


Conceptual Framework of Money Laundering and Real Estate

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ABSTRACT

Real estate transactions as a tool for laundering money have been recognized as the most sophisticated and robust method used by launderers to legalize their illicit gains. The real estate industry, given its unique nature characterized by high transaction amounts, lack of regulation, opacity and the ability to inflate the value, offers launderers the perfect platform to integrate their gains from the illegal acts into the legitimate economy. In India, which boasts one of the biggest property markets in the world and where an overwhelming majority of the transactions are conducted in the informal sector, the risk of real estate money laundering remains highly significant.

The present dissertation conducts a thorough study of real estate transactions as a mechanism of money laundering. The primary focus is on the Prevention of Money Laundering Act, 2002 (PMLA), and the property law in India. The project begins with a discussion of the concept of money laundering, three-tiered process involving placement, layering and integration, and analyses how these stages are accomplished within the real estate sector. Further, there will be a discussion of various provisions of the PMLA such as proceeds of crime, money laundering offence, power of attachment, reporting obligations, ED and FIUIND.

In addition, the dissertation looks into the nexus between the PMLA and other property laws such as the Transfer of Property Act, 1882; Registration Act, 1908; Benami Transactions (Prohibition) Act, 1988; Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as RERA); and Foreign Exchange Management Act, 1999 (hereinafter referred to as FEMA). The adequacy of the law in question and the loopholes existing therein that permit illicit money transfers using the property route is critically examined.

Based on relevant decisions made by the Supreme Court of India and some High Courts, the thesis will examine the current law regarding attachment and confiscation of immovable property and the legal protection available to good faith purchasers of property that are subject to confiscation in money laundering cases. In order to compare and contrast the Indian legal position with that of other countries, the FATF Guidelines and laws of selected jurisdictions such as the UK and US will be considered.

The dissertation shows that even though India has shown significant development on paper in tackling money laundering through real estate, major lacunas exist in terms of implementation, interdepartmental cooperation, real estate industry disclosures, and beneficial ownership. Some recommendations have been put forward which include amendment to PMLA schedule, beneficial ownership registers, technology integration in property registration system, and capacity building in law enforcement.

Keywords: Money Laundering, Real Estate, PMLA, Benami Transactions, Enforcement Directorate, Proceeds of Crime, Attachment, FATF, Property Laws India, Financial Crime

CHAPTER 1

1.1 Research Questions

The thesis research is based on the following key questions:

1. In what ways is the real estate industry used to facilitate money laundering activities, and what specific means and methods are used in relation to money laundering in real estate sector in India?
2. In what way can the current legislative measures provided by PMLA be effective in combating real estate money laundering activities in the country, and what limitations are there in the legislation?
3. In what manner have the courts dealt with the issue of real estate money laundering using the PMLA provisions?
4. What is the contribution of other property-related laws and legislations in relation to the prevention and prosecution of money laundering in the real estate sector, such as the Benami Transactions (Prohibition) Act and RERA?
5. In what manner is the legislation in India in compliance with international recommendations, such as FATF, and how useful could be the experience gained in other countries?
6. What kind of reforms should be undertaken by India in relation to money laundering in real estate sector?

1.2 Significance of the Study

The importance of this dissertation is threefold: Academic contributions to the existing literature about the interaction between financial crime laws and property laws in India, which has had limited academic literature compared to the substantial amount of literature created about each of these two areas in isolation, the Policy implications associated with the findings of this dissertation and their relevance to ongoing discussions regarding amending the PMLA, strengthening RERA's ability to combat money laundering, and compliance with FATF standards, and practicalities in terms of providing a practical, useful reference for practitioners working in the field of real estate who must navigate the complex waters created by anti-money laundering regulations within the context of the property industry.

Considering that India will be undergoing a FATF Mutual Evaluation in 2024-2025, the findings of this dissertation are extraordinarily relevant. India will be assessed on its AML/CFT regime and a number of other factors, including how it operates in various sectors, including real estate, during this Mutual Evaluation.

1.3 Research Methodology

The methodology used in this research is primarily a doctrinal legal research methodology, combined with aspects of comparative and empirical methodologies. The methodological foundation for doctrinal legal research is based on the interpretation of primary and secondary sources of law. This includes an exhaustive analysis of the relevant statutory provisions, subordinate laws, judicial pronouncements, and policy guidelines, supported by secondary sources such as academic writings, policy papers, FATF typology studies, and investigative journalism.

Sources of law considered for the purpose of doctrinal research include: Prevention of Money Laundering Act, 2002 (PMLA), and amendments; Benami Transactions (Prohibition) Act, 1988 (amended in 2016); Transfer of Property Act, 1882; Registration Act, 1908; Real Estate (Regulation and Development) Act, 2016; Foreign Exchange Management Act, 1999; and Indian Penal Code, 1860. Sources of judicial interpretation include Supreme Court of India judgments; judgments from various High Courts; decisions of the Appellate Tribunal for Forfeited Property (ATFP); and Special Courts under PMLA.

Secondary sources are those which include the FATF Reports, FIU-IND Reports, Enforcement Directorate Reports, Ministry of Finance Reports, and various reports of Parliamentary Standing Committees. These include peer-reviewed articles from journals, books, and legal commentaries. In case necessary, news reports and investigative reporting may be referred to in order to give practical examples from the application of the legal framework.

1.4 Hypothesis

The research proposes that even though both Prevention of Money Laundering Act, 2002 (PMLA) and Real Estate (Regulation and Development) Act, 2016 (RERA) exist in India, the Indian real estate sector still continues to be very vulnerable to the risk of money laundering operations. It is caused by the fact that there are deficiencies in enforcement, transparency, and regulation in the matter.

Thus, although the main goal of PMLA is combating money laundering through providing a framework, the lack of monitoring and reporting mechanism limits the application of the act in the real estate field. Meanwhile, RERA focuses on transparency in the real estate business; however, it is not specifically dedicated to addressing the problem of money laundering.

In addition, certain practices such as dealing in cash and using benami properties, among others, lead to a lack of transparency. Furthermore, the absence of coordinated actions of enforcement authorities based on PMLA and RERA makes them ineffective, thus contributing to the laundering of illegal funds via real estate properties.

