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# FINANCIAL INVESTIGATIONS AND LEGAL STANDARDS FOR FREEZING AND DEFREEZING BANK ACCOUNTS IN INDIAN CRIMINAL JURISPRUDENCE

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## I. ABSTRACT

*Financial investigations now sit at core of criminal policing in India. Police follow money trails because digital banking leave strong evidence traces. This approach helps detect fraud, laundering, and organised financial misconduct. It also shift focus from physical seizure to data based seizure. Section 102 of Code of Criminal Procedure, 1973 supports this shift. Courts treat bank account as “property” under Section 102 CrPC. Police therefore can freeze account when facts create suspicion of offence. Yet, police must follow safeguards, else freeze becomes unlawful. Section 102(3) demands reporting seizure to Magistrate forthwith. Courts call this requirement mandatory, not optional compliance. Supreme Court has said Section 102 needs cautious use, not routine use. Court also clarified no prior notice required before freezing. This legal position creates hard practical problem for account holder. Account holder discovers freeze later, so harm already happens. Defreezing then becomes urgent remedy for business and livelihood. Magistrate can grant relief under Sections 451 and 457 CrPC. High Courts may also intervene under Article 226 or Section 482. Courts weigh nexus with offence, proportionality, and procedural legality. This paper studies standards governing freezing and defreezing in Indian criminal jurisprudence. It also maps tensions between investigative effectiveness and property rights. It further evaluates judicial tools that prevent arbitrariness and misuse.*

## II. KEYWORDS:

Financial investigation, Section 102 CrPC, bank account freezing, defreezing, criminal procedure, property rights, due process.

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### III. INTRODUCTION

#### A. Evolution of Financial Investigations in Indian Criminal Law

Economic offences grew because banking reach expanded into every town.<sup>3</sup> Fraud now uses digital payments, layered transfers, and fake accounts.<sup>4</sup> Police therefore chase transaction trails, not only physical objects.<sup>5</sup> This change makes bank records central evidentiary material.<sup>6</sup> It also brings investigative emphasis on rapid restraint of funds.<sup>7</sup> Section 102 CrPC became key operational tool for this restraint.<sup>8</sup> Supreme Court in *State of Maharashtra v Tapas D Neogy* accepted that modern banking reality demands wide meaning of “property”.<sup>9</sup> Court stressed that narrow reading would create hurdles for investigation. That reasoning fits financial investigations where money moves fast. Yet, discretion still needs legal discipline, else liberty and property suffer.<sup>10</sup> Law must allow tracing, but also stop casual freezing orders.<sup>11</sup>

#### B. Importance of Bank Account Freezing in Criminal Investigations

Freeze prevents sudden withdrawal, transfer, or dissipation of suspected funds.<sup>12</sup> Investigators use it to preserve evidence and protect restitution prospects.<sup>13</sup> In *Tapas D Neogy*, Supreme Court explained seizure supports evidence production and final disposal orders.<sup>14</sup> It also helps court pass orders under Section 452 CrPC later.<sup>15</sup> Freezing also stops accused from frustrating investigation through rapid fund movement.<sup>16</sup> Still, freeze works only when there is offence nexus.<sup>17</sup> Police must show link between money in account and alleged crime.<sup>18</sup> Courts insist suspicion cannot be

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<sup>3</sup> *State of Maharashtra v Tapas D Neogy* (1999) 7 SCC 685.

<sup>4</sup> Vishal Kumar, ‘Freezing Bank Accounts’ (Manupatra Academy, Legal Posts).

<sup>5</sup> *State of Maharashtra v Tapas D Neogy* (1999) 7 SCC 685.

<sup>6</sup> *Nevada Properties Pvt Ltd v State of Maharashtra* (2019) 15 SCR 223.

<sup>7</sup> Vishal Kumar, ‘Freezing Bank Accounts’ (Manupatra Academy, Legal Posts).

<sup>8</sup> Code of Criminal Procedure 1973, s 102.

<sup>9</sup> *State of Maharashtra v Tapas D Neogy* (1999) 7 SCC 685.

<sup>10</sup> *Teesta Atul Setalvad v State of Gujarat* (2018) 2 SCC 372.

<sup>11</sup> *Ibid.*

<sup>12</sup> Vishal Kumar, ‘Freezing Bank Accounts’ (Manupatra Academy, Legal Posts).

<sup>13</sup> *State of Maharashtra v Tapas D Neogy* (1999) 7 SCC 685.

<sup>14</sup> *Ibid.*

<sup>15</sup> Code of Criminal Procedure 1973, s 452.

<sup>16</sup> Vishal Kumar, ‘Freezing Bank Accounts’ (Manupatra Academy, Legal Posts).

<sup>17</sup> *Adarsh Cooperative Housing Society Ltd v Union of India* (2012) Cri LJ 520 (Bom).

<sup>18</sup> *Nevada Properties Pvt Ltd v State of Maharashtra* (2019) 15 SCR 223.

bare guess or pressure tactic.<sup>19</sup> So freezing becomes justified only when record show credible suspicious circumstances.<sup>20</sup>

### C. Legal and Constitutional Concerns

Freezing stops person from using own money for routine life needs.<sup>21</sup> It may block salaries, loan repayments, and medical or education payments. Such impact raises Article 21 livelihood concerns in practical terms.<sup>22</sup> Courts have noted freezing is drastic measure and cannot continue indefinitely.<sup>23</sup> Overbroad freezing can also hit third parties, not named accused.<sup>24</sup> Supreme Court recognised bank account need not be only accused account.<sup>25</sup> That view increases risk of overreach if police act casually.<sup>26</sup> Bombay High Court has rejected requirement of prior notice.<sup>27</sup> Supreme Court in *Teesta Atul Setalvad v State of Gujarat* also held Section 102 does not mandate prior notice.<sup>28</sup> This position supports urgency but reduces fairness at first stage. Hence, procedural compliance like reporting to Magistrate becomes crucial safeguard.<sup>29</sup> If police skip it, courts often direct defreezing on legality ground.<sup>30</sup>

### D. Research Objectives

1. To explain statutory scope of Section 102 CrPC for bank account freezing.
2. To identify judicial standards for nexus, suspicion, and proportional restraint.
3. To analyse procedural safeguards, especially reporting requirement under Section 102(3).
4. To map remedies and legal pathways for defreezing before Magistrate and High Court.

