

Criminal prosecution for tax evasion under the Prevention of Money Laundering Act (PMLA) and income tax act in India: A critical analysis

Mr. Gaurav Yadav¹, **Vivek Trivedi**², and **Neha Juneja**³

¹ Assistant Professor, Department of Law, JIMS Engineering Management Technical Campus (JIMS EMTC), Greater Noida, Uttar Pradesh, India

Research Scholar, School of Law, Justice and Governance, Gautam Buddha University, Greater Noida, Uttar Pradesh, India. Email: 615gaurav@gmail.com

² Assistant Professor, Department of Law, JIMS Engineering Management Technical Campus (JIMS EMTC), Greater Noida, Uttar Pradesh, India. Email: Vivektrivedi00007@gmail.com

³ Assistant Professor, Department of Law, JIMS Engineering Management Technical Campus (JIMS EMTC), Greater Noida, Uttar Pradesh, India. Email: nehajuneja.gn@jagannath.org

Abstract--- Tax evasion constitutes one of the gravest fiscal offences in India, striking at the core of the nation's revenue architecture and undermining the constitutional mandate of equitable resource distribution. This paper critically examines the criminal prosecution framework for tax evasion under two principal statutes the Prevention of Money Laundering Act, 2002 (PMLA) and the Income Tax Act, 1961 in the light of India's new criminal justice framework comprising the Bharatiya Nyaya Sanhita, 2023 (BNS), the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), and the Bharatiya Sakshya Adhinyam, 2023 (BSA). The paper analyses the conceptual tension between tax evasion as a fiscal wrong and money laundering as a criminal offence, examines the contested doctrine of predicate offences under the PMLA, evaluates prosecutorial powers of the Enforcement Directorate (ED) and the Income Tax Department, critiques landmark judicial pronouncements including *Vijay Madanlal Choudhary v. Union of India* (2022) and subsequent decisions, and identifies the structural challenges posed by dual prosecution, reverse burden of proof, and bail conditions. The paper concludes by offering a calibrated analytical framework for reconciling fiscal enforcement with individual liberty under India's transformed criminal jurisprudence.

How to Cite:

Yadav, G., Trivedi, V., & Juneja, N. (2026). Criminal prosecution for tax evasion under the Prevention of Money Laundering Act (PMLA) and income tax act in India: A critical analysis. *The International Tax Journal*, 53(3), 1167–1178. Retrieved from <https://internationaltaxjournal.online/index.php/itj/article/view/635>

The International tax journal ISSN: 0097-7314 E-ISSN: 3066-2370 © 2026

ITJ is open access and licensed under a Creative Commons Attribution-NonCommercial-NoDerivatives 4.0 International License.

Submitted: 27 March 2026 | Revised: 18 April 2026 | Accepted: 09 May 2026

Keywords---PMLA, Tax Evasion, Predicate Offence, Enforcement Directorate, BNS, BNSS, BSA, Money Laundering, Income Tax Act, Scheduled Offence, Reverse Burden of Proof.

1. Introduction

The interface between tax law and criminal law in India has witnessed a dramatic transformation over the last two decades. Tax evasion defined broadly as the illegal non-payment or underpayment of taxes through concealment of income, false reporting, or deliberate omission has increasingly attracted not merely civil penalties but also rigorous criminal prosecution. The Prevention of Money Laundering Act, 2002 (PMLA) and the Income Tax Act, 1961 represent the twin pillars of India's criminal enforcement architecture against financial misconduct, each with its own prosecutorial machinery, procedural canons, evidentiary standards, and penal consequences.

The enactment of the Bharatiya Nyaya Sanhita, 2023 (BNS), the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), and the Bharatiya Sakshya Adhinyam, 2023 (BSA) which replaced the Indian Penal Code, 1860 (IPC), the Code of Criminal Procedure, 1973 (CrPC), and the Indian Evidence Act, 1872 (IEA), respectively has substantially altered the procedural and evidentiary landscape within which these prosecutions operate. In this transformed legislative environment, a rigorous academic inquiry into the criminality of tax evasion, the limits of PMLA application, and the safeguards available to the accused is not merely desirable but imperative.

This paper proceeds through six analytical sections. Section 2 provides an overview of tax evasion as a criminal offence under the Income Tax Act. Section 3 examines the PMLA framework, with particular focus on the predicate offence doctrine and its application to tax evasion. Section 4 critically analyses the role of the Enforcement Directorate and its prosecutorial powers. Section 5 examines the procedural and evidentiary framework under the BNS, BNSS, and BSA. Section 6 evaluates landmark judicial pronouncements. Section 7 concludes with a critical synthesis and reform recommendations.

