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EXAMINING THE SOCIETAL IMPACT DUE TO THE MISAPPLICATION AND ERRENEOUS INTERPRETATION OF THE PREVENTION OF MONEY LAUNDERING ACT, 2002.

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ABSTRACT: The research article is going to examine the socioeconomic impact due to the offence of money laundering. The article would focus on the examination of the direct impact on the economy and society and the unintended impact on the same. The offence of money laundering enables the easy flow of the proceeds of crime in the economy, which also affects the society at large. The offence of money laundering is based on the commission of the predicate offence, which serves as the foundation for the flow of proceeds of crime in the economy. These predicate offences also have the tendency to affect the social fabric. Predicate offences mentioned in the schedule of the Prevention of Money Laundering, like cheating, corruption, counterfeiting, and terrorism, have the tendency to disturb the social fabric of society and need to be countered with stringent methods. Therefore, the research would examine the manner in which the economy is destabilized and public trust erodes. Recently the Government of India, while addressing the parliament, said that the conviction rate in money laundering cases filed by the Enforcement Directorate is 6.42% since 2019. Therefore, it reflects that in some instances the Prevention of Money Laundering Act is being invoked in an arbitrary manner. Recently SC also made the observation that the Enforcement Directorate shall focus on the quality of prosecution because in the last 10 years only in 40 cases out of 50,000 was the conviction in. This data clearly shows that the arbitrary invocation of the PMLA would have an adverse societal impact. The PMLA would also lose its potency due to the over application. Therefore, the article would also elaborate upon the potential impacts on society due to the arbitrary application of the Prevention of Money Laundering Act, 2002. Research would also focus on adverse effects

caused by the erroneous interpretation of "Value of such property" provided in section 2(u) PMLA and erroneous interpretation of other provisions.

LITERATURE REVIEW: (1) <https://www.livelaw.in/law-firms/articles/prevention-of-money-laundering-act-2002-an-inherently-flawed-legislation-155328>. Prevention Of Money Laundering Act, 2002: An Inherently Flawed Legislation?. Last visited on 14th February 2025.

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INTRODUCTION: The practice of hiding the illegal sources of income and masking the money's source to make it seem authentic and untarnished is known as money laundering¹.An article in the Guardian on April 19, 1973, used the term for the first time in relation to the

¹ Dr MC Mehanathan, Law on Prevention of Money Laundering in India- (Commentary on Prevention of Money-Laundering Act, 2002 including Related Regulations, International Conventions and Allied statutes) Pg 3.(Lexis Nexis 2023).

Watergate scandal and the conversion of Republican campaign funds². The Money Laundering Control Act of 1986, the world's first anti-money laundering (AML) law, was passed in the United States more than ten years later in response to the explosive growth of drug trafficking. It made the activity illegal in the particular context of drug trafficking.³ It is pertinent to note that according to the United Nations Office on Drugs and Crime, the annual amount of money laundered is between 2% and 5% of the world's gross domestic product, which could be around US\$2 trillion⁴. Money-laundering is an activity that requires confidentiality throughout the entire process. When someone steals, they typically leave behind evidence of their crime, but when someone launders money, they typically leave behind a "money trail" that is often complicated but intended to give the impression of legitimacy. It can be challenging to discern between the actual crime and the money-laundering process that follows in many situations⁵. The above mentioned data shows that the money laundering has huge negative socio economic impact and needs to be countered in a deterrent manner with stringent provisions of the law. Therefore on August 4, 1998, the Prevention of Money-laundering Bill, 1998, was introduced in the Lok-Sabha. This was done in light of the pressing need to stop money-laundering and related activities, the confiscation of criminal proceeds, and India's commitments under various international conventions to take action against money-laundering. The Bill was referred to the Parliamentary Committee known as the Standing Committee on Finance. On March 4, 1999, the report from the Standing Committee on Finance was presented. In 2003, the Prevention of Money-laundering Act, 2002 (15 of 2003) was subsequently passed into law. Earlier, the Prevention of Money-laundering (Amendment) Act, 2005 (20 of 2005) amended the Act before it was even put into effect. Effective July 1, 2005, the Prevention of Money-laundering Act, 2002, went into effect. Only the predicate crimes listed in the Act's Schedule are actionable under this Act for money laundering⁶. The Delhi HC in *J Sekar v Union of India*⁷ confirmed that the dual structure is intended by the PMLA because of the criminal proceedings under sections 3 and 4 and the civil proceedings of the attachment under sections 5 and 8. Importantly, section 5 of the Prevention of Money Laundering Act, 2002, allows the enforcement directorate to seize criminal proceeds when they are in the hands of the individual and are likely to be handled in a

² Editors of Encyclopaedia Britannica, What was the Watergate scandal?, Britannica (March 5th 2025), What was the Watergate scandal? | Britannica.

³ Louis DeNicola, Key AML laws and regulations in the US, Persona (February 26, 2025), Key Anti-Money Laundering (AML) Laws & Regulations in the US.

⁴ Supra note at 3.

⁵ Ibid.

