Vijay Mandal Chaudhary*<sup>5</sup> stated below :

Applicability of CrPC to money laundering prosecutions

S.65 of the PMLA <sup>6</sup>provides for the application of the CrPC to proceedings under the PMLA. It states that the provision of the CrPC will apply to investigations and prosecutions related to money laundering, as long as they are consistent with the provisions of the PMLA. S. 4 read with s. 5 of the PMLA<sup>7</sup> provides that the provisions of the CrPC would be applicable to the

---

<sup>3</sup> Article.20(2) of the Constitution of India

<sup>4</sup> Section.44 of the Prevention of Money Laundering Act

<sup>5</sup> *Vijay Mandal Chaudhary*

<sup>6</sup> S.65 of the PMLA

<sup>7</sup> PMLA. S. 4 read with s. 5 of the PMLA

extent that they are consistent with the provisions of any Special Act.

### **(A) Burden of Proof**

The PMLA has established a reversal of the burden of proof because it is a rigorous statute that addresses the offence of money laundering. According to S. 24 of the PMLA<sup>8</sup>, a court or other body handling a case involving proceeds of crime may rely on an assumption that such proceeds are being used for money laundering. In summary, this assumption states that money laundering may be assumed in any situation in which a predicate offence is committed and results in the proceeds of crime.

The accused may refute this rebuttable presumption by providing proof or other materials that refute the notion that the proceeds were used for money laundering. Although this assumption might help any property harmed by the ED that is attached, it's noteworthy to note that it might also help with PMLA Prosecution.

Upon a more expansive reading, it could be inferred that the presumption pertains to 'any procedure connected to proceeds of crime,' and that the prosecution of money laundering aims to penalise the accused for such money laundering.

### **(B) Procedure of Trial**

The Special Court constituted for the area in which the offence has been committed shall try money laundering offences, according to PMLA 44(1)(a)<sup>9</sup>. Although this section's subclause (b) states that the court will only take notice of an offence under Section 3 of the PMLA upon a complaint from an authority, the accused will not be brought before the court for a trial.

More specifically, Section 45 of the PMLA<sup>10</sup> specifies that any offence punishable under Section 4 of the PMLA<sup>11</sup> will not be brought before the special court unless it is accompanied by a written complaint from either the Director or any officer of the Central Government or a State Government who has been specifically authorised to do so by a general or special order issued by that Government.

Moreover, in the case of *KA Rauf v. Directorate of Enforcement & Ors.*<sup>12</sup>, the SC addressed the jurisdictional question of the Special Court. Despite the offences being committed in Kerala, the prosecution complaint under ss. 44 and 45 of the PMLA<sup>13</sup> were filed before the Special

---

<sup>8</sup> S. 24 of the PMLA

<sup>9</sup> PMLA 44(1)(a)

<sup>10</sup> Section 45 of the PMLA

<sup>11</sup> Section 4 of the PMLA

<sup>12</sup> *KA Rauf v. Directorate of Enforcement & Ors.*

<sup>13</sup> ss. 44 and 45 of the PMLA

Court in Lucknow. The petitioner sought to transfer the case to the Special Court in Kerala, arguing that the Special Court in Lucknow lacked jurisdiction due to most criminal activities occurring in Kerala, along with the majority of accused residents and witnesses being from there.

However, the court heavily relied on the precedent set in *Rana Ayyub v. Directorate of Enforcement*<sup>14</sup>, asserting that the Special Court under the PMLA has jurisdiction even over scheduled offences, as mandated by s. 44(1)(a) of the PMLA<sup>15</sup>. Additionally, the court clarified that residency or witness location alone cannot warrant a transfer of investigation, emphasizing that the Special Court in the jurisdiction where money laundering activities occurred holds jurisdiction, regardless of the accused's residency or witness location.

Transferring cases from one court to another is another matter of concern in PMLA prosecutions. In contrast to the special PMLA court, such as the Court of the Additional Sessions Judge, the court trying the predicate offence is frequently a senior court (in terms of hierarchy), such as the Court of the Sessions Judge. Friction arises from the need to relocate or commit the matter from the senior court to the lower (based only on seniority), which causes an excessive delay in the proceedings. Frequently, this results in the predicate offence prosecution remaining at the charge stage while the PMLA prosecution proceeds considerably more quickly—possibly even finishing the evidence stage.

