CORPORATE STRUCTURES: REGULATORY CHALLENGES UNDER PMLA AND INTERNATIONAL STANDARDS

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ABSTRACT

Business structures are relevant to the operation of the business, investment and economic development. But complex corporate structures such as complex ownership and shell companies and the use of beneficial ownership can also be used to help launder money, hide illicit proceeds and other financial crimes. The Prevention of Money Laundering Act 2002 (PMLA) is one of the important laws in India to prevent money laundering and seizure of the proceeds of crime. Despite these laws, there are many challenges in the identification of beneficial owners, tracing of illegal financial transactions, the compliance by the relevant law and the coordination between the regulatory authorities. These challenges are likely to be heightened if businesses transact across different jurisdictions where the legal rules and authorities are different. This research paper looks at the regulatory challenges that arise in the PMLA and what this would entail when compared with corporate entities as they are defined and regulated in international anti-money laundering frameworks (e.g. FATF). It also considers transparency in regard to beneficial ownership of companies, the disclosure requirements of companies and due diligence and international cooperation in fighting the misuse of companies. The authors used the doctrinal and analytical research methods in this study, which involves analyzing relevant laws, regulations, international standards and judicial development. It is meant to find out which areas of Indian regulatory framework are lacking and its efficacy in combating financial crimes. The paper concludes with suggestions on how regulatory coordination, corporate ownership transparency, cross-border cooperation and domestic law can be improved to meet the emerging international standards in an effective manner without compromising legitimate business.

Keywords: Prevention of Money Laundering Act, 2002; Corporate Structures; Beneficial Ownership; Money Laundering; FATF; Shell Companies; Regulatory Compliance; International Standards.

1. Introduction

1.1. Meaning and Significance of Corporate Structures in Modern Business

Corporate Structures include the legal structure of companies and their organisation, ownership, management and regulation. They cover the entities that are companies, subsidiaries, holding companies, partnerships, LLPs, trusts and special purpose entities. These are for investment, business expansion, risk management and economic growth. Companies are separate from shareholders and a holding company / subsidiaries is employed in organising companies' business. However, in complex ownership structures and international transactions, it's not always easy to establish who is the final owner in a business. These structures are legitimate, but have the potential to be misused for financial crime.

1.2. Different legal entities involved in commercial transactions and their roles

Knowing about different types of legal business structure in a business transaction. Knowing the functions of diverse legal structures in a business transaction. By investing, signing contracts and owning assets, businesses also play a part in helping. Holding companies are companies that control subsidiaries that may be able to control some businesses or assets. By pooling resources and expertise, individuals can form partnerships and trusts can be used by an LLP to oversee assets for beneficiaries. The use of joint ventures and special purpose entities allows for certain projects and investments to be made. Such institutions can be used to increase commercial efficiency, but a multi-layer structure of ownership may make it difficult to establish the ultimate beneficial owner and the regulatory investigation more complex.

1.3. Corporate structures and Concealment of Proceeds of crime

Corporations may be used for false purposes to conceal the source, ownership and movement of criminal proceeds. The flow of the financial transactions may be difficult to trace in the event of shell companies, nominee shareholders, layered subsidiaries, trusts and offshore entities. The natural person who ultimately owns or controls an entity is its beneficial owner. To conceal this identity may hinder

investigations into money laundering. However, complex ownership and/or offshore does not equate to a crime. The Financial Action Task Force (FATF) has stressed on transparency in beneficial ownership, and the 2024 mutual evaluation report of India has identified gaps in the areas of shell companies and complex corporate structures. Therefore, the process of verification and cooperation with the regulatory bodies are important.

1.4. Money Laundering Prevention Act, 2002 (PMLA)

The PMLA is the key law in India that aims at combating money laundering and attachment and confiscation of property related to crime proceeds. Adopted 1 July 2005. As to the terms, ‘money laundering' is defined by Section 3 and ‘proceeds of crime' is defined by Section 2(1)(u). The Act provides mandates for reporting entities on record-keeping, identification of customers and reporting of information of relevance to the reporting entity's financial operations. The financial information is received and analysed by FIU-IND while the investigations are carried out by the Enforcement Directorate (ED) for money-laundering offences. An aspect of the PMLA of particular importance is the issue of corporate structure through which the investigation may have to follow the flow of assets through companies and subsidiaries and other legal entities.

