

# THE CONSTITUTIONAL VALIDITY OF THE PREVENTION OF MONEY LAUNDERING ACT: A CRITICAL ANALYSIS OF FUNDAMENTAL RIGHTS AND CONSTITUTIONAL MORALITY

**Ris premika.S,**

Student, School of Law, II-year, B.A LLB (Hons), SASTRA Deemed University, Thanjavur, Tamilnadu, India.

E-mail- [129087038@sastra.ac.in](mailto:129087038@sastra.ac.in)

**Manisha Gowrisankar,**

Student, School of Law, II-year, B.A LLB (Hons), SASTRA Deemed University, Thanjavur, Tamilnadu, India.

E-mail- [129087027@sastra.ac.in](mailto:129087027@sastra.ac.in)

## ABSTRACT

The Prevention of Money Laundering Act, 2002 (PMLA) was enacted to combat laundering of immoral proceeds and strengthen India's anti-financial crime framework in accordance with international standard. Over time, however, the statute has evolved into one of the most stringent economic legislation in India, characterized by extensive investigative powers, arbitrary bail provisions, reverse burden of proof clauses, attachment proceedings, and broad executive discretionary power given to the Enforcement Directorate (ED). While the legislative objective of preventing money laundering remains constitutionally legitimate, the procedural setup of the Act has generated serious constitutional concerns under Articles 14, 20(3), and 21 of the Constitution of India.

This article critically analyses the constitutional structure of the PMLA and examines whether its exceptional procedural mechanisms undermine traditional criminal jurisprudence and constitutional safeguards. The article studies the historical evolution of anti-money laundering legislation, the statutory architecture of the PMLA, and the constitutional implications of its bail provisions, reverse burden of proof mechanisms, arrest procedures, and evidentiary framework. Additionally, this article reveals a paradox which was highlighted in the report released by the Ministry of Finance and the Enforcement Directorate : while the agency boasts a conviction rate of 93.33%, this figure is calculated across a minuscule baseline of only 60 completed trials out of 8,851 Enforcement Case Information Reports (ECIRs) registered since the enactment of the Act.

Under this article, Particular emphasis is placed on the Supreme Court's ruling in Nimesh Tarachand Shah v. Union of India, Vijay Madanlal Choudhary v. Union of India, and Pankaj Bansal v. Union of India, which collectively represent the judicial tension between economic enforcement and constitutional liberty. The article further incorporates critiques relating to procedural asymmetry, continuing offence theory, absence of limitation safeguards, and coercive pre-trial structures under the PMLA. It argues that although the State possesses legitimate authority to enact stringent economic legislation, such legislation cannot operate outside the constitutional framework of fairness, due process, and the rule of law. Extraordinary economic legislation cannot override constitutional morality, nor can financial enforcement become a justification for diluting procedural safeguards fundamental to criminal justice.

**KEYWORDS:** Prevention of Money Laundering Act (PMLA), Constitutional Validity, Rule of Law, Constitutional Morality, Reverse Burden of Proof, Twin Conditions for Bail, Procedural Fairness, Due Process, Enforcement Directorate, Economic Offences, Continuing Offence Theory, Presumption of Innocence, Self-Incrimination, Procedural Asymmetry, Bail Jurisprudence, Fundamental Rights, Judicial Review, Criminal Jurisprudence, Money Laundering, Legal Certainty, Arbitrary State Action, Constitutional Safeguards.

## 1. INTRODUCTION

The rapid expansion of transnational financial crimes, organised economic offences, and illicit asset concealment has compelled the state to adopt stringent anti-money laundering frameworks. Money laundering does not merely involve unlawful possession of wealth; it refers to the process through which illegally obtained property is integrated into the legitimate economy while concealing its criminal origin. Consequently, anti-money laundering statutes increasingly combine elements of criminal law, financial regulation, confiscatory mechanisms, and preventive enforcement structures.

India enacted the Prevention of Money Laundering Act, 2002 (PMLA) with the stated objective of preventing money laundering and confiscating property derived from criminal activity. The Act came into force on 1 July 2005 and introduced a specialised enforcement regime distinct from ordinary criminal procedure. Unlike conventional penal statutes, the PMLA does not merely punish completed offences. It enables attachment of property, authorises broad investigative powers, permits arrest without warrant, imposes restrictive bail conditions, and creates a reverse burden framework against the accused.

