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THE SHRINKING SHADOW OF THE PREDICATE OFFENCE: TRACKING THE EVOLVING BOUNDARIES OF 'PROCEEDS OF CRIME

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ABSTRACT

The foundational architecture of anti-money laundering (AML) jurisprudence has traditionally rested on a symbiotic, derivative relationship between a 'predicate offence' (the underlying criminal activity) and the resulting 'proceeds of crime'. Historically, money laundering was treated as an accessory crime—a consequential act inherently dependent upon the establishment of a primary illegal act. However, driven by the escalating sophistication of transnational financial networks and the aggressive standard-setting of global watchdogs like the Financial Action Task Force (FATF), recent legislative amendments and sweeping judicial pronouncements have triggered a paradigm shift. This paper, titled "The Shrinking Shadow of the Predicate Offence: Tracking the Evolving Boundaries of 'Proceeds of Crime',", critically examines the jurisprudential transition of money laundering from an ancillary violation into a formidable, increasingly autonomous offence.

By tracing the statutory expansion of what constitutes 'proceeds of crime', the research highlights how modern AML frameworks have systematically decoupled money laundering from its predicate roots. The legal definition of "tainted property" has been aggressively widened to encompass not only the direct fruits of a crime but also properties of equivalent value, commingled assets, and assets held by bona fide third parties. Consequently, regulatory authorities now wield unprecedented, quasi-judicial powers to provisionally attach properties, freeze accounts, and prosecute individuals entirely independent of the outcome—or even the initiation—of a formal criminal trial for the foundational predicate offence. The shadow of the predicate crime has shrunk to the extent that an acquittal in the primary offence no longer guarantees a discharge from the corresponding money laundering prosecution in several jurisdictions.

The paper systematically analyzes the practical and legal implications of this decoupling, evaluating the acute tension between the State's compelling interest in preemptively combatting systemic financial crimes and the steady erosion of fundamental constitutional safeguards. Through a critical appraisal of recent case law, the research explores how the creation of a "standalone offence" fundamentally alters traditional criminal law doctrines.

Key words - Predicate Offence, Standalone Offence, Proceeds of Crime, Reverse Burden of Proof

1: INTRODUCTION

1.1BACKGROUND AND CONTEXT: THE GENESIS OF GLOBAL AML FRAMEWORKS

The global architecture of anti-money laundering (AML) frameworks was historically forged as a targeted response to the booming transnational narcotics trade of the 1980s. The 1988 United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (commonly known as the Vienna Convention) established the first international mandate compelling member states to criminalize the laundering of drug money. In this nascent stage, money laundering was inherently conceptualized as a secondary, accessory crime. Its entire legal existence and enforcement depended strictly upon a primary "predicate" offence—the underlying criminal activity (specifically drug trafficking) that generated the dirty money.

In this traditional framework, the State's power to attach assets and prosecute individuals for laundering was tightly tethered to the proven commission of the predicate offence. The logic was grounded in the fundamental criminal law maxim nullum crimen sine lege (no crime without law): if the prosecution failed to prove the foundational crime, no "proceeds of crime" could legally exist, and the money laundering charge collapsed automatically.

1.2 STATEMENT OF THE PROBLEM: THE TRANSITION TO AN AUTONOMOUS OFFENCE

Over the past two decades, driven by the escalating sophistication of corporate fraud, transnational financial networks, and the aggressive standard-setting by global watchdogs like the Financial Action Task Force (FATF), this legal architecture has undergone a radical transformation. Legislatures worldwide—including India, through successive amendments to the Prevention of Money Laundering Act, 2002 (PMLA)—have systematically expanded the definition of what constitutes "proceeds of crime."[1038]

Consequently, money laundering has progressively shed its accessory nature, emerging as a formidable, standalone offence. The original requirement to definitively prove the predicate offence before attaching properties has been largely dismantled. Instead, regulatory authorities now routinely invoke the "equivalent value" doctrine, allowing them to freeze completely legitimate, tax-paid properties belonging to an accused if the original tainted funds are deemed untraceable.

