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A Legal Study on the Exploitation Related to Unlawful Activities Versus Cultural Legitimacy

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A Legal Study on the Exploitation Related to Unlawful Activities Versus Cultural Legitimacy

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Abstract

The tension between unlawful exploitation and claims of cultural legitimacy presents a complex and evolving challenge within contemporary legal discourse. Practices justified on the grounds of tradition, custom, or cultural identity often intersect with activities that may violate statutory provisions, human rights norms, and principles of justice. This dissertation undertakes a critical legal study of the extent to which cultural legitimacy can be invoked as a defense or justification for practices that amount to exploitation, with particular focus on the Indian legal framework.

The study explores various forms of exploitation—such as bonded labour, trafficking, child marriage, devadasi practices, and caste-based discrimination—that have historically been defended under the guise of cultural or traditional practices. It critically examines constitutional provisions, including fundamental rights such as equality, dignity, and freedom, alongside directive principles and statutory enactments, to assess the limits placed on cultural autonomy. Judicial trends reveal a consistent effort by courts to strike a balance between respecting cultural diversity and upholding constitutional morality, often prioritizing human dignity and social justice over regressive customs.

Further, the research evaluates the role of the judiciary in addressing these conflicts, highlighting landmark judgments where courts have intervened to invalidate exploitative practices despite their cultural acceptance. It also identifies significant implementation gaps, including weak enforcement mechanisms, socio-economic vulnerabilities, and lack of awareness, which allow such practices to persist.

By adopting a doctrinal and analytical approach, the dissertation argues that while cultural rights are an essential component of a pluralistic society, they cannot override fundamental human rights or legitimize exploitation. The study concludes by advocating for a rights-based approach grounded in constitutional morality, stronger regulatory frameworks, and increased societal awareness to ensure that cultural practices evolve in harmony with principles of justice, equality, and human dignity.

Keywords: *Cultural Legitimacy, Exploitation, Constitutional Morality, Human Rights, Customary Practices, Indian Legal System, Social Justice, Legal Pluralism.*

Background of the Study

The regulation of financial transactions has long been a central concern of modern legal systems, particularly in an era marked by globalization, technological advancement, and increasing cross-border economic activity. Within this framework, the State seeks to ensure transparency, accountability, and traceability in monetary exchanges in order to prevent unlawful activities such as tax evasion, corruption, and the financing of criminal enterprises. However, parallel to the formal banking and financial infrastructure, there exist informal systems of value transfer that operate outside the regulatory domain of the State. Among these, the system of *hawala* occupies a distinctive position, especially within the South Asian context.¹

Hawala, often described as an informal value transfer system, predates modern banking institutions and has historically served as a reliable means of transferring funds across regions without the physical movement of currency. Rooted in trust-based relationships and community networks, hawala emerged as a practical solution in times when formal financial systems were either inaccessible or underdeveloped. Traders, migrants, and small businesses relied on hawaladars—intermediaries operating within established networks—to facilitate quick and secure transactions. Over time, this system became deeply embedded within certain cultural and economic practices, gaining a form of social legitimacy that continues to persist even in contemporary times.

Meaning and Concept of Hawala

The term *hawala* is derived from the Arabic word “*hawala*,” which broadly translates to “transfer,” “trust,” or “reference.” In legal and financial discourse, hawala refers to an informal system of transferring value from one place to another without the actual physical movement of money.² Unlike formal banking channels that rely on documented transactions, regulated intermediaries, and institutional oversight, hawala operates through a network of brokers known as *hawaladars*, who settle accounts based on mutual trust, reputation, and long-standing personal or community relationships.

¹ Ahmed, Usman. "The Importance of cross-border regulatory cooperation in an era of digital trade." *World Trade Review* 18.S1 (2019): S99-S120.

² Thompson, Edwina A. "An introduction to the concept and origins of Hawala." *J. Hist. Int'l L.* 10 (2008): 83.

