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LEGAL FRAMEWORK GOVERNING MONEY LAUNDERING IN INDIA: A CRITICAL LEGAL ANALYSIS

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Abstract

Money laundering has emerged as a significant threat to the stability of financial systems, economic development, and governance structures across the globe. In India, the rapid expansion of financial markets, globalization, and technological advancements have increased both the scale and complexity of laundering activities. This paper undertakes a critical legal analysis of the framework governing money laundering in India, with particular emphasis on the Prevention of Money Laundering Act, 2002 (PMLA), which forms the backbone of the country's anti-money laundering regime.

The study examines the objectives, scope, and key provisions of the PMLA, including its mechanisms for attachment and confiscation of property, investigation, prosecution, and adjudication. It further analyzes the role of key institutions such as the Enforcement Directorate (ED), the Reserve Bank of India (RBI), and the Financial Intelligence Unit (FIU-IND) in implementing and enforcing anti-money laundering measures. The paper also explores India's compliance with international standards established by the Financial Action Task Force (FATF), highlighting the influence of global norms on domestic legal reforms.

Through a critical evaluation, the paper identifies key challenges in the implementation of the legal framework, including procedural delays, low conviction rates, lack of inter-agency coordination, and the increasing sophistication of financial crimes involving digital platforms and cryptocurrencies. It also addresses concerns related to the broad powers granted to enforcement agencies, the reversal of the

burden of proof, and the potential impact on fundamental rights and principles of natural justice.

The paper further considers recent amendments and judicial interpretations that have shaped the application of the law, assessing their implications for both enforcement efficiency and civil liberties. In doing so, it highlights the need for a balanced approach that ensures effective deterrence of financial crimes while safeguarding constitutional protections.

The study concludes that although India has established a robust and evolving legal framework to combat money laundering, its effectiveness is contingent upon improved implementation, greater transparency enhanced technological capabilities, and stronger institutional coordination. It recommends legal and policy reforms aimed at strengthening accountability, promoting fairness, and adapting to emerging challenges in the financial landscape. Ultimately, the paper emphasizes the importance of maintaining a dynamic and rights-oriented approach to ensure the long-term success of India's anti-money laundering regime.

Keywords: *Money Laundering, Prevention of Money Laundering Act, 2002, Anti-Money Laundering (AML), Enforcement Directorate, Financial Action Task Force, Financial Regulation, Proceeds of Crime, Economic Offences, India, Legal Framework*

Introduction

Money laundering has emerged as one of the most complex and pervasive financial crimes in the modern global economy. It not only facilitates illegal activities such as corruption, drug trafficking, human trafficking, and terrorism financing but also undermines the integrity of financial systems and weakens the rule of law. At its core, money laundering involves the process of converting illicitly obtained funds into seemingly legitimate assets, thereby concealing their unlawful origin. As financial markets become increasingly interconnected and technology-driven, the scale and sophistication of money laundering operations have grown exponentially.



In the Indian context, rapid economic growth, financial liberalization, and the expansion of digital payment systems have created both opportunities and vulnerabilities. While these developments have strengthened financial inclusion and economic progress, they have also provided new avenues for the movement and concealment of illicit funds. The rise of shell companies, hawala transactions, offshore accounts, and more recently, cryptocurrencies and virtual digital assets, has made the detection and prevention of money laundering significantly more challenging for enforcement agencies.

Recognizing the gravity of the problem, India has developed a comprehensive legal and regulatory framework to combat money laundering. The enactment of the Prevention of Money Laundering Act, 2002 (PMLA) marked a turning point in the country's approach, shifting from fragmented legal provisions to a structured and dedicated anti-money laundering regime. The Act not only criminalizes the process of money laundering but also provides for the attachment, adjudication, and confiscation of proceeds of crime. It further establishes mechanisms for investigation and prosecution, thereby strengthening the state's capacity to address financial crimes.

