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CRITICAL ANALYSIS OF PREVENTION OF MONEY LAUNDERING ACT, 2002

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ABSTRACT

The Prevention of Money Laundering Act, 2002 (PMLA) constitutes the principal legislative framework in India aimed at combating the offence of money laundering and facilitating the confiscation of proceeds of crime. Enacted to give effect to international obligations arising inter alia from the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988 and subsequent global anti-money laundering standards, the Act provides a comprehensive mechanism for investigation, attachment, adjudication, and confiscation of illicit assets.

This paper undertakes a critical analysis of the PMLA, focusing on its doctrinal framework, operational mechanisms, and constitutional implications. The Act empowers enforcement authorities with extensive powers of search, seizure, arrest, and provisional attachment, which are exercised on the basis of "reason to believe" that property constitutes proceeds of crime. While these provisions are designed to ensure effective deterrence against complex financial crimes, their expansive scope has generated significant debate regarding procedural fairness, due process, and potential executive overreach.

A central concern under scrutiny is the reversal of the burden of proof under Section 24 of the Act, which shifts the evidentiary burden onto the accused to establish that property is untainted. This departure from the traditional criminal law principle of presumption of innocence raises important constitutional questions under Articles 14 and 21 of the Constitution of India. Further, the powers of attachment and confiscation, though preventive in nature, often result in substantial deprivation of property rights under Article 300A, thereby necessitating strict judicial oversight.

Judicial interpretation, particularly in landmark decisions such as *Vijay Madanlal Choudhary v. Union of India*, has largely upheld the constitutional validity of the Act while acknowledging the necessity of stringent measures to combat money laundering. However, dissenting academic opinion and comparative jurisprudence suggest the need for recalibration of safeguards to ensure proportionality and fairness.

The study concludes that while the PMLA is indispensable in addressing economic offences and transnational financial crimes, its effectiveness must be balanced with constitutional guarantees. Strengthening procedural safeguards, enhancing transparency, and ensuring proportional application of coercive powers are essential to align the Act with the broader principles of rule of law and constitutional governance.

I. INTRODUCTION

Money laundering is recognised as a complex economic and transnational offence involving the conversion or concealment of proceeds derived from criminal activity into ostensibly legitimate assets. It undermines the integrity of financial systems, facilitates organised crime, and erodes public confidence in regulatory institutions.[1] The laundering process is conventionally understood as a three-stage phenomenon comprising **placement**, where illicit funds are introduced into the financial system; **layering**, involving complex transactions designed to obscure the origin of funds; and **integration**, whereby the laundered proceeds are reintroduced into the legitimate economy.[2] The cumulative impact of such activity extends beyond financial markets, adversely affecting governance structures, national security frameworks, and global economic stability.

A. Global Response to Money Laundering

The international community has responded to the menace of money laundering through a coordinated regulatory architecture. The Financial Action Task Force (FATF) has played a pivotal role in

"[1] P. Ramanatha Aiyar, *Advanced Law Lexicon* Vol. 3, 3012 (LexisNexis Butterworths Wadhwa, Nagpur, 5th edn., 2017)

[2] United Nations Office on Drugs and Crime, *Money Laundering and Global Financial Integrity Report* 14 (UNODC, 2018).

prescribing global standards for anti-money laundering (AML) and counter-terrorist financing (CFT) regimes, thereby influencing domestic legislative frameworks worldwide.[1] Similarly, the United Nations Convention against Corruption (UNCAC) mandates State Parties to criminalise laundering of proceeds of crime and adopt robust enforcement mechanisms. The Basel Committee on Banking Supervision has further issued prudential guidelines requiring financial institutions to implement stringent due diligence and compliance frameworks. Collectively, these instruments have exerted significant normative pressure on jurisdictions, including India, to develop comprehensive AML legislation aligned with international best practices.

B. Introduction to PMLA, 2002

In response to these global obligations, India enacted the Prevention of Money Laundering Act, 2002 (PMLA). The Act provides a statutory framework for the identification, attachment, adjudication, and confiscation of proceeds of crime. Its core objectives include the prevention and regulation of money laundering, confiscation of illicit assets, and, through subsequent amendments, the strengthening of mechanisms to address financing of terrorism-related activities.[2] The Act also establishes the Enforcement Directorate as the principal agency responsible for investigation and enforcement, thereby centralising AML enforcement powers.