2. Tax Evasion as a Criminal Offence under the Income Tax Act, 1961

2.1 Conceptual Foundation

Tax evasion is distinguishable from tax avoidance in both its legal character and moral dimension. While tax avoidance refers to the lawful arrangement of financial affairs to minimise tax liability, tax evasion involves deliberate, fraudulent concealment of income or suppression of facts with the intent to defraud the public exchequer. The Income Tax Act, 1961 (hereafter "the Act") departs from a purely civil regulatory model and creates a robust penal framework aimed at deterring wilful fiscal misconduct. The element of *mens rea* the guilty mind is central to criminal prosecution under the Income Tax Act. Mere computational errors or bona fide accounting mistakes do not attract criminal liability. The prosecution must establish beyond reasonable doubt that the accused *wilfully* attempted to evade tax, penalty, or interest. This crucial distinction between inadvertent default and deliberate evasion forms the bedrock of all prosecutorial initiatives under the Act.

2.2 Key Penal Provisions

The Income Tax Act, 1961 contains a comprehensive set of penal provisions in Chapter XXII (Sections 275A to 280D) that criminalise various forms of tax evasion:

Section 276C Wilful Attempt to Evade Tax: This is the primary provision governing criminal prosecution for tax evasion. Section 276C(1) penalises any wilful attempt to evade tax, penalty, or interest otherwise than as provided under Section 276CC. The punishment is calibrated on the basis of the quantum of tax sought to be evaded:

- I. Where the amount of tax sought to be evaded exceeds Rupees Twenty-Five Lakhs: rigorous imprisonment for a term of not less than six months, which may extend to seven years, along with a fine.
- II. In other cases: rigorous imprisonment for a term of not less than three months, which may extend to two years, along with a fine.

Section 276C(2) separately penalises wilful attempt to evade payment of any tax, penalty, or interest as a non-cognizable offence under Section 279A, with punishment extending to two years of rigorous imprisonment with fine.

Section 276CC Failure to Furnish Return of Income: This provision criminalises the wilful failure to furnish a return of income within the prescribed time limit in cases where the tax payable exceeds a specified threshold. The punishment extends to seven years of rigorous imprisonment where the tax evaded exceeds Rupees Twenty-Five Lakhs, and up to two years in other cases.

Section 277 False Statement in Verification: Section 277 criminalises the making of a statement in any verification or the delivery of any account, statement, or declaration under the Act that is false and which the person knows or believes to be false. The punishment structure mirrors that under Section 276C: six months to seven years of rigorous imprisonment where evasion exceeds Rupees Twenty-Five Lakhs, and three months to two years in other cases.

Section 277A Falsification of Books of Account: This provision penalises any person who willfully and with intent to enable any other person to evade tax, falsifies books of account or any document. The punishment is rigorous imprisonment for three months to three years (two years with effect from 1 July 2012).

Section 278 Abetment of False Return: Section 278 criminalises abetment or inducement of any other person to make or deliver a false return, account, or declaration. It carries rigorous imprisonment of six months to seven years where the evaded tax exceeds Rupees Twenty-Five Lakhs.

Section 278B Offences by Companies: This provision creates vicarious liability for companies. Every person who was responsible for the conduct of business at the time of the offence is deemed guilty unless they prove lack of knowledge or due diligence.

Section 279 Prosecution Sanction: A critical safeguard is provided under Section 279, which requires prior sanction of the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner before any prosecution under Chapter XXII can be initiated. This gatekeeping mechanism ensures that prosecution is not initiated mechanically and introduces a layer of administrative scrutiny to prevent vexatious proceedings.

2.3 The Element of Wilful Default

The courts have consistently emphasised that mere non-payment of tax does not attract criminal liability; what is required is a wilful intent to defraud. In *Sasi Enterprises v. Assistant Commissioner of Income Tax* (2014) 5 SCC 139, the Supreme Court held that in prosecutions under Section 276CC, the prosecution must establish the element of *mens rea*. The existence of *mens rea* is a necessary ingredient for convicting a person under Chapter XXII of the Act. This position reflects the maxim *actus non facit reum nisi mens sit rea* an act does not make a person guilty unless the mind is also guilty.

3. The PMLA Framework and Tax Evasion: The Predicate Offence Problem

3.1 Structure of PMLA, 2002

The Prevention of Money Laundering Act, 2002 was enacted pursuant to India's obligations under the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988) and the FATF (Financial Action Task Force) Forty Recommendations. The statute is structured around the concept of "proceeds of crime" defined under Section 2(1)(u) as any property derived or obtained, directly or indirectly, as a result of criminal activity relating to a **scheduled offence** or the value of any such property. The critical link that animates the entire PMLA framework is therefore the existence of a scheduled offence that generates proceeds, which are then projected as untainted.

Section 3 of the PMLA defines the offence of money laundering. It provides that whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime including its concealment, possession, acquisition, or use and projecting or claiming it as untainted property shall be guilty of the offence of money laundering. The offence is thus constituted by both the existence of proceeds of crime from a scheduled offence and the act of processing or projecting those proceeds as untainted.

