
INTERNATIONAL JOURNAL OF ADVANCED LEGAL RESEARCH

A CRITICAL ANALYSIS OF PROVISIONS OF PREVENTION OF MONEY LAUNDERING ACT, 2002 WITH SPECIAL REFERENCE TO PROCEEDS OF CRIME■ Nivedha B¹ & Ms. T. Vaishali²**ABSTRACT:**

The prevention of Money Laundering Act, 2002 (PMLA) was enacted by the parliament to curb the money laundering activities acquired through Proceeds of Crime and it creates a combat to illicit financial. It was enacted to fulfill India's commitment under *United Nation Convention* against illicit trafficking **Narcotic Drugs and Psychotropic Substances** which was primarily adopted by the UN General assembly with ulterior motive of preventing laundering of proceeds of drug crime, drug related money.

India was participant and signatory of the above said convention, So India was under the compulsion to enact a law to control and prevent the laundering of money through various proceeds of crime. Accordingly the bill was passed by the parliament in the year 2002 and it came into effect on **1st July 2005**.

The definition of **Money Laundering** under PMLA, 2002 as been widely define and covers any process or activity attempting to legitimize illegally obtained proceeds such as those arising from criminal activity. The act criminalizing money laundering activities and imposes stringent penalties that include arrest of the individual if they found guilty under this act. This act provides various statutory authority with the **Enforcement Directorate (ED)** at the forefront. By this, the ED have statutorily obtained full power of investigation, search and seizure of properties and arrest of persons whenever they are engaged in money laundering.

Keywords: PMLA, The Prevention of Money Laundering Act, 2002, The Key Provisions of PMLA, 2002, Section 24 of PMLA, 2002, Section 45 of PMLA, 2002.

¹ Student, Department of Human Rights, The Tamil Nadu Dr. Ambedkar Law University (SOEL)

² Assistant Professor of Law, Department of Criminal Law and Criminal Justice Administration, The Tamil Nadu Dr. Ambedkar Law University, Chennai.

For general queries or to submit your research for publication, kindly email us at ijalr.editorial@gmail.com

<https://www.ijalr.in/>

© 2025 International Journal of Advanced Legal Research

INTRODUCTION:

The term **Money Laundering** is a process where the money obtained through illegal means through a legitimate business or sent abroad to a foreign bank so that when it comes back to the person who obtained through illegal means nobody knows that it was illegally obtained. Normally Money Laundering involves three major transactions.

In 1996, The Ministry of Finance obtained an inter ministerial committee to submit the report on the measures to control the prevention of money laundering. The committee submitted the report in 1998 according to the report the PMLA was introduced by the parliament in the year, 1998. And the bill was sent to the standing committee of the parliament. Later on the bill was passed in the year 2002 and came into force on 1st July 2005. The PMLA defines "proceeds of crime" as any property derived or obtained, directly or indirectly, as a result of criminal activity relating to a scheduled offence. This definition is deliberately broad, encompassing not just the immediate gains from crime but also any property traceable to such gains. Understanding this concept is crucial because the entire architecture of the PMLA—from attachment and confiscation to prosecution—revolves around identifying, tracing, and recovering these tainted assets. A comprehensive research paper on this topic would examine several dimensions: the statutory framework and its evolution through amendments; judicial interpretation of what constitutes proceeds of crime; the mechanisms for identification, attachment, and confiscation; the challenges in enforcement including issues of burden of proof; international cooperation and cross-border asset recovery; and the balance between effective law enforcement and protection of individual rights. Recent years have witnessed an expansion in PMLA's application, with courts clarifying contentious issues around the scope of scheduled offences, the threshold for attachment, and the rights of accused persons. High-profile cases have brought these questions into public discourse, making this an opportune moment to analyze how the law operates in practice.

Aim and Objectives of the Study:

1. To critically analyze the key provisions of PMLA, 2002.
2. To analyze the extended scope of definition relating to Proceeds of Crime.
3. To study about the stringent provision relating to reverse burden of proof and bail under PMLA, 2002.
4. To examine the various statutory authorities under the PMLA, 2002.
5. To critically analyze the various judicial pronouncements relating to PMLA, 2002.