At its core, hawala is a mechanism of value transfer rather than a physical exchange of currency. The system functions on a simple yet highly effective principle: the transfer of money is executed through a chain of informal assurances rather than through formal financial instruments. For instance, a person in one city may approach a hawaladar and deposit a sum of money intended for a recipient in another city or country. The hawaladar then contacts a counterpart in the destination location, instructing them to pay the equivalent amount to the intended recipient. The transaction is completed without any physical movement of funds across borders, and the accounts between the two hawaladars are settled later through various means, including reverse transactions, trade adjustments, or cash settlements.

The distinguishing feature of hawala lies in its reliance on *trust* as the foundational element of operation. Hawaladars typically belong to tightly-knit networks based on familial, ethnic, or regional affiliations. Their credibility is maintained through reputation rather than legal enforceability, and any breach of trust can result in social and economic exclusion from the network. This trust-based structure significantly reduces transaction costs and eliminates the need for extensive documentation, making hawala an attractive option for individuals seeking quick and discreet financial transfers.³

From a conceptual standpoint, hawala can be understood as part of a broader category of informal value transfer systems (IVTS), which exist parallel to formal financial institutions. These systems have historically played an important role in facilitating trade and remittances, particularly in regions where banking infrastructure was limited or unreliable. In India, the indigenous form of hawala has often been associated with the traditional *hundi* system, which functioned as a credit and remittance instrument among merchants. While *hundi* had certain recognized commercial uses in earlier periods, the contemporary manifestation of hawala operates largely outside the legal framework.

Historical Evolution of Hawala in India

The origins of hawala in India can be traced back several centuries, long before the emergence of modern banking institutions and formal financial regulation. Historically, systems resembling hawala developed as practical solutions to the challenges of trade, distance, and security in a largely agrarian and pre-industrial economy. In the Indian context, the indigenous counterpart of hawala was known as the *hundi* system, which functioned as an informal

³ Bowers, Charles B. "Hawala, money laundering, and terrorism finance: Micro-lending as an end to illicit remittance." *Denv. J. Int'l L. & Pol'y* 37 (2008): 379.

instrument for credit, remittance, and trade settlement. This traditional system formed the foundation upon which the contemporary practice of hawala evolved.⁴

During the medieval period, Indian merchants engaged in extensive trade networks that extended across regions such as Central Asia, the Middle East, and Southeast Asia. The absence of a standardized banking system and the risks associated with transporting physical currency over long distances necessitated the development of alternative methods of transferring value. The *hundi* system emerged as a reliable mechanism in this regard. It allowed merchants to issue written or oral instructions for payment, which could be honored by agents or associates in distant locations. These transactions were based primarily on trust and reputation, reinforced by strong community ties and commercial ethics. The Mughal era witnessed a more organized use of such informal financial instruments. Merchant communities, including Marwaris, Gujaratis, and Multanis, developed sophisticated networks of credit and remittance that operated across vast territories. Hundis were widely used not only for private trade but also for state-related transactions, including revenue collection and military payments. Although these systems lacked formal legal codification in the modern sense, they were governed by well-established customary practices that ensured reliability and accountability within the network.

Evolution from FERA to FEMA

The legal regulation of foreign exchange and cross-border financial transactions in India has undergone a significant transformation over time, particularly with the shift from the Foreign Exchange Regulation Act, 1973 (FERA) to the Foreign Exchange Management Act, 1999 (FEMA). This transition reflects not only a change in legislative policy but also a broader shift in India's economic philosophy—from a regime of strict control to one of liberalization and management. Understanding this evolution is essential for analyzing the current legal position of hawala transactions in India.

