



Introspecting PMLA, 2002

This editorial is based on [“The PMLA — a law that has lost its way”](#) which was published in The Hindu on 02/04/2024. The article explores various aspects of the Prevention of Money Laundering Act, 2002 (PMLA). It highlights a critical concern that the PMLA includes offences unrelated to its primary objective of combating drug money laundering.

For Prelims: [Supreme Court](#), [Money Laundering](#), [Prevention of Money Laundering Act, 2002](#), [Enforcement Directorate](#), [United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988](#), [Enforcement Case Information Report](#), [Foreign Exchange Management Act, 1999](#).

For Mains: Legal and Regulatory framework in India to combat Money Laundering, Prevention of Money-Laundering Act (PMLA) and its objectives, Impact of Money Laundering on the economy.

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. The recent series of arrests of political leaders made under the PMLA, 2002, and the government's reliance on it, highlight the need for a thorough examination of its provisions.

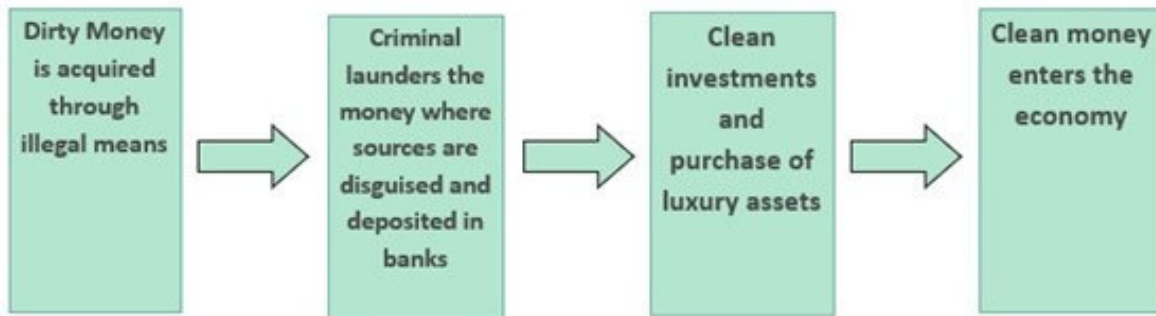
What is Money Laundering?

- **About:**
 - Money laundering is a complex process used by individuals and organisations to conceal the origins of illegally obtained money. It involves making illicit funds appear legitimate through a series of transactions.
- **Stages of Money Laundering:**
 - **Placement:** The initial stage where illicit funds are introduced into the financial system. This can involve deposits into bank accounts, currency exchanges, or purchases of valuable assets.
 - **Layering:** The process of separating the illicit funds from their source through a series of complex financial transactions. This often involves transferring funds between accounts or across borders to obscure their origin.
 - **Integration:** The final stage where the laundered funds are reintroduced into the economy as legitimate funds. This can involve investing in businesses, purchasing real estate, or other means of legitimising the funds.
- **Methods of Money Laundering:**
 - **Structuring (Smurfing):** Breaking up large amounts of cash into smaller, less conspicuous amounts that are then deposited into bank accounts.

- **Trade-Based Laundering:** Using trade transactions to move value across borders and disguise the origins of illicit funds.
- **Shell Companies:** Creating companies with no legitimate business activity to funnel illicit funds through legitimate-looking transactions.
- **Real Estate:** Purchasing real estate with illicit funds and then selling it to convert the value into legitimate assets.

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How Money Laundering Works?



What is PMLA, 2002?

▪ About:

- The Prevention of Money Laundering Act, 2002 (PMLA) is an Act of the Parliament of India enacted to prevent money laundering and provide for the confiscation of property derived from money laundering.
- It aims to combat money laundering related to illegal activities such as drug trafficking, smuggling, and terrorism financing.

▪ Key Provisions of PMLA:

- **Offences and Penalties:** PMLA defines money laundering offences and imposes penalties for such activities. It includes rigorous imprisonment and fines for offenders.
- **Attachment and Confiscation of Property:** The Act allows for the attachment and confiscation of property involved in money laundering. It provides for the establishment of an Adjudicating Authority to oversee these proceedings.
- **Reporting Requirements:** PMLA mandates certain entities, such as banks and financial institutions, to maintain records of transactions and report suspicious transactions to the Financial Intelligence Unit (FIU).
- **Designated Authority and Appellate Tribunal:** The Act establishes a Designated Authority to assist in the investigation and prosecution of money laundering offences. It also provides for the establishment of an Appellate Tribunal to hear appeals against orders of the Adjudicating Authority.