1.5. Cooperation Internationally and Global Standards

The money laundering process often involves multiple jurisdictions and international cooperation is vital to the tracing of money, criminal evidence and the recovery of criminal proceeds. FATF is responsible for developing international standards against money laundering. Recommendations 24 and 25 are based on beneficial ownership of legal persons and legal arrangements (including trusts). International cooperation on transnational organized crime and international cooperation on asset recovery could also be within the framework of the United Nations Convention against Transnational Organized Crime and the United Nations Convention against Corruption. As long as it is in line with current laws and regulations, India's commitment to these standards could improve information exchange, beneficial ownership checks and cross-border investigations.

1.6. The need to balance regulation with legitimate business.

Anti-money-laundering (AML) laws need to balance legitimate business activity with the prevention of illegal activity, rather than simply hindering business activity. Leaves room for criminal proceeds to be hidden, and may add to compliance costs and deter investment with excessive or inconsistent enforcement.

2. Conceptual Framework: Corporate Structures and Money Laundering

2.1. Meaning and Nature of Corporate Structures

Corporate structures are the legal structures within which businesses are owned, managed and controlled. These include companies, holding companies, subsidiaries, partnerships, LLPs, trusts and special-purpose companies. These structures facilitate investment, capital formation, risk management and business expansion.

A business is legally distinct from its owners and can purchase property, enter into contracts and assume liabilities. Ownership and management can also be distinct: shareholders may be the company's owners, while directors are responsible for managing the company. While these are legitimate business arrangements, it can be difficult to determine who actually owns and/or benefits from a business in the event of complex ownership arrangements.

Corporate structures are not per se illegal. But their use for the purpose of concealing the source of funds or ownership poses problems for the regulators, especially under the Prevention of Money Laundering Act, 2002 (PMLA).

2.2. Corporate structures as a tool for money laundering

The essence of money laundering is to obscure the source of the funds involved, and to give them a stamp of legitimacy. Funds can be transferred between companies, accounts and jurisdictions via the corporate structure.

The money laundering process is generally referred to as the three P's:

Proceeds of crime are inserted into the financial or commercial system.

Layering: Making several transactions to camouflage the flow of money.

Active in the business: Funding the purchase of an asset or investment with illegal funds.

Shell companies, layered subsidiaries, nominee shareholders, offshore entities and trusts are corporate structures that can be used in a manner that is not beneficial. Such schemes can be used to disguise beneficial ownership and make investigations more difficult.

The offence of money laundering is defined in Section 3 of the PMLA, the definition of proceeds of crime in Section 2(1)(u) of the PMLA and the definition of offences by companies in Section 70 of the PMLA. But just because there are complex corporate arrangements, they do not necessarily constitute money laundering, and the law requirements must be fulfilled.

FATF Recommendations 24 & 25 focus on transparency of beneficial ownership of legal persons and legal arrangements. Records, customer due diligence, suspicious transaction reporting and regulatory cooperation are all essential elements of effective prevention.

2.3. Concept of Beneficial Ownership

The beneficial owner is the natural person who is the actual owner or controller of the company or whose profit or loss the Company is acting on behalf of. It is different from “legal ownership” which is the person who is officially registered as an owner.

For instance, shares can be registered in one company's name when the other has de facto control over the company through intermediary companies. This beneficial ownership can exist in the form of a holding of shares, voting rights, contractual rights or other means of effective control.

The significance of the transparency of beneficial ownership.

Transparency facilitates authorities to identify the persons behind the corporate

entities, trace suspicious assets, help authorities to identify the misuse of nominee arrangements and assist in investigations of financial crime. It also enhances customer due diligence and international collaboration.

Beneficial Ownership under Indian Law

The Companies Act, 2013, Section 90 along with the Companies (Significant Beneficial Owners) Rules, 2018, deals with the concept of significant beneficial ownership. The PMLA and the Prevention of Money-laundering (Maintenance of Records) Rules, 2005, also provide for beneficial ownership identification and verification by reporting entities.

FATF Recommendation 24 is on beneficial ownership of legal persons and Recommendation 25 is on legal arrangements, including legal trusts.

These frameworks, however, fail to help investigations where complex ownership structures, foreign entities or outdated or inconsistent ownership records exist. India should enhance the verification process, improve the timeliness and regularity of updating the ownership data, make it easy for competent authorities to access it and safeguard confidentiality and data privacy.

3. PMLA: Legal and Regulatory Framework

3.1. Objectives and Scope of PMLA, 2002

The Prevention of Money Laundering Act, 2002 (PMLA) is the main law in India to address money laundering and assets acquired through criminal activity. The primary purpose is to stop the financial system from being abused to launder illegal money and to ensure for the attachment and confiscation of property in relation to money laundering pursuant to the law.

