
ATTACHMENT AND CONFISCATION OF PROPERTY UNDER PMLA: LEGAL AND CONSTITUTIONAL CONCERNS

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The Prevention of Money Laundering Act, 2002 (PMLA) constitutes India's principal legislative framework for combating money laundering and facilitating the attachment and confiscation of properties derived from criminal activities. The statute empowers the Directorate of Enforcement to provisionally attach properties believed to be “proceeds of crime” and, upon adjudication, to secure their eventual confiscation by the Central Government. While these powers are designed to prevent dissipation of illicit assets and strengthen the integrity of the financial system, their expansive nature has generated significant legal and constitutional debate.

The regime of attachment and confiscation under the PMLA departs from traditional criminal jurisprudence by permitting restrictions on proprietary rights even before the conclusion of criminal proceedings. Such measures raise concerns regarding the presumption of innocence, procedural fairness, and the extent of executive discretion vested in enforcement authorities. The broad definition of “proceeds of crime,” coupled with the retrospective application of attachment mechanisms in certain contexts, has further intensified scrutiny regarding compliance with constitutional guarantees under Articles 14, 20, 21 and 300A of the Constitution of India.

Judicial pronouncements have played a pivotal role in shaping the contours of these powers. The Supreme Court, particularly in *Vijay Madanlal Choudhary v. Union of India*, upheld the constitutional validity of several provisions of the PMLA while simultaneously recognizing the necessity of procedural safeguards against arbitrary exercise of power. Nevertheless, questions persist concerning proportionality, due process, access to effective remedies, and the balance between public interest in combating economic offences and the protection of individual property rights.

This study critically examines the statutory framework governing attachment and confiscation under the PMLA, analyses key judicial developments, and evaluates the constitutional challenges arising from its implementation. It argues that while robust anti-money laundering measures are indispensable, their legitimacy ultimately depends upon adherence to constitutional principles of fairness, legality, and proportionality.

I. INTRODUCTION

Money laundering constitutes a sophisticated process through which proceeds generated from criminal activities are disguised and introduced into the legitimate financial system to conceal their illicit origin.¹ The phenomenon poses a serious threat to economic stability, financial integrity, and the rule of law by enabling organized crime, corruption, terrorism financing, and other transnational offences. Traditionally, money laundering occurs through three interrelated stages: **placement**, wherein illicit funds are introduced into the financial system; **layering**, involving a series of complex transactions designed to obscure the source of the funds; and **integration**, whereby the laundered assets are reintroduced into the economy as apparently legitimate wealth.² Given its transnational character, money laundering has emerged as a global concern requiring coordinated international action. Consequently, institutions such as the Financial Action Task Force (FATF), the United Nations, and

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, *Model Legislation on Money Laundering and Financing of Terrorism* 12 (UNODC, Vienna, 2016).

the Basel Committee have developed comprehensive standards and principles to strengthen anti-money laundering mechanisms worldwide.¹

In India, the increasing complexity of economic crimes and the necessity to comply with international obligations prompted the enactment of the Prevention of Money Laundering Act, 2002 (PMLA). Prior to the enactment of the PMLA, the absence of a specialized statutory framework limited the ability of authorities to effectively trace, freeze, and confiscate assets derived from criminal conduct. The Act was therefore enacted with the primary objectives of preventing and controlling money laundering, confiscating the proceeds of crime, and deterring economic offences that undermine the financial system.²

A central feature of the PMLA is the power of provisional attachment and eventual confiscation of property suspected to constitute proceeds of crime. Attachment serves as a preventive mechanism by restraining the transfer or dissipation of tainted assets during investigation, while confiscation operates as a final deprivation of property upon satisfaction of statutory requirements.³ In recent years, the Enforcement Directorate (ED) has increasingly invoked these powers, leading to significant legal and constitutional debates.⁴

The exercise of attachment and confiscation powers under the PMLA raises critical questions regarding the balance between the State's legitimate interest in combating money laundering and the constitutional guarantees of due process, equality, personal liberty, and property rights.⁵ Concerns relating to executive overreach, procedural fairness, and proportionality have intensified judicial scrutiny of the Act. Against this backdrop, the present study seeks to examine the legal framework governing attachment and confiscation under the PMLA, analyse the constitutional challenges arising therefrom, evaluate judicial responses, and explore whether an appropriate balance has been maintained between public interest and individual liberties.