1.5 Scope and Limitations

However, the scope of the dissertation will be restricted to the laws pertaining to money laundering using immovable property in India, particularly the PMLA and its provisions concerning immovable property. Any comparative law discussion will only be used to support the thesis but not as part of an exhaustive comparative law analysis. In addition, the scope will be limited to immovable property, excluding money laundering involving securities, financial instruments, and movable property unless otherwise necessary for the analysis.

There are several limitations to the study. For one, since the legislative regime under which money laundering occurs evolves constantly through new legislation or amendments, including multiple amendments to the PMLA and notifications under RERA, the law at the time of writing will be applicable up until mid-2025. Furthermore, due to limitations in statistical data concerning enforcement actions, attachments, and prosecutions, the extent of empirical analysis will be curtailed. Lastly, the study will only draw from publicly available information sources such as judgments and official reports, without considering confidential documents from enforcement agencies' files.

CHAPTER 2

CONCEPTUAL FRAMEWORK OF MONEY LAUNDERING AND REAL ESTATE TYPOLOGIES

2.1 THE CONCEPT OF MONEY LAUNDERING

Money laundering is named after its origin, the concealment of the profits of organised crime by cash-intensive laundry attempts—a metaphor that has survived in legal and criminological circles long after its actual implementation became much more sophisticated.¹ In modern legal and criminological terms, money laundering can be described as a collection of operations through which the funds obtained due to illegal activities, also known as dirty money or proceeds of crime, are transformed into mediums of exchange which are of supposedly legal origin.² The essential aim of money laundering is to cut the traceable connection between the illicit origin of the funds and funds that personify the same in the legal economy, allowing a beneficiary to enjoy the proceeds of crime with impunity, without drawing the attention of the law enforcement enterprise or necessitating the investigation of the financial supervisory structure.

The economic rationale behind money laundering is simple: criminal activity results in money, however, such results do not always exist in a free form that is easy to use without detection. A drug peddler who gathers hundreds of crore rupees in cash cannot store the cash in a bank, invest in luxury goods, or acquire a lawful venture without raising questions as to the origin of the wealth. The process through which such conspicuous wealth is converted into inconspicuous is referred to as money laundering, and the end result includes the criminal enjoying the fruits of the crime in the legitimate economy.

The United Nations Conventions can be considered the most significant sources of the definition of money laundering in international law. The 1988 United Nations Convention

¹ The etymology of the term is traced to Al Capone-era laundromats used to commingle illegal proceeds with legitimate cash business revenue. See Nikos Passas, *Informal Value Transfer Systems and Criminal Organizations: A Study into So-Called Underground Banking Networks* 5 (1999).

² See Financial Action Task Force, *Guidance for a Risk-Based Approach: Real Estate Sector* 7 (2022) [hereinafter FATF Real Estate Guidance].

Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances was the first international instrument to define money laundering, in the first instance in relation to drug-related proceeds.³ The international community subsequently recognised the weaknesses of a drugcentric definition and adopted the 2000 United Nations Convention against Transnational Organised Crime (the Palermo Convention), which extended the scope of the definition to include proceeds in respect of a wider repertoire of serious offences.⁴ These two instruments are at the heart of international anti-money laundering (AML) law, as most countries have ratified them.

Since 1989, when the G7 at the Paris Summit created the Financial Action Task Force (FATF), the task force—now recognised as the main global standards-setter in the field—has devised a detailed framework of Forty Recommendations, last substantially revised in 2012 and since updated, establishing minimum standards for countries to combat money laundering and the financing of terrorism.⁵ As a FATF member since 2010, India has undergone a number of mutual evaluation rounds, the results of which have meaningfully influenced the development of the domestic AML framework.

Section 3 of the Prevention of Money Laundering Act, 2002 defines money laundering. This definition includes all those individuals who attempt, assist, or otherwise participate in (either directly or indirectly) any act or activity that results in the use, possession, acquisition, presentation and/or concealment of the proceeds of crime (whether actual or considered innocent).⁶ This generous definition encompasses both concealment-type activity as well as all various forms (stakeholder and activity) of the proceeds of crime, including a broader range of offenders because, under the definition, those who are indirectly involved in perpetrating the crime will also be held liable for criminal activities.

The PMLA has undergone extensive legal interpretation through the courts. The Supreme Court of India in the landmark case of *Vijay Madanlal Choudhary v. Union of India* (2022) upheld

the constitutionality of the extensive enforcement powers granted to the Enforcement Directorate under the PMLA, including powers of arrest and attachment, and affirmed the expansive definition of money laundering.⁷ The Court held that money laundering under Section 3 is an independent offence, not a parasitic one, and that the Enforcement Directorate need not establish the conviction of the accused in the predicate offence as a precondition to prosecution for money laundering. This conclusion substantially supports the autonomy of PMLA prosecution across sectors, including real estate.

Money laundering should be distinguished from the similar, albeit distinct, concepts of tax evasion and financial fraud with which it often shares practical overlap. Tax evasion involves the illegal non-disclosure or insufficient disclosure of revenues or assets to the tax system, and does not necessarily entail the production of proceeds from a planned criminal offence as such. In the technical legal sense, money laundering entails a predicate offence—a crime from which the proceeds being laundered were obtained. Nonetheless, the 2019 amendment to the PMLA, which included various fiscal offences, such as tax evasion, within the Schedule of predicate offences, has effectively blurred the line between these categories in enforcement.⁸ This amendment is of especial importance to the real estate industry, which has traditionally been plagued by tax evasion through under-reporting of transaction values.

2.2 THE THREE-STAGE MODEL OF MONEY LAUNDERING

The three-stage conceptualisation of the money laundering process—involving placement, layering, and integration—was initially introduced and extensively discussed by the FATF in its typology papers and has since been widely adopted in academic and policy literature.⁹ Though this approach has been criticised for being overly simplistic, given that many contemporary laundering processes involve steps that do not exist in isolation or that may occur

³ United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances art. 3(1)(b), Dec. 20, 1988, 1582 U.N.T.S. 165 [hereinafter 1988 Vienna Convention].

⁴ United Nations Convention against Transnational Organized Crime art. 6, Nov. 15, 2000, 2225 U.N.T.S. 209 [hereinafter Palermo Convention]; *see also* G.A. Res. 55/25, annex I (Nov. 15, 2000).

