



PMLA & Supreme Court

For Prelims: Foreign Exchange, Foreign Exchange Management Act, 1999, FEMA, Fugitive Economic Offenders Act, 2018 FEOA, Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 COFEPOSA, ED, Supreme Court

For Mains: Issue of Money Laundering, Significance of Black Money, Powers of ED, Judicial Review

Why in News?

In a recent hearing, the [Supreme Court of India](#) upheld the constitutional validity of the [Prevention of Money Laundering Act, 2002](#).

- The court underlined that **the principle of innocence of the accused/offender is regarded as a human right but that presumption can be interdicted by a law made by the Parliament/Legislature.**

What has the Supreme Court said in the Ruling?

- **Enforcement Case Information Report (ECIR):**
 - **Enforcement Case Information Report (ECIR)** cannot be equated with an [FIR](#).
 - Supplying an ECIR in every case to the person concerned is **not mandatory and “it is enough if the Enforcement Directorate (ED), at the time of arrest, discloses the grounds of such arrest”.**
 - The ECIR is an **internal document of the ED** and the fact that FIR in respect of scheduled offence has not been recorded, does not come in the way of ED authorities to commence inquiry/investigation
- **Section 3 of PMLA Act:**
 - **Section 3 of the PMLA Act 2002** has a wider reach and captures that offence of [money laundering](#) is an **independent offence** regarding the process or activity connected with the **proceeds of crime which had been derived or obtained as a result of criminal activity** relating to or in relation to a scheduled offence.
 - The ruling also made it clear that:
 - Offence under Section 3 **“is dependent on illegal gain of property as a result of criminal activity relating to a scheduled offence”.**
 - The Authorities under the 2002 Act **cannot prosecute any person on notional basis or on the assumption** that a scheduled offence has been committed, unless it is so registered with the jurisdictional police and pending enquiry including by way of criminal complaint before the competent forum.
- **Enforcement Directorate:**
 - The bench upheld the **ED’s power under Section 5 of the Act** (order provisional attachment of any proceeds of crime).
 - The Court stated that **Section 5 provides for a balancing arrangement** to secure the interests of the person and also ensures that the proceeds of crime

- remain available to be dealt with in the manner provided by the 2002 Act.
- **It rejected the argument that ED authorities are police officers** and, hence, a statement recorded by them under Section 50 of the Act would be hit by [Article 20\(3\) of the Constitution](#) which says **no person accused of an offence shall be compelled to be a witness against himself.**

What do we know about the Prevention of Money Laundering Act, 2002?

- It is a **criminal law** enacted to **prevent money laundering** and to **provide for confiscation of property** derived from, or involved in, money-laundering and related matters.
- It forms the **core of the legal framework** put in place by India to combat **Money Laundering.**
- The provisions of this act are applicable to all financial institutions, banks (Including [RBI](#)), [mutual funds](#), [insurance companies](#), and their financial intermediaries.
- **PMLA (Amendment) Act, 2012:**
 - Adds the concept of '**reporting entity**' which would include a **banking company, financial institution, intermediary etc.**
 - PMLA, 2002 levied a **fine up to Rs 5 lakh**, but the **amendment act has removed this upper limit.**
 - It has provided for **provisional attachment and confiscation of property** of any person involved in such activities.

What do we know about the Enforcement Directorate?

- **History:**
 - **The Directorate of Enforcement or the ED** is a multi-disciplinary organization **mandated** with investigation of **economic crimes** and **violations of [foreign exchange laws](#).**
 - The origin of this Directorate goes back to **1st May, 1956**, when an '**Enforcement Unit**' was formed in the **Department of Economic Affairs** for handling **Exchange Control Laws** violations under **Foreign Exchange Regulation Act, 1947 (FERA '47).**
 - With the onset of the process of [economic liberalization](#), FERA, 1973, which was a regulatory law, **was repealed** and in its place, [Foreign Exchange Management Act, 1999 \(FEMA\)](#) came into operation.
 - Recently, with the increase in the number of cases relating to economic offenders taking shelter in foreign countries, the **Government has passed the Fugitive Economic Offenders Act, 2018 (FEOA)** and ED is entrusted with its enforcement.
- **Functions:**
 - **The Prevention of Money Laundering Act, 2002 (PMLA):**
 - **ED has been given the responsibility to enforce the provisions of the PMLA** by conducting investigation to trace the assets derived from proceeds of crime, to provisionally attach the property and to ensure prosecution of the offenders and confiscation of the property by the Special court.
 - **The Foreign Exchange Management Act, 1999 (FEMA):**
 - ED has been given the responsibility to **conduct investigation into suspected contraventions of foreign exchange laws and regulations**, to adjudicate and impose penalties on those adjudged to have contravened the law.
 - **[The Fugitive Economic Offenders Act, 2018 \(FEOA\):](#)**
 - It is a law whereby the **Directorate is mandated to attach the properties of the fugitive economic offenders who have escaped from India warranting arrest** and provide for the confiscation of their properties to the Central Government.
 - **Sponsoring agency under COFEPOSA:**
 - Under the **Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (COFEPOSA)**, Directorate is empowered to **sponsor cases of preventive detention with regard to contraventions of FEMA.**

Prelims

Q. Which one of the following groups of items is included in India's foreign-exchange reserves? (2013)

- (a)** Foreign-currency assets, Special Drawing Rights (SDRs) and loans from foreign countries
- (b)** Foreign-currency assets, gold holdings of the RBI and SDRs
- (c)** Foreign-currency assets, loans from the World Bank and SDRs
- (d)** Foreign-currency assets, gold holdings of the RBI and loans from the World Bank

Ans: (b)

Explanation:

- Foreign Exchange Reserves are assets kept in reserve by a central bank in foreign currencies.
- According to RBI, Foreign Exchange Reserve in India includes:
 - Foreign Currency Assets
 - Gold
 - SDRs
 - Reserve Tranche Position with IMF
- Therefore, option (b) is the correct answer.

Mains

Q. Discuss how emerging technologies and globalisation contribute to money laundering. Elaborate measures to tackle the problem of money laundering both at national and international levels. (2021)

Q. India's proximity to the two of the world's biggest illicit opium-growing states has enhanced her internal security concerns. Explain the linkages between drug trafficking and other illicit activities such as gunrunning, money laundering and human trafficking. What counter-measures should be taken to prevent the same? (2018)

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