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Bail Provisions in PMLA Act

A trial court in Delhi denied interim bail to Bharat Rashtra Samithi (BRS) leader K Kavitha in the Delhi excise scam case.

Prevention of Money Laundering Act (PMLA)

• The Financial Action Task Force (FATF) was created in 1989 to coordinate anti-money laundering efforts across the world.
• The PMLA was enacted in response to the political declaration adopted by the special session of the United Nations General Assembly held on June 8 and 10, 1998.
• The special session called on member states to put in place national anti-money laundering legislation.
• **Aim –** The main focus of the PMLA is
• To prevent money-laundering.
• To provide for confiscation of property derived from or involved in money-laundering.
• **Key features of PMLA –**
• **Confiscation of property –** The PMLA deals with the confiscation of both movable and immovable property.
• **Intermediaries –** The Act provides that every banking company, financial institution and intermediaries should maintain a record of transaction.
• **Appellate Tribunal –** The Appellate Tribunal was established by Central Government to hear appeals against the dealers of Adjudicating Authority and authorities under this Act.
• **Special Courts –** The Central Government shall constitute the Special Courts in consultation of the Chief Justice of India to try the offence of Money Laundering.
• **Location of an entity –** The third party of any entity in the country shall not be located in any country classified as high risk by the Financial Action Task Force (FATF).
• The Enforcement Directorate (ED) is the main agency probing allegations under PMLA.
• **Key Amendments –**
• **2009 –** 'Criminal conspiracy' under Section 120B of the Indian Penal Code was added to the PMLA's schedule among various other offences.
• This has, over the years, allowed the ED to enter any case where a conspiracy is alleged, even if the principal offence is not part of the PMLA's schedule.
• In 2009, the ED also got international jurisdiction as far as tracking laundered money was concerned.
• **2012 –** The PMLA was amended to move the Prevention of Corruption Act, 1988 (PC Act) to Part A of the statute's schedule from Part B.
• This was a significant move as it applied stringent bail conditions on those accused of corruption.
• Section 45(1) of the PMLA requires that the public prosecutor must be given an opportunity to oppose any application for release on bail.
• This section, however, is applicable only to Part A of the statute's schedule.
• When Parliament passed PMLA in 2002, Part A only covered offences such as waging war against the nation and trafficking of drugs.
• However, the 2012 amendment expanded Part A to include PC Act, Wildlife (Protection) Act, Immoral Traffic (Prevention) Act, Antiquities and Arts Treasures Act, Transplantation of Human Organs Act 1994, Passports Act, IT Act, and other laws.

> *In **Vijay Madanlal Choudhary vs Union of India**, the Supreme Court upheld the validity of certain challenged provision relating to the power of arrest, attachment, search and seizure conferred on the ED under the PMLA.*

Bail Provisions

- **Section 45 –** Section 45 of the PMLA provides for bail on money laundering charges.
- **UAPA –** This provision in the law, like the stringent bail standard in the Unlawful

Activities (Prevention) Act, 1967 (UAPA), puts the onus on the accused to prove that there is no prima facie case against them while seeking bail.

- **Section 45(1) –** No person accused of an offence under this Act shall be released on bail or on his own bond unless:
    1. The Public Prosecutor has been given an opportunity to oppose the application for such release.
    2. Where the Public Prosecutor opposes the application, the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.
- **Crucial Exception –** However, there is a crucial exception to the bail standard.
- Provided that a person, who is under the age of sixteen years or is a woman or is sick or infirm (not physically or mentally strong), may be released on bail, if the Special Court so directs.
- This exception is similar to exemptions under the Indian Penal Code for women and minors.
- **Preeti Chandra vs Directorate of Enforcement, June 14, 2023 –** The court added a qualifier that the accused cannot be a flight risk or tamper witnesses to be eligible for bail.
    - Flight risk corresponds to someone who has been accused of a crime and is considered likely to try to escape out of the country before their trial begins.
- Thus it requires the accused to not be a flight risk, likely to tamper with evidence, or likely to influence witnesses.

