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Introduction

Welcome to the Indian Journal of Legal Affairs and Research (IJLAR), a distinguished platform dedicated to the dissemination of comprehensive legal scholarship and academic research. Our mission is to foster an environment where legal professionals, academics, and students can collaborate and contribute to the evolving discourse in the field of law. We strive to publish high-quality, peer-reviewed articles that provide insightful analysis, innovative perspectives, and practical solutions to contemporary legal challenges. The IJAR is committed to advancing legal knowledge and practice by bridging the gap between theory and practice.

Preface

The Indian Journal of Legal Affairs and Research is a testament to our unwavering commitment to excellence in legal scholarship. This volume presents a curated selection of articles that reflect the diverse and dynamic nature of legal studies today. Our contributors, ranging from esteemed legal scholars to emerging academics, bring forward a rich tapestry of insights that address critical legal issues and offer novel contributions to the field. We are grateful to our editorial board, reviewers, and authors for their dedication and hard work, which have made this publication possible. It is our hope that this journal will serve as a valuable resource for researchers, practitioners, and policymakers, and will inspire further inquiry and debate within the legal community.

Description

The Indian Journal of Legal Affairs and Research is an academic journal that publishes peer-reviewed articles on a wide range of legal topics. Each issue is designed to provide a platform for legal scholars, practitioners, and students to share their research findings, theoretical explorations, and practical insights. Our journal covers various branches of law, including but not limited to constitutional law, international law, criminal law, commercial law, human rights, and environmental law. We are dedicated to ensuring that the articles published in our journal adhere to the highest standards of academic rigor and contribute meaningfully to the understanding and development of legal theories and practices.

BAIL JURISDICTION UNDER THE PREVENTION OF MONEY LAUNDERING ACT, 2002

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ABSTRACT:

The Prevention of Money Laundering Act, 2002 treats bail in a unique way. Money laundering is considered a serious economic crime because of how it harms financial systems, public trust, governance, and the rule of law. However, the seriousness of an offence does not automatically mean that someone should be in custody before convicted. Section 45 of the PMLA makes offences under the Act cognizable and non-bailable, and it also sets out more conditions that must be satisfied before bail is granted. This creates a complex legal challenge: courts must protect personal liberty while also respecting the laws designed to address economic crimes.

This project explores bail jurisdiction under the PMLA through the broader context of constitutional and procedural principles in Indian criminal law.

The analysis is based on Article 21 of the Constitution, the presumption of innocence, the right to a fair trial, and the protection against unnecessary detention. These are just not legal formalities; they represent a major conflict between State authority and individual freedom. The main question is whether the current bail framework under the PMLA maintains a fair balance between prosecuting money laundering effectively and upholding the constitutional right of liberty.

INTRODUCTION:

The Prevention of Money Laundering Act, 2002 gives bail a distinct character. Money laundering is treated as a serious economic offence due to its damaging effect on financial systems, public confidence, governance, and the rule of law. Nevertheless, the serious nature of an offence does

not automatically justify keeping an accused person in custody before a verdict. Section 45 of the PMLA makes offences under the Act cognizable and non-bailable, and introduces additional conditions that must be fulfilled before bail can be granted. This creates a difficult legal situation: courts must protect personal liberty while also following the stricter legal framework introduced in economic crime laws.

This project looks at bail decisions under the PMLA through the broader lens of constitutional and procedural principles in Indian criminal law. The analysis focuses on Article 21 of the Constitution, the presumption of innocence, the right to a fair trial, and the protection against unnecessary detention. These considerations are not just technical; they reflect a deeper tension between State power and individual freedom. The central question this study addresses is whether the current bail framework under the PMLA maintains a fair balance between effectively prosecuting of money laundering and the protecting the constitutional guarantee of liberty.

In this research paper the challenge analysed is:

Stringent Bail conditions

Section 45 of PMLA states that if an accused wants bail, then they must prove that they will not commit any such offence, which effectively means that they have to prove their innocence. This leads to a mini-trial during the bail applications stage. The Prevention of Money Laundering Act (PMLA) in India allows for strict bail conditions to be placed on individuals accused of money laundering offenses. While bail is a legal right, the PMLA gives authorities the power to impose certain conditions to ensure that the accused follows legal procedures and does not interfere with the investigation. These conditions include depositing large amount of money and freezing assets.

OBJECTIVES OF STUDY

- The first objective is to examine the special bail framework under the PMLA. Section 45 makes the offence cognizable and non-bailable and imposes special conditions for bail. The study investigates how these conditions function in practice, whether they create a heavier burden on the accused at the pre-trial stage, and whether the special nature of economic offences justifies such stricter requirements.

- The second objective is to analyse the constitutional dimensions of PMLA bail, focusing on the impact of strict bail conditions on Article 21, the right to speedy trial, protection against arbitrary arrest, and the fairness of reverse burden provisions. The study also considers whether long period of custody in PMLA cases may become punitive when trials are significantly delayed.

LITERATURE REVIEW

The following literature review framework is devised for a legal research paper that examines the intersection of the Prevention of Money Laundering Act, 2002 (PMLA) and the new criminal framework established by the Bharatiya Nyaya Sanhita, 2023 (BNS) and the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS).