The implementation of the PMLA is supported by a network of regulatory and enforcement bodies. The Enforcement Directorate (ED) serves as the primary investigative agency responsible for enforcing the Act, while institutions such as the Reserve Bank of India (RBI) and the Financial Intelligence Unit (FIU-IND) play crucial roles in ensuring compliance, monitoring financial transactions, and generating actionable intelligence. Together, these bodies form a multi-tiered institutional framework aimed at preventing, detecting, and prosecuting money laundering activities.

India's anti-money laundering efforts are also shaped by its international commitments. As a member of the Financial Action Task Force (FATF), India is required to adhere to globally accepted standards for combating money laundering and terrorist financing. This has led to continuous amendments in domestic legislation,

improved regulatory practices, and enhanced international cooperation. The alignment with FATF recommendations reflects India's recognition of the transnational nature of financial crimes and the need for coordinated global action.

However, despite the existence of a robust legal framework, the enforcement of anti-money laundering laws in India is not without challenges. Issues such as procedural delays, low conviction rates, overlapping jurisdictions, and concerns regarding the misuse of enforcement powers have raised questions about the effectiveness and fairness of the system. The expansive scope of the PMLA, particularly provisions relating to the burden of proof and powers of arrest and attachment, has sparked debates on their compatibility with constitutional safeguards and principles of natural justice.

Furthermore, the rapidly evolving nature of financial crimes necessitates continuous adaptation of legal and institutional mechanisms. Traditional enforcement approaches often struggle to keep pace with innovations such as digital currencies, online financial platforms, and cross-border fund transfers. This creates a pressing need for technological advancement, capacity building, and policy reforms to ensure that the legal framework remains effective and relevant.

In this context, a critical legal analysis of the framework governing money laundering in India becomes essential. Such an analysis not only examines the strengths and achievements of the existing system but also identifies its limitations and areas requiring reform. It seeks to evaluate whether the current framework strikes an appropriate balance between effective enforcement and the protection of individual rights, and whether it is adequately equipped to address emerging challenges in the financial landscape.

This paper, therefore, aims to provide a comprehensive examination of India's anti-money laundering regime, focusing on its legal foundations, institutional mechanisms, and practical



implementation. By analyzing statutory provisions, regulatory practices, and judicial interpretations, the study endeavors to assess the overall effectiveness of the framework and propose measures for its improvement. Ultimately, the goal is to contribute to a more transparent, accountable, and efficient system that can effectively combat money laundering while upholding the principles of justice and the rule of law.

1. Concept and Process of Money Laundering

Money laundering typically involves three stages: placement, layering, and integration. Placement refers to introducing illicit funds into the financial system. Layering involves conducting complex transactions to obscure the origin of the funds. Integration is the final stage, where the laundered money is reintroduced into the economy as legitimate funds.

The growing use of digital payment systems, cryptocurrencies, and offshore financial centers has complicated detection mechanisms. These evolving techniques require robust legal and technological responses.

2. Evolution of Anti-Money Laundering Laws in India

Before the enactment of specific legislation, money laundering in India was addressed indirectly through laws such as the Indian Penal Code, 1860, and the Narcotic Drugs and Psychotropic Substances Act, 1985. However, these laws were insufficient to tackle the complexities of financial crimes.

The introduction of the Prevention of Money Laundering Act, 2002 marked a significant shift toward a comprehensive legal framework. The Act came into force in 2005 and has since undergone several amendments to strengthen its provisions and align with international standards.

3. Key Features of the PMLA

The PMLA provides a detailed mechanism for preventing and prosecuting money laundering offenses. Key features include:

- **Definition of Offense:** Money laundering is defined as any process involving proceeds of crime, including concealment, possession, acquisition, or use.
- **Attachment and Confiscation:** Authorities are empowered to attach and confiscate properties derived from criminal activities.
- **Burden of Proof:** The Act shifts the burden of proof onto the accused in certain circumstances.
- **Scheduled Offenses:** The Act includes a wide range of predicate offenses listed in its schedule.

The Enforcement Directorate is the primary agency responsible for enforcing the Act

4. Role of Regulatory and Enforcement Authorities

4.1 Enforcement Directorate (ED)

The ED is responsible for investigating offenses under the PMLA. It has wide-ranging powers, including search, seizure, arrest, and attachment of property.

