

From Law to Justice: Exploring the Prevention of Money Laundering Act's (PMLA) Provisions, Evolution, and Bail Issues

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ABSTRACT

Money laundering is most often an illegal practice in almost every country whether the country is developed or which is still developing. Earning money illegally, but turning it to be looks like legal is the most common trick that everyone uses while laundering money. Money laundering can be a great threat to countries economic development. Money laundering can include a wide range of actions bank frauds, misuse of countries' funds, and earning through any illegal means. To curb this illegal practice government of India enacted the Prevention of Money Laundering Act (PMLA) in the year 2002. In this article, the author has analyzed an in-depth view of certain provisions of the PMLA that include, meaning, punishments, the burden of proof, arrest, and bail under the PMLA. The article also covers certain nuances that are found in the provisions of PMLA with court interpretations in this regard. The article covers the evaluation, recent changes, and foreign laws concerned with PMLA. Finally, concluded with a critical analysis and certain recommendations for the development and proper application of PMLA in India.

Keywords: PMLA, Money Laundering, Illegal Practice, ED, Offence.

I. INTRODUCTION

Imagine someone stealing a large sum of money and then using various tricks to make it look like they earned it legally. This is an illegal practice and is often called money laundering. This illegal practice poses a significant threat to the economy and society because it fuels further criminal activities. As of November 2023, there were 5906 cases of money laundering in India have been reported by the Directorate of Enforcement³. These cases include bank fraud, misuse of government funds, and Ponzi schemes. As per the Enforcement Case Information Report (ECIR), the Enforcement Directorate (ED) has registered a total of 3,110 cases under anti-money laundering laws and received over 12,000 complaints related to alleged violations of foreign exchange rules in the past three years.⁴ The

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³ (Directorate of Enforcement) <<https://enforcementdirectorate.gov.in/statistics-0>> accessed 2 June 2024

⁴ 'Parliament proceedings | 3,110 money laundering, 12,000 FEMA cases registered by ED in last 3 years, says Indian government' (*The Hindu*, July 31, 2023) <<https://www.thehindu.com/news/national/parliament-proceedings-3110-money-laundering-12000-fema-cases-registered-by-ed-in-last-3-years-govt/article67142041.ece>> accessed 2 June 2024

government stated that these cases were identified using a strong, risk-based approach under the Prevention of Money Laundering Act, 2002 (PMLA),⁵ and the Foreign Exchange Management Act, 1999 (FEMA).⁶

In order to curb this money laundering practice, many countries have established strict laws. The United States has the Bank Secrecy Act (BSA)⁷ and the Money Laundering Control Act⁸, the United Kingdom enforces the Proceeds of Crime Act (POCA),⁹ and Australia implements the Anti-Money Laundering and Counter-Terrorism Financing Act (AML/CTF Act)¹⁰. In India, the key legislation is the Prevention of Money Laundering Act (PMLA), which was enacted in 2002. This law aims to prevent money laundering and to provide for the confiscation of property derived from money laundering.

II. MEANING OF THE MONEY LAUNDERING

In general, money laundering means is a process in which criminals try to make illegally obtained money look like it comes from a legal source. They do this by using different tricks and moving the money through various transactions or investments so that it appears clean and not connected to any crime.

Section 2(p) of the Act states that the meaning of money laundering is linked to Section 3 of the Act.¹¹ Accordingly, Section 3 defines the offence of money laundering. It states that “anyone who tries to engage in, helps with, is involved in, or is aware of any activity related to the money or property gained from illegal activities, including hiding it, keeping it, acquiring it, using it, or making it look like it was obtained legally, will be guilty of the crime of money-laundering.”¹²

Section 3 of the Act covers more than one action that tends to offence of money laundering. It includes if an individual tries to engage, who assists, participates, or if such an individual has knowledge about money or such assets that are earned from illegal means. On the other hand, the Section involves certain activities that tend to money laundering. That involves hiding the money or property, keeping the money or property, acquiring the money or property, using the money or property, and making the money or property look like it came from legal sources.