C. Research Problem

The central issue under examination is whether the PMLA achieves a constitutionally sustainable balance between the legitimate interest of the State in combating financial crime and the protection of individual rights guaranteed under the Constitution of India. The extensive coercive powers under the Act raise concerns regarding proportionality, due process, and potential executive overreach, particularly in relation to attachment, arrest, and burden of proof provisions.

D. Objectives of Study

This study seeks to examine the statutory structure and evolution of the PMLA, critically analyse its key substantive and procedural provisions, evaluate judicial interpretation by constitutional courts, and identify emerging constitutional and procedural challenges associated with its implementation.

E. Research Questions

The research is guided by the following questions: whether the PMLA is disproportionately stringent or a necessary instrument for ensuring financial security; whether its provisions infringe fundamental rights under Articles 14, 21, and 300A of the Constitution; and whether judicial interpretation has contributed to an expansion of executive authority beyond constitutionally permissible limits.

II. EVOLUTION AND LEGISLATIVE FRAMEWORK OF PMLA

The Prevention of Money Laundering Act, 2002 (PMLA) represents a culmination of India's legislative response to the growing threat of financial crimes and its obligation to align domestic law with international anti-money laundering (AML) standards. The Act is rooted in global commitments undertaken by India under United Nations conventions and policy frameworks formulated by the Financial Action Task Force (FATF), which necessitated the criminalisation of money laundering and establishment of robust asset recovery mechanisms.[3] The legislative journey was preceded by the Prevention of Money Laundering Bill, 1998, which laid the conceptual foundation for a specialised AML statute but underwent subsequent refinement before enactment.

A. Historical Background

The genesis of the PMLA is closely linked to India's obligation to implement international AML norms under the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988 and later global frameworks emphasizing financial transparency and cross-border cooperation. These developments underscored the need for a comprehensive domestic framework capable of addressing sophisticated laundering techniques involving transnational financial networks and layered transactions.

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[1] Financial Action Task Force, *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation (FATF Recommendations)* (2023).

[2] Prevention of Money Laundering (Amendment) Act, 2019.

[3] Financial Action Task Force, *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation (FATF Recommendations)* (2023).

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B. Enactment and Amendments

The PMLA was enacted in 2002, but it became operational only in 2005, reflecting the gradual institutional readiness required for its enforcement.[1] Since its inception, the Act has undergone significant amendments in 2009, 2012, 2019, and 2022, each progressively expanding its scope and enforcement reach. The definition of "proceeds of crime" was substantially widened to include not only direct but also indirect and equivalent-value assets. The amendments also fortified the powers of the Enforcement Directorate (ED), particularly in relation to search, seizure, arrest, and provisional attachment. Additionally, the introduction and reinforcement of reverse burden provisions under Section 24 marked a significant departure from traditional criminal jurisprudence by shifting the evidentiary burden onto the accused.[2]

C. Objectives of the Act

The core objectives of the PMLA are threefold: first, to prevent and regulate the process of money laundering; second, to facilitate the confiscation and forfeiture of property derived from criminal activity; and third, to ensure the integrity and stability of India's financial system by deterring the use of illicit proceeds in legitimate economic transactions. These objectives collectively reflect a preventive-cum-punitive legislative design aimed at disrupting the economic incentives underlying criminal enterprises.

D. Institutional Framework

The enforcement architecture under the PMLA is multi-tiered. The Enforcement Directorate (ED) functions as the principal investigating agency responsible for detection and prosecution of money laundering offences.[3] The Financial Intelligence Unit–India (FIU-IND) serves as the national agency for receiving, analysing, and disseminating financial intelligence. The Adjudicating Authority is entrusted with quasi-judicial determination of matters relating to attachment of property, while Special Courts established under the Act adjudicate offences of money laundering and order final confiscation where warranted. This institutional framework reflects an integrated approach combining investigative, adjudicatory, and prosecutorial functions to ensure effective enforcement of the Act.

III. KEY CONCEPTS UNDER PMLA

The Prevention of Money Laundering Act, 2002 (PMLA) is structured around certain foundational legal concepts that define the scope, operation, and enforcement of the statute. These concepts collectively determine the threshold for criminal liability, asset tracing, and forfeiture proceedings, thereby forming the doctrinal backbone of the Act.