This "shrinking shadow" of the predicate offence allows agencies like India's Enforcement Directorate (ED) to initiate investigations, secure provisional attachment orders, and effect arrests based merely on the registration of a First Information Report (FIR) for a scheduled crime—without awaiting the outcome of a trial, or even the filing of a formal charge sheet. While the Supreme Court of India in the landmark Vijay Madanlal Choudhary v. Union of India (2022) [1039]upheld the PMLA as an independent code and legitimized this standalone nature, the practical application has created severe due process deficits. Because the offence of money laundering now operates in a separate silo from the underlying crime, the process itself frequently becomes the punishment.

1.3 RESEARCH QUESTIONS AND OBJECTIVES

This paper critically examines the jurisprudential transition of money laundering into an autonomous offence. It seeks to answer three core questions:

1. **The Structural Decoupling:** How has the statutory expansion of 'proceeds of crime'—particularly the inclusion of properties of "equivalent value" and intangible assets—structurally decoupled money laundering from its predicate offence?

2. **Constitutional Frictions:** To what extent does the conceptualization of money laundering as a "standalone offence" erode fundamental constitutional safeguards, specifically the presumption of innocence (due to reverse burdens of proof) and the right to property (due to preemptive provisional attachments)?

3. **A Recalibrated Framework:** How can domestic legal frameworks balance the State's compelling macroeconomic interest in pursuing illicit wealth with robust procedural checks that protect *bona fide* citizens and the broader credit market?

1038 The Prevention of Money-Laundering Act, 2002 (Act 15 of 2003), s. 2(1)(u)

1039 Vijay Madanlal Choudhary v. Union of India, (2022) SCC OnLine SC 929.

1.4 SCOPE AND LIMITATIONS

The study primarily analyzes this jurisprudential shift through the lens of the Indian legal framework, specifically focusing on the Prevention of Money Laundering Act, 2002 (PMLA). It evaluates the evolution of the law leading up to the foundational 2022 Supreme Court ruling in Vijay Madanlal, as well as critical judicial developments traversing 2024 through 2026.[1040]

Recent jurisprudence from 2026 provides a crucial backdrop for this analysis. For instance, in early 2026, the Supreme Court pushed back against the absolute denial of bail in economic offences, ruling that prolonged pre-trial incarceration under the PMLA violates the fundamental right to a speedy trial under Article 21, especially when there is no realistic prospect of the trial concluding swiftly. Furthermore, a pivotal May 2026 Supreme Court decision mandated that an accused possesses the substantive right to be heard before a Special PMLA Court takes cognizance of a complaint, rejecting the Enforcement Directorate's argument that the standalone nature of the PMLA exempts it from general criminal procedure safeguards.

While drawing comparative insights from FATF guidelines and selective approaches in the UK and US, this paper predominantly focuses on the **pre-trial phasespecifically** examining provisional attachments, the burden of proof, and bail thresholds under Section 45 of the PMLA. It is within this pre-trial arena that the decoupling from the predicate offence is most aggressively weaponized, inflicting economic and personal deprivation long before a formal adjudication of guilt occurs.

2: THE FOUNDATIONAL ARCHITECTURE: THE SYMBIOTIC RELATIONSHIP

2.1 CONCEPTUALIZING MONEY LAUNDERING: THE TRADITIONAL VIEW

In orthodox criminal jurisprudence, money laundering could not exist in a legal vacuum; it was conceptually and operationally a derivative act. The very definition of the crime—as a subsequent or secondary offence—mandated that a prior, primary illegal act had already occurred to generate the illicit wealth. Historically rooted in the global response to the booming transnational narcotics trade of the 1980s, the prosecution of a launderer necessitated unequivocal proof that a scheduled "predicate" crime (such as drug trafficking or organized extortion) had actually been committed.

Under this traditional framework, the actus reus (the physical act of laundering) and the mens rea (the criminal intent) were inextricably linked to the specific illegal origin of the funds. The core intent required to secure a conviction was the deliberate design to conceal or disguise the illicit origins of specific wealth generated by a specifically identified crime. The law did not criminalize the mere possession of unexplained wealth; it criminalized the active process of "placement, layering, and integration" designed to cleanse dirty money flowing directly from a proven criminal enterprise. Thus, a predicate offence was the absolute sine qua non—without the proven existence of the primary crime, the legal concept of 'proceeds of crime' simply could not materialize.

