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## AN ANALYTICAL STUDY OF THE INTERPLAY BETWEEN THE PREVENTION OF MONEY LAUNDERING ACT (PMLA) AND THE PREVENTION OF CORRUPTION ACT (PCA) IN CURBING ECONOMIC CRIMES IN INDIA

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### ABSTRACT

*Money laundering and corruption are intricately linked issues in India, posing significant challenges to the nation's economic integrity and governance. Corruption acts as a facilitator for money laundering, enabling illicit funds to be integrated into the formal economy. High-profile cases involving public officials highlight how bribery and embezzlement create pathways for laundering activities, often involving complex financial transactions that obscure the origins of dirty money.*

*The Prevention of Money Laundering Act (PMLA) and various anti-corruption frameworks have been established to combat these issues. However, enforcement remains inconsistent, often hindered by political interference and bureaucratic inefficiencies. This dynamic perpetuates a cycle where corrupt practices breed more corruption, allowing laundered funds to flow back into corrupt systems, thereby undermining public trust and economic development.*

*Furthermore, the nexus between organized crime and corrupt officials exacerbates the situation, leading to a loss of government revenue and exacerbating socio-economic disparities. Addressing these intertwined challenges requires comprehensive reforms, improved transparency, and robust accountability mechanisms to disrupt the cycle of corruption and money laundering. By understanding this relationship, policymakers can develop targeted strategies to enhance governance and restore integrity within India's financial systems.*

### CHAPTER 1 INTRODUCTION

#### 1.1. Introduction

*“Capital as such is not evil; it is its wrong use that is evil. Capital in some form or other will always be needed.”*

– Mahatma Gandhi

It is a concept that has developed over time and is closely linked to the progress of money and banking since ancient times. The practise of hiding assets or wealth from the government to avoid taxes or redistribution began when people started doing it. According to the IMF and World Bank, money laundering has been identified as

the third largest industry in the world. The phrase ML became widely known through two high-profile cases in the United States: the Watergate Scandal<sup>1</sup> and Operation Green Ice. Money laundering is a technique used by criminals to conceal the illegal source of their money and safeguard their assets. This is done to avoid arousing suspicion from law enforcement agencies and to prevent any incriminating evidence from being left behind. The process of money laundering involves a series of transactions that aim to make illegally obtained money appear legal or clean. Some refer to it as a victimless crime because there is none of the

drama typically associated with crimes like robbery, theft, or murder. Money laundering refers to the conversion of illegally obtained funds and profits from criminal activities into legal assets.<sup>2</sup> "According to Section 3 of the Prevention of Money Laundering Act, 2002, within the Indian Act context, the act of money laundering is defined as any individual who is directly or indirectly involved in any activity linked to the proceeds of crime and is projecting it as untraced property should be guilty of offence of money laundering."<sup>3</sup> This individual would be considered guilty of the offence of money laundering. The funds in question are commonly referred to as dirty money or black money, as they are acquired through illegal means such as smuggling, corruption, tax evasion, black market activities, sex tourism, human trafficking, and drug trade. In the past, the phrase "money laundering" referred to financial transactions associated with organised crime. Nowadays, it encompasses any financial transaction that produces an asset or value as a result of an illegal activity, which could include actions like tax evasion or falsifying accounting records. Money

laundering can take on various forms, both locally and internationally, and can involve varying amounts of funds and activities. The initial stage of money laundering involves the generation of illicit funds. The process of generating money at a local level often involves corrupt practices to earn money. On an international level, this is largely related to drug trafficking, business transactions involving goods and services, purchasing weapons, modernization processes in developing countries, and incentives for imports and exports. Countries may provide incentives to exporters to encourage trade.

A report by Global Financial Integrity in December 2012 revealed that India was among the top ten countries in the world with a significant outflow of black money, amounting to \$1.6 billion (RS 8,720 crore).<sup>4</sup> It was also found that the total amount of black money that flowed

out of India since independence was \$232 billion, which was generated through corrupt practices such as bribery and money laundering. In the past, money laundering was primarily associated with the banking and financial industry. The definition of money laundering has evolved over time, and now government regulators define it as any financial transaction that results in a benefit or profit due to an illegal activity. This can include actions such as tax evasion or fraudulent accounting. "Money laundering has become a widespread practice that involves individuals, businesses, officials, gang members, and even states or lawful agencies."<sup>5</sup> It is evident that India is highly susceptible to criminal activities that result in money laundering.

However, the country has taken measures to combat this issue by implementing various acts and legislations. Since the implementation of global trade and liberalisation policies by the World Trade Organisation, there has been a significant increase in the volume of goods and services being traded. This has made it challenging for law enforcement agencies in different countries to identify legitimate and fraudulent agencies involved in various activities. To prevent money laundering, different actions have been implemented both globally and locally. During the 1980s, the United Nations and the Bank for International Settlements implemented specific actions to tackle the issue. The Financial Action Task Force was established in 1989, and since then, various regional groups such as the European Union, Council of Europe, and Organisation of American States have implemented anti-money laundering standards for their member countries. There are several significant global agreements that focus on combating

money laundering. One of these is the 1988 United Nations Convention against Illicit Trafficking in Drugs and Psychotropic Substances. All countries around the world have implemented anti-money laundering measures based on their practicality and appropriateness.

As early as the 1980s, the global community acknowledged the negative effects of money laundering across borders. To address this issue, various measures were implemented, including the Vienna Convention (1988) which targeted drug trafficking and the Palermo Convention (2000) which focused on transnational crimes.

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However, it is worth noting that India has yet to ratify any of these conventions. In the past, there were no laws that solely addressed money laundering. However, certain acts did have provisions related to money laundering, such as the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act of 1974, the Income Tax Act of 1961, the Benami Transaction Act of 1988, the Indian Penal Code, the Code of Criminal Procedure of 1973, and the Narcotic Drugs and Psychotropic Substances Act of 1985. The Prevention of Money Laundering Act, 2002 (PMLA) was established in India to combat money laundering. The aforementioned legislation was implemented on July 1st, 2005. In accordance with the regulations outlined in the legislation. The Prevention of Money Laundering Act (PMLA) was put into effect in 2005 and has undergone some changes, including amendments made in 2009 through the Prevention of Money Laundering (Amendment) Act. The PMLA amendment has widened its scope by including more financial institutions and introducing measures to tackle terrorism financing. Additionally, it has broadened the list of offences under PMLA to include those with cross-border implications. Despite the amendments made in 2009, there was still a discrepancy between the international standard for combating money laundering and the measures implemented in PMLA. Money laundering is a significant issue that has both national and international implications. Engaging in such activities is not only a violation of economic laws but also poses a threat to national security. Preventive measures must be taken to combat money laundering.

The prevention of money laundering is now a worldwide issue. International cooperation is

necessary and should be improved. Currently, there is a widespread concern that Anti-Money Laundering measures need to be in line with the global standard. This is a subject of research to determine whether India has fully adhered to these standards or not. The previous measures taken to prevent money laundering were found to be ineffective.

## 1.2. Literature review

- **Jean B Weld's (2011)** in his article "Current International Money Laundering Trends and Anti-Money Laundering Co-Operation Measures" in his Resource Material Series, studied that investigators and prosecutors are facing an endless array of challenges when it comes to global money laundering. Criminals and money launderers are constantly finding new ways to take advantage of weak AML/CFT jurisdictions, financial secrecy jurisdictions, and underground value transfer systems. They also prey on vulnerable victims who are greedy or gullible. Despite efforts to combat money laundering, it remains a persistent problem.
- In her article titled "Crime and Money Laundering: The Indian Perspective", **Jyoti Trehan (2004)** discusses the impact of the underground economy on the financial stability of various states. She highlights the connection between illegal markets and the outflow of capital. The statement highlights the fact that transnational crime exploits the weak points of developing economies by using legal businesses as a cover. Additionally, it acknowledges the significant advantage that information technology provides to criminal activities.
- The Indian government's "**White Paper on Black Money**", 2012 brings attention to the weaknesses of the financial instrument known as Participatory Note (PN). A PN is a financial product that is created by a Foreign Institutional Investor (FII) in foreign countries, and it is based on Indian securities. Foreign investors commonly prefer PNs. These financial instruments are traded internationally and are not directly monitored by SEBI. This has raised concerns about who ultimately owns them and

the source of the funds invested in them. There are concerns that some of the funds entering the securities market through Participatory Notes (PNs) may be unaccounted for and disguised as Foreign Institutional Investor (FI) investments.

- In his book **“Commentary on the Prevention of Money Laundering Act, 2002** with Rules, Regulations, Notifications and Forms, 2013,” Tushar V. Shah discusses the key aspects of the Prevention of Money Laundering Act, 2002. He explains how this Act is a significant step in India's fight against money laundering and terrorism financing.

- Boskovic's MA in his Thesis titled **“Types of money laundering and suppression methods” (2003)** from the Police Academy in Belgrade, money laundering techniques differ across national and international contexts. However, current trends in money laundering involve the exploitation of money deposit cards, Internet banking, electronic cash, securities, and international trade.

- **Professor Bibek Debroy and Laveesh Bhandari's research in 2011**, in their book,

“Corruption in India: The DNA and RNA”, suggested that public officials may be involved in corruption, resulting in a loss of Rs.92,122 crore (\$18.42 billion), which is equivalent to 1.26% of the GDP. According to the book, corruption has become widespread in India and is increasing by more than 100% every year. The majority of bribery occurs in the transport industry, real estate, and other public services.

- In their 2010 research paper titled **“The Concept of Money Laundering as a Manifested Function of Organised Crime,”** Sikman and Jovanovic delve into the relationship between money laundering and organised crime. The topics of security, law enforcement, community members, and missing persons are all important issues that require attention and consideration. According to the “Department of Police Education” in Banja Luka, Republic Srpska, education is crucial for competent authorities to

effectively combat criminal acts. Additionally, education can increase the knowledge of bank employees, legal business representatives, taxpayers, and citizens, enabling them to fulfil their social role in the fight against financial crime.

### 1.3. Hypothesis Of Study

This study hypothesizes that the prevalence of corruption in India significantly facilitates money laundering activities, creating a detrimental feedback loop that undermines economic stability and governance. Specifically, it posits that corrupt practices among public officials and institutions provide the necessary cover for illicit financial flows, allowing criminals to integrate dirty money into the legitimate economy with relative ease. Furthermore, it is anticipated that the lack of effective enforcement mechanisms and political will exacerbates this relationship, enabling a cycle where laundered funds reinforce corrupt practices and vice versa. By examining case studies and quantitative data, this research aims to elucidate the ways in which corruption serves as both a catalyst and a shield for money laundering, ultimately impacting broader socio-economic conditions. The findings are expected to inform policy recommendations aimed at breaking this cycle, thereby enhancing financial integrity and governance in India.

### Objective Of Study

- To examine the extent to which corruption facilitates money laundering activities in India, identifying specific mechanisms and practices involved.
- To assess the effectiveness of existing laws and regulations, such as the Prevention of Money Laundering Act (PMLA), in combating both corruption and money laundering.
- To conduct in-depth case studies of high-profile corruption and money laundering cases to illustrate the interplay between these two issues.
- To explore the broader socio-

economic consequences of the corruption-money laundering nexus, including impacts on public trust, economic development, and social equity.

- To develop targeted policy recommendations aimed at strengthening governance, enhancing enforcement mechanisms, and breaking the cycle of corruption and money laundering in India.

#### 1.4. Research Methodology

The research work is primarily doctrinal in nature and uses historical methods, analytical methods and descriptive methods of research wherever required. Historical method is used to point out the genesis, progress and impact of money laundering nationally and internationally. Descriptive method has been used to examine the threat of money laundering as a whole and the various issues involved in it. Analytical methods have been used to analyse the laws, rules and regulations in place for the offence of money laundering. It has also been used to analyse the judicial decisions and interpretations. The use of both primary and secondary sources has been made for the collection of data.

#### 1.5. Importance Of Study

This study on the relationship between money laundering and corruption in India is crucial for several reasons. Firstly, it aims to enhance understanding of how corruption facilitates money laundering, providing insights that can inform effective policymaking and governance reforms. By elucidating these connections, the study contributes to efforts to strengthen institutional integrity and accountability.

Secondly, it addresses the economic implications of these issues, as rampant corruption and money laundering undermine economic stability and growth. Understanding their interplay can help develop targeted strategies to mitigate these risks.

Additionally, the study supports law enforcement agencies in identifying best practices for detecting and preventing financial crimes,

thereby enhancing the overall effectiveness of legal frameworks like the Prevention of Money Laundering Act.

Lastly, raising public awareness about these issues fosters a more informed citizenry, encouraging advocacy for transparency and accountability in governance, ultimately promoting a more equitable society

#### 1.6. Limitation Of Study

This study on the relationship between money laundering and corruption in India faces several limitations. Firstly, data availability poses a significant challenge, as many instances of corruption and money laundering may go unreported or be obscured by legal complexities, making comprehensive analysis difficult. Additionally, the study may rely on case studies that, while illustrative, do not capture the full spectrum of experiences across different regions or sectors.

Secondly, the dynamic nature of both corruption and money laundering means that findings may quickly become outdated due to evolving regulations and enforcement practices. The study's reliance on qualitative analysis could also limit its generalizability, as the nuances of individual cases may not reflect broader trends.

Lastly, the interplay of political factors and influences may introduce bias, complicating the objective assessment of the relationship between these issues. These limitations underscore the need for ongoing research and the use of multiple methodologies to enhance understanding.

### CHAPTER –2 UNDERSTANDING THE MECHANISMS OF MONEY LAUNDERING & CORRUPTION

#### 2.1. Introduction

Centuries ago, Chinese merchants would conceal their assets and trade profits out of fear that rulers would seize them. The traders were able to convert their profits into assets that were easily transportable. They also moved their cash to foreign jurisdictions and engaged in trading at

inflated prices to attract expatriate funds.<sup>7</sup> The reason for following the money trail is that drug sales are often made in cash and need to be transformed into usable financial resources that appear to have a legitimate origin. Organised crime and money laundering are closely linked, as money laundering is a crucial component of organised crime. In fact, it can be said that organised crime cannot exist without money laundering.<sup>8</sup>

Money laundering has been around for as long as money has existed. However, before the 1970s, it was not widely recognised as a criminal activity. Governments were primarily concerned with addressing the initial criminal activity that generated illegal profits, as well as the act of laundering those profits. According to reports, significant amounts of money were laundered during the Prohibition era in the United States, particularly between 1920 and 1933. It is worth noting that Al Capone, a well-known American gangster, was first charged in 1931 for violating Prohibition laws by transporting beverages with an alcohol content exceeding 0.5%. This charge was brought against him despite the fact that he and his gang had committed numerous other crimes. There was a period when a US Attorney was on the verge of charging someone for the first time with a money laundering offence. According to him, the term "money laundering" accurately depicts the process of transforming illegal or dirty money into legal or clean money through a series of transactions. To put it differently, the origin of unlawfully acquired money is concealed by a series of transactions and agreements so that the same money can ultimately be presented as lawful earnings.<sup>9</sup>

Interestingly, legal gambling was one of the ways used to hide the origin of the funds. One of the the form of small denomination coins. If the coins were deposited into the bank, inquiries would be made. Storing a significant amount of money in coins with low denominations can be a challenging task. They established multiple enterprises, including slot machines and laundries. Therefore, the term "money laundry"

was coined. Rulers mistreating merchants and other individuals prompted them to seek methods of concealing their riches, such as ways to transfer it without detection or seizure.