A. Money Laundering

Section 3 of the PMLA defines the offence of money laundering as any process or activity connected with the concealment, possession, acquisition, use, or projection of proceeds of crime as untainted property.[4] The statutory formulation reflects a broad and inclusive interpretation, capturing not only direct laundering activities but also any ancillary conduct that facilitates the legitimisation of illicit assets. The offence is inherently derivative in nature, as it is predicated upon the existence of a "scheduled offence" under the Act.

B. Proceeds of Crime

The concept of "proceeds of crime" under Section 2(1)(u) constitutes the jurisdictional foundation of the PMLA framework.[5] It encompasses any property derived or obtained, directly or indirectly, as a result of criminal activity relating to a scheduled offence. The definition is expansive and includes not only the original assets generated through unlawful activity but also property representing their value. Importantly, the legislative amendments have incorporated the principle of **value-equivalent property**, enabling authorities to proceed against substitute assets where the actual proceeds are unavailable or have been dissipated. This expansion significantly strengthens the asset recovery mechanism under the Act.

[1] Prevention of Money Laundering Act, 2002; Notification of Enforcement Date, 2005.

[2] Prevention of Money Laundering Act, 2002, s. 24.

[3] Prevention of Money Laundering Act, 2002, ss. 48–49.

[4] Prevention of Money Laundering Act, 2002, s. 3.

[5] Prevention of Money Laundering Act, 2002, s. 2(1)(u).

C. Attachment of Property

Section 5 of the PMLA empowers the Director or authorised officers of the Enforcement Directorate to provisionally attach property suspected to be involved in money laundering. Such attachment is contingent upon the existence of "reason to believe" that the property constitutes proceeds of crime and is likely to be concealed, transferred, or dealt with in a manner that frustrates confiscation proceedings. The measure is preventive in nature and does not determine guilt; rather, it operates as a safeguard to preserve the property during investigation and adjudication.[1]

D. Confiscation

Confiscation under Section 8 represents the final stage of deprivation, wherein property found to be involved in money laundering is permanently forfeited to the Central Government. Upon confirmation by the Adjudicating Authority and subsequent order of the Special Court, the property vests absolutely in the State free from all encumbrances. The legal effect of confiscation is thus irreversible and results in permanent deprivation of proprietary rights, distinguishing it from the interim nature of attachment.

E. Burden of Proof

A distinctive feature of the PMLA is the reverse burden of proof under Section 24, which shifts the evidentiary burden onto the accused to demonstrate that the alleged proceeds of crime are untainted.[2] This statutory departure from the traditional criminal law principle of presumption of innocence significantly alters the evidentiary dynamics of prosecution under the Act. While intended to address evidentiary complexities inherent in financial crimes, the provision has been a subject of constitutional scrutiny due to its implications on due process and fair trial guarantees.

IV. PROCEDURAL FRAMEWORK UNDER PMLA

The Prevention of Money Laundering Act, 2002 (PMLA) establishes a distinct procedural architecture that governs investigation, enforcement, adjudication, and trial of money laundering offences. The procedural scheme is designed to ensure effective tracing and confiscation of illicit assets while simultaneously incorporating limited safeguards of due process.

A. Investigation Stage

The investigation under the PMLA is primarily initiated by the Enforcement Directorate (ED) upon receipt of information or material indicating the commission of a money laundering offence.[3] The existence of a predicate offence, commonly referred to as a "scheduled offence," constitutes a jurisdictional precondition for initiating proceedings under the Act. The Enforcement Directorate typically relies upon First Information Reports (FIRs) registered by other law enforcement agencies to establish the foundational link between the scheduled offence and subsequent laundering activities.[4] This derivative nature of jurisdiction ensures that proceedings under the PMLA are contingent upon the existence of underlying criminal activity.

B. Search and Seizure

Sections 17 and 18 of the PMLA empower authorized officers to conduct search and seizure operations upon satisfaction that any person is in possession of proceeds of crime or relevant material evidence.[5] These powers are subject to authorization requirements, including recording of reasons and obtaining prior approval from competent authorities. While the statute incorporates procedural safeguards, concerns have been raised regarding the breadth of discretion vested in enforcement authorities and the limited scope of pre-decisional judicial oversight.[6] The intrusive nature of search and seizure powers underscores the tension between effective enforcement and protection of individual privacy and property rights.