The enactment of FERA in 1973 must be viewed in the context of India's economic conditions at the time. The country was facing a severe shortage of foreign exchange, and the State adopted a highly restrictive approach to regulate its use. FERA was designed as a stringent regulatory statute with the primary objective of conserving foreign exchange and preventing its misuse. Under this regime, all foreign exchange transactions were strictly controlled, and any violation

⁴ Wheatley, Joseph. "Ancient banking, modern crimes: how hawala secretly transfers the finances of criminals and thwarts existing laws." *U. Pa. J. Int'l Econ. L.* 26 (2005): 347.

of the law was treated as a criminal offense. The Act placed the burden of proof on the accused, making it one of the most rigorous economic legislations in India.⁵

Within the framework of FERA, informal systems like hawala were explicitly targeted as illegal. Since hawala transactions involved the transfer of funds outside authorized banking channels, they were considered a direct violation of foreign exchange regulations. The absence of documentation and the cross-border nature of such transactions made them particularly suspect in the eyes of regulators. Consequently, individuals involved in hawala dealings could face severe penalties, including imprisonment. The strict enforcement regime under FERA reflected the State's intent to exercise complete control over foreign exchange and to eliminate parallel systems of financial transfer.

Regulation under the Foreign Exchange Management Act, 1999

The Foreign Exchange Management Act, 1999 (FEMA) constitutes the principal legislation governing foreign exchange transactions in India. Enacted as part of the post-liberalization reforms, FEMA represents a shift from strict control to a system of regulation and management. Its primary objective is to facilitate external trade and payments while ensuring the orderly development and maintenance of the foreign exchange market in India. Within this framework, hawala transactions are regulated indirectly, as they fall outside the legally recognized channels of foreign exchange dealings.⁶

At the core of FEMA is the principle that all foreign exchange transactions must be conducted through authorized persons, such as banks and financial institutions licensed by the Reserve Bank of India (RBI). Section 3 of FEMA explicitly prohibits any dealing in or transfer of foreign exchange to any person other than an authorized entity. It also restricts payments to or for the credit of any person resident outside India, except through prescribed legal channels. Hawala transactions, by their very nature, bypass these authorized mechanisms, thereby constituting a clear violation of the statutory framework.

FEMA also regulates capital account and current account transactions. While current account transactions (such as remittances for trade, education, or personal expenses) are generally permitted subject to reasonable restrictions, capital account transactions are more tightly regulated. The Act empowers the Central Government and the RBI to impose limits and

⁵ Chauhan, Yug, and Dhruv Dedhia. "The Legal Framework for Foreign Investment in India: A Comparative Analysis of the Laws and Regulations Governing Foreign Investment." *Issue 2 Indian JL & Legal Rsch.* 5 (2023): 1.

⁶ Marshall, Andrew P., and Pauline Weetman. "Information asymmetry in disclosure of foreign exchange risk management: can regulation be effective?." *Journal of Economics and Business* 54.1 (2002): 31-53.

conditions on such transactions. Hawala transactions often involve unreported cross-border transfers that evade these regulatory controls, thereby undermining the statutory scheme designed to monitor and manage foreign exchange flows.⁷

Hawala and the Prevention of Money Laundering Act, 2002

The Prevention of Money Laundering Act, 2002 (PMLA) represents a crucial component of India's legal framework aimed at combating financial crimes, particularly those involving the concealment and legitimization of illicit funds. While hawala is not explicitly defined or named under the Act, its operations frequently fall within the ambit of money laundering when it is used as a conduit for transferring or disguising proceeds derived from criminal activities. In this sense, the relationship between hawala and PMLA is not direct but deeply interconnected. The central objective of PMLA is to prevent and control money laundering and to provide for the confiscation of property derived from or involved in such activities. The Act defines money laundering in broad terms, encompassing any process or activity connected with the proceeds of crime, including its concealment, possession, acquisition, use, or projection as untainted property. Hawala transactions, particularly those involving unaccounted or illicit funds, often serve precisely this purpose by enabling individuals to move money across borders without detection, thereby obscuring its origin and ownership.

A key feature of PMLA is the concept of "proceeds of crime," which refers to any property derived or obtained, directly or indirectly, as a result of criminal activity relating to a scheduled offense. The Schedule to the Act lists a wide range of offenses under various laws, including the Indian Penal Code, the Narcotic Drugs and Psychotropic Substances Act, and anti-corruption statutes. When funds generated from such offenses are transferred through hawala channels, the transaction becomes part of the money laundering process, thereby attracting the provisions of PMLA.⁸

The process of money laundering is often understood in three stages—placement, layering, and integration—and hawala systems are particularly effective in facilitating the latter two stages. Through informal and undocumented transfers, hawala allows funds to be moved across jurisdictions (layering), thereby distancing them from their illicit origin. Subsequently, these funds can be reintroduced into the formal economy (integration) in a manner that appears legitimate. This makes hawala an attractive mechanism for individuals seeking to launder money while avoiding regulatory scrutiny.