There was a period when police officers armed with guns pursued criminal gangs relentlessly, but without success. Meanwhile, individuals working behind desks, without guns, were successful in identifying and charging the gang members. The 1980s were commonly referred to as the decade of "total greed," while the 1990s were known as the decade of "cleaning up."<sup>10</sup> The new millennium has been focused on cleaning up the financial world. According to records, the term was initially utilised in a legal context in a 1982 American court ruling that involved the seizure of illicit profits from drug trafficking in Colombia.<sup>11</sup>

The idea of criminal finance is extensive as it revolves around making a profit from or funding illegal activities. Criminal money laundering is not a complicated secret, but rather a well-known fact.<sup>12</sup> If a person has a large amount of wealth that cannot be explained by legal means, it can lead to suspicion of criminal activity. As a result, criminals feel the need to launder their money in order to make their illegal profits appear as if they were obtained through legal means. The crucial element of money laundering involves concealing the connection between the funds and their (unlawful) origin. The profits obtained from drug trafficking cannot be tracked in the same way as legal businesses, so they must be concealed. Numerous criminal and terrorist groups resort to money laundering as a means to transfer their funds into lawful businesses by means of unlawful activities. These businesses are used to hide the source and intended recipient of the money. Money laundering has been around for as long as there has been criminal activity that generates money.<sup>13</sup> Throughout history, successful criminals have always had to find ways to make their profits from illegal activities appear as if they were obtained through legal means.

## 2.2 **Conceptual Understanding Of Money Laundering**

*“Money laundering is called what it is because that perfectly described what takes place—illegal of dirty, money is put through a cycle of transactions or washed, so that it comes out the other end as legal, or clean money. In other words, the source of illegally obtained funds is obscured through a succession of transfers and deals in order that those same funds can eventually be made to appear as legitimate income.”<sup>14</sup>*

- Robinson

The international Financial Action Task Force (1999), France, defines money laundering as “The goal of a large number of criminal acts is to generate a profit for the individual or group that carries out the act. Money laundering is the processing of these criminal proceeds to disguise their illegal origin. This process is of critical importance, as it enables the criminal to enjoy these profits without jeopardizing their source.”<sup>15</sup>

Article 1 of EC Directive defines the term ‘money laundering’ as “the conversion of property, knowing that such property is derived from serious crime, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the committing such an offence or offences to evade the legal consequences of his action, and the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, knowing that such property is derived from serious crime.”<sup>16</sup>

Money laundering is a common practise among organised crime groups and is crucial for any criminal activity that generates profits. Money laundering refers to various methods employed to conceal the origin of illegal profits and incorporate them into the lawful economy.<sup>17</sup> In simple terms, money laundering refers to the process of cleaning dirty money to make it appear legitimate. In general, the term “money

laundering” refers to any process or activity that involves converting the proceeds of criminal activity into clean, untainted property. Criminals often disguise their illegal earnings to appear as if they were obtained through legitimate means, such as converting them into seemingly lawful bank accounts, real estate, or luxury items.<sup>18</sup> This method enables offenders to benefit from their unlawful activities and blend in with society without appearing as lawbreakers. Corrupt officials and criminals often resort to money laundering methods to conceal the actual origins of their earnings. This enables them to evade being detected by law enforcement and spend their earnings without any restrictions. Money laundering is a crucial component of many illegal activities, but the techniques used can differ greatly.

Sophisticated drug-trafficking groups and dishonest government officials employ intricate layering tactics that span multiple jurisdictions. In contrast, less experienced criminals tend to utilise more straightforward methods. Money laundering typically involves handling property that has been obtained through criminal activity. However, the key aspect is that the money is processed in a manner that makes it appear to have been obtained through legitimate means, rather than through criminal activity. The definition of laundering offences has become so broad that virtually any financial transaction can be considered as money laundering, as long as some of the funds or assets involved are known to have originated from criminal activity. Initially, the term “money laundering” was used specifically to describe the process of cleaning or disguising the proceeds of drug trafficking. Although criminal codes may vary across different countries, it is crucial to establish a universal definition of money laundering. To accurately measure money laundering, it is essential to have a precise definition that encompasses all types of criminal activities involved in the process.

Money laundering involves a series of three stages, namely placement, layering, and

integration. These stages can occur simultaneously, sequentially, or in combination with each other. Due to the increased focus on the issue of money laundering, there has been a significant effort to analyse cases of money laundering in a serious, thorough, and systematic manner. Money laundering typically involves concealing the true ownership and source of funds, preserving the proceeds in good condition, using sophisticated methods to transform the proceeds, and pursuing financial gain with a strong motivation.<sup>19</sup> The act of money laundering has been present throughout history as long as there has been a desire for financial gain. Money launderers commonly employ various techniques such as utilising sophisticated technology, seeking help from professionals, and transferring funds across borders to exploit the variations in language and legal systems between different nations.

### **2.3 Methods And Process Of Money Laundering**

The process of money laundering generally involves three stages that are aimed at integrating illicit funds into the legitimate financial system. The process of money laundering can be broken down into three stages:

#### • **PLACEMENT**

Placement refers to the process of introducing illicit funds into the financial system. One common method is to divide a large sum of money into smaller amounts to deposit into a bank account or to buy financial instruments like money orders or checks that can be deposited into other accounts. This is done to avoid drawing attention to the large sum of money. Placement is the initial phase of entering into lawful financial systems. Numerous criminal organisations attempt to inject significant sums of illegal money into lawful financial systems. They select a state to deposit their illegal money, regardless of its proximity or distance, based on its weak regulations and lenient banking system. The act of sanitization or whitewashing involves

altering the representation of certain issues and facts that may contradict the official perspective in order to make them appear more favourable. Additional methods of placement includes:

1. Incorporating illegal funds obtained from criminal activities into the lawful revenue of a company, especially those with minimal or no fluctuating expenses.
2. Creating fraudulent invoices.
3. Smurfing which refers to the practise of depositing small amounts of money into bank accounts or credit cards, which are below the threshold for reporting under anti-money laundering (AML) regulations. These funds are then used to pay for various expense
4. Concealing the identity of the beneficial owner is by using trusts and offshore companies.
5. One strategy is to take small amounts of cash below the customs declaration threshold when travelling abroad, and then deposit it into foreign bank accounts before sending it back.

#### • **LAYERING**

During the layering stage, the launderer engages in a sequence of financial transactions to obscure the origin of the money and make it challenging to track. Layering involves developing intricate networks and transactions that aim to obscure the connection between the beginning and end of the money laundering process. Money launderers and criminals who fund terrorists try to hide the origin of their funds and avoid detection by authorities by using various techniques such as smurfing, utilising multiple bank accounts, purchasing gold bullions, and other sophisticated methods. They do this after they have successfully entered the proceeds into legitimate financial systems. To put it differently, criminals often convert a significant portion of their illicitly obtained funds into different types of assets, such as purchasing less conspicuous valuable items like gemstones, to make it easier to conceal the large sums of money generated from their illegal activities from law enforcement agencies. One way to

transfer the funds is by buying and selling investments, using a holding company, or transferring them through multiple bank accounts across different countries. Jurisdictions that do not cooperate with AML investigations are more likely to have widely scattered accounts. Sometimes, the person who launders money may try to make it look like they are paying for goods or services or giving a loan to another company, in order to make it seem like a legal transaction. Although cryptocurrencies are subject to the same three stages of money laundering as traditional currencies, layering is the most frequently used method for criminals to enter the crypto market. They use this method in conjunction with the traditional financial system to conceal the source of their funds.

Some layering tactics to be aware of are:

1. Chain-hopping refers to the process of exchanging one type of cryptocurrency for another and transferring it from one blockchain to another.
2. Mixing or tumbling refers to the process of blending different transactions from multiple exchanges. This makes it difficult to trace the transactions back to a particular exchange, account, or owner.
3. Cycling refers to the process of depositing fiat currency from one bank, buying and selling cryptocurrency, and then depositing the resulting funds into a different bank or account.

### INTEGRATION

The last step in the process is called integration, where the funds are returned to the legal economy to be extracted at a later time. Money laundering refers to the process of trying to make illegally obtained money appear to be legitimate by integrating it into the legal financial system.<sup>20</sup> In order to avoid drawing attention from law enforcement or tax authorities, a criminal may choose to invest their funds in real estate, luxury assets, or business ventures, allowing them to purchase goods and services without raising suspicion. Money launderers and

terrorist financiers make laundered money appear to have been legally earned in order to integrate it into the legitimate economy. It can be quite challenging to differentiate between lawful and unlawful riches within a combined state of prosperity. Some individuals may choose to use payroll and other taxes to make their illegal activities appear more legitimate. They may even accept a 50% loss in profits as a necessary expense for conducting their business.

Some of the commonly used integration tactics are:

1. Creating fictitious employees is a method of retrieving funds. Cash payment is the usual method of payment and it is collected upon receipt of goods or services.
2. Loans provided to directors or shareholders that are not expected to be paid back.
3. Dividends are payments made to shareholders of companies that are owned by the individuals who do engage in the criminal and illegal activities.

There are few methods of doing money laundering and these are given as follows:

#### • UTILISATION OF BUSINESS ENTITIES

It is common for criminals to utilise business enterprises as a means to launder money. Business enterprises can take various forms such as sole proprietorships, business trusts, partnerships, close corporations, and companies. Typically, shell companies are utilised for the purpose of establishing and managing bank accounts. These organisations won't engage in actual trading and their primary purpose would be to offer the criminal a corporate shield to hide their true identity.

Family members are frequently the shareholders, directors, or members of these shell corporations. Criminals often mix their illegal earnings with the legitimate profits of their business and deposit the combined amount into their bank account as business earnings.

An illustration of this is an IT firm that had multiple call centres located throughout the nation. The company would contact individuals residing in a foreign country and offer them the opportunity to access a credit facility in exchange for a fee. The fees collected were transferred to various locations, both within the country and abroad, using shell companies. Shell companies are entities that do not have a physical presence in the jurisdiction where they are registered. They can be utilised as a tool to transfer and conceal the origin of funds.

Several shell companies seem to be significant in the money laundering scheme, as they share the same postal address. After receiving funds from the IT company through electronic transfers, the shell companies proceed to transfer the money to a bank account located offshore. The International Monetary Fund has identified several "major offshore centres," which include the Bahamas, Bahrain, the Cayman Islands, Hong Kong, the Antilles, Panama, and Singapore.

#### • **INSURANCE POLICIES**

A established a scheme for money laundering that involved two companies, each incorporated in different jurisdictions. Both companies used to offer financial services and provide financial guarantees, with the user acting as a director. The company director in Country M received a total of US\$ 5 million wired from these companies. It is probable that the money was obtained through illicit means and has already been deposited into the financial system. Transfers from Country N were also received by the director of the company. Money was transferred from one account to another by utilising multiple bank accounts. One of the transfers involved moving funds from a current account to Country P for the purpose of paying life insurance premiums. The main tool used in the money laundering scheme was the investment in these policies. In Country P, life insurance policies were purchased for a total of approximately US\$ 5.5 million, which was the last stage of the money laundering process. An attempt was made to purchase life insurance

policies for a number of individuals who are not citizens of the country. The individual responsible for underwriting was requested to provide life insurance coverage that had an indemnity value equivalent to the premium. Additionally, there were indications that in the event of policy withdrawal, the refunded premiums would be deposited into a bank account located in a jurisdiction other than that of the policyholder. The money was transferred to different bank accounts and then moved to an account located in a different jurisdiction. The individual involved in money laundering proceeded to purchase a life insurance policy worth US\$ 1 million. Two wire transfers were used to pay for the policy, both originating from overseas accounts. It was claimed that the money used for payment came from investments made overseas.

#### • **FINANCIAL INSTITUTIONS ASSISTANCE**

India's financial system is strong and well-developed. The range of products and services available includes internet and mobile banking, offshore investments, and small savings accounts. These financial tools make it easier to deposit a large amount of illicit funds into bank accounts. Money launderers frequently create accounts using fake identification or register them under the names of corporations or trusts. It is common for people to use legitimate bank accounts belonging to their family members or other individuals with whom they have made prior arrangements. In future investigations, the family member may consistently claim ignorance regarding the true source of the deposited funds. Sophisticated schemes have also utilised bearer documents like Negotiable Certificates of Deposit.

• **SMURFING** This technique entails dividing large amounts of money into smaller, less conspicuous sums. In the United States, any transaction below \$10,000 is considered a smaller amount. This is the threshold at which U.S. banks are required to report the transaction to the government. The funds are subsequently transferred to one or several bank accounts,

either by a single individual over a prolonged period or by multiple individuals.

- **RESIDENTIAL REAL ESTATE** Money laundering related to residential real estate is often associated with mortgage loan fraud. This is because individuals involved in money laundering may use mortgage loan scams as a way to launder money through residential real estate. This fraudulent scheme entails the collaboration of an individual who deceives and another who launders money. After a mortgage loan obtained through fraudulent means is approved, the fraudster and the launderer's actions diverge. The scammer hires a dishonest appraiser to inflate the value of a property, resulting in a higher loan amount from a housing finance institution. They then take the loan money and flee. The person who launders money will try to appear normal by making regular and timely payments on their mortgage loan, which helps to blend their illegal money with legitimate funds. In the end, the person who launders the money might sell the property and use the profits to buy a more expensive property with better potential for laundering and investment. One form of mortgage loan fraud involves money laundering through the purchase and renovation of distressed properties. These properties are then sold at a higher price than what was originally paid for them. Another tactic is to inflate the fair market value of a property by using a fake appraiser. The purpose of this appraisal is to persuade a housing finance institution to approve a mortgage loan for a property that is worth less than the requested loan amount. This is achieved through the use of fraudulent valuation methods. If the borrower fails to repay the loan, the lending institution may face a financial loss. In such a scenario, the institution may have to foreclose the property, which could have a market value lower than the falsely inflated appraisal value. Money launderers often employ multiple individuals to obtain multiple mortgages on different residential properties. This allows them to convert illegal cash into real estate while also creating the appearance of

several unrelated mortgages being paid regularly and on time.

#### **2.4. Corruption As A Social Problem**

Sociology of corruption is generally not taken into consideration despite of its uniqueness. Corruption not only destroys the economical stability but also hampers the security of the nation. Corruption reduces confidence of the people of the nation on judiciary, law and order of the nation. Terrorists and organized criminals are aided in their illegal activities by the complicity of corrupt public officials. Corruption can be seen in very low level of society and very high level of the society also as at low level the milk seller mixing water in milk and at high level the security official taking money to give confidential military information to anyone. Corruption destroys the society and brings the ends of morality, ethics and good values and gives the way to support crimes. Common man of the society and the poor people of the society are the people that are most affected by it as the people who are in the official departments that have any authority over anything demands money from the common man and poor people. Crime is very much associated with corruption and crime is the main concern for the society that's why corruption is also seemed as a social problem. Corruption reduces the transparency provided by the government to aware the people about their nations standing on the basis of economic development, educational development and structural development. Corruption indicates that the nation in which corruption is prevalent lack education, morality, development and literacy. To build a happy nation without any drawbacks, we need to eradicate the corruption as corruption is so prevalent in the society that it is now a part of everyday structure of the society and also seems as a tradition for those who are doing it as a regular basis.

