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Constitutional Challenges and Judicial Scrutiny of the Prevention of Money Laundering Act 2002: An Analysis of Bail Restrictions and Burden of Proof

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The Prevention of Money Laundering Act, 2002 (PMLA) represents India's primary legislative response to the global threat of money laundering, aiming to combat illicit financial flows and associated criminal activities. However, its stringent provisions, particularly Section 45 (restrictions on bail) and Section 24 (reversal of burden of proof), have raised significant constitutional concerns regarding their compatibility with fundamental rights guaranteed under the Indian Constitution. This paper critically examines the constitutional validity of these provisions in light of judicial pronouncements, including landmark decisions such as Nikesh Tarachand Shah v Union of India and P. Chidambaram v Directorate of Enforcement. The study evaluates whether the PMLA strikes a fair balance between the state's compelling interest in curbing economic crimes and the protection of individual liberties, such as the presumption of innocence and the right to personal liberty under Articles 14 and 21. It further analyses the amendments to the Act and the evolving judicial interpretation, highlighting persistent legal ambiguities and potential misuse. The paper concludes with recommendations for legislative refinement and judicial clarity to ensure that the anti-money laundering framework remains effective, proportionate, and constitutionally sound.

Keywords: *PMLA, constitutional validity, section 45, section 24, bail restrictions.*

INTRODUCTION

While there are many challenges associated with the menace of money laundering, the most concerning issue remains the illegal origin of the funds involved. Money laundering is not only an economic crime but also a catalyst for other dangerous illegal activities, such as terrorism, drug trafficking, and corruption. The globalised nature of the world economy and the rapid evolution of digital financial systems have made it easier than ever for individuals and criminal networks to move money across borders with minimal detection.[1] This has transformed money laundering into a serious transnational threat, prompting the need for robust and constitutionally sound legal frameworks across the globe.

India's legislative response to this threat came in the form of the Prevention of Money Laundering Act 2002 (PMLA), which sought to tackle the issue by creating mechanisms for investigation, prosecution, and confiscation of proceeds of crime. The very nature of money laundering, often linked with corporate fraud, financial crimes, and other sophisticated white-collar offences, demands a flexible and efficient enforcement mechanism.[2] However, the provisions of such laws must be carefully balanced against the fundamental rights guaranteed under the Constitution. In the quest for flexibility, there is a risk that excessive or unchecked powers could result in misuse by enforcement agencies, particularly the Enforcement Directorate (ED), leading to potential human rights violations.

One of the central controversies surrounding the PMLA lies in its constitutional validity. Certain provisions, such as the reversal of the burden of proof under Section 24,[3] and the restrictions on the grant of bail under Section 45,[4] have been widely debated in judicial forums and academic discourse.[5] Critics argue that these provisions compromise basic legal principles such as the presumption of innocence and the right to personal liberty.

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[1] Aditi Sharma, 'Unveiling the Depths of Money Laundering: Exploring Legal Loopholes in the Indian Context' (*Jotwani Associates*) <https://jotwani.com/unveiling-the-depths-of-money-laundering-exploring-legal-loopholes-in-the-indian-context-by-aditi-sharma/> accessed 02 December 2025

[2] Praveen Kumar, 'Money Laundering in India: Concepts, Effects and Legislation' (2015) 3(7) International Journal of Research in Humanities and Social Sciences <https://www.raijmr.com/ijrhs/wp-content/uploads/2017/11/IJRHS_2015_vol03_issue_07_11.pdf> accessed 02 December 2025

[3] Prevention of Money Laundering Act 2003, s 24

[4] Prevention of Money Laundering Act 2003, s 45

[5] Bharat Andhale et al., 'Financial Crimes in India with special reference to Prevention of Money Laundering Act 2002' (2022) 11(11) International Journal of Food & Nutritional Sciences <https://www.researchgate.net/publication/375866459_Financial_Crimes_in_India_with_special_reference_to_Prevention_of_Money_Laundering_Act_2002> accessed 02 December 2025

Furthermore, the expanded powers granted to the ED under this legislation have led to accusations of arbitrary and politically motivated action.[6]

The Supreme Court of India has been called upon multiple times to examine the constitutionality of these provisions. The evolving judicial interpretations have added further complexity to the issue, sometimes upholding and sometimes questioning the manner in which the law is implemented. Given that several provisions have been subject to constitutional challenge, there is a growing concern that the current framework may not be adequate or fair, thereby strengthening the call for a comprehensive review or even repeal of the legislation.[7]

This paper, therefore, seeks to analyse the constitutional validity of certain contentious provisions under the PMLA, while simultaneously evaluating the effectiveness of the current legal regime in dealing with the offence of money laundering in India. Through this study, the aim is to explore whether the law, in its current form, strikes a just and constitutional balance between national security, economic integrity, and individual rights.