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<sup>19</sup> *Teesta Atul Setalvad v State of Gujarat* (2018) 2 SCC 372.

<sup>20</sup> *Nevada Properties Pvt Ltd v State of Maharashtra* (2019) 15 SCR 223.

<sup>21</sup> *B Kavitha v Inspector of Police* MANU/TN/4197/2019.

<sup>22</sup> Constitution of India 1950, art 21.

<sup>23</sup> Vishal Kumar, 'Freezing of Bank Accounts by Investigating Authorities: Breaking the ice on the legal position and remedies' (PSL Chambers, July 2021).

<sup>24</sup> *Teesta Atul Setalvad v State of Gujarat* (2018) 2 SCC 372.

<sup>25</sup> *Adarsh Cooperative Housing Society Ltd v Union of India* (2012) Cri LJ 520 (Bom).

<sup>26</sup> Vishal Kumar, 'Freezing of Bank Accounts by Investigating Authorities: Breaking the ice on the legal position and remedies' (PSL Chambers, July 2021).

<sup>27</sup> *Adarsh Cooperative Housing Society Ltd v Union of India* (2012) Cri LJ 520 (Bom).

<sup>28</sup> *Teesta Atul Setalvad v State of Gujarat* (2018) 2 SCC 372.

<sup>29</sup> Code of Criminal Procedure 1973, s 102(3).

<sup>30</sup> *Muktaben M Mashru v State* (NCT of Delhi) 265 (2019) DLT 651.

### **E. Research Questions**

1. What legal threshold of “suspicion” permits freezing under Section 102 CrPC.
2. Which procedural lapses make freezing illegal, and why courts treat them fatal.
3. What principles guide courts while granting defreezing or partial operation relief.
4. How do constitutional values shape judicial control over freezing power.

### **F. Research Methodology and Sources**

Doctrinal method suits this issue because rules emerge from cases. Analytical method also helps compare High Court standards and trends. Primary sources include CrPC provisions, constitutional remedies, and binding precedents. Secondary sources include legal commentary and practice based research notes.<sup>31</sup> This study uses reported decisions on Section 102 and allied provisions.<sup>32</sup> It also relies on scholarly discussion on freezing remedies and procedure.<sup>33</sup> International instruments appear for due process and property protection standards.<sup>34</sup>

## **IV. CONCEPT AND SCOPE OF FINANCIAL INVESTIGATIONS IN INDIA**

### **A. Meaning and Nature of Financial Investigations**

Financial investigation means tracing value flow linked to suspected offence.<sup>35</sup> It includes identifying accounts, beneficiaries, and transaction layering patterns.<sup>36</sup> Police also collect bank statements, KYC records, and digital trail logs. These materials later support proof of mens rea and proceeds link.<sup>37</sup> This process differs from final confiscation or forfeiture stage. Investigation preserves evidence and prevents

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<sup>31</sup> Vishal Kumar, ‘Freezing Bank Accounts’ (Manupatra Academy, Legal Posts).

<sup>32</sup> State of Maharashtra v Tapas D Neogy (1999) 7 SCC 685.

<sup>33</sup> Vishal Kumar, ‘Freezing of Bank Accounts by Investigating Authorities: Breaking the ice on the legal position and remedies’ (PSL Chambers, July 2021).

<sup>34</sup> Universal Declaration of Human Rights 1948, art 17.

<sup>35</sup> State of Maharashtra v Tapas D Neogy (1999) 7 SCC 685.

<sup>36</sup> Vishal Kumar, ‘Freezing Bank Accounts’ (Manupatra Academy, Legal Posts).

<sup>37</sup> Nevada Properties Pvt Ltd v State of Maharashtra (2019) 15 SCR 223.

disappearance of suspected assets. Confiscation, by contrast, needs adjudication and specific statutory route. Supreme Court in *Nevada Properties Pvt Ltd v State of Maharashtra* clarified Section 102 aids investigation and evidence collection. Court said Section 102 is not tool to decide rightful ownership. That point matters because freezing may look like punishment, but law treats it as investigative restraint.<sup>38</sup>

### **B. Role of Police and Investigating Agencies**

Section 102(1) empowers police to seize property found under suspicious circumstances.<sup>39</sup> Police can also issue prohibitory directions to bank to restrict operations.<sup>40</sup> *Tapas D Neogy* accepted prohibitory freezing as valid seizure mechanism.<sup>41</sup> Still, police must work within CrPC structure and judicial oversight.<sup>42</sup> Section 102(2) requires reporting to officer in charge when needed.<sup>43</sup> Section 102(3) requires immediate reporting of seizure to Magistrate.<sup>44</sup> Courts treat this reporting as mandatory safeguard for legality.<sup>45</sup> Delhi High Court in *Muktaben M Mashru v State (NCT of Delhi)* held failure vitiates freezing.<sup>46</sup> Madras High Court has also read “forthwith” as without delay.<sup>47</sup> These checks keep police discretion aligned with due process needs.<sup>48</sup> Police should also reassess necessity as investigation progresses.<sup>49</sup> Supreme Court in *Teesta Atul Setalvad* advised IO to lift seizure if continuance not necessary.<sup>50</sup> That guidance supports dynamic review, not automatic continuation.<sup>51</sup>

### **C. Banking System as an Investigative Interface**

Banks hold transactional truth, so investigators treat them as evidence gatekeepers.<sup>52</sup> Bank compliance becomes crucial once police issue freezing instruction.<sup>53</sup> Bank must

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<sup>38</sup> Ibid.