Recently in the case of *Y. Balaji vs Karthik Desari*¹³ honourable Supreme Court interpreted Section 3 of the PMLA and identified 3 aspects as three P’s.¹⁴ It includes the involvement of individuals in money laundering activities, the specific processes or activities constituting money laundering such as hiding or using illicit funds, and the identification of “proceeds of crime” resulting from these activities. Further

⁵ Acts of Parliament, Prevention of Money Laundering Act, (Act no. 15 of 2003)

⁶ Acts of Parliament, Foreign Exchange Management Act, (Act no. 42 of 1999)

⁷ U.S Federal Law, The Bank Secrecy Act, (1970)

⁸ U.S Federal Law, Money Laundering Control Act (1986)

⁹ U.K Federal Law, Proceeds of Crime Act (2002)

¹⁰ Federal Law, Anti-Money Laundering and Counter-Terrorism Financing Act (2006)

¹¹ Acts of the Parliament, Prevention of Money Laundering Act, 2002, S.2(p), (Act no. 15 of 2002)

¹² Acts of the Parliament, Prevention of Money Laundering Act, 2002, S.3, (Act no. 15 of 2002)

¹³ *Y. Balaji vs Karthik Desari*, SLP (CrI.) Nos.12779-12781 of 2022

¹⁴ Vaibhavi Sharma, Rishabh Sharma, Deciphering the Deciphering the Code: A Compilation of PMLA Judgments (2023) and Legal Evolution (*Bar and Bench*, Sept 12, 2023) <<https://www.barandbench.com/law-firms/view-point/deciphering-the-code-a-compilation-of-pmla-judgments-2023-and-legal-evolution>> accessed 3 June 2023

court interpreted that if corruption leads to the creation and laundering of illegal funds, it falls under the crime of money laundering as defined under Section 3 of the PMLA.

The Foundational Goals of the PMLA

- To establish measures to prevent money laundering and related activities.
- To enable the confiscation of property obtained through or involved in money laundering.
- To implement resolutions and declarations from international bodies like the United Nations that call for effective measures against money laundering.
- To provide a comprehensive framework to regulate and combat money laundering activities.
- To equip authorities with the powers needed to investigate and prosecute money laundering offences effectively.
- To enhance the integrity of the financial system by preventing the introduction of illicit funds.

III. THE INCEPTION AND LEGISLATIVE JOURNEY OF THE PMLA IN INDIA

India has been a party to the UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances¹⁵ since 1988. It is also committed to preventing funds from drug and criminal activities. The Financial Action Task Force (FATF), formed in 1989, issued comprehensive guidelines in 40 recommendations to combat money laundering globally. Following these international frameworks, India enacted the Prevention of Money Laundering Bill in 1999,¹⁶ which later became the Prevention of Money Laundering Act, in 2002. This Act was approved by the President on January 17, 2003, and came into effect on July 1, 2005. The Act intends to strengthen measures against money laundering and related crimes in India.

IV. IS PUNISHMENT UNDER PMLA SEVERE?

Section 4 outlines the punishments for those who are found guilty of money laundering under this Act. According to Section 4 of the Prevention of Money Laundering Act, 2002, “whoever commits the offense of money-laundering shall be punishable with rigorous imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine. Provided that where the proceeds of crime involved in money laundering related to any offence specified under paragraph 2 of Part A of the Schedule, the provisions of this section shall have effect as if for the words which may extend to seven years, the words which may extend to ten years had been substituted.”

Section 4 prescribes the punishment in two ways. It can be classified as general punishment for those who are found guilty of money laundering will be imprisoned for at least three years and the maximum term will be 7 years. However, if the individual is found guilty of the offence of money laundering which is listed under paragraph 2 of the Part of the Schedule the punishment will be rigorous. Such listed crimes are serious in nature and include Sections 15 to 23, Section 25A, Section 27A, and Section 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act)¹⁷. Section 2(y) of the Act,¹⁸ contains the definition of the scheduled offences that include offence mentioned in Part A, Part B, and Part C of the Act.