INTERNATIONAL RESPONSE TO MONEY LAUNDERING

The international community has long recognised that money laundering poses a serious threat to the integrity of financial systems and the stability of economies. In response to growing concerns, the G7 Summit held in Paris in 1989 resulted in the formation of the Financial Action Task Force (FATF), a policy-making body aimed at fostering global cooperation to combat money laundering and, later, terrorist financing and proliferation financing. The FATF was established to develop a coordinated international response to these challenges, as individual national efforts alone proved insufficient in addressing crimes that often transcend borders.

The FATF sets international standards through its '40 Recommendations,' which provide a comprehensive framework covering legal, regulatory, and operational measures required to combat money laundering. These recommendations are not legally binding but are widely

[6] Dr Anuradha Gupta, 'Money Laundering and Financing of Terrorism—A Study on Methods to Fight Money Laundering in India and USA' (2010) 58(10) Journal of The Institute of Chartered Accountant of India <https://resource.cdn.icai.org/18595apriljournal2010.pdf> accessed 02 December 2025

[7] Sharma (n 1)

adopted and respected as benchmarks for national legislation and institutional procedures.[8] Countries are regularly evaluated through a mutual assessment process, ensuring that they are effectively implementing these standards. Those found non-compliant may face reputational and economic consequences, including being listed in FATF's 'grey list' or 'blacklist.'

India, recognising the importance of being part of the global anti-money laundering framework, became a full member of the FATF in 2010. Since then, it has undertaken significant steps to align its financial regulations and enforcement mechanisms with FATF standards. Institutions such as the Financial Intelligence Unit-India (FIU-IND) play a central role in collecting and analysing financial data to detect and prevent illicit financial activities. India's membership not only enhances its credibility in the international financial system but also supports its efforts in curbing the use of its financial infrastructure for illegal purposes.

Through the work of the FATF, a robust framework of global cooperation has emerged, encouraging transparency, accountability, and the strengthening of financial systems worldwide. This has proven especially vital in an era of increasingly sophisticated and transnational economic crimes.

STEPS TAKEN BY INDIA

India has proved to be active in fighting against money laundering and has closely followed international footsteps in this regard. As of today, India is a signatory to three important conventions that deal with money laundering and the prevention of terrorist financing. These are, namely: the UN Convention against Corruption (2003), the UN Convention against Transnational Organised Crime (2000), and the International Convention for the Suppression of the Financing of Terrorism (1999).[9]

In fact, the Prevention of Money Laundering Act, 2002 (PMLA 2002) was enacted as a consequence of the special session called by the United Nations General Assembly (UNGASS), held from 8th to 10th June 1998.[10] The session urged member states to adopt national laws that prevent crimes such as money laundering. Since then, India has enlarged

[8] *Combating Money Laundering and the Financing of Terrorism: A Comprehensive Training Guide* (World Bank 2009)
[9] Kumar (n 2)
[10] Gupta (n 6)

the scope of its 2002 Act twice, once through the 2009 Amendment and again by virtue of the 2013 Amendment.[11]

Money laundering refers to the concealment of the origins of funds acquired through illegal means, with the intention of making such funds appear lawful. In the Indian context, this challenge has been met with a robust legislative and institutional response. A significant milestone in this effort is the enactment of the PMLA, which lays down a legal framework to combat the laundering of illicit wealth. Under this law, financial entities such as banks and intermediaries are required to verify the identities of their clients, keep records of transactions, and report any suspicious activities to the authorities.[12] To further support the implementation of PMLA, the Financial Intelligence Unit–India (FIU-IND) was set up in 2004. This agency serves as the central body responsible for receiving, analysing, and disseminating information about potentially unlawful financial transactions.

