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NARROW VIEW: THE HINDU EDITORIAL ON THE SUPREME COURT VERDICT ON THE PREVENTION OF MONEY LAUNDERING ACT

Relevant for: Indian Polity | Topic: Judiciary in India: its Structure, Organization & Functioning, Judges of SC & High Courts, Judgments and related Issues

The Supreme Court's verdict upholding all the controversial provisions of the Prevention of Money Laundering Act (PMLA) falls short of judicial standards of reviewing legislative action. Undergirding every aspect of its analysis is a belief that India's commitment to the international community on strengthening the domestic legal framework for combating money-laundering is so inviolable that possible violation of fundamental rights can be downplayed. The judgment repeatedly invokes the "international commitment" behind Parliament's enactment of the law to curb the menace of laundering of proceeds of crime which, it underscores, has transnational consequences such as adversely impacting financial systems and even the sovereignty of countries. There is, no doubt, widespread international concern over the malefic effects of organised crime fuelling international narcotics trade and terrorism. Much of these activities are funded by illicit money generated from crime, laundered to look legitimate and funnelled into the financial bloodstream of global and domestic economies. A stringent framework, with apposite departures from the routine standards of criminal procedure, may be justified in some circumstances. However, experience suggests that money-laundering in the Indian context is linked or is seen as a byproduct of a host of both grave and routine offences that are appended to the Act as a schedule. These 'scheduled' or 'predicate' offences ought to be ideally limited to grave offences such as terrorism, narcotics smuggling, corruption and serious forms of evasion of taxes and duties. However, in practice, the list contains offences such as fraud, forgery, cheating, kidnapping and even copyright and trademark infringements. The Enforcement Directorate has also been manifestly selective in opening money-laundering probes, rendering any citizen vulnerable to search, seizure, and arrest at the whim of the executive.

It is disappointing that the Court did not find the provision for forcing one summoned by the ED to disclose and submit documents, and then sign it under pain of prosecution, as violating the constitutional bar on testimonial compulsion. Nor was it impressed by the argument that the search and seizure provisions lack judicial oversight and are exclusively driven by ED officers. Provisions that allow prosecution for money-laundering even without the scheduled offence being established and amendments deleting safeguards have passed muster with the Bench, solely on the ground that these were for removing lacunae pointed out by international evaluators of the efficacy of the law. Save for an odd comment that the Special Court could examine the documents to decide on continuing detention, there is nothing in the judgment that will attenuate the law's rigours. It rejects the plea to treat ED officers who record statements as police officers, thus protecting their evidentiary admissibility. At a time when the ED is selectively targeting regime opponents, the verdict is bound to be remembered for its failure to protect personal liberty from executive excess.

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