iJRASET
International Journal For Research in Applied Science and Engineering Technology

INTERNATIONAL JOURNAL FOR RESEARCH

IN APPLIED SCIENCE & ENGINEERING TECHNOLOGY

Volume: 14 **Issue:** IV **Month of publication:** April 2026

DOI: https://doi.org/10.22214/ijraset.2026.80202

www.ijraset.com

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International Journal for Research in Applied Science & Engineering Technology (IJRASET)
ISSN: 2321-9653; IC Value: 45.98; SJ Impact Factor: 7.538
Volume 14 Issue IV Apr 2026- Available at www.ijraset.com

The Constitutional Deficit of the Prevention of Money Laundering Act, 2002: From Statutory Rigor to Structural Reform

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ABSTRACT: ***Over the past decade, the Prevention of Money Laundering Act, 2002 (PMLA) has undergone a significant legislative and operational metamorphosis, transforming the Directorate of Enforcement (ED) into a parallel criminal justice apparatus. This paper conducts a constitutional audit of the ED's expanding powers, focusing on the intersection of state authority and individual liberty. Empirical analysis reveals a glaring "statistical paradox"despite sweeping powers of arrest and asset attachment, the enforcement model functions primarily through pre-trial detention rather than securing convictions. The paper critically examines the doctrinal anomalies embedded in the statute, specifically the subversion of Article 20(3) through Section 50 statements, and the mechanical application of the "twin conditions" for bail under Section 45. Furthermore, it explores the federal friction caused by the ED's encroachment into State policing subjects. While tracking the Supreme Court's recent jurisprudential recalibrationwhich reasserts the primacy of Article 21 over statutory bail rigorsthis study argues that judicial intervention alone is insufficient. Consequently, the paper proposes a "Reform Framework 2.0," advocating for the structural bifurcation of the ED into a Hybrid FIU-Prosecutor model, the codification of a statutory custody-time cap, and a two-tier ECIR disclosure regime to restore constitutional equilibrium.***

I. INTRODUCTION

The architecture of global financial systems in the late twentieth century necessitated a coordinated legal response to the clandestine movement of illicit capital. For India, the inception of the Prevention of Money Laundering Act, 2002 (PMLA)[1] was not born merely out of domestic necessity, but was heavily catalysed by international mandates. Guided by the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (the 1988 Vienna Convention) and the Political Declaration adopted by the UN General Assembly in 1990, the PMLA was originally conceptualized as a highly specialized, targeted instrument. Its primary intent was to insulate the sovereign economy from the proceeds of organized crime, specifically narcotics trafficking and terrorism financing, aligning India with the recommendations of the Financial Action Task Force (FATF).[2]

However, the trajectory of the PMLA over the last two decades tells a story of unprecedented statutory expansion and arbitrary powers to execute them. Through a series of sweeping legislative amendmentsmost notably the Finance Acts of 2013, 2015, and 2019the statute has shed its original, narrow mandate. It has evolved into a vast, catch-all "super-policing" framework encompassing a disparate array of ordinary economic offences, ranging from intellectual property violations to localized corporate fraud.[3]

Accompanying this legislative expansion is the metamorphosis of the Directorate of Enforcement (ED), the primary agency tasked with PMLA enforcement. Originally a relatively obscure financial regulatory body enforcing the Foreign Exchange Management Act (FEMA), 1999, the ED has been transformed into a formidable investigative behemoth.[4] Vested with near-absolute powers of search, seizure, attachment, and arrest, the ED operates as a parallel criminal justice system. Crucially, this parallel system is immunized from the standard procedural safeguards guaranteed to citizens under the Code of Criminal Procedure (CrPC), 1973, and the Indian Evidence Act, 1872.At the core of this paper is the identification of a profound "Constitutional Deficit" within the PMLA's operational reality.

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[1] Prevention of Money Laundering Act 2002 (PMLA).
[2] Financial Action Task Force (FATF), 'International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation' (The FATF Recommendations, 2012).
[3] Sharma S, 'Expanding the Definition of Money Laundering: A Study of Substantive vs. Clarificatory Amendments in the PMLA' (2024) 7 Indian Journal of Law and Legal Research 5405.
[4] Ujjwal Shahi and Ambar Srivastava, 'The Role of the Enforcement Directorate in the Indian Criminal Justice System' (2025) 5(4) Indian Journal of Legal Review 204.

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The Indian Constitution demands a delicate equilibrium between the State's duty to ensure national security and the individual's right to life and personal liberty under Article 21. Yet, the PMLA regime systematically prioritizes state authority over individual liberty through a combination of reverse burdens of proof, the admissibility of compelled testimony, and draconian bail conditions.