In addition to the PMLA, India has also introduced other important laws to address related issues. The Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015, targets the concealment of foreign income and assets, aiming to curb the flow of unaccounted wealth held overseas. Similarly, the Benami Transactions (Prohibition) Amendment Act, 2016, was enacted to broaden the definition of benami (proxy) transactions and impose stricter penalties on offenders.[13] Moreover, India has committed to following international best practices laid out by the Financial Action Task Force (FATF), thereby aligning its legal and regulatory systems with global standards to tackle both money laundering and the financing of terrorism.

CONSTITUTIONAL VALIDITY OF THE RESTRICTION ON GRANTING OF BAIL

Although the Magna Carta was drafted more than 800 years ago, it still holds an important place in establishing the principles of individual liberty and is followed in India to this day.

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[11] Syed Azhar Hussain Shah et al., 'Governance of Money Laundering: An Application of the Principal-agent Model' (2006) 45(4) Pakistan Institute of Development Economics <https://www.jstor.org/stable/41260672> accessed 02 December 2025

[12] Friedrich Schneider, 'Money Laundering and Financial Means of Organized Crime: Some Preliminary Empirical Findings' (2010) 26 Economics of Security Working Paper Series <https://www.diw.de/documents/publikationen/73/diw_01.c.354167.de/diw_econsec0026.pdf> accessed 02 December 2025

[13] Vandana Ajay Kumar, 'Money Laundering: Concept, Significance and its Impact' (2012) 4(2) European Journal of Business and Management <https://files01.core.ac.uk/download/pdf/234624157.pdf> accessed 02 December 2025

The rule that an accused shall be presumed innocent until proved guilty is an important principle of the criminal justice system and finds its roots in Article 21 of our Constitution. Regarding the grant of bail, the Supreme Court, through various judgments, has declared that bail should be the rule and jail to be granted in exceptional circumstances.[14] The Supreme Court in one of the recent cases (P. Chidambaram v Directorate of Enforcement)[15] laid down a test for granting of bail known as the 'triple test'. The test considers a) the risk of flight, b) the possibility of tampering with evidence, and c) the likelihood of the accused influencing the witness.

Section 45 Before Amendment: This Section seeks to override the provisions of BNSS 2023 by placing two additional conditions for the grant of bail for those offences listed under Part A of Schedule where the prescribed punishment is greater than 3 years. The additional conditions are as follows: i) Public Prosecutor will be allowed to oppose the grant of bail, and ii) the court is satisfied that the accused will not commit any crime while on bail, despite hearing the opposition by the Public Prosecutor.

The Supreme Court in Nikesh Tarachand Shah v Union of India,[16] after thorough examination of the twin condition, the court held that such a condition was a violation of Articles 14 and 21 of the Constitution of India and consequently struck down the provision. The reasoning given by the court was as follows:

Despite being eligible for bail for the offences under the schedule, the person might have to reapply and satisfy the test under this Act. Moreover, in a situation where the person is acquitted of the scheduled offence, he might still be subjected to rigour by virtue of this provision.

The impugned section 45(1)[17] was seen to have no nexus with the twin condition or other offences under the Act. Due to this section, the court was no longer applying its mind as to whether the person was guilty of money laundering, but was rather more focused on

[14] Dr B Rajeswari, 'A STUDY ON MONEY LAUNDERING IN INDIA' (2021) 13(08) International Journal of Current Research <https://www.journalcra.com/sites/default/files/issue-pdf/42092.pdf> accessed 02 December 2025
[15] *P Chidambaram v Directorate of Enforcement* (2019) 9 SCC 24
[16] *Nikesh Tarachand Shah v Union of India & Anr* AIR 2017 SC 5500
[17] Prevention of Money Laundering Act 2002, s 45(1)

whether the person was liable under the Schedule. This led to arbitrariness and injustice in the judicial process.[18]

In a situation where a person is charged with an offence under Schedule A, along with the offence of money laundering. He might have been granted anticipatory bail under other laws which cover offences under the schedule, but since the PLMA does not provide for any pre-arrest bail, the person will have to satisfy the dual condition despite being granted anticipatory bail.

The nature of Section 45 is such that it has an effect of curtailing personal liberty and thus goes against Article 21. The court, although competent to impose a reasonable restriction on Article 21, will have to exercise due caution and care. Such a step should only be taken if it advances a legitimate interest of the state and not otherwise.

