



INDIAN JOURNAL OF
LEGAL REVIEW

VOLUME 6 AND ISSUE 4 OF 2026

INSTITUTE OF LEGAL EDUCATION



INDIAN JOURNAL OF LEGAL REVIEW

APIS – 3920 – 0001 | ISSN – 2583-2344

(Open Access Journal)

Journal's Home Page – <https://ijlr.iledu.in/>

Journal's Editorial Page – <https://ijlr.iledu.in/editorial-board/>

Volume 6 and Issue 4 of 2026 (Access Full Issue on – <https://ijlr.iledu.in/volume-6-and-issue-4-of-2026/>)

Publisher

Prasanna S,

Chairman of Institute of Legal Education

No. 08, Arul Nagar, Seera Thoppu,

Maudhanda Kurichi, Srirangam,

Tiruchirappalli – 620102

Phone : +91 73059 14348 – info@iledu.in / Chairman@iledu.in



© Institute of Legal Education

Copyright Disclaimer: All rights are reserve with Institute of Legal Education. No part of the material published on this website (Articles or Research Papers including those published in this journal) may be reproduced, distributed, or transmitted in any form or by any means, including photocopying, recording, or other electronic or mechanical methods, without the prior written permission of the publisher. For more details refer <https://ijlr.iledu.in/terms-and-condition/>

BURDEN OF INNOCENCE UNDER PMLA: A CONSTITUTIONAL CRITIQUE

AUTHOR – AVAYAW KUMAR* & DR KUNVAR DUSHYANT SINGH**

* STUDENT AT AMITY LAW SCHOOL LUCKNOW, AMITY UNIVERSITY UTTAR PRADESH LUCKNOW CAMPUS

** ASSISTANT PROFESSOR OF LAW AT AMITY LAW SCHOOL LUCKNOW, AMITY UNIVERSITY UTTAR PRADESH LUCKNOW CAMPUS

BEST CITATION – AVAYAW KUMAR & DR KUNVAR DUSHYANT SINGH, BURDEN OF INNOCENCE UNDER PMLA: A CONSTITUTIONAL CRITIQUE, *INDIAN JOURNAL OF LEGAL REVIEW (IJLR)*, 6 (4) OF 2026, PG. 231-244, APIS – 3920 – 0001 & ISSN – 2583-2344. DOI – <https://doi.org/10.65393/IJLRV6I427>

ABSTRACT

The presumption of innocence constitutes the philosophical and jurisprudential bedrock of classical criminal law, serving as a critical safeguard against the arbitrary deprivation of personal liberty by the State. However, the escalating complexity of transnational financial crimes has catalysed a global paradigm shift, prompting legislatures to enact stringent socio-economic statutes that fundamentally derogate from these classical procedural guarantees. In India, the Prevention of Money Laundering Act, 2002 (PMLA) functions as the primary legislative bulwark against the integration of illicit wealth into the formal economy. Central to the enforcement mechanisms of this regulatory framework are Section 24, which imposes a reverse burden of proof upon the accused, and Section 45, which establishes draconian twin conditions for the grant of pre-trial bail. This comprehensive research report delivers an exhaustive constitutional critique of these provisions, rigorously analysing their friction with the fundamental rights guaranteed under Articles 14, 20(3), and 21 of the Constitution of India.

*Through a detailed doctrinal analysis of landmark Supreme Court jurisprudence tracing the pendulum swing from the rights-protective approach in *Nikesh Tarachand Shah v. Union of India* to the state-centric validation in *Vijay Madanlal Choudhary v. Union of India* the study examines how the Indian judiciary attempts to balance compelling state interests with inviolable human rights. The paper further explores the evolving "doctrine of foundational facts" established in recent rulings such as *Prem Prakash and Pavana Dibbur*, which mandates that the prosecution must prove a baseline nexus between the proceeds of crime and the scheduled offence before triggering the reverse onus. By engaging in a robust comparative legal analysis with international frameworks, particularly the United Kingdom's Unexplained Wealth Orders (UWOs) and the Financial Action Task Force (FATF) standards, the research contextualizes India's unique amalgamation of civil forfeiture standards within a criminal prosecution matrix. Ultimately, the paper posits that while combatting financial crime is an urgent macroeconomic imperative, the systemic erosion of the presumption of innocence transforms the investigative process into a form of pre-trial punishment, thereby necessitating urgent legislative reforms and procedural safeguards to prevent the arbitrary extinguishment of personal liberty.*

Keywords: Prevention of Money Laundering Act, Reverse Burden of Proof, Article 21, Presumption of Innocence, Bail Jurisprudence

Introduction and Research Problem

The clandestine practice of reintegrating funds obtained through criminal enterprises into the formal financial system poses a profound threat to global economic stability, national security, and the integrity of democratic institutions. This sophisticated phenomenon, traditionally categorized into the distinct operational stages of placement, layering, and integration, is designed to obscure the illicit origins of capital, rendering it virtually indistinguishable from legally acquired wealth.⁴⁰⁷ To systematically combat this transnational menace, the international community, spearheaded by the United Nations and the Financial Action Task Force (FATF), formulated rigorous standards requiring member nations to criminalize the laundering of illicit proceeds and implement aggressive asset recovery mechanisms.⁴⁰⁸ In fulfillment of these binding international obligations, the Indian Parliament enacted the Prevention of Money Laundering Act, 2002 (PMLA), a comprehensive legislative framework engineered to confiscate tainted assets and prosecute offenders.⁴⁰⁹ While the legislative intent underpinning the PMLA is unequivocally crucial for preserving the sovereign financial ecosystem, the statutory architecture designed to execute this mandate has ignited profound and ongoing constitutional debates within the Indian legal landscape.

