

LIBERTY, BURDEN AND BAIL: CONSTITUTIONAL LIMITS ON ENFORCEMENT DIRECTORATE POWERS UNDER THE PREVENTION OF MONEY LAUNDERING ACT 2002

¹Ms. Pulikkoden Rosy Jose Mary and ²Dr. Simran Singh

¹Research Scholar, ²Associate Professor

^{1&2} Department of Law,

^{1&2}SAGE University, Bhopal, India

Abstract : The Enforcement Directorate (ED) under the Prevention of Money Laundering Act 2002 (PMLA) has powers of summons, arrest and bail-resistance which differs from the normal criminal procedure in several respects. The central provisions of sections 19, 24, 45 and 50 of the Act were upheld by the Supreme Court in the case of *Vijay Madanlal Choudhary v Union of India* (2022) against attacks under the aforementioned constitutional provisions. This article will look at what has transpired since then. It claims that the controversy over the constitutionality of the statute has shifted from the question of the validity of the statute, to the question of how it is to be applied – written grounds of arrest, producing before a magistrate, long pre-trial detentions and disclosure of seized material. This kind of arrangement is beneficial but not permanent, the article argues. The safeguards are based on case-by-case judicial discretion, are not always applied, as Pankaj Bansal's case demonstrates, and leave unanswered structural questions which may be revived by the pending case of *Vijay Madanlal*. The article suggests statutory codification of the written-grounds rule, more clarity about persons summoned under section 50, a legislated cap on pre-trial detention and notice to States in parallel proceedings, and public reporting of outcomes on a doctrinal reading of the statute and the judgments rendered up to October 2026.

IndexTerms - Money Laundering; PMLA; Enforcement Directorate; Self-Incrimination; Reverse Burden of Proof; Bail; Article 21; Federalism

I. Introduction

The Prevention of Money Laundering Act 2002 (PMLA), was passed to combat money laundering and to confiscate property obtained from or used in money laundering. It entered into force in 2005 and has been amended numerous times, including by the Prevention of Money-laundering (Amendment) Act 2012, and by the 2018 and 2019 Finance Acts. The State police has no responsibility for enforcement while it is a responsibility of the Directorate of Enforcement (ED) of the Union government. Most of the constitutional challenge has been directed at four provisions of the Act. Section 50 enables ED officers to call any person to give evidence, to force attendance and give true answers, and to have statements recorded for use in evidence. Section 19 allows arrest for offences under the Act without a warrant on the officer's own written belief. Section 24 stipulates that the proceeds of crime must be presumed to be involved in money laundering if a person is charged under section 3, unless otherwise proved. Section 45 makes offences under the Act cognizable and non-bailable and attaches two further conditions to release. Every provision corresponds to a different constitutional guarantee. Section 50 is challenged on the basis of the privilege against self-incrimination under article 20(3), section 19 under articles 21 and 22 – the presumption of innocence which article 21 is said to contain, and section 45 under articles 14 and 21. In *Vijay Madanlal Choudhary v Union of India* (2022) ('*Vijay Madanlal*') a three-judge bench of the Supreme Court sustained all four provisions. But the ruling did not put an end to debate. Petitions challenging it continue to be pending, and over the following years, the Supreme Court and High Courts have ruled on several cases that have helped clarify the use of the sustained powers. The effect is a queer situation where there are provisions valid, applied in a way that the statute itself does not specify. This article looks at that stance in three questions. Now, what did *Vijay Madanlal* compromise on sections no. 19, 24, 45 and 50 and why? Second, how has it been limited by courts since then and by what constitutional protections? Third, however, do such limits remain stable enough without the support of the legislature to ensure freedom or do they need to be modified, and in what way? The article suggests that the struggle over the constitutionality of the provisions has shifted from their validity to how to use them and that the protections engendered by this shift are genuinely present but hinge on the post hoc judicial interpretation of the statute; and that a lasting peace requires not only amendment of the statute, but also ongoing judicial supervision. The approach used is doctrinal. The major sources of materials are the statute, the text and decisions of the Supreme Court and High Courts. Secondary commentary is not designed to establish the law, but rather to identify the primary line(s) of critique. The Law is presented as on 2 October 2026. Some of the decisions discussed are recent and do not have law-report citations, so they are cited by neutral citation. The empirical implementation of the Act is not examined and the rules regarding attachment and confiscation are not considered, both of which involve property rights issues. Much of the literature on the Act did not use to be available when *Vijay Madanlal* was reading it or soon after his reading of it (see, for example, Rana 2025 on arrest, grounds of arrest, remand, summons and self-incrimination). The later decisions reveal a pattern which individual case notes do not highlight: it was not the court's intention to challenge the power, but to impose limitations on its exercise. The dissemination of confiscation, reporting requirements and inverted duties is often considered a unique characteristic of the field of money laundering law, and

there has been doubts as to the effectiveness of the regime in meeting its objectives (Alldridge 2003; Levi & Reuter 2006; Reuter & Truman 2004). On the domestic front, it was observed that the system is effective in many aspects, but there is a huge number of pending money laundering cases in its system and a mismatch between the number of investigations and the number of prosecution complaints (FATF 2024). Both of these impinge on the argument below: pre-trial powers must be strict in order to be justified for the offence; the cost increases as trials are slow.