<sup>39</sup> Code of Criminal Procedure 1973, s 102(1).

<sup>40</sup> *State of Maharashtra v Tapas D Neogy* (1999) 7 SCC 685.

<sup>41</sup> Ibid.

<sup>42</sup> Code of Criminal Procedure 1973, ss 451–459.

<sup>43</sup> Code of Criminal Procedure 1973, s 102(2).

<sup>44</sup> Code of Criminal Procedure 1973, s 102(3).

<sup>45</sup> *Muktaben M Mashru v State (NCT of Delhi)* 265 (2019) DLT 651.

<sup>46</sup> Ibid.

<sup>47</sup> *R Chandrasekar v Inspector of Police, Fair Land Police Station Salem* 2002 SCC OnLine Mad 686.

<sup>48</sup> Ibid.

<sup>49</sup> *Teesta Atul Setalvad v State of Gujarat* (2018) 2 SCC 372.

<sup>50</sup> Ibid.

<sup>51</sup> Ibid.

<sup>52</sup> Vishal Kumar, ‘Freezing Bank Accounts’ (Manupatra Academy, Legal Posts).

<sup>53</sup> *State of Maharashtra v Tapas D Neogy* (1999) 7 SCC 685.

implement freeze, else evidence may vanish quickly.<sup>54</sup> Yet bank also owes duty to customers, so legal clarity matters.<sup>55</sup> Courts have accepted confidentiality needs during investigation stage.<sup>56</sup> Still, law expects police to justify freeze with offence nexus.<sup>57</sup> When nexus absent, courts treat freezing as arbitrary and unlawful.<sup>58</sup> Kerala High Court in *South Indian Chamber of Commerce and Industries Members Welfare Charitable Society v M C Alex* considered impact on members when society had no offence nexus.<sup>59</sup> Courts also allow remedy route before Magistrate through Section 457.<sup>60</sup> Parties may seek defreezing with bond and production undertaking.<sup>61</sup> High Courts sometimes entertain writ when illegality appears glaring.<sup>62</sup> *Madhu v Sub Inspector of Police* allowed approaching to High Court when freezing was *per se* illegal.<sup>63</sup> This framework shows banking system sits between crime control and rights protection.<sup>64</sup>

## V. STATUTORY FRAMEWORK GOVERNING FREEZING OF BANK ACCOUNTS

### A. Section 102 of the Code of Criminal Procedure, 1973

Section 102 of the Code of Criminal Procedure empowers any police officer to seize property suspected to be stolen or found in circumstances creating suspicion of any offence.<sup>65</sup> The provision sits in Chapter VII, so it legally ties freezing of bank accounts with processes to compel production of things during investigation.<sup>66</sup> The legislature uses very wide expressions like “any property” and “any offence”, and courts

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<sup>54</sup> Vishal Kumar, ‘Freezing Bank Accounts’ (Manupatra Academy, Legal Posts).

<sup>55</sup> Ibid.

<sup>56</sup> Vishal Kumar, ‘Freezing Bank Accounts’ (Manupatra Academy, Legal Posts).

<sup>57</sup> *Adarsh Cooperative Housing Society Ltd v Union of India* (2012) Cri LJ 520 (Bom).

<sup>58</sup> *South Indian Chamber of Commerce and Industries Members Welfare Charitable Society v M C Alex* 2020 SCC OnLine Ker 16814.

<sup>59</sup> Ibid.

<sup>60</sup> Code of Criminal Procedure 1973, s 457.

<sup>61</sup> Ibid.

<sup>62</sup> *South Indian Chamber of Commerce and Industries Members Welfare Charitable Society v M C Alex* 2020 SCC OnLine Ker 16814.

<sup>63</sup> *Madhu v Sub Inspector of Police* 2020 (5) KHC 35.

<sup>64</sup> *B Kavitha v Inspector of Police* MANU/TN/4197/2019.

<sup>65</sup> Code of Criminal Procedure 1973, s 102.

<sup>66</sup> Suvigya Awasthy, Anu Sura and Mathew Thomas, ‘Freezing of Bank Accounts by Investigating Authorities: Breaking the ice on the legal position and remedies’ (PSL Chambers, 20 July 2023).

repeatedly treat this as deliberate policy choice.<sup>67</sup> However courts also insist that these words do not give unfettered discretion, and police must stay within investigation purpose, not civil recovery.<sup>68</sup> Sub section (3) requires immediate reporting of every seizure to the Magistrate having jurisdiction, which shows clear intent of judicial supervision over coercive powers.<sup>69</sup> Legislative design therefore imagines freezing as temporary, closely monitored measure that preserves property till criminal court decides its proper destination.