⁶ Dr MC Mehanathan, Law on Prevention of Money Laundering in India- (Commentary on Prevention of Money-Laundering Act, 2002 including Related Regulations, International Conventions and Allied statutes) Pg 19. (Lexis Nexis 2023).

⁷ *J Sekar v UOI*, 2018 SCC OnLine Del 6523.

way that will thwart the efforts to seize them. The proceeds of crime has been defined in the section 2(u)⁸ PMLA. Basically the Proceeds of crime refer to the property which is derived or obtained as a result of criminal activity of the relating to schedule offence. The section 2(u) read as :

“proceeds of crime 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”

Without a unified ruling from the nation's highest court, various courts have given completely different opinions about what defines "proceeds of crime" and what the specifics of the money laundering offence are. It is pertinent to note that the absence of any unified interpretation would allow the room for the arbitrary invocation of the PMLA which is going to have the huge societal impact. ***The research article would examine how the “value of such property” in section 2(u) has been wrongly interpreted which ultimately enables the ED to attach the property which was acquired even before the commission of the schedule offence which is arbitrary and has the adverse impact on the fundamental rights which a individual holds. The research articles also seeks to analyse how the attachment of the property under section 5 PMLA leads to the deprivation of third-party.*** In order to examine how the attachment of the property have effect on the third parties it is pertinent to distinguish the third parties into two categories ie The first category consist of the persons who have acquired the property in return of legal consideration from the person who is accused of committing the offence of money laundering. Despite the fact of not having the knowledge of any money laundering process the property is subject to the unjust process of attachment. The second category consists of the persons who acquire the property despite having the knowledge of the fact that the property has been obtained/derived from the commission of the schedule offence. Therefore the article would examine how the error in the interpretation of the scheme of the PMLA deprives the third parties and allows the room for the arbitrary invocation of the PMLA which has adverse societal impact. Recently the Madras HC in its recent judgment has reopened the settled principle on the quashing of the PMLA proceedings. Among other things, the Hon'ble Madras High Court ruled in Vijayraj Surana v. The Directorate of Enforcement⁹ that mere quashing of the FIR on "technical grounds" or "procedural irregularities" does not absolves the accused from the PMLA proceedings, nor can

⁸ The Prevention of Money Laundering Act, 2002, § 2(u).

⁹ Vijayraj Surana v. The Directorate of Enforcement order dated August 28, 2024 in W.P. Nos. 14782, 14786 & 14787 of 2024 and W.M.P. Nos. 16016 to 16024 of 2024.

it collapse the predicate offence. This interpretation calls into question the traditional wisdom regarding the PMLA's reliance on scheduled offences, which permits the ED to function under the law. This order ex facie is based on erroneous interpretation of law which again enables the ED to invoke the rigors the PMLA in a arbitrary manner. ***Therefore the research article would present the adverse implication of the judgment in the light of judicial pronouncement. The research article would also present the correct interpretation/reading of above mentioned provisions which would reduce the arbitrary invocation of the PMLA.*** Section 24 PMLA¹⁰ provides the provision where the reverse burden of proof is imposed on the proceedings relating to the proceeds of crime. The section 24(b) imposes the reverse burden of proof on the person who claims himself to be the innocent individual. A conjoint reading of Section 8(8) of the PMLA and Rule 2(b) of the RCP Rules elucidates the qualification for a "claimant"¹¹. A claimant is defined as any innocent individual i.e. one having acted in good faith and has suffered a quantifiable loss despite adopting reasonable precautions¹². The imposition of the reverse burden of proof has certain shortcomings. The presumption of section 24 is rebuttable but still the omission from mentioning the necessary standards raises certain practical difficulties. ***Therefore the article would also shed the light on the difficulties which a subsequent bona fide purchaser may encounter.*** Further the research would also shed the light on the potential socio economic impact due to the offence of money laundering.

ANALYZING THE AMBIT OF "PROCEEDS OF CRIME": 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" is the definition of money laundering found in §3¹³, the cornerstone of the PMLA. As a result, it makes sense to consider what exactly makes up the proceeds of crime, given its significant influence on the nature of the offence. §2(1)(u)¹⁴ of the PMLA, 2002 defines proceeds of crime; however, despite its brevity, the definition's exact meaning is unclear. Proceeds of crime are defined by §2(1)(u) as any property that is directly or indirectly acquired by an individual as a result of criminal activity connected to a scheduled offence, or the value of any such property, or in cases where such property is taken or held outside of the nation then the property equivalent in value within the country or abroad. In order to analyse the ambiguity in the definition it is pertinent to categorize the definition into 3 parts. Property obtained or derived from criminal activity connected to a scheduled offence makes up the first category. This is essentially property which has been directly tainted and has an obvious connection to the scheduled offence. Instead of property obtained through criminal activity, the second category is the equivalent "value of any such property." Finally, the third

¹⁰ The Prevention of Money Laundering Act, 2002, § 24.

¹¹ Prevention of Money-Laundering Act, 2002, S. 8(8); Prevention of Money-Laundering (Restoration of Property) Rules, 2016, R. 2(b).

¹² Ibid.

¹³ The Prevention of Money Laundering Act, 2002, § 3.

