AN ASSESSMENT OF THE EVOLUTION OF THE LEGAL FRAMEWORK IN INDIA FOR PREVENTING ECONOMIC CRIMES, WITH A FOCUS ON RECENT LEGISLATIVE CHANGES

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ABSTRACT

The legal environment in India on dealing with economic crimes has gone through a significant shift after the liberalized market, which had begun to function after 1991, since the state controlled economic system. It has changed it by the replacement of the Foreign Exchange Regulation Act with the Foreign Exchange Management Act, 1999, and through introduction of the Prevention of Money Laundering Act, 2002, to prevent illegal financial flows. The legislative changes considered in the paper are the amendments to the PMLA, the Fugitive Economic Offenders Act, 2018, and changes made in line with the Bharatiya Nyaya Sanhita and Bharatiya Nagarik Suraksha Sanhita, 2023. Regardless of a strong surge in enforcement actions and attaching of assets by the Enforcement Directorate, the framework faces constitutional and procedural issues, including high bail levels, nondisclosure of the Enforcement Case Information Report, and a poor conviction rate of about 0.25 percent. The paper finds that to prevent economic crimes, deterrence strategies must be balanced with a balance between enforcement authorities and procedural fairness to guarantee substantive justice. It also highlights the need of judicial checks and balances to ensure that there is legitimacy and credibility of the enforcement regime. The paper concludes by arguing that the lack of such reforms will result in a danger of undermining fundamental rights and losing trust of the criminal justice system by the population due to wide enforcement powers.

Keywords: The Prevention of Money laundering Act (PMLA), Fugitive Economic Offenders Act (FEOA), Due Process, Presumption of Innocence, Enforcement Directorate (ED), Economic Liberalization, Constitutional Law.

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Chapter 1 – Introduction:

1. Introduction: The Imperative for Rigorous Economic Crime Legislation

1.1.The Contradictory Economic Crime in the Developmental Path of India.

The Indian experience of economic governance is closely connected with the fight against corruption and financial misconduct. History is seeing the continuation of corruption back in ancient times because it became institutionalized during the British Raj where inequalities were established in system, and these were created to extract the wealth of the country. The economic model known as the License Raj that had supported independence unwillingly encouraged bureaucratic and political corruption and created the platform where manipulation and economic rent-seeking could thrive after independence.

Economic crimes include crimes that apply to specialized statutory definitions which go outside of the general BNS and the subject matter of these crimes are tax evasion, illegal drug trafficking, bank fraud, and money laundering. Before the present structure, there existed legislative sources of dealing with economic criminal behavior, though statutes like the Income Tax Act, the Banking Regulation Act, 1949 and the Imports and Exports Control Act, 1947, played a role in the counteract. The trend toward more centralized and offensive legal framework is indicative of the intricacy and trans or international character of the financial crime in the twenty-first century.

1.2. Statement of Research Objectives and Scope:

This research paper intends to offer an expert evaluation of the trend of the legal framework of fighting economic crime in India. The main aims are four-fold, the first one is to trace the historical evolution of economic laws, and especially the transformative shift between the FERA and FEMA, the second is to critically analyze the scope of operation of the Prevention of Money Laundering Act (PMLA), 2002, and its constitutional validity as confirmed and challenged in the judicial precedents, the third is to examine the procedural and substantive implications of recent reformulation of criminal laws, i.e. the BNS and the BNSS, on the white-collar crime landscape, and last.

1.3. Literature and Theoretical Framework Review:

The Economics of Crime and Deterrence Theory:

The legal philosophy that supports economic crime deterrence depends largely on the accuracy and harshness of punishment. Nevertheless, it has been argued by academics that there is a lack of correspondence between theories and facts in India. Vis-a-vis research reports, deterrence factors namely, the likelihood of arrests and the likelihood of apprehensions have an unexpected, or rather perverse, influence on the total rate of crime in India. When the likelihood of committing crime is increased, there is no guarantee that it results in a decrease in crime. This fact implies that the correction mechanisms of the penal system contain a serious flaw. When the first step in enforcement (apprehension) is strong, yet it does not curb the crime, it consequently follows that where there is a deficiency in the process is the subsequent court action which is the conviction assurance and timeliness of sentencing. The aggressive operations of the Enforcement Directorate (ED) to seize the property and carry out search activities are working as far as making the likelihood of apprehension stronger, but the very small rate of conviction compromises the overall deterrent impact. The literature thus points in the direction of significant remodel in the penal system to reestablish the behavioral system between apprehension and ultimate result and underlines that the use of strong investigative institutions cannot lead to the general policy objectives. The legal architecture of combating the money laundering is Global Mandates and Jurisprudential Critiques of Exceptional Laws, which are inherently attached to global regulatory measures that have arisen as a response to the transnational structured crime. The need to inject more vigor into international policies was led by events such as the drug trafficking cartels of the 1980s that necessitated the creation of the United Nations (UN) Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances in 1988, which was the first policy document to oblige countries to criminalize the practice of money laundering. Subsequently, G7 instituted the Financial Action Task Force (FATF) in 1989 to convene and implement international principles to prevent money laundering and funding of terrorism[3].

