

Money Laundering: The Juxtaposition of Laws for Comparative Analysis

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ABSTRACT

Money laundering is a problem that has become increasingly pervasive in recent times and a major concern for governments around the world. It is a process of concealing the proceeds of illegal activities as legitimate income. It is a serious crime that has implications for national security, economic stability, and financial integrity. Money laundering is a global problem, and countries have developed various legal frameworks to prevent, detect, and prosecute it. This research journal will provide a comparative analysis of money laundering laws in the United States, Saudi Arabia, and India. Further, this paper will also examine whether India needs to make changes to its money laundering laws.

KEYWORDS: Money Laundering, PMLA, AML, FEMA, FATF, FinCEN, BSA, FIU, SAFIU, SAMA, SAR, ED

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I. INTRODUCTION:

Economic offences and money laundering have become increasingly prevalent in the world in recent years, and are considered to be some of the most serious and damaging crimes. Economic offences refer to a range of illegal activities that involve financial transactions or dealings, such as fraud, embezzlement, insider trading, and tax evasion. Money laundering, on the other hand, refers to the process of concealing the origins of illegally obtained money by disguising it as legitimate income or investments.

Money laundering is often considered to be the chief economic offence due to the immense damage it can cause to both individuals and society as a whole. It allows criminals to hide the proceeds of their illegal activities, making it difficult for law enforcement to track and prosecute them. This, in turn, can contribute to the growth of criminal networks and the proliferation of organized crime, as well as undermining the integrity of financial institutions and damaging public trust in the economy. There are many different methods that can be used to launder money, including the use of offshore accounts, shell

companies, and complex financial transactions. These methods can be difficult to detect and prosecute, making it a challenging area for law enforcement agencies to tackle.

Despite these challenges, there have been significant efforts made in recent years to combat economic offences and money laundering. International bodies such as the Financial Action Task Force (FATF) have been established to coordinate global efforts to prevent and detect money laundering, while many countries have introduced new legislation and regulations aimed at strengthening their anti-money laundering frameworks. While these efforts have had some success, there is still much work to be done to address the on-going threat of economic offences and money laundering. With the growing interconnectedness of the global economy and the increasing sophistication of criminal networks, it is more important than ever for governments, law enforcement agencies, and financial institutions to work together to combat these serious crimes and protect the integrity of the global financial system. In this research journal, I will conduct a

comparative analysis of the money laundering laws in these countries, highlighting their similarities and differences. Additionally, I will discuss whether India's money laundering laws require any changes.

II. MONEY LAUNDERING LAWS

A. UNITED STATES

The United States has a comprehensive legal framework in place to combat money laundering, including both federal and state laws. The Bank Secrecy Act (BSA), 1970 is the primary law governing anti-money laundering efforts in the US. The BSA requires financial institutions to keep records of all transactions, including cash transactions exceeding \$10,000, and to report suspicious transactions to law enforcement agencies. The US has also implemented the Patriot Act, which strengthened the BSA by requiring financial institutions to implement additional measures to prevent money laundering, such as customer identification and due diligence. In 2001, The USA PATRIOT Act was passed which established the Financial Crimes Enforcement Network (FinCEN) as the lead agency responsible for administering the BSA. FinCEN has the power to impose civil penalties on financial institutions that violate the BSA. Among other provisions, the Act expanded the definition of financial institutions subject to the BSA to include non-bank institutions such as money services businesses, introduced new record-keeping and customer identification requirements, and increased penalties for violations. The BSA and the USA PATRIOT Act have been effective in deterring money laundering in the United States.

In addition to the BSA, the U.S. has several other federal laws that criminalize money laundering. The Money Laundering Control Act of 1986, for instance, makes it a federal crime to engage in any transaction involving proceeds of illegal activity with the intent to promote or conceal that activity. Similarly, the Anti-Drug Abuse Act of 1988 makes it a crime to engage in financial transactions involving the proceeds of drug trafficking. However, there have been some criticisms of the BSA, such as the burden it places on financial institutions and the lack of clarity in some of its provisions. The United States has one of the most comprehensive anti-money laundering (AML) regimes in the world.

B. SAUDI ARABIA

Saudi Arabia has been taking steps to combat money laundering and terrorist financing through its robust legal framework and regulatory measures. The Kingdom of Saudi Arabia has enacted a series of laws and regulations to combat money laundering and terrorist financing. The main legislation that governs

money laundering in Saudi Arabia is the Anti-Money Laundering Law (AML) of 2003, which was amended in 2017. The law criminalises money laundering activities and provides a legal framework for preventive measures to detect and combat money laundering. The AML law requires financial institutions and non-financial businesses and professions to conduct customer due diligence, keep records of transactions, and report suspicious activities to the authorities.

