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Unmasking Corporate Liability in Money Laundering: Judicial Trends under the Prevention of Money Laundering Act, 2002

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Unmasking Corporate Liability in Money Laundering: Judicial Trends under the Prevention of Money Laundering Act, 2002

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Abstract

The growing sophistication of financial crimes has amplified concerns regarding the role of corporate entities in money laundering activities, necessitating a closer examination of legal accountability frameworks in India. This research paper critically analyses corporate liability under the Prevention of Money Laundering Act, 2002 (PMLA), with a particular focus on evolving judicial trends that shape its interpretation and enforcement. It explores how the Act attributes liability to companies and their officers, especially through provisions relating to “proceeds of crime,” attachment of property, and vicarious liability.

*The study evaluates significant judicial pronouncements, including *Vijay Madanlal Choudhary v. Union of India*, which upheld the constitutional validity of key provisions of the PMLA, and other rulings that clarify the scope of corporate culpability and due process safeguards. It highlights the increasing judicial inclination towards a stringent enforcement approach, reflecting a policy shift aimed at deterring economic offences and enhancing financial transparency. However, the paper also identifies critical concerns, such as the ambiguity surrounding *mens rea* in corporate contexts, the breadth of enforcement powers vested in authorities, and the potential tension between regulatory objectives and fundamental rights.*

By situating Indian jurisprudence within broader international anti-money laundering standards, the research underscores the need for a balanced framework that ensures effective prosecution of corporate offenders while safeguarding procedural fairness. It concludes that although judicial interpretations have strengthened the enforcement landscape under the PMLA, further doctrinal clarity, institutional accountability, and harmonization with global best practices are essential to ensure a fair and efficient regime for addressing corporate involvement in money laundering.

Keywords

Money Laundering, Corporate Liability, PMLA, Judicial Trends, Economic Offences, Enforcement Directorate, Proceeds of Crime, Financial Regulation, Corporate Accountability, India.

Introduction

In today's interconnected economies, cleaning dirty money ranks among the trickiest financial crimes. Illegally earned cash - from operations like smuggling drugs, embezzlement, scams, dodging taxes, or criminal networks - gets reshaped to look lawful. The process usually moves through three stages: placing, weaving layers around it, then merging it into normal finance channels. Because global commerce expands quickly - and so do online banks and overseas transfers - the act grows harder to track. Authorities across nations, India included, now face mounting pressure tracking these shifting flows.¹

Following the 1991 reforms, India saw deeper integration into global markets - this shift brought growth, yet opened doors to hidden financial risks. Though openness boosted investment, it simultaneously weakened safeguards against illegal fund movements. As banks spread further and financial tools grew intricate, chances to hide wealth multiplied. Hidden companies, offshore accounts, alongside layered transactions began serving misuse at larger scales. Because of these shifts, building clear laws and reliable agencies became essential to respond with strength.

Even though PMLA offers a detailed structure, how it works in practice draws sharp criticism. Investigations stumble due to complex procedures, slowing down prosecutions. Because the accused must prove innocence, doubts arise over fairness linked to Article 14. Strict rules for releasing someone before trial add pressure on personal liberty under Article 21. Enforcement bodies hold wide authority, raising unease about misuse. Cases drag on when evidence takes too long to gather or review. Poor coordination between departments weakens outcomes. Without skilled personnel handling financial data, progress stalls often.²

Essential in shaping how the PMLA operates, the court's role emerges clearly through key rulings. Not only defining legal boundaries, but also responding when enforcement stretches too far. With each case, attention shifts toward fairness - how power is used matters just as much as intent. Sometimes starting from constitutional limits, judgments clarify what authorities can or cannot do. Even small details in procedure gain weight when liberty stands at risk. Power must act within bounds, a message repeated across verdicts on asset seizure rules. While curbing financial crime remains central, space opens up for personal rights to be heard.

