
EVOLVING INTERPRETATION OF PROCEEDS OF CRIME UNDER THE PMLA 2002: JUDICIAL TRENDS AND CONSTITUTIONAL CHALLENGES

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ABSTRACT

The Prevention of Money Laundering Act, 2002 (PMLA) was enacted to combat the menace of money laundering and to prevent the legitimisation of illicit wealth generated through criminal activities. It establishes a comprehensive legal framework for attachment, adjudication, and confiscation of property derived from scheduled offences, thereby strengthening India's financial regulatory regime. Central to the functioning of the Act is the definition of "proceeds of crime" (PoC) under Section 2(1)(u), which determines the very foundation of a money laundering offence.¹

The term "proceeds of crime" has undergone significant judicial interpretation, particularly in light of legislative amendments expanding its scope to include not only property directly derived from criminal activity but also property indirectly linked or equivalent in value.² Courts have increasingly interpreted PoC in a broad and purposive manner, thereby enlarging the enforcement powers of agencies like the Directorate of Enforcement. However, this expansion has also generated considerable legal controversy.

In *Vijay Madanlal Choudhary v. Union of India*, the Supreme Court upheld the constitutional validity of key provisions of the PMLA while emphasising that PoC must be linked to a scheduled offence.³ Subsequently, *Pavana Dibbur v. Directorate of Enforcement* clarified that the existence of proceeds of crime is a sine qua non for invoking the offence of money laundering.⁴ Further, *Pankaj Bansal v. Union of India* highlighted procedural safeguards and the necessity of fairness in enforcement actions.⁵

These evolving interpretations raise serious constitutional concerns, particularly regarding Article 14 (arbitrariness), Article 21 (due process and personal liberty), and Article 20(3) (protection against self-incrimination).⁶ The expanding ambit of PoC, coupled with reverse burden provisions and stringent bail conditions, has triggered debates on the balance between effective enforcement and protection of civil liberties.

This paper aims to critically analyse the evolving judicial interpretation of "proceeds of crime" under the PMLA and examine whether the current legal framework strikes an appropriate balance between state interests in combating financial crimes and the preservation of fundamental rights.

INTRODUCTION**Background**

The rapid growth of economic offences in the era of globalization has posed significant challenges to financial systems and governance structures worldwide. Money laundering, in particular, has emerged as a sophisticated transnational crime that facilitates the concealment of illicit proceeds derived from predicate offences such as corruption, drug trafficking, fraud, and organized crime.⁷ In response, the international community has developed coordinated mechanisms to combat such activities, most notably through the Financial Action Task Force (FATF), which prescribes global standards for anti-money laundering (AML) and counter-terrorist financing (CFT) regimes.⁸

India, being a member of FATF, is obligated to align its domestic legal framework with these international standards.⁹ Consequently, the Prevention of Money Laundering Act, 2002 (PMLA) was enacted to prevent money laundering and to provide for confiscation of property derived from or involved in such activities.¹⁰ Over time, the Act has undergone several amendments to strengthen enforcement mechanisms and broaden its scope, particularly with respect to the definition of "proceeds of crime."

¹ The Prevention of Money Laundering Act, 2002 (Act 15 of 2003), s. 2(1)(u).

² The Prevention of Money Laundering Act, 2002 (Act 15 of 2003), s. 2(1)(u), Explanation.

³ *Vijay Madanlal Choudhary v. Union of India*, (2022) 10 SCC 1.

⁴ *Pavana Dibbur v. Directorate of Enforcement*, (2023) SCC OnLine SC 1586.

⁵ *Pankaj Bansal v. Union of India*, (2023) SCC OnLine SC 1244.

⁶ The Constitution of India, arts. 14, 20(3), 21.

⁷ K.C. Khanna, *Money Laundering and Financial Crimes* 12 (LexisNexis, New Delhi, 2010).

⁸ Financial Action Task Force, "International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation" (2012).

⁹ Id.

¹⁰ The Prevention of Money Laundering Act, 2002 (Act 15 of 2003).

Importance of “Proceeds of Crime”

The concept of “proceeds of crime” (PoC) forms the cornerstone of the offence of money laundering under the PMLA. Section 3 of the Act criminalizes any process or activity connected with the proceeds of crime, including its concealment, possession, acquisition, or use.¹ Thus, the existence of PoC is a sine qua non for establishing the offence. Without the identification of property derived or obtained from a scheduled offence, the machinery of the PMLA cannot be set in motion.²

The statutory definition under Section 2(1)(u) has been interpreted expansively to include not only direct proceeds but also indirect or equivalent value property.³ This broadening has significantly enhanced the scope of enforcement but has also raised questions regarding the limits of criminal liability and the potential for misuse of power by enforcement authorities.