The constitutional controversy surrounding the PMLA arises not from its objective but from its procedural design. The Act significantly deviates from ordinary criminal jurisprudence by altering traditional safeguards associated with the presumption of innocence, transparency, procedural fairness, and personal liberty. Critics argue that the conclusive effect of the statute creates a strategic framework in which constitutional protections are weakened in favour of investigative efficiency. This structural imbalance is mathematically evidenced by institutional data.

As of March 31, 2026, the Enforcement Directorate had initiated 8,851 ECIRs, yet filed prosecution complaints (charge sheets) in only 2,396 cases. This indicates that over 72.9% of all initiated PMLA cases remain trapped in a state of perpetual, unresolved investigation, turning the investigative process itself into a punitive tool.

Critiques have particularly focused upon procedural asymmetry between the Enforcement Directorate and the accused, the absence of temporal safeguards, and the increasing normalization of exceptional criminal procedure within economic legislation.

This constitutional conflict is particularly visible under Articles 14, 20(3), and 21 of the Constitution. Questions concerning arbitrariness, self-incrimination, procedural fairness, executive overreach, and disproportionate restrictions on liberty have repeatedly reached the Supreme Court. While the Court has largely upheld the legislative framework of the PMLA, it has simultaneously recognized the necessity of procedural safeguards against abuse. This article critically examines whether the extraordinary powers granted under the PMLA remain constitutionally compatible with the principles of fairness, liberty, and the rule of law.

## 2. OBJECTIVES OF THE RESEARCH

This research aims to identify the arbitrary nature of PMLA in undermining the procedural safeguards guaranteed under the Constitution. And further exemplifies the necessity in bringing in a reform to the impugned legislation.

## 3. RESEARCH METHODOLOGY

A doctrinal methodology is applied to conduct research for this study. The research primarily makes use of secondary sources such as constitutional provisions, case laws, journals, legal commentaries, government reports and comparative legal research materials.

## 4. LITERATURE REVIEW

The speculations surrounding the Prevention of Money Laundering Act (PMLA), 2002, is primarily a debate between the necessity of economic regulation and the preservation of due process of law

Scholarly research by Chaudhary and Kale (2024) critically analyze the Supreme Court's judgment in Vijay Madanlal Choudhary v. Union of India arguing that the Court's validation of the distinction between an "inquiry" by the Enforcement Directorate (ED) and a "police investigation" is legally unjustified. They contend that this distinction allows the ED to exercise police like power such as compelling testimony while bypassing the procedural safeguards under criminal law. Similar research work by Basu (2025) examines how provisions such as the "reverse burden of proof" (Section 24) and the stringent "twin conditions" for bail (Section 45) definitely undermines individual liberty

## 5. HISTORICAL BACKGROUND TO THE PREVENTION OF MONEY LAUNDERING ACT

The development of anti-money laundering legislation in India cannot be understood independently of international financial regulation. This concern can be traced back to late twentieth century where money laundering emerged as a major concern within international legal systems due to the increasing expansion of organised crime, narcotics trafficking, corruption, and transnational financial networks.

The international anti-money laundering framework was significantly shaped by the 1988 United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances and the 1990 United Nations Political Declaration and Global Programme of Action, both of which encouraged member states to adopt domestic anti-money laundering legislation. India's enactment of the PMLA reflected compliance with these international obligations, reinforced by the mandates of the Financial Action Task Force (FATF).

Prior to the enactment of the PMLA, India lacked a consolidated statutory framework specifically targeting the laundering of the proceeds of crime. While economic offences were punishable under various statutes, such as the Foreign Exchange Regulation Act, 1973 (FERA) and the Income Tax Act, 1961, there existed no comprehensive legislation enabling the tracing, attachment, confiscation, and prosecution of laundered assets. FERA, while stringent, was fundamentally a regulatory and foreign exchange conservation statute rather than a mechanism designed to map the transformation of criminal proceeds into clean assets.