At the very heart of classical criminal jurisprudence lies the Latin maxim *ei incumbit probatio qui dicit, non qui negat* (the burden of proof lies on the one who asserts, not the one who denies). This principle is globally encapsulated as the "golden thread" of the presumption of innocence, ensuring that an accused is presumed innocent until proven guilty beyond a reasonable doubt.⁴¹⁰ Under traditional Indian penal law, guided by Sections

101 and 102 of the Indian Evidence Act, 1872, the prosecution bears the absolute and unshifting burden of establishing the foundational facts and the ultimate guilt of the accused.⁴¹¹ However, the PMLA radically departs from this normative standard, adopting a framework of reversed evidentiary burdens. Section 24 of the PMLA flips the traditional onus, creating a statutory presumption that the assets in question are proceeds of crime, thereby forcing the accused to definitively prove their untainted nature.⁴¹²

This reverse burden operates synergistically with Section 45 of the PMLA, a provision that imposes exceptionally stringent "twin conditions" for the grant of bail. Under this regime, an accused can only secure pre-trial liberty if the adjudicating court is satisfied that there are reasonable grounds for believing they are not guilty of the alleged offence, and additionally, that they are not likely to commit any offence while on bail.⁴¹³ Together, these statutory provisions create a formidable legal labyrinth that structurally disadvantages the accused from the moment of inquiry.

The core research problem addressed in this comprehensive report is the inherent constitutional friction generated by the confluence of these provisions. By statutorily presuming guilt and setting an almost insurmountable evidentiary threshold for pre-trial liberty, the PMLA framework risks violating the right to equality under Article 14, the protection against self-incrimination under Article 20(3), and the fundamental right to life and personal liberty enshrined in Article 21 of the Indian Constitution.⁴¹⁴ The remarkably low conviction rate under the PMLA historically hovering around negligible percentages despite thousands of active investigations juxtaposed with extended periods of pre-trial incarceration, raises the critical socio-legal question of whether the investigative and judicial process

⁴⁰⁷ "Prevention of Money Laundering Act..." *International Journal of Creative Research Thoughts* (May 2024).

⁴⁰⁸ Financial Action Task Force, *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation* 7 (FATF, 2012).

⁴⁰⁹ The Prevention of Money Laundering Act, 2002.

⁴¹⁰ Pragnu Goyal, "Reverse Burden of Proof and its Implications on Presumption of Innocence," *The Criminal Law Blog* (Oct. 9, 2022).

⁴¹¹ The Indian Evidence Act, 1872, ss. 101, 102.

⁴¹² The Prevention of Money Laundering Act, 2002, s. 24.

⁴¹³ The Prevention of Money Laundering Act, 2002, s. 45.

⁴¹⁴ "The Presumption of Innocence vs. Reverse Burden Clauses- A Constitutional Critique," *International Journal of Legal Research* (2024).

itself has metamorphosed into a form of disproportionate punishment.⁴¹⁵ Resolving this tension requires a meticulous examination of how the State's compelling interest in eradicating financial crimes can be harmonized with the foundational civil liberties that define a constitutional democracy.

Research Objectives

The primary objectives of this research report are structured to dissect the multifaceted implications of the reverse burden of proof within the PMLA framework. First, the study aims to critically examine the constitutional validity of the reverse burden of proof stipulated under Section 24 of the PMLA, specifically contextualizing this provision against the guarantees of substantive due process, the right to a fair trial, and the protection against self-incrimination outlined in Articles 14, 20(3), and 21 of the Indian Constitution. Second, the report seeks to map the volatile jurisprudential evolution of the twin conditions for bail under Section 45, charting the legal trajectory from their constitutional invalidation in 2017 to their subsequent legislative resurrection and judicial endorsement in 2022.

Third, the research is designed to evaluate the practical efficacy and judicial application of the emerging "doctrine of foundational facts." This doctrine is analyzed as a critical judicial safeguard designed to prevent the arbitrary invocation of the reverse burden of proof by law enforcement agencies. Fourth, the report conducts an exhaustive comparative analysis of reverse onus mechanisms in anti-money laundering legislation across global jurisdictions. By contrasting the PMLA with the United Kingdom's civil recovery regimes, specifically Unexplained Wealth Orders (UWOs), and frameworks in Australia and Ireland, the study highlights systemic divergences in how democracies handle the presumption of innocence. Finally, synthesizing these analytical strands, the report aims to propose actionable

legal, legislative, and procedural recommendations to harmonize the rigorous enforcement of socio-economic laws with the non-negotiable preservation of fundamental civil liberties.

Research Questions

To systematically address the research problem and fulfill the stated objectives, this report investigates several core legal inquiries. The foundational question revolves around how the statutory presumption of guilt embedded in Section 24 of the PMLA can be theoretically and practically reconciled with the fundamental human right of the presumption of innocence, and whether this reversal inherently violates the constitutional protection against self-incrimination. Furthermore, the inquiry extends to the domain of pre-trial liberty, asking to what extent the twin conditions for bail under Section 45 of the PMLA contravene the established constitutional doctrine that "bail is the rule, and jail is the exception," a principle deeply intertwined with Article 21.

The investigation also questions the adequacy of contemporary judicial interventions. Specifically, in light of recent Supreme Court jurisprudence, does the mandatory establishment of 'foundational facts' by the prosecution serve as a robust and adequate bulwark against the potential investigative overreach associated with the reverse burden of proof? Finally, looking beyond domestic borders, the research asks how international anti-money laundering frameworks and the FATF standards balance the global mandate for aggressive asset forfeiture and reverse evidentiary burdens with the preservation of localized due process and human rights guarantees.

Research Hypotheses

This study is predicated upon several interconnected hypotheses regarding the operation of the PMLA. The primary hypothesis posits that the blanket application of the reverse burden of proof under Section 24 of the

⁴¹⁵ Parv Gupta, "The Fading Contours of Presumption of Innocence," *Journal of Legal Research and Juridical Sciences* (2025).