### **B. Meaning of “Property” under Section 102 CrPC**

In *State of Maharashtra v Tapas D Neogy*, the Supreme Court held that bank account of accused or even relative is “property” within meaning of Section 102. Court reasoned that narrow reading will defeat anti corruption prosecutions because tainted money in banks will disappear before trial concludes.<sup>70</sup> Later in *Nevada Properties Private Limited v State of Maharashtra*, Supreme Court clarified that “any property” in Section 102 covers only movable property and not immovable assets like land or buildings.<sup>71</sup> Court stressed that seizure in strict sense requires capacity to bring property before court, which is practically impossible for immovable property without dispossessing lawful occupants.<sup>72</sup> This interpretation keeps Section 102 focused on assets which can genuinely facilitate investigation, like cash, securities, digital balances, and title documents.<sup>73</sup> Questions of civil title or possession over immovable property therefore move to other mechanisms like Sections 145 and 146 CrPC or civil suits.<sup>74</sup>

### **C. Bank Account as “Property” Under Criminal Procedure**

Recognition of bank accounts as property under Section 102 transformed landscape of financial investigations in India. In *Tapas D Neogy*, Court allowed police to prohibit operation of accounts where deposits had direct link with offences like forgery,

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<sup>67</sup> *State of Maharashtra v Tapas D Neogy* [1999] Supp 2 SCR 609 (SC).

<sup>68</sup> *Nevada Properties Private Limited v State of Maharashtra* [2019] 15 SCR 223 (SC).

<sup>69</sup> Code of Criminal Procedure 1973, s 102(3).

<sup>70</sup> *ibid* 615–620.

<sup>71</sup> *Nevada Properties* (n 4) 250–252.

<sup>72</sup> *ibid*.

<sup>73</sup> *ibid*.

<sup>74</sup> *ibid* 251–252.



cheating and corruption. *Teesta Atul Setalvad v State of Gujarat* reaffirmed this approach and approved earlier Bombay High Court view that bank accounts are clearly attachable property during investigation.<sup>75</sup> Court emphasised that once material creates suspicion of misappropriation of donated funds, investigating officer may freeze related accounts, subject to Section 102 safeguards.<sup>76</sup> Commentary from PSL Chambers notes that this wide reading responds to modern white collar crimes, where money moves rapidly through banking channels and digital platforms. Practical effect is that bank account becomes crucial evidentiary object, as well as instrument for preserving potential restitution to victims and State.

#### **D. Expansion of Section 102 through Judicial Interpretation**

Supreme Court jurisprudence gradually converted Section 102 from simple stolen property rule into comprehensive tool for financial investigations. By reading “any offence” broadly, Court allowed use of freezing power in corruption, economic offences, cybercrime, and even terrorism financing matters. At same time in *Nevada Properties*, Court refused to extend Section 102 to sealing of immovable property, insisting that interpretation must respect language and structure of Code. This careful limitation shows judiciary tries to balance investigative needs with property rights under Article 300A of Constitution.<sup>77</sup> High Courts have also contributed by specifying that mere allegation does not justify freezing; investigating agency must show some material linking account with alleged crime. Thus doctrinal expansion comes together with discipline, preventing Section 102 from becoming general debt recovery or harassment provision.

#### **E. Procedural Requirements under Section 102 CrPC**

Courts repeatedly state that two preconditions govern use of Section 102 power, there must be identifiable property and suspicion that this property connects with an offence. In *Tapas D Neogy*, Supreme Court called these requirements mandatory, holding that without such nexus freezing order will be ultra vires. The Bombay High Court in *Ezulix Software Private Limited v State of Maharashtra* stressed that police

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<sup>75</sup> *Teesta Atul Setalvad v State of Gujarat* [2017] 12 SCR 774 (SC).

<sup>76</sup> *ibid* 800.

<sup>77</sup> Constitution of India 1950, art 300A.

can freeze a bank account only when material indicates it is stolen money or proceeds of crime.<sup>78</sup> Courts therefore expect investigation diary or case record to reflect reasons showing how account entries relate to transactions under probe. Sub section (3) of Section 102 imposes further procedural safeguard by requiring police to report seizure forthwith to Magistrate.<sup>79</sup> Delhi High Court in *Muktaben M Mashru v State of NCT of Delhi* treated this reporting duty as mandatory and held that failure vitiates freezing. This jurisprudence forces investigating agencies to justify coercive action before neutral judicial authority at earliest stage. Continuous oversight also allows timely modification or lifting of freezing orders once investigative necessity weakens or disappears.

#### **F. Distinction Between Seizure and Freezing**

Section 102 speaks of seizure, yet in banking context practice commonly takes form of freezing instructions to bank, not physical custody of money. Courts treat such prohibitory orders as functional equivalent of seizure because they prevent withdrawal and preserve balance for criminal court. In *Nevada Properties*, Supreme Court drew sharp contrast between movable and immovable property and refused to treat sealing of premises as seizure under Section 102. Reasoning shows that seizure involves control over property compatible with investigation needs, and not drastic dispossession without express statutory backing. For account holders, freezing creates serious practical consequences, since they cannot operate accounts for business, salaries, household expenditure, or statutory dues. Because impact is often crippling, courts insist that freezing should be closely tailored to investigative purpose and should not become punitive sanction.

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<sup>78</sup> 'Freezing Bank Accounts' (*Ezulix Software Pvt Ltd v State of Maharashtra*, MANU/MH/1076/2021, blog summary).

<sup>79</sup> Code of Criminal Procedure 1973, s 102(3).