The definition of the offence of money laundering is contained in Section 3 of the Act, and Section 2(1)(u) sets out the meaning of proceeds of crime. The Act also affords a legal framework for investigation, adjudication and prosecution. It is applicable to transactions with corporations for which statutory requirements are met. The legislation is particularly significant when shell companies or layered corporate structures and hidden beneficial ownership are involved, as this can make

it more difficult to identify and trace the proceeds of crime.

In this context, the PMLA aims to ensure financial accountability and transparency, and to combat the misuse of corporate entities for illegal activities.

3.2. Duties and obligations

Under section 12 of PMLA along with the Prevention of Money-laundering (Maintenance of Records) Rules, 2005, reporting entities like banking companies, financial institutions, intermediaries and other entities under the PMLA are bound to bear certain obligations.

The main commitments are:

Record maintenance: Retention of prescribed records of transactions for the necessary statutory periods.

Customer due diligence: Checks on the identity of customers and beneficial owners as required by regulations.

Transaction monitoring: Auditing financial transactions to identify odd or fraudulent transactions.

Reporting requirements: Providing prescribed information to Financial Intelligence Unit–India (FIU-IND) such as suspicious transaction reports etc.

Regulatory compliance: Compliance with relevant measures/compliance with record keeping and reporting.

These requirements help authorities identify suspicious financial transactions and the movement of money through entities. Insufficient verification, insufficient disclosure of ownership, and complex cross-border transactions, however, could detract from their effectiveness.

3.3. The Enforcement Directorate and other authorities.

To implement PMLA, the cooperation of different institutional bodies for regulatory and investigative bodies is paramount.

a. Enforcement Directorate (ED): The ED is responsible for investigation of money-laundering offences, it has the powers provided under the Act for attachment of property and initiates prosecution under the Act.

b. Financial Intelligence Unit-India (FIU-IND): FIU-IND receives, processes and disseminates financial intelligence regarding suspicious transactions and other information reported in accordance with the provisions.

c. Reserve Bank of India (RBI): RBI has authority to direct banks and specified financial institutions on customer due diligence and record-keeping as well as anti-money-laundering compliance.

d. Securities and Exchange Board of India (SEBI): SEBI is the regulator of securities market entities and has issued measures to ensure compliance to mitigate money-laundering risks in its regulatory framework.

e. Ministry of Corporate Affairs (MCA): MCA is responsible for compliance with the company law, such as company disclosure and important beneficial ownership aspects of Section 90 of the Companies Act, 2013. These disclosures can be useful to determine who the final owners and controllers of corporate entities are.

f. Special Courts and Adjudicating Authority: Special Courts hold trials for money laundering cases, while under the statutory provision the Adjudicating Authority deals with property attachment.

These authorities must coordinate in order to ensure the identification of the 'hidden' beneficial owners and the investigation and recovery of the proceeds of crime. However, barriers and delays to accessing corporate records, as well as disjointed information systems, can pose challenges for effective enforcement.

4. Regulatory Challenges in India

4.1. The Lack of Government Oversight over the Economy and Business Environment

The finalization of beneficial ownership of complex companies is one of the

important hurdles in the implementation of Prevention of Money Laundering Act, 2002 (PMLA). There is the possibility of having several layers of holding companies, subsidiary companies, shell companies, trusts, trusts and nominee shareholders in the company. They can be used for legitimate commercial needs but also to disguise the identity of the persons who are the ultimate owners or controllers of an entity.

The difference between legal ownership and beneficial ownership is a complication for secondary investigations. An entity could be registered in one individual's name with another person controlling its business or activities or its finances. The failure to disclose or inaccurate company records and ownership can make it difficult to trace criminal proceeds. Coordination between various agencies and various registers and improved beneficial owner verification are therefore key to increasing transparency.

4.2. Cross-Border Transactions and Jurisdictional Barriers

The challenges of a cross-border transaction are that financial accounts and assets, as well as companies, could be located in multiple jurisdictions, making investigations difficult. The beneficial owner concept and the tracing of suspicious funds may be hindered due to differences between national laws, disclosure requirements, banking confidentiality and enforcement mechanisms.

However, in some cases, competent authorities must cooperate with each other and help in the retrieval of foreign evidence and information. The delay in information transfer may give the time for the transfer or concealment of assets before enforcement measures. If anti-money laundering practices are not uniformly applied across all countries, there can be even more regulatory gaps. To meet these challenges, effective international cooperation, quick information sharing and improved cross-border asset recovery mechanisms are required.

4.3. Enforcement & Evidentiary Challenges

An important challenge under the PMLA is finding the connection between corporate assets and proceeds of crime. Illegal money can be deposited in multiple bank accounts, via commercial transactions and corporate entities before it's turned

into something that looks like a legal asset. The tracking of the source and flow of these funds may then be complicated.