▪ Objectives of PMLA:

- **Prevention:** To prevent money laundering by implementing stringent measures and monitoring financial transactions.
- **Detection:** To detect and investigate instances of money laundering through proper enforcement and regulatory mechanisms.
- **Confiscation:** To confiscate properties derived from money laundering activities to deter offenders and disrupt illicit financial flows.
- **International Cooperation:** To facilitate international cooperation in combating money laundering and terrorist financing activities.

▪ Recent Amendments to PMLA, 2002:

- **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.

A TYPICAL MONEY LAUNDERING SCHEME



What Factors Necessitated the Adoption of PMLA, 2002?

- **Flourishing Drug Trade at Global Level:**
 - The **United Nations** took serious note of this, and in 1988, held the **United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances**. All countries were urged to take urgent steps to prevent the laundering of the proceeds of drug crimes and other connected activities.
- **Formation of Financial Action Task Force:**
 - Seven major industrial nations held a summit in Paris in 1989 and established the **Financial Action Task Force (FATF)** to examine the problem of money laundering and recommend measures to tackle this menace.
 - Thereafter, in 1990, the **United Nations General Assembly (UNGA)** adopted a resolution, namely, the Political Declaration and Global Programme of Action which called upon all member-countries to enact suitable pieces of legislation to effectively prevent the laundering of drug money.
- **Adoption by Indian Parliament:**
 - In pursuance of this resolution of the UN General Assembly, the Government of India used the recommendations of the FATF to formulate a legislation to prevent **drug money laundering**.
 - As drug trafficking is a trans-border operation, the UN held a special session in 1998 on the theme 'Countering World Drug Problem Together' and made another declaration on the urgent need to combat money laundering.
 - Accordingly, the **Indian Parliament** enacted the Prevention of Money Laundering Act in 2002. But it was brought into force in 2005.
- **Recommendations of the Narasimham Committee:**

- The Narasimham Committee on Banking Sector Reforms, commissioned by the [Reserve Bank of India \(RBI\)](#) in 1998, underscored the importance of addressing money laundering concerns within the Indian financial system. These recommendations spurred legislative action.
- **Adhering to Provisions of Erstwhile Legislations:**
 - 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](#).
 - The UN resolutions, and the FATF recommendations are all focused on the prevention of money from the laundering of drugs. However, the PMLA of India acquired a different character through amendments from time to time.
- **Note:**
 - The PMLA was enacted by India's Parliament under [Article 253](#) which empowers it to make laws for implementing the international conventions.
 - This Article indicates that a law Parliament makes to implement any decision of an international body will be confined to the subject matter of that decision.
 - Item 13 in the [Union list](#) of the [Seventh Schedule](#) of the Constitution is specific on this point.

What are the Different Concerns Regarding PMLA, 2002?

- **Proceeds of Crime -Too Broad Definition:**
 - Debates have emerged regarding the interpretation of the term "proceeds of crime" in the context of the PMLA. Some argue that the definition is excessively broad and has the potential to encompass lawful financial transactions, possibly leading to misuse.
 - The law on money laundering revolves around the "crime proceeds" which are laundered. Not only the persons involved directly in the crime and the generation of the crime proceeds but also persons who have nothing to do with the crime but who have some involvement at a later stage in the laundering process are also guilty under this law.
- **Large Number of Offences:**
 - The most serious aspect of the PMLA is that it includes a large number of offences in the schedule which have nothing to do with the original purpose of this law — namely, combating the laundering of drug money.
 - The UN resolution on the basis of which the law on laundering was enacted in India spoke only about the offence of the laundering of drug money. This was considered the most serious economic crime which had the potential to destabilise the world economy and endanger the sovereignty of nations.
- **Burden of Proof on Accused:**
 - Concerning the burden of proof, critics maintain that it is unreasonably burdensome for the accused under the PMLA. The alteration in the burden of proof may, on occasion, present challenges in ensuring a fair trial.
- **Overreach by Officers**
 - It is contended that the legislation might confer excessive powers upon authorities, potentially leading to misuse and overreach. Striking a balance between empowering law enforcement and safeguarding individual rights presents a nuanced challenge.
- **Stringent Bail Conditions:**
 - PMLA in India allows for stringent bail conditions to be imposed on individuals accused of money laundering offences.
 - A fundamental principle of Anglo-Saxon jurisprudence is that a person is presumed innocent until proven guilty. PMLA turns this principle upside down.
 - An accused will be denied bail by the entire hierarchy of courts because the bail provision contained in section 45 of the PMLA says that a judge can give bail only when he is satisfied that the accused is innocent.
- **Arrest of Person Without Written Communication of Grounds of Arrest:**
 - Violating [Article 22\(1\) of the Constitution](#) and Section 19(1) of the 2002 PMLA, relying

solely on verbal communication for arrest is considered inadequate. **Enforcement Directorate** officers have consistently acted in contravention of these provisions for a significant period.