This research paper aims to dissect this constitutional imbalance. Part II traces the legislative metamorphosis of the PMLA, illustrating how the concept of "Proceeds of Crime" was infinitely expanded to capture ordinary penal offences. Part III conducts an empirical audit of the ED's enforcement model, exposing a glaring "statistical paradox" wherein the agency achieves less than a 1% absolute conviction efficiency despite an exponentially increasing volume of arrests. Part IV undertakes a doctrinal analysis of the constitutional anomalies embedded in the statute, focusing on the subversion of Article 20(3) (protection against self-incrimination) and the arbitrary application of Section 45 (bail conditions). Part V traces the recent judicial recalibration by the Supreme Court of India, which has begun to reassert the primacy of Article 21. Finally, Part VI proposes a comprehensive "Reform Framework 2.0," arguing that the only sustainable cure for this constitutional deficit is a structural re-engineering of the ED and the codification of strict procedural firewalls.

II. THE LEGISLATIVE TRANSFORMATION: FROM TARGETED STATUTE TO WEAPONIZED LAW

To understand the current constitutional crisis surrounding the PMLA, one must map its legislative evolution. The PMLA is not the statute it was enacted to be in 2002; it has been fundamentally rewritten through consecutive parliamentary amendments, transforming it from a shield against transnational terror into a sword against domestic economic misconduct.

1) The Dilution of the "Scheduled Offence" Requirement

The operational trigger for the PMLA is the existence of a "Scheduled Offence". Money laundering cannot exist in a vacuum; it requires illicit wealth generated from a primary crime. In its 2002 iteration, the Schedule was highly restricted. Part A of the Schedule included only the most heinous offences under the Indian Penal Code (IPC), the Narcotic Drugs and Psychotropic Substances (NDPS) Act, and the Arms Act. Part B contained offences where the PMLA could only be triggered if the value involved exceeded ₹30 Lakhs.

However, the 2012 amendment systematically dismantled these limitations. The monetary threshold under Part B was entirely abolished, moving almost all offences into Part A. Furthermore, the Schedule was expanded to include offences under the Copyright Act, the Trade Marks Act, the Environment Protection Act, and the Information Technology Act.[5]By integrating ordinary, non-heinous offences into the PMLA Schedule, the legislature effectively authorized the ED to utilize counter-terrorism investigative tools against ordinary corporate disputes, intellectual property infringements, and routine tax evasions. This dilution fundamentally violates the principle of proportionality, treating a copyright violator with the same procedural severity as a transnational drug trafficker.

2) The Infinite Expansion of "Proceeds of Crime" (Section 2(1)(u))

The most severe mechanism of mission creep occurred in the statutory redefinition of "Proceeds of Crime" under Section 2(1)(u). Originally, the Act required the property in question to be directly derived from the criminal activity related to a scheduled offence.The Finance Act of 2015 expanded this to include the "value of any such property." If the direct proceeds were untraceable or moved abroad, the ED was empowered to attach an equivalent value of legitimate, untainted property belonging to the accused domestically.[6] This severed the direct nexus between the crime and the asset.

The final nail in the coffin of jurisdictional restraint was the Finance Act of 2019, which introduced an explanation to Section 2(1)(u), stating that "Proceeds of Crime" include property derived "directly or indirectly" as a result of "any criminal activity relatable to the scheduled offence." This circular and dangerously broad definition allows the ED to cast an infinitely wide net. As critiqued by various constitutional scholars, this definition lacks conceptual boundaries. It permits the attachment of corporate assets, primary residences, and legitimate business revenues merely on the suspicion that they are tangentially "relatable" to a scheduled offence.[7]

[5] Prevention of Money-Laundering (Amendment) Act 2012
[6] Finance Act 2015, amending s 2(1)(u) of the PMLA 2002.
[7] Kumar S and Dixit A, 'Prevention of Money Laundering Act, 2002 (PMLA) Critical Review of Key Provisions' (2023) 5(6) International Journal for Multidisciplinary Research 1, 2.

3) The "Continuing Offence" Doctrine and Retrospective Application

Article 20(1) of the Constitution of India categorically prohibits the enactment of ex post facto criminal laws, barring the State from prosecuting an individual for an act that was not legally an offence at the time of its commission.[8] However, the PMLA bypasses this fundamental constitutional guarantee through the judicial and legislative construct of the "Continuing Offence."

The 2019 amendments to Section 3 of the PMLA clarified that a person is guilty of money laundering if they are involved in "concealment, possession, acquisition, or use" of the proceeds of crime. Crucially, the explanation clarified that this process is a "continuing activity." The Supreme Court, in Vijay Madanlal Choudhary, affirmed that even if the predicate scheduled offence was committed years prior to the enactment of the PMLA (i.e., prior to 2005), the mere possession of those proceeds today constitutes a fresh, ongoing offence under the PMLA.[9]This interpretation creates a state of perpetual liability. It essentially abolishes the statute of limitations for economic offences. By viewing the retention of past illicit wealth as a daily, ongoing crime, the ED has been granted the authority to reopen decades-old financial transactions, subjecting citizens to the draconian rigors of the PMLA for acts committed before the law even existed. This retrospective weaponization of the statute introduces severe legal uncertainty, undermining the bedrock principles of the Rule of Law.

