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Financial Crimes in India with special reference to Prevention of Money Laundering Act 2002

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Abstract

This research also seeks to provide a comprehensive review of the Prevention of Money Laundering Act 2002, so as to better understand how it is being implemented and enforced in India. It is only through proper implementation of such laws that financial crimes and money laundering activities can be effectively curbed. Thus, this study seeks to provide valuable insights into the measures that should be taken to strengthen the Prevention of Money Laundering Act 2002, for better protection of citizens and the economy. Moreover, this study will further assess the efforts that have been taken to combat financial crimes and money laundering activities, and the effectiveness of these efforts. It will also examine the current state of enforcement of the Prevention of Money Laundering Act 2002, as well as its shortcomings. Furthermore, this research will seek to identify potential gaps in existing financial laws and regulations, and what steps should be taken to fill those gaps. This research will provide an in-depth look into financial crimes and money laundering activities in India, as well as their underlying causes and effects. Through this study, we hope to gain a better understanding of the magnitude of these activities, as well as the strategies used to conceal them. In addition, we hope to provide valuable insights into the measures that should be taken to strengthen the Prevention of Money Laundering Act 2002, so as to better protect citizens and the economy from financial crimes.

Keywords: Money laundering, HAWALA, The prevention of money laundering Act, 2002

I. Introduction

This study aims to examine the prevalence of financial crimes in India, in particular, the use of creative accounting techniques to facilitate money laundering activities, which are in contravention of the Prevention of Money Laundering Act 2002. This research will explore the various forms of financial crimes that take place in India, as well as the various methods used to disguise money laundering activities. Through this study, we hope to gain a better understanding of the magnitude of financial crimes and money laundering activities in India, and what can be done to better prevent these activities. This research will also delve into the underlying factors that motivate individuals to engage in financial crimes, and the conditions within India that facilitate such activities. Additionally, this study will also analyse the measures that have been put in place to curb financial crimes and money laundering activities in India.

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The importance of this research is not only to help identify and prevent financial crimes and money laundering activities, but also to provide a comprehensive understanding of the various factors that contribute to these activities in India. With this understanding, better measures can be put in place to help protect citizens of India and the economy as a whole. This study is quite timely, as financial crimes are on the rise in India, with more and more people turning to creative accounting practices to disguise the movement of illicit funds. Money laundering activities are particularly concerning, as they can disrupt the financial system, leading to serious economic and social consequences. Thus, this study seeks to explore the state of financial crimes and money laundering activities in India, as well as the methods employed to conceal these activities. It is imperative that we gain a better understanding of these activities in order to come up with effective solutions to curb them.

Moreover, financial crimes have far-reaching implications, beyond just the immediate economic and social costs. They can threaten financial stability, disrupt trade and investment flows, and erode public confidence in the financial system. For that reason, it is important to identify the underlying causes of financial crimes, so that proper measures can be taken to prevent them. With the increasing complexity of financial crimes and money laundering activities, it is important to gain a better understanding of the strategies used to exploit loopholes in financial regulations. This research will also analyse the ways in which criminals are able to conceal activities, and the techniques used to launder money. Additionally, the study will explore the role of technology in facilitating financial crimes, and the measures that should be taken to make such activities more difficult to carry out.

This research will also look into the various measures that have been taken to address financial crimes and money laundering activities in India. This includes analysing the existing regulations, as well as the areas where regulations should be further strengthened to make it easier to identify and prosecute offenders. Additionally, this study will examine the role of financial institutions in preventing and detecting financial crimes, and the role of technology in facilitating these activities. Furthermore, this research will also assess the effectiveness of the measures taken to combat financial crimes and money laundering activities, and will explore what else can be done to improve the existing system. Finally, this study will also analyse the various international initiatives that have been taken to address financial crimes and money laundering activities. This includes examining how other countries have implemented effective measures to prevent and detect such activities, and what lessons can be learned from these initiatives. Additionally, this research will explore how India can cooperate on an international level to combat financial crimes and money laundering activities.

II. Objectives of The Study

The objectives behind this study can be summarized as under:

1. To Identify the different types of financial crimes committed in India using creative accounting.

2. To Study the legal framework of the PMLA 2002 and its implications for financial crimes in India.

3. To Know the role of Chartered Accountants in facilitating financial crimes in India.

4. To Understand the various Accounting practices used to perpetrate financial crimes in India.

5. To Analysis the Menace of money laundering & effectiveness of PMLA 2002 in preventing financial crimes.

ISSN PRINT 2319 1775 Online 2320 787
Research Paper , UGC CARE Listed (Group -I) Journal Volume 11, Iss 11 2022

6. To Identification of the major challenges in preventing financial crimes in India.

III. Literature Review

Several studies have been conducted to understand the nature of financial crimes in India and the effectiveness of the PMLA in preventing and punishing such crimes.

