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**REVOCATION OF SAFEGUARDS UNDER SECTIONS 17(1) AND 18(1)
OF THE PMLA:
A CRITICAL ANALYSIS OF DUE PROCESS, PRIVACY RIGHTS, AND
ENFORCEMENT POWERS IN POST-PMLA (AMENDMENT)
JURISPRUDENCE**

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ABSTRACT

*This paper critically examines the constitutional and procedural implications of the 2019 amendment to Sections 17(1) and 18(1) of the Prevention of Money Laundering Act, 2002 (PMLA)¹, which removed the requirement of prior judicial approval for search and seizure operations conducted by the Enforcement Directorate. It argues that this legislative shift marks a significant departure from foundational principles of due process and the right to privacy under Article 21 of the Indian Constitution. Through a doctrinal analysis of key Supreme Court judgments, particularly *Vijay Madanlal Choudhary v. Union of India*² and *Pankaj Bansal v. Union of India*³, the paper evaluates the judiciary's evolving stance on the balance between state power and individual rights. It further critiques the overconcentration of executive authority and the lack of meaningful oversight mechanisms, situating these developments within both domestic and international legal standards. The study concludes that while*

¹ Prevention of Money Laundering Act, No. 15 of 2003, § 17, § 18, § 19, INDIA CODE (2003).

² *Vijay Madanlal Choudhary v. Union of India*, (2022) 10 SCC 353 (India).

³ *Pankaj Bansal v. Union of India*, 2023 SCC OnLine SC 1242 (India).

combating money laundering is a legitimate state interest, it must not come at the cost of procedural fairness and constitutional accountability. The paper proposes targeted reforms, including reinstating limited judicial oversight, codifying procedural safeguards, and enhancing transparency within enforcement agencies to ensure that the PMLA remains effective without undermining the rule of law.

Keywords: *Prevention of Money Laundering Act (PMLA), Section 17 and Section 18, Judicial oversight, Due process, right to privacy, Article 21 – Indian Constitution, Enforcement Directorate (ED), Search and seizure, Constitutional rights, Executive overreach.*

INTRODUCTION

In an era where transnational economic offences increasingly threaten the integrity of financial systems, the Prevention of Money Laundering Act, 2002 (PMLA)⁴, has emerged as a key legislative instrument to combat the concealment and legitimisation of illicit wealth in India. The Act equips enforcement agencies with extensive powers to search, seize, arrest, and attach property suspected to be involved in money laundering. However, these powers are constitutionally significant, as they operate at the delicate intersection of state security and individual liberty. Among the provisions that once embodied this balance were Sections 17(1) and 18(1) of the PMLA, which mandated prior recording of "reasons to believe" and, crucially, required authorisation from a judicial magistrate before conducting searches on premises or persons.⁵

This safeguard was removed by the Finance Act, 2019, through an amendment that omitted the requirement for magistrate approval, allowing internal authorisation by designated officers of the Enforcement Directorate (ED). The stated objective was to ensure expediency and confidentiality in investigations. However, this shift has triggered significant concerns regarding due process, arbitrary exercise of executive power, and erosion of privacy rights especially in the backdrop of the Supreme Court's recognition of the right to privacy as a fundamental right under Article 21⁶ in *Justice K.S. Puttaswamy v. Union of India* (2017).⁷⁸

⁴ Prevention of Money Laundering Act, No. 15 of 2003, § 17, § 18, § 19, INDIA CODE (2003).

⁵ Financial Action Task Force (FATF), *Recommendations*, <https://www.fatf-gafi.org/recommendations.html>.

⁶ INDIA CONST. art. 21.

⁷ *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1 (India)

⁸ *Gillan and Quinton v. United Kingdom*, App. No. 4158/05, Eur. Ct. H.R. (2010).

The present paper seeks to critically examine the constitutional and procedural implications of revoking these safeguards. It interrogates whether the current framework post-amendment aligns with the requirements of fairness, reasonableness, and judicial oversight as mandated under Indian constitutional jurisprudence. Further, it evaluates whether judicial interpretations most notably in *Vijay Madanlal Choudhary v. Union of India*⁹ have adequately responded to these challenges or have contributed to a broader trend of deference to executive enforcement.

