



## Misuse of Prevention of Money Laundering Act

**For Prelims:** Supreme Court, Money Laundering, Prevention of Money Laundering Act, Enforcement Directorate, Enforcement Case Information Report, Foreign Exchange Management Act.

**For Mains:** Money Laundering, Challenges to Internal Security Through Communication Networks, Significance and issues with the Prevention of Money Laundering Act 2002 (PMLA), Foreign Exchange Management Act.

### Why in News

The [Supreme Court \(SC\)](#) is examining allegations of rampant misuse of [Prevention of Money Laundering Act 2002 \(PMLA\)](#) by the government and the [Enforcement Directorate \(ED\)](#).

### What are the Major Allegations?

#### ▪ Being Used for Ordinary Crimes:

- PMLA is **pulled into the investigation of even “ordinary” crimes** and assets of genuine victims have been attached.
- PMLA was enacted in response to India’s global commitment (including the Vienna Convention) to combat the menace of money laundering. Instead, **rights have been “cribbed, cabined and confined”**.
- PMLA was a **comprehensive penal statute to counter the threat of money laundering**, specifically stemming from trade in narcotics.
  - Currently, the **offences in the schedule of the Act are extremely overbroad**, and in several cases, have absolutely no relation to either narcotics or organised crime.

#### ▪ Lack of Transparency and Clarity:

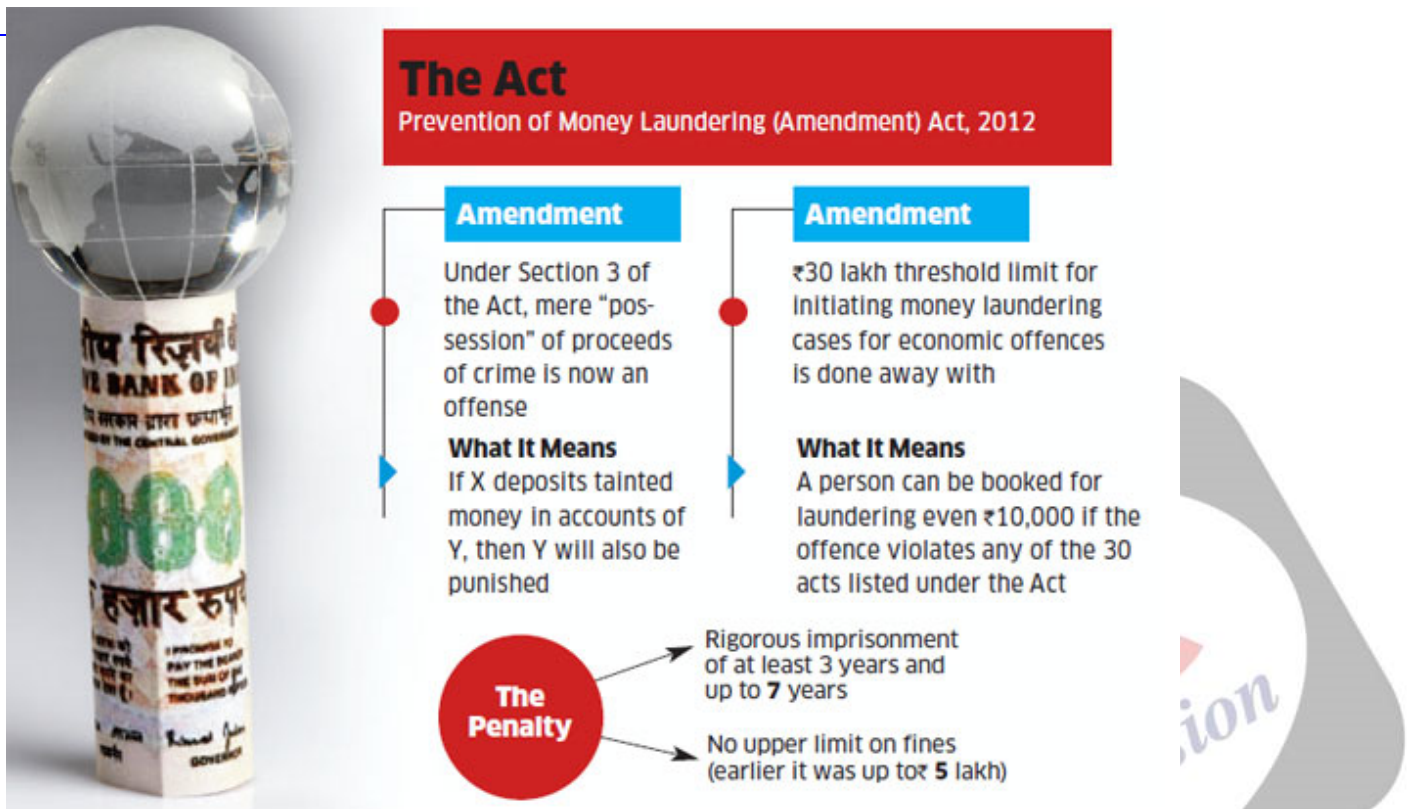
- Even the **Enforcement Case Information Report (ECIR)** - an equivalent of the FIR - is considered an “internal document” and **not given to the accused**.
  - The **ED treats itself as an exception to these principles and practises [of criminal procedure law]** and chooses to register an ECIR on its own whims and fancies on its own file.
- There is also a **lack of clarity about ED’s selection of cases to investigate**. The initiation of an investigation by the ED has consequences which have the potential of curtailing the liberty of an individual.

