

ENFORCEMENT OF CORPORATE CRIMINAL LIABILITY: A REVIEW ON BANKING SECTOR AND ROLE OF PMLA, 2002 AND ITS AMENDMENTS

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Abstract

Cash is often used for more expensive transactions and difficult and hence it attracts a large number of people who want to avoid detection from various criminal sources. In this paper we are going to analyse how banks have come up with ways to combat this issue and what steps have been taken to curb this menace. Thus, our main objective is to know the level of compliance with the provisions of the Prevention of Money Laundering Act, 2002 and how these laws have impacted on the financial services sector. This paper is based on the understanding that banks require to implement this section of the Prevention of money laundering act 2002¹ (PMLA) in order to avoid financial risk that may occur from the criminal activity. The bank will be selected as an example for this paper. According to the RBI had issued a circular which had been meant to protect the interest of depositors. This is because the banking sector was highly affected by economic instabilities such as recession and high inflation rates. However, it is important to note that these depositors were not aware that they themselves were being targeted by criminals. Therefore, through implementing the provisions of PMLA, banks are now able to have awareness of how to deal with such crimes.²

Introduction: Money Laundering Controls and Regimes

Financial institutions such as banks and credit unions and other non-banking entities which are found operating on Indian soil have for the last two decades been under strict control by the government, particularly with respect to the financing and transactions relating to real estate properties. According to the current regulations, all financial centers must undergo regular audits every year in order to ensure that they have met the set standards and requirements. To effectively meet these mandates, there has been an increase in the number of penalties for failing to comply with the set measures. Such penalties include; jail terms,

¹ THE PREVENTION OF MONEY-LAUNDERING ACT, 2002, ACT NO. 15 OF 2003

² Okazaki, K., 2017. Banking System Reform in China: The Challenges to Improving Its Efficiency in Serving the Real Economy. *Asian Economic Policy Review*, 12(2), pp.303-320.

fines and other severe consequences. But since the time when these controls were implemented, there have been instances where some criminal elements have managed to evade the stipulated rules and regulations. This has prompted many individuals and organizations to join forces and fight back against these acts, some even enlisting military support.

The major goal of (PMLA 2002³) is to reduce the cases of fraud and money laundering activities, and the key goals are as follows. “To prevent and control money laundering. To confiscate and seize the property obtained from the laundered money; and. To deal with any other issue connected with money laundering in India.”

These regulations do not only target the public but also private firms as well. For instance, if one wants to acquire a loan or a service, he should sign his personal details and contact information without much hesitation. Most importantly, these regulations have helped most businesses and financial institutions to become more stringent by preventing them from using the services of untruthful employees who may end up giving out sensitive information about their clients. Hence, they can also apply for loans or other services. Generally speaking, they are clear indication that an institution must act responsibly and must exercise good knowledge about who they deal with.

There are different types of crimes that may be committed by a person who has acquired a criminal history. They are referred into five categories that include organized crimes, white collar crime, labor/trade crime, narcotics crime, transport crime, and computer crime. These crimes may be carried out either by the individuals at state or federal levels . Organized crime, white collar crime and computer crime are some of the most dangerous illegal activities that persons can engage in. The organized crime involves a group of individuals with specific and joint objectives. For example, in the case of a gang, the main focus would be to gain financial advantage. One of the ways that organized crime proceeds includes taking over the property of a company and selling it for cash. Similarly for the white collar crime, it involves the sale of products such as software. However, to carry out this crime successfully, one must have sufficient money to start the business and should also possess certain characteristics. Therefore, one cannot carry out any activity unless he is part of organized crime. So far, there have been several incidences in which people were able to achieve success in their undertakings while involved in organized crime.