¹⁴ Supra note at 9.

category consists of properties from the accused's property that are valued the same as the tainted property and that can be attached if the tainted property is taken or held abroad. The research article is not concerned with the interpretation of the first and third category because there is no ambiguity in the respective categories. The second category of the definition is the controversial part. What is meant by the term "value of any such property"?

EXAMINING THE JUDICIAL CONFLICT ON THE TERM "VALUE OF SUCH PROPERTY" :In *Vineet Gupta v Deputy Director, Directorate of Enforcement*¹⁵, the father of the appellant bought a property in the year 1999, which was attached by the ED as proceeds of crime. The property was obtained 17 years before the commission of the crime. Therefore it couldn't fall within the ambit of the first category as it was not the tainted property obtained from the commission of the scheduled offence. Also, contrary to what would be allowed under the third category, the ED did not use the attachment because the tainted property was actually stationed abroad. The second limb was used by the ED instead, and "the property was attached in lieu of the value thereof." Recently the Appellate tribunal under SAFEMA in the case of *Ayush Kejriwal Vs Enforcement Directorate* ruled that any property owned by the accused that is worth the amount of the embezzled funds may be attached when assets obtained through illegal activity connected to a scheduled offence, such as misappropriated bank funds, cannot be discovered. This attachment is applicable whether the property was bought with legally obtained funds prior to the filing of the FIR or whether it was acquired with funds that were misappropriated. In this judgment the appellate tribunal relied on the second category to uphold the order of attachment. The ED and tribunal believed that the second category permitted any property from the accused's estate to be classified as proceeds of crime. This is not only an erroneous interpretation, but it also greatly expands the PMLA's potential scope and permits its arbitrary application¹⁶. The term "value of any such property" refers to property that has been transformed into another form of equal value after being obtained illegally. It is anticipated that money laundering will entail changing the money obtained from criminal activity, and law enforcement must be prepared to track down the source. Consequently, assets that have been changed from their original state at the time of the scheduled offence to a different state are considered proceeds of crime¹⁷. It is best to use an example to demonstrate this. Theft of gold constitutes a scheduled offence, and according to the definition's first category, the stolen gold is "proceeds of crime" since it is directly tainted property obtained through illegal activity. Since the value of the gold, which is now deposited in the form of a vehicle, would be referenced in the "value of any such property," the second limb would cover this change in the form of property if the gold was used to buy a car. ". Using the same example again, if someone uses stolen gold to buy a car, then that person's house, which is entirely unrelated to the stolen gold, cannot be regarded as

¹⁵ *Vineet Gupta v Deputy Director Directorate of Enforcement*, 2017 SCC OnLine ATPMLA 18.

¹⁶ *Ayush Kejriwal Vs Enforcement Directorate Case No. FPA-PMLA-4358/KOL/2021*, order dated 1-5-2024.

¹⁷ *Ibid.*

proceeds of crime under the second category because the car is a store of the value of the stolen gold, not the house. The conversion of stolen gold into a vehicle only qualifies that particular vehicle as proceeds of crime; it would be improper to classify another vehicle that belongs to the individual as proceeds of crime irrespective of the fact that the other vehicle is having the same value. That is to say, the phrase "value of any such property" is not a separate clause or component that refers to the "proceeds of crime." It simply clarifies or expands the definition of property derived from criminal activity related to the scheduled offence to include property that has been converted in the end¹⁸. The same principle of law was also affirmed by the Punjab and Haryana HC in the case of Seema Garg v Deputy Director Directorate of Enforcement¹⁹. HC held that the ED's broad definition would eliminate the distinction between the second and third categories if it were to be accepted. Delineating a special third category for cases where tainted property was taken abroad would not be necessary if the statute gave the ED the authority to recognise any property from an accused person's estate as proceeds of crime. The second category would take over this function since it would be sufficient to support the ED's classification of any property as proceeds of crime. The relevant portion of the judgment read as follows:

“In our considered opinion, to understand true meaning of second limb of definition of ‘proceeds of crime’, it must be read in conjunction with Section 3 and 8 of the PMLA. If all these sections are read together, phrase ‘value of such property’ does not mean and include any property which has no link direct or indirect with the property derived or obtained from commission of scheduled offence i.e. the alleged criminal activity. ‘Value of such property’ means property which has been converted into another property or has been obtained on the basis of property derived from commission of scheduled offence e.g. cash is received as bribe and invested in purchase of some house. House is value of property derived from scheduled offence. Cash in the hands of an accused of offence under Prevention of Corruption Act, 1988 is property directly derived from scheduled offence, however if some movable or immovable property is purchased against said cash, the movable or immovable property would be ‘value of property’ derived from commission of scheduled offence”.

It is pertinent to note that the 3rd category was added via amendment in the year 2015. Therefore if the intent was to equate the 2nd and 3rd category then the amendment would have never been enacted²⁰. The judgment of the appellate tribunal²¹ is per incuriam due to the law laid down by

¹⁸ Supra note at 17.

¹⁹ Seema Garg v Deputy Director Directorate of Enforcement 2020 SCC OnLine P&H 738.