III. THE EMPIRICAL AUDIT:"STATISTICAL PARADOX" & PROCESS AS PUNISHMENT

The constitutional legitimacy of any penal statute restricting fundamental liberties is traditionally justified by its necessity and its efficacy. In the context of the Prevention of Money Laundering Act (PMLA), the State has consistently defended the statute's draconian provisionssuch as the reversal of the burden of proof and the stringent bail conditionson the premise that economic offences are exceptionally sophisticated, requiring harsh tools to secure convictions and protect national wealth.[10] However, an empirical audit of the Directorate of Enforcement's (ED) performance reveals a deeply concerning operational reality, one that fundamentally undermines this justification.

Data presented before the Parliament of India in December 2025 exposes a glaring "statistical paradox."[11] Between 2014 and 2025, the ED registered approximately 6,444 Enforcement Case Information Reports (ECIRs) across the country. During this same decade-long period, investigations and trials were completed in merely 56 cases. Out of these 56 completed trials, the ED secured convictions in 53 cases. Consequently, the agency routinely projects a "conviction rate" of 94.64%, utilizing this metric to validate its aggressive enforcement methodologies and to resist judicial intervention.This metric, however, is statistically manipulative. The 94.64% figure is calculated exclusively against the minuscule fraction of cases that have actually reached final adjudicationwhich constitutes less than 1% of the total cases initiated. When the 53 convictions are measured against the total universe of 6,444 ECIRs registered, the absolute "conviction efficiency" collapses to a staggering 0.82%.[12]

This disparity highlights a severe systemic dysfunction. Over 99% of PMLA cases remain pending, often languishing for years without reaching the trial stage. This empirical reality confirms a paradigm shift: the PMLA no longer functions as a mechanism for adjudicating guilt and securing convictions. Instead, it operates as an instrument of prolonged pre-trial incarceration. When the investigative machinery expands aggressively but the adjudicatory process remains stagnant, the deprivation of liberty becomes the primary outcome of the law. As judicial observers have increasingly noted, in the current PMLA regime, the process itself has become the punishment.

IV. DOCTRINAL ANOMALIES: THE ARCHITECTURE OF PRE-TRIAL DETENTION

The statistical paradox identified above is not an administrative accident; it is the direct result of the PMLA's statutory architecture. The statute is structurally designed to make the deprivation of liberty frictionless, while making the formal adjudication of guilt an afterthought. It achieves this by dismantling the ordinary constitutional safeguards available to an accused under the Code of Criminal Procedure (CrPC), 1973, and the Indian Evidence Act, 1872. This section examines three core doctrinal anomalies that construct the ED's fortress of pre-trial detention.

[8] Constitution of India, art 20(1).
[9] Vijay Madanlal Choudhary v Union of India (2022) 15 SCC 1
[10] Vijay Madanlal Choudhary v Union of India (2022) 15 SCC 1, para 388.
[11] Data presented by Minister of State for Finance Pankaj Chaudhary before the Parliament of India (8 December 2025).
[12]] Parv Gupta, 'A Critical Analysis of the PMLA Act: Its Constitutional Validity and the Role of Judiciary in Shaping Its Jurisprudence' (2024) 4 Journal of Legal Research and Juridical Sciences 1563, 1568.

1) The "Hybrid Status" Fiction and the Subversion of Article 20(3)

Article 20(3) of the Constitution of India embodies the fundamental right against self-incrimination, guaranteeing that no person accused of an offence shall be compelled to be a witness against themselves.[13] In ordinary criminal jurisprudence, this right is protected by Section 25 of the Indian Evidence Act, which mandates that no confession made to a police officer shall be proved against an accused.[14]

However, the PMLA bypasses this constitutional shield through a jurisprudential fiction: the "Hybrid Status" of ED officers. In Vijay Madanlal Choudhary v Union of India (2022), the Supreme Court upheld the legislative framing that officers of the ED are "non-police" officers.[15] The Court reasoned that the predominant objective of the PMLA is the tracing and confiscation of proceeds of crime, rendering ED proceedings an "inquiry" rather than a conventional criminal investigation.[16]Consequently, statements recorded by ED officers under Section 50 of the PMLA are fully admissible in court as substantive evidence.This classification generates a profound constitutional anomaly. Under Section 50, an individual summoned by the ED is legally bound to speak the truth, and any refusal to do so, or the provision of an "evasive reply," attracts immediate penal consequences, including arrest for non-cooperation.[17] The individual is thus placed in an inherently coercive environment where silence is penalized, speech is compelled, and the compelled speech is subsequently weaponized as evidence of guilt.

The fiction of the "non-police" officer completely collapses when juxtaposed with the Supreme Court's later ruling in V. Senthil Balaji v The State (2023).[18] In Senthil Balaji, the Court affirmed that ED officers possess the authority to seek "police custody" of an accused for the purpose of custodial interrogation under Section 167 of the CrPC.The legal contradiction is glaring: ED officers are entitled to exercise the most coercive police power available (custodial interrogation), yet they are simultaneously immunized from the constitutional and evidentiary restraints under Article 20(3) of constitution and Section 25of the Evidence act, that govern police authorities. This hybrid status systematically erodes the privilege against self-incrimination, placing the accused in a position of "testimonial compulsion" unparalleled in comparable common-law jurisdictions.

