



A CRITICAL ANALYSIS OF THE PMLA ACT: ITS CONSTITUTIONAL VALIDITY AND THE ROLE OF JUDICIARY IN SHAPING ITS JURISPRUDENCE

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ABSTRACT

The offence of money laundering may sound like a lesser crime to a large group of people, and they may even have the opinion that making separate legislation to curb this crime may not be necessary. However, money laundering is one of the primary reasons behind criminal and illegal activities such as drug trafficking, terrorism, and other offences that may hinder the economic development of a country. Thus, to tackle and prevent these types of activities, various countries have adopted certain measures in the form of laws and legislation to tackle this menace. In India, the Prevention of Money Laundering Act of 2002 was enacted by the Parliament to prevent money laundering and provide for the confiscation of property derived from it. This Act established an independent agency known as the Enforcement Directorate or the ED, which was given wide powers to investigate money laundering. However, in recent times, various provisions of the established act and the powers of ED started to come into the limelight when numerous petitions were filed before the High Court and the Supreme Court of India citing abuse of power by the ED agency, highlighting certain provisions of the act which violated the fundamental rights of a person such as the “Reverse burden of proof” and thus, they were being termed as arbitrary and unconstitutional. This prompted the Supreme Court to handle this issue and take the necessary cognisance. However, the honorable court upheld the provisions of the act and stated that this peculiar act is essential for solving cases of money laundering. Hence, this piece of paper will provide the users with an effective understanding of how the judiciary, through various judgments, has interpreted this article, which even prompted the Parliament to amend it a few times. It will also delve into the various intricate and complex provisions of the respective Act, along with discussing its core constitutional challenges. This research paper will also critically examine and compare the other anti-money

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laundrying legislations of different countries and will conclude by stating how the stringent and punitive provisions of the PMLA Act can be brought to changed.

Keywords: Money laundering, Legislation, Provision, Criminal activity, Attachment.

SHORT STATEMENT OF THE PROBLEM

The Prevention of Money Laundering Act, (PMLA Act of 2002) has been in recent debates due to its constitutional criticism and challenges along with the role of judiciary in upholding certain provisions in the Act, which have been criticized by the well-educated people of this country due their operation being violative of the fundamental rights of a person. These provisions have been upheld by the judiciary, stating that these provisions do not violate the fundamental rights of a person who is accused in the case of money laundering and that these overriding provisions are necessary for the proceedings in cases of money laundering. The reasons laid by the judiciary stated that money laundering is a serious threat to the financial integrity and the sovereignty of the country, and the court viewed PMLA not as a statute in a conventional sense but as a regulatory and preventive law. The court in landmark judgments concluded that this Act is a necessary tool to combat economic offences and money laundering and stated that the unique nature of economic offences and regulatory objectives justify a departure from standard criminal law safeguards.

OBJECT AND PURPOSE OF STUDY

This particular project explores the complex and various critical aspects of the PMLA Act of 2002 through numerous constitutional articles, Supreme Court judgments, precedents, and their ramifications. This study aims to provide people with a nuanced and proper understanding of the particular Act, which is supplemented by several precedents and an analysis of certain laws. It also gives the readers a brief knowledge about how this piece of legislation came into effect and how its counterpart legislation in other countries functions. The main intention behind this piece of paper is to understand the intricate nature of the PMLA Act and the other provisions that come into play with it.

RESEARCH METHODOLOGY

This paper employs a doctrinal methodology approach to thoroughly investigate the subject matter at hand. It seeks to analyse and comprehend the intricate and complex legal framework surrounding the PMLA ACT, 2002, delving into various judicial interpretations and exploring

various pertinent precedents. The primary sources of this research include the Constitution of India and the PMLA ACT of 2002, alongside significant judgments delivered by the High Court and the Supreme Court of India. Secondary sources include various journals, websites, expert opinions, and articles concerning this Act. These legal texts provide invaluable insights and a comprehensive understanding of the framework and judicial responses associated with the Prevention of Money Laundering Act, 2002. These supplementary materials play a crucial role in enriching the research, facilitating a deeper understanding of the topic, and offering diverse perspectives that complement the legal analysis presented in this paper.

INTRODUCTION

Since the genesis of time, a common question has arisen among the common strata of people: what is the most important asset for a human being, which is vital for their survival? Is it food, land, or clothing? Well, it's neither of them. It's none other than 'Money'. Everyone wants to earn money and get rich, so that they can have a higher standard of living. Eventually, the world got divided between two types of people, the individuals who would resort to legal ways of earning money and the other kinds of people, who thought of just getting rich, no matter the way and were ready to go to any extent to acquire wealth. The psychology behind this school of thought was not so unique or distinct, but 3 simple and common reasons- "Greed", "Power", and "Desire". Hence, this sect of individuals began to engage in unethical means and corrupt practices such as organised crime, drug trafficking, to generate money and increase their wealth. However, these types of activities posed a significant threat, as if these individuals got caught while conducting these malpractices, they would face consequences.¹

This led to the origination of the term "Money laundering", which enabled people to convert their illegitimate money into legitimate or "White money" and escape from the radar of the concerned authorities. In essence, money laundering refers to a process that criminals use as an attempt to hide the illegal source of their income and avoid taxation by passing money through complex transfers and transactions, or sometimes even through a series of channels involving certain businesses.² If done effectively, the money is "Cleaned" of its corrupt origin and is made legitimate, which in turn enables the people to spend their money freely and hide

¹ CA Mayur Joshi, 'Origin of Money Laundering' (India Forensic, 8 March 2020) <https://indiaforensic.com/certifications/origin-of-money-laundering/> accessed 10 May 2025

² Corporate Finance Institute, 'Money Laundering' (Corporate Finance Institute, 2023) <https://corporatefinanceinstitute.com/resources/career-map/sell-side/risk-management/money-laundering/> accessed 12 May 2025.

their criminal proceeds. Although the particular term and the process behind it may sound easy to comprehend, the operation behind money laundering is not so laid-back and contains a variety of steps to effectively hide or make it appear as income from a legitimate source. It consists of various methods such as structuring, shell companies or even through real estate, which is conducted by purchasing land with illicit funds and then selling it to convert the value into white money. As major businesses and enterprises, containing illicit and criminal operations that generated huge amounts of cash, there was a strong need for a mechanism to store this cash effectively and even conceal it to avoid investigation by authorities.³ This made money laundering a vital tool for them to avoid incurring massive tax implications and convert their black income into white money by “Laundering” it.