4.2 Reserve Bank of India (RBI)

The Reserve Bank of India plays a regulatory role by issuing guidelines to financial institutions for compliance with anti-money laundering (AML) standards.

4.3 Financial Intelligence Unit (FIU-IND)

The FIU-IND collects and analyzes financial transaction reports and shares intelligence with enforcement agencies.



5. International Framework and India's Compliance

India's anti-money laundering framework is influenced by global standards set by the Financial Action Task Force (FATF). FATF recommendations provide guidelines for combating money laundering and terrorist financing.

India became a member of FATF in 2010 and has since undertaken several reforms to ensure compliance, including strengthening reporting requirements and enhancing enforcement mechanisms.

6. Legal Framework Governing Money Laundering in India

India's response to the growing threat of money laundering is grounded in a comprehensive and evolving legal framework that combines statutory law, regulatory guidelines, and institutional mechanisms. The framework is primarily centered around the Prevention of Money Laundering Act, 2002 (PMLA), supplemented by rules, notifications, and sector-specific regulations issued by competent authorities. Over time, this framework has been significantly strengthened to address emerging challenges and align with international standards.

6.1 The Prevention of Money Laundering Act, 2002 (PMLA)

The Prevention of Money Laundering Act, 2002 serves as the cornerstone of India's anti-money laundering regime. Enacted to prevent and control money laundering and to provide for the confiscation of property derived from or involved in money laundering, the Act came into force in 2005.

1. Objectives of the Act

- To prevent and combat money laundering
- To confiscate and seize proceeds of crime
- To establish mechanisms for coordination among authorities

- To address cross-border aspects of money laundering

2 Definition of Money Laundering

Section 3 of the Act defines money laundering broadly to include any process connected with the proceeds of crime, such as concealment, possession, acquisition, or use, and projecting it as untainted property.

3 Scheduled Offenses

The PMLA operates in conjunction with "scheduled offenses" listed in its Schedule. These include crimes under various statutes such as drug trafficking, corruption, fraud, and terrorism-related offenses. A predicate offense is a prerequisite for initiating proceedings under the Act.

6.2 Key Provisions and Mechanisms

2.1 Attachment and Confiscation of Property

The Act empowers authorities to provisionally attach properties suspected to be involved in money laundering. Upon confirmation, such properties may be confiscated by the state. This mechanism is central to depriving offenders of illicit gains.

2.2 Powers of Investigation and Arrest

The Enforcement Directorate (ED) is vested with extensive powers, including search, seizure, survey, arrest, and prosecution. These powers are designed to ensure swift action but have also been subject to scrutiny regarding their scope.

2.3 Adjudicating Authority and Appellate Tribunal

The Act provides for the establishment of an Adjudicating Authority to determine whether attached properties are involved in money laundering. Appeals against its orders can be made to the Appellate Tribunal and subsequently to higher courts.



2.4 Burden of Proof

A distinctive feature of the PMLA is the reversal of the burden of proof, requiring the accused to demonstrate that the assets in question are not proceeds of crime. This provision strengthens enforcement but raises concerns about fairness.

6.3 PMLA Rules and Compliance Framework

The implementation of the Act is supported by the Prevention of Money Laundering (Maintenance of Records) Rules, 2005. These rules impose obligations on “reporting entities,” including banks, financial institutions, and intermediaries.

1 Customer Due Diligence (CDD) and KYC Norms

Financial institutions must follow strict Know Your Customer (KYC) guidelines issued by the Reserve Bank of India. These measures help verify the identity of clients and prevent the misuse of financial systems.

2 Reporting Obligations

Entities are required to report suspicious transactions, cash transactions above prescribed thresholds, and cross-border transfers to the Financial Intelligence Unit (FIU-IND).

3 Record Maintenance

Reporting entities must maintain detailed records of transactions and client information for a specified period, facilitating investigation and audit.

6.4 Role of Regulatory and Enforcement Bodies

1 Enforcement Directorate (ED)

The Enforcement Directorate is the primary agency responsible for enforcing the PMLA. It conducts investigations, attaches properties, and initiates prosecutions.