²⁰ Ajay Wadhwa and Ragini Handa, "Proceeds of Crime" under PMLA: Whether includes Properties acquired before commission of the Scheduled Offence, <https://www.sconline.com/blog/post/2024/08/21/proceeds-of-crime->

the SC in the case of Pavana Dibbur Vs Enforcement Directorate²² declared unequivocally that the ED cannot attach the property that was acquired before the crime was committed and that was obtained from known sources. It was decided that property that does not originate from criminal activity related to a scheduled offence is not eligible for attachment under the PMLA. They were very clear in their interpretation that "proceeds of crime" simply refers to assets obtained through criminal activity associated with the scheduled offence. As a result, they released the property from attachment, and it is appropriate to restate the pertinent section of the ruling regarding this matter:

“The first property cannot be said to have any connection with the proceeds of crime as the acts constituting the scheduled offence took place after its acquisition”.

HC of Andhra Pradesh in Pappu Singh case²³ held that ***“Viewed from this perspective, the amendments would be unnecessary if the term “or the value of such property” was understood to authorize the attachment of any property, when the actual proceeds of the crime are not available”.*** It is pertinent to note that the SC in Pavana Dibbur case held that the property acquired prior to the commission of the crime is not subject to the process of attachment but that judgment didn't clarify the meaning of ***“Value of such Property”***. Therefore the SC has to give the authoritative judgment on the term ie ***“Value of such property”*** and the law laid down by the AP High Court and Punjab and Haryana HC appears to be correct and in consonance with the scheme of the PMLA.

EXAMINING THE LACK OF 3rd PARTIES RIGHTS IN THE ATTACHMENT PROCESS: The paper also presents that the provisions of provisional attachment under section 5 PMLA²⁴ amounts to the deprivation of the 3rd parties rights. Therefore it is pertinent to define the exact ambit of the “third parties”. As already mentioned the paper will classify the 3rd parties into two categories. The first category refers to the subsequent innocent purchaser of the property who have paid consideration. The second category refers to those who are not the innocent purchasers. As per the section 5²⁵ the order of attachment can be passed when the person is in the possession of the proceeds of crime and is likely to be dealt in such a manner which will frustrate the proceedings pertaining to the confiscation. It is pertinent to note that the section 5 R/W section 8²⁶ does not provide any protection to the bona fide subsequent purchasers. Further there is lack of judicial pronouncement which affirms the 3rd parties right against the process of the attachment. It is pertinent to note that the Vienna Convention deals with the confiscation of the

under-pmla-whether-includes-properties-acquired-even-before-commission-of-the-scheduled-offence-important-decision-analysed/amp/ .

²¹ Supra note at 17.

²² Pavana Dibbur Vs Enforcement Directorate 2023 SCC OnLine SC 1586.

²³ Kumar Pappu Singh vs Union Of India 2021 SCC OnLine AP 983.

²⁴ Supra note at 8.

²⁵ Ibid.

²⁶ Supra note at 8.

property and it also enables the court to trace and seize the proceeds for efficient confiscation²⁷. The same convention also provides that the enforcement of the convention shall not prejudice the rights of the bona fide 3rd parties . The section 8²⁸ provides the procedure of the adjudication and the adjudicating authorities are bound to confirm the attachment order when they find that property is involved in the process of money laundering. Therefore the claim of being a bona fide purchasers will not be sustained. The bona fide purchasers will be allowed to present their claims only after the order of confiscation under section 8²⁹ R/W RCP rules³⁰.

EXAMINING STAGE OF RAISING THE PLEA OF “INNOCENT PURCHASERS” :

The author argues that the bona fide purchaser shall be allowed to take the defence of lack of “knowledge” at the stage of adjudication under section 8(2). The attachment of the property acquired by the bona fide parties shall be unjust and the only option for the ED shall be to retain the sale proceeds which is in the possession of the vendor. .The same principle was also affirmed by the madras HC in the case of C. Chellamuthu v Deputy Director, Directorate of Enforcement³¹. The relevant portion of the judgment read as follows:

“The respondent failed to prove any nexus or link of Appellants with G. Srinivasan and his benamies. Once a person proves that his purchase is genuine and the property in his hand is untainted property, the only course open to the respondent is to attach sale proceeds in the hands of vendor of the appellants and not the property in the hands of genuine legitimate bona fide purchaser without knowledge”.

The Naples Political Declaration and Global Action Plan Against Transnational Crime stipulate that when nations adopt laws to seize money obtained illegally, they should "always have with due respect for the rights of bona fide third parties³². The Delhi HC in Axis Bank case³³ held that the order of the provisional attachment is not going to be rendered illegal merely because there is an interest of the 3rd party . Therefore as per the Delhi HC the claims can only raised at the stage when the property has been confiscated to the central government under section 8(8). The

²⁷ United Nations Vienna Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1998.

²⁸ Supra note 27.

²⁹ Supra note at 27.

³⁰ Prevention of Money-Laundering (Restoration of Property) Rules, 2016, R. 3-A.

³¹ C. Chellamuthu v Deputy Director, Directorate of Enforcement 2015 SCC OnLine Mad 13896.

