A CRITICAL EVALUATION OF THE REVERSE BURDEN OF PROOF UNDER SECTION 24 OF THE PREVENTION OF MONEY LAUNDERING ACT, 2002

Kiran Wagaj, New Law College, Pune

Dr. Jyoti Dharm, New Law College, Pune

ABSTRACT

The Prevention of Money Laundering Act, 2002 (PMLA) is India's principal legislative response to the growing threat of money laundering and the concealment and utilisation of proceeds derived from criminal activity. One of its most distinctive features is Section 24, which incorporates a reverse burden of proof in proceedings relating to proceeds of crime. The provision permits the Authority or Court, subject to its terms, to presume that proceeds of crime are involved in money laundering, thereby requiring the person proceeded against to rebut the statutory presumption.

The reverse burden under Section 24 raises an important question of criminal jurisprudence: to what extent can the conventional presumption of innocence and the prosecution's burden to establish guilt be displaced in the interests of effective enforcement of economic offences? The issue becomes particularly significant because the PMLA operates through a combination of stringent investigative powers, attachment and confiscation provisions, restrictive bail conditions and evidentiary presumptions.

This paper critically examines the constitutional and jurisprudential validity of Section 24. It analyses the distinction between the legal burden and evidentiary burden, the presumption of innocence, the constitutional protections under Articles 14 and 21, and the Supreme Court's interpretation of Section 24 in *Vijay Madanlal Choudhary v Union of India*. Particular emphasis is placed upon the Court's requirement that the prosecution must first establish three foundational facts: the commission of a scheduled offence, the derivation or obtaining of property from the criminal activity, and the accused's direct or indirect involvement in a process or activity connected with such property.

The paper argues that Section 24 can be constitutionally sustained only when treated as a conditional evidentiary presumption rather than as a complete reversal of the prosecution's burden. The prosecution must establish the foundational facts through cogent material before the burden can shift to the accused. The subsequent jurisprudence, particularly *Prem Prakash v Union of India*, reinforces this principle. The paper concludes that the constitutional legitimacy of Section 24 depends less upon the mere existence of a reverse burden and more upon the rigour with which courts enforce the foundational-facts requirement.

1. Introduction

Money laundering differs fundamentally from conventional criminal activity because its principal objective is to disguise the origin, ownership, possession, or utilisation of property derived from criminal conduct. Modern money laundering may involve multiple transactions, corporate entities, intermediaries, banking channels, real estate transactions, shell companies, and cross-border transfers. Consequently, conventional methods of proving criminal conduct may encounter considerable evidentiary difficulties.

The internationalisation of anti-money-laundering regulation has led States to adopt specialised legislative frameworks. The Financial Action Task Force (FATF) has developed internationally accepted standards to combat money laundering, terrorist financing and proliferation financing. These standards emphasise criminalisation, financial intelligence, beneficial ownership, confiscation, investigation and international cooperation. FATF's current evaluation methodology assesses both technical compliance and effectiveness.

India's PMLA is an important part of this international framework. The statute creates a specialised mechanism for tracing proceeds of crime, attaching property, prosecuting persons involved in money laundering, and ultimately confiscating property connected with criminal activity.

However, the effectiveness of an anti-money-laundering regime must coexist with constitutional guarantees of the criminal process.

One of the most significant departures from ordinary criminal jurisprudence is found in Section 24 of the PMLA. The provision creates a statutory presumption regarding proceeds of crime and places the burden on the person charged under Section 3 to prove the contrary. Section 24(a) uses the expression "shall presume", whereas Section 24(b) uses "may presume", thereby creating different consequences depending on the status of the person against whom the proceedings are brought.

The question is not merely whether such a reverse burden is desirable from an enforcement perspective. The more fundamental question is whether and to what extent such a provision is compatible with the constitutional principle that an accused person is presumed innocent until proved guilty.

The Supreme Court upheld Section 24 in Vijay Madanlal Choudhary v. Union of India. However, the Court did not treat the statutory presumption as automatic. It held that certain foundational facts must first be established by the prosecution.

This paper examines whether that judicial safeguard is sufficient to reconcile Section 24 with constitutional principles.