II. CONCEPTUAL FRAMEWORK OF ATTACHMENT AND CONFISCATION UNDER PMLA

The scheme of the Prevention of Money Laundering Act, 2002 (PMLA) is fundamentally premised upon the identification, attachment, and eventual confiscation of assets connected with criminal activity. These mechanisms constitute the cornerstone of India's anti-money laundering regime and are intended to ensure that offenders do not enjoy the economic benefits derived from unlawful conduct.⁶

A. Meaning of Attachment

Attachment under the PMLA refers to the legal process by which property suspected to be involved in money laundering is temporarily restrained from transfer, conversion, disposition, or movement. Section 2(1)(d) of the Act defines "attachment" as the prohibition of transfer, conversion, disposition or movement of property by an order issued under the Act. The attachment contemplated under Section 5 is provisional in nature and may be invoked where the competent authority has reason to believe, based on material in its possession, that the property constitutes "proceeds of crime."⁷

¹ Financial Action Task Force, *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation (FATF Recommendations)* (2023); Basel Committee on Banking Supervision, *Core Principles for Effective Banking Supervision* (2012).

² Prevention of Money Laundering Act, 2002, Preamble; K.I. Vibhute, *P.S.A. Pillai's Criminal Law* 1045 (LexisNexis Butterworths Wadhwa, Nagpur, 14th edn., 2019).

³ B. Raman, *Economic Offences and Money Laundering Laws* 214 (Universal Law Publishing Co., New Delhi, 2018).

⁴ Enforcement Directorate, Annual Report 2023–24, Ministry of Finance, Government of India.

⁵ Constitution of India, arts. 14, 21 and 300A; Gautam Bhatia, *The Transformative Constitution* 313 (HarperCollins India, New Delhi, 2019).

⁶ Prevention of Money Laundering Act, 2002, Preamble.

⁷ Prevention of Money Laundering Act, 2002, s. 5(1).

The primary objective of attachment is preventive rather than punitive. It seeks to prevent the concealment, alienation, or dissipation of tainted assets during the pendency of investigation and adjudication proceedings. By preserving the property in its existing form, the State ensures that such assets remain available for eventual confiscation if the allegations of money laundering are established. Consequently, attachment is temporary in character and remains subject to confirmation by the Adjudicating Authority through a statutorily prescribed process.¹

B. Meaning of Confiscation

Confiscation signifies the permanent deprivation of property by the State following the determination that such property constitutes proceeds of crime under the PMLA. Unlike attachment, which is merely an interim protective measure, confiscation results in the vesting of the property in the Central Government free from all encumbrances. Attachment therefore operates as a preventive mechanism, whereas confiscation functions as the ultimate punitive and remedial consequence of money laundering proceedings.² The principal objectives of confiscation are to deprive offenders of illicit gains, deter economic crimes, and safeguard public interest by preventing the reinvestment of criminal proceeds into legitimate economic activities.³

C. Concept of “Proceeds of Crime”

The concept of “proceeds of crime” forms the jurisdictional foundation of attachment and confiscation proceedings. Section 2(1)(u) of the PMLA defines the expression as any property derived or obtained, directly or indirectly, as a result of criminal activity relating to a scheduled offence. The definition encompasses not only the original property generated through unlawful means but also assets representing its value. Subsequent legislative amendments have significantly expanded the scope of the concept by including property located outside India and permitting attachment and confiscation of equivalent-value assets situated within India where the actual proceeds are unavailable.⁴ Such expansion reflects the legislative intent to prevent offenders from escaping liability through cross-border transfers or complex asset-concealment strategies.

III. STATUTORY FRAMEWORK GOVERNING ATTACHMENT AND CONFISCATION

The Prevention of Money Laundering Act, 2002 (PMLA) establishes a comprehensive statutory mechanism for the identification, attachment, adjudication, and confiscation of properties connected with money laundering activities. The legislative framework seeks to ensure that offenders are deprived of the economic benefits derived from criminal conduct while preserving the interests of justice and public order.⁵

A. Provisional Attachment under Section 5

Section 5 of the PMLA empowers the Director or any other authorized officer of the Enforcement Directorate to provisionally attach property believed to constitute “proceeds of crime.” The exercise of this power is contingent upon the existence of a “reason to believe,” based on material available on record, that a person is in possession of proceeds of crime and that such property is likely to be concealed, transferred, or dealt with in a manner that may frustrate confiscation proceedings.⁶ The expression “reason to believe” operates as a statutory safeguard against arbitrary action and requires the authority to arrive at a bona fide and rational satisfaction founded upon objective material.