### **(C) Provisions for Bail**

According to PMLA, money laundering is a crime that is both cognizable and not subject to bail. Section 45 of the PMLA<sup>16</sup> imposes stringent bail requirements on an individual who has been arrested for a criminal act, superseding the established legal precedent under Section 439 of the CrPC<sup>17</sup>. The section outlines "twin conditions," which mandate that if a court decides to grant bail to an individual accused of money laundering, it must first give the public prosecutor a chance to object to the bail request and then find reasonable grounds to believe that the individual is not guilty of the crime and is unlikely to commit another one while on bail.

In *Nikesh Tarachand Shah v. Union of India*<sup>18</sup>, the Supreme Court invalidated the twin criteria, citing their discriminatory and arbitrary nature. But s. 45 was quickly amended<sup>9</sup>, and the Supreme Court has maintained the legality of the revised section in the case of *Vijay Madanlal*

---

<sup>14</sup> *Rana Ayyub v. Directorate of Enforcement*,

<sup>15</sup> s. 44(1)(a) of the PMLA

<sup>16</sup> Section 45 of the PMLA

<sup>17</sup> Section 439 of the CrPC

<sup>18</sup> *Nikesh Tarachand Shah v. Union of India*

*Chaudhary*<sup>19</sup> (previous).

When someone is arrested and given bail, the conclusions stated in the bail order are very important to the prosecution. It is necessary to analyse the charges and evidence at the bail stage in order to reach a more-than-*prima-facie*<sup>10</sup> decision that the accused is not guilty at the bail stage. As a result, the prosecution is already underway, with the court forming an opinion at the outset. However, as of late, the majority of PMLA prosecutions have involved bail orders in which other constitutional protections have superseded the twin requirements (for example, an unreasonable length of detention for which the court has overruled the twin conditions in light of Part III of the Constitution).

### **III. EFFECTS OF MONEY LAUNDERING**

The Financial Action Task Force (FATF) has been concerned with estimating the amount of money laundering and quantifying its constituent elements since its first report, according to Mr. Stanley Morris, Chairman of the OECD's Working Group on Statistics and Methods. According to his analysis, there are at least four areas where there is a justifiable need for quantitative money laundering measures:

- Being aware of the scope of the crime will help lawmakers and law enforcement officials come to a consensus regarding the role of anti-money laundering initiatives. This will help lawmakers draft an enforcement plan and facilitate communication between law enforcement, national lawmakers, and international organisations regarding the placement of anti-money laundering initiatives in national and international enforcement and regulatory agendas.
- Recognising the success of anti-money laundering initiatives and assessing the initiatives.
- Being aware of the negative consequences that money laundering has on economies and financial institutions, as well as the macroeconomic impacts of money laundering. When we speak of money laundering, we are grouping together several aspects of the phenomenon. In order to address the issue, it is necessary to fully comprehend each component.

But in the end, he said, "There isn't currently an economic *deus ex machina* that will enable the precise measurement of money laundering globally, or even within the majority of major nations." There is just no foundation for these estimates.

---

<sup>19</sup> *Vijay Madanlal Chaudhary*

A crime in one nation might not always be considered a crime in another. It's possible that certain crimes that yield the highest profits in one nation won't in another. While criminals in certain nations would prefer to spend their riches, those in others might decide to launder them. In this sense, Morris's assertion that there isn't a single explanation for money laundering may be true.

Financial crime would be impacted if money laundering were made as hazardous or unrewarding as handling stolen commodities. Everyone is impacted by financial crime: The consequences of tax evasion include higher taxes for nonevaders, higher insurance premiums for nonevaders, higher taxes for taxpayers who do not file fraudulent benefit claims, higher costs for businesses, which translate into lower profits and higher prices for consumers, and money going to the pockets of dishonest politicians and businesspeople, including those involved in the trafficking of drugs, weapons, and people.

### **(A) Process of Money Laundering**

Money laundering involves disguising the proceeds obtained from criminal activities in order to use them without disclosing their illegitimate source. Money laundering is a well planned procedure that involves, but is not limited to, the following three stages:

**1. Placement:** During this procedure, the launderer introduces illicit monies or assets into the financial system. It necessitates physically depositing the monies into authorised banking institutions. Depositing specific sums of cash into banks and illegally transporting currency across international boundaries for subsequent deposit are often used methods for placement.

**2. Layering:** After the illicit monies have been introduced into the financial system, other intricate financial transactions are carried out to further obscure their unlawful origin. Layering typically entails the utilisation of many accounts, banks, intermediaries, organisations, trusts, and nations in order to conceal the source. Wire transfers between separate accounts, acquiring monetary instruments (such as traveler's checks, bank drafts, money orders, letters of credit, securities, bonds, etc.) using other monetary instruments, and converting currencies of different denominations all contribute to the process of layering.