Money Laundering Regulations

Money laundering does not always involve money exchange between parties for personal gains, and money that is stolen, embezzled or lost during the course of business transactions and especially in a fraudulent manner. Rather, money laundering is an umbrella term that refers to a wide range of procedures and practices, including the following three areas namely

³ THE PREVENTION OF MONEY-LAUNDERING ACT, 2002, ACT NO. 15 OF 2003

transaction, fund diversion and fund transfer⁴. Transaction involves the process whereby the funds from a legitimate source are diverted, sometimes through fictitious processes like laundering, through channels that are legitimate using the name of trusted relationships that exist among the agents.⁵

Fund diversion is one of the most prolific methods employed by these professionals because a client can receive his desired gift/service in return for the initial payment. Fund movement entails the way in which the proceeds of your illegitimate scheme are moved after the intended recipients have made their payments. Other ways of facilitating money laundering would involve the transfer of funds after the transfer of funds. Fraudulent funds are mostly generated as a result of tax evasion; so as to hide the source of funds and increase its credibility as a source of revenue, the use of false documents to conceal the origin of the funds; and money laundering involving the transportation of funds in order to conceal and divert them from their original source and destination.

Cases of Professional Crime - Finances for Offshore Businesses

The concept of offshore businesses started in the late 1960s. Just like ordinary businesses, offshore businesses have very few restrictions when it comes to carrying out their operations. Nonetheless, there are certain factors that may limit their operation. Financial and political difficulties are few and offshore businesses can easily become targets of corruption by local authorities and thus hindering their smooth operations. When using offshore businesses, there are several risks that include reduced tax revenues, loss of earnings, decreased demand for goods and services offered by competitors and increased costs. Another risk is limited access to markets. The purpose of this study is to determine the type of criminal responsibility that corporate banking should bear, with special reference to the Bank Century case. It also aims to comprehend the legal procedures utilised against victims of banking crime in that scenario. Corporate criminal culpability is a well-established notion that can apply to both the corporation and/or the board of directors.⁶

Corporate criminal liability has been a focus of several investigations into the fraudsters who also used bogus bank accounts to operate and conceal their crime. The banks were accused of using fake company accounts without permission, which will eventually lead them to lose money through bad debts. Some of the most prominent corporations that have come under this sort of investigation include National Insurance Company Limited (NIC), Standard Life Insurance Co. (SLC) and SBI Group of Companies Ltd (SBC). To bring these organizations out of bankruptcy there are various steps that should be taken by any business entity to ensure that corporate criminal liability exists. One of these actions is that there should be clear identification of the owner and solid proof of corporate responsibility in case the organization

⁴ Lydia de Leeuw. "Corporate Agents and Individual Criminal Liability under the Rome Statute." *State Crime Journal*, vol. 5, no. 2, 2016, pp. 242–67.

⁵ Minkes, John. *The British Journal of Criminology*, vol. 48, no. 3, 2008, pp. 418–20.

⁶ Greenfield, Kent. "Ultra Vires Lives! A Stakeholder Analysis of Corporate Illegality (With Notes on How Corporate Law Could Reinforce International Law Norms)." *Virginia Law Review*, vol. 87, no. 7, 2001, pp. 1279–379.

needs to obtain financial aid or even loans. However, it is not sufficient to just establish organizational responsibility or liability for fraudulent transactions, but rather the company also needs to show proof of its ability to resolve an issue in a timely manner before receiving assistance. This could be done by providing a list of people who are involved in the process of acquiring insurance policies and giving them all access to important details that will facilitate resolving financial problems.⁷

Another way that can be used is by using an expert who could represent other members of society. For instance, NIC can use either a legal representative, accountant or accountant who is experienced in handling financial affairs for him or herself and provide additional information on whether they will do anything incorrect in making sure that the lender does not take advantage of them⁸. If a company has an excellent reputation among those around it then its financial performance, if that's a good reputation, will likely be high. Thus, such a company is more likely to receive aid from the government or even financial institutions. These kinds of companies happen to be less likely to get sued using a court docket due to a great excellent public image. It might also give protection to innocent stakeholders as they provide better ways for settling financial issues.

In contrast side to such a large number of banks, SBC is very well-known and highly reputed. Consequently, they are not only liable for having given loans or lending loans, which might eventually fail, nevertheless also have good image in front of potential investors and lenders. As compared to other lenders, SBC is much less likely to be sued for fraudulently obtaining funds. Furthermore, they are not really easily exposed to lawsuits. Nevertheless, if SBC will need some type of support, then they're most likely to get it than several bank because SBC provides quick help in solving legal matters, unlike the case for SLC and NIC. Therefore, the corporation will probably be able to avoid being prosecuted. Though no one can tell exactly what kind of assistance SBC can provide, they will be more likely to attract funding and therefore become a source of credit intended for companies.