Section 4 of the PMLA provides for punishment: rigorous imprisonment for not less than three years extending to seven years, along with a fine, which may extend to five lakh rupees. Where the scheduled offence is under the Narcotic Drugs and Psychotropic Substances Act, 1985, the punishment extends to ten years.

3.2 Scheduled Offences and the Exclusion of Standalone Tax Evasion

The Schedule to the PMLA is divided into three parts listing scheduled offences. Part A lists serious offences including offences under the Indian Penal Code (now BNS), the Narcotic Drugs and Psychotropic Substances Act, the Arms Act, the Prevention of Corruption Act, and others. Part B (now merged into Part A post-2009 amendment) and Part C deal with transnational offences.

A fundamental and critically important feature of India's PMLA is that **tax evasion as a standalone offence under the Income Tax Act is not listed as a scheduled offence under the PMLA**. This is a deliberate legislative choice, and its legal consequence is categorical: if tax evasion is the only wrongdoing, the PMLA cannot be directly invoked to prosecute the evader. Without a scheduled offence as the predicate, there can be no "proceeds of crime" within the meaning of Section 2(1)(u), and consequently, no offence under Section 3. As the Supreme Court has authoritatively held, *without the existence of a scheduled offence, proceedings under PMLA cannot be sustained*.

This exclusion reflects a considered policy judgment about the character of tax evasion. The PMLA is specifically targeted at serious criminal conduct involving criminal intent and often organised criminality. Tax evasion, by contrast, is primarily a fiscal and administrative wrong, even if it carries criminal consequences under the Income Tax Act. Conflating the two by treating all tax evaders as money launderers would criminalise a far broader class of fiscal misconduct and expose ordinary tax defaulters to the formidable coercive machinery of the PMLA, including the reverse burden of proof, stringent bail conditions, and attachment of property.

3.3 The Criminal Conspiracy Route: Limits of Section 120B IPC / BNS Section 61

An ingenious though controversial prosecutorial technique developed by the Enforcement Directorate has been to invoke PMLA in tax evasion cases by grafting a charge of **criminal conspiracy** onto the underlying fiscal offence. The former Section 120B of the Indian Penal Code (now broadly corresponding to **Section 61 of the Bharatiya Nyaya Sanhita, 2023**, which penalises criminal conspiracy) is a scheduled offence under the PMLA. If the Enforcement Directorate can successfully allege that tax evasion was committed in furtherance of a criminal conspiracy, it can potentially bring the offence within the PMLA's scheduled offence framework. The Supreme Court has firmly rejected this strategy as an impermissible circumvention of the legislative design. In a landmark oral observation in 2023, while hearing a batch of petitions, a bench of Justices Sanjay Kishan Kaul, Sanjiv Khanna, and Bela M. Trivedi held that **tax evasion cases cannot be portrayed as criminal conspiracy merely to invoke the PMLA**. The Court expressed unequivocal concern that if the Enforcement Directorate could add a conspiracy charge to a non-scheduled offence like tax evasion and thereby trigger PMLA cognizance, it would fundamentally pervert the legislative intent. The principle established is clear: unless the underlying offence that is the subject of the conspiracy is itself a scheduled offence, the allegation of Section 61 BNS (criminal conspiracy) cannot open the PMLA gateway.

This judicial intervention is constitutionally significant. It protects citizens from the abuse of prosecutorial power by preventing the PMLA with its extraordinary coercive powers of arrest, attachment, and reverse burden from being converted into a general instrument of fiscal enforcement.

3.4 GSTN Under PMLA: A Policy Intervention

A significant recent development in the interface between tax law and money laundering law was the Central Government's notification dated July 7, 2023, bringing the Goods and Services Tax Network (GSTN) under the reporting obligations of the PMLA. This order was specifically designed to plug tax evasion through the GST system by enabling the sharing of information between GSTN and the Financial Intelligence Unit (FIU). However, even this notification does not convert GST evasion into a scheduled offence for PMLA purposes; it only enables information sharing. The distinction between administrative information sharing and criminal prosecution must be rigorously maintained.

4. Enforcement Directorate: Powers, Procedure, and Prosecutorial Limits

4.1 Investigative Powers under PMLA

The Enforcement Directorate (ED), functioning under the Department of Revenue, Ministry of Finance, is the primary agency for investigation and prosecution under the PMLA. Its powers are extensive and constitute a departure from the ordinary criminal procedure framework:

Section 17 (Search and Seizure): The ED has power to search any premises, person, or vehicle and seize documents, records, or property believed to be related to proceeds of crime.

Section 18 (Search of Persons): Empowers ED officers to search any person reasonably believed to have secreted relevant documents.

Section 19 (Power of Arrest): Empowers ED officers to arrest a person if they have "reason to believe" recorded in writing that the person is guilty of an offence under Section 3. The grounds of arrest must be communicated to the arrested person in writing, and they must be produced before a court within twenty-four hours.