1) The first work that was surveyed in this context is a study conducted by the National Institute of Financial Management (NIFM) in 2019. The study examined the legal framework governing financial crime in India and the implementation of the Prevention of Money Laundering Act (PMLA) 2002. The study found that the PMLA has served as an effective tool to combat money laundering and terrorist financing, however, it is hampered by a lack of awareness, inadequate enforcement procedures and limited coordination among agencies.
2) The second work examined for the purpose of this research is a study by the Indian Institute of Management Ahmedabad (IIMA) in 2017. The study examined the effectiveness of the PMLA in tackling money laundering and terrorist financing in India. The study found that the PMLA was effective in deterring criminals to a large extent.
3) The third work in this context is a study conducted by the Institute for Development and Research in Banking Technology (IDRBT) in 2018. The study analysed the current legal and regulatory framework in India and its effectiveness in tackling financial crimes. The study concluded that the PMLA was effective in tackling money laundering and terrorist financing, however, it was hindered by a lack of coordination between the various stakeholders involved in law enforcement and the lack of enforcement of the law.
4) The fourth work used in this research is a study conducted by the Indian School of Business (ISB) in 2017. The study examined the legal and regulatory framework governing financial crime in India, and the effectiveness of the PMLA in curbing money laundering and terrorist financing. The study found that the PMLA was effective in curbing financial crime, however, the implementation of the PMLA was hampered by the lack of coordination between law enforcement agencies, inadequate enforcement procedures and inadequate public awareness.
5) The fifth work to be discussed is a study conducted by the National Institute of Public Finance and Policy (NIPFP) in 2017. The study reviewed the legal and regulatory framework governing financial crime in India and the effectiveness of the PMLA in preventing such crimes. The study found that the PMLA was effective in prosecuting money launderers and terrorists, however, the enforcement of the law was hampered by a lack of coordination between the various stakeholders involved in law enforcement and inadequate public awareness.

IV. Different Types of Financial Crimes Committed in India Using Creative Accounting

Financial crimes in India have been increasing steadily over the past few years. Financial crimes include fraud, embezzlement, money laundering, insider trading, bribery, and other illegal activities that involve the misuse of funds or assets. Financial crimes can result in huge losses for organizations and individuals, and can have a significant impact on the economy.

1) **Financial fraud** is one of the most common financial crimes in India. It involves misappropriating funds or assets in order to gain an economic benefit. Examples of financial fraud include accounting fraud, Ponzi

ISSN PRINT 2319 1775 Online 2320 787
 UGC CARE Listed (Group -I) Journal Volume 11, Iss 11 2022

schemes, and credit card fraud. These crimes often involve the use of false documents or misrepresentation of information in order to deceive victims.

2) **Money laundering** is another type of financial crime in India. It involves the process of concealing the true source of illegally obtained funds in order to make them appear legitimate. Money laundering is often used to fund criminal activities such as terrorism, drug trafficking, and other illegal activities. The Indian government has implemented several measures to combat money laundering, including the establishment of an Anti-Money Laundering law in 2002.
3) **Insider trading** is also a major financial crime in India. It involves the use of confidential information to gain an unfair advantage in the stock market. Insider trading is illegal in many countries, including India, and can result in severe penalties for those found guilty.
4) **Bribery** is another financial crime in India. It involves the offering of money or other items of value in order to gain an advantage in business or political transactions. Bribery is illegal in India, and can result in serious penalties for those caught engaging in it.

The government has implemented laws and regulations to prevent and punish those who engage in financial crimes. It has also established a number of investigative agencies, such as the Central Bureau of Investigation, to investigate and prosecute financial crimes. Financial crimes can have a serious impact on the economy, and can result in significant losses for individuals and organizations. It is therefore important for everyone to be aware of the laws and regulations related to financial crimes in India, and to report any suspicious activity to the relevant authorities.

It is worthwhile to take a look at some data in this regard. As per a report published by Economic Times in November 2022, 52% of Indian organizations suffered due to financial crimes between 2020 to 2022[1]. The same report said that the pandemic had the interesting effect of a massive spike in financial frauds committed all over India, and perpetrated against all kinds of organizations.

The said report in ET was based upon a study that had been carried out by PwC. Some of the interesting snippets of information mentioned in the PwC study were as follows:

Percentage of companies that had reported suffering losses on account of financial frauds and the quantum of losses suffered by them.

Total no. of companies surveyed all over the world	1296
Total number of Indian companies surveyed	112
No. of industry types from which the companies hailed	32
%age of companies reporting loss due to financial frauds	**Quantum of losses**
40%	USD 50,000 - 100,000
17%	USD 1 million - 50 million and
5%	USD 50 million and above through

Source: PwC's Global Economic Crime and Fraud Survey 2022

Main perpetrator of the most disruptive or serious fraud experienced:

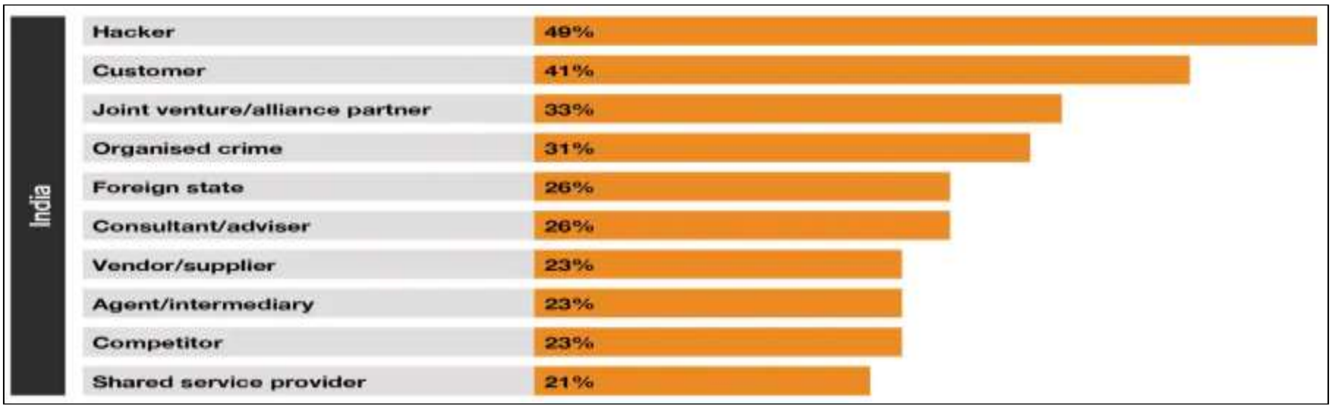
External perpetrator	43%
Internal perpetrator	33%

[1] 52% Indian organisations victim of economic crime in last 2 years: Report, BFSI News, ET BFSI (indiatimes.com)

Collusion between internal and external actors	24%

Source: PwC's Global Economic Crime and Fraud Survey 2022

Again, since external perpetrators were found to be the largest source of financial crimes, the report also dissected that source and came up with different categories within the external source. Those categories are as follows:



Source: PwC's global economic crime and fraud survey, 2022

Among the various industries, the one industry the suffered perhaps the most because of financial frauds has been banking. This fact was confirmed by an RBI report[2] that came out in 2022. The same report also highlighted that compared to 2021, the total amount involved in banking frauds reduced by around 50%, From Rs 60,389 in FY22 crore to Rs 1.37 lakh crore in FY21[3]. Let us now look at the geographical spread of financial crimes in India:

SL	State/UT	Criminal Breach of Trust (Sec.406 to 409 IPC)	Counterfeiting (Secs.231- 243, 255 & 489A to 489E IPC)	Forgery, Cheating & Fraud (Secs.420, 465, 468, 471, 231- 243, 255 and 489A to 489E IPC)	Total Economic Offences
1	Andhra Pradesh	852	27	6588	7467
2	Assam	2284	63	7537	9884
3	Bihar	586	13	7358	7957
4	Gujarat	407	27	2695	3129
5	Haryana	1472	18	5296	6786
6	Jharkhand	381	4	2775	3160
7	Karnataka	386	22	4699	5107
8	Kerala	120	23	8993	9136
9	Madhya Pradesh	472	49	2714	3235
10	Maharashtra	1629	54	10770	12453
11	Odisha	486	18	3524	4028
12	Punjab	262	25	3203	3490
13	Rajasthan	357	49	18122	18528
14	Telangana	579	10	12396	12985
15	UP	4455	55	12198	16708
16	West Bengal	1503	109	7097	8709

[2] Number Of Banking Frauds Go Up In FY22: RBI Report (outlookindia.com)
[3] Number Of Banking Frauds Go Up In FY22: RBI Report (outlookindia.com)

ISSN PRINT 2319 1775 Online 2320 787
Research Paper , UGC CARE Listed (Group -I) Journal Volume 11, Iss 11 2022

17	Delhi	271	32	4221	4524
18	J&K	48	9	554	611

Source: TABLE 8A.2.xlsx (ncrb.gov.in)

This data points to the fact that almost all major states have to deal with the phenomenon of financial crimes. There is certainly difference in the degree to which individual states witness incidences of such crimes. The difference in frequencies of such crimes however correlates with the size of those states. That is something that also agrees with the common sense which says that large states with large population and large economies are more likely to experience higher frequencies of such crimes. But, there is clearly no such thing as a state that is completely free from such crimes.

V. Legal Framework of The Prevention of Money Laundering Act 2002 And Its Implications for Financial Crimes in India

Before the advent of PMLA, 2002 into the statutes of India, law enforcement agencies used to address the menace of money laundering through legal instruments such as Conservation of Foreign Exchange and Prevention of Smuggling Activities Act,1974 (COFEPOSA), the Benami Transactions (Prohibition) Act,1988, the Indian Penal Code,1860 (IPC) and Code of Criminal Procedure,1973 (CrPC), the Narcotic Drugs and Psychotropic Substances Act (NDPS), 1985, the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988.