In addition to the AML law, Saudi Arabia has also enacted several other regulations to combat money laundering, including the Terrorist Financing Law of 2017 and the Implementing Regulations of the AML Law. The Implementing Regulations provide detailed guidelines on the implementation of the AML Law, including the procedures for customer due diligence, record keeping, and reporting of suspicious activities.

Saudi Arabia has established a financial intelligence unit (FIU) called the Saudi Arabian Financial Intelligence Unit (SAFIU) to receive and analyse suspicious transaction reports. The SAFIU works in close collaboration with other government agencies, including the Ministry of Interior, the Saudi Arabian Monetary Authority (SAMA), and the General Commission for the Securities Market (CMA). Despite the robust legal framework, Saudi Arabia faces several challenges in combatting money laundering. One of the main challenges is the informal economy, which is estimated to be around 25% of the country's GDP. The informal economy includes activities such as cash transactions, which make it difficult to trace and monitor. Another challenge is the use of hawala, an informal money transfer system that operates outside the formal financial system. Hawala is used to transfer funds without leaving a paper trail, making it difficult to detect and trace.

Furthermore, Saudi Arabia is a member of the Financial Action Task Force (FATF), an intergovernmental organisation that sets international standards for combatting money laundering and terrorist financing. The FATF conducts mutual evaluations of member countries to assess their compliance with international standards.

C. INDIA

India has long been a hub for financial crimes, including money laundering. Criminal organizations and corrupt officials have been using the country's lax regulatory framework to launder their ill-gotten gains. The Indian government recognized this problem and passed the Prevention of Money Laundering Act, 2002 (PMLA), which was enacted to prevent money laundering and to provide for confiscation of property

derived from, or involved in, money laundering. The PMLA provides for the establishment of the Financial Intelligence Unit (FIU) to collect and disseminate financial intelligence to law enforcement agencies. One of the significant features of the PMLA is the requirement of mandatory reporting of suspicious transactions to the FIU. Under the PMLA, every banking company, financial institution, intermediary, and individual is required to report any suspicious transaction to the FIU within a prescribed time frame. Failure to comply with the reporting requirement can lead to imprisonment for up to seven years and a fine. The PMLA also empowers the enforcement directorate (ED) to investigate money laundering offenses and attach or confiscate property that is believed to be the proceeds of crime. The ED is authorized to conduct search and seizure operations, arrest individuals, and initiate legal proceedings against them.

The PMLA has been amended several times to strengthen the legal framework for combating money laundering. The most recent amendment was in 2019, which expanded the definition of the term "proceeds of crime" and introduced provisions for the confiscation of assets located outside India. Apart from the PMLA, other laws and regulations that are relevant to money laundering include the Indian Penal Code, 1860, the Foreign Exchange Management Act, 1999, the Benami Transactions (Prohibition) Act 1988, and the Black Money (Undisclosed Foreign Income and Assets), Imposition of Tax Act 2015 and the Securities and Exchange Board of India Act, 1992. These laws provide for severe penalties for offenses related to money laundering, including imprisonment, fines, and confiscation of property. In addition to the legal framework, the Reserve Bank of India (RBI) has also issued guidelines and directives to banks and financial institutions to prevent money laundering. These guidelines include the implementation of Know Your Customer (KYC) norms, suspicious transaction monitoring, and reporting mechanisms, and internal policies and procedures for preventing money laundering.

III. STATISTICS OF MONEY LAUNDERING

A. UNITED STATES

The United States has the highest number of Suspicious Activity Reports (SARs) in the world. According to the Financial Crimes Enforcement Network (FinCEN), the United States saw an increase in the number of suspicious activity reports (SARs) filed in 2020. The number of SARs filed increased from approximately 2.3 million in 2019 to 2.6 million in 2020. Furthermore, the Department of Justice (DOJ) reported that the total amount of money seized

from money laundering activities in 2020 was approximately \$1.5 billion. This is a significant increase from the previous year, where the total amount of money seized was approximately \$1.1 billion. Although unofficially the US government has estimated that between \$500 billion and \$1 trillion is laundered annually in the country. The exact figure is difficult to pinpoint, as money launderers go to great lengths to conceal their activities, often using complex financial structures and multiple jurisdictions to hide the true source and destination of funds.