Research Methodology:

For general queries or to submit your research for publication, kindly email us at ijalr.editorial@gmail.com

<https://www.ijalr.in/>

This study follows a doctrinal research methodology, which is based on the analysis of existing laws, statutes, and judicial decisions related to the Prevention of Money Laundering Act, 2002. It involves examining legal provisions, government reports, and case laws to understand how the ED functioned as a regulatory body. Secondary sources such as books, journals, and official notifications have been used to interpret the implementation mechanisms and legal framework of the ED.

Hypothesis:

The establishment of Enforcement Director under PMLA, 2002 has paved a way to reduce the money laundering activities in India and its shortcoming leads to excessive judicial interference to control the autocratic actions of ED.

PLACEMENT:

In order to put that illicit money into use, the criminals try to hide the source and legalise it. The **placement stage of money laundering** deals with cases where illicit money gets introduced into the legitimate economy by way of cash deposit into a bank, money muling, currency exchange, etc. The placement stage of money laundering is full of challenges for the criminals as it involves placing money into the legal system without causing any suspicion. The purpose of the placement process in money laundering is to introduce ill-gotten assets into a financial system without arousing suspicion that they were obtained illegally. Fraudsters are aiming to make it difficult for financial regulators to trace the source of their funds or assets back to criminal activity.

They need to do this to protect their criminal operations. This is because once financial regulators identify illicit assets, they can use techniques like link analysis to follow their transaction paths. This can allow them to identify other actors in money laundering or fraud rings, then notify the proper authorities to shut these enterprises down.

LAYERING:

Layering is a term that is often used when talking about how criminals use it to prevent the detection of **money laundering** activities. Layering refers to moving money from one account to another and from one banking and financial institution to add layers of legitimate owners and avoid detection of the actual source of the funds and make it harder for authorities to track the initial source of the money. Layering is a financial crime. It is called layering when money launderers buy other liquid investment instruments using the illegally placed funds. Such funds are then transferred to other forms such as negotiable instruments or used to purchase goods and services to make their detection nearly impossible. It is worthwhile to note over here that structuring and layering in the

For general queries or to submit your research for publication, kindly email us at ijalr.editorial@gmail.com

<https://www.ijalr.in/>

money laundering mean one and the same thing. The layering stage of money laundering makes the entire process of detecting money laundering complex, and it's essential that money laundering is detected at the early stage of layering.

INTEGRATION:

Integration is the third stage of money laundering. Here the illegitimate funds are integrated into the legitimate economy. Money launderers buy real estate, stocks, securities, jewellery, precious metals, or other luxury goods to integrate their laundered money into the financial system. When it comes to **terrorist financing**, the integration is accomplished by distributing funds to terrorists and terrorist organizations. Through the layering stage of money laundering, fraudsters have made it significantly tough to trace their illegal funds back to crime. So money laundering's integration stage is where fraudsters spend their illicit money on things they want—or to fund further criminal activity—without worrying if anyone will dig too deeply into where the money came from. They still don't want to look too suspicious to AML teams, law enforcement, financial regulators, or government bodies, though. So they will often integrate the illegal money through a series of limited-value transactions that would be conceivably ordinary for an individual or business.

PROCEEDS OF CRIME:

Section 2(1)(u) of the Prevention of Money Laundering act, 2002 defines about the term “Proceeds of Crime” is as follows;

means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property [or where such property is taken or held outside the country, then the property equivalent in value held within the country] [or abroad];

[Explanation.—For the removal of doubts, it is hereby clarified that "proceeds of crime" include property not only derived or obtained from the scheduled offence but also any property which may directly or indirectly be derived or obtained as a result of any criminal activity relatable to the scheduled offence;]³

AFTER 2019 AMENDMENT OF PMLA, 2002:

In 2019, an Explanation was added to **Section 2(1)(u)** of the Prevention of Money Laundering Act that states—For the removal of doubts, it is hereby clarified that “proceeds of crime” include property not only derived or

³ Section.2(1)(u) of PMLA, 2002

For general queries or to submit your research for publication, kindly email us at ijalr.editorial@gmail.com