³³ Deputy Director, Directorate of Enforcement Delhi and Ors. v. Axis Bank and Ors. 2019 SCC OnLine Del 7854.

SLP³⁴ against the judgment is also pending in the SC. The author would that the reasoning of the Madras HC is in consonance with the various above mentioned international instruments. Therefore the judicial interpretation shall enable the bona fide 3rd parties to get protection from the attachment process. As far as the case of 2nd category of 3rd parties is concerned then obviously they are not entitled to get any protection because they purchased the property despite having the clear knowledge of the involvement in money laundering.

EXAMINING THE PER INCURIAM JUDGEMENT : As already mentioned the paper also seeks to highlight the negative implications of the Madras HC judgment³⁵. SC in *Vijay Madanlal Choudhary & Ors Vs UOI & Ors*³⁶ held that The phrase "derived or obtained" denotes a criminal act that has already been carried out in connection with a scheduled offence. The legal basis for any investigation carried out under the PMLA is the commission of a scheduled offence, whether it is reported to the jurisdictional police or is being examined by a competent court through a complaint. Similarly in *P. Chidambaram Vs Directorate of Enforcement*³⁷ it was held that the existence of the scheduled offence is the sine qua non for the money laundering which would generate the money that is being laundered. Before Vijay Madanlal, there were contradictory rulings due to the interaction between the PMLA's money-laundering offence and the scheduled offences. Regarding whether a discharge, acquittal, or quashing of a FIR would result in the PMLA investigation being closed, various High Courts held differing opinions. The Hon'ble High Court of Bombay in *Babulal Verma v. Enforcement Directorate*³⁸ held that the offence of money laundering is independent of the scheduled offence, and the ED's investigation into the money-laundering offence it is looking into will not be wiped out or stopped even if the investigating agency has filed a closure report in it and the court of competent jurisdiction has accepted it.. The Delhi HC in *Directorate of Enforcement v. Gagandeep Singh*³⁹ and in *Rajiv Chanana v. Dy. Director of enforcement*⁴⁰ highlighted the irreversible connection between the two, asserting that there should be a prerequisite relationship between the commission of PMLA-scheduled offences and the subsequent money laundering offence. In *Sushil Kumar Katiyal v. Union of India*⁴¹ it was argued in the Allahabad High Court that it was illegal to issue a summons for an offence under section 3 of the PMLA after the accused had been discharged from the Predicate Offence and the discharge order had become final. The HC determined that the contested summoning order contains a manifest error and is subject to revocation because, at the time the complaint was filed, there was no trial for the scheduled offence pending, and the summoning order was issued under section 3. But on the contrary Orissa HC in the case of *Janata*

³⁴ *Axis Bank Ltd. v. Deputy Director, Directorate of Enforcement Delhi* Diary No. 28906/2019.

³⁵ *Supra* note at 10.

³⁶ *Vijay Madanlal Choudhary & Ors Vs UOI & Ors 2023 (12) SCC 1.*

³⁷ *P. Chidambaram Vs Directorate of Enforcement (2019) 9 SCC 24.*

³⁸ *Babulal Verma v. Enforcement Directorate 2021 SCC OnLine Bom 392.*

³⁹ *Directorate of Enforcement v. Gagandeep Singh 2022 SCC OnLine Del 514.*

⁴⁰ *Rajiv Chanana v. Dy. Director of enforcement 2014 SCC OnLine Del 4889.*

⁴¹ *Sushil Kumar Katiyal v. Union of India 2016 SCC OnLine ALL 2632.*

Jha v. AD, Directorate of Enforcement⁴² saw things differently and concluded that the PMLA is a unique statute that supersedes the statute that addresses the predicate offence. As a result, the PMLA will operate even after an accused person is discharged from the Predicate Offence.

After analysing the PMLA's provisions, the Hon'ble Supreme Court put an end to the dispute in the Vijay Madanlal case⁴³. Apex court decided that no money-laundering action could be taken against or through a person for the property linked to a "stated scheduled offence" if that person was "finally exonerated" by a court of competent jurisdiction because of "discharge, acquittal, or because of quashing the criminal case (scheduled offence against him/her).