⁵ Financial Action Task Force, *The Forty Recommendations* (2003, rev. 2012) [hereinafter FATF Forty Recommendations]. India became a FATF member in June 2010. *See* Financial Action Task Force, *Mutual Evaluation Report: India 3* (2024).

⁶ Prevention of Money Laundering Act, 2002, § 3, No. 15, Acts of Parliament, 2003 (India) [hereinafter PMLA].

⁷ *Vijay Madanlal Choudhary v. Union of India*, (2022) SCC OnLine SC 929 (India). *See also* Prabhat Kumar, *PMLA: The Vijay Madanlal Verdict and Its Implications*, 58 *Econ. & Pol. Wkly.* 12 (2023).

⁸ Income Tax Act, 1961, §§ 276C, 277, No. 43, Acts of Parliament, 1961 (India). For the 2019 amendment bringing tax offences within the PMLA Schedule, *see* Prevention of Money Laundering Act (Amendment), 2019, No. 2, Acts of Parliament, 2019 (India).

⁹ *See* Financial Action Task Force, *Money Laundering Typologies 3–5* (1990) (introducing the three-stage model). For academic critique, *see* Peter Reuter & Edwin M. Truman, *Chasing Dirty Money: The Fight Against Money Laundering* 13–16 (2004).

simultaneously, it remains analytically useful for examining the logic behind laundering operations and identifying appropriate intervention points.¹⁰

2.2.1 Stage One: Placement

Placement refers to the first introduction of the proceeds of crime into the financial system or legitimate economy. At this stage, the money launderer attempts to convert money or other illegally obtained resources into a more manageable form and to establish distance between the funds and their illegal source. Placement is commonly considered the weakest phase of the laundering process in terms of enforcement, because it is where the movement of large volumes of money is most likely to attract attention.¹¹ Detection during the placement stage is therefore the primary consideration behind many AML compliance measures, including cash transaction reporting requirements, customer due diligence requirements, and suspicious transaction reporting requirements placed on banks and other financial institutions.

Placement in the real estate scenario may occur through several channels. The most direct approach is paying part, or in extreme instances all, of the purchase price of a property with proceeds of crime. Where property purchases structurally normalise cash transactions, as has historically been the case in most parts of the Indian property market, illicit cash payments can be completed with relative ease and less scrutiny.¹² Other methods include use of shell companies or nominee buyers to purchase property with illegal funds, thereby separating by one or more layers of corporate or personal identity the source of funding from the property; overpayment of deposits or advance payments in relation to property acquisition with subsequent withdrawal of the excess payment as supposedly legitimate refunds; and disbursement of costs of construction or development through illegal funds not fully documented.

The accepted use of cash transactions in India's real estate sector is underpinned by the historically widespread custom of bifurcating property sale prices into a declared 'white' portion—registered with the relevant authorities and liable

to stamp duty and registration

¹⁰ See Donato Masciandaro, *Money Laundering: The Economics of Regulation*, 7 Eur. J.L. & Econ. 225, 229–30 (1999).

¹¹ PMLA § 12 (imposing cash transaction reporting requirements on designated reporting entities); see also Prevention of Money Laundering (Maintenance of Records) Rules, 2005, Rule 3, No. G.S.R. 444(E) (India) [hereinafter PMLA Rules].

¹² See Income Tax Act, 1961, §§ 269SS, 269ST, 269T (India) (restricting cash transactions). See generally Enforcement Directorate, *Annual Report 2022–23*, at 34–37 (2023) (India) [hereinafter ED Annual Report 2022–23].

fees—and an undeclared 'black' portion paid in cash and not reflected in formal sale records. This two-level pricing system has traditionally offered a ready vehicle for placing illegal funds into the property market without a paper trail. The legislative and regulatory changes

implemented over the last decade have been aimed at disrupting this mechanism, with varying degrees of success.

2.2.2 Stage Two: Layering

Layering involves separating illegal funds from their source crime through a series of complex financial operations deliberately designed to create an obscure and difficult-to-follow audit trail, thereby concealing the ultimate source of the money.¹³ The aim of layering is to insert as many transactions, entities, and jurisdictions as possible between the source of the illicit funds and their final destination, making it as resource-intensive and technically challenging as possible to trace them to the predicate offence. This phase can include transfers between bank accounts in various countries, conversion among different types of assets, the use of offshore financial centres and bank secrecy jurisdictions, and the interposition of several legal entities, trusts, and nominee structures.

There are many techniques for layering, and they tend to become increasingly sophisticated as they are used within the real estate industry. The use of the serial resale of real estate between parties generally either connected to or controlled by the true owner at various continuously changing prices creates the illusion of lawful capital appreciation while, in fact, concealing the fact that the asset was originally purchased through illegal means. Each resale provides a further level of legitimacy to the ownership since, on the surface, the increased sale price can be accounted for as being due to market appreciation (i.e., legitimate capital appreciation) rather than illegal/illegitimate means of acquisition.

Another major form of layering is through mortgage or refinancing transactions. Illegally obtained assets may be financed through mortgages from banks (i.e., appear to be legitimate when financing), and the mortgage proceeds could then be invested further. The mortgages can be serviced by rental income (or otherwise) and paid off with proceeds from a later sale. After each round of these types of transactions, the distance and ability to trace back to the original funding of equity becomes more difficult. The layering of numerous corporate vehicles through the use of multiple shell companies, holding companies, subsidiary companies (with some

¹³ FATF Real Estate Guidance, *supra* note 2, at 11–14.

being located in a variety of jurisdictions), etc., adds further complexity to identifying beneficial owners.

Layering can also be achieved through lease, rent, and licensing arrangements. Illegally obtained property can be leased to an affiliated party or a legitimate business, generating rental income that appears lawful but whose tracing back to its criminal source becomes increasingly difficult when commingled with other streams of income.¹⁴

2.2.3 Stage Three: Integration

Integration is the final stage of money laundering, in which laundered funds re-enter the legitimate economy in a form that cannot readily be distinguished from legitimately acquired income or wealth.¹⁵ At this point, having successfully misled investigators during the placement and layering phases, the money launderer can theoretically use the funds at will without attracting the attention of law enforcement, tax collection agencies, or financial institutions.