## VI. JUDICIAL INTERPRETATION OF BANK ACCOUNT FREEZING

### A. Supreme Court Jurisprudence on Section 102 CrPC

In *Tapas D Neogy*, Supreme Court read Section 102 purposively and held that power to seize bank accounts is necessary to prevent laundering of ill gotten public money. Court linked this with provision on fine in Prevention of Corruption Act, which looks at value of property obtained by corrupt acts.<sup>80</sup> In *Teesta Atul Setalvad*, Court reiterated sweep of Section 102 and accepted that investigating officer may freeze accounts when circumstances create suspicion of criminal breach of trust and cheating. However Court underlined that such power must relate to ongoing investigation, and that once police file report, accused can seek defreezing before trial court. *Nevada Properties* added further nuance by holding that Section 102 does not extend to attaching immovable property, and that disputes about land and buildings belong largely to civil courts. This trilogy of cases shows Supreme Court approach, expansive about movable financial assets yet cautious about constitutional property and liberty concerns.

### B. High Court Decisions and Divergent Approaches

High Courts have developed varying thresholds for accepting freezing orders as valid under Section 102. Bombay High Court in *Gulam Sarvar v State of Maharashtra* insisted that mere allegation is not enough, and some material must support suspicion that deposits relate to crime. Madras High Court in *R Chandrasekar v Inspector of Police* held that Section 102 mainly applies when discovery of account itself gives rise to suspicion of offence, not where account is found later as sequel to crime. Delhi High Court in *Muktaben Mashru* focused more on procedural compliance and struck down freezing for non reporting to Magistrate, even where some suspicion existed. These divergent accents show regional judicial cultures, some stress on evidentiary nexus, others highlight procedural rigour, all trying to restrain arbitrary interference with

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<sup>80</sup> Prevention of Corruption Act 1988, s 13(2).

banking operations. Yet common thread is that freezing cannot rest on mechanical reliance upon FIR without independent application of mind by investigating officer.

### **C. Requirement of Nexus Between Offence and Account**

Requirement of nexus forms central safeguard within Section 102 jurisprudence. Supreme Court in *Tapas D Neogy* permitted freezing because case records showed that dramatic rise in land prices and suspected illegal gratification found reflection in bank balances of accused. Bombay High Court in *Gulam Sarvar* stressed that allegation must rest on material, such as suspicious entries, transfers to shell entities, or deposits inconsistent with disclosed income. PSL Chambers analysis similarly notes that property must either be alleged stolen or have close connection with offence under investigation; otherwise Section 102 is not attracted. *Nevada Properties* recognised that suspicion for Section 102 is weaker standard than “reasonable belief” but still demands rational basis, not conjecture or departmental convenience. Judicial insistence on nexus directly counters practice of routine freezing of all accounts of accused or associates, which often paralyses lawful business activity without evidentiary justification.

### **D. Notice to Account Holder and Natural Justice**

Question whether prior or immediate post seizure notice is necessary generated substantial debate. In *Teesta Atul Setalvad*, Supreme Court clearly held that Section 102 contains no requirement of prior notice to account holder before freezing order. Court reasoned that giving advance warning will often defeat purpose of seizure, since suspect can withdraw funds instantly and frustrate investigation. However Court balanced this by emphasising immediate reporting to Magistrate and by recognising right of accused to apply for defreezing after investigation stage. High Courts like Delhi in *Muktaben Mashru* read natural justice into procedure by insisting that once freezing is reported, Magistrate must give affected person opportunity to contest continuation. This combination of ex parte initiation with prompt post decisive hearing tries to reconcile urgency of financial investigations with fairness and right to livelihood under Article 21.

## VII. LEGAL STANDARDS AND SAFEGUARDS IN FREEZING BANK ACCOUNTS

### A. Principle of Proportionality

Proportionality emerged as key constitutional yardstick for reviewing freezing orders affecting bank accounts. Supreme Court in *Nevada Properties* highlighted that severe measures like dispossessing owners of immovable property cannot be read into Section 102, as that would overshoot purpose of investigation. *Teesta Atul Setalvad* implicitly applied proportionality by clarifying that once investigation completes and police file report, further continuation of freezing must be justified before trial court. Courts therefore treat freezing as exceptional and temporary, expecting agencies to regularly reassess whether entire balance must remain under restraint. Indian proportionality discourse also draws strength from international human rights law, particularly Article 17 and Article 14 of International Covenant on Civil and Political Rights. Interference with property and fair hearing rights must thus be necessary, suitable, and least restrictive among available investigative tools.

### B. Accountability of Investigating Agencies

Accountability of police and specialised agencies forms another safeguard around Section 102 power. Supreme Court in *Teesta Atul Setalvad* observed that suspicion about misappropriation of riot relief funds will have to be ultimately explained by accused, but at same time investigation remains subject to court scrutiny. Delhi and Madras High Courts have not hesitated to quash freezing where agencies fail to show material nexus or violate mandatory reporting requirement. PSL Chambers notes that courts increasingly insist on reasoned freezing orders and time bound follow up, limiting scope for mechanical action based on generic suspicion. Where agencies misuse freezing to arm twist business rivals or civil debtors, constitutional courts can award costs, direct internal inquiry, or call for personal affidavits from responsible officers. Such judicial responses send signal that Section 102 is serious power carrying

corresponding duty to act bonafide and without arbitrariness under Articles 14 and 21.<sup>81</sup>

### **C. Role of the Magistrate as a Supervisory Authority**

Design of Section 102 places Magistrate at centre of supervision, since every seizure must be reported forthwith and further custody orders flow from court.<sup>82</sup> Supreme Court in *Teesta Atul Setalvad* recognised that after filing of police report, accused may apply for defreezing and Magistrate must decide based on whether account remains necessary for investigation or trial. Chapter XXXIV of CrPC, especially Sections 451, 452 and 457, empowers criminal courts to pass orders for interim custody and final disposal of property produced before them.<sup>83</sup> *Nevada Properties* explains that these provisions can cover both movable and immovable property, but their invocation must align with evidence and party rights. Magistrate therefore functions as important check upon investigative enthusiasm, with power to modify, confirm or revoke freezing depending on strength of material and hardship caused to account holder. Effective use of this supervisory role can prevent constitutional challenges and maintain trust in criminal process among citizens and financial institutions.