The Statement of Objects and Reasons of the PMLA demonstrates Parliament's intention to align domestic law with international anti-money laundering standards while creating a specialised institutional framework capable of identifying and confiscating illegally acquired property. However, from its inception, the statute was designed not merely as a criminal law enactment but as a hybrid enforcement mechanism combining preventive, regulatory, and punitive elements.

Recent academic analyses examining the evolution of the PMLA have argued that the legislation gradually shifted from a targeted anti-money laundering statute into a broader disproportionate mechanism with extensive coercive powers. Scholars have particularly criticized the transformation of the Act through successive amendments that expanded investigative discretion and diluted traditional procedural safeguards.

## **6.ENACTMENT AND LEGISLATIVE EVOLUTION OF THE PREVENTION OF MONEY LAUNDERING ACT**

The Prevention of Money Laundering Bill was introduced in Parliament in 1998 and enacted in 2002. The legislation came into force on 1 July 2005. Initially, the PMLA operated within a comparatively narrower framework. However, subsequent amendments substantially expanded the scope and powers of the legislation.

Amendments introduced in 2005, 2009, 2012, and 2019 significantly altered the operational structure of the Act. One of the most important developments was the expansion of the definition of money laundering under Section 3. Legislative amendments widened the offence by including direct and indirect participation in activities connected with proceeds of crime. Simultaneously, amendments strengthened the powers of the Enforcement Directorate, expanded the schedule of predicate offenses, and reinforced attachment and confiscation mechanisms.

The most controversial legislative development emerged through Section 45, which introduced stringent bail conditions commonly referred to as the "twin conditions." These conditions required courts to satisfy themselves that the accused was not guilty of the offence and unlikely to commit further offenses while on bail.

In *Nikesh Tarachand Shah v. Union of India*, the Supreme Court struck down the unamended Section 45 as unconstitutional on the ground that it violated Articles 14 and 21. Parliament subsequently amended the provision through the Finance Act, 2018, replacing references to predicate offenses with offenses under the PMLA itself. This clarificatory modification effectively bypassed the jurisprudence of *Nikesh Tarachand Shah*. The amended provision was later upheld by the Supreme Court in *Vijay Madanlal Choudhary v. Union of India*.

The legislative evolution of the PMLA therefore reflects a consistent trend toward expanding enforcement powers while simultaneously triggering deeper constitutional scrutiny. The 2019 amendment further inserted an explanation to Section 3, clarifying that the mere possession, acquisition, or use of proceeds of crime is an independent offence, completely decoupled from any active projection of the property as untainted, thereby vastly expanding the operational power of the Enforcement Directorate.

## 7. STRUCTURAL FRAMEWORK OF THE PREVENTION OF MONEY LAUNDERING ACT

The PMLA operates through an interconnected structure comprising predicate offences, proceeds of crime, attachment proceedings, adjudication mechanisms, and criminal prosecution. The offence of money laundering is defined under Section 3 as direct or indirect involvement in any process connected with proceeds of crime, including concealment, possession, acquisition, use, projection, or claiming of such property as untainted. Section 4 prescribes punishment for the offence.

The Act further empowers authorities to provisionally attach property believed to constitute proceeds of crime under Section 5. Sections 17 and 18 authorise search and seizure operations, while Section 19 grants powers of arrest to authorised officers. Section 24 creates a reverse burden framework, shifting evidentiary responsibility onto the accused in certain circumstances.

The procedural structure of the Act also includes adjudicating authorities, appellate tribunals, and special courts designated for PMLA proceedings. Importantly, Section 71 grants overriding effect to the Act over inconsistent laws, thereby reinforcing the exceptional nature of the statute.

Scholarly critiques of the structural framework of the PMLA have argued that the cumulative effect of attachment powers, restrictive bail standards, broad arrest discretion, and evidentiary presumptions creates substantial procedural asymmetry between the State and the accused. Some analyses characterise the Enforcement Directorate as operating through a “parallel procedural structure” possessing coercive authority without equivalent transparency obligations. The constitutional significance of this framework lies not merely in individual provisions but in the cumulative concentration of investigative, confiscatory, and prosecutory powers within a specialized enforcement regime. The data proves that while property worth ₹2,36,016.61 crore has been frozen or disrupted under Section 5, only 60 cases have reached trial completion over two decades. The structural framework of the act, therefore, incentivise long-term economic deprivation without judicial conformity.