Research Problem

The evolving judicial interpretation of “proceeds of crime” has led to a noticeable expansion in the scope of the PMLA. While such expansion is often justified on the grounds of effective enforcement, it has simultaneously given rise to concerns of over-criminalization. Individuals may be subjected to stringent legal consequences even in cases where the nexus with the predicate offence is tenuous or indirect.⁴

Moreover, the enhanced powers granted to enforcement agencies, particularly the Directorate of Enforcement, have raised apprehensions regarding excessive executive discretion. The combination of broad definitions, reverse burden of proof, and stringent bail conditions has the potential to infringe upon fundamental rights.⁵ This creates a tension between the objectives of combating financial crimes and safeguarding constitutional guarantees.

OBJECTIVES

This research seeks to examine the evolving judicial interpretation of “proceeds of crime” under the PMLA and to assess its implications on the legal and constitutional framework. It aims to critically analyse how courts have expanded or restricted the meaning of PoC over time. Additionally, the study intends to evaluate the constitutional challenges arising from such interpretations, particularly in relation to fundamental rights enshrined in the Constitution of India.

Further, the research attempts to assess whether the current enforcement regime strikes an appropriate balance between the need for stringent anti-money laundering measures and the protection of individual liberty.

Research Questions

The study is guided by the following research questions:

- Whether the judicial interpretation of “proceeds of crime” has resulted in an excessive widening of its scope beyond legislative intent?
- Whether the existing framework under the PMLA is constitutionally sustainable in light of Articles 14, 20(3), and 21 of the Constitution of India?
- Whether there is a need for legal reforms to limit the powers of enforcement agencies and ensure greater accountability and protection of civil liberties?

Statutory Definition

The concept of “proceeds of crime” (PoC) forms the cornerstone of the Prevention of Money Laundering Act, 2002 (PMLA). The statutory definition under Section 2(1)(u) defines PoC as any property derived or obtained, directly or indirectly, as a result of criminal activity relating to a scheduled offence.⁶ This definition is intentionally broad and inclusive, reflecting the legislative intent to capture the full spectrum of illicit gains arising from unlawful activities.

The inclusion of both “derived” and “obtained” indicates that the law is not confined merely to the immediate fruits of crime but also extends to subsequent transformations of such property.⁷ Over time, amendments to the provision, particularly the addition of the Explanation, have further clarified that PoC includes property not only

¹ The Prevention of Money Laundering Act, 2002 (Act 15 of 2003), s. 3.

² *Pavana Dibbur v. Directorate of Enforcement*, (2023) SCC OnLine SC 1586.

³ The Prevention of Money Laundering Act, 2002 (Act 15 of 2003), s. 2(1)(u).

⁴ *Vijay Madanlal Choudhary v. Union of India*, (2022) 10 SCC 1.

⁵ The Constitution of India, arts. 14, 20(3), 21.

⁶ The Prevention of Money Laundering Act, 2002 (Act 15 of 2003), s. 2(1)(u).

⁷ *Id.*

within India but also abroad, as well as property equivalent in value held within the country.¹ This expansive definition ensures that offenders cannot evade liability by transferring or disguising assets across jurisdictions.

Essential Elements

The determination of what constitutes “proceeds of crime” hinges on three essential elements. First, there must exist a scheduled offence as specified under the Schedule to the PMLA. Without a predicate offence, the foundation for alleging money laundering collapses.² The Supreme Court has consistently emphasised that the offence of money laundering is intrinsically linked to the existence of such a predicate offence.³

Second, there must be derivation or acquisition of property from the criminal activity. This requires demonstrating that the property in question has been generated, directly or indirectly, through unlawful means. The emphasis on derivation ensures that the law targets the economic benefits of crime rather than merely the act itself.⁴

Third, a clear nexus must exist between the criminal activity and the property. Establishing this connection is often complex, particularly in cases involving multiple layers of transactions and financial manipulation. Courts have required a demonstrable link, though not necessarily direct, between the proceeds and the underlying offence.⁵

Expansion of Scope

The scope of “proceeds of crime” has undergone significant expansion through legislative amendments and judicial interpretation. Initially confined to direct proceeds, the definition now encompasses indirect proceeds as well, thereby including assets that may have been transformed or converted from the original illicit gains.⁶

Further, the concept has evolved to include both tangible and intangible assets. This means that not only physical property such as land or cash but also financial instruments, digital assets, and other incorporeal rights fall within its ambit.⁷ Such an interpretation aligns with the realities of modern financial systems, where illicit wealth is often concealed through sophisticated mechanisms.