⁷ Rupee, Non-Resident Ordinary. "Foreign Exchange Management."

⁸ Sharma, Abhay. *Prevention of money laundprevention of money laundering act, 2002: It's implication & challenges in India*. Diss. 2021.

Role of the Indian Penal Code in Hawala-related Offences

While hawala transactions are primarily regulated under specialized financial legislations such as the Foreign Exchange Management Act, 1999 and the Prevention of Money Laundering Act, 2002, the Indian Penal Code, 1860 (IPC) plays a significant supplementary role in addressing the criminal dimensions associated with such activities. Notably, the IPC does not expressly define or criminalize hawala as a distinct offense. However, various provisions of the Code are frequently invoked in cases where hawala transactions are intertwined with conventional criminal acts such as cheating, forgery, criminal conspiracy, and fraud.⁹

The application of the IPC becomes particularly relevant when hawala transactions are used as a mechanism to facilitate or conceal criminal conduct. In such instances, the focus shifts from the method of transfer to the underlying intent and associated offenses. One of the most commonly invoked provisions is Section 120B, which deals with criminal conspiracy. Hawala operations typically involve multiple individuals working in coordination across different locations, often forming organized networks. When two or more persons agree to engage in illegal financial transfers or to facilitate unlawful activities through hawala, they may be charged with conspiracy under this provision.

Another significant provision is Section 420 of the IPC, which pertains to cheating and dishonestly inducing delivery of property. In certain cases, hawala transactions are accompanied by fraudulent representations or deceptive practices, particularly where individuals are misled regarding the nature or legality of the transaction. For example, where false documentation is created to disguise illicit transfers as legitimate business transactions, the element of cheating may be established, thereby attracting liability under Section 420.¹⁰

Forgery-related provisions under the IPC/BNS also play an important role in hawala-related prosecutions. Sections 467, 468, and 471 deal with forgery of valuable security, forgery for the purpose of cheating, and the use of forged documents, respectively. Hawala networks often rely on fabricated invoices, manipulated account statements, or false declarations to mask the true nature of transactions. Such practices bring the activities within the ambit of these provisions, enabling authorities to prosecute individuals not merely for unauthorized financial transfers but also for the creation and use of fraudulent documents.¹¹

⁹ Razavy, Maryam. "Hawala: an underground haven for terrorists or social phenomenon?." *Crime, Law and Social Change* 44.3 (2005): 277-299.

¹⁰ Passas, Nikos. "Law enforcement challenges in hawala-related investigations." *Journal of Financial Crime* 12.2 (2005): 112-119.

¹¹ Pathak, Rachana. "The obstacles to regulating the Hawala: A cultural norm or a terrorist hotbed." *Fordham Int'l LJ* 27 (2003): 2007.

Additionally, Section 411 (dishonestly receiving stolen property) and Section 414 (assisting in concealment of stolen property) may be invoked in cases where hawala channels are used to transfer or conceal proceeds derived from theft or other criminal activities. In situations involving large-scale financial fraud or organized crime, these provisions help in establishing the criminal liability of individuals who facilitate the movement or concealment of illicit funds through informal systems.

Preventive Detention under COFEPOSA

The Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (COFEPOSA) represents a distinct and stringent component of India's legal framework aimed at safeguarding the country's economic interests. Unlike conventional criminal laws, which are punitive in nature and operate after the commission of an offence, COFEPOSA is a preventive detention law. Its primary objective is not to punish past conduct but to prevent individuals from engaging in activities that may be detrimental to the conservation of foreign exchange or that facilitate smuggling and related economic offences. In this context, hawala operations, particularly those involving large-scale and organized networks, fall within the ambit of activities that may justify preventive detention under the Act.¹²

Preventive detention under COFEPOSA is based on the premise that certain economic offences pose a serious threat to national security and economic stability. Hawala transactions, by enabling the unauthorized transfer of foreign exchange and the movement of unaccounted money across borders, undermine the regulatory framework established by the State. In cases where such transactions are carried out systematically or are linked to broader networks of illegal activities, authorities may consider detention under COFEPOSA as a necessary measure to disrupt and prevent further operations.

