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# ADJUDICATING AUTHORITY UNDER THE PMLA PROVISIONS

THIS ARTICLE COVERS 'DAILY CURRENT AFFAIRS' AND THE TOPIC DETAILS OF "ADJUDICATING AUTHORITY UNDER THE PMLA PROVISIONS". THIS TOPIC IS RELEVANT IN THE "ECONOMICS" SECTION OF THE UPSC CSE EXAM.

## WHY IN THE NEWS?

Recently, the adjudicating authority under the Prevention of Money Laundering Act (PMLA) upheld the Enforcement Directorate (ED) 's attachment of assets worth around ₹752 crore of Congress-run National Herald newspaper and associated firms, terming them "proceeds of crime" involved in money laundering.

These assets include prime properties in Delhi, Mumbai, and Lucknow owned by Associated Journal Limited (AJL) and Young Indian (YI), associated with Congress leaders Sonia Gandhi and Rahul Gandhi. According to the ED's findings, AJL possessed proceeds of crime valued at Rs.661.69 crore through immovable properties across various cities. In comparison, YI held proceeds totalling Rs.90.21 crore in AJL's equity shares.

## BACKGROUND OF THE ENFORCEMENT DIRECTORATE (ED):

- The Enforcement Directorate (ED) is a domestic law enforcement and economic intelligence agency. It is responsible for enforcing economic laws and fighting economic crime in India.
- EDs originated in May 1956, when an "enforcement unit" was formed to handle Exchange Control law violations under the Foreign Exchange Regulation Act (FERA) 1947. In 1957, this unit was renamed 'Enforcement Directorate'.
- ED is controlled by the Department of Revenue, Ministry of Finance, and Government of India.
- The Enforcement Directorate's prime objective is to enforce three key Acts of the Government of India, mainly the Foreign Exchange Management Act, 1999 (FEMA), the Prevention of Money Laundering Act, 2002 (PMLA), and the Fugitive Economic Offenders Act, 2018 (FEOA).

## ABOUT THE PREVENTION OF MONEY LAUNDERING ACT, 2002:

The Enforcement Directorate (ED) enforces the Prevention of Money Laundering Act (PMLA) by investigating to identify assets acquired from criminal proceeds. It has the authority to prosecute offenders and facilitate the confiscation of such assets by a Special Court.

Section 3 of the Act defines money laundering as any direct or indirect involvement, assistance, or engagement in activities related to the proceeds of crime, presenting it as legitimate. PMLA defines

money laundering offences and imposes penalties for them. These include imprisonment and fines for offenders.

PMLA allows certain entities, such as banks and financial institutions, to maintain records of transactions and report suspicious transactions to the ED. The Act establishes a Designated Authority to assist in investigating and prosecuting money laundering offences. Also, it provides for establishing an Appellate Tribunal to hear appeals against orders of the Adjudicating Authority.

The Act was amended by the Prevention of Money Laundering (Amendment) Act, 2009 and the Prevention of Money Laundering (Amendment) Act, 2012. The recent PMLA was amended through the Finance Act of 2015 ('2015 Amendment'), Finance Act of 2018 ('2018 Amendment'), and Finance Act 2019 ('2019 Amendment').

#### **POWERS OF ED UNDER THE PMLA:**

1. Sections 48 & 49 of the PMLA empower the ED officers to investigate cases of Money Laundering.
2. Section 50(2) of the PMLA authorizes the ED to summon "any person" needed for evidence or record production during investigations or proceedings under the law.
3. Section 50 (3) required the summoned individual to attend personally or via authorized agents, ensuring they provided truthful statements and relevant documents.
4. The ED has special powers for confiscating property under the PMLA Act.

#### **ADJUDICATING AUTHORITY UNDER THE PMLA PROVISIONS:**

- In Section 5 of the PMLA, ED can provisionally attach assets suspected to be acquired through criminal proceeds.
- This provisional attachment order is valid for 180 days.
- The central government-appointed adjudicating authority will review the attachment orders to ensure compliance with legal standards and procedural requirements.
- The accused can challenge the adjudicating authority's confirmation order at the PMLA's Appellate Tribunal within 45 days.
- If convicted, the trial court may order the confiscation of the attached property and vest the property rights with the central government.

#### **MAINS PRACTICE QUESTION:**

- Q. Money laundering poses a serious security threat to a country's economic sovereignty. Critically examine.**

**Amit Pradhan**

# UPHOLDING THE PRIVACY OF ELECTORAL CANDIDATES

THIS ARTICLE COVERS 'DAILY CURRENT AFFAIRS' AND THE DETAILS OF 'UPHOLDING PRIVACY OF ELECTORAL CANDIDATES'. THIS TOPIC IS RELEVANT TO THE "POLITY AND GOVERNANCE" SECTION OF THE UPSC CSE EXAM.

## WHY IN THE NEWS?

The Supreme Court has held that individuals running for office in elections possess a right to privacy regarding certain aspects of their personal lives and belongings, and they are not obligated to reveal every detail. This ruling was made in response to a specific case involving an MLA whose election was contested due to the failure to disclose vehicles as assets. The Court sided with the MLA, asserting that vehicles, once sold, do not qualify as assets for the purpose of election disclosure.