II. The Statutory Scheme and the Vijay Madanlal Baseline

Money laundering occurs when a person engages in any process or activity relating to the proceeds of crime, including concealing, possessing, acquiring, using or projecting such proceeds as untainted property (section 3). Under the definition in section 2(1)(u), 'proceeds of crime' shall include property obtained or derived from any criminal activity in connection with any scheduled offence. Consequently, there is no jurisdiction independent of the ED. It only operates in areas where there is a scheduled offence, typically one entered by the police or another agency. Generally, a case progresses through stages. The ED maintains an internal document called an Enforcement Case Information Report (ECIR), not included in the Act. It can then call for persons under section 50, search sites and take documents under section 17 and arrest under section 19 if an authorised officer has reason to believe that a person is guilty. Section 5 allows for property to be provisionally attached. Prosecution complaint filed before the Special Court under section 44, bail under section 45. Here are five conclusions in Vijay Madanlal. First, the offence in section 3 is independent and relies on a scheduled offence – if the scheduled offence is discharged or acquitted or the proceedings are quashed, there can be no offence of money laundering. Second, the provision of the Evidence Act 1872 that a statement made in the presence of the police is invalid if it is a confession is not relevant to ED officers; and, as to article 20(3), a person who is not yet an accused is not summoned by ED officers. Thirdly, an ECIR is an internal document and does not constitute a First Information Report and does not have to be provided to the accused in all cases. Fourth, section 24 is valid as a presumption which works after the prosecution has laid a case. Fifth, section 45, as amended in 2018, cures the defect found in *Nikesh Tarachand Shah v Union of India* (2017), and applies to anticipatory bail as well. The Court also affirmed section 19, noting the protections included in the section. In 2022 petitions challenging the decision were considered, with only two issues raised: the lack of any duty to provide an ECIR and the overturning of the presumption of innocence. This is recorded by the Supreme Court Observer and BW Legal World. The bench that heard the batch was reconstituted on 20 August 2026, which comprised of Justice V Mohana, Justice Joymalya Bagchi and the Chief Justice. The Court had said that it shall first listen to the parties on maintainability. According to LiveLaw, the reconstitution was reported. Thus, all that follows about the baseline is subject to this outcome.

III. Section 50 and the Privilege against Self-Incrimination

The Director and officers may at any time during an investigation or proceeding under the Act, summon any person to appear before them for evidence or to inspect and produce any record they deem necessary. If summoned, the person summoned is required to appear, to say the truth on the subject of the examination, and to produce the documents for which he or she is summoned. Section 50(4) deems the proceeding to be a judicial proceeding for the purposes of Sections 193 and 228 of the Indian Penal Code 1860 and Section 63 provides for punishment for failure to do so. Summoning powers of this kind are not unique to the PMLA; the case law on section 108 of the Customs Act 1962 has been cited in PMLA cases, including the case of *Poolpandi v Superintendent, Central Excise* (1992). Article 20(3) says that no person who is charged of an offence shall be compelled to be a witness against himself. The three elements that follow from the text are: The person has to be accused of an offence, there has to be compulsion and compulsion has to be a compulsion that is to be against himself. The first element of the dispute under section 50 is almost all that is at stake in that dispute. In the case of *M P Sharma v Satish Chandra* (1954) the protection has been extended to an individual against whom a formal complaint was made, the petitioners in the case being mentioned in a First Information Report. In *State of Bombay v Kathi Kalu Oghad* (1961), an eleven judge bench limited the meaning of the word 'witness' to the purpose of compulsion in giving testimony, and ruled that the person must have been an accused at the time of the earlier statement to be entitled to the privilege of not being compelled to repeat it. Subsequent decisions interpreted the privilege in a more expansive manner in the context of investigation. In *Nandini Satpathy v P L Dani* (1978), it was held that the protection does not just apply to the trial, but to police interrogation too, even of a person who could be incriminated by what he says. In *Selvi v State of Karnataka* (2010), the privilege was considered as existing during the investigation and section 161(2) of the Code of Criminal Procedure 1973 provides a similar protection to those persons who are questioned by the police and may be exposed to a criminal charge. Vijay Madanlal did not tread it that far. It treated the section 50 process as an inquiry similar to the process as per the customs statutes and held that a person summoned during such an inquiry did not constitute a person accused of an offence as there was no formal accusation and ECIR was not an FIR and accordingly held that there was no application of article 20(3). It was left to be tested whether the statement was voluntary or not at the trial. The challenge is to be done in practice. It is usually the individual the agency suspects when a person is called in an ED case. The right to be heard is only available after the person has been called upon to be heard under the label 'inquiry', and in many inquiries, it is only available after the person has provided the material for the accusation. The privilege comes at a time when it's least needed, because it is a privilege with regard to the order of summons, sworn statement, accusation and complaint. There is nothing new in this criticism. This is also reflected in the practitioner comments to LiveLaw ('Statements of Accused Persons under Section 50 of the PMLA') and in the comments by Rana (2025).

