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THE TALE OF WEAPONISING PMLA: A PREVENTIVE ACT WEAPONIZED BY THE STATE?

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Abstract: The Prevention of Money Laundering Act (PMLA), enacted in 2002 and operational from 2005, was designed to prevent money laundering, confiscate illicit assets, and align India's legal framework with international standards. While the PMLA's objectives—combating financial crimes and terrorism financing—are legitimate, concerns have arisen regarding its potential misuse, especially in politically sensitive contexts. This paper examines the key provisions of PMLA, particularly Section 3 (defining money laundering), Section 45 (bail conditions), and the controversial powers of attachment and confiscation. The 2019 amendment expanded the scope of predicate offenses, granting the state wider discretionary powers. Judicial interpretations, notably the Supreme Court's ruling in *Vijay Madanlal Choudhary v. Union of India* (2022), have further raised concerns. The Court upheld the PMLA's stringent bail conditions and broad arrest powers, which critics argue could be used to suppress dissent, especially against political figures and activists. Case studies, such as those of Anil Deshmukh, Sanjay Raut, and P. Chidambaram, illustrate how PMLA has been applied selectively against opposition leaders and critics, often under questionable motives. The paper argues that the PMLA's application has, at times, been weaponized for political purposes, undermining its intended role as a tool for justice. It proposes legal reforms, including amendments to the bail provisions and broader oversight mechanisms, to mitigate the risk of misuse. It calls for increased judicial scrutiny and transparency in the Enforcement Directorate's (ED) operations to ensure fairness and reduce political bias.

Key Words: Money Laundering, Weaponization of Act, PMLA

Introduction

Money laundering, defined as the process of concealing the origins of illegally obtained money, often to make it appear legitimate, is a serious and pervasive financial crime.¹ It involves a series of complex financial transactions, deliberately structured to obscure the link between illicit funds and their criminal origins. The global implications of money laundering are significant, with the United Nations Office on Drugs and Crime (UNODC) estimating that approximately 2% to 5% of the world's Gross Domestic Product (GDP), which amounts to over \$1.5 trillion annually, is laundered through various financial channels.²

In the context of India, money laundering poses an acute challenge, given the country's large informal economy, extensive cross-border trade, and the existence of systemic corruption and high-profile financial scandals.³ The issue is further compounded by the misuse of legal financial institutions, the manipulation of stock markets, and the prevalence of counterfeit currency networks. Money laundering is not merely a financial offense; it is an enabler of various other serious crimes, including drug trafficking, tax evasion, human trafficking, terrorism financing, and corruption. By facilitating these criminal activities, money laundering undermines the integrity of India's financial system, erodes public trust in its institutions, and perpetuates economic inequality. Recognizing the gravity of the problem, India has developed a comprehensive legislative and regulatory framework to combat money laundering. The Prevention of Money Laundering Act, 2002 (PMLA), is the primary statute aimed at tackling money laundering in the country. It provides for the investigation, prosecution, and confiscation of proceeds of crime linked to money laundering. The PMLA not only criminalizes money laundering but also imposes stringent reporting obligations on financial institutions, intermediaries, and businesses. The law also mandates that banks, financial

¹ Narayan, S., 2019. Anti-money laundering law in India: a 'Glocalization' model. *Statute Law Review*, 40(3), pp.224-235.

² Unger, B., Siegel, M., Ferwerda, J., De Kruijf, W., Busuioic, M., Wokke, K. and Rawlings, G., 2006. The amounts and the effects of money laundering. *Report for the Ministry of Finance*, 16(2020.08), p.22.

³ Viritha, B. and Mariappan, V., 2016. Anti-money laundering practices in banks: customer's awareness and acceptance in India. *Journal of Money Laundering Control*, 19(3), pp.278-290.

intermediaries, and other reporting entities comply with strict know-your-customer (KYC) norms and maintain records of suspicious transactions.⁴

The Enforcement Directorate (ED), vested with wide-ranging powers under the PMLA, is the primary enforcement agency tasked with investigating and prosecuting money laundering cases. In addition to the PMLA, India has enacted several other laws such as the Foreign Exchange Management Act (FEMA), the Benami Transactions (Prohibition) Act, and the Black Money (Undisclosed Foreign Income and Assets) Act, each of which plays a complementary role in targeting different facets of money laundering. Moreover, the role of financial intelligence units, such as FIU-IND, is critical in analyzing financial transactions and reporting suspicious activities that may indicate laundering. India's legal framework is further bolstered by its commitment to international standards, particularly those established by the Financial Action Task Force (FATF). India has been an active participant in global efforts to combat money laundering and terrorist financing, aligning its domestic legislation with FATF's recommendations. This includes measures to ensure greater transparency in financial transactions, customer due diligence, and international cooperation in investigating cross-border financial crimes.⁵

Understanding the concept of Money Laundering

Money laundering is the act of concealing the source of unlawfully acquired monies, aiming to incorporate these illicit assets into the lawful economy. It is a complex crime that generally occurs in three distinct phases: Placement, Layering, and Integration. These stages are intended to obscure the illicit origins of the funds, rendering it progressively more challenging for regulatory bodies to track the unlawful proceeds. Every phase of the process necessitates meticulous preparation and implementation, frequently encompassing intricate financial networks and global transactions.⁶

⁴ Kumar, B.V., 2004. The prevention of money laundering in India. *Journal of Money Laundering Control*, 7(2), pp.158-169.