2) The Inversion of the Presumption of Innocence (Section 45)

If Section 50 forces the accused to incriminate themselves, Section 45 ensures that they remain incarcerated. Section 45 of the PMLA imposes the infamous "Twin Conditions" for the grant of bail. To secure pre-trial liberty, the Special Court must be satisfied that there are "reasonable grounds for believing that [the accused] is not guilty of such offence and that he is not likely to commit any offence while on bail."[19]

In standard criminal procedure, bail is the rule and jail is the exception. The burden lies on the prosecution to justify continued detention. Section 45, however, inverts the foundational maxim of eiincumbitprobatio qui dicit, non qui negat (the burden of proof lies on the one who asserts). It creates a statutory presumption of guilt, compelling the accused to affirmatively demonstrate their innocence at the preliminary bail stage, long before the prosecution has led evidence or witnesses have been cross-examined.[20] This effectively converts a bail hearing into a premature mini-trial.The Supreme Court initially recognized the unconstitutionality of this provision in Nikesh Tarachand Shah v Union of India (2018), striking down the twin conditions for rendering the remedy of bail "virtually impossible" and violating Articles 14 and 21.[21]However, the legislature swiftly bypassed this judicial check through the Finance Act of 2018, nominally amending the section to cure the technical defect while retaining the draconian conditions, a manoeuvre subsequently validated in Vijay Madanlal Choudhary.

The uncompromising severity of Section 45 is most pronounced at the pre-arrest stage. As the Delhi High Court recently established in Bhaskar Yadav v Directorate of Enforcement (2026),[22] the twin conditions apply with equal, unyielding force to applications for anticipatory bail under Section 438 of the CrPC. In Bhaskar Yadav, the Court rejected the plea that the constitutional right to liberty overrides the agency's need for custodial interrogation, holding that the "exclusive domain of the investigator" to arrest cannot be disturbed unless the accused clears the virtually insurmountable threshold of Section 45.

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[13] Constitution of India, art 20(3).
[14] Indian Evidence Act 1872, s 25.
[15] Vijay Madanlal Choudhary v Union of India (2022) 15 SCC 1, para 425.
[16] Vijay Madanlal Choudhary v Union of India (2022) 15 SCC 1, para 431
[17] PMLA 2002, s 50
[18] V Senthil Balaji v The State 2023 SCC OnLine SC 934
[19] PMLA 2002, s 45
[20] Mudit Sharma, 'A Comprehensive Evaluation of Sections 24 And 45 Of the Prevention of Money Laundering Act, 2002' (2024) 12 International Journal of Creative Research Thoughts 112, 115.
[21] Nikesh Tarachand Shah v Union of India (2018) 11 SCC 1.
[22] Bhaskar Yadav v Directorate of Enforcement [2026] DHC 813.

By extending this rigor to anticipatory bail, the statute ensures that the mere registration of an ECIR effectively suspends the presumption of innocence.

3) Arbitrariness in the Power of Arrest and the "Summons Trap" (Section 19)

Under Section 19 of the PMLA, an ED officer is authorized to arrest a person without a warrant based on their "subjective satisfaction" and "reasons to believe" that the individual is guilty of money laundering.[23]Historically, this unfettered discretion resulted in "ambush arrests," where the grounds of arrest were withheld from the accused, rendering them incapable of mounting an effective legal defense or moving a meaningful bail application.

While the Supreme Court in **Pankaj Bansal v Union of India (2023)** introduced a crucial procedural check by mandating that the grounds of arrest must be furnished in writing,[24] the underlying structural imbalance persists. This imbalance was most vividly illustrated by the ED's strategic deployment of the "Summons Trap," a practice dismantled by the Supreme Court in Tarsem Lal v Directorate of Enforcement (2024).[25]

Prior to Tarsem Lal, the ED would routinely refrain from arresting cooperative individuals during the investigative phase. However, once the prosecution complaint was filed and the Special Court issued summons, the ED would oppose the accused's routine bail application upon their appearance in court. The agency argued that the moment the accused appeared before the judge, they were "in custody" and therefore subjected to the draconian twin conditions of Section 45.[33]

This created a constitutionally absurd paradox: an accused who fully cooperated with the investigation, furnished documents, and dutifully obeyed a court summons was placed in a worse position than a fugitive. Merely by walking into the courtroom, the cooperative citizen was trapped by Section 45 and routinely remanded to prolonged judicial custody. Though the Supreme Court in Tarsem Lal rightly held that an accused appearing on summons is not in "custody" for the purposes of Section 45, the fact that the enforcement agency utilized such tactics underscores the inherently coercive nature of the PMLA. It demonstrates an institutional mindset where arrest and incarceration are viewed not as tools of last resort for securing investigations, but as the primary objectives of the enforcement strategy itself.