C. Provisional Attachment

Section 5 of the PMLA governs provisional attachment of property. The exercise of this power is conditioned upon the statutory threshold of "reason to believe" that the property constitutes proceeds

[1] B. Rama Raju v. Union of India.

[2] Prevention of Money Laundering Act, 2002, s. 24.

[3] Prevention of Money Laundering Act, 2002, ss. 48–49.

[4] K.N. Chandrasekharan Pillai, *R.V. Kelkar's Criminal Procedure* 52 (Eastern Book Company, Lucknow, 7th edn., 2018)

[5] Prevention of Money Laundering Act, 2002, ss. 17 and 18.

[6] S.P. Sathe, *Administrative Law* 455 (LexisNexis, Gurgaon, 8th edn., 2019).

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of crime and is likely to be concealed, transferred, or dealt with in a manner prejudicial to confiscation proceedings.[1] The attachment is temporary in nature and remains valid for a prescribed duration unless confirmed by the Adjudicating Authority under Section 8. This mechanism reflects a preventive regulatory approach aimed at preserving the status quo of suspected assets during the pendency of proceedings.

D. Adjudication Process

The adjudication mechanism under Sections 6 to 8 vests jurisdiction in the Adjudicating Authority, a quasi-judicial body tasked with determining whether the attached property is involved in money laundering. The process is initiated by issuance of a notice to the concerned person, requiring disclosure of income, assets, and explanation regarding the source of property. The proceedings are governed by principles of natural justice, including the right to be heard and to present evidence.[2] Upon evaluation of material, the Authority may confirm the attachment or order release of property if no sufficient grounds are established.

E. Special Courts

The PMLA provides for the establishment of Special Courts designated to try offences of money laundering and adjudicate related matters. These courts are empowered to conduct expedited trials, ensuring swift disposal of cases involving complex financial transactions and cross-border elements. The procedural design reflects legislative intent to prioritise efficiency and deterrence in economic offence adjudication while maintaining judicial oversight over final confiscation orders.

V. CRITICAL ANALYSIS OF KEY LEGAL ISSUES

The Prevention of Money Laundering Act, 2002 (PMLA), while serving as a robust anti-financial crime legislation, raises significant doctrinal and constitutional concerns owing to its expansive definitions, reverse burden framework, and coercive enforcement architecture. The Act represents a marked departure from traditional criminal jurisprudence, particularly in its treatment of evidentiary standards and pre-conviction deprivation of property.[3]

A. Broad Definition of "Money Laundering"

Section 3 of the PMLA defines money laundering in extremely wide terms, encompassing not only concealment and acquisition of proceeds of crime but also mere possession and use of such proceeds. The inclusive drafting of the provision has been criticised for potentially criminalising conduct that may lack direct mens rea or active participation in laundering activities. This expansive interpretation increases the risk of over-criminalisation, thereby diluting the principle of *nullum crimen sine culpa*.[4] The absence of clear limiting principles further enhances prosecutorial discretion, raising concerns regarding legal certainty and predictability in criminal liability.

B. Reverse Burden of Proof (Section 24)

Section 24 introduces a statutory reversal of the burden of proof, requiring the accused to demonstrate that alleged proceeds of crime are untainted. This represents a significant departure from the cardinal principle of criminal law that presumes innocence until proven guilty beyond reasonable doubt. While such reverse burden provisions are often justified in complex economic offences, their application under the PMLA has been criticised for undermining procedural fairness and shifting the evidentiary burden disproportionately onto the accused.[5] The compatibility of this provision with constitutional guarantees under Articles 14 and 21 remains a subject of sustained judicial scrutiny.

C. Arrest Powers of the Enforcement Directorate

Section 19 empowers officers of the Enforcement Directorate to arrest individuals upon the existence of "reason to believe" based on material in possession.[6] However, the provision does not mandate immediate prior judicial authorization, thereby vesting significant discretionary power in executive authorities. This has raised concerns regarding potential misuse and arbitrariness, particularly in the

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[1] Prevention of Money Laundering Act, 2002, s. 5.

[2] B. Rama Raju v. Union of India.

[3] M.P. Jain, *Indian Constitutional Law* 1049 (LexisNexis, Gurgaon, 8th edn., 2018).

[4] S. S. Roy, *Economic Offences in India* 72 (Eastern Book Company, Lucknow, 2020).