2. Research Questions

The paper seeks to answer the following questions:

1. What is the precise nature of the burden imposed by Section 24 of the PMLA?
2. Does Section 24 constitute a permissible reverse evidentiary burden or an unconstitutional reversal of the prosecution's burden?
3. What foundational facts must the prosecution establish before the statutory presumption under Section 24 arises?
4. Whether Section 24 is consistent with Articles 14 and 21 of the Constitution of India?
5. Whether the safeguards developed by the Supreme Court in *Vijay Madanlal Choudhary* adequately protect the presumption of innocence?
6. What is the effect of subsequent Supreme Court decisions on the application of Section 24?
7. Does the international obligation to maintain an effective anti-money-laundering framework justify the reverse burden imposed by Section 24?

3. Hypothesis

The hypothesis of this research is:

Although Section 24 of the PMLA constitutes a constitutionally permissible reverse evidentiary burden, its legitimacy depends upon the prosecution first establishing the foundational facts connecting the scheduled offence, the proceeds of crime and the accused. If the provision is applied without such foundational proof, it risks transforming a limited statutory presumption into a presumption of guilt, thereby undermining the principles of fair procedure and personal liberty under Article 21.

4. Research Methodology

The research adopts a doctrinal and analytical methodology.

Primary sources include:

a) the Constitution of India;

b) the Prevention of Money Laundering Act, 2002;

c) relevant amendments;

d) judgments of the Supreme Court and High Courts; and

e) FATF standards and evaluation materials.

Secondary sources include legal commentaries, journal articles, scholarly literature and academic analysis concerning reverse burdens, economic offences and constitutional criminal procedure.

The research primarily analyses judicial interpretation of Section 24 and evaluates whether the statutory provision, as interpreted by the Supreme Court, achieves an appropriate balance between effective enforcement and constitutional safeguards.

5. The Concept of Burden of Proof in Criminal Law

The traditional principle of criminal jurisprudence is that the prosecution bears the burden of establishing the guilt of the accused.

The principle is closely connected with the presumption of innocence.

The prosecution ordinarily bears the persuasive or legal burden, which requires it to establish the ingredients of the offence to the applicable standard of proof.

The evidentiary burden, however, may shift during the course of a criminal proceeding. Once the prosecution establishes certain foundational circumstances, the law may require the accused to explain particular facts or rebut a statutory presumption.

This distinction is crucial to the constitutional analysis of Section 24.

A reverse burden does not necessarily mean that the prosecution is relieved of proving the offence. A statutory presumption may merely require the accused to rebut an inference arising after specified foundational facts have been established.

The constitutional difficulty arises when the evidentiary burden is interpreted so extensively that the prosecution's primary burden effectively disappears.

Accordingly, three propositions must be distinguished:

First: the prosecution must establish the essential foundational facts.

Second: a statutory presumption may then arise.

Third: the accused may be required to rebut that presumption.

The constitutional legitimacy of Section 24 depends upon preserving this sequence.

6. Statutory Framework of Section 24

Section 24 of the PMLA provides:

“Burden of proof.—In any proceeding relating to proceeds of crime under this Act— (a) in the case of a person charged with the offence of money-laundering under section 3, the Authority or Court shall, unless the contrary is proved, presume that such proceeds of crime are involved in money-laundering; and

(b) in the case of any other person, the Authority or Court may presume that such proceeds of crime are involved in such money-laundering.”

The provision therefore creates two categories.

Section 24(a)

Where a person is charged with money laundering under Section 3, the Authority or Court shall presume, unless the contrary is proved, that the proceeds of crime are involved in money laundering.

The language is mandatory.

Section 24(b)

In the case of any other person, the Authority or the Court may presume that the proceeds of crime are involved in money laundering.

The language is discretionary.

This distinction is significant.

Section 24(a) creates a stronger statutory presumption than Section 24(b). Nevertheless, the presumption cannot be divorced from the ingredients of the substantive offence under Section 3.

A presumption regarding proceeds of crime cannot logically arise in a vacuum.

There must first be material establishing the existence of proceeds of crime and the statutory link between the accused and such proceeds.

7. Legislative Rationale for the Reverse Burden

The primary justification for reverse burdens in economic legislation is evidentiary difficulty.

Money laundering frequently involves:

a) concealed ownership;

b) complex financial transactions;

c) layered transfers;

d) fictitious entities;

e) benami or proxy arrangements;

f) multiple bank accounts;

g) conversion of illicit funds into legitimate assets; and

h) transactions designed to obscure the source of property.

