



Prior Sanction to Prosecute Public Servants Under PMLA

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Why in News?

The [Supreme Court \(SC\) of India](#) recently upheld a decision by the **Telangana High Court**, mandating that public servants must receive **prior government sanction** before being prosecuted under the [Prevention of Money Laundering Act \(PMLA\), 2002](#).

- This decision clarifies that Section 197(1) of the [Code of Criminal Procedure, 1973](#) (now replaced by the [Bharatiya Nagarik Suraksha Sanhita, 2023](#)), which mandates prior government sanction to prosecute public servants, also applies to PMLA cases.

What is Section 197(1) of CrPC?

- It mandates **prior government sanction before prosecuting public servants**, judges, or magistrates for actions performed in their official duties.
 - This aims to prevent malicious prosecutions and protect decision-making in good faith. The sanction must come from the Central Government for Union-affiliated individuals and from the State Government for those in State affairs.
- **Exceptions:** Specific crimes, particularly those involving **gender-based violence and sexual offences** under the [Indian Penal Code, 1860 \(BNS, 2023\)](#) do not require prior sanction for prosecution of public servants.

How Does the PMLA Interact with the CrPC?

- **Section 65 of PMLA:** Provides for CrPC provisions to apply to PMLA cases unless they conflict with the PMLA itself.
- **Section 71 of PMLA:** Asserts that PMLA provisions have overriding authority over other laws in cases of inconsistency.
- **Supreme Court's Ruling:** The appellant [Enforcement Directorate \(ED\)](#) had argued that Section 71 of the PMLA, which gives the PMLA overriding authority over other laws, should exclude the prior sanction requirement. However, the SC rejected this claim.
 - The SC held that Section 197(1) of the CrPC is **not inconsistent with the PMLA**, thus requiring its application in cases involving public servants under the PMLA.
 - It further clarified that **Section 71 cannot nullify Section 197(1)**, as doing so would render Section 65 of the PMLA redundant.
- **Implications of SC Ruling:** This sets a benchmark for applying the CrPC to PMLA cases, **clarifying the limits of the PMLA's overriding authority under Section 71**.
 - The judgement limits the ED's ability to prosecute public servants under PMLA without government consent, highlighting the **need for due process**.
 - The SC ruling balances the government's efforts to combat **money laundering** with the rights of public servants to fair legal procedures.

Note: In the *CBI v. Dr. R.R. Kishore Case, 2023*, the SC ruled that [Section 6A](#) of the [Delhi Special Police Establishment \(DSPE\) Act, 1946](#), requiring prior government sanction for arresting officers of **joint secretary rank and above**, was unconstitutional.

- The SC held that such a law is **void ab initio** under [Article 13\(2\) of the Constitution](#) and rendering Section 6A invalid from its inception in 2003.

Constitutional Protection for Civil Servants

- **Part XIV of the Constitution:** Deals with services under the Union and the States.
- **Article 309:** Empowers [Parliament](#) and State legislatures to regulate the recruitment and conditions of service for civil servants.
- **Doctrine of Pleasure:** Article 310 states civil servants hold office at the pleasure of the President or Governor, but this power is not absolute.
- **Article 311: It lays down two major safeguards for civil servants.**
 - Dismissal or removal can only be done by the appointing authority or a higher rank.
 - Dismissal or reduction in rank requires an inquiry with a reasonable opportunity to defend.

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