Real estate enables integration in several interconnected ways. Layered corporate structures, along with multiple transactions of both selling and reselling, create the appearance of legitimate sale proceeds and provide a means to use wash sales proceeds by depositing those funds into a bank account, investing them in a financial instrument or using them in other business activities with no apparent link to the criminal activity. In addition, any rent received on property purchased with the proceeds from laundering money is captured in the formal economy as if they are typical business proceeds, subject to income tax and standard bookkeeping and filing practices, making it very difficult to assert an income challenge without tracing through the complete laundering process.¹⁶

Using laundered funds to finance credible real estate development projects is a particularly significant means of integration in the Indian setting. Developers accepting illegal coinvestment in development projects effectively absorb the money into project costs; the resulting sales of residential or commercial units create valid sale proceeds that commingle returns from both licit and illicit portions of the investment. This integration mechanism is

¹⁴ See Reuter & Truman, *supra* note 9, at 17–19.

¹⁵ See FATF Real Estate Guidance, *supra* note 2, at 18–22.

¹⁶ Unger et al., *supra* note 14, at 55–58.

particularly difficult to combat because it is hard to determine the percentage of illicit funds embedded within a large-scale development project and even harder to trace, seize, and expose those involved.

2.3 REASONS REAL ESTATE IS DESIRABLE FOR MONEY LAUNDERING

The structural appeal of real estate as an asset class to money launderers across jurisdictions and legal systems derives from certain unique qualities inherent in real estate.¹⁷ Real estate's susceptibility to money laundering is not accidental, but rather reflects core properties of the industry that distinguish it among other asset classes. These attributes are fundamental to any study of the legal and regulatory framework intended to address this vulnerability.

2.3.1 High Transaction Values

Real estate operations typically involve substantial sums—in the Indian context, commonly ranging from tens of lakhs to hundreds of crore rupees—making the sector particularly effective for absorbing large volumes of illicit money in a relatively small number of transactions. This is highly relevant at the point in time when the money laundering or launderer is seeking to combine many smaller illegal transaction proceeds into one large legitimately valued item (i.e., a large amount of illegal money Laundering combined into a few transactions). By utilizing one or a few transactions to transfer large sums of money, the value of the assets are combined while at the same time decreasing the amount of locations where the illegal transactions can be discovered when transferring an equivalent amount of money via multiple transactions of luxury items or financial instruments, each, individually, possess their own discovery risk.

Due to the high values of the assets associated with real property, they are also well suited for use in the perpetration of round-tripping money laundering schemes (i.e., money laundering, by sending funds out of the country and subsequently returning them as legitimate foreign direct investment) because of their high values.¹⁸ This feature is especially significant for

¹⁷ See Financial Action Task Force, *Money Laundering and Terrorist Financing Through the Real Estate Sector* 8–10 (2007) [hereinafter FATF 2007 Real Estate Report]; see also FATF Real Estate Guidance, *supra* note 2, at 5–7.

¹⁸ Jason Sharman, *The Despot's Guide to Wealth Management* 41–44 (2017).

highvalue commercial real estate, where individual transactions can run to several hundred crore rupees.

2.3.2 Low Transparency and Weak Regulatory Control

Compared to the banking and securities industries, which have been subject to increasingly stringent AML regulation since the early 1990s, the real estate industry has not traditionally been heavily regulated in AML terms. Most national schemes have not designated real estate brokers, developers, lawyers, and accountants engaged in property transactions as reporting entities with AML obligations, creating structural opportunities for money launderers to use professional intermediaries without the same know-your-customer (KYC) and suspicious transaction reporting requirements imposed on banks and financial institutions.

In India, the extension of PMLA reporting obligations to real estate agents and developers through the 2023 amendment to the PMLA Rules—undertaken in response to FATF pressure—represents an important step towards bridging this regulatory gap.¹⁹ Until this amendment, real estate professionals were not legally required to perform customer due diligence or to file suspicious transaction reports with the Financial Intelligence Unit–India (FIU-IND), creating a significant compliance gap that money launderers could exploit.²⁰ The scope of implementation and enforcement on a broad scale remains uncertain, evidencing substantive challenges; the full practical effectiveness of the enlarged reporting system has not yet been successfully demonstrated.

The lack of a comprehensive centralised land registry in India that accurately captures the ultimate beneficial owner of the property, further contributes to lack of transparency in the sector. Although property transactions must be registered under the Registration Act 1908, the registration authority's records are theoretically accessible but the records, therefore reflect only the nominal registered owner, do not capture the identity of the ultimate beneficial owner when property is held by either a corporate vehicle or a nominee arrangement.²¹ The lack of transparency is in stark contrast to the beneficial ownership disclosures banks must provide in connection with their account holders and is a major weakness in the overall AML process.

¹⁹ See Prevention of Money Laundering (Maintenance of Records) (Second Amendment) Rules, 2023, No.

G.S.R. 220(E) (India) [hereinafter 2023 PMLA Amendment Rules] (extending reporting entity obligations to real estate agents and developers).

²⁰ See Financial Intelligence Unit-India, *Annual Report 2022–23* 9–11 (2023) [hereinafter FIU-IND Report 2022–23].

²¹ Registration Act, 1908, § 17, No. 16, Acts of Parliament, 1908 (India). For the beneficial ownership gap, see Financial Action Task Force, *Mutual Evaluation Report: India* 88–92 (2024) [hereinafter FATF MER India 2024].

2.3.3 Structural Complexity

A typical contemporary real estate transaction can involve multi-layered ownership arrangements utilising private limited companies, limited liability partnerships, trusts, and offshore entities. Such arrangements can greatly obscure the identity of the ultimate beneficial owner of a property, making it extremely difficult for enforcement agencies to trace ownership back to the original criminal proceeds.²² A property registered under the name of a private limited company whose shares are owned by an offshore company formed in a jurisdiction with minimal transparency standards may

require significant investigative effort to trace to the individual who ultimately possesses and benefits from ownership.

