

Lawless Laws and the Supreme Court

The Supreme Court's blessing for the PMLA shows its contempt for human rights and the Constitution.

Alok Prasanna Kumar writes:

To say that the Prevention of Money Laundering Act (PMLA), 2002 is a Kafkaesque law is putting it mildly. Introduced in 2002 to tackle terror funding, the PMLA has been amended over the years to become a lawless law used at will to target political opponents and intimidate businesspersons. The rate of conviction under the PMLA is abysmal—out of 5,422 cases, the Directorate of Enforcement has been able to obtain convictions against only 23 people—a conviction rate of less than 0.5%! This conviction rate also gives us a hint to the true purpose and nature of the law.

Like the Narcotics Drugs and Psychotropic Substances Act, 1985 and anti-terror legislations, such as the Terrorist and Disruptive Activities (Prevention) Act, 1987, the Prevention of Terrorism Act, 2002, and the Unlawful Activities (Prevention) Act, 1967, the PMLA comes from a place of contempt for the due process and the rule of law. Such “lawless laws” are not content with defining offences and punishments—these tamper with some of the most basic principles of natural justice and fairness underlying the Code of Criminal Procedure, 1974. Lawless laws seek, among other things, to make getting bail next to impossible, to allow for the use of extrajudicial confessions, and even place the burden of proof of establishing innocence on the accused. The establishment of truth and the imposition of punishment in accordance with the law are the core principles underlying criminal justice. Such lawless laws subvert criminal justice by making the process, the punishment, and rendering of the truth irrelevant.

However, the process cannot by itself become the punishment without the active participation of the judiciary. The Supreme Court's judgment in *Vijay Madanlal Choudhary v Union of India* (2022) is another instance of the Court's complicity in undermining the basic principles of natural justice and the rule of law. While the findings of the Court relate to a whole range of provisions of the PMLA, the most egregious ones deserve to be highlighted here.

One of the points of contention taken up by the petitioners challenging the provisions of the PMLA was the scope of the main offence itself—whether it required a person to project laundered money as legitimate or simply be in possession of such money. The provision, poorly drafted, was capable of both interpretations, but in complete disregard of all established principles of interpretation, the Court chose a much wider scope, in one stroke, expanding the offence to otherwise harmless

activities. Laws defining offences are supposed to be drafted carefully and with a view so that the citizens know what acts are prohibited, precisely. This principle was entirely disregarded as the Supreme Court interpreted Section 3 so widely as to make even the simple possession of tainted funds a crime whether or not one knows that they are tainted funds.

Nowhere does the Court take into account the loosening of basic principles of criminal justice in the PMLA, insisting that the flimsy procedural protections are “stringent” when the barest reading of the provisions shows that they are not.

As things stand, a person who has committed murder is far more likely to get a fair trial than a person who happens to find some money from the victims of murder in their pockets. The former will be arrested by the police only by a warrant, produced before a magistrate, entitled to apply for bail on all grounds available under law, prevent any extrajudicial confession being used against them, and watch as the prosecution proves their guilt. The latter will be detained by the Directorate of Enforcement as long as it pleases, arrested at the whim of the officer of the directorate, has next to no grounds in applying for bail, can be compelled to confess to their crimes before the directorate, and try to prove their innocence as their own extorted “confession” is against them in court.

What the judgment in the *Vijay Madanlal Choudhary* case shows is that the Supreme Court consistently engages in doublespeak in matters of rights and the rule of law. The Supreme Court fills its judgments with the grand rhetoric about civil rights and the rule of law, but when asked to put its words into action, it meekly upholds whatever lawless laws the legislatures pass. While the Supreme Court ferociously defends its power to undertake judicial review of laws, it has seldom, if ever, used its power of judicial review to protect citizens against such lawless laws.

Not all is necessarily lost since the worst amendments to the PMLA were done through a “money bill”—an issue still pending a decision by a seven-judge bench of the Supreme Court. However, even if the Supreme Court were to strike them down, it will not change the fact that the Court does not take rights seriously.

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