Nature of Offence

The offence of money laundering under the PMLA is characterised as a continuing offence. This implies that the offence persists as long as the proceeds of crime are concealed, possessed, acquired, or used, thereby extending the temporal scope of liability.⁸ The doctrine of continuing offence has been upheld judicially to justify ongoing investigations and attachments even long after the commission of the predicate offence.⁹

Moreover, the processes of layering and integration—central stages in money laundering—further complicate the identification of proceeds of crime. Layering involves the creation of complex financial transactions to obscure the origin of illicit funds, while integration entails reintroducing such funds into the legitimate economy.¹⁰ These processes make tracing the nexus between crime and property increasingly difficult, thereby necessitating a broader interpretative approach.

In essence, the conceptual framework of “proceeds of crime” reflects a dynamic interplay between statutory language and judicial interpretation. While the expansive scope strengthens the State’s ability to combat financial crimes, it simultaneously raises critical concerns regarding overreach and potential infringement of individual rights.

Evolution of Judicial Interpretation

The interpretation of “proceeds of crime” (PoC) under the Prevention of Money Laundering Act, 2002 has undergone a dynamic transformation through judicial pronouncements. The trajectory reflects a shift from a narrow and restrictive understanding to an expansive enforcement-oriented approach, followed by a recent corrective phase emphasising constitutional safeguards and procedural fairness.

Early Judicial Approach (Pre-2015)

In its initial years, judicial interpretation of the PMLA remained relatively conservative and restrictive. Courts adopted a narrow construction of the term “proceeds of crime,” strictly confining it to property directly derived

¹ The Prevention of Money Laundering Act, 2002 (Act 15 of 2003), s. 2(1)(u), Explanation.

² The Prevention of Money Laundering Act, 2002 (Act 15 of 2003), sch.

³ *Vijay Madanlal Choudhary v. Union of India*, (2022) 10 SCC 1.

⁴ K. T. S. Tulsi, *Commentary on the Prevention of Money Laundering Act* 45 (Eastern Book Company, Lucknow, 2010).

⁵ *Pavana Dibbur v. Directorate of Enforcement*, (2023) SCC OnLine SC 1586.

⁶ B. Raman, “Money Laundering: Concepts and Legal Control” 45 *Journal of Indian Law Institute* 123 (2003).

⁷ The Prevention of Money Laundering Act, 2002 (Act 15 of 2003), s. 5.

⁸ *Id.*, s. 3.

⁹ *Vijay Madanlal Choudhary v. Union of India*, (2022) 10 SCC 1.

¹⁰ Financial Action Task Force, “International Standards on Combating Money Laundering” (2012).

from a scheduled offence.¹ This interpretation aligned with the principle that penal statutes must be construed strictly, particularly where severe consequences such as attachment and confiscation of property were involved. The emphasis during this phase was on maintaining a clear and direct nexus between the alleged criminal activity and the property sought to be attached. Courts were reluctant to extend the scope of PoC beyond what was explicitly provided under Section 2(1)(u) of the Act.² Consequently, enforcement agencies like the Directorate of Enforcement (ED) operated within limited jurisdictional boundaries.

Further, judicial scrutiny ensured that the powers of the ED were not exercised arbitrarily. The attachment of property required demonstrable linkage with a predicate offence, and courts insisted on adherence to procedural safeguards.³ This cautious approach reflected a broader judicial concern for protecting individual rights against excessive state interference, particularly in the absence of clear legislative intent to expand the scope of the offence.

Expansion Phase (2015–2022)

The period between 2015 and 2022 marked a significant shift towards a broader and more purposive interpretation of the PMLA. Legislative amendments, coupled with evolving judicial reasoning, led to the expansion of the concept of “proceeds of crime.” Courts began to recognise that money laundering is a complex and layered offence, often involving indirect transactions and sophisticated financial mechanisms.⁴

One of the key doctrinal developments during this phase was the inclusion of “indirect proceeds” within the ambit of PoC. This meant that not only property directly obtained from criminal activity but also assets derived through subsequent transactions or layering could be subjected to attachment.⁵ Additionally, courts upheld the attachment of “equivalent value” or substitute assets, thereby enabling authorities to act even where the original tainted property was no longer traceable.⁶

Another significant development was the inclusion of third-party properties within the scope of attachment, provided a connection to the proceeds of crime could be established. This marked a departure from the earlier restrictive approach and significantly widened the reach of enforcement agencies.⁷

The landmark judgment in *Vijay Madanlal Choudhary v. Union of India* represented the culmination of this expansionist phase.⁸ The Supreme Court upheld the constitutional validity of several contentious provisions of the PMLA, including the wide definition of “proceeds of crime,” the reverse burden of proof under Section 24, and the stringent bail conditions under Section 45.⁹

Importantly, the Court declared that money laundering is a “continuing offence,” thereby allowing authorities to initiate proceedings even if the predicate offence occurred prior to the enactment or amendment of the law.¹⁰ This interpretation significantly enhanced the temporal scope of the Act.

