



## PREVENTION OF MONEY LAUNDERING ACT - GOVERNANCE GS II AND III MAINS

Q. Does the Prevention of Money Laundering Act serve its purpose? Give your suggestions to make it more effective and efficient in India. (15 marks, 250 words)

**News:** *The PMLA — a law that has lost its way*

### What's in the news?

- The Prevention of Money Laundering Act (PMLA), 2002 was enacted with a distinct objective.
- The humongous volume of black money generated through international drug trafficking posed a grave threat to the economy of many countries.

### Key takeaways:

- There was widespread realisation that the black money generated through the flourishing drug trade and integrated into the legitimate economy was likely to destabilise the world economy and endanger the integrity and sovereignty of nations.
- The most serious aspect of the Prevention of Money Laundering Act is the inclusion of offences which have nothing to do with the original motive — namely, to combat the laundering of drug money.

### Money Laundering:

- Money laundering is the illegal act of obtaining large sums of money from **illegal sources that appear to be legitimate.**
- **Three process:**
  - **Placement:** The introduction of criminal revenues into the legitimate financial system marks the beginning of the process.
  - **Layering:** The second stage involves hiding the source of the money by relocating it through a series of intricate bank transfers or other financial maneuvers.
  - **Integration:** The third and final stage is integration, in which the proceeds are reinjected into the economy and are no longer detectable by the authorities.

### Prevention of Money Laundering Act:

- The Prevention of Money Laundering Act of 2002 was enacted to **combat the criminal offence of legalising income/profits obtained illegally.**
- The Prevention of Money Laundering Act of 2002 empowers the government or a public authority to **seize property** derived from illegally obtained proceeds.

### Objectives:

- To prevent and control money laundering.



- To **confiscate** and seize the property obtained from the laundered money.
- To deal with any other issue connected with money laundering in India.
- To **facilitate international cooperation** in combating money laundering and terrorist financing activities.

## Important Provisions of the Act:

### 1. Adjudicating Authority:

- The Adjudicating Authority is the authority **appointed by the central government** of India via notification to exercise the jurisdiction, powers, and authority set forth in the prevention of money laundering act 2002.

### 2. Punishment:

- The Act expressly states that if a person is found guilty of money laundering in India, he will be sentenced to rigorous imprisonment ranging from 3 to 7 years.
- If the proceeds of guilt are related to any of the offences listed in paragraph 2 of Part A of the Schedule (Offences under the Narcotic Drugs and Psychotropic Substance Act, 1985), the sentence will be increased to 10 years.

### 3. Burden of proof:

- When a person is found **guilty** of money laundering, he must prove that the alleged proceeds of the crime are in fact lawful property.

### 4. Appellate Tribunal:

- It is the body appointed by the Government of India to hear appeals from decisions of the adjudicating authority or any other authority established under the Act.
- It is worth noting that tribunal decisions can be appealed to the High Court (for that jurisdiction) and then to the Supreme Court.

### 5. Special Courts:

- It envisages the designation of **one or more courts of sessions** as Special Court or Special Courts to try the offences punishable under PMLA and offences with which the accused may, under the **Code of Criminal Procedure 1973**, be charged at the same trial.

## Financial Intelligence Unit - India:

- The Government of India established the **Financial Intelligence Unit-India (FIU-IND)** on November 18, 2004, as the central national agency primarily responsible for obtaining, processing, analyzing, and disseminating information related to suspect financial transactions.
- It is an **independent body** that reports directly to the Finance-Minister-led Economic Intelligence Council (EIC).

## Agreement for Central Government:



- It allows the Central Government to enter into an **agreement with the Government of any country outside India** for enforcing the provisions of the PMLA, exchange of information for the prevention of any offence under PMLA or under the corresponding law in force in that country or investigation of cases relating to any offence under PMLA.

## Authority to Implementation the Act:

- The Money Laundering Act of 2002 empowers certain officers of the **Directorate of Enforcement** to conduct investigations in cases involving money laundering offences and to seize any property involved in money laundering.

## Scheduled offences:

- Any offence listed in **Parts A, B, and C** of PMLA is a Scheduled offence according to the PMLA. Some of these offences (which may be covered by the PMLA) are extrapolated as follows:
- **PART A** – It includes offences under various acts, such as
  - Indian Penal Code
  - Narcotics Drugs & Psychotropic Substances Act
  - Prevention of Corruption Act
  - Antiquities & Art Treasures Act
  - Copyright Act
  - Trademark Act
  - Wildlife Protection Act
  - Information Technology Act
- **PART B** – It mentions the Part A offenses, but the value involved in such offenses is Rs 1 crore or more.
- **PART C** – It addresses transnational crimes and reflects the commitment to combating money laundering across international borders.

## PMLA Act Amendment in 2019:

- **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

## Criticisms of PMLA:

### 1. Definition of crime:

- The definition of crime under this Act is criticised for being almost **infinitely elastic**.
- According to critics, the authority has immense latitude to define what counts as the relevant crime.

### 2. Enactment as a Money Bill:

- While enacting the law, the subterfuge of a Money Bill was used.
- So, it is alleged that the parliamentary procedure under which the law was enacted was itself proper.

### 3. Power to Enforcement Directorate (ED):

- The Act gives the government and the Enforcement Directorate (ED) **virtually unbridled powers of summons, arrest, and raids**.
- Despite having powers of investigation, the ED has not been classified as a 'police agency'.
- Besides, there is a lack of clarity about the ED's selection of cases to investigate.

### 4. Bails & the Burden of Proof:

- It makes bail nearly impossible while shifting the burden of proof of innocence onto the **accused** rather than the prosecution.
- The Court made it clear that the State has a compelling interest in imposing stringent bail conditions for economic offences.

### 5. Low Conviction Rate:

- Everyone who has gone through a trial-claims that the trial itself is punishment, and that any assets you have can be seized while the case is pending.
- The conviction rate under this law is very low, less than 5%.

### 6. Broad Definition of 'Proceeds of Crime':

- The broad definition of 'proceeds of crime, provides considerable discretion to the authorities.
- Critics fear that this discretion, in determination of 'proceeds of crime', can be misused by the investigating authorities.

## Way Forward:

### 1. Precise Definition of 'Proceeds of Crime':

- A precise definition of 'Proceeds of Crime' under PMLA must be incorporated to mitigate the potential abuse of its definition by the authorities.

### 2. Reassessment of Burden of Proof:



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- An amendment to PMLA which provides a more equitable distribution of the burden of proof between the prosecution and the accused, can be brought.

### 3. Safeguards Against Overreach by Officers:

- An independent oversight mechanism to review and monitor the actions of law enforcement officers must be established at the earliest.

### 4. Review of the Stringent Bail Conditions:

- The stringent bail conditions for minor and non-serious economic offences must be done away with.

### 5. Enhanced Independence and Transparency of ED:

- Measures like regular reporting and disclosure of cases handled, convictions secured, and actions taken, must be incorporated to enhance the transparency in ED's functioning.
- These measures will ensure confidence among the public that ED is not a politicised institution.