## 8. SCOPE AND APPLICABILITY OF THE PREVENTION OF MONEY LAUNDERING ACT

The PMLA derives its applicability from the existence of a scheduled offence. However, the laundering offence remains distinct from the predicate offence itself. Section 3 criminalises any process connected with proceeds of crime and treats the offence as continuing in nature so long as the accused continues to enjoy the tainted property. The scope of the statute is therefore both broad and technically selective. It is broad because it encompasses direct and indirect participation, layered transactions, and property interests. It is selective because prosecution depends upon the existence of criminal activity linked to scheduled offences.

The constitutional concern emerges from the breadth of the definition and the expansive interpretation accorded to “proceeds of crime.” Critics argue that wide substantive scope combined with stringent procedural restrictions creates the risk of disproportionate enforcement and arbitrary application. The legislative addition of everyday penal offences to the PMLA schedule such as ordinary cheating (Sec. 420 IPC / Sec. 318 BNSS), copyright infringement, and environmental violations means the law is no longer restricted to high-level financial terrorism.

Extensive analyses examining the “continuing offence” theory under Section 3 have further criticised the absence of a specific limitation period under the PMLA. According to these studies, indefinite exposure to criminal proceedings weakens legal certainty and potentially undermines the constitutional guarantee of a speedy trial under Article 21. The criticism becomes particularly significant where attachment proceedings and investigations continue for prolonged periods without final adjudication.

Under the current framework, the ED can provisionally attach properties under Section 5(1) for an initial period of 180 days, which is routinely confirmed by the Adjudicating Authority under Section 8(3), leading to the deprivation of property rights for years while the predicate offence trial remains stalled.

## **9. REVERSE BURDEN OF PROOF AND THE TWIN BAIL CONDITIONS: A DEPARTURE FROM TRADITIONAL CRIMINAL JURISPRUDENCE**

One of the most constitutionally contentious aspects of the PMLA is its departure from traditional criminal jurisprudence through reverse burden provisions and restrictive bail conditions.

Section 24 shifts the burden of proof onto the accused in relation to proceeds of crime. Traditionally, criminal law operates upon the presumption of innocence and requires the prosecution to establish guilt beyond a reasonable doubt. The reverse burden framework under the PMLA alters this foundational principle by compelling the accused to prove that the property in question is untainted. Under Section 24(a), in a case before a person is charged with the offence of money laundering, the Special Court “shall presume” that such proceeds of crime are involved in money laundering, unless the contrary is proven.

Similarly, Section 45 imposes the “twin conditions” for the grant of bail. Courts must satisfy themselves that there are reasonable grounds for believing that the accused is not guilty and is unlikely to commit any offence while on bail. This effectively transforms bail into an exception rather than a rule. Contemporary constitutional scholarship has strongly criticised the cumulative impact of reverse burden provisions and restrictive bail conditions on traditional criminal jurisprudence. Academic analyses argue that the PMLA weakens the presumption of innocence by simultaneously imposing evidentiary burdens, restrictive bail standards, and coercive investigative procedures upon the accused.

In *Nikesh Tarachand Shah v. Union of India*, the Supreme Court held that the original twin conditions violated Articles 14 and 21 because they were manifestly arbitrary and imposed irrational restrictions unrelated to the laundering offence itself. However, the amended provision was upheld in *Vijay Madanlal Choudhary v. Union of India*, where the Court emphasised the seriousness of economic offences and their impact upon national financial integrity.

Despite judicial approval, the constitutional criticism remains significant because the combined effect of the reverse burden and stringent bail provisions substantially weakens procedural parity within criminal justice. Forcing an un-charged or newly arrested individual to establish a negative fact that they are “not guilty” at the absolute primitive threshold of a bail hearing, before receiving the copies of the evidence or the ECIR, creates an insurmountable barrier to liberty.