⁵ Singh, P., 2023. Money Laundering and Abuse of the Financial System. *Issue 2 Indian JL & Legal Rsch.*, 5, p.1.

⁶ Cassella, S.D., 2018. Toward a new model of money laundering: Is the "placement, layering, integration" model obsolete?. *Journal of Money Laundering Control*, 21(4), pp.494-497.

A. Placement

The initial and most susceptible phase of money laundering is Placement, during which illegal funds are integrated into the financial system. At this juncture, the principal aim of the launderer is to sever the connection between the funds and their illicit origin, while evading scrutiny from law enforcement or financial authorities. In India, placement frequently entails fragmenting substantial sums of money into smaller denominations to circumvent reporting requirements and anti-money laundering (AML) regulations established by banks and other financial entities.

Criminals may utilize "smurfing" by depositing small sums of cash into various bank accounts to evade reporting requires established by the Prevention of Money Laundering Act, 2002 (PMLA) and the directives of the Financial Intelligence Unit (FIU-IND). Illicit funds may be utilized to acquire costly commodities such as jewellery, luxury automobiles, or artwork, which can subsequently be resold for a seemingly lawful profit. The transfer of monies between bank accounts, whether domestically or internationally, facilitates the rapid movement of money by criminals, particularly when the sums are just below the threshold that invokes Anti-Money Laundering scrutiny. Criminals may invest illegal proceeds in enterprises with substantial cash flow, such as restaurants or bars, to obscure the source of the money by blending it with legitimate revenue. The informal economy in India poses further difficulties in identifying placement activity. The reliance on cash for a significant number of transactions, along with insufficient banking access in rural regions, fosters a climate favourable to the clandestine infusion of illegal funds into the system.

B. Layering

Layering is the most intricate phase of the money laundering process. The objective at this juncture is to conceal the unlawful source of the funds through numerous layers of financial transactions. These transactions are frequently worldwide and may involve multiple middlemen, complicating the efforts of law enforcement organizations to trace the funds to their illicit origin. This is the phase in which funds are "laundered" by transferring them through several accounts, institutions, or assets to obscure the audit trail. Money can be transferred through many bank accounts across different jurisdictions, particularly those with less stringent anti-money laundering legislation. The objective is to render the audit trail intricate and

challenging to navigate. Offenders may invest in stocks, bonds, or other financial instruments to fabricate the semblance of legitimate investment activity. These instruments can be repeatedly transacted to obfuscate the source of the funding. Shell businesses are often utilized to establish layers of transactions. These are entities that exist nominally but own no substantial assets or operations. Criminals utilize these organizations to transfer funds discreetly, avoiding detection. Trade-based money laundering (TBML) entails the manipulation of trade transactions, including over-invoicing or under-invoicing products and services, to facilitate the movement of illicit monies across borders. This strategy poses significant challenges for authorities to identify, as it leverages lawful trading operations. In India, hawala networks are a predominant tactic employed throughout the layering stage. Hawala is an informal, trust-dependent mechanism for transnational monetary transfers that does not include the physical movement of currency. It functions beyond conventional financial frameworks, complicating regulatory detection. Notwithstanding the government's attempts to suppress hawala transactions, the system persists, particularly in populations with entrenched cultural connections to these networks.

C. Integration

The last phase of money laundering is Integration, wherein the illicit funds re-enter the lawful economy, presenting the semblance of having been properly obtained. The launderer has effectively severed the cash from their illicit source, allowing for their unrestricted usage without raising suspicion. Criminals frequently allocate laundered monies into legitimate enterprises, real estate, or various sectors, so creating the illusion that the money was acquired through conventional commercial operations. After laundering, the proceeds may be utilized for substantial acquisitions, such as opulent residences, automobiles, or other assets that enhance a luxurious lifestyle. Illegitimate funds can be reinvested in the stock market or alternative investment avenues, so rendering the money as seemingly legitimate gains from financial speculation. In India, real estate transactions have become a prevalent means of laundering money. Criminals often acquire high-value properties, which can be sold or rented to fabricate the appearance of lawful income. The real estate sector, traditionally under-

regulated and characterized by cash transactions, offers a conducive environment for the incorporation of illicit funds into the economy.⁷

Structural Problems with the PMLA

A. Broad Definitions Enabling Overreach

One of the foundational issues with the PMLA lies in the broad definitions that shape its enforcement, particularly in the terms "proceeds of crime" and "money laundering." Section 2(u) of the Act defines "proceeds of crime" expansively as any property derived from a scheduled offense, but it extends further to include any property indirectly connected with such an offense. This broad scope allows the Enforcement Directorate (ED) to interpret almost any financial asset as linked to criminal activity, increasing the risk of enforcement beyond the intended bounds of the Act. Similarly, Section 3, which defines the offense of money laundering, allows for prosecution not only of individuals directly engaged in laundering but also of those indirectly involved. This opens avenues for potential misuse, as even peripheral individuals with tenuous connections to the primary offense can become targets of investigation and seizure, which in turn can serve as a tool of coercion and intimidation. The vague language in these definitions creates room for selective application, leaving individuals vulnerable to prosecution based on associations rather than direct criminal conduct.