Information concerning the ultimate source and beneficial ownership of assets may be particularly within the knowledge of the accused.

Consequently, requiring the prosecution to prove every aspect of the financial transaction through direct evidence may make enforcement extremely difficult.

The reverse burden under Section 24 can therefore be understood as an evidentiary response to the distinctive character of money laundering.

However, evidentiary difficulty cannot by itself justify a complete reversal of criminal responsibility.

The State must still establish the basic factual circumstances that activate the statutory presumption.

8. Presumption of Innocence and Constitutional Protection

The presumption of innocence occupies a fundamental position in criminal justice.

Although the Constitution does not contain an express provision worded identically to Article 6(2) of the European Convention on Human Rights, Indian constitutional jurisprudence has substantially incorporated the principle of fair criminal procedure through Article 21.

Article 21 requires that any procedure depriving a person of liberty be fair, just and reasonable.

Article 14 further prohibits arbitrary State action.

Therefore, a statutory reverse burden must satisfy constitutional standards of rationality and procedural fairness.

The existence of a serious economic offence may justify special legislation. It does not, however, eliminate constitutional scrutiny.

The constitutional question is consequently one of proportionality.

9. Section 24 and Article 14

Article 14 is relevant in two respects.

First, it requires that the classification created by the legislation bear a rational relationship to the object of the statute.

Second, it serves as a guarantee against arbitrary State action.

The distinction between persons charged under Section 3 and “any other person” under Section 24 is rationally justifiable because persons formally charged with money laundering occupy a different legal position from those whose involvement is otherwise alleged.

However, the manner of applying the provision remains subject to Article 14.

A presumption cannot be triggered merely because:

a) the accused had a financial relationship with another person;

b) the accused possessed property;

c) a transaction appears commercially unusual; or

d) the accused failed to provide an immediate explanation.

There must be a rational and demonstrable link between the statutory foundational facts and the presumption.

Otherwise, Section 24 risks becoming a vehicle for arbitrary inference.

10. Section 24 and Article 21

Article 21 provides the strongest constitutional basis for evaluating Section 24.

The consequences of a PMLA prosecution are severe.

The accused may face:

a) arrest;

b) custody;

c) stringent bail conditions;

d) attachment of property;

e) criminal prosecution;

f) reputational consequences; and

g) possible confiscation.

A reverse burden therefore operates within a broader system that can significantly affect personal liberty and property rights.

The requirement for fair procedure consequently becomes particularly important.

A person cannot reasonably be expected to rebut a presumption unless the person knows the factual basis for that presumption.

Thus, the foundational-facts doctrine serves an important function under Article 21.

11. ***Vijay Madanlal Choudhary v Union of India***

The Supreme Court considered the constitutional validity of Section 24 in Vijay Madanlal Choudhary v Union of India.

The Court substantially upheld the PMLA's statutory framework, including Section 24. However, its interpretation of Section 24 is crucial.

The Court explained that the legal presumption regarding the involvement of proceeds of crime in money laundering becomes relevant only after the prosecution or the authority establishes at least three basic or foundational facts:

1. A criminal activity relating to a scheduled offence has been committed;

2. The property in question has been derived or obtained, directly or indirectly, as a result of that criminal activity; and

3. The person concerned is directly or indirectly involved in a process or activity connected with that property being proceeds of crime.

Only after these foundational facts are established does the legal presumption arise.

This is perhaps the most important judicial safeguard under Section 24.

The Court further explained that the presumption is not conclusive and that the person concerned must have an opportunity to rebut it by producing evidence within their knowledge.

Thus, Vijay Madanlal should not be construed as saying:

"Once a person is accused, the accused must prove innocence." Rather, its reasoning establishes a sequence:

Foundational facts → statutory presumption → opportunity to rebut.

That sequence is constitutionally significant.

12. The Three Foundational Facts: The Core Safeguard

The three foundational facts identified by the Supreme Court merit separate consideration.

12.1 Commission of the Scheduled Offence

The first requirement is the existence of criminal activity relating to a scheduled offence.

Money laundering under the PMLA is not conceptually independent of the existence of proceeds of crime.

The existence of proceeds necessarily presupposes criminal activity from which the property was derived or obtained.

Therefore, the prosecution cannot merely establish suspicious financial activity and automatically invoke Section 24.

There must be a legally sustainable link connecting the property to criminal activity.