Through a doctrinal analysis of statutory changes, judicial pronouncements, and comparative legal standards, this paper aims to explore the shifting contours of due process and enforcement under the PMLA, questioning whether efficiency in combating economic offences can justify the dilution of fundamental liberties.¹⁰

THE STATUTORY FRAMEWORK OF SECTIONS 17 AND 18 OF PMLA

The Prevention of Money Laundering Act, 2002 (PMLA)¹¹, was enacted to prevent the laundering of proceeds derived from criminal activity and to provide for the confiscation of such property. Central to the Act's enforcement mechanism are the provisions that empower authorities to conduct searches and seizures in connection with suspected laundering activities. Sections 17 and 18 of the PMLA operationalise these powers, laying down the legal basis for the search of property and persons, respectively.¹²

Section 17: Search and Seizure of Property

Under the original text of Section 17(1), officers not below the rank of Deputy Director were empowered to enter and search buildings, break open lockers, seize records or property, and even freeze assets, but only upon satisfying two key conditions:

1. The existence of "reason to believe," recorded in writing, that any person is in possession of property involved in money laundering; and
2. Obtaining prior approval from the jurisdictional Magistrate or a competent court.

This framework ensured that such invasive actions were subject to judicial oversight, thereby aligning the exercise of executive power with constitutional guarantees under Article 21¹³. The

⁹ *Vijay Madanlal Choudhary v. Union of India*, (2022) 10 SCC 353 (India).

¹⁰ European Convention on Human Rights, art. 8, Nov. 4, 1950, 213 U.N.T.S. 221.

¹¹ Prevention of Money Laundering Act, No. 15 of 2003, § 17, § 18, § 19, INDIA CODE (2003).

¹² Gautam Bhatia, *The Transformative Constitution: A Radical Biography in Nine Acts* (2019).

¹³ INDIA CONST. art. 21.

rationale was to prevent abuse and to uphold procedural fairness by placing a neutral judicial authority as a check against arbitrary intrusion.

Section 18: Search of Persons

Similarly, Section 18(1) authorised specified officers to conduct personal searches, including examination of documents and belongings, provided they:

1. Had “reason to believe,” recorded in writing, that the person had concealed proceeds of crime on his person; and
2. Sought prior approval from a Magistrate before undertaking the search.

This provision mirrored the protections under the Code of Criminal Procedure (CrPC)¹⁴, especially Sections 100 and 165, which reinforce judicial oversight in search procedures to protect personal liberty and bodily integrity.

Post-2019 Amendment Changes

The Finance (No. 2) Act, 2019¹⁵, brought a significant departure from the original structure. The amendment deleted the requirement for obtaining prior approval of a Magistrate under both Sections 17(1) and 18(1). Instead, internal authorisation from a superior officer within the ED, not below the rank of Deputy Director, became sufficient. The purported justification was to ensure operational secrecy, efficiency, and to avoid tipping off suspects.

This change effectively removed an important layer of external accountability. Now, the determination of “reason to believe” and the subsequent decision to conduct a search rests entirely within the executive hierarchy, with no ex ante judicial scrutiny. Though the statute still requires such reasons to be recorded in writing and forwarded to the Adjudicating Authority, the safeguard of prior judicial intervention has been supplanted by a self-certifying process.¹⁶

This legislative shift significantly alters the balance between the state’s power to investigate and the individual’s right to privacy and due process. It lays the foundation for deeper constitutional scrutiny, which will be explored in the following sections.

¹⁴ Code of Criminal Procedure, No. 2 of 1974, §§ 100, 102, 165, INDIA CODE (1974).

¹⁵ Finance (No. 2) Act, No. 23 of 2019, § 213, INDIA CODE (2019) (amending §§ 17 and 18 of the PMLA).

¹⁶ Abhinav Sekhri, *The Unconstitutionality of the PMLA*, The Caravan (Jul. 2022), <https://caravanmagazine.in/law/pmla-judgment-unconstitutional-ed>.