There are four major differences between SBC and SLC that make it hard for them to have the resources required to fight with each other. First, all three organizations can be found to possess a huge amount of cash in hand. They will therefore be capable of getting more loans in comparison to SBC's total assets. Their particular loan amounts will be greater due to their great repayment capacity, which will also allow them to get higher interests or perhaps rates. Secondly, SBC is not really expected to make large profits; hence, they may only need small amounts of loans, yet will be unable to afford large amounts of loan. SBC is likely to be forced to limit its level of loans and thus, is going to be incapable to increase its volume or size of loans. Lastly, SBC may be more likely to be affected by the change in interest rates that are offered to borrowers as compared to SLC, which usually will have an option of offering discounts and fixed financing rates. This difference in loans for the two

⁷ Stewart, David Overlock. "Basics of Criminal Liability for Corporations and Their Officials, and Use of Compliance Programs and Internal Investigations." *Public Contract Law Journal*, vol. 22, no. 1, 1992, pp. 81–99.

⁸ HORNBY, SIMON. "Whose Money Is It Anyhow? Corporate Support to the Community." *RSA Journal*, vol. 142, no. 5451, 1994, pp. 22–31.

organizations makes SBC be susceptible to pressure from a few sources, whereas SLC is usually a little cushy when it comes to its future.⁹

To counter the risks associated with SBC, SLC, it is extremely critical to ensure that their credit rating is definitely above 600. This means that the company is certainly not willing to borrow to the same extent. They should reduce their borrowing amounts and keep up the cost of home loans the same because they already possess in house. Once the corporation has a huge collection of loan amounts, it is going to be able easy for lenders or perhaps creditors to demand that they give a payment on time. Also, this means that SBC will need to pay off all of them before any kind of repayments can be made. Another strategy that would stop risky debt is to offer some sort of tax shield to both SBC and SLC, which in turn give SBC the flexibility to use loans as long as the taxes are paid as soon as they have received the payments. As a result, SBC will be in a better position to finance itself instead of relying on external funding or loans. They can even consider raising prices for its products which might increase its competitiveness in the marketplace. Finally, SBC should consider setting up new branches where it is possible to find employment opportunities, instead of creating branches where there is certainly no job opportunity. Any sort of move would enable the firm to get rid of the chance of its failure, thus protecting shareholders and workers. Both SBC and SLC should work together to try to maintain strong company image not only in the business.¹⁰ They need to set up stronger partnerships with suppliers for example an equal partnership with the UBLRU and the PHL to help develop a competitive edge in the market. This implies that both of these types of businesses should start developing their own supply in a bid to produce products that will satisfy clients and also prevent competition which might exist in the market. The existence risk with SBC and SLC can easily be eliminated if they have adequate capital and they are willing to invest in areas like real estate and advertising. They have an excellent reputation among their community, so it might be difficult for them to lose any of this good image over the time duration of time.

Avoiding the formation of corrupt practices within the company structure, as well as risks to the health and safety of workers and/or the environment and committing other crimes defined as “prerequisites” for the liability of entities; In practice, the expansion of culpability seeks to include the assets of entities and the economic interests of shareholders in the punishment of specific criminal offences¹¹, who, until the entry into force of Legislative Decree 231/2001, did not suffer consequences as a result of the commission of crimes committed, for the benefit or in the interest of the company, by directors and/or employees.¹²

If each of the aforementioned conditions is satisfied, the firm cannot be held accountable for the actions of its managers or employees, even in the event that one of them is found guilty of committing a crime. The prospect of wrongdoing on the part of businesses is the driving force

⁹ Koehn, Daryl. “Transforming Our Students: Teaching Business Ethics Post-Enron.” *Business Ethics Quarterly*, vol. 15, no. 1, 2005, pp. 137–51.

¹⁰ Koehn, Daryl. “Transforming Our Students: Teaching Business Ethics Post-Enron.” *Business Ethics Quarterly*, vol. 15, no. 1, 2005, pp. 137–51.