V. THE JUDICIAL RECALIBRATION: FROM DEFERENCE TO "SPEEDY TRIAL" OVERRIDES

The judicial history of the Prevention of Money Laundering Act (PMLA) is best understood as a sustained constitutional contest. For a significant period, the judiciary adopted a posture of pronounced statutory deference, prioritizing the State's narrative of national economic security. This phase of deference reached its pinnacle in the 2022 judgment of **Vijay Madanlal Choudhary v** Union of India,[26] where the Supreme Court upheld the constitutionality of the PMLA's most draconian provisions, characterizing money laundering as a "heinous" offence that warranted exceptional procedural deviations.

However, as the empirical reality of the "statistical paradox" became impossible to ignore, constitutional courts were compelled to confront the consequences of the statute's unrestrained enforcement. Between 2023 and 2026, the Supreme Court initiated a phase of "procedural awakening," shifting its focus from validating the legislative text to rigorously scrutinizing executive action.[27] This recalibration sought to temper substantive severity with procedural fairness, reasserting the primacy of Part III of the Constitution.

1) The "Speedy Trial" Override (Article 21)

The most profound doctrinal correction occurred in the domain of bail. Confronted with the reality that Section 45 of the PMLA effectively mandated indefinite pre-trial incarceration, the Supreme Court resurrected Article 21 of the Constitution as a vital safety valve.This shift was crystallized in Manish Sisodia v Directorate of Enforcement (2024), where the accused had been incarcerated for seventeen months without the trial commencing.[28] The Supreme Court ruled that the statutory restrictions of Section 45 cannot override the constitutional guarantee of a speedy trial. The Court emphasized that prolonged incarceration without trial effectively converts pre-trial detention into a sentence, fundamentally violating the presumption of innocence.

[23] PMLA 2002, s 19(1).
[24] Pankaj Bansal v Union of India 2023 SCC OnLine SC 1244, para 35.
[25] Tarsem Lal v Directorate of Enforcement 2024 SCC OnLine SC 971.
[26] Vijay Madanlal Choudhary v Union of India (2022) 15 SCC 1.
[27] Parv Gupta, 'A Critical Analysis of the PMLA Act: Its Constitutional Validity and the Role of Judiciary in Shaping Its Jurisprudence' (2024) 4 Journal of Legal Research and Juridical Sciences 1563.
[28] Manish Sisodia v Directorate of Enforcement 2024 SCC OnLine SC 1920.

This principle was further entrenched in **Arvind Dham v Directorate of Enforcement (2026).**[29] In this case, the Directorate of Enforcement (ED) opposed bail on the grounds of the sheer magnitude of the alleged fraud, presenting a prosecution complaint running into thousands of pages. The Supreme Court categorically rejected this argument, establishing that the mere filing of a voluminous charge sheet cannot justify indefinite detention if the agency fails to commence the trial within a reasonable timeframe. By ruling that economic offences cannot be treated as a homogenous class warranting blanket denial of bail, the Court dismantled the "prevention-by-detention" model, ensuring that statutory rigors yield to constitutional liberties when systemic delays occur.

2) The Limits of Recalibration: The 'Investigation Necessity' Doctrine

While the judiciary has acted to protect long-incarcerated undertrials, it has been careful not to swing the pendulum to an absolute extreme. The boundaries of this constitutional recalibration were sharply defined by the Delhi High Court in **Bhaskar Yadav v Directorate of Enforcement (2026).**[30]In Bhaskar Yadav, the accused sought anticipatory bail in a complex cyber-fraud and cryptocurrency laundering syndicate. The High Court firmly rejected the plea, clarifying that the "Speedy Trial" benefit established by the Supreme Court applies strictly to cases of prolonged incarceration and does not create a bar on initial custodial interrogation. The Court observed that Article 21 cannot be interpreted in a manner that completely blocks the investigator's domain, particularly where the accused had actively wiped electronic devices and destroyed digital evidence.

This judgment serves as a crucial doctrinal counterbalance. It affirms that while the judiciary is aggressively checking indefinite detention, the Twin Conditions of Section 45 remain a formidable and necessary barrier at the pre-arrest stage. The ED retains its sovereign power to secure custody when non-cooperation and evidence tampering are evident, ensuring that the Sisodia exception does not devolve into blanket immunity for sophisticated financial criminals.

3) Procedural Illegality and Evidentiary Transparency

The judicial pushback has also targeted the ED's investigative opacity and procedural short-circuiting. In **Directorate of Enforcement v Subhash Sharma (2025)**,[31] the Supreme Court ruled that procedural illegality vitiates the invocation of Section 45. The accused had been detained at an airport for over 46 hours without being produced before a Magistrate, violating Article 22(2) of the Constitution.[32] The Court held that an illegal arrest entirely vitiates subsequent custody; consequently, the ED cannot rely on the twin conditions of Section 45 to oppose bail if the foundational arrest itself was constitutionally flawed.

Simultaneously, the Court shattered the ED's culture of evidentiary secrecy in **Sarla Gupta v Directorate of Enforcement (2025).**[33] Historically, the ED selectively supplied only "relied-upon" documents to the accused, withholding potentially exculpatory material seized during searches. The Supreme Court directed the ED to furnish copies of all seized documents to the defense, holding that the right to a fair trial under Article 21 is meaningless if the prosecution controls the informational narrative. This ruling effectively ended the information asymmetry that long prejudiced PMLA accused, restoring a measure of equality of arms in economic trials.