This became a concern for various countries as money laundering operations started to deal with trillions of dollars worldwide each year; therefore, these activities began to exert an extensive impact on major national economies. This prompted the law enforcement agencies of various countries to urgently address this issue, and as a result, all the G-7 member nations held a summit in Paris in 1989, aiming to formulate various policies and establish institutions to examine this subject. Therefore, a Financial Action Task Force (FATF) was created to recommend measures to tackle this menace.⁴

Shortly after going through the recommendation of FATF and coming to parity in terms of foreign regulations which were being made to address this topic, in India, the Parliament enacted an act to tackle and prevent the particular issue of money laundering, which came to be known as the Prevention of Money Laundering Act, 2002 (PMLA), and was enforced in 2005. It primarily aims to combat the rising trend of money laundering-related and other illegal activities, such as drug trafficking, smuggling, and terrorism financing. The Act states that anyone who tries to hide or help with money gained from illegal activities by pretending it's clean money can be charged with money laundering.⁵ The PMLA even states that proceeds from certain activities identified as offences under the Indian Penal Code, the NDPS Act, the

³ *Ibid*

⁴ Drishti IAS, ‘Introspecting PMLA, 2002’ (Drishti IAS, 17 April 2023) <https://www.drishtiias.com/daily-updates/daily-news-editorials/introspecting-pmla-2002> accessed 12 May 2025.

⁵ *Anti-money laundering act kicks off*, The Economic Times (New Delhi, 3 August 2005) <https://economictimes.indiatimes.com/news/economy/policy/anti-money-laundering-act-kicks-off/articleshow/1156901.cms> accessed 13 May 2025.

Arms Act, the Wildlife (Protection) Act, the Immoral Traffic (Prevention) Act, and the Prevention of Corruption Act would be covered under this piece of legislation.⁶

It even describes the punishment for the offences under this particular act, which is termed as the punishment for offences under the Act, is rigorous imprisonment for 3-7 years and a fine which may extend to Rs 5 lakh. Where the money laundering offence relates to a drug offence under the Narcotic Drugs and Psychotropic Substances Act (NDPS Act), the penalty can extend to a maximum term of 10 years.⁷ It even mandates other entities, such as banks and financial institutions, to maintain records of transactions and report suspicious transactions to the Financial Intelligence Unit (FIU), a multi-disciplinary unit created by the government to establish links between suspicious transactions and underlying criminal activities. Another crucial element, which is quite a decisive factor in determining whether a crime comes under the ambit of investigation under the PMLA Act, is called “Proceeds of crime” (POC). This essential term refers to the property which is derived or obtained directly or indirectly as a result of criminal activities related to scheduled offences, or the value of any such property, or where such property is taken or held outside the country.

So, if an individual engages in activities such as concealment, possession, or utilisation of said proceeds of crime, they shall be deemed to have committed the offence of money laundering.⁸ Hence, we can conclude that to an investigation under the PMLA Act, there are 2 primary prerequisites namely – a commission of an offence which is defined as a “Scheduled offence” under the act and there should be any “Proceeds of crime” involved in the case (which is only possible if there is a financial transaction involved). However, there is a small catch in this situation, which lies in that the PMLA lies in focuses on the later steps of making the illegal money look clean and not the initial crime that generated the money. In layman's language, if the predicate offence is not scheduled, then the PMLA Act will not apply. For example, if a thief commits theft at a house and simply steals and hides the stolen property, goods or money, they might face charges under IPC (now BNS), but not necessarily under the PMLA act until and unless it can be proved that the thief “used”, “layered” or “received” the stolen property through illegal means.

⁶ *Ibid*

⁷ Law Offices of Panag & Babu, 'In brief: money laundering offences in India' (Lexology, 14 May 2024) <https://www.lexology.com/library/detail.aspx?g=f1fcdc94-3125-4171-828f-1002ea847756> accessed 13 May 2025.

⁸ Shivam Mishra, 'Quantification of Proceeds of Crime under PMLA' (Meta Legal, 3 April 2024) <https://www.metalegal.in/post/quantification-of-proceeds-of-crime-under-pmla> accessed 14 May 2025.

Now, if we delve into the legislative or the fundamental intention behind this act, we can conclude that its main purpose is to safeguard the nation's finances and prevent activities that involve money laundering, often facilitated by criminal organisations. It basically aims to disrupt the process of disguising the origin of illegally obtained money, which more often than not involves complex financial transactions. Its key provisions include describing the offences and penalties for such activities, along with three different terms used when involving property, being attachment, confiscation and seizure.

WHO CONDUCTS THE INVESTIGATION UNDER PMLA?

After gaining an insight into the Act, we must also delve into the intricacies of how an investigation and the following proceedings are carried out under the PMLA Act and who has the power to investigate it. The investigative power under PMLA comes under the Department of the Enforcement Directorate (ED), which comes under the Department of Revenue, Ministry of Finance.

The **Directorate of Enforcement (ED)** is a multi-disciplinary organisation tasked with the investigation of offences of money laundering and violations of foreign exchange laws.⁹ Although the scheduled offences are ordinarily investigated by agencies mentioned under the respective act. For example, the CBI, the local police, or the customs department. The Act certainly gives a wide range of powers to the ED to conduct activities such as, according to section 17, the ED is empowered to search and seize records or property, or freeze a particular property if seizure is not possible, which is believed to be related to money laundering offences.¹⁰ Section 48, on the other hand, lays down the authorities who are empowered to act under the discussed act, which include designations such as the Director, Additional Director, or for in fact, any other class of officers as may be appointed under the Act.¹¹ The Director (and certain other officers) can even act as a quasi-judicial authority and exercise powers similar to a civil court to facilitate investigation, especially for summoning witnesses and accessing records. However, before just going to the stage of arresting a person or giving him/her the punishment of imprisonment, there are multiple steps involving summons, investigations, and making an ECIR.