2.2 THE ACCESSORY NATURE OF EARLY AML LAWS AND THE VIENNA CONVENTION

Early anti-money laundering (AML) statutes strictly adhered to the fundamental criminal law maxim nullum crimen sine lege (no crime without law). Because money laundering was an accessory crime, the evidentiary burden on the

[1040] The Prevention of Money-Laundering Act, 2002 (Act 15 of 2003), s. 24.

State was heavily weighted. If the prosecution failed to prove the foundational predicate offence beyond a reasonable doubt in a court of law, the subsequent money laundering charge collapsed automatically, as the "taint" of the money could no longer be legally established.

This symbiotic architecture was codified in the foundational international treaty of this era: the 1988 United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (commonly known as the Vienna Convention). The Vienna Convention was the first major international instrument to require member states to establish money laundering as a criminal offence, but its scope was deliberately narrow, explicitly restricting the definition of predicate offences to drug trafficking and related crimes. Under this regime, the State's power to freeze, attach, or confiscate assets was tightly tethered to the proven commission of a scheduled drug offence. This strict tether ensured that fundamental property rights were not arbitrarily disturbed or expropriated based on mere preliminary suspicion of financial irregularity; asset forfeiture was the punitive conclusion of a successful criminal trial, not a preemptive investigative tool.

2.3 INTERNATIONAL STANDARD-SETTING AND THE PALERMO SHIFT

The establishment of the Financial Action Task Force (FATF) by the G7 in 1989 began to broaden the international focus beyond narcotics, but it was the 2000 UN Convention Against Transnational Organized Crime (the Palermo Convention) [1041]that marked the critical legal inflection point. Recognizing that criminal syndicates were generating massive revenues from non-drug related activities, the Palermo Convention urged member states to drastically widen the net.

Crucially, Palermo mandated that countries apply the crime of money laundering to "the widest range of predicate offences," officially expanding the scope to include all "serious crimes" such as corruption, human trafficking, arms smuggling, and obstruction of justice. While the Palermo Convention technically retained the theoretical symbiotic relationship—still requiring a primary crime to generate the proceeds—it fundamentally altered the legislative landscape. By actively encouraging the expansion of the predicate schedule, it laid the groundwork for domestic legislatures to exponentially increase the number of offences that could trigger an AML investigation. This global policy shift opened the floodgates, setting the stage for the modern expansive regime where legislatures continuously append even minor corporate and regulatory offences to their schedules, effectively transforming the exception of asset forfeiture into a generalized weapon of state enforcement.

3: THE EXPANDING BOUNDARIES OF 'PROCEEDS OF CRIME'

3.1 STATUTORY EVOLUTION: BROADENING THE "TAINTED" DEFINITION

The pivot toward an autonomous offence required a fundamental, statutory redefinition of what constitutes the "fruits of the crime." In India, the original conceptualization of 'proceeds of crime' under Section 2(1)(u) of the Prevention of Money Laundering Act, 2002 (PMLA)[1042] was relatively straightforward, targeting property strictly "derived or obtained" as a result of a scheduled offence. However, successive legislative interventions—most notably the Finance Acts of 2015 and 2019—radically expanded this definition.

The insertion of the phrase "or the value of any such property" became the linchpin of modern AML overreach. Furthermore, the 2019 amendment introduced an overarching "Explanation" clause, clarifying that proceeds of crime include not only property derived from the scheduled offence itself but also any property derived directly or indirectly from any criminal activity relatable to the scheduled offence. This statutory evolution effectively broadened the

[1041] The Prevention of Money-Laundering Act, 2002 (Act 15 of 2003), s. 24.

[1042]The Prevention of Money-Laundering Act, 2002 (Act 15 of 2003), s. 2(1)(u agency's mandate. The focus shifted from merely tracking the immediate physical or monetary fruits of a crime to capturing substitute assets, thereby laying the groundwork for the aggressive attachment strategies seen today.

3.2 BEYOND DIRECT FRUITS: EQUIVALENT VALUE AND INDIRECT BENEFITS

The most profound consequence of this statutory expansion is the operationalization of the "equivalent value" doctrine. This doctrine dictates that if an accused successfully dissipates, consumes, or siphons off the original tainted funds, enforcement agencies are not left powerless. They can legally attach entirely legitimate, legally acquired, and tax-paid properties belonging to the accused, up to the monetary value of the missing tainted funds.