Corruption has its strong roots in the society as it became the human nature of the persons living in the society and they also believe that doing corruption is no wrong and they also believes

that doing corruption is nothing like that which affects the whole society. It is observed by the thoughts of the society that they does not support corruption but major of its population is committing corruption on the daily basis which also shows the hypocrisy of the persons living in the society. By the above analysis of the statements we can clearly state corruption as a social problem.

### **Types Of Corruption**

There is various type of corruption in a broad view and it includes bribery, extortion, influence peddling, fraud, embezzlement, nepotism and favoritism. If we generally analyze the types of corruption then majorly there are two types of corruption. These two types of corruption are stated below: -

**1. Petit corruption:** - It is the form of corruption which we can say as small-scale corruption as it include small amount of money and have lesser impact on the country. This type of corruption is often ignored but gave more damage than grand corruption if summed of. Petite corruption includes acts like taking a college seat by paying money; obtain professional promotion by paying money, for a judge to reserve the court judgment by offering him/her money or to stop their transfer from one office to another office by paying money. Petite corruption is done by the people who are less powerful and authoritative than the people who perform grand corruption. Petite corruption is generally done by middle and lower level officials using their power and authority to earn some money illegally.

**2. Grand corruption:** - It is the form of corruption as its name suggests is large scale corruption and has huge and long lasting impact on the country. Grand corruption is the misuse of powers and authority by high level officials which causes heavy losses to the common lives and the country also take much time in reviving from the damages done by this type of corruption. Grand corruption includes the acts like government officials taking all the money for their personal use which is actually

given to complete any public projects like bridges, roads etc, and officials taking money to allow the projects that are not environment friendly and are not suitable to be allowed and the official awarding public contract to unqualified tenders. Grand corruption include large amount of money and that's why high level officials are included in this corruption. Grand corruption not only economically impact the life of common man it also creates danger to their life.

### **Causes Of Corruption**

Corruption is prevalent in the whole world and different society has different causes why they are suffering from corruption but there are some causes which are common in every societies of the world and in this section we will discuss these causes of corruption. The causes of the corruption are the following: -

**1. Political and economic environment:** - Political and economic environment plays major role in determining the level of corruption in the country. According to the various studies and researches it is concluded that where there is more limitation and regulation in the economic activity, the scope of the corruption will also increase. As due to limitation in economic activity it gives authority to public administrator to allow the economic activity and this sole authority give them scope to demand for bribery which sums up to corruption. They also observed that where there is freedom in the economic activity there is less scope of corruption. Many researches also state that where the elite class of government officials is corrupt then the other levels will be corrupt as the corrupt elite ones motivate their lower level official. Another reason of corruption is that the government employees are underpaid and due to which they are dissatisfied by their payments which will motivate them to demand for the bribe, this phenomenon is generally seen in developing nation. However, according to the existing research there is nothing that is observed that if the salary is increased the rate of corruption will decrease,

which means the salary is not a decisive factor, but merely one of many.

**2. Professional ethics and legislation:** – Professional ethics are needed to be checked and are needed to be adopted and respected by the people working as a government officials. Ethics defines the behavior of the individuals and the job ethics tells you what to do and what not to do, so it is really important to keep the administrator officials to aware about these professional ethics. Legislation is also an important cause of corruption because legislation of many countries acts very lenient in making the laws against corruption which do nothing in stopping the corruption.

### **Impact Of Corruption On Society**

Corruption generally includes the people which are of great authority and powers and persons who possess these level of powers are the top most of the hierarchy level of governing body and if the governing body is corrupt then it leads to moral unrest in the society and make the society worst place to survive. Corruption has different and major drawbacks which make the society unsuccessful in being happy and desirable. Corruption impacts the employment as the job is offered to the person who offers highest amount of money and not to the person who actually deserve that job and acquire the talent that is required for the job and the people who are not really qualified to the job is employed then it leads to the huge loss which is lastly incurred by the society. The pace of the development of the society will also decrease as the industries and the business that want to do business in the society has to pay the bribe to the officials for taking the permission of doing business and this will demotivate the entrepreneur in doing the business in the society in which corruption is very much high. The financial assistance given by the government will also decrease as the official which are given authority to distribute the money will keep the large amount of that money for their personal use and then distribute the remaining money to

the needy people as a financial assistance due to which less people will get the help and that leads to increase in the poverty in the society which is a huge social problem. Corruption makes the administrative officials weak as these officials in the greed of bribes think of their own good rather than common good and that hamper their full capacity of administering the society and also stop them from doing good to the society. Due to corruption certain social amenities and resources suffers wastage when there is dire need of that resource by a population else where. Corruption both physically and mentally impacts the people of the society and that make the society at large to suffer. Corruption in the health care department is the straight forward threat for the society and it an impact which we can categories as a physical impact on the society.

As we discussed sociological impact of the society, we can say that corruption is the major obstacle for the upliftment of the society. To make the good society and increase the pace of development of the society corruption needs to be tackled.

### **2.5. Tussle between PMLA and Prevention of Corruption Act, 1988**

The complex relationship between the PMLA and the Prevention of Corruption Act, 1988 (POCA) presents a significant matter that warrants careful consideration. This section illustrates the nuanced dynamics and implications that arise when addressing the issues of money laundering while also tackling corruption. Recently, the Supreme Court addressed the matter concerning the PMLA and POCA in the case of Directorate of Enforcement vs. Padmanabhan Kishore. The charges against the respondent pertain to his purported participation in a conspiracy with co-accused individuals to offer a bribe to a public official. The ruling clarified an important differentiation: provided that the funds meant for bribery are held by the giver and do not exhibit the requisite corrupt intent, they maintain their classification as unblemished assets. It is only upon the

transfer of this money, accompanied by the necessary corrupt intent, that it qualifies as a bribe. If it is later misappropriated by the public servant, the nature of the offense changes from bribery to misappropriation. In these situations, when the funds identified as a bribe are set to be transferred, those holding this money may face legal action concerning their possession and acquisition of these funds, which are regarded as proceeds of unlawful activity. By providing or transferring this money, the individual actively participates in and is aware of an activity linked to illicit gains. Without the presence of intent and active involvement in the act of offering a bribe, the funds do not revert to being classified as “proceeds of a crime.” As a result, the respondent was determined to be, at first glance, engaged in actions associated with the “proceeds of a crime” as an individual providing a bribe, in relation to the possession and acquisition of the funds designated for the bribe. Consequently, the ruling of the High Court was reversed, and the actions taken under the PMLA were considered legitimate concerning the accused respondent. The respondent has been instructed to continue as a party in the proceedings related to the Enforcement Case Information Report (ECIR) filed by the Enforcement Directorate. This highlights the complexity involved in aligning the PMLA with the POCA and the importance of upholding a careful balance in the fight for both financial integrity and the elimination of corruption. The changing framework in India requires a constant dedication to consistency in tackling these urgent matters.

## **2.6 Impact Of Money Laundering On Economy**

There is a negative correlation between money laundering and economic growth. The threat of money laundering to national economies and government coffers is substantial. Legal financial institutions and nations are vulnerable to the political and economic instability that might result from the presence of illicit funds. Crimes related to the economy can have a severe impact on a country's financial system as they can affect a larger number of people compared

to other types of crimes. Crimes related to the economy can harm individuals who may not appear to be directly impacted by the offence. Tax evasion can have a significant impact on government revenue, which in turn can limit the government's ability to fund development projects. This can ultimately affect a wide range of people who would have otherwise benefited from these initiatives.

Fraudulent activities by a company not only deceive its investors but can also have a negative impact on their trust, potentially leading to a decline in the economy's growth. Money laundering has a detrimental impact on economic development, although it is challenging to measure its negative economic effects. It harms financial institutions that are crucial to economic growth and diverts resources from the real sector of the economy, leading to reduced productivity. Additionally, it encourages crime and corruption, which further slow down economic growth. Money laundering can also distort international trade and capital flows, which can be harmful to long-term economic development. The efforts of developing countries to use offshore financial centres (OFCs) as a means of promoting economic growth are hindered by the prevalence of money laundering activities that occur through these channels. Money laundering activities can have adverse impacts on various sectors such as the financial sector, formal agents like the state, financial institutions, and the banking sector.<sup>21</sup>

### **• FINANCIAL SECTOR**

When analysing the effect on financial institutions in a developing country, the stages of money laundering that pose the most significant threat are the placement and layering phases. During these phases, illegal funds are laundered but have not yet been completely assimilated into the economy for use by those who claim ownership of the funds, either as consumer goods or investments in seemingly legitimate businesses. Money laundering is a widespread issue in developing countries that can harm

financial institutions in three main ways. Firstly, it raises the likelihood of customers being deceived by corrupt individuals within the institution. Secondly, it increases the chances of the institution becoming corrupt or even being taken over by criminal elements, which can again lead to customers being defrauded. Lastly, it raises the risk of financial collapse for the institution due to fraudulent activities. The risks associated with bank operations are formally known as operational risks, and they can have a significant impact on a bank's reputation.<sup>22</sup>

These three factors can arise independently or in combination, and they can even strengthen each other. They are highly likely to raise operational risks, especially through fraudulent activities, and reputational risks that banks may face. It is true that any harm caused by money laundering, whether operational or otherwise, can lead to a negative impact on the reputation of an institution. Similarly, a sudden loss of reputation can also have adverse effects on the institution's financial position, and in extreme cases, it can result in a run on its deposits. This vulnerability is present irrespective of the direction in which the funds are flowing among the 5 possible directions. Engaging in money laundering activities raises the likelihood of corrupt individuals within the institution defrauding either the institution itself or individual customers. Individuals within legitimate financial institutions who engage in major money laundering activities often commit financial fraud as well. According to FATF reports, financial crime is the most common precursor to money laundering, following narcotics trafficking.

The rapid growth of financial activity in proportion to overall economic activity in recent decades is believed to be a contributing factor to the increase in financial crime. During the period of 1990 to 2000, the nominal gross domestic products of Thailand, Malaysia, and the Philippines experienced a significant increase. Thailand's GDP rose by 124%, Malaysia's by 185%, and the Philippines' by 206%. In comparison, the nominal level of bank deposits in

these countries increased by a much higher percentage. Bank deposits increased by 237%, 379%, and 504% in Thailand, Malaysia, and the Philippines, respectively. This increase in bank deposits was typically around twice the increase in GDP. As financial activity and financial crime tend to increase simultaneously, the same is true for financial crime and money laundering. This is because they both enable and support each other. Employees who are willing to participate in money laundering are less likely to refrain from committing fraud or take measures to prevent it as part of their job responsibilities. Although it may be challenging to measure, the connection between substantial fraud and banks is evident from a thorough examination of the cases.

#### REAL SECTOR

Money laundering not only harms the financial sectors of developing countries, but also has a direct impact on economic growth in the real sector. This is because it diverts resources towards less productive activities and enables domestic corruption and crime, both of which contribute to a decrease in economic growth. The act of money laundering has a negative impact on the economy's growth as it leads to a diversion of resources towards less productive activities.

Additionally, it also facilitates domestic corruption and crime, further hampering the growth of the real sector. Money laundering can occur through means other than financial institutions. This may involve investing in assets such as real estate, art, antiques, jewellery, and luxury cars. These types of investments may have lower marginal productivity in an economy and are considered to be less risky for money laundering. Inefficient allocation of resources can lead to reduced economic growth, which can be a significant obstacle for developing countries.<sup>23</sup> Some criminals choose to invest their earnings in legitimate or illegitimate businesses and properties in order to generate additional profits.

Many of these investments are made in industries that are commonly associated with

criminal activity, such as bars, restaurants, and prostitution. Money laundering poses a significant threat to the real estate industry, which is the largest and most susceptible sector to such criminal activity. The real estate industry is often used for money laundering due to its lack of transparency and the difficulty in accurately valuing properties. This makes it a prime target for individuals looking to place large sums of money and potentially see significant increases in value. The rise in real estate prices can be a lucrative investment, and the yearly returns from legitimate business ventures provide a lawful source of income.

#### • BANKING SECTOR

Financial institutions, including banks, are leading the fight against money laundering. Using banking products to transfer criminal proceeds for money laundering and terrorist financing is a threat to the integrity of the financial system. The financial market has been impacted by money laundering, either directly or indirectly. Banks have significantly increased their expenses in the fight against money laundering by investing in advanced software to detect suspicious transactions. Estimating the costs of AML (anti-money laundering) can be challenging because the expenses are distributed among various functions such as operations, compliance, and risk management. These costs can be both direct and indirect.<sup>24</sup> The presence of these characteristics makes it difficult to accurately determine the cost level and evaluate past and future changes, ultimately affecting the reliability of the information. Conducting AML activities necessitates a significant investment to improve transaction monitoring and update KYC documentation for current customers. If institutions fail to report, they may face fines and sanctions from competent authorities. In the worst-case scenario, their banking licence may be revoked.

#### • EXTERNAL SECTOR

When illegal funds are sent out of a country

through money laundering, it leads to the illegal flight of capital. These harms developing economies by taking away their resources. Additionally, if there is a lot of money laundering happening, it can discourage foreign direct investment (FDI) that could actually help with economic growth. Illicit capital flight from developing countries can be facilitated by money laundering.<sup>25</sup> Identifiable centres of money laundering activity have facilitated each of the major episodes of rapid and large-scale illicit capital flight from developing and transition countries. An example that is often cited, albeit an extreme one, is the illegal outflow of capital from Russia. Money laundering, both domestically and internationally, resulted in the outflow of funds that were not repatriated. This caused a drain on the economy's resources through the external sector. Since the mid-1990s, there has been a significant illegal outflow of capital from Nigeria, which has been facilitated by money-laundering centres in developed countries. However, most of this money has not been returned to Nigeria, which contradicts the common belief that money laundering involves illegal funds from developed countries being laundered in developing countries. According to financial supervisory authorities in the UK, it is estimated that approximately \$1.3 billion in illegal transactions from Nigeria were made in UK accounts during the period of 1996 to 2000.<sup>26</sup> It is possible for domestic institutions to be used as the primary institutions for illegal capital flight. For instance, the Central Bank of Zambia suspended the licence of United Bank of Zambia, a significant private bank, due to accusations of outbound money laundering, as reported by the press. Although some people argue that anti-money-laundering regulations lead to significant capital flight, there is no evidence to support this claim. It is interesting to note that some people have used the possibility of capital flight as a reason to avoid or postpone the implementation of anti-money laundering regulations. They argue that depositors may move their money to countries with less strict regulations or keep their funds hidden to

maintain their privacy. However, it is believed that even with some initial challenges, the financial sector will continue to thrive in the long run. One way to launder money without using the financial system or spending money in the domestic economy is through "misinvoicing." This involves manipulating the prices of imports or exports to conceal the transfer of funds during the layering process. This creates the appearance of a legitimate value-for-value transaction. Extensive transactions can have a significant impact on a country's entire external sector.

#### • SOCIAL COST

Money laundering is a serious issue that comes with considerable social risks and costs. The process of money laundering is crucial for criminals to make their illegal activities profitable. The expansion of operations for drug traffickers, smugglers, and other criminals is made possible by this. The cost of government increases as a result of the need for more law enforcement and healthcare spending to address the severe consequences of drug abuse, such as providing treatment for addicts. Money laundering has various negative impacts on the economy and society. One of these is the transfer of economic power from legitimate entities such as the market, government, and citizens to criminal organisations. In brief, it contradicts the traditional saying that criminal activities do not bring any financial gain. In addition, the enormous economic power that criminals gain through money laundering has a corrupting influence on all aspects of society. In rare situations, it has the potential to result in the virtual seizure of a lawful government.