1.4. Research Questions:

1. Examine the legal and philosophical transformation between the control

[3] Siddharth Karnawat, Academic Legal Critique PMLA Constitutional Validity, JUSCORP. (2024).

paradigm of Foreign Exchange Regulation Act (FERA) to the managerial and foreign exchange Foreign Exchange Management Act (FEMA), and how the transformation led to the subsequent enactment of the Prevention of Money Laundering Act (PMLA).

2. Judicially evaluate the constitutionality of the Section 45 twin bail provisions of the PMLA and non-disclosure policy of the Enforcement Case Information Report (ECIR) against the absolute right to due process and presumption of innocence (Article 21).

3. How effective and efficient recent legislative changes such as the Fugitive Economic Offenders Act (FEOA), 2018, and the addition of trial in absentia to the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, as applied to economic offenders can be substantively and procedurally are yet to be established.

4. Discuss the large statistical gap between the coercive enforcement actions under the PMLA and the dismal criminal conviction rate of the PMLA and suggest structural changes in policy to increase the deterrence certainty and the efficiency of the judicial system.

1.5 Research Methodology

The research employs a combined research approach of doctrinal legal research and empirical policy study as well as comparative jurisprudence. The research is based on the doctrinal legal analysis, which dwells on the strict analysis of the primary legal sources. This covers the Prevention of Money laundering act (PMLA), 2002, the Fugitive Economic offenders act (FEOA), 2018, and the defining parts of the Bharatiya Nyaya Sanhita (BNS) and Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023.

2. Historical Development: Towards Liberalization.

2.1. The Control Paradigm (Pre-1991)

The economic policy that was adopted prior to the period of 1990s was marked by a system of centralized planning and control with the aim of being self-sufficient and ensuring a strict preservation of the limited reserves of foreign exchange. This regime was founded upon the Foreign Exchange Regulation Act (FERA), 1973. FERA was a draining,

restrictive law whose main aims were to control foreign trade, payments and investments in a way that could guarantee the conservation of foreign currency reserves[4].As a result, any breach of FERA was examined as an offense criminal upon criminalized offenses with harsh penalties. This control ideology was applied to the anti-corruption initiatives. In illustration, the Prevention of Corruption Act, 1988, a major pre-liberalization legislature was criticized due to the inability of the act to distinguish well between those acts that were corrupt in nature and those that were simply erroneous economic or administrative acts made ex-post facto. This indistinct line also led to risk-aversion in the civil servants and lowered the enthusiasm in the bold economic decision making in critical sectors such as commercial contracting, privatization and in the purchase of military equipment, a case of both negative consequence of excessively broad criminal laws[5].

2.2. The Liberalization Catalyst and Structural Adjustment:

The necessity to carry out such a wholesale legal reform was triggered by the drastic Balance of Payments crisis of 1991 in which the foreign exchange reserve of India had fallen to less than three weeks of importation. It was precipitated by the factors as the dissolution of the Soviet Union, the gulf war of 1990-91 and political instability, India had to seek the financial assistance of the international monetary fund (IMF) and the world bank, and the financial aid was dependent on the sweeping structural adjustment programs, and the Liberalization, Privatization and Globalization (LPG) reforms began[6]. This substitution marked a paradigm shift on economic philosophy of no longer being "Regulation" to Management. FEMA is a loose, business-oriented law, unlike the restrictive FERA, which is meant to assist in the external payments and trade as well as encourage the systematic development of the foreign exchange market. More importantly, FEMA decriminalized foreign exchange violations by categorizing them as civil offenses and as such, this made it easy to comply with by businesses and brought the affairs of India to international financial standards. This post 1991 system represents conflicting legal ideologies. As FEMA unveiled a civil, managerial solution to transactional violations to lure capital, the concomitant actualization of augmented global financial crime (particularly after 9/11 and based on FATF requirements) required that illicit proceeds be hyper-

[4] Difference Between FERA and FEMA, BAJAJ FINSERV (2025).
[5] Arun Jaitley, Text of IB Annual Lecture... on Economic Criminal Offences, ARUN JAITLEY (2018).
[6] Introduction of New Timelines in Criminal Procedural Law, BPRD (2024).

criminalized with the PMLA. This multifaceted and possibly unbalanced architecture is aimed at promoting legitimate capital flows and actively discouraging illegal ones. The central similarity between FERA and FEMA, are the Foreign Exchange Regulation Act (FERA), 1973, the restrictive, control-oriented philosophy, whose main goal was to control and conserve foreign exchange reserves. Breaking of FERA was therefore considered as a crime punishable by severe punishments. The Foreign Exchange Management Act (FEMA), 1999, on the other hand, was liberal and market-oriented in its philosophy. Its fundamental goals changed to make external trade and payments and effective management of foreign exchange. More importantly, FEMA decriminalized the infractions, which were considered civil crimes with the penalty being instituted by an Adjudging Authority.