[5] Noor Aga v. State of Punjab.

[6] Prevention of Money Laundering Act, 2002, s. 19.

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absence of contemporaneous judicial review at the stage of arrest. The procedural safeguards post-arrest are often considered insufficient to offset the initial deprivation of liberty.

D. Bail Restrictions (Section 45)

Section 45 imposes stringent twin conditions for grant of bail, requiring courts to be satisfied that the accused is not guilty of the offence and is unlikely to commit any offence while on bail.[1] These conditions impose a substantial threshold on the grant of bail and have a direct impact on personal liberty under Article 21. The Supreme Court initially struck down these conditions as unconstitutional, but they were subsequently reintroduced through legislative amendment, reviving debates on proportionality and fairness in bail jurisprudence.[2]

E. Attachment of Property Before Conviction

A defining feature of the PMLA is the provision for provisional attachment of property even prior to conviction. Such attachment results in severe civil consequences, including restriction on enjoyment and alienation of property, despite the absence of judicial determination of guilt. This raises serious due process concerns, particularly in relation to the presumption of innocence and protection against arbitrary deprivation of property.

F. Expansive Interpretation of "Proceeds of Crime"

The jurisprudential expansion of "proceeds of crime" to include value-based attachment and equivalent assets has significantly widened the operational scope of the Act.[3] This allows enforcement authorities to attach untainted property in certain circumstances, thereby affecting third-party rights and bona fide owners. Such an approach has been criticised for blurring the distinction between tainted and untainted assets and for disproportionately affecting innocent stakeholders.

G. Overlapping Jurisdiction

The PMLA operates in a complex statutory ecosystem and often overlaps with other fiscal and penal statutes, including the Income Tax Act, 1961, the Benami Transactions (Prohibition) Act, 1988, and the Fugitive Economic Offenders Act, 2018.[4] This overlapping jurisdiction raises concerns regarding multiplicity of proceedings, potential double jeopardy-like effects, and inconsistent enforcement standards. The lack of statutory harmonisation among these regimes further complicates legal certainty and regulatory coherence.

VI. CONSTITUTIONAL ANALYSIS

The Prevention of Money Laundering Act, 2002 (PMLA), though enacted to address the pressing menace of financial crimes, raises substantial constitutional concerns when examined through the prism of Articles 14, 21, and 300A of the Constitution of India. The Act's coercive enforcement mechanisms, coupled with its reverse burden framework and expansive executive discretion, have led to sustained constitutional scrutiny by courts and scholars.

A. Article 14 – Equality Before Law

Article 14 guarantees equality before law and prohibits arbitrary State action.[5] Under the PMLA, the Enforcement Directorate exercises wide discretionary powers, particularly in initiating investigation, arrest, and provisional attachment. The statutory threshold of "reason to believe" under Section 5 has been criticised for its inherent subjectivity and lack of clearly defined objective parameters[2] This ambiguity creates potential for inconsistent application and selective prosecution, thereby undermining the constitutional mandate of non-arbitrariness.

B. Article 21 – Right to Life and Liberty

Article 21 encompasses not only the right to life and personal liberty but also the procedural guarantees of fairness, reasonableness, and non-arbitrariness.[6] The arrest powers under Section 19 of the PMLA permit deprivation of liberty on the basis of internal satisfaction of enforcement officers, often without immediate judicial scrutiny. This raises serious concerns regarding preventive detention-

[1] Prevention of Money Laundering Act, 2002, s. 45.

[2] Nikesh Tarachand Shah v. Union of India; Vijay Madanlal Choudhary v. Union of India.

[3] Prevention of Money Laundering (Amendment) Act, 2019.

[4] Income Tax Act, 1961; Benami Transactions (Prohibition) Act, 1988; Fugitive Economic Offenders Act, 2018.

[5] Constitution of India, art. 14.

[6] Maneka Gandhi v. Union of India.

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like consequences within a criminal investigative framework. Further, stringent bail conditions under Section 45 impose restrictive thresholds that may result in prolonged incarceration before trial, thereby affecting the substantive and procedural dimensions of personal liberty. The cumulative effect of these provisions raises significant due process concerns, particularly in the context of pre-trial deprivation of liberty.