In general, the act of money laundering poses a multifaceted and ever-changing problem for the global community. It is true that money laundering is a worldwide issue that demands universal regulations and collaboration among nations. This is crucial in order to limit the ability of criminals to launder their illicit gains and engage in criminal behaviour.

### CHAPTER –3 LEGISLATIONS GOVERNING MONEY

#### LAUNDERING IN INDIAN AND INTERNATIONAL CONTEXT

##### 3.1 Indian Context

India's increasing economic power has made it more susceptible to money laundering, even though the country has stringent foreign exchange regulations that pose challenges for criminals attempting to launder money. The Bureau for International Narcotics and Law Enforcement Affairs' International Narcotics Control Strategy Report highlights India's susceptibility to money laundering. The report states that, "India's emerging status as a regional financial center, its large system of informal crossborder money flows, and its widely perceived tax avoidance problems all contribute to the country's vulnerability to money laundering activities. Some common sources of illegal proceeds in India are narcotics trafficking, illegal trade in endangered wildlife, trade in illegal gems (particularly diamonds), smuggling, trafficking in persons, corruption, and income tax evasion. Historically, because of its location between the heroin-producing countries of the Golden Triangle and Golden Crescent, India continues to be a drug-transit country." There are two ways to look at money laundering in India: from an international perspective and from a domestic perspective. India's strict foreign exchange laws and reporting norms have played a significant role in controlling cross-border money laundering on the international stage. Informal transactions such as 'Hawala' have posed a threat. Indian experts estimate that the amount of money transferred through the hawala market is approximately 30-40% of the formal market. India is currently the top destination for remittances globally, with a significant number of Indian expatriates residing in North America and the Middle East. China and Mexico follow India in the list of leading recipients of remittances. Money laundering was a method used to convert illegal or black money into legitimate or white money.

In June 2010, India became the 34th member of the FATF and has since made several attempts to

enhance its anti-money laundering (AML) system. During the APG meeting in July 2011, Finance Minister Pranab Mukherjee highlighted India's dedication to combatting money laundering and the financing of terrorism. According to Mr. Mukherjee, several steps have been taken to enhance the AML/CTF system in compliance with the FATF guidelines. The Directorate of Enforcement, which is responsible for investigating money laundering in India, has recently increased its workforce threefold. India has set up a Financial Intelligence Unit that involves a mechanism for reporting doubtful financial transactions. Despite progress made, there are still several obstacles that the country must overcome. The following items are presented and explained within the framework of the current anti-money laundering system and other measures implemented to reinforce the current structure.

### 3.1.2 **Anti-Money Laundering Laws: India**

India was among the early adopters of anti-money laundering laws after it became an industrialised nation. India implemented a series of regulations in 1939, just prior to the start of World War II, with the aim of restricting the outflow of capital. Although the primary objective was to safeguard the capital, it also served as a powerful deterrent against financial wrongdoing. The UAPA 1967 deals with issues related to terrorism and the funding of such activities. India has specific laws that focus on preventive detention. This is aimed at addressing the issue of organised crime. The idea behind preventive detention is that by keeping criminals away from their normal lives for a significant period of time, they lose contact with criminal activity and society. This, in turn, indirectly puts an end to their criminal activities. The COFEPOSA act allows for prompt action by detaining individuals who may engage in harmful activities in order to prevent them from doing so. The National Security Act of 1980 allows the Central or State Government to detain individuals as a preventive measure. The Act allows for detention up to one year, but it has been rarely used against individuals who pose a threat to national

security or are involved in serious criminal activities. Detention is a decision made by the executive branch, which means that the individual being detained does not have to go to court for a trial.

The Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act of 1988 allows for the apprehension of individuals who are involved in the trafficking of drugs. It is common for criminals to transform their illegal profits into various forms and then strategically inject them into the financial and economic systems, which can harm a country's economy. The laws in question do not directly address the specific actions that lead to and are related to the act of conversion. There was a need to develop a specific law that would address the issue comprehensively. As a result, the PMLA was created to fulfil this endeavour. The FATF recognised India's strategic importance in 1998 and extended an invitation for India to apply for membership. The PMLA is a unique law that has been enacted by the Indian Parliament in accordance with a resolution of the United Nations. When the Parliament delayed its decision, India faced significant pressure from international organisations and experts to pass a law against money laundering due to the severity of the issue on a global scale. The 2009 amendment to PMLA was introduced to fulfil the obligations of the Vienna and Palermo Conventions.

### **1. The Conservation Of Foreign Exchange and Prevention of Smuggling Activities Act, 1974**

The COFEPOSA Act was passed by the Parliament on December 13, 1974. This act grants the executive branch wide-ranging powers to detain individuals suspected of being involved in smuggling activities. It came into effect on December 19, 1974. On the other hand, engaging in smuggling activities and violating foreign exchange regulations can have a detrimental impact on the economy and security of the nation. Large-scale smuggling operations are often conducted in areas that are particularly

susceptible to this type of activity. To effectively combat these violations, it is important to apprehend those involved in any capacity and prevent further smuggling. The COFEPOSA Act empowers the government to undertake measures to safeguard and enhance the country's foreign exchange reserves. The government has the authority to guarantee that the Act is enforced by its organisations. The government authorities have detained an individual as a preventive measure to prevent them from participating in smuggling activities as per the law.

The role of the Advisory Board is to evaluate whether there was sufficient reason for detaining the individual at the time the detention order was issued, and whether there is still adequate justification for their arrest at the time the report is required. The Act is founded on the concept of Preventive Detention, which was first introduced during the colonial era. The Indian Constitution explicitly refers to the need for laws to maintain public order and ensure state security. These laws are outlined in Article 22 and are considered a necessary measure. According to the guidelines specified in section 10, the period of imprisonment is established to range from 1 to 2 years. The Act grants the state or central government the authority to make all necessary decisions. When detaining specific individuals, it is crucial to take into account the following areas: Section 3 provides the authority to issue detention orders, while Section 4 outlines the procedure for carrying out such orders. Section 5 permits the regulation of the location and circumstances of detention, and Section 11 deals with the cancellation of detention orders.

## 2. Income Tax Act, 1961

The Income Tax Act of 1961 is an important tool in India for preventing and addressing money laundering. Although the main objective of the Income Tax Act is to ascertain the tax responsibility of individuals and organisations, it also includes clauses that aid in recognising and preventing money laundering operations. The Income Tax Act has provisions that regulate

money laundering in several ways.

1. Individuals and entities, including financial institutions, are required by the Income Tax Act to report any suspicious transactions to the Financial Intelligence Unit - India (FIU-IND). These transactions seem to be linked to money laundering or the funding of terrorist operations. The law requires taxpayers and entities responsible for reporting to keep records and immediately notify the authorities of any suspicious transactions.

2. The Income Tax Act requires individuals and entities to verify their identity and address for different transactions, including opening bank accounts, conducting high-value transactions, or making investments. This process aids in verifying the identities of people engaged in financial transactions, making it harder for money launderers to conceal their illegal funds.

3. The Income Tax Act includes various provisions that are consistent with measures to prevent money laundering, commonly known as anti-money laundering (AML) measures. As an example, it forbids the receipt or repayment of a loan or deposit in cash that goes beyond a certain limit. The objective is to hinder the transformation of unlawful funds into lawful sources by limiting significant cash transactions.

4. The Income Tax Act has provisions for penalties in case of non-compliance with the reporting and verification requirements. Individuals or entities who fail to maintain accurate records, submit reports, or adhere to anti-money laundering regulations may face legal consequences and penalties.

5. The Income Tax Act allows for the sharing of information between tax authorities and other agencies responsible for enforcing the law. This helps different agencies work together and coordinate their efforts to fight against money laundering, which improves the overall effectiveness of anti-money laundering measures.

6. The Income Tax Act grants the tax

authorities the authority to investigate potential instances of money laundering and implement necessary enforcement measures. This involves performing investigations, examinations, and inspections to collect proof of unlawful financial actions. The tax authorities have the ability to collaborate with other agencies, such as the Enforcement Directorate (ED), to aid in the fight against money laundering through the sharing of information.

7. The Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 is a significant legislation that deals with money laundering. Although it is not directly related to the Income Tax Act, it works in conjunction with it to address the issue of undisclosed foreign income and assets. The Black Money Act is aimed at addressing undisclosed foreign income and assets, and it enforces strict penalties and prosecution for those who fail to comply with the law. This provision grants tax authorities the power to investigate instances of foreign assets that have not been disclosed and to take necessary measures to ensure that they are taxed appropriately.

### **3. The Benami Transaction Prohibition Act, 1988**

A Benami transaction refers to a scenario where a property is transferred to one individual, but the value is paid or provided by another person. In most cases, the identities of the parties involved are kept hidden. The legislation was enacted in 1988. The purpose is to restrict Benami transactions and enable the retrieval of property held through such transactions. According to Section 3 of the Act, it is prohibited for anyone to engage in a Benami transaction.<sup>37</sup> The Act outlines the properties acquired through Benami transactions that can be seized by competent authorities without the need for compensation to be paid by said authority. The Supreme Court of India has recently declared that Section 3(2) of the Benami Transactions (Prohibition) Act 1988 is unconstitutional due to its manifestly arbitrary nature.<sup>38</sup> The penalty for engaging in a benami

transaction is specified in Section 3(2). The judges ruled that the amended Act of 2016 can only be enforced for future cases and invalidated any legal actions or property seizures that occurred before the amended Act was implemented.

### **4. The Narcotic Drugs And Psychotropic Substances Act, 1985**

The Narcotic Drugs Act was enacted in 1985 to consolidate and revise laws pertaining to narcotic drugs. In accordance with its goals, the article identifies, lists, and provides explanations for various forms and types of narcotic drugs and psychotropic substances. The main purpose of the Act is to prevent and limit the transportation and sale of drugs and other mind-altering substances. However, it does not specifically address the issue of money laundering. It should be noted that the illegal trade of narcotics can result in significant financial gain for those involved in it. A significant amount of money from drug trafficking is often used for money laundering, which gives it a sense of legitimacy. The NDPS Act aims to prevent drug trading and trafficking, which helps to curb the flow of money into illegal activities. The NDPS Act has provisions in place to regulate money laundering. These provisions help to prevent and control the illegal transfer of funds obtained through drug trafficking. The NDPS Act grants authorities the power to confiscate and forfeit any profits obtained from drug-related crimes. This involves the seizure of assets, properties, and funds obtained through drug trafficking or other illegal drug-related activities. The NDPS Act acts as a deterrent and disrupts the flow of funds associated with drug trafficking by taking away the illegal profits of offenders.

1. The NDPS Act requires individuals to report any suspicious transactions that are linked to drug trafficking or money laundering to the appropriate authorities. It is mandatory for individuals and organisations, such as financial institutions, to report any information or suspicion they have regarding drug-related

activities or financial transactions linked to such activities. This type of reporting is useful in detecting possible instances of money laundering and assists in the inquiry and legal action against those responsible.

2. The NDPS Act provides law enforcement agencies with the authority to conduct investigations in order to combat drug-related crimes, such as money laundering. Agencies like the Narcotics Control Bureau (NCB) are empowered to collect information, carry out probes, and take measures against people and organisations engaged in drug trafficking and related financial crimes. To combat money laundering, authorities have the power to freeze bank accounts, seize assets, and initiate legal proceedings.

3. Provisions Regarding Penalties: The NDPS Act enforces strict punishments such as imprisonment and fines for crimes related to drugs. The penalties act as a preventive measure and aid in the fight against money laundering that is linked to drug trafficking. Individuals who participate in drug-related actions, such as funding or assisting in drug trafficking, may encounter serious repercussions, such as imprisonment and the forfeiture of assets.

##### **5. The Indian Penal Code, 1860**

The Indian Penal Code of 1860 is the main law that governs various criminal activities and outlines the corresponding punishments for them. The Code of Criminal Procedure, 1973 is a set of procedural laws that outline the necessary steps to be taken in criminal cases. Several crimes listed in the Indian Penal Code are considered scheduled offences as defined in the PMLA. Additionally, Section 65 of the Prevention of Money Laundering Act (PMLA) states that the procedures outlined in the Code of Criminal Procedure must be adhered to for the various proceedings outlined in the PMLA

##### **6. The Prevention Of Money Laundering Act, 2002**

The Prevention of Money Laundering Act (PMLA)

of 2002 was implemented in India to combat money laundering. Therefore, it is a concept that has been recently introduced. According to the Prevention of Money Laundering Act (PMLA) of 2002, the act of money laundering is committed by anyone who knowingly participates, assists, or is involved in any process or activity related to the proceeds of a crime and presents it as legitimate property. This is considered a criminal offence. Money laundering is a crime that often involves multiple countries and their jurisdictions. The Prevention of Money Laundering Act (PMLA) was enacted as Act 15 of 2003 and became effective on July 1st, 2005. According to the Act's Preamble, it is stated as follows:

1. To prevent money laundering.
2. Establish a process and system for seizing assets obtained through or involved in money laundering.
3. Confiscate property that is linked to the crime of money laundering.

It is important to take action against individuals who engage in the illegal activity of money laundering. The ED, which is a part of the Department of Revenue under the Ministry of Finance, is tasked with investigating instances of money laundering as per the PMLA, 2002. The Prosecuting Agency is in charge of investigating such cases. The Financial Intelligence Unit - India (FIU-IND) is a national agency that operates under the Department of Revenue, Ministry of Finance. Its primary responsibility is to receive, process, analyse, and share information about suspicious financial transactions with enforcement agencies and foreign FIUs. Both of these organisations collaborate to prevent the occurrence of Money Laundering and investigate financial transactions that may involve. Also, The Amendment to PMLA Act, 2002 came in year 2009 and introduced some provisions. This part of the Chapter would be discussed in the later chapter of the dissertation.

##### **3.2 International Context**

Money laundering is a widespread issue that has become more prevalent due to the

interconnectedness of the global financial system. Advancements in technology and fewer obstacles to the unrestricted flow of capital have been observed. This implies that individuals involved in money laundering can exploit this system to conceal their unlawfully obtained profits. These individuals are adept at swiftly transferring their illicit profits across different countries, making it difficult to track and seize their assets. The study of Canadian money laundering police files revealed the presence of an international aspect to money laundering. It was disclosed that over 80% of money laundering schemes had an international aspect. By the end of the 1980s, only a handful of developed western countries had established systems in operation. Many governments have acknowledged the need for close international collaboration to combat money laundering. As a result, several international agreements have been established to address this issue. Currently, more and more states are implementing laws and regulations. However, according to UNDCP, approximately 70% of governments still lack efficient legislation. Efforts to address money laundering on a global scale were initiated in 1988 through two significant actions: the establishment of the Basel Committee on Banking Regulations and Supervisory Practices, and the adoption of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

### 3.2.2 UN Convention Against Illicit Traffic In Narcotic Drugs And Psychotropic Substances

The UN Convention was a significant event as it acknowledged the connection between illegal drug trafficking and other organised criminal activities that harm the lawful economies and pose a threat to the stability, security, and independence of nations. It was recognised that drug trafficking is a global criminal activity that generates huge profits, allowing transnational criminal groups to infiltrate and corrupt government structures, legitimate businesses, financial institutions, and society at all levels. The agreement mandated that those who signed it must make it illegal to launder money obtained

from drug-related activities, and must seize any such funds that are discovered. All nations that ratify this agreement commit to implementing a thorough criminal law that prohibits the laundering of drug trafficking profits. Additionally, they pledge to establish protocols for detecting, tracking, and either freezing or confiscating the profits generated by drug trafficking. Many countries have developed their national laws based on conventions. The Council of Europe Convention on Laundering serves as a basis for the FATF to operate and expand. This convention provides the motivation for the FATF's work.