Historically, India's corporate registration has been relatively opaque on the disclosure of beneficial ownership in private limited companies. Although the Companies Act, 2013 and the SBO Rules have established a formal requirement for companies to identify and disclose individuals who own or control an interest greater than 10% in the company through their ownership or control in that company, the application of those requirements to particularly complex, layer-based ownership structures has been ineffective. Furthermore, the use of foreign holding companies, particularly those located in jurisdictions like the British Virgin Islands, the Cayman Islands, and Mauritius, further complicates the tracing of beneficial ownership of those companies to Indian law enforcement as the existence of this type of beneficial ownership cannot be made known to the relevant enforcement agencies in India without international cooperation.

2.3.4 Vulnerability to Misvaluation

As property valuation can be described as relative and context-based, it is therefore also more easily and intentionally manipulated than say, listed securities or standardised financial instruments. In India, for example, the ability for buyers to pay a significant portion of their purchase price in undeclared cash is made possible due to the significant gap between the official circle rate which is established by the state and the true market value of the property. This enables the buyer to put illicit funds (money that has been illegally obtained) into the

²² See Companies Act, 2013, § 90, No. 18, Acts of Parliament, 2013 (India); Companies (Significant Beneficial Owners) Rules, 2018, No. G.S.R. 340(E) (India) [hereinafter SBO Rules].

property market.²³ The seller may have a complementary incentive to accept undeclared cash income free from tax.

Over-valuation, conversely, enables an equally effective laundering function: it facilitates illicit transfers of money between countries or parties under the guise of legitimate payment for a commercial property sale. A buyer who over-pays for a property effectively transfers the surplus to the seller as a disguised payment. This is particularly common in cross-border settings, where capital flows can be structured to exploit favourable exchange control regulations or lower scrutiny of particular types of foreign real estate investment.

Indian legislators and regulators have recognised the problem of intentional misvaluation and introduced measures to constrain it. Attempts to address under-valuation at the legislative level include the introduction of fair market value guidelines under the Income Tax Act and authorisation for the Income Tax Department to assess under-reported transaction values under Section 56(2) of the Act.²⁴ Similarly, the pricing transparency requirements prescribed by RERA are intended to reduce the potential for opaque pricing schemes at the developer level.²⁵

2.4 MAJOR TYPOLOGIES OF REAL ESTATE MONEY LAUNDERING IN INDIA

On the basis of published enforcement instances, FATF typology research, Enforcement Directorate investigation reports, parliamentary committee inquiries, and academic literature on the Indian context, a number of distinct typologies of real estate-based money laundering can be identified.²⁶ These typologies are not mutually exclusive—in practice, a sophisticated laundering scheme may employ several simultaneously and may adapt as regulatory constraints evolve—but independent examination of each provides insight into the structural mechanisms involved and the regulatory response each attracts.

²³ See FATF 2007 Real Estate Report, *supra* note 18, at 16–19.

²⁴ See Income Tax Act, 1961, § 56(2)(x) (India); Income-Tax (22nd Amendment) Rules, 2016, No. G.S.R. 1004(E) (India) (fair market value guidelines).

²⁵ Real Estate (Regulation and Development) Act, 2016, §§ 4, 11–13, No. 16, Acts of Parliament, 2016 (India) [hereinafter RERA].

²⁶ See generally FATF, *Money Laundering Vulnerabilities of Free Trade Zones* 9 (2010); ED Annual Report 2022–23, *supra* note 12.

2.4.1 Under/Over-Declarations and Cash Payments

The simplest and most commonly encountered typology of real estate money laundering in India involves the use of criminal money to pay a portion of a property's purchase price that is not reflected in the registration documents. The seller will accept a separate 'undeclared' cash element (the 'black' component) in addition to, and as part of a different transaction from, the declared 'white' component which will be recorded by the seller in the sale deed and will also be subject to payment of stamp duty and registration. This dual pricing arrangement is both tax-deductible for the purchaser (who is able to insert his illegal funds into the property market without any documentation), and at the same time, provides a tax-free cash benefit to the seller.

A typical example of this is where a property sale is registered against its applicable circle rate (the minimum value decided by state government for stamp duty purposes) yet the actual market price of the property could be as much as a multiple of the circle rate and is then paid fully or partly in cash as part of a transaction that was undertaken outside of the formal registration process. For many years, the physical transfer of cash in large amounts has been facilitated by a permissive environment in many segments of the Indian property market.

Section 269SS of the Income Tax Act, 1961, which prohibits the acceptance of loans or deposits of over INR 20,000 in cash, and Section 269ST, which restricts cash receipts exceeding INR 2 lakh in a single transaction, including property purchases, were partly enacted to discourage this practice. However, their application has been patchy and inconsistent, especially in markets where cash transactions are firmly institutionalised and the income tax administration's capacity to monitor compliance is constrained. This trend continues in the majority of property markets, especially in (2) and (3) tier towns and where there is often less regulatory oversight, such as with regards to the transferability of agricultural land. stratégies et les pratiques des développeurs pour obtenir des terres agricoles et d'autres formes de développement.

2.4.2 Benami Transactions

Benami transactions occur when someone purchases an asset (usually worth a significant amount of money) and puts it into the name of a third party (known as the benamidar). At the same time, the true owner of the asset often indirectly provides payment for that asset. The term 'benami' is derived from Persian/Urdu words denoting the absence of a name, reflecting the historical interpretation of such transactions as those in which the actual owner's name did not appear in the official registry. This typology is specifically addressed by the Benami Transactions (Prohibition) Act, 1988, as substantially amended by the Benami Transactions (Prohibition) Amendment Act, 2016, which provides a broad statutory definition of benami transactions, a dedicated enforcement framework under the Income Tax Department (through its Benami Prohibition Units), and stiff penalties including confiscation of benami property.²⁷

Benami transactions are a key and widespread aspect of real estate money laundering in India. By using trusted family members, spouses, adult children, domestic servants, business partners, professional nominees, and business entities, criminals, politicians, and corruption-prone public servants arrange for property to be held on their behalf, making it extremely difficult to trace actual ownership and establish the nexus required between the property and the criminal activity generating the funds used for its purchase.²⁸

Investigations and prosecutions by the Income Tax Department and the Enforcement Directorate have revealed networks of benami properties belonging to politicians, senior bureaucrats, businesspersons, and organised criminal

enterprises. The investigation conducted of Tamil Nadu's Chief Minister J. Jayalithaa's assets identified large-scale abuse of benami arrangements, via companies and associates, to acquire disproportionate assets. Enforcement Directorate investigations into narcotics trafficking, or other forms of organised crime, reveal that benami properties are often held in multiple states and at multiple levels of nominees.