<https://www.ijalr.in/>

obtained from the scheduled offence but also any property which may directly or indirectly be derived or obtained as a result of any criminal activity relatable to the scheduled offence. The Finance Act of 2015 expanded the definition of ‘**proceeds of crime**’ by including within its ambit not only the specific property which is the subject matter of ‘money laundering’ or its value, but in a case where the property which is the ‘proceeds of crime’ has been taken or held outside India, then the property-equivalent in value held within India. Subsequently, the Finance Act of 2019 inserted the above ‘explanation’ to the definition of ‘proceeds of crime’ and the issue of the properties that will fall within the ambit of ‘proceeds of crime’ by virtue of “any criminal activity relatable to scheduled offence” has now become thorny in light of the insertion of such ‘explanation’.⁴

Constituents of ‘Proceeds of Crime’

The definition of ‘proceeds of crime’ under the PMLA may be broken down to essentially refer to three types of properties:

- (a) property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence;
- (b) value of any such property;
- (c) property equivalent in value held within the country, where such property is taken or held outside the country.⁵

1. The Three-Limb Definition

Section 2(1)(u) of PMLA defines proceeds of crime through three limbs: property derived directly or indirectly from criminal activity relating to scheduled offence; value of property derived from such criminal activity; and property equivalent in value held in India or outside when property obtained from criminal activity is taken abroad

2. Restrictive Interpretation:

- a) The Supreme Court emphasizing strict construction hold that proceeds of crime needs to be construed strictly, meaning property acquired by legal means before the scheduled offence does not constitute proceeds of

⁴International Journal for Multidisciplinary

⁵A Paper on PMLA, 2002 By Binodpoddar

For general queries or to submit your research for publication, kindly email us at ijalr.editorial@gmail.com

<https://www.ijalr.in/>

crime unless the actual proceeds are taken abroad.⁶In the case of *The Deputy Director Directorate of Enforcement Delhi and Ors. v. Axis Bank and Ors*⁷, the Hon'ble High Court of Delhi provided a comprehensive elucidation of the several types of properties that qualify as Proceeds of Crime. It observed that: "To illustrate, bribe or illegal gratification received by a public servant in the form of money (cash) being an undue advantage and dishonestly gained, is tainted property acquired "directly" by a scheduled offence and consequently "proceeds of crime." Any other property acquired using such bribe as consideration is also "proceeds of crime," it having been obtained "indirectly" from a prohibited criminal activity within the meaning of first limb of the definition.

Nexus with Scheduled Offence - Degree of Connection

Strict Nexus Requirement

Property must be derived or obtained as a result of criminal activity relating to the scheduled offence, meaning vehicles used in committing offences or unaccounted property acquired legally may not qualify as proceeds of crime unless the tax legislation prescribes such violation as a scheduled offence. The Supreme Court stated that properties recovered or attached in connection with criminal activity relating to a scheduled offence under general law cannot be regarded as proceeds of crime, and possession of unaccounted property acquired by legal means does not necessarily mean proceeds of crime.

Indirect Derivation

Following 2019 amendments, proceeds of crime include property not only derived from the scheduled offence but also any property which may directly or indirectly be derived as a result of any criminal activity relatable to the scheduled offence, extending coverage to returns and profits from tainted money.

Conditions for Equivalent Property Attachment:

- Original proceeds must be untraceable
- Must have clear nexus to scheduled offence
- Applies primarily when tainted property is held abroad

⁶SLP (cr1 no.4634 of 2014)

⁷ 259 (2019) DLT 500.

For general queries or to submit your research for publication, kindly email us at ijalr.editorial@gmail.com

<https://www.ijalr.in/>

MONEY LAUNDERING:

Section 3 of the PMLA,2002 defines “ offence of Money Laundering as follows;

Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the [proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming] it as untainted property shall be guilty of offence of money-laundering.