B. Stringent Attachment and Seizure Provisions

Another structural issue with the PMLA is its attachment and seizure provisions, which grant sweeping powers to authorities. Under Section 5, the ED can provisionally attach properties suspected of being connected to money laundering for 180 days, extendable if court proceedings are initiated. This attachment can occur even without a conviction or formal charge, based solely on "reason to believe" that the property is involved in a money-laundering offense. Such provisions often lead to premature and sometimes unnecessary asset seizures, depriving individuals of property based on suspicion alone. Additionally, this process can have severe financial and reputational consequences for the accused, especially if they are politically

⁷ Sultan, N. and Mohamed, N., 2024. The money laundering typologies and the applicability of placement-layering-integration model in undocumented South Asian economies: a case of Pakistan. *Journal of Money Laundering Control*, 27(4), pp.741-762.

active or outspoken critics of the government. These attachment powers, when wielded selectively, create a scenario where property confiscation can be used to financially destabilize individuals even before the courts can determine guilt, often crippling political opponents or business competitors without due process.

C. Burden of Proof on the Accused

The PMLA reverses the traditional presumption of innocence by placing the burden of proof on the accused. Section 24 of the Act shifts this burden, requiring individuals to prove that their assets are not proceeds of crime. This is a significant departure from conventional legal principles, which presume innocence until proven guilty. For individuals entangled in complex financial dealings, this requirement to establish the legitimacy of each asset can be onerous and, in many cases, unattainable without prolonged and costly legal battles. Moreover, this reversal is especially problematic when combined with the broad definitions of proceeds of crime. Innocent individuals may struggle to disprove allegations when the law itself permits flexible interpretations, effectively compromising their right to a fair trial. The heightened burden can also serve as a deterrent against legitimate opposition, given the difficulty of disproving accusations under such a framework, which risks turning the PMLA into a tool for penalizing dissent.

D. Restrictive Bail Conditions and Prolonged Detention

Section 45 of the PMLA introduces restrictive conditions for granting bail, requiring the accused to satisfy two stringent criteria: proving that they are not guilty of the offense and that they are unlikely to commit any offense if released. These requirements, known as the “twin conditions,” make bail particularly difficult to obtain, often leading to prolonged detention of individuals even before trial. While these conditions were struck down as unconstitutional in *Nikesh Tarachand Shah v. Union of India* (2017), subsequent amendments reintroduced them, reinstating the restrictive bail provisions. This stringent bail framework often results in long pre-trial detention periods, which can be used coercively to silence or intimidate political figures, activists, and business competitors. Such detention practices undermine the principles of justice and fairness, especially in cases where accusations are later found to be baseless. By making bail nearly inaccessible, the PMLA enables prolonged punitive detention, amplifying its potential as a tool of oppression rather than justice.

E. Lack of Judicial Oversight and Accountability

The PMLA grants extensive powers to enforcement agencies with minimal checks and balances, creating an environment ripe for misuse. The Act does not mandate regular judicial oversight over investigations and enforcement actions, leaving significant discretion with the ED and other authorities. For example, while the ED can provisionally attach property, the process of validation and adjudication often lacks timely judicial review, leading to extended periods where individuals are denied access to their assets without fair recourse. Additionally, the lack of transparency and accountability in ED operations means that decisions to investigate or attach properties may not be scrutinized adequately. The absence of clear guidelines and oversight mechanisms increases the risk of arbitrary enforcement, allowing the law to be used for purposes beyond its original intent. Such unchecked authority is particularly concerning in politically charged cases, where enforcement actions may be influenced by motives unrelated to justice, undermining public trust in the PMLA's application.

F. Expansive List of Predicate Offenses and Arbitrary Application

The PMLA's scope has been expanded significantly through the inclusion of a broad range of predicate offenses in its schedule. While initially limited to serious financial crimes, the schedule now covers a wide array of offenses, including relatively minor infractions. This expansion, while intended to deter various forms of crime, creates a scenario where even minor regulatory or financial offenses can trigger PMLA proceedings. The inclusion of minor offenses raises concerns about proportionality, as the Act's severe provisions are now applicable to individuals involved in non-severe infractions. This broad applicability enables selective targeting, as authorities can choose from a wide array of predicate offenses to initiate investigations under the PMLA. The inclusion of minor offenses dilutes the Act's original purpose, leading to cases where the law is applied not to prevent money laundering but to target individuals on marginal or politically motivated grounds.

A Tale of two Cases: How Nikesh Tarachand and Vijay Madanlal Shaped the PMLA

In this part of the paper, we shall discuss how the present interpretation of the PMLA as it is has undergone a regime shift due to the two landmark decisions of the Supreme Court, namely, *Nikesh Tarachand Shah*⁸ and *Vijay Madanlal Choudhary*⁹.

A. Declaring Provisions of PMLA Un-constitutional: Nikesh Tarachand Shah

The Supreme Court's judgment in *Nikesh Tarachand Shah v. Union of India* (2017) stands as a landmark case that significantly reshaped the application of the Prevention of Money Laundering Act (PMLA). In this case, the Court addressed the constitutionality of Section 45 of the PMLA, which imposed stringent bail conditions for offenses under the Act. Specifically, Section 45 mandated that bail could only be granted if the Public Prosecutor was given an opportunity to oppose it, and if the court believed there were reasonable grounds that the accused was not guilty and unlikely to commit another offense while on bail. This twin-condition requirement placed a severe burden on the accused, effectively making bail difficult to obtain for individuals accused under the PMLA.