The 2016 amendment to the Benami Transactions (Prohibition) Act greatly improved the Act by expanding the definition of benami transactions, clarifying that the prohibition against benami transactions applies to property held in the name of company and trust structures, providing for an independent adjudicating authority and appellate tribunal, and imposing higher penalties for violations of the Act. Most notably, the amendment clarifies that if the property is held in the name of a corporation, and the consideration is paid by (or on behalf of) a person other than the corporation itself, the property is considered to be benami. Therefore, shell companies cannot be used for benami transactions. Enforcement of the Act in cases

²⁷ Benami Transactions (Prohibition) Act, 1988, No. 45, Acts of Parliament, 1988 (India), *amended by* Benami Transactions (Prohibition) Amendment Act, 2016, No. 43, Acts of Parliament, 2016 (India) [hereinafter Benami Act].

²⁸ See *State of Tamil Nadu v. Jayalithaa*, (2017) 9 SCC 481 (India); see also S. Gurumurthy, *Benami Property: The Indian Experience*, 31 Nat'l L. Sch. India Rev. 78 (2019).

involving multiple layers of nominees and a complex corporate structure continues to be problematic.

2.4.3 Shell Companies and Corporate Vehicles

Globally, and especially in India, the use of shell companies is one of the key methods in sophisticated schemes for laundering cash through real estate transactions. A shell company is defined as an entity with no real business operations; its only purpose is to hold assets and engage in transactions.²⁹ Money launderers use shell companies to place one or more layers of corporate identity between themselves and the property, masking beneficial ownership and making asset tracing exercises substantially more resource-intensive and technically complex.

A common arrangement in the Indian setting involves the creation of a series of linked private limited companies or firms to purchase property, each owned by additional companies or individual nominees in a multi-layered corporate ownership structure that may only be unravelled through extensive forensic analysis. The companies may be incorporated with minimal share capital, with no employees or operational premises beyond the possession of the relevant property. They may file accounts irregularly or not at all, and their directors and shareholders may be professional nominees who do not represent the underlying beneficial owner.

The Indian corporate regulatory framework has addressed shell company abuse in a number of ways. A notable measure was the 2017 Ministry of Corporate Affairs project to identify and strike off dormant and non-compliant companies from the Companies Register, leading to the deregistration of over two lakh companies.³⁰ The Significant Beneficial Ownership (SBO) framework under Section 90 of the Companies Act, 2013, and the SBO Rules, 2018, require companies to compile and maintain a register of persons who ultimately hold a substantial beneficial interest exceeding ten per cent in the company, and to disclose such information to the Registrar of Companies.³¹ Practical challenges in implementing the SBO framework, and

²⁹ See Ministry of Corporate Affairs, *Report of the High Level Committee on Shell Companies* 14–18 (2017) (India) [hereinafter MCA Shell Companies Report].



³⁰ Ministry of Corporate Affairs, *Press Note on Strike-Off of Shell Companies* (Sept. 12, 2017) (India) (announcing deregistration of over 2 lakh companies).

³¹ SBO Rules, *supra* note 23; Companies Act, 2013, § 90 (India). See FATF MER India 2024, *supra* note 22, at 104–08.

the cross-jurisdictional complications associated with offshore holding companies, remain significant impediments to positive ownership disclosure.

2.5 PREDICATE OFFENCES UNDER INDIAN LAW

The money laundering legislation is based on the predicate offence. That is, money laundering is unlawful and can only occur if there is a primary crime from which the proceeds of the crime arose to begin with; if there is no primary crime, there is no money laundering offence. In other words, the predicate offence has generated criminal proceeds from which you need to determine whether the course of action in question is an offence under the money laundering legislation, and how the predicate offences from which those funds or proceeds of crime qualify as 'proceeds of crime' under the money laundering legislation are used to define whether you will commit or have committed a money laundering offence.

The PMLA designates a comprehensive schedule of predicate offences under Indian law whose proceeds are treated as proceeds of crime for the purposes of the Act. The Schedule is divided into three parts: Part A lists the main scheduled offences, including offences under the Indian Penal Code (covering cheating, forgery, criminal breach of trust, extortion and related offences), the Narcotic Drugs and Psychotropic Substances Act, 1985, the Arms Act, 1959, and the Prevention of Corruption Act, 1988; Part B enumerates certain offences whose proceeds must exceed a monetary threshold; and Part C deals with offences of a transnational character.³²

In the real estate context, the most commonly encountered predicate offences include: corruption and bribery under the Prevention of Corruption Act, 1988, a particularly significant source of illicit proceeds invested in property by public officials and politicians; tax offences under the Income Tax Act, 1961, following their addition to the Schedule by the 2019 PMLA amendment; drug trafficking under the Narcotic Drugs and Psychotropic Substances Act, 1985; fraud and cheating under the Indian Penal Code, where real estate project fraud by developers generates illicit proceeds recycled into further property investment; and foreign exchange violations under FEMA.³³

³² PMLA, *supra* note 6, Schedule (listing predicate offences in three parts).

³³ Prevention of Corruption Act, 1988, No. 49, Acts of Parliament, 1988 (India); Narcotic Drugs and Psychotropic Substances Act, 1985, No. 61, Acts of Parliament, 1985 (India); Foreign Exchange Management Act, 1999, No. 42, Acts of Parliament, 1999 (India) [hereinafter FEMA].

The 2019 amendment to the PMLA Schedule, which introduced fiscal offences—including offences under the Income Tax Act of misrepresenting income and assets, and offences under the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015—was a particularly significant extension of the predicate offence model as applied to real estate money laundering.³⁴ The amendment enabled a large category of property transactions, previously the subject only of civil and criminal enforcement under the Income Tax Act and the Benami Transactions (Prohibition) Act, to be treated by the Enforcement Directorate under its broader PMLA authority.

The existence of a predicate offence raises procedural questions concerning the relationship between prosecution of the predicate offence and prosecution of money laundering. As noted above, the Supreme Court in *Vijay Madanlal Choudhary* confirmed that conviction in the predicate offence is not a prerequisite to money laundering prosecution, and that the predicate offence may proceed simultaneously with the money laundering prosecution.³⁵ This has substantially enhanced the Enforcement Directorate's capacity to pursue attachment and prosecution in cases where investigation of the predicate offence by another agency has not concluded, or has not yet resulted in a conviction.