The constitutional legality of the Act, such as the bail terms which were dealt with in Section 45(1) of the PMLA, 2002, were challenged on many occasions in different courts but, by and large, it has received the seal of approval from the courts each time. In the landmark case of Nikesh Tarachand Shah v. Union of India, this draconian clause was found to be illegal because it violated Articles 14 and 21 of the Indian Constitution. Under Sec 45(1) of PMLA 2002, an accused, booked for an offence punishable with a jail term of more than three years under Part A of the Schedule, seeking bail would have to satisfy certain additional conditions, over and above those that were prescribed under the relevant provisions of CrPC, 1973.

The 2019 Amendment to the Prevention of Money Laundering Act (PMLA) saw the repeal of Sections 17(1) and 18(1), and the extension of the Enforcement Directorate (ED) officers' powers. This includes the ability to conduct searches of the accused or their property, as outlined in Section 157 of the Code of Criminal Procedure, 1973, without filing a report with the magistrate. This could lead to the accused suffering under the whims of the officers. The constitutional validity of these provisions is being examined by the court.

Other high-profile challenges to the legal validity of PMLA 2002 include cases filed by Karti Chidambaram, son of former Union Minister P Chidambaram and a Congress MP. He claims that the law is void, super vires, unconstitutional, arbitrary and irrational, and is in violation of Articles 14, 19, 20, and 21 of the Indian Constitution. His petition also focuses on the ED's excessive and arbitrary power in determining predicate offences, as well as their procedure for attachment, adjudication, and possession of property, all of which can be done based on their belief alone, even during ongoing investigations.

Similarly, Section 3 of the law has been challenged as being in violation of Article 20(2), due to the petitioner in the INX Media case being penalized for an offence that did not exist at the time of the offence being committed. In a similar vein, People's Democratic Party Chief Mehbooba Mufti has challenged the constitutional validity of Section 50 of the PMLA, 2002, claiming it violates Article 20(3) of the Constitution, and has sought to declare it void and inoperative. This section grants ED officers the power to summon people and demand documents or evidence, which is seen to contravene the privilege of self-incrimination given by the Constitution.

The constitutionality of Sections 2(1) (u), 8 and 23 of the Act were challenged in the case of B Rama Raju v. Union of India and Ors (2019). The petitioner objected against the powers of ED to seize and attach even those property that did not belong to the accused. The petitioner also claimed that properties acquired even before the enactment of the Act, if found to be illicit under the act, were being seized and attached. Furthermore, the petitioner pleaded the court to look into the legal validity of Section 23 of the Act which presumes guilt rather than innocence. The Court examined the Act and its relevant provisions, and ultimately held the said sections to be valid in view of the powers of the Parliament to make an Act retroactive. Based upon the facts presented before it in the case, the Court found these provisions to be constitutional and upheld their legality.

Financial crime prevention measures in India have been an ongoing issue in recent years. The Prevention of Money Laundering Act (PMLA), 2002 was an effort to combat money laundering and its related activities within the country. It was enacted in order to meet the requirements of the Financial Action Task Force (FATF), an organization dedicated to fighting financial crime.

The PMLA, 2002 provides for the establishment of a Financial Intelligence Unit which is responsible for collecting, analysing and disseminating information regarding suspicious transactions. The FIU must also coordinate with other government agencies including the Reserve Bank of India (RBI), the Department of Revenue, and the Central Bureau of Investigation (CBI). The FIU is also responsible for providing technical assistance to the RBI and other government agencies in the enforcement of the PMLA, 2002.

The PMLA, 2002 has been effective in combating money laundering activities in India. The law is enforced by the Reserve Bank of India and other government agencies, and financial institutions are required to comply with the Know Your Customer regulations. The law has also helped to create an effective system of reporting and monitoring of suspicious activities. However, it is important to note that the success of the law depends on the cooperation of financial institutions and the public in reporting and preventing financial crimes.

The Indian government has also taken steps to ensure that financial institutions are compliant with the PMLA, 2002. For example, the RBI has issued specific guidelines to banks and other financial institutions to ensure that they are properly adhering to the law. In addition, the RBI has also set up a Financial Intelligence Unit to monitor suspicious transactions and report them to law enforcement agencies.

Overall, the PMLA, 2002 has been successful in combating money laundering activities in India. The law has provided a framework for financial institutions to adhere to and has helped to create a system of reporting and monitoring suspicious activities. The success of the law depends on the cooperation of financial institutions and the public in reporting and preventing financial crimes.