The statute further mandates that the reasons for such belief must be recorded in writing.⁷ This requirement facilitates judicial review and ensures accountability in the exercise of executive power.

¹ Prevention of Money Laundering Act, 2002, ss. 5 and 8.

² K.I. Vibhute, *P.S.A. Pillai's Criminal Law* 1051 (LexisNexis Butterworths Wadhwa, Nagpur, 14th edn., 2019).

³ N. Vasanthi, *The Law of Money Laundering in India* 88 (LexisNexis, Gurgaon, 2019).

⁴ Prevention of Money Laundering (Amendment) Act, 2012; Prevention of Money Laundering (Amendment) Act, 2019.

⁵ Prevention of Money Laundering Act, 2002, Preamble.

⁶ Id.

⁷ Prevention of Money Laundering Act, 2002, s. 5(1).

Courts have consistently emphasized that the recorded reasons must disclose a nexus between the material available and the conclusion reached by the authority. A provisional attachment order remains operative for the period prescribed under the Act and is subject to confirmation by the Adjudicating Authority under Section 8.¹

B. Adjudication Process under Sections 6–8

To ensure procedural fairness, the Act establishes an independent Adjudicating Authority under Section 6. The Authority performs a quasi-judicial function by examining the legality of attachment orders and determining whether the attached property is involved in money laundering. Upon receipt of a complaint from the Enforcement Directorate, the Authority issues a notice to the concerned person requiring disclosure of the sources of income, earnings, or assets used for acquisition of the property.²

The notice procedure embodies the principles of natural justice by providing an opportunity of hearing and permitting the production of documentary and oral evidence. After considering the material placed before it, the Adjudicating Authority may confirm or vacate the attachment. Although the burden of proving that property is untainted is significantly influenced by Sections 23 and 24 of the Act, the Authority must nevertheless assess the evidence in accordance with statutory standards and constitutional requirements of fairness.

C. Confiscation under Section 8

Confiscation represents the culmination of attachment proceedings. Under Section 8, where the Special Court concludes that the offence of money laundering has been committed, the property involved in money laundering becomes liable for confiscation.³ Upon confiscation, all rights, title, and interests in the property vest absolutely in the Central Government free from encumbrances. The consequence is the permanent deprivation of proprietary rights, distinguishing confiscation from the temporary restraint imposed through attachment.

D. Special Situations

The application of attachment and confiscation provisions becomes particularly complex where property is held by third parties or jointly owned. Bona fide purchasers who acquire property without knowledge of its illicit origin frequently invoke equitable considerations to protect their interests.⁴ Similarly, jointly owned properties raise intricate questions regarding the extent to which the share of an innocent co-owner may be affected by attachment proceedings. The Act also extends to properties located outside India and authorizes action against equivalent-value assets situated within India, thereby addressing the transnational character of money laundering.

E. Role of the Enforcement Directorate

The Enforcement Directorate (ED) is the principal agency entrusted with the enforcement of the PMLA. It possesses extensive powers of investigation, search, seizure, survey, arrest, attachment, and prosecution.⁵ These powers are intended to facilitate effective tracing of illicit assets and dismantling of complex laundering networks. However, the expanding scope of ED's authority has attracted criticism from scholars, civil society organizations, and constitutional courts on the ground that excessive concentration of investigative and coercive powers may undermine procedural safeguards and individual liberties.⁶ Consequently, the exercise of attachment and confiscation powers continues to remain a subject of intense legal and constitutional scrutiny.

¹ Prevention of Money Laundering Act, 2002, ss. 5(3) and 8.

² Prevention of Money Laundering Act, 2002, s. 8(1).

³ Prevention of Money Laundering Act, 2002, s. 8(5).

⁴ B. Rama Raju v. Union of India.

⁵ Prevention of Money Laundering Act, 2002, ss. 16, 17, 18, 19 and 50.

⁶ Vijay Madanlal Choudhary v. Union of India; Gautam Bhatia, *The Transformative Constitution* 318 (HarperCollins India, New Delhi, 2019).