¹¹ Treverton, G. F., Matthies, C., Cunningham, K. J., Goulka, J., Ridgeway, G., Wong, A, “Innovations in Enforcement. In *Film Piracy, Organized Crime, and Terrorism*” 2009 (pp. 121–138)

¹² Ibanet.org, 2022. *Corporate liabilities under Italian law: risks and remedies for foreign companies operating in Italy*. [online] Available at: <<https://www.ibanet.org/article/C6FF46FD-5C69-4DAD-86EA-457C1D34436D>> [Accessed 17 July 2022].

behind this discussion. Individuals and corporate entities are both capable of committing offences of varying degrees of seriousness, but the former is more common. In the first scenario, a person's legal responsibility is typically evaluated by analysing whether or not all of the necessary mental and physical components of the crime have been present.¹³

Possible reasons for introducing corporate criminal liability

Respondeat superior is the legal principle that underpins corporation criminal responsibility in the United States. An organisation is fundamentally accountable for the conduct of all of its employees when those individuals are acting within the course and scope of their employment and, at the very least, for the benefit of the corporate entity. Even though some of the states in the United States have different regulations, according to the federal legal system, it is not required that an employee have a certain level of corporate responsibility. This means that the employee does not need to be able to speak for the corporation, be a part of a control group, or be a directing mind. Although it is true, as the proverb goes, that a corporation does not have a soul to condemn or a body to kick, the law in the United States has long held that a company can be held criminally accountable for the activities of any of its workers. And this is also true of limited liability firms, tightly held corporations, and partnerships. Closely held corporations are those that are owned by a restricted number of stockholders.¹⁴

This type of criminal responsibility for corporations is sufficiently broad that the corporation may be held criminally accountable even in cases where an employee violates an established corporate policy. Even if the individual violates the law while performing illegal crimes within the course and scope of their work, the corporation may not be exempt from liability even if specific counter instructions are followed.¹⁵ Under US law, a corporation, regardless of whether or not it has an extensive compliance programme, may nonetheless be held legally accountable for the unlawful activities of its workers. Given the aforementioned, it is rather simple for prosecutors working for the US government to pin criminal responsibility on the corporation. And as a direct consequence of this, US corporations are considerably more likely to negotiate a plea bargain with the prosecutors in order to avoid having to go to court. In the following instalment of this series, we will discuss the legal ramifications of such delayed and non-prosecution agreements in the United States of America, as well as in the United Kingdom and France.¹⁶

In such a broad sense, the United States began holding corporations criminally accountable more than a century ago. In a similar vein, the United Kingdom has long recognised the

¹³ Drover, Will, et al. "A 30-Year Historical Examination of Ethical Concerns Regarding Business Ethics: Who's Concerned?" *Journal of Business Ethics*, vol. 111, no. 4, 2012, pp. 431–38.

¹⁴ Polidori, P. and Teobaldelli, D., 2022. *Corporate Criminal Liability*. [online] Available at: <https://link.springer.com/10.1007/978-1-4614-7883-6_701-2> [Accessed 17 July 2022].

¹⁵ Stewart, David Overlock. "Basics of Criminal Liability for Corporations and Their Officials, and Use of Compliance Programs and Internal Investigations." *Public Contract Law Journal*, vol. 22, no. 1, 1992.

¹⁶ Drover, Will, et al. "A 30-Year Historical Examination of Ethical Concerns Regarding Business Ethics: Who's Concerned?" *Journal of Business Ethics*, vol. 111, no. 4, 2012, pp. 431–38.

possibility of criminal liability for corporations in situations in which the criminal acts of senior employees (typically through the board of directors) could be criminally attributed to the company. This has been the case for a considerable amount of time. Under English criminal law, the concept of mens rea has never been compatible with the imposition of criminal liability on an organisation. This has never been an easy fit. In the realm of US criminal law, vicarious liability does exist; however, it is limited to specific quasi-regulatory areas, such as those dealing with health and safety and environmental concerns.¹⁷ However, apart from vicarious liability, the "identification principle" is the sole foundation on which prosecutors have been able to hold the firm accountable for the majority of criminal offences that require a mental state. This is the case even when vicarious liability is not involved. In order to accomplish this, a prosecutor needs to demonstrate the criminal responsibility of the most senior officers in the organisation. These officers are considered to represent the "directing mind and will" of the entire company, and their mental state can be attributed to (or identified with) the business. This has long been a source of frustration for prosecutors, who must contend with a variety of evidentiary obstacles when pursuing major corporations that have murky reporting lines and decentralised decision-making. These challenges help to explain, in part, why there has historically been a low level of corporate prosecutions in the UK.¹⁸