⁹ Drishti IAS, 'Directorate of Enforcement (ED)' (*Drishti IAS*, 2023) <https://www.drishtiias.com/important-institutions/drishti-specials-important-institutions-national-institutions/directorate-of-enforcement-ed> accessed 15 May 2025

¹⁰ Prevention of Money Laundering Act 2002, s 17

¹¹ Prevention of Money Laundering Act 2002, s 48

ECIR or enforcement case information report is a formal entry of a complaint by the agency, and it contains all the grounds and allegations based on which the investigation is being conducted.¹² Once this peculiar report is made by the ED, it marks the beginning of the investigation. Interestingly, a copy of ECIR is not made available to the accused, which makes him vulnerable to the abuse of power of the Enforcement Directorate since he does not know why he/she is being investigated. This provision was upheld in *Vijay Madanlal Choudhary v Union of India* (2022), in which the Supreme Court held that ECIR is an internal document of the ED and is not equivalent to an FIR; hence, its non-disclosure to the accused does not violate constitutional rights.¹³ The Court held that there can be no analogy between an ECIR and an FIR as the Act overrides CrPC. It, however accepted t, accepted the Union's argument that ECIR was only an internal document created by ED before initiating penal action or prosecution against the accused.

In a favourable response to the petitioners, the Court stated that the ED is bound to inform the accused about the grounds of arrest to conform with Article 22 of the Constitution. However, it is not bound to give a copy of the ECIR since it is not mandated under the PMLA, once an ECIR report is made, the following designations, which have been mentioned above, have the power to issue summons to any person to give evidence or to produce any records during the investigation or to hand over certain evidence. For people who don't know what a summons is, it is a notice which is issued by an authority (usually a court) or any authority under relevant laws to appear or to produce documents or give statements during the investigation.¹⁴ After issuing a summons, stages such as investigation, collection of evidence, inspection, and compelling the production of records and testimonies by the persons who are involved in the offence laundering are conducted.

After going through this rigorous process, if the Enforcement Directorate has reason to believe that the evidence found during investigations indicates that a suspect is involved in money laundering, it can proceed with the arrest of that person under section 19 of PMLA.¹⁵ Nevertheless, as it has been proven that the ED has wide and comprehensive powers, there should be a sense of responsibility to handle the given position diligently. In the case of B.

¹² Kavita Vijay, 'Investigation under PMLA' (VJM Global, 7 July 2023) <https://vjmglobal.com/blog/investigation-under-pmla/> accessed 15 May 2025

¹³ *Vijay Madanlal Choudhary v Union of India*, (2022) 10 SCC 1 (SC).

¹⁴ Kavita Vijay, 'Investigation under PMLA' (VJM Global, 7 July 2023) <https://vjmglobal.com/blog/investigation-under-pmla/> accessed 15 May 2025

¹⁵ Prevention of Money Laundering Act 2002, s 19

Narayanaswamy v Deputy and Others (2019), it was held that unless persons summoned are found to have been involved in the offence of money laundering, they cannot be treated as an accused at the stage of enquiry.¹⁶ It was also contended that investigating officers cannot harass the person physically, mentally, or verbally, even at the inquiry stage. The person cannot be treated as an accused to extract a statement against their will.

KEY CONSTITUTIONAL CHALLENGES

The Prevention of Money Laundering Act (PMLA) was enacted to create a robust legal framework to combat the growing menace of money laundering, which has become a critical issue worldwide. At first glance, the Act appears to be a necessary measure to tackle illegal financial activities and protect the integrity of the financial system.¹⁷ For many, it represents a significant effort by the government and law enforcement agencies to address the complexities involved in money laundering, which often facilitates various forms of organised crime, corruption, and terrorism financing. However, beneath this seemingly protective layer lies a set of stringent conditions and procedural requirements that raise serious concerns about the rights of individuals accused under the Act.¹⁸ While the goal of the Act was to deter and prevent crime, it led to huge implications for the accused. One of the most controversial provisions of the PMLA, the constitutionality of which has already been challenged before the different High Courts of the country, is section 24 of the PMLA Act, which will be discussed and analysed below, along with other key issues.¹⁹

Before understanding the nuances of the above section, we may first grasp a concept that is essentially the bedrock in the legal industry. The burden of proof is a concept in law, which essentially refers to the responsibility on a party to prove the existence of certain facts, elements which are essential for a case, and it is the obligation to provide sufficient evidence to convince the court of the validity of one's claim.²⁰ Generally, the burden of proof, in the jurisdiction of India, lies on the plaintiff or the complainant. It's the job of the plaintiff's side in civil cases,

¹⁶ *B Narayanaswamy v Deputy Director, Enforcement Directorate* [2019] Mad HC, W.P. Nos. 33158 & 33163 of 2018 (Madras High Court, 4 April 2019).

¹⁷ Prevention of Money Laundering Act 2002

¹⁸ Madhav Khurana and Vignaraj Pasayat, 'Reverse Burden of Proof under Section 24 of the Prevention of Money Laundering Act, 2002—Obligation of the Prosecution and the Accused and at What Stage Can This Provision Be Invoked' (SCC Online, 4 June 2020) <https://www.sconline.com/blog/post/2020/06/04/reverse-burden-of-proof-under-section-24-of-the-prevention-of-money-laundering-act-2002-obligation-of-the-prosecution-and-the-accused-and-at-what-stage-can-this-provision-be-invoked/> accessed 16 May 2025.

¹⁹ Prevention of Money Laundering Act 2002, s 24

²⁰ 'Difference Between Burden of Proof and Onus of Proof' (LawBhoomi, 18 February 2023) <https://lawbhoomi.com/difference-between-burden-of-proof-and-onus-of-proof/> accessed 17 May 2025.

while in a criminal case, it rests with the prosecution to prove in the court of law that the defendant is guilty of the alleged offence, beyond a “Reasonable doubt”. It emphasises that the party making the claim must substantiate it with adequate evidence, while the opposing party may only need to counter the evidence presented. It involves proving the entire case to the satisfaction of the court. This means that the party bearing the burden of proof must present evidence supporting all the necessary facts and elements required to establish their claim.²¹ This has been laid down in Section 104 of Bharatiya Sakshya Adhiniyam (BSA), which states that the burden of proof lies on the party who asserts the existence of any fact. This means that if a party claims that a certain fact is true, it is their responsibility to provide evidence supporting that claim.²² The burden of proof under the BSA is a fundamental principle that shapes the landscape of legal proceedings in India. However, in the cases pertaining to crimes which come under the ambit of the Prevention of Money Laundering Act, the burden of proof is not on the plaintiff, but on the defendant.