PMLA, particularly when it operates in conjunction with the admissibility of coerced custodial statements, disproportionately infringes upon the constitutional guarantees of a fair trial and the right against self-incrimination. It is theorized that this statutory matrix creates an irrebuttable presumption in practice, fundamentally skewing the adversarial system.

The second hypothesis focuses on the intersection of evidence and liberty, suggesting that the legislative revival and subsequent judicial endorsement of the twin conditions for bail under Section 45 effectively negate the presumption of innocence at the pre-trial stage. This negation inevitably leads to prolonged, arbitrary incarceration that functions as punitive detention rather than preventive custody, violating the essence of Article 21. The third hypothesis argues that the judicial "doctrine of foundational facts," while a vital interpretive safeguard, is currently insufficient to check investigative abuse. It is hypothesized that until this doctrine is explicitly codified into the statutory language of the PMLA, the statute will remain misaligned with the principles of substantive due process, leaving individuals vulnerable to the subjective application of the law by enforcement authorities.

Research Methodology

This research employs a rigorous doctrinal, analytical, and comparative legal methodology to dissect the complexities of the PMLA. The primary legal sources utilized in this extensive study include the Constitution of India, the Prevention of Money Laundering Act (2002), the Indian Evidence Act (1872), the Code of Criminal Procedure (1973), and the Bharatiya Nagarik Suraksha Sanhita (BNSS, 2023), alongside their corresponding legislative amendments.⁴¹⁶ The study relies heavily on the critical doctrinal analysis of landmark judgments delivered by the Supreme Court of India and various High Courts, meticulously deconstructing the *ratio*

decidendi and *obiter dicta* that shape the current legal landscape.

Secondary sources encompass a wide array of scholarly articles, peer-reviewed legal journals (such as the Indian Law Institute reviews), comprehensive reports by the Law Commission of India, and policy directives from international regulatory bodies, particularly the Financial Action Task Force (FATF) and the United Nations.⁴¹⁷ The comparative aspect of the methodology evaluates the Indian legislative framework against the anti-money laundering statutes and civil recovery mechanisms of the United Kingdom, explicitly examining the application of the Proceeds of Crime Act (POCA) 2002 and Unexplained Wealth Orders (UWOs).⁴¹⁸ Furthermore, international frameworks in Australia and Ireland are analyzed to provide a holistic view of global standards.⁴¹⁹ A qualitative synthesis of these diverse primary and secondary sources is undertaken to generate an exhaustive, multi-dimensional critique of the socio-legal implications of reverse burden clauses in economic crimes.

Literature Review

The academic discourse and legal scholarship surrounding the reversal of the burden of proof in socio-economic offences present a deeply polarized and fiercely debated landscape. One prominent spectrum of scholarly literature rigorously defends the incorporation of reverse onus clauses in special statutes like the PMLA, NDPS, and UAPA. Proponents of this view argue that socio-economic crimes, particularly money laundering, involve highly sophisticated, clandestine, and borderless financial networks where traditional investigative methods and evidentiary standards are rendered obsolete. Scholars supporting this legislative approach frequently echo the judicial rationale that traditional burdens of proof must not operate

⁴¹⁶ The Bharatiya Nagarik Suraksha Sanhita, 2023.

⁴¹⁷ Law Commission of India, 273rd Report on Implementation of 'United Nations Convention against Torture' 5 (Oct. 2017).

⁴¹⁸ "Unexplained Wealth Orders: Lessons for the UK," *Royal United Services Institute (RUSI)* (2017).

⁴¹⁹ "Unexplained Wealth Orders," *National Institute of Justice (NIJ)* (2020).

as "fossilized theories" that allow sophisticated offenders to exploit the complexities of corporate structures and digital financial transactions to perpetually evade justice. It is frequently articulated in legal journals that because the specific facts pertaining to the historical derivation of illicit wealth and complex layering transactions are within the exclusive, personal knowledge of the accused, placing the evidentiary burden upon them is logically consistent with the principles underlying Section 106 of the Indian Evidence Act.⁴²⁰ Furthermore, literature focusing on international law heavily cites adherence to the FATF Recommendations. FATF Recommendation 4 actively encourages member countries to adopt legislative frameworks where suspected offenders must demonstrate the lawful origin of alleged proceeds.⁴²¹ Scholars point to FATF Mutual Evaluation Reports, which often praise jurisdictions for implementing stringent AML/CFT (Anti-Money Laundering/Combating the Financing of Terrorism) frameworks, as evidence that reverse burdens are an unavoidable international treaty obligation driving domestic legislative policy.⁴²²

Conversely, a robust and critical body of constitutional literature vehemently opposes the ongoing erosion of the presumption of innocence. Legal scholars and constitutional experts argue that the presumption of innocence is not merely a procedural convenience or a dispensable rule of evidence, but rather a fundamental human right recognized internationally under Article 14(2) of the International Covenant on Civil and Political Rights (ICCPR) and implicitly embedded within the due process guarantees of Articles 20 and 21 of the Indian Constitution.⁴²³ Academic critiques emphasize that reverse burdens in statutes like the PMLA fundamentally tilt the scales of justice in favor of the State an entity that already possesses vast, asymmetrical

investigative resources, technological capabilities, and institutional power.⁴²⁴

Literature analyzing the Supreme Court's watershed judgment in *Vijay Madanlal Choudhary v. Union of India* frequently characterizes the ruling as a systemic dilution of established constitutional safeguards.⁴²⁵ Commentators argue that by classifying the PMLA as a unique regulatory and preventive statute rather than a purely penal one, the Court bypassed the stringent procedural safeguards ordinarily mandated under the Code of Criminal Procedure, leaving the accused highly vulnerable to state overreach.⁴²⁶ The intersection of the reverse burden of proof with the strict bail conditions has drawn particularly severe academic censure. Authors note that demanding an accused to conclusively prove their innocence merely to secure pre-trial bail effectively initiates a "mini-trial" at the pre-cognizance stage. This fundamentally disrupts the equilibrium of criminal justice, leading to a situation where the pre-trial detention process itself functions as punitive action, especially given the historically low conviction rates under the Act.