IV. CONSTITUTIONAL FRAMEWORK AND PROPERTY RIGHTS IN INDIA

The constitutional validity of attachment and confiscation proceedings under the Prevention of Money Laundering Act, 2002 (PMLA) must be examined against the broader framework of property rights and limitations on State action under the Constitution of India. Although the Constitution empowers the State to regulate and deprive property in accordance with law, such power remains subject to constitutional safeguards designed to prevent arbitrariness and ensure procedural fairness.¹

A. Evolution of Right to Property

At the commencement of the Constitution, the right to property enjoyed the status of a fundamental right through Articles 19(1)(f) and 31. Article 19(1)(f) guaranteed the freedom to acquire, hold, and dispose of property, while Article 31 protected individuals against compulsory acquisition except by authority of law and upon payment of compensation.² However, persistent conflicts between property rights and socio-economic reform measures resulted in a series of constitutional amendments aimed at reducing judicial intervention in land reform and redistribution policies.³

A significant constitutional transformation occurred through the Forty-Fourth Constitutional Amendment Act, 1978, which deleted Articles 19(1)(f) and 31 from Part III of the Constitution. Consequently, the right to property ceased to be a fundamental right and was repositioned as a constitutional and legal right under Article 300A. Article 300A provides that no person shall be deprived of his property save by authority of law, thereby preserving protection against unlawful State interference while reducing the level of constitutional scrutiny applicable to property claims.⁴

B. Constitutional Limitations on State Action

Despite the change in status of the right to property, State action affecting proprietary interests must satisfy constitutional requirements. The foremost limitation is the requirement of “authority of law” embodied in Article 300A. Deprivation of property must be sanctioned by a validly enacted law and cannot result from executive fiat or arbitrary administrative action.⁵

Further, constitutional jurisprudence developed under Articles 14 and 21 has infused principles of fairness, reasonableness, and non-arbitrariness into all forms of State action. The doctrine of substantive fairness requires that procedures affecting property rights must be just, fair, and reasonable.⁶ Judicial review consequently operates as an essential safeguard against abuse of statutory powers and ensures that governmental action remains within constitutional boundaries.

C. Relevance to PMLA

The provisions relating to attachment and confiscation under the PMLA directly implicate property rights. Provisional attachment constitutes a substantial restriction upon an individual's ability to enjoy, transfer, or deal with property, whereas confiscation results in complete and permanent deprivation of proprietary interests. Given the serious consequences flowing from these measures, strict adherence to constitutional requirements becomes indispensable.⁷ Therefore, the legality of attachment and confiscation under the PMLA ultimately depends upon their conformity with Article 300A, the guarantee against arbitrariness under Article 14, and the broader principles of due process embodied in Article 21.

V. LEGAL ISSUES AND CONSTITUTIONAL CONCERNS IN ATTACHMENT PROCEEDINGS

¹ M.P. Jain, *Indian Constitutional Law* 1048 (LexisNexis, Gurgaon, 8th edn., 2018).

² Id.

³ H.M. Seervai, *Constitutional Law of India* Vol. III, 2456 (Universal Law Publishing Co., New Delhi, 4th edn., 2015).

⁴ *Jilubhai Nanbhai Khachar v. State of Gujarat*.

⁵ *Bishambhar Dayal Chandra Mohan v. State of Uttar Pradesh*.

⁶ *Maneka Gandhi v. Union of India*.

⁷ N. Vasanthi, *The Law of Money Laundering in India* 124 (LexisNexis, Gurgaon, 2019).

The power of attachment under the Prevention of Money Laundering Act, 2002 (PMLA) represents one of the most intrusive mechanisms available to the State in combating economic offences. Although the objective of preventing dissipation of criminal assets is legitimate and necessary, the exercise of attachment powers has generated substantial constitutional concerns relating to equality, due process, property rights, and fundamental principles of criminal jurisprudence.¹

A. Article 14: Equality and Non-Arbitrariness

Article 14 of the Constitution embodies the guarantee against arbitrariness in State action and requires that statutory powers be exercised in a fair, reasonable, and non-discriminatory manner. Under Section 5 of the PMLA, provisional attachment may be ordered when the competent authority has “reason to believe” that a person possesses proceeds of crime and that such property is likely to be concealed or transferred. While the phrase “reason to believe” ostensibly imposes an objective threshold, its application frequently depends upon the subjective satisfaction of the authorized officer.