The notoriousness of ED officers enhances it. The deduction that they are not police officers has a logic in the customs cases, where the powers of the officers were more limited, and proceedings were much more fiscal. The powers of the ED include search, arrest and compulsory examination under a penal statute, and so is the analogy weaker. This means an agency which has the forceful power of a police force yet where the examination records have the evidentiary force denied to police statements. The State's response isn't frivolous. In a multi-layered financial transaction, necessary documentation and explanations from non-suspect parties can frequently be required, and an investigator who must warn each party of a privilege before interviewing them may be frustrated in his investigations. There is a strong rationale for the present rule at the beginning of an inquiry. It is weakest when the caller has, in essence, become the called. As is, the law does not differentiate between the two, and that is where the other safeguards in the next part seek to fill in from other angles.

IV. Section 19: Arrest and the Guarantees of Articles 21 and 22

The Director, a Deputy Director, an Assistant Director or a person authorised by the Central Government may make an arrest without a warrant if on the basis of any material in his possession, the Director has reason to believe that the person is guilty of an

offence against the Act and such belief is recorded in writing. The officer shall notify the person of the reason(s) for his/her arrest. A copy of the arrest order and the supporting material shall be sent by the arresting officer to the Adjudicating Authority in a sealed envelope under section 19(2) and the arrested person shall be brought to the Special Court/ Magistrate under section 19(3) within twenty four hours exclusive of journey time. The objection is that under this Act the power is vested in the arresting officer alone as to his satisfaction, and there is no previous judicial examination of what is sufficient, and that the consequences of an arrest under this Act are of a very unusual nature in view of the provisions of section 45. Vijay Madanlal has responded that there are safeguards for the answer: belief, not suspicion, is the necessary condition; it must be based on material and it must be written; it can be reviewed by the Adjudicating Authority and, in the event that it is reserved, before the court. That's a good answer, when compared to the normal power of arrest. It is a disadvantage because each of the safeguards only works after an arrest is issued. The moment when section 19 is considered is more important under this Act than under the general law, as section 45 makes it more difficult to release after arrest. The choices discussed here are an effort to shift that review earlier. This is a pattern noted in the case law and in the commentary that the person(s) were arrested after receiving one or more summons, on the stated grounds that the individual gave evasive answers or failed to cooperate. The practice is dealt with by Rana (2025) under the headings of a summons, evasive replies and custody. No definition of non-cooperation was included in the Act. In *Pankaj Bansal v Union of India* (2023) the Supreme Court has held that the presumption of guilt cannot be raised against a person merely because he did not answer questions asked by the officer without the officer being satisfied with the replies, and where the ED alleges evasive replies, they must be brought before the court for examination. This is a tension which has not been resolved by the case law. Vijay Madanlal believes that the right to refuse to incriminate oneself does not exist at the summons stage, while Pankaj Bansal views a refusal as grounds for arrest merely as this cannot be done on the basis of the answer alone. The second proposition is more clearly a formulation of article 21 and of the requirement in the statute of material giving reason to believe in guilt; not of that of article 20(3). Stated like that, both decisions are the same, that silence is not evidence, and that the privilege may not exist. Article 22(1) provides for informing an arrested person as soon as practicable of the grounds of his arrest, and section 19(1) reiterates the requirement. The grounds are not stated in either text as to how they should be conveyed. Vijay Madanlal said the grounds need to be communicated, either verbally or in writing, in order to meet the requirement. In *V Senthil Balaji v State* (2023), it said that the grounds were 'served' on the arrested person, but didn't mention how. In practice the ED was handing out the written grounds in some locations, and just reading them in others. This was corrected by Pankaj Bansal on 3 October 2023. The Court ruled that henceforth arresting person shall be furnished the written grounds as a matter of course. It was pragmatic, not doctrinal reasons that led to its reasons. If the nature of the grounds is subsequently challenged, an oral statement is an unreliable way to establish grounds, and is not a strong position from which to oppose remand or seek bail when the person is unable to remember the grounds in detail. The Court set aside the arrests in that case. In Two months later, *Ram Kishor Arora v Directorate of Enforcement* (2023), the court held that the arrests were not tainted by the lack of any written grounds as the accused had been arrested at a time when Pankaj Bansal was acting on a verbal order, and that oral communication during arrest followed by the issuance of written grounds within 24 hours was sufficient to meet the requirements of section 19(1) and article 22(1). There is nothing special about the first holding. The second one has attracted criticism. It eliminates the open-ended phrase 'as soon as may be' and turns it into a time window, which is the same as the twenty-four hour limit for production before a magistrate, which means that written grounds will reach the arrestee at about the same time he reaches the court. There is also a criticism that a bench of equal strength should not have reduced a previous decision of the same strength without "referring" to a stronger bench. The criticism was published in *The Wire* (December 2023). Later, the decisions are inclined to Pankaj Bansal out of the PMLA. In both the cases of meaningful communication of the grounds is held to be a constitutional requirement and failure to do so vitiates the arrest under the Unlawful Activities (Prevention) Act 1967 (*Prabir Purkayastha v State (NCT of Delhi)* 2024) and in *Vihaan Kumar v State of Haryana* 2025 (a police arrest). Vihaan Kumar further states that notification to a relative would not amount to compliance and that if there is an order of remand or a charge-sheet issued subsequently, it could not cure the defect. On this reading, the twenty-four hour's allowance of *Ram Kishor Arora* for ED arrests remains pending. Section 19(3) and Article 22(2) mandate that production be made before a magistrate within 24 hours. In *Directorate of Enforcement v Subhash Sharma* (2025), the respondent was picked up by the police from the airport at around 11 am on 5 March 2022, and the ED recorded his arrest at 1.15 am on 6 March 2022 after which he was produced in court within the next 24 hours. The Supreme court ruled that the arrest was vitiated because the actual restraint of liberty was not before them, and the period was more than 24 hours from 11 am which violated article 22(2) of the Constitution. It rejected the ED's challenge to the bail granted and explained that when an arrest is illegal, bail cannot be denied on the grounds that the two conditions of section 45 are not fulfilled. Decision is important because it excludes the benefit of a paper arrest time to the ED, and essentially overrides the statutory bail regime, favouring the constitutional guarantee.