The Act empowers the Central Government and State Governments, as well as specified officers, to detain individuals if they are satisfied that such detention is necessary to prevent them from acting in a manner prejudicial to the conservation or augmentation of foreign exchange. This satisfaction is subjective, meaning that it is based on the authority's assessment of the available material rather than on a formal judicial determination of guilt. In the context

¹² Mukherjee, Suparna, and Smita Satapathy. "Economic Sustainability Through Preventive Detention: The Necessity of COFEPOSA Act, 1974 in Regulating Economic Stability." *Big Data in Finance: Transforming the Financial Landscape: Volume 2*. Cham: Springer Nature Switzerland, 2025. 323-334.

of hawala, this allows authorities to act swiftly against suspected operators, even in situations where sufficient evidence for criminal prosecution may not yet be available.¹³

One of the key features of COFEPOSA is that detention can be ordered without a prior trial, which distinguishes it from ordinary criminal proceedings. The detained individual is not immediately prosecuted for an offence but is held in custody to prevent future activities. The maximum period of detention can extend up to one year, or longer in certain cases, subject to confirmation by an Advisory Board. The Advisory Board, comprising judges or qualified legal professionals, reviews the grounds of detention to ensure that it is justified.

Regulatory Role of the Reserve Bank of India

The Reserve Bank of India (RBI), as the central banking authority of the country, plays a pivotal role in regulating and supervising foreign exchange transactions and maintaining the integrity of the financial system. Within the framework of the Foreign Exchange Management Act, 1999 (FEMA), the RBI acts as the primary regulatory body responsible for formulating policies, issuing directions, and ensuring compliance in matters relating to foreign exchange. Although hawala transactions operate outside the formal financial system, the regulatory measures undertaken by the RBI are crucial in indirectly curbing such informal and unauthorized practices.¹⁴

One of the fundamental functions of the RBI under FEMA is the authorization and regulation of entities dealing in foreign exchange. Only those institutions that are licensed as “authorized persons”—including banks, money changers, and financial institutions—are permitted to engage in foreign exchange transactions. By establishing a system of licensed intermediaries, the RBI ensures that all cross-border financial dealings are conducted through regulated channels that are subject to monitoring and oversight. Hawala transactions, which bypass these authorized entities, are therefore inherently illegal within this regulatory framework.

The RBI also plays a significant role in formulating rules and issuing directions to govern foreign exchange transactions. Through notifications, circulars, and master directions, the RBI prescribes the conditions under which various types of transactions may be conducted. These include guidelines on current account transactions such as remittances for education, medical treatment, and family maintenance, as well as regulations governing capital account

¹³ Mishra, Jaya. "Preventive Detention: A Necessity." *Journal Of Innovation for Inclusive Development* 2.02 (2017): 68-71.

¹⁴ Dhungel, Sudiksha, and Suyash Upadhyay. "Shadow Banks and Dirty Money: Investigating the Use of NBFCs in Money Laundering and Financial Crimes." *LawFoyer Int'l J. Doctrinal Legal Rsch.* 3 (2025): 361.

transactions. By clearly defining permissible activities and setting limits on transactions, the RBI seeks to reduce the scope for unauthorized transfers and to promote compliance with legal requirements.¹⁵

Another important aspect of the RBI's role is ensuring transparency and accountability in financial transactions. Regulated entities are required to maintain proper records, verify the identity of customers, and comply with reporting obligations. Mechanisms such as Know Your Customer (KYC) norms and Anti-Money Laundering (AML) guidelines are enforced to prevent the misuse of the financial system for illegal purposes. These measures create a traceable and documented trail for transactions, which stands in stark contrast to the anonymity and informality of hawala operations.¹⁶

The RBI also contributes to the prevention of hawala through its efforts in financial inclusion and banking outreach. By promoting access to formal financial services, particularly in rural and underserved areas, the RBI aims to reduce dependence on informal systems of money transfer. Initiatives such as simplified account opening procedures, expansion of banking infrastructure, and promotion of digital payment systems are intended to make formal channels more accessible, efficient, and cost-effective. In doing so, the RBI addresses some of the underlying factors that drive individuals towards hawala.

