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Corporate Liability in Financial Crimes: Examining Judicial Approaches under the Prevention of Money Laundering Act, 2002

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Corporate Liability in Financial Crimes: Examining Judicial Approaches under the Prevention of Money Laundering Act, 2002

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Abstract

The escalation of financial crimes in India has brought corporate entities under increasing scrutiny, particularly in the context of money laundering and related economic offences. This research paper examines the contours of corporate liability under the Prevention of Money Laundering Act, 2002 (PMLA), with a focus on judicial approaches that have shaped its interpretation and enforcement. It analyses the statutory framework governing the attribution of liability to companies and their officers, including provisions on “proceeds of crime,” attachment of property, and vicarious liability, while assessing the extent to which corporations can be held criminally accountable.

*The study critically evaluates key judicial pronouncements, including *Vijay Madanlal Choudhary v. Union of India*, which upheld the constitutional validity of core provisions of the PMLA and reinforced the expansive powers of enforcement authorities. It highlights an emerging judicial trend favouring strict enforcement and deterrence, reflecting the judiciary’s recognition of the serious economic and societal impact of corporate financial crimes. At the same time, the paper identifies significant concerns relating to due process, evidentiary standards, the presumption of culpability, and the challenge of establishing *mens rea* in corporate structures.*

By situating Indian judicial approaches within international anti-money laundering standards, the research underscores the need for a balanced legal framework that ensures effective prosecution without compromising fundamental rights and corporate fairness. It concludes that while judicial interpretations have strengthened the enforcement regime under the PMLA, greater doctrinal clarity, procedural safeguards, and institutional accountability are essential to achieve a fair, transparent, and effective system of corporate liability in financial crimes.

Keywords

Corporate Liability, Money Laundering, PMLA, Judicial Interpretation, Financial Crimes, Enforcement Directorate, Proceeds of Crime, Economic Offences, Due Process, India

Introduction

Today's interconnected economies see illicit finance grow more complex by the day. Turning profits from crimes like smuggling, bribery, deception, or hidden taxes into what looks like honest income defines this act. The origin of dirty cash gets masked through stages - first entry into banks, then moving it around, finally merging it as clean capital. Global trade expanding rapidly makes oversight harder than before.¹ Digital payments accelerate movement across borders without physical trails. Authorities everywhere struggle to keep pace with shifting tactics. Indian regulators face mounting pressure alongside others globally.

With India opening up its economy in 1991, the flow of illicit funds began rising alongside greater access to global markets. Though growth picked up, so did weaknesses in the financial system that criminals could exploit. Banking expansions, complex financial tools, while offshore entities and hidden companies created fresh paths for dirty money. Because of these shifts, strong laws and agencies became essential to track and stop such activities.

Though enacted in 2005, India's Prevention of Money Laundering Act originated in 2002, shaped by growing awareness of financial crime risks. Its core purpose? Disrupting illicit fund flows while ensuring illegal gains can be taken back by the state. Instead of working in isolation, investigative bodies now operate under coordinated frameworks inspired by international standards - especially those from FATF. Over years, updates have sharpened its reach and responsiveness. Leading this effort is the Enforcement Directorate, empowered to trace dirty money, freeze linked property, then move toward prosecution when evidence supports such steps.²

Businesses contribute significantly to financial crime within modern economic systems. Due to their separate legal status, complex internal structures, and large-scale monetary capabilities, they can become vehicles for illegal fund movements. Shifting dirty money often involves tactics like phantom firms, multi-step transfers, or banking outside national borders. Questions arise about how blame is assigned when wrongdoing occurs - especially concerning leadership awareness, shared accountability among executives, and whether a firm inherits guilt from those acting on its behalf. Legal frameworks such as the PMLA face challenges defining these boundaries clearly.³

¹ P. Ishwara Bhat, *Law and Social Transformation* 203 (Eastern Book Company, Lucknow, 2014).

² Financial Action Task Force, *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation* 14 (FATF, Paris, 2022).