CONSTITUTIONAL AND PROCEDURAL SAFEGUARDS: DUE PROCESS AND PRIVACY RIGHTS

The revocation of judicial safeguards under Sections 17(1) and 18(1) of the PMLA must be evaluated not merely through a statutory lens but also in the context of India's constitutional commitment to due process, personal liberty, and the right to privacy. These principles, embedded in Article 21¹⁷ of the Constitution, have evolved through decades of jurisprudence to form a substantive shield against arbitrary executive action. The dilution of safeguards in search and seizure provisions under the PMLA raises serious concerns about constitutional compatibility, particularly in light of contemporary interpretations of due process and privacy rights.¹⁸

Article 21¹⁹ and the Expanding Horizon of Due Process

Article 21²⁰ of the Constitution guarantees that no person shall be deprived of their life or personal liberty except according to "procedure established by law." Initially interpreted narrowly in *A.K. Gopalan v. State of Madras* (1950)²¹, this provision underwent a dramatic transformation with *Maneka Gandhi v. Union of India* (1978)²². The Court held that the "procedure" must be "right, just, and fair," and not arbitrary, fanciful, or oppressive.

This expanded interpretation of due process introduced two essential checks on state action: (i) the procedure must be reasonable and non-arbitrary, and (ii) the deprivation of liberty must be proportionate to the legitimate aim sought to be achieved. In this framework, statutory powers of search and seizure must meet the test of fairness and must be subjected to independent scrutiny.

Prior to the 2019 amendment, the requirement of judicial approval under Sections 17 and 18 served precisely this purpose, functioning as a procedural buffer against executive overreach. With its removal, the ED now acts as both initiator and reviewer of its own actions, undermining the essential safeguard of neutrality that Article 21²³ demands.

¹⁷ INDIA CONST. art. 21.

¹⁸ Justice R.F. Nariman, *Due Process and the Rule of Law*, 3 SCC J 1 (2015).

¹⁹ INDIA CONST. art. 21.

²⁰ INDIA CONST. art. 21.

²¹ *A.K. Gopalan v. State of Madras*, AIR 1950 SC 27 (India)

²² *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248 (India)

²³ INDIA CONST. art. 21.

The Right to Privacy and the Puttaswamy Framework

The right to privacy was firmly established as a fundamental right in *Justice K.S. Puttaswamy v. Union of India* (2017)²⁴, where a nine-judge bench unanimously affirmed that privacy is intrinsic to life and liberty under Article 21²⁵. Importantly, the Court laid down a three-pronged test for any state intrusion into the privacy of individuals:

1. Legality – the action must have a statutory basis;
2. Necessity – there must be a legitimate state interest; and
3. Proportionality – the means adopted must be the least intrusive method available to achieve the objective.

Although the PMLA provides a statutory basis for searches, the 2019 amendment renders the process devoid of independent oversight, raising doubts about its proportionality and necessity. The search of a person or private property without prior judicial authorisation is a serious intrusion into privacy. In the absence of an external check, such as a warrant or prior judicial approval, the action becomes susceptible to abuse and fails the proportionality prong of the Puttaswamy test.²⁶

Procedural Parallels under the Criminal Procedure Code (CrPC)

Under the CrPC, Sections 165 and 100 lay down detailed procedural safeguards for searches. These include:

- Requirement of prior warrant unless circumstances necessitate urgent action;
- Documentation of reasons to believe;
- Searches to be conducted in the presence of independent witnesses;
- Obligation to prepare a seizure memo and provide a copy to the person searched.

These safeguards are meant to ensure transparency, prevent fabrication, and provide the searched individual with a procedural remedy. In contrast, post-amendment PMLA provisions lack many of these checks. While the officer must still record reasons in writing and inform the

²⁴ *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1 (India)

²⁵ INDIA CONST. art. 21.

²⁶ Sidharth Chauhan, *Judicial Oversight in Economic Offences: The PMLA Context*, 12 NUJS L. Rev. 144 (2021).

Adjudicating Authority, these internal mechanisms do not equate to the impartiality and procedural fairness of judicial review.

Moreover, CrPC provisions are grounded in centuries-old principles of common law fairness and form part of the "procedure established by law" under Article 21²⁷. Therefore, any deviation must be justified with compelling reasoning and not merely administrative convenience. The omission of judicial sanction under PMLA, especially given its punitive and stigmatic consequences, risks failing this constitutional benchmark.

Conclusion of the Section

In sum, the removal of judicial oversight in searches and seizures under the PMLA not only erodes statutory safeguards but also offends core constitutional values. The revised provisions fail to meet the fairness and reasonableness requirements of Article 21²⁸ and do not withstand the tests of necessity and proportionality under the right to privacy. As enforcement powers continue to expand, the necessity of embedding robust procedural safeguards becomes even more critical to preserve the rule of law and the fundamental rights of individuals.