**3. Integration:** Laundered monies are transformed into funds that appear to be legal. Money laundering entails the process of reintegrating illicitly obtained funds into the economy in a manner that allows them to seamlessly re-enter the financial system as legitimate corporate assets. This may entail making a last bank transfer to the account of a local business in which the money launderer is investing, in return for a share of the earnings.



**(B) Indian Financial Crimes and the Prevention of Money Laundering Act 2002<sup>20</sup>**

Prior to the implementation of the Prevention of Money Laundering Act (PMLA) in 2002, law enforcement agencies in India dealt with the issue of money laundering using legal tools such as the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (COFEPOSA), the Benami Transactions (Prohibition) Act, 1988, the Indian Penal Code, 1860 (IPC), the Code of Criminal Procedure, 1973 (CrPC), the Narcotic Drugs and Psychotropic Substances Act, 1985, and the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988<sup>21</sup>. The constitutional validity of the Act, namely the bail conditions addressed in Section 45(1) of the PMLA, 2002, has been repeatedly challenged in various courts. However, for the most part, it has consistently been upheld and approved by the courts. In the significant legal case of *Nikesh Tarachand Shah v. Union of India*, the oppressive provision was deemed unlawful since it contravened Articles 14 and 21 of the Indian Constitution. According to Section 45(1) of the Prevention of Money Laundering Act (PMLA) 2002, if a person is suspected of a crime that can result in a prison sentence of more than three years under Part A of the Schedule, they must meet certain extra conditions in order to be granted bail. These conditions go beyond what is required under the relevant sections of the Code of Criminal Procedure (CrPC) 1973. In 2019, the Prevention of Money Laundering Act (PMLA) was amended to remove Sections 17(1) and 18(1), and to expand the authority of Enforcement Directorate (ED) personnel. This encompasses the capacity to carry out investigations of the defendant or their belongings, as specified in Section 157 of the Code of Criminal Procedure, 1973, without submitting a report to the magistrate. This could result in the accused enduring the capricious actions of the authorities. The court is currently examining the constitutional legality of these clauses. Additional prominent legal challenges to the legal legitimacy of PMLA 2002 have been initiated by Karti Chidambaram, the offspring of former Union Minister P Chidambaram and a Member of Parliament from the Congress party. He asserts that the statute is null and void, ultra vires, unconstitutional, arbitrary, and irrational, and it contravenes Articles 14, 19, 20, and 21 of the Indian Constitution. The petitioner's argument centres around the ED's disproportionate and capricious authority in defining predicate offences, as well as its process for seizing, adjudicating, and retaining assets, all of which can

---

<sup>20</sup> Indian Financial Crimes and the Prevention of Money Laundering Act 2002 [https://www.researchgate.net/publication/375866459\\_Financial\\_Crimes\\_in\\_India\\_with\\_special\\_reference\\_to\\_Prevention\\_of\\_Money\\_Laundering\\_Act\\_2002](https://www.researchgate.net/publication/375866459_Financial_Crimes_in_India_with_special_reference_to_Prevention_of_Money_Laundering_Act_2002)

<sup>21</sup> the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (COFEPOSA), the Benami Transactions (Prohibition) Act, 1988, the Indian Penal Code, 1860 (IPC), the Code of Criminal Procedure, 1973 (CrPC), the Narcotic Drugs and Psychotropic Substances Act, 1985, and the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988