## **10. ARTICLE 14 AND THE QUESTION OF ARBITRARINESS UNDER THE PREVENTION OF MONEY LAUNDERING ACT**

Article 14 prohibits arbitrariness and requires that legislative classifications possess a rational nexus with legitimate objectives. The PMLA has repeatedly faced constitutional challenges on the ground that its procedural structure creates excessive executive discretion and unequal procedural burdens.

The Supreme Court's decision in *Nikesh Tarachand Shah v. Union of India* represents the clearest articulation of arbitrariness concerns under the Act. The Court observed that the earlier version of Section 45 imposed irrational conditions because bail depended upon the classification of the predicate offence rather than the severity or nature of the laundering offence itself, creating an unequal and discriminatory application of law among similarly situated accused persons.

Contemporary academic critiques have additionally highlighted the problem of procedural asymmetry within the enforcement structure of the PMLA. Scholars argue that the combined effect of opaque ECIR procedures, broad arrest powers, extensive attachment mechanisms, and restricted disclosure obligations creates substantial informational inequality between the State and the accused.

Unlike an FIR registered under the Code of Criminal Procedure, 1973 (or the *Bharatiya Nagarik Suraksha Sanhita*, 2023), an ECIR is treated as an internal, confidential document of the Enforcement Directorate. The accused is not entitled to a copy of the ECIR as a matter of right. This concern assumes constitutional importance because Article 14 prohibits not merely explicit discrimination but also arbitrary and disproportionate state action. Excessive executive discretion, particularly in criminal enforcement statutes, risks transforming procedural law into an instrument of selective application rather than neutral adjudication.

The data confirms that the ED conducted 2,892 raids during the 2025–26 fiscal year alone—a drastic spike compared to 1,491 raids in the preceding fiscal cycle. This doubling of search operations without a corresponding rise in trial commencements highlights an expanding net of unchecked executive discretion, vulnerable to the vice of manifest arbitrariness.

## **11. ARTICLE 21 AND THE REQUIREMENT OF DUE PROCESS UNDER THE PREVENTION OF MONEY LAUNDERING ACT**

Article 21 guarantees that no person shall be deprived of life or personal liberty except according to procedure established by law. Following *Maneka Gandhi v. Union of India*, such procedure must be fair, just, and reasonable.

The PMLA directly implicates Article 21 because it authorises arrest without a warrant, stringent bail restrictions, the attachment of property prior to conviction, and prolonged investigative detention. Although the statute requires reasons to be recorded in writing by the officer under Section 19 prior to executing an arrest, critics argue that the procedural safeguards remain insufficient when viewed against the extraordinary powers granted to the ED.

A significant contemporary criticism of the PMLA concerns the absence of effective temporal safeguards within the statute. Academic studies examining the “continuing offence” doctrine under Section 3 argue that indefinite exposure to investigation and prosecution weakens the constitutional value of legal certainty and undermines the right to a speedy trial. These analyses further argue that prolonged attachment proceedings and delayed adjudication convert the criminal process itself into a punitive mechanism.

The statistics underscore this concern: since 2005, 1,187 individuals have been arrested under Section 19. Given that only 60 trials have concluded, more than 1,100 arrested individuals have faced or continue to face extended pre-trial detention, effectively transforming incarceration into a form of advanced punishment without guilt being adjudicated.

The constitutional significance of due process became particularly visible in *Pankaj Bansal v. Union of India*. The Supreme Court emphasised that the grounds of arrest must be meaningfully and mandatorily communicated in writing to the accused at the time of arrest, recognising that oral reading or mere presentation of the grounds fails to ensure compliance with the constitutional protection guaranteed under Article 22(1). This principle was further extended by the Apex Court in *Mohammad Kashif v. Directorate of Enforcement* (May 2026), where the Court explicitly prioritized Article 21 over Section 45, granting bail to an accused on the sole ground of undergoing more than three years of prolonged pre-trial incarceration without trial progress. The judgment reinforced the principle that procedural fairness cannot be sacrificed even within special economic legislation.