However the judgment of the Madras HC⁴⁴ is in contravention with the law laid down by the SC which also appears to be per incuriam. As the director and promoter of three businesses (referred to as "Borrower Entities"), the Petitioner had secured loans from different financial institutions. It is alleged that fraudulent accounting practices, such as making false entries and diverting funds to related entities, were used to misappropriate these funds. In accordance with the pertinent provisions of the Prevention of Corruption Act, 1988, and the Indian Penal Code, 1860, which are scheduled offences under the PMLA, the Central Bureau of Investigation ("CBI") registered a Regular Case ("RC") on November 1, 2019, based on the aforementioned allegations. The ED recorded an ECIR and started proceedings under the PMLA based on the predicate offence. Furthermore, the ED submitted a complaint to the Special Judge (PMLA) in accordance with Sections 44 and 45. Because "*the SFIO alone has the jurisdiction to try the offences against the petitioners*" the Hon'ble High Court of Karnataka quashed the CBI case in order dated April 15, 2024. The Honourable High Court of Madras noted that the proceedings in the SFIO's Complaint are still pending before the Special Court, Chennai, and that the Honourable High Court of Karnataka's order dated April 15, 2024, only addressed the CBI case. As a result, the scheduled offence under Section 447 of the Companies Act would remain valid even if the CBI case is quashed. The Hon'ble High Court of Madras ruled that the ED would have the necessary jurisdiction to conduct its investigation under the PMLA since the scheduled offence would emerge during the SFIO's Complaint proceedings. Additionally, it was emphasised that the quashing of a FIR would not necessarily impact the validity of an ECIR because the two documents have different functions within their respective legal systems; an ECIR focusses on the "proceeds of crime," while a FIR addresses scheduled offences. Therefore, the Honourable High Court of Madras ruled that the quashing of a FIR on "technical grounds" or "procedural irregularities" alone would not automatically end PMLA proceedings; rather, each case would have to be evaluated on its own merits in order to decide whether or not PMLA proceedings should proceed.

⁴² Janata Jha v. AD, Directorate of Enforcement 2014 CRLJ 2556.

⁴³ Supra note at 37.

⁴⁴ Supra note at 10.

By noting that a FIR being quashed for certain procedural irregularities would not absolve the accused under the PMLA proceedings and, consequently, could not collapse the predicate offence in the PMLA proceedings, the Hon'ble High Court of Madras in Vijayraj Surana⁴⁵ has adopted an approach that introduces a fundamental anomaly in this established jurisprudence. The reasoning behind Vijayraj Surana⁴⁶ disturbs the balance of legislation, thereby permitting money laundering procedures to continue without any connection to the criminal activity that warrants their inception. This deviation brings up a number of concerning issues. To begin with, it erodes the legislative basis of the PMLA, which links scheduled offence to the idea of "proceeds of crime." Permitting an ECIR to function autonomously runs the risk of turning the PMLA into a speculative investigative tool, which runs counter to its stated goal of identifying identifiable criminal activity. Second, by allowing the continuation of PMLA proceedings even after the accused has been exonerated of predicate offence, this anomaly creates serious practical difficulties that include drawn-out court cases and heightened susceptibility to capricious enforcement.

NEGATION OF THE PRACTICAL HARDSHIPS :Another aspect which the author seeks to present is the difficulties which the innocent purchaser may encounter due to the section 24 PMLA⁴⁷. The section 24 read as follows:

“ Burden of proof.--In any proceeding relating to proceeds of crime under this Act,--

(a) in the case of a person charged with the offence of money-laundering under section 3, the Authority or Court shall, unless the contrary is proved, presume that such proceeds of crime are involved in money-laundering; and

(b) in the case of any other person the Authority or Court, may presume that such proceeds of crime are involved in money-laundering”.

Section 8(8) of the PMLA and Rule 2(b) of the RCP Rules, when read together, clarify what constitutes a "claimant. The term "claimant" refers to any innocent person who has acted in good faith and has incurred a measurable loss in spite of taking reasonable precautions.⁴⁸ The first issue is that the claimant is being given the burden of proof in reverse. In accordance with the proviso of Section 8(8), an aggrieved claimant is only granted a hearing opportunity after ED has

⁴⁵ Supra note at 10.

⁴⁶ Supra note at 10.

⁴⁷ Prevention of Money-Laundering Act, 2002, S. 24.

⁴⁸ Supra note at 12.

attached⁴⁹. First, the imposition of a reverse burden of proof on the claimant is problematic. How is a claimant supposed to know if the principal offender engaged in money laundering? To comprehend this dilemma, let's look at a typical example. When granting credit to an organisation, a financial institution obtains a mortgage over the entity's assets as collateral. Without any publicly available information, the financial institution will have little chance of determining whether the property was obtained through "proceeds of crime" aside from conducting the standard due diligence required in such transactions. Because of this, it is clear from even a cursory examination of the PMLA's restoration-facilitating provisions that they are blatantly arbitrary and offer no realistic channels of recourse to a legitimate interest holder. Delhi High Court in Enforcement Directorate v. Axis Bank⁵⁰ held ***“If it is shown by cogent evidence by the bona fide third-party claimant (as aforesaid), staking interest in an alternative attachable property (or deemed tainted property), claiming that it had acquired the same at a time around or after the commission of the proscribed criminal activity, in order to establish a legitimate claim for its release from attachment it must additionally prove that it had taken “due diligence” (e.g. taking reasonable precautions and after due inquiry) to ensure that it was not a tainted asset and the transactions indulged in were legitimate at the time of acquisition of such interest”.***

Following the ruling in Axis Bank when a claimant acquires property before the scheduled offence is committed, they are under less burden than a later acquirer. The burden of due diligence extends to a thorough investigation into the validity of transactions to ascertain whether an asset is tainted or not because the claimant bought the property around or after the predicate offence was committed. This is a stretch, since each claimant would have to look into the potential for a money laundering offence before buying any type of property⁵¹. There is an additional issue with a claimant's qualifications. Would it essentially imply that the claimant should have been aware of the money-laundering and should have had access to the proceeds of the crime if, for instance, the due diligence section of an application is deemed to be unsuccessful? ***On the contrary hand, does it not follow that the claimant is guilty of aiding the crime of money-laundering if the burden of due diligence is satisfied but the first requirement regarding good faith is not met?*** The question again has to be addressed through judicial pronouncement or legislative amendment. Therefore the above mentioned absurdities in the implementation of the PMLA is having a tendency to erode the civil liberties. Due to the erroneous interpretation and the misapplication of the law the individuals and business would also witness the negative impact.