VI. FEDERALISM FRICTION: THE PMLA AS AN INSTRUMENT OF CENTRALIZATION

While much of the constitutional critique surrounding the PMLA focuses on individual liberty (Articles 14, 20, and 21), a highly consequential and underexplored dimension is its impact on India’s federal structure. As the ED’s jurisdiction has expanded, it has increasingly encroached upon subjects traditionally reserved for State governments, transforming the PMLA into an instrument of administrative and political centralization.

1) Bypassing the State Police and Anti-Corruption Bureaus

Under the Seventh Schedule of the Indian Constitution, "Public Order" and "Police" are exclusively State subjects under List II, Entries 1 and 2. State governments possess the primary constitutional mandate to investigate crimes, including localized corruption, through their respective state police forces and Anti-Corruption Bureaus. The PMLA, however, allows the Union government to bypass this federal division of power.

Because the PMLA Schedule now includes offences under the Prevention of Corruption Act (PCA) and ordinary cheating under the Indian Penal Code (IPC), any localized corruption scandal can be re-categorized as a money laundering offence.

[29] Arvind Dham v Directorate of Enforcement 2026 INSC 12
[30] Bhaskar Yadav v Directorate of Enforcement [2026] DHC 813.
[31] Directorate of Enforcement v Subhash Sharma 2025 INSC 141.
[32] Constitution of India, art 22(2).
[33] Sarla Gupta vs. Enforcement Directorate (2025) 7 SCC 626

Once a local police station registers a First Information Report (FIR) for a scheduled offence, the ED possesses the unilateral authority to register an Enforcement Case Information Report (ECIR) and take parallel cognizance of the matter. This enables a central agency to enter a state's jurisdiction, summon state officials, and attach properties without the consent of the State government, effectively sidelining the State's own investigative machinery.[34]

2) The TASMAC Litigation: A Constitutional Red Line

This federal tension escalated into a direct constitutional confrontation in the litigation surrounding the Tamil Nadu State Marketing Corporation (TASMAC) in 2025. The ED initiated proceedings against the State-owned liquor corporation, alleging financial irregularities, and conducted unilateral searches on its premises.

The State of Tamil Nadu challenged this jurisdiction, arguing that the regulation of liquor and the policing of state-owned entities were purely State matters. The State contended that the ED's intervention was a violation of cooperative federalism, functioning as an encroachment by the Union executive. While the Madras High Court initially upheld the ED's actionsruling that federalism cannot shield investigations into national economic offencesthe Supreme Court of India subsequently stayed the probe.

In State of Tamil Nadu v Directorate of Enforcement (2025),[35] the Supreme Court expressed serious concern that the central agency was "crossing all limits" by initiating action when the State's own vigilance authority was already investigating the alleged predicate offences. The Court cautioned that if the ED is permitted to usurp every local corruption investigation under the guise of the PMLA, it would irreparably alter the constitutional distribution of powers, rendering State investigative agencies redundant.The TASMAC litigation stands as a critical juncture in PMLA jurisprudence. It highlights that the unchecked expansion of the ED's powers threatens not only individual civil liberties but also the structural integrity of India's federalism. When a penal statute is weaponized to exert coercive control over State institutions, it ceases to be a mere economic law and becomes a tool of constitutional destabilization.

VII. THE WAY FORWARD: REFORM FRAMEWORK

The jurisprudential shift initiated by the Supreme Court from 2024 to 2026 has provided critical relief to undertrials trapped in prolonged incarceration. However, reactive judicial oversight is an insufficient cure for systemic statutory defects. A paradigm where citizens must litigate up to the apex court merely to secure fundamental liberties is inherently flawed. A sustainable balance between effective economic prosecution and constitutional liberty requires comprehensive legislative re-engineering.To bridge this constitutional deficit, this paper proposes a "Reform Framework," comprising three foundational pillars: institutional redesign, statutory custody caps, and calibrated evidentiary disclosure.

1) Institutional Redesign: The "Hybrid FIU-Prosecutor" Model

The root of the Enforcement Directorate's (ED) procedural overreach lies in its monolithic structure. Currently, the ED concentrates intelligence gathering, financial investigation, and criminal prosecution within a single entity. This concentration creates an inherent institutional bias toward securing arrests to justify investigations, resulting in the abysmal 0.82% conviction efficiency identified earlier.India must pivot toward a "Hybrid FIU-Plus-Prosecutor" model, aligning its enforcement mechanisms with global best practices outlined by the Egmont Group of Financial Intelligence Units. The PMLA should be amended to bifurcate the ED into two legally distinct, firewall-separated wings:

- The Administrative Intelligence Wing (AIW): Functioning purely as a Financial Intelligence Unit, the AIW would receive Suspicious Transaction Reports (STRs), analyze complex financial data, and execute short-term, provisional asset freezes to prevent capital flight. Crucially, officers in the AIW would possess absolutely no powers of arrest or custodial interrogation.
- The Law Enforcement Wing (LEW): This wing would execute arrests and handle prosecutions, but its jurisdiction would only be triggered upon receiving a "Reasoned Reference" from the AIW, establishing a high probability of criminal conduct.