¹⁵ *UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances*, (1988) <https://www.unodc.org/pdf/convention_1988_en.pdf> accessed 2 June 2024

¹⁶ Prevention of Money Laundering Bill (Bill no. 79 of 1999)

¹⁷ Act of Parliament, Narcotic Drugs and Psychotropic Substances Act, 1985 (Act no.61 of 1985)

¹⁸ Acts of the Parliament, Prevention of Money Laundering Act, 2002, S.2(y), (Act no. 15 of 2002)

V. SUPREME COURT NARROWS ED'S ARREST POWERS UNDER PMLA

Section 19 of the PMLA¹⁹ includes the provision for the arrest. It states that, if the Director, Deputy Director, Assistant Director, or any officer authorized by the Central Government has sufficient material and believes with reasons recorded in writing that a person is guilty of an offence under the PMLA, they can arrest that person. The arrested person must be informed of the grounds for their arrest immediately. After arresting a person, the officer must send a copy of the arrest order and the related material to the Adjudicating Authority in a sealed envelope. This must be done immediately and in the prescribed manner. Any person arrested must be taken to a Special Court, Judicial Magistrate, or Metropolitan Magistrate with jurisdiction within 24 hours. This 24-hour period excludes travel time from the place of arrest to the court.

The Enforcement of the Directorate is one of the officers authorized by the Central Government. However, the judgment on 1 March 2024 narrowed the arrest power of the Enforcement Directorate (ED). Recently the Hon'ble Supreme Court in the case of Tarsem Lal vs Directorate of Enforcement Jalandhar,²⁰ has limited the power of arrest by the ED under PMLA. The court held that, once the Special Court takes cognizance of a complaint under Section 44 of the PMLA²¹, the power to arrest under Section 19 of the PMLA may be curtailed. This indicates that after legal proceedings are initiated by the Special Court, the ED may no longer have the authority to arrest individuals implicated in the case. Therefore, the court's decision sets limits on the ED's powers. The court has clarified the circumstances under which arrests can be made. These limitations aim to balance the investigative powers of the ED with procedural safeguards for individuals accused under the PMLA. Similarly, earlier in the 2023 Pankaj Bansal vs. Union of India²² case, the honourable Supreme Court held that when an accused is arrested under the PMLA by the ED, it is required to record the grounds of arrest in a written form. Thereby this ruling upheld Article 22(2) of the Constitution which provides the rights of the arrested person to know the reasons for their arrest.

However, earlier in the case of the Vijay Madanlal Choudary vs. Union of India²³ case decision of the honourable Supreme Court was surrounded by ambiguities as the court did not question ED when they arrested the accused under Section 19 of the PMLA without giving the copy of Enforcement Case Information Report (ECIR) which is a must require document whenever ED arrest accused under PMLA.

VI. WHO BEARS THE BURDEN?

In any legal proceedings the party who initiated the suit such person has to prove their claim before the court. In other words, the burden of the proof lies upon such persons. Section 24 of the PMLA²⁴ contains the provision for the Burden of the proof. The section has been amended in 2013. Accordingly, it states that "for a person charged with money laundering (Section 3), the Authority or Court shall, unless the contrary is proved, presume that such proceeds of crime are involved in money-laundering; and in the case of any other person the Authority or Court, may presume that such proceeds of crime are involved

¹⁹ Acts of the Parliament, Prevention of Money Laundering Act, 2002, S.19, (Act no. 15 of 2002)

²⁰ Tarsem Lal vs Directorate of Enforcement Jalandhar, 2024 INSC 434

²¹ Acts of the Parliament, Prevention of Money Laundering Act, 2002, S.44, (Act no. 15 of 2002)

²² Pankaj Bansal vs. Union of India, Criminal Appeal Nos 3051-3052 of 2023

²³ Vijay Madanlal Choudary vs. Union of India, SPL (CR) No. 4634 OF 2014

²⁴ Acts of the Parliament, Prevention of Money Laundering Act, 2002, S.24, (Act no. 15 of 2002)

in money-laundering.” The burden is on the accused to demonstrate that the property in their possession is not tainted by money laundering. When it comes to “other persons” i.e., individuals who are not directly charged with money laundering under Section 3 of the PMLA, the burden of proof is not automatically shifted to them. However, the court can still consider the presumption that the proceeds of crime are involved in money laundering unless evidence to the contrary is presented.

Prior to the 2013 amendment, the burden of proving that proceeds of crime were untainted property rested on the accused. However, the amendment shifted the burden to the accused in cases specifically related to money laundering. If the prosecution establishes a prima facie case against the accused, they must then prove that the alleged proceeds of crime are from legitimate sources.