1. Conceptual Foundation: The "Special" Nature of PMLA

Economic Offence vs. Fundamental Rights: Existing literature often discusses the classification of money laundering as an "economic offence" that jeopardizes the national economy. Research here should contrast the "Twin Conditions" under Section 45(1) of the PMLA¹ with the general principles of bail under the BNSS.

The Burden of Proof: Academic discussion often focus on the constitutionality of the "reverse burden" (Section 24)². Literature from constitutional scholars such as the case of Vijay Madanlal Choudhary V. Union Of India³ is essential in understanding how this provision alters the presumption of innocence.

2. The Twin Conditions and Judicial Interpretation

The Vijay Madanlal Paradigm: This landmark judgment is the foundation of PMLA jurisprudence.

Evolution of Bail Jurisprudence: Analyze writings that trace the shift from the pre-2018 era (post-Nikesh Tarachand Shah) to the current post-2022 era.

Focus: Examine whether legal commentary views the current bail threshold as a "near-impossible" barrier that effectively turns pre-trial detention into a de facto sentence.

¹ Section 45(1) of the PMLA.

² Section 24 of the PMLA.

³ Vijay Madanlal V. UOI.

3. Constitutional Dimensions and Article 21

Bail as a Rule, Jail as an Exception: Critique how the Supreme Court's approach to bail has evolved, with bail being seen as the norm and imprisonment as the exception the foundational principle of State of Rajasthan v. Balchand.⁴

Right to Speedy Trial: Integrate literature regarding the "triad" of rights:

Article 21 (Life and Liberty): Does prolonged incarceration, inherent in PMLA cases due to the complexity of investigations, violate the right to a speedy trial?

Prosecutorial Delay: Review academic articles focusing on the "pre-trial detention trap," where the Enforcement Directorate's (ED) prolonged investigation periods preclude the possibility of satisfying the "reasonable grounds" test for bail.

RESEARCH METHODOLOGY

The study adopts a doctrinal method of legal research. This approach is appropriate because the subject is primarily concerned with statutes, judicial decisions, constitutional principles, and legal interpretation rather than empirical data. The research analyses the Prevention of Money Laundering Act, 2002, the Bharatiya Nagarik Suraksha Sanhita, 2023, the Bharatiya Nyaya Sanhita, 2023, relevant constitutional provisions, and case law relating to bail. The BNSS receives particular attention because it now governs the general procedural framework of criminal law, including arrest, custody, bonds, bail, and under trial detention.

The study draws on two categories of sources. Primary sources include statutory provisions, constitutional provisions, and judgments of the Supreme Court and High Courts. The PMLA is examined with particular focus on Sections 3, 4, and 45 — which define the offence, prescribe punishment, and regulate bail in money laundering cases. The relevant BNSS provisions on bail and detention are also considered to understand how general criminal procedure interacts with special laws. Secondary sources include textbooks, commentaries, journal articles, law commission materials, legal databases, government materials, and academic writings on bail, economic offences, money laundering, constitutional criminal procedure, and human rights. These help place the subject in its wider context and provide different perspectives on the problem of

⁴ State of Rajasthan v. Balchand.

strict bail conditions.

RESEARCH FINDINGS

Section 45 of the Prevention of Money Laundering Act, 2002 declares offences under the Act to be cognizable and non-bailable. This classification has a substantial effect on bail jurisprudence because it places PMLA offences outside the ordinary liberal treatment given to bailable offences. In a bailable offence, release is generally a matter of right once the accused is prepared to furnish bail. In a non-bailable offence, bail depends on judicial discretion. Under the PMLA, that discretion is further controlled by special statutory conditions.

The term "cognizable" generally means that the investigating authority may arrest without a warrant, subject to the safeguards provided by law. In the PMLA context, this power must be read alongside Section 19 of the Act, which authorises specified officers — including the Director, Deputy Director, and Assistant Director — to arrest a person when, on the basis of material in their possession, they have reason to believe the person is guilty of an offence punishable under the Act. The officer must record the reasons for such belief and inform the arrested person of the grounds of arrest. After arrest, the person must be produced within twenty-four hours before the Special Court or the competent Magistrate.

The term "non-bailable" does not mean that bail is completely prohibited — it only means that bail is not available as a matter of right. In PMLA cases, the accused must satisfy a stricter legal standard under Section 45. The Supreme Court has clarified that although Section 45 restricts the right to bail, it does not create an absolute bar on the grant of bail. The discretion remains with the court, but it must be exercised according to the statutory conditions and principles of law. The cognizable and non-bailable classification reflects the legislative belief that money laundering is a serious economic offence that may involve large amounts of money, organised structures, political or corporate influence, and cross-border transactions. In such cases, the legislature appears to have considered ordinary bail rules insufficient, and the special classification is intended to prevent accused persons from frustrating investigation, concealing assets, influencing witnesses, or moving proceeds of crime beyond the reach of law.