3. Foundations of the Modern Enforcement: PMLA and Special Authorities.

3.1. The Prevention of Money laundering Act (PMLA), 2002: Scope and Enforcement Powers.

PMLA is the epicenter of combating the advanced financial crimes in India. Its central aims are to avert the commission of the money laundering offense, offer to the seizure of assets gained or engaged with money laundering (so-called proceeds of crime), and to impose criminals on judicial prosecution. The law stipulates tough penalties such as strict imprisonment of a sentence of three to seven years which may be extended by up to ten years in case the offence is connected to the crimes identified in terms of paragraph 2 Part A of the Schedule (e.g. narcotics)[7]. **The Enforcement Directorate (ED)** is the multi-disciplinary agency, which is mandated with the responsibilities of implementing the PMLA, FEMA and FEOA on the entire territorial jurisdiction of India[8]. The ED is endowed with extensive investigative jurisdictions such as summons the appearance of any person to provide evidence or produce documents with failure to which penalties follow. Probably the strongest forces of the ED are associated with the seizure of assets. The agency has the authority to temporarily detain the suspected properties, which are likely to be the product of crime up to a period of 180 days. This Kinds power tends to be independent of the belief in the underlying or prearranged criminal case[9]. It is an interim attachment which is to be

[7] The Prevention of Money Laundering act, 2002, § 4 (enf't dir. 2024).
[8] Attachment and Confiscation of Property, BHATT & JOSHI ASSOCIATES (2024).
[9] Vijay Singh, Contemporary Adjudicatory Challenges in PMLA cases, NATIONAL JUDICIAL ACADEMY (2020).

validated by an Adjudicating Authority. The 2019 Act was later amended to give the Special Court the authority to repatriate to rightful claimants even in the course of the trial assets that were seized, in contrast to the previous arrangements, which required that the trial be completed first[10].

3.2. The Fugitive Economic Offenders Act (FEOA), 2018.

The FEOA, 2018, was a legal measure to the dilemma of large-scale economic perpetrators who leave the nation to avoid undergoing the legal procedure. The Act only comes into effect when a warrant of arrest has been granted on certain crimes in which the value at stake is more than ₹100 crore and the individual willingly left and refuses to go back to stand trial[11]. To declare a person as a Fugitive Economic Offender (FEO), the ED applies in a Special Court (specified by the PMLA) which describes the confiscated properties. On being declared an FEO, the property belonging to the person, which might or might not be located in India but might be located abroad, may be confiscated and vested in the central government, without the accompanying requirement of any standard of proof of any kind whatsoever, but simply the standard of proof of preponderance of probabilities, a civil standard, instead of the high standard of proof beyond reasonable doubt on which criminal conviction depends[12].This form of innovative style institutionalizes fast, non-punitive recovery of assets against those individuals who take advantage of the loopholes in the jurisdictions through the pursuit of seizure of ill-acquired wealth rather than the intricacy of obtaining a criminal judgment. The FEOA is a nonconviction-focused action to curb high-value economic fugitives (more than ₹100 crore) granted a free pass out of India. The Act gives the state the right to put on a temporary hold and eventually seize assets of an announced Fugitive Economic offender using the civil standard of demonstration (preponderance of probabilities) and focuses on restorative actions of assets over the difficulty of achieving a criminal conviction.

3.3. Corporate accountability and Serious Fraud Investigation Office (SFIO).

Serious Fraud Investigation Office (SFIO) was introduced to act as an investigator of the frauds that could be described as complex, inter-departmental and multi-disciplinary with

[10] PMLA Amendment 2019 – Plugging the Loopholes, CYRIL AMARCHAND BLOGS (Sept. 19, 2019).
[11] Fugitive Economic Offenders Act, 2018,
[12] The Fugitive Economic Offenders Ordinance, 2018, PRS INDIA (2018).

a significant public interest. The jurisdiction of the SFIO has its basis mainly on the Companies Act, 2013. The SFIO is tasked with the Investigations when it is sent reports by the Registrar or the Inspector, when there are special resolutions requested by a company, in the national interest or when ordered by other departments of the government. The Companies Act, 2013, made the SFIO much more powerful than its former counterpart, the Companies Act, 1956. The previous legislation did not include clear sections on investigations or gathering of evidence regarding transactions and individuals that were located abroad[13]. This is taken care of by the present structure through giving the SFIO the investigative and evidence-gathering authority needed to overcome corporate fraud with international consequences.

3.4 Benami Transactions (Prohibition) Act, 1988 (Amended 2016):

The act, which was enhanced greatly in 2016, outlaws the ownership of any property in a false or assumed name (benami) and serves as a direct legislative measure to crack down on black money and evasion of taxes. It enables the seizure of benami properties, and special laws such as this have not been easily met with in the judicial system, resulting in high rates of pendency of Special Local Law (SLL) crimes[14].

3.5 Companies Act, 2013 – Corporate Fraud Provisions:

This Act institutionalized the Serious Fraud Investigation Office (SFIO), empowering it to investigate frauds characterized by complexity, multi-disciplinary ramifications, and significant public interest[15]. The companies act as well as the Companies (Amendment) Act, 2023 are recent amendments aimed at fighting the shell companies that are mostly used to launder money and evade taxes. The authority of the Registrar of Companies (ROC) was boosted to physically audit registered offices, remove dormant companies and probe nominee directors. These will increase the degree of corporate transparency and reduce entities that will hide positive ownership and finance illegal practices.