ISSN PRINT 2319 1775 Online 2320 787
 UGC CARE Listed (Group -I) Journal Volume 11, Iss 11 2022

VI. The role of chartered accountants in facilitating financial crimes in India

Before beginning this discussion, it would be helpful to take a look at some of the most recent instances of Chartered Accountants involved in facilitating money laundering India:

1) In 2017, ED arrested CA Rajesh Agrawal for enabling Jain brothers Virendra and Surendra launder around Rs. 8000 Crores.
2) Another famous case was the one where the Chinese smart phone manufacturer Vivo was alleged to have indulged in largescale money laundering to siphon money away from India. In this case, Vivo, in collaboration with two Chartered Accountants and a Company Secretary is alleged to have hidden around US$700 million in profits and repatriated that money back to China without having paid any tax in India.
3) Another famous case involved a Rajya Sabha MP from Rashtriya Janata Dal (RJD), a Bihar based political party and a Delhi based CA. In the said case, which is alleged to be a part of the larger fertilizer scam of around Rs. 685 Crores, the Chartered Accountant in question, enabled funds to the tune of Rs. 40 Crore come into India via Dubai, hidden as various kinds of payments and investments.

One of the most common ways in which chartered accountants facilitate financial crimes is by providing false or misleading information to the authorities. For instance, they can provide false information about a company's finances, such as its profits and losses, in order to help the company, evade taxes. They may also provide false information about the company's assets and liabilities in order to conceal the true financial position of the company from the authorities.

Another way in which chartered accountants facilitate financial crimes is by helping companies to launder money. They may help companies to set up complex financial structures that make it difficult for the authorities to trace the source of the money. They may also advise companies on how to best hide their income from the authorities.

Moreover, chartered accountants can also be used to hide the profits of criminal activities. They can provide false documents and accounts that conceal the true nature of the profits being earned. This can make it difficult for the authorities to trace the source of the money. In addition, chartered accountants can be used to facilitate insider trading. They can provide false information about a company's financial position, thus enabling investors to buy or sell shares at an unfair advantage.

Finally, chartered accountants can also help companies to evade taxes. They can provide false information about a company's finances, such as its profits and losses, in order to help the company, evade taxes. They may also provide false information about the company's assets and liabilities in order to conceal the true financial position of the company from the authorities.

In addition, chartered accountants can provide false documents and accounts that conceal the true nature of the profits being earned. This can make it difficult for the authorities to trace the source of the money. Moreover, they can also be used to facilitate insider trading. They can provide false information about a company's financial position, thus enabling investors to buy or sell shares at an unfair advantage.

The role of chartered accountants in facilitating financial crimes in India is a serious one. It is therefore important for the authorities to ensure that these professionals adhere to the ethical standards and rules set by

ISSN PRINT 2319 1775 Online 2320 787
 UGC CARE Listed (Group -I) Journal Volume 11, Iss 11 2022

the Institute of Chartered Accountants of India (ICAI). This will help to ensure that financial crimes are prevented in India.

VII. Analysis of the extent and pattern of various accounting practices used to perpetrate financial crimes in India

Financial crimes in India have been on the rise in recent years. Accounting practices are often used to perpetrate such crimes, ranging from falsifying financial statements to embezzlement.

1) One of the most common accounting practices used to perpetrate financial crimes in India is falsifying financial statements. This involves misrepresenting a company's financial performance by manipulating numbers or by omitting certain expenses or revenues. This allows the company to appear more profitable than it actually is, thus opening up opportunities for fraudulent activities.
2) Another accounting practice used to commit financial crime in India is falsifying accounts receivable. This involves recording fictitious sales or inflating the value of existing accounts receivable. This can be used to disguise losses or to inflate the company's profits.
3) Another form of accounting fraud involves the misappropriation of funds. This involves diverting funds from the company to personal or other accounts. This can be achieved by manipulating the company's books or by falsifying documents to cover up the misappropriation.

To sum up, one could look at the following accounting techniques as the most common tools used to perpetrate financial crimes in India:

1. **Overstating sales and understating expenses:** This are a common accounting practice used to inflate profits and understate losses.
2. **Manipulating the books:** This involves changing the financial records in order to hide or distort information.
3. **Fictitious accounts:** This involves creating and maintaining fictitious accounts or transactions to hide or distort information.
4. **Loan fraud:** This involves taking out a loan using false information or documents.
5. **Over-invoicing and under-invoicing:** This involve inflating or deflating the value of goods or services to gain an unfair advantage.
6. **Money laundering**: This involves taking money from illegal activities and moving it into legitimate accounts to hide its source.
7. **Tax evasion:** This involves using false information or documents to avoid paying taxes.

The consequences of financial crimes in India can be severe and long-lasting. Companies may be subject to civil and criminal penalties, as well as damage to their reputation. Investors may be subject to losses, and employees may suffer from reduced wages or job loss. Therefore, it is important for companies to take measures to prevent and detect any financial crimes. This may involve implementing internal controls, conducting independent audits, and training employees on accounting practices. Additionally, companies should monitor their financial records and reports on a regular basis to ensure they are accurate and up-to-date.