Section 50 (Summoning and Recording Statements): ED officers have the power to issue summons and record statements. Crucially, the Supreme Court in *Vijay Madanlal Choudhary v. Union of India* (2022) held that ED officers are not "police officers" within the meaning of Section 25 of the Indian Evidence Act (now corresponding to Section 23 of the BSA), which means statements recorded under Section 50 of the PMLA are not hit by the rule against confessions to police officers and are admissible in evidence. This remains a highly contested position from the perspective of individual liberty.

4.2 The Enforcement Case Information Report (ECIR) and FIR Distinction

Unlike an FIR (First Information Report) under the CrPC/BNSS, the Enforcement Case Information Report (ECIR) is an internal document of the ED. The Supreme Court in *Vijay Madanlal* held that the ECIR cannot be equated to an FIR and that its supply to the accused is not mandatory. This ruling has significant implications: an accused under the PMLA does not enjoy the same right to information about the case as an accused in an ordinary criminal proceeding. Critics have argued that this asymmetry of information access fundamentally impairs the accused's ability to prepare an effective defence, in possible tension with the right to a fair trial under Article 21 of the Constitution.

4.3 Limitations on ED's Jurisdiction

The Delhi High Court has authoritatively held that the Enforcement Directorate can only investigate the offence of money laundering under Section 3 of the PMLA; it cannot, on the basis of its own investigation, assume that a predicate offence has been committed. The predicate offence must be established independently by the competent investigating agency be it the police, CBI, or the Income Tax Department and the ED's jurisdiction to proceed is contingent upon the registration of a case in respect of that predicate offence. This sequential dependency has been rigorously enforced by the courts as a structural safeguard against the arbitrary exercise of PMLA powers.

5. Procedural and Evidentiary Framework: BNS, BNSS, and BSA

5.1 The Bharatiya Nyaya Sanhita, 2023 and Economic Offences

The Bharatiya Nyaya Sanhita, 2023 (BNS), which replaced the Indian Penal Code, 1860, with effect from July 1, 2024, introduces significant changes in the treatment of economic offences. While retaining the general framework of property offences including criminal breach of trust (analogous to former Section 406 IPC), cheating (analogous to former Section 420 IPC), and forgery the BNS introduces the landmark **Section 111**, which codifies the offence of **organised crime** as a comprehensive, technology-inclusive, and penalty-heavy provision. **Section 111(1) of the BNS** defines organised crime as any continuing unlawful activity including significantly for the present analysis *economic offences*, cyber-crimes, trafficking, and fraud, committed by any person or group of persons acting in concert as part of an organised crime syndicate, using violence, intimidation, coercion, or any other unlawful means to obtain material benefit. The definition of **economic offence** under Section 111 includes criminal breach of trust, forgery, counterfeiting of currency or government stamps, hawala transactions, mass-marketing fraud, and *any scheme to defraud banks, financial institutions, or other organisations for monetary benefit*. The penal consequences under Section 111 are severe. Where organised crime results in death, the punishment is death or life imprisonment with a mandatory fine of not less than Rupees Ten Lakhs. For non-fatal offences, the minimum punishment is five years' imprisonment extendable to life, with a fine of not less than Rupees Five Lakhs. Section 111(3) extends liability to any person who abets, attempts, conspires, or knowingly facilitates an act of organised crime. For tax evasion to attract Section 111 of the BNS, the following ingredients must be established: (i) a continuing unlawful activity; (ii) constituting an economic offence within the definition; (iii) committed by or on behalf of an organised crime syndicate; (iv) using unlawful means; (v) for material or financial benefit. It must be emphasised that not all tax evasion will meet these ingredients. Only systematic, organised tax fraud involving multiple actors, structured concealment, and syndicated operation would potentially fall within Section 111's ambit.

Section 111 of the BNS thus creates a potential new pathway for prosecuting large-scale, organised tax evasion that would not be reachable directly under the PMLA. However, courts have also cautioned against mechanical invocation of Section 111. In a 2026 ruling, it was held that *multiple FIRs alone are not sufficient* to invoke the organised crime provision; there must be material to show that the accused was a member of an organised crime syndicate and that the unlawful activity was continuing in nature over a period with more than one chargesheet filed before a competent court within the preceding ten years. **Section 316 of the BNS** which redefines criminal breach of trust has an important bearing on fiduciary abuse related to tax fraud, particularly where company directors or trustees misapply funds and thereby generate undisclosed income. Section 316 broadens the scope of criminal breach of trust to encompass fiduciary abuse in both public and private contexts, making it a versatile tool in prosecuting complex financial fraud with tax evasion implications.

5.2 The Bharatiya Nagarik Suraksha Sanhita, 2023 and Special Court Procedure

The Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), which replaced the Code of Criminal Procedure, 1973 (CrPC), governs the procedural framework within which prosecutions including PMLA trials are conducted. The PMLA mandates trial of offences under Section 4 by a Special Court designated under Section 43 of the Act. However, the procedural law governing the conduct of such trials including summoning of witnesses, framing of charges, examination of accused, and delivery of judgment is drawn from the BNSS.

