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REAL ESTATE AS A VEHICLE FOR MONEY LAUNDERING IN INDIA: CONCEPTUAL FRAMEWORK, TYPOLOGIES AND REGULATORY CHALLENGES

AUTHORED BY - DEVANGANA MISRA

ABSTRACT:

Money laundering poses a substantial threat to financial stability and regulatory governance, especially in sectors that can absorb massive amounts of cash with little transparency. India's real estate sector has constantly been highlighted as one of the most vulnerable channels for money laundering. This study addresses the conceptual foundation of money laundering under Indian law, focusing on the Prevention of Money Laundering Act of 2002. It also examines the structural flaws in the Indian real estate market, such as the persistence of cash-based transactions, fragmented land records, and disparities in valuation. In addition to critically assessing judicial remedies, the paper examines important laundering typologies include undervaluation, benami transactions, and the use of shell organisations. The relationship between benami practices and the cash economy is given particular focus, emphasising how both processes work together to make it easier to integrate and conceal illicit income. In order to effectively combat real estate-based money laundering, the paper's conclusion makes the case for a change toward preventive legislation, more transparency, and institutional coordination.

KEYWORDS -: Money Laundering, Real Estate-Based Money Laundering, Proceeds of Crime, PMLA, Benami Transactions, Beneficial Ownership, Cash Economy, Shell Companies, AML Enforcement, Property Valuation

INTRODUCTION:

Money laundering is more than just a financial crime it is a systemic practice that affects economic governance and institutional legitimacy. It allows for the conversion of criminal money into assets that appear genuine, undermining public trust and distorting market structures. Section 3 of the Prevention of Money Laundering Act, 2002 (PMLA)¹ defines

¹ Prevention of Money Laundering Act 2002, § 3. (India).

money laundering as any conduct related to the proceeds of crime, including concealment, possession, acquisition, use, or projection as untainted property.

In *Vijay Madanlal Choudhary v. Union of India*², the Supreme Court declared that money laundering is a continuing offence that lasts as long as a person enjoys the benefits of crime. This view is especially relevant in real estate, where assets provide long-term value preservation, appreciation, and social legitimacy.

The Prevention of Money Laundering Act, 2002 (PMLA) serves as the primary statutory framework in India for combating money laundering. Section 3 of the Act defines money laundering broadly as any conduct involving the proceeds of crime, including its concealment, ownership, acquisition, use, or projection as untainted property. This broad term demonstrates a legislative aim to include not only the first act of concealment, but the complete chain of action that legitimises illicit monies.

The standard three-stage model of money laundering³, placement, layering, and integration is a useful analytical framework. Real estate plays an important role in this process, especially during the integration stage, when illicit monies are turned into seemingly legitimate assets. The sector's potential to absorb considerable wealth, along with its structural opacity, makes it particularly appealing for laundering activities.

THE DYNAMICS OF MONEY LAUNDERING AND REAL ESTATE

The real estate industry offers a number of features that make it very appealing for money laundering. Property transfers may include fragmented documentation, informal talks, and subjective appraisal, in contrast to financial transactions, which frequently leave thorough electronic traces. These characteristics make it possible to hide the actual nature of financial transactions.

Real estate is a high-risk industry for money laundering, according to the Financial Action Task Force (FATF)⁴ on a global scale. The historical frequency of undeclared cash transactions often

² *Vijay Madanlal Choudhary v Union of India* (2022) 10 SCC 1.

³ Financial Action Task Force (FATF), *Money Laundering & Terrorist Financing through the Real Estate Sector* (2007)

⁴ FATF definition

referred to as "black money" in real estate transactions in India exacerbates this susceptibility. Real estate deals enable the conversion of liquid illicit monies into fixed assets that not only preserve value but frequently increase over time. Furthermore, the social legitimacy associated with property ownership adds another layer of concealment, allowing individuals to more easily integrate unlawful income into the formal economy. Another important consideration is the intricacy of ownership structures. Individuals, partnerships, corporations, or trusts can own property, and layered structures may disguise the underlying beneficial owner's identity. This complication is sometimes exploited through benami transactions, in which one person owns property while another provides the consideration.

