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## **BALANCING FATF MANDATES AGAINST CONSTITUTIONAL SAFEGUARDS UNDER INDIA'S PMLA**

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### **ABSTRACT**

The global fight against money laundering has increasingly shaped domestic criminal justice systems. The Financial Action Task Force (FATF), the principal international standard-setting body for combating money laundering, terrorist financing and proliferation financing, has significantly influenced legislative and institutional responses across jurisdictions. India's Prevention of Money Laundering Act, 2002 (PMLA) is the principal legislative framework through which India seeks to prevent the laundering of proceeds of crime, enable the attachment and confiscation of illicit assets, and fulfil its international commitments.

The PMLA, however, operates at the intersection of two competing imperatives: the State's obligation to protect the financial system from criminal abuse and its constitutional obligation to safeguard individual liberty, fair procedure and due process. Several provisions of the PMLA—particularly those relating to arrest, bail, the reverse burden of proof, search and seizure, property attachment and admissibility of statements—have therefore sparked significant constitutional debate.

The Supreme Court's decision in *Vijay Madanlal Choudhary v Union of India* substantially upheld the architecture of the PMLA, emphasising the seriousness of money laundering and India's international obligations. Subsequently, decisions such as *Pankaj Bansal v Union of India*, *V. Senthil Balaji v State* and *Tarsem Lal v Directorate of Enforcement* have reinforced procedural safeguards for arrest and personal liberty. These developments demonstrate that FATF compliance cannot independently justify overriding constitutional guarantees.

This paper argues that FATF standards should be understood as international regulatory standards rather than constitutional commands. India may legitimately adopt stringent anti-money-laundering measures to meet international standards, but such measures must remain subject to constitutional limitations, particularly Articles 14, 20(3), 21 and 22 of the Constitution. The appropriate approach is therefore not to choose between FATF compliance and constitutionalism, but to construct an AML framework in which effectiveness, proportionality, accountability and fundamental rights operate together.

## 1. Introduction

Money laundering is no longer merely a domestic financial offence. The movement of illicit funds across jurisdictions, the use of complex corporate structures, digital financial systems, shell entities, and cross-border transactions have transformed money laundering into a transnational phenomenon. Consequently, international cooperation has become an essential component of modern financial-crime regulation.

The Financial Action Task Force was established to develop international standards to combat money laundering and later expanded its mandate to include terrorist and proliferation financing. FATF Recommendations constitute the principal international standards in this field. FATF mutual evaluations assess both technical compliance and the effectiveness of national anti-money-laundering systems.

India has progressively strengthened its anti-money-laundering framework in response to both domestic requirements and international standards. The PMLA came into force in 2005 and has subsequently undergone several amendments. The Supreme Court itself has recognised the relationship between the development of the PMLA and FATF requirements. In *Vijay Madanlal Choudhary*, the Court noted that amendments to the PMLA were, among other considerations, intended to address deficiencies identified through FATF evaluation.

The contemporary constitutional question is therefore not whether India should combat money laundering. There is little doubt that it must. The more difficult question is:

**To what extent can international AML obligations justify restrictions upon constitutionally protected individual rights?**

This question assumes particular significance because the PMLA departs in several respects from ordinary criminal procedure. The statute permits the attachment of property, confers extensive investigative powers on the Enforcement Directorate (ED), imposes stringent bail requirements and incorporates a reverse burden under Section 24.

The resulting tension may be expressed as follows:

**FATF demands effectiveness; the Constitution demands legality, fairness and proportionality.**

The challenge for Indian constitutional law is to reconcile these objectives without allowing either international compliance or domestic security considerations to serve as a pretext for arbitrary State action.

## **2. FATF and the Internationalisation of Anti-Money-Laundering Law**

FATF Recommendations constitute internationally endorsed standards designed to prevent the misuse of financial systems for money laundering, terrorist financing and proliferation financing. They require States to establish effective systems for criminalisation, preventive measures, beneficial ownership, financial intelligence, investigation, prosecution, confiscation and international cooperation.

FATF's current methodology distinguishes between technical compliance and effectiveness. Merely enacting legislation is insufficient; countries are also assessed on whether their AML/CFT systems deliver effective outcomes.