## 12. ARTICLE 20(3) AND THE PROTECTION AGAINST SELF INCRIMINATION

Section 50 of the PMLA empowers ED authorities to summon individuals, compel attendance, and require the production of documents and statements. Section 50(3) categorically binds all persons so summoned to state the truth or make statements upon pain of penal prosecution. The constitutional issue arises because statements recorded under this provision are admissible in evidence and may subsequently be used to convict the individual under the Act.

In *Vijay Madanlal Choudhary v. Union of India*, the Supreme Court upheld the constitutional validity of Section 50 by drawing a formalistic distinction between ED officers and regular police officers. The Court held that since the ED is an investigative agency focused on asset recovery and not a police station, an inquiry under Section 50 is not an “investigation” for prosecution purposes, and thus, statements made before ED officials are not hit by the exclusionary bars of Article 20(3) or Section 25 of the Indian Evidence Act, 1872 (or Section 23 of the *Bharatiya Sakshya Adhiniyam*, 2023).

Nevertheless, constitutional criticism persists because the coercive atmosphere surrounding ED investigations raises serious concerns regarding voluntariness and compulsion. Several scholars have criticised this judicial distinction by pointing out the practical realities of the Act: an officer who records a statement under Section 50 possesses simultaneous powers to freeze assets under Section 5 and execute an immediate arrest under Section 19.

Therefore it is pertinent to understand that the threat of immediate arrest and permanent financial ruin creates indirect, systemic pressure upon accused persons to furnish potentially self-incriminatory material, rendering the protection under Article 20(3) practically hollow.

### 13. RULE OF LAW AND PROCEDURAL FAIRNESS UNDER THE PREVENTION OF MONEY LAUNDERING ACT

The rule of law constitutes a foundational feature of constitutional governance and forms part of the basic structure doctrine. It requires that coercive state power remain structured, accountable, reviewable, and procedurally fair.

The PMLA challenges this principle because of its concentration of investigative authority, overriding statutory effect, and limited procedural transparency. Section 71 grants overriding effect to the Act over inconsistent laws, while Section 45 makes offences under the statute cognizable and non-bailable. Combined with the ED's broad arrest and attachment powers, these provisions create an enforcement-centric legal regime.

Recent constitutional scholarship has criticised the cumulative operation of the PMLA as producing a form of “process-based punishment.” This critique does not necessarily claim that the statute is entirely unconstitutional; rather, it argues that prolonged investigations, restrictive bail standards, broad attachment powers, and limited procedural transparency collectively create severe pre-trial consequences independent of final conviction.

The Supreme Court in recent jurisprudence has attempted to preserve procedural fairness by insisting upon stricter compliance with arrest safeguards and constitutional requirements. However, concerns remain regarding informational asymmetry, prolonged attachment proceedings, and the practical imbalance between investigative agencies and accused persons. The fact that the ED has secured provisional attachment orders worth ₹2,36,016.61 crore across 3,501 orders, but has only achieved final judicial confiscation of a fraction of these assets (₹15,735.91 crore under Sections 8(5) and 8(7)), highlights an enforcement model that emphasizes immediate deprivation over ultimate judicial proof.

The constitutional question therefore is not whether economic offences should be treated seriously, but whether extraordinary enforcement mechanisms can operate without eroding foundational rule-of-law principles.

### 14. CAN ECONOMIC LEGISLATION OVERRIDE CONSTITUTIONAL MORALITY?

The constitutional legitimacy of economic legislation depends not only upon legislative competence but also upon compatibility with constitutional morality. Economic legislation may pursue legitimate objectives such as financial stability, the prevention of organised crime, and the protection of public revenue. However, such objectives cannot justify the unrestricted dilution of constitutional safeguards.

Contemporary scholarship on economic legislation increasingly warns against the normalisation of “constitutional exceptionalism” within financial enforcement statutes. Critics argue that while economic offences undoubtedly justify stronger regulatory mechanisms, constitutional morality requires that such mechanisms remain proportionate and procedurally accountable.

In the context of the PMLA, this debate becomes particularly significant because exceptional procedural mechanisms, such as reverse burdens, stringent bail restrictions, continuing offence theory, and expansive attachment powers, have gradually become central features of the enforcement process itself.