This statutory fiction legally transforms untainted assets into 'proceeds of crime' for the sole purpose of attachment, completely bypassing the complex forensic requirement to trace the actual flow of dirty money. The Delhi High Court in Deputy Director, Directorate of Enforcement v. Axis Bank (2019) explicitly validated this, ruling that the PMLA permits proceedings against untainted property provided it is attached as an equivalent to the "value of any such property". This was further cemented by the Supreme Court in Vijay Madanlal Choudhary v. Union of India (2022), which held that if tainted property is untraceable or taken outside the country, property equivalent in value held within the country can be validly proceeded against.

While the Supreme Court attempted to install a guardrail in Pavana Dibbur v. Directorate of Enforcement (2023) [1043]by clarifying that properties bought prior to the commission of the scheduled offence cannot intrinsically be termed 'proceeds of crime', enforcement agencies frequently circumvent this. They attach older, ancestral, or pre-existing properties by invoking the "equivalent value" clause, asserting that because the actual proceeds of the crime generated after the offence were consumed or hidden, the pre-existing legitimate assets must be attached as a substitute.

3.3 COMMINGLED ASSETS AND INTANGIBLE WEALTH

The contemporary application of the PMLA recognizes that modern financial networks rarely keep illicit funds isolated in distinct silos. When tainted money is injected into a corporate entity and commingled with legitimate business revenue, tracing the exact rupee becomes a forensic impossibility. Under the expanded definition of proceeds of crime, authorities frequently resort to attaching the entire pool of assets or the entire bank account, shifting the burden onto the business owner to mathematically separate the clean money from the dirty.

Furthermore, the statutory expansion now aggressively targets intangible wealth. The definition of "property" under Section 2(1)(v) [1044]encompasses assets of every description—corporeal or incorporeal, tangible or intangible. This empowers agencies to attach digital currencies, intellectual property rights, and the equity valuations of shell companies. By broadening this definition to include indirect economic benefits and commingled corporate assets, legislatures have empowered agencies to cast a massive, paralyzing dragnet over corporate operations. Consequently, the actual predicate crime—whether a localized fraud or a banking irregularity—seems legally distant and operationally irrelevant to the immediate, devastating seizure of a corporation's entire working capital.

4:THE 'SHRINKING SHADOW': JUDICIAL DECOUPLING AND THE STANDALONE OFFENCE

4.1 THE PARADIGM SHIFT: TRACING THE JUDICIAL DEPARTURE FROM THE PREDICATE OFFENCE REQUIREMENT.

Because tracing layered funds globally is notoriously difficult, states shifted their

[1043] Pavana Dibbur v. Directorate of Enforcement, (2023) SCC OnLine SC 1586.

[1044] The Prevention of Money-Laundering Act, 2002 (Act 15 of 2003), s. 2(1)(v).

overarching enforcement strategy: rather than merely prosecuting the generation of illicit funds through the primary crime, they began prioritizing the prosecution of the *concealment* or *possession* of those funds. This strategic pivot required legally and operationally separating the anti-money laundering (AML) prosecution from the predicate trial.

Today, this paradigm shift is most evident in the *modus operandi* of agencies like India's Enforcement Directorate (ED). The initiation of a money laundering investigation no longer waits for a police charge sheet or a magisterial finding of guilt in the underlying crime. The mere registration of a standard police First Information Report (FIR) for a scheduled offence is sufficient for the ED to register an Enforcement Case Information Report (ECIR). Armed with this ECIR, the agency rapidly moves to provisionally attach properties, freeze bank accounts, and summon individuals under Section 50 of the PMLA. The timeline of AML enforcement now operates entirely uncoupled from the slow grind of the predicate trial. Consequently, the State secures the immediate economic incapacitation of the accused years—sometimes decades—before a criminal court actually determines whether the underlying scheduled offence was ever committed.