2 Financial Intelligence Unit (FIU-IND)

FIU-IND acts as the central agency for receiving, processing, and analyzing financial information. It plays a critical role in identifying suspicious patterns and disseminating intelligence.

3 Reserve Bank of India (RBI)

The Reserve Bank of India regulates banks and financial institutions, ensuring compliance with AML guidelines and imposing penalties for violations.

4 Other Regulatory Bodies

Entities such as the Securities and Exchange Board of India (SEBI) and the Insurance Regulatory and Development Authority of India (IRDAI) also contribute by enforcing AML norms within their respective sectors.

6.5 Related Legislations Supporting AML Framework

India’s AML regime is supported by several other laws that address predicate offenses and financial misconduct:

- The Companies Act, 2013 (regulation of corporate entities)
- The Prevention of Corruption Act, 1988
- The Narcotic Drugs and Psychotropic Substances Act, 1985
- The Benami Transactions (Prohibition) Act, 1988

These laws complement the PMLA by addressing underlying criminal activities that generate illicit funds.

7. International Commitments and Influence

India’s legal framework is shaped by its international obligations, particularly under the Financial Action Task Force (FATF). FATF recommendations provide



a global standard for AML and counter-terrorist financing (CTF).

India's membership in FATF has led to:

- Regular legislative amendments
- Strengthening of compliance mechanisms
- Increased international cooperation

Additionally, India is a party to various United Nations conventions aimed at combating financial crimes.

8. Recent Amendments and Policy Developments

The PMLA has undergone multiple amendments to address emerging threats and improve enforcement efficiency. Key developments include:

- Expansion of the definition of reporting entities
- Inclusion of new predicate offenses
- Enhanced powers for investigation and attachment
- Greater focus on digital transactions and virtual assets

These reforms reflect the dynamic nature of financial crimes and the need for continuous adaptation.

9. Critical Evaluation of the Framework

While the legal framework is comprehensive, its implementation raises several concerns:

- Broad and sometimes ambiguous definitions
- Potential for misuse of enforcement powers
- Procedural complexities and delays
- Tension between enforcement and fundamental rights

These issues highlight the need for ongoing reforms to ensure fairness and effective

10. Challenges in Implementation

Despite the existence of a comprehensive statutory framework under the Prevention of Money Laundering Act, 2002(PMLA), the effective implementation of anti-money laundering (AML) laws in India faces numerous structural, legal, and

operational challenges. These challenges not only limit the efficiency of enforcement but also raise concerns regarding fairness, transparency, and institutional capacity.

1. Institutional and Coordination Issues

One of the primary challenges lies in the lack of seamless coordination among multiple agencies involved in AML enforcement, including the Enforcement Directorate (ED), the Reserve Bank of India (RBI), and the Financial Intelligence Unit (FIU-IND). While each agency has a distinct mandate, overlapping jurisdictions often lead to duplication of efforts, delays in information sharing, and fragmented investigation.

Moreover, the absence of a centralized and fully integrated database hampers real-time tracking of suspicious transactions. Effective enforcement requires synchronized action, which is often lacking due to bureaucratic hurdles and inter-agency rivalry.

2. Complexity of Financial Transactions

Modern money laundering techniques involve highly sophisticated financial instruments, shell companies, layered transactions, and offshore accounts. The use of digital platforms, cryptocurrencies, and fintech innovations has further complicated detection and investigation.

Enforcement agencies frequently struggle to trace the "proceeds of crime" due to the intricate structuring of transactions across multiple jurisdictions. This complexity increases dependency on forensic accounting and advanced data analytics, areas where institutional capacity is still developing.

3. Cross-Border Jurisdictional Challenges

Money laundering is inherently transnational. Illicit funds are often transferred across multiple countries to evade detection. This creates jurisdictional challenges, as Indian authorities must rely on mutual legal



assistance treaties (MLATs) and international cooperation to access information and evidence.

