



Research Article

## The Interface between Corporate Fraud and Money Laundering in India: A Study of Legal Convergence and Enforcement Challenges

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DOI: <https://doi.org/10.5281/zenodo.20028033>

### Abstract

Corporate fraud and money laundering, that is characterized by a definite time interdependence, are two such offences that have led to threats to the integrity and governance of the markets in India. Although fraud occurring in the companies comes within the scope of criminalisation in the Companies Act 2013, the Prevention of Money Laundering Act 2002 (PMLA) targets the proceeds of a corresponding wrongdoing. Their contact has given a complicated landscape of implementation and needs an analysis by the legal, institutional and judicial regimes between them. The given paper will study the interconnection between fraud and laundering as a concept, analyse statutory as well as case law and outline significant issues of enforcement. The paper supposes that in the study of the landmark judgment in the form of Standard Chartered Bank v. Directorate of Enforcement, Iridium India Telecom v. Motorola Inc., SERIOUS fraud investigation office v. Nittin Johari and Vijay Madanlal Chaud, based on the comparison of the United Kingdom and the United States, it suggests that the corporate fraud and anti-money laundering regulation should be harmonised in a single enforcement.

### Manuscript Information

- ISSN No: 2583-7397
- Received: 01-04-2026
- Accepted: 28-04-2026
- Published: 04-05-2026
- IJCRM:5(3); 2026: 17-21
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- Plagiarism Checked: Yes
- Peer Review Process: Yes

### How to Cite this Article

Mishra S. The Interface between Corporate Fraud and Money Laundering in India: A Study of Legal Convergence and Enforcement Challenges. Int J Contemp Res Multidiscip. 2026;5(3):17-21.

### Access this Article Online



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**KEYWORDS:** Corporate Fraud, Money Laundering, Economic Offences, PMLA (Prevention of Money Laundering Act), Corporate Governance.

## 1. INTRODUCTION

### 1.1 Background

Economic liberalisation in India in 1991 resulted in the transformation of India into an open market-oriented economy, which was once a controlled economic system. This was subsequently accompanied by corporate growth and world capital inflows.<sup>1</sup> But the same liberalisation uncovered the loophole in the regulating checks, which witnessed the emergence of the greedy corporate scandals, like in Satyam Computer Services, IL&FS, Yes Bank, where the fake accounting and embezzlement of funds rocked the investor dependence.

Fraudulent deceptions are not the end of corporate scams: illegal profit is again transferred in a highly built system of money laundering. This crossroad makes fraud a personal corporate evil into a crime in the economy. The International requirement by the Financial Action Task Force (FATF) is to consider corporate offence as a predicate offence to prosecute money laundering<sup>2</sup>. This promise is fulfilled by the addition of the fraud-related provisions of the Companies Act and IPC to the schedule of the PMLA in India.

### 1.2 Purpose and Questions

This paper addresses the concept of the interplay of corporate fraud and money laundering based on Indian law. It is not only that its questions are:

1. So what is the overlap between the conceptual and operational worlds of corporate fraud and anti-money laundering laws?
2. What has the courts created to hold corporations criminally liable?
3. How are the institutional frameworks - SFIO, ED, SEBI - in their enforcement to collaborate/ conflict?
4. Which reforms can be made to balance deterrence and due process?

### 1.3 Methodology and Scope

It applies the doctrinal analysis of the statutes, the case law and policy documents, which is complemented by the comparative analysis of the UK and US regimes. It is concerned with text and judicial interpretation of law as an alternative to data. The time frame encompasses the developments up to 2026.

## 2. Conceptual Foundations

### 2.1 Economic Crime Continuum

Money laundering-corporate fraud is a spectrum; the former illegal wealth is a by-product; the latter is laundering<sup>3</sup>. Managerial fraud is addressed in the Companies Act, and the PMLA covers the cover-ups of any money transaction relating to the proceeds of a managerial fraud. Both are being sought after towards corporate responsibility and macroeconomic stability.