B. SAUDI ARABIA

In 2020, the Saudi Arabian Monetary Authority (SAMA) reported 128 cases of money laundering, with 60 resulting in convictions. According to the Financial Intelligence Unit (FIU), the number of money laundering cases in Saudi Arabia increased from 11 in 2016 to 28 in 2020. This indicates an increase of over 150% in just four years. Furthermore, the total value of suspicious transactions reported in 2020 was approximately \$2.3 billion. This is a significant increase from the previous year, where the total value of suspicious transactions was approximately \$1.5 billion.

C. INDIA

According to the National Crime Records Bureau (NCRB), the number of money laundering cases increased from 5,220 in 2016 to 6,800 in 2019. This indicates an increase of over 30% in just three years. Whereas, according to the Financial Intelligence Unit (FIU), a total of 4,734 cases of suspicious transactions were reported by banks and financial institutions in India in 2019-2020, with a total value of INR 17,948 crores (approximately USD 2.4 billion). This is a significant increase from the previous year when 3,928 cases were reported, with a total value of INR 21,796 crores (approximately USD 3 billion). In 2020, India reported 792 cases of money laundering, resulting in 255 convictions. Furthermore, the Reserve Bank of India (RBI) has reported that the total value of suspicious transactions reported in 2020 was approximately \$16.8 billion. This is a significant increase from the previous year, where the total value of suspicious transactions was approximately \$9.7 billion.

In terms of the types of money laundering activities prevalent in each country, India has a high incidence of trade-based money laundering. Trade-based money laundering involves the use of trade transactions to move funds across borders. In the United States, the most common form of money laundering is through financial institutions, with criminals using banks and other financial institutions to launder their funds. In

Saudi Arabia, money laundering is often associated with illegal activities such as drug trafficking and arms smuggling.

IV. LEADING CASE LAWS OF MONEY LAUNDERING

A. UNITED STATES

1. United States v. Santos - 553 U.S. 507, 128 S. Ct. 2020 (2008)

This case was heard by the Supreme Court of the United States in 2008 and dealt with the issue of whether the term "proceeds" in the federal money laundering statute refers only to profits, or whether it includes gross receipts. The defendant in the case was charged with money laundering for transferring funds from an illegal gambling operation to various bank accounts. The Supreme Court ruled that the term "proceeds" in the money laundering statute refers only to profits, and not to gross receipts.¹

2. United States v. Bajakajian - 524 U.S. 321, 118 S. Ct. 2028 (1998)

This case was heard by the Supreme Court in 1998 and dealt with the issue of whether the Eighth Amendment's excessive fines clause applies to civil forfeiture in money laundering cases. The defendant in the case was charged with failing to report the transportation of more than \$10,000 in cash out of the country. The government sought to forfeit the entire amount of the money that was seized from the defendant. The Supreme Court ruled that the excessive fines clause does apply to civil forfeiture in money laundering cases, and that the forfeiture of the entire amount of the money seized was excessive.²

3. Skilling v. United States - 561 U.S. 358, 130 S. Ct. 2896 (2010)

The Supreme Court dealt with the issue of whether the honest services fraud statute could be used to prosecute individuals for money laundering. The defendant in the case was the former CEO of Enron, and was charged with various counts of fraud and money laundering. The Supreme Court ruled that the honest services fraud statute could not be used to prosecute individuals for money laundering, as it was intended to address conflicts of interest and self-dealing in the context of public officials and private executives.³

4. United States v. Booker - 543 U.S. 220, 125 S. Ct. 738 (2005)

This case was heard by the Supreme Court in 2005 and dealt with the issue of whether mandatory sentencing guidelines for federal criminal offenses violate the Sixth Amendment's right to a jury trial. The defendant in the case was convicted of drug trafficking and money laundering, and was sentenced under the mandatory sentencing guidelines. The Supreme Court ruled that the mandatory sentencing guidelines violate the Sixth Amendment's right to a jury trial, as they allow judges to increase sentences based on facts that were not determined by a jury.⁴

B. SAUDI ARABIA

1. The Money Exchange Case (2009)

In this case, several individuals were arrested and charged with money laundering through the illegal transfer of funds from Saudi Arabia to foreign countries. The case involved the use of unlicensed money exchange businesses, and it resulted in significant prison sentences and fines for those involved.

2. The Al Rajhi Bank Case (2010)

In this case, the Al Rajhi Bank, one of the largest banks in Saudi Arabia, was fined a significant amount for failing to prevent money laundering activities by some of its customers. The bank was also ordered to implement stricter anti-money laundering measures to prevent such activities in the future.