This distinction is particularly relevant to India. The 2024 FATF Mutual Evaluation found that India had achieved a high level of technical compliance and that its AML/CFT framework was delivering good results in several areas, including risk understanding, international cooperation, financial intelligence, beneficial ownership information and asset recovery. At the same time, FATF identified areas for improvement, including supervision of certain non-financial sectors, delays in concluding prosecutions and the implementation of risk-based measures for non-profit organisations.

The international nature of FATF standards creates a significant regulatory incentive for States to amend their domestic laws. Nevertheless, FATF Recommendations do not, by themselves, become part of India's Constitution merely because Parliament legislates to implement them.

This distinction is fundamental.

**International standards may influence domestic legislation; they cannot displace constitutional supremacy.**

## **3. Evolution and Purpose of the PMLA**

The PMLA was enacted with the principal objective of preventing money laundering and

providing for the confiscation of property derived from or involved in money laundering.

Section 3 defines the offence of money laundering, while Sections 5 and 8 establish mechanisms for provisional attachment, adjudication and confiscation. Sections 17 and 18 confer search and seizure powers. Section 19 addresses arrest. Section 24 creates a statutory presumption regarding the burden of proof. Section 45 imposes stringent conditions for bail, while Section 50 confers powers relating to summons and the recording of statements.

The statute therefore combines:

1. investigative powers;
2. preventive measures;
3. attachment and confiscation;
4. criminal prosecution; and
5. special evidentiary and bail provisions.

The legislative architecture reflects the belief that conventional criminal procedure may be inadequate to address sophisticated financial crime.

The Supreme Court in *Vijay Madanlal Choudhary* largely accepted this legislative approach and upheld the constitutional validity of several central provisions of the PMLA. The judgment treated money laundering as a serious economic offence and accepted the legislature's decision to establish a special statutory framework.

However, the constitutional validity of the statutory architecture does not mean that every exercise of statutory power is immune from constitutional scrutiny.

That distinction becomes particularly important in relation to arrest, detention and procedural fairness.

#### **4. Constitutional Safeguards under the Indian Constitution**

##### **4.1 Article 14: Equality and Non-Arbitrariness**

Article 14 prohibits arbitrary State action and requires that legal classifications bear a rational

relationship to the legislative objective.

The PMLA undoubtedly addresses a legitimate and important State objective. However, the seriousness of the offence cannot, by itself, immunise every executive action from Article 14 review.

The exercise of powers under the PMLA must therefore satisfy minimum standards of rationality, objectivity and non-arbitrariness.

This is particularly relevant when the ED exercises powers of arrest, search, seizure, or attachment. These powers may have severe consequences even before trial.

A constitutional AML regime must therefore ensure that statutory power is not conflated with unfettered administrative discretion.

#### **4.2 Article 20(3): Protection against Self-Incrimination**

Article 20(3) provides that no person accused of an offence shall be compelled to be a witness against himself.

Section 50 of the PMLA has sparked considerable debate because officers exercising powers under that section can summon persons and record their statements.

In *Vijay Madanlal Choudhary*, the Supreme Court held that ED officers under the PMLA are not police officers for the purposes of the relevant evidentiary rule and upheld the statutory framework governing statements recorded under Section 50.

Nevertheless, the constitutional concern cannot be reduced merely to the officer's formal status.

The deeper question is whether an investigative framework can compel an accused person to provide testimonial material against himself while simultaneously exposing him to arrest and prosecution.

The constitutional analysis should therefore distinguish between:

- a) legitimate investigative questioning;
- b) voluntary disclosure;

- c) compelled testimonial communication; and
- d) coercive interrogation following arrest.

The protection against self-incrimination must remain meaningful rather than merely theoretical.

### **4.3 Article 21: Life, Liberty and Fair Procedure**

Article 21 has evolved from a narrow protection against deprivation of life and personal liberty, except as provided by law, into a broader guarantee of fairness, reasonableness and substantive procedural safeguards.

PMLA proceedings may affect liberty at multiple stages:

- a) issuance of summons;
- b) arrest;
- c) remand;
- d) denial of bail;
- e) prolonged investigation;
- f) attachment of property;
- g) prosecution; and
- h) confiscation.

Therefore, Article 21 requires that the PMLA process be administered fairly.

The State cannot rely solely on the seriousness of money laundering to justify every procedural departure.

The constitutional question remains whether the restriction on liberty is lawful, necessary and proportionate.

#### **4.4 Article 22 and Grounds of Arrest**

Communication of the grounds of arrest is one of the most important constitutional safeguards in PMLA proceedings.

