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# Prevention of Money laundering Act 2002

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**Why is in news?** The PMLA — a law that has lost its way

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.

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.

## Background to the law:

The **UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances** adopted in the **Vienna Convention (1988)** was the **first treaty** that called upon nations to adopt domestic laws to combat drug trafficking.

As part of these laws, countries were asked to **prohibit the conversion or transfer of property gained through dealing in narcotics to conceal its illicit origin.**

All countries were urged to take urgent steps to **prevent the laundering** of the proceeds of drug crimes and other connected activities.

The **Financial Action Task Force (FATF)** was established at the **G-7 Summit in Paris in 1989** in response to mounting concern over money laundering. The Task Force made recommendations from time to time to strengthen laws on the subject.

As drug trafficking is a trans-border operation, the UN held a special session on **June 10, 1998** on the **theme 'Countering World Drug Problem Together'** and made another declaration on the urgent need to combat money laundering.

The **UN Convention against Transnational Organized Crime of 2000 (Palermo Convention)** also advocated legislative and other measures to combat organized crime, and specifically called for 'criminalizing the laundering of proceeds of crime'

## The PMLA's enactment:

The **Indian Parliament** enacted the **Prevention of Money Laundering Act in 2002**. But it was brought into force in 2005.

The main focus of the law is on **combating the laundering of drug money.**

Accordingly, the Act of 2002 contained a few offences listed in the **Indian Penal Code (IPC) and the Narcotic Drugs and Psychotropic Substances Act, 1985.**

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**Article 253** gave the **Union Parliament the exclusive power** to make laws for any part of India's territory to implement any treaty, agreement or convention involving one or more countries.

Item 13 (Communication which is subject to provisions in List I and III) in the **Union list of the Seventh Schedule** of the Constitution is specific on this point.

It was enacted in January 2003 and seeks to combat money laundering in India **under three major domains**: Preventing and controlling Money Laundering; Confiscating and seizing the property obtained from the laundered money; and Issues that are directly connected with Money Laundering in India.

**Section 3 of the PMLA** defines the offense of money laundering as whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime and projecting it as untainted property shall be guilty of the offense of money-laundering.

The **Act was amended** by the Prevention of Money Laundering (Amendment) Act, **2009** and by the Prevention of Money Laundering (Amendment) Act, **2012**. Recently, the PMLA was amended through the Finance Act, 2015, Finance Act, 2018 and Finance Act, 2019.

### **Concerns with PMLA:**

The object of the Act is to curb the laundering of black money and to save the economy from **being destabilised**.

The learned judges nearly said that **inclusion of a particular offence** in the schedule comes within the domain of the legislative policy.

Over time, the PMLA schedule grew to **encompass a variety of offences unrelated to its initial aim**, such as those specified in the IPC or other special laws, diverging from its concentration on drug money laundering.

The **PMLA's harsh provisions, originally designed for drug traffickers**, are now applied equally to all scheduled offenses, including non-drug-related crimes such as corruption under the Prevention of Corruption Act of 1988.

### **Bail Provisions under PMLA:**

The present judicial approach to the issue of bail in PMLA cases appears to be very technical.

**Gudikanti NarasimhulAnd Ors vs Public Prosecutor (1978)**: The judicial perspective on bail was laid out by Justice V.R. Krishna Iyer (Andhra Pradesh HC) where it said that "Personal liberty is deprived when bail is refused, which is too precious value of our constitutional system recognized under Article 21".

The bail provision of the **PMLA Act (Section 45)** is invested with a lot of political significance in present day India.

The PMLA's bail provision (Section 45) **reverses** the presumption of **innocence, requiring the accused to prove innocence in order to be granted bail**, resulting in lengthy incarceration **without trial and generating concerns** about individual rights.

It was held **unconstitutional** by a two-judge Bench of the Supreme Court of India in **Nikesh Tarachand Shah vs Union of India (2018)** as violating Article 14 and Article 21.

However, Parliament, with great alacrity, restored this provision with certain amendments which was upheld by a three-judge Bench headed by Justice A.M. Khanwilkar in **Vijay Madanlal Choudhary vs Union of India (2022)**.

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The top court held that this provision is reasonable and has direct nexus with the purposes and objects of the PMLA Act.

**Conclusion:**

India as a signatory to the treaties and an important participant in the international process and the fight against money laundering is bound legally and morally, to adopt the global best practices and respond to the changing needs of the times.