Looking at things closely, India's rules against moving dirty money need review - especially how firms are held accountable and how well the PMLA works. Because of gaps that exist, spotting weaknesses can lead to better tools for fighting financial crime. One aim here stands out: judging the PMLA not just by its words, but by real outcomes. Courts have shifted their stance over time, which

¹ P. Ishwara Bhat, *Law and Social Transformation* 203 (Eastern Book Company, Lucknow, 2014).

² United Nations Office on Drugs and Crime, *Money Laundering and Globalization* 29 (UNODC, Vienna, 2018).

shapes how these laws take form. On the ground, applying them faces hurdles tied to process, clarity, and response speed. Firms, meanwhile, sometimes play parts hard to see - yet vital to trace. After all, progress often hides in details most overlook.

Money Laundering: Definition and Interpretation

Money laundering, sometimes known as "cleaning," is the process of passing off profits from illicit activity (also known as "dirty money") as legitimate.

The practice of concealing the original owners and managers of the proceeds from illicit activities by making them seem to have originated from a respectable source is known as money laundering.

There are many methods to launder money that has been used to conduct crimes. Money laundering is the practice of concealing the source or reality of illegal funds after they have been moved through several channels to seem as legitimate payments. Additionally, it completes the series of financial transactions. Accounting for the income from these kinds of operations without raising red flags with law enforcement is one of the issues. The money launderers put a lot of effort and time into developing procedures that allow the safe use of illicit funds. A financial record demonstrating the source of the funds and how money laundering rendered them legal must be produced by the owner of funds obtained illegally.³

Money laundering is defined by the United Nations Convention of Vienna 1988 as : "The conversion or transfer of property, knowing that such property is derived from any offence, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person involved in such offence to evade the legal consequences of his actions."⁴

The Public Accountants and Auditors Board described money laundering in South Africa as "virtually every act or transaction that involves the proceeds of crimes, including the spending of funds that were obtained illegally" in 2003. Money laundering is defined by the International Monetary Fund (IMF) (2001: 7-8) as the "transfer (of) illegally obtained money or investments through an outside party to conceal the true source." The definition of money laundering varies across agencies.⁵

The United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 created a transnational definition of money laundering that was almost universally recognised, even though it was limited to the earnings of drug-related crimes. The definition of money laundering (ML) is "the conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of disguising the illicit origin of the property

³ M. Cherif Bassiouni, *International Criminal Law* Vol. 2, 543 (Martinus Nijhoff Publishers, Leiden, 2011)

⁴ United Nations Convention against Transnational Organized Crime, 2000, art. 6.

⁵ United Nations Office on Drugs and Crime, *Global Report on Money Laundering* 47 (UNODC, Vienna, 2021).

or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his/her action; the concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, participation in, association with, or conspiracy to commit, attempt to commit, and aiding and abetting the commission of any of the specified offences, knowing that such property is the proceeds of crime at the time of receipt." ⁶

Money laundering is broadly defined as the transactional processing or movement of funds obtained illegally (such as cash, checks, electronic transfers, or similar equivalents) with the intention of concealing their origin, nature, ownership, or intended beneficiaries in order to create "clean money" that can be accessed or distributed through legal channels. Interpol defines money laundering as "any act or attempted act to conceal or disguise the identity of proceeds obtained illegally so that they appear to have originated from lawful sources."

The goal of money laundering is to keep money or other assets hidden from the government in order to avoid losing them to obvious taxes, judgement enforcement, or other forms of confiscation. Criminals attempt to conceal the source of money obtained through illegal means so that it appears to have come from legitimate sources in order to avoid being caught using it, having it linked to their involvement in the crime, and having it seized by law authorities. ⁷

The Money Laundering Concept

Money laundering is the practice of making large sums of money obtained through illegal activities, such as drug trafficking or financing terrorism, appear to have come from a legitimate source. Since money obtained through illegal activity is perceived as filthy, money laundering is illegal on its own.

The term "money laundering" is relatively new. At first, no one in society would take money laundering seriously because it is a complicated crime. Unlike street crimes, it is a modern crime⁴². Although it is often referred to as a victimless crime, it is actually a crime against governments, economies, the rule of law, and the entire world rather than a single individual. Money laundering has become a global issue. A large portion of crimes are carried out with the intention of earning money for the person or group committing the money.