V. Section 24: The Reverse Burden

As originally drafted, section 24 said that if a person was charged with an offence under section 3, the accused had to prove that the property was "untainted property". As a result of the Prevention of Money-laundering (Amendment) Act 2012, a provision in two limbs was substituted. The authority or court shall presume that the proceeds of crime are involved in money laundering where a person is charged with the offence of money laundering under section 3 unless the contrary is proved. In the case of any other person, the authority or court may so presume. The change brings the mandatory presumption and discretion together and in the process. It constricts the provision, but does not delete the reversal. The objection is that a presumption which is to be rebutted by the accused reduces the strength of the presumption of innocence which has been evolved from article 21. Reverse burden clauses are not unheard of in Indian criminal law but the Supreme Court has endorsed them if the prosecution first has to build its case and the burden can be met on a preponderance of probability (*Noor Aga v State of Punjab* (2008)). The nature of legal burdens has long been subject to criticism for impositions that are not justified based on whether an alternative less burdensome evidentiary burden would achieve the same result (Ashworth & Blake 1996); and attempts to articulate principled tests for when a reversal is, and is not, justified (Dennis 2005; Ashworth 2006; Stumer 2010). Vijay Madanlal used this technique for section 24 in *Noor Aga*. On the Court's interpretation of the section it does not impose an additional burden but merely transfers a burden, and only after the prosecution has established an offence that the accused is connected with it and that the property is derived from the offence. But the burden of the safeguard is on the basic facts, and it is here that things become tricky. Generally, another agency investigates the scheduled offence. In many cases, the ED's evidence of the predicate offence is the FIR or a police report, the evidence of which

has not been tested at trial, and the accused may be required to contradict a presumption that has yet to be tested to his or her detriment. The rebuttal must also have documents, many of which are in the hands of the ED. This is because *Sarla Gupta v Directorate of Enforcement* (2025), discussed in Part VII, is relevant to section 24; the Court there equated the right to obtain copies of seized and unrelayed-upon material with the fairness of a trial where the accused is the party with the burden of rebuttal. The proposed review and the overturning of the presumption of innocence is one of two observations made to overturn the foundation of the section, potentially readdressing the key issue.

VI. Section 45: The Twin Conditions for Bail

Section 45(1) makes offences under the Act cognizable and non-bailable. No person shall be released on bail on such occasion without an opportunity having been given to the Public Prosecutor to oppose the application and, if he opposes the same, the court shall be satisfied that there are reasonable grounds for believing that the accused is not guilty and is not likely to commit any offence during his stay on bail. There are some categories of accused who can be released by the Special Court, such as those who are under 16 years of age, women and those who are sick or infirm. The bail conditions of risk of flight and tampering with evidence and influencing witnesses also apply, albeit on a basis different from that of bail law (*P Chidambaram v Directorate of Enforcement* (2019)) but there is added a view on the merits.