Furthermore, comparative legal scholars note that while international frameworks like the FATF advocate for stringent asset recovery, advanced jurisdictions such as the United Kingdom and Australia deploy such reverse burdens primarily within the realm of *civil* recovery and non-conviction-based asset forfeiture.⁴²⁷ In stark contrast, the Indian model integrates these mechanisms directly into the criminal prosecution matrix, thereby dramatically amplifying the threat to personal liberty and bodily freedom.

Research & Analysis

The Statutory Architecture of Reverse Burden in the PMLA

⁴²⁰ The Indian Evidence Act, 1872, s. 106.

⁴²¹ FATF Recommendation 4.

⁴²² FATF, *Mutual Evaluation Report of India* (Sept. 2024).

⁴²³ Shruti Bedi, "Article 21 and Reverse Burdens," *Indian Law Institute* (2018).

⁴²⁴ Manu Sebastian, "The Bizarre Logic In Supreme Court's Judgment Denying Bail," *LiveLaw*.

⁴²⁵ *Vijay Madanlal Choudhary v. Union of India*, (2022) 10 SCC 24.

⁴²⁶ Aashish Gupta, et al., "Bail under PMLA—Presumed Guilty Until Proven Guilty," *SCC Online Blog*.

⁴²⁷ The Proceeds of Crime Act, 2002 (UK).

The legislative genesis of the PMLA is inextricably linked to the Political Declaration and Global Programme of Action adopted by the United Nations General Assembly in 1990, which urgently called upon member states to enact comprehensive domestic legislation to combat the laundering of drug money and other illicit proceeds. To fulfill these international obligations, the Indian Parliament enacted the PMLA in 2002. At its statutory core, Section 3 of the PMLA defines the offence of money laundering expansively, covering any process or activity connected with the "proceeds of crime," including its concealment, possession, acquisition, use, or projection as untainted property.⁴²⁸ The foundational term "proceeds of crime," defined under Section 2(1)(u), acts as the jurisdictional trigger for the entire Act, strictly requiring a nexus with a "scheduled offence" (predicate offence) explicitly listed in the Act's schedule.⁴²⁹

To facilitate the effective prosecution of these complex financial webs, Parliament introduced a paradigm shift in the rules of evidence through Section 24 of the Act. Following critical amendments in 2013 designed to better align with FATF expectations, Section 24 currently operates on a dual-tiered structure. Section 24(a) mandates that in the case of a person formally charged with the offence of money laundering under Section 3, the Authority or Court "shall presume" that such proceeds of crime are involved in money laundering unless the contrary is proved. Section 24(b) provides a secondary, discretionary "may presume" standard for individuals who are not directly charged but are involved in the adjudicatory proceedings.

This statutory construct fundamentally and irrevocably alters the baseline of criminal prosecution in India. Under traditional jurisprudence, governed meticulously by Sections 101 and 102 of the Indian Evidence Act, the initial and continuing burden of establishing

the foundational facts and the ultimate guilt of the accused lies squarely and exclusively on the prosecution. The accused is only required to create a reasonable doubt, not to prove their innocence conclusively. While Section 106 of the Evidence Act does place the burden of proving specific facts "especially within the knowledge" of a person upon that individual, this evidentiary shift never absolves the prosecution of its primary duty to establish a robust prima facie case.⁴³⁰ Section 24 of the PMLA, however, weaponizes this concept by establishing a compulsory, overarching statutory presumption of guilt regarding the nature of the assets. It demands that the accused furnish negative proof demonstrating that the property is unequivocally untainted a task that is often mathematically and practically compounded by the convoluted nature of historical financial transactions spanning decades.

Constitutional Friction: Articles 14, 20(3), and 21

The imposition of a reverse burden under the PMLA invites rigorous, multi-faceted constitutional scrutiny, primarily evaluated through the lenses of Articles 14 (Right to Equality), 20(3) (Protection against Self-Incrimination), and 21 (Right to Life and Personal Liberty) of the Indian Constitution. Article 21 guarantees that no person shall be deprived of their life or personal liberty except according to the procedure established by law.⁴³¹ The Supreme Court has repeatedly affirmed in landmark constitutional jurisprudence that such a procedure must be substantively "just, fair, and reasonable" and must not suffer from the vices of arbitrariness or oppression.⁴³² The presumption of innocence, while not explicitly articulated in the verbatim text of the Constitution, has been recognized by the highest courts as a fundamental human right inextricably linked to the due process protections of Article 21.

⁴²⁸ The Prevention of Money Laundering Act, 2002, s. 3.

⁴²⁹ The Prevention of Money Laundering Act, 2002, s. 2(1)(u).

⁴³⁰ The Indian Evidence Act, 1872, s. 106.

⁴³¹ The Constitution of India, art. 21.

⁴³² *Subhash Kashinath Mahajan v. State of Maharashtra*, (2018) 11 SCC 46.

A critical area of constitutional friction, and arguably the most contentious mechanism within the PMLA, arises from the intersection of Section 24 with the vast investigative powers granted to the Enforcement Directorate (ED) under Section 50 of the Act. Section 50 grants ED officials the sweeping power to summon individuals, mandate their physical attendance, compel them to produce documents, and force them to make statements regarding their financial affairs. Crucially, the Supreme Court has held that ED officials are not considered "police officers" within the meaning of Section 25 of the Indian Evidence Act (now Section 23 of the Bharatiya Sakshya Adhiniyam, 2023).⁴³³ Consequently, confessions and statements recorded under Section 50 are fully admissible in a court of law as substantive evidence.