Analysis of Landmark Cases

Vineet Narain v. Union of India (Jain Hawala Case)

The case of *Vineet Narain v. Union of India* (1998)¹⁷ is widely regarded as one of the most significant judicial pronouncements in the context of hawala transactions in India. Popularly known as the Jain Hawala Case, it marked a turning point not only in exposing large-scale misuse of hawala channels for political corruption but also in redefining the accountability and functioning of investigative agencies in India.

In its landmark judgment, the Supreme Court did not focus solely on determining the guilt or innocence of the accused. Instead, it took a structural and institutional approach, addressing the systemic deficiencies in the functioning of investigative agencies. The Court issued a series of

¹⁵ Bhala, Raj. "Reserve Bank of India." *Research Handbook on Central Banking*. Edward Elgar Publishing, 2018. 68-93.

¹⁶ Nakhasi, Smriti S. "Western Unionizing the Hawala: The privatization of Hawalas and lender liability." *Nw. J. Int'l L. & Bus.* 27 (2006): 475.

¹⁷ *Vineet Narain v. Union of India*, (1998) 1 SCC 226.

directions aimed at insulating these agencies from political interference and enhancing their independence and efficiency.¹⁸

Ram Jethmalani v. Union of India

The case of *Ram Jethmalani v. Union of India* (2011)¹⁹ is another landmark decision that significantly contributed to the legal discourse on black money, illicit financial flows, and the role of informal channels such as hawala in facilitating the movement of unaccounted wealth. Unlike the Jain Hawala case, which primarily focused on institutional accountability in investigations, this case addressed broader concerns relating to the State's responsibility in identifying, investigating, and repatriating black money held abroad by Indian citizens.

In its judgment, the Supreme Court took a strong stance on the seriousness of black money as a threat to the nation's economic stability and governance. The Court recognized that the generation and transfer of black money, often facilitated through informal systems like hawala, had far-reaching implications for taxation, public finance, and the rule of law. It emphasized that such activities not only undermine the financial system but also erode public confidence in institutions.

The judgment also underscored the importance of international cooperation in dealing with black money and illicit financial flows. The Court observed that in an increasingly globalized economy, financial crimes often transcend national boundaries, requiring collaboration with foreign governments and institutions. It directed the government to actively pursue information-sharing agreements and take necessary steps to identify and repatriate undisclosed foreign assets.

The Court also made important observations regarding the duty of the State to act in the public interest. It emphasized that the failure to investigate and curb black money could amount to a violation of constitutional principles, particularly those related to good governance and accountability. By intervening in the matter, the judiciary sought to ensure that the executive fulfilled its obligations in addressing a problem of national importance.

¹⁸ Choudhury, Anwesha, and Sarthak Sharma. "Civil Implications of PMLA: Envisaging the Financial Death of an Accused." *Nat'l LU Delhi Stud. LJ* 6 (2024): 21.

¹⁹ *Ram Jethmalani v. Union of India*, (2011) 8 SCC 1.

Conclusion

The study also underscores the significant role of the judiciary in shaping the legal discourse on hawala. Courts have consistently emphasized due process, evidentiary standards, and the need to prevent misuse of enforcement powers. At the same time, judicial decisions reflect the challenges of applying traditional legal principles to informal financial practices. The judiciary has sought to maintain a balance between strict enforcement and protection of individual rights, but its role remains largely reactive and case-specific.