12.2 Property Derived from Criminal Activity

The second foundational fact concerns the property's nature.

The prosecution must establish that the property was derived or obtained, directly or indirectly, from the criminal activity.

This is the critical proceeds-of-crime nexus**.**

Suspicion regarding an asset is not necessarily equivalent to proof that it constitutes proceeds of crime.

The distinction is important because legitimate property may become entangled in complex transactions involving individuals who are later accused of money laundering.

Therefore, the prosecution must establish a factual nexus rather than merely rely on association.

12.3 Involvement of the Accused

The third foundational fact concerns the person's involvement in a process or activity connected with the property.

This requirement protects persons who may have an incidental or innocent connection with property.

The existence of proceeds of crime alone cannot automatically establish the guilt of every person who comes into contact with the property.

The prosecution must establish the person's direct or indirect connection with a process or activity relating to those proceeds.

13. *Prem Prakash v Union of India*: Strengthening the Foundational-Facts Requirement

The Supreme Court's decision in *Prem Prakash v Union of India* is particularly significant because it applied the foundational-facts principle in the context of bail.

The Court reiterated that the prosecution must establish the three foundational facts identified in *Vijay Madanlal*. It further observed that where the prosecution opposes bail, its response should explain how these foundational facts are prima facie established.

The Court stated, in substance, that only after the foundational facts are set out does the Section 24 presumption arise and the burden shift to the accused.

This is significant because Section 24 is not confined to the final stage of trial. Its operation may indirectly influence the bail determination under Section 45.

The Court's approach therefore prevents Section 24 from becoming an automatic presumption operating merely because an accused is facing a PMLA complaint.

14. Section 24 and Section 45: A Potential Double Burden

One of the most serious concerns arises from the interaction between Sections 24 and 45.

Section 24 concerns the burden of proof.

Section 45 establishes stringent conditions for bail.

The accused seeking bail must satisfy the statutory conditions, including the requirement concerning reasonable grounds for believing that he or she is not guilty.

This creates the possibility of cumulative burdens.

The practical sequence may become:

Prosecution alleges proceeds of crime
↓
Section 24 presumption
↓
Burden shifts to accused
↓
Section 45 requires accused to demonstrate reasonable grounds
↓
Liberty remains restricted pending trial

The constitutional concern becomes particularly acute where the trial is delayed.

The Supreme Court has repeatedly emphasised that constitutional liberty cannot be subordinated indefinitely to statutory restrictions. In 2024, the Court reiterated that prolonged incarceration coupled with trial delay may justify bail notwithstanding the restrictive framework of Section 45.

Therefore, Section 24 must not be interpreted in isolation.

Its application must be considered within the broader constitutional architecture governing PMLA proceedings.

15. Section 24 and the Presumption of Innocence

The strongest criticism of Section 24 is that it potentially transforms the presumption of innocence into a presumption of culpability.

However, that criticism must be carefully qualified.

A reverse burden is not automatically inconsistent with criminal justice.

Various statutes legitimately create presumptions where:

a) the prosecution establishes foundational facts;

b) the presumed fact is rationally connected with those facts;

c) the accused has a meaningful opportunity to rebut the presumption; and

d) the ultimate determination remains with the court.

Section 24 can therefore be constitutionally justified if interpreted narrowly.

The constitutional problem arises if the following proposition is accepted:

"Once the accused is charged under Section 3, the prosecution need not establish the existence and nexus of proceeds of crime."

Such an interpretation would effectively reverse the entire burden.

It would permit the accusation itself to become the foundation for the presumption.

That would undermine the distinction between **being accused** and **being proved guilty**.

16. Legal Burden versus Evidentiary Burden

A useful analytical framework is to distinguish between the two.

Legal burden

The legal burden is the ultimate responsibility to establish guilt.

Evidentiary burden

The evidentiary burden concerns the obligation to produce material sufficient to rebut a presumption or explanation arising from established facts.

Section 24 should be understood as shifting the evidentiary burden, not eliminating the prosecution's responsibility to establish the essential elements of the offence.

The prosecution must establish:

a) scheduled offence

b) property derived from criminal activity

c) connection of accused with property

Only thereafter does the statutory presumption operate.

The accused may then rebut that presumption.

This interpretation preserves the prosecution's primary responsibility while recognising the practical evidentiary difficulties inherent in money-laundering cases.

