

Research Article

Reverse Burden of Proof under PMLA and Article 20(3)

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Abstract: The Prevention of Money Laundering Act, 2002 (PMLA) represents India's principal anti-money-laundering legislation aimed at combating economic crimes and terror financing. One of the most debated features of the Act is the reverse burden of proof, particularly under Sections 24 and 45, which shifts the obligation from the prosecution to the accused. This framework raises serious constitutional concerns, especially regarding Article 20(3) of the Constitution of India, which protects individuals from self-incrimination. This paper critically examines whether the reverse burden under PMLA violates the constitutional guarantee against self-incrimination and the presumption of innocence. It analyses legislative intent, judicial interpretation, constitutional jurisprudence, and comparative perspectives. The study concludes that while the reverse burden has been judicially upheld due to the seriousness of economic offences, significant concerns remain regarding due process, coercive investigation, and fair trial rights.

Keywords: Prevention of Money Laundering Act, Reverse Burden of Proof, Article 20(3), Self-Incrimination, Presumption of Innocence, Economic Offences, Fair Trial, Constitutional Law, Bail Conditions, Financial Crimes etc.

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INTRODUCTION

Money laundering has emerged as one of the most serious threats to global financial stability, governance, and national security in the twenty-first century. The rapid expansion of transnational financial networks, digital transactions, and organised crime has made it easier to disguise the origins of illicit wealth and integrate it into the legitimate economy. In response to these challenges, India enacted the Prevention of Money Laundering Act, 2002 (PMLA) to prevent the process of laundering the proceeds of crime and to enable the confiscation of illegally derived property. Unlike traditional criminal statutes, the PMLA adopts a stringent and enforcement-centric approach that departs from conventional criminal law principles. The Act incorporates provisions such as presumptions of guilt in specified circumstances, strict and restrictive bail conditions, extensive powers of search, seizure, arrest and attachment, and most significantly, the reverse burden of proof placed upon the accused.

While these provisions aim to strengthen the State's capacity to combat complex financial crimes and terror financing, they simultaneously raise profound constitutional concerns. The shift of the evidentiary burden from the prosecution to the accused challenges the long-standing principle of presumption of innocence and raises questions about compatibility with the protection against self-incrimination guaranteed under Article 20(3) of the Constitution of India. The central issue therefore lies in determining whether the State can legitimately require an accused person to prove innocence in money laundering cases and whether such a requirement indirectly compels the accused to become a witness against themselves. This paper seeks to critically examine these constitutional tensions and evaluate the legitimacy of the reverse burden framework under the PMLA.

PRESUMPTION OF INNOCENCE IN CRIMINAL LAW

The presumption of innocence is a cornerstone of criminal jurisprudence and forms the foundation of a fair and just criminal

justice system. It requires that every person accused of a crime be treated as innocent until proven guilty beyond reasonable doubt by the prosecution. This principle places the primary burden of proof on the State and ensures that an accused person is not compelled to establish their innocence. The presumption of innocence operates as a safeguard against wrongful convictions, abuse of state power, and arbitrary punishment, thereby reinforcing public confidence in the administration of justice. It is deeply rooted in the principles of natural justice, particularly the rule that no person should be condemned unheard and is recognised as an essential component of the right to a fair trial under constitutional and human rights jurisprudence. However, the emergence of complex economic offences, organised crime, and financial fraud has increasingly challenged the traditional application of this principle. Legislatures across the world, including in India, have introduced reverse burden clauses in certain special statutes to address evidentiary difficulties in prosecuting such offences, thereby creating a tension between effective law enforcement and the protection of individual liberties.

REVERSE BURDEN OF PROOF: CONCEPT

A reverse burden of proof refers to a statutory mechanism through which the obligation of proving certain facts shifts from the prosecution to the accused. In traditional criminal law, the prosecution bears the responsibility of establishing guilt beyond reasonable doubt; however, reverse burden clauses require the accused to disprove elements such as guilty intent, the illicit origin of assets, or involvement in criminal activity once a basic foundational fact is established by the prosecution. These provisions are typically introduced in statutes dealing with serious and complex offences where evidence is difficult to obtain through conventional investigative methods. Laws relating to narcotic offences, terrorism, corruption, and money laundering frequently incorporate such presumptions on the justification that financial and organised crimes are often committed in secrecy and involve sophisticated concealment techniques. As a result, the accused is considered to possess special knowledge of the relevant facts, making it reasonable to expect them to provide an explanation regarding suspicious assets or transactions. The underlying rationale for reverse burden provisions, therefore, lies in enhancing the effectiveness of law enforcement while addressing the evidentiary challenges inherent in prosecuting modern economic crimes.