### 3.2.3 Basle Committee On Banking Regulations And Supervisory Practices

The Basle Statement of Principles was a major achievement in the financial world as it established a framework to prevent the criminal use of the banking system and combat money laundering on a global scale. The Statement of Principles covers not only money laundering related to drugs but also includes all forms of laundering that involve the banking system. This includes depositing, transferring, or hiding money obtained from illegal activities such as robbery, terrorism, fraud, or drug trafficking. The aim is to prevent individuals engaged in money laundering from accessing the banking system through the implementation of four fundamental principles: The KYC policy requires banks to make reasonable attempts to confirm the true identity of their customers and establish effective procedures for verifying the authenticity of new customers. Bank management must maintain high ethical standards by complying with laws and regulations. They should also be vigilant and avoid providing services if they suspect any money-laundering activity. Banks should comply with the regulations set by law enforcement agencies and collaborate with them to combat the issue of money laundering. The fourth principle is about adherence to the statement. This means that the bank's management should follow the principles outlined in the statement to prevent potential money laundering activities.

### 3.2.4 The Financial Action Task Force (FATF)

The FATF is an inter-governmental organisation established in 1989 by the G7 countries, namely Canada, France, Germany, Italy, Japan, and the United Kingdom. Its primary objective is to develop and advocate for national and global policies aimed at preventing money laundering and terrorist financing. The Forty Recommendations on money Laundering have been recognised as the global benchmark for implementing effective measures against money laundering. The FATF conducts periodic reviews of its members to ensure that they are adhering to the aforementioned recommendations and provides recommendations for areas where they can improve. The organisation achieves this by conducting yearly self-evaluations and occasional mutual assessments among its members. The FATF is responsible for detecting new patterns in money laundering techniques and proposing strategies to counter them. The FATF has developed 9 special recommendations on terrorist financing in addition to the 40 existing recommendations. The task force has recommended that all countries must designate offences such as financing of terrorism, terrorist acts, and terrorist organisations as 'money laundering predicate offences.'

The Recommendations offer a comprehensive range of measures to combat money laundering (ML). These measures encompass the criminal justice system and law enforcement, the financial system and its regulation, as well as international co-operation. The principles for action are established and provide countries with some degree of flexibility to implement them based on their unique circumstances and constitutional frameworks. Although it is not a legally binding global agreement, numerous countries worldwide have pledged to fight against money laundering by adopting the 40 Recommendations. Additionally, the recommendations of FATF are supported by the United Nations. The Recommendations were first created in 1990 and were later updated in 1996 to reflect changes in money laundering patterns

and to prepare for potential future risks. Additionally, the FATF has conducted a comprehensive assessment and revision of the 40 Recommendations that were established in 2003.

### 3.2.5 Global Programme Against Money Laundering (GPML)

In 1997, the Global Programme against Money Laundering was created by UNODC as a result of the mandate given by the 1988 UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. In 1998, the United Nations General Assembly Special Session (UNGASS) Political Declaration and Action Plan against Money Laundering expanded the scope of GPML's authority beyond drug-related crimes to encompass all forms of serious criminal activity.<sup>44</sup> This move served to reinforce GPML's mandate.

### 3.2.6 Council Of Europe Convention On Laundering, Search, Seizure And Confiscation On The Proceeds Of Crime

The Strasbourg Convention, also known as the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, was created to expand international cooperation against organised crime beyond drug trafficking. In addition, the 1991 EC Directive on Prevention of the use of the Financial System for the Purpose of Money Laundering is a legal requirement that mandates member states to adopt the regulations outlined in the directive into their own legal systems by a specified deadline. The European Union has implemented several measures to address the issue of terrorism, including the Council's common position on combating terrorism and the application of specific measures to combat it. Additionally, the Warsaw Convention and the Council of Europe Convention on Laundering, Search, Seizure, and Confiscation of the Proceeds from Crime and on the Financing of Terrorism have also been established.

### 3.2.7 Wolfsberg Aml Principles

These eleven principles are crucial in combating

serious crimes such as money laundering, corruption, and other related offences. These principles hold significant importance as they have been initiated by the private sector. Historically, the majority of efforts to combat this issue have been spearheaded by the public sector, specifically governments and their regulatory and law enforcement agencies. Additionally, government representatives have taken action through international organisations like the Financial Action Task Force (FATF) and the Basel Committee of Bank Supervisors. The Wolfsberg Principles refer to a set of guidelines that are not legally binding but are considered as the best practises for private bankers to establish and maintain relationships with their clients.

### 3.2.8 Asia-Pacific Group On Money Laundering

The APG is a global organisation that comprises of 38 member countries and jurisdictions. It also includes several international and regional observers such as the United Nations, IMF, and World Bank. The APG has a close association with the FATF, which is located at the OECD Headquarters in Paris, France. Every member of APG has pledged to implement the 40+9 Recommendations, which are the international standards set by FATF for preventing money laundering and financing of terrorism.

### 3.2.9 The Vienna Convention

The United Nations Drug Control Programme (UNDCP) took the initiative to combat drug trafficking and money laundering as the amount of money involved in these illegal activities was enormous. This was the first international agreement made to address this issue. The adoption of the Vienna Convention, which is the United Nations Convention against Illicit Traffic in Narcotic Drugs and psychotropic substances, is a clear indication of the efforts made to combat drug trafficking. The Convention became effective on November 11, 1990. The Vienna Convention is mainly concerned with addressing the illegal drug trade and associated law enforcement matters. The UN Web Archive

observed on January 1, 2012 that there were 185 parties to the Convention. The Convention does not explicitly mention money laundering, but it does provide a definition of the concept and urges nations to make it a criminal offence. The first article of The Vienna Convention provides definitions. According to the statement, any asset, whether physical or non-physical, that is obtained directly or indirectly through the commission of an offence established in accordance with Article 3, paragraph 1, is considered as property. This includes all types of assets such as legal documents or instruments that prove ownership or interest in such assets. According to Article 4 Paragraph 1 of the Convention, money laundering is defined as the act of converting or transferring property with the knowledge that it was obtained through criminal activity. The purpose of this act is to conceal or disguise the illegal origin of the property or to help someone involved in the crime to avoid punishment. Additionally, it is mentioned that hiding or altering the actual identity, origin, whereabouts, transfer, entitlements, or possession of assets, while being aware that such assets are obtained from a crime or crimes established under subparagraph a) of this section or from involvement in such a crime or crimes.

The Convention provides a broad definition of proceeds, as it only includes funds that are directly or indirectly derived from drugs. Although it has its limitations, the purpose of this establishment is to combat the illegal trafficking of drugs and psychotropic substances, as well as to prevent money laundering, particularly that which is obtained through drug-related activities. This introduces a new phrase to legislation and lawmakers. The Vienna Convention restricts predicate offences to drug trafficking offences as per its provisions. Therefore, according to the Convention, crimes like kidnapping, fraud, and theft are not considered as money laundering offences. The global community now believes that the crimes related to money laundering should encompass more than just drug trafficking.

In his book "Proceeds of Crime–Money Laundering, Confiscation and Forfeiture" (1996), Brown Alen acknowledged the significance of the Convention as a crucial document in the global fight against illegal drug trafficking. This is because it was the first international Convention to cover all aspects of drug dealing, including the proceeds from production, transfer, and sale, as well as the prohibition of money laundering related to these activities. The Convention also facilitated international cooperation in criminal matters. Taking into account the significance of the Vienna Convention and considering other international agreements that have been ratified subsequently, it is evident that all of these documents and conventions have been influenced by the Vienna Convention. The Vienna Convention's definition of predicate offences has been broadened by various international organisations such as the European Commission and the Financial Action Task Force (FATF) to encompass other major crimes.

#### **CHAPTER–4 CRITICAL ANALYSIS OF PREVENTION OF MONEY LAUNDERING ACT, 2002 & PREVENTION OF CORRUPTION ACT**

##### **4.1 Introduction**

Money laundering is a criminal offence in India and is prohibited by both the Prevention of Money Laundering Act (PMLA) and the Narcotic Drugs and Psychotropic Substances Act (NDPS). The NDPS Act's money laundering provisions are limited to drug-related crimes, while the PMLA covers a wider range of underlying offences, including narcotics. According to the NDPS Act, drug-related offences are only applicable to offences committed within India. This is because Section 8A (c) of the NDPS Act does not mention drug offences committed in other countries, nor does it include a provision that extends the Act's jurisdiction to offences committed outside of India. Since PMLA has incorporated drug-related predicate offences under the NDPS Act and has jurisdiction beyond national borders, the provisions outlined in Section 8A of the NDPS Act have become unnecessary. However, they have

not yet been abolished. The offence of money laundering under the PMLA applies to anyone who knowingly participates in the laundering of proceeds from a crime, including the person who committed the underlying offence. On the other hand, the money laundering provision under the NDPS Act applies to any person without any exceptions. In addition, there is no legal principle in India that prohibits the use of ML provisions for the predicate offender.<sup>45</sup> On December 9th, 2005, India signed the UN Convention against corruption, which is also referred to as the Merida Convention. Money laundering is often associated with corruption as it is considered to be one of the predicate offences.

The primary goal of introducing such legislation was to combat the crime of legalising financial earnings from illicit sources. The Indian Government and police officials are authorised by this Act to confiscate any property that has been determined to have been obtained through illegal means or by engaging in unlawful activities.

The PML Act was created with the purpose of preventing or impeding the occurrence of money laundering, as its name implies. Additionally, the intention was to confiscate any assets acquired through the commission of money laundering and for related matters pertaining to such an offence.

##### **4.2. Key Provisions Of The Prevention Of Money Laundering Act, 2002 Objectives Of The Act:**

The Prevention of Money Laundering Act, 2002, was established to address the problem of money laundering. A few of its objectives include:

1. To address and manage the problem of money laundering.
2. The act of seizing or detaining any assets that are suspected to be linked to money laundering or have been obtained through such illegal means.
3. To punish those who commit the crime of money laundering.

4. For choosing the tribunal and adjudicating body that will handle money laundering related cases.

5. It is proposed to mandate banking companies, financial institutions, and intermediaries to maintain records or documents pertaining to financial transactions.

6. To address any additional concerns pertaining to the act of money laundering.

#### **SCHEDULE OF OFFENCES:**

According to the Prevention of Money Laundering Act (PMLA), committing any offence listed in Part A or Part C of the PMLA Schedule will result in the application of PMLA provisions. Below are some examples of acts and offences that may result in PMLA charges.

1. Part A provides a list of offences that are covered under different acts, including the Indian Penal Code, Narcotics Drugs and Psychotropic Substances Act, Prevention of Corruption Act, Antiquities and Art Treasures Act, Copyright Act, Trademark Act, Wildlife Protection Act, and Information Technology Act.

2. Part B outlines offences that are categorised as Part A offences, but the amount involved in these offences is equal to or greater than Rs 1 crore.

3. Part C focuses on transnational crimes and demonstrates a commitment to combat money laundering on a global scale.

#### **“PROCEEDS OF CRIME” U/S 2, PMLA, 2002:**

The newly inserted section defines “proceeds of crime” as any property that a person has acquired, either directly or indirectly, through criminal activity related to a scheduled offence.

This includes the value of the property, even if it is held outside of the country. If the property is held abroad, its equivalent value held within the country is also considered.

According to Section 2(u) of the PMLA, the phrase ‘proceeds of crime’ refers to any asset obtained by an individual, either directly or indirectly,

through the commission of a crime related to a scheduled offence. It also includes the monetary value of such assets. If the assets are held outside the country, then the equivalent value of those assets held within the country is also considered. Subsequent changes were implemented to the Section, which included the inclusion of the phrase ‘or abroad’ to the explanation of ‘proceeds of crime’.

Additionally, to prevent any inconsistencies, an explanation is provided that defines ‘proceeds of crime’ as not only property obtained from the scheduled offence, but also any property that may be acquired directly or indirectly as a result of any criminal activity related to the scheduled offence.

#### **“OFFENCE OF MONEY-LAUNDERING” UNDER SECTION 3 OF THE PMLA, 2002**

The PMLA includes an Explanation in section 3 which states the following: “Explanation –” To clear up any confusion, it is stated that a person can be charged with the crime of moneylaundering if they are found to have been involved in any of the following activities related to proceeds of crime: concealment, possession, acquisition, use, presenting as clean property, or claiming as clean property, either directly or indirectly, or by knowingly assisting or being a party to it.

The process or activity related to the profits obtained from criminal activities is an ongoing process that persists until the point where an individual is either directly or indirectly enjoying the profits by concealing, possessing, acquiring, using, or presenting it as legitimate property, or claiming it as legitimate property in any way possible.

The Supreme Court of India, in the case of S. Sundaram Pillai, Etc vs V.R. Pattabiraman<sup>46</sup>, 1985 AIR 582, referred to previous legal decisions and concluded that an explanation added to a statutory provision should not be considered a substantive provision. This is because the explanation only serves to clarify the meaning of the provision, as the word “explanation”

suggests. The purpose is simply to clarify or specify any uncertainties that may have arisen in the legal provision. The court ruled that an explanation cannot alter or affect the enactment or any of its provisions. In case of any ambiguity, the provision stated in Section 3 of the PMLA will take precedence over the explanation (i) added to it.

## ATTACHMENT, ADJUDICATION AND CONFISCATION

### 1. SECTION 5- ATTACHMENT OF PROPERTY

Section 2(v) of the PMLA, 2002 defines 'property' as "any property or assets of every description, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and includes deeds and instruments evidencing title to, or interest in, such property or assets, wherever located".<sup>47</sup> Also, Section 2(d) of the Act, defines the term 'attachment' as "means prohibition of transfer, conversion, disposition, or movement of property" by any direction given under the provisions of the PML Act.<sup>48</sup> It is important to mention that Section 5 of the PMLA grants the authority to attach assets to the director, joint director, or any deputy director. If there is reason to suspect that an individual has obtained property illegally or possesses proceeds of a crime, and they are charged with said crime, the person in authority may seize their property for a maximum of 180 days.

This is done to prevent the concealment or transfer of any potential proceeds of the crime. Additionally, it is necessary to carry out the attachment in the manner specified in the Second Schedule of the Income Tax Act, 1961. Additionally, it is necessary for the individual in a position of power to document in written form the rationale behind their belief that the property was acquired through unlawful methods. To comply with the regulations, it is necessary to submit the cause in a sealed envelope to the adjudicating authority, along with a duplicate of the attachment order. Once the complaint is submitted, the adjudicating authority will review it. It's important to file the complaint within 30 days of attachment.

### 2. SECTION 6- ADJUDICATORY AUTHORITY

According to Section 6 of the PMLA, the responsibility of appointing an adjudicating authority to carry out the jurisdiction, powers, and authority granted by or under this Act lies with the Central Government.