⁴⁹ The Prevention of Money Laundering Act, 2002, § 8(8).

⁵⁰ Supra note at 34.

⁵¹ Supra note at 50.

SOCIO ECONOMIC IMPACT OF THE MONEY LAUNDERING & ARBITRARY ENFORCEMENT OF THE ANTI MONEY LAUNDRING LAWS : As already mentioned the money laundering involves the activity where the source of the illegally obtained property is concealed which often leads to the commission of crime such as drug trafficking, corruption, terrorism and fraud.⁵². The entire process is conducted through 3 steps ie (1) Placement (2) Layering (3) Integration. Worldwide, money laundering has a profound socioeconomic impact on societies, influencing everything from government credibility to financial systems. The socio economic ramifications of money laundering are examined in this article, with particular attention paid to the detrimental impacts it has on societal well-being, governance, and economic growth. The offence of money laundering has the deep rooted impact on the financial stability of a state. Whenever the illegal funds are integrated into the economy then the entire integrity of the banks and financial institutions is undermined. The process of money laundering can also affect the market conditions because the illegal funds are often used to influence the market forces. For instance, using illegal funds, criminals may invest in companies or real estate, increasing asset values and generating fictitious market bubbles⁵³. The money laundering also has a negative impact on the potential investment because the investors will not ordinarily invest in those territories which is vulnerable to the money laundering. Money laundering also increases the tendency of wealth concentration where the wider population wont be having the access to the generated proceeds⁵⁴. Money laundering facilitates the commission of the organized crimes such such a drug trafficking, terrorism and systematic frauds⁵⁵. Through the legitimization of criminal proceeds, money laundering enables criminal organizations to gain more influence, reach a wider audience, and function with a degree of impunity. Money laundering schemes are closely related to corruption, which is used as "an end in itself or as a means to an end." In a nation, the frequency of one of these offence typically indicates the frequency of the other. Research conducted by the World Bank and Asian Development Bank to correlate the relationship between money laundering and corruption supports the aforementioned connection⁵⁶. Further the political condition of the country may also face a adverse impact because it becomes more vulnerable to the influence by criminal organizations. While analyzing the socio economic impact of the money laundering it is pertinent to note the impact due to the arbitrary enforcement of the anti money laundering laws. The attachment of the property in the pretext of the ***“Value of such Property”*** in the above

⁵² Supra note at 2.

⁵³ Leonardo S. Borlini, The economics of money laundering, Research Gate (January 2013), (PDF) The economics of money laundering.

⁵⁴ Ibid.

⁵⁵ Supra note at 2.

⁵⁶ Supra note at 54.

mentioned procedure will have the impact on the right to hold the property envisaged in the article 300 A⁵⁷. because the property which is not even linked to the process of money laundering is attached due to the arbitrary interpretation. . At this stage it is pertinent to note that the depriving the person from holding the property in such manner will not only undermine the constitutional right but would also undermine the human right⁵⁸. The PMLA scheme doesn't recognize the 3rd party rights at the stage of the adjudication⁵⁹ which again enables the law enforcement agencies to arbitrarily apply the strict rigors of the PMLA. Therefore the businesses involved in the international trial may find themselves being targeted unfairly by the anti money laundering laws with freezing of accounts, delayed transaction and damage to the reputation. Financial institutions would exclude small businesses from the formal financial system if they unfairly flag them under random AML enforcement, especially if they operate in high-risk industries or areas. Their ability to obtain credit would be compromised, and their potential for expansion would be limited. Foreign investors would be discouraged from investing in an economy if companies in that country believe that the AML regulations are capricious or onerous. FDI, which is a major driver of economic growth in the majority of developing nations, would then decline. Further the judgment of the Madras HC⁶⁰ leads to the conclusion that the offence of the money laundering is an independent offence. However on the examination of the sections 3 and 2(u) together, it is evident that money laundering is not a separate crime but rather one whose existence is dependent on committing one or more of the predicate offences listed in the act's schedule and profiting from those offences, which are then known as tainted or ill-gotten money⁶¹. To put it briefly, money laundering, as defined by Section 3, is a two-part crime that is committed when someone obtains proceeds of crime through the commission of a predicate offence and then they are laundered. The fact that the first proviso of section 5 of the PMLA stipulates that a complaint, charge sheet, or report must be filed in the relevant court for the commission of the Predicate Offence before proceedings under section 5 can begin further demonstrates that money laundering is not a stand-alone offence⁶². Therefore the judgment failed to consider the maxim of *sublato fundamento cadit opus* which means that once the foundation of the matter is removed, the structure built thereupon must fall and the ignorance of the maxim would also affect the free and fair trial envisaged under article 21⁶³.