In *Nikesh Tarachand Shah v Union of India* (2017) the Supreme Court struck down the twin conditions as then worded. Before amendment, section 45 applied them to offences under the Act only where the scheduled offence was one in Part A of the Schedule punishable with more than three years' imprisonment. The Court found that this made the conditions turn on the gravity of the scheduled offence and not on the offence of money laundering, that the resulting classification was arbitrary, and that the conditions imposed an impossible burden at the bail stage, in breach of articles 14 and 21.

Parliament responded through the Finance Act 2018, which recast section 45 so that the twin conditions apply to offences under the Act itself and no longer depend on the scheduled offence. *Vijay Madanlal* held that this cured the defect identified in *Nikesh Tarachand Shah* and upheld the conditions, treating them as a reasonable response to the seriousness of the offence and to India's international commitments. The effect is that the same twin conditions were struck down in 2017 and upheld in 2022, with the difference lying in how the conditions are attached to the offence and not in what they require of the accused.

Parliament was not alone in thinking that economic offences call for caution in granting bail. The Law Commission of India's 268th Report on bail (2017) recommended that bail in economic offences be approached strictly, although it did so within a package of proposals that also sought to liberalise bail for other categories and to make it available as of right in some cases (Law Commission of India 2017). The point supports the State's case that a stricter standard for this class of offence is defensible in principle. It does not answer the narrower objection, taken up next, that a standard requiring the court to find reasonable grounds for non-guilt is a different thing from a standard of caution.

The remaining objection is not about classification. The second condition asks a bail court, before any evidence has been led, to form a view that there are reasonable grounds for believing the accused is not guilty. The court forms that view largely on material the ED chooses to place before it, and the accused's access to the rest of the material was, until recently, limited. At the same time, delay in trial means that the bail stage is often the real contest. Those three features together, and not the text of the section alone, explain why section 45 has been the focus of the later case law.

VII. Article 21: Corrective – Speedy Trial, Disclosure and its Limits

The trajectory of these decisions is through article 21 which the Supreme Court has consistently held to embody substantive and procedural guarantees that are broader than just 'procedure established by law' (Surendranath 2016). That history is the reason why the Court can impose reasonable conditions on the exercise of the liberty without hitting the statute down: it reads the liberty guarantee as imposing an outer limit, one which the statute's words cannot abrogate. The Court oscillates between the two perspectives, that of public order and that of liberty, in the cases below, in the context of the interaction between criminal law and the Constitution

First line of correction based on the right to a speedy trial. The bench comprising Gavai and Viswanathan JJ in *Manish Sisodia v Directorate of Enforcement* (2024) granted bail to one of the former Deputy Chief Ministers of Delhi who was in custody for nearly seventeen months without the trial of his case being initiated. The Court said that the right to bail could be implied into section 45 considering that it is implied into section 439 of CrPC and that the rigour of the two limbs could be eased when the delay involved is accompanied by long incarceration, and it faulted the courts below for being over-cautious while making bail decisions.

The point was extended in *Arvind Dham v Directorate of Enforcement* (2026). It was the appellant who had been detained for about sixteen months and twenty days, and the evidence was mostly documentary, having been in the prosecution's possession. The appellant had been in custody for about sixteen months and twenty days, and there were 210 (209) witnesses to be examined, of which only a small number were oral. The ED said the gravity of the offence and the twin conditions precluded bail. The Court dismissed this argument, pointing out that the speedy trial was not cancelled by the nature of the offence, and that part of the delay was due to the delays faced by the ED in challenging orders issued by the trial courts, and ordered the release. It found the practice of prolonged pre-trial detention without any hope of trial to be punishment before trial. See *Makhdoomi* (2026) for details of the decision. The Court also referred to its previous bail order in the case of *Senthil Balaji* where it had laid down that in a case where the maximum sentence is seven years, if the trial does not stand a reasonable chance of getting over it, then the prolonged imprisonment may be sufficient grounds for the constitutional court to grant bail.

There are three characteristics of this line that are noteworthy. Outcome-based – Detention period 16-17 months in the cases – before relief – as against halfway point as prescribed in section 436A of the Code of Criminal Procedure, now section 479 of the *Bharatiya Nagarik Suraksha Sanhita* 2023, in case of seven years detention, the halfway period will be three and a half years. The right comes into play once the detention has taken place. The Supreme Court has given relief, but the Court has itself noted that it is the lower courts that are hesitant.

