



Prevention of Money Laundering Act

This editorial is based on [**"Narrow view: On the Supreme Court's PMLA verdict"**](#) which was published in The Hindu on 29/07/2022. It discusses about the apprehensions on the amendments made recently to the Prevention of Money Laundering Act (PMLA), 2002.

For Prelims: Money Laundering, Prevention of Money Laundering Act, Enforcement Directorate, United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988, Enforcement Case Information Report

For Mains: Amendments in Prevention of Money Laundering Act and associated concerns, Supreme Court's stand on the amendments in PMLA

Money Laundering is a heinous crime which not only affects the social and economic fabric of the country but also tends to promote other serious offences like [terrorism](#) and [drug trafficking](#) which India has been witnessing a lot lately. It's a growing problem that needs to be addressed.

The [Prevention Of Money Laundering Act \(PMLA\)](#) formulated in the year **2002** has undergone various critical changes from time to time in order to give itself more strength to deal with the offence of money laundering.

Several petitions have been filed across the country that question the almost blanket powers assigned to the [Enforcement Directorate](#) under PMLA for searching, seizing, investigating, and attaching assets considered to be [proceeds of crimes](#).

What is the Prevention of Money Laundering Act (PMLA), 2002?

- **Money Laundering** refers to the **conversion or misrepresentation of money** which has beenb
◦ It is a **criminal offence in India** and charges in this instance refer to statutory provisions
of the **Prevention of Money Laundering Act, 2002**.
- The PMLA was enacted in response to India's global commitment (Vienna Convention) to combat the menace of money laundering. These include:
 - [United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988](#)
 - [Basle Statement of Principles, 1989](#)
 - [Forty Recommendations of the Financial Action Task Force on Money Laundering, 1990](#)
 - [Political Declaration and Global Program of Action adopted by the United Nations General Assembly in 1990](#)
- The PMLA is applicable to all persons which include **individuals, companies, firms, partnership firms, associations of persons or incorporations and any agency**, office or branch owned or

controlled by any of the above-mentioned persons.

II

Money laundering stages

Placement Layering Integration



- Accumulating the money from illegal activities.
- Placing the money into a financial system.
- Transferring the money to hide the origin of the funds.
- Returning the money for the money launderer to spend.

What are the Recent Amendments in PMLA?

- **Clarification about the Position of Proceeds of Crime:** Proceeds of the Crime **not only includes the property derived from scheduled offence** but would also include **any other property derived or obtained indulging into any criminal activity** relate-able or similar to the scheduled offence.
- **Money Laundering Redefined:** Money Laundering was not an independent crime rather depended on another crime, known as the **predicate offence or scheduled offence**.
 - **The amendment seeks to treat money laundering as a stand-alone crime.**
 - Under Section 3 of PMLA, the person shall be accused of money laundering if in any manner that person is directly or indirectly involved in the proceeds of the crime.
 - **Concealment**
 - **Possession**
 - **Acquisition**
 - **Use or projecting as untainted property**
 - **Claiming as untainted property**
- **Continuing Nature of Offence:** This amendment further mentioned that the person will be considered to be **involved in the offence of money laundering till the time that person is getting the fruits of activities** related to money laundering as this offence is of a **continuing nature**.

What are the Concerns Raised About the Amendments in PMLA?

- **Possible Misuse of Powers:** There is a strong possibility that PMLA can be invoked against a political rival or a dissenter, because the **“process is itself the punishment”**.
- **Issues with ECIR:** [ECIR](#) (Enforcement Case Information Report), an equivalent of the [FIR](#), is considered an “internal document” and not given to the accused.
 - Throughout the procedure, the **accused does not even know facts of the allegation against him**, as the only document which contains the allegation is the ECIR, **which is not supplied to the accused persons**.
- **Contrast to General Criminal Law:** PMLA is different from the [General Criminal Law](#).
 - In General Criminal Law, **every accused is innocent until proven guilty**.
 - However, in PMLA, this burden has been shifted to the accused persons; **they will have to prove their innocence**.
- **Accused-Bound to be a Witness:** Section 63 of PMLA states that information must be given by the accused, **false information or no information will constitute another offence**.
 - **Compelling the accused to be a witness against themselves** is violative of the [right against self-incrimination](#).
- **Inefficiency of ED:** The **conviction rate of Enforcement Directorate under this law is very low**, despite thousands of cases registered, people arrested, and lives turned upside down.

- According to the data quoted by the **government in Parliament of India**, there were **zero convictions between 2005 and 2013-14**. By **2014-15 to 2021-22, out of 888 cases under ED, only 23 cases were under conviction**.

What is the Enforcement Directorate?

- Directorate of Enforcement is a **specialized financial investigation agency under the Department of Revenue, Ministry of Finance**.
- In 1956, an '**Enforcement Unit**' was formed, in the Department of Economic Affairs, for handling Exchange Control Laws violations under,
- In 1957, this Unit was renamed as '**Enforcement Directorate**'.
- ED enforces the following laws:
 - **Foreign Exchange Management Act, 1999 (FEMA)**
 - **Prevention of Money Laundering Act, 2002 (PMLA)**

What is the Current Stand of the Supreme Court Regarding the Amendments in PMLA?

- Recently, a **three-judges-bench of the Supreme Court** has upheld the constitutional validity of the provisions of the PMLA, calling it a "unique and special legislation" underlining the powers of the ED to hold inquiries, arrest people and attach property.
- SC ruled that **no comparison can be drawn between PMLA and Criminal Procedure Code (1973)**.
 - Including the mechanism regarding prevention, investigation or trial in connection with the scheduled offence.
- **The SC has also held that the ECIR cannot be equated with FIR.**
 - ECIR is an internal document of the ED. Supply of ECIR to the accused is not mandatory and only disclosure of reasons during arrest is enough **but can merely be informed about the grounds for arrest**.

What Should be the Way Forward?

- **Internal Checks and Balances:** It is true that law has given stringent powers to the ED in dealing with the accused that can increase the possibility of political misuse.
 - But there must be a **consensus between the adjudicating authority and the officers of ED** to abide by the constitutionality of provision under PMLA, **making the investigation more lucid**.
- **The Process Itself Should not Become Punishment:** The ED's expanded powers **should be welcomed with a greater commitment to expeditiously resolve the cases**, so both the judiciary and enforcement agencies can move forward with **speedy trials and convictions**.
- **Operational Vigilance:** There must be a constant scrutiny over the operations of the Enforcement Directorate and current disposition whether this clarification will improve the conviction rate (which is right now less than half a percent).
 - And if there will be any lacunas in the operative part, **change is the law of nature**, these **gaps can be filled** either through **suitable legislation, executive action or revised order of the apex court**.

Drishti Mains Question

"The Enforcement Directorate is assigned almost-blanket powers under the Prevention of Money Laundering Act 2002 and the following amendments to the Act". Comment.

PDF Reference URL: <https://www.drishtiias.com/printpdf/prevention-of-money-laundering-act-2>