### 2.2 Defining Corporate Fraud

The term fraud in section 447 of the Companies Act 2013 assumes a very broad meaning that all that is given or not given or not disclosed with the aim of misleading and/or gaining an

unfair advantage or is detrimental to the interest of a company or its stakeholders<sup>4</sup>. Such a clear definition of fraud turns it into an ethical rather than a criminal offence in comparison to the earlier 1956 Act. The aim was endorsed in the yield of legislative intentions to restore investor trust in the wake of the Satyam debacle through parliamentary deliberations<sup>5</sup>. In Section 447, there is fraud- mens rea, or intentional act- and it punishes those who are involved with the direct commission of the misconduct and anyone who aids in the concealment or covering of the habit. It offers up to 10 years imprisonment and fines that are worth three times the value of the fraud, which implies that corporate crimes are a severe economic crime.

### 2.3 Defining Money Laundering

PMLA section six (3) is a criminal charge concerning any operation connected to the results of concealing offences, property, obtaining or signalling as untainted assets. The clause is similar to the three-stage typology of FATF, which includes placement, layering and integration. Section 24 shifts the burden of the proof, and this section makes the accused prove that the assets are acquired lawfully<sup>6</sup>.

### 2.4 Predicate Offence Relationship

A predicate offence that facilitates laundering is fraud. The proceeds of a crime in PMLA Section 2(u) are the gains which accrue as a result of fraud under the Companies Act, the IPC or the SEBI.<sup>7</sup> Section 447 is situated in PMLA Schedule Part A because the 2019 amendments made connect the culpability of corporations as well as finances in a smooth way.

### 2.5 Corporate Mens Rea

This issue surrounding the application of mens rea to artificial legal persons was answered in The problem of applying mens rea to artificial legal persons received an answer in the case of Standard Chartered Bank v. Directorate of Enforcement, where corporations were treated as liable to an individual charge, and likely the imposition of a fine, though a fine is of necessity critical in the case.<sup>8</sup> In the case of Iridium India Telecom v. Motorola Inc Iridium, it was established that divergence of the will and intent of the directors and top management- the company directing mind and will- is attributed to the company.<sup>9</sup> With such decisions, there will be unified prosecution on both of the get-rich-quick laws.

## 3. Legislative Framework

### 3.1 Companies Act 2013

**Besides Section 447, the Act provides a right to a list of anti-fraud mechanisms:**

- Section 448 (penalising false statements);
- 449 (false evidence in investigations);
- CHAPTER 212, 212 (empowering the Serious Fraud Investigation Office (SFIO)).

In determining cases within the larger interest of law, the SFIO may choose to do so by the central government on a given course, and its interest report (under Section 212(12)) is a valid complaint of prosecution.<sup>10</sup> But internal regulation and not

seizure is also part of the Act, which is an area taken by the PMLA.

### 3.2 Prevention of Money Laundering Act 2002

The laws passed are binding by the UN conventions in the PMLA: Section 5 (provisional attachment of property).

- Section 8 (adjudication);
- Section 43 (special courts);
- Section 50 (ED's powers of summons).

In 2019, the definition of proceeds of crime was extended to include the property that was obtained indirectly and was affirmed in the case of Vijay Madanlal Chaudhary vs. Union of India.<sup>11</sup> The process of empowering attachment and confiscation is possible under the law, but there has been controversy over due process based on its strong presumptions.

### 3.3 SEBI Act 1992 and Regulations

Regulations, such as the PFUTP2003 and the LODR 2015, have the capacity to regulate markets, prevent fraud and impose fines on the offenders<sup>12</sup>. SEBI investigations are often initiated in an attempt to unravel the fund diversion mechanism to promote money laundering. In Sahara, India, Real Estate Corp, Ltd v. SEBI, the Supreme Court recognised the duality of the operations of SEBI as a regulator and pseudo-prosecutor in protecting investors<sup>13</sup>.

