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.

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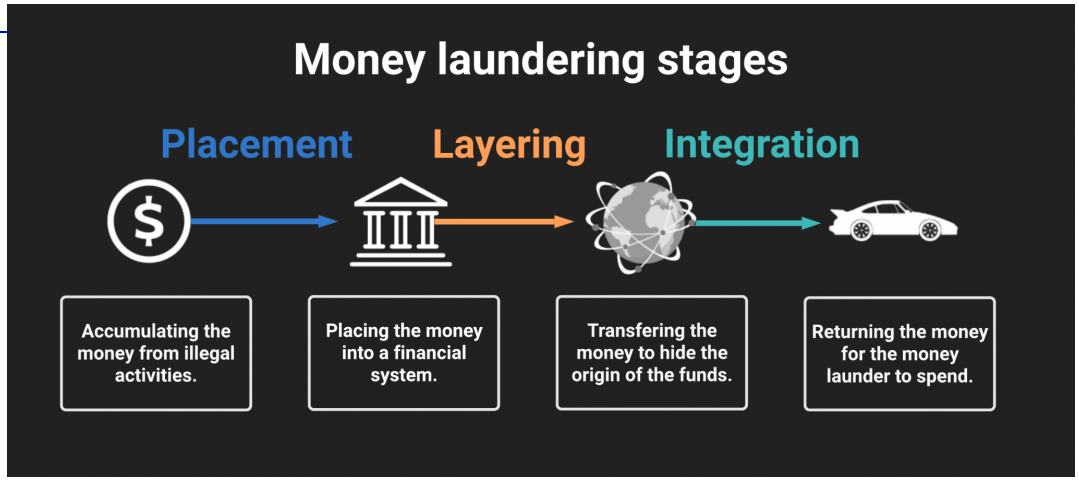

What are the Recent Amendments in PMLA?

- **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.

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