However, this classification also creates a risk of excessive pre-trial detention. If courts treat the words "cognizable and non-bailable" as a command to refuse bail in every case, accused persons may remain in custody for prolonged periods without any conviction, which would conflict directly with Article 21 and the principle that personal liberty can be restricted only through fair, just, and reasonable procedure. The correct approach is therefore not automatic detention but careful judicial examination. The BNSS, 2023 is also relevant here because it now provides the general procedural law for arrest, detention, and remand in new criminal proceedings, subject to the saving clause for pending matters. Section 187 of the BNSS⁵ deals with the procedure where investigation cannot be completed within twenty-four hours, while Section 531 repeals the CrPC and saves certain pending proceedings⁶. In current legal analysis, the procedural consequences of arrest and remand must therefore be understood through the BNSS framework wherever applicable. The cognizable and non-bailable character of PMLA offences makes bail more difficult, but not impossible — it strengthens the prosecution's position, but it does not remove the court's responsibility to apply the law constitutionally.

Article 14 and Reasonableness

Article 14 of the Constitution guarantees equality before law and equal protection of laws within the territory of India. In criminal law, Article 14 ensures that State action must not be arbitrary, discriminatory, or unreasonable. A law may classify offences and accused persons differently, but such classification must have a rational basis and must be connected with the object of the law. Strict bail provisions under a special statute like the PMLA must therefore satisfy the test of reasonableness that Article 14 demands.

The PMLA creates a special bail regime because money laundering is treated as a serious economic offence. Section 45 declares PMLA offences cognizable and non-bailable and imposes twin conditions for bail, and the legislative classification is based on the idea that money laundering affects economic integrity, public interest, financial systems, and the State's ability to trace and confiscate criminal property. Accused persons under the PMLA are therefore treated

⁵ Section 187 of the BNSS.

⁶ Supreme Court of India 2020 S Kasi v State through Inspector of Police Supreme Court Cases New Delhi.

differently from accused persons under ordinary criminal law. The constitutional question is whether this different treatment is reasonable. In *Nikesh Tarachand Shah*, the Supreme Court found the earlier version of Section 45 unconstitutional because the twin conditions were linked to offences punishable for more than three years under Part A of the Schedule, rather than being properly connected to the offence of money laundering itself—a classification that created an Article 14 problem because it was not considered rationally connected in that form. After the 2018 amendment, Section 45 was changed so that the twin conditions applied specifically to offences under the PMLA, and in *Vijay Madanlal Choudhary*, the Supreme Court upheld the amended provision and accepted that the special bail conditions had a rational connection with the object of the Act, meaning that at the level of constitutional validity, the present Section 45 has been treated as reasonable.

However, Article 14 reasonableness is not limited only to the text of the statute — it also applies to the manner in which the statute is implemented. Even a valid law can be applied arbitrarily. If similarly placed accused persons are treated differently without reasons, if arrest is made selectively, or if bail is opposed mechanically in every case without considering individual facts, Article 14 concerns may still arise. Reasonableness requires individualised judicial assessment. The proviso to Section 45 also reflects proportionality and reasonableness, allowing the Special Court to release certain categories such as persons below sixteen years of age, women, sick or infirm persons, and persons accused of laundering less than one crore rupees — showing that the legislature itself recognises that strict bail conditions should not operate identically in every situation and that vulnerability, health, gender, age, and monetary scale may all be relevant. Under the BNSS, general bail law also values reasoned decision making, and Section 480 permits conditions while requiring judicial application of mind in non-bailable offences. Article 14 therefore requires that PMLA bail should not become arbitrary — strictness may be constitutionally valid, but it must be applied reasonably, with the court examining each accused separately and considering the precise role, evidence, custody period, health, cooperation, and risk factors. Equality before law does not mean identical treatment in all cases; it means fair treatment based on relevant differences.

CONCLUSION

The study of bail jurisprudence under the Prevention of Money Laundering Act, 2002 reveals a complex conflict between economic enforcement and personal liberty. Money laundering is undoubtedly a serious offence — it affects the financial system, enables criminal wealth to enter lawful markets, weakens public institutions, and may support wider criminal networks. For this reason, Parliament has created a strict legal framework under the PMLA, including attachment of property, special investigation powers, arrest powers, and stringent bail conditions under Section 45. At the same time, the seriousness of money laundering cannot erase the constitutional identity of the accused as an under trial. A person accused under the PMLA is not a convict, and until guilt is proved through trial, that person remains protected by Article 21, Article 22, the presumption of innocence, and the right to fair procedure. The central provision in PMLA bail law is Section 45. Its twin conditions make bail difficult, especially where the Public Prosecutor opposes release. The Supreme Court's jurisprudence shows that the provision has travelled through different stages: in *Nikesh Tarachand Shah V. Union of India*,⁷ the earlier version was struck down; Parliament then amended the provision; in *Vijay Madanlal Choudhary*,⁸ the amended Section 45 was upheld. Later decisions — *Pankaj Bansal*, *Tarsem Lal*, *Manish Sisodia*, and *Prem Prakash* — have added constitutional safeguards by focusing on written grounds of arrest, summons-based appearance, delay in trial, and Article 21. The result is a more balanced judicial trend that insists on the seriousness of money laundering while refusing to allow statutory strictness to become automatic detention.

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