4. New Legislative & Policy Changes.

4.1 2016 Demonetization and Its Impact:

[13] Serious Fraud Investigation Office (SFIO), ARTHAPEDIA (2025).
[14] Indian Business Crime Update: Recent Legal Reforms, ICLG (2024).
[15] Serious Fraud Investigation Office (SFIO), ARTHAPEDIA (2025).

The ₹500 and ₹ 1000 currency notes were invalidated on November 8, 2016, as the Government of India to fight black money, counterfeit currency circulation, and corruption surprised the nation by demonetizing high-value currency notes. The relocation affected economic crimes as it interfered with illegal cash reserves, diminished unreported wealth, and limited cash-based corruption and money laundering of terrorism. According to reports, unaccounted cash in the tune of billions of rupees was seized after the demonetization and sizeable sums held in the fresh currency were found to be in ill circulation. Yet, according to some research the effect on corruption and tax avoidance was small and temporary and that informal sectors and cash-based economies would persist.

4.2. Money laundering: Prevention Amendments to the Prevention of Money Laundering Act(PMLA):

PMLA has been subjected to major revisions that have broadened its parameters as well as ensuring that it has become more restrictive. Some of the significant changes involve a wider definition of the concept of beneficial ownership, reduction of thresholds in relation to reporting suspicious transactions and incorporation of professionals such as company secretaries, chartered accountants and financial entities as reporting entities. The predicate offence timeline has now grown by more than 30 items and the Enforcement Directorate has the authority to probe complicated conspiracy and money laundering offenses, such as virtual digital assets and cryptocurrencies since 2023. The Supreme Court has affirmed constitutional soundness of the massive powers of the ED under PMLA as petitions continue to be challenged against some of the provisions. The Guidelines will be applied internally at the Enforcement Directorate (ED) in late 2024 this time around, targeting the improvement of procedural fairness in the interrogations. These guidelines require the attempts to record the statements according to Section 50 of the PMLA during the normal working hours, especially to vulnerable persons, and require the officers to be ready to accomplish the examination in a timely manner, to alleviate the accusations of undue harassment and compliance of the procedures [16].

Reforms enacted after 2015 gave the ED more power such as control over money

[16] The ED has issued internal guidelines to its officers about the timing for recording statements under Section 50, HINDUSTAN TIMES (Oct. 29, 2024).

laundering related property located anywhere in the world, and more jurisdiction over larger crimes such as wildlife and terror financing related to money laundering related offenses. The staff and regional offices of the ED have been increased, which enhances the nationwide implementation capabilities, yet certain critique still exists about procedural protection and charges of abuse[17].

4.4 Reforms in Insolvency and Bankruptcy Code (IBC):

Since its adoption in 2016, the IBC has played a key role in dealing with corporate insolvency and non-performing assets (NPAs). The legislation eases the procedures of creditor rights enforcement, increases the speed of the resolution procedure, and enhances recovery of assets, causing less chances of economic offenders to escape responsibility by using insolvency abuses. Changes ensured that faster resolution process among MSMEs was implemented and value maximization to the stakeholders. These changes strengthen accountability and limit fraudulent restructuring.

4.5 Digital Fraud Rules and RBI Direction.

The RBI has implemented strict policies to reduce cyber-based financial frauds, which require improved digital transaction security, real-time identification of fraud risks, financial education of its customers, and limits data warehousing of payment systems. Use of superior applications such as the Financial Fraud Risk Indicator (FRI) can be used to issue specific warnings and proactive measures when faced with suspicious transactions, minimizing the threats of identity theft, internet phishing and unauthorized entry. The cooperation between telecom regulators and financial institutions through inter-agency helps to improve the process of fraud detection and remediation even more.

4.6 FATF Compliance and International Pressure

The adherence of India to the Financial Action Task Force (FATF) standards has boosted legal reforms and enforcement to anti-money laundering (AML) and counter-financing of terrorism (CFT). The performance assessments by FATF should be achieved as India has made tremendous steps towards risk knowledge, application of financial intelligence and

[17] The ED has issued internal guidelines to its officers about the timing for recording statements under Section 50, HINDUSTAN TIMES (Oct. 29, 2024)

seizure of illegal funds, but the system of supervision and prosecution needs reinforcement. India in turn has increased fines to financial institutions that violate compliance and cooperation in legal assistance across borders.

5. Landmark Case Studies: Judicial Enforcement of Judiciary.

The high-profile financial scandals in India have always revealed the weaknesses in the legal and regulatory environment, which often served as a catalyst to a certain tightening of the laws or judicial rulings, especially around the area of corporate governance, social trust, and extraterritorial enforcement of PMLA.

5.1 Anil Bhavarlal Jain & Ors v. State of Maharashtra (2025)[18]:

The case Supreme Court confirmed the principle that economic crimes, particularly those comprising of moral turpitude, corruption or significant wrongful loss to the populace, cannot be aborted just because a financial compensation has been paid between the accused and the victim (e.g., the bank)[19]. (state of Maharashtra, 2025). This brings out the social aspect of such crimes and the importance of having a totally public accountability rather than a personal compromise. In case SFIO v. The case Supreme Court (2025)[20] instructed lower courts to engage in an increased scrutiny when it comes to considering bail applications in major economic offences with an underlying conspiracy and large losses to the public funds. In the decision, it was pointed out that this type of crime is a danger to the economic system of the country hence explaining the severe treatment of individual freedom during the pre-trial stage.