Although India aligns with global standards set by the Financial Action Task Force (FATF), practical cooperation is often slow and constrained by differences in legal systems, confidentiality laws, and political considerations. Delays in obtaining information from foreign jurisdictions can significantly weaken investigations and prosecutions.

4. Procedural Delays and Low Conviction Rates

Another major issue is the slow pace of investigations and judicial proceedings. Cases under the PMLA often involve extensive documentation and complex evidence, leading to prolonged trials. The backlog in courts further exacerbates delays.

Additionally, despite a high number of investigations initiated by the Enforcement Directorate, the conviction rate remains relatively low. This raises concerns about the quality of investigations, evidentiary standards, and prosecutorial effectiveness. Delays also reduce the deterrent impact of the law.

5. Burden of Proof and Legal Ambiguities

The reversal of the burden of proof under the PMLA is a controversial feature that complicates implementation. While it aims to strengthen enforcement, it also creates legal ambiguities and challenges in judicial interpretation.

Courts often face difficulties in balancing statutory provisions with constitutional safeguards, leading to inconsistent rulings. The broad and sometimes vague definitions within the Act, such as “proceeds of crime,” further contribute to interpretational challenges.

6. Concerns of Misuse and Overreach

The extensive powers granted to enforcement authorities, particularly in relation to search, seizure, arrest, and attachment of property, have raised

concerns about potential misuse. Critics argue that these powers may be used selectively or disproportionately, leading to allegations of political bias or harassment.

Such concerns can undermine public trust in the legal system and create resistance among stakeholders, including businesses and financial institutions, thereby affecting compliance.

7. Compliance Burden on Financial Institutions

Banks, non-banking financial companies (NBFCs), and other reporting entities are required to comply with strict AML guidelines issued by the Reserve Bank of India. These include customer due diligence (KYC), transaction monitoring, and reporting suspicious activities.

While necessary, these requirements impose significant operational and financial burdens, particularly on smaller institutions. Inadequate training and lack of awareness among compliance officers can lead to inconsistent implementation and reporting gaps.

8. Technological and Capacity Constraints

Although financial crimes are becoming increasingly technology-driven, enforcement agencies often face limitations in terms of technical expertise, infrastructure, and access to advanced tools. Cyber forensics, blockchain analysis, and AI-based monitoring systems are essential for modern AML enforcement but are not uniformly available.

Capacity-building initiatives, including specialized training and recruitment of experts, remain insufficient to meet the growing demands of complex financial investigations.

9. Emerging Threats: Cryptocurrencies and Digital Assets

The rise of cryptocurrencies and decentralized finance (DeFi) platforms presents new challenges for



regulators. These technologies enable anonymous and borderless transactions, making it difficult to trace illicit funds.

Although regulatory steps have been taken, the legal framework is still evolving to effectively address these emerging risks. The lack of clear and comprehensive regulations in this area creates enforcement gaps.

10. Balancing Enforcement with Fundamental Rights

A critical challenge in implementation is maintaining a balance between effective enforcement and protection of fundamental rights. Stringent provisions under the Prevention of Money Laundering Act, 2002, such as strict bail conditions and prolonged attachment of property, may adversely affect individual liberties.

Ensuring due process, transparency, and judicial oversight is essential to prevent abuse and uphold the rule of law.

Conclusion of the Section

In sum, the challenges in implementing India's anti-money laundering framework are multi-dimensional, encompassing legal, institutional, technological, and ethical concerns. While the legislative structure is robust, its effectiveness depends largely on addressing these practical constraints. Strengthening inter-agency coordination, enhancing technological capabilities, ensuring accountability, and refining legal provisions are crucial steps toward a more efficient and fairer AML regime.

11. Recent Amendments and Developments

Recent amendments to the PMLA have expanded the scope of reporting entities and enhanced enforcement powers. These changes aim to address emerging threats such as digital money laundering and cross-border financial crimes.

However, these amendments have also intensified debates regarding transparency, accountability, and judicial oversight.