C. Article 300A – Right to Property

Article 300A mandates that no person shall be deprived of property except by authority of law.[1] While the PMLA provides statutory authority for attachment and confiscation, the deprivation often occurs prior to conviction, thereby raising concerns regarding premature interference with proprietary rights.[2] The constitutional validity of such deprivation depends upon whether the procedure established under the Act is just, fair, and reasonable. The absence of immediate adjudication before deprivation, coupled with prolonged attachment periods, raises proportionality concerns and questions the balance between State interest and individual property rights.

D. Doctrine of Proportionality

The doctrine of proportionality requires that any restriction on fundamental or constitutional rights must be suitable, necessary, and the least restrictive means of achieving a legitimate State objective.[3] In the context of the PMLA, the key question is whether the severity of measures such as arrest, attachment, and reverse burden is excessive relative to the objective of combating money laundering. While the objective is undoubtedly legitimate, concerns persist regarding whether less intrusive mechanisms could achieve the same regulatory purpose without disproportionately affecting individual rights.

E. Presumption of Innocence

The principle of presumption of innocence is a fundamental tenet of criminal jurisprudence and forms an essential component of fair trial rights under Article 21. The reverse burden of proof under Section 24 of the PMLA significantly alters this foundational principle by requiring the accused to prove that alleged proceeds of crime are untainted. This statutory inversion of burden raises constitutional concerns, particularly when viewed in conjunction with stringent bail provisions and pre-conviction attachment, thereby potentially undermining the fairness of the criminal justice process.

VII. JUDICIAL INTERPRETATION AND LANDMARK JUDGMENTS

The judicial interpretation of the Prevention of Money Laundering Act, 2002 (PMLA) has played a pivotal role in shaping the contours of its enforcement architecture. Indian courts, particularly the Supreme Court, have consistently grappled with balancing the imperatives of combating financial crime with the constitutional safeguards of liberty, due process, and property rights. The jurisprudence reflects an evolving trajectory from rights-oriented scrutiny to a more deferential stance towards economic legislation.

A. Supreme Court Approach

1. Vijay Madanlal Choudhary v. Union of India

In *Vijay Madanlal Choudhary v. Union of India*, the Supreme Court upheld the constitutional validity of the major provisions of the PMLA, including those relating to attachment, arrest, search, seizure, and burden of proof.[4] The Court recognized money laundering as a serious economic offence with transnational ramifications that necessitates stringent legislative and enforcement measures. It held that the reverse burden under Section 24 and the wide powers conferred upon the Enforcement Directorate are constitutionally permissible in view of the compelling State interest in preserving the integrity of the financial system. However, the judgment has been critiqued for significantly expanding executive discretion while diluting procedural safeguards traditionally associated with criminal jurisprudence.

2. Nikesh Tarachand Shah v. Union of India

[1] Constitution of India, art. 300A.

[2] Jilubhai Nanbhai Khachar v. State of Gujarat.

[3] Modern Dental College & Research Centre v. State of Madhya Pradesh.

[4] Vijay Madanlal Choudhary v. Union of India.

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In *Nikesh Tarachand Shah v. Union of India*, the Supreme Court struck down the twin bail conditions under Section 45 of the PMLA as being unconstitutional and violative of Articles 14 and 21.[1] The Court held that the conditions imposed an unreasonable and disproportionate burden on the accused, thereby infringing the fundamental right to personal liberty. The decision reaffirmed that even in cases involving serious economic offences, procedural fairness and constitutional guarantees under Article 21 cannot be compromised.

3. P. Chidambaram v. Directorate of Enforcement

In *P. Chidambaram v. Directorate of Enforcement*, the Supreme Court addressed issues relating to arrest and custodial interrogation under the PMLA.[2] The Court observed that economic offences constitute a distinct category of crimes requiring a stringent approach, given their impact on the national economy and public interest. It upheld the powers of the Enforcement Directorate to arrest under Section 19, while simultaneously emphasizing that such powers must be exercised in strict compliance with statutory safeguards.

B. High Court Decisions

High Courts have also contributed significantly to the interpretation of the PMLA. In *B. Rama Raju v. Union of India*, the Andhra Pradesh High Court upheld the constitutional validity of the attachment provisions and clarified the preventive nature of provisional attachment.[3] In the *Axis Bank v. Directorate of Enforcement* line of cases, courts examined the conflict between secured creditors and enforcement authorities, ultimately addressing issues relating to priority of claims over attached properties. Recent High Court decisions have also dealt with attachment of ancestral and jointly owned properties, emphasizing the need to protect third-party and bona fide interests while permitting enforcement action against proceeds of crime.