[Explanation.—For the removal of doubts, it is hereby clarified that,—

- (i) a person shall be guilty of offence of money-laundering if such person is found to have directly or indirectly attempted to indulge or knowingly assisted or knowingly is a party or is actually involved in one or more of the following processes or activities connected with proceeds of crime, namely:—
 - (a) concealment; or
 - (b) possession; or
 - (c) acquisition; or
 - (d) use; or
 - (e) projecting as untainted property; or
 - (f) claiming as untainted property, in any manner whatsoever;
- (ii) the process or activity connected with proceeds of crime is a continuing activity and continues till such time a person is directly or indirectly enjoying the proceeds of crime by its concealment or possession or acquisition or use or projecting it as untainted property or claiming it as untainted property in any manner whatsoever.⁸

The **Section 3** of the PMLA,2002 defines offences of **Money Laundering** which also;

A person shall be guilty of the offence of money laundering when, he/she has directly or indirectly attempted to indulge, knowingly assisted, knowingly is a party, or is actually involved in one or more of the following processes or activities connected with proceeds of crime: Concealment, Possession, Acquisition, Use, Projecting

⁸Section.3 of PMLA,2002

For general queries or to submit your research for publication, kindly email us at ijalr.editorial@gmail.com

<https://www.ijalr.in/>

as untainted property, Claiming as untainted property. The section 3 also considers the offence of money laundering when it is continuing transaction also.

Punishment for offences relating to money laundering: Section 04 of the PMLA, 2002 defines that whoever commits the act of money laundering shall be punished with rigorous imprisonment of not less than for a term of 3 years but which may extend to 7 years and also liable to be fined. The provided clause of section 04 defines that when an offence of money laundering falls within the ambit of **paragraph 2** of part a of the **schedule** under this act, the maximum punishment shall be construed as ten years.⁹ The Enforcement Directorate in the Department of Revenue, Ministry of Finance, the Government of India is responsible for investigating the offences of money laundering under the PMLA. Financial Intelligence Unit – India (FIU-IND) under the Department of Revenue, Ministry of Finance is an independent body reporting directly to the Economic Intelligence Council (EIC) headed by the Finance Minister.¹⁰ FIU-IND is the central national agency responsible for receiving, processing, analyzing, and disseminating the information relating to suspect financial transactions. It is also responsible for coordinating and strengthening the efforts of national and international intelligence, investigations for pursuing the global efforts against money laundering and related crimes.

BURDEN OF PROOF OF ACCUSED:

Section 24 of the PMLA defines that when a person is charged under section.03 of the act and some parts proceeds of crime are traced the onus lies on the accused person to prove that he is innocent. In Indian judiciary we follow the principle of doctrine of presumption of innocence but PMLA is entirely different from general doctrine and places the onus of proving the innocence on the accused person. By this, the PMLA provides stringent provision to curb the offence relating to money laundering.¹¹

BAIL UNDER PMLA, 2002:

Section 45 of PMLA, 2002 provides stringent conditions for bail. There are twin conditions to be satisfied by the accused to release him on bail.

- a) The accused have to prove Prima-facie innocence before the court.
- b) He will not likely to commit an offence while on bail.¹²

⁹ Section 4 of the PMLA, 2002

¹⁰ AZD Partners .com

¹¹ Section 24 of PMLA, 2002

¹² Section 45 of PMLA, 2002

This leads to a stringent approach for grant of bail which is an anathema with the approach of criminal jurisprudence in general. The Finance Act, 2018 revived Section 14 by construing money laundering as a very serious offence that is to be treated as an exception to general principles of criminal jurisprudence. “Bail is a rule and jail is an exception” that was ruled out in **Premprakash vs Union of India**¹³ by the honourable apex court doesn't apply when it attracts section 45 of PMLA, 2002.

JUDICIAL PRONOUNCEMENT:

Manish Sisodia V. Union of India¹⁴

Judgement denying the Bail to Manish Sisodia rendered by a panel of judges, comprising Justices Sanjiv Khanna and SVN Bhatti, was abundant in general statements but lacked in providing relief. The challenge posed by Section 45 of the Prevention of Money Laundering Act (PMLA) is that it compels the Court to undertake an initial scrutiny of the evidence on record to establish the existence of a prima facie case against the accused. In the case of Manish Sisodia, a noteworthy aspect is that, despite challenging most of the charges presented by the Central Bureau of Investigation (CBI) and the Directorate of Enforcement (ED) at a prima facie stage, the Court refused to grant bail. This decision was grounded in the revelation that certain private liquor wholesale distributors had benefited from the alteration in the excise policy, even though there is no conclusive determination regarding the exchange of kickbacks or detriment to the public exchequer. The denial of bail should be based on a methodical examination of facts, the establishment of a prima facie case, and a comprehensive evaluation of the existing evidence. If the court's discussion suggests a lack of evidence supporting a potential conviction, it prompts the crucial question of whether the ruling can be a reliable precedent for other courts nationwide in handling bail-related matters—a concern that baffles every one.