It is now generally accepted that individuals who hold positions of authority within a corporation, such as directors, officers, and employees, can be held criminally liable for any illegal acts that they commit personally, regardless of whether or not they were acting in the best interests of the corporation. If a director, officer, or agent of a corporation is found to be personally responsible for illegal activity, they cannot hide behind the corporation for protection. In accordance with the respondeat superior tort principle, which was introduced earlier, an officer or director may also be held criminally liable for criminal activities that were carried out by an agent of the organisation. Directors, officers, and employees may all be held criminally liable for any act in which they have a role in its commission or further its commission. Directors and officers may also be held criminally liable for any crime under the theory that they were unable to prevent the crime "by failing to regulate the misconduct of those subject to their control." This is one of the theories that underlies vicarious criminal liability. The "responsible relation" theory of responsibility holds that a person is criminally liable for a criminal violation based on her "responsible relation" to the violation, regardless of whether or not the person had any knowledge of the illegal behaviour.¹⁹

When the concept of criminal liability for corporations was initially introduced in 1992, it was guided by something called the "specialty principle." This meant that in order for a corporation to be found criminally accountable for a specific offence, the relevant legal provisions had to be present. On the other hand, as of the 31st of December 2005, a

¹⁷McFarlane, John. "Transnational Crime: Corruption, Crony Capitalism and Nepotism in the Twenty-First Century." Corruption and Anti-Corruption, edited by Peter Larmour and Nick Wolanin, ANU Press, 2013, pp. 131–45.

¹⁸Bryan Cave Leighton Paisner. 2022. *Corporate Criminal Liability – Perspectives from the US, UK and France*. [online] Available at: <<https://www.bclplaw.com/en-US/insights/corporate-criminal-liability-perspectives-from-the-us-uk-and.html>> [Accessed 17 July 2022].

¹⁹Middlebrook, Stephen T., and Sarah Jane Hughes. "Virtual Uncertainty: Developments in the Law of Electronic Payments and Financial Services." *The Business Lawyer*, vol. 69, no. 1, 2013, pp. 263–73.

corporation may be held accountable for any criminal offence. However, a corporation's legal responsibility is limited to offences that were "committed by their organs or representation."

Historically, individuals or groups acting on behalf of a corporation were not held criminally liable for the actions of the corporation. It was believed that a corporation was a legally fake creature that was incapable of committing criminal acts because it lacked the ability to develop the essential mens rea. This proposition was finally shot down by the Supreme Court in the case known as *New York Central & Hudson River Railroad v. U.S.* in 1909.²⁰ A violation of federal law occurred when an employee of a railroad firm offered refunds to shippers. The court affirmed the criminal conviction of the corporation after concluding that there was no valid reason why companies should not be held "responsible for and charged with the knowledge and purposes of its representatives, acting within the authority conferred upon them." The United States Supreme Court²¹ reached the conclusion that a company's criminal guilt might be imputed to it based on the advantage the corporation obtained as a result of the unlawful activities of its agents. The precedent set by this case and subsequent decisions have effectively brought the respondent superior theory from the field of tort law into the field of corporate criminal law. When an agent commits illegal conduct while acting within the boundaries of his or her apparent or actual authority, the corporation that employs the agent may be held liable for the agent's actions. The "collective knowledge doctrine" is an additional approach to the concept of criminal culpability for corporations. The requisite knowledge might be attributed to the company based on the collective knowledge of the directors and officers due to the fact that knowledge of illegal activity is frequently an element of the scienter component of a particular crime.²²