What Suggestions Need to be Implemented in Reforming PMLA, 2002?

- **Refinement of "Proceeds of Crime" Definition:**
 - Propose a more precise definition of "Proceeds of Crime" in the PMLA to mitigate potential ambiguity that could disrupt financial operations.
 - Seek input from legal experts, financial institutions, and relevant stakeholders to draft a clear, comprehensive definition aligned with international standards.
- **Reassessment of Burden of Proof:**
 - Evaluate the burden of proof on the accused, especially concerning reliance on statements from other accused or individuals.
 - Explore ensuring a reasonable burden of proof that balances the need for a fair trial while safeguarding fundamental rights guaranteed by the Constitution.
 - Consider amendments for a more equitable distribution of the burden of proof between the prosecution and the accused.
- **Safeguards Against Overreach by Officers:**
 - Introduce additional checks and balances to prevent potential overreach by officers, particularly in cases involving political opponents.
 - Establish clear guidelines and protocols for investigative methods to protect individual rights and privacy, ensuring legally justified asset seizures and adherence to due process.
 - Institute an independent oversight mechanism to review and monitor the actions of law enforcement officers in money laundering cases.
- **Review of Stringent Bail Conditions:**
 - Conduct a comprehensive review of stringent bail conditions, particularly under Section 45 of the PMLA, to assess their necessity and impact on accused individuals.
 - Consider aligning bail procedures for money laundering cases with those applicable to other financial crimes, eliminating perceived bias or undue hardship.
 - Explore alternatives to streamline the bail adjudication process without compromising the integrity of investigations.
- **Periodic Review and Amendment of PMLA:**
 - Establish a periodic review mechanism to assess the effectiveness and relevance of the PMLA, addressing emerging challenges and evolving international standards.
 - Encourage parliamentary discussions and debates on potential amendments to the PMLA, involving legal experts, lawmakers, and representatives from financial institutions.
- **Enhanced Independence and Transparency of ED:**
 - Strengthen the independence of the Enforcement Directorate (ED) by ensuring its actions are free from political influence.
 - Introduce measures to enhance transparency in the functioning of the ED, including regular reporting and disclosure of cases handled, convictions secured, and actions taken.
- **Public Awareness and Education:**
 - Conduct public awareness campaigns to educate citizens about the purpose, procedures, and implications of the PMLA.
 - Promote understanding of individual rights and legal safeguards, fostering cooperation between law enforcement agencies and the public.
- **Consultative Approach:**
 - Adopt a consultative and inclusive approach in the policymaking process, seeking input from legal experts, civil society organisations, financial institutions, and the public.
 - Engage in open dialogues and consultations to address concerns and gather diverse perspectives on proposed reforms. Establish mechanisms for continuous monitoring and evaluation of the implementation of reforms.
 - Participate actively in international forums to stay updated on global standards and contribute to shaping international efforts against money laundering.

Conclusion

The current judicial approach to bail in cases under the PMLA seems overly technical. Justice V.R. Krishna

Iyer, in 1978, emphasized the importance of personal liberty in the Gudikanti Narasimhulu case, stating that denying bail is a serious judicial responsibility under Article 21, requiring careful consideration of its impact on the individual and society. However, amendments over time expanded the scope of the law to include offences beyond drug money laundering, leading to concerns about its original intent. The PMLA's evolution underscores the complexities and challenges in addressing money laundering while ensuring fairness and justice.

Drishti Mains Question:

Evaluate the effectiveness of legislative frameworks in combating money laundering, with a focus on recent amendments and challenges.

UPSC Civil Services Examination, Previous Year Questions (PYQs)

Q. Discuss how emerging technologies and globalisation contribute to money laundering. Elaborate measures to tackle the problem of money laundering both at national and international levels. **(2021)**

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