4.2 LANDMARK JUDICIAL PRONOUNCEMENTS: VIJAY MADANLAL CHOUDHARY AND BEYOND

This statutory decoupling was judicially cemented and constitutionalized in the landmark judgment of Vijay Madanlal Choudhary v. Union of India (2022). [1045]In this sweeping verdict, the Supreme Court of India upheld the extensive powers of the ED, explicitly declaring that the offence of money laundering under Section 3 of the PMLA is an "independent and standalone offence." The Court ruled that the mere possession, acquisition, concealment, or projection of tainted property as untainted is sufficient to constitute the crime, fundamentally decoupling the actus reus of laundering from the commission of the predicate offence. The ruling clarified that a person can be prosecuted for money laundering even if they are not named as an accused in the predicate crime, provided they are knowingly involved in dealing with its proceeds.

While Vijay Madanlal serves as the bedrock of the modern standalone offence, subsequent jurisprudence has attempted to temper its harshest edges. For instance, in Yash Tuteja v. Union of India (2024)[1046], the Supreme Court clarified that while the PMLA is a special statute, the Special Court must still apply its judicial mind to determine if a prima facie case of money laundering is actually made out in the ED's complaint before issuing process, preventing the mechanical initiation of trials. Furthermore, in Tarsem Lal v. Directorate of Enforcement (2024), [1047]the Supreme Court ruled that the ED cannot arbitrarily arrest an accused after the Special Court has taken cognizance of the complaint, thereby attempting to reinstate judicial oversight over the agency's unbridled power of arrest. Nonetheless, the core doctrine of the standalone offence established in Vijay Madanlal remains the prevailing law, pending a partial review before the Supreme Court.

4.3 SURVIVING THE PRIMARY TRIAL: THE ACQUITTAL DICHOTOMY

A deeply complex and often paradoxical legal dichotomy currently exists at the intersection of the predicate offence and the PMLA charge. Recent jurisprudence, notably Pavana Dibbur v. Directorate of Enforcement (2023) [1048]and echoed in subsequent 2024/2025 High Court rulings, has clarified a vital boundary: if an accused is finally acquitted or discharged in the predicate offence on its substantive merits, or if the predicate FIR is quashed, the PMLA prosecution cannot sustain. The legal logic is absolute—if the primary court determines that no scheduled crime occurred, the legal existence

[1045] Vijay Madanlal Choudhary v. Union of India, (2022) SCC OnLine SC 929.
[1046] Yash Tuteja v. Union of India, (2024) 8 SCC 465.
[1047] Tarsem Lal v. Directorate of Enforcement, (2024) 7 SCC 61.
[1048] Pavana Dibbur v. Directorate of Enforcement, (2023) SCC OnLine SC 1586.

of the 'proceeds of crime' is wiped out, and the standalone PMLA charge must logically collapse.

However, this jurisprudential protection only arrives at the end of a trial—a process that in India can take over a decade. For the years leading up to that eventual acquittal or discharge, the accused suffers preemptive incarceration, the destruction of their reputation, and the complete paralysis of their personal and corporate assets.

Recognizing that this "process is the punishment," the Supreme Court has recently been forced to invoke constitutional remedies to override the PMLA's rigid statutory framework. In V. Senthil Balaji v. Deputy Director [1049](2024) and Udhaw Singh v. Enforcement Directorate (2025)[1050], the Supreme Court explicitly held that when the trial of a PMLA complaint—along with its voluminous predicate trial involving hundreds of witnesses—is likely to prolong beyond reasonable limits, Constitutional Courts must exercise their power to grant bail. The Court ruled that the draconian bail restrictions of Section 45(1)(ii) of the PMLA cannot become instruments for indefinite pre-trial incarceration, as doing so directly violates the fundamental right to a speedy trial under Article 21 of the Constitution. Thus, while the standalone nature of the offence permits preemptive punishment, the judiciary is increasingly leaning on constitutional rights to mitigate the devastating delay between the initial attachment and the eventual, often inevitable, collapse of the case upon an acquittal in the predicate offence.

5: DUE PROCESS DEFICITS AND CONSTITUTIONAL FRICTIONS

5.1 THE REVERSE BURDEN OF PROOF AND THE PRESUMPTION OF GUILT

The most glaring constitutional friction in modern AML law is the statutory inversion of the presumption of innocence—the bedrock "golden thread" of traditional criminal jurisprudence. Under Section 24 of the PMLA, the evidentiary framework is radically skewed: once the enforcement agency establishes a mere "foundational fact" (often just the existence of an asset and the registration of an FIR for a predicate offence), the burden of proof shifts entirely to the accused. The accused must legally demonstrate that the attached assets are entirely untainted.