Situation post Amendment to Section 45 PMLA: Although it is argued that the said amendment to Section 45 has remedied the issues that were present, there is a heated debate that there are yet many issues to be resolved, which are as follows:

The amendment may have, to an extent, dealt with the violation of Article 14, but it has retained the twin condition in a manner that it still has the effect of negating the presumption of innocence, which is against fundamental rights of personal liberty guaranteed by Article 21 of the Constitution.[19]

The Supreme Court had to deal with the amended Section 45 in Chidambaram v Directorate of Enforcement, where the Supreme Court took cognisance of the amendment to Section 45, and yet the bail was decided without satisfying the rigours of the amended Section 45. However, many of the Judgements passed by the High Courts of Madhya Pradesh, Delhi, etc. state that the amendment to Section 45 has in no way retained the twin condition.

CONSTITUTIONAL VALIDITY OF REVERSAL IN THE BURDEN OF PROOF

There has always been a controversy with regard to the provision of the PMLA. Many times, the constitutionality of the PMLA has been challenged before different courts. One of the

[18] Vinod K Shah, 'Prevention of Money Laundering' (2002) 7 Practical Lawyer Web Journal <https://www.ebc-india.com/lawyer/articles/612_1.htm> accessed 02 December 2025
[19] Brent L Bartlett, *THE NEGATIVE EFFECTS OF MONEY LAUNDERING ON ECONOMIC DEVELOPMENT* (The Asian Development Bank, 2002)

provisions that creates controversy in Section 24, which puts upon the accused the burden to dispel the presumption that the property which has been seized from the accused is not 'proceeds of crime' and is unaltered. The original provision of the act is as follows:

S. 24 Burden of Proof: 'When a person is accused of having committed the offence under Section 3, the burden of proving that proceeds of crime are untainted property shall be on the accused.' Subsequently, the same was amended. The purpose of this article was not to debate the constitutional legitimacy of Section 24 of the PMLA, but it was intended to clarify who has the burden of proving a fact, the prosecutor or the accused, and when could the prosecution can utilise it.

Section 24 of the PMLA changes the prosecution's conventional burden to establish its case against an accused beyond a reasonable doubt. The burden of the prosecution to prove its case beyond a reasonable doubt is an essential component of a person accused of an offence being presumed innocent until proven guilty. A similar controversy was observed in the parliamentary debates during the time of its inception. Jurist like the late Mr Ram Jethmalani and Mr Fali S. Nariman had expressed their doubts about its inclusion.

Mr Fali S. Nariman stated that the burden of proof under Section 24 is worrisome. The late Mr Ram Jethmalani expressed concern regarding the burden of proof under Clause 3, asserting that placing the onus on the accused to demonstrate that the proceeds of crime are untainted lacks a foundational basis in fact. He argued that such a presumption, which arises merely from an accusation without any prior evidentiary support, is irrational and unreasonable. In his view, this approach could lead to significant legal complications and may fail to withstand scrutiny under constitutional principles.

It is important to note that, while the courts have on numerous occasions affirmed the constitutionality of certain provisions similar to Section 24 of the PMLA, they have also held on numerous occasions that, in cases where legal statutes provide for such a reverse burden, it is essential for the prosecutors to first demonstrate beyond a reasonable doubt the fundamental facts, which would then require greater scrutiny, before assertion can be made.

Several High Courts have ruled that the presumption stated in the aforementioned section ought not understood to assert that the assets in question is the 'proceeds of crime,' but rather that it is simply held to be such once conclusively demonstrated by the prosecutors, and that

it is only upon certain evidence that the asset in question can be deemed to be linked with the deeds involving money laundering.[20] Additionally, it has been determined that the aforementioned does not necessarily create a presumption about the accused's awareness of 'proceeds of crime,' meaning the prosecution still needs to prove this.

Given that Section 24 of the PMLA is a harsh law which can be easily misapplied and abused by unscrupulous and/or dishonest personnel, courts must exercise caution when dealing with money laundering matters. William Blackstone, in his Commentaries on the Laws of England, stated, 'It is better that ten wicked individuals escape than that one innocent suffer.' The similar principle would apply to Section 24 of the PMLA, which is a contradictory presumption of fact rather than a guilt presumption. As a result, the issue of when the assumption comes in becomes relevant. Is it applicable at all phases, even during the bail application? Is it applicable when drafting charges against an accused or summoning him? Or does it simply apply at the end of the trial?