Therefore, there are essentially three things that need to be proven in order to establish criminal liability: When it comes to making sure that it is easier than ever before to prosecute corporate criminal culpability, the United Kingdom and France have taken a page from the United States' playbook. Because of these regulations, public prosecutors in all three nations are now authorised to vigorously pursue corporations for crimes that have been committed by their workers, officers, and agents. Along with their increased authority to hold corporations criminally liable, prosecutors in the United States, United Kingdom, and France now have access to new enforcement powers, which allow them to demand (and indeed receive) large settlements from corporations. This article in this series, which was also published today, examines these new enforcement powers. Criminal liability can also be premised on a failure to act when the accused was under a legal duty to act and was reasonably capable of doing so. This is known as the "failure to act" theory of criminal culpability. The legal obligation to act may be imposed directly by statute, such as the requirement to file an income tax return, or it may arise out of the relationship between the parties, such as the obligation of parents to provide food for their child. Both of these scenarios are examples of how the legal duty to act may be triggered. Statutes that impose legal responsibility in the absence of an objectively culpable act have come in for a great deal of criticism. It raises questions about justice to subject persons to the stigma of a criminal conviction without first demonstrating that they

²⁰ *New York Central R. Co. v. United States*, 212 U.S. 481 (1909)

²¹ *ibid*

²² LEE, IAN B. "Corporate Criminal Responsibility as Team Member Responsibility." *Oxford Journal of Legal Studies*, vol. 31, no. 4, 2011, pp. 755-81.

are morally responsible for their actions. In many instances, the goals of such legislation can be more effectively achieved through the use of civil sanctions, such as, for example, suits for damages, injunctions, and the revocation of licences. [Civil sanctions include:] [Civil sanctions include:] [Civil sanctions include:] [Civil sanctions include:] There is a variety of federal legislation that applies to corporations and under which criminal responsibility could be imposed. Some of these statutes include: Several of these federal statutes are broken out in further detail in other articles on our site. Despite the fact that federal statutes might be applicable, this does not indicate that federal statutes have the authority to override state laws that are similar. For instance, if a breach of the Occupational Safety and Health Act by an employer result in the death of an employee, the employer is still subject to prosecution under the homicide legislation of the state in which the death occurred.²³

“Section 70 of The Prevention of Money Laundering Act, 2002”

In the case of India, this provision has two main aims. First, this section aims at safeguarding individual rights and interests and secondly protecting society. If individuals are victims of money lending, then this section would prohibit any form of financial institution giving out funds that are illegitimate.²⁴ In addition, if individuals own some property but some financial institutions give them loans in cases of personal emergencies, then they will also have to have section 80 in their application form for credit against specific assets. In this case, when providing loan, it is required that some identification document of the owner and his or her guarantor be revealed, thereby enabling the lender know whether he or she can provide funds or not. Therefore, this section helps create accountability to the user who takes part in giving out a loan. Finally, section 70 seeks to ensure that legitimate deposits are not used to finance illegitimate activities and funds should only be given out to facilitate transactions. One way of achieving this is by allowing users to add other information about themselves. In addition, this section bars the transfer of funds through any means and channels that do not reveal the real account or identity of the beneficiary. Therefore, this section requires that money transferred through different channels be identified under specific accounts and that they should not include names of family members.²⁵

In the banking industry, there are various advantages associated with this section. Firstly, this section limits the use of certain activities like money remittances, remittances are made via many international sources and it therefore becomes very difficult for a person to trace their origin. Secondly, section 70 ensures that individuals receive the maximum amount of money that they deserve. For instance, one can only earn between \$20.00 and \$25,000 per day, provided the money transfer remains within this limit for a period of 10 years. Moreover, this

²³ the Guardian. 2022. *Anti-money laundering proposals ‘thundering disappointment’, say MPs*. [online] Available at: <<https://www.theguardian.com/business/2022/jun/10/anti-money-laundering-proposals-uninspired-insipid-mps-law-commission-review-corporate-criminal-liability>> [Accessed 17 July 2022].

²⁴ Santos, R. (2015). *Criminal Law in Modern Society*. New York: Oxford University Press.

²⁵ Murthy, Narayana N. R. “Corporate Governance and Its Relevance to India.” *India International Centre Quarterly*, vol. 38, no. 3/4, 2011, pp. 280–88.

section helps discourage people of using cash for payments and such payments should have a clear description of the payment. Furthermore, this section allows the government and public agencies to monitor all forms of transactions.