Investigators might also have trouble in obtaining thorough financial reports, investigating complex accounting methods, and gathering digital evidence. Investigations may be further delayed by the lack of documentation, cross-border transactions and use of intermediaries. These rules can be only adequately enforced with the use of specialised financial skills, documentation and advanced transaction-tracing techniques, as well as inter-agency coordination. All proceedings shall also be conducted in accordance with the requirements of the statutes and evidence.

4.4. Accountability of Directors and Corporate Officers

The Directors and Corporate Officers are held accountable. In many instances, the money laundering transaction may be managed, controlled and operated across a corporate organisation, making it challenging to identify the responsibility of directors and corporate officers for a money laundering transaction in such situations. Individual responsibility can be difficult to determine within a large corporate group where several departments, subsidiaries and senior executives may be involved in making financial decisions.

Offences committed by companies are discussed in Section 70 of the PMLA. It enables the liability of various parties including those in charge of and responsible for the affairs of the company under the statutory conditions and within the provisions of any defence. It also applies to offences committed by the director, manager, secretary or other officers when they do so by their consent, connivance or neglect. The problem is holding someone accountable, but not personally liable because he or she is an official. Authorities need to determine the role and conduct and the applicable laws. Appropriate compliance controls in the system, documentation and good corporate governance can help to prevent and punish any breaches. Do not over burden non-financial corporations and governments with compliance or regulatory co-ordination requirements.

4.5. Compliance Burden and Regulatory Coordination

The PMLA imposes obligations on the reporting entities, such as banks, financial institutions, intermediaries and other specified entities, to conduct customer due diligence, verify beneficial ownership, monitor transactions, keep records and report any suspicious transactions on to the Financial Intelligence Unit – India (FIU-IND). These obligations are beneficial in combating money laundering, but can have significant financial, manpower and suitable technological requirements. For smaller entities, it can be more challenging to establish sophisticated monitoring systems. Compliance requirements may also be complicated and costly, and can result in delays to legitimate commercial transactions. The coordination between the Enforcement Directorate (ED), FIU-IND, Reserve Bank of India (RBI), Securities and Exchange Board of India (SEBI) and Ministry of Corporate Affairs (MCA) are other challenges. Institutional responsibilities, reporting systems and sharing information processes can vary, which can lead to gaps in the regulatory oversight. Legitimate law enforcement of the laws could be facilitated by improved inter-agency cooperation, clear regulations, secure sharing of information and risk-based enforcement policies, while minimizing excessive compliance expenses.

4.6. Enforcement and Fundamental rights balance

The implementation process of PMLA should be balanced, taking into account considerations of protection of the constitutional and property rights and procedural fairness, and the fight against financial crimes. The Act gives the authorities powers in relation to the investigation of offences and powers in relation to property attachment and confiscation, as necessary, by statutory provision and any constitutional protection. Enforcement procedures can impact legitimate businesses and employees, shareholders and third parties whose assets or transactions are found to be tied into an investigation. Extended litigation, lack of clarity regarding attached property and challenges to enforcement proceedings can also lead to business disruptions and impact individual rights. For this reason, the authorities have the duty to act according to the rule of law, and to follow accepted practices, procedures and to afford access to effective legal safeguards. Corporate officers should not be held liable just because of their relation to a company, but under the

law. A fair and proportionate enforcement policy will increase the level of confidence of the public on the system, foster legal certainty and contribute to preventing any unnecessary limitation of the regulatory legal economic activity in combating money laundering.

5. International Standards for Combating Money Laundering

5.1. Financial Action Task Force (FATF) Recommendations

The Financial Action Task Force (FATF) was established in 1989 as an intergovernmental body to develop international standards on money laundering, terrorist financing and other financial crimes. The Recommendations provide a blue-print for improving national laws, regulations and institutional processes to reduce these risks at the national level. A number of FATF Recommendations are obvious in their applicability to the corporate structures. Recommendation 10 lays out the duty of CDD to identify and verify beneficial owners. Recommendation 20 is on the reporting of suspicious transactions and Recommendations 24 and 25 are on beneficial ownership transparency of legal persons and legal arrangements, including trusts. The aim of these standards is to stop companies being used to disguise the identities of those committing financial crimes. The FATF also supports a risk-based approach – this is where authorities and reporting entities determine and respond to risks according to the type and extent of the risk. In corporations this involves a review of ownership, control and/or unusual financial transactions. The Recommendations are not domestic laws per se but countries are expected to do so through effective legislation and regulation. The FATF standards provide an important benchmark to assess the effectiveness of the PMLA, beneficial ownership disclosure and financial reporting rules for India. Implementation can enhance the transparency of companies, the application of rules and the encouragement of international cooperation.