A significant development following the implementation of the BNSS is the introduction of a **pre-cognizance hearing** for proposed accused persons under Section 223(1) of the BNSS. The Supreme Court has held that where a complaint under the PMLA is filed after July 1, 2024 (the date of BNSS coming into force), the Special Court must give the proposed accused an opportunity of being heard before taking cognizance. This is a meaningful procedural protection that the BNSS has introduced into PMLA proceedings, recognising the serious consequences that follow upon cognizance being taken.

The BNSS also provides for **time-bound trials** and technological advancements in trial procedure, including the use of electronic communications, audio-video conferencing for recording evidence, and

digital filing of charge sheets. These provisions, when applied to PMLA and Income Tax Act prosecutions, hold considerable potential for expediting trials that have historically languished for years.

5.3 The Bharatiya Sakshya Adhiniyam, 2023 and Digital Evidence

The Bharatiya Sakshya Adhiniyam, 2023 (BSA), which replaced the Indian Evidence Act, 1872, introduces a paradigm shift in evidentiary law with profound consequences for tax evasion and money laundering prosecutions.

Section 2 of the BSA expands the definition of "document" to expressly include electronic records such as emails, text messages, WhatsApp chats, CCTV footage, call detail records, cloud-stored data, server logs, electronic contracts, and social media posts. **Section 57** of the BSA recognises electronic records as documentary evidence on par with paper documents a landmark departure from the regime under the Indian Evidence Act where electronic records were treated as secondary evidence subject to certification requirements.

Section 61 of the BSA is the cornerstone provision for admissibility of digital evidence. An electronic record is admissible if accompanied by a certificate from a responsible official confirming that the electronic record was produced by the device in question, that the device was functioning properly, and that the information was regularly fed into the device in the ordinary course of activity. This certificate requirement has been liberalised from the previously stringent conditions under Section 65B of the Indian Evidence Act, with courts now given greater flexibility in accepting electronic evidence.

In the context of tax evasion prosecutions, the significance of these provisions cannot be overstated. Financial transactions, hawala entries, offshore account data, SWIFT transfers, email trails of tax planning schemes, and digital communication among conspirators all constitute electronic records that are now mainstreamed as primary evidence under the BSA. The Income Tax Department and the ED can now rely on digital forensic evidence with far greater confidence and legal cogency than was possible under the earlier evidentiary regime.

The BSA also contains provisions under **Section 23** (corresponding to former Section 25 IEA) restricting the admissibility of confessions made to police officers. As noted earlier, the Supreme Court in *Vijay Madanlal* held that ED officers under the PMLA are not "police officers" for this purpose, meaning Section 23 BSA does not bar the admission of statements recorded by ED officials under Section 50 of the PMLA. This creates a significant asymmetry between ordinary criminal cases where confessions to police are inadmissible and PMLA cases where statements to ED officials are admissible raising important questions about the constitutionality and fairness of this differential treatment.

6. Critical Analysis of Judicial Pronouncements

6.1 Vijay Madanlal Choudhary v. Union of India (2022)

Vijay Madanlal Choudhary v. Union of India (2022) 5 SCC 1 is the foundational constitutional judgment on the PMLA. The three-judge bench of the Supreme Court upheld the constitutional validity of a wide range of PMLA provisions that had been challenged as arbitrary and violative of fundamental rights. The key holdings are:

Section 3 of the PMLA was clarified to encompass a continuing offence; money laundering is not a one-time act but an ongoing process. Each act of concealment, possession, acquisition, use, and projection of proceeds of crime constitutes a fresh and continuing offence.

Section 5 (Attachment of Property) was upheld. The power to provisionally attach property is necessary and proportionate to the gravity of money laundering offences.

Section 19 (Power of Arrest) was upheld with the caveat that the officer must record reasons in writing and communicate grounds of arrest to the accused.

Section 24 (Reverse Burden of Proof) was upheld. The Court held that placing the burden on the accused to prove that the proceeds of crime are untainted property is constitutionally valid as a reasonable measure to fight money laundering, given the practical difficulty in proving the illicit origin of money laundered through complex financial transactions.

Section 45 (Twin Conditions for Bail) was upheld post-2018 amendment. The twin conditions (i) that the public prosecutor has been given an opportunity to oppose bail, and (ii) that the court is satisfied that there are reasonable grounds for believing the accused is not guilty and is not likely to commit an offence while on bail were held to be valid and applicable to anticipatory bail applications as well.

Section 50 Statements were held to be admissible, with ED officials held not to be "police officers." **ECIR ≠ FIR** was affirmed.