17. Standard of Rebuttal by the Accused

An important unresolved issue concerns the precise standard by which the accused must rebut the presumption.

The reverse burden should not be understood to require the accused to establish innocence beyond reasonable doubt.

That would be incompatible with the basic distinction between the prosecution's burden and the defence burden.

The accused should be permitted to rebut the presumption through credible material, circumstances emerging from the prosecution's own evidence, cross-examination, documentary evidence and other legally admissible material.

The Supreme Court in *Vijay Madanlal* recognised that the accused may rebut the presumption through evidence within his or her personal knowledge and that the presumption is not conclusive.

This reinforces the proposition that Section 24 creates a rebuttable presumption, not an irrebuttable presumption of guilt.

18. Section 24 and Section 50

The interaction between Section 24 and Section 50 raises additional constitutional questions.

Section 50 empowers the relevant authorities to summon persons and record statements during proceedings under the PMLA.

The concern is whether the reverse burden under Section 24, combined with investigative questioning under Section 50, may create practical pressure upon the accused to provide information that assists the prosecution.

The Supreme Court in *Vijay Madanlal* upheld the relevant statutory framework concerning Section 50, including its distinction from ordinary police investigation.

Nevertheless, the existence of Section 24 does not eliminate the constitutional requirement that the overall procedure remain fair.

The evidentiary burden cannot become an indirect mechanism for compelling the accused to prove his innocence through self-incriminating statements.

19. FATF and the Reverse Burden

India's anti-money-laundering framework operates in an international regulatory environment.

FATF standards emphasise effective criminalisation, confiscation, financial intelligence, beneficial ownership and international cooperation. FATF's 2024 Mutual Evaluation of India concluded that India had achieved a high level of technical compliance and that its AML/CFT/CPF framework was achieving good results in several areas, including international cooperation, financial intelligence, beneficial ownership information and asset recovery. FATF nevertheless identified areas requiring improvement, including delays in concluding money-laundering prosecutions.

This international context is important but cannot independently determine the constitutional validity of Section 24.

FATF standards are international standards; they are not constitutional provisions.

Therefore:

FATF compliance may explain why Parliament adopted stringent AML mechanisms, but it cannot by itself authorise the State to disregard constitutional safeguards.

The appropriate approach is harmonisation rather than hierarchy.

India can maintain an effective AML framework while ensuring that reverse burdens operate only after a rational evidentiary threshold is crossed.

20. Comparative Perspective on Reverse Burdens

Reverse burdens are not unique to India.

Several jurisdictions permit statutory presumptions or reverse evidentiary burdens in relation to economic and organised crime.

However, comparative constitutional jurisprudence generally distinguishes between:

1. a permissible evidentiary presumption; and
2. an irrebuttable or disproportionate presumption of guilt.

The legitimacy of a reverse burden generally depends upon:

a) the importance of the legislative objective;

b) the rational connection between the established fact and presumed fact;

c) the seriousness of the infringement;

d) the availability of rebuttal;

e) the standard of proof required from the accused; and

f) judicial supervision.

The Indian constitutional approach can therefore be situated within a broader principle:

The more serious the consequence of the presumption, the stronger the procedural safeguards surrounding its application must be.

21. Critical Evaluation of Section 24

Section 24 possesses considerable enforcement value, but it also creates significant constitutional risks.

21.1 Strength: Addressing Evidentiary Complexity

Money laundering is inherently designed to conceal financial origins.

A completely conventional burden may make prosecution unnecessarily difficult.

Section 24 responds to this problem.

21.2 Strength: Encouraging Explanation of Personal Transactions

Where the accused possesses information particularly within his knowledge, requiring an explanation can be justified.

21.3 Weakness: Risk of Presumption Becoming Automatic

The greatest danger is that the statutory presumption may be invoked merely because a person has been charged.

That would effectively reverse the burden before foundational facts have been established.

21.4 Weakness: Potential Interaction with Section 45

The reverse burden becomes more problematic when combined with restrictive bail provisions.

The accused may be required to demonstrate the absence of guilt at a stage when the prosecution's evidence has not yet been tested through trial.

21.5 Weakness: Third-Party Consequences

Persons having commercial or familial relationships with the principal accused may become involved in proceedings concerning property.

The prosecution should therefore establish an actual connection rather than rely upon proximity or association.