be executed solely on the basis of their subjective conviction, even in the midst of ongoing investigations. Section 3 of the statute has also been contested for contravening Article 20(2) because the petitioner in the INX Media case was punished for an act that was not considered an offence when it was performed. Similarly, Mehbooba Mufti, the leader of the People's Democratic Party, has questioned the constitutionality of Section 50 of the PMLA, 2002. She argues that this section contradicts Article 20(3) of the Constitution and requests for it to be declared null and invalid. This clause confers upon ED officials the authority to summon individuals and request the production of documents or evidence, a practice that is perceived to violate the constitutional right against self-incrimination. The legality of Sections 2(1) (u), 8, and 23 of the Act were contested in the case of *B Rama Raju v. Union of India and Ors (2019)*. The petitioner raised an objection to the authority of the ED to confiscate and seize property, even if it did not belong to the accused. The petitioner further alleged that properties obtained before to the implementation of the Act, if determined to be illegal under the act, were being confiscated and seized. Moreover, the petitioner requested the court to examine the legal legitimacy of Section 23 of the Act, which assumes guilt instead of innocent. The Court analysed the Act and its pertinent provisions, and eventually determined that the aforementioned portions are legal in light of the Parliament's authority to enact retroactive legislation. After considering the provided circumstances, the Court determined that these provisions are constitutional and affirmed their legitimacy. The implementation of financial crime prevention measures in India has been a persistent concern in recent years. The Prevention of Money Laundering Act (PMLA), 2002 was enacted with the aim of countering the illicit practice of money laundering and its associated activities within the nation. The enactment was carried out to fulfil the standards of the Financial Action Task Force (FATF), an organisation committed to combatting financial crime. The PMLA, 2002 mandates the creation of a Financial Intelligence Unit that is tasked with the gathering, examining, and sharing of data pertaining to questionable financial transactions. The Financial Intelligence Unit (FIU) is required to collaborate with several governmental entities, such as the Reserve Bank of India (RBI), the Department of Revenue, and the Central Bureau of Investigation (CBI). The Financial Intelligence Unit (FIU) is tasked with offering technical support to the Reserve Bank of India (RBI) and other governmental organisations in the implementation of the Prevention of Money Laundering Act (PMLA), 2002. The PMLA, 2002 has successfully addressed the issue of money laundering in India. The Reserve Bank of India, together with other government authorities, ensures the implementation of the law, and financial institutions are obligated to adhere to the Know Your Customer laws. The legislation has also contributed to the

establishment of an efficient framework for reporting and monitoring activities that arouse suspicion. Nevertheless, it is crucial to acknowledge that the effectiveness of the legislation relies on the collaboration of financial institutions and the general people in the detection and prevention of financial offences. The Indian government has implemented measures to guarantee that financial institutions adhere to the provisions of the Prevention of Money Laundering Act (PMLA), 2002. As an illustration, the Reserve Bank of India (RBI) has issued explicit directives to banks and other financial institutions to ensure their strict compliance with the law. Furthermore, the Reserve Bank of India (RBI) has established a Financial Intelligence Unit to oversee and detect potentially illicit transactions, which are then promptly reported to law enforcement authorities. In general, the PMLA, 2002 has effectively addressed the issue of money laundering in India. The legislation has established a structure for financial institutions to comply with and has contributed to the establishment of a system for detecting and overseeing dubious transactions. The efficacy of the legislation hinges on the collaboration of financial institutions and the general populace in promptly reporting and thwarting financial offences.

#### IV. CONCLUSION

The development of the Prevention of Money Laundering Act (PMLA) in India is a significant reaction to the worldwide issue of financial crime. Since its implementation in 2002, the PMLA has created a thorough legislative structure with the goal of identifying, preventing, and punishing money laundering acts. The Act has greatly enhanced the country's capacity to combat money laundering by implementing strict measures, including the reversal of the burden of proof, imposing tough bail terms, and establishing Special Courts.

The historical backdrop of money laundering underscores its enduring existence and the imperative for strong legislation. The establishment of the PMLA was shaped by international standards established by the Financial Action Task Force (FATF) and global initiatives aimed at reducing illegal financial transactions. India's adherence to these criteria has enabled international collaboration and conformity with global anti-money laundering norms.

Nevertheless, the execution and application of the PMLA continue to pose persistent difficulties. The Act's legitimacy has been ensured by the implementation of judicial interpretations and legislative revisions, which have effectively addressed any problems. Landmark cases, such as *Vijay Mandal Chaudhary* and *Nikesh Tarachand Shah*<sup>22</sup>, have influenced the legal framework by elucidating procedural elements and safeguarding

---

<sup>22</sup> *Vijay Mandal Chaudhary* and *Nikesh Tarachand Shah*

fundamental rights.

The detrimental impacts of money laundering on economies and financial institutions emphasise the significance of ongoing monitoring and adaptability. Money laundering, which includes the stages of placement, layering, and integration, requires advanced detection methods and strong collaboration between different agencies. The effectiveness of the PMLA is highly dependent on the collaboration of financial institutions and the general public in promptly reporting suspicious transactions and complying with regulatory obligations.

Ultimately, the effectiveness of the PMLA in combating money laundering in India depends on its ability to continuously adapt to changing financial crimes. To maintain the Act as a powerful tool against money laundering, it is crucial to improve enforcement capacities, promote public awareness, and enhance international collaboration. In response to the increasing complexity of financial crimes, it is necessary for the legal and enforcement systems to adapt in order to protect the integrity of the financial system and maintain the principles of the rule of law.

\*\*\*\*\*