REVERSE BURDEN UNDER PMLA

1. Section 24 – Presumption in Interconnected Transactions Section 24 of the PMLA introduces a statutory presumption that any property linked with money-laundering proceedings is deemed to be “proceeds of crime” unless the accused proves otherwise. This reverses the traditional rule of criminal law by placing the burden on the accused to demonstrate that the property in question is untainted and has a lawful origin. In effect, once the prosecution establishes a basic connection between the accused and suspicious assets or transactions, the responsibility shifts to the accused to rebut the presumption by producing evidence of legitimate sources of income.

2. Section 45 – Twin Bail Conditions Section 45 imposes stringent “twin conditions” for the grant of bail under the PMLA. The accused must satisfy the court that there are reasonable grounds to believe that they are not guilty of the alleged offence and that they are unlikely to commit any offence while on bail. These conditions effectively compel the accused to demonstrate prima facie innocence at the pre-trial stage, thereby requiring them to defend themselves even before the trial formally begins.

ARTICLE 20(3): PROTECTION AGAINST SELF-INCRIMINATION

Article 20(3) of the Constitution of India guarantees the privilege against self-incrimination by providing that no person accused of an offence shall be compelled to be a witness against himself. This protection applies only when three conditions are satisfied: the person must be formally accused of an offence, there must be some form of compulsion, and such compulsion must lead to self-incriminating testimony. The Supreme Court has interpreted the expression “accused” broadly to include persons who are under investigation and reasonably suspected of a crime, thereby extending the protection even during police interrogation. The term “compulsion” has also been given a wide meaning to include not only physical force but also psychological pressure, threats, or custodial interrogation methods that undermine free will. The guarantee specifically protects testimonial evidence, meaning statements or information based on the personal knowledge of the accused, while permitting the collection of physical evidence such as fingerprints, handwriting samples, or blood samples because these do not involve the disclosure of personal knowledge. The right under Article 20(3) also incorporates the right to silence, ensuring that an accused cannot be penalised for refusing to answer questions during investigation.² In later jurisprudence, the Court held that involuntary use of scientific techniques such as narco-analysis, polygraph tests, and brain-mapping violates this protection because they forcibly extract personal knowledge without consent. Overall, Article 20(3) acts as a crucial safeguard against forced confessions, police coercion, and investigative abuse, reinforcing the principle that the burden of proving guilt lies entirely on the prosecution.

CONFLICT BETWEEN PMLA AND ARTICLE 20(3)

The reverse burden of proof under the Prevention of Money Laundering Act (PMLA) creates significant constitutional

tension with the guarantee against self-incrimination under Article 20(3).

First, the presumption provisions under the PMLA require the accused to rebut the allegation that property is “proceeds of crime” by producing financial records, business documents, and bank transactions. Although the law does not explicitly force the accused to testify, in practice the only way to disprove the presumption is by disclosing personal financial information and explanations based on the accused’s own knowledge. This amounts to indirect or testimonial compulsion, as the accused is effectively required to provide self-incriminating material to establish innocence.

Second, the stringent bail provisions under the PMLA create economic and procedural pressure that operates as a form of compulsion. Since bail is granted only when the accused can show prima facie innocence and assure the court that they will not commit further offences, the accused is incentivised to cooperate with investigators and disclose financial details at the investigation stage itself. The Supreme Court has recognised that compulsion under Article 20(3) includes not only physical coercion but also psychological or legal pressure that undermines the freedom to remain silent. Therefore, the harsh bail regime converts compulsion into a practical reality, even if it is not overtly physical.

Third, these provisions contribute to an erosion of the presumption of innocence, a core principle of criminal justice. Instead of the prosecution proving guilt beyond reasonable doubt, the accused must demonstrate the lawful source of wealth and absence of criminal intent. This shift in burden changes the traditional criminal law paradigm and raises concerns that the accused is being compelled to disprove guilt rather than the State proving it. While reverse burden clauses have been upheld in limited contexts, courts have emphasised that such provisions must be applied carefully to avoid violating constitutional protections, including the right against self-incrimination and the guarantee of fair trial.