³ United Nations Office on Drugs and Crime, *Money Laundering and Globalization* 29 (UNODC, Vienna, 2018).

Definition and Interpretation of Money Laundering

Money laundering, commonly referred to as "cleaning," is the practice of disguising earnings from illegal activities (sometimes called "dirty money") as lawful.

Money laundering is the process of hiding who originally owned and managed the profits of illegal activity by taking steps to make them seem to have come from a legitimate source.

The money that has been used to commit crimes may be laundered in a number of ways. The process of hiding the origin or actuality of illicit monies after they have been transferred through many channels to seem as legal payments is known as money laundering. It also completes the sequence of financial transactions. One of the problems is accounting for the profits from these types of activities without raising red flags with law authorities. The money launderers spend a great deal of time and energy creating protocols that enable the secure use of illegal cash. The owner of monies gained unlawfully must produce a financial record to show where the funds came from and how money laundering made them legitimate⁴

However, money laundering is fundamentally a straightforward notion. It's a way to conceal the true source of cash gains from illegal activity. In this usage, "laundering" refers to money that has been gained illegally and transformed or otherwise made to look as if it originated from a legitimate source. As such, it is a way to conceal the source of the money obtained via illegal conduct. Money launderers employ the practice of money laundering to conceal crimes such as extortion, terrorism, and the trafficking of weapons or drugs.⁵

Money laundering is the illegal practice of passing off large quantities of money earned via illegal activities, including drug trafficking or supporting terrorism, as originating from a lawful source. Since revenues from illicit activities are seen as "dirty money," the method "launders" the money to make it seem clean. Financial institutions have been working for many years to detect and prevent money laundering, according to academic research, but the primary feature of money laundering is how it is done. Many experts claim that money laundering necessitates a more complex process that involves three primary steps: placement, layering, and integration.

Money laundering is the process of transforming assets acquired through fraud, theft, or corruption into ostensibly "legitimate" ones. It is defined as "the transactional processing or movement of illicitly obtained funds (such as cash, checks, electronic transfers, or similar equivalents) towards disguising their source, nature, ownership, intended destination, and/or beneficiaries." Sometimes, financial system abuse (including securities, digital currencies, credit cards, and conventional currency) is referred to as "money laundering" in a

⁴ M. Cherif Bassiouni, *International Criminal Law* Vol. 2, 543 (Martinus Nijhoff Publishers, Leiden, 2011)

⁵ United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988, art. 3.

broader meaning. This includes supporting terrorists and avoiding international sanctions. This is because the term has become synonymous with other types of financial and commercial crime across a range of legal and regulatory frameworks. Money laundering, which is concerned with the source of funds, is blatantly confused with terrorist financing, which is concerned with the end destination of funds, by the majority of anti-money laundering legislation that govern the financial system.

Money laundering is defined by the UN Vienna 1988 Convention as "The conversion or transfer of property, knowing that such property is derived from any offence, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person involved in such offence to evade the legal consequences of his actions."⁶

Money laundering is the process of transforming assets obtained through illegal means (such as theft, human trafficking, drug trafficking, or illicit gambling) into assets or investments that seem legitimate. This method may conceal illegal activities under the guise of legitimate ones, with the intention of keeping criminals in control of their gains while concealing the cash's illicit origin without endangering the money's source.

Concept of Money Laundering

The phrase "money laundering" is relatively recent. At first, no one in society would take money laundering seriously since it is a complex crime. In contrast to street crimes, it is a contemporary crime⁴². Although it is frequently called a victimless crime, in reality, it is a crime against governments, economies, the rule of law, and the whole globe rather than a single individual. Money laundering has become a worldwide problem. A significant percentage of crimes are carried out with the intention of earning money for the individual or group committing the crime and then hiding the money's source or destination. Money laundering is the practice of processing these illegally acquired cash to hide their illegal origins. Because it enables the criminal to profit from the money without jeopardising their source, this process is essential.⁷

Crimes that generate substantial profits include drug trafficking, illegal weapons sales, smuggling, corruption, and organised criminal activities like tax evasion. Bribery, computer fraud, and insider trading all provide significant profits and promote the money laundering of illicit earnings. When a criminal organization generates a substantial profit, the individual or group in charge must find out how to handle the funds without calling attention to themselves or the illegal enterprise. By concealing the origins, changing the form, or moving the money to a place where it is less likely to be seen, criminals accomplish this. If they didn't, the money would be confiscated by law police and they would be

⁶ United Nations Convention against Transnational Organized Crime, 2000, art. 6.