### What is the Prevention of Money Laundering Act?

- It forms the core of the legal framework put in place by India to combat Money Laundering.
- The provisions of this act are applicable to all financial institutions, banks (Including RBI), mutual funds, insurance companies, and their financial intermediaries.
- **PMLA (Amendment) Act, 2012:**
  - Adds the concept of ‘reporting entity’ which would include a banking company, financial institution, intermediary etc.

- **PMLA, 2002** levied a fine up to Rs 5 lakh, but the amendment act has removed this upper limit.
- It has provided for provisional attachment and confiscation of property of any person involved in such activities.

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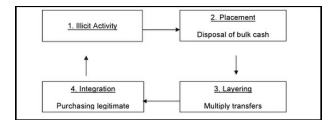
## What is Money Laundering?

### ▪ About:

- Money laundering is the **process of making large amounts of money generated by criminal activity**, such as drug trafficking or terrorist funding, **appear to have come from a legitimate source**.
- **Criminal activities** like illegal arms sales, smuggling, drug trafficking and prostitution rings, insider trading, bribery and computer fraud schemes produce large profits.
- Thereby it **creates the incentive for money launderers to "legitimise" the ill-gotten gains** through money laundering.
- The money generated is called '**dirty money**' and money laundering is the process of conversion of 'dirty money', to make it appear as 'legitimate' money.

### ▪ Process of Money Laundering:

- Money laundering is a **three-stage process** :
  - **Placement:** The first stage is when the crime money is injected into the formal financial system.
  - **Layering:** In the second stage, money injected into the system is layered and spread over various transactions with a view to obfuscate the tainted origin of the money.
  - **Integration:** In the third and the final stage, money enters the financial system in such a way that original association with the crime is sought to be wiped out and the money can then be used by the offender as clean money.



- **Some of the Common Methods of Money Laundering:**

- Bulk Cash Smuggling, Cash Intensive Businesses, Trade-based laundering, Shell companies and trusts, Round-tripping, Bank Capture, Gambling, Real Estate, Black Salaries, Fictional Loans, Hawala, False invoicing.

## What is the Enforcement Directorate?

- Directorate of Enforcement is a **specialised financial investigation agency** under the Department of Revenue, Ministry of Finance..
- On **1<sup>st</sup> May 1956, an 'Enforcement Unit' was formed**, in the Department of Economic Affairs, for handling Exchange Control Laws violations under **Foreign Exchange Regulation Act, 1947**.
- In the year 1957, this Unit was renamed as 'Enforcement Directorate'.
- ED enforces the following laws:
  - **Foreign Exchange Management Act,1999 (FEMA)**
  - Prevention of Money Laundering Act, 2002 (PMLA)

**Source: TH**

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