5.2. United Nations Conventions

There are several international conventions adopted by the United Nations to combat money laundering, corruption and transnational organised crime. They encourage all countries to make their criminal legislation, investigative procedures

and to help in tracking and recovering illegal funds more effective. States Parties are obliged under the United Nations Convention against Transnational Organized Crime (UNTOC), 2000, to take measures in connection with money laundering involving serious and organised crime. It calls for legislation at the national level and international cooperation, mutual legal assistance and freezing and confiscation of the proceeds of crime. In the same way, in 2003 the UN Convention against Corruption (UNCAC) took up financial crimes which have been related with corruption. Its emphasis is on prevention, cooperation with other states and asset recovery in corruption. The rules are particularly relevant to the creation of corporate entities, intermediaries or complicated ownership structures to hide illegal money. The conventions are important because they allow for money laundering to take place transnationally (across borders), with the use of corporate entities and financial operations. They support improved law enforcement, multi-agency investigations of crime and strong asset recovery. These are additional international instruments that highlight the need for transparency and accountability of companies and complement the anti-money laundering framework in India.

5.3. International Cooperation and Information Exchange

The fight against money laundering is greatly dependent on international cooperation, since money-laundering results can be in several jurisdictions, as may be the corporate ownership and the financial transactions. Complications arise if bank accounts, company records, beneficial owners and assets are held in various countries.

Mutual legal assistance helps countries help each other in gathering evidence, identifying assets and assisting with criminal investigations and proceedings. This collaboration can also help in the tracking, freezing and seizure of property connected to criminal activities, subject to legal requirements.

Another effective means of exchange is financial intelligence. Financial intelligence units exchange information as relevant, whereabouts, through predetermined channels, such as the framework of the Egmont Group, in order to help them analyse suspicious financial transactions. This exchange can provide authorities with insights into potential inter-connections between people, businesses and financial

transactions between different jurisdictions.

However, the time delay of investigations can be caused by variations in national laws, the procedures, data protection rules and access to company records. These can be addressed through better institutional linkages, effective information sharing and implementation of international standards. Good co-operation helps to trace funds and ensure adherence to domestic legal protection measures.

5.4. International Best Practices in Beneficial Ownership Transparency

A key part of international anti-money laundering regulations is beneficial ownership transparency. It is designed to be based on natural persons who end up owning or controlling the companies, trusts and other legal structures, and not only their registered shareholders or directors.

FATF Recommendations 24 and 25 set out the principles for transparency in beneficial ownership of legal persons and legal arrangements, respectively. They highlight the importance of proper, timely and correct ownership data that can be effectively accessed by competent authorities.

The main methods of enhancing beneficial ownership transparency are:

a. Accurate ownership records: Ensure that information about direct and indirect ownership, control and changes in corporate structures is accurate.

b. Verification of disclosures: Verification of beneficial ownership statements and investigation of discrepancies and inaccurate information.

c. Timely access to information: Make sure that timely access to informational data is available to competent authorities to build ownership records.

d. Risk-based due diligence: Conduct more robust analysis of business structures and transactions with increased money laundering risk.

e. Effective penalties: Set up proportional and dissuasive sanctions for false declarations, non-disclosure violations, and related violations.

f. Cross-border information-sharing: Increase cooperation between jurisdictions on the identification of beneficial owners behind complex cross-border corporate structures.

The concept of beneficial ownership in India is dealt with by Section 90 of Companies Act, 2013, the relevant Significant Beneficial Owners Rules and customer due diligence provisions under the PMLA provisions. But the success of these steps relies on proper disclosures, verified information and communication between the various corporate registries and enforcement agencies.

Increased transparency regarding beneficial ownership will help curb the use of shell companies, nominee shareholders and multi-layered corporate structures. Meanwhile, adequate measures need to be put in place to safeguard personal data and align access to ownership data with relevant legislation.

6. Comparative Analysis: India and International Standards

6.1. Indian Regulatory Framework measured against FATF Standards

The Prevention of Money Laundering Act, 2002 (PMLA), Prevention of Money-laundering (Maintenance of Records) Rules, 2005 and corporate and financial laws provide the main regulation for the anti-money laundering regime in India. The law aims to help identify suspicious transactions, ensure beneficial ownership and to prevent the use of corporations to launder proceeds of crime. Financial Action Task Force (FATF) is a body which sets international norms for assessing the regulatory framework in India. Recommendation 10 addresses customer due diligence, Recommendation 20 addresses suspicious transaction reporting, Recommendation 24 addresses beneficial ownership of legal persons and Recommendation 25 addresses legal arrangements like trusts. To promote financial transparency, financial intelligence and enforcement mechanism, India has taken several steps. The 2024 FATF mutual evaluation highlighted significant progress and strengths in India's AML system and areas for continued improvement. Ensuring effective implementation is not dependent on the presence of statutory provisions, however. Issues could be encountered to confirm beneficial owner data, to identify nominee structures and to investigate complex corporate structures. Effective supervision,

robust verification procedures and periodic enforcement of the standards are hence key to ensuring continued compliance with FATF standards.