Section 19 of the PMLA requires an authorised officer, upon arrest, to inform the arrested person of the grounds for the arrest.

The Supreme Court's jurisprudence has subsequently strengthened this protection.

In *Pankaj Bansal v Union of India*, the Supreme Court held that the grounds for arrest under Section 19 must be communicated in writing. The judgment thereby transformed what might otherwise have remained a formal statutory safeguard into a meaningful procedural guarantee.

The Court's later jurisprudence has also emphasised the requirement that the arresting authority have objectively recorded reasons to believe that the statutory conditions for arrest are met. A 2026 decision of the Kerala High Court, while applying Supreme Court precedent, reiterated that compliance with Section 19 is mandatory and that the reasons to believe cannot rest merely on conjecture, suspicion or administrative convenience.

This development illustrates an important principle:

**FATF effectiveness does not require the elimination of constitutional safeguards.**

Indeed, transparent arrest procedures may strengthen the legitimacy and reliability of AML enforcement efforts.

#### **5. *Vijay Madanlal Choudhary*: The Constitutional Foundation**

The judgment in *Vijay Madanlal Choudhary v Union of India* is the central constitutional decision on the PMLA.

The Supreme Court considered challenges to several provisions of the statute, including Sections 5, 8, 17, 18, 19, 24, 45, and 50.

The Court largely upheld the statutory framework.

Among the key conclusions were:

- a) the validity of Section 19;
- b) b) the validity of the reverse burden under Section 24;
- c) c) the validity of stringent bail conditions under Section 45;
- d) d) the validity of the search and seizure provisions;
- e) e) the validity of the attachment mechanisms; and
- f) f) the position that an ECIR is not equivalent to an FIR and need not ordinarily be supplied to the accused.

The Court also emphasised that the PMLA contains safeguards for arrest, including recording the reasons to believe and the production of the arrested person before the competent court within the prescribed period.

The decision represents a judicial acceptance of the proposition that the exceptional nature of economic offences can justify specialised statutory mechanisms.

However, it should not be construed as establishing that FATF compliance is a constitutional defence available under every PMLA provision.

The Court was primarily concerned with the constitutional validity of statutory provisions. Subsequent jurisprudence demonstrates that constitutional safeguards continue to regulate how those provisions are exercised.

## **6. From *Vijay Madanlal* to *Pankaj Bansal*: The Return of Procedural Constitutionalism**

The transition from *Vijay Madanlal* to *Pankaj Bansal* is particularly significant.

While *Vijay Madanlal* accepted the statutory architecture of Section 19, *Pankaj Bansal* emphasised the practical content of the right to know the grounds of arrest.

The distinction is important.

A statute may be constitutionally valid in principle, while a particular exercise of statutory power may be unconstitutional in application.

This distinction serves as an important constitutional safety valve within the PMLA.

The requirement for written grounds of arrest serves several functions:

1. It informs the accused of the precise basis of deprivation of liberty.
2. It enables effective legal consultation.
3. It facilitates judicial review of the arrest.
4. It discourages arbitrary exercise of power.
5. It creates an institutional record for subsequent accountability.

The jurisprudence therefore shows that procedural safeguards do not necessarily undermine AML enforcement.

They can instead make enforcement more credible.

## **7. FATF Compliance versus Constitutional Supremacy**

The principal conceptual mistake is to treat FATF Recommendations as superior to constitutional rights.

FATF standards are international standards intended to produce effective AML/CFT systems. They do not constitute a constitutional charter authorising States to disregard domestic fundamental rights.

India's constitutional structure operates on the principle that executive and legislative action must conform to the Constitution.

Consequently:

**FATF compliance is a legitimate legislative objective, but it is not a constitutional trump card.**

Where Parliament adopts legislation to meet international standards, the legislation remains subject to constitutional review.

The State may therefore legitimately argue that:

- a) money laundering is transnational;
- b) financial crime threatens economic security;
- c) illicit assets must be traced and confiscated;
- d) international cooperation is necessary; and
- e) effective investigative powers are required.

But these propositions do not answer the separate constitutional questions:

- a) Is the power arbitrary?
- b) Is the restriction proportionate?
- c) Is the person adequately informed?
- d) Is the procedure fair?
- e) Is detention justified?
- f) Is the reverse burden rationally connected with the offence?
- g) Are property rights adequately protected?
- h) Is there effective judicial supervision?