In Nikesh Tarachand Shah Vs Union of India, declared that Section 45(1) of the PMLA to be unconstitutional as it violates Articles 14 and 21 of the Constitution, however, this was overruled in Vijay Madanlal Choudhary's case.

References

1. The Indian Express – K Kavitha's bail plea rejected
2. The Indian Express – How anti-money laundering law came to have a vast scope?
3. Live Law – The Arrest and Bail Process under PMLA

CDP-Suraksha

The government has come up with a new platform to disburse subsidies to horticulture farmers under the Cluster Development Programme (CDP), the Centre's initiative to promote horticulture crops.

- The CDP-SURAKSHA is essentially a digital platform.
- **SURAKSHA –** System for Unified Resource Allocation, Knowledge, and Secure Horticulture Assistance.
- The platform will allow an instant disbursal of subsidies to farmers in their bank account by utilising the e-RUPI voucher from the National Payments Corporation of India (NPCI).

- The CDP-SURAKSHA has features such as:
    - Database integration with PM-KISAN, cloud-based server space from NIC, UIDAI validation, eRUPI integration, local government directory (LGD), content management system, geotagging, and geo-fencing.
- **Working –** The platform allows access to farmers, vendors, implementing agencies (IA), and cluster development agencies (CDAs), and officials of the National Horticulture Board (NHB).
- A farmer can login using their mobile number and place an order for planting material such as seeds, seedlings, and plants based on their requirement.
- Once the demand has been raised by the farmer, the system will ask them to contribute their share of the cost of planting material.
- The subsidy amount paid by the government will appear on the screen automatically.
- After the farmer pays their contribution, an e-RUPI voucher will be generated.
- This voucher will then be received by a vendor, who will provide the required planting material to the farmer.
- **Difference –** In the old system, a farmer had to buy planting materials on their own.
- They would then have to approach the officials concerned for the release of the subsidy.
- The CDP-SURAKSHA platform, however, will provide subsidies to farmers upfront, at the time of purchasing the planting material.
- Vendors, who will supply planting materials to farmers, will receive their payment only after farmers verify the delivery of their orders.
- **e-RUPI –** The CDP-SURAKSHA platform uses e-RUPI vouchers from the NPCI.
- The voucher is a one-time payment mechanism that can be redeemed without a card, digital payments app or internet banking access, at the merchants accepting e-RUPI.
- According to the NPCI, the e-RUPI can be shared with the beneficiaries for a specific purpose or activity by organisations or government via SMS or QR code.

Quick Facts
Cluster Development Program (CDP)
• The CDP is a component of the central sector scheme of NHB. • It is aimed at leveraging the geographical specialization of horticulture cluster, promoting integrated and market-led development of pre-production, production, post-harvest, logistics, branding, and marketing activities. • So far, 55 horticulture clusters have been identified and these clusters are in different stages of development. • Four more clusters, a floriculture cluster in West Bengal, coconut clusters in Kerala and Tamil Nadu, and white onion clusters in Gujarat, are also in the pipeline. • Each cluster will have an implementing agency and a cluster development agency (CDA).

Reference

1. The Indian Express – What is CDP-SURAKSHA?
2. CDP – Horticulture Cluster Development Program (CDP)

Lunar Time Standard

NASA has been asked to create a time zone for the moon.

- A fundamental aspect of nature in the Universe is that time is not absolute.
- As a consequence of Albert Einstein's Theory of General Relativity, which states that gravity bends space and time, we experience different time on Earth and moon.
- As there is less gravity on the Moon, time ticks slightly faster there relative to the time on the Earth (58.7 microseconds faster every day, compared to the Earth).
- In other words, for someone on the Moon, an Earth-based clock will appear to lose on average 58.7 microseconds per Earth day with additional periodic variations.
- This can create problems for situations such as a spacecraft seeking to dock on the Moon, data transferring at a specific time, communication, and navigation.
- Currently, handlers of each lunar mission use their own timescale that is linked to UTC.
- The specifics for creating a time standard for the Moon are not clear yet.