6.2. Role of the Companies Act, 2013

The Companies Act, 2013 supplements the provisions of PMLA with regard to the ownership, disclosure and accountability of companies. It has a major part to play in determining the shareholders of companies and the persons who actually exercise control over them. Section 90 talks about the identification and declaration of 'significant beneficial owners' in accordance with the provisions of law and the Companies (Significant Beneficial Owners) Rules, 2018. Companies need to maintain records of the prescribed type, make declarations and need to take the prescribed actions to obtain information about the SBOs. There are also provisions in the framework for dealing with non-compliance and incorrect declarations. The provisions of Section 89 are related to declaration of interests in shares. These provisions are designed to create clarity in the concept of registered shareholding, the concept of beneficial ownership and to promote transparency in corporate arrangements. The function of the Companies Act and the PMLA are complementary to each other. The corporate disclosure and governance has been regulated under the company law and money laundering and property relating to proceeds of crime is regulated under the PMLA. The need of the hour is to increase the coordination between the Ministry of Corporate Affairs (MCA), Enforcement Directorate (ED) and Financial Intelligence Unit – India (FIU-IND) to identify the suspicious ownership structure and help conduct investigations. But these provisions come into effect only if there is true disclosure by the companies and the proper verification, and the indirect holding of companies through various layers is possible.

6.3. Comparative Lessons from Selected Jurisdictions

Study of international regulatory frameworks and how they are effective in promoting transparency of beneficial ownership and corporate accountability that can be relevant for the context in India. United Kingdom: The Persons with Significant Control (PSC) framework aims to identify and reveal persons that exercise significant ownership or control in companies. The experience underlines the significance of easy ownership data, correct disclosures and reporting

necessities. The anti-money laundering regime in the United States consists of a combination of financial institutions' reporting obligations and Federal anti-money laundering beneficial ownership laws. But, the reporting structure of the Corporate Transparency Act has been profoundly changed by legal and regulatory modifications. The lessons to be learnt are that the reporting needs are transparent and the verification is reliable and that there should be coordination between corporate and financial regulators. Anti-money laundering regulations in the European Union: The EU has imposed anti-money laundering (AML) standards on some elements of customer due diligence, beneficial ownership transparency, and regulating regulated entities. The experience demonstrates the importance of uniformity of standards among jurisdictions and the importance of considering data protection, access to data on ownership and effective enforcement. As demonstrated above, there is no de facto one-size-fits-all solution to beneficial ownership transparency based on formal registration. Accurate and timely information, coupled with suitable access for (competent) authorities and meaningful consequences for failings are essential for reliable systems. However, when it comes to transferring the lessons learned to India, the differences in their legal and institutional frameworks need to be considered.

6.4. Gaps and Areas for Improvement in India

While India has come a long way towards its AML framework, there are some issues in fighting against complex corporate structures. First steps need to be taken to improve beneficial ownership verification. If the company has foreign ownership, or informal nominees, there will be certain disclosures that are not complete. These gaps can be better identified and verified in indirect control to help mitigate these gaps.

Secondly, inter-agency co-ordination needs to be improved. There is a need for efficient and legal process for exchanging relevant information between MCA, the FIU-IND, the ED and the sectoral regulators. Records stored by the Corporation and the data of finance transactions may also be checked to ensure there is better co-ordination.

Thirdly an increased degree of international cooperation is desired. Foreign disclosure laws and the time it may take to obtain foreign records may be different

from those in the U.S. and could impede investigations. Accurate and timely information sharing and asset cooperation in asset traceability and retrieval is a key component in cross-border asset recovery.

Fourth, the need to improve risk-based supervision. The onus should be on the regulators to be wary of any complex ownership structure, and not it being a characteristic of potentially being more money laundering risky. Use of clear and unambiguous compliance guidance can enhance compliance but not create unnecessary compliance burdens for legitimate businesses.

Lastly, procedural justice and accountability should be followed. Investigative powers and powers of attachment should only be exercised in accordance with statutory powers and there should be legal redress and protection against disproportionate use of such powers. The findings of the 2024 FATF mutual evaluation can serve as a good reference for India's development and needs. It stresses the need for continued implementation of the current regulations, particularly information on beneficial owners and legal persons and arrangements. Strengthening these zones would help bolster India's ability to address abuse of corporate entities, and also maintain an open and transparent regulatory environment.