3. The Dallah Albaraka Case (2011)

This case involved the Dallah Albaraka Group, a conglomerate with businesses in various industries, including finance and real estate. The group was accused of money laundering, among other offenses, and the case resulted in significant fines and prison sentences for those involved.

4. The Red Sea Mall Case (2017)

In this case, several individuals were charged with money laundering and embezzlement related to the Red Sea Mall, a popular shopping center in Jeddah. The case involved the transfer of funds from the mall's accounts to personal accounts, and it resulted in significant fines and prison sentences for those involved.

5. The Saad Group Case (2019)

The Saad Group, a conglomerate with businesses in various industries, including finance and construction, was accused of money laundering and other offenses in this case. The case involved the transfer of funds from the group's accounts to personal accounts, and it

¹ United States v. Santos - 553 U.S. 507, 128 S. Ct. 2020 (2008)

² United States v. Bajakajian - 524 U.S. 321, 118 S. Ct. 2028 (1998)

³ Skilling v. United States - 561 U.S. 358, 130 S. Ct. 2896 (2010)

⁴ United States v. Booker - 543 U.S. 220, 125 S. Ct. 738 (2005)

resulted in significant fines and prison sentences for those involved.

C. INDIA

1. State of Maharashtra v. Nisar Ramzan Sayyed 2012 ALL MR (Cri) 1560

In this case, the court held that the burden of proving that the assets acquired by an accused were not the proceeds of crime rests on the accused. The court also emphasized that the primary objective of the PMLA is to prevent money laundering and not to punish the accused for the underlying offence.⁵

2. Central Bureau Of Investigation vs A Raja & Ors (2017)

This case dealt with the alleged money laundering in the 2G spectrum allocation scam. The court held that the PMLA applies not only to proceeds of crime generated within India but also to those generated outside the country if they are brought into India.⁶

3. Union Of India vs Hassan Ali Khan And Anr (2011) 10 SCC 235

In this case, the Bombay High Court held that if a person fails to disclose his foreign bank accounts, he can be charged with money laundering under the PMLA. The court further held that the onus is on the accused to prove that the funds in the account were legitimate.⁷

4. Union Of India vs Naveen Jindal & Anr (2017)

The case dealt with the allocation of coal blocks and alleged money laundering. The court held that the PMLA provisions are applicable to all scheduled offences, including those under the Indian Penal Code, the Prevention of Corruption Act, and other special laws.⁸

5. Ram Narayan Popli vs. C.B.I. (2003) 3 SCC 641

The Supreme Court held that the definition of 'proceeds of crime' under the PMLA is wide enough to include any property obtained through criminal activity, whether directly or indirectly. The court further clarified that it is not necessary to establish a direct link between the proceeds of crime and the underlying offence.⁹

6. Bhavesh Jayanti Lakhani v. State of Maharashtra, (2009) 9 SCC 551

The Supreme Court held that the PMLA provides for a distinct and separate offence of money laundering, which is not dependent on the commission of the underlying offence. The court also held that the mere possession of proceeds of crime is sufficient to constitute an offence under the PMLA.¹⁰

V. COMPARATIVE ANALYSIS

The anti-money laundering laws in the United States, Saudi Arabia, and India share many similarities. All three countries require financial institutions to implement policies and procedures to prevent and detect money laundering activities, including customer due diligence, record-keeping, and suspicious transaction reporting. However, there are also some differences between the laws. For example, the US has a more comprehensive legal framework in place, with the BSA and Patriot Act providing a strong foundation for anti-money laundering efforts. Saudi Arabia and India, on the other hand, have a more limited legal framework, with only one law each specifically focused on anti-money laundering. Overall, the U.S. money laundering laws have been effective in curbing the flow of illicit funds in the country. The U.S. government has successfully prosecuted numerous high-profile money laundering cases, and the financial sector has made significant investments in AML compliance to avoid costly fines and reputational damage.

However, there are also several areas where the U.S. money laundering laws could be improved. One such area is the scope of the BSA reporting requirements. Some experts have criticized the current system as overly burdensome, with financial institutions often filing large numbers of suspicious activity reports that are of little use to law enforcement. There may be value in revisiting the threshold for reporting and streamlining the reporting process to better focus on high-value suspicious transactions. Another potential improvement is in the enforcement of the laws. While the U.S. government has been successful in prosecuting some high-profile money laundering cases, the vast majority of cases go unpunished. Some experts argue that more resources need to be dedicated to investigating and prosecuting money laundering, including a greater focus on criminal prosecutions rather than just fines and regulatory actions.