Crimes that generate substantial profits include drug trafficking, illegal weapons sales, smuggling, corruption, and organised criminal activities like tax evasion. Bribery, computer fraud, and insider trading all provide significant profits and promote the money laundering of illicit earnings. When a criminal organization generates a substantial profit, the individual or group in charge must find out how to handle the funds without calling attention to themselves or the illegal

⁶ International Monetary Fund, *Money Laundering and the International Financial System* 33 (IMF Working Paper, Washington DC, 2020).

⁷ European Union Council Directive 91/308/EEC on Prevention of the Use of the Financial System for the Purpose of Money Laundering, art. 1.

enterprise. By concealing the origins, changing the form, or moving the money to a place where it is less likely to be seen, criminals accomplish this. If they didn't, the money would be confiscated by law police and they would be connected to the illegal activity. If effective, it allows the offenders to maintain control over their riches and, in the end, provides a credible explanation for their source of income. When criminals are allowed to spend the earnings, the ability to launder such money makes crime more appealing. The concept of machine learning has cross-cutting ties with criminal, administrative, financial, and international public law because to its complexity and the expansion of globalisation processes. Money laundering is the process of disguising money obtained unlawfully as coming from a legitimate source. Rumour has it that the word "money laundering" originated in US launderettes run by the mafia. For the massive quantities of money it earned via extortion, gambling, and other illicit operations, the mafia provided evidence of legitimate sources of income (such as launderettes). In the US, money laundering only became a crime and a cause for concern in the 1980s.⁸

The term "Hawala" in Arabic refers to the transfer of money or information between two parties via a third party. The Hawala system facilitated the conversion of "black money" into "white money," which is defined as money earned but not subject to income tax or other taxes. On the other hand, "white money" is defined as legitimately earned income for which all relevant taxes have been paid. Criminals use a variety of money laundering techniques to make money obtained unlawfully appear genuine. Online banking and digital currencies have made it easier for money launderers.

Money laundering's criminological aspects

Examining the definition of "proceeds of crime" in both domestic and international law reveals that it basically refers to three types of properties. First comes property created as a consequence of criminal behaviour related to a particular offence. The second element is the value of the property in issue, which is followed by comparable property held in the nation and the place where the property is seized or held. To put it another way, money laundering (ML) is the intentional creation of any assets—monetary or non-monetary—obtained either directly or indirectly via illicit activities. Hard currency, soft electronic bank transactions, or their equivalents fall under the former category, whilst physical assets like houses and vehicles go under the latter. Such illegal action also seeks to realise an asset. Therefore, a criminal intent to purposefully alter, combine, hide, and misrepresent the real source or nature of the items utilised in the illegal action defines the acts. Examining this growing global legal framework for

⁸ United States Code, 18 U.S.C. § 1956.

combating money laundering is essential because, as previously said, derivative crimes have consistently been expanded to encompass money laundering.⁹

The strategy of making money laundering illegal and using it as an excuse for asset forfeiture, regardless of the underlying behaviour, was first introduced by the US in 1986 and is quickly gaining traction worldwide. Since laundering the profits of crime may carry even worse penalties than the initial offence in those nations that have chosen this approach, it is believed that outlawing money laundering is necessary to protect a number of interests, such as those pertaining to human life, social cohesion, and public order.¹⁰

Criminalisation has three objectives.

Firstly state must first adhere to AML regulations.

Secondly, it connects actions that seem harmless to overt criminal activities.

Thirdly, criminalisation establishes the foundation for global collaboration in a crucial aspect of law enforcement.¹¹

The government initially outlawed money laundering as a symbolic "stick" to ensure that the gatekeepers of the legal economy did not allow the proceeds of various illicit actions to enter it. However, as time went on, money laundering prosecutions were seen as a means of addressing both the main offenders and the gatekeepers. The criminalisation of money laundering advances the three main objectives of AML legislation. As a result, relevant authorities can use powerful international instruments to detect, prevent, and seek mutual legal assistance.¹²

Initially, it necessitates following AML preventive protocols, and in

Secondly, it links apparently harmless behaviour to overt criminal behaviour, such as when a person or group handles the illicit gains of a crime.