One of the most important insights of this study is the recognition of cultural legitimacy as a key factor in the persistence of hawala. Rooted in trust-based networks, historical practices, and community relationships, hawala is perceived as a legitimate and efficient system within certain socio-economic contexts. This cultural acceptance creates a disconnect between legal norms and social behavior, reducing compliance and complicating enforcement efforts. It also highlights the broader challenge faced by legal systems in regulating practices that are socially accepted but legally prohibited.

The economic dimension further reinforces this conclusion. Hawala continues to thrive because it offers advantages that formal financial systems have not fully replicated, including speed, cost efficiency, accessibility, and flexibility. For many users, particularly those in the informal sector or with limited access to banking services, hawala is not a choice driven by illegality but by necessity and convenience. This indicates that the persistence of hawala is as much a reflection of systemic gaps as it is of regulatory failure.

At the same time, the study makes it clear that hawala poses serious risks to economic integrity, governance, and national security. Its potential for misuse in activities such as money laundering, tax evasion, and illicit financial flows necessitates strict regulation and effective enforcement. The challenge, therefore, is not to justify or normalize hawala, but to address it in a manner that is both effective and context-sensitive.

The overarching conclusion of this study is that the issue of hawala cannot be resolved through a binary approach of strict prohibition versus acceptance. Instead, it requires a balanced and integrated strategy that combines legal enforcement with socio-economic and institutional reforms. Strengthening formal financial systems, improving accessibility, enhancing investigative capacity, and promoting awareness are essential components of such a strategy. Furthermore, the study highlights the need for greater alignment between law and social reality. Legal frameworks must evolve to account for the practical conditions in which individuals operate, while also maintaining the integrity of the financial system. Bridging this gap is crucial for ensuring both compliance and effectiveness.

In conclusion, hawala represents a persistent challenge that tests the adaptability and responsiveness of the legal system. Its continued existence reflects not only the limitations of enforcement but also the resilience of informal practices in the face of formal regulation. Addressing this challenge requires a nuanced understanding that goes beyond legal prohibition and engages with the broader social and economic context. The study ultimately advocates for a holistic and pragmatic approach, recognizing that sustainable solutions lie in harmonizing legal objectives with the realities of contemporary society.

References

A. Books

1. V.K. Shukla, *Constitution of India* (Eastern Book Company, 13th edn., 2017).
2. K.C. Shekhar & Lekshmi Shekhar, *Banking Theory and Practice* (Vikas Publishing, 21st edn., 2013).
3. I.P. Massey, *Administrative Law* (Eastern Book Company, 9th edn., 2016).
4. Ratanlal & Dhirajlal, *The Indian Penal Code* (LexisNexis, 34th edn., 2017).
5. G.P. Singh, *Principles of Statutory Interpretation* (LexisNexis, 14th edn., 2016).
6. S.N. Mishra, *Money Laundering: The Indian Scenario* (Universal Law Publishing, 2010).
7. Robin Booth et al., *Money Laundering Law and Regulation* (Oxford University Press, 2011).
8. R. Bose & A. Chatterjee, *Financial Crimes in India* (Eastern Law House, 2018).
9. N. Jayapalan, *Money Laundering: Concepts and Issues* (Atlantic Publishers, 2008).
10. S.K. Verma & Raman Mittal, *Legal Dimensions of Economic Offences* (Indian Law Institute, 2012).
11. Stuart P. Green, *Lying, Cheating, and Stealing: A Moral Theory of White-Collar Crime* (Oxford University Press, 2006).
12. Mark Pieth, *Recovering Stolen Assets* (Peter Lang, 2008).
13. Douglas W. Arner, *Financial Stability, Economic Growth and the Role of Law* (Cambridge University Press, 2007).
14. Bimal N. Patel, *India and International Law* (Martinus Nijhoff Publishers, 2005).
15. R.K. Gupta, *Economic Offences in India* (Deep & Deep Publications, 2014).
16. R. Vasanthakumar, *Financial Services and Systems* (S. Chand, 2012).
17. P. Ishwara Bhat, *Law and Social Transformation* (Eastern Book Company, 2013).
18. Upendra Baxi, *The Crisis of the Indian Legal System* (Vikas Publishing, 1982).