The second correction is in regards to what the accused can see. That a person from whose custody documents are brought under section 17 and 18 has the right to obtain true copies thereof, on cognizance, the court ought to supply the complaint and the documents brought before it under section 17 and 18, including the statement of section 50, and later any supplementary document and that at an appropriate stage, the accused must be given a list of statements and documents collected but not relied upon and that he may apply for production of unrelayed-upon statements and documents at an appropriate stage, which application may be refused

only if disclosure would prejudice investigation. The decision does not mean that the accused now has a right to all the material which has not been relied upon at the charge stage. It is noteworthy because it does afford the accused access to evidence under article 21, and helps to offset the information imbalance that causes section 24 and 45 to be heavier in practice.

The Delhi High Court has drawn the boundaries of this line. In the case of *Bhaskar Yadav v Directorate of Enforcement* (2026) Kathpalia J denied anticipatory bail to two chartered accountant accused of laundering the proceeds of the alleged cyber-fraud amounting to over ₹100 crore through cryptocurrency transactions. In a later Delhi High Court ruling, it is written that it was upheld by the Supreme Court. The court noted that the twin conditions exist with respect to anticipatory bail, that the speedy-trial cases cannot be extended to the extent of meaningfulness of the twin conditions and that the conferring of article 21 would not completely bar custodial interrogation, especially in cases involving alleged destruction of evidence and obstruction in the investigation. The decision follows *Arvind Dham* in which the two matched two different stages – delay following prolonged custody in the former, and the necessity of custody at the investigative stage in the latter. Put simply, the cases set an outer limit on detention and a minimum of fairness, but they don't change the baseline established in *Vijay Madanlal*.

VIII. Federal Concerns

Another constitutional aspect is with regards to the distribution of powers. The terms 'public order' and 'police' are part of the Seventh Schedule of the State subjects in List II, entries 1 and 2. All aspects of scheduled offences, such as those committed under the Prevention of Corruption Act 1988 and penal law are registered and investigated by State police and anti-corruption bodies. The ED has the jurisdiction as the scheduled offence has been reported under an FIR in the State, and can initiate parallel proceedings against the State after getting an FIR and attach property without the State's consent. There is a view that this is a way for the Union to invade an area that has been the concern of State agencies.

The issue reached Supreme Court in the controversy between the Tamil Nadu state marketing corporation (TASMAC). In March 2025, the ED filed its case on the basis of 41 FIRs filed by the State's vigilance and anti-corruption directorate and searched the corporation's headquarters. In April 2025, the Madras High Court rejected the State's as well as the corporation's challenge. The *Tamil Nadu State Marketing Corporation Ltd v Directorate of Enforcement* (2025) decision is reported by the High Court; the litigation process has been reported by Courtbook (22 May 2025). On 22 May 2025, on hearing, a bench presided by Gavai CJI quizzed the ED on its proceedings, stating it was violating the federal structure and that an offence cannot be registered against a corporation instead of the individuals accused of the same, and stayed the proceedings against the petitioners. The case is *State of Tamil Nadu vs Directorate of Enforcement* (2025) SLP (Crl) No 7958/2025, reported by BW Legal World.

There are two precautions. The order was interim, and the Court has not given a reasoned ruling on the federal question, so the observations from the bench are indications and not law. The Union's position is not without its supporters either: money laundering occasionally takes place across State or national lines and the Act is based on Union legislative power. What the episode illustrates is that the Act does not provide for any coordination between the ED and State agencies and that any overlap issues get heard in the Supreme Court as separate petitions.

IX. Critical Appraisal

The Cases reveal three themes. The first one is that protection takes place at the end. The powers in sections 19, 24, 45 and 50 are unaffected and the restrictions are placed through the remand and bail powers and by findings of illegality. Vindication of a person's rights is therefore largely postponed to the moment when the power has been exercised, and sometimes to the moment when custody has been taken. The most prominent examples of this are *Subhash Sharma* and *Arvind Dham*, in each case the individual found relief only after lengthy custody and a successful appeal.

The second theme is instability. It is unfortunate that within two months, *Pankaj Bansal* and *Ram Kishor Arora* set two different standards that haven't yet been harmonized by a larger bench, as per this article. The two arguments of *Arvind Dham* and *Bhaskar Yadav* press in opposite directions on Article 21 vis-à-vis section 45 and each is explainable on its facts. Fact sensitivity is a good thing for adjudication, but if it is whether a person is to be held in custody, it also means that results will vary depending on what bench hears the case.

The third theme is that some structural features are untouched by any of the cases. A person summoned under section 50 is deemed to be on the status set by *Vijay Madanlal* and it cannot be changed without the review of *Vijay Madanlal*'s decision or a law. No independent investigation prior to arrest and no maximum limit on pre-trial detention as established by the courts. The twin conditions are retained, as they were following 2018, in text. How much can the arrested person learn about the case against him at the beginning depends on the position he occupies, which the review is to examine, on the ECIR.