⁷ Ministry of Finance, Government of India, *White Paper on Black Money* 84 (Government Press, New Delhi, 2012).

connected to the illegal activity. If effective, it allows the offenders to maintain control over their riches and, in the end, provides a credible explanation for their source of income. When criminals are allowed to spend the earnings, the ability to launder such money makes crime more appealing. The concept of machine learning has cross-cutting ties with criminal, administrative, financial, and international public law because to its complexity and the expansion of globalisation processes. Money laundering is the process of disguising money obtained unlawfully as coming from a legitimate source. Rumour has it that the word "money laundering" originated in US launderettes run by the mafia. For the massive quantities of money it earned via extortion, gambling, and other illicit operations, the mafia provided evidence of legitimate sources of income (such as launderettes). In the US, money laundering only became a crime and a cause for concern in the 1980s.

Criminological features of money laundering

Examining the definition of "proceeds of crime" in both domestic and international law reveals that it basically refers to three types of properties. First comes property created as a consequence of criminal behaviour related to a particular offence. The second element is the value of the property in issue, which is followed by comparable property held in the nation and the place where the property is seized or held. To put it another way, money laundering (ML) is the intentional creation of any assets—monetary or non-monetary—obtained either directly or indirectly via illicit activities. Hard currency, soft electronic bank transactions, or their equivalents fall under the former category, whilst physical assets like houses and vehicles go under the latter. Such illegal action also seeks to realise an asset. Therefore, a criminal intent to purposefully alter, combine, hide, and misrepresent the real source or nature of the items utilised in the illegal action defines the acts. Examining this growing global legal framework for combating money laundering is essential because, as previously said, derivative crimes have consistently been expanded to encompass money laundering.⁸

The criminalisation of money laundering provides an additional avenue for the prosecution of offenders. Prosecution is possible for both the main offender and those who assist them in laundering the profits of their crime. In the past, the money laundering process was centred on the main crime that produced the money. The strategy of making money laundering illegal and using it as an excuse for asset forfeiture, regardless of the underlying behaviour, was first introduced by the US in 1986 and is rapidly gaining traction worldwide. Laundering the profits of crime may carry even worse penalties than the initial offence in those nations that have opted for this approach. Therefore, it is thought that outlawing

⁸ Law Commission of India, *Report on Financial Crimes and Asset Recovery* 59 (2017).

money laundering is required to protect a number of interests, such as those pertaining to human life, social cohesion, and public order.⁹

There are three goals for criminalisation.

A state must first comply with AML requirements.

Secondly, it links seemingly innocuous conduct to overt illegal activity.

Thirdly, criminalisation lays the groundwork for international cooperation in an essential law enforcement function.

Since money laundering is now considered a criminal offence, relevant authorities are able to use powerful international instruments to detect, prevent, and punish international money laundering as well as seek mutual legal aid. The government first outlawed money laundering as a symbolic "stick" to make sure the gatekeepers of the legal economy did not allow the proceeds of different illicit actions to enter it. However, as time passed, money laundering prosecutions were seen as a means of addressing both the main offenders and the gatekeepers. The criminalisation of money laundering advances the three primary objectives of AML legislation.

First of all, it requires adherence to AML preventative procedures, and in

Second, it connects seemingly innocuous conduct to overt criminal activity, such as an individual's or an organization's activities while handling the illegal profits of a crime.