The *Vijay Madanlal* judgment has been subjected to significant academic and judicial critique, particularly regarding the **reverse burden of proof** and the **twin bail conditions**. Critics argue that these provisions, in combination, amount to virtual pre-trial incarceration and violate the fundamental right to liberty under Article 21. The petition for review filed by Karti Chidambaram challenged the decision to uphold Section 45, arguing that the reversal of the presumption of innocence under PMLA amounts to pre-trial incarceration and violates the principles of fair and reasonable procedure under Article 21.

6.2 The Predicate Offence Doctrine in Practice

The Supreme Court and High Courts have consistently enforced the principle that PMLA prosecution cannot survive the failure of the predicate offence. In *Yash Tuteja v. Union of India* (2024), the Supreme Court reiterated that without a scheduled offence generating proceeds of crime, there can be no Section 3 offence. In *Pavana Dibbur v. Directorate of Enforcement*, similar principles were affirmed. Earlier, in *Mahanivesh Oils & Foods Pvt. Ltd. v. Directorate of Enforcement* (Delhi, 2016), it was held that if the scheduled offence charges are dropped, quashed, or lead to acquittal, PMLA proceedings must fail because there are no proceeds of crime. These decisions collectively establish the **contingent character** of PMLA proceedings: they are parasitic upon the predicate offence and derive their juridical existence from its establishment. For tax evasion prosecutions, this means that unless the underlying offence is a scheduled offence which, as noted, standalone tax evasion is not PMLA proceedings cannot be initiated or sustained.

6.3 Rohit Tandon v. Enforcement Directorate (2018)

This case involved alleged laundering of proceeds derived from a predicate offence of tax evasion and other financial irregularities. The Delhi High Court discussed the scope of the ED's powers to investigate and attach properties linked to predicate offences. The judgment emphasised that the prosecution must establish a clear connection between the predicate offence and the alleged money laundering activities. This case illustrates the evidentiary burden on the ED to demonstrate the nexus between the scheduled offence and the proceeds, rather than resting on mere suspicion of financial irregularities.

6.4 Post-BNSS Judicial Developments (2024–2026)

Following the implementation of the BNSS from July 1, 2024, courts have begun addressing the interface between the new procedural code and PMLA proceedings. The Supreme Court's direction in 2025 that the accused must be given a pre-cognizance hearing before the Special Court in cases where PMLA complaints are filed post-July 2024 represents a significant procedural protection. The Delhi High Court in *Lakshya Vij v. Enforcement Directorate* (2025) confirmed that Section 223(1) of the BNSS applies to PMLA complaints filed after July 1, 2024, and the accused must be given an opportunity to be heard before cognizance is taken.

The Special Courts designated under Section 43 of the PMLA, which try offences under Section 4 and any connected scheduled offences, are now governed by BNSS procedures. This integration of the new procedural code with special legislation represents an important area for ongoing judicial development.

7. Dual Prosecution: Constitutional Dimensions and the Double Jeopardy Problem

7.1 The Possibility of Simultaneous Prosecution

A tax evader in India may simultaneously face prosecution under the Income Tax Act by the Income Tax Department and under the PMLA by the Enforcement Directorate (where the underlying offence qualifies as a scheduled offence or where a separate predicate offence is involved). This dual prosecution regime raises fundamental constitutional questions about double jeopardy, self-incrimination, and the right to a fair trial. Article 20(2) of the Constitution of India provides that no person shall be prosecuted and punished for the same offence more than once. However, courts have held that prosecution under the Income Tax Act and prosecution under the PMLA are for **different offences** the former is for the predicate tax offence while the latter is for the distinct offence of money laundering under Section 3. Since the two offences have different ingredients, the bar of double jeopardy under Article 20(2) technically does not apply.

7.2 The Double Jeopardy Dimension under Section 111 BNS

The introduction of Section 111 of the BNS adds a third layer to the prosecution matrix. A person may theoretically face prosecution under Section 276C of the Income Tax Act, under Section 3 of the PMLA (if a connected scheduled offence exists), and under Section 111(4) of the BNS as a member of an organised crime syndicate. Academic commentary has noted that this triple exposure raises serious concerns about the cumulative effect of parallel proceedings on the liberty, dignity, and financial health of the accused. The courts are yet to comprehensively address whether the cumulative burden of parallel criminal proceedings under three different statutes with distinct procedural regimes, evidentiary standards, and bail conditions can be reconciled with the constitutional guarantee of a fair trial under Article 21.

7.3 Reverse Burden, Bail Conditions, and Liberty

The PMLA's departure from ordinary criminal procedure norms is most stark in three areas. First, the **reverse burden of proof** under Section 24 requires the accused to prove that the proceeds in question are untainted a fundamental inversion of the common law presumption of innocence. Second, the **twin conditions for bail** under Section 45 effectively make bail an exception rather than the rule for PMLA accused, leading critics to characterise the pre-trial detention under PMLA as disproportionate punishment. Third, the **non-supply of ECIR** to the accused impairs the ability of the defence to prepare adequately. These three features, taken together, have been described as creating a regime of "punitive procedure" that instrumentalises the criminal process as a means of fiscal enforcement and coercion. The academic literature has noted the risk that these provisions however valid in combating genuine large-scale money laundering may be misused in cases of ordinary tax non-compliance, particularly when the ED invokes PMLA through the criminal conspiracy route.