That is why it is called “reverse burden of proof”, which highlights that now the “Defendant” must prove in the court of law that he/she has not committed the alleged offence. Section 24 of the PMLA is a shift from the traditional responsibility/duty/obligation cast upon the prosecution to prove its case against an accused beyond a reasonable doubt.²³ The duty of the prosecution to prove its case beyond a reasonable doubt is an integral part of the Fundamental Right of a person accused of having committed an offence to be presumed innocent until proven guilty.

This reversal of the presumption of innocence poses a significant challenge to the fundamental rights guaranteed by the Constitution. It raises questions about the fairness and transparency of the legal process, leaving many individuals vulnerable to misuse of power by authorities. It also highlights that once the prosecution proves that the accused received proceeds generated from the original ‘scheduled offence’, it is presumed that they tried to launder the proceeds. The burden of proof is now on the accused to prove that the proceeds are *not* connected to money laundering.²⁴ Although it is quite noteworthy to understand that, despite the reverse

²¹ Drishti Judiciary, 'Burden of Proof Under Bharatiya Sakshya Adhiniyam' (10 December 2024)

<https://www.drishtijudiciary.com/to-the-point/bharatiya-sakshya-adhiniyam-&-indian-evidence-act/burden-of-proof-under-bharatiya-sakshya-adhiniyam> accessed 18 May 2025.

²² Bharatiya Sakshya Adhiniyam, s 104

²³ Prevention of Money Laundering Act 2002, s 24

²⁴ Sushovan Patnaik, 'Challenges to the Prevention of Money Laundering Act | Judgement Summary' (Supreme Court Observer, 7 August 2024) <https://www.scobserver.in/reports/challenges-to-the-prevention-of-money-laundering-act-pmla-judgement-summary/> accessed 19 May 2025

burden clause being a draconian law and violative of one of the most significant rights of an individual, which states that “innocent until proven guilty”, the courts have upheld its constitutional validity in various cases.

The Supreme Court has upheld its validity and held that it does not violate the fundamental right of the accused, even though section 24 of PMLA is nonetheless a very drastic provision, and prone to misuse and abuse by overzealous and corrupt officers.²⁵ Because this particular section was prone to abuse and included a wide range of meanings and interpretations, the Parliament amended it via the PMLA (Amendment Act), 2021. This amendment showcases that the word “accused” has been replaced with the phrase “charged with the offence of Money laundering”.²⁶ It would thus be necessary to interpret the latter phrase to conclude when the said presumption would operate against an accused.

In the landmark judgment of *Vijay Madanlal Choudhary v Union of India* (2022), the honourable Supreme Court upheld Section 24 of the PMLA Act. The petitioners' side violates the accused's fundamental rights, which are enshrined under articles 14, 19, and 20 of the Indian Constitution.²⁷ The petitioners' side of the reverse burden compromises the presumption of innocence, a fundamental tenet of criminal jurisprudence and that in traditional criminal law, the burden is always on the prosecution to prove guilt beyond a reasonable doubt. They furthered their arguments by stating that the phrase “reason to believe” that property is involved in money laundering is vague and subjective, hence giving too much discretion to the ED officer.²⁸ On the other side, the defenders contended that Section 24 only applies after the prosecution establishes a **foundational fact** that the person is found in possession or control of property linked to scheduled offences.²⁹ Only after the initial threshold is met does the burden shift, which is a reasonable legislative measure in the face of sophisticated financial crime. They also contended that the reverse burden provision does not mean automatic conviction, and the accused will get a full opportunity to rebut the presumption.

²⁵ Madhav Khurana and Vignaraj Pasayat, ‘Reverse Burden of Proof under Section 24 of the Prevention of Money Laundering Act, 2002—Obligation of the Prosecution and the Accused and at What Stage Can This Provision Be Invoked’ (SCC Online, 4 June 2020) <https://www.sconline.com/blog/post/2020/06/04/reverse-burden-of-proof-under-section-24-of-the-prevention-of-money-laundering-act-2002-obligation-of-the-prosecution-and-the-accused-and-at-what-stage-can-this-provision-be-invoked/> accessed 18 May 2025

²⁶ Prevention of Money Laundering (Amendment) Act 2021, No 13 of 2021, Gazette of India, Extraordinary, Part II, Section 1, 14 March 2021

²⁷ *Vijay Madanlal Choudhary v Union of India* (2022) 10 SCC 1

²⁸ *Ibid*

²⁹ *Ibid*

After going through the arguments of both sides and understanding the intricacies of the Act, along with the offence it establishes, the court upheld the validity of section 24³⁰ and justified it under the **doctrine of proportionality**, given the nature and seriousness of money laundering offences. It stated that the initial burden remains on the prosecution to prove that the accused has the proceeds of crime. Once this is established, the burden rightly shifts to the accused to prove that the property is not connected to criminal activity. The court even held that Section 24 did not 'reverse' the burden of proof – it only 'shifted' the burden. It stated that the accused is required to "dispel the suspicion" if there is a "legal presumption" against them. The Court noted that the provision cannot be declared unconstitutional merely because the "burden of proof" is shifted. It was merely a rule of evidence that could be shifted.³¹

Another section of the PMLA Act, which created quite a problem and commotion for the accused during the investigations against them in cases about money laundering, was section 45 of the respective act.³² It established 2 conditions which were to be adhered to by the accused if he/she wanted to get bail in money laundering cases, which were as follows-

The public prosecutor will be given a chance to oppose the application. The court is satisfied that there are reasonable grounds for believing that the individual accused in the case of money laundering is not guilty and that he/she is likely to commit any offence while on bail, which is also called the "twin conditions" for getting bail in money laundering offences. However, the section being violative of article 21 of the Indian constitution and having to prove the guilt of a predicate offense under the PMLA, which was completely different from the offense of money laundering, the Supreme Court, in the case of *Nikesh Tarachand Shah v. Union of India*, held that the section 45 of the PMLA Act was unconstitutional and arbitrary.³³ The judgment said that in a proceeding under the PMLA for the offence of money laundering, the bail provision required an accused to prove he/she was not guilty of a "scheduled/predicate offense the offence of money laundering."³⁴

³⁰ Prevention of Money Laundering Act 2002, s 24

³¹ Sushovan Patnaik, 'Challenges to the Prevention of Money Laundering Act | Judgement Summary' (Supreme Court Observer, 7 August 2024) <https://www.scobserver.in/reports/challenges-to-the-prevention-of-money-laundering-act-pmla-judgement-summary/> accessed 23 May 2025