When a statute simultaneously compels a person to provide self-incriminating statements under the explicit threat of penal sanctions for non-compliance (Section 50) and then subjects that same individual to a statutory presumption of guilt requiring them to prove their innocence (Section 24), a grave, systemic threat is posed to the constitutional protection against testimonial compulsion guaranteed by Article 20(3).⁴³⁴ Scholars and practitioners emphasize that this legal matrix effectively corners the accused in a procedural trap. If an individual exercises their fundamental right to silence during an ED summons, they face immediate punitive action and arrest for non-compliance. If they provide statements, those statements are aggressively utilized by the prosecution as primary evidence to establish the nexus to money laundering, which instantly triggers the Section 24 reverse burden. This forces the individual into an evidentiary deficit that severely violates the anti-arbitrariness mandate of Article 14.⁴³⁵ The traditional constitutional shield that insulates an accused from the immense, overpowering investigative

machinery of the State is thus substantially, if not entirely, compromised.

The Bail Conundrum: Section 45 and the Twin Conditions

The constitutional precarity of the reverse burden is exacerbated exponentially by the draconian bail provisions of the PMLA. Section 45 establishes a rigorous threshold, dictating that an accused cannot be granted bail unless the Public Prosecutor has been given an explicit opportunity to oppose the application, and the Court is satisfied that there are "reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail".

This provision effectively transplants the reverse burden of proof from the final trial stage directly to the preliminary pre-trial bail stage. By requiring a judicial determination of "not guilty" based on mere preliminary evidence before a trial has even formally commenced, Section 45 forces the accused to discharge a near-impossible evidentiary burden while still physically incarcerated. The accused is expected to prove their innocence while lacking full access to legal resources, financial records, and the complete prosecution dossier. This mechanism results in what legal experts and the Supreme Court itself have termed a "mini-trial" at the stage of bail adjudication.⁴³⁶ The fundamental constitutional doctrine that "bail is the rule, and jail is the exception," which operationalizes the liberty guarantees of Article 21 across ordinary criminal law, is entirely subverted under the PMLA.⁴³⁷ Under Section 45, the presumption is fundamentally of guilt, and continued pre-trial incarceration becomes the statutory norm rather than a preventive exception.

The Judicial Pendulum: From Nimesh Tarachand Shah to Vijay Madanlal Choudhary

The trajectory of judicial interpretation surrounding these highly contentious provisions

⁴³³ *Pankaj Bansal v. Union of India*, (2024) 7 SCC 576.

⁴³⁴ The Constitution of India, art. 20(3).

⁴³⁵ The Constitution of India, art. 14.

⁴³⁶ Manu Sebastian, "The Bizarre Logic In Supreme Court's Judgment Denying Bail," *LiveLaw*.

⁴³⁷ *State of Rajasthan v. Balchand*, AIR 1977 SC 2447.

reveals a profound, ongoing struggle within the Supreme Court of India to balance civil liberties against the macroeconomic imperatives of state security and global financial integrity.

In the watershed judgment of *Nikesh Tarachand Shah v. Union of India* (2017), a Division Bench of the Supreme Court took a strong rights-protective stance and struck down Section 45(1) as blatantly unconstitutional.⁴³⁸ The Court incisively observed that the twin conditions turned the presumption of innocence on its head. The Court recognized that demanding an accused to demonstrate their innocence merely to secure bail created a drastic, unjustified inroad into the fundamental right of personal liberty guaranteed by Article 21. Furthermore, the Court noted the manifest arbitrariness under Article 14, as the twin conditions at that specific time were tied only to offences punishable by more than three years under Part A of the Schedule, creating an illogical and discriminatory classification among different classes of economic offenders.

However, the legislative response to this judicial setback was immediate. Through a controversial amendment in the Finance Act of 2018, Parliament sought to cure the constitutional defect identified in *Nikesh Tarachand*.⁴³⁹ The amendment deleted the specific reference to Part A of the Schedule and substituted it with the broader phrase "offence under this Act," thereby applying the draconian twin conditions uniformly to all money laundering offences, regardless of the severity of the predicate crime.

This legislative maneuvering paved the way for the monumental and highly debated 2022 judgment in *Vijay Madanlal Choudhary v. Union of India*.⁴⁴⁰ A three-judge bench of the Supreme Court, pivoting sharply from the 2017 stance, categorically upheld the constitutional validity of almost the entirety of the PMLA framework. This included affirming the sweeping powers of

the ED (Sections 5, 17, 19), the absolute admissibility of Section 50 statements, the reverse burden of proof under Section 24, and the resurrected, amended twin conditions for bail under Section 45. The Court reasoned that money laundering is an aggravated economic offence with devastating global consequences, necessitating stringent preventive and regulatory measures. Aligning heavily with FATF commitments and international treaties, the Court ruled that the reverse burden is merely a procedural rule of evidence and does not invalidate the statute, provided the accused is theoretically given a meaningful opportunity to rebut the presumption during the trial. Regarding Section 45, the Court controversially concluded that the 2018 amendment successfully cured the anomalies identified in *Nikesh Tarachand*, and that the compelling state interest in tackling serious economic crime justified the radical departure from standard bail norms.

The Doctrine of Foundational Facts: A Judicial Bulwark

In the turbulent aftermath of *Vijay Madanlal*, subsequent benches of the Supreme Court have increasingly recognized the existential threat posed to civil liberties by the unchecked, arbitrary application of the reverse burden. To prevent what scholars term "constitutional suffocation," the judiciary has increasingly fortified the "doctrine of foundational facts" as a mandatory prerequisite before the reverse burden under Section 24 can be legally triggered.⁴⁴¹

The doctrine explicitly establishes that the statutory presumption of guilt under Section 24 is neither automatic nor absolute. The prosecution cannot merely allege the occurrence of money laundering and demand the accused prove otherwise in a vacuum. Instead, the ED must first incontrovertibly establish three distinct foundational elements on a prima facie basis: (1) the actual commission of a scheduled (predicate)

⁴³⁸ *Nikesh Tarachand Shah v. Union of India*, (2018) 11 SCC 1.