5.2 Nirav Modi Scam[21] (PNB Fraud)

The Nirav Modi case where fraudulent acquisition of Letters of Undertaking (LOUs) was obtained in Punjab National Bank (PNB) to finance transactions abroad became a test case to the cross-border authority of the Enforcement Directorate under the PMLA. The PMLA Utility and Cross-Border Attachment which the scam emphasized the utility of the PMLA

[18] Anil Bhavarlal Jain v. State of Maharashtra, 2024 SCC OnLine SC 3823 (India).
[19] Supreme Court: Economic Offences Cannot Be Quashed Even if a Settlement Exists Between the Parties, METALGAL (Jan. 16, 2025). [
[20] Serious Fraud Investigation Office v. Aditya Sarda, 2025 SCC OnLine SC 764 (India).
[21] Directorate of Enforcement v. Nirav Deepak Modi, Special Ct. (PMLA), Mumbai, Order Declaring Fugitive Economic Offender (Dec. 5, 2019) (India).

in addressing high value foreign money laundering and fraud involving the public sector banks. The Enforcement Directorate was able to seek interim attachment of assets internationally even in New York, which proves that the law permits the interim attachment of proceeds of crime or its equivalent value to be attached even when it is located overseas. The success of PMLA in this instance was practical as shown in the Asset Recovery as Deterrence of the Finance Ministry that made sure that the ₹ 1,052 crore out of the assets of Modi was recovered and it was later refunded to the banks that had been affected. This result highlights the legislative goal of the FEOA and PMLA to seek the recovery of illicit wealth with an overriding aim of safeguarding the interest of the population. The Regulatory Consequences are the scandal itself which has prompted the Reserve Bank of India (RBI) to suspend the issuance of LoUs and Letters of Comfort (LoC) on imports to provide the importers with less financial flexibility, but to reduce the systemic risk in the activities of the public sector banks.

5.3 Sahara Case (SEBI v. Sahara)[22]

The case against Sahara India Real Estate Corporation Limited was long and focused on the failure to comply with the instructions to pay back thousands of crores of money that it had raised via small investors using Optionally Fully Convertible Debentures (OFCDs) without due regulatory compliance. The Investor Protection and Regulatory Oversight the case was a historic precedent that bitterly stressed investor safeguarding and obligated market rules to be enforced by the Securities and Exchange Board of India (SEBI). The measures of the Supreme Court justified the fact that the regulatory framework of SEBI must be strictly observed. The Corporate and Director Accountability the court strengthened the concept of personal responsibility by attempting a contempt action against Sahara and its directors (including Subrata Roy) to avoid paying the money as ordered by the court. To ensure that company conduct was responsible, the non-compliance of the regulations by directors was a significant deterrent including holding them personally accountable. Asset Liquidation to effect Restitution of the judgment ordered that SEBI should supervise the sale and liquidation of the assets belonging to Sahara, so that money can be refunded to the defrauded investors at the due rate. This provided a legal precedent of how the sale of assets can be managed in accordance with the courts to protect the

[22] Securities and Exchange Board of India v. Sahara India Real Estate Corp. Ltd., (2012) 10 SCC 234.

confidence of the people in the financial markets.

5.4 Coal and 2G Spectrum Scam Cases.

The 2G Spectrum and Coal Scams that took place in the pre-2014 period were criminal in nature and led to colossal losses in the public exchequer largely due to the non-transparent distribution of the state resources. This was a scam where the policy of first come first serve was purportedly compromised by the public servants to sell the limited 2G spectrum licenses on obsolete rates of 2001 leading to criminal violation of trust, cheating, and forgery charges under the Prevention of Corruption Act (PC Act) and the Indian Penal Code (IPC) section. The enquiry raised levels of public and judicial attention on the merging of politics, bureaucracy, and distribution of public resources.

5.5 Coal Scam Cases[23]:

The Supreme Court in a landmark decision, declared the distribution of all except 4 out of 218 blocks of coal in 2014, as illegal and arbitrary, which were consequently cancelled. The lack of transparency in the allocation process and the possibility of corruption and bribery became the basis of the decision by the Court. This ruling was a very strong message that the judicial system would step in to stop abuse of national resources which directly impacted on the policy reforms that followed to ensure the tightening of anti-corruption controls and more transparency in the public procurement and allocation of resources. The cumulative effect of these cases was the realization that a more rigorous and centralized legal framework was badly needed, and this directly led to the creation of the legislative appetite towards acts such as the PMLA and FEOA.