According to the regulations, an adjudicating authority should be composed of a panel comprising of three members. This panel should include a chairperson and two other members. One of these members must have expertise in the areas of law, administration, finance, or accountancy.

"It is important to mention that an individual cannot be appointed as a member of the adjudicating authority in the legal field unless they possess the following qualifications:

1. Has qualifications to be appointed as a judge of any district, or
2. Has been a representative member of the Indian Legal Service and has held a post in Grade I of that service."<sup>27</sup>

An individual must possess the required qualifications to be eligible for appointment as a member of the adjudicating authority in the areas of finance, accountancy, or administration. In addition, the authority responsible for making decisions will not be required to follow the specific guidelines outlined in the Code of Civil Procedure, 1908. Instead, they will be guided by the principles of natural justice. Additionally, the authority responsible for making judgements will have the power to establish and adhere to its own set of procedures.

### POWERS OF THE BENCH:

As mentioned earlier, the bench can be comprised of a chairperson along with one or two members. The adjudicating authority's panels will convene in New Delhi and other locations as designated by the Central Government and the chairperson. In addition, the Central Government has the power to specify through a notification which regions will be under the jurisdiction of the adjudicating

authority bench. Additionally, the chairperson has the responsibility to transfer a member from one bench to another and has the authority to do so. In addition, the chairperson has the authority to transfer a case to a different bench if they believe that the complexity of the case requires the involvement of two members. This can happen at any stage of the case or matter. Furthermore, the chairperson and members are appointed for a term of five years starting from the date they assume office. However, individuals who have reached the age of 65 years are not qualified to hold the position.

#### **SALARY OF THE BENCH:**

The salary, allowances, and terms of service for the bench and other members will be in accordance with the prescribed guidelines. However, there will be no disadvantage to the members after their appointment.

#### **VACANCY:**

If there are any vacancies for the position of chairperson or any other member in the office, the Central Government has the authority to appoint a suitable candidate as per the guidelines mentioned in the Act. Additionally, the proceedings will begin from the point at which the vacancy was filled.

#### **RESIGNATION, DEATH OR ILLNESS OF ANY MEMBER:**

In order to resign from the office, the chairperson or any other member must submit a formal written application. The appropriate recipient for the application would be the Central Government. Once the application is submitted, the member is required to serve a notice period of three months, unless a replacement is appointed or they are granted permission by the Central Government to resign earlier than the prescribed period. If the chairperson of the office resigns, passes away, or becomes ill, the next most senior member will take over as chairperson until a replacement is appointed to fulfil the role.

#### **DISMISSAL OF ANY MEMBER**

The Central Government is the only authority

that can remove the chairperson or any other member from their position. The principle of audi alteram partem requires that the party be given a chance to speak before being dismissed.

#### **3. SECTION 8- ADJUDICATION**

In case of a complaint filed under Section 5(5) or an application made under Section 17(4) or Section 18(10), the person accused of money laundering will receive a notice of at least 30 days. The notice will require them to provide evidence of the sources of their income, earnings, or assets and a valid explanation as to why their property should not be seized.

Once the adjudicating authority has heard from both sides, they will make a determination as to whether any of the properties in question were involved in money laundering. If the authority responsible for making a decision determines that the property in question is linked to money laundering, they must provide a written explanation and confirmation of the property's attachment. If the property has already been attached, this attachment will remain in place until the trial order is finalised. If the court finds the person guilty, the attached property will become the property of the Central Government.

#### **"OFFENCES TO BE COGNIZABLE AND NON-BAILABLE" – SECTION 45(2), PMLA, 2002**

An Explanation has been added to section 45 of the PMLA after sub-section (2). The Explanation is as follows:

"Explanation -- For the removal of doubts, it is clarified that the expression "Offences to be cognizable and non-bailable" shall mean and shall be deemed to have always meant that all offences under this Act shall be cognizable offences and non-bailable offences notwithstanding anything to the contrary contained in the Code of Criminal Procedure, 1973 (2 of 1974), and accordingly the officers authorised under this Act are empowered to arrest an accused without warrant, subject to the fulfilment of conditions under section 19 and subject to the conditions enshrined under this section."<sup>28</sup>

This explanation resolves a longstanding dispute, as there were conflicting rulings from different High Courts regarding whether the crime of money laundering is considered a cognizable and non-bailable offence or a non-cognizable and bailable offence.

According to the recent ruling in the case of Chhagan Chandrakant Bhujbal v. Union of India<sup>29</sup> by the Division Bench of the Bombay High Court, the nature of the offence under PMLA being cognizable or non-cognizable does not affect the power of arrest granted under Section 19 of the PMLA

The Indian Government has made significant changes to the PMLA through the Finance Act of 2019. However, they did not follow the usual process of introducing the amendment bill in both houses of Parliament. It is evident that the recent changes made to the PMLA will result in numerous legal disputes and obstacles regarding the interpretation and implementation of these provisions. In recent decades, various measures have been implemented to combat money laundering through the adoption of anti-money laundering policies. Governments and financial institutions are always seeking innovative ways to combat money laundering.

### SECTIONS 17(1) AND SECTION 18(1) OF THE ACT

The provision that has been removed from Sections 17(1) and 18(1) of the PMLA is as follows:-

“Provided that no search shall be conducted unless, in relation to the scheduled offence, a report has been forwarded to a Magistrate under section 157 of the Code of Criminal Procedure, 1973 (2 of 1974), or a complaint has been filed by a person, authorized to investigate the offence mentioned in the Schedule, before a Magistrate or court for taking cognizance of the scheduled offence, as the case may be, or in cases where such report is not required to be forwarded, a similar report of information received or otherwise has been submitted by an officer authorized to investigate a scheduled offence to an officer not below the rank of Additional

Secretary to the Government of India or equivalent being head of the office or Ministry or Department or

Unit, as the case may be, or any other officer who may be authorised by the Central Government, by notification, for this purpose.”<sup>30</sup>

Removing the proviso from Sections 17(1) and 18(1) of the PMLA means that the authorised officer under the PMLA has the power to conduct search and seizure on any property and person, even if there has been no report of a scheduled offence to a Magistrate or court for taking cognizance of the offence, or to the head of the office, ministry, department, or unit.

### PENALTY OF MONEY-LAUNDERING

According to the Act, individuals convicted of money-laundering may face imprisonment ranging from three to seven years. If the proceeds of the crime are related to offences listed under paragraph 2 of Part A of the Schedule (Offences under the Narcotic Drugs and Psychotropic Substance Act, 1985), the maximum punishment may be extended to 10 years instead of 7 years.

### MEASURES THAT CAN BE TAKEN AGAINST INDIVIDUALS INVOLVED IN MONEY LAUNDERING

1. The act of seizing or freezing property and records, as well as attaching property that was obtained through criminal activity.
2. Anyone found guilty of the crime of money laundering faces the following penalties:
  - a) Rigorous imprisonment for a minimum term of three years and this may extend up to seven years.
  - b) Fine (without any limit).

In recent decades, various measures have been implemented to combat money laundering through the implementation of anti-money laundering policies. Governments and financial institutions are always seeking innovative ways to combat money laundering.

Financial crime is greatly influenced by the

actions of banks and financial institutions. It is crucial to ensure that individuals receive adequate training on how to detect and manage instances of money laundering. Training in anti-money laundering is provided to nearly all bank employees, and financial institutions and banks are obligated by law to report any suspicious activity. Financial crime is greatly impacted by the involvement of banks and

financial institutions. It is crucial to ensure that individuals receive adequate training on how to recognise and manage instances of money laundering.

Most bank employees undergo training on how to prevent money laundering, and financial institutions and banks are obligated by law to report any suspicious activity. Thanks to technological advancements like specialised compliance platforms, businesses can now conduct thorough research on their customers and verify that they are not engaging in any illegal activities.

### **4.3 Amendments To PMLA, 2002**

In November/December of 2009, the FATF conducted a comprehensive assessment of a country's legislative and governmental framework to prevent money laundering and combat the financing of terrorism. The PMLA underwent amendments in 2005, 2009, and 2013 to address enforcement challenges and align with global standards.

The PMLA has undergone significant changes with the implementation of the Prevention of Money-Laundering (Amendment) Act, 2012. The crime of money-laundering has been expanded to include hiding, owning, obtaining, or utilising profits obtained through illegal activities. The offence not only includes concealing the profits of criminal activity as legitimate assets but also involves asserting that the profits of criminal activity are legitimate assets.

The 2012 amendment to the Prevention of Money-Laundering Act eliminates the maximum fine limit and grants the authority to impose an

unrestricted fine.

Below are some of the significant amendments that have been made in the Prevention of Money Laundering Act (PMLA).<sup>31</sup>

1. The definition of the offence of Money Laundering has been expanded to include criminal activities such as concealment, possession, acquisition, and use of the proceeds of crime. This is in accordance with the Palermo Convention.
2. The consequences for committing money laundering now include a fine that is based on the severity of the crime, with no maximum limit. Furthermore, it has been established that the trial or conviction of a legal entity should not be contingent upon the trial or conviction of any individual.
3. Removing the monetary threshold for investigating an offence. The offences listed in Part B of the schedule, which previously had a monetary threshold of 30 lakh rupees, have now been included in Part A, which has no monetary limit.
4. Section 12 has now made it clear that reporting entities have certain obligations to fulfil. These include keeping records of all transactions reported to FIU-IND, identifying the beneficial owner of their customers, maintaining records of the identity of such beneficial owners, and keeping all recorded, supplied or confirmed information confidential.
5. The PMLA now includes additional entities from the financial sector, which are as follows:
  - a) Entities regulated by the Forward Market Commission (Commodity Exchange)
  - b) Members of Commodity Exchanges (Commodity Brokers)
  - c) Entities regulated by the Pension Funds Regulatory Authority (Pension Funds)
  - d) Recognized stock exchanges under Securities Contracts (Regulation) Act
  - e) India Post, which provides a number of

financial services

6. A new category of entities called "person carrying on designated business or profession" has been created to include additional non-financial businesses and professions. This category covers the following entities.

- a) "Registrar of Sub-Registrar appointed under section 6 of the Registration Act, 1908, b) Real estate agents,
- c) Dealers in precious metals, precious stones and other high value goods and,
- d) Person engaged in safekeeping and administration of cash and liquid securities on behalf of other persons."

7. To ensure compliance, the FIU has been granted additional powers such as the ability for the Director of FIU-IND to request transaction records or other relevant information. The reporting entity is required to keep these requests confidential. Sanctions can now be imposed on Designated Directors or employees of the reporting entity, and the range of sanctions available has been expanded.

8. The directors and employees of a reporting entity are safeguarded from any criminal or civil charges for revealing information to FIU-IND.

9. Agencies that can aid in enforcing: The list of officers who will assist the authorities in enforcing the law includes the following departments/organizations:

- a) The Insurance Regulatory and Development Authority
- b) The Department of Post
- c) The Pension Funds Regulatory and Development Authority
- d) Registrar or Sub-Registrar (authorised under section 6 of the Registration Act, 1908)
- e) A Registering authority with the power to register motor vehicles
- f) A Recognised Stock Exchange
- f) The Institute of Chartered Accountants

of India

g) The Institute of Cost and Works Accountants of India

h) The Institute of Company Secretaries of India.

#### **4.4. Impacts of The 2023 PMLA Amendments on Indian Legal Landscape**

The fight against money laundering in India has entered a new, revolutionary chapter with the latest modifications to the PMLA. The updated PMLA expands its scope to include 'Reporting Entities,' which includes banks, financial institutions, intermediaries, and individuals involved in certain industries and occupations, such as gambling, real estate, and the management of liquid assets and cash on behalf of others. The government can adjust the legislation to changing financial threats thanks to the flexibility to designate additional persons or activities. The Central Government took the initiative to announce their intention to increase the PMLA's coverage in order to successfully address new difficulties on May 3, 2023, and May 9, 2023. Professionals such as Cost and Management Accountants, Company Secretaries, and Chartered Accountants are now part of the PMLA as they represent clients in specific financial transactions. In order to remove any room for confusion, the precise definitions of these transactions—which cover asset management, company operations, and property transactions—require more elaboration. As a gesture of respect for the confidentiality of communications between clients and attorneys, these revisions do not apply to advocates and lawyers who deal with client funds as part of their duties. In addition, the PMLA is expanded to include "Trust and Company Service Providers" (TCSPs) in a later notice. This includes formation agents, people working for corporations, and people providing registered office addresses. However, this expansion still includes exceptions for certain certified professionals who are involved in formation activities, such as advocates and chartered accountants. Tighter due diligence

procedures, more reporting demands, and reporting organizations' obligations for monitoring and record-keeping have all been imposed by the modifications. In order to protect sensitive information, keep track of transactions, and verify the identities of clients and beneficial owners, they need to use cutting-edge verification technologies. Certain transactions, such as large cash deposits or withdrawals, require enhanced due diligence. Reporting entities are obligated to notify the Financial Intelligence Unit – India (FIU-IND) of any suspicious financial transactions. FIU-IND is the primary authority for receiving, processing, and distributing information regarding such transactions. In addition, the FIU-IND's FINNET 2.0 portal registration and the designation of relevant persons for compliance are mandatory for all reporting firms. Finally, in line with international standards and best practices, these PMLA revisions demonstrate India's resolve to strengthen its financial security and fight against money laundering. The successful execution of these substantial changes depends on providing reporting entities, professionals, and law enforcement authorities with detailed instructions, thorough training, and sufficient resources. Ensuring compliance and pinpointing areas that need improvement necessitates continuous monitoring and evaluation systems. There is an ongoing responsibility to address existing inadequacies, even if these amendments are a significant step forward.

#### **4.5. Prevention of Corruption Act 1988**

##### **Domestic Bribery: Legal Framework**

##### **(i) Regulation of public bribery**

- Among other things, the Prevention of Corruption Act 1988 (PCA) criminalizes the taking and giving of 'undue benefit' to 'public personnel,' making it the principal anti-corruption law in India. Under the PCA, both people and companies can face punishment for a violation.
- According to the PCA, an undue benefit can be defined as any form of

compensation that a public worker is not legally allowed to receive from the government or any other organization they serve, regardless of whether it is monetary in nature or estimable in money. In addition, the term "public servant" encompasses a wide range of individuals who work for or receive compensation from the government, including judges, arbitrators, and staff of institutions that receive financial aid from the state. It also includes statutory corporations, government companies, and local authorities.

- In *CBI v. Ramesh Gelli & Ors.*,<sup>[2]</sup> the Supreme Court of India held that pursuant to certain provisions of Indian banking law, employees of banks (whether public or private) are also considered public servants under the PCA.

- The offences under the PCA include:
  - (1) public servants obtaining any undue advantage with the intention of, or as a reward for, improperly or dishonestly performing or causing performance of a public duty;
  - (2) public servants obtaining any undue advantage without (or for inadequate) consideration from a person concerned in proceedings or business transacted either by the public servant or by any of the public servant's superiors;
  - (3) criminal misconduct by a public servant (which included possession of disproportionate assets); and
  - (4) commission of any subsequent offence after being convicted previously under the PCA.