C. Judicial Trends

A discernible judicial trend in PMLA jurisprudence is the increasing deference shown by courts to legislative and executive policy in the domain of economic offences. Courts have consistently recognized the complexity and transnational nature of money laundering, thereby justifying stringent enforcement mechanisms. At the same time, judicial intervention in Enforcement Directorate actions has become relatively limited, with courts often adopting a restrained approach unless clear violations of statutory procedure or constitutional mandates are demonstrated.[4] This trend reflects a broader shift towards prioritizing economic security and financial integrity over expansive procedural intervention in enforcement matters.

VIII. COMPARATIVE ANALYSIS

A comparative evaluation of anti-money laundering and asset forfeiture regimes reveals significant variations in the degree of judicial oversight, procedural safeguards, and protection of property rights across jurisdictions.

A. United States

In the United States, asset forfeiture operates through both civil and criminal mechanisms, enabling the State to confiscate property linked to criminal activity even in the absence of a criminal conviction in certain cases.[5] Civil asset forfeiture, in particular, has been subject to sustained criticism for permitting property seizure on the basis of a lower evidentiary threshold and limited procedural safeguards. Although judicial oversight exists, concerns have been raised regarding potential abuse and excessive executive discretion in forfeiture proceedings.

B. United Kingdom (POCA, 2002)

The United Kingdom’s framework under the Proceeds of Crime Act, 2002 (POCA) adopts a structured and court-supervised confiscation regime. The Act also introduces mechanisms such as Unexplained Wealth Orders (UWOs), which require individuals to account for assets disproportionate to known income sources. Judicial authorization is central to enforcement, and confiscation proceedings are

[1] Nikesh Tarachand Shah v. Union of India.
[2] P. Chidambaram v. Directorate of Enforcement.
[3] B. Rama Raju v. Union of India.
[4] M.P. Jain, *Indian Constitutional Law* 1062 (LexisNexis, Gurgaon, 8th edn., 2018).
[5] Asset Forfeiture Law in the United States, 18 U.S.C. §§ 981–982.

subject to rigorous court supervision, thereby ensuring a higher degree of procedural fairness and proportionality.[1]

C. European Union

European Union anti-money laundering frameworks emphasize strong proportionality standards and robust human rights safeguards, particularly under the Charter of Fundamental Rights of the European Union.[2] Judicial authorization is generally required for intrusive investigative measures such as searches, seizures, and asset freezing. The EU model places significant emphasis on balancing effective enforcement with protection of property rights and due process guarantees.

D. Lessons for India

A comparative analysis suggests that India may benefit from strengthening judicial checks at the stage of attachment and seizure under the PMLA. Enhanced judicial oversight would help mitigate concerns regarding excessive executive discretion. Additionally, clearer statutory articulation of the nexus between property and criminal activity would improve legal certainty. Protection of innocent third parties and bona fide purchasers remains an area requiring further legislative refinement to align with international best practices.[3]

IX. CONCLUSION

The Prevention of Money Laundering Act, 2002 (PMLA) constitutes a critical component of India's legal framework for combating financial crimes and ensuring compliance with global anti-money laundering standards. It serves as a powerful instrument for tracing, attaching, and confiscating proceeds of crime, thereby strengthening the integrity of the financial system.

At the same time, the Act's expansive enforcement powers raise significant constitutional concerns, particularly in relation to procedural fairness, due process, and protection of property rights under Articles 14, 21, and 300A of the Constitution. Judicial interpretation has largely upheld the legislative intent underlying the Act, recognising the State's compelling interest in addressing complex economic offences. However, this judicial deference has also generated sustained debate regarding the balance between individual liberty and State power.

A constitutionally sustainable framework requires a calibrated approach that ensures effective enforcement while safeguarding fundamental rights. Strengthening procedural safeguards, enhancing judicial oversight, and ensuring proportional application of coercive powers are essential to maintaining this balance. Ultimately, the future efficacy and legitimacy of the PMLA depend upon its ability to harmonize robust enforcement mechanisms with the foundational principles of constitutional governance and the rule of law.

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[3] Financial Action Task Force, *Mutual Evaluation Report: India* (2024)."

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