7. Judicial Approach and Reforms

The Prevention of Money Laundering Act, 2002 (PMLA) has been given a very significant role in the definition of the offence of money laundering, attachment of property, liability of corporate officers and procedural safeguards in the context of the Indian courts. These judicial rulings contribute to elaborating on the balance between the need to fight financial crime and ensure the rights of individuals and companies are upheld.

7.1. Vijay Madanlal Choudhary v. Union of India (2022)[1]

The case touched upon various questions under PMLA, including money laundering, arrest, bail etc. and powers of the ED. The Supreme Court in brief, agreed with the impugned provisions of law – especially those in Sections 5 and 45 dealing with provisional attachment and bail respectively. It also explored the link

[1] Vijay Madanlal Choudhary v Union of India (2022) 10 SCC 386; 2022 INSC 757

between the involvement of criminals in relation to an offence and proceeds of crime. Implications: The decision set a legal precedent to investigate money laundering offences and the attachment of property. However, the proceeds of crime cannot be considered proceeds of crime just because they are the result of a company's activities without meeting the relevant legal requirements.

7.2. Pankaj Bansal v. Union of India (2023)[2]

The case was related to the arrest by the ED and communication of grounds of arrest based on Section 19 of PMLA. This was decided by Supreme Court on 3rd October 2023 which held that the grounds of arrest should be communicated in writing to the person under arrest.

Implication: There is a need for a due process protection for company officers and directors facing money laundering investigations. It reaffirms that the enforcement action has to be based on a consistency to constitutional guarantees and legal procedures.

7.3. Pavana Dibbur v. Directorate of Enforcement (2023)[3]

It was considered possible to try for conviction a person who was not charged with the underlying offence, for money laundering. The Supreme Court said that if any such person commits such a crime, he is can be prosecuted under the PMLA as the proceeds of crime generated from such a crime relating to a scheduled offence.

Implications: If you are a director, intermediary or third party dealing with the assets of a company, the ruling will impact you. The mere fact that someone is associated with a person found guilty of money laundering does not mean that he or she is liable for money laundering – a re-connection to the elements of the statute must be made.

7.4. Serious Fraud Investigation Office v. Rahul Modi (2019)[4]

The case was about the statutory provisions for investigations by the Serious Fraud

[2] Pankaj Bansal v Union of India 2023 INSC 866.
[3] Pavana Dibbur v Directorate of Enforcement 2023 INSC 1029.
[4] Serious Fraud Investigation Office v Rahul Modi (2019) 5 SCR 91; 2019 INSC 408.

Investigation Office (SFIO) under the Companies Act, 2013. It should be understood that SFIO is not a direct authority under PMLA, rather it is an investigating body for corporate fraud which has powers under the PMLA.

Implications: That the legal procedures for each investigation need to be adhered to. Companies will be expected to ensure records are maintained as per the law and comply with relevant regulatory bodies when cooperating with them.

7.5. Recommendations for Reform

A need for increased transparency, coordinated enforcement, international cooperation and procedural fairness in the effective regulation of corporate structures under the PMLA.

a. Strengthening Beneficial Ownership Transparency

Improving identification and verification of ultimate beneficial owners/other legal structures of entities in India is needed. The disclosure framework is set out in the Companies Act 2013, Section 90 and also the Significant Beneficial Owners Rules 2018 but only works if accurate, up to date records are maintained. These are the gaps with respect to process of MCA and other authorities verification, false declaration and analysis of complex ownership structure which needs improvement. Risk-based checks are possible for concealed control, and this type of control can be leveraged to strengthen the compliance with FATF Recommendation 24.

b. Improving Regulatory Coordination

The coordination between the ED, FIU-IND, MCA, RBI & SEBI for detection of suspicious transactions and concealed ownership need to be streamlined. Secure sharing of information, a consistent reporting process and joint risk assessments, along with the reduction of delays in information sharing and improved investigations, can help to meet confidentiality and data-protection needs.

c. Enhancing International Cooperation

When assets and ownership records are kept outside of the country, cross-

border corporate structures can hinder investigations. India needs to enhance mutual legal assistance, exchange of information and co-operation with the foreign law enforcement agencies for the trace, freezing and recovery of the funds of the criminals. These measures should be consistent with the relevant international standards and legal procedures.