## MORE ABOUT THE CASE

- The Supreme Court was presented with a case wherein an MLA from Arunachal Pradesh **challenged a 2023 Guwahati High Court ruling that invalidated his election** due to the omission of three vehicles from his assets declaration, as required by the **Conduct of Election Rules, 1961**.
- The MLA was accused of violating **Section 123 of the Representation of People Act (RPA), 1951**, which defines "corrupt practice" for not disclosing ownership of these vehicles.
- However, the Supreme Court ruled that a candidate's decision to maintain privacy regarding **matters irrelevant to their candidacy** or of no concern to voters **does not constitute a "corrupt practice" under Section 123 of the RPA, 1951**.
- Furthermore, such non-disclosure does **not amount to a significant defect under Section 36(4) of the RPA, 1951**. The court emphasised that voters have a right to essential information for making an informed decision about the candidate they wish to support.
- The court elucidated that candidates are not obligated to disclose every movable asset unless it notably affects their overall asset value or mirrors their standard of living.

## ABOUT REPRESENTATION OF THE PEOPLE ACT (RPA), 1951

- The Representation of the People Act (RPA), 1951, is a significant piece of legislation in India that governs elections to the Parliament and State Legislatures. Enacted by the Indian Parliament, the RPA, 1951 **lays down the framework for conducting free and fair elections in the country**.
- It **outlines the qualifications and disqualifications for candidates contesting elections**, the process of voter registration, the conduct of elections, and the resolution of disputes arising from elections.
- **Some important key provisions of RPA, 1951 are-**
  1. **Qualifications and Disqualifications of Candidates: Sections 8 to 10** of the RPA, 1951, **outline the qualifications required for individuals to contest elections to the Parliament and State Legislatures**. It also specifies various grounds for disqualification, such

as being of unsound mind, being an undischarged insolvent, or holding an office of profit under the government.

2. **Conduct of Elections: Sections 21 to 29** deal with the **conduct of elections, including the preparation of electoral rolls**, the appointment of election officers, the nomination process for candidates, and the procedure for polling.
3. **Disputes Regarding Elections: Sections 80 to 99** provide for the resolution of disputes arising from elections. This includes the filing of election petitions, the jurisdiction of election tribunals, and the grounds on which an election can be challenged.
4. **Election Expenses: Sections 77 to 81F regulate the expenditure incurred by candidates and political parties during elections.** The Act imposes limits on campaign spending to curb the influence of money in politics and requires candidates to submit expenditure statements.
5. **Election Commission of India (ECI):** The RPA, 1951, establishes the **Election Commission of India (ECI) as the apex body responsible for the conduct of elections.** The powers and functions of the ECI are delineated in various sections of the Act, empowering it to supervise elections, enforce electoral laws, and ensure free and fair polls.

### **CORRUPT PRACTICES UNDER RPA, 1951**

- **Section 123 describes corrupt practices as actions undertaken by a candidate** with the intention of furthering their chances of success in an election. These actions encompass various forms of misconduct, including but **not limited to bribery, exertion of undue influence, dissemination of false information, and provocation of hostility** based on factors such as religion, race, caste, community, or language.
- **Section 123(4) extends the definition of corrupt practices to include the deliberate dissemination of false statements** aimed at swaying the outcome of an election. This provision widens the scope of prohibited activities to encompass deceptive tactics employed to manipulate voter opinions.
- **Section 123(2) of the Act addresses the issue of undue influence**, which encompasses both direct and indirect interference by a candidate, their agents, or any other individuals that hinders the free exercise of electoral rights. Such interference may **involve tactics such as intimidation, social ostracism, expulsion from a social group or community**, or coercion based on spiritual consequences.

### **RIGHT TO PRIVACY IN INDIA**

- The Constitution of India, **under Article 21, guarantees the right to life and personal liberty**, which has been interpreted to include the right to privacy. This right extends to protecting an individual's autonomy, dignity, and personal choices from unwarranted interference by the state or any other entity.
- The Supreme Court's ruling in the case of **Justice K.S. Puttaswamy (Retd.) vs Union of India** affirmed the **right to privacy as an intrinsic part of the fundamental freedoms** guaranteed under the Constitution. The Court held that privacy is essential for the exercise of other fundamental rights and is integral to the concept of liberty and dignity.
- However, the right to privacy is **not absolute and can be subject to reasonable restrictions in certain circumstances**, such as national security, public order, morality, or the protection of other fundamental rights. Additionally, laws and regulations governing data protection,

surveillance, and other privacy-related matters continue to evolve to address the challenges posed by technological advancements and changing societal norms.

### PRELIMS PRACTISE QUESTIONS

**Q1. The right to Privacy is protected as an intrinsic part of the Right to Life and Personal Liberty. Which of the following in the Constitution of India correctly and appropriately implies the above statement?**

- (a) Article 14 and the provisions under the 42nd Amendment to the Constitution.
- (b) Article 17 and the Directive Principles of State Policy in Part IV.
- (c) Article 21 and the freedoms guaranteed in Part III.
- (d) Article 24 and the provisions under the 44th Amendment to the Constitution.

**Answer: C**

**Q2. For election to the Lok Sabha, a nomination paper can be filed by**

- (a) Anyone residing in India.
- (b) A resident of the constituency from which the election is to be contested.
- (c) Any citizen of India whose name appears in the electoral roll of a constituency.
- (d) Any citizen of India.

**Answer: C**

### MAINS PRACTISE QUESTION

**Q1. Analyse the Supreme Court's interpretation of the right to privacy in the context of electoral disclosures and its implications for candidates and voters.**

**Q2. Reflect on the ethical implications of political parties and candidates adhering to or violating the provisions of the Model Code of Conduct (MCC) during electoral campaigns.**

**Himanshu mishra**