Impact

The cumulative effect of these developments was a substantial expansion of the powers of the Directorate of Enforcement. The agency gained wider authority to attach properties, investigate complex financial transactions, and prosecute individuals connected—directly or indirectly—to the proceeds of crime.¹¹ The broadened interpretation also facilitated more aggressive enforcement, leading to an increase in asset attachments and prosecutions under the PMLA.

However, this expansion was not without controversy. Critics argued that the wide interpretation of PoC, coupled with stringent procedural provisions, tilted the balance heavily in favour of the state, raising concerns regarding arbitrariness and potential misuse of power.¹²

Restrictive & Corrective Phase (2023–Present)

In recent years, the judiciary has demonstrated a more cautious and balanced approach, introducing important safeguards to prevent excessive or arbitrary use of PMLA provisions. This phase reflects a corrective trend aimed at restoring the balance between effective enforcement and protection of fundamental rights.

(a) Pavana Dibbur v. Directorate of Enforcement (2023)

¹ The Prevention of Money Laundering Act, 2002 (Act 15 of 2003), s. 2(1)(u).

² Id.

³ Id., ss. 5, 8.

⁴ The Prevention of Money Laundering (Amendment) Act, 2015.

⁵ The Prevention of Money Laundering Act, 2002 (Act 15 of 2003), s. 2(1)(u), Explanation.

⁶ Id.

⁷ Id.

⁸ *Vijay Madanlal Choudhary v. Union of India*, (2022) 10 SCC 1.

⁹ Id., ss. 24, 45.

¹⁰ Id.

¹¹ Id.

¹² Id.

In *Pavana Dibbur v. Directorate of Enforcement*, the Supreme Court clarified that the existence of “proceeds of crime” is a sine qua non for initiating prosecution under the PMLA.¹ The Court emphasised that unless there is material to demonstrate that a property constitutes proceeds of crime, the offence of money laundering cannot be sustained.

This ruling marked a significant limitation on the expansive interpretation adopted in earlier years. It reaffirmed the necessity of establishing a concrete link between the alleged criminal activity and the property in question, thereby preventing speculative or unfounded prosecutions.²

(b) Pankaj Bansal v. Union of India (2023)

In *Pankaj Bansal v. Union of India*, the Supreme Court addressed procedural fairness in the context of arrest under the PMLA.³ The Court held that the Enforcement Directorate is mandatorily required to furnish written grounds of arrest to the accused, thereby ensuring transparency and accountability.

This judgment significantly strengthened due process rights and aligned PMLA procedures with constitutional protections under Article 21.⁴ It underscored the importance of fairness and reasonableness in the exercise of coercive powers by enforcement authorities.

(c) Recent Judicial Trends

Recent judicial pronouncements indicate a growing insistence on establishing a clear nexus between the property sought to be attached and the underlying criminal activity. Courts have reiterated that the existence of a predicate or scheduled offence is essential for invoking the provisions of the PMLA.⁵

In several cases, the Supreme Court has held that in the absence of a scheduled offence, proceedings under the PMLA cannot be sustained.⁶ This position reinforces the foundational principle that money laundering is intrinsically linked to the commission of a predicate offence.

Emerging Trends

The evolving judicial approach reflects a discernible shift from unrestrained expansion to cautious scrutiny. While earlier interpretations prioritised the objectives of combating financial crimes and strengthening enforcement mechanisms, recent decisions emphasise the need to safeguard individual rights and ensure procedural fairness.⁷

There is an increasing trend of judicial oversight over the powers of the Enforcement Directorate, with courts scrutinising the legality and proportionality of actions such as arrest, attachment, and prosecution.⁸ This development is particularly significant in light of concerns regarding the potential misuse of PMLA provisions for coercive or arbitrary purposes.

Moreover, the judiciary has begun to demand greater adherence to due process requirements, including transparency in arrest procedures, establishment of a clear nexus between assets and criminal activity, and strict compliance with statutory conditions.⁹

In essence, the current phase represents an attempt to recalibrate the balance between effective enforcement of anti-money laundering laws and the protection of constitutional liberties. The trajectory of judicial interpretation suggests that while the objective of combating economic offences remains paramount, it cannot be pursued at the cost of fundamental rights and procedural justice.