- The PCA also targets the conduct of influence peddlers or intermediaries by criminalising the act of taking any undue advantage to cause the improper or dishonest performance of a public duty. Until recently, bribe-givers were brought within the ambit of the PCA through the offence of 'abetment' of the offences mentioned above (in addition to liability for 'criminal conspiracy' under the Indian Penal Code). However, legislative changes to the PCA in 2018 have (in addition to liability for 'abetment' and 'criminal conspiracy') expressly targeted bribe-givers (including commercial organisations and their identified person in charge) by criminalising the act of providing or

promising to provide a bribe to any person (regardless of whether that person is a public servant) to induce or reward a public servant to improperly or dishonestly perform public duty.

- The penalties for various offences under the PCA include imprisonment ranging from six months to 10 years and a fine (with one instance where it is imprisonment, a fine or both). Further, recent legislative changes to the PCA have also introduced provisions pertaining to attachment and confiscation of property procured by way of an offence under the PCA. It is not inconceivable for investigating authorities to allege that any advantage received by a bribe-giver through the bribery (which is an offence under the PCA) could also be subject to attachment and confiscation, and not just the property of the public servants in question. Courts are required by the PCA to make every effort to finish trials within two years, with a maximum extension of four years allowed.

- Regardless of whether the public servant actually performed their official position illegally or dishonestly, the PCA makes it clear that any attempt by a public servant to obtain or accept any unfair advantage is sufficient to establish an offense under the PCA. It is not essential to actually pay or receive bribes in order to be held liable under the PCA; mere attempts to do so are enough. The fact that the bribe was taken either directly or indirectly by a public worker for their personal advantage or by another person's benefit is irrelevant. State police anti-corruption units or the Central Bureau of Investigation (CBI) look into crimes committed under the PCA, depending on whether the alleged wrongdoing involves central government officials or not. Cases involving PCA are tried in dedicated courts. Keep in mind that in order to begin prosecuting public officials under the PCA, the prior approval of the government is necessary. But this protection is solely in place for cases involving current or former public officials; it does not extend to cases involving individuals accused of bribery.

- The PCA grants immunity to an

individual who is suspected of supplying an unfair advantage if they were forced to do so and are prepared to disclose the incident to the appropriate authorities within seven days after it occurred.

#### (ii) Regulation of foreign contributions

- A person must have the permission of the central government in order to accept foreign hospitality or contributions from foreign sources according to the Foreign Contribution Regulation Act 2010 (FCRA). This includes government servants, employees of any other body owned or controlled by the government, judges, legislators, political parties, and their office-bearers. Companies based in another country, other foreign corporations, a foreign trust or foundation, or even a foreign citizen can be considered a "foreign source" under the broad definition. Charities and other non-governmental organizations (NGOs) that receive donations from outside the country must register with the FCRA and disclose the contributions. A fine of up to five years' imprisonment, or both, may be imposed for a violation of the FCRA. Members of parliament, party officials, judges, public servants, and employees of state-owned or -controlled corporations are also required by the FCRA to obtain the central government's prior approval before accepting foreign hospitality while visiting any country outside of India.

- (iii) **Regulation of public servants:** The regulations that are relevant to public officials dictate how they are governed. So, for example, the Service Rules control those who work for the federal government and are subject to the Civil Services (Conduct) Rules 1964 and the All India Services (Conduct) Rules 1968. Depending on their grade and seniority, public servants are prohibited from receiving gifts (such as travel, lodging, meals, entertainment, or other pecuniary advantage) that exceed certain thresholds, according to the Service Rules. However, social hospitality, such as a casual meal or lift, is allowed. It is also prohibited in the Service Rules for public officials to accept frequent or extravagant hospitality from private

companies or individuals with whom they have business dealings. Companies doing business with Indian government employees must exercise considerable caution because, in contrast to the Service Rules, the PCA does not establish any de minimis thresholds for hospitality, gifts, meals, or entertainment.

● In addition to not being able to engage in any kind of employment, the Service Rules forbid public servants from holding elective office, soliciting votes for candidates for elective office or for private businesses, being involved in the registration, promotion, or management of any bank, company, or cooperative society for profit, unless it's for official duties, and taking part in sponsored private media programs. Also, government employees can't just sit on their hands and speculate on the stock market or any other investment vehicle; they have to have official approval before they may even participate sometimes through registered brokers. That being said, the Service Rules do not apply to engaging in "commercial activities" such as amateur sports, literary, artistic, or scientific endeavors, or participating in honorary social or charity activity. An offence punishable by up to one year in simple jail, a fine, or both is defined by Section 168 of the Indian Penal Code 1860, which states that public servants are not to engage in any trade, business, profession, or occupation that is forbidden from doing so. as a result, participating in illegal business activities may potentially subject a public worker to criminal liability. Temporary or contract workers for the government are often free to pursue other interests; this includes senior physicians who consult for public hospitals and state-employed attorneys.

(iv) **Regulation of private bribery** Although the Indian Penal Code and other general criminal statutes may make it illegal to bribe private businesses, the Companies Act (discussed below) and other company policies may make it illegal to do so, and there may not be any overall laws in India that ban private commercial bribery like the PCA. The Companies Act 2013

(the Companies Act) is India's corporate law that defines fraud as "any act, omission, concealment of any fact or abuse of position committed by any person.. with intent to deceive, to gain undue advantage from, or to injure the interests of, the company or its shareholders or its creditors or any other person" (without requiring a wrongful gain or wrongful loss). The Companies Act has strict provisions regarding fraud. Companies can face fines and prison terms of six months to ten years for acts of private bribery (and concealment thereof). However, if the amount of fraud is below a certain limit 1 million rupees or 1% of the company's turnover, whichever is lower and does not involve public interest, the punishment can be up to five years in prison, a fine of up to five million rupees, or both. The Companies Act requires directors to include relevant confirmations in their directors' responsibility statement, and they must also disclose any fraud discovered by auditors, unless the fraud is required to be reported to the federal government. The Companies Act further mandates that auditors, cost accountants, and company secretaries report any suspicion of fraud to the central government. A vigilance structure for reporting concerns and safeguards for whistle-blowers must be established by all listed firms and some types of unlisted companies. The auditor's report includes a mechanism for disclosing fraud to all companies and, in some cases, to stock exchanges where the company is listed.

#### **4.6 Judicial Pronouncements In Relation To PMLA, 2002 & Prevention Of Corruption Act 1988**

It is commendable how the Indian court system has played a crucial role in promoting legal integration among countries worldwide. The courts play a crucial role in enabling the implementation of a universal anti-money laundering (AML) system, which allows countries to work together towards this global initiative.

In *Ram Jethmalani & Others v. Union of India*,<sup>32</sup> the Supreme Court of India issued a ruling. The Court has directed the formation of a Special Investigation Team (SIT) to investigate and

prosecute cases related to the concealment of unaccounted money in foreign banks by Indians or entities operating in India. The SIT will be responsible for conducting investigations and initiating appropriate criminal or civil proceedings. The court has ordered that the High-Level Committee formed by the Indian government should be appointed as a Special Investigation Team (SIT) without any delay. The SIT should consist of the Director of Research and Analysis Wing. The Hon'ble Supreme Court has directed that the SIT should be led by two former

distinguished judges of the Supreme Court, namely Mr. Justice B.P. Jeevan Reddy as Chairman and Mr. Justice M.B. Shah as Vice-Chairman. The Central Government has formed a Special Investigation Team to carry out the Supreme Court's decision. This team has suggested that steps should be taken to prevent money laundering. The topic of money laundering has been explored through previous legal cases and related laws.

The High Court of Andhra Pradesh heard a writ petition challenging some provisions of the Prevention of Money Laundering Act, 2002, including its amendments, in *B. Rama Raju, S/o*

*B. Ramalinga Raju v. Union of India (UOI)*<sup>33</sup> and *Centre for Public Interest Litigation v. the Union of India*.<sup>34</sup> The question at hand was whether assets belonging to someone other than the individual accused of a scheduled offence could be seized and confiscated, and if so, whether Section 2(1)(u) was lawful. The purpose of the Act is to stop money laundering and related activities, as well as to seize the profits obtained from criminal acts. It aims to prevent the legitimization of illegally earned money through investments in movable and immovable properties, which often involves the use of multiple transactions to conceal the origin of the funds. The Act has a broad definition of the term "proceeds of crime" in order to achieve its overall goals. According to Chapter III, any property owned or possessed by an individual, other than someone accused of committing a scheduled

offence, could be subject to attachment and confiscation proceedings.

The case of *Hari Narain Rai v. Union of India*<sup>35</sup> established that the act committed is subject to punishment under Sections 3 and 4 of the PMLA, 2002. According to the High Court, it is evident that the accused's offence under the Act will persist as long as they possess the proceeds of crime and engage in activities related to it, while presenting it as legitimate property. In this particular case, the accused has been trying to convert and portray the proceeds of crime as untainted property. Moreover, enough evidence was gathered during the investigation to establish the culpability of the petitioner. According to Section 45 of the Act, the Appellate Court can grant bail only if they are convinced that there are valid reasons to believe that the accused is innocent of the alleged crime and that they will not engage in any criminal activity while out on bail. The petitioner's request for bail was denied due to the severity of the allegations against him and the substantial evidence that had been presented.

The Court made a definitive ruling in the case of *Nikesh Tarachand Shah v. Union of India*,<sup>36</sup> stating that Section 45(1) of the PMLA, 2002 is unconstitutional as it violates Articles 14 and 21 of the Constitution of India by imposing two additional conditions for release on bail. In essence, the reason for the denial of bail is due to the twin conditions outlined in Section 45. As a result, those who were denied bail will need to return to the courts that made the decision. The orders were overturned by the Court and the cases were sent back to their respective Courts to be heard based on their merits, without applying the two conditions outlined in Section 45 of the 2002 Act. It is important to address the cases of individuals who are currently in jail and whose personal freedom is at stake. Therefore, the courts should prioritise these matters and make prompt decisions.

On 27th July 2022, the Apex Court made a significant ruling stating that the Enforcement Directorate (ED) has the legal authority to

investigate individuals, carry out searches and raids, and even detain citizens under the strict provisions of the Prevention of Money Laundering Act (PMLA).<sup>37</sup> The court rejected the petitioners' claim that Section 3's money laundering offence only applies if the property is presented as clean. Instead, the court interpreted the "and" in Section 3 as "or" and concluded that the section has a broad scope, encompassing all activities related to money laundering, not just the final act. The court also noted that possessing the proceeds of a crime can also be considered money laundering under the section. According to the petitioners, the law violates their fundamental rights to liberty and protection against self-incrimination as stated in Article 20 and Article 21. The individuals had raised concerns about the excessive authority granted to the Enforcement Directorate and the broad interpretation of the law that allows any crime to be classified as a money-laundering offence. According to the Supreme Court, the power of the ED to arrest, conduct search and seizure operations, and issue summons to individuals is constitutional.

The court also stated that these provisions are not arbitrary. The statement mentioned that the law has enough measures in place to prevent the agency from abusing its authority, so it cannot be considered as arbitrary. Under the PMLA, the ED has the authority to arrest individuals without being required to provide them with a copy of the Enforcement Case Information Report (ECIR). According to the Supreme Court, an ECIR is an internal document of the agency and is not mandatory to be provided to the accused. This provision has been upheld. The petitioners challenged a provision that allowed for the non-supply of ECIR to the accused.

ECIR is similar to a First Information Report (FIR) as it contains allegations made against the accused. The challenge was based on principles of natural justice.

According to criminal procedure, an accused person has the right to receive a copy of the FIR. Having a copy of the FIR allows the accused to protect themselves by providing a means to

defend against the accusations. According to the Evidence Act of 1972, any confession made by an accused individual to a police officer cannot be used as evidence in court. In addition, the Constitution's Article 20 ensures the fundamental right to protection against self-incrimination. According to PMLA regulations, any statement given to an ED official can be used as evidence in a case against the accused.

## CHAPTER-5 ISSUES AND CHALLENGES IN RELATION TO MONEY LAUNDERING LAWS & CORRUPTION

### 5.1 Challenges

On paper, India's efforts to combat the illegal practise of money laundering are admirable. When it comes to having an efficient AML system, India faces various challenges in many different areas. There are a number of different elements that are contributing to these issues, and it is essential that all of the efforts be focused on a single path that is directed towards the primary source of the issue. The following is a list of some of the most significant locations where there are issues:

1. **A Lax Approach to Enforcing** Laws India began its anti-money laundering activity in the year 1998, which was a good start but was not fully tackled and did not see the day of enforcement until 2005, which is seven years and a very lengthy time for enforcement. When the AMLA 02 with changes in 2005 came into force, it was inherent with many lacunae because there had been a number of developments in those seven years that the Act failed to address. In 2005, there were amendments made to the AMLA. After then, it became clear that there was a demand for additional adjustments to be made.

2. **The Development of Technology** - While the development of technology has been of benefit to the average person, it has also been of great assistance to those who launder money, and India is not an exception to this trend. In this rapidly changing economy, the concept of cyber finance is rising in importance. The sluggish state of cybercrime particularly draws attention to the

fact that the rate at which technology is advancing is not being matched by the rate at which the enforcement agencies are increasing.

### 3. **Lack of Knowledge about the Problem –**

The lack of knowledge about the problem of money laundering among the general population is a barrier to implementing an effective AML regime. People in India do not trust banks and would rather avoid the extensive paperwork required to make a money transfer through a financial institution. This distrust is especially prevalent among the country's poor and illiterate population. The hawala system offers individuals the same remittance service as a bank does, with minimal or no documentation required, and at significantly lower rates. In addition, it protects their identity and keeps their transactions private. This is due to the fact that many people do not consider this to be a crime and are unaware of the detrimental impacts that come as a result of the criminal activity.

### 4. **Know Your Customer (KYC) Norms- Do**

They Serve Their Purpose? At this time, India has KYC Norms in place in both the money market and the capital markets. On the other hand, these KYC norms do not put an end to hawala transactions because the RBI is unable to regulate them. In addition, the indifference demonstrated by the authorities in charge of executing KYC Norms causes them to degenerate into a farce. The KYC regulations are complied with in their letter forms, but what is required is that they be followed in their spirit forms as well. An increase in market rivalry both forces banks to relax their security measures and provides them with the motivation to do so. To be more specific, the franchisees of banks that are permitted to initiate new account openings.

### 5. **Smuggling is a common practice-**

India is home to a flourishing underground economy for buying and selling items illegally. On a consistent basis, smuggled products including food items, computer components, cellular phones, gold, and a wide variety of imported consumer goods are sold through the black

market. Black market merchants are able to offer more competitive rates than their regulated counterparts because they conduct their business only in cash and avoid paying taxes and customs fees. However, the problem has been less severe as a result of the liberalisation programme implemented by the government.

### 6. **Tax Laws:**

about the case of Commissioner v. Newman<sup>38</sup>, Justice Learned Hand made the following statement: "Over and over again courts have said that there is nothing sinister in so arranging one's affairs to keep taxes as low as possible." Everyone does so, regardless of their financial situation, and they are all doing the right thing since nobody has any obligation to pay more than what is required by law: taxes are imposed exactions, not voluntary donations. To ask for more in the name of morality is nothing but empty cant. While deciding the case *Azadi Bachao Andolan & Anr*,<sup>39</sup> the Supreme Court of India cited Lord Tomlin's ruling in *IRC v Duke of Westminster*,<sup>40</sup> which upheld the legality of treaty shopping. It is imperative that a differentiation be made between tax avoidance and tax evasion in this context. Concerns have been raised regarding the potential for money laundering to occur as a result of double taxation treaties.<sup>41</sup>

### 7. **Threshold Limit under PMLA 02:**

The definition of "money laundering" results in the formation of two different categories of "scheduled offences." Any cash or property, regardless of its value, may be taken and confiscated in accordance with this Act if it was obtained via the commission of a crime against the state or an offence involving drugs. A ceiling value of Rs. 30 Lakhs has been specified for other listed offences that fall under schedule B. This figure serves to exclude relatively minor offences and properties from the scope of the legislation. Unfortuitously, this floor limit itself provides an escape route, as a person may participate with relative immunity in a series of transactions of money laundering below this limit. This limit is the minimum amount at which a person can be held accountable for their activities.