Thirdly, because money laundering is a transnational crime and domestic law enforcement agencies can always rely on powerful international tools like tracking, enforcing, and prosecuting international laundering, it lays the groundwork for increased international cooperation.

Articles 3(1)(b) and 3(1)(c) of the Vienna Convention and Article 6(1) of the Palermo Convention include the relevant requirements that should make money laundering a crime correspondingly.¹⁰

Money Laundering's Effect on the Nation's Economy

Money laundering has two negative effects on financial businesses' capacity to endure and expand:

1. Since there seems to be a connection between money laundering and the dishonest behaviour of institution employees, it directly undermines financial institutions. In a similar vein, the development of money laundering activities increases the likelihood that criminal elements may attack financial institutions in a state. This strengthens the criminal class and other avenues for money laundering. As a result, a monopoly may emerge and less skilled competitors may be forced out.

⁹ European Union Council Directive 91/308/EEC on Prevention of the Use of the Financial System for the Purpose of Money Laundering, art. 1.

¹⁰ United Nations Office on Drugs and Crime, *Global Report on Money Laundering* 47 (UNODC, Vienna, 2021).

2. Customers' trust is essential to the growth of respectable financial organisations, and this trust is hampered by investors' and depositors' perceptions of institutional fraud and corruption.

Procedures for Money Laundering

Before the money is ultimately released into the legal financial system, the money laundering procedure typically entails three phases. Money obtained illegally may be transformed or transferred to make it seem as if it came from a legal source. This procedure is referred to as "money laundering." To put it another way, it is a way to hide the source of the money obtained via illegal conduct. Money launderers employ the practice of money laundering to conceal crimes such as terrorism, extortion, and the trafficking of weapons or narcotics.

Placement: The process of introducing illegal funds into the financial system is referred to as placement. This might be achieved by purchasing a variety of financial instruments (such as checks or money orders) that are then collected and put into accounts at many places, or by dividing large quantities of money into less visible smaller sums that are then paid straight into a bank account.

Layering: Layering is spreading the money across a number of financial transactions in order to hide the trail. This might include transferring money to different accounts across international boundaries or utilising the money to purchase actual goods that will subsequently be sold. It involves transferring the money via many transactions in order to confuse the trail and hide the funds' origins. The trail is hampered by the foreign transactions that often occur at this most difficult time. Layering can be used to change the forms of money through numerous bank-to-bank transfers, wire transfers between accounts with different balances, currency changes, purchasing pricey goods (boats, houses, cars, names in different countries, making deposits and withdrawals to continuously vary the diamonds).

Cash transformed into Monetary Instruments: After being successfully placed in the financial system via a bank or other financial institution, the proceeds may be converted into financial instruments. For this, money orders and banker's drafts are used.

Material assets acquired with cash and subsequently sold: It may be more difficult to locate and confiscate assets bought with illegal funds if they are sold again locally or abroad.

Integration: In this last phase, money that has been "cleaned" is mixed with money that has been legitimately acquired, usually via the banking system, and

used in the mainstream economy to increase wealth and engage in further criminal activities. Differentiating between legitimate and illegitimate riches is now quite challenging. It becomes difficult to distinguish the "cleaned" money from the original when it is returned into the economy. The offender now receives their "clean" money back.

Property Dealing: To reintroduce money that has been cleaned up into the economy, criminals often sell real estate. For example, a lot of criminal groups set up shell companies to buy real estate, so the proceeds from the sale would be considered legitimate.

Front Companies and False Loans: Criminals use front companies created in countries with corporate secrecy laws to make false loans to themselves. The loans take the shape of what seems to be a legitimate commercial transaction.

Foreign Bank Complicity: Money laundering via reputable international organisations is more complex and presents a greater challenge to law enforcement. Because of their enthusiastic backing, foreign banks are sometimes insulated from law enforcement inspection. The financial laws and regulations of other sovereign states, in addition to criminals, achieve this.

False Import/Export Invoices: Import/export companies have discovered that utilising phoney invoices is one of the most effective methods to reintegrate illegal earnings into the system. This involves overvaluing admission papers in order to support the money later put in local banks and/or the worth of money gained from exports.