⁴³⁹ The Finance Act, 2018.

⁴⁴⁰ *Vijay Madanlal Choudhary v. Union of India*, (2022) 10 SCC 24.

⁴⁴¹ "Doctrine of Foundational Facts," 11 *Law Journals* (2025).

criminal activity; (2) the generation of "proceeds of crime" derived directly or indirectly from that specific scheduled offence; and (3) the direct or indirect involvement of the accused in a process or activity tangibly connected to those specific proceeds.

Recent progressive jurisprudence in 2024 and 2025 has significantly refined and strengthened this doctrine. In the landmark *Prem Prakash v. Union of India* judgment, the Supreme Court placed a stringent, much-needed check on the mechanisms used to prove these foundational facts.⁴⁴² The Court ruled that statements recorded while an accused is in judicial custody even if that custody is for an entirely separate offence are inherently compromised by a lack of free will and the coercive environment of incarceration. Therefore, such statements are inadmissible under Section 25 of the Evidence Act for the purpose of establishing the "taint" on property. This ruling effectively prevents the ED from using coerced custodial confessions as the sole, uncorroborated basis for shifting the burden of proof onto the accused.

Similarly, the *Pavana Dibbur* judgment added critical nuance to the interpretation of Section 3.⁴⁴³ The Court ruled that "mere possession" of tainted property is insufficient to trigger the reverse burden of proof. The prosecution must establish as a foundational fact that the accused had actual, conscious *knowledge* of the property's illicit origins. This crucial legal distinction serves a vital constitutional purpose: it protects bona fide third parties such as innocent purchasers, legitimate service providers, or unaware family members from being ensnared in the draconian evidentiary trap of Section 24.

Ongoing Judicial Review and the Money Bill Controversy

The jurisprudential landscape surrounding the PMLA remains highly dynamic, with significant legal battles currently unfolding before the highest court. Recognizing the profound,

systemic implications of the *Vijay Madanlal Choudhary* verdict, the Supreme Court has agreed to a limited but highly consequential review of the 2022 judgment. The review petition, notably spearheaded in *Karti P. Chidambaram v. Enforcement Directorate*, is restricted to examining specific constitutional vulnerabilities that were arguably overlooked.⁴⁴⁴

Primarily, the review bench, active into 2025 and 2026, is interrogating whether the ED is legally obligated to supply the Enforcement Case Information Report (ECIR) the PMLA equivalent of an FIR to the accused. The ED has historically argued that the ECIR is an internal document, a stance that severely hampers the ability of the accused to mount a defense or even understand the exact nature of the charges, compounding the difficulty of overcoming the reverse burden. Fundamentally, the review is reassessing whether the reversal of the presumption of innocence under Section 24 is constitutionally sound in its current, aggressive application.

Furthermore, petitioners have forcefully argued that amending the PMLA through the "Money Bill" legislative route a maneuver used to bypass the Rajya Sabha (the upper house of Parliament) represents a fatal constitutional flaw. They argue this maneuver strikes at the root of the democratic legislative process, rendering the amendments that enacted the strict bail conditions entirely invalid.⁴⁴⁵ The Supreme Court had deferred this issue in *Vijay Madanlal*, linking it to the pending decision in the *Rojer Mathew* case before a seven-judge bench. The resolution of this specific controversy holds the potential to dramatically alter the statutory basis of the entire PMLA framework.

Comparative Global Perspectives on the Reversal of Burden of Proof

The Indian approach to the reverse burden of proof under the PMLA can only be comprehensively understood when evaluated against global anti-money laundering

⁴⁴² *Prem Prakash v. Union of India*, 2024 SCC OnLine SC 2270.

⁴⁴³ *Pavana Dibbur v. Directorate of Enforcement*, (2023) 15 SCC 91.

⁴⁴⁴ *Karti P. Chidambaram v. Enforcement Directorate*, R.P. (CrI) 219/2022.

⁴⁴⁵ *Rojer Mathew v. South Indian Bank Ltd.*, (2020) 6 SCC 1.

frameworks. The FATF, through Recommendation 4, expressly encourages member jurisdictions to adopt measures that allow for the confiscation of criminal proceeds without a prior criminal conviction. This is commonly effectuated through shifting the burden of proof to the suspected offender to demonstrate the lawful origin of the property. Consequently, many advanced jurisdictions have implemented reverse burden mechanisms. However, a stark, systemic divergence exists in how these mechanisms are structurally applied and balanced against human rights.

In the United Kingdom, the Proceeds of Crime Act 2002 (POCA) was significantly augmented by the Criminal Finances Act 2017 to introduce Unexplained Wealth Orders (UWOs).⁴⁴⁶ A UWO is an investigatory tool that requires individuals suspected of serious crime, or Politically Exposed Persons (PEPs) from outside the European Economic Area, to explain the origin of their assets if their visible, legitimate income does not mathematically align with their wealth (specifically targeting assets valued over £50,000). If the respondent fails to provide a legitimate explanation or evidence, the property is presumed to be illicit and is subject to recovery.