This broad discretionary power has attracted criticism on the ground that attachment orders may be issued without prior judicial authorization and often before the commencement or conclusion of criminal proceedings.² The absence of immediate judicial oversight creates a possibility of arbitrary exercise, particularly where the material relied upon by the authorities is not fully disclosed at the initial stage. Judicial precedents have therefore emphasized that the expression “reason to believe” cannot be reduced to a mere formality and must be supported by tangible material capable of withstanding judicial scrutiny.

B. Article 21: Right to Life and Personal Liberty

Although attachment proceedings primarily concern property, their consequences frequently extend beyond proprietary interests and affect the right to life and personal liberty under Article 21. The freezing of bank accounts, business assets, and immovable properties may impair an individual's ability to carry on lawful economic activities, thereby affecting livelihood and economic survival.³ In many instances, attachment orders have severe repercussions on ongoing commercial enterprises and professional engagements even before the guilt of the accused is judicially established.

The constitutional requirement of procedural fairness assumes particular significance in this context. While the PMLA provides for adjudication and hearing procedures, questions remain regarding the adequacy and effectiveness of such safeguards. Moreover, attachment often affects family members, dependents, and third parties who may have legitimate interests in the property but are not directly implicated in the alleged offence.⁴ Such collateral consequences raise concerns regarding fairness and proportionality under Article 21.

C. Article 300A: Right to Property

Article 300A mandates that no person shall be deprived of property except by authority of law. Although the right to property is no longer a fundamental right, it remains a valuable constitutional right requiring protection against arbitrary deprivation. Consequently, attachment proceedings must satisfy not only statutory requirements but also broader constitutional principles of fairness and legality.⁵

The doctrine of proportionality has emerged as an important constitutional standard in evaluating restrictions upon property rights. Attachment measures must bear a rational nexus with the objective sought to be achieved and should not impose excessive burdens disproportionate to the alleged wrongdoing.

¹ Prevention of Money Laundering Act, 2002, ss. 5 and 8.

² N. Vasanthi, *The Law of Money Laundering in India* 138 (LexisNexis, Gurgaon, 2019).

³ *Olga Tellis v. Bombay Municipal Corporation*.

⁴ *B. Rama Raju v. Union of India*.

⁵ *K.T. Plantation Pvt. Ltd. v. State of Karnataka*.

D. Presumption of Innocence

One of the most significant criticisms of the attachment regime is that it permits substantial interference with property before conviction. Since attachment may occur at the investigation stage, individuals effectively suffer serious economic consequences despite the absence of a judicial finding of guilt. Critics argue that such measures dilute the presumption of innocence, a foundational principle of criminal jurisprudence. The constitutional debate therefore centres upon whether preventive attachment amounts to a necessary regulatory measure or an indirect punitive sanction imposed prior to trial.¹

E. Burden of Proof under PMLA

The PMLA departs from traditional criminal law principles through its reverse burden provisions. Section 24 places the burden upon the accused to demonstrate that the property in question does not constitute proceeds of crime. Such provisions have generated controversy because criminal jurisprudence ordinarily requires the prosecution to establish guilt beyond reasonable doubt.

Judicial approaches have generally upheld the validity of reverse burden clauses in the context of economic offences, recognizing the difficulties associated with tracing complex financial transactions.² Nevertheless, courts have simultaneously stressed that statutory presumptions cannot extinguish the requirement of fairness and must operate within constitutional limitations. The continuing challenge lies in reconciling effective anti-money laundering enforcement with the preservation of individual rights and procedural justice.

VI. JUDICIAL INTERPRETATION AND LANDMARK DECISIONS

Judicial interpretation has played a decisive role in defining the contours of attachment and confiscation under the Prevention of Money Laundering Act, 2002 (PMLA). Given the far-reaching consequences of these powers on individual liberty and property rights, courts have been called upon to reconcile the objectives of anti-money laundering enforcement with constitutional guarantees. The evolution of judicial doctrine reflects a gradual shift from strict scrutiny of executive action towards a more deferential approach that accords greater weight to legislative policy aimed at combating economic crimes.³

A. Early Judicial Approach

In the initial years of the PMLA, courts exhibited considerable caution in interpreting provisions relating to attachment and confiscation. The judiciary emphasized that deprivation of property, even under a valid statutory framework, must conform to constitutional principles of legality, fairness, and reasonableness. Since attachment proceedings impose substantial restrictions upon proprietary interests before the conclusion of criminal trials, courts insisted upon strict compliance with statutory requirements and procedural safeguards.⁴

Particular emphasis was placed upon the necessity of recording reasons, adherence to principles of natural justice, and observance of procedural fairness during adjudication proceedings. Judicial scrutiny focused on ensuring that attachment powers were exercised only upon the existence of credible material establishing a nexus between the property and the alleged criminal activity. This approach reflected the traditional constitutional commitment to protecting property rights against arbitrary executive interference.