### 3.4 Indian Penal Code 1860

Hegemonic clauses concerning cheating (Sections 415-420), criminal breach of trust (405-409) and forgery (463-467) are still used as predicate crimes to PMLA. The individual liability, as opposed to the common one, unless a statute states the existence of vicarious responsibility, is the one that needs to be taken into account, as has been reformulated in Sunil Bharti Mittal v. CBI<sup>14</sup>.

### 3.5 Integration and Institutional Overlap

The various regulators, such as the SFIO (Ministry of Corporate Affairs), ED (Ministry of Finance), SEBI (Department of Economic Affairs) and CBI, have no statutory coordination. Trying to prevent the overlap, the Law Commission Report No. 276 (2021) has proposed one investigative hierarchy.<sup>15</sup> but this remains to be implemented.

## 4 Judicial Developments

### 4.1 Corporate Criminal Liability

In the case of Standard 0 Chartered Bank purposive interpretation, to wit, in cases involving corporations, the reason why corporations cannot be criminally liable cannot be used in defence because of the physical absence of corporations.<sup>16</sup> This ruling brought more strength to the deterrent and allowed corporations to be subject to a wide range of prosecutions under economic crime laws.

### 4.2 Attribution Doctrine

Iridium India Telecom institutionalised the theory of a directing mind, such that the Indian law follows the UK and Canadian precedents.<sup>17</sup> Thus, the intentions of the corporation can be

inferred from the evidence of the actions of the controlling executives, and it is possible to relate the fraud (intentional deception) and the laundering (concealment of the proceeds).

### 4.3 Stringent Approach to Economic Offences

Fraud Investigation following sub. Serious. According to the Supreme Court, corruption in the corporation is prevalent and pervasive, and thus, the requirement of bail should be raised.<sup>18</sup> On the same note, P.chidambaram v. Directorate of Enforcement highlighted that the economic infractions of the law affect the growth of a nation and therefore should not be given broad discretion by the court.<sup>19</sup>

### 4.4 Constitutionality of PMLA

The ultimate determination of the constitutionality of the procedures of the PMLA was the matter of the case of Vijay Madanlal Chaudhary, in which the Court supported the provision on the powers of the ED to arrest and attach.<sup>20</sup> Relunched as a special law to address the international obligations, its flipped charge was diluted based on the severity of laundering.

### 4.5 Safeguarding Rights

Viewed as being a special law in order to conform to the international obligations, its inverse weight was deemed according to the severity of the laundering.<sup>21</sup> By this reasoning, the courts have now called on ED to show prima facie in relation to the relation between assets and predicate offences before custody or attachment is given as a measure of balancing enforcement against liberty.

## 5. Enforcement Architecture

### 5.1 Serious Fraud Investigation Office (SFIO)

The SFIO investigates big and complex frauds because it is under Section 212. Despite being multidisciplinary, insufficiency of manpower inhibits its performance - the number of investigators is below 200 in the country.<sup>22</sup> Mean cases have a more than three-year take-off, the irrevocable deterrent effect.

### 5.2 Enforcement Directorate (ED)

According to the powers of PMLA, the ED prosecutes money laundering and attaches property. The examples of Wide recoveries in Nirav Modi and ICICI- Videocon demonstrate the capacity and controversies of the long-term custodial interrogation<sup>23</sup>. The insufficiency of the transparency of the agency concerning closed cases reporting gives an opportunity to raise concerns over the independent control.

### 5.3 Securities and Exchange Board of India (SEBI)

SEBI is also familiar with infiltrating corporate fraud through market investigations. There are, however, gaps in coordination as evident in the Sahara India Real Estate Corp litigation, where ED proceedings are pursued ahead of the action of SEBI, and thus a jurisdictional uncertainty emerges<sup>24</sup>.

#### 5.4 Institutional Coordination

Absence of a unified protocol is going to cause a multiplicity of attachments to the same property and duplicity in the witness statements. The Law Commission proposes a Central Economic Offences Coordination Council to coordinate the investigations<sup>25</sup>.

#### 5.5 Evidentiary Complexities

Electronic data security is poor. Evidence Act section 65 B states that when data is not properly certified, then it cannot be used as evidence, which is what happened to Anvar P. V. v. P.K. Basheer.<sup>26</sup> The cross-border money trails are founded on MLAT requests, which are normally delayed by bureaucracy.

