



CURRENT AFFAIRS



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“PMLA: WEAPON AGAINST POLITICAL OPPONENTS OR SHIELD FOR ECONOMIC STABILITY?”

This article covers “Daily Current Affairs” and details the topic of the Prevention of the Money Laundering Act 2002.

Syllabus mapping: GS:3- Internal Security: Money-Laundering and its prevention.

For Prelims:

What are money Laundering and EDs?

For Mains:

What are the ways of money Laundering how the PMLA is effective against Money laundering?

Why In the News?

The Supreme Court of India has approved bail for Manish Sisodia, the former Deputy Chief Minister of Delhi. This decision underscores the Court’s commitment to the principle that “bail is the rule, and jail is the exception,” particularly when there are delays in trials and prolonged periods of pre-trial detention. The Court emphasized that in such cases, bail should be granted even under strict laws like the Prevention of Money Laundering Act (PMLA). State of Rajasthan vs Balchand alias Baliya (1977): Bail is the Rule, Jail is the Exception the principle initially highlighted by the Apex Court in this case.

What are the Supreme Court Observation?

Delay and Prolonged Detention: The Supreme Court highlighted that delays in trials and long periods of pre-trial detention are valid reasons for granting bail, even under strict laws like the PMLA.

Right to a Speedy Trial: The Court affirmed that the constitutional right to a speedy trial is more important than statutory bail restrictions. The severity of the crime cannot be used to deny bail.

Approach of Lower Courts: The Court noted that trial and high courts often avoid granting bail, even when delays make it necessary. This reminder from the Supreme Court will influence how lower courts handle bail requests in future cases, especially those involving the Enforcement Directorate under the PMLA.

What is Money laundering?

According to PMLA: Money laundering is the process of concealing the origins of illegally obtained funds, often referred to as black money, to make them appear as if they come from legitimate sources. This involves a series of transactions or manipulations to transform illicit

money into legally acceptable assets, eventually integrating it into the financial system through institutions such as banks.

What are the Common Forms of Money Laundering?

Money laundering can be carried out through various methods, including:

Hawala: Informal money transfer systems.

Bulk Cash Smuggling: Physically transporting large amounts of cash.

Fictional Loans: Creating fake loans to move money.

Cash-Intensive Businesses: Using businesses that handle large amounts of cash to disguise illegal money.

Round-Tripping: Moving money through different jurisdictions to obscure its origin.

Trade-Based Laundering: Over- or under-invoicing in trade transactions.

Shell Companies and Trusts: Using fake companies or trusts to conceal the ownership of money.

Real Estate: Investing in property to launder money.

Gambling: Using gambling activities to launder funds.

Fake Invoicing: Creating false invoices to justify transactions.

Method of Money Laundering Operations?

Money laundering typically occurs in three stages:

Placement: Introducing illicit money into the formal financial system.

Layering: Conducting various transactions to obscure the money's illegal origin.

Integration: Making the money appear legitimate so that it can be used freely without association with criminal activities.

Money Laundering vs. Syphoning of Funds

Simply earning money through illegal activities or obtaining property via crime does not necessarily constitute money laundering. It becomes money laundering when the obtained property or money, which originates from a Scheduled offense, is then disguised or claimed as legitimate

PREVENTION OF MONEY LAUNDERING ACT (PMLA) 2002

The Prevention of Money Laundering Act (PMLA), enacted in 2002, is legislation to combat money laundering and related financial crimes. It empowers authorities to investigate and prosecute money laundering offenses, seize and confiscate the proceeds of crime, and enhance transparency in financial transactions.

Significance and Objectives

Combating Money Laundering: The primary objective of the PMLA is to prevent money laundering by targeting the financial gains obtained through illegal activities. It seeks to disrupt the process of converting illicit funds into legitimate assets.

Confiscation of Proceeds: The Act provides mechanisms to seize and confiscate the proceeds of crime, thus depriving offenders of their ill-gotten gains and deterring further criminal activities.

Regulation and Compliance: It mandates reporting and record-keeping requirements for financial institutions to enhance transparency and facilitate the detection of suspicious transactions.

Strengthening Enforcement: The Act establishes enforcement mechanisms, including the Enforcement Directorate (ED), to investigate money laundering offenses and ensure effective

prosecution.

International Cooperation: The PMLA promotes cooperation with international agencies and other countries to combat cross-border money laundering and financial crimes.

Addressing Related Matters: To cover aspects connected to and incidental to money laundering activities.

Key Provisions

Definition of Money Laundering: Money laundering is defined as the process of disguising the origins of illegally obtained money, typically by passing it through a complex sequence of banking transfers or commercial transactions.

Scheduled Offenses: The PMLA links money laundering to specific “scheduled offenses” under Indian law. If an individual is involved in these offenses, any proceeds from such crimes can be subject to investigation under the PMLA.

Bail Conditions: Under Section 45 of the PMLA, the conditions for granting bail are stringent, requiring proof of prima facie innocence and ensuring that the accused is unlikely to commit further offenses while on bail.

Enforcement Directorate (ED): The Act grants the ED the authority to investigate, attach, and seize assets involved in money laundering. The ED can also file charges and prosecute offenders.

Directorate of Enforcement (ED):

Origins and Early Structure:

Date: May 1, 1956

Formation: An ‘Enforcement Unit’ was established within the Department of Economic Affairs to handle violations of Exchange Control Laws under the Foreign Exchange Regulation Act, of 1947 (FERA '47).