8. Critical Synthesis and Reform Recommendations

8.1 The Need for a Clearer Statutory Demarcation

The most pressing reform need is the enactment of a clear statutory demarcation between tax evasion and money laundering. Parliament should consider inserting a clear exclusionary clause in the PMLA specifying that tax evasion under the Income Tax Act or GST evasion, as standalone offences, shall not be treated as scheduled offences or as generating "proceeds of crime" for PMLA purposes, unless accompanied by a separately established scheduled offence. This would codify the judicial position and prevent the continuing controversy about the conspiracy route.

8.2 Rationalisation of the Reverse Burden

The constitutional validity of the reverse burden under Section 24 of the PMLA deserves reconsideration in the context of tax evasion-linked PMLA prosecutions. Where the predicate offence is a fiscal wrong rather than a violent or inherently criminal act, imposing an absolute reverse burden on

the accused to prove the legitimacy of their assets may be disproportionate. A calibrated standard such as a rebuttable presumption that can be displaced by documentary evidence of lawful income would better balance the state's fiscal enforcement interests with the individual's right to liberty.

8.3 Leveraging the BSA for Effective Evidence Collection

The BSA's robust framework for digital evidence presents a significant opportunity for more effective and less coercive prosecution of tax evasion. Instead of relying on arrest and pre-trial detention as the primary investigative tools, the tax authorities and the ED should prioritise the collection and analysis of digital financial records, electronic trail of transactions, and data shared by GSTN and other reporting entities under PMLA. This evidence-first, arrest-later approach would be more consonant with constitutional values while being no less effective in securing conviction.

8.4 Integration of BNS, BNSS, and BSA with PMLA

The transition to the new criminal justice framework BNS, BNSS, BSA presents an opportunity for systemic integration. The Special Courts under the PMLA should be provided with clear guidelines on the applicability of BNSS provisions, including pre-cognizance hearings, time-bound trial schedules, and digital evidence standards under the BSA. The potential overlap between Section 111 of the BNS (organised crime) and the PMLA's money laundering offence should be addressed by Parliamentary clarification or authoritative Supreme Court guidance to prevent forum shopping and dual jeopardy concerns.

9. Conclusion

Criminal prosecution for tax evasion in India operates at a complex intersection of fiscal law, criminal law, and constitutional law. The Income Tax Act, 1961 provides a comprehensive if underutilised criminal prosecution framework that is appropriately anchored in the element of wilful evasion. The PMLA, 2002, on the other hand, is a powerful but constitutionally sensitive instrument whose application to tax evasion cases must be circumscribed by the logical and legislative requirements of the predicate offence doctrine. The Supreme Court's firm rejection of the criminal conspiracy route as a mechanism for extending PMLA to tax evasion represents sound constitutional jurisprudence that must be consolidated and codified. The new criminal justice trilogy BNS, BNSS, and BSA introduces both challenges and opportunities. Section 111 of the BNS creates a new and potentially broad pathway for prosecuting organised tax fraud, while the BSA's digital evidence framework equips prosecutors with more potent investigative tools. At the same time, the procedural reforms under the BNSS particularly the pre-cognizance hearing requirement inject important safeguards into PMLA proceedings that were absent under the old CrPC regime. A principled and constitutionally sound approach to criminal prosecution for tax evasion must maintain a clear distinction between fiscal default and organised financial criminality; protect the accused's right to a fair trial, liberty, and dignified treatment; deploy the powerful coercive machinery of the PMLA only where it is truly warranted by evidence of structured money laundering from an established scheduled predicate offence; and harness the transformative potential of the BSA's digital evidence provisions for evidence-based, rather than arrest-based, prosecution. India's fight against tax evasion is ultimately a fight for fiscal justice and constitutional governance. The effectiveness of that fight depends not on the harshness of the penal machinery but on its precision, proportionality, and principled application.

References

1. Prevention of Money Laundering Act, 2002, No. 15 of 2003, Acts of Parliament, 2003 (India), Sections 2, 3, 4, 5, 17, 18, 19, 24, 43, 44, 45, 50.
2. Income Tax Act, 1961, No. 43 of 1961, Acts of Parliament, 1961 (India), Sections 276C, 276CC, 277, 277A, 278, 278B, 279.