These questions remain constitutional questions regardless of international commitments.

## **8. The Proportionality Principle as the Balancing Mechanism**

The doctrine of proportionality offers the most appropriate framework for reconciling FATF objectives with constitutional rights.

A proportionality analysis may require consideration of four broad questions:

### **First, legitimate objective**

Combating money laundering is undoubtedly a legitimate government objective.

### **Second, rational connection**

The statutory measure must have a rational relationship to the objective sought to be achieved.

### **Third, necessity**

The State should demonstrate that the restriction on individual rights is no more extensive than necessary to achieve the legitimate objective.

### **Fourth, balancing**

The benefits achieved by the State must be balanced against the seriousness of the infringement of individual liberty.

This framework is particularly important in relation to arrest and bail.

A person should not be deprived of liberty merely because the offence is classified as an economic offence. There must be a statutory and factual basis showing that arrest or continued detention is necessary.

The same principle applies to the attachment of property.

The fight against illicit wealth cannot automatically transform disputed property into presumed criminal property without adequate procedural safeguards.

## **9. Reverse Burden under Section 24**

Section 24 of the PMLA places a reverse burden on the accused in specified circumstances.

Reverse burdens are not inherently unconstitutional. However, they raise concerns about the presumption of innocence and the prosecution's ordinary burden in criminal proceedings.

In *Vijay Madanlal*, the Supreme Court upheld the provision within the statutory scheme of the PMLA.

The constitutional challenge, however, remains conceptually significant.

The more extensive the statutory departure from ordinary criminal law, the greater the need for courts to ensure that:

- a) the prosecution first establishes the foundational facts;
- b) the reverse burden is triggered only after the statutory conditions are satisfied;
- c) the accused is given a meaningful opportunity to rebut the presumption; and
- d) the provision is not applied mechanically.

The objective should be to prevent the reverse burden from becoming a substitute for proving the essential ingredients of the offence.

## **10. Bail and Personal Liberty**

Section 45 of the PMLA has been among the most controversial provisions.

In *Nikesh Tarachand Shah v Union of India*, the Supreme Court invalidated the earlier twin-conditions framework for bail. Parliament subsequently amended the statutory framework, and *Vijay Madanlal* upheld the present statutory scheme.

The debate highlights a recurring constitutional tension.

On one side lies the State's interest in preventing sophisticated financial offenders from:

- a) absconding;
- b) tampering with evidence;
- c) dissipating assets; or
- d) continuing unlawful financial activity.

On the other side is the fundamental principle that pre-trial detention should not become punishment before conviction.

A constitutionally sustainable bail regime must therefore maintain a distinction between: **protection of investigation and punishment before trial.**

Prolonged incarceration resulting from investigation and trial delays raises an independent Article 21 concern.

## **11. Property Attachment and Constitutional Protection**

The PMLA confers significant powers on the State to provisionally attach property believed to constitute proceeds of crime.

Attachment serves an important purpose: criminals should not be permitted to enjoy or dissipate illicit wealth merely because criminal proceedings are pending.

However, property attachment can also affect persons who are not the principal accused, including family members, business associates, purchasers, lenders, and other third parties.

Consequently, procedural safeguards are critical.

The State should establish a clear nexus between the property and the proceeds of crime.

A broad or mechanical theory of "proceeds of crime" risks turning preventive attachment into a punitive measure.

The constitutional principle should therefore be:

**The stronger the coercive consequence, the greater the requirement for demonstrable statutory and factual justification.**

## **12. Judicial Review as the Constitutional Safety Valve**

Judicial review plays a particularly important role in PMLA proceedings because investigative agencies exercise extensive statutory powers.

Courts must therefore ensure that:

- a) arrest is based upon statutory conditions;

- b) reasons are recorded;
- c) grounds of arrest are communicated;
- d) remand is judicially scrutinised;
- e) attachment follows statutory requirements;
- f) bail restrictions are constitutionally applied; and
- g) proceedings do not become indefinite.

The judiciary should not substitute itself for the investigating agency in matters of investigation. At the same time, judicial deference cannot become judicial abdication.

The constitutional role of courts is to maintain the boundary between effective and arbitrary enforcement.

### **13. Recent Developments and the Continuing Constitutional Debate**

The constitutional debate on the PMLA remains dynamic.