According to a 2023 report by the journal Nature, there will be a need to place at least three atomic clocks on the lunar surface that will tick at the Moon's natural pace, and whose output will be combined by an algorithm to generate a more accurate virtual timepiece.

Earth Standard Time

• It is also known by the name, Coordinated Universal Time (UTC).
• It is set by the International Bureau of Weights and Measures in Paris, France.
• **Atomic Clocks –** This 24-hour time standard is kept using highly precise atomic clocks combined with the Earth's rotation.
• Atomic clocks measure time in terms of the resonant frequencies, the natural frequency of an object where it tends to vibrate at a higher amplitude, of atoms such as cesium-133.
• In atomic time, a second is defined as the period in which a caesium atom vibrates 9,192,631,770 times.
• As the vibration rates at which atoms absorb energy are highly stable and ultra-accurate, atomic clocks make for an excellent device for gauging the passage of time.
• These clocks tick at different rates due to changes in Earth's rotational speed varying from the Equator to the poles, which also affects time.
• The planet rotates faster at the Equator than it does at the poles as it is wider at the Equator.
• **Components –** Two components are used to determine UTC:
1. **International Atomic Time (TAI) –** A time scale that combines the output of some 400 highly precise atomic clocks worldwide, and provides the exact speed for our clocks to tick.
2. **Universal Time (UT1) –** Also known as astronomical time or solar time, it refers to the Earth's rotation.
3. It is used to compare the pace provided by TAI with the actual length of a day on Earth.
• **Universal Time (UT) –** It was created at the International Meridian Conference in 1884.
• This is the basis for the 24-hour time zone system we know today.
• At the time, Greenwich Mean Time (GMT) was chosen as the world's time standard.
• The reference line or starting point, the Prime Meridian, was determined to be the transit circle at the Royal Observatory in Greenwich, London.
• The transit circle is a part of the telescope's mechanics and it is still cited as the prime meridian's original reference (0° longitude).
To obtain their local time, countries need to subtract or add a certain number of hours from UTC depending on how many time zones they are away from 0 degree longitude meridian.
• **GMT to UTC –** In 1960, the International Radio Consultative Committee formalized the concept of UTC, and it was put into practice the year after.
• The name Coordinated Universal Time was officially adopted in 1967.
Until 1972, Greenwich Mean Time (also known as Zulu time) was the same as Universal Time (UT).
• If a country lies on the west of the Greenwich meridian, it has to subtract from the UTC, and if a country is located on the east of the meridian, it has to add.

References

1. The Indian Express – US wants to establish a time standard for the Moon
2. Times of India – Why we need a lunar standard time
3. NPR – NASA asked to create a time zone for the moon

Muria Tribals

The Muria Tribals lack access to primary education, safe drinking water, and social welfare benefits.

- **Location –** They are concentrated in the states of Telangana, Andhra Pradesh,

Chhattisgarh, and Odisha.

- **Internally Displaced People (IDPs) –** The Muria settlements are known as habitations of Internally Displaced People (IDPs).
- **Population –** Their population is around 6,600 in Andhra Pradesh.
- **Other Name –** The Murias are referred to as 'Gutti Koyas' by the native tribes.
- **Language –** They speak Koya, which is Dravidian language.
- **Festival –** The most important fair celebrated by Koyas is the Sammakka Saralamma Jatra.
- It is celebrated once in two years on full moon day of the Magha Masam (January or February).
- **Agriculture –** They practice Podu form of shifting cultivation.
- **Status –** The held ST status in Chattisgarh but they were not granted ST status in their migrated states such as Telangana.

Reference

The Hindu – Muria Tribe

Curative Petition

SC quashes 7687-crore arbitral award against Delhi Metro's DAMEPL as patently illegal.