³² Prevention of Money Laundering Act 2002, s 45

³³ *Nikesh Tarachand Shah v Union of India* (2018) 11 SCC 1

³⁴ Aashish Gupta, Aditya Mukherjee and Puneeth Ganapathy, 'Bail under PMLA—Presumed Guilty Until Proven Guilty' (2023) SCC OnLine Blog Exp 77 <https://www.sconline.com/blog/post/2023/10/20/bail-under-pmla-presumed-guilty-until-proven-guilty/> accessed 18 May 2025

Hence, the Supreme Court held this section to be a drastic provision that reverses the presumption of innocence of an accused. This prompted the Parliament to amend the particular section in 2018 and carve out its newer version. Now the newly amended section states that the individual accused in a case of money laundering no longer has to prove that he/she is not guilty of the “scheduled offence” offence requires that he/she is not guilty of the offence laundering under PMLA.³⁵ The constitutionality of the provisions of section 45 was again challenged in the Supreme Court before the Vijay Madanlal Choudhary case in 2022; however, the judges held that the Parliament had removed the defects noted in the Nikesh Tarachand Shah case.³⁶ Hence, in the case of *Vijay Madanlal Choudhary v Union of India* (2022), the court upheld the provisions of the amendment of section 45 of the PMLA Act, along with stating that sections 24 and 45 had no “inconsistencies” between them.³⁷ It noted that *Tarachand Shah* had declared the twin conditions to be unconstitutional, only because the reversed burden of proof was regarding ‘scheduled offences.’ But after the Parliament’s amendment in 2018, which removed the condition, the defect was “duly cured.” Because of this, the Court said, Section 45 got “revived.”

After carefully analysing both sections 24 and 45 of the Act,³⁸ we can say that the interconnection between them simply lies in how they mutually reinforce a presumption of guilt and restrict the liberty of the accused. The interrelation between them can be seen as the accused must disprove guilt for both defending his/her property and to obtain bail, and as the burden is on the accused, it makes it harder for the particular individual to satisfy the conditions stipulated in section 45.³⁹ They are both structured to reverse the traditional burden on the prosecution, which is otherwise a cornerstone of criminal jurisprudence. Thus, the reverse burden under Section 24 directly feeds into the bail conditions under Section 45. If the accused cannot disprove the presumption under Section 24, they are unlikely to satisfy the twin bail conditions.

³⁵ Prevention of Money Laundering (Amendment) Act 2018, No 13 of 2018, India Code (2018)

³⁶ Aashish Gupta, Aditya Mukherjee and Puneeth Ganapathy, ‘Bail under PMLA – Presumed Guilty Until Proven Guilty’ (2023) SCC OnLine Blog Exp 77 <https://www.scconline.com/blog/post/2023/10/20/bail-under-pmla-presumed-guilty-until-proven-guilty/> accessed 19 May 2025

³⁷ *Vijay Madanlal Choudhary v Union of India* (2022) 10 SCC 1

³⁸ Prevention of Money Laundering Act 2002, ss 24 and 45

³⁹ Prevention of Money Laundering Act 2002, s 45

COMPARISON OF ANTI-MONEY LAUNDERING LAWS IN OTHER JURISDICTIONS

The PMLA Act⁴⁰, in recent times, has become a critical and essential tool for combating and curbing illegal financial transactions, reducing terrorism funding and preventing the integration of illicit funds into the economy. This act also mandates institutions to report transactions that appear suspicious and empowers authorities to seize assets linked to money laundering activities.⁴¹ As India faces serious terrorism and terrorist financing threats, it has, over time, placed strong emphasis on the disruption and prevention of illegal financial activities. As a result, after adhering to the recommendations and meeting the required level of compliance and global standards set by FATF, the PMLA Act was created as a response to tackle these issues. This law was a significant step towards building a legal framework aimed at curbing money laundering and other socio-economic offences. FATF or Financial Action Task Force was established after 7 major industrial nations held a summit in 1989 in Paris, aiming to examine the problem of money laundering and recommend measures to tackle it.⁴² FATF leads global action to tackle money laundering, terrorism and proliferation financing as the 40-member body sets international standards to ensure national authorities can effectively go after illicit funds linked to drug trafficking, the illicit arms trade, cyber fraud and other serious crimes.⁴³

Now we must see how the PMLA Act compares to other anti-money laundering laws in other jurisdictions that have successfully curbed money laundering, such as the United States (USA PATRIOT Act) and the United Kingdom (Proceeds of Crime Act). The effectiveness of enforcement strategies in these countries is analysed, drawing parallels to India's enforcement under the PMLA.

The United States of America has one of the most comprehensive and strict AML regimes in the world. The designated authority for combating money laundering and terrorist financing in the US is called the Financial Crimes Enforcement Network (FinCEN), just like the Enforcement Directorate (ED) in India. Under the USA PATRIOT Act and the Bank Secrecy Act (BSA) 1970 financial institutions in the US are required to implement robust AML programs, conduct customer due diligence, report suspicious activities, and maintain

⁴⁰ Prevention of Money Laundering Act 2002

⁴¹ *Ibid*

⁴² 'Introspecting PMLA, 2002' (Drishti IAS, 2 April 2024) <<https://www.drishtiias.com/daily-updates/daily-news-editorials/introspecting-pmla-2002>> accessed 21 May 2025.

⁴³ Financial Action Task Force, *The FATF* (FATF, 2024) <https://www.fatf-gafi.org/en/the-fatf.html> accessed 21 May 2025

transactional records.⁴⁴ The BSA provides a foundation to promote financial transparency and deter those who seek to misuse the U.S. financial system to launder criminal proceeds, finance terrorist acts, or move funds for other illicit purposes.⁴⁵ Additionally, the US Treasury Department regularly updates its list of specially designated nationals and blocked persons, which includes individuals and entities with whom US citizens and businesses are prohibited from engaging in financial transactions. This list serves as a key tool for financial institutions to screen their customers and ensure compliance with AML regulations.⁴⁶ In the US, companies are even required to establish and confirm the identities of their customers to carry out thorough risk assessments, including the CDD process. Customer Due Diligence (CDD) is a series of continuous measures dedicated to determining customer risk and representing a crucial element of Know Your Customer (KYC) practices and is enforced by the FinCEN. Another important law which was created in the United States of America was called the Anti-Money Laundering Act of 2020 (AMLA), which includes the Corporate Transparency Act (CTA).⁴⁷ The CTA provisions in the AMLA authorise the Financial Crimes Enforcement Network (**FinCEN**) to collect beneficial ownership information and disclose it to appropriate recipients, including federal law enforcement.