Initial Structure: Headquartered in Delhi, led by a Director of Enforcement (a Legal Service Officer), assisted by an officer from the Reserve Bank of India (RBI) and three Inspectors from the Special Police Establishment.

Branches: Bombay and Calcutta.

Evolution and Administrative Changes:

1957: The ‘Enforcement Unit’ was renamed the ‘Enforcement Directorate’ and a new branch was opened in Madras.

1960: Administrative control transferred from the Department of Economic Affairs to the Department of Revenue.

1973-1977: The Directorate came under the Department of Personnel & Administrative Reforms due to the replacement of FERA '47 with FERA, 1973.

Current Structure: The Directorate is currently under the Department of Revenue, Ministry of Finance, Government of India.

Legislative Changes and Expanded Mandates:

Economic Liberalization: With the repeal of FERA, 1973, the Foreign Exchange Management Act, 1999 (FEMA) was enacted and came into force on June 1, 2000.

Prevention of Money Laundering Act, 2002 (PMLA): Enacted to align with international anti-money laundering regimes, with the ED entrusted to enforce it from July 1, 2005.

Fugitive Economic Offenders Act, 2018 (FEOA): Enacted to address cases of economic offenders fleeing abroad, with the ED assigned enforcement responsibilities from April 21, 2018.

What are the Money Laundering Offences?

A person is guilty of money laundering if they engage in any of the following activities related to the proceeds of crime:

Concealment: Hiding the origins of illicit funds.

Possession: Holding money known to be derived from crime.

Acquisition: Obtaining property with illicit funds.

Use: Using the money or property obtained from crime.

Projecting as Untainted: Presenting money or property as legally acquired.

Claiming as Untainted: Asserting that the money or property is clean.

What are the Proceeds of Crime?

Proceeds of Crime refers to any property obtained directly or indirectly from criminal activities related to a Scheduled Offence.

List of Offences under PMLA?

Under the PMLA, the following types of offenses are covered:

Part A: Includes offenses under various laws such as the Indian Penal Code, Narcotic Drugs and Psychotropic Substances Act, Prevention of Corruption Act, Antiquities and Art Treasures Act, Copyright Act, Trademark Act, Wildlife Protection Act, and Information Technology Act.

Part B: Specifies offenses in Part A where the value involved is Rs 1 crore or more.

Part C: Deals with trans-border crimes, focusing on international aspects of money laundering.

Concerns and Issues

Stringent Bail Conditions: Section 45 imposes a high bar for bail, making it challenging for accused individuals to secure release. Critics argue that this undermines the principle that “bail is the rule, and jail is the exception.”

Presumption of Guilt: Earlier amendments to the PMLA implied a presumption of guilt for those accused of money laundering, shifting the burden of proof to the accused. This has been a contentious issue as it conflicts with the principle of presumption of innocence.

Prolonged Detention: There are concerns about the prolonged detention of accused individuals due to delays in trials and investigations, which can violate their right to a speedy trial.

Discretionary Powers: The Act grants broad discretionary powers to investigative agencies, which can lead to potential misuse or abuse of power.

Lack of Clarity: Some provisions of the PMLA have been criticized for being vague or overly broad, leading to challenges in interpretation and enforcement.

Scholars and Committee Suggestions to make Act more effective

Several scholars and committees have suggested reforms to address concerns and improve the effectiveness of the PMLA:

The Malimath Committee (2003):

1. Recommended strengthening the framework for combating financial crimes and enhancing procedural safeguards to protect the rights of accused individuals.
2. Suggested improvements in the functioning of investigative agencies and the legal framework for money laundering.

The Law Commission of India:

1. Highlighted the need for a more balanced approach to bail conditions under the PMLA.
2. Suggested reforms to ensure that the burden of proof does not unfairly shift to the accused and to safeguard personal liberties.

The Parliamentary Standing Committee on Finance:

1. Recommended amendments to address issues related to prolonged detention and the presumption of guilt.
2. Suggested measures to enhance transparency and accountability in the enforcement process.

Scholarly suggestions:

1. Scholars have called for clearer definitions and stricter guidelines to prevent the misuse of discretionary powers by investigative agencies.
2. Emphasized the need for reforms to ensure that the Act adheres to international human rights standards and legal principles.

Conclusion

The Prevention of Money Laundering Act is a crucial piece of legislation in India's fight against financial crime. While it has achieved significant milestones in combating money laundering and enhancing financial transparency, there are ongoing concerns about its implementation and impact on individual rights. Reforms and amendments, guided by expert recommendations and scholarly critiques, are essential to address these issues and ensure the Act remains effective and just.

Prelims Question?**Q. Consider the following statements:****Statement-I:**

India is a signatory of the ILO's Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988.

Statement-II:

India enacted the Prevention of the Money Laundering Act 2002 to fulfill its obligation under the Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988.

Which one of the following is correct in respect of the above statements?

- (a) Both Statement-I and Statement-II are correct and Statement-II is the correct explanation for Statement-I
- (b) Both Statement-I and Statement-II are correct and Statement-II is not the correct explanation for Statement-I
- (c) Statement-I is correct but Statement-II is incorrect
- (d) Statement-I is incorrect but Statement-II is correct

ANSWER: D.**Mains Question?**

Discuss the objectives and challenges of the Prevention of Money Laundering Act (PMLA), 2002. How effective is the PMLA in combating money laundering in India? Critically analyze the role of various authorities established under the Act and suggest reforms to enhance its effectiveness.

(250 words 15 marks)

[MundeDhananjayNavnath](#)

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