Justice Nariman, delivering the judgment, emphasized that the twin conditions for bail were “manifestly arbitrary” and violated Articles 14 and 21 of the Indian Constitution, which guarantee equality before the law and the right to personal liberty, respectively. The Court pointed out that these bail conditions under Section 45 were originally intended for serious, heinous offenses directly related to money laundering. However, amendments had expanded the range of predicate offenses covered by the PMLA, resulting in less severe offenses being subjected to the same restrictive bail conditions. This expansion meant that individuals accused of comparatively minor offenses were now facing disproportionately strict bail requirements, leading the Court to conclude that Section 45 lacked a rational basis in its broad application. In its analysis, the Court underscored that the imposition of such restrictive bail conditions without a reasonable distinction among offenses was arbitrary. The Court also observed that such stringent conditions contradicted the presumption of innocence and the fundamental right to personal liberty. By imposing a high threshold for bail without regard to the severity or

⁸ AIR 2017 SUPREME COURT 550

⁹ SLP (Crl) No. 4634/2014

specifics of the offense, Section 45 was found to be excessively punitive, especially given that individuals could face extended pre-trial detention despite a lack of substantial evidence. The *Nikesh Tarachand* decision marked a critical intervention in the PMLA's structure, as it required lawmakers to consider due process and proportionality when designing bail conditions for economic offenses. By declaring the twin bail conditions under Section 45 unconstitutional, the judgment reinforced the necessity for a balanced approach that upholds individual liberties while effectively addressing financial crimes.

B. Reversing Nikesh Tarachand: A case of Vijay Madanlal Choudhary

In *Vijay Madanlal Choudhary v. Union of India* (2022), the Supreme Court of India issued a significant judgment that addressed the validity of several stringent provisions under the Prevention of Money Laundering Act (PMLA). This ruling had wide-reaching implications, as the Court upheld contentious aspects of the Act, including provisions related to the power of the Enforcement Directorate (ED), the procedure of arrests, and the twin bail conditions. This judgment marked a shift from the earlier decision in *Nikesh Tarachand Shah v. Union of India* (2017), which had declared certain parts of the PMLA unconstitutional, especially regarding bail conditions. By affirming the constitutionality of these provisions, *Vijay Madanlal* reaffirmed the expansive powers granted to the ED under the PMLA and reinforced the Act's stringent nature.

Restoration of Twin Bail Conditions

One of the most critical aspects of the *Vijay Madanlal* ruling was the Court's decision to uphold the reintroduced twin bail conditions under Section 45 of the PMLA. These conditions require the accused to demonstrate (1) reasonable grounds to believe they are not guilty of the offense and (2) that they are not likely to commit any offense if granted bail. The Supreme Court reasoned that these stringent requirements were essential to address the serious nature of money laundering offenses, which involve complex financial transactions and cross-border implications that pose substantial threats to national economic stability.

This decision reversed the *Nikesh Tarachand* judgment, where the Court had struck down these conditions as arbitrary and unconstitutional. In *Vijay Madanlal*, however, the Court argued that these conditions were rational and in line with the government's objectives to counter money

laundering comprehensively, thus restoring the stringent bail structure that limits the release of accused individuals during investigations. This restoration of the twin conditions underscored the Court's recognition of the PMLA as an extraordinary statute aimed at addressing severe financial crimes, even if that entailed curtailing certain procedural rights.

Upholding the ED's Powers to Conduct Searches and Seizures

The Court in *Vijay Madanlal* also upheld provisions that allow the ED extensive authority to conduct searches, seizures, and arrests without the traditional procedural safeguards available in regular criminal investigations. For instance, the Court ruled that the ED's powers under Sections 5 and 17 of the PMLA to attach properties and conduct searches based on "reason to believe" were valid and not in violation of constitutional protections under Articles 14 or 21. This validation granted the ED considerable discretion in pursuing preliminary actions against individuals suspected of money laundering, even when such actions could result in significant financial and reputational damage.

Moreover, the Court dismissed arguments that the absence of an FIR or an ECIR (Enforcement Case Information Report) violates due process. It reasoned that the PMLA, as a specialized statute, warranted a separate procedural mechanism distinct from the Criminal Procedure Code (CrPC). By not requiring the disclosure of an ECIR, the Court accepted the argument that such procedural flexibility is necessary to prevent evidence tampering in complex financial crimes. This validation granted the ED broad procedural latitude, raising concerns about transparency and due process while underscoring the Court's deference to the legislature's judgment in drafting financial crime statutes.

Burden of Proof and Self-Incrimination

In this case, the Court addressed the constitutionality of Section 24, which shifts the burden of proof onto the accused, requiring them to demonstrate the legitimacy of their assets when accused of money laundering. Critics argued that this provision contradicts the presumption of innocence and violates the right against self-incrimination under Article 20(3). However, the Court upheld Section 24, emphasizing that the presumption of innocence is not absolute and that reverse onus provisions are justified in specific cases involving serious crimes with substantial public impact, such as money laundering. The *Vijay Madanlal* judgment thereby

affirmed the exceptional nature of the PMLA by reinforcing this reverse burden provision. The Court's stance effectively acknowledged the challenges inherent in prosecuting financial crimes, which often involve concealed or offshore assets, necessitating that the accused bear the burden of establishing the legitimacy of their finances. By doing so, the Court reinforced the view that the PMLA, due to the sophisticated nature of financial crimes it targets, could justifiably impose heavier evidentiary burdens on the accused.