Similarly, in the UK, anti-money laundering laws primarily consist of the Proceeds of Crime Act 2002 (POCA), the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (MLR 2017), and the Terrorism Act 2000. These laws define money laundering and terrorist financing, and impose obligations on businesses, especially those in the financial sector, to prevent and detect these crimes.⁴⁸ The UK's anti-money laundering and counter terrorist financing network consists of primary and secondary legislation and industry guidance, designed to support His Majesty's Treasury, in accordance with the Financial Action Task Force's (FATF) international standards and EU Directives.

⁴⁴ 'International Anti Money Laundering Laws: AML Around the World' (17 February 2024) <https://www.tookitaki.com/afc-thoughts/international-anti-money-laundering-laws-aml-around-the-world> accessed 21 May 2025.

⁴⁵ Federal Deposit Insurance Corporation, *Anti-Money Laundering / Countering The Financing Of Terrorism (AML/CFT)* (FDIC, 2024) <https://www.fdic.gov/banker-resource-center/anti-money-laundering-countering-financing-terrorism-amlcft> accessed 21 May 2025.

⁴⁶ 'International Anti Money Laundering Laws: AML Around the World' (17 February 2024) <https://www.tookitaki.com/afc-thoughts/international-anti-money-laundering-laws-aml-around-the-world> accessed 21 May 2025.

⁴⁷ 'AML Laws in the US: A Comprehensive Guide' (iDenfy Blog, 16 January 2024) <https://www.idenfy.com/blog/aml-laws-us-guide/> accessed 21 May 2025.

⁴⁸ Natalie Davies, 'A Complete Guide to Anti-Money Laundering (AML) Regulations in the UK' (NorthRow, 20 March 2023) <https://www.northrow.com/blog/anti-money-laundering-regulations-guide> accessed 21 May 2025

Being a member of the FATF since 1990, the UK commits to developing and strengthening its AML and CTF framework to maintain membership; this is achieved through regulations that outlaw money laundering as well as other forms of corruption, and also require financial institutions to take action to combat these crimes.⁴⁹

If an individual fails to meet the requirements of the AML regulations in the UK, they can face serious consequences both civil and criminal, with penalties ranging from unlimited fines and reputational damage to sanctions, licence revocation and even jail time. There is also a provision in the Part 7 of the proceeds of crime act in which, individuals working within regulated organisations are required to submit a Suspicious Activity Report (SAR) to the National Crime Agency if they know, suspect or have reasonable grounds to believe that a person is engaged in, or is attempting to engage in, money laundering or terrorist financing.⁵⁰

Now, if we closely look at the AML laws of both India and the UK, we can see that they have similar objectives and some common features, as both nations have legislation criminalising money laundering, require financial institutions to implement due diligence measures, and have designated agencies for enforcement and regulation. However, their approaches differ significantly in structure, enforcement strategy and institutional transparency, resulting in unique implementation challenges.⁵¹

The legal frameworks governing anti-money laundering (AML) in India and the United Kingdom are founded on distinct legal traditions but share common objectives shaped by international obligations, particularly the Financial Action Task Force (FATF) recommendations. However, the UK framework is considered more detailed in compliance and reporting obligations, partly due to its integration with the European Union's financial regulatory systems before Brexit. In contrast, India's PMLA has been criticised for its overbroad definitions and alleged misuse in politically sensitive cases.⁵² For example, the regulatory authority in India is called the ED, whereas in the UK, it is called the Financial Conduct Authority (FCA) or the National Crime Agency (NCA). Another key difference lies in their legal and institutional design. India operates under a centralised enforcement mechanism primarily led by the Enforcement Directorate (ED), which exercises considerable

⁴⁹ *Ibid*

⁵⁰ *Proceeds of Crime Act 2002*, Part 7

⁵¹ Tusshar Sharma, 'Bridging Borders: A Comparative Study of the Anti-Money Laundering Legislation in India and the UK' (2025) 7(2) Indian Journal of Law and Legal Research <https://www.ijllr.com/post/bridging-borders-a-comparative-study-of-the-anti-money-laundering-legislation-in-india-and-the-uk> accessed 21 May 2025.

⁵² *Ibid*

discretionary powers under the Prevention of Money Laundering Act (PMLA), 2002.⁵³ Critics argue that this centralised authority lacks adequate judicial checks, often leading to political misuse and arbitrary arrests.

In contrast, the UK's AML framework, governed by the Proceeds of Crime Act (POCA) 2002 and Money Laundering Regulations, 2017, adopts a decentralised and risk-based approach.⁵⁴ It promotes collaborative oversight by multiple regulatory bodies such as the Financial Conduct Authority (FCA), Her Majesty's Revenue and Customs (HMRC), and the National Crime Agency (NCA), enabling more balanced and transparent enforcement. This comparative study of anti-money laundering (AML) legislation in India, the United Kingdom, and the US reveals both convergence and divergence in legal frameworks, enforcement mechanisms, and international obligations. While each of these nations is committed to FATF standards, the structural differences in their regulatory approaches significantly impact their effectiveness.⁵⁵

EXAMINATION OF JUDICIAL CHALLENGES AND TRENDS

Now we will analyse that how various High court and Supreme court judgments have impacted the operation of the PMLA Act, which led to a few of its amendments and checks on the powers of the ED, along with how the judiciary over the time has maintained a balancing approach towards the rights of a citizen and the powers of the ED which have been bestowed upon them by the PMLA Act.

As we all know in the case of *Nikesh Tarachand Shah v. Union of India* (2017), the honourable Supreme Court of India had struck down the "Twin conditions" of bail which were highlighted in section 45 of the Act as "Unconstitutional" and "Arbitrary" because their terms and conditions violated the article 14 and 21 of a person who was accused in the cases of money laundering.⁵⁶ This led to a temporary easing of the bail conditions under the PMLA Act. However, an amendment in 2018 by the Parliament changed the particular section, and due to this, the bail conditions for the accused again got pretty tough and technical.⁵⁷ Another landmark judgment that had a huge impact on the future and upcoming cases under the PMLA

⁵³ Prevention of Money Laundering Act 2002

⁵⁴ *Proceeds of Crime Act 2002*

⁵⁵ Tusshar Sharma, 'Bridging Borders: A Comparative Study of the Anti-Money Laundering Legislation in India and the UK' (2025) 7(2) *Indian Journal of Law and Legal Research* <https://www.ijlrr.com/post/bridging-borders-a-comparative-study-of-the-anti-money-laundering-legislation-in-india-and-the-uk> accessed 21 May 2025

⁵⁶ *Nikesh Tarachand Shah v. Union of India*, (2017) 11 SCC 1

⁵⁷ Prevention of Money Laundering (Amendment) Act 2018, No 13 of 2018, India Code (2018)

Act was delivered by the Supreme Court in the Vijay Madanlal Choudhary case, which was decided on July 27, 2022.