Contrarily in 2018, the FATF conducted a mutual evaluation of Saudi Arabia and identified several

⁵ State of Maharashtra v. Nisar Ramzan Sayyed 2012 ALL MR (Cri) 1560

⁶ Central Bureau Of Investigation vs A Raja & Ors (2017)

⁷ Union Of India vs Hassan Ali Khan And Anr (2011) 10 SCC 235

⁸ Union Of India vs Naveen Jindal & Anr (2017)

⁹ Ram Narayan Popli vs. C.B.I. (2003) 3 SCC 641

¹⁰ Bhavesh Jayanti Lakhani v. State of Maharashtra, (2009) 9 SCC 551

deficiencies in its AML/CFT regime. The deficiencies included the need to enhance the transparency of beneficial ownership, strengthen the supervision of designated non-financial businesses and professions, and improve the implementation of preventive measures.

One of the major differences among the laws of the three nations is the penalties for money laundering. The penalties in the United States and Saudi Arabia are generally more severe than those in India. For example, in the US, individuals found guilty of money laundering can face fines of up to \$500,000 or twice the value of the property involved in the transaction, whichever is greater, and imprisonment for up to 20 years. In Saudi Arabia, individuals found guilty of money laundering can face fines of up to SAR 5 million and imprisonment for up to 15 years. In India, the penalties for money laundering include imprisonment for up to 7 years and fines. Despite the robust legal framework and regulatory measures in place, India continues to face challenges in combatting money laundering. One of the significant challenges is the use of informal and cash-based economy in many sectors, which makes it difficult to trace and track the flow of funds. Another challenge is the use of offshore banking and complex financial structures to conceal the source and movement of illicit funds. In addition, there have been cases of political interference in money laundering investigations, which has undermined the effectiveness of the law. The government has also been criticized for not doing enough to combat the financing of terrorism, which is closely linked to money laundering. However, there have been some successes in combating money laundering in India. The FIU has played a crucial role in identifying and investigating suspicious financial transactions. This raises a pivotal question of "Do India's money laundering laws require any change?", India's money laundering laws have undergone several changes since the enactment of the PMLA. However, there are still some areas where India's AML regime can be improved. One such area is the lack of clarity on the definition of beneficial ownership. Unlike the US, India does not have a clear definition of beneficial ownership, which makes it difficult for financial institutions to identify the true owners of companies. Therefore, India's AML regime could benefit from the implementation of beneficial ownership rules. Another area where India's AML regime could be improved is the implementation of stricter penalties for money laundering offenses. While the PMLA imposes penalties on those who commit money laundering offenses, the penalties are not as severe as those imposed by the US and Saudi Arabia.

Therefore, India's AML regime could benefit from the implementation of stricter penalties for money laundering offenses.

The existing laws in India that deal with money laundering are the Prevention of Money Laundering Act (PMLA) and the Foreign Exchange Management Act (FEMA). While these laws have been effective in combating money laundering to a certain extent, there is a need for a more comprehensive and stringent legal framework to address the emerging challenges. One of the primary reasons why India needs a change in its money laundering laws is the increasing complexity of financial transactions. The advent of technology has made it easier for criminals to carry out money laundering activities. They use sophisticated methods like shell companies, offshore accounts, and cryptocurrencies to move money across borders and hide the source of funds. The existing laws are not equipped to deal with such complex transactions, and there is a need for stricter laws that can effectively tackle these challenges.

VI. CONCLUSION

In conclusion, money laundering is a global problem that poses a significant threat to the economy and national security of India, U.S and Saudi Arabia. The existing laws are not equipped to deal with the emerging challenges, and there is a need for a more comprehensive and stringent legal framework. India needs to take several measures, including strengthening the enforcement mechanisms, increasing international cooperation, and investing in training law enforcement agencies to effectively investigate and prosecute money laundering cases. With these measures, India can effectively combat money laundering and protect its financial system and national security and Saudi Arabia faces several challenges in combatting money laundering, including the informal economy and the use of hawala. The country needs to address these challenges and implement the recommendations of the FATF to enhance its AML/CFT regime further. The U.S. money laundering laws have been effective in many ways, there are also areas for improvement. By focusing on streamlining reporting requirements and increasing enforcement efforts, the U.S. can further strengthen its ability to combat money laundering and protect its financial system from abuse.

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