6. Judicial review and Constitutional Issues and Objections on PMLA.

6.1. Cancellation of the Presumption of Innocence: The Twin Conditions of Bail (Section45): Section 45 of the PMLA which provides tough, or twin, conditions of granting bail in money laundering cases, remains the most disputed. The accused has to prove two things to the court, the first one being that there is reasonable cause that the accused is innocent of the offense; and the second reason is that the accused will not commit any other offense on bail. This provision is heavily criticized by legal scholars on the fact that it

[23] Manohar Lal Sharma v. Principal Secretary & Others. (2014) 9 SCC 516.

practically reinstates the cornerstone of criminal jurisprudence presumption of innocence principle[24].It compels the accused who are incarcerated to show their innocence against the power of the state at the pre-trial stage, which is regarded as being opaque, arbitrary and unfair. The government justifies such tough terms by suggesting that money laundering criminals are very resourceful and intelligent, and a more rigorous standard is required to ensure that they do not tamper with evidence or continue to perpetuate the offense[25]. Although the constitutional principle here is that liberty of the individual is always a Rule and deprivation is the exception (bail is the rule, jail is the exception), the Supreme court has made it clear that Section 45 only adds conditions that must be met in cases of money laundering without necessarily rewriting the basic constitutional principle[26]. However, the specialists argue that the international obligations and the mentioned aim of the PMLA do not presuppose such extremely strict terms and conditions and demand the reevaluation by the court.

6.2. The Controversy over ECIR and the Right against self-incrimination:

The additional constitutional conflict is in the character of the Enforcement Case Information Report (ECIR) and in the admissibility of the statements to the ED. The ED is not a categorized as a police officer. Two significant procedural implications are attached to this classification. To begin with, the accused has no right to have his statements during investigation before ED officials enjoy the protection of the Code of Criminal Procedure against testimonial compulsion, that is, the statements given by him can be utilized against the accused in the court of law. This goes round the constitutional right against self-incrimination of Article 20(3) of the Constitution. Second, ECIR, starting the PMLA investigation, is also called an internal document not obliged by statute to be disclosed by the ED to the accused. The interest of denying the ECIR is usually hinged on the avoidance of the untimely release of information that may enable the property to be infected even more. The denial of the ECIR, however, avoids the judicial review of the ECIR of the actions of the ED at the pre-trial stage, which essentially denies the accused the successful

[24] Siddharth Karnawat, Academic Legal Critique PMLA Constitutional Validity, JUSCORP. (2024).
[25] Pranav Raj & Md Mizanur Rahman, Education, Work, and Crime: A Human Capital Approach, 10 INT'L REV. L. & ECON. 2170021 (2023).
[26] Prem Prakash v. Union of India, 2024 INSC 637, ¶ 11 (2024).

remedy to address the initiation of the case as being frivolous or malafide.[27]

6.3. Upholding before the Court and Later Review: Vijay Madanlal Choudhary (2022):

In July 2022, the constitutional discussion of the PMLA was at a very critical point when the Supreme Court in the case of Vijay Madanlal Choudhary v. Union of India, affirmed the constitutionality of essentially all the disputed features of the PMLA, both the broad powers of the ED and the harsh twin requirements of bail of Section 45[28]. But because of the scale of the issues over erosion of due process, the Supreme Court later decided to permit a narrow review of the judgment in August 2022. The two main questions that are considered in this review are whether or not a reversal of the presumption of innocence through Section 45 is constitutional and whether or not the ED has a duty to provide the accused with a copy of the ECIR. Such a move to review reflects the court system as desperately seeking a balanced approach to providing the state with the coercive authority it needs to address highly sophisticated financial crime, and ensuring compliance with fundamental constitutional rights.[29]The other procedural issues that are significant is the validity of using the mechanism of a Money Bill to pass the amendments of PMLA (which included the controversial provisions about the powers of EDs). By taking a Money Bill, such important amendments would not require the obligatory approval of the Rajya Sabha, but would minimize debates in parliament. Although the court of Vijay Madanlal judgment deliberately declined in deciding on the same, the matter continues to await a decision in front of a seven-judge bench in Rojer Mathew v. South Indian Bank Ltd. The discussion of the procedural issues that are critical to the PMLA, which was already described in a table, is introduced into the story below. There are a number of provisions around which the constitutional scrutiny of the PMLA focuses. In January 2022, the Supreme Court affirmed the Twin Bail Conditions (Section 45), which questions the very Presumption of Innocence (Article 21), based on the necessity to interpret the law legislatively. The Supreme Court is now going through this particular problem on a limited scale. The ECIR Non-Disclosure policy that questions the Right to know charter/ Fair Trial was also affirmed, and the ECIR

[27] Disclosure of ECIR under PMLA: A Case for Transparency and Fair Trial, LAW AND OTHER THINGS (2024).
[28] Review of the SC's 'Vijay Madanlal' judgement, SC OBSERVER (2022).
[29] Karti P. Chidambaram v Enforcement Directorate (Review of the SC's Vijay Madanlal Judgement), SC OBSERVER (2025).

was considered an internal document. This, as well, is subject to a limited judicial scrutiny of procedural transparency. Lastly, the objection to the validity of the passage of the Act as a Money Bill (challenging the necessary Legislative Procedure (Article 110)) was not only intentionally refused by the Vijay MadanlalCourt, but is pending adjudication upon by a bench of seven judges in Rojer Mathew[30].