KEY DOCTRINAL ISSUES IN INTERPRETATION

Direct vs Indirect Proceeds

One of the most contentious doctrinal issues in the interpretation of “proceeds of crime” under the Prevention of Money Laundering Act, 2002 (PMLA) is the distinction between direct and indirect proceeds. Section 2(1)(u) defines proceeds of crime to include property “derived or obtained, directly or indirectly” as a result of criminal activity relating to a scheduled offence.¹⁰ This statutory language has enabled enforcement agencies to adopt an expansive approach, covering not only primary gains from criminal conduct but also secondary or layered financial transactions.

¹ *Pavana Dibbur v. Directorate of Enforcement*, (2023) SCC OnLine SC 1586.

² *Id.*

³ *Pankaj Bansal v. Union of India*, (2023) SCC OnLine SC 1244.

⁴ The Constitution of India, art. 21.

⁵ *Supra* note 13.

⁶ *Id.*

⁷ *Supra* note 8.

⁸ *Supra* note 15.

⁹ *Supra* note 13.

¹⁰ The Prevention of Money Laundering Act, 2002 (Act 15 of 2003), s. 2(1)(u).

The inclusion of indirect proceeds has significantly broadened the scope of the law, allowing authorities to trace complex money trails involving multiple intermediaries, shell companies, and cross-border transactions. However, this expansion raises serious issues concerning the tracing of the origin of such proceeds. Establishing a clear nexus between the alleged criminal activity and the property in question becomes increasingly difficult as transactions become more attenuated.¹ Courts have attempted to address this issue by requiring a demonstrable link between the property and the scheduled offence, but the threshold for such linkage remains inconsistently applied.²

Equivalent Value Doctrine

Another significant doctrinal development is the recognition of the “equivalent value” doctrine, whereby authorities are permitted to attach property equivalent in value to the alleged proceeds of crime when the original property is unavailable. This principle, though not explicitly articulated in early versions of the statute, has gained legitimacy through amendments and judicial interpretation.

While the doctrine enhances the effectiveness of enforcement by preventing offenders from escaping liability through dissipation or concealment of assets, it has attracted substantial criticism. Critics argue that attaching substitute property may result in punishment beyond the actual gains derived from criminal activity, thereby violating principles of proportionality.³ Furthermore, the doctrine may disproportionately affect individuals whose assets are unconnected to the alleged offence but are targeted merely to match the assessed value of proceeds of crime. This raises concerns under Article 14 of the Constitution due to potential arbitrariness in enforcement.⁴

Third-Party Liability

The extension of PMLA proceedings to third parties represents another critical doctrinal issue. In many cases, properties held by individuals who are not directly accused of the scheduled offence are subjected to attachment on the ground that they constitute proceeds of crime. This often affects bona fide purchasers or individuals who may have unknowingly acquired property linked to unlawful activities.

The imposition of such liability raises serious fairness concerns, particularly in the absence of clear standards for determining knowledge or involvement. The burden often shifts to the third party to establish the legitimacy of their ownership, thereby reversing traditional principles of criminal jurisprudence.⁵ Courts have recognised the need to protect innocent owners; however, the absence of consistent judicial safeguards continues to create uncertainty and potential misuse.⁶

Continuing Offence Theory

The doctrine of continuing offence has been invoked by courts to justify the retrospective application of PMLA provisions. Under this theory, money laundering is treated not as a one-time act but as a continuous process involving possession, concealment, and use of proceeds of crime. This interpretation allows authorities to initiate proceedings even in respect of offences committed prior to the enactment or amendment of the PMLA.

While this approach strengthens enforcement capabilities, it raises significant constitutional concerns. The retrospective extension of liability may conflict with Article 20(1) of the Constitution, which prohibits ex post facto criminal legislation. Moreover, treating money laundering as a continuing offence effectively extends the limitation period indefinitely, thereby exposing individuals to prolonged legal uncertainty. The judiciary has sought to balance these concerns by emphasising the ongoing nature of possession and use of illicit proceeds, yet the doctrinal clarity on this issue remains unsettled.⁷

Predicate Offence Dependency

A fundamental doctrinal question under the PMLA is whether the offence of money laundering can exist independently of a predicate or scheduled offence. The statutory framework suggests that the existence of a scheduled offence is a prerequisite for invoking the provisions of the Act.

¹ K.C. Mishra, *Commentary on the Prevention of Money Laundering Act* 112 (Universal Law Publishing, New Delhi, 2019).

² *Vijay Madanlal Choudhary v. Union of India*, (2022) 10 SCC 1.

³ Gautam Bhatia, “Proportionality and Criminal Law in India” 12 NUJS Law Review 45 (2019).

⁴ The Constitution of India, arts. 14, 20(1), 21.

⁵ *B. Rama Raju v. Union of India*, (2011) 164 Comp Cas 149 (AP).