Thirdly, it creates the foundation for greater international cooperation since money laundering is a transnational crime and domestic law enforcement agencies can always depend on strong international instruments like monitoring, enforcing, and prosecuting international laundering.

The pertinent conditions that should render money laundering illegal are found in Articles 3(1)(b) and 3(1)(c) of the Vienna Convention and Article 6(1) of the Palermo Convention correspondingly.

⁹ Ministry of Finance, Government of India, *White Paper on Black Money* 84 (Government Press, New Delhi, 2012).

¹⁰ European Union Council Directive 91/308/EEC on Prevention of the Use of the Financial System for the Purpose of Money Laundering, art. 1.

¹¹ United Nations Office on Drugs and Crime, *Global Report on Money Laundering* 47 (UNODC, Vienna, 2021).

¹² Law Commission of India, *Report on Financial Crimes and Asset Recovery* 59 (2017).

The Impact of Money Laundering on the Economy of the Country

Economic crimes have a disastrous effect on a nation's economy because the potential victims are far more numerous than those of other forms of crime. Even those who do not initially appear to be the victims of economic crimes may suffer as a result. For instance, tax fraud reduces government income, which makes it harder for the government to finance development projects, which has a negative impact on a significant number of individuals who might have benefitted from such government spending. In addition to defrauding investors, corporation fraud threatens investor confidence and, ultimately, the state of the economy.¹³

The ability of financial companies to survive and grow is negatively impacted by money laundering in two ways:

1. Financial institutions are directly undermined because there appears to be a link between money laundering and the dishonest behaviour of institution employees. Similarly, the growth of money laundering activities increases the possibility that criminal elements will attack financial institutions in a state, strengthening the criminal class and other avenues for money laundering, which may lead to the emergence of a monopoly and the expulsion of less skilled competitors.
2. The development of reputable financial institutions depends on the faith of their clients, which is undermined by depositors' and investors' impressions of institutional corruption and fraud.

Money Laundering Procedures

The placement process may be completed in a variety of methods, such as:

- 1. Currency Smuggling:** The actual, unauthorised export of money and financial assets is referred to as currency smuggling. The several types of mobility provide no clear audit trail.
- 2. Bank Complicity:** Money launderers find it easier when a financial institution, like a bank, is owned or run by dishonest people who are suspected of conspiring with drug traffickers and other organised crime groups. The complete deregulation of the financial sector without sufficient controls creates a simple method of money laundering.
- 3. Currency Exchanges:** The liberalisation of foreign exchange markets, which has enabled currency transfers in many transitional economies, may be advantageous to money laundering schemes.
- 4. Securities Brokers:** By arranging large cash deposits in a way that hides the funds' actual source, brokers may aid in money laundering.
- 5. Blending of Funds:** Since a sizable sum of money is the best place to conceal money, financial institutions may be used for money laundering. Alternatively,

¹³ N. Vasanthi, "Trade Based Money Laundering in India" (2021) 7 Indian Law Review 178

money from illegal activities may be used to create front companies, which enables money from illegal activities to be hidden in legal transactions.

6. Buying assets with cash is a traditional way of money laundering. The main goal is to transform the earnings from conspicuous bulk cash to a less obvious but still functioning form.

Supreme Court Decisions on PMLA Constitutional Issues

One key moment in legal history emerged through *Vijay Madanlal Choudhary v. Union of India*¹⁴, where a trio of judges at India's highest court weighed in. Following years of buildup, their decision responded to over 240 appeals questioning different parts of the PMLA. Though scrutiny was thorough, the majority of the law stood firm after review. Guidance followed - meant to anchor investigative authority inside constitutional limits - not rewriting statutes, just shaping how they operate. Surprisingly few sections faced adjustment; most survived intact.