#### 5.6 Stakeholder and Human Rights Impact

Such aggressive attachment is most of the time helpful to innocent shareholders, the unfortunate minority shareholders, creditors, and the suffering minority employees who have taken years to be paid as a consequence of PMLA Section 8(8). The scholars state that the regime is merely symbolically brutal but actually quite unjust<sup>27</sup>.

### 6. Comparative Perspective

#### 6.1 United Kingdom

Enforcement of fraud and money laundering is regulated by the Serious Fraud Office of the UK. It charges companies and negotiates Deferred Prosecution Agreements under the Criminal Acts 1987 and 2002 of Proceeds of Crime. Conformance and deterrence are achieved in high-profile settlements (Rolls-Royce, 2017)<sup>28</sup>.

#### 6.2 United States

The US collaborates with the DOJ, SEC and FinCEN. The Money Laundering Control Act of 1986 made money laundering illegal, and transparency is set under the Sarbanes-Oxley Act of 2002. The Dodd-Frank 2010 at the DOJ/whistleblower provisions of the Yates Memo promote internal reporting<sup>29</sup>.

#### 6.3 Implications for India

The deterrent architecture of India could be improved through centralised enforcement and DPA-style cooperation. Collocation of the agencies of corporate law and financial crime, whistleblower protection and compliance credits would be used to transform the current punitive model into a preventive one.

### 7. Challenges and Gaps

1. Fragmentation: There are overlaps between the turf of different statutes and agencies.
2. No uniformity in jurisprudence: The non-uniformity of the lower courts in parallel Companies Act and PMLA trials.
3. Resource deficit: Availability of resources (lack of forensic accountants and resources for technology).
4. Delay Procedural: complex cases require more than five years.
5. Victim - Redress: An incomplete compensation structure for investors.

6. Technology: Frauds in cryptocurrency and digital assets are not subject to trace requirements<sup>30</sup>.

### 8. Reform Agenda

#### 8.1 Legislative Harmonisation

Amend the Companies Act to mention the PMLA definitions of proceeds of crime, to ensure concerted application. Provide joint power in conducting investigations and obligatory information exchange.

#### 8.2 Unified Economic Offences Authority

Establish the ED, SFIO, SEBI and CBI Statutory Economic - Offences Coordination Council, with a retired Supreme Court judge as chairperson. When the evidence is in-house, there will be no duplication, and transparency will be increased.

#### 8.3 Specialised Judicial Benches

Bring Financial Crime Benches to High Courts to expedite and combine a range of corporate law and forensic accounting work.

#### 8.4 Compliance Incentives

Embrace Deferred: Concord to allow companies that self-disclose and pay victims to get out of conviction on condition that they sign a police compliance.

#### 8.5 Transparency and Oversight

Compulsory CAG scrutiny of agencies of economic crime and annual performance evaluation by parliament. Establish a statutory ombudsman to avoid probing malpractice.

#### 8.6 Technological Capacity

Create state-of-the-art digital forensics labs, construct blockchain analytics teams and provide cross-agency training. The automatic data exchange systems will have to be institutionalised with the cooperation of foreign FIUs (Financial Intelligence Units).

### 9. CONCLUSION

Corporate fraud with money laundering clearly defines the nexus of the regime of economic crime in India. The legislative innovation has been considerable, and the interpretation of the law by the courts has broadened the corporate liability to a certain level. But the continued practice of spotty enforcement mutes the desired deterrence. Convergence, legislative, institutional, and technological, is now needed to ensure effective governance.

Through the congruent framework of corporate fraud prevention coupled with anti-money laundering enforcement, India would develop a multifaceted system that would not only penalise the misdeeds of the past but would also forecast the threat in the future. An improved system of enforcement, achieved by re-engineering the statutory alignment, judicial efficiency, and open and transparent oversight, would create an ethical corporate behaviour and would keep investors confident in India, making it a more reliable member as part of the global financial governance.

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