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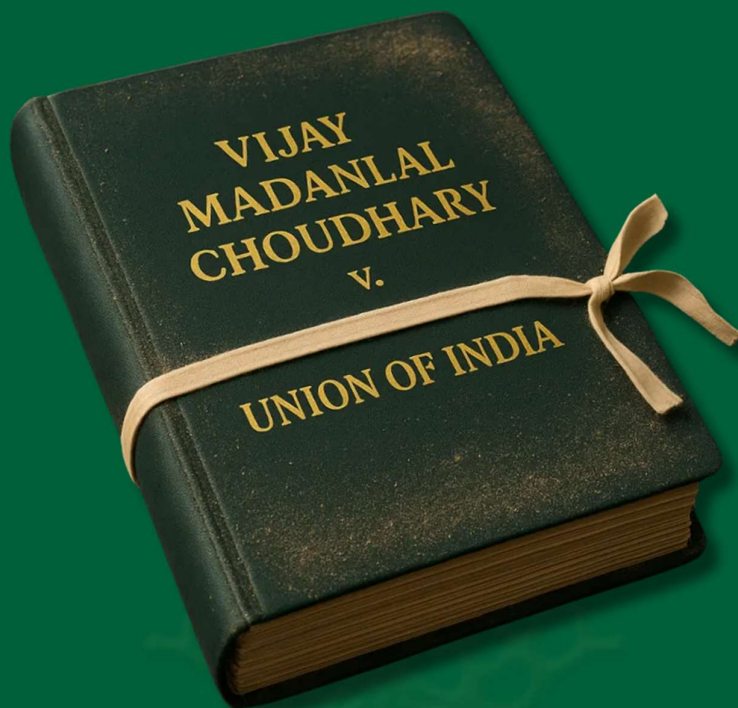


info@knallp.com



+91 981 981 5818

PMLA on Trial: A Deep Dive into How the Supreme Court's Review of Vijay Madanlal Could Reshape PMLA Jurisprudence



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Introduction

The PMLA¹, stands as India's bulwark against the insidious crime of money laundering, empowering authorities to seize ill-gotten gains. Yet, its stringent nature has often stirred legal storms, a prominent one being the **Vijay Madanlal Choudhary v. Union of India judgment (July 27, 2022)**². This ruling, seen as the bedrock of PMLA jurisprudence, clarified many aspects but also ignited dissatisfaction among those facing its formidable reach. Review petitions³ have now surfaced, urging the Supreme Court to reconsider certain interpretations deemed overly harsh. This article navigates these contentious points, exploring the core arguments for a re-evaluation.

The first arrow in the petitioners' quiver targets the very genesis of key PMLA amendments, questioning if Parliament bypassed crucial checks and balances. Several pivotal PMLA provisions were ushered in or significantly altered via Money Bills, a legislative route that curtails the Rajya Sabha's power. Did this maneuver sidestep the full deliberative process enshrined in our Constitution? The Supreme Court itself, in the Vijay Madanlal judgment, acknowledged the gravity of this challenge, noting its potential to "**strike at the root of the matter**". Yet, surprisingly, the Court chose to defer this fundamental issue, proceeding to





rule on the PMLA's provisions without first confirming their valid enactment. Should the constitutionality of a law's provisions be decided before the validity of its very creation? The petitioners argue this deferral was a critical error, contending that the judgment should have first addressed the "Money Bill" issue, perhaps even awaiting the decision in **Roger Mathew**⁴, a case grappling with similar questions of legislative propriety. By not doing so, they argue, the judgment stands on potentially shaky ground.

The second major challenge zeroes in on the interpretation of **Section 3**, the heart of the PMLA defining money laundering. The petitioners argue that the **Vijay Madanlal judgment** misconstrued this crucial section. Originally, **Section 3** included the vital phrase "and projecting it as untainted property," a recommendation of the Select Committee. Later, despite observations from the **FATF**⁵, this evolved to "and projecting or claiming." However, **the 2019 amendment which added an Explanation in the main section** swapped "**and**" for "**or**." Is this a minor tweak or a seismic shift in the definition? The petitioners argue vehemently that "projecting or claiming it as untainted property" is an indispensable element of money laundering, distinguishing it from the original crime. If someone steals, are they automatically a money launderer simply by possessing the stolen goods? The original wording suggested a further step of legitimizing the ill-gotten wealth was necessary. By changing "and" to "or" in the Explanation, the petitioners fear the line between the initial crime and money laundering blurs, potentially erasing it altogether. **Can a mere explanation fundamentally alter the core meaning of a statutory provision? The petitioners believe the judgment erred in dismissing this crucial distinction.**

The third contentious point tackles the retrospective application of money laundering laws. The Vijay Madanlal judgment deemed money laundering a "continuing offense," even for crimes added to the PMLA schedule later. Imagine this: an act of cheating occurs when it's not a PMLA offense. Years later, cheating is added to the schedule. Could mere possession of the gains from that past act now constitute money laundering? The petitioners argue this retroactivity violates the bedrock principle of criminal law and **Article 20 of the Constitution**, which forbids punishing someone for an act that wasn't a crime when committed. Could an act from a century ago, now a scheduled offense, suddenly trigger money laundering charges? Such a scenario, the petitioners contend, is fundamentally unjust. They point out that the judgment's view seems influenced by an Explanation added via a Money Bill, again raising concerns about the legislative process and suggesting the bench should have awaited the **Roger Mathew outcome**.