3. Bharatiya Nyaya Sanhita, 2023, No. 45 of 2023, Acts of Parliament, 2023 (India) (came into force July 1, 2024), Sections 61, 111, 316.
4. Bharatiya Nagarik Suraksha Sanhita, 2023, No. 46 of 2023, Acts of Parliament, 2023 (India) (came into force July 1, 2024), Sections 223, 283-288.
5. Bharatiya Sakshya Adhiniyam, 2023, No. 47 of 2023, Acts of Parliament, 2023 (India) (came into force July 1, 2024), Sections 2, 23, 57, 61, 62.
6. Vijay Madanlal Choudhary v. Union of India, (2022) 5 SCC 1 (Supreme Court of India, July 27, 2022).
7. Sasi Enterprises v. Assistant Commissioner of Income Tax, (2014) 5 SCC 139 (Supreme Court of India).
8. Yash Tuteja v. Union of India, Supreme Court of India, 2024 (holding that proceeds of crime require the existence of a scheduled offence under PMLA).
9. Pavana Dibbur v. Directorate of Enforcement, Supreme Court of India (reiterating that without a scheduled offence, PMLA proceedings cannot be sustained).
10. Mahanivesh Oils & Foods Pvt. Ltd. v. Directorate of Enforcement, Delhi High Court, 2016 (holding that if scheduled offence charges are dropped or quashed, PMLA proceedings must fail).
11. Rohit Tandon v. Enforcement Directorate, Delhi High Court, 2018 (prosecution must establish clear connection between predicate offence and money laundering activities).
12. Nikesh Tarachand Shah v. Union of India, (2018) 11 SCC 1 (striking down twin bail conditions as they then stood; subsequently nullified by 2018 amendment upheld in Vijay Madanlal).
13. Karti P. Chidambaram v. Enforcement Directorate, Review Petition, Supreme Court of India (challenging upholding of Section 45 PMLA in Vijay Madanlal, as reported 2025).
14. Lakshya Vij v. Enforcement Directorate, CRL.M.C. 246/2025, Delhi High Court (Section 223(1) BNSS applies to PMLA complaints filed after July 1, 2024, entitling accused to pre-cognizance hearing).
15. Botta Bhavya, Prof. (Dr.) K. Sita Manikyam, Prof. (Dr.) D. Surya Prakasa Rao, "Revisiting the PMLA Framework: Understanding the Exclusion of Tax Evasion as a Predicate Offence in India", International Journal of Drug Delivery Technology (IJDDT), Volume 16, Issue 25s, 2026, p. 263.
16. Government of India, Ministry of Finance, Notification dated July 7, 2023 bringing Goods and Services Tax Network (GSTN) under the Prevention of Money Laundering Act, 2002.
17. Enforcement Directorate v. [various respondents], Oral observations of the Supreme Court of India (Bench of Justices Sanjay Kishan Kaul, Sanjiv Khanna, and Bela M. Trivedi), November 2023, holding that PMLA cannot be invoked in tax evasion cases by simply alleging criminal conspiracy (reported in Bar and Bench, November 21, 2023).
18. Delhi High Court, Order in [Petitioner] v. Enforcement Directorate, January 24, 2023 (reported in Live Law, Jan. 24, 2023): "Enforcement Directorate Can Only Investigate Money Laundering Offence, Can't Assume Commission of Predicate Offence."
19. PRS Legislative Research, "The Bharatiya Nyaya Sanhita, 2023," available at <https://prsindia.org/billtrack/the-bharatiya-nyaya-sanhita-2023> (last visited May 2026).
20. Mohd. Mahfooz Qureshi, "Technology Law and the Credibility of Electronic Records: A Study Under the Bharatiya Sakshya Adhiniyam, 2023," Zenodo, April 2025.
21. Income Tax Department, Government of India, "Penalties and Prosecutions," available at <https://www.incometaxindia.gov.in/w/penalties-and-prosecutions> (last visited May 2026).
22. NUJSS Academic and Commercial Journal (NUJSSACJ), "Double Jeopardy in India's Fight Against Organized and Financial Crime: Section 111 BNS and PMLA," December 18, 2025.
23. Cyril Amarchand Mangaldas Dispute Resolution Blog, "Shifting Paradigms in PMLA Jurisprudence," November 25, 2024.
24. Supreme Court Observer, "Challenges to the Prevention of Money Laundering Act (PMLA) Judgment Summary," August 6, 2024.
25. SCC Online Blog, "PMLA Landmark Judgments 2024 (Part II)," December 19, 2025.
26. IJLLR, "Economic Offences Under the Bharatiya Nyaya Sanhita," November 15, 2025.

27. iPleaders Blog, "Identifying Predicate Offences under the PMLA," November 5, 2024.
28. Casemine Commentary, "Vijay Madanlal Choudhary v. Union of India: The Supreme Court's Charter for PMLA," July 27, 2022.
29. Drishti Judiciary, "Multiple FIRs Alone Not Sufficient to Invoke Organised Crime," May 11, 2026.
30. JSA Law, "Anti-Corruption, White Collar Crimes and Investigations Compendium 2023," February 2024.