Section 24 puts the responsibility on the accused to show that their property is not tainted and is not linked to criminal proceeds. In other words, they must prove their innocence regarding money laundering allegations. However, this section is debatable and controversial. Since our criminal law says ‘accused is innocent until proven guilty’. In criminal proceedings, the burden of proof always lies on the prosecution side. The court expects the prosecution to prove the case beyond a reasonable doubt. However, Section 24 has shifted the burden of proof on the accused side to prove to establish their innocence. During the parliamentary debates when Section 24 of the Prevention of Money Laundering Act (PMLA) was introduced, it became clear that this provision was contentious. Respected jurists like Mr. Fali S. Nariman (Senior Advocate & Ex-Member of Parliament) and the Late Mr. Ram Jethmalani (Senior Advocate & Ex-Member of Parliament) expressed concerns about its inclusion.

Mr. Fali S. Nariman remarked, “But what worries me is the burden of proof, that is, Section 24” Late Mr. Ram Jethmalani went further, arguing that the presumption of guilt placed on the accused under Section 24 was unreasonable and would face constitutional challenges. He emphasised that the prosecution should first prove foundational facts beyond a reasonable doubt before raising the presumption against the accused.²⁵ In the case of Kavitha G. Pillai v. The Joint Director,²⁶ the High Court of Kerala clarified that Section 24 of the Prevention of Money Laundering Act (PMLA) only presumes that the assets are “proceeds of crime.” However, whether these assets are genuinely ill-gotten can only be determined when there is proof of the underlying criminal offense. Given that Section 24 is a powerful provision, prone to misuse by overzealous or corrupt officials, courts need to handle money laundering cases with caution.

VII. DETERMINATION OF THE JURISDICTION OF THE SPECIAL COURT

As per Section 43 of the PMLA,²⁷ the Central Government, in consultation with the Chief Justice of the High Court, will designate one or more Courts of Session as Special Courts for the trial of offences under Section 4 of the PMLA. This designation will be specified by notification for particular areas or classes of cases. A Special Court trying an offence under the PMLA can also try any other offence the accused is charged with under the Code of Criminal Procedure (CrPC), 1973.

²⁵ Madhav Khurana & Vignaraj Pasayat, ‘Reverse Burden of Proof under Section 24 of the Prevention of Money Laundering Act, 2002– Obligation of the prosecution and the accused and at what stage can this provision be invoked’, (*SCC Online Times*, June 4, 2020) <<https://www.sconline.com/blog/post/2020/06/04/reverse-burden-of-proof-under-section-24-of-the-prevention-of-money-laundering-act-2002-obligation-of-the-prosecution-and-the-accused-and-at-what-stage-can-this-provision-be-invoked/>> accessed on 4 June 2024

²⁶ Kavitha G. Pillai v. The Joint Director, C.M Appln no.341 of 2016

²⁷ Acts of the Parliament, Prevention of Money Laundering Act, 2002, S.43, (Act no. 15 of 2002)

According to Section 44,²⁸ offences under Section 4 and related scheduled offences are triable by the Special Court in the area where the offence occurred. If a scheduled offence was already being tried by a Special Court before the PMLA's commencement, it will continue there. A Special Court can take cognizance of an offence under Section 3 based on a complaint by an authorized authority, without the accused being committed for trial. If another court has taken cognizance of a scheduled offence, it must transfer the case to the Special Court upon application by the authorized authority. The Special Court will then proceed from the current stage of the case. On 10th April in the case of *KA Rauf Sherif v. Directorate of Enforcement*²⁹, the honourable Supreme Court clarified that a Special Court's jurisdiction under the Prevention of Money Laundering Act (PMLA), which depends on where the money laundering activities occurred, which constitutes the offence of money laundering under Section 3 of the PMLA. It does not matter where the First Information Report (FIR) was filed or which court initially took cognizance of the scheduled offense.

Special Court's jurisdiction over PMLA offences during investigation, inquiry, or trial is independent of orders regarding the scheduled offence. The trial of both sets of offences by the same court is not considered a joint trial. However, the High Court retains its special powers regarding bail under Section 439 of the CrPC, including powers applicable to Special Courts designated under Section 43.