The judgment focused on multiple aspects of the Act and addressed several constitutional challenges raised against the Prevention of Money Laundering Act, 2002 (PMLA), particularly focusing on the powers of the Enforcement Directorate (ED) and the procedural safeguards available to the accused.⁵⁸ This judgment even upheld the 2018 amendment, which was done to correct section 45 of the PMLA Act. The Petitioners argued that Section 45 became inoperative after the *Tarachand Shah* case and further contended that the 2018 amendment had not rectified the fundamental problem with the first condition, which was that it reversed the burden of proof.⁵⁹ However, the Court disagreed and noted that *Tarachand Shah* had declared the twin conditions to be unconstitutional, only because the reversed burden of proof was regarding ‘scheduled offences.’ But after the Parliament’s amendment in 2018, which removed the condition, the defect was “duly cured.” Because of this, the Court said, Section 45 got “revived.”⁶⁰

The petitioners in the case of Vijay Madanlal Choudhary had challenged the Act on various grounds, such as:

- The powers of search, seizure, and arrest of the ED,
- The shifting of the burden of proof,
- Bail conditions,
- The ED’s wide powers to attach the accused’s property,
- Whether the ED is bound to give a copy of the ECIR report to the accused.

The Supreme Court, after listening diligently to both sides and carefully analysing the operations of the PMLA Act, upheld the constitutional validity of all the challenged provisions of the PMLA, hence giving the ED extensive powers under the Act.⁶¹ However, the court acknowledged concerns regarding potential misuse and indicated that certain aspects, such as the non-provision of the Enforcement Case Information Report (ECIR) to the accused and the reversal of the presumption of innocence, require reconsideration. The court stated that the ED is bound to inform the accused about the grounds of the arrest under Article 22 of the

⁵⁸ Vijay Madanlal Choudhary v. Union of India, (2022) 10 SCC 1

⁵⁹ Prevention of Money Laundering Act 2002, s 45

⁶⁰ Vijay Madanlal Choudhary v. Union of India, (2022) 10 SCC 1

⁶¹ Ibid

Constitution. However, it is not bound to give a copy of the ECIR since it is not mandated under the PMLA.⁶² After some time, on the 23rd of August 2022, Karti P. Chidambaram (petitioner) filed a review petition against the Vijay Madanlal case and contended that the court had not adjudicated on the question of whether amendments to the PMLA can be made by Parliament through a Money Bill.⁶³ The petitioner, a member of the Parliament, further challenged the Court's interpretation of Section 3 of the PMLA. In *Vijay Madanlal*, the Court had essentially noted that an offence of money laundering can be made out even if the accused did not attempt to misrepresent the 'proceeds of crime' as 'untainted'.

The review petition argues that "projecting or claiming [proceeds of crime] as untainted property" is an essential ingredient of the offence of money laundering. The petitioner also raised certain concerns regarding the judgment, which included the presumption of innocence, access to the ECIR report, and various other procedural safeguards under the Code of Criminal Procedure (CrPC), to the ED investigations were also contested.⁶⁴ The petition challenged *Vijay Madanlal*'s holding that the CrPC did not apply to the ED. The state argues that since the ED is not bound by the CrPC, the ECIR—essentially the PMLA's equivalent of the FIR—may not be supplied to the accused on demand. The petition battled in favour of the application of the CrPC's procedures in PMLA cases, on the ground that the CrPC was an "integral part of 'the procedure established by law' under Article 21."⁶⁵ As a result of filing a petition, the three-judge bench led by then Chief Justice N.V. Ramana and Justices Dinesh Maheshwari and C.T. Ravikumar decided to review the judgment. As a result, the Supreme Court agreed to review the specific aspects of the 2022 verdict, particularly those affecting the fundamental rights and other procedural safeguards.

As the judgment in the case of Vijay Madanlal remains in effect, there are also several other judgments of the Supreme Court which are necessary to understand and interpret the scope of powers of ED and how the court has attempted to strike a balance with the fundamental rights of the accused.⁶⁶ In the case of *Pankaj Bansal v. Union of India*, the Supreme Court favoured the accused, who were challenging an order of the Punjab and Haryana High Court. The accused challenged their arrest as they had not received a copy of the ECIR, nor were they

⁶² Ibid

⁶³ Karti P Chidambaram v Directorate of Enforcement [2022] SCC Online SC 1084 (SC).

⁶⁴ Ibid

⁶⁵ The Constitution of India, art 21

⁶⁶ Vijay Madanlal Choudhary v. Union of India, (2022) 10 SCC 1

provided with any written information regarding the grounds on which they were arrested.⁶⁷ The Supreme Court held that the arrest by the ED was illegal since the grounds of arrest were not properly communicated to the Petitioners. The Court underlined and bolstered the requirements under Section 19(1) of the PMLA (providing for power to arrest), finding that the ED must inform the arrested persons of the grounds of their arrest in a written format.⁶⁸

The Court further observed that any non-adherence with the safeguards under Section 19 of PMLA would result in vitiating the arrest. Although Vijay Madanlal held that the supply of ECIR is not mandatory if grounds of arrest were communicated, the mode or manner of informing these grounds was not interpreted.⁶⁹ The Court acknowledged the need to inform the grounds of arrest through a written format in all cases, especially to avoid conflicts regarding the validity of the arrests. However, it is pertinent to mention that some of these requirements were diluted by the Supreme Court subsequently in *Ram Kishor Arora v Directorate of Enforcement*, 2023 SCC Online SC 1682, where a different bench of the Supreme Court held that the directions in *Pankaj Bansal* cannot be applied retrospectively, and that the ED only must inform the grounds of arrest to the accused orally at the time of arrest, while the written format can be provided within 24 hours.⁷⁰