## **VIII. DEFREEZING OF BANK ACCOUNTS: LEGAL REMEDIES AND PROCEDURE**

### **A. Concept and Importance of Defreezing**

Defreezing restores financial autonomy of individuals and businesses whose accounts were restrained during earlier investigative phase. Supreme Court in *Teesta Atul Setalvad* expressly contemplated that once investigation completes, accused can move court to get bank accounts released if no longer required for probe. Commentary highlights that prolonged freezing can cause unpaid salaries, tax defaults, and loan instalment failures, thereby inflicting economic punishment before guilt is established. Defreezing process therefore works as corrective tool, ensuring that coercive measure does not outlive purpose for which statute created it.

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<sup>81</sup> Constitution of India 1950, arts 14 and 21.

<sup>82</sup> Code of Criminal Procedure 1973, s 102(3); s 457.

<sup>83</sup> Code of Criminal Procedure 1973, ss 451, 452, 457.

## **B. Remedies Available to the Account Holder**

Primary statutory remedy lies before jurisdictional Magistrate or Special Court, where account holder can seek defreezing by demonstrating absence of nexus or change in circumstances. Applicants usually place bank statements, tax records, and business documents to show legitimate origin of funds and lack of connection with alleged crime. Where freezing is arbitrary, disproportionate, or continued despite lack of material, account holder may also invoke writ jurisdiction of High Court under Articles 226 and 227. High Courts have used this power especially when procedural safeguards like reporting to Magistrate or passing speaking orders were ignored by agencies. In cases involving PMLA, Supreme Court in *Opto Circuit India Limited v Axis Bank* clarified that authorities must follow special seizure and freezing procedure under that Act rather than Section 102. This distinction gives affected persons additional defences based on non compliance with PMLA safeguards like prior recording of reasons and confirmation by Adjudicating Authority.<sup>84</sup>

## **C. Judicial Grounds for Defreezing Orders**

Courts frequently order defreezing where investigation papers fail to disclose specific transactions showing connection between account and alleged offence. Bombay, Delhi and Madras High Courts have each insisted that general suspicion or mere naming of account holder in FIR cannot justify continuing restraint. Procedural lapses like failure to “forthwith” report seizure to Magistrate, or inability to place freezing direction on record, also supply strong grounds for defreezing. Courts treat these defects as going to root of jurisdiction since Section 102 itself creates reporting obligation as integral component of seizure power.<sup>85</sup> Where investigation has dragged on without meaningful progress, or charge sheet does not rely on bank balance as evidence, courts sometimes hold that continued freezing violates proportionality and property rights. Such orders echo broader constitutional principle that criminal process should not impose indefinite collateral punishment in absence of adjudicated guilt.<sup>86</sup>

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<sup>84</sup> Prevention of Money Laundering Act 2002, s 17.

<sup>85</sup> Code of Criminal Procedure 1973, s 102(3).

<sup>86</sup> Constitution of India 1950, arts 21 and 300A.

### **D. Conditional Defreezing and Partial Operation**

In many cases, courts choose middle path by ordering conditional defreezing, which allows limited operation of account while preserving core balance for possible confiscation. Typical conditions include permitting withdrawals for salaries, litigation expenses, medical treatment, or specific business obligations, while requiring regular statements to be filed before court. Such calibrated orders balance investigative necessity with right to livelihood and trade under Articles 19(1)(g) and 21 of Constitution.<sup>87</sup> They also reduce incentive for accused to challenge freezing through prolonged writ litigation, since essential expenses can be met without undermining evidentiary value of remaining funds. Over time, conditional defreezing practice may evolve into more structured framework, guided by proportionality, transparency, and clear communication between courts, agencies and financial institutions. This will help align Indian criminal process with international standards on due process and protection of property in financial investigations.

## **IX. CONSTITUTIONAL DIMENSIONS AND HUMAN RIGHTS CONCERNS**

### **A. Right to Property and Article 300A**

Article 300A guarantees that no person shall be deprived of property except by authority of law.<sup>88</sup> Money lying in a bank account constitutes movable property in Indian law and enjoys this protection.<sup>89</sup> The Supreme Court in *State of Maharashtra v Tapas D Neogy* recognised bank accounts as “property” capable of seizure under Section 102 CrPC.<sup>90</sup> Once freezing blocks withdrawal, State effectively deprives person of control over that property, at least temporarily.<sup>91</sup> In *Nevada Properties Private Limited v State of Maharashtra*, Court limited Section 102 to movable property, linking power closely with investigation purpose. This limitation shows judicial anxiety that investigative powers should not silently swallow broader

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<sup>87</sup> Constitution of India 1950, arts 19(1)(g) and 21.

<sup>88</sup> Constitution of India 1950, art 300A.

<sup>89</sup> *Nevada Properties Private Limited v State of Maharashtra* [2019] 15 SCR 223 (SC).

<sup>90</sup> *State of Maharashtra v Tapas D Neogy* [1999] Supp 2 SCR 609 (SC).