JUDICIAL APPROACH TO PMLA CONSTITUTIONALITY

The judiciary has generally adopted a deferential approach while examining the constitutionality of the PMLA, recognising the exceptional nature of money-laundering as a complex and transnational economic offence. Courts have repeatedly observed that financial crimes are often committed through sophisticated and layered transactions, making investigation and proof extremely difficult for enforcement agencies. In this context, the reverse burden of proof has been justified on the ground that the accused possesses special knowledge of financial dealings and the source of funds, which places them in a better position to explain the legitimacy of assets. The Supreme Court has emphasised that economic offences constitute a distinct class of crimes that seriously threaten the financial system and national economy and therefore require stricter procedural mechanisms including stringent bail standards and evidentiary presumptions. The judiciary has thus treated the reverse burden under PMLA as a procedural departure necessary for effective enforcement, rather than a violation of constitutional guarantees, provided that judicial safeguards and fair trial principles remain intact.

CRITICAL ANALYSIS

Despite judicial endorsement of the PMLA framework, several critical concerns continue to be raised regarding its practical impact on fair trial rights. First, the reverse burden provisions create a practical presumption of guilt, as the accused is often required to demonstrate the legitimacy of assets at an early stage of investigation or bail. This shifts the focus of investigation towards building a case around the accused rather than independently establishing guilt, thereby diluting the traditional standard that the prosecution must prove guilt beyond reasonable doubt. Courts have acknowledged that fair trial includes the presumption of innocence and procedural fairness, which may be strained when the burden shifts prematurely to the accused.

Second, the PMLA regime produces a significant power imbalance between enforcement agencies and the accused. Authorities are vested with wide powers of arrest, search, seizure, and provisional attachment of property, while the accused frequently faces limited financial resources and the challenge of navigating complex financial investigations. This inequality of arms raises concerns about access to justice and the ability of the accused to effectively defend themselves, particularly in prolonged investigations involving large volumes of financial data and international transactions.

Third, the reverse burden framework creates a risk of coercive investigations, as the pressure to rebut presumptions and secure bail may encourage forced cooperation, prolonged custody, and indirect pressure to make incriminating disclosures. Such investigative pressure can conflict with the spirit of the constitutional protection against self-incrimination under Article 20(3), which aims to prevent compelled testimony and safeguard personal liberty.

RECOMMENDATIONS

Meaningful reform of the PMLA framework requires the incorporation of a proportionality test while assessing reverse burden provisions and bail restrictions. Courts should evaluate whether the procedural deviation is proportionate to the seriousness of the alleged offence, the quality and nature of evidence collected by the prosecution, and the degree of compulsion imposed upon the accused. The doctrine of proportionality, now firmly embedded in Indian constitutional

jurisprudence, requires that restrictions on fundamental rights must be suitable, necessary, and balanced against the objective sought to be achieved. Applying this standard would ensure that anti-money laundering measures do not disproportionately infringe Article 20(3) and fair trial guarantees.

Further, there is a pressing need to modify the stringent bail conditions, particularly the requirement that the accused demonstrate prima facie innocence at the bail stage. Bail jurisprudence in India traditionally rests on the principle that “bail is the rule and jail is the exception,” and pre-trial detention should not become punitive. Removing or relaxing the requirement of proving innocence at the threshold stage would restore balance between individual liberty and the State’s interest in investigation, while still permitting courts to impose reasonable conditions to secure presence and prevent misuse of liberty.

Additionally, stronger procedural safeguards must be institutionalised, including enhanced judicial oversight of investigation, protection against coercive interrogation, and clearly defined evidentiary standards before presumptions are invoked. Courts have emphasised that investigative powers must operate within constitutional boundaries and cannot override due process guarantees. In this context, the statutory presumption regarding proceeds of crime should be triggered only after the prosecution establishes a credible prima facie case linking the property to criminal activity. Limiting the scope of presumption in this manner would prevent arbitrary application and ensure that the burden shifts only when justified by foundational facts.

CONCLUSION

The reverse burden of proof under PMLA represents a major shift in Indian criminal jurisprudence. While designed to tackle complex financial crimes, it raises serious concerns regarding the right against self-incrimination under Article 20(3). The judiciary has upheld the law by prioritising national economic security. However, the current framework risks undermining:

- Presumption of innocence
- Fair trial rights
- Protection against coercion

A balanced reform approach is necessary to ensure that the fight against money laundering does not weaken constitutional liberties.

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