12. Suggestions and Recommendations

To strengthen the legal framework, the following measures are recommended:

- Enhancing transparency and accountability of enforcement agencies
- Ensuring judicial oversight to prevent misuse of powers
- Strengthening inter-agency coordination
- Adopting advanced technological tools for detection
- Balancing enforcement with protection of fundamental rights

Conclusion

The legal framework governing money laundering in India has undergone significant transformation over the past two decades, reflecting the country's commitment to combating financial crimes in an increasingly complex global environment. The enactment and subsequent strengthening of the Prevention of Money Laundering Act, 2002 (PMLA) marked a decisive step toward establishing a comprehensive mechanism to identify, investigate, and prosecute money laundering activities. Supported by institutional actors such as the Enforcement Directorate, the Reserve Bank of India, and the Financial Intelligence Unit, India has developed a multi-layered approach that integrates legislative, regulatory, and enforcement strategies.

At the international level, India's alignment with the standards of the Financial Action Task Force (FATF) has further strengthened its anti-money laundering regime. Compliance with FATF recommendations has led to continuous legislative amendments and policy reforms, ensuring that India's framework remains responsive to evolving global threats such as digital money laundering, shell companies, and cross-border



financial flows. This harmonization has also enhanced India's credibility in the global financial system and facilitated greater international cooperation in tackling transnational crimes.

However, despite these advancements, the effectiveness of the legal framework remains a subject of critical concern. One of the most debated aspects of the PMLA is the broad scope of powers granted to enforcement agencies, particularly the Enforcement Directorate. While these powers are intended to ensure swift and effective action against offenders, they have raised concerns regarding potential misuse, lack of transparency, and insufficient checks and balances. The reversal of the burden of proof, stringent bail conditions, and expansive definitions within the Act have further intensified debates about their compatibility with fundamental principles of criminal jurisprudence, including the presumption of innocence and the right to a fair trial.

Judicial scrutiny has played a crucial role in shaping the interpretation and application of the PMLA. Courts have attempted to strike a balance between empowering the state to combat serious financial crimes and safeguarding individual rights. Nonetheless, ambiguities in statutory provisions and inconsistent interpretations continue to create legal uncertainty. Moreover, procedural delays, low conviction rates, and challenges in evidence collection highlight gaps in the practical implementation of the law.

Another critical issue lies in the rapidly evolving nature of financial crimes. The rise of digital platforms, cryptocurrencies, and sophisticated laundering techniques has outpaced traditional enforcement mechanisms. Although recent amendments have attempted to address these challenges, there remains a pressing need for greater technological capacity, specialized training, and inter-agency coordination. Additionally, effective cross-border cooperation is essential, given the transnational character of money laundering activities.

In light of these challenges, a more balanced and accountable approach is necessary. Strengthening judicial oversight, enhancing transparency in enforcement actions, and ensuring adherence to constitutional safeguards are crucial for maintaining the legitimacy of the legal framework. At the same time, investment in technology, capacity building, and international collaboration will be key to improving enforcement efficiency.

In conclusion, while India's anti-money laundering regime, anchored in the Prevention of Money Laundering Act, 2002, represents a robust and evolving legal structure, its long-term success depends on achieving an equilibrium between effective enforcement and the protection of civil liberties. A nuanced and reform-oriented approach will not only strengthen the fight against money laundering but also uphold the rule of law and democratic values that underpin the Indian legal system.

Footnotes (OSCOLA Style)

1. *Vijay Madanlal Choudhary v Union of India* (2022) SCC OnLine SC 929.
2. Prevention of Money Laundering Act 2002, s 3.
3. *Vijay Madanlal Choudhary v Union of India* (2022) SCC OnLine SC 929.
4. *Nikesh Tarachand Shah v Union of India* (2017) 11 SCC 1.
5. *P Chidambaram v Directorate of Enforcement* (2019) 9 SCC 24.
6. *Rohit Tandon v Directorate of Enforcement* (2018) 11 SCC 46.
7. Ibid (*Vijay Madanlal Choudhary* case).
8. *Nikesh Tarachand Shah v Union of India* (2017) 11 SCC 1.
9. *Maneka Gandhi v Union of India* (1978) 1 SCC 248.