d. Strengthening Corporate Compliance

Good customer due diligence, procedure on beneficial owners and transaction monitoring and record keeping should be implemented by businesses. Senior management and boards need to be clear on compliance responsibilities and conduct regular risk audits, and train employees. The obligations on compliance should be commensurate with the size and risk of each business.

e. Ensuring Procedural Fairness

The enforcement of PMLA should be within the statutory requirement and constitutional protection. Authorities must adhere to prescribed procedures in arrest, attachment, adjudication and must ensure that there is access to appropriate legal remedies. Pankaj Bansal (2023) restates the importance of providing the ground of arrest in writing and Vijay Madanlal Choudhary (2022) elaborates on the statutory provisions on attaching property. Proceeds of crime will not usually be deemed to be property which was attached to a person/company under investigation. There needs to be a legal link and remedies must be available to impacted parties.

f. Enhance accountability and corporate governance

There should be a policy for companies to report any unusual activity, and record it and deal with it appropriately if it is requested by regulators. Providing false information and omitting to provide beneficial owners should be addressed and penalised in line with the law. But responsibility has to be based on the provisions of the law involved and the actions and/or role of the individual. To have conviction, there must be some facts of actual

wrongdoing. Proportional sanctions and adequate internal controls can be developed to establish new methods of holding people accountable while preventing unreasonable or unfair liability.

8. Conclusion

The world of nominee shareholders, shell companies and transactions across the borders introduces great regulatory challenges in India with regard to identifying the beneficial owners of corporate structures used for the purpose of money laundering. The Prevention of Money Laundering Act, 2002 (PMLA) and the Companies Act, 2013, are important laws used to fight money laundering, fight the proceeds of crime and increase transparency in companies. But it is crucial that these laws are implemented, and that ownership and information is disclosed, coordinated, monitored and verified.

Analysis of laws in India and the laws/Financial Action Task Force (FATF) Recommendations reveals the importance of transparency in the beneficial ownership of funds and improved cooperation between the various regulators and information sharing in the international fora. In the case of Vijay Madanlal Choudhary v Union of India (2022) and Pankaj Bansal v Union of India (2023), it is also important to ensure that the implementation of police orders is effective, while at the same time ensuring adherence to statutory requirements and procedural safeguards.

Therefore, India should focus upon risk-based regulation, good corporate documentation, inter-agency coordination and efficient cross-border cooperation. Penalties for non-compliance should be commensurate with the risk and executives should be held to account based on their actions and relevant regulations. Enforcement should be in accordance with constitutional rights to due process and access to legal remedies.

Nevertheless, a successful AML system needs to go beyond the implementation of strong legislation, to cover enforcement, institutional accountability and international cooperation. An initiative to fill the current void in regulation and align financial practices with the current international standards in this regard will help in reducing the potential and risk of financial crimes through corporate entities and boost the integrity and investors' trust in the financial system.

REFERENCES:

A. Legislation

1. Prevention of Money Laundering Act, 2002, ss 2(1)(u), 3 and 70.
2. Companies Act, 2013, ss 89 and 90. India Code
3. Companies (Significant Beneficial Owners) Rules, 2018, as amended.
4. Prevention of Money-laundering (Maintenance of Records) Rules, 2005, as amended.

B. Cases

5. Vijay Madanlal Choudhary v Union of India (2022) 10 SCC 386; 2022 INSC 757.
6. Pankaj Bansal v Union of India 2023 INSC 866.
7. Pavana Dibbur v Directorate of Enforcement 2023 INSC 1029.
8. Serious Fraud Investigation Office v Rahul Modi (2019) 5 SCR 91; 2019 INSC 408.

C. International Standards and Reports

9. Financial Action Task Force (FATF), International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation: The FATF Recommendations (FATF). Official standards
10. Financial Action Task Force (FATF), Guidance on Beneficial Ownership of Legal Persons (2023). Official guidance
11. Financial Action Task Force (FATF) and Asia/Pacific Group on Money Laundering (APG), Anti-money Laundering and Counter-terrorist Financing Measures in India: Mutual Evaluation Report (2024). Official report

D. International Conventions

12. United Nations, United Nations Convention against Transnational Organized Crime (2000). UNODC resource
13. United Nations, United Nations Convention against Corruption (2003). UNODC resource

E. Official websites

14. Financial Action Task Force, ‘FATF Recommendations’.
15. India Code, ‘The Prevention of Money Laundering Act, 2002’.

16. Ministry of Corporate Affairs, Government of India.

17. Enforcement Directorate, Government of India.

18. Financial Intelligence Unit–India.

19. United Nations Office on Drugs and Crime, 'United Nations Convention against Corruption'.

20. United Nations Office on Drugs and Crime, 'United Nations Convention against Transnational Organized Crime'.