2.6 PROFESSIONAL INTERMEDIARIES AND THEIR ROLE

In particular, the involvement of professional intermediaries such as lawyers, chartered accountants, company secretaries, real estate agents, and valuers in facilitating real estate money laundering deserves special consideration, although the professional intermediaries act unconsciously at times as well. The professional intermediaries play an important role as gatekeepers in the real estate transaction process. Their services are essential to carry out many sophisticated money laundering schemes. A lawyer who assists in setting up benami property holding scheme and a chartered accountant who maintains the account of the shell company that holds laundered money plays a significant role in the process of money laundering.

FATF Recommendations 22 and 23 have obliged member states to apply AML obligations—including customer due diligence and suspicious transaction reporting—to designated

³⁴ Prevention of Money Laundering Act (Amendment), 2019, *supra* note 8 (inserting offences under the Income Tax Act, 1961 and the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 into the PMLA Schedule).

³⁵ *Vijay Madanlal Choudhary*, *supra* note 7, ¶¶ 165–74.

nonfinancial businesses and professions (DNFBPs), covering lawyers, accountants, and real estate agents acting in financial transactions on behalf of clients.³⁶ The extension of reporting entity status in India to real estate agents and certain accounting professionals through amendments to the PMLA Rules represents progress towards implementing these obligations.³⁷

³⁷ Nevertheless, practical application of DNFBP regulation remains fraught with serious challenges, including resistance from professional associations, limited awareness within the professional community, and inadequate supervisory resources.

The intersection of AML reporting obligations with legal professional privilege—the principle that attorney-client communications should be kept confidential—is especially challenging. The precise extent of AML reporting requirements applicable to legally privileged communications under Indian law remains a contested issue, as it does in most jurisdictions.³⁸ Striking the appropriate balance between the societal interest in AML transparency and the principle of client confidentiality, which serves important rule-of-law functions, requires careful legislative and regulatory calibration.

2.7 SCALE OF REAL ESTATE MONEY LAUNDERING IN INDIA: MEASUREMENT PROBLEMS AND INDICATORS

Measuring the magnitude of real estate money laundering in India with any precision is inherently problematic due to the covert nature of the activity and the inherent limitations of available data. Successful money laundering by definition generates no reliable observable record—the launderer's goal is to ensure that the unlawful source of money cannot be traced. Any estimates of the scale of the phenomenon must therefore rely on indirect indicators, extrapolation from case studies, and macroeconomic modelling, all subject to large margins of error.

A number of types of indirect evidence, however, indicate that the phenomenon is of considerable economic scale. Reports by the Global Financial Integrity organisation have estimated that trade misinvoicing—a common mechanism in round-tripping schemes to the

³⁶ FATF Forty Recommendations, *supra* note 5, Recommendations 22–23 (imposing AML obligations on designated non-financial businesses and professions).

³⁷ PMLA Amendment Rules, *supra* note 20. *See also* FIU-IND Report 2022–23, *supra* note 21, at 14–16.

³⁸ *See* Bar Council of India v. A.K. Balaji, (2018) 5 SCC 379 (India); *see also* W.S. Clarke, *Lawyer Money Laundering: The Problem and a Proposal*, 18 Geo. J. Legal Ethics 201, 210–13 (2004) (discussing attorney-client privilege in AML contexts).

property sector—resulted in the transfer of several billion US dollars annually during the periods covered by the reports.³⁹ Despite their methodological limitations, these estimates indicate the magnitude of cross-border illicit financial flows that may overlap with the real estate sector.

More specific quantitative data on the enforcement dimension of real estate money laundering is provided in annual reports to Parliament by the Enforcement Directorate. During the 2019–2024 period, the Enforcement Directorate reported the attachment of assets worth tens of thousands of crore rupees in connection with PMLA inquiries, with immovable property constituting a significant share of the value of assets attached in each year.⁴⁰ These figures represent the value of property attributed to confirmed or assessed money laundering that has been identified and brought to the attachment stage; the population of laundering schemes that go undetected and unattached must be substantially larger.

Investigations into prominent real estate developers and project promoters provide further illustration of the magnitude of laundering. Enforcement Directorate investigations into the Amrapali Group, alleged to have diverted homebuyer funds towards property transactions and businesses, led to asset seizures running to thousands of crore rupees.⁴¹ Investigations into Unitech Limited, DB Realty, and numerous other entities disclosed similar patterns of money laundering.⁴²

Academic research on India's black money economy provides an additional lens through which to gauge the extent of money laundering. While estimates of the magnitude of the informal or black economy vary widely based on methodology, there is consistent evidence of unaccounted economic activity constituting a significant share of GDP. Studies carried out by the National Institute of Public Finance and Policy (NIPFP) found that the informal sector constituted roughly between 20% and 40% of the GDP of India.⁴³ It would appear that a significant amount of money laundering occurs through the purchase of real estate assets due to the industry's ability to take in massive amounts of cash and tolerate undervalued transactions.⁴⁴

Even these statistics, as indicative as they may be, can only represent a small part of the actual scale of the issue, considering the inherent problems with enforcing such laws due to the informal economy that remains prevalent in Indian real estate markets; the incomplete nature of property registrations that prevents institutions from tracking compliance; and the characteristics of the property market itself, especially the presence of dual prices, which directs the flow of illegal money into the market. The solution to this issue would involve much more than better enforcement capabilities or legislation; it would require a fundamental change to the Indian real estate markets, which will be discussed later on in this paper.

³⁹ *See* Global Financial Integrity, *Illicit Financial Flows to and from India: 2005–2014* 5–8 (2016); *see also* Dev Kar & Joseph Spanjers, *Illicit Financial Flows from Developing Countries: 2004–2013* 9 (2015).

⁴⁰ ED Annual Report 2022–23, *supra* note 12, at 8–14 (reporting attachment statistics under PMLA for 2019–2024).

⁴¹ *See Amrapali Silicon City Pvt. Ltd. v. Union of India*, (2019) 11 SCC 1 (India); ED Annual Report 2022–23, *supra* note 12, at 52–55 (Amrapali attachments).