B. Major Supreme Court Decisions**1. Vijay Madanlal Choudhary v. Union of India**

¹ Attorney General for India v. Amratlal Prajivandas.

² Vijay Madanlal Choudhary v. Union of India.

³ K.I. Vibhute, *P.S.A. Pillai's Criminal Law* 1056 (LexisNexis Butterworths Wadhwa, Nagpur, 14th edn., 2019).

⁴ Prevention of Money Laundering Act, 2002, ss. 5 and 8.

The most significant judicial pronouncement concerning the PMLA is *Vijay Madanlal Choudhary v. Union of India*.¹ The case involved a comprehensive constitutional challenge to several provisions of the Act, including those relating to attachment, confiscation, arrest, burden of proof, and investigative powers of the Enforcement Directorate.

The principal issue before the Supreme Court was whether the extensive powers conferred upon enforcement authorities violated constitutional guarantees under Articles 14, 20, 21, and 300A of the Constitution. The petitioners argued that the attachment and confiscation mechanisms were arbitrary, disproportionate, and inconsistent with established principles of criminal jurisprudence.

The Court upheld the constitutional validity of the majority of the challenged provisions and reaffirmed the legislative objective of combating the menace of money laundering. It observed that money laundering constitutes a serious threat to the economic sovereignty and financial integrity of the nation and therefore justifies the adoption of stringent regulatory measures. The Court also sustained the reverse burden framework under Section 24, holding that such presumptions are not alien to economic legislation and are necessary in view of the complexities associated with tracing illicit financial transactions.

Nevertheless, the judgment has attracted considerable academic and constitutional criticism. Scholars contend that the decision accords excessive deference to executive agencies and insufficient weight to procedural safeguards traditionally associated with criminal justice administration. Critics further argue that the ruling significantly expands the operational autonomy of the Enforcement Directorate while limiting judicial scrutiny at preliminary stages of investigation and attachment.

2. Nikesh Tarachand Shah v. Union of India

A landmark decision preceding *Vijay Madanlal Choudhary* was *Nikesh Tarachand Shah v. Union of India*.² Although the case primarily concerned the constitutional validity of the stringent bail conditions under Section 45 of the PMLA, its broader significance lies in its reaffirmation of constitutional values of fairness, liberty, and due process.

The Supreme Court invalidated the twin bail conditions then contained in Section 45, holding them to be manifestly arbitrary and violative of Articles 14 and 21. The judgment underscored that anti-money laundering legislation, notwithstanding its importance, cannot operate beyond constitutional limitations. The decision remains relevant to attachment proceedings because it emphasizes that procedural fairness must remain an integral component of all coercive measures under the Act.

3. B. Rama Raju v. Union of India

The decision in *B. Rama Raju v. Union of India* constitutes one of the earliest comprehensive judicial analyses of the attachment mechanism under the PMLA.³ The Court examined the scope of provisional attachment and the statutory meaning of “proceeds of crime.” It held that attachment is a preventive measure designed to preserve property pending adjudication and does not amount to confiscation by itself. The judgment also clarified that the existence of a scheduled offence forms the jurisdictional foundation for attachment proceedings under the Act.

C. High Court Jurisprudence

Various High Courts have contributed significantly to the development of procedural safeguards under the PMLA. Courts have repeatedly emphasized the necessity of adherence to natural justice, proper disclosure of material, and meaningful opportunities of hearing. Judicial review has been recognized as an essential constitutional mechanism for preventing abuse of attachment powers and ensuring accountability in enforcement actions. High Courts have also addressed the rights of bona fide

¹ *Vijay Madanlal Choudhary v. Union of India*.

² *Nikesh Tarachand Shah v. Union of India*.

³ *B. Rama Raju v. Union of India*.

purchasers and innocent third parties whose interests may be adversely affected by attachment proceedings.