JUDICIAL PRONOUNCEMENTS AND POST-AMENDMENT JURISPRUDENCE

The judicial response to the expanded enforcement powers under Sections 17(1) and 18(1) of the Prevention of Money Laundering Act (PMLA)²⁹, particularly after the 2019 amendment, has been pivotal in shaping the boundaries of constitutional acceptability. While the legislature removed the requirement of prior judicial approval in search and seizure operations, the judiciary has largely exhibited deference to executive discretion under the guise of combating economic crimes. However, certain recent decisions show a growing tension between upholding state power and preserving individual liberties, especially in light of the fundamental rights discourse under Articles 21³⁰ and 14³¹ of the Constitution.³²

²⁷ INDIA CONST. art. 21.

²⁸ INDIA CONST. art. 21.

²⁹ Prevention of Money Laundering Act, No. 15 of 2003, § 17, § 18, § 19, INDIA CODE (2003).

³⁰ INDIA CONST. art. 21.

³¹ INDIA CONST. art. 14.

³² Gautam Bhatia, *The Transformative Constitution: A Radical Biography in Nine Acts* (2019).

Vijay Madanlal Choudhary v. Union of India³³(2022)

The most consequential ruling post-amendment is the Supreme Court's decision in *Vijay Madanlal Choudhary v. Union of India*³⁴, [(2022) 10 SCC 353], where a three-judge bench upheld the constitutional validity of various provisions of the PMLA, including Sections 17 and 18, as amended. The Court justified the dilution of safeguards on the ground that money laundering poses a serious threat to the financial integrity and sovereignty of the nation, warranting an exceptional legal framework.

The Court observed that:

“The requirement of judicial authorization for search and seizure under Sections 17 and 18 is not mandatory in the context of the PMLA, which is a sui generis legislation aimed at tackling an aggravated form of crime.”

It further held that since the search and seizure provisions were accompanied by post-facto communication to the Adjudicating Authority and internal checks within the Enforcement Directorate (ED), the procedural safeguards under Article 21³⁵ were substantially complied with. However, this interpretation has been heavily criticised for allowing executive action to replace judicial scrutiny, thus weakening the very essence of procedural due process.

Legal scholars and civil rights groups have argued that *Vijay Madanlal* marks a troubling expansion of state power, setting a precedent where the exception becomes the rule. By prioritising national security rhetoric over individual rights, the judgment arguably shifts the constitutional balance in favour of unchecked executive authority.

Pankaj Bansal v. Union of India³⁶ (2023)

In a significant subsequent decision, the Supreme Court in *Pankaj Bansal v. Union of India*³⁷, [(2023) SCC OnLine SC 1242], addressed the procedural requirement of informing the accused of the “grounds of arrest” under Section 19 of the PMLA. The Court held that merely informing

³³ *Vijay Madanlal Choudhary v. Union of India*, (2022) 10 SCC 353 (India).

³⁴ *Vijay Madanlal Choudhary v. Union of India*, (2022) 10 SCC 353 (India).

³⁵ INDIA CONST. art. 21.

³⁶ *Pankaj Bansal v. Union of India*, 2023 SCC OnLine SC 1242 (India).

³⁷ *Pankaj Bansal v. Union of India*, 2023 SCC OnLine SC 1242 (India).

the accused orally does not satisfy the constitutional mandate of Article 22(1)³⁸; the grounds must be furnished in writing.

While the case did not directly concern Sections 17 and 18, its reasoning is instructive for assessing procedural safeguards under the PMLA more broadly. The Court's insistence on transparency, accountability, and procedural fairness in arrest can be extended analogically to search and seizure. If an arrest being a severe deprivation of liberty requires written grounds, arguably, a search or seizure of property or person without judicial sanction should also be accompanied by more stringent procedural safeguards.

This judgment also signals a shift in the Court's tone, acknowledging the need to harmonise enforcement with constitutional rights, particularly in the wake of increasing allegations of misuse of PMLA powers for political and vendetta-driven investigations.