Furthermore, to insulate the process from executive weaponization, the PMLA must institute a mandatory "Prosecution Filter," modelled conceptually on the United Kingdom's Crown Prosecution Service (CPS). Before the LEW can file a prosecution complaint (charge sheet) before the Special Court, an independent panel of prosecutors must certify the "evidentiary sufficiency" of the case.

[34] A Srivastava, 'The Federal Fault Lines: ED's Overreach into State Subjects' (2025) 1 Journal of Constitutional Law and Policy 88.
[35] Tamil Nadu State Marketing Corporation Ltd v Directorate of Enforcement 2025: MHC: 1037.

By separating the investigators from the prosecutors, the State can ensure that only cases with a realistic prospect of conviction reach the trial stage, thereby drastically reducing the volume of innocent or marginally involved individuals subjected to the rigors of Section 45.[36]

2) Operationalizing Article 21

While Manish Sisodia and Arvind Dham established that Article 21 overrides Section 45 in cases of delayed trials, this relief remains subject to the discretionary interpretation of individual judges. What constitutes an "unreasonable delay" varies wildly across jurisdictions. To crystallize this jurisprudence, the PMLA requires the codification of a Statutory Custody-Time Cap via a proposed amendment, Section 45A.[37]

This statutory cap must operate on two distinct timelines:

- The Pre-Complaint Phase: While Section 167 of the Code of Criminal Procedure (CrPC) limits pre-charge sheet custody to 60 or 90 days, the ED frequently files incomplete or "piecemeal" complaints to defeat default bail. The proposed Section 45A should mandate that if a comprehensive, trial-ready prosecution complaint is not filed within 90 days of arrest, the rigors of Section 45 automatically cease to apply, and ordinary bail jurisprudence takes over.
- The Trial Phase (The "One-Third" Rule): The statute must dictate that if a trial does not conclude within one-third of the maximum sentence prescribed for the scheduled offence (e.g., 2 to 3 years), the statutory presumption of guilt under Section 45 is extinguished. At this temporal threshold, the presumption of innocence is statutorily restored, shifting the burden back to the State to demonstrate why continued detention is necessary under standard CrPC principles.[38]

3) The Calibrated Disclosure Protocol (Two-Tier ECIR)

The opacity surrounding the Enforcement Case Information Report (ECIR) has historically facilitated a "process as punishment" environment. Because the Supreme Court in Vijay Madanlal Choudhary ruled that the ECIR is an "internal document" not akin to a First Information Report (FIR), accused persons are routinely deprived of the foundational allegations against them until long after coercive steps are taken.

This paper advocates for the legislative establishment of a Two-Tier ECIR Regime to balance the agency's need for operational secrecy with the accused's right to a fair defense.

- Tier 1 (Covert Phase): During the pure intelligence-gathering and preliminary tracing phase, the ECIR remains strictly confidential. This prevents the tipping-off of sophisticated financial syndicates and secures the integrity of the investigation.
- Tier 2 (Overt Phase): The moment the ED exercises any coercive power against an individualbe it a summons under Section 50, a search under Section 17, or an arrest under Section 19the ECIR automatically transitions to Tier 2. The agency must be statutorily mandated to serve a "Statement of Foundational Allegations" upon the accused. This document must explicitly detail the scheduled offence, the exact quantum of the alleged proceeds of crime, and the specific role attributed to the accused.Ending the culture of evidentiary ambush is a non-negotiable prerequisite for restoring the Rule of Law within the PMLA framework.

VIII. CONCLUSION

The Prevention of Money Laundering Act, 2002, stands at a critical constitutional crossroad. Enacted as a vital legislative shield to protect India's macroeconomic stability from the corrosive effects of transnational crime and terrorism financing, its operational reality over the past two decades has exposed a profound constitutional deficit. A legal framework that boasts near-absolute powers of search, seizure, and arrest, yet delivers an absolute conviction efficiency of less than one percent, cannot be classified as a successful criminal statute; it is, by empirical definition, a punitive administrative regime.The unchecked expansion of the "Proceeds of Crime" definition, combined with the retrospective application of the "Continuing Offence" doctrine, has allowed the State to weaponize the PMLA against ordinary economic infractions and localized corruption, fundamentally altering India's federal balance.

[36] S Pavithra, 'Abuse of Discretionary Power by Enforcement Director Prevention of Money Laundering Act' (2024) 4 Indian Journal of Integrated Research in Law 374.
[37] Supreme Court Observer 'Right to Speedy Trial Under Article 21' (Supreme Court Observer, 6 January 20
[38] Kumar S and Dixit A, 'Prevention of Money Laundering Act, 2002 (PMLA) Critical Review of Key Provisions' (2023) 5(6) International Journal for Multidisciplinary Research 1, 12.