- **Curative Petition –** A curative petition is a petition which requests the court to review its own decision even after a review petition is dismissed.
- Curative Petitions are the final remedy where the SC can reconsider a dismissed review petition.
- **Rupa Hurra Case –** In 2002, in ***Rupa Hurra vs Ashok Hurra***, the SC allowed curative writs as the last resort to correct judgments that are oppressive to judicial conscience and would cause perpetuation of irremediable injustice.
- They held that the Supreme Court could entertain a curative petition under the following grounds:
    1. Violation of principles of natural justice,
    2. Question of bias against the presiding judge,
    3. Abuse of the process of the court.

The issue of curative petition gained prominence during the ***Nirbhaya Case*** *when two of the convicts filed the same petition against the Supreme Court's decision after the mercy and review petition had been rejected.*

Cases involving Curative Petition

2013 – National Commission for Women Vs Bhaskar Lal Sharma
• Monica Sharma had accused her husband and in-laws of cruelty, leading to a summons order against them.
• The accused appealed against this order in the Supreme Court.
• The SC set aside the summons order stating that the accusations made by Monica Sharma didn't fall within the ambit of 'cruelty'.
• The National Commission for Women (NCW) filed a Curative petition on behalf of Monica Sharma.
• Here, the Court recalled the Judgement stating that the Court had ventured into the nature of the allegation, rather than deal with the appeals against the summons order.

2014 – Navneet Kaur Vs State of NCT of Delhi
• A petitioner convicted under the Terrorist and Disruptive Activities (Prevention) Act filed a Curative petition to commute his death sentence to life imprisonment.
• A 4-Judge bench commuted his sentence on two grounds.
• First, the petitioner was suffering from a mental illness, as determined by the Institute of Human Behaviour and Allied Sciences.
• Second, the fact that his mercy petition was pending for 8 years, was found to be a strong ground for the commutation of a death sentence.
• The Court relied on ***Shatrughan Chauhan v Union of India*** where it was held that an unreasonable delay in disposing of mercy petitions is a ground for commutation of death sentence.

2015 – Yakub Memon Vs State of Maharashtra
• Terror suspect Yakub Memon's curative petition against his death penalty was dismissed.
• The Supreme Court Rules 2013 state that a curative petition has to be placed before a 3-Judge Bench and the judge who delivered the challenged judgement.

2023 – Union of India Vs Union Carbide
• In 2010, the Union Govt. had filed a curative petition seeking additional compensation for the victims of the Bhopal Gas Tragedy.
• In 2023, a 5-Judge Bench led by Justice S.K. Kaul rejected the Petition.
• The Bench narrowed the scope of the curative jurisdiction and emphasised that the previously decided compensation was adequate.
• The Bench held that a curative petition can be entertained when there is a 'gross miscarriage of justice', fraud or suppression of material facts.
• The Union did not justify the petition on either of these grounds.

- **Procedure –** A curative petition is supported by Article 137 of the Constitution of India.
- As per the article, in matters of law and regulations made under Article 145, the Supreme Court has the power to review any judgements or orders made by it.
- A curative petition needs to be made within 30 days from the date of the judgement passed.
- **Criteria –**
    1. A petitioner can file a curative petition only if the review petition has been dismissed.
    2. It is also required from the petitioner to state or assert specifically the grounds on which the review petition was undertaken and that it was dismissed by circulation, which is in turn certified by a senior advocate.
    3. A curative petition is entertained if it has been established that there has been a violation of the principles of natural justice.
    4. Additional grounds of considering the petition is that he/she was not heard by the

court when passing the judgement.

5. The curative petition is circulated to a Bench consisting of the three senior-most judges, and the judges who had passed the original sentence if possible.
6. When and only a majority of the judges decided that the matter needs a hearing, can the petition be listed before the same Bench.
7. Should a request for an open-court hearing be made, then such a hearing is allowed, but a curative petition is usually decided by judges in the chamber.
8. If the petition lacks any grounds for reasonable consideration then the court could impose “exemplary costs” on the petitioner.

