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**DAILY EDITORIAL
ANALYSIS**

TOPIC

**Prevention of Money
Laundering Act (PMLA): Key
Aspects**

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PREVENTION OF MONEY LAUNDERING ACT (PMLA): KEY ASPECTS

In News

- The Punjab and Haryana high court has made it clear that courts can order release of an accused of money laundering under police custody without fulfilling twin conditions as mandated under the **Prevention of Money Laundering Act (PMLA), 2002**.

About the Act

- PMLA forms the core of the legal framework put in place by India to combat **money laundering**.
- PMLA and the Rules notified there under came into force with effect from July 1, 2005 .
 - ♦ The PMLA was enacted by India's Parliament under **Article 253** which empowers it to make laws for implementing the international conventions.
- The Act seeks to combat money laundering in India and has **three main objectives**:
 - ♦ to prevent and control money laundering
 - ♦ to confiscate and seize the property obtained from the laundered money
 - ♦ to deal with any other issue connected with money laundering in India.
- Director, **FIU-IND** and **Director (Enforcement)** have been conferred with exclusive and concurrent powers under relevant sections of the Act to implement the provisions of the Act.
- The Act was amended by the Prevention of Money Laundering (Amendment) Act, 2009 and by the Prevention of Money Laundering (Amendment) Act, 2012.

Need of the act and Background

- 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.
- Therefore in 1988, the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances was held .
 - ♦ Seven major industrial nations held a summit in Paris (July 1989) and established the **Financial Action Task Force (FATF)** to examine the problem of money laundering and recommend measures to tackle this menace.
- **In 1990**, the United Nations General Assembly 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.

Emerging Issues

- **Crime proceeds**: PMLA revolves around the "**crime proceeds**" which are laundered.
 - ♦ 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.
 - ♦ an accused under PMLA is presumed to be guilty until proven innocent.
 - A fundamental principle of **Anglo-Saxon jurisprudence** is that a person is presumed innocent until proven guilty. PMLA turns this principle upside down.
- **Large number of Offences**: PMLA **includes a large number of offences in the schedule** which have nothing to do with the original purpose of this law.
 - ♦ its ambit has been extended to cover even offences not related to drug trafficking, organised crimes, and other serious crimes.
- **Lack of Transparency : Enforcement Case Information Report (ECIR)**: the absence of a procedure to commence investigation and summoning, while the accused was not made aware of the contents of the Enforcement Case Information Report (ECIR).

- **The bail provision:** The bail provision of the PMLA Act (Section 45) is invested with a lot of political significance in present day India.
 - ♦ 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.
 - But In 2022, the Supreme Court upheld the validity of various provisions of the Prevention of Money Laundering Act (PMLA) which empowers ED to make arrests, conduct search and seizures and attach proceeds of crime.

Conclusion and Way Forward

- 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 .
 - ♦ But legal and constitutional safeguards must be kept in mind in this context .
- The Supreme Court's decision in Pankaj Bansal vs Union of India is a significant step towards enhancing transparency, accountability, and fairness in the arrest procedures under PMLA.
 - ♦ It delved into an important point of law — how is the enforcement directorate (ED) required to “inform” persons arrested under the Prevention of Money Laundering Act, 2002, (PMLA) of the grounds of their arrest.
 - ♦ In addition to increased transparency, the decision will foster better corporate governance.
- There must be a global consensus on the need to have a law to deal effectively.

Mains Practice Question

[Q] Money laundering has the potential to destabilise the economy and endanger the integrity and sovereignty of nations. In light of the above statement, analyse effectiveness of Prevention of Money Laundering Act (PMLA) .