Prevention Money Laundering (PMLA) Act

When the PMLA was passed, its goals were to stop money laundering, implement strict regulations, and keep an eye on financial activities. By properly enforcing the legislation, regulatory agencies may discover and investigate offences while also preventing them. Upon receiving the criminal information, the law enforcement agencies conduct a thorough investigation to find out how the properties were obtained, if money laundering was committed, and details on illicit financial flows. The result of international agreements that would aid in the fight against the worldwide crime of money laundering is the PMLA.

The worldwide commitment to fight the danger of money laundering of illegal profits that might affect both national financial institutions and the global economy led the Parliament to approve the Act. On January 17, 2003, the President signed the Prevention of Money Laundering Bill into law after it had been adopted by both Houses of Parliament. The "Prevention of Money Laundering Act, 2002 (15 of 2003)" became operative on 1.7.2005.

In compliance with Section 732, the Central Government has created rules to carry out the Act's provisions. This Act has been amended to satisfy the demands of the international organization that offered suggestions on how to improve the procedures in place to deal with the issue of money laundering, which jeopardises the integrity and sovereignty of the country as well as the financial systems.

The list of Acts undergoing amendment is as follows:

Enactments were altered in response to the need to curb financial crimes that impact both the domestic and global economies. They are

- The Prevention of Money Laundering Act, which was created in 2002 and revised in 2005, 2009, and 2012 to better regulate offenders.
- Every year, the Finance Act of 1963 is updated to reflect current events and the nation's financial requirements. The Finance Act affects taxes, charges, and exemptions overall, acting as a check on Indian residents' income.
- The Black Money Act, which went into effect in 2015 with the goal of tracking and restoring the nation's riches while eliminating the underlying vicious cycle of black money.
- The Prevention of Corruption Act, which was created in 1988 with the primary goal of preventing corruption and advancing integrity in public administration, was further modified in 2018.
- The Adhaar Act, which was passed in 2016 with the intention of giving the unique identification number project legal support, was further modified in 2019.

Corporate Liability Under Section 70 Of the PMLA

Section 70 of the PMLA shifts focus squarely onto companies, positioning the law as the main route for holding both organizations and people responsible in money laundering cases. If a violation happens, clause (1) makes clear that the entity - together with any person directing its actions at the time - faces liability. Those running everyday affairs during the relevant window share responsibility along with the corporation. Being in charge of operational decisions is enough to trigger culpability, even without evidence of individual wrongdoing. What matters most is their position in shaping how the business operated. Notice how wide the reach of this rule really is - leadership roles alone trigger accountability, whether we're talking about organizations or individuals at the top. Simply occupying a major decision-making role opens the door to legal exposure, regardless of personal involvement or proof of intent.

When required, protection under Section 70(1) could still apply if the person proves they did not know about the act or made every effort to stop it. Because large organizations are complex, the law accepts that leaders cannot watch every transaction themselves. Evidence needs to appear - solid and real - that safeguards were working. It is not enough to have policies written down. These controls must

have been active, doing their job when tested. How things actually operated becomes central here. True accountability demands actual involvement, never just gestures. When oversight, audits, or supervision fail to leave clear marks of genuine effort, being unaware offers no shield.

It stands apart because of its reach into corporate hierarchies - Section 70(2) pulls responsibility deep inside an organization. A breach of the PMLA might land legal consequences on those at the helm, whether they are directors, managers, secretaries, or hold equivalent positions, so long as proof ties them through consent, passive support, or lapses. What counts here is not only deliberate misconduct; even lack of proper care may trigger liability. Because of this, leadership can no longer rely solely on reactive oversight - they need to stay engaged with compliance mechanisms before issues arise. Awareness of questionable flows of funds becomes essential, along with maintaining solid checks that actually work. Turning a blind eye brings risk; choosing not to know won't shield someone from consequences. Responsibility sticks when oversight falters, regardless of personal engagement in wrongdoing.