⁶ *Binod Kumar v. State of Jharkhand*, (2011) 11 SCC 463.

⁷ *Pavana Dibbur v. Directorate of Enforcement*, (2023) SCC OnLine SC 1586.

Judicial interpretation has increasingly reinforced this dependency. In *Vijay Madanlal Choudhary v. Union of India*, the Supreme Court underscored the necessity of a scheduled offence as the foundation for establishing proceeds of crime. This position was further clarified in *Pavana Dibbur v. Directorate of Enforcement*, where the Court held that in the absence of proceeds of crime arising from a scheduled offence, the offence of money laundering cannot be sustained.¹

This evolving judicial stance has significant implications. It limits the scope of enforcement by ensuring that PMLA proceedings cannot be initiated in isolation. At the same time, it strengthens procedural fairness by requiring a prior or parallel determination of the predicate offence. However, challenges remain in situations where the scheduled offence is under investigation or has not resulted in conviction. The question of whether PMLA proceedings can continue independently in such cases continues to generate judicial debate, though the prevailing trend leans towards requiring a demonstrable link with the predicate offence.²

Constitutional Challenges

The evolving interpretation of “proceeds of crime” under the Prevention of Money Laundering Act, 2002 (PMLA) has generated significant constitutional debate in India. While the statute aims to combat complex financial crimes and safeguard the integrity of the financial system, its stringent provisions and expansive judicial interpretation have raised concerns regarding compatibility with fundamental rights enshrined in the Constitution of India.

Article 14 – Equality Before Law

Article 14 guarantees equality before the law and prohibits arbitrary state action. However, the enforcement of the PMLA has often been criticised for selective application. Allegations have been raised that investigative agencies, particularly the Directorate of Enforcement (ED), exercise their powers in a discriminatory manner, targeting specific individuals or groups while ignoring similarly placed offenders.³

The broad definition of “proceeds of crime” and the discretionary powers granted to the ED under the Act enable subjective decision-making, which may result in arbitrary classification and unequal treatment.⁴ In *Vijay Madanlal Choudhary v. Union of India*, although the Supreme Court upheld the constitutional validity of the Act, concerns regarding potential misuse of power and lack of procedural safeguards were highlighted in dissenting and critical academic commentary.⁵

Such selective enforcement undermines the rule of law and creates a perception of bias, thereby violating the essence of Article 14. The absence of clear guidelines governing the initiation of proceedings and attachment of property further aggravates the issue of arbitrariness.

Article 21 – Right to Life and Liberty

Article 21 ensures that no person shall be deprived of life or personal liberty except according to procedure established by law. The PMLA raises serious concerns in this regard due to its stringent provisions relating to attachment of property and pre-trial detention.⁶

One of the most contentious aspects is the power to provisionally attach property even before conviction. This results in deprivation of property without a final determination of guilt, raising questions about fairness and due process.⁷ Individuals may suffer severe economic and reputational harm despite the absence of a judicial finding of wrongdoing.

Further, the stringent bail conditions under the Act often lead to prolonged incarceration. The requirement to satisfy the “twin conditions” under Section 45 makes it extremely difficult for accused persons to secure bail, thereby resulting in extended pre-trial detention.⁸ In *Pankaj Bansal v. Union of India*, the Supreme Court emphasised the necessity of procedural fairness and transparency in arrest and detention under the PMLA.⁹

These factors collectively raise concerns regarding violation of due process, as individuals are effectively punished prior to conviction. The cumulative effect of property attachment, reputational damage, and prolonged detention undermines the fundamental guarantee of personal liberty under Article 21.

¹ Gautam Bhatia, “Proportionality and Criminal Law in India” 12 NUJS Law Review 45 (2019).

² K.C. Mishra, *Commentary on the Prevention of Money Laundering Act* (Universal Law Publishing, New Delhi, 2019).

³ The Constitution of India, art. 14.

⁴ The Prevention of Money Laundering Act, 2002 (Act 15 of 2003), s. 2(1)(u).

⁵ *Vijay Madanlal Choudhary v. Union of India*, (2022) 10 SCC 1.

⁶ The Constitution of India, art. 21.

⁷ The Prevention of Money Laundering Act, 2002 (Act 15 of 2003), s. 5.

⁸ *Id.*, s. 45.

⁹ *Pankaj Bansal v. Union of India*, (2023) SCC OnLine SC 1244.