D. Emerging Judicial Trends

Contemporary judicial trends indicate increasing deference towards legislative and executive measures designed to combat economic offences. Courts increasingly acknowledge that money laundering poses serious threats to national economic stability, financial governance, and public confidence in institutions. Consequently, judicial reasoning has increasingly incorporated considerations of economic security and public interest.

At the same time, courts continue to recognize that anti-money laundering objectives cannot entirely eclipse constitutional guarantees. The emerging jurisprudence therefore seeks to balance competing interests by preserving the effectiveness of enforcement mechanisms while ensuring that attachment and confiscation powers remain subject to legality, proportionality, and procedural fairness.¹ This balancing approach is likely to shape the future constitutional discourse surrounding the PMLA.

VII. RECOMMENDATIONS AND REFORM PROPOSALS

The statutory framework governing attachment and confiscation under the Prevention of Money Laundering Act, 2002 (PMLA) requires recalibration to ensure a more balanced alignment between enforcement objectives and constitutional safeguards. While the Act serves a critical role in combating financial crimes, its coercive mechanisms necessitate enhanced procedural guarantees to prevent potential misuse.

A. Strengthening Procedural Safeguards

A primary reform imperative is the introduction of mandatory judicial approval prior to the issuance of provisional attachment orders under Section 5. Such a mechanism would significantly reduce the risk of unilateral executive action and reinforce the constitutional principle of separation of powers. Further, the establishment of independent review committees comprising judicial or quasi-judicial members may ensure an additional layer of scrutiny.² Periodic judicial monitoring of ongoing attachment orders would further enhance accountability and prevent indefinite restraint on property rights without adjudication.

B. Protection of Property Rights

Clear statutory standards defining the threshold for attachment must be articulated to minimize interpretative ambiguity surrounding “reason to believe.” The introduction of compensatory remedies for wrongful or mala fide attachment would act as a deterrent against arbitrary exercise of power.³ Additionally, statutory recognition of protections for bona fide purchasers acting in good faith and for value would safeguard innocent third-party interests from collateral consequences of enforcement actions.

C. Improving Transparency

Transparency in enforcement proceedings is essential to ensure public confidence in the PMLA regime. Publication of attachment orders, subject to confidentiality limitations, would enhance institutional accountability.⁴ Strengthening internal accountability mechanisms within the Enforcement Directorate and expanding parliamentary oversight over enforcement trends would further institutionalize checks and balances.

D. Balancing Security and Liberty

¹ K.T. Plantation Pvt. Ltd. v. State of Karnataka; Maneka Gandhi v. Union of India.

² S.P. Sathe, *Administrative Law* 446 (LexisNexis, Gurgaon, 8th edn., 2019).

³ K.T. Plantation Pvt. Ltd. v. State of Karnataka, (2011) 9 SCC 1.

⁴ S.P. Sathe, *Administrative Law* 452 (LexisNexis, Gurgaon, 8th edn., 2019).

The adoption of the proportionality doctrine as an explicit statutory standard would ensure that attachment measures are not excessive in relation to the objectives sought to be achieved. Courts should continue to adopt a human rights-oriented interpretative approach, harmonizing anti-money laundering objectives with constitutional guarantees under Articles 14, 21, and 300A.¹

VIII. CONCLUSION

The regime of attachment and confiscation under the PMLA constitutes a vital instrument in India's legal architecture for combating money laundering and depriving offenders of illicit gains. It reflects the State's legitimate and compelling interest in safeguarding economic stability, preventing financial crimes, and ensuring that proceeds of crime are not reintegrated into the formal economy.

At the same time, the operation of these provisions raises significant constitutional concerns, particularly in relation to equality before law, procedural fairness, personal liberty, and the right to property under Articles 14, 21, and 300A of the Constitution. Judicial intervention has played an essential role in delineating the boundaries of executive power and ensuring that enforcement mechanisms remain within constitutional limits.

While the Supreme Court has largely upheld the validity of the PMLA framework, it has also underscored the necessity of maintaining a balance between effective enforcement and individual rights. The evolving jurisprudence reflects an ongoing attempt to reconcile the imperatives of economic security with the foundational principles of due process and rule of law.

In conclusion, although stringent anti-money laundering measures are indispensable in contemporary financial governance, their legitimacy ultimately depends upon adherence to constitutional norms. A more transparent, proportionate, and accountable framework is essential to ensure that enforcement under the PMLA operates within the boundaries of constitutional governance, thereby preserving both economic integrity and individual rights.

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