Section 70 of the PMLA²⁶ has several limitations.

For example, it restricts the amount of money that should be remitted to a particular entity . Under this section, this requirement cannot apply to any person, corporation or association. It also prohibits individuals from spending more than \$10,000 annually on non-revenue generating goods and services. These restrictions are unnecessary since these persons can still meet their basic needs and even go beyond the minimum requirements . As a result, most individuals and companies can only lend up to 100% . Nonetheless, while this section does not explicitly forbid transfers as long as it is only related to transfer of capital, it encourages fraud cases among borrowers by requiring collateral that can be returned to the owners before transferring the money. The section thus limits the ability of an individual to achieve a much higher goal than what he or she originally owed.²⁷

In most cases, the term "money laundering" refers to the process relating to the exchange of illicit currency for legal. A few common things that make up unlawful means of dealing with funds are money laundering transactions, bribery and counterfeiting. All these acts are highly discouraged in the business world. Nevertheless, even though illegal means of facilitating transactions may involve some small amounts, a large sum can be laundered through the process of bribing public officials. Thus, this section of the PMLA focuses mainly on drug trafficking. Drug trafficking is a crime that involves the distribution of drugs to the public, usually illegally to users including police officers and local leaders.

There are three major ways of carrying out money laundering. The first method involves smuggling of drugs into a country legally. During the time of transit, these drugs are often stored in containers inside small packages. Some of these packages are loaded onto trucks and later transported across borders. To gain entry, some smugglers send money to officials who can easily take care of the shipment of the drugs to the intended destination. Later, once smuggled into the country, the original buyers pay the proceeds to the traffickers in their original form. From my understanding, each packet contains 50 pills made out of cannabis, 30 capsules of cocaine, 200 amphetamines and 5 packs of ‘ganja’. When transporting these products from abroad, the courier will need authorization from the relevant authorities to conduct the transfer. After reaching the intended destination, the packets of drugs will usually disappear in the air on arrival at the final destination. In most African countries where I reside, the cost of transport to a city exceeds \$100,000 and so this case falls under this category.²⁸

The second method of money laundering is to use private houses without a physical sign of ownership. Through this aspect, one can pass off money as its original owner. Another way

²⁶ THE PREVENTION OF MONEY-LAUNDERING ACT, 2002, S70, ACT NO. 15 OF 2003

²⁷ Wiley.com. 2022. *Finance*. [online] Available at: <<https://www.wiley.com/en-us/etextbooks-and-courseware/finance>> [Accessed 17 July 2022].

²⁸ Altschuller, Sarah A., et al. "Corporate Social Responsibility." *The International Lawyer*, vol. 45, no. 1, 2011, pp. 179–89.

includes making sure that certain documents such as passports and social security cards are used for sending money. Most importantly, some of these money laundering procedures involve money remittances. Most of these funds are given out over the internet and some are also sent back to other countries that have no extradition facility. With these operations, the value of these profits increases tremendously, and hence more and more illegal immigrants are willing to become involved in drug trafficking.²⁹

Conclusion

It is possible to conclude that most offenders carry out money laundering transactions through banks. They can often get away with their actions, especially when they deal with illegal products. Such businesses can be found in every society irrespective of its location, culture and ethnicity. Therefore, the focus should be based on educating stakeholders in the business field about the various forms, types and effects of money laundering. Once this is understood, appropriate actions to combat the vice can be implemented at an early stage. The implications of introducing corporate criminal liability in the banking sector, as well as PMLA compliances, play a significant role in this respect. Corporate liability can take several forms, ranging from vicarious liability to duty-based obligation. Vicarious liability is a strict (absolute) form of secondary liability arising from the legal doctrine of respondeat superior, which is the common law doctrine of agency under which a party (the principal) is responsible for the acts committed (within the scope of employment) by its agents, having the legal right or duty to control their actions. Obligation-based responsibility regimes are types of secondary liability in which the principal is held accountable for the agent's wrongdoing only if he violates a legal duty - that is, if he fails to exercise due care in preventing or reporting a violation.

²⁹ Ramsden, B., & Nalani, M. (2013). National policy towards e-money laundering and fintech (2nd ed.). Cheltenham: Edward Elgar Pub. Ltd.