Has PMLA Become the State's Weapon?

A. Confounding Statistics

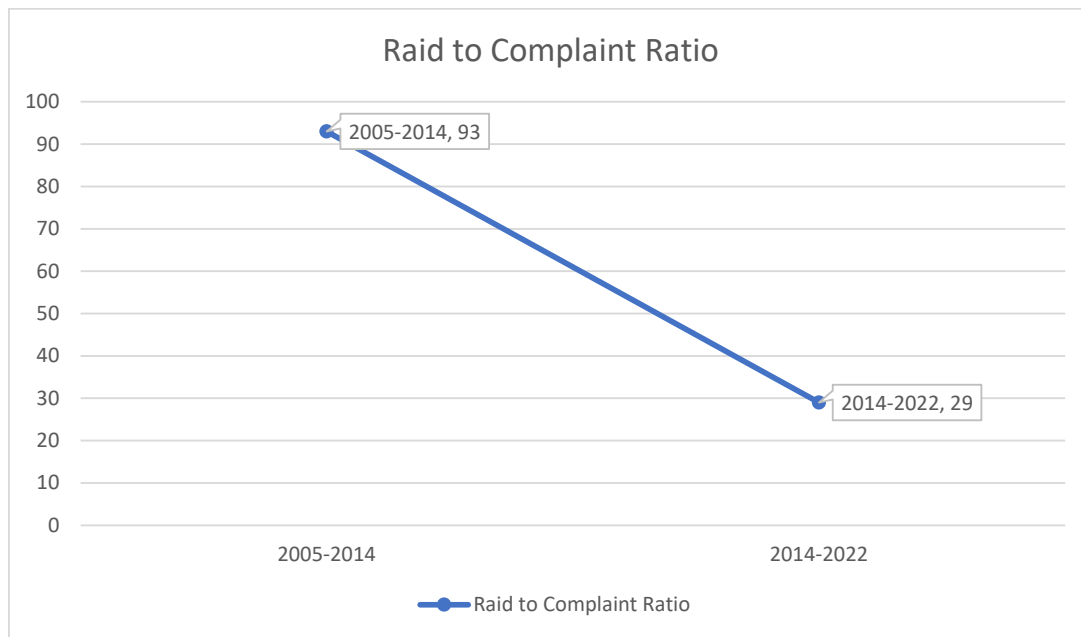
A closer look at the individuals targeted under the PMLA post-2014 further elucidates this trend. Before 2014, opposition leaders represented approximately 54% of all politicians investigated under the Act. However, this figure has skyrocketed to 95% in the years following 2014. This almost exclusive focus on opposition leaders suggests a systematic shift in enforcement practices, raising concerns over whether the PMLA is being used to neutralize political competition and silence dissent. The near-total focus on opposition leaders not only undercuts the perceived neutrality of the ED but also suggests that the agency's priorities may be influenced by factors beyond criminal justice. Given that the purpose of the PMLA is to address financial crimes, the increase in investigations predominantly targeting opposition leaders raises questions about the impartiality of the law's enforcement. This selective application of the PMLA may undermine its intended role as a neutral instrument for economic justice, reducing it instead to a tool for political control and suppression.¹⁰

¹⁰ Kumar, S. and Dixit, A., Prevention of Money Laundering Act, 2002 (PMLA) Critical Review of Key Provisions.



The data shows that the action rate on raids conducted under the PMLA has dropped significantly since 2014. From 2005 to 2014, 93% of raids under the PMLA led to complaints, suggesting a high level of success or follow-through in enforcement actions. However, from 2014 to 2022, this rate dropped to 29%, indicating that less than a third of raids result in formal complaints or charges. This drastic decline raises questions about the purpose and effectiveness of these raids.

The sharp reduction in action rate implies that while raids have become more frequent, they are less likely to culminate in a successful complaint or charge. This discrepancy suggests a shift in focus from substantive outcomes to the use of raids as symbolic or strategic acts, often perceived as intimidation tactics rather than genuine attempts to address economic crimes. The trend points to a potential shift in the modus operandi of the Enforcement Directorate (ED), the agency primarily responsible for PMLA enforcement. By prioritizing the frequency of raids over their effectiveness, the ED may be leveraging the law's powers to create a climate of fear and control among certain sections of the political landscape.



The Modi administration has made transparency, anti-corruption, and financial integrity focal points of its governance narrative. However, the available data suggests that the administration's approach to PMLA enforcement does not align with these principles in practice. The selective targeting of opposition leaders and the decrease in action rates after raids indicate that the PMLA may be repurposed for political gains rather than its original anti-corruption mandate. This trend can be seen as part of a broader strategy to consolidate political power by limiting the influence and efficacy of opposition leaders. In a democracy, laws and their enforcement are expected to reflect neutrality and fairness. However, the apparent bias in PMLA enforcement erodes these democratic ideals by creating an uneven playing field where opposition leaders are disproportionately subjected to scrutiny and legal action. Such practices risk transforming the PMLA from a legislative tool for financial integrity into an apparatus for political leverage and control.