The pattern can be expressed in terms of Packer. Herbert Packer compared a crime control model of the criminal process, which values speed and efficiency in its suppression of crime, and a due-process model, which values reliability and restraint of official power (Packer 1964). Chandra and Satish make a similar distinction between a 'public order' and a 'liberty' interpretation in the context of Indian criminal law (Chandra & Satish 2016). While the earlier decisions are mostly of the PMLA, the decisions of the later are more of the second without displacing the first. Ashworth and Zedner (2014) point out that the use of the terms 'preventive' or 'regulatory' should not dangle the barriers of the criminal law and uphold principled boundaries.

There must be a record of the other side for a balanced account. The Act covers an offence difficult to detect and prosecute, as proceeds are through entities and jurisdictions, evidence is often documentary and easily destroyed and the offence is often international. Those are all features which have shaped the Court's attitude to uphold the powers of the ED and in *Bhaskar Yadav*'s case, it was clear that the Court was unwilling to grant bail when it was necessary to grant custody. This criticism is not for the removal of the powers, but for their present inadequate safeguards, which are late and unevenly developed.

X. Recommendations

The following suggestions are the ideas of the writer. They are modest in that each builds on a safeguard that the courts have already recognised.

First, section 19 should be amended to provide that written grounds of arrest be given to the arrested person at the time of arrest, and to a person nominated by him, together with the written reasons for belief, at the first production before court. This would bring in uniformity in the name of *Pankaj Bansal* and eliminate the ambiguity left behind by *Ram Kishor Arora* without the need for a reference.

Secondly, section 50 should be modified so that a person who is summoned shall be informed in the summons whether he is summoned as a witness or as a suspect, and that an examination of a person who is summoned as a suspect shall be recorded by audio-visual means. The Supreme Court has already ordered the installation of cameras in interrogations rooms of the central agencies like the ED etc. Refer *Paramvir Singh Saini vs Baljit Singh* (2021). A recording does not answer the question of voluntariness as raised in article 20(3), but it provides a trustworthy record for the trial court to consider in determining voluntariness.

Third, the principle in *Manish Sisodia and Arvind Dham* ought to be enshrined in the statute by providing that the twin conditions exist when the accused is in detention without the commencement of the trial within a specified time; and that Special Courts need to report on the advancement of the trial in respect of an accused in detention. Instead of relying on the constitutional court and the speed of individual petitions, a legislated time would be used.

Fourth, the ED should be mandated to notify the State government concerned of the opening of proceedings following the registration of a scheduled offence by the State authorities and record the reasons for the need for having parallel proceedings. This would have no veto power but would set a precedent that disputes such as the TASMAL litigation can be resolved against.

Fifth, the statistics of arrests and disposition of the same, and the length of the trials and convictions rendered under the Act should be published annually by the Union. Debate on proportionality is now very much anecdotal, and consolidated data on the same would help in the review that Vijay Madanlal has called for. The FATF 2024 assessment of India identified an extensive roll-out of pending money laundering investigation cases and identified a need for increased capacity of the courts, both of which are desirable from both the enforcement and civil liberties perspectives, due to the lack of data and the slow pace of court trials.

Lastly, on merits, the Court should look into the possibility of creating a larger bench to resolve questions that have led to divergent verdicts, particularly the manner, and the timing, of communication of the grounds of arrest.

XI. Conclusion

Since 2022, the constitutional history of the PMLA has been one of restrictions on powers which the Court has refused to declare unconstitutional. Section 50 has survived on the basis that the summoned person is not an accused, section 19 on the basis of built-in safeguards, and section 45 following re-drafting by Parliament. These have been followed by decisions which have included a requirement for grounds of arrest, that the production before a magistrate must be immediate, a limit on delay, and greater disclosure of seized material and some concern for the federal balance.

These advances look at shielding individuals, but they do so unevenly and after the fact, and they raise the questions that the forthcoming review might renew. The rights of an arrested person does not depend on a stable basis on a bench before which an application is made. The right answer is that Parliament should incorporate such safeguards into the Act, and that the Supreme Court should resolve the questions on which the Supreme Court decisions differ. The goal of combating money laundering is legitimate, and it is not required that it be done less effectively by article 21. It does call for rules of conflict which are certain, and early and reviewable, in the exercise of the powers to pursue it.