Another case which revolved around the section 19 of the PMLA Act⁷¹ (arresting powers of the ED), the Supreme Court in the case of *V. Senthil Balaji v State*, observed that the magistrate is bound to ensure the compliance of the mandatory requirements under the respective section, but the Magistrate shall also satisfy himself as to the order that has been passed by the authority under Section 19(1) of the PMLA.⁷² The Court made it clear that failure of compliance would entitle the accused to be released forthright unconditionally and also assigned power to the Magistrate to initiate action under Section 62 of the PMLA⁷³ (providing for punishment for vexatious search) in case any non-compliance of the mandatory provisions of Section 19 ensues. The Court ultimately all arrests conducted in noncompliance with the aforementioned

⁶⁷ *Pankaj Bansal v. Union of India*, 2023 SCC OnLine SC 1244

⁶⁸ The Prevention of Money Laundering Act 2002, s 19(1)

⁶⁹ SAMVĀD: PARTNERS, 'Looking back at 2023: The Supreme Court on the prevention of money laundering act (PMLA)' (Lexology, 22 March 2024) <https://www.lexology.com/library/detail.aspx?g=1d959f0c-ed61-4119-9a7e-b42e0a97b93d> accessed 23 May 2025.

⁷⁰ *Ram Kishor Arora v. Directorate of Enforcement*, 2023 SCC Online SC 1682

⁷¹ The Prevention of Money Laundering Act 2002, s 19

⁷² *V. Senthil Balaji v. State*, 2023 SCC OnLine SC 934

⁷³ The Prevention of Money Laundering Act 2002, s 62

mandate of Section 19 of PMLA, including not providing the arrestee with the grounds of arrest, shall be deemed to be illegal, and the accused shall be liable to be released from custody.

Although there are several more judgements concerning the PMLA Act, these above judgements provide the readers with adequate knowledge about the various trends where the Court after noting the severe gravity of the offense of money laundering have over the times interpreted the scope of powers of ED and also balancing the fundamental rights of a person who is accused in the case of money laundering. The implications which are associated with these judgments have a severe and drastic impact on the accused and the judiciary's powers and oversight in these matters. The judiciary should carefully interpret and analyse these complex laws, and on the other hand, also should safeguard the rights of the accused. To a large group of people, the judgment in the case of Vijay Madan Lal may seem as a negative and drastic outcome by giving wide powers to the ED and the reverse burden of proof, along with the other provisions which have been upheld in this case. The recent approach of the Supreme Court in the case of Pankaj Bansal may be seen as a welcome step for striving to find an equilibrium between the seriousness of financial crimes and the rights of the accused when extensive powers have been granted to an investigating and prosecuting agency under a special legislation.⁷⁴

CONCLUSION

The Prevention of Money Laundering Act 2002 has nevertheless been a draconian and vivid piece of legislation, and also, there is simply no doubt that this unconventional statute, in some parts, may violate the fundamental rights of an individual. But if we look at this particular bill from the angle of the government, it may seem as a valid piece of exercise as money laundering is a grave threat to the economy and is also a tool for people who engage in activities such as terrorism, drug trafficking, or activities involving corruption. If more reasonable measures are introduced in terms such as proceeds of crime", "burden of proof" and certain checks on the powers and authority of the enforcement directorate, then it can become a more powerful weapon for the government to use and prevent the above illegal activities. Further review of bail provisions, such as aligning bail procedures for money laundering cases with those applicable to other financial crimes, eliminating perceived bias or undue hardship, along

⁷⁴ SAMVĀD: PARTNERS, 'Looking back at 2023: The Supreme Court on the prevention of money laundering act (PMLA)' (Lexology, 22 March 2024) <https://www.lexology.com/library/detail.aspx?g=1d959f0c-ed61-4119-9a7e-b42e0a97b93d> accessed 23 May 2025.

exploring other alternatives to streamline the bail adjudication process without compromising the integrity of investigations. One of the most important factors to consider in the PMLA Act is to periodically review its mechanism so as to assess the effectiveness and relevance of the PMLA, addressing emerging challenges and evolving international standards. Even encouraging parliamentary discussions and debates on potential amendments to the PMLA, involving legal experts, lawmakers, and representatives from financial institutions, would be an effective way to make the Act more effective.⁷⁵ The Govt of India should accordingly have a fresh look at the Scheduled Offences List – to omit all trivial offences and include serious violations of FEMA and the Income Tax Act. Whilst the inclusion of serious FEMA violations within the scope of the PMLA would be a desirable move that aligns with the legislative objective of having a robust architecture to combat money laundering, the Government. India should simultaneously consider amendments that would provide more teeth to the FEMA. Another crucial issue to look into the Act should be to take cognisance of the conviction rate of the accused under this Act. According to data, the ED carried out 3,010 raids and attached ‘proceeds of crime’ worth Rs 99,356 crore under the PMLA over the last 8 years since the NDA came to power in 2014. In contrast, only 112 raids were conducted and Rs 5,346 crore were impounded between 2004-05 and 2013-14 during the tenure of the Congress-led United Progressive Alliance (UPA). However, nobody is bothered about convictions. Just 23 persons have been convicted in the 5,422 cases registered under the PMLA since it was implemented 17 years ago. Significantly, the last financial year has been the most ‘productive’ with 1,180 cases registered in 2021-22.⁷⁶ To address the escalating concerns surrounding the actions of investigative agencies like the Enforcement Directorate (ED), it is crucial to introduce effective measures that aim to tackle the current situation. The government must prioritise implementing strategies that will enhance transparency and accountability within the legal processes. This includes establishing clearer guidelines on the operational scope of the ED and ensuring that its powers are subject to necessary checks and balances. In the absence of such reforms, we risk fostering an environment where indiscriminate arrests occur without just cause, leading to individuals being detained without trial for extended periods. This erosion

⁷⁵ 'Introspecting PMLA, 2002' (Drishti IAS, accessed 23 May 2025) <https://www.drishtiias.com/daily-updates/daily-news-editorials/introspecting-pmla-2002>

⁷⁶ Gurbir Singh, 'The PMLA weapon: Perfecting the process as punishment' (The New Indian Express, 31 July 2022) <https://www.newindianexpress.com/opinions/2022/Jul/31/the-pmla-weapon-perfecting-the-process-as-punishment-2482433.html> accessed 23 May 2025.

of legal safeguards not only threatens the rights of citizens but also undermines the foundational principles of justice that our democratic society is built upon.