T.T.V. Dhinakaran v. Directorate of Enforcement ³⁹(Madras High Court)

In *T.T.V. Dhinakaran v. ED* [2020 SCC OnLine Mad 1632]⁴⁰, the Madras High Court emphasised the requirement of "reasons to believe" being not just a ritualistic formality but a substantive safeguard. The Court held that such belief must be based on tangible material and not on vague or unverified allegations. Though the Court did not invalidate the search conducted without a magistrate's approval (post-amendment), it reinforced the principle that executive satisfaction must meet a threshold of reasonableness and objectivity.

This case underscores the judiciary's role in ensuring that "internal authorisation" under Sections 17 and 18 does not become a carte blanche for arbitrary intrusion. Nevertheless, the lack of consistent judicial insistence on strict scrutiny of ED's "reasons to believe" continues to raise concerns.

Emerging Judicial Trends and Critique

The post-amendment jurisprudence reveals a marked judicial tendency to uphold ED powers under the PMLA, with a relatively restrained approach to procedural and constitutional objections. While the *Vijay Madanlal* judgment articulates national interest and financial

³⁸ INDIA CONST. art. 22(1).

³⁹ *T.T.V. Dhinakaran v. Directorate of Enforcement*, 2020 SCC OnLine Mad 1632 (India).

⁴⁰ *T.T.V. Dhinakaran v. Directorate of Enforcement*, 2020 SCC OnLine Mad 1632 (India).

security as overriding objectives, it does so at the cost of diluting established principles of fair trial and personal liberty.

Moreover, courts have largely accepted post-facto remedies such as reporting to the Adjudicating Authority as a sufficient safeguard. This deviates from criminal law jurisprudence under the CrPC, which treats ex ante judicial control as a non-negotiable precondition for legitimising coercive state action.

This posture of judicial deference also runs contrary to the constitutional position adopted in *Puttaswamy*, which emphasises proportionality, necessity, and minimal intrusiveness. By permitting search and seizure based on an internal satisfaction mechanism, the judiciary has arguably endorsed an exception to the general constitutional rule.

Conclusion of the Section

The judiciary's evolving stance on Sections 17 and 18 reflects the broader tension between strengthening the state's capacity to tackle financial crime and safeguarding constitutional rights. While the courts have acknowledged the seriousness of money laundering, they have, in several instances, failed to apply a rigorous constitutional standard to procedural safeguards. The reliance on internal authorisation mechanisms in place of judicial oversight sets a problematic precedent, weakening the procedural bulwarks that protect individual liberty. In the absence of a consistent constitutional standard, the risk of arbitrary and politically motivated enforcement remains significant.

EXECUTIVE POWERS VS. INDIVIDUAL LIBERTIES: A CRITICAL EVALUATION

The post-amendment framework of the PMLA reflects a marked shift in the legal landscape, where enhanced executive powers are prioritised over individual safeguards. This transformation, especially through the removal of prior judicial oversight under Sections 17(1) and 18(1), brings to the forefront a constitutional dilemma: how to reconcile the legitimate need for effective enforcement with the constitutional mandate to protect personal liberty, dignity, and privacy. The issue is not whether the state should possess coercive powers to combat money laundering, but rather, whether such powers are adequately regulated to prevent arbitrary and disproportionate use.

Concentration of Investigative and Authoritative Power within the Executive

One of the central critiques of the amended PMLA is the concentration of unchecked power within the Enforcement Directorate (ED). Post-2019, the ED no longer requires judicial approval for conducting searches of premises or persons suspected of involvement in money laundering. Instead, internal authorisation from an officer not below the rank of Deputy Director is deemed sufficient.

This model of internal validation raises serious concerns about impartiality, as the investigating agency becomes the sole arbiter of the legality and necessity of its own actions. Unlike the Criminal Procedure Code (CrPC), where warrants must be obtained from a magistrate based on prima facie satisfaction, the PMLA allows a circular chain of authorisation within the same executive hierarchy. The lack of a neutral and independent check prior to a search or seizure undermines procedural fairness and opens the door to arbitrary or mala fide actions.

Moreover, the ED is not bound by standard procedural requirements such as the presence of independent witnesses during searches or mandatory disclosure of seizure memos to affected persons in real time. The absence of such safeguards compromises the accountability of the enforcement process.⁴¹

⁴¹ Aparna Chandra, *Criminal Justice and the Supreme Court: The Many Wounds of Vijay Madanlal*, Indian Constitutional Law and Philosophy Blog (Jul. 30, 2022), <https://indconlawphil.wordpress.com>.