B. The Pattern of Weaponization

The Reverse Burden of Proof: A Menace to the Presumption of Innocence

The reverse burden of proof stipulated in Section 24 of the PMLA, which mandates that the accused demonstrate the non-connection of the purported proceeds of crime to any illicit

conduct, is among the most contentious elements of the legislation. This provision directly violates the fundamental premise of the presumption of innocence, which is established in criminal jurisprudence and safeguarded under Article 21 (Right to Life and Personal Liberty) of the Indian Constitution.¹¹ In criminal law, the onus of proof conventionally rests with the prosecution, which is required to demonstrate the defendant's guilt beyond a reasonable doubt. The PMLA, however, reverses this idea by imposing the burden of proof for innocence on the accused. This notable deviation from established legal standards has been contested on constitutional grounds, with detractors asserting that it infringes upon the right to a fair trial and the fundamental principles of criminal justice.¹²

In **Nikesh Tarachand Shah v. Union of India (2017)**, the Supreme Court of India examined the bail rules under Section 45 of the PMLA, which mandated that the accused demonstrate their "not guilty" status to obtain release. The Court determined that these conditions were unconstitutional, as they infringed upon the values of equality (Article 14) and liberty (Article 21). It highlighted that imposing such a burdensome obligation on the accused, especially during the pre-trial phase, compromised the presumption of innocence and created an inequitable disadvantage. The verdict resulted in the alleviation of strict bail conditions; but, the reverse burden of proof under Section 24 persists, continuing to present considerable difficulties for the accused. The reverse burden clause has intensified accusations that the PMLA is being utilized as a tool by the state. Critics contend that this provision permits investigative agencies to extend imprisonment and intimidate individuals¹³, particularly in politically charged instances. By transferring the burden to the accused, the state can exert extended control over individuals without the necessity of presenting sufficient evidence initially, so fostering a climate conducive to abuse.

¹¹ Kumar, S. and Dixit, A., Prevention of Money Laundering Act, 2002 (PMLA) Critical Review of Key Provisions.

¹² Pieth, M., 1998. Prevention of Money Laundering: A Comparative Analysis. *Eur. J. Crime Crim. L. & Crim. Just.*, 6, p.159.

¹³ Mongia, S. and Chhabra, P., 2021. Powers of Enforcement Directorate under the Prevention of Money Laundering Act, 2002. *Indian JL & Legal Rsch.*, 3, p.1.

Stringent Bail Provisions: Freedom at Risk

A significant topic of dispute regarding the PMLA is its rigorous bail restrictions. Prior to the Supreme Court's involvement in the Nikesh Shah case, Section 45 established exceedingly stringent criteria for bail, necessitating that the accused demonstrate their innocence prior to release. This rule imposed an exceptional burden on persons charged with money laundering, many of whom were incarcerated for prolonged durations without trial. The Court's ruling in Nikesh Shah deemed these restrictions unconstitutional, since they excessively encumbered the accused and infringed upon the right to personal liberty. The ruling emphasized that although financial crimes are grave felonies, the right to bail should not be entirely revoked, particularly in the lack of adequate proof.

Notwithstanding this verdict, the rigorous character of PMLA's bail conditions remains a cause for anxiety. In politically sensitive cases, defendants frequently endure prolonged pre-trial imprisonment, as the prosecution invokes the severity of the offense to postpone bail. This practice has resulted in accusations of selective targeting and the utilization of legal mechanisms to detain political adversaries for extended durations.

The case of **P. Chidambaram v. Directorate of Enforcement (2020)** re-examined the issue of bail under the Prevention of Money Laundering Act (PMLA). The ex-Union Minister was apprehended under the PMLA and held for an extended duration prior to receiving bail from the Supreme Court. The Court, in giving him bail, reiterated that the right to personal liberty must not be compromised, especially in instances of economic wrongdoing. The case underscored the judiciary's function in reconciling the state's imperative to combat financial crimes with the necessity of safeguarding individual rights.

Seizure of Property Without Conviction: Deterioration of Property Rights

The PMLA empowers the ED to seize properties suspected of association with money laundering, prior to a formal conviction. Section 5 of the Act permits the provisional attachment of property, which may be prolonged, sometimes resulting in individuals being deprived of

their assets for protracted periods without due process.¹⁴ This provision has elicited significant apprehensions regarding the infringement of Article 300A, which safeguards property rights.

In **Vijay Madanlal Choudhary v. Union of India (2022)**¹⁵, the Supreme Court affirmed the validity of the PMLA's attachment provisions, holding that the statute includes sufficient safeguards, including the ability to appeal to the Appellate Tribunal. This decision did little to alleviate apprehensions regarding the possibility of misuse. Legal academics have noted that although the law ostensibly offers protections, in reality, individuals may be deprived of their property for prolonged durations without official charges or convictions. This has resulted in allegations that the PMLA being employed as a mechanism to financially incapacitate individuals, especially political adversaries or government critics.¹⁶ The extensive powers of attachment have also fostered the belief that the PMLA is being utilized as a weapon. Numerous prominent cases involving political personalities have witnessed the ED seizing properties without adequate evidence of misconduct. The discretionary nature of these powers and the absence of prompt judicial scrutiny have engendered accusations that the law is being employed to target individuals for political motives rather than to address authentic cases of money laundering.¹⁷

Procedural Safeguards and Claims of Capricious Arrest

The procedural safeguards under the PMLA, especially concerning arrest and imprisonment, have under examination. The Act confers significant discretion upon the ED to apprehend individuals based on substantive evidence, without necessitating the provision of specific grounds or proof to the accused at the moment of arrest. This has raised concerns regarding arbitrary arrests and extended imprisonment without trial, prompting inquiries into the

¹⁴ Sharma, S., 2020. Independence and temporality: examining the PMLA in India. *Journal of Money Laundering Control*, 23(1), pp.208-223.