The Supreme Court has repeatedly recognised that economic offences possess serious social consequences and may therefore warrant stricter legislative treatment. Nevertheless, constitutional morality requires that all legislation, irrespective of purpose, remain subject to the guarantees of equality, liberty, dignity, and procedural fairness. Economic efficiency cannot trade off fundamental rights. Thus, economic legislation cannot override constitutional morality. Rather, it must operate within the constitutional discipline imposed by fundamental rights and rule-of-law principles.

## 15. CRITICAL ANALYSIS OF JUDICIAL INTERPRETATIONS

*Nikesh Tarachand Shah v. Union of India* (2018) 11 SCC 1- This judgment represents the most significant constitutional limitation historically imposed upon the PMLA. The Supreme Court struck down the original version of Section 45 on the ground that the twin conditions were manifestly arbitrary and violated Articles 14 and 21. The Court emphasised that bail conditions linked to the classification of predicate offences rather than the laundering offence itself lacked a rational nexus and created unconstitutional discrimination. The judgment reaffirmed that even stringent economic legislation must comply with constitutional standards of fairness and non-arbitrariness.

*Vijay Madanlal Choudhary v. Union of India* (2022) SCC ONLINE SC 929- This decision constitutes the principal judicial defence of the PMLA framework. The Supreme Court upheld the amended Section 45, validated the reverse burden provisions under Section 24, sustained the distinct nature of money laundering as an independent offence, and recognised the special nature of economic offences. However, the judgment attracted substantial academic criticism for according excessive deference to investigative necessity while insufficiently addressing procedural asymmetry, pre-trial coercion, and liberty concerns. By classifying Section 50 statements as non-police confessions, the ruling significantly enhanced the state's coercive capabilities.

*Pankaj Bansal v. Union of India* (2023) SCC ONLINE SC 1244- The decision in *Pankaj Bansal* significantly strengthened procedural safeguards relating to arrest under Section 19 of the PMLA. The Court insisted that the grounds of arrest must be properly communicated in writing and treated written disclosure as necessary for meaningful compliance with Article 22(1) protections. The judgment is important because it demonstrates judicial recognition that extraordinary enforcement powers must remain constitutionally accountable and that the ED cannot hide behind the veil of administrative confidentiality when violating personal liberty.

## 16. COMPARITIVE CONSTITUTIONAL PERSPECTIVES

Comparative jurisdictions similarly struggle with balancing anti-money laundering enforcement and civil liberties. In the United Kingdom, the Proceeds of Crime Act 2002 (POCA) permits extensive investigative powers, including Unexplained Wealth Orders (UWOs). However, procedural safeguards such as mandatory judicial oversight at every stage of asset freezing, controlled disclosure mechanisms, and robust adversarial review operate as effective balancing mechanisms. The prosecution always carries the initial burden of establishing a prima facie case before any reverse onus mechanisms are triggered.

The United States similarly adopts aggressive financial enforcement frameworks under statutes such as the Bank Secrecy Act and the USA PATRIOT Act. However, constitutional safeguards under the Fourth and Fifth Amendments continue to impose strict limits upon arbitrary search, seizure, and compelled self-incrimination. Statements made to federal agents without a proper warning cannot be mechanically introduced as substantive evidence of guilt at trial.

Comparatively, the Indian PMLA framework appears more strategic because many safeguards remain internal to the investigative process rather than externally adversarial. The systemic refusal to supply the ECIR, combined with the judicial blessing of Section 50 statements, places the Indian PMLA regime in an exceptionally punitive position on the global comparative scale. The comparative perspective demonstrates that even stringent anti-money laundering systems require independent institutional safeguards against procedural excess.

## 17. NEED FOR REFORMS AND PROCEDURAL SAFEGUARDS

The PMLA requires urgent procedural recalibration to ensure compatibility with constitutional guarantees while preserving enforcement efficacy.

Firstly, greater transparency is mandatory at the stage of arrest and attachment proceedings. The Enforcement Directorate must be statutorily compelled to supply a copy of the ECIR or a detailed "Statement of Allegations" within 24 hours of an arrest or provisional attachment to bridge the acute informational asymmetry.