VIII. REMEDY FOR ARREST AND PRE-ARREST UNDER PMLA

Section 45 of the Prevention of Money Laundering Act (PMLA)³⁰ deals with bail for those arrested for the offence of money laundering. People fearing arrest under PMLA can also seek anticipatory (pre-arrest) bail from the High Court. As per Section 45 of the Act, the person accused of an offence under the PMLA cannot get bail unless the Public Prosecutor has had a chance to argue against their release. If the Public Prosecutor argues against bail, the court must believe the person is not guilty and will not commit another offence while on bail. However, children under 16, women, people who are sick or weak, and those accused of laundering less than one crore rupees may be granted bail if the Special Court agrees. But the Special Court can only start a trial for an offence under the PMLA if there is a written complaint from:

- The Director of the Enforcement Directorate.
- An officer from the Central or State Government authorized by the Central Government.

Police officers cannot investigate PMLA offences unless specifically allowed by the Central Government through a special order. All offences under the PMLA are considered serious (cognizable) and non-bailable. This means Authorities can arrest someone without a warrant. Arrests without a warrant are subject to conditions in Section 19 of the PMLA and the bail conditions mentioned under Section 45 of the PMLA. In *Nikesh Tarachand Shah v. UOI*, (2017)³¹ case, the honourable Supreme Court ruled that Section 45's conditions were too harsh and violated the presumption of innocence, deeming them unconstitutional. However, in the *Vijay Madanlal Chaudhary v. UOI* (2022)³² case, the court revised this stance, saying the conditions were not an absolute barrier to bail. The court

²⁸ Acts of the Parliament, Prevention of Money Laundering Act, 2002, S.44, (Act no. 15 of 2002)

²⁹ *KA Rauf Sherif v. Directorate of Enforcement*, Transfer Petition (CR) NO.89 OF 2023

³⁰ Acts of the Parliament, Prevention of Money Laundering Act, 2002, S.45, (Act no. 15 of 2002)

³¹ *Nikesh Tarachand Shah v. UOI*, WP (CR) NO. 67 OF 2017

³² *Vijay Madanlal Chaudhary v. UOI*, (2022) SLP (CR) NO. 4634 OF 2014

emphasized that given the severity of money laundering crimes, judges have the discretion to grant bail only after these conditions are met.

Section 65 of PMLA³³ allows using provisions from the Criminal Procedure Code (CrPC), including anticipatory bail under Section 438 of Cr.P.C.,³⁴ since PMLA itself does not mention anticipatory bail. In *P. Chidambaram v. Directorate of Enforcement*, (2019)³⁵ the Hon'ble Supreme Court stated that anticipatory bail during an investigation might hinder the investigation. It should only be granted in rare cases where the prosecution's case is clearly baseless. The decision to grant anticipatory bail depends on the specific details of each case.

IX. DEVELOPMENT, RECENT AMENDMENTS OF PMLA

Over the years, the PMLA has been amended multiple times, notably in 2005, 2009, 2013, 2021, and 2023 to enhance its effectiveness and align with international standards. These amendments introduced concepts like compliance with foreign laws and expanded the scope of reporting entities to include banking institutions, financial entities, and professionals conducting designated businesses. The Indian government amended the Prevention of Money Laundering Act (PMLA) through the Finance Act, 2021,³⁶ which significantly expanded the Act's scope. These changes, implemented in April 2021, bring certain professionals under the Act's ambit, with important implications for their practice and compliance requirements. The definition now includes any property involved in money laundering or linked to any offense under the Act. This broadens the scope of what can be considered proceeds of crime, facilitating stricter enforcement and asset seizure.³⁷ Further, the definition of money laundering now encompasses activities such as concealment, acquisition, possession, or use of proceeds of crime. This expansion ensures that a wider range of activities related to the handling of illicit funds are criminalized. On the other hand, professionals such as Chartered Accountants, Company Secretaries, and Cost and Works Accountants are now categorized as "Reporting Entities" under the PMLA. This means they must adhere to specific compliance requirements. That includes,

- Maintain records of their clients' identity and transactions.
- Verify the identity of their clients.
- Report any suspicious transactions to the authorities.