Types of Petitions	
Petition	**Characteristics**
Arbitration Petition	• These petitions are filed in the Supreme Court of India. • The statutory provisions for such a petition are in Section 11(5) of the Arbitration and Conciliation Act, 1996.
Civil (Appeal) Petition	• These petitions are filed in the Supreme Court of India. • The statutory provisions for such Petition are in Article 132,133, and 136 of the Indian Constitution read with Rules of the Supreme Court. • Similarly, they can also be filed under appropriate provisions of the Central Excise Act, Consumer Protection Act, Telecom Regulatory Authority of India Act, 1997, Advocates Act, 1961, Contempt of Courts Act, etc.
Contempt Petition (Civil)	• These petitions are filed in the Supreme Court of India. • The statutory provisions for such Petition are in Rule 3 of the Rules to Regulate Proceedings for Contempt of the Supreme Court, 1975, read with Section 2(b) of the Contempt of Courts Act, 1971 Articles 129 and 142(2) of the Constitution.
Contempt Petition (Criminal)	• These petitions are filed in the Supreme Court of India. • The statutory provisions for such Petition are in Rule 3 of the Rules to Regulate Proceedings for Contempt of the Supreme Court, 1975, read with Section 2(c) of the Contempt of Courts Act, 1971 Articles 129 and 142(2) of the Constitution.
Criminal Appeal Petition	• These petitions are filed in the Supreme Court of India. • The statutory provisions for such Petition are in Article 134 and 136 of the Indian Constitution, read with the Supreme Court Rules. • A criminal appeal petition can be filed under appropriate sections of Armed Forces Tribunal Act, 2007, Section 374 and Section 380 Contempt of Courts Act, 1971 of the Code of Criminal Procedure, 1973, etc.
Election Petition	• These petitions are filed in the Supreme Court of India. • The statutory provisions for such Petition are in Elections Act, 1952 (31 of 1952) read with Article 71 of the Constitution and Order XLVI of the Rules relating to doubts and disputes about a President's election as Vice-President.

Original Suit	• These petitions are filed in the Supreme Court of India. • The statutory provisions for such a petition are in Article 131 of the Indian Constitution. • The Petition may be about any dispute: 1. Between the Government of India and one or more States; or 2. Between the Government of India and any State or States on one side and one or more other States on the other; or 3. Between two or more States.
Petition for Special Leave to Appeal	• These petitions are filed in the Supreme Court of India. • The statutory provisions for such Petition is under Article 136 of the Constitution from an order of the High Court refusing to grant a certificate under Article 134A of the Constitution or in any other case from any judgment, decree, determination, sentence, or order passed or made by any Court or Tribunal, except relating to armed forces. • It may be either civil SLP or criminal SLP.
Transferred Case Petition	• These petitions are filed in the Supreme Court of India. • The statutory provisions for such Petition are in Article 139A (1) of the Constitution read with Order XL of the Rules upon being transferred by the High Court to the Supreme Court.
Write Petition	• These petitions are filed in the Supreme Court and High Courts of India. • The statutory provisions for such Petitions are in Article 32 and 226 of the Constitution to file in the Supreme Court and High Courts, respectively. • The Court may issue writs like habeas corpus, mandamus, certiorari, quo warranto, and prohibition.
Review Petition	• These petitions are filed in the Supreme Court of India. • The statutory provisions for such Petition are in Article 137 of the Constitution read with Order XLVII of the Supreme Court Rules 2013 is a Review Petition. • It may be either civil or criminal.
Curative Petition	• These petitions are filed in the Supreme Court of India. • The statutory provisions for such Petition are in Order XLVIII of the Supreme Court Rules 2013 shall be Curative Petition. • It may be either civil or criminal.

References

1. The Indian Express – In allowing curative plea in DMRC case, how Supreme Court pushes the envelope
2. The Hindu – SC quashes ₹7687-crore arbitral award against DMRC's DAMEPL

SHANKAR IAS PARLIAMENT
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