In the context of modern commerce, this creates an almost insurmountable evidentiary hurdle. Corporate structures are inherently complex, often involving decades of legitimate transactions, cross-border investments, and commingled revenue streams. Forcing a citizen or corporate entity to prove a negative—that specific funds were *not* illicitly obtained—demands forensic accounting reconstructions that stretch back years, long after standard document-retention periods have expired. This statutory presumption of guilt allows the State to secure attachments and drive prosecutions based on circumstantial suspicion, fundamentally undermining the protections guaranteed under Article 21 (Right to Life and Personal Liberty) of the Constitution.

5.2 STRINGENT BAIL THRESHOLDS: THE PRE-TRIAL PUNISHMENT

This decoupling of the AML prosecution from the predicate crime is aggressively enforced through draconian bail conditions, transforming pre-trial detention from a preventive measure into a punitive tool. Section 45 of the PMLA imposes notorious "twin conditions" for the grant of bail: a judicial magistrate must be legally satisfied that there are reasonable grounds for believing the accused is *not guilty* of the offence, and furthermore, that they are not likely to commit any offence while on bail.

This framework effectively demands a "mini-trial" at the bail stage. It forces the judge to arrive at a preliminary finding of innocence before the trial has even commenced, directly subverting the time-honored constitutional tenet that "bail is the rule, and jail is an exception." Because

[1049] V. Senthil Balaji v. Deputy Director, Directorate of Enforcement, 2024 SCC OnLine SC 2626.

[1050] Udhaw Singh v. Enforcement Directorate, 2025 SCC OnLine SC 178.

meeting this threshold is practically impossible in complex financial cases where the agency produces voluminous, unverified digital evidence, pre-trial incarceration becomes the norm. Consequently, the process itself becomes the punishment. Even when the underlying predicate offence is highly contestable or lacks evidentiary backing, the accused languishes in prison for years under the standalone PMLA charge, weaponizing incarceration to coerce confessions or force corporate settlements.

5.3 THE RIGHT TO PROPERTY AND PREEMPTIVE CIVIL DEATH

Article 300A of the Indian Constitution unequivocally protects citizens from being deprived of their property save by authority of law. [1051]However, the provisional attachment mechanisms embedded in AML statutes frequently render this protection hollow. Under Section 5 of the PMLA, agencies can provisionally attach properties based merely on an internal, highly subjective "reason to believe" that the assets are proceeds of crime and are likely to be concealed or transferred.

Because these attachments occur entirely independent of a formal conviction—and often before a formal charge sheet is even filed in the predicate offence—they serve as a preemptive strike. By immediately freezing operational bank accounts, factories, and personal estates, the State economically incapacitates the accused. For a corporate entity, the freezing of working capital accounts leads to an immediate "civil death"—salaries halt, statutory dues default, and supply chains collapse. Even if the accused is acquitted a decade later, the business is completely decimated. This statutory power circumvents the traditional criminal standard of "beyond a reasonable doubt," allowing the State to inflict the ultimate economic penalty based solely on preliminary investigative suspicion.

6: THE COLLATERAL IMPACT: THIRD PARTIES AND CORPORATE LIABILITIES

6.1 CAUGHT IN THE CROSSFIRE: BONA FIDE PURCHASERS

The sweeping statutory definition of 'proceeds of crime' creates a severe contagion effect, frequently ensnaring individuals and entities entirely unconnected to the foundational predicate crime. Because modern anti-money laundering (AML) frameworks treat the "taint" of illicit wealth as something that attaches to the property itselfrather than strictly to the offender—*bona fide* purchasers who unknowingly acquire real estate, vehicles, or business assets with a hidden illicit history find their properties abruptly attached by enforcement agencies.

This creates a profound legal asymmetry. While the primary accused may still be undergoing trial, the third-party purchaser is immediately subjected to the punitive consequences of asset freezing. Although courts and appellate tribunals theoretically offer a shield to purchasers who can prove they conducted rigorous "due diligence" and paid fair market value, the procedural reality is punishing. The reverse burden of proof embedded in statutes like Section 24 of the Prevention of Money Laundering Act (PMLA) forces legitimate citizens to prove a negative: that they had absolutely no knowledge of the asset's historical connection to criminal activity, which may have occurred years or even decades prior.