Because the Section 24 PMLA, as initially drafted, was prone to misuse due to the wide range of interpretations that might be attributed to the term 'accused' common within Parliament, thought appropriate to change it via the PMLA (Amendment) Act, 2012, and modified it as follows:

Burden of proof in any proceeding relating to proceeds of crime under this Act:

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

When comparing the initially enacted provision and the modified Section 24 PMLA, the term 'accused' has indeed been substituted with the phrase 'charged with the offence of money

[20] J D Agarwal and Aman Agarwal, 'Money Laundering : New Forms of Crime Victimisation (Current Trends and Modus Operandi)' (2006) 20(4) Finance India <https://openurl.ebsco.com/EPDB%3Agcd%3A9%3A34269081/detailv2?sid=ebsco%3Aplink%3Ascholar&id=ebsco%3Agcd%3A25339921&crl=c&link_origin=www.google.com> accessed 02 December 2025

laundering.' To determine when the aforementioned presumption would apply to an accused, it would be necessary to construe the latter clause.

The courts have historically been reticent to depend upon the Parliamentary Debates as a means to the construction of the law, as evidenced by Supreme Court rulings in the cases of State of West Bengal v Union of India[21] and State of Travancore v Bombay Co. Ltd.[22] Following that, the Courts began relying on Parliamentary Discussions to determine the purpose of an uncertain phrase or word contained in provisions, as discernible from the debates around the said provision. In the case of Abhiram Singh v C.D. Commachen,[23] a 7-Judge Bench of the Supreme Court relied on Parliamentary Debates to grasp the meaning of the word 'his' occurring in Section 123(3) of the Representation of the People Act, 1951. As a result, the Parliamentary Debates held when revising Section 24 of the PMLA would be essential in determining the significance of the term 'charged' that appears therein.

CONCLUSION AND SUGGESTIONS

With regards to Section 45, it can be said with certainty that the twin condition has the effect of infringing Article 14 and 21 of our Constitution. The amendment made to the impugned provision has, to an extent, rectified the problem with regard to Article 14 by substitution of certain words in the provision; the twin condition is still in effect. The condition may make its appearance in a different manner; however, it still exists. The Judiciary has, for the time being, denied any such possibility, but a bare reading of the provision definitely shows scope for the same.

It must be ensured that such conditions, which go against the presumption of innocence, are employed only when there is a compelling interest of the State involved and not otherwise. Use of such a provision in an Act to combat corruption raises a question of disproportionality between the offence and the sanction thereof. In view of complying with the international standards regarding money laundering, the legislature must not forget its duty to comply with the requirements of the UNHRD, which offer certain protection to the accused.

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[21] *State of West Bengal v Union of India* (1964) 1 SCR 371
[22] *State of Travancore-Cochin & Ors v The Bombay Co Ltd State of Travancore-Cochin & Anr mich* AIR 1952 SC 366
[23] *Abhiram Singh v C D Commachen (Dead) By LRs & Ors* (2017) 2 SCC 629

Care must be taken while drafting special laws; if every special law were to override the general law, it could cause the general law to be left with no relevance. Here, the invalidation of bail granted under BNSS 2023 does not prove good for the working of the criminal law regime when seen from a broader perspective.

Even as of today, there are a number of petitions that remain pending, which seek to challenge the validity of these provisions under the PMLA. Ever since the passing of the Act, it has remained highlighted by politicians, activists, etc., due to its controversial nature. The process of money laundering being complicated, it becomes more or less obvious that there are lacunas in the law that combats it. The approach taken while dealing with lacunas has been to make the Act more stringent, which might not be the most effective means of tackling the issue. An effort must be made to conduct further research before making amendments to laws dealing with white-collar crimes.

In my opinion, the present laws dealing with offences such as white-collar crimes provide huge powers to the authorities without ensuring much accountability. Although this has a positive effect on combating black money, it compromises on natural justice, which is an important pillar for ensuring the rule of law. There is a long way to go in terms of judicial pronouncements, maturing of laws and their interpretative aspect.