⁴² *See Unitech Ltd. v. Enforcement Directorate*, PMLA Appeal No. 183/2021 (Appellate Trib. India); *see also* Enforcement Directorate, *Press Release on DB Realty* (Mar. 14, 2022) (India).

⁴³ National Institute of Public Finance and Policy, *Size and Sustainability of India's Informal Economy* 28–32 (2021)

[hereinafter NIPFP Report]; *see also* Arun Kumar, *The Black Economy in India* 47–53 (1999).

⁴⁴ *See* NIPFP Report, *supra* note 46, at 35; *see also* World Bank, *India: Towards a New Era of Trade and Investment* 62 (2018) (estimating informal economy at approximately 20 percent of GDP by conservative measures).

Secondary Market Transactions: RERA provisions also need to cover secondary market transactions (sale of residential properties) with a focus on compliance with KYC requirements for property sales worth higher amounts.⁴⁵

CHAPTER 3

CONCLUSION

3.1 Summary of Findings

In this research paper, an extensive legal study on real estate transactions as instruments of money laundering through the Prevention of Money Laundering Act, 2002, and other property legislations in India has been carried out. It has encompassed the theoretical fundamentals of money laundering and its typologies in the context of real estate transactions; the provisions of the Prevention of Money Laundering Act in respect of immovable property transactions; the Benami Transactions (Prohibition) Act and its relationship with the Prevention of Money Laundering Act; the allied property legislations such as the Transfer of Property Act, the Registration Act, the Real Estate Regulatory Authority (RERA) Act, and the Foreign Exchange Management Act; the evolving judicial jurisprudence from the Indian Supreme Court and various High Courts; and international benchmarks based on the FATF guidelines and comparative studies.

The core findings of this research paper can be summarised as follows. India has developed a fairly well-developed legislative regime to tackle real estate-based money laundering with the support of a robust Prevention of Money Laundering Act, a rejuvenated Benami Transactions (Prohibition) Act, and other ancillary provisions in various pieces of legislation.

⁴⁵ Real Estate (Regulation and Development) Act, 2016, No. 16, Acts of Parliament, 2016, § 3(1) (India) (applying RERA to projects with more than eight apartments or plot area exceeding 500 sq. m., thus excluding secondary market resale transactions from mandatory registration).

Nevertheless, the effectiveness of this model faces a serious threat due to numerous weaknesses associated with its implementation, inherent vulnerabilities in the real estate sector, and issues related to enforcing its provisions. These include the following: insufficient reporting requirements for real estate practitioners, lack of a central beneficial ownership register in case of corporate purchases of properties, the tendency towards undervaluation of real estate, which allows for placing dirty money in cash form on the property, weaknesses in cooperation between different agencies when investigating real estate cases of money laundering, and problems with dealing with attached real estate properties.

3.2 Principal Analytical Contributions

This dissertation makes several explicit contributions to the existing scholarly discourse on the subject of anti-money laundering regulations and laws pertaining to real estate law in India. Firstly, the dissertation presents the most extensive analysis thus far of the interaction between the PMLA and the Benami Transactions (Prohibition) Act in relation to real estate dealings, covering both the areas where these two systems complement each other and those where they clash. Secondly, the dissertation undertakes a thorough analysis of the contribution of RERA to the anti-money laundering regulatory regime — an area which is relatively underexplored by scholars but has great practical significance. Thirdly,

the dissertation provides a holistic comparative assessment of the global legal system with regards to real estate anti-money laundering regulations, drawing lessons for India from the experience of countries such as the United Kingdom, the United States, Australia, and Canada.

3.3 Policy Significance

The importance of the research findings in terms of policy relevance cannot be overstated against the backdrop of the present position regarding India's involvement in the process of international AML regulations. With the upcoming FATF Mutual Evaluation that will evaluate the country's AML/CFT regime for all sectors, including the real estate sector, the discussion provided in this paper offers a clear guide to changes required in order to receive a positive result during this evaluation process.

Moreover, the problem of real estate money laundering prevention is vital in relation to India's priorities in terms of economic development and financial governance, including decreasing corruption and illicit financial flows, ensuring fair real estate market performance, protecting potential homebuyers from scams, enhancing fiscal revenues through higher compliance, among others.

3.4 Limitations and Areas for Further Research

Limitations within this dissertation indicate a number of areas in which further research should be undertaken. Firstly, this study mainly uses doctrinal and comparative methodologies. Empirical research using surveys conducted among enforcement authorities, real estate practitioners, and judges would offer complementary perspectives on the efficiency of the legal framework under discussion. Secondly, case studies focusing on the investigation process under the PMLA regarding real estate can offer insights into the issues faced during the investigation and prosecution process.

Moreover, the intersection of RERA and the AML legal regime should be studied in greater depth. Further research should also examine the effectiveness of the enforcement system of the Benami Transactions (Prohibition) Act five years after the enactment of the Act. Additionally, the efficiency of the MLA regime in investigating cases of real estate money laundering cases with an international dimension should also be explored.

3.5 Concluding Observations

Real estate is likely to continue being an enticing method for money laundering in light of its intrinsic features such as high value, opaqueness, and value manipulation. What the Indian legal system faces is the task of building on the existing legislative framework in a manner that will make it possible for the country to create an environment where it becomes difficult for individuals to engage in real estate activities with money-laundering motives owing to high risks of discovery, prosecution, and asset forfeiture.

In this case, what the country needs to do is enact more laws related to beneficial ownership disclosure, expand its list of relevant real estate professionals as reporting parties, and incorporate RERA within the AML framework, among other things. While these measures present considerable difficulties and require high-level political commitment in order to be achieved, experiences from other jurisdictions indicate that they can be done with enough persistence.

The Indian real estate sector, which is where India's aspirations meet its governance problems, represents both a potential and an obligation. It is an opportunity to develop a transparent, legitimate, and effectively regulated property market that facilitates sustainable economic growth and ensures that the ownership of property provides benefits in an increasingly balanced manner to all of society. It is also an obligation to prevent this market from being abused by criminal elements that might seek to turn it into a means of laundering their ill-gotten gains. This legislation, as analyzed in this dissertation, serves as the key means of ensuring the latter obligation.

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