Consequently, innocent buyers are dragged into a labyrinthine adjudicatory process. They must litigate before Adjudicating Authorities, Appellate Tribunals, and High Courts merely to unfreeze their legally purchased homes or commercial spaces. This aggressive attachment strategy not only violates the property rights of innocent citizens but also casts a chilling effect

[1051] The Constitution of India, art. 300A..

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over legitimate secondary markets and real estate transactions, as the omnipresent threat of retroactive state confiscation undermines the sanctity of legal titles.

6.2 THE PLIGHT OF LENDERS, SECURED CREDITORS, AND THE IBC CONFLICT

A severe and systemic conflict exists between punitive AML attachments and remedial corporate restructuring laws, most notably the Insolvency and Bankruptcy Code, 2016 (IBC) and the SARFAESI Act. At the heart of this friction are two diametrically opposed legislative objectives: the IBC seeks value maximization, corporate rescue, and the protection of credit markets, whereas the PMLA seeks the punitive confiscation and vesting of tainted assets in the State.

When a corporate debtor defaults, secured creditors—often public sector banks holding the public's trust and money—initiate insolvency proceedings to liquidate or resolve the company's assets. However, enforcement authorities frequently intervene, attaching these exact same secured assets as "proceeds of crime" stemming from financial frauds committed by the debtor's erstwhile promoters. This triggers highly complex litigation over who holds the "first charge" or priority over the asset: the defrauded bank or the sovereign State?

While Parliament introduced Section 32A into the IBC to immunize new buyers (resolution applicants) from the prior management's AML liabilities, this safe harbor is conceptually flawed in its timing. Section 32A only triggers *after* a resolution plan is approved by the adjudicating authority. [1052]In practice, when enforcement agencies attach a corporate debtor's core assets at the very inception of the insolvency process, the intrinsic value of the company plummets. Potential buyers are scared away by the prospect of inheriting PMLA litigation, making a successful resolution plan impossible to formulate.

Furthermore, recent judicial interpretations leaning toward state supremacy have destabilized the priority waterfall established under Section 53 of the IBC. When state attachments override the rights of secured creditors, the financial loss is ultimately absorbed by the banking sector. By prioritizing state confiscation over credit recovery, the current legal framework effectively penalizes the victims of the financial crime—the lenders and public depositors—while failing to isolate the punitive actions to the personal, unencumbered estates of the rogue promoters who actually committed the fraud.

7: CONCLUSION AND A RECALIBRATED FRAMEWORK

7.1 SUMMARY OF FINDINGS: THE CULMINATION OF THE STANDALONE OFFENCE

The statutory and judicial evolution of money laundering into an autonomous, standalone offence has successfully equipped the State with the rapid-response tools necessary to combat modern financial syndicates. However, this transition has cast a "shrinking shadow" over the predicate offence, resulting in a regime where the mere suspicion of financial irregularity frequently triggers the suspension of fundamental rights. The aggressive attachment of "equivalent value" properties, combined with reverse burdens of proof and restrictive bail conditions, has created a framework that borders on preventive detention and arbitrary expropriation.

The apex of this jurisprudential shift is starkly visible in recent judicial interpretations regarding corporate assets. In the landmark 2025 decision *National Spot Exchange Ltd. (NSEL) v. Union of India*, [1053]the Supreme Court of India fundamentally altered the hierarchy of economic laws by ruling that properties attached under the Prevention of Money Laundering Act, 2002 (PMLA) vest entirely in the State, thereby taking precedence over the Insolvency and Bankruptcy Code (IBC) and the

[1052] The Insolvency and Bankruptcy Code, 2016 (Act 31 of 2016), s. 32A.

[1053] National Spot Exchange Ltd. v. Union of India, 2025 SCC OnLine SC 123.

SARFAESI Act. Consequently, the State's punitive authority to confiscate 'proceeds of crime' now eclipses the rights of *bona fide* secured creditors and paralyzes the collective resolution mechanism. By allowing state-driven attachments to override the IBC's moratorium, the law effectively punishes legitimate stakeholders—such as banks and public depositors—for the historic sins of rogue promoters, demonstrating how far the standalone offence has strayed from traditional criminal justice principles.