<sup>91</sup> *ibid.*



constitutional property rights. Deprivation under Article 300A must rest on valid law, applied fairly, and not by arbitrary executive direction.<sup>92</sup> Freezing orders issued without statutory nexus, or ignoring Section 102 safeguards, risk becoming unconstitutional takings of bank balances. *K T Plantation Private Limited v State of Karnataka* clarified that Article 300A demands not only formal law but also reasonableness and public purpose.<sup>93</sup> Where freezing cripples legitimate business without clear connection to alleged offence, proportionality of this deprivation becomes highly doubtful.<sup>94</sup>

### **B. Right to Livelihood and Article 21**

Article 21 protects life and personal liberty in substantive, not merely procedural, sense after *Maneka Gandhi v Union of India*.<sup>95</sup> *Olga Tellis v Bombay Municipal Corporation* read right to livelihood into Article 21, because deprivation of livelihood makes life itself meaningless.<sup>96</sup> Freezing of salary or business accounts can practically disable person from meeting basic needs of food, rent, education and health. For small enterprises, one frozen account often means immediate disruption of wages, supply chains and tax compliance. The PSL Chambers analysis documents how mechanical freezing can cause “crippling effect on operational aspects of business”. Such impact engages Article 21 because State action indirectly hits ability to work, trade and live with basic dignity. In *Teesta Atul Setalvad v State of Gujarat*, Supreme Court noted that accused could seek defreezing after investigation, implicitly acknowledging hardship of prolonged restraints.<sup>97</sup> This window for relief reflects judicial sensitivity that investigative interest cannot override livelihood concerns indefinitely.<sup>98</sup> Courts also sometimes permit conditional operation of accounts for salaries or essential expenses, precisely to prevent Article 21 violations.<sup>99</sup> These calibrated orders show

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<sup>92</sup> Constitution of India 1950, art 300A.

<sup>93</sup> *K T Plantation Private Limited v State of Karnataka* (2011) 9 SCC 1.

<sup>94</sup> *ibid.*

<sup>95</sup> *Maneka Gandhi v Union of India* (1978) 1 SCC 248.

<sup>96</sup> *Olga Tellis v Bombay Municipal Corporation* (1985) 3 SCC 545.

<sup>97</sup> *Teesta Atul Setalvad v State of Gujarat* [2017] 12 SCR 774 (SC).

<sup>98</sup> *ibid.*

<sup>99</sup> ‘Freezing Bank Accounts’ (Ref: *Ezulix Software Pvt Ltd v State of Maharashtra*, MANU/MH/1076/2021, blog).

that constitutional right to livelihood quietly shapes remedial design in freezing jurisprudence.<sup>100</sup>

### **C. Abuse of Power and Due Process Safeguards**

Section 102 confers wide authority on police, but due process under Article 21 demands fair, just and non arbitrary procedure.<sup>101</sup> Maneka Gandhi held that any law affecting personal liberty must satisfy test of non arbitrariness derived from Article 14. Freezing of bank accounts can be misused as coercive tactic, pressuring accused to confess or settle unrelated civil disputes. PSL commentary notes instances where even persons not named in FIR find their accounts frozen merely due to tenuous association. Delhi High Court in *Muktaben M Mashru v State of NCT of Delhi* emphasised that failure to report freezing “forthwith” to Magistrate vitiates action itself. Court treated this procedural lapse as going to root, not minor irregularity, signalling strict scrutiny of coercive steps. Madras High Court in *R Chandrasekar v Inspector of Police* warned that discovery of offence cannot automatically justify search for accounts to freeze later. This reasoning seeks to prevent reverse engineering, where freezing follows accusation instead of genuine investigative discovery. Due process demands recorded reasons, clear proof of nexus and opportunity for affected person to contest continuation before court.<sup>102</sup> Without such safeguards, account freezing risks degenerating into instrument of harassment rather than legitimate investigative tool.

## **X. CRITICAL ANALYSIS AND EMERGING TRENDS**

### **A. Overuse of Section 102 CrPC in Practice**

Experience recorded in case law and commentary suggests tendency towards over invocation of Section 102 for bank accounts. In many matters, investigating officers freeze multiple accounts of accused and relatives, even before detailed financial analysis. Bombay High Court in *Gulam Sarvar v State of Maharashtra* criticised practice of acting on mere allegation without concrete material linking deposits with

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<sup>100</sup> *ibid.*

<sup>101</sup> Constitution of India 1950, art 21.

<sup>102</sup> Code of Criminal Procedure 1973, s 102(3).

crime. Court insisted on prima facie evidence, such as suspicious entries or unusual transfers, before resorting to such drastic step. The Ezulix Software Private Limited decision shows how freezing of corporate accounts can paralyse legitimate software and fintech businesses overnight. Employees, vendors and customers suffer collateral damage even when investigation ultimately yields no charge against company. Third party account holders, including charities or family members, often bear brunt despite absence of specific allegations in FIR. This over breadth undermines rule of law because individuals feel punished without trial or even formal accusation.

### **B. Judicial Push Towards Accountability and Restraint**

Recent decisions reveal emerging judicial pushback against casual freezing and prolonged restraints. Courts increasingly demand written reasons from investigating officers, demonstrating how specific transactions relate to alleged offence. In *Muktaben M Mashru*, Delhi High Court stressed mandatory nature of immediate reporting to Magistrate and set aside freezing for non compliance. This approach converts reporting duty from formality into core accountability mechanism under Section 102. Bombay High Court in multiple matters, including *Gulam Sarvar*, insisted that use of Section 102 cannot be a default response in every economic offence. Courts there often demand status reports on investigation progress before permitting continuation of restraints. Supreme Court in *Opto Circuit India Limited v Axis Bank* held that when special statute like Prevention of Money Laundering Act applies, authorities must follow that scheme rather than shelter behind Section 102 CrPC.<sup>103</sup> This ruling indirectly curbs over reliance on general criminal procedure for complex financial crimes governed by tailored legislative frameworks. Time bound investigation is another emerging theme, as prolonged freezing without charge sheet increasingly seen as disproportionate and unfair. Courts sometimes tie continued freezing to specific milestones, such as filing of final report within stipulated period.