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As the legal battle intensifies, further contentions against the Vijay Madanlal Choudhary judgment emerge, probing the very sinews of investigative powers and fundamental rights. One key area of dispute concerns the identity of Enforcement Directorate (ED) officers. The judgment classified them as not being **“police officers.”** But consider this: the PMLA is a criminal law, granting ED officers powers akin to the police. If a police officer investigates a PMLA offense under **Section 45(1A)**, are they a **“police officer,”** but an ED officer wielding the same authority not? The petitioners argue this distinction is illogical and violates **Article 14**.

Expanding on this, the judgment’s limitation on the applicability of the Cr.P.C. to post-arrest situations is challenged. **Sections 46 and 65** of the PMLA suggest the Cr.P.C.⁶ applies unless PMLA specifies otherwise. Doesn’t excluding crucial pre-arrest safeguards like arrest regulations and investigation procedures undermine the “fair and reasonable procedure” guaranteed by Article 21? The petitioners highlight the ED’s opaque procedures – **no public FIR (ECIR)**, no clear distinction between witness and accused, and alleged limitations on the right to silence and self-incrimination.

The stringent bail conditions under **Section 45** also face fire. Requiring the accused to prove **“not guilty”** seems to invert the presumption of innocence, especially without access to standard investigation documents. Doesn’t this tilt towards pre-trial detention? The petitioners also contest applying these conditions to anticipatory bail, seemingly contradicting **Nikesh Tarachand Shah v. Union of India**⁷. They argue that equating money laundering with heinous crimes like terrorism (in the context of bail) is flawed and disregards Article 21 concerns raised in **Nikesh Tarachand Shah**. Furthermore, they argue the judgment overlooked the principle of proportionality (**Justice K.S. Puttaswamy**⁸) and precedents allowing constitutional courts to grant bail when fundamental rights are at stake (**Union of India v. K.A. Najeeb**⁹ Finally, the admissibility of statements under **Section 50** is questioned. The judgment allows these even against the accused. But doesn’t this fly in the face of the protection against self-incrimination (Article 20(3)) and established legal principles (**State of Bombay v. Kathi Kalu Ogod**¹⁰, **Nandini Satpathy, Selvi v. State of Karnataka**)? The petitioners argue that labeling the pre-arrest process as a mere “inquiry,” not an “investigation” (despite the PMLA’s definition), undermines these crucial safeguards.

These multifaceted challenges underscore the intense legal scrutiny of the Vijay Madanlal Choudhary judgment. The outcome of these review petitions will be pivotal, potentially reshaping the landscape of PMLA jurisprudence and the delicate balance between combating financial crime and upholding fundamental rights.





Conclusion

The review petitions against the Vijay Madanlal Choudhary judgment present a multi-faceted challenge, questioning the very foundations of PMLA application and interpretation. The petitioners raise concerns about the legislative process, the definition of money laundering, the scope of investigative powers, and the delicate balance between fighting financial crime and protecting fundamental rights. The core of their argument rests on the assertion that the judgment, in upholding certain PMLA provisions and interpretations, has overstepped constitutional boundaries, particularly those enshrined in Articles 14, 20, and 21, which guarantee equality before the law, protection against retrospective criminal laws, and the right to life and personal liberty, respectively.

If the review petitions are allowed and the Vijay Madanlal judgment is reversed or significantly modified, the implications would be profound. A reversal could necessitate a re-evaluation of numerous ongoing investigations and prosecutions under the PMLA, potentially leading to the release of individuals currently detained under its stringent provisions. It could also compel Parliament to revisit and amend the PMLA, particularly those sections enacted through Money Bills, to ensure compliance with constitutional requirements. More broadly, such a decision would reaffirm the judiciary's role as the ultimate guardian of fundamental rights, signaling a recalibration of the balance between national security concerns and individual liberties. This would have far-reaching consequences on how financial crimes are investigated and prosecuted in India, potentially requiring a more nuanced approach that prioritizes due process and safeguards against potential abuse of power.

During the hearing of these review petitions, the Supreme Court might face a crucial question: How does the Court balance the state's legitimate interest in combating money laundering, a crime with serious economic and social consequences, with the individual's fundamental rights to a fair trial, protection against arbitrary arrest, and the presumption of innocence, especially in cases where the accused is not directly involved in the predicate offense but is alleged to have dealt with the "proceeds of crime"? This question encapsulates the central dilemma at the heart of the PMLA controversy and underscores the complexity of reconciling these competing interests within the framework of a constitutional democracy.

Citations

1. Prevention of Corruption Act, 2002
2. Vijay Madanlal Choudhary v. Union of India





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3. Vijay Madanlal Choudhary v. Union of India
4. Karti P. Chidambaram Versus Directorate Of Enforcement R.P.(Crl.) No. 219/2022 in T.C.(Crl.) No. 4/2018
5. Financial Action Task Force
6. Rojer Mathew v. South Indian Bank Ltd.(2020) 6 SCC 1
7. Code of Criminal Procedure,1973
8. Nikesh Tarachand Shah v. Union of India(2018) 11 SCC 1,
9. Beghar Foundation v. Justice K.S. Puttaswamy and Ors., (2021) 3 SCC 1
10. Union of India v. K.A. Najeed(2021)3 SCC 713
11. State of Bombay v. Kathi Kalu OgodAIR 1961 SC 1808
12. Nandini Satpathy vs. P. L. Dani, reported in (1978) 2 SCC 424
13. Selvi vs. State of Karnataka, reported in (2010) 7 SCC 263

Expositor (s): Adv. Anuja Pandit