7. Criminal Procedure: BNS and BNSS (2023): The Paradigm Shift:

7.1. Organized Economic Crime and Increased Penalties (BNS):

The constitutional reform of Indian criminal codes is substituting the IPC with the Bharatiya Nyaya Sanhita (BNS) and the CrPC with the Bharatiya Nagarik Suraksha Sanhita (BNSS) that will be effective since July 2024. The BNS is the first law in the area of organized crime that defines economic offence. In this definition, particular criminal offenses have been set to be criminal breach of trust, forgery, counterfeiting of currency, hawala (fictitious transactions), and mass-marketing fraud done to defraud financial institutions[31]. The BNS makes the current punishments stricter. An example is that the maximum term of imprisonment of criminal breach of trust has been harmonized and extended to five years. Moreover, there is a new stronger provision, which requires up to ten years of imprisonment to the members of an organized crime syndicate who are unable to explain satisfactorily the presence of property to their possession [32].

7.2. The Procedural Modernization and the BNSS:

The objective of the BNSS is to make the judicial system faster and more transparent. It provides stringent procedural schedules in the preliminary inquiry, charging and discharge application and judgment delivery and to accomplish efficiency, the BNSS takes advantage of technology, requiring all trials, inquiries and proceedings to be in electronic format, including the provision of electronic First Information Reports (E-FIRs). The BNSS also brings in important reforms victim focused. This is expressly stipulated in section 107(6) and (7) which state that the monies obtained because of the sale or liquidation of attached properties labeled as proceeds of crime are subject to rate able distribution among the

[30] Rojer Mathew v. South Indian Bank Ltd., MANU/SC/1563/2019 (S.C. 2019).
[31] Indian Business Crime Update: Recent Legal Reforms, ICLG (2024).
[32] Prosecution under New BNS Entails Draconian Punishment for Economic Offences, WORLD TRADE SCANNER (2024).

victims of the criminal actions. The provision offers a direct mode of relief to victims connecting asset recovery to the restorative justice.

7.3. The Trial in Absentia Constitutional Issue:

One of the most controversial provisions provided by the BNSS is the possibility of trial in absentia. This Section 356 allows the court to continue with the trial and give its verdict without the presence of an alleged offender who has been declared a proclaimed offender, if he or she has absconded to evade trial and has no imminent opportunity to be apprehended. Before the trial in absentia can start, a period of ninety days since the framing of the charge is required[33]. This is a direct legislative approach to curb the accumulating delays in the judiciary, combat the increasing pendency and reverse the everyday abuse of procedural protections by absconding accused individuals. Although, the idea essentially questions the constitutional right to fair trial in Article 21, which conventionally encompasses the privy of the accused to be present, face witnesses and have a part in their defense the incorporating obligatory legal symbolism of the absent accused and secured right of retrial upon reentry.[34]

8. Judicial Administration Problems and Loopholes in the Process:

The enormous gap between the enforcement measures (which are characterized by high apprehension, high attachment) and the convictions (which has almost no chances of success) will demonstrate that the main mechanism of coercion used by PMLA is procedural instead of substantive. The Supreme Court had observed this inversion of justice when it saw that moderately strict bail conditions in PMLA translate to the accused being sentenced near trial over years on hold. This technical punishment overworks the judicial system and establishes a system in which punishment is administered before the guilt is determined. The primary compounding factor on this problem is the increasing alarming case pendency. The rate of court disposal of economic Special Local Law (SLL) crimes has declined and the overall pendency rate of cases in courts stood almost at 92% in 2021[35]. The Procedural delays are usually aggravated by the fact that the accused submits reiterated

[33] Ready Reckoner: Trial in Absentia, BPRD (2024). [^7]: ED PMLA Conviction Rate Just 15 Convictions in 10 Years, EFILETAX (2025).
[34] Mr. Haricharan Vijay Anand et al., Trial in Absentia under BNSS, IJFMR (2024).
[35] Data: Significant Increase in the Pendency of Economic Offences in 2020 & 2021, FACTLY (2022).

applications of seeking discharge or postponement of trial. Special judicial infrastructure is necessary to counter this inefficiency. One of the possible solutions that have been proposed by the Supreme Court is the creation of Special Courts to have specialized cadres of judges specifically to hear the cases of money laundering under the PMLA. The reason why this structural reform is imperative is to handle the complexity of financial evidence, raise the rate of disposals, and above all, raise the certainty of conviction hence the deterrence effect of the law.

8.1. Procedural Delays and Judicial Backlogs

The reason is that the judiciary is typically overloaded and cannot adequately handle the cases it has to hear, leading to more and more delays in court.

The lengthy period of litigation of cases of economic crime is one of the greatest obstacles to enforcement. Although the number of economic offences reported has increased, to even more than 2 lakh in 2023, the conviction rate remains close to 30 percent, mainly due to the protracted investigations, slowness in sanctioning prosecution, and court overload. Economic offence special courts are usually characterized by lack of manpower and infrastructural facilities resulting in both high case stalemates and high case pendency in most areas. Such systemic delays destroy the deterrence and the faith of people in the justice system.

8.2. Deficiency in Qualified Forensic Investigation:

The economic crimes require specific technology and forensic skills, be they forensic accounting or a cyber forensic investigation. Lack of specialized staff who are well trained in new technologies like blockchain analysis, artificial intelligence-powered transaction monitoring, and digital forensics are common in enforcement agencies. Although the use of advanced AI/ML detection methods is observed in the elite agencies such as the Enforcement Directorate (ED), small agencies and local police departments are left behind because of the lack of resources and capacity.