REFERENCES

- [1] Peter Alldridge, *Money Laundering Law: Forfeiture, Confiscation, Civil Recovery, Criminal Laundering and Taxation of the Proceeds of Crime* (Hart Publ'g 2003).
- [2] Andrew Ashworth & Lucia Zedner, *Preventive Justice* (Oxford Univ. Press 2014).
- [3] Peter Reuter & Edwin M. Truman, *Chasing Dirty Money: The Fight Against Money Laundering* (Peterson Inst. for Int'l Econ. 2004).
- [4] Andrew Stumer, *The Presumption of Innocence: Evidential and Human Rights Perspectives* (Hart Publ'g 2010).
- [5] Aparna Chandra & Mrinal Satish, *Criminal Law and the Constitution*, in *The Oxford Handbook of the Indian Constitution* 794 (Sujit Choudhry, Madhav Khosla & Pratap Bhanu Mehta eds., Oxford Univ. Press 2016).
- [6] Anup Surendranath, *Life and Personal Liberty*, in *The Oxford Handbook of the Indian Constitution* 756 (Sujit Choudhry, Madhav Khosla & Pratap Bhanu Mehta eds., Oxford Univ. Press 2016).
- [7] Andrew Ashworth, *Four Threats to the Presumption of Innocence*, 10 Int'l J. Evidence & Proof 241 (2006).
- [8] Andrew Ashworth & Meredith Blake, *The Presumption of Innocence in English Criminal Law*, 1996 Crim. L. Rev. 306.
- [9] Saurabh Rana, *Revisiting Personal Liberty under PMLA, 2002 on Constitutional Premises*, 10 NUJS J. Regul. Stud., no. 4, 2025,
- [10] India Const. arts. 14, 20, cl. 3, 21, 22; sched. VII, List II, entries 1–2.
- [11] The Bharatiya Nyaya Sanhita, 2023, No. 45 of 2023, India Code (2023).
- [12] The Code of Criminal Procedure, 1973, No. 2 of 1974, India Code (1974), 161(2), 436A, 439.
- [13] The Customs Act, 1962, No. 52 of 1962, India Code (1962), 108.
- [14] The Evidence Act, 1872, No. 1 of 1872, India Code (1872).
- [15] The Finance Act, 2018, No. 13 of 2018, India Code (2018).
- [16] The Indian Penal Code, 1860, No. 45 of 1860, India Code (1860), 193, 228.
- [17] The Prevention of Corruption Act, 1988, No. 49 of 1988, India Code (1988).
- [18] The Prevention of Money-laundering (Amendment) Act, 2012, No. 2 of 2013, India Code (2013).
- [19] The Unlawful Activities (Prevention) Act, 1967, No. 37 of 1967, India Code (1967).
- [20] *Arvind Dham v. Directorate of Enf't*, 2026 INSC 12 (India).
- [21] *Bhaskar Yadav v. Directorate of Enf't*, 2026:DHC:813 (Delhi H.C.) (India).
- [22] *Directorate of Enf't v. Subhash Sharma*, 2025 INSC 141 (India).
- [23] *M.P. Sharma v. Satish Chandra*, A.I.R. 1954 S.C. 300 (India).
- [24] *Manish Sisodia v. Directorate of Enf't*, 2024 INSC 595 (India).
- [25] *Nandini Satpathy v. P.L. Dani*, (1978) 2 SCC 424 (India).
- [26] *Nikesh Tarachand Shah v. Union of India*, (2018) 11 SCC 1 (India).
- [27] *Noor Aga v. State of Punjab*, (2008) 16 SCC 417 (India).
- [28] *P. Chidambaram v. Directorate of Enf't*, (2019) 9 SCC 24 (India).

- [29] *Pankaj Bansal v. Union of India*, (2024) 7 SCC 576 (India) (decided Oct. 3, 2023).
[30] *Paramvir Singh Saini v. Baljit Singh*, (2021) 1 SCC 184 (India).
[31] *Poolpandi v. Superintendent, Cent. Excise*, (1992) 3 SCC 259 (India).
[32] *Prabir Purkayastha v. State (NCT of Delhi)*, (2024) 8 SCC 254 (India).
[33] *Ram Kishor Arora v. Directorate of Enf't*, (2024) 7 SCC 599 (India) (decided Dec. 15, 2023).
[34] *Sarla Gupta v. Directorate of Enf't*, 2025 INSC 645 (India).
[35] *Selvi v. State of Karnataka*, (2010) 7 SCC 263 (India).
[36] *State of Bombay v. Kathi Kalu Oghad*, A.I.R. 1961 S.C. 1808 (India).
[37] *State of Tamil Nadu v. Directorate of Enf't*, SLP (Crl.) No. 7958/2025 (India May 22, 2025) (interim order).
[38] *Tamil Nadu State Mktg. Corp. v. Directorate of Enf't*, 2025:MHC:1037 (Madras H.C.) (India).
[39] *V. Senthil Balaji v. State*, (2024) 3 SCC 51 (India) (decided Aug. 7, 2023).
[40] *Vihaan Kumar v. State of Haryana*, 2025 INSC 162 (India).

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.