22. The Proceeds-of-Crime Nexus as the Constitutional Threshold

The most important safeguard against misuse of Section 24 is the requirement of a demonstrable nexus.

The prosecution's case should logically proceed through the following chain:

Scheduled offence

↓

Criminal activity

↓

Property derived or obtained

↓

Proceeds of crime

↓

Accused's direct or indirect connection

↓

Process or activity relating to proceeds

↓

Section 24 presumption

↓

Opportunity to rebut

If one of the foundational links is absent, the reverse burden should not automatically arise.

This approach maintains a rational connection between the fact proved and the fact presumed.

It also protects Article 14 against arbitrary application.

23. Judicial Scrutiny Must Differ at Different Stages

The standard applicable at the stage of bail cannot be equated with the standard required for conviction.

At the bail stage, the court conducts a prima facie assessment.

At trial, the prosecution must establish guilt in accordance with the criminal standard of proof.

The Supreme Court in *Prem Prakash* expressly recognised the importance of the foundational facts at the bail stage while also noting that the bail court does not conduct a mini-trial.

Accordingly, courts must avoid two extremes:

First extreme: treating the prosecution's allegations as proved facts.

Second extreme: conducting a full trial at the bail stage.

The appropriate approach is to determine whether the material prima facie establishes the foundational facts necessary to trigger the statutory framework.

24. Need for Greater Judicial Discipline

The constitutional sustainability of Section 24 depends substantially upon judicial discipline.

Courts should require the prosecution to identify separately:

1. the scheduled offence;
2. the criminal activity;
3. the property allegedly derived from that activity;
4. the basis for characterising that property as proceeds of crime; 5. the accused's connection with the property; and

6. the specific process or activity constituting money laundering.

This approach would make the application of Section 24 more transparent.

It would also prevent the statutory presumption from becoming a substitute for investigation.

25. Proposed Safeguards

The following safeguards are recommended.

25.1 Foundational Facts Must Be Specifically Pleaded

The prosecution complaint should clearly identify the three foundational facts rather than merely reproduce statutory language.

25.2 Nexus Must Be Demonstrated

There should be a clear evidentiary connection between the scheduled offence and the property.

25.3 Presumption Should Not Arise Automatically

The mere filing of a complaint or framing of a charge should not by itself be treated as sufficient to invoke Section 24.

25.4 Accused Must Have Effective Opportunity to Rebut

The accused should receive adequate access to relied-upon material necessary to challenge the statutory presumption.

25.5 Bail Courts Must Apply the Foundational-Facts Test

Before applying the restrictive conditions of Section 45, courts should examine whether the prosecution has prima facie established the foundational facts.

25.6 Third-Party Rights Require Particular Protection

Where property belongs to or is connected with persons other than the principal accused, the prosecution should establish an independent nexus with proceeds of crime.

25.7 Reverse Burden Should Remain Evidentiary

The accused should be required to rebut the presumption, but not to prove innocence beyond reasonable doubt.

26. The Need for a Constitutional Interpretation of Section 24

Courts should adopt a constitutional interpretation rather than an expansive interpretation of Section 24.

The provision should be interpreted consistently with:

a) Article 14;

b) Article 21;

c) presumption of innocence;

d) fair trial;

e) proportionality; and

f) judicial accountability.

A constitutional interpretation would mean:

Section 24 shifts an evidentiary burden only after the prosecution establishes the foundational facts; it does not shift the ultimate burden of proving guilt.

This interpretation also preserves the legislative purpose of the PMLA.

The State retains the ability to prosecute sophisticated financial crime, while the accused retains a meaningful opportunity to challenge the prosecution's case.

27. Conclusion

Section 24 of the Prevention of Money Laundering Act, 2002 represents one of the most significant departures from the conventional burden of proof in Indian criminal law.

Its legislative rationale is understandable. Money laundering is complex, deliberately concealed and frequently structured through transactions that make direct proof difficult. An effective anti-money-laundering regime therefore requires carefully designed evidentiary mechanisms.

However, effectiveness cannot be equated with unrestricted coercive power.

The constitutional legitimacy of Section 24 lies in the distinction between a **reverse evidentiary burden** and a **reverse burden of guilt**.