⁵⁷ India Const.art.300 A.

⁵⁸ Lachhman Dass v. Jagat Ram, (2007) 10 SCC 448.

⁵⁹ Supra note at 25.

⁶⁰ Supra note at 10.

⁶¹ Tarun Gaur, Prevention Of Money Laundering Act, 2002: An Inherently Flawed Legislation?, LIVE LAW(April 16,2020, 3:11 PM),<https://www.livelaw.in/law-firms/articles/prevention-of-money-laundering-act-2002-an-inherently-flawed-legislation-155328> .

⁶² Ibid.

⁶³ Ankoosh Mehta, Sanika Gokhale & Divya Behl, Cyril Amarchand Mangaldas(April 21,2021),<https://corporate.cyrilamarchandblogs.com/2021/04/a-predicate-offence-is-the-sine-qua-non-for-the-offence-of-money-laundering-is-it-really/> .

CONCLUSION & SUGGESTION: Numerous aspects of economies, governance, and societies around the world are impacted by the profound and extensive socioeconomic impact of money laundering. As explained throughout this study, money laundering is a complex, multifaceted phenomenon that has significant ramifications for social and economic stability, making it more than just a financial crime. Determining these impacts and the effectiveness of countermeasures is essential for financial institutions, policymakers, and society at large. Money laundering creates an unfair playing field, distorts markets, and impedes fair competition, all of which impede economic growth. Illegal funds enter legal financial systems, making it more difficult for law-abiding businesses to compete. Illegal money infusions have the potential to create speculative bubbles that destabilise markets by artificially inflating asset prices, particularly in luxury goods and real estate. Such market imbalances typically result in a general decline in economic efficiency, a misallocation of resources, and a decrease in investment in productive industries. The consequences of money laundering extend to public spending and government revenue. Large-scale money laundering results in tax evasion and a loss of government revenue. These lost monies would have gone towards funding social welfare, infrastructure, healthcare, and education, among other public services. As a result, governments may experience budget deficits, which push them to borrow more money, raise taxes, and enact austerity measures that disproportionately affect the most vulnerable members of society. International groups like the Financial Action Task Force (FATF) have been issuing global standards and recommendations as anti-money laundering measures have evolved over time. The effectiveness of AML policies varies greatly among countries, despite this. Lax enforcement or inadequate systems often serve as havens for money launderers. Combating AML has become even more difficult as a result of the financial sector's globalisation, as cutting-edge technologies enable rapid and anonymous money transfers across borders. New regulatory approaches were required to combat the anonymity and decentralized nature of digital assets and cryptocurrencies, which introduced an extra layer of complexity. Notwithstanding these challenges, good AML procedures can have a significant positive socioeconomic impact. Money laundering can be reduced through the improvement of regulatory agencies, international collaboration, and the purchase of new monitoring technology. To identify and stop questionable activities, regulators and financial institutions should share more information and be more transparent. Giving law enforcement the tools, technology, and training they need to dismantle criminal organisations that profit from money laundering is equally crucial.

As far as the question of erroneous interpretation is concerned the author seeks to present following suggestions:

- The Parliament can add the explanation clause in Section 2(u) PMLA which shall categorically mention that the property which is acquired prior to the commission of the crime or is not linked to the commission of the money laundering shall not be subject to the

process of attachment. Further the illustration for explaining the correct meaning of “Value of such Property” can also be enacted. The illustration provided by the Punjab & Haryana HC⁶⁴ would be the perfect illustration.

- The Parliament can enact the amendment in the section 8 PMLA whereby the law needs of expressly mention “ *Nothing in this section shall be construed to cause the prejudice to the rights of the innocent 3rd parties during the stage of confirming the provisional attachment*”
- *However, via Finance Act 2019, an explanation has been added to section 44(1)(d) PMLA, which is as follows:*

“Explanation: For the removal of doubts, it is clarified that,—

(i) the jurisdiction of the Special Court while dealing with the offence under this Act, during investigation, enquiry or trial under this Act, shall not be dependent upon any orders passed in respect of the scheduled offence, and the trial of both sets of offences by the same court shall not be construed as joint trial;”

Instead of solving the issue, this recently added explanation made it worse. With this explanation, the legislature once again dismissed the idea that a PMLA offence depends on the commission of a predicate offence and that decisions pertaining to predicate offence will directly affect the prosecution of PMLA offence. In order to remove the inherent flaw the provision can be amended or read in following manner:

“The jurisdiction of the Special Court while dealing with the offence under this Act, during investigation, enquiry or trial under this Act, shall not be dependent upon any orders, except order of discharge or acquittal or quashing , passed in respect of the scheduled offence”⁶⁵

- The burden of proof envisaged in the section 24(b) on the subsequent purchasers shall be relaxed and the standard of due diligence should be relaxed in such manner which recognizes the practical difficulties. The responsibility to lead the cogent evidence pertaining to the presence of knowledge shall be on the prosecution instead on 3rd parties.

⁶⁴ Supra note at 20.

⁶⁵ Supra note at 62.

