

SC upholds powers of arrest, raid under PMLA

'Money laundering is no less heinous than terrorism'

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The Supreme Court on Wednesday upheld the core amendments made to the Prevention of Money Laundering Act (PMLA), which gives the government and the Enforcement Directorate (ED) virtually unbridled powers of summons, arrest, and raids, and makes bail nearly impossible while shifting the burden of proof of innocence on to the accused rather than the prosecution.

The top court called the PMLA a law against the "scourge of money laundering" and not a hatchet wielded against rival politicians and dissenters.

"This is a *sui generis* (unique) legislation... Parliament enacted the Act as a result of international commitment to sternly deal with the menace of money laundering of proceeds of crime having transnational consequences and on the financial systems of the countries," a Special Bench of Justices A.M. Khanwilkar, Dinesh Maheshwari and C.T. Ravikumar observed in a 545-page judgment.

Extensive challenge

The verdict came on an extensive challenge raised against the amendments introduced to the 2002 Act by way of Finance Acts. The three-judge Bench said the method of introduction of the amendments through Money Bills would be separately examined by a larger Bench of the top court.

"Money laundering is an

On ED's power under PMLA

An upshot of the judgment by the Supreme Court on the validity of certain provisions under the Prevention of Money Laundering Act

- The offence of money laundering is as heinous an offence as terrorism
- Section 3 (definition of money laundering), Section 24 (reverse burden of proof), and Section 5 (attachment of property) to stay
- Stringency in granting bail under the Act is legal and not arbitrary
- It is not mandatory to give an Enforcement Case Information Report (ECIR) in every case as it was not an FIR
- The statements made to ED are considered admissible
- Provision of attachment of property of accused as proceeds of crime 'balances' the interests of the accused and the State
- The question of enactment of PMLA amendments through the Money Bill route is to be decided by a larger Bench



offence against the sovereignty and integrity of the country," the court noted. "It is no less a heinous offence than the offence of terrorism," Justice Khanwilkar, who authored the judgment, said.

Over 240 petitions were filed against the amendments, which the challengers claimed would violate personal liberty, procedures of law and the constitutional mandate. The petitioners included former Ministers Mehbooba Mufti, Anil Deshmukh and Karti Chidambaram, who all claimed that the "process itself was the punishment".

The court's stamp of approval comes at a crucial time when Congress leaders like Sonia Gandhi are being summoned by the ED and put to several rounds of questioning spanning hours.

Justice Khanwilkar underscored how illegitimate money could disappear abroad with a click of the mouse. "Once this money leaves the country, it is almost impossible to get it back," he said.

Submissions rejected

The apex court rejected submissions by senior advocate Kapil Sibal, for petitioners, that the accused's right against self-incrimination suffered when the ED summoned them and made them sign statements on threats of arrest.

But the court said these statements were recorded as part of an "inquiry" into the proceeds of crime. A person cannot claim right against self-incrimination at a summons stage.