Furthermore, the doctrinal anomalies embedded within Sections 19, 45, and 50 have systematically dismantled the constitutional protections against self-incrimination and arbitrary detention. By inverting the presumption of innocence, the PMLA has created a procedural fortress where the deprivation of liberty is frictionless, but the adjudication of guilt is an anomaly.

The Supreme Court's recent jurisprudencespearheaded by landmark rulings like Pankaj Bansal, Manish Sisodia, and Arvind Dhamsignals a necessary and urgent constitutional recalibration. The judiciary has rightly recognized that the Constitution is not a silent spectator to executive overreach, and that the gravity of an economic offence cannot justify the suspension of Article 21. The State cannot indefinitely sustain a justice system that relies on pre-trial incarceration as its primary metric of success. By adopting the structural firewalls proposed in this studyspecifically, the institutional bifurcation of the Enforcement Directorate, the codification of a statutory custody cap, and the enforcement of evidentiary transparencyIndia can ensure that its fight against financial terror remains robust without becoming a casualty of its own excess. A democratic republic must demand nothing less than a system where economic security and constitutional liberty coexist, not as competing interests, but as mutually reinforcing pillars of the Rule of Law.

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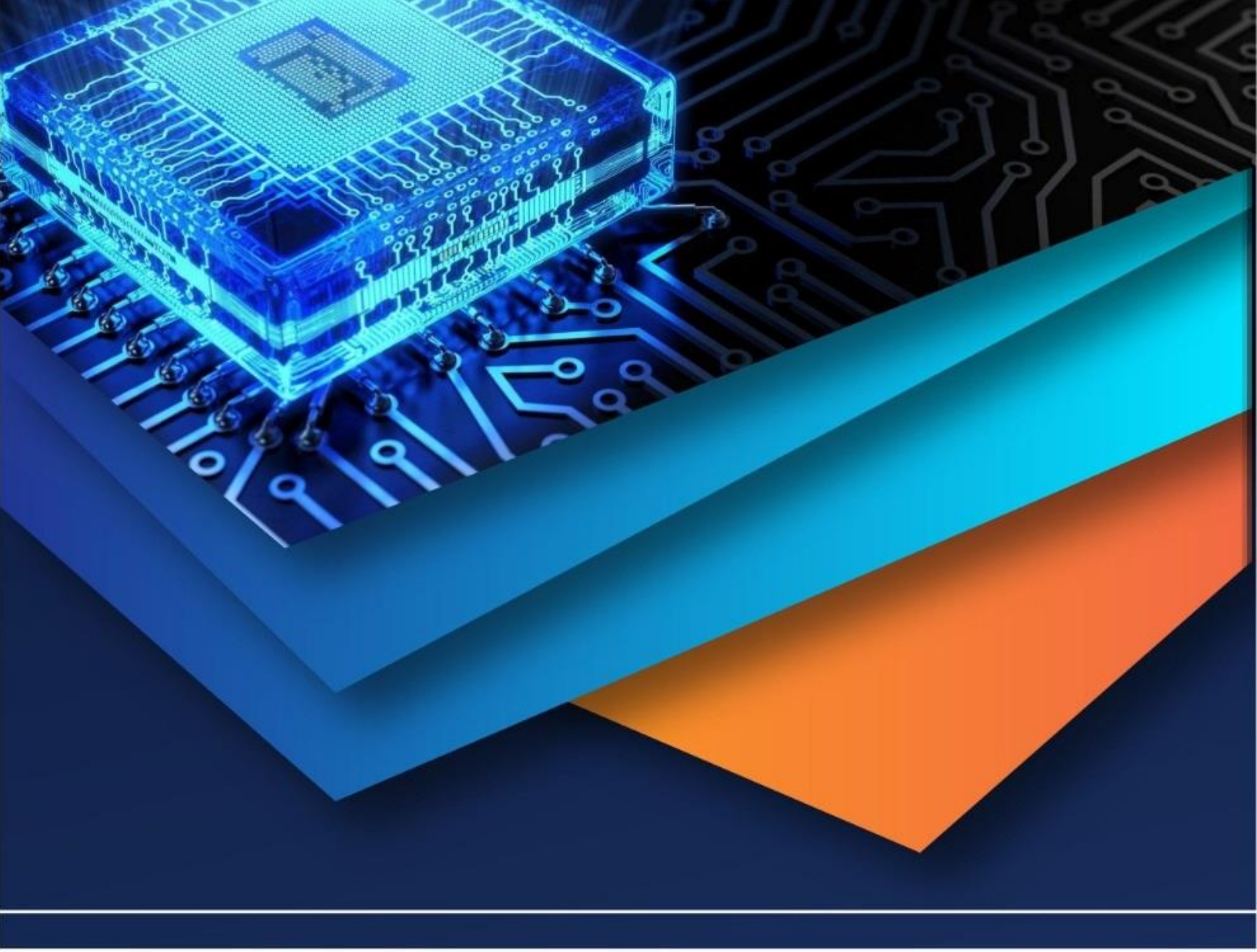

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