Pattern of Alleged Abuse and Political Selectivity

In recent years, there has been a visible increase in allegations of the ED being used selectively for political ends. Data presented before Parliament and in public domain shows a dramatic rise in the number of PMLA cases filed and property attachments, yet with a disproportionately low rate of conviction. This raises a legitimate question: are these powers being exercised primarily for genuine criminal prosecution or to create an environment of fear and coercion?

Numerous public figures, activists, journalists, and opposition politicians have reported receiving ED summons or being subject to search and seizure under PMLA. In many instances, no further legal action has followed, indicating that the invocation of PMLA provisions may be driven more by strategic timing than by solid prosecutorial evidence.

Such selective use not only erodes public trust in the impartiality of enforcement agencies but also compromises the legitimacy of the state's anti-money laundering agenda. Where discretion is wide and oversight is minimal, the possibility of misuse is not merely theoretical it is systemic.

Absence of Effective Remedies and Oversight Mechanisms

A key indicator of balance in any legal regime is the presence of remedies. Under the current PMLA structure, the individual subjected to a search has limited options for immediate redress. Since the pre-search authorisation is internal and post-search reporting is made only to the Adjudicating Authority another quasi-judicial body functioning under the Ministry of Finance the process lacks a truly independent supervisory mechanism.

Further, unlike under the CrPC where illegal searches can be challenged promptly before a magistrate, the PMLA provides no explicit statutory remedy for questioning the legality of a search on the grounds of lack of judicial sanction or insufficient "reason to believe." In the absence of clear procedural channels, aggrieved persons are compelled to approach High Courts under writ jurisdiction, which is often time-consuming and expensive, especially for those without access to quality legal representation.

Global Comparisons and the Proportionality Principle

International legal systems provide instructive comparisons. In jurisdictions such as the United Kingdom, the United States, and Canada, search and seizure powers, even in anti-money laundering regimes, are invariably subject to some form of judicial or independent oversight, either before or immediately after execution. The European Court of Human Rights has repeatedly held that intrusive actions such as property searches must meet the test of necessity, legality, and proportionality and must involve an external adjudicator to ensure fairness.⁴²

India's deviation from this global standard, especially in the name of administrative convenience or efficiency, reflects a troubling departure from democratic accountability and the rule of law. The PMLA, as interpreted and amended, risks creating a surveillance-enforcement state rather than a rights-based legal order.

Conclusion of the Section

The PMLA's current enforcement framework reveals a systemic tilt in favour of concentrated executive power, with little meaningful external oversight or remedy. The resulting erosion of individual liberties especially the right to privacy, dignity, and protection from arbitrary state action raises serious constitutional and democratic concerns. While the need to deter and punish money laundering is beyond dispute, it must not come at the cost of hollowing out the constitutional promise of procedural fairness. The challenge before lawmakers and courts alike is to reimagine an enforcement architecture that is both robust and rights-respecting.

⁴² *Gillan and Quinton v. United Kingdom*, App. No. 4158/05, Eur. Ct. H.R. (2010).

THE WAY FORWARD: BALANCING ENFORCEMENT AND RIGHTS

The contemporary enforcement regime under the PMLA, especially after the 2019 amendment, reflects an imbalance between the state's legitimate interest in combating financial crime and the individual's right to privacy, liberty, and due process. While national security and financial integrity are critical goals, constitutional democracy demands that even the most pressing state interests be pursued within the framework of procedural fairness and accountability. The way forward lies not in diminishing the state's capacity to investigate, but in embedding such capacity within a system of credible and independent checks.

Restoring Judicial Oversight

One of the most viable reforms is the reintroduction of judicial oversight in search and seizure operations under Sections 17 and 18. This does not necessarily entail reverting to the exact pre-2019 framework but may involve a calibrated model, such as:

- **Pre-search judicial approval** in cases not involving imminent risk of evidence destruction;
- **Post-facto judicial scrutiny** within a statutorily defined timeframe where exigent circumstances require urgent action.