¹⁵ Bhatia, T.T., 2023. The Vijay Madanlal Judgment of India: A New ERA for PMLA. *Part 2 Indian J. Integrated Rsch. L.*, 3, p.1.

¹⁶ Ibid

¹⁷ Ebikake, E., 2016. Money laundering: an assessment of soft law as a technique for repressive and preventive anti-money laundering control. *Journal of Money Laundering Control*, 19(4), pp.346-375.

infringement of Articles 20 and 22 of the Constitution, which shield individuals against arbitrary arrest and guarantee procedural protections in criminal proceedings.¹⁸

In **P. Chidambaram v. Directorate of Enforcement**, the Supreme Court underscored the significance of procedural safeguards and individual liberty in proceedings under the PMLA. The Court granted bail to Chidambaram, emphasizing that the right to liberty must be upheld even in economic criminal cases, and that extended imprisonment without adequate proof is unjustifiable. This case underscored the judiciary's responsibility in guaranteeing the equitable application of PMLA's provisions and preventing the arbitrary detention of individuals without due process. The application of the PMLA for capricious arrests, especially in politically sensitive situations, continues to be a significant issue. Numerous political leaders and activists have alleged that the government is employing the PMLA to incarcerate them for protracted durations without trial, so stifling dissent and restraining opposition.

C. Case Studies Regarding Possible Misuse

The application of the PMLA has shown a noticeable pattern where opposition figures and political leaders critical of the ruling government find themselves subject to investigation, often leading to asset seizure, prolonged detention, and reputational damage. By examining some recent cases, this section reveals how the selective use of the PMLA reflects the potential for its weaponization.¹⁹

Anil Deshmukh Case

Anil Deshmukh, the former Home Minister of Maharashtra, faced allegations of corruption leading to an Enforcement Directorate (ED) investigation under the PMLA. The ED conducted numerous raids and ultimately detained Deshmukh, citing alleged involvement in financial misappropriation and money laundering. The investigation extended over months, and Deshmukh faced prolonged detention due to stringent bail conditions under the PMLA. The intensity and swiftness of the investigation led to accusations that the action against Deshmukh was politically motivated, with detractors arguing that it served to weaken the opposition in

¹⁸ Sekhri, A. (2024) *PMLA: From Prosecuting Drug Lords to going after critics and farmers? Supreme Court Observer*. Available at: <https://www.scobserver.in/journal/pmla-from-prosecuting-drug-lords-to-going-after-critics-and-farmers/> (Accessed: 13 November 2024).

¹⁹ Jain, M., 2023. Money Laundering in India: A Multi-Dimensional Advent. *Justice and Law Bulletin*, 2(2), pp.51-60.

Maharashtra—a state with significant political tensions between the central and state governments.²⁰

Arvind Kejriwal Case (Delhi Liquor Policy Investigation)

In the case of the Delhi liquor policy investigation, the ED launched an inquiry into alleged irregularities, implicating officials close to Delhi Chief Minister Arvind Kejriwal. This investigation received widespread media coverage and scrutiny, with opponents accusing the ED of using the PMLA to undermine Kejriwal's administration by targeting his close aides. The investigation sparked debates over the extent to which the PMLA is being wielded as a mechanism to destabilize opposition-ruled states, especially where state policies diverge from the center's priorities. Many see the case as indicative of how economic legislation is used to put political pressure on rival governments and discredit opposition leaders.

Hemant Soren Case

Jharkhand Chief Minister Hemant Soren was subjected to ED scrutiny under the PMLA due to alleged irregularities in mining leases. The case has underscored the contentious relationship between the central government and state leaders from opposition parties. Soren himself publicly suggested that the investigation was intended to destabilize his government, citing selective enforcement as evidence of political motivation. The ED's investigation into Soren and others in similar circumstances has drawn criticism, as analysts argue that it reflects a pattern of targeting political leaders from states that maintain opposition-led administrations.

P. Chidambaram Case (INX Media)

Former Finance Minister P. Chidambaram's case is one of the most prominent examples illustrating the State's ability to use the PMLA against influential political figures. Chidambaram, who was instrumental in several economic policies, was arrested and detained under the PMLA in connection with the INX Media case. The case involved prolonged detention due to strict bail conditions, during which Chidambaram's political career faced significant disruption. His detention raised questions regarding the selective use of the PMLA

²⁰ Ibid

against high-profile members of the opposition, suggesting a pattern where the law is leveraged to intimidate and discredit prominent political figures who challenge the central administration.

Possible Reforms of the PMLA

The Prevention of Money Laundering Act (PMLA) was established in India to address the escalating issue of money laundering. The law has seen criticism and accusations of misuse, especially concerning its potential exploitation against political adversaries and dissenters. As the state persists in utilizing the PMLA in prominent instances, it is essential to address these problems while simultaneously combating money laundering effectively. This essay advocates for a comprehensive strategy that aims to harmonize the enforcement of the PMLA with the safeguarding of individual rights, thereby cultivating a legal environment that enhances justice and accountability.

