PMLA Verdict

Why in news?

In Vijay Madanlal Choudhary vs Union of India, the Court has upheld vast parts of the Prevention of Money Laundering Act (PMLA), 2002, despite the law's inversion of time-honoured maxims of criminal jurisprudence.

What about the issue of erosion of values?

- India's criminal justice system is built on a set of received axioms that are inherent to the basic precepts of justice and fairness. These include
    - the idea that a person is presumed innocent until proven guilty
    - the idea that a person detained on suspicion of having committed an offence would be entitled to bail pending trial
    - the idea that a criminal law ought not to be retroactive
    - the idea that a person accused of an offence must be informed of the charges made against him
    - the idea that a suspect has a privilege against incriminating herself
- But, each of these principles is consumed by a series of exceptions that their bases have lost all vigour.

What is the money laundering?

- Money laundering refers to the process through which the proceeds from criminal activity are masked with a view to concealing their illegitimate source.
- The PMLA defines the crime itself in vague terms.
- Section 3 of the Act says, "Whosoever directly or indirectly attempts to indulge or knowingly assists or a party or is actually involved in any activity connected with the proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming it as untainted property shall be guilty of offence of money-laundering."
- The phrase "proceeds of crime" is separately defined to mean property that is obtained out of the commission of a crime relating to a scheduled offence.
- The schedule, in the law's present version contains an array of breaches under 30 different statutes.
- These range from specific offences under Indian Penal Code such as murder, extortion and kidnapping, and offences under laws such as the Arms Act, 1959 and the Immoral Traffic (Prevention) Act, 1956, to more minor infractions under the Copyright Act, 1957, and the Trade Marks Act, 1999.

What is the case about?

- **Case**- Prior to an amendment made in 2018, the law classified the predicate offences

contained in the schedule into two categories.
- It separated those which carried with it an imprisonment for a term no less than three years from other offences.
- The twin requirement was mandated only for those cases where the predicate offence was viewed as more serious.
- The Court in *Nikesh Tarachand Shah vs Union of India* found that the classification of offences based on imprisonment years as unreasonable and the conditions as disproportionate.
- The Parliament deleted the classification that it had made, and imposed through Section 45 the twin conditions for all offences under the PMLA.
- The petitioners in Vijay Madanlal Choudhary argued that the legislature could not have validly amended a law that had already been declared unconstitutional.
- It meant that a provision for bail could not have been reintroduced into the PMLA without explicitly removing the twin conditions.
- **Judgement**- The judgment in Vijay Madanlal Choudhary held that if a person is ultimately acquitted or discharged in a case concerning the predicate offence, the charge under the PMLA can no longer be maintained.
- The ruling upheld Section 45 that imposes twin conditions for bail.
- Vijay Madanlal Choudhary not only grants sanction to Parliament's effort at reintroducing a law previously declared unconstitutional but also holds that the requirements for bail are by no means arbitrary or unreasonable.
- The Court's finding is unmindful of the fact that the predicate offences contained in the Schedule include crimes ranging from the discharging of pollutants under the Environment Protection Act to penalties for applying for a false trade mark under the Trade Marks Act.

Reference

1. https://www.thehindu.com/opinion/lead/the-pmla-verdict-overlooks-constitutional-safeguards/article65707726.ece

SHANKAR IAS PARLIAMENT
Information is Empowering