Section 45 of the PMLA sparked intense debate due to its strict rules for bail in financial crime cases. Before release becomes possible, a prosecutor must first have the chance to challenge the request - only then may freedom follow. Belief in innocence matters; so does confidence the individual won't break laws during release - but both hinge on judicial perception. Normally, courts lean toward accessibility when it comes to pretrial liberty under criminal procedure norms. Yet here, those expectations tilt sharply backward. A landmark moment arrived through *Nikesh Tarachand Shah v. Union of India*¹⁵. Then, the highest bench erased prior versions of these dual demands, calling them illogical and contrary to constitutional rights protected by Articles 14 and 21. Following those changes, Parliament adjusted Section 45 during 2018, bringing back the dual requirements - this time with alterations. Then came *Vijay Madanlal Choudhary*, where the top court backed the revised rule. Because money laundering inflicts serious harm and deep financial wounds, lawmakers can set tough terms for release. Still, such terms must avoid randomness, linking clearly to the law's intended goal. What matters is balance - not blanket restrictions, but measured barriers.

In *Radha Krishan Industries v. State of Himachal Pradesh*¹⁶, the Supreme Court outlined key procedural protections in cases involving provisional attachment. Notice to the individual facing property seizure must come first - only then may such an order be finalized, ruled the bench. Although some claimed High Courts lose oversight once the Adjudicating Authority acts, the Court disagreed sharply. Even after confirmation by that body, judicial review under Article 226 remains available. Contrary to assertions limiting legal recourse, the decision affirms

¹⁴ *Vijay Madanlal Choudhary v. Union of India* (2022) 6 SCC 185

¹⁵ *Nikesh Tarachand Shah v. Union of India* (2018) 11 SCC 1

¹⁶ *Radha Krishan Industries v. State of Himachal Pradesh* (2021) 6 SCC 771

constitutional scrutiny cannot be blocked by statute alone. By upholding this path for challenge, the judgment maintains balance where enforcement power meets personal rights. While acting against financial misconduct, agencies still face accountability through established courts. Ultimately, space for redress stays open when state actions touch private assets.

Conclusion

One might overlook how quietly the law reshaped financial oversight since 2002, yet its impact echoes across courts and agencies alike. Though born with modest tools, repeated updates have sharpened its reach over time. Judicial rulings layered meaning onto its clauses, turning abstract lines into practical force. Enforcement bodies emerged not overnight but through steady institutional growth shaped by real cases. What began as a legislative response now functions as a core barrier against illicit finance flows. Without it, alignment with global norms - especially those pressed by intergovernmental groups - would lack grounding. Hostile is too strong a word, perhaps; still, moving money undetected today faces far greater friction than ever before.

Though passed with high expectations, the PMLA has fallen short in practice. Despite its strong framework, real-world results tell a different story. Enforcement often lags behind intent, revealing a persistent mismatch. Trials stretch on for years, dragging down trust in resolution speed. Few accused face conviction, weakening deterrence. Corporate accountability varies case by case, lacking uniformity. Tools meant to strengthen prosecution have at times tilted balance away from fair trial norms. Rights enshrined in the Constitution risk erosion when powers are exercised without restraint. Fault does not lie within the law's wording, rather in how systems around it function. Courts struggle under heavy loads, delaying justice further. Coordination among agencies falters, leaving gaps in investigation flow. Financial crimes demand expertise many lack, complicating evidence gathering.

Not least among those shaping PMLA outcomes are the courts, whose decisions quietly steer how power balances play out. Because constitutional principles guide their rulings, judges often reshape how the law applies in practice. While enforcement bodies push forward, judicial review steps in - checking moves that might override basic liberties. Over time, repeated interventions have formed a pattern: one where legal authority holds firm despite demands for speed or severity. Even when pressure builds to sideline safeguards, court judgments tend to re-center fairness. This steady presence reflects less a dramatic stance than a quiet persistence in treating every case as a test of principle. What emerges isn't perfection - but a record grounded in effort, not convenience.

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