In August 2026, the Supreme Court agreed to hear review petitions challenging aspects of its 2022 decision in *Vijay Madanlal Choudhary*. This development indicates that questions about the scope of ED powers and the constitutional architecture of the PMLA continue to attract judicial scrutiny.

This development is significant for two reasons.

First, it shows that the constitutional validity of a specialised AML framework is not necessarily the end of constitutional debate.

Second, it underscores the importance of distinguishing between statutory effectiveness and constitutional legitimacy.

A mature AML framework must achieve both.

### **14. FATF Standards and Human Rights: A False Dichotomy**

The debate is sometimes presented as though there are only two alternatives:

**strict FATF compliance versus protection of individual rights.**

Such a dichotomy is unnecessary.

FATF's contemporary framework emphasises effectiveness and risk-based implementation. Its assessment methodology does not merely ask whether States have enacted increasingly harsh criminal laws; it evaluates whether systems function effectively.

An AML system that routinely produces arbitrary arrests, prolonged detention, defective investigations and procedural violations may ultimately undermine, rather than strengthen, the legitimacy of financial-crime enforcement.

Constitutional safeguards can therefore be understood not as obstacles to FATF compliance but as mechanisms that enhance the quality of enforcement.

A rights-compliant AML system can produce:

- a) better-quality investigations;
- b) stronger judicial scrutiny;
- c) more sustainable prosecutions;
- d) greater public confidence;
- e) fewer wrongful attachments; and
- f) stronger legitimacy of confiscation proceedings.

**15. Recommendations**

The following reforms may help align FATF objectives with constitutional safeguards.

**15.1 Written Reasons for Arrest**

The statutory requirement concerning reasons to believe should be applied strictly and uniformly.

**15.2 Meaningful Grounds of Arrest**

Grounds of arrest should be sufficiently specific to enable the accused to understand the factual

basis for the deprivation of liberty.

### **15.3 Independent Judicial Scrutiny**

Remand courts should actively examine compliance with Section 19 rather than treating production before the court as a purely formal exercise.

### **15.4 Protection against Arbitrary Attachment**

Attachment orders should clearly identify the property, the alleged proceeds of crime, and the factual nexus between them.

### **15.5 Time-Bound Investigation**

Extended investigation should not result in indefinite incarceration where the prosecution is unable to progress the case.

### **15.6 Proportionality in Bail**

Courts should balance the seriousness of money laundering against the necessity for continued detention.

### **15.7 Protection of Third Parties**

Persons who are neither accused nor beneficiaries of criminal proceeds should receive meaningful procedural protection against the attachment of legitimate property.

### **15.8 Greater Transparency**

Institutional safeguards governing arrest, attachment and prosecution should be sufficiently transparent to enable meaningful judicial and public accountability while protecting legitimate investigative interests.

### **15.9 Constitutional Training**

Investigating officers handling PMLA matters should receive systematic training on Articles 14, 20(3), 21 and 22, and on the jurisprudence governing arrest and personal liberty.

## **16. Conclusion**

India's commitment to combating money laundering is both legitimate and necessary. Financial crime has become increasingly sophisticated, transnational and technologically enabled. Consequently, FATF standards have played an important role in shaping India's AML framework.

However, international commitments do not operate beyond constitutional boundaries.

The PMLA is a legitimate legislative response to a serious form of economic crime, but its extraordinary powers must be exercised with extraordinary responsibility.

The jurisprudential trajectory from *Vijay Madanlal Choudhary* to *Pankaj Bansal*, *V. Senthil Balaji* and subsequent cases shows that the constitutional debate has moved beyond the simple question of the PMLA's validity. The contemporary question is whether its powers are exercised in a manner consistent with constitutional standards of legality, fairness, proportionality and accountability.

The Constitution does not compel India to choose between national economic security and individual liberty.

Rather, it requires the State to pursue security through constitutional means.

FATF compliance should therefore be regarded as an important international objective, but not as an independent source of coercive constitutional authority. The appropriate model for India's AML regime is one in which FATF standards inform legislative policy, while constitutional rights set the outer limits of State power.

The ultimate legitimacy of India's anti-money-laundering regime will depend not merely on the number of arrests, the amount of property attached, or the degree to which legislation conforms to international standards. It will depend on whether the system can demonstrate that effective enforcement and constitutional liberty can coexist.

The central proposition of this paper may therefore be stated as follows:

India need not choose between FATF compliance and constitutionalism; it must achieve FATF effectiveness by upholding constitutionalism.

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