Crucially, however, the UK's UWO operates entirely within the *civil* sphere of law. It is a non-conviction-based asset recovery tool targeting the property itself (*in rem* proceedings) based on the lower civil evidentiary standard of a "balance of probabilities". The failure to explain wealth results in the forfeiture of the asset, but it does not automatically result in a criminal conviction, nor does it mandate arbitrary pre-trial imprisonment or impact bail conditions for related criminal charges. Australia and Ireland (through its highly effective Criminal Asset Bureau) employ similar civil frameworks that rely on a reverse burden primarily for asset

confiscation, keeping the process distinct from the deprivation of personal liberty.⁴⁴⁷

In sharp contrast, India's PMLA integrates the reverse burden of proof directly into the *criminal* prosecution matrix. Section 24 not only facilitates the civil attachment and confiscation of property but is intrinsically linked to the determination of criminal guilt. Most severely, it is directly tied to the subsequent deprivation of personal liberty under the stringent bail conditions of Section 45. This amalgamation of civil forfeiture standards with criminal penal consequences makes the Indian framework uniquely aggressive on a global scale. While global jurisdictions carefully separate the reverse burden of asset justification from the presumption of innocence in criminal trials, the PMLA blurs this fundamental boundary, creating a systemic risk of human rights violations that lacks a comparable parallel in equivalent common law democracies.

The Horizon of PMLA Jurisprudence: 2025/2026 Legislative Amendments

Concurrently with the judicial reviews, the executive and legislative branches of the Indian government continue to relentlessly expand the regulatory perimeter of the Act. Recognizing the shifting nature of global finance, recent amendments and rules introduced in 2025 and 2026 have brought Virtual Digital Asset (VDA) service providers and cryptocurrency exchanges explicitly within the ambit of reporting entities under the PMLA.⁴⁴⁸ These entities are now mandated to perform exhaustive KYC protocols, real-time transaction monitoring, and beneficial ownership reporting, subjecting the digital economy to the exact same reverse burden frameworks if illicit activity is suspected.

Furthermore, proposed legislative changes via the Prevention of Money Laundering (Amendment) Bill, 2025, indicate a growing, albeit delayed, recognition of the need for

⁴⁴⁷ The Proceeds of Crime Act, 1996 (Ireland).

⁴⁴⁸ Financial Intelligence Unit - India, *AML & CFT Guidelines for Reporting Entities Providing Services Related to Virtual Digital Assets* (Jan. 8, 2026).

⁴⁴⁶ The Criminal Finances Act, 2017 (UK).

institutional checks and balances.⁴⁴⁹ The proposed legislation floats the establishment of an "Oversight and Accountability Committee" (OAC), comprising retired judges, eminent legal experts, and senior bureaucrats, designed to oversee the implementation of the Act and monitor the activities of the Enforcement Directorate. This signals an emerging legislative realization that granting absolute, unfettered powers to investigative agencies, coupled with a reverse evidentiary burden and stringent bail conditions, requires a structured, independent counterweight to prevent systemic abuse and political weaponization of the law.

Suggestions and Recommendations

To successfully reconcile the urgent, undeniable macroeconomic necessity of combatting illicit financial flows with the inviolable constitutional guarantees of personal liberty, fair trial, and the presumption of innocence, the following comprehensive legal, legislative, and procedural reforms are urgently recommended:

- 1. Statutory Codification of the Foundational Facts Doctrine:** The vital judicial safeguards meticulously developed in recent rulings such as *Prem Prakash* and *Pavana Dibbur* must not be left to the fluctuating interpretations of varying judicial benches. They must be explicitly codified into the text of Section 24 of the PMLA. The statute should clearly articulate that the reverse burden of proof is absolutely not triggered until the prosecution has established beyond a mere suspicion, meeting a strict prima facie threshold, and utilizing independent corroborating evidence the existence of the predicate scheduled offence and the accused's direct, knowledgeable connection to the generated proceeds.
- 2. Structural Bifurcation of Civil Forfeiture and Criminal Prosecution:** Aligning with the best practices of the United

Kingdom's Unexplained Wealth Orders and the Australian models, the PMLA should be structurally bifurcated into distinct civil and criminal tracks. The reverse burden of proof should apply strictly to civil proceedings designed for the attachment, freezing, and confiscation of illicit assets (*in rem* proceedings). However, for criminal prosecution that carries the consequence of physical imprisonment (*in personam* proceedings), the traditional burden of proving *mens rea* (criminal intent) and guilt beyond a reasonable doubt must be restored to the prosecution, thereby permanently preserving the constitutional presumption of innocence.

- 3. Reading Down and Reforming the Twin Conditions for Bail:** Section 45 must be urgently legislatively amended or judicially read down by the Supreme Court to ensure that the draconian "twin conditions" apply exclusively to highly exceptional, demonstrable scenarios. These should be limited to instances where the State can prove the accused is a documented flight risk, possesses the tangible capacity to tamper with critical evidence or intimidate witnesses, or is actively involved in the financing of terrorism. For standard economic offences, ordinary, well-established bail principles under Section 439 of the Code of Criminal Procedure (or corresponding sections of the BNSS) should govern, preventing pre-trial incarceration from functioning as an unconstitutional, premature sentence.
- 4. Harmonizing Section 50 with Article 20(3) Protections:** The sweeping power to record admissible statements under Section 50 must be reformed to respect the constitutional mandate of Article 20(3). Statements compelled from an accused under the explicit threat of legal penalty for non-compliance should be

⁴⁴⁹ The Prevention of Money Laundering (Amendment) Bill, 2025.

deemed fundamentally inadmissible in the criminal trial for the purpose of proving guilt, mirroring the vital protections historically provided under Section 25 of the Indian Evidence Act. Alternatively, if such statements are to be recorded and utilized, the law must mandate continuous audio-visual recording of the interrogation in the physical presence of the accused's legal counsel to ensure the absolute absence of psychological or physical coercion.

5. **Implementation of Strict Statutory**

Timelines and Default Bail: To actively counter the severe violation of the right to a speedy trial under Article 21 a systemic issue in Indian courts the PMLA must incorporate rigid, non-extendable statutory timelines for the conclusion of ED investigations. If the investigative agency fails to file a comprehensive, trial-ready prosecution complaint within a stipulated, reasonable timeframe, the accused must be granted an infeasible, statutory right to default bail, completely bypassing the restrictive constraints of Section 45.

