

4. Supreme Court examines allegations of rampant misuse of PMLA

Prelims Syllabus: Economy

Mains Syllabus: GS-III Economy: Money-Laundering & Its Prevention

Why in News?

- The Supreme Court is looking into allegations of the metamorphosis of the Prevention of Money Laundering Act (PMLA), brought to sniff out drug money, into a potent weapon to raid rivals and Deny Rights.

Prevention of Money Laundering Act (PMLA):

- PMLA, 2002 is an Act of the Parliament of India enacted by the NDA government to prevent money-laundering and to provide for confiscation of property derived from money-laundering.
- It was enacted in response to India's global commitment (including the Vienna Convention) to combat the menace of money laundering.
- PMLA and the Rules notified there under came into force with effect from July 1, 2005.
- The act was amended in the year 2005, 2009 and 2012.

Objectives of PMLA:

- The PMLA seeks to combat money laundering in India and has three main objectives:
- To prevent and control money laundering.
- To confiscate and seize the property obtained from the laundered money; and
- To deal with any other issue connected with money laundering in India.

Key Definitions:

- **Payment System:** A system that enables payment to be effected between a payer and a beneficiary, involving clearing, payment or settlement service or all of them. It includes the systems enabling credit card, debit card, smart card, money transfer or similar operations.
- **Money-laundering:** Whosoever directly or indirectly attempts to indulge or assist other person or actually involved in any activity connected with the proceeds of crime and projecting it as untainted property.
- **Attachment:** Prohibition of transfer, conversion, disposition or movement of property by an appropriate legal order.
- **Proceeds of crime:** Any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence.

Salient Features:

- **Punishment and Jail term:** The Act prescribes that any person found guilty of money-laundering shall be punishable with rigorous imprisonment from three years to seven years. The maximum punishment may extend to 10 years instead of 7 years.
- **Powers of attachment of tainted property:** The Director or officer above the rank of Deputy Director with the authority of the Director, can provisionally attach property believed to be “proceeds of crime”.
- **Adjudicating Authority:** It is the authority appointed by the central government which decides whether any of the property attached or seized is involved in money laundering.
- **Presumption in inter-connected transactions:** Where money laundering involves two or more inter-connected transactions. It is presumed that the remaining transactions form part of such inter-connected transactions.
- **Burden of proof:** A person, who is accused of having committed the offence of money laundering, has to prove that alleged proceeds of crime are in fact lawful property.
- **Appellate Tribunal:** It is given the power to hear appeals against the orders of the Adjudicating Authority and any other authority under the Act. Its orders are not final and can be challenged.
- **Establishment of Special Court:** To ensure speedy trial.

Issues with PMLA:

- **Misuse of Central Agencies:** PMLA is being pulled into the investigation of even ordinary crimes by the Enforcement Directorate.
- **Seizing of Assets:** Assets of genuine victims have been attached. The ED could just walk into anybody’s house.
- **Politically Motivated Raids:** In all this, the fundamental purpose of PMLA to investigate the conversion of “illegitimate money into legitimate money” was lost.
- **Opacity of charges:** Petitioners pointed out that even the Enforcement Case Information Report (ECIR) – an equivalent of the FIR – is considered an “internal document” and not given to the accused.
- **Vagueness over Evidences:** The accused is called upon to make statements which are treated as admissible in evidence.
- **Harassment:** The ED begins to summon accused persons and seeks details of all their Financial Transactions and of their family members.

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- **Against individual liberty:** The initiation of an investigation by the ED has consequences which have the potential of curtailing the liberty of an individual.

Way Ahead:

- It is unlikely that corruption can be substantially reduced without modifying the way Government Agencies operate.
- The fight against Corruption is intimately linked with the reform of the Investigations.
- Therefore the adjudicating authorities must work in cooperation and ensure the Highest standards of Transparency and Fairness.