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Following are some of the instances where various accounting techniques were used to perpetrate financial crimes in India:

1. **Satyam Computers[4]:** In 2009, the founder of Satyam Computers, B. Ramalinga Raju, was arrested for falsifying accounts and inflating profits by more than $1 billion over several years.
2. **Satyam Computers:** In 2010, the company's auditor, Price Waterhouse Coopers[5], was accused of certifying false accounts and facilitating fraudulent activities.
3. **Nirav Modi**[6:] In 2018, billionaire jeweller Nirav Modi was accused of perpetrating a $1.8 billion fraud by misusing Letters of Undertaking from the Punjab National Bank.
4. **Vyapam Scam**[7:] In 2015, the Vyapam scandal was uncovered involving the alleged misappropriation of funds and manipulation of examination results for admission into professional courses and government jobs.
5. **NSEL Scam[8]:** In 2013, the National Spot Exchange scam was uncovered involving the alleged misappropriation of funds and manipulation of prices of commodities in the exchange.
6. **Saradha Group Scam**[9:] In 2014, the Saradha Group scam was uncovered involving the alleged misappropriation of funds from thousands of investors.
7. **Rose Valley Scam[10]**: In 2014, the Rose Valley scam was uncovered involving the alleged misappropriation of funds from thousands of investors.
8. **NSEL-FTIL Scam[11]:** In 2015, the NSEL-FTIL scam was uncovered involving the alleged misappropriation of funds and manipulation of prices of commodities in the exchange.
9. **Reebok India Scam[12]**: In 2012, the Reebok India scam was uncovered involving the alleged misappropriation of funds and manipulation of books of accounts.
10. **Sahara India Scam[13]:** In 2014, the Sahara India scam[14] was uncovered involving the alleged misappropriation of funds from thousands of investors.
11. **IPL Scam[15]:** In 2013, the Indian Premier League (IPL) scam was uncovered involving the alleged misappropriation of funds from several teams and players.

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[14] Sahara companies raised Rs 50,000 crore, did not pay back investors: SFIO | India News - Times of India (indiatimes.com)
[15] Enforcement Directorate closes in on Lalit Modi, BCCI in Rs 450-crore IPL scam (dnaindia.com)

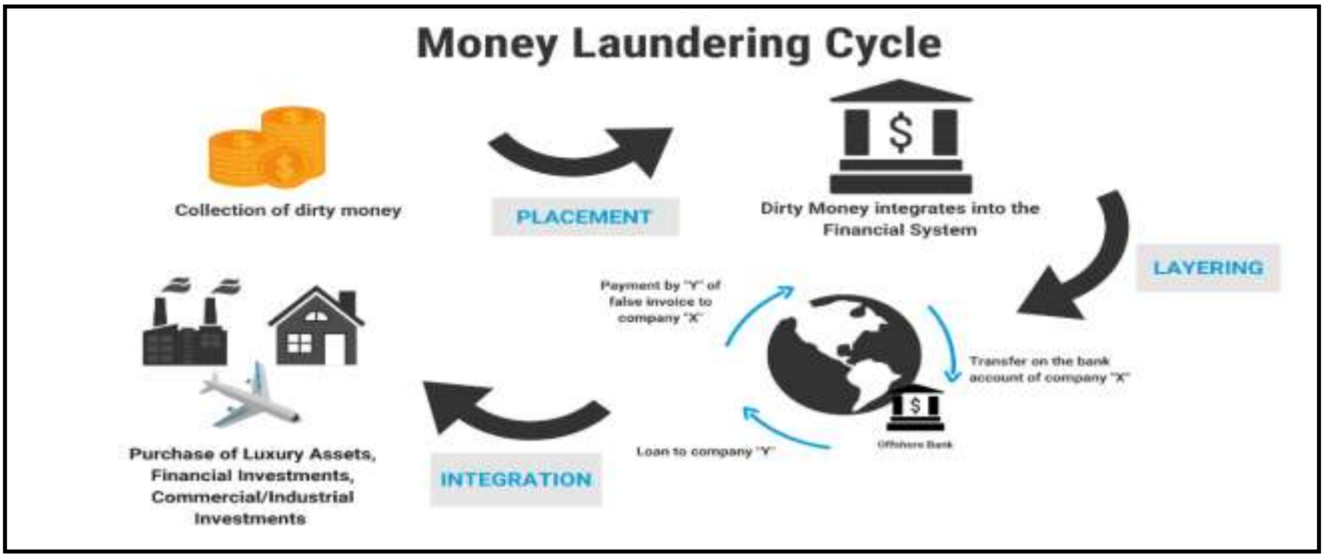
VIII. Menace of money laundering and analysis of the effectiveness of PMLA 2002 in preventing financial crimes

A) Menace of money laundering

Article 3.1 of United Nation's Vienna Convention held in the year 1988 describing Money Laundering as: "The conversion or transfer of property, knowing that such property is derived from any offense(s), for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in such offense(s) to evade the legal consequences of his actions**".**[16]

Typically, money laundering happens in three (3) Stages:

1. **Placement:** During this stage, money is moved from away from the bank accounts or financial instruments directly owned by the entities who generated it in such a manner that direct association between the funds and the crimes used to generate those funds are sought to be removed.
2. **Layering:** During this stage, multiple entities called layers are crated between the real source of the funds to the ultimate beneficiary. This usually involves building a complex web of companies, each handling a part of the overall quantum of funds and each transaction designed to conceal the identity of the source and the end-user.
3. **Integration:** During this stage, funds that were divided and distributed across multiple layers, spread across multiple jurisdictions are once again made to converge into one or a few entities owned or controlled by the ultimate beneficiary. The goal is to put the money back at the disposal of the criminal entities that generated it in the first place, but in such a manner that it seems to come from legitimate sources.