**8. The lack of a single, all-encompassing regulatory body** As was just demonstrated, money laundering has evolved into a hybrid crime that is not only connected to NDPS investigations but also many other fields of business. Crimes committed online, money laundering, economic offences, and terrorist offences are all being investigated and prosecuted by specialised divisions within the law enforcement agencies. The agencies are not able to converge their efforts among themselves, and as a result, they are still struggling to come up with policies and procedures that will allow them to arrest a person who lives in another state. In addition to the

issues mentioned above, it is important to consider the costs associated with maintaining an AML regime.

### **5.2 Need Of An Hour**

There are some issues which need to be solved immediately for effective implementation of money laundering laws in India and these are:

1. The PMLA does not currently have jurisdiction over the commodities market.
2. The DNFBP sector, with the exception of casinos, is not covered by the PMLA.
3. There are concerns about the effectiveness of machine learning because there is no conviction in its results.
4. Identifying and verifying the rightful ownership of legal entities.
5. The system of sanctions for non-compliance is ineffective.
6. The problem of trade-based money laundering and its related issues have not been resolved yet.
7. Identifying the various important industries that generate unreported income.
8. Regularly updating the reasons and circumstances that result in the creation of such funds and assets.
9. Identifying the techniques and tools currently employed to transform illicit funds

into legitimate money.

10. Introducing schemes to reduce the large amount of unreported income and assets can be done without causing any inconvenience to honest taxpayers.

11. Efficient and prompt methods for penalising individuals who evade taxes.

12. Ensure that you comply with tax laws in a genuine and honest manner.

### **5.3 Solutions**

As discussed earlier, money laundering is a global activity that takes place on a large scale. To effectively combat this issue, it is necessary for all nations to implement strict and similar regulations. This will prevent money launderers from exploiting jurisdictional limitations to launder their ill-gotten gains. There is currently no agreement among countries regarding which crimes should be classified as predicate offences for money laundering. This lack of consensus has hindered international efforts to harmonise anti-money laundering measures. Hence, it is necessary to identify common predicate crimes to address this issue on a global scale, especially considering the worldwide scope of money laundering as a criminal activity.

Additionally, the issue of financial privacy in other countries is a matter of concern. Many countries are unwilling to compromise on their financial confidentiality. It is important to distinguish between financial confidentiality regulations and financial institutions that have become hubs for money laundering.

In addition to these issues, the general public tends to believe that money laundering is a crime that doesn't harm any specific individual. They are unaware of the dangerous consequences of committing such a serious offence. It is important to provide education to the general public and increase their awareness about money laundering. This will help them become more vigilant towards such cases. By increasing public awareness, it would be easier to enforce laws as they would be subject to public scrutiny.

In addition, it is important to establish a proper coordination between the Central and State governments to ensure an effective system for preventing money laundering. In order to achieve that goal, the conflict between the two parties needs to be resolved. It is important for laws to be enforced not only by the central government, but also at the state level. A law that is more decentralised would have a wider reach and be more effective. Therefore, to create an effective system to prevent money laundering, it is necessary to consider the regional, national, and international aspects.

So, here are some suggestions and solutions which could be implemented:

1. To effectively combat money laundering, it is crucial for all countries to implement and enforce consistent laws regarding this illegal activity. This will leave no safe haven for criminals involved in money laundering. The fact that states have the authority to determine which crimes can be considered as predicate offences for money laundering has hindered the global efforts to harmonise anti-money laundering laws.<sup>42</sup> Many countries have identified certain offences as predicate crimes. However, they have taken different approaches to defining what qualifies as a serious crime for this purpose. It is necessary to establish a universal list of predicate offences to effectively address the issue of intersections, taking into account the global nature of money laundering and the need for a cohesive and logical approach worldwide.

2. To reduce the risk of money laundering in the international financial system, regulators need to increase their efforts to eliminate harmful regulations and practises that hinder global cooperation in combating money laundering. 3. It is important to raise awareness among the Private Sector regarding their role in combating money laundering. The Wolfberg principles serve as an example.

3. Preventing money laundering is not solely the responsibility of the government, but also falls on private entities as they play a crucial

role in our country's financial system. It is important to raise awareness among the private sector about the gravity of the matter.

4. It is important to educate the general public and raise their awareness about the negative consequences of money laundering. This will help them understand that it is not a victimless crime and that it has a detrimental impact on society as a whole. By being informed about the harmful effects of money laundering, individuals can contribute to effective law enforcement efforts. It is crucial to raise awareness among individuals about the negative impact of money laundering and the importance of effectively enforcing Anti Money Laundering regulations.

5. Experts suggest the creation of a dedicated unit to combat money laundering, similar to the Economic Intelligence Council (EIC), which focuses on developing and researching anti-money laundering measures. This specialised unit should be connected to Interpol and other international organisations that deal with antimoney laundering measures. The cell should include all regulatory bodies and law enforcement agencies such as RBI, SEBI, etc.

6. It is not solely the responsibility of the central government to enforce anti-money laundering laws. State governments should also make a concerted effort to effectively implement these laws. Decentralising the law would enable it to have a wider reach at the grassroots level of issues. Effective anti-money laundering systems require strong coordination between central and state agencies.

7. In India, the laws against money laundering are applicable only to certain offences such as terrorism and drug trafficking. Hence, it is recommended that these regulations be enforced for all criminal activities to encompass a broader perspective of money laundering. One suggestion is to include income-tax offences in anti-money laundering regulations. This would simplify the trial process, and result in stricter penalties such as

imprisonment and fines. Additionally, the burden of proof would shift to the offender to prove their innocence. The list of offences will encompass concealing profits, evading taxes, and providing misleading testimony. Many countries across the globe have incorporated these crimes into their anti-money laundering laws. Incorporating these changes would expedite the prosecution process for cases tried in special courts under PMLA, as the accused bears the burden of proving their innocence.<sup>43</sup>

8. It is important to maintain a broad scope for the crime of money laundering. The Prevention of Money Laundering (Amendment) Act 2012 does not expand the definition of money laundering to include actions such as hiding, obtaining, owning, and utilising proceeds from illegal activities. It is still necessary to demonstrate that a perpetrator is aware that the property in question is considered "criminal property."

9. The Prevention of Money Laundering (Amendment) Act 2012 has expanded the definition of reporting entities to include banks, financial institutions, intermediaries, and professionals such as those involved in real estate and jewellery industries. This is to ensure that appropriate anti-money laundering controls are put in place. Nonetheless, there are no penalties specified for failing to comply with these requirements. Hence, it is recommended to consider non-compliance with the regulations of the Act as a violation.

10. The Prevention of Money Laundering (Amendment) Act 2012 has removed the maximum fine limit of INR 5 lakh as a form of punishment for money laundering. In contrast, the maximum duration of imprisonment is 7 years, except for certain offences which carry a maximum sentence of 10 years. In the United Kingdom, the maximum length of imprisonment is 14 years. It is recommended to increase the maximum fine and length of imprisonment for offences under PMLA.

11. It is recommended to issue a restraining order to prevent the handling of

assets obtained through unlawful means. A restraining order has the effect of freezing any property that may be subject to a confiscation order. The Prevention of Money Laundering (Amendment) Act 2012 does not include any provisions related to restraint orders or similar measures. The Amendment Act has introduced a new presumption regarding earnings related to money laundering. It states that unless proven otherwise, funds connected to money laundering will be assumed to be involved in the crime of money laundering.

12. To enhance the effectiveness of anti-money laundering measures, lawmakers should consider expanding the list of predicate offences beyond drug trafficking. This would involve including a wider range of offences that are legally considered to generate proceeds of crime for the purpose of money laundering regulations. The goal should be to make the legislation as comprehensive as possible. We can refer to the interpretative note to FATF, which uses the term "all crimes that produce a substantial amount of profits."

13. The government should take steps to ensure that financial institutions' information provided to law enforcement agencies or other legally designated organisations remains confidential, except in cases where it is deemed necessary for genuine investigations and trials or other lawful purposes. It is essential to take this step to ensure that the financial sector is on board and supports anti-money laundering efforts, as well as to gain the trust of the public.

14. It is important for states to create a mechanism that promotes communication and coordination among their current and future agencies to combat money laundering. The goal is to enhance cooperation and facilitate the exchange of relevant information. It is recommended to promote regular meetings between established groups such as the Asia Pacific Group and the Egmont Group, which aim to enhance collaboration in the fight against money laundering, within the region

### **Ways To Eradicate Corruption**

Corruption has their strong roots in the society but still we should take the important step to eradicate it from the society because we how much it is important for a nation to eradicate the corruption. The ways to eradicate the corruption form the society are the following: -

**1. Ethics:** - Corruption is due to the weak ethics of the people. The people should be educated about the side effects of the corruption and the more work should be done in improving the ethical behavior of the people. This can be done from the very first institution which educates people i.e. schools, the school should provide the knowledge the importance of the ethical behavior in the life.

**2. Keep distance with greediness:** - The greediness is the very big problem of human nature and this greediness make the people to think of their own. The people should be advised to stop being greedy and this can only be done by reminding them about their duties and responsibilities regarding the country and their countrymen. They should control their greed for the betterment of their nation and not their own.

**3. Make payment online:** - This method will make little difference but still it will reduce the corruption at low levels. As in many countries like India the people usually focus on the offline method of paying amount like college fees or buying any article from shop due to which transaction amount and other details cannot be traced which make the process of corruption easy but if the online payments are made mandatory then there will be full knowledge about the payment and that will left little scope for corruption which will lead to reduction in corruption as a result.

**4. Modify rules:** - The rules and regulation should be more strict then earlier. The important modification in the rules and regulation should be there as this will bring fear in the minds of the people who support the practices of the corruption. The people who is

proved to be involved in corruption need to be prosecuted and should be removed from their posts without providing them a second chance.

### **CHAPTER-6 CONCLUSION**

One of the biggest problems currently affecting the economy and the security of countries is money laundering. The practise of turning unclean or illicit money into clean, legal money through a series of transactions is known as money laundering.. The term is aptly named as it accurately depicts the process of "washing" the money. To put it differently, the origin of unlawfully acquired funds is concealed by a series of transactions and agreements so that the said funds can ultimately be presented as lawful earnings.

"In the past, the phrase "money laundering" was limited to financial dealings associated with organised crime. However, today, government regulations have broadened its meaning to include any financial transaction that produces assets or value as a result of an illegal activity." This may involve actions like tax evasion or falsifying accounting records. As money laundering techniques become more advanced, technology is also advancing to combat it. In the past, anti-money laundering initiatives would identify transactions that went beyond a specific threshold. This approach was found to be ineffective as money launderers quickly adapted their methods to evade detection. The objective of combating money laundering is to enhance the enforcement of criminal law concerning crimes that are motivated by financial gain.

There is a correlation between the implementation of two primary legal measures to combat money laundering – confiscation of criminal proceeds and criminalization of money laundering

- and the legal and socio-economic transformation that took place. However, these instruments of criminal law have generated their own momentum.

The fight against money laundering has evolved significantly over time, particularly in terms of the

confiscation of proceeds from criminal activities and the criminalization of money laundering. This signifies a notable shift in the norm-making process within law enforcement. Money laundering has two aspects to it:

- National
- International

Residents of a country have a better understanding of the national dimension of money laundering due to their familiarity with the socio-economic and cultural aspects of their country. Money laundering has an international aspect that requires knowledge of global finance and banking. This field can be complex and difficult for the average person to comprehend, similar to high finance. The global aspect is gaining significance as many nations are moving towards economic progress, with the "free market" being the new buzzword.

Our next step is to examine the process of money laundering. When it comes to mechanics, it's important to understand that money laundering cannot be fully taught or learned through a single course. Keeping up with the latest developments in the field is crucial as it is a constantly evolving and dynamic process. This includes staying informed about the latest techniques and instruments used in the field. When examining the different methods of money laundering, it becomes clear that some are highly effective, some are only partially successful, and some are simply unskilled attempts.

The process of transforming illegal money into legitimate money, known as money laundering, involves three stages: placement, layering, and integration. This process is often part of an international circuit for money laundering. Money laundering networks on a global scale can be organised in different manners, each corresponding to a specific method or categorization of money laundering. The UNDCP has initiated an international agreement to combat drug trafficking and money laundering due to the growing concern about their increase

on a global scale. These illegal activities have resulted in significant amounts of money being laundered through the banking system. The Vienna Convention was adopted in 1988 as a result of this endeavour. The convention does not explicitly mention money laundering, but it does provide a definition for the concept and urges nations to make it a criminal offence. The Vienna convention only covers drug trafficking offences as the basis for money laundering and does not focus on preventing money laundering. The Basel Committee on Banking Supervision released a statement in December 1988 regarding the prevention of money laundering through the banking system and its potential use for criminal activities. The inter-governmental organisation known as FATF has developed a framework aimed at establishing global standards and policies to combat money laundering and terrorist financing. This framework operates at both national and international levels. In 1990, the FATF introduced its initial set of global standards to combat money laundering, known as the "Forty Recommendations."

The Prevention of Money Laundering Act was enacted in India in 2002 and has now become law after receiving presidential assent. This measure addressed a significant loophole in the fight against money laundering in India. This legislation is one of the limited number of laws that have been approved by the Indian Parliament in accordance with a resolution from the United Nations.

When the Indian Parliament was considering its stance on money laundering, there was significant pressure from international organisations and experts to pass a law to address this global issue. This was due to the severity of the problem and its impact on countries around the world.

The Act has introduced a new and innovative idea of defining money laundering. It states that an offence can only be categorised as a money laundering offence if the property involved is valued at INR 3 million or higher, except in cases

related to drug offences against the state. There is no other nation globally that has a similar provision in their legislation regarding money laundering. Actually, this provision would promote the practise of "smurfing" in the United States. This technique involves keeping transactions below R 3 million to evade the attention of law enforcement. The enforcement aspect of this act is perhaps the most ambiguous.

The enforcement agencies have not been specified under the act. The legislation discusses various legal procedures such as searches, seizures, arrests, attachment, confiscation, and the role of public prosecutors. However, there seems to be a misconception between empowerment and providing assistance, which can lead to confusion. The text does not provide clear information about the agencies or authorities responsible for investigating and pressing charges for offences committed under the act.

By the above analysis my finding is that corruption is a multidirectional process, it involves the benefits of the provider and the receiver and all other are the one who actually suffers. Corruption is not a problem that is created due to the people who are demanding the money it is the problem of controlling the people who are demanding the money. If the government officials and other people who support corruption are controlled and regulated then the corruption can also be controlled. By the above study we can also say that the debate of whether corruption affects society or not has now come to an end and clearly we can say that corruption largely affects the society. The society should be educated regarding the bad effects of the corruption as it is proved by our study that the higher the average levels of education, the lower the level of corruption.

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