

PMLA RULING REVIEW: POLITY

NEWS: PMLA ruling review: Supreme Court seeks issues for consideration

WHAT'S IN THE NEWS?

The Supreme Court is reviewing its 2022 verdict that upheld wide powers for the Enforcement Directorate under the PMLA, including reversing the burden of proof and denying access to the ECIR. The review raises critical questions about civil liberties, due process, and the balance between state power and individual rights under Article 21.

1. Background of the Case

a) 2022 Supreme Court Verdict on PMLA

- The Supreme Court upheld the constitutional validity of amendments made to the Prevention of Money Laundering Act (PMLA), 2002.
- The judgment granted sweeping powers to the Enforcement Directorate (ED).
- These powers included:
 - Arresting individuals without pre-arrest bail safeguards.
 - Conducting searches and seizures without strict procedural checks.
 - Issuing summons and compelling statements.
- Reversal of burden of proof: Unlike traditional criminal law where the burden lies with the prosecution, the PMLA judgment placed it on the accused to prove their innocence.
- The ruling marked a departure from established criminal jurisprudence, raising concerns about due process and fair trial under Article 21.

2. Current Review Proceedings in Supreme Court

a) Who Filed the Review?

- Review petitions were filed by several individuals, including Karti Chidambaram, a Member of Parliament and others affected by ED action.
- Core argument: The 2022 verdict violates basic rights, including:
 - Right to be informed of charges.
 - Right to fair trial.
 - Right against self-incrimination.

b) Bench Hearing the Case

- The review is being heard by a 3-judge bench comprising:
 - Justice Surya Kant
 - Justice Ujjal Bhuyan
 - Justice N. Kotiswar Singh

3. Centre's Position in Review

- Represented by Solicitor General Tushar Mehta and Additional Solicitor General S.V. Raju.
- The Centre wants the review to be limited to two issues only:
 - Non-provision of ECIR (Enforcement Case Information Report) to the accused.
 - Reversal of burden of proof in money laundering cases.
- The Centre filed an affidavit confirming this limited scope, which was initially not objected to by the petitioners.

4. Next Steps in the Review Process

- The Supreme Court has directed both parties (petitioners and the Centre) to:

- Jointly finalise a list of legal issues to be taken up in the review hearing.
- Important Dates:
 - July 16, 2024: Finalisation of the list of issues.
 - August 6–7, 2024: Supreme Court to conduct final hearing on the review petitions.

5. Broader Legal and Constitutional Implications

a) Civil Liberties vs. National Security

- The case highlights the tension between national security enforcement and individual civil liberties.
- Key questions:
 - Can the state override constitutional safeguards in the name of combating money laundering?
 - Does empowering the ED to bypass procedural safeguards violate Article 21?

b) Legal Uncertainty

- Multiple, and at times contradictory Supreme Court rulings, have created confusion regarding:
 - The accused's right to access ECIR.
 - Whether PMLA cases require following strict criminal procedure standards.

c) Possibility of Referral to Constitutional Bench

- Given the serious constitutional questions raised (especially around Article 21 – Right to Life and Personal Liberty), there is speculation that the Court may refer the matter to a larger Constitutional Bench.

6. Relevance for Governance and Policy

- GS Paper 2 (Governance, Transparency & Accountability) relevance:
 - The case raises fundamental questions about executive overreach.
 - Highlights the role of judicial review in checking the expansion of state surveillance powers.
 - Reinforces the need for balance between enforcement efficiency and civil rights protection.

Conclusion

- The Supreme Court's final ruling in the review of the PMLA verdict could set a landmark precedent regarding due process, presumption of innocence, and the limits of state power in economic offences.
- The outcome may significantly impact how central investigative agencies operate, and how constitutional protections are interpreted in the context of economic crimes.

Source: <https://www.thehindu.com/news/national/supreme-court-seeks-issues-for-consideration-in-review-of-2022-pmla-ruling-final-hearing-on-august-6-7/article69549139.ece>