These professionals are defined as Reporting Entities if they hold a certificate of practice under the Chartered Accountants Act, of 1949,³⁸ the Company Secretaries Act, of 1980,³⁹ or the Cost and Works Accountants Act, of 1959,⁴⁰ whether practicing individually or through a firm.⁴¹ The activities covered under the PMLA now include:

- Buying and selling of immovable property.

³³ Acts of Parliament, Prevention of Money Laundering Act, 2002, S.65, (Act no. 15 of 2002)

³⁴ Acts of Parliament, Code of Criminal Procedure Code, 1973, (Act No. 2 of 1974)

³⁵ *P. Chidambaram v. Directorate of Enforcement*, AIR 2019 SUPREME COURT 4198, 2019 (9) SCC 24

³⁶ Act of Parliament, Finance Act 2021, (Act no. 13 of 2021)

³⁷ 'Amendments to PMLA by Finance Act 2019 – Widening the scope of the Legislation', (Bar and Bench, Aug 21, 2019) <<https://www.barandbench.com/columns/amendments-to-pmla-by-finance-act-2019-widening-the-scope-of-the-legislation>> accessed on 4 June 2024

³⁸ Act of Parliament, Chartered Accountants Act, 1949, (Act No. XXXVIII of 1949)

³⁹ Act of Parliament, Company Secretaries Act, 1980, (Act No. 56 of 1980)

⁴⁰ Act of Parliament, Cost and Works Accountants Act, 1959, (Act No. 23 of 1959)

⁴¹ Supra note 29

- Managing client money, securities, or other assets.
- Managing bank, savings, or securities accounts.
- Organizing contributions for the creation, operation, or management of companies.
- Buying and selling of business entities.

Chartered Accountants, Company Secretaries, and Cost and Works Accountants must enhance their compliance measures to meet the new requirements. This includes stricter client due diligence, maintaining detailed records, and reporting suspicious activities promptly. Failure to comply with these requirements can result in penalties and legal consequences, emphasising the need for robust internal compliance systems. These amendments also aim to strengthen the legal framework against money laundering and terrorism financing in India. By involving professionals who handle critical financial transactions, the government seeks to improve transparency and accountability in financial dealings.

The 2021 amendments to the PMLA have significantly strengthened the law against money laundering and terrorism financing in India. Recently, on March 7, 2023, the Government of India has made several amends to PMLA. Especially, these amendments mainly focus on more disclosures for banks and financial institutions.⁴² By expanding the scope of the Act and bringing certain professionals under its ambit, these changes enhance compliance and reporting standards, ensure comprehensive monitoring of financial activities, and thus improve the overall effectiveness of the legal framework.

X. COURT INTERPRETATION OF PMLA PROVISIONS

(i) **Bhupinder Singh Honey vs. Enforcement of Directorate (2022)**⁴³

Facts:

In 2017, Kudratdeep Singh won a bid for a sand mine in Punjab. Due to issues with land demarcation and allegations of illegal mining, his operations faced numerous challenges. In 2018, a criminal case was filed, accusing several individuals of illegal mining. Though Kudratdeep Singh and Bhupinder Singh were not named as accused at that time. The Enforcement Directorate (ED) conducted raids in January 2022, during which cash was recovered from Bhupinder Singh and others. The ED alleged that this cache was the proceeds of crime related to illegal mining activities. Bhupinder Singh was subsequently arrested and has been in custody since February 3, 2022. He filed a petition under Section 439 of the Criminal Procedure Code (Cr.P.C.)⁴⁴ for regular bail, arguing that he was not accused in the original FIR and that the cash recovered did not constitute proceeds of crime.

Issues:

The primary issue before the court was whether Bhupinder Singh should be granted bail under Section 439 Cr.P.C. in light of the allegations under the Prevention of Money Laundering Act (PMLA). The court needed to consider if the cash recovered from him could be directly linked to the illegal mining activities and whether his detention was justified based on the evidence provided by the ED.