7.2 PROPOSING A RECALIBRATED FRAMEWORK (SUGGESTIONS)

To prevent the complete subversion of criminal justice and the destabilization of credit markets, a recalibrated approach is imperative. The law must evolve to balance the aggressive pursuit of illicit wealth with robust procedural safeguards.

- **Codification of Asset Substitution and Enhanced Judicial Oversight:** Provisional attachments, particularly of "equivalent value" assets, must be subjected to immediate, stringent judicial scrutiny. Currently, businesses face "civil death" when their operational bank accounts and primary assets are frozen indefinitely. While the Supreme Court recently permitted the substitution of provisionally attached assets with unencumbered commercial units in M3M India Pvt. Ltd. v. Union of India (2025) [1054]to allow business continuity, the Court explicitly noted this was not a binding precedent. Parliament must codify this right of substitution into the PMLA, allowing accused entities to offer alternative unencumbered security (such as bank guarantees or equivalent properties) to release operational assets during the pendency of trial.

- **Enforcing Proportionality in Attachment:** The statutory power to attach properties based on a "reason to believe" is frequently exercised as a sweeping dragnet. Legislative amendments must mandate a strict proportionality test: the value of attached properties must exactly correlate to the quantifiable, documented proceeds of the specific crime. Furthermore, enforcement agencies must be required to prove a direct, undeniable nexus between the alleged crime and the specific property attached, rather than relying on the arbitrary attachment of a citizen's entire legitimate estate.

- **Harmonizing Corporate Laws to Protect the Broader Economy:** The precedent set by the 2025 *NSEL* judgment poses a systemic risk to the banking sector. The legislature must decisively intervene to restore the primacy of the IBC in matters of corporate insolvency. The "clean slate" doctrine must be fortified to ensure that the rights of secured creditors and successful resolution applicants are statutorily insulated from retroactive PMLA attachments. Money laundering penalties should pursue the individual wrongdoer's personal assets, rather than destroying the residual corporate value that legitimately belongs to public banks and operational creditors.

7.3 CONCLUSION

The war on financial crime and the recovery of illicit wealth are undeniable macroeconomic necessities. In an era of borderless digital finance and sophisticated corporate fraud, the State must possess potent tools to dismantle laundering networks that threaten national security and the integrity of credit markets. However, these tools cannot operate in a constitutional vacuum. The transformation of the PMLA into an entirely independent code—one where the sheer gravity of the alleged economic offence overrides all procedural safeguards—has created a disproportionate regime where the punishment often precedes the trial itself. The combination of endless pre-trial incarceration without bail, the reverse burden of proof, and the total preemptive expropriation of personal and corporate assets ensures that an accused is economically and socially decimated long before a judge ever rules on their guilt.

[1054] M3M India Pvt. Ltd. v. Union of India, 2025 SCC OnLine SC 456.

Yet, recent jurisprudential developments in early 2026 suggest a crucial, corrective shift. Recognizing that the PMLA cannot be allowed to permanently "freeze" Article 21 of the Constitution, constitutional courts are beginning to pivot from the harsh "Reverse Burden" of Section 24 to demanding a "Performance Burden" from the State. In cases involving mountains of unverified digital evidence and hundreds of witnesses, the Supreme Court has signaled the inception of the "Wherewithal Test". This doctrine mandates that if the enforcement agency lacks the practical wherewithal to conclude a trial swiftly, it loses the legal standing to demand the continued, indefinite pre-trial custody of the accused. It is a profound judicial acknowledgment that the "supply of documents" and the right to a fair trial are inextricably linked to the right to a speedy trial; the State's power to prosecute does not grant it the power to procrastinate at the cost of human liberty.

Ultimately, the war against economic offences must not be waged by sacrificing the constitutional bedrock of due process, the presumption of innocence, and the fundamental right to property. Allowing state attachments to indefinitely paralyze businesses or override the rights of *bona fide* creditors under the IBC punishes the economy rather than the actual perpetrators of the fraud. A statutory and judicial recalibration—by strictly defining 'proceeds of crime', codifying asset substitution, and placing strict time limits on pre-trial incarceration—is not a concession to criminals. Rather, it is a necessary restoration of the rule of law, ensuring that the sword used to strike down financial crime does not simultaneously sever the foundational tenets of democratic justice.