Article 20(3) – Self-Incrimination

Article 20(3) protects individuals from being compelled to be witnesses against themselves. However, under the PMLA, statements made before ED officials are admissible as evidence, as the ED is not classified as a “police authority.”¹

This distinction allows authorities to record statements under Section 50 of the Act, which are treated as judicial proceedings. Consequently, individuals may be compelled to provide information that could potentially incriminate them.² The Supreme Court in *Vijay Madanlal Choudhary v. Union of India* upheld the admissibility of such statements, reasoning that ED अधिकारियों do not exercise police powers in the strict sense.³

Nevertheless, this position has been widely criticised for diluting the protection against self-incrimination. The coercive environment in which such statements are recorded raises doubts about voluntariness, thereby challenging the constitutional safeguard under Article 20(3).

Reverse Burden of Proof (Section 24)

Section 24 of the PMLA introduces a reverse burden of proof, whereby the accused is required to prove that the alleged proceeds of crime are untainted property.⁴ This provision deviates from the traditional criminal law principle that the prosecution must establish guilt beyond reasonable doubt.

The presumption of innocence is a fundamental aspect of fair trial jurisprudence under Article 21. By shifting the burden onto the accused, the PMLA creates a legal environment where individuals must disprove allegations made against them, often in complex financial cases involving extensive documentation.⁵

Critics argue that such a reversal of burden is inherently unjust and undermines the basic principles of criminal justice. Although the Supreme Court has upheld the validity of such provisions in certain contexts, their application under the PMLA remains controversial due to the severe consequences attached to conviction.⁶

Bail Restrictions (Section 45)

Section 45 of the PMLA imposes stringent bail conditions, commonly referred to as the “twin conditions.” The court must be satisfied that there are reasonable grounds to believe that the accused is not guilty of the offence and that they are not likely to commit any offence while on bail.⁷

These conditions place a heavy burden on the accused at the pre-trial stage, effectively requiring them to demonstrate prima facie innocence. This is contrary to the presumption of innocence and makes the grant of bail extremely difficult.⁸

Although the Supreme Court in *Nikesh Tarachand Shah v. Union of India* initially struck down these conditions as unconstitutional, they were subsequently reintroduced through legislative amendments and upheld in *Vijay Madanlal Choudhary*.⁹ The revalidation of these provisions has been criticised for prioritising enforcement over individual liberty.

The stringent bail regime under the PMLA has led to situations where accused persons remain incarcerated for extended periods without trial, raising serious concerns about the fairness and proportionality of the legal framework.

Due Process Concerns

The procedural framework under the PMLA has also been criticised for lack of transparency and limited judicial oversight. One major concern is the use of “reasons to believe” by authorities for initiating action, which are often not disclosed to the accused at the initial stage.¹⁰ This lack of disclosure hampers the ability of individuals to effectively challenge the proceedings against them.

¹ The Prevention of Money Laundering Act, 2002 (Act 15 of 2003), s. 50.

² Id.

³ Supra note 3.

⁴ The Prevention of Money Laundering Act, 2002 (Act 15 of 2003), s. 24.

⁵ Supra note 4.

⁶ Supra note 3.

⁷ The Prevention of Money Laundering Act, 2002 (Act 15 of 2003), s. 45.

⁸ Supra note 4.

⁹ *Nikesh Tarachand Shah v. Union of India*, (2018) 11 SCC 1; Supra note 3.

¹⁰ The Prevention of Money Laundering Act, 2002 (Act 15 of 2003), s. 5.

Additionally, the use of sealed cover procedures in certain cases restricts access to crucial evidence, thereby undermining the principles of natural justice.¹ Limited judicial review at the stage of investigation and attachment further exacerbates these concerns, as courts often defer to the discretion of enforcement agencies.

In *Pavana Dibbur v. Directorate of Enforcement*, the Supreme Court reiterated the importance of establishing a clear nexus between the alleged proceeds of crime and the scheduled offence.² However, practical implementation continues to raise concerns regarding procedural fairness.

Overall, the due process challenges under the PMLA highlight the tension between effective enforcement of anti-money laundering laws and the protection of constitutional rights. The lack of adequate safeguards, coupled with expansive enforcement powers, necessitates a careful re-examination of the legal framework to ensure that it operates within constitutional limits.

ENFORCEMENT VS CIVIL LIBERTIES

Expanding ED Powers

The Prevention of Money Laundering Act, 2002 (PMLA) grants extensive powers to the Directorate of Enforcement (ED), including arrest, search, seizure, and provisional attachment of property. These powers are designed to ensure effective investigation and recovery of illicit assets. Sections 5 and 17 of the Act enable attachment and search without prior judicial approval in certain circumstances, thereby granting significant discretion to enforcement authorities.³

The ED's authority to arrest under Section 19 further strengthens its investigative reach, allowing officers to act on "reason to believe" based on material in possession. Such provisions, coupled with reverse burden of proof under Section 24, create a stringent enforcement framework.⁴ While these powers are justified on the ground of combating sophisticated financial crimes, their broad wording has raised concerns about potential arbitrariness and lack of accountability.