6. **Expedited Establishment of Independent Oversight:**

The proposed legislative implementation of an Oversight and Accountability Committee (OAC) must be expedited and granted genuine statutory teeth. This independent body should be empowered to review the initial registration of ECIRs, audit the justification for invoking the reverse burden in specific cases, and ensure that the vast, extraordinary powers of the investigative agencies are exercised proportionately, transparently, and are not deployed as instruments of arbitrary political or systemic harassment.

Conclusion

The statutory architecture of the Prevention of Money Laundering Act, 2002, epitomizes the

profound and enduring contemporary struggle between the absolute preservation of state security, economic integrity, and the uncompromising defense of fundamental civil liberties. In its highly commendable and globally mandated pursuit to sever the financial arteries of organized crime, corruption, and terrorism, the Indian State has engineered a statutory framework that fundamentally alters the axioms of criminal justice. The explicit reversal of the burden of proof under Section 24, compounded exponentially by the severe, almost insurmountable restrictions on pre-trial liberty under Section 45, creates a systemic legal vulnerability where the constitutional presumption of innocence is essentially hollowed out, leaving the citizen defenseless against the machinery of the State.

The tumultuous jurisprudential journey from the rights-centric invalidation in *Nikesh Tarachand Shah* to the state-deferential validation in *Vijay Madanlal Choudhary* vividly illustrates the agonizing complexity of classifying and adjudicating socio-economic crimes within the strict parameters of a constitutional democracy. While international mandates like the FATF necessitate the creation of aggressive asset recovery mechanisms, the Indian legislative adaptation has uniquely, and perhaps dangerously, fused civil forfeiture evidentiary standards with severe criminal penal consequences. This unique fusion places an extraordinarily onerous burden on the accused, risking the normalization of prolonged pre-trial incarceration as a form of substantive punishment, existing in direct violation of the core ethos of Article 21.

However, the evolving judicial narrative over the last few years, marked by the stringent enforcement of the "doctrine of foundational facts" in cases like *Prem Prakash* and the renewed, vital emphasis on the fundamental right to a speedy trial, offers a beacon of constitutional resilience. As the Supreme Court of India continues its critical review of these draconian provisions, it is absolutely imperative to recognize that a robust, effective anti-money

laundering regime does not require the wholesale sacrifice of fundamental human rights. By implementing structured statutory safeguards, bifurcating civil and criminal evidentiary standards in line with global best practices, and emphatically reaffirming the supremacy of the right to life and personal liberty, India can construct a legal framework that is unyielding on economic crime yet unwavering in its commitment to constitutional justice. The burden of innocence must never be rendered so impossibly heavy that the scales of justice themselves collapse under its weight.

BIBLIOGRAPHY

I. Primary Sources

A. Statutes and Bills

- The Bharatiya Nagarik Suraksha Sanhita, 2023.
- The Constitution of India.
- The Criminal Finances Act, 2017 (UK).
- The Finance Act, 2018.
- The Indian Evidence Act, 1872.
- The Prevention of Money Laundering Act, 2002.
- The Prevention of Money Laundering (Amendment) Bill, 2025.
- The Proceeds of Crime Act, 1996 (Ireland).
- The Proceeds of Crime Act, 2002 (UK).

B. Table of Cases

- *Karti P. Chidambaram v. Enforcement Directorate*, R.P. (Crl) 219/2022.
- *Nikesh Tarachand Shah v. Union of India*, (2018) 11 SCC 1.
- *Pankaj Bansal v. Union of India*, (2024) 7 SCC 576.
- *Pavana Dibbur v. Directorate of Enforcement*, (2023) 15 SCC 91.
- *Prem Prakash v. Union of India*, 2024 SCC OnLine SC 2270.

- *Roger Mathew v. South Indian Bank Ltd.*, (2020) 6 SCC 1.
- *State of Rajasthan v. Balchand*, AIR 1977 SC 2447.
- *Subhash Kashinath Mahajan v. State of Maharashtra*, (2018) 11 SCC 46.
- *Vijay Madanlal Choudhary v. Union of India*, (2022) 10 SCC 24.

II. Secondary Sources

A. Journal Articles, Papers, and Blogs

- Aashish Gupta, Aditya Mukherjee, and Puneeth Ganapathy, "Bail under PMLA Presumed Guilty Until Proven Guilty", *SCC Online Blog*.
- "Doctrine of Foundational Facts", 11 *Law Journals* (2025).
- Manu Sebastian, "The Bizarre Logic In Supreme Court's Judgment Denying Bail", *LiveLaw*.
- Parv Gupta, "The Fading Contours of Presumption of Innocence", *Journal of Legal Research and Juridical Sciences* (2025).
- Pragun Goyal, "Reverse Burden of Proof and its Implications on Presumption of Innocence", *The Criminal Law Blog* (2022).
- "Prevention of Money Laundering Act...", *International Journal of Creative Research Thoughts* (2024).
- Shruti Bedi, "Article 21 and Reverse Burdens", *Indian Law Institute* (2018).
- "The Presumption of Innocence vs. Reverse Burden Clauses- A Constitutional Critique", *International Journal of Legal Research* (2024).

B. Reports and Guidelines

- Financial Action Task Force, *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation* (FATF, 2012).

- Financial Action Task Force, *Mutual Evaluation Report of India* (2024).
- Financial Intelligence Unit - India, *AML & CFT Guidelines for Reporting Entities Providing Services Related to Virtual Digital Assets* (2026).
- Law Commission of India, *273rd Report on Implementation of 'United Nations Convention against Torture'* (2017).
- "Unexplained Wealth Orders: Lessons for the UK", *Royal United Services Institute (RUSI)* (2017).
- "Unexplained Wealth Orders", *National Institute of Justice (NIJ)* (2020).

