



Prevention of Money Laundering Act

For Prelims: Fugitive Economic Offenders Act, 2018 FEOA, Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 COFEPOSA.

For Mains: Issue of Money Laundering, Powers of ED, Judicial Review.

Why in News?

Recently, the [Supreme Court](#) has rejected a plea by a political leader challenging his arrest by the [Enforcement Directorate \(ED\)](#) on [Money Laundering](#) charges.

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 launderer to "legitimize" 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.**

▪ Stages:

- **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.

What is the Prevention of Money Laundering Act (PMLA), 2002?

▪ Background:

- The PMLA **was enacted in response to India's global commitment (Vienna Convention)** to combat the menace of money laundering. These include:
 - [United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988](#)
 - **Basle Statement of Principles, 1989**
 - [Forty Recommendations of the Financial Action Task Force on Money Laundering, 1990](#)
 - **Political Declaration and Global Program of Action adopted by the [United](#)**

[Nations General Assembly in 1990.](#)

▪ **About:**

- It is a criminal law enacted to prevent money laundering and to provide for confiscation of property derived from, or involved in, money-laundering and related matters.
- 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.

▪ **Recent Amendments:**

- **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
- **Continuing Nature of Offence:** This amendment further mentioned that the person will be considered to be involved in the offence of money laundering till the time that person is getting the fruits of activities related to money laundering as this offence is of a continuing nature.

What is the Enforcement Directorate?

▪ **History:**

- The Directorate of Enforcement or the ED is a multi-disciplinary organization mandated with investigation of economic crimes and violations of [foreign exchange laws](#).
- The origin of this Directorate goes back to 1st May, 1956, when an 'Enforcement Unit' was formed in the Department of Economic Affairs for handling Exchange Control Laws violations under Foreign Exchange Regulation Act, 1947 (FERA '47).
- With the onset of the process of [economic liberalization](#), **FERA, 1973**, which was a regulatory law, was repealed and in its place, [Foreign Exchange Management Act, 1999 \(FEMA\)](#) came into operation.
- Recently, with the increase in the number of cases relating to economic offenders taking shelter in foreign countries, the Government has passed the [Fugitive Economic Offenders Act, 2018 \(FEOA\)](#) and ED is entrusted with its enforcement.

▪ **Functions:**

- **The PMLA, 2002:**
 - ED has been given the responsibility to enforce the provisions of the PMLA by conducting investigation to trace the assets derived from proceeds of crime, to provisionally attach the property and to ensure prosecution of the offenders and confiscation of the property by the Special court.
- **The FEMA, 1999:**
 - ED has been given the responsibility to conduct investigation into suspected contraventions of foreign exchange laws and regulations, to adjudicate and impose penalties on those adjudged to have contravened the law.
- **The FEOA, 2018:**
 - It is a law whereby the Directorate is mandated to attach the properties of the fugitive economic offenders who have escaped from India warranting arrest and provide for the confiscation of their properties to the Central Government.
- **Sponsoring agency under COFEPOSA:**
 - Under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (COFEPOSA), Directorate is empowered to sponsor cases of preventive detention with regard to contraventions of FEMA.

Source: IE

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