



## THE PREVENTION OF MONEY-LAUNDERING ACT - POLITY

**News:** The Supreme Court recently held that constitutional courts cannot allow provisions of the **Prevention of Money Laundering Act** to become instruments in the hands of the **Enforcement Directorate** to continue incarceration for a long time.

### WHAT'S IN THE NEWS?

#### The Prevention of Money-Laundering Act (PMLA)

- It was enacted by Parliament of India under **Article 253 of Constitution in 2002** to prevent money laundering and provide for the confiscation of property derived from or involved in money laundering.
- PMLA and the Rules notified there under came into force with effect from **2005**, and it was further amended in **2009 and in 2012**.
- Director, FIU-IND and Director (Enforcement) have been conferred with exclusive and concurrent powers under relevant sections of the **Act to implement the provisions of the Act**.
- **The offence under the PMLA** mainly involves money laundering obtained through criminal activities (e.g., drug trafficking, terrorism, corruption).

#### Bail Provisions under the Law

- **Section 45 of the PMLA**, which deals with bail, first states that **no court can grant bail for offences under this law**, and then proceeds to mention a **few exceptions**.
  - The negative language in the provision itself shows **that bail is not the rule but the exception under PMLA**.
- The provision makes it **mandatory to hear the public prosecutor** in all bail applications, and when the prosecutor opposes bail, the **court is required to apply a twin test**.
  - These two conditions are: (i) that there are “reasonable grounds for believing that [the accused] is not guilty of such offence”; and (ii) that “he is not likely to commit any offence while on bail”.
- There are **similar provisions in several other laws** that deal with serious offences — for example, Section 36AC of The Drugs and Cosmetics Act, 1940, Section 37 of The Narcotic Drugs and Psychotropic Substances Act, 1985, and Section 43D(5) of the Unlawful Activities Prevention Act, 1967.

#### Supreme Court's Take on the Law



- To address concerns raised by ED regarding possible tampering with witnesses or evidence, the court imposed **strict conditions on bail, including:**
  - regular appearance before the deputy director of ED;
  - appearance before the investigating officer of the scheduled offences;
  - restraint against contacting any prosecution witnesses or victims related to the scheduled offences;
  - full cooperation with the trial and a refrain from asking for adjournments.