Judgement:

The Punjab and Haryana High Court, after considering the arguments and evidence, granted regular bail to Bhupinder Singh. The court observed that he had not been named in the original criminal case related

⁴² Ca Mayur Joshi, 'PMLA Amendments 23: strengthened regulations and increased scrutiny' (*indiaforensic*) <<https://indiaforensic.com/pmla-amendments-2023/#:~:text=On%207th%20March%202023%2C%20the%20Ministry%20of%20Finance%2C,the%20banks%20as%20well%20as%20the%20financial%20institutions.>> accessed on 4 June, 2023

⁴³ Bhupinder Singh Honey vs. Enforcement of Directorate (2022), CRM-M-27871-2022 (O&M)

⁴⁴ Acts of Parliament, Code of Criminal Procedure Code, 1973, (Act No. 2 of 1974)

to illegal mining and that there was insufficient direct evidence to link the cash recovered from him to the proceeds of crime under the PMLA. Consequently, the court found that his continued detention was not warranted and allowed his release on bail, subject to conditions designed to ensure his cooperation with the ongoing investigation and trial proceedings.

(ii) Directorate of Enforcement v. Gagandeep Singh (2022)⁴⁵

Facts:

Gagandeep Singh was accused of being part of an international money laundering syndicate linked to drug trafficking in Australia and other countries. Despite being acquitted of drug trafficking charges by the Sessions Court in Amritsar, the Enforcement Directorate (ED) filed a criminal complaint against him under the PMLA. The ED alleged that he had laundered money derived from drug trafficking, but no contraband was found with him.

Issue:

The issue in this case was whether Gagandeep Singh could be charged under the Prevention of Money Laundering Act (PMLA) when he had been acquitted of drug trafficking charges under the Narcotic Drugs and Psychotropic Substances Act (NDPS Act).

Judgement:

The High Court upheld the discharge of Gagandeep Singh from PMLA charges. It ruled that since he had been acquitted of drug trafficking charges and there was no evidence that the money seized was from drug proceeds, the essential condition for proving money laundering under the PMLA was not met. The court emphasised that a conviction for a scheduled offence (like drug trafficking) is necessary before someone can be charged with money laundering. Therefore, the discharge order was affirmed, and Gagandeep Singh was not prosecuted under the PMLA.

(iii) Prakash Industries Ltd. v. Directorate of Enforcement (2022)⁴⁶

Facts:

Prakash Industries Ltd. challenged the Enforcement Directorate's (ED) orders attaching their assets under the PMLA. The allegations stemmed from the allocation of a coal block in Chhattisgarh, which happened in 2003, before the PMLA was enacted in 2005. Prakash Industries argued that the allocation of the coal block itself cannot be considered "proceeds of crime" under the PMLA.

Issue:

The case dealt with whether assets could be attached under the Prevention of Money Laundering Act (PMLA) based on allegations related to the allocation of a coal block, which occurred before the PMLA came into effect.

Judgement:

The High Court ruled in favour of Prakash Industries Ltd. It held that the PMLA cannot be applied retroactively to acts committed before its enactment unless there is clear evidence that the money laundering occurred after the law came into force. The court emphasized that the predicate (or scheduled) offence, like the allocation of the coal block, must be committed after the PMLA was enforced to trigger money laundering charges. It also stressed that the ED must establish a direct link between the alleged criminal activity and the properties being attached. Since the coal block allocation itself did not constitute proceeds of crime, the ED's actions were deemed unsustainable. The court

⁴⁵ Directorate of Enforcement v. Gagandeep Singh, CRL.REV.P. 493/2017

⁴⁶ Prakash Industries Ltd. v. Directorate of Enforcement, W.P.(C) 14999/2021

referred to previous judgments to support its decision, highlighting that without a predicate offence after the PMLA's enforcement, the attachment of assets cannot be justified under the Act.

Outcome:

All writ petitions filed by Prakash Industries Ltd. were allowed, and the High Court quashed the ED's attachment orders, finding them legally unsustainable in the absence of a post-PMLA predicate offence.