19. Surajit Sinha, *Informal Economy and Social Structures in India* (Oxford University Press, 2010).
20. Tanzi Vito, *The Underground Economy* (International Monetary Fund, 1999).

B. Journal Articles

1. S. Chaudhuri, "Hawala Transactions and Legal Challenges in India," (2015) 7 *Journal of Financial Crime* 45.
2. A. Kumar, "Money Laundering through Hawala: Legal Issues," (2018) 10 *Indian Journal of Law and Justice* 112.
3. R. Singh, "Economic Offences and Enforcement Challenges," (2016) 8 *NUJS Law Review* 89.
4. P. Sharma, "Hawala System and Its Impact on Indian Economy," (2017) 12 *Journal of Banking Law* 56.
5. N. Patel, "Anti-Money Laundering Laws in India," (2019) 5 *Indian Law Review* 201.
6. M. Khan, "Hawala Networks and Terror Financing," (2014) 6 *Journal of National Security Law* 78.
7. S. Gupta, "FEMA and Regulatory Framework in India," (2013) 4 *Company Law Journal* 132.
8. V. Iyer, "Judicial Approach to Economic Offences," (2020) 9 *Supreme Court Cases Journal* 221.
9. A. Bose, "Informal Financial Systems and Law," (2015) 3 *Economic and Political Weekly* 67.
10. R. Mehta, "Parallel Economy and Black Money in India," (2016) 51 *EPW* 45.
11. K. Sinha, "Evidentiary Challenges in Financial Crimes," (2018) 6 *Criminal Law Journal* 98.
12. D. Banerjee, "Role of Enforcement Directorate in AML," (2019) 11 *Journal of Financial Regulation* 150.
13. A. Verma, "Hawala and Financial Inclusion Debate," (2021) 13 *Indian Journal of Economics* 89.
14. S. Rao, "Legal Pluralism and Informal Systems," (2017) 8 *Socio-Legal Review* 134.
15. P. Das, "Cultural Legitimacy vs Legal Norms," (2020) 14 *Journal of Law and Society* 76.
16. M. Ali, "Cross-border Financial Crimes," (2018) 9 *International Law Journal* 59.
17. R. Kapoor, "PMLA and Judicial Trends," (2022) 15 *Indian Bar Review* 210.

18. S. Thomas, "Economic Crimes and Globalization," (2016) 7 *Asian Law Review* 88.
19. A. Nair, "Black Money and Legal Reforms," (2019) 10 *Journal of Policy Studies* 143.
20. V. Menon, "Informal Remittance Systems," (2015) 6 *Global Finance Journal* 67.

C. Reports

1. Financial Action Task Force (FATF), *Money Laundering and Terrorist Financing through Hawala* (2013).
2. FATF, *Mutual Evaluation Report on India* (2023).
3. Reserve Bank of India, *Annual Report* (2022–23).
4. Reserve Bank of India, *Report on Trend and Progress of Banking in India* (2023).
5. Enforcement Directorate, *Annual Report* (2022).
6. Ministry of Finance, *White Paper on Black Money* (2012).
7. World Bank, *Migration and Remittances Report* (2023).
8. International Monetary Fund (IMF), *Shadow Economies Around the World* (2018).
9. UNODC, *Global Report on Illicit Financial Flows* (2020).
10. Transparency International, *Corruption Perception Index Report* (2023).
11. National Crime Records Bureau, *Crime in India Report* (2022).
12. Financial Intelligence Unit–India, *Annual Report* (2022).
13. Asian Development Bank, *Financial Inclusion Report* (2021).
14. OECD, *Illicit Financial Flows and Development* (2014).
15. Government of India, *Economic Survey* (2023).
16. World Bank, *Doing Business Report* (2020).
17. FATF, *Risk-Based Approach Guidance* (2019).
18. RBI, *Master Directions on KYC* (2023).
19. Ministry of Home Affairs, *Report on Terror Financing* (2021).

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