A. Amendment of Legal Regulations

A primary problem surrounding the PMLA is the reverse burden of proof outlined in Section 24. This rule transfers the onus of demonstrating innocence to the accused, undermining the essential premise of presumption of innocent that is foundational to criminal law. To reinstate this principle, the legislation must be revised to mandate that the prosecution establishes a *prima facie* case prior to transferring the burden to the defendant. This modification would reinforce the presumption of innocence and protect the rights of those accused under the PMLA.

The bail requirements of the PMLA have been criticized for their excessive stringency, frequently leading to extended incarceration without trial. The Supreme Court's involvement in *Nikesh Tarachand Shah v. Union of India* (2017) underscored the necessity for a more equitable approach. Optimizing bail processes through the establishment of explicit criteria for granting bail, which reconcile the gravity of the offense with the right to freedom, is essential. This will guarantee that persons are not subjected to unjust detention during trial proceedings, thereby strengthening the idea of fairness in the judicial system. Moreover, the authorities conferred upon the Enforcement Directorate (ED) for the provisional attachment of assets under Section 5 of the PMLA require refinement. The existing regulations permit property attachment absent a formal conviction, which raises significant issues about the infringement

of property rights. The legislation should mandate a higher evidentiary standard prior to property attachment, together with procedures for prompt judicial review to validate the reason for such measures.

B. Improving Accountability and Oversight Systems

To alleviate the potential for PMLA misuse, it is imperative to establish independent review boards capable of evaluating cases begun under the Act. These panels, consisting of legal professionals, civil society leaders, and retired judges, would assess the merits of specific cases and oversee the acts of the ED. By fostering transparency and accountability, such boards can facilitate the equitable and just application of the PMLA. Moreover, enhancing judicial oversight is essential. Requiring immediate reviews by specified courts for all actions executed by the ED, including arrests and property seizures, would establish a crucial oversight mechanism for the enforcement of the PMLA. This scrutiny would ensure the legality and proportionality of the acts undertaken, so safeguarding individual rights.

C. Enhancing Training and Protocols for Law Enforcement

It is essential to provide law enforcement professionals with a thorough comprehension of the PMLA and its effects on individual rights. Thorough training programs centered on ethical enforcement methods help cultivate a culture of accountability among law enforcement institutions. By underscoring the significance of maintaining constitutional safeguards during investigations, these programs can reduce the potential for abuse and guarantee that enforcement measures conform to legal norms. Furthermore, establishing explicit and transparent protocols for the implementation of the PMLA is crucial. Establishing optimal protocols for investigations, arrests, and property seizures will mitigate the potential for abuse while facilitating the efficient prosecution of money laundering offenses.

D. Advancing Public Awareness and Participation

Awareness of the PMLA, its objectives, and individuals' rights under the law is essential for promoting a culture of compliance and accountability. Implementing awareness programs to inform the public on the law's provisions will enable individuals to comprehend their rights and the procedures for reporting suspicious financial activities. Promoting whistle-blowers' and reporting via secure and anonymous means can augment public engagement. Implementing

safeguards for whistle-blowers' will foster an environment that encourages the reporting of money laundering operations, so enhancing the state's ability to address financial crimes.

E. Executing Data-Driven Methodologies

Utilizing technology to improve the identification of money laundering activities is a progressive strategy that can aid in the efficient enforcement of the PMLA. Employing data analytics, artificial intelligence, and machine learning methods to discern patterns of suspicious behaviour can inform investigations, decreasing dependence on arbitrary arrests and mitigating the danger of abuse. Consistent impact assessments of the PMLA and its enforcement will yield significant insights into the law's influence on individual rights and liberties. Through the examination of case outcomes, legislators and law enforcement can guarantee that enforcement activities correspond with the law's aims while protecting essential rights.

Conclusion

The Prevention of Money Laundering Act (PMLA), while originally conceived as a vital legislative tool to combat financial crimes, exhibits structural vulnerabilities that have led to misuse and selective application. This research highlights how broad definitions of "proceeds of crime" and "money laundering," along with expansive powers of attachment and seizure, expose the Act to potential abuse. The burden of proof on the accused, coupled with restrictive bail conditions, fundamentally alters the presumption of innocence, thereby compromising due process rights. Judicial decisions have both alleviated and intensified these structural issues: *Nikesh Tarachand Shah v. Union of India* initially struck down the stringent bail conditions as unconstitutional, advocating for greater procedural fairness. However, *Vijay Madanlal Choudhary v. Union of India* later reversed this stance, reinstating and validating many of the Act's most stringent provisions, thereby reinforcing its rigid framework and the discretionary powers granted to enforcement agencies. The PMLA's current structure, as reinforced by these judicial rulings, poses challenges to the principles of fair and equal application, potentially turning the Act into an instrument of political leverage. The overwhelming focus on opposition leaders, as reflected in recent enforcement patterns, exemplifies this trend, casting doubt on the neutrality of enforcement agencies and eroding public trust. The decline in action rate on raids further reinforces the perception that the PMLA may serve as a tool of intimidation rather than a legitimate means to deter financial crimes.