8.3. Cross-Border Money Trail Barriers:

There is a growing transnational aspect in economic crimes, that is, in terms of layered transactions and offshore entities, along with informal ways of transferring funds such as

hawala networks. These complications hinder the identification of the origin and flow of illegal funds and make it difficult to apply mutual legal assistance treaties (MLAT). The lack of quick informal cooperation systems and deviations in the international regimes slows down the freezing, confiscation, and re-patriation operations of assets.

8.4. Cybercrime and Crypto Crime Expansion:

Digitization of the economy presents new weaknesses. The crimes of cyber fraud, identity theft, ransomware, phishing, and crypto cons are increasing. According to reports by the Enforcement Directorate and others, crypto-related laundering schemes, such as " Pig Butchering scams ", and phantom hacking aimed at draining digital resources are on the steep increase. Strict regulations and technical abilities cannot keep up with how cyber threats evolve rapidly, indicating weak enforcement.

8.5. It lacks uniformity in the enforcement agencies:

The existence of jurisdictional overlaps and agency turf wars between many of the bodies CBI, ED, SFIO, SEBI, RBI, local police are empowered by different statutes to probe offenses. Coordination between agencies has been a significant problem and this has resulted in duplication or conflict in efforts to achieve greater efficiency. The variation of investigative and prosecution standards also worsens the smoother control of economic crimes between states and industries. Overall, India is limited in its fight against economic crimes due to procedural and structural constraints, lack of capacity in forensics and cyber tools, challenges in jurisdiction and increasing problem of transnational financial crime. To overcome these restrictions, it is necessary to implement major reforms in the judicial infrastructure, improve the technical base, facilitate the international cooperation and make the enforcement agencies more harmonized.

9. Suggestions and Recommendations:

1.Enhancing Forensic and Cyber laboratories:

To combat contemporary economic crimes, it is of critical importance to invest in the state-ofthe-art laboratories and cybercrime investigation departments. The use of artificial intelligence, blockchain, and machine learning applications should be increased among the enforcement agencies to identify, work with, and thwart advanced financial fraud and

money laundering. The effectiveness of the detection and prosecution will be enhanced by training forensic specialists and developing the capacity on an ongoing basis.

2. Introduction of Fast-Track Courts in Economic criminals:

The solution to the issue of judicial delays lies in the establishment of special fast-track courts that deal with economic crimes in isolation and have sufficient infrastructure and trained personalities. This will decrease the pendency, conviction rates will be high and investor and the people confidence will be back as justice will be served fast and fairly.

3.Whistleblower Protection Reforms:

Enhancing the law to protect whistleblowers and encouraging whistle blowing both in corporate and governmental sectors can help in detecting corrupt activities at early stages. Transparency will be promoted by increased anonymity, anti-retaliation provisions, and well-defined procedures of reporting whistleblowers.

4. Fintech Surveillance and Risk Scoring:

The financial institutions and governments need to integrate the AI-generated risk scoring of the third parties and transactions to highlight the risks of corruption and bribery early on. Integrated real time monitoring structures with regulatory information will help in prevention as opposed to post facto implementation.

5. Improved International Cooperation Treaties:

The fight against cross-border financial offenses requires effective mutual legal assistance agreements, efficient systems of extradition and intelligence sharing. India should also keep up with the standards of FATF and take the lead in regional partnership to reduce the potential risks of money laundering and terrorist financing.

6. Striking a balance between Enforcement and Civil Liberties:

New laws and regulations should provide the enforcers with procedural fairness and adherence to basic rights. Clear provisions regarding preventive detention, confiscation of property, and prosecution ensure that it is not abused and politicized. There should be increased judicial oversight mechanisms to maintain the checks and balances.

10. Conclusion:

This study brings out the major transformation of legal system in India to prevent and control economic crimes. Since the colonial laws in the past, through the transformation of the contemporary multi-layered statutory laws including Prevention of Corruption Act, PMLA, reforms in the Companies Act and cyber laws, accountability and enforcement has increasingly been on the rise in India. The enactment of the newest legislation, especially since the year 2016 with the Indian demonetization, updates to the PMLA, the reform of IBC, and improved openness in corporate transparency, indicates the Indian dedication to reducing the constantly changing offences in the economic arena. The cases of Vijay Mallya, Nirav Modi and Sahara have shot these laws and enforcement agencies into the limelight of the people. Nevertheless, procedural delays, capacity shortages, technological flexibility, overlapping jurisdictions, and political abuse issues are serious problems as evidenced by empirical data in NCRB, RBI, SEBI, and FATF, which show both significant success in asset recovery and prosecution and low conviction rates and ongoing enforcement gaps. Therefore, it is urgent to adopt proposals to transform the judiciary, modernize forensic, protect whistleblowers, monitor with AI, and cooperate with other nations. In the digital era, a measured approach of strong enforcement and safeguarding of civil liberties will not only discourage economic offenses but also result in a preservation of the democratic principles, which form the basis of the rule of law. The development of the Indian legal system on economic crimes is the manifestation of a wider international trend on collaborative and technologically advanced oversight of the monetary honesty. Further vigilance, legislative creativity, and strengthening of the institutions, will be important in ordering this framework to an effective, resilient, and just economic order.

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