[16] https://www.unodc.org/unodc/en/money-laundering/overview.html

ISSN PRINT 2319 1775 Online 2320 787
, UGC CARE Listed (Group -I) Journal Volume 11, Iss 11 2022

The UNODC estimates the amount of money laundered annually to be between 2-5% of global GDP, or $800 billion to $2 trillion in today's US dollars[17]. In India, the Prevention of Money Laundering Act (PMLA) of 2002 was introduced to combat and control money laundering. The Act gives authorities vast powers in battling the issue of black money.

The PMLA, 2002 came into effect on July 1, 2005[18], with the primary goal of preventing money laundering, providing for the confiscation of property derived from or involved in money laundering, and punishing those who commit money laundering offences. To this end, several enactments were used for addressing the menace of money laundering.

B) Effectiveness of PMLA 2002 in tackling financial crimes in India

The Prevention of Money Laundering Act (PMLA) of 2002 has been effective in tackling financial crimes in India. This Act provides for confiscation and seizure of all the property and assets acquired through proceeds of crime. It also provides for the establishment of various authorities such as the Financial Intelligence Unit (FIU) and the Directorate of Enforcement (DOE).

The PMLA 2002 has also been effective in creating an environment of deterrence against the perpetrators of financial crimes in India. It has enabled the authorities to punish those who are found guilty of money laundering and other related offences. Moreover, it has helped in enhancing the capacity of the investigative agencies by providing them with the necessary tools and resources to detect and investigate financial crimes. The PMLA 2002 has also been effective in curtailing the use of hawala transactions and black money in India. It has made it mandatory for individuals to disclose their source of income and assets. This has enabled the authorities to track and trace the sources of funds and identify any suspicious transactions.

In addition, the PMLA 2002 has enabled the authorities to freeze the assets of those involved in money laundering and other financial crimes. This has been instrumental in preventing the proceeds of crime from being used for further criminal activities. Furthermore, the PMLA 2002 has been effective in introducing the concept of 'Know Your Customer' (KYC) in India. This has enabled the financial institutions and intermediaries to obtain the necessary information about their customers. This has enabled them to detect and report suspicious transactions in a timely manner.

Examples of how this Act has been effectively used in India include:

1. Over the last 10 years, ED has attached assets worth Rs 58,333 crores as a result of the powers given to it by PMLA 2002. Out of these, assets worth Rs 36,000 crores have been confirmed by the adjudicating authority, while for the rest, the process is still continuing.[19]

[17] https://www.unodc.org/unodc/en/money-laundering/overview.html

[18] https://fiuindia.gov.in/files/AML_Legislation/pmla_2002.html

[19] All you want to know about ED — the dreaded nightmare of Indian politicians & businessmen (theprint.in)

2. In the Sterling Biotech case, applying the provisions of the PMLA 2002, ED has attached assets worth around Rs. 14,000 crores.[20]
3. In 2011, the Enforcement Directorate (ED), in connection with the 2G spectrum scam, attached properties worth Rs. 230 crores belonging to Kalaignar TV in Tamilnadu.[21]
4. In 2018, the ED arrested several people involved in the AgustaWestland scam and confiscated properties worth Rs. 3,600 crores[22].
5. In July 2022, ED seized an AgustaWestland helicopter a builder accused of money laundering in the Rs. 34,000 crores DHFL scam case[23].
6. In Feb 2018, ED conducted raids at several premises belonging to Nirav Modi and seized properties worth Rs. 5100 Crores[24].
7. In Dec 2022, ED attached assets worth Rs. 907 Crores in connection with the money laundering done through crypto exchanges[25].
8. Kingfisher Airlines Case – In 2016, ED registered a case worth Rs. 9,000 crores under the Prevention of Money Laundering Act (PMLA) against Vijay Mallya and his Kingfisher Airlines for defaulting on loans taken from a consortium of banks[26].
9. Satyam Computer Services Fraud Case – In 2014, ED registered a case against SATYAM computer services and its promoters, including its founder B. Ramalinga Raju, under PMLA for alleged financial irregularities[27].
10. Rose Valley Case – In March 2018, ED attached properties of over Rs 2,381 crores belonging to various people involved in Rose Valley chit fund scam amounting to Rs 17,000 crore[28].
11. Saradha Chit Fund Case – In 2013, ED registered a case under PMLA against the Saradha Group and its directors in connection with the massive chit fund scam in West Bengal[29].
12. Jaganmohan Reddy Disproportionate Assets Case[30] – In 2013, ED registered a case against Jaganmohan Reddy, the former Chief Minister of Andhra Pradesh, under PMLA for alleged irregularities in his business dealings[31].
13. National Spot Exchange Limited Case [32]– In 2013, ED registered a case under PMLA against the National Spot Exchange Limited and its directors in connection with a Rs 5,600 crore fraud.