### **C. Need for Legislative or Executive Guidelines**

Despite heavy constitutional stakes, there is still no uniform national guideline on freezing of bank accounts under Section 102. Investigating agencies prepare their own

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<sup>103</sup> *Opto Circuit India Limited v Axis Bank* (2021) 6 SCC 707.

internal circulars, often unpublished, leading to inconsistent practices across jurisdictions. Both PSL and Ezulix analyses highlight uncertainty among businesses and individuals about triggers, scope and duration of freezing orders. This unpredictability itself undermines trust in criminal justice system and financial regulatory environment. Structured guidelines could standardise minimum thresholds of suspicion, documentation formats and timelines for review by Magistrates. Such framework would also facilitate audit of police conduct and training efforts, improving institutional learning over time. Legislative intervention could codify right of prompt hearing for affected account holders and require reasoned orders at each stage.<sup>104</sup> Clear rules would help both investigators and citizens, by clarifying expectations and reducing unnecessary litigation on procedural questions.

## **XI. SUGGESTIONS AND REFORM PROPOSALS**

### **A. Codified Guidelines for Investigating Agencies**

First reform priority is detailed codified guideline for use of Section 102 against bank accounts. Guideline should specify nature of material required before freezing, such as transaction analysis, complaint statements or intelligence inputs. Officers should record reasons in writing, linking each account with particular offence and documenting why lesser intrusive measures are inadequate.<sup>105</sup> These notes may remain confidential at initial stage but must be available for in camera judicial scrutiny when challenged. Guidelines may draw from standards under Prevention of Money Laundering Act, where reasons to believe and forwarding of records to Adjudicating Authority are mandatory.<sup>106</sup> Opto Circuit India Limited shows that such structured safeguards are workable even in serious financial crime investigations.

### **B. Strengthening Magistrate Level Oversight**

Magistrate supervision must move from mechanical endorsement to substantive review of necessity and proportionality.<sup>107</sup> Statutory amendment or practice

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<sup>104</sup> Constitution of India 1950, arts 14 and 21.

<sup>105</sup> Code of Criminal Procedure 1973, s 102(1).

<sup>106</sup> Prevention of Money Laundering Act 2002, s 17.

<sup>107</sup> Code of Criminal Procedure 1973, ss 102(3), 457.

directions could require hearing of affected account holder within fixed timeframe from date of freezing. During such hearing, prosecution should explain progress of investigation and justify why continued restraint remains essential. Courts can then tailor orders, including partial defreezing, to balance rights and investigative needs. Muktaben M Mashru already treats failure to report as fatal defect, signalling expectation of active judicial role. Building on this, High Courts could frame rules requiring periodic review of all freezing orders after set intervals. Reasoned judicial orders would also help appellate or writ courts to assess legality more efficiently, reducing repetitive litigation. Strong oversight ultimately protects both State and citizens by keeping Section 102 power within constitutional boundaries.<sup>108</sup>

### **C. Protection of Third Party and Innocent Account Holders**

Reform must give special attention to accounts of persons not named as accused, including family members, employees and counterparties. Courts should insist on stronger nexus showing before restraining such accounts, since presumption of innocence is even higher.<sup>109</sup> PSL article notes recurring problem of banks receiving blanket instructions covering all accounts connected with certain PAN or corporate group. Instead, directions should be account specific and supported by demonstrable link with suspicious flows. Where third party demonstrates legitimate source of funds and no knowledge of alleged offence, defreezing should be default outcome. At most, court may preserve limited portion as security while freeing remaining amount for genuine needs. Compensation mechanisms or cost orders could be developed for cases where freezing of innocent accounts is later found entirely unjustified. Such remedies would incentivise greater care from investigating officers before issuing sweeping instructions.

### **D. Capacity Building and Sensitisation of Police Officers**

Effective reform also depends on sustained capacity building within police and specialised agencies. Many investigating officers still lack training in reading bank statements, understanding complex financial instruments and tracing digital payment

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<sup>108</sup> Constitution of India 1950, arts 14, 21 and 300A.

<sup>109</sup> Constitution of India 1950, art 20(3).

trails. Training modules should combine technical skills with orientation on constitutional rights, due process and impact of overbroad freezing. Sessions may use leading cases like *Tapas D Neogy*, *Nevada Properties* and *Teesta Atul Setalvad* to illustrate permissible boundaries. Internal audits and supervisory checklists can further ensure that each freezing proposal undergoes senior review before communication to banks. Cultural shift from “freeze first, justify later” towards careful, rights conscious decision making should be explicit goal of such programmes.

## **XII. CONCLUSION**

Freezing of bank accounts under Section 102 CrPC now sits at intersection of criminal investigation, constitutional rights and financial stability. Supreme Court jurisprudence, especially *Tapas D Neogy*, *Nevada Properties* and *Teesta Atul Setalvad*, has defined outer contours of this power with significant clarity. Legal position today recognises bank accounts as property, yet insists on nexus with alleged offence and procedural safeguards like Magistrate reporting.<sup>110</sup> Courts attempt to balance investigative demands with Article 300A protection of property and Article 21 right to livelihood.<sup>111</sup> Emerging trend shows judiciary nudging agencies towards accountability, proportionality and time bound investigation rather than indefinite restraints. High Courts emphasise recorded reasons, specific linkage and meaningful hearing as indispensable components of rule of law. Future trajectory likely depends on whether legislature and executive now translate these constitutional insights into structured guidelines and training. If that happens, financial investigations can remain effective while still respecting dignity, autonomy and economic security of account holders.

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