This hybrid approach would preserve investigative efficiency while ensuring that enforcement does not operate in a constitutional vacuum. Even a limited reintroduction of judicial scrutiny would restore the perception of fairness and reduce potential abuse.

Codifying Procedural Safeguards and Transparency Norms

The legislature could consider amending the PMLA to codify specific procedural safeguards similar to those in the CrPC, including:

- Mandatory **presence of independent witnesses** during search and seizure;
- **Provision of seizure memos and copies of reasons to believe** to the affected party;
- Clear timelines for reporting to the Adjudicating Authority;
- Statutory right to challenge the legality of search operations before a designated judicial forum.

Such reforms would introduce clarity, protect against executive arbitrariness, and strengthen public trust in the anti-money laundering regime.

Ensuring Accountability of Enforcement Agencies

Reforms must also address the institutional opacity of the Enforcement Directorate. Mechanisms such as **annual reporting to Parliament, independent audit of enforcement actions**, and **disciplinary review** in cases of wrongful search or seizure can enhance transparency and deter overreach. Establishing a **neutral grievance redressal mechanism** for individuals adversely affected by ED actions would add another layer of accountability.⁴³

Judicial Re-engagement with Proportionality and Rights

The judiciary, too, must reassess its role in upholding constitutional values in the face of expanding executive power. Future constitutional challenges should invite deeper engagement with the **principle of proportionality**, the **least restrictive means test**, and **comparative constitutional jurisprudence**. Courts must resist the temptation to accept administrative convenience as a substitute for constitutional legitimacy.⁴⁴

Conclusion of the Section

As India continues to combat sophisticated financial crimes, it must do so within the bounds of constitutional discipline. Strengthening the procedural architecture of PMLA enforcement through judicial oversight, codified safeguards, and institutional accountability is not a dilution of power but a refinement of it. A robust legal regime that respects both national security and individual rights is not only possible but essential in a constitutional democracy. The future of PMLA lies in recalibrating the balance between power and liberty towards a system that is effective, just, and constitutionally resilient.

⁴³ Justice R.F. Nariman, *Due Process and the Rule of Law*, 3 SCC J 1 (2015).

⁴⁴ Gautam Bhatia, *The Transformative Constitution: A Radical Biography in Nine Acts* (2019).

CONCLUSION

The evolution of Sections 17(1) and 18(1) of the PMLA reveals a significant tension at the heart of Indian constitutionalism the contest between the need for powerful enforcement mechanisms and the imperative of safeguarding fundamental rights. The 2019 amendment, which removed the requirement for prior judicial approval before search and seizure, has substantially altered the nature of procedural protections once embedded in the PMLA. What was designed as a shield to prevent arbitrary intrusion has been replaced by an internal authorisation mechanism that vests extensive discretion in the executive branch, without meaningful external scrutiny.

This shift carries profound implications for the rule of law. The right to privacy, recognised as a fundamental right in *Puttaswamy*, and the guarantee of procedural fairness under Article 21⁴⁵, are now vulnerable to dilution under a regime where power is unchecked at the point of application. While the Supreme Court in *Vijay Madanlal Choudhary* upheld the post-amendment provisions, the judgment has drawn significant criticism for prioritising enforcement objectives over constitutional safeguards and for insufficiently engaging with the proportionality and necessity standards laid down in prior landmark rulings.

Although the fight against money laundering and financial crime remains vital, the current enforcement model under the PMLA risks crossing the constitutional boundary between necessity and overreach. The expanding power of the Enforcement Directorate, coupled with inadequate institutional oversight and growing allegations of political misuse, further underscores the need for a rights-sensitive recalibration of the law.

Moving forward, the solution lies not in weakening the state's hand but in fortifying the legal scaffolding within which it operates. Reinstating elements of judicial review, codifying procedural checks, and promoting transparency in enforcement actions can help strike the necessary balance between power and accountability. The courts, too, must remain vigilant guardians of constitutional rights, ensuring that procedural shortcuts do not become systemic norms.

⁴⁵ INDIA CONST. art. 21

In essence, a truly effective anti-money laundering regime is not one that sacrifices rights at the altar of enforcement, but one that draws its legitimacy from fidelity to the Constitution. The challenge ahead lies in reclaiming that equilibrium and ensuring that the PMLA evolves not just as a powerful statute, but as a just one.