Pankaj Bansal V. Union of India¹⁵

Honourable Supreme Court's Ruling in 'Pankaj Bansal' Offers a Positive development in Exerting Control Over the Enforcement Directorate (ED) in which following important law points were illustrated:

1. Rather than mere oral reading of grounds, the Accused should be informed in writing about the grounds of arrest at the time of the arrest.
2. The practice of arrest on mere non-cooperation to summons should stop.

¹³ 2024 SCC online SC2270

¹⁴ AIR 2023 INSC 956

¹⁵ AIR 2023 INSC 866

3. In case the arrest is invalid, then any subsequent remand order will also be invalid.

The reverberations of the verdict were swiftly felt in the NewsClick case, where the Delhi High Court, highlighted the parallels between the UAPA and PMLA provisions. The High Court explicitly referenced a pertinent Supreme Court judgment in this context.

Anoop Bartaria vs Dy. Director Enforcement ¹⁶

It was held by Supreme Court that Decide that, for filing a complaint under the mentioned Act, it is essential for the prosecution to demonstrate that the accused had the awareness that they were involved with the proceeds of crime. The court also decided that the nature of offence of Money Laundering viz section 45 (1) shall be cognizable and non-bailable offences nothing withstanding anything contrary written in Code of Criminal Procedure Code, 1973.

ED v. M/S Prakash Industries Ltd & other ¹⁷

The Supreme Court had ruled out that if a public servant receives a bribe, which constitutes an offence under Prevention of Corruption Act, 1988, and invests that sum in narcotics trade, real estate, preferential shares or any other avenue, the taint of illegality would still continue and the entire corpus shall be liable to be attached irrespective of the subsequent channels through which it has been routed or the forms it assumes subsequently,” the Court said. The Court also observed that “Similarly, if the sum received as bribe is invested in share market, which later increases or goes beyond and above the value of actual investment owing to market forces or corporate actions, the entire enhanced amount shall constitute as proceeds of crime,” it added.

Naresh Bansal & Ors. v. Adjudicating Authority And Anr ¹⁸

A division bench of Justices Anil Kshetarpal and Harish Vaidyanathan Shankar in the High court of Delhi observed that the scope of Section 2(1)(u) PMLA, which defines proceeds of crime, is very wide. “Even if a downstream activity, such as conducting betting, is not a scheduled offence, profits generated from such activity remain traceable to the original tainted property, especially when the said downstream activity is a final manifestation of a chain of criminality, intricately interwoven with multiple preceding criminal acts, any profit derived therefrom clearly constituting “proceeds of crime” within the contours of the PMLA,” it observed.

¹⁶ SLP (CrL.) No. 2397-2398 of 2019

¹⁷ 2025 LiveLaw (Del) 1432

¹⁸ W.P.(C) 11361/2015

For general queries or to submit your research for publication, kindly email us at ijalr.editorial@gmail.com

<https://www.ijalr.in/>

Vijay Madanlal Choudhary v. Union of India¹⁹(Vijay Madanlal) case of 2022,

The Supreme Court 3-Judges bench of the SC decided on the constitutionality of various provisions of PMLA including section 45, as revived in 2018. The petitioners challenged the provisions of the Act violates the Article 22 of the Constitution of India. The court added that