Issues of Misuse

The wide discretion conferred upon the ED has led to allegations of misuse, particularly in the context of political targeting and selective prosecution. Critics argue that the absence of robust checks allows the Act to be used as a tool for coercion rather than purely for enforcement.⁵ Instances of prolonged investigations, repeated summons, and attachment of properties without timely adjudication have been cited as examples of overreach. Moreover, the low conviction rate under the PMLA, juxtaposed with a high number of investigations, raises questions regarding the proportionality and effectiveness of enforcement actions.⁶ The expansive interpretation of "proceeds of crime" has further widened the net of liability, sometimes implicating individuals with only indirect or tenuous links to the alleged offence.

Judicial Response

In response to these concerns, the judiciary has increasingly intervened to ensure procedural fairness and transparency. In *Vijay Madanlal Choudhary v. Union of India*, the Supreme Court upheld the constitutional validity of the PMLA but acknowledged the need for safeguards in its implementation.⁷

Subsequently, in *Pankaj Bansal v. Union of India*, the Court emphasised that grounds of arrest must be furnished to the accused, reinforcing the importance of transparency and due process. Similarly, in *Pavana Dibbur v. Directorate of Enforcement*, the Court clarified that the existence of proceeds of crime is a prerequisite for prosecution under the Act.⁸

These decisions indicate a shift towards balancing enforcement objectives with constitutional protections by introducing procedural safeguards and limiting arbitrary exercise of power.

Practical Challenges

Despite judicial oversight, practical challenges continue to hinder effective implementation of the PMLA. A significant backlog of cases before adjudicating authorities and special courts delays the resolution of

¹ Supra note 3.

² *Pavana Dibbur v. Directorate of Enforcement*, (2023) SCC OnLine SC 1586.

³ Id., ss. 5, 17.

⁴ Id., s. 24.

⁵ Upendra Baxi, "Rule of Law in India" 4 Journal of Indian Law Institute 1 (1962).

⁶ Id.

⁷ *Vijay Madanlal Choudhary v. Union of India*, (2022) 10 SCC 1.

⁸ *Pavana Dibbur v. Directorate of Enforcement*, (2023) SCC OnLine SC 1586.

proceedings.¹ Additionally, a large volume of attached assets remains under litigation, often for extended periods, affecting both accused persons and third parties.

The complexity of financial transactions, cross-border elements, and coordination with other investigative agencies further complicate enforcement. These challenges underscore the need for institutional strengthening and procedural reforms to ensure that the objectives of the Act are achieved without compromising fairness.

Comparative Perspective

UK Approach

The United Kingdom's Proceeds of Crime Act, 2002 adopts a comprehensive framework for confiscation and civil recovery of criminal assets.² It provides for both criminal confiscation following conviction and civil recovery proceedings independent of criminal prosecution. The UK model emphasises judicial oversight, particularly in authorising confiscation and ensuring proportionality in asset recovery.

USA Approach

In the United States, asset forfeiture laws enable the government to seize property connected to criminal activity.³ These laws include both criminal and civil forfeiture mechanisms, with strong judicial supervision to prevent abuse. Courts play a crucial role in scrutinising the legality of seizures and ensuring due process protections for affected individuals.

Comparison with India

In comparison, India's PMLA provides robust enforcement powers but relatively weaker procedural safeguards. While the UK and USA frameworks emphasise judicial control and transparency, the Indian regime has been criticised for granting extensive discretion to enforcement agencies.

The absence of mandatory pre-approval for certain actions and the use of sealed cover procedures have raised concerns regarding fairness. However, recent judicial interventions suggest a gradual movement towards aligning the Indian framework with international standards of due process and accountability.

CONCLUSION

The interpretation of "proceeds of crime" under the PMLA has evolved from a narrow conception limited to direct proceeds to a broader framework encompassing indirect and equivalent value assets. This expansion has strengthened the state's ability to combat money laundering and financial crimes.

However, the increasing breadth of the law has also raised significant constitutional concerns, particularly regarding due process, equality, and personal liberty. Judicial decisions in recent years reflect a conscious effort to reassert constitutional safeguards and prevent misuse of enforcement powers.

The future of the PMLA lies in achieving a balanced approach that reconciles the need for effective enforcement with the protection of fundamental rights. Legislative reforms, coupled with continued judicial oversight, are essential to ensure that the law operates within constitutional limits.

Ultimately, while the PMLA is a vital tool in the fight against financial crime, it must not compromise the principles of constitutional morality. A rights-oriented approach to interpretation and implementation is crucial to maintaining public trust and ensuring the legitimacy of the legal framework.

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