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[27] Ramalinga Raju: Satyam case: Raju appears in court on money-laundering charges - The Economic Times (indiatimes.com)
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[29] Saradha scam case | ED attaches assets of several 'beneficiaries' - The Hindu
[30] A timeline of the Jaganmohan Reddy case - India Today
[31] Jagan Mohan Reddy money laundering case: ED attaches Rs 216-crore worth of assets of private firm - The Economic Times (indiatimes.com)
[32] NSEL Scam: All You Need To Know About It - Equitypandit

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14. NSEL Payment Crisis Case[33] – In 2013, ED registered a case under PMLA against individuals and companies in connection with a payment crisis at the National Spot Exchange Limited.

IX. Identification of the major challenges in preventing financial crimes in India

The challenges facing India in preventing financial crimes are complex and multifaceted. One of the critical challenges is the high level of corruption in the country. Corruption has become a pervasive problem in India, with reports indicating that it costs the economy billions of dollars annually.

The first challenge is the lack of a comprehensive legal framework. India has several laws and regulations that deal with financial crimes, but they are scattered across different legislations, making it challenging to have a unified legal framework to address all financial crimes. For instance, the Prevention of Money Laundering Act (PMLA) and the Prevention of Corruption Act (PCA) are two different laws that address financial crimes, but they have different provisions, definitions, and punishments. This lack of uniformity in the legal framework makes it difficult to prosecute financial criminals effectively.

The second challenge is the inadequate enforcement of existing laws. Even with the existing laws, the enforcement of these laws has been inadequate. There are instances where financial criminals have gone unpunished due to weak prosecution, inefficient investigation, or political interference. Corruption and political influence in the investigation process have often been cited as significant factors that hinder the prosecution of financial crimes. Moreover, the courts are burdened with a backlog of cases, leading to long delays in justice delivery.

The third challenge is the lack of effective regulatory oversight. India has several regulatory bodies that oversee financial transactions, but there have been instances where these bodies have failed to detect or prevent financial crimes. The Reserve Bank of India (RBI) oversees the banking sector, while the Securities and Exchange Board of India (SEBI) regulates the capital markets. However, these regulatory bodies have been criticized for being lax in their oversight responsibilities, allowing financial crimes to occur.

The fourth challenge is the inadequate use of technology. Technology has become a critical tool in preventing financial crimes, but India has been slow in adopting modern technology to combat financial crimes. For instance, the use of artificial intelligence, machine learning, and big data analytics can help identify suspicious transactions and patterns, but these technologies have not been adequately deployed. Furthermore, the lack of a centralized database for financial transactions and customer identification has made it difficult to track illicit financial flows.

The fifth challenge is the lack of international cooperation. Financial crimes are often transnational, with criminals using offshore accounts and shell companies to launder money. India's efforts to prevent financial crimes are limited by the lack of international cooperation in sharing information and assets. India needs to collaborate with other countries to track and freeze the assets of financial criminals and prevent them from using the international financial system to launder money.

In addition to the challenges mentioned above, another major hurdle in preventing financial crimes in India is the lack of awareness and education among the general public. Many people in India, especially in

[33] How the NSEL crisis unfolded | Mint (livemint.com)

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rural areas, are not aware of the risks of financial crimes and how to protect themselves from being victimized. This lack of awareness makes them vulnerable to fraudulent schemes and other financial scams.

Another challenge is the involvement of powerful individuals and institutions in financial crimes. Often, financial crimes in India involve influential people who have the power to evade detection and prosecution. These individuals and institutions use their power and influence to cover up their crimes, making it difficult for law enforcement agencies to hold them accountable.

Finally, there is a need to strengthen the capacity of law enforcement agencies and regulatory bodies. India's law enforcement agencies and regulatory bodies often lack the resources, expertise, and training needed to effectively prevent and investigate financial crimes. The government needs to invest in building the capacity of these agencies and bodies to ensure that they can effectively prevent and investigate financial crimes.

X. CONCLUSION

In conclusion, the association between creative accounting and financial crimes in India is a multifaceted and evolving issue that demands continuous research and analysis. Addressing the gaps in the existing research necessitates a collaborative and multidisciplinary approach involving researchers, practitioners, and policymakers from diverse fields and perspectives. By working together, it is feasible to gain a better understanding of this issue and develop more effective prevention and enforcement strategies to tackle the challenges and opportunities posed by creative accounting and financial crimes in India.

Preventing financial crimes in India remains a significant challenge, with several obstacles hindering progress. Addressing these challenges will require a concerted effort by the government, regulatory bodies, financial institutions, and the international community. A comprehensive legal framework, effective enforcement, robust regulatory oversight, the use of modern technology, and international cooperation are necessary to combat financial crimes effectively.

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