- A) Supply of a copy of ECIR in every case to the person concerned is not mandatory, it is enough if ED at the time of arrest, discloses the grounds of such arrest.
- B) However, when the arrested person is produced before the Special Court, it is open to the Special Court to look into the relevant records presented by the authorised representative of ED for answering the issue of need for his/her continued detention in connection with the offence of money-laundering. Even when ED manual is not to be published being an internal departmental document issued for the guidance of the Authorities (ED officials), the department ought to explore the desirability of placing information on its website which may broadly outline the scope of the authority of the functionaries under the Act and measures to be adopted by them as also the options/remedies available to the person concerned before the Authority and before the Special Court.
- C) The provision in the form of [Section 45](#) of the 2002 Act, as applicable post amendment of 2018, is reasonable and has direct nexus with the purposes and objects sought to be achieved by the 2002 Act and does not suffer from the vice of arbitrariness or unreasonableness.

Gautam Khaitan v. Union of India²⁰:

The Supreme Court held that the quantification of the Proceeds of Crime involves a multifaceted approach. It begins with the identification of initial assets stemming from criminal activity, subsequently encompassing any assets obtained through these initial proceeds. To execute this, a meticulous property tracing process is essential, entailing a comprehensive examination by either the court or the adjudicating authority. This process may extend to property inspections, to reveal the interconnectedness of properties acquired or derived by the accused during the period encompassing both the scheduled offense and money laundering activities.

CONCLUSION:

¹⁹ SLP (crl no.4634 of 2014)

²⁰(2019) 10 SCC 18

For general queries or to submit your research for publication, kindly email us at ijalr.editorial@gmail.com

<https://www.ijalr.in/>

The Prevention of Money Laundering Act, 2002, represents a significant legislative measure in India's fight against financial crimes and the legitimization of illicit funds. While the Act has strengthened the enforcement framework through provisions for attachment and confiscation of proceeds of crime, and has established the Enforcement Directorate as a key investigative body, its implementation has not been without challenges. Issues surrounding the broad definition of "proceeds of crime," concerns about procedural safeguards, and the balance between effective enforcement and individual rights continue to spark debate. Moving forward, the success of the PMLA will depend on judicial oversight, capacity building within enforcement agencies, and continued alignment with international standards such as those set by the Financial Action Task Force (FATF). As money laundering techniques evolve with technology, the Act must remain adaptive while ensuring that its provisions are applied fairly and transparently. Ultimately, a robust anti-money laundering regime is essential not only for economic integrity but also for maintaining India's credibility in the global financial system.

This research has examined the multifaceted dimensions of "proceeds of crime" under the Prevention of Money Laundering Act, 2002, revealing it as the cornerstone upon which India's anti-money laundering regime is constructed. The statutory definition, while comprehensive in scope, continues to evolve through legislative amendments and judicial interpretations that shape its practical application in an increasingly complex financial landscape. The PMLA represents a delicate equilibrium between two competing imperatives: the state's legitimate interest in combating financial crimes and recovering illicit assets, and the constitutional safeguards protecting individual liberty and property rights. Our analysis demonstrates that this balance remains dynamic and contested. While the courts have generally upheld the law's stringent provisions—including reverse burden of proof and broad attachment powers—they have also established important guardrails to prevent arbitrary exercise of authority. The enforcement mechanism under PMLA has shown both remarkable successes and persistent challenges. The Enforcement Directorate's powers to provisionally attach and ultimately confiscate proceeds of crime have yielded significant recoveries, disrupting criminal networks and deterring potential offenders. However, issues remain: the extraordinarily low conviction rate, prolonged litigation timelines, definitional ambiguities around "scheduled offences," and concerns about the potential for misuse of draconian provisions. The concept of proceeds of crime under PMLA embodies the legal system's commitment to ensuring that criminal activity remains economically unviable. While the law has matured significantly since 2002, it must continue adapting to new threats while remaining anchored to constitutional principles. The ultimate measure of success will not merely be the quantum of assets attached or confiscated, but whether the regime achieves its deterrent objectives while commanding public confidence in its fairness and legitimacy. The journey toward a robust yet rights-respecting anti-money laundering framework is ongoing. As economic

crimes grow more sophisticated and internationalized, India's legal response through instruments like the PMLA must evolve with equal sophistication—vigilant against both the criminal who seeks to profit from wrongdoing and the state that might overreach in its zeal to combat it.