The Supreme Court's decision in *Vijay Madanlal Choudhary* provides the necessary constitutional boundary by requiring the prosecution to establish three foundational facts before the statutory presumption arises. Those facts concern the existence of criminal activity relating to a scheduled offence, the derivation or obtaining of the property from that criminal activity, and the accused's direct or indirect involvement in a process or activity connected with that property.

The subsequent decision in *Prem Prakash* strengthens this safeguard by requiring the prosecution, particularly when opposing bail, to demonstrate how those foundational facts are prima facie established before the Section 24 burden shifts to the accused.

This jurisprudence suggests that Section 24 should not be interpreted as creating a presumption of guilt merely because a person has been charged.

The correct legal sequence is:

Prosecution establishes foundational facts → statutory presumption arises → evidentiary burden shifts → accused receives meaningful opportunity to rebut → court determines guilt on the totality of legally admissible evidence.

Any departure from this sequence risks converting Section 24 from an evidentiary mechanism into a presumption of guilt.

The interaction between Section 24 and Section 45 further demonstrates why constitutional safeguards are essential. A reverse evidentiary burden combined with restrictive bail conditions can have significant consequences for personal liberty, particularly where investigation or trial is prolonged. The Supreme Court has recognised that constitutional liberty and the right to speedy trial cannot be rendered subordinate merely because the offence falls within the PMLA framework.

The international dimension also requires careful treatment. FATF standards provide an important framework for effective AML regulation, and India's 2024 Mutual Evaluation recognised the country's high level of technical compliance and significant effectiveness in several areas. However, international standards cannot supersede India's constitutional guarantees.

Ultimately, the question is not whether India should have an effective anti-moneylaundering regime. It unquestionably should.

The question is how that regime can remain effective without converting the accused into the bearer of the entire burden of proving innocence**.**

The answer lies in constitutional proportionality and disciplined judicial application.

Section 24 should therefore be regarded as constitutionally sustainable only when it operates as a conditional and rebuttable evidentiary presumption founded upon clearly established foundational facts**.**

The ultimate principle should be:

The complexity of money laundering may justify a reverse evidentiary burden; it cannot justify a presumption of guilt.

That distinction is essential to preserving both the effectiveness of the PMLA and the constitutional promise of fair criminal justice.

REFERENCES:

A. Statutes

1. Constitution of India, 1950.
2. Prevention of Money Laundering Act, 2002.
3. Prevention of Money Laundering (Amendment) Act, 2013.
4. Finance (No. 2) Act, 2019.
5. Code of Criminal Procedure, 1973.
6. Bharatiya Nagarik Suraksha Sanhita, 2023.
7. Indian Evidence Act, 1872.
8. Bharatiya Sakshya Adhiniyam, 2023.

B. Supreme Court Cases

1. *Nikesh Tarachand Shah v Union of India*, (2018) 11 SCC 1.
2. *Vijay Madanlal Choudhary v Union of India*, 2022 SCC OnLine SC 929.
3. *Pankaj Bansal v Union of India*, 2023 SCC OnLine SC 1244.
4. *V. Senthil Balaji v State*, (2024) 3 SCC 51.
5. *Prem Prakash v Union of India through Directorate of Enforcement*, 2024 INSC 637.
6. *Tarsem Lal v Directorate of Enforcement*, (2024) 7 SCC 61.
7. *P. Chidambaram v Directorate of Enforcement*, (2019) 9 SCC 24.
8. *Gautam Kundu v Directorate of Enforcement*, (2015) 16 SCC 1.
9. *Tofan Singh v State of Tamil Nadu*, (2021) 4 SCC 1.

10. Relevant subsequent decisions concerning Section 24, Section 45, proceeds of crime and foundational facts.

C. International Materials

1. Financial Action Task Force, *The FATF Recommendations*.

2. Financial Action Task Force, *Methodology for Assessing Technical Compliance with the FATF Recommendations and the Effectiveness of AML/CFT/CPF Systems*.

3. FATF/APG/EAG, *Anti-Money Laundering and Counter-Terrorist Financing Measures – India: Mutual Evaluation Report 2024*.

4. FATF, materials concerning effectiveness, confiscation and recovery of proceeds of crime.

D. Principal Online Authorities

a) FATF – India: Mutual Evaluation and Country Materials

b) FATF – 2024 Plenary Outcomes and India Mutual Evaluation

c) Supreme Court – Prem Prakash v Union of India, 28 August 2024

d) Supreme Court – 2024 judgment discussing the foundational facts under Section 24