(iv) Directorate of Enforcement v. Kamma Srinivasa Rao (2022)⁴⁷

The Hon'ble Supreme Court addressed challenges to various provisions of the Prevention of Money Laundering Act, 2002 (PMLA). The issues involved included the registration of cases, arrest procedures, bail conditions, property attachment rules, and powers related to summoning and seizing evidence. The Court upheld the validity of most challenged provisions:

- Section 5 (Attachment of Property): Property can be provisionally attached if there's reason to believe it's linked to money laundering. This must be approved by a magistrate within 180 days.
- Sections 17 and 18 (Search and Seizure): These Sections allow search and seizure without an FIR, aligning with other economic laws.
- Section 19 (Power to Arrest): High-ranking officials can arrest based on reasons recorded in writing, ensuring checks against arbitrary arrest.
- Section 45 (Provisions relating to Bail): Bail can be granted under stringent conditions to prevent serious economic offences, following constitutional principles.
- Section 50 (Powers to Summon and Seize): Authorities can summon individuals and seize evidence, which doesn't violate the right against self-incrimination unless the person is formally accused.

The Court emphasized the importance of these provisions in combating money laundering, citing international conventions and legislative intent.

XI. Critical Analysis

Implementing the Prevention of Money Laundering Act (PMLA) in India has faced several difficulties. The PMLA has strict rules that banks and other institutions must follow. These rules include checking customers' backgrounds and reporting suspicious activities. Following these rules requires a lot of effort and resources. It is important that everyone involved banks, regulators, and others understand and can follow the PMLA rules. However, providing enough training and keeping up with new ways criminals use to launder money can be a challenge. Different agencies need to work together well to enforce the PMLA effectively. Sometimes, sharing information and working together can be slow or difficult due to bureaucracy and different priorities. Certain provisions of the PMLA still need to be developed. That includes the burden of proof on the accused is the most crucial provision. Which is not inconsistent with the principle of criminal law ideology.

On the other hand, cases under the PMLA can take a long time to resolve in court. Delays in legal proceedings can reduce the act's effectiveness in stopping financial crimes. Some people are concerned about the wide powers given to authorities under the PMLA, like the power to arrest without a warrant and restrictions on bail. Critics worry these powers might infringe on people's rights. The strict rules of the PMLA might make it harder for some people, especially those without proper ID, to open bank accounts or access financial services. Some of the opposition even contended that ED is influenced by the Central Government about arrest and proceeds of crime. Similarly, 14 political parties moved to the

⁴⁷ Directorate of Enforcement v. Kamma Srinivasa Rao, CrIp no.9825 of 2021

Supreme Court to challenge the center's arbitrary use of ED's power. On March 24 the Honourable Supreme Court agreed to hear these petitions.⁴⁸

However, the Prevention of Money Laundering Act (PMLA) of 2002 has had a profound impact on India's financial sector. Banks, financial institutions, and other entities are now required to implement stringent Anti-Money Laundering (AML) measures. These measures include conducting thorough due diligence on customers, reporting suspicious transactions, and cooperating with authorities to combat financial crimes.

XII. Conclusion & Recommendations

The Prevention of Money Laundering Act (PMLA) is a crucial law in India that fights against illegal practices like money laundering, where criminals hide illegally earned money to make it look legal. Since its inception in 2002 and subsequent updates, the PMLA aims to stop illicit funds from entering our financial system and punish those involved in such activities. Implementing the PMLA is not easy in India. It requires strict rules for identifying individuals and businesses, reporting suspicious transactions, and punishing offenders. This can sometimes make it harder for people and businesses to operate freely. To address the challenges and nuances associated with implementing the Prevention of Money Laundering Act (PMLA), it is important to increase awareness among the public about the importance of complying with PMLA regulations. ED must act independently without being influenced by the power of any government. Certain provisions of the PMLA have to be reconsidered by the judiciary through judicial review like the burden of proof under PMLA which is inconsistent with the principles of criminal law.

To make the PMLA more effective, there is a need to increase awareness, simplify rules, and use better technology to track illegal activities. In this regard, collaboration between government, businesses, and the public is crucial.

⁴⁸ KRISHNADAS RAJAGOPAL, '14 Opposition parties move Supreme Court against 'misuse' of ED, CBI by government' (*The Hindu*, March 24, 2023) <<https://www.thehindu.com/news/national/14-opposition-parties-move-supreme-court-against-misuse-of-ed-cbi-by-government/article66656208.ece>> accessed on 4 June 2023