Secondly, the application of Section 24 must remain carefully limited. The presumption of guilt should only arise after the prosecution establishes the foundational facts: namely, that a predicate offence was committed, that specific assets were generated from that offence, and that the accused had direct knowledge or control over those specific assets.

Thirdly, judicial scrutiny at the remand and bail stage must be strengthened. Special Courts must look past the formalistic bar of Section 45 and apply the "prolonged incarceration" rule established in recent 2026 apex rulings (Mohammad Kashif), recognizing that when a trial takes decades to conclude, pre-trial detention becomes an unconstitutional tool of punishment.

Fourthly, structured temporal safeguards must be introduced. If the ED fails to frame charges or commence trial within a statutory period (e.g., 2 years from the date of the ECIR), provisional attachment orders under Section 5 should automatically lapse, and the accused should be entitled to default bail.

Lastly, legislative reform should seek to balance economic enforcement with constitutional liberty rather than treating the two as mutually exclusive objectives.

## 18. CONCLUSION

The Prevention of Money Laundering Act represents one of the most powerful enforcement statutes within the Indian legal system. Its objective of combating financial crime and illicit wealth is constitutionally legitimate and internationally necessary. However, the constitutional difficulty lies not in the purpose of the legislation but in the procedural severity of its enforcement framework.

The Act departs substantially from traditional criminal jurisprudence through reverse burdens, restrictive bail provisions, broad arrest powers, attachment proceedings, and limited procedural transparency. These departures have repeatedly generated constitutional challenges under Articles 14, 20(3), and 21.

The empirical reality of the Act evidenced by 8,851 registered ECIRs against a mere 60 completed trials demonstrates that the constitutional concerns surrounding the PMLA extend beyond isolated provisions. The cumulative effect of indefinite investigative exposure, coercive procedural structures, restrictive bail conditions, and informational asymmetry risks transforming the criminal process itself into a punitive mechanism.

The Supreme Court's jurisprudence reveals an ongoing tension between economic enforcement and constitutional liberty. While the Court has largely upheld the structural validity of the PMLA, recent decisions demonstrate an increasing recognition that extraordinary powers require equally strong procedural safeguards. Ultimately, a constitutional democracy requires that even the most serious economic legislation remain subject to the discipline of fairness, accountability, and the rule of law. The fight against money laundering cannot become a constitutional justification for weakening the foundational safeguards of criminal justice.

## 19. AUTHOR'S NOTE

In this paper, the constitutionality of the Prevention of Money Laundering Act, 2002 has been critically analysed through constitutional statutes and comparative laws. The aim is to strike a balance between enactment of legislation and constitutionally guaranteed safeguards.

## 20. REFERENCES

### Books

1. Constitutional Law of India, LexisNexis, 9th Edition.
2. Introduction to the Constitution of India, LexisNexis, 26th Edition.
3. Constitutional Law of India, Eastern Book Company.
4. Principles of Criminal Law, Eastern Book Company.
5. Principles of Administrative Law, LexisNexis.
6. The Rule of Law, Penguin Books.
7. Constitutional Morality, Oxford University Press.
8. Prevention of Money Laundering Act, 2002

## Cases

1. Nikesh Tarachand Shah v. Union of India
2. Vijay Madanlal Choudhary v. Union of India
3. Pankaj Bansal v. Union of India
4. Maneka Gandhi v. Union of India
5. Justice K.S. Puttaswamy v. Union of India
6. A.K. Gopalan v. State of Madras
7. E.P. Royappa v. State of Tamil Nadu

## Research Paper

1. Journal of Illicit Trade, Financial Crimes, and Compliance ISSN (online) 3070-6122 G.S. Bajaj and Garima Pal
2. The Constitutional Deficit of the Prevention of Money Laundering Act 2002: From Statutory rigour to Structural Reform by Malhar S. Barrot

### Copyright & License:

© Authors retain the copyright of this article. This work is published under the Creative Commons Attribution 4.0 International License (CC BY 4.0), permitting unrestricted use, distribution, and reproduction in any medium, provided the original work is properly cited.