One key phrase in Section 70(1) - "person in charge of and responsible to the company for the conduct of the business" - has drawn significant attention from courts. Though someone may hold the title of director or officer, Indian judiciary rulings make clear that such status alone does not trigger liability. Instead, the Supreme Court, referring to similar clauses in the Negotiable Instruments Act of 1881, has stressed function over form when applying the rule. Responsibility arises only if evidence shows real oversight during the critical period. From top to bottom, accountability depends on demonstrated influence, not position on paper. Take *S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla* (2005) 8 SCC 89: personal exposure demands concrete allegations about engagement in questionable acts. Because of this stance, judges reject automatic blame assigned to every corporate official named. What counts is how deeply involved each individual was - assessed individually, never by assumption.

Though applied routinely, Section 70's enforcement by the Directorate has stirred debate. Some argue it pulls too many figures into legal scrutiny - directors without active involvement often appear named alongside those directly implicated. Instead of focusing only on key individuals, authorities sometimes include persons like independent board members or investor appointees, raising concerns about fairness. Judicial rulings, discussions within Parliament, and writings in scholarly journals suggest another pattern: pressure through charges may prompt deals when fear of prolonged process looms large. Yet courts increasingly demand clear details linking each person to wrongdoing before allowing cases to proceed.

Where evidence lacks precision, judges have stepped in - to release individuals or dismiss accusations altogether.¹¹

Conclusion

Hidden financial flows threaten India's economic stability, legal fairness, and trust in key systems. Examining these operations shows they thrive on secrecy and bending legitimate frameworks. Though the Prevention of Money Laundering Act, 2002, anchors official efforts, weaknesses surface under actual scrutiny. Firms avoid accountability easily, since control paths vanish inside layers of fake firms. Though enforcement teams face slow responses, spotty cooperation, and gaps in reaching international financial records, the damage goes much deeper than shifting illicit money. Hidden from view, this behavior warps how leaders make choices inside official institutions. Without control, fair competition bends out of shape - progress for legitimate businesses drags behind. Over time, confidence slips away quietly; only later do people question whether banks or oversight still hold value.

Formed as a response to economic wrongdoing, the PMLA sets firm procedures against unlawful profits - penalizing them, enabling confiscation of tainted property, yet assigning enforcement power to examining agencies. Over years, amendments pushed its scope outward, aligning more closely with international standards. Yet despite movement forward, practical outcomes stall amid tangled laws and field-level delays. Written strength often fails to become actual effect. Inside any firm, separating guilt from structure gets messy. Though businesses act like individuals in law, their layered chains of command blur responsibility. Shifting profits through opaque channels becomes easier when roles overlap and decisions scatter across departments. Blame rarely sticks because criminal intent requires proof of deliberate choice - hard to trace in collective environments. Rules may permit holding organizations accountable for employee actions, yet applying them falters when consensus replaces single authority. Enforcement cracks appear where power is shared, not owned.

Even with such results, real-world challenges stay unresolved. Following money trails requires particular expertise, particularly if deals span countries - a process relying heavily on smooth coordination among agencies. Still, shortcomings continue: certain departments face budget shortfalls, while different ones wrestle with old systems or isolated workflows. Investigations slowed by red tape weaken judicial impact gradually. Poor execution in court proceedings subtly erodes enforcement power.

¹¹ S.K. Kapoor, *Corporate Criminal Liability in India* (Universal Law Publishing, New Delhi, 2017).

Though often overlooked, courts have shaped how the Act functions by clarifying rules while weighing law enforcement against individual rights. Because interpretation matters, judges have stepped in where laws were unclear, blocking potential abuse. With financial crimes changing fast, steady court involvement remains necessary - without it, legal standards could fall behind.

Ultimately, though the PMLA marks progress against financial crime in India, real-world impact remains limited due to unclear legal terms, difficulties assigning company responsibility, and weak enforcement capacity. Improvement demands changes that bolster legislation alongside execution - without weakening rights protected under the Constitution.

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