Structural Vulnerabilities In The Indian Real Estate Sector

The vulnerability of India's real estate sector to money laundering is strongly founded in systemic and structural vulnerabilities, not just criminal cleverness.

1. Cash-based Transactions

One of the most serious risks is the traditional reliance on cash transactions. For decades, property transactions in India have followed a dual structure, with a portion of the consideration recorded formally and the remaining paid in cash. This approach enables parties to escape taxes while converting undeclared riches into official assets.

2. Valuation Discrepancies

The establishment of circle rates⁵ government-determined minimum property values provides additional opportunities for manipulation. Because these rates frequently fall below actual market values, parties may underreport the transaction value and transfer the balance via unrecorded cash transfers. Overvaluation, on the other hand, might be used to rationalise unexplained cash inflows or to promote fraudulent loan transactions.

3. Fragmented Land Records

India's land record system⁶ is primarily decentralised, with major variances between states. Incomplete or outdated documents make it challenging to authenticate ownership and track property transactions. This lack of regularity allows for fraudulent transfers and hinders enforcement operations.

⁵ Income Tax Act, 1961, § 50C (India)

⁶ Digital India Land Records Modernisation Programme (DILRMP)

4. Uncertain Ownership Structures

People can hide beneficial ownership by using trusts, nominee arrangements, and layered corporate organisations. When several transactions are utilised to conceal the source of funds during the layering stage of money laundering, these arrangements work very well.

5. Fragmentation of Regulation

A number of organisations, including state registration authorities, tax departments, and enforcement agencies, are involved in the regulatory system that governs real estate transactions. These organisations' lack of smooth coordination leaves gaps that could be used for money laundering.

Types Of Money Laundering Through Real Estate Sector

In the real estate industry, money laundering is typified by a variety of complex typologies that are frequently combined.

1. Undervaluation of property transactions

The deliberate undervaluation of property transactions is one of the most widely used strategies of laundering illicit monies in the real estate industry. In such cases, the property is formally registered at a value much lower than its true market value, with the remaining amount transferred in unaccounted cash. This dual-structure transaction allows individuals to simultaneously dodge taxes and bring illicit wealth into the formal economy. From a legal standpoint, undervaluation distorts financial reporting transparency and impairs regulatory supervision. Although statutory procedures, like as Section 50C of the Income Tax Act of 1961⁷, strive to solve this issue by tying stated transaction values to stamp duty valuations, the continuing discrepancy between circle rates and actual market prices allows for manipulation. In reality, this strategy essentially combines the placement and integration stages of money laundering. Unaccounted funds are both injected and legitimised inside a single transaction. In addition to tax avoidance, undervaluation raises evidentiary issues. Because official documentation only reflects a portion of the consideration, authorities frequently must rely on circumstantial evidence to demonstrate the presence of unaccounted payments, complicating enforcement.

⁷ Income Tax Act, § 50C

2. Overvaluation of Property Transactions

In contrast to undervaluation, overvaluation entails intentionally boosting the claimed value of property transactions. This strategy is frequently used to justify unexplained money by framing it as part of a legal investment. For example, a property worth ₹50 lakh may be reported as ₹1 crore, offering a formal explanation for the additional monies. Overvaluation is especially common in cross-border transactions and corporate structures, where exaggerated property valuations can be used to legitimise foreign investments or expedite the transfer of funds between countries. It also plays an important role in financial fraud, particularly when inflated valuations are used to get loans from financial institutions. Overvaluation presents unique regulatory problems when compared to undervaluation. While undervaluation reduces tax revenue, overvaluation distorts financial systems by allowing illegal capital to circulate under the cover of lawful transactions. It also makes it more difficult to distinguish between legitimate speculative investments and money laundering, especially in quickly appreciating urban markets.

3. All Cash Transactions

Cash is one of the most straightforward and effective ways to launder criminal funds in the real estate industry. All cash transactions include paying the entire or a large portion of the consideration outside of traditional banking channels, leaving little to no financial trail. Historically, similar techniques have been common in India, especially in high-value property purchases. The lack of documentation makes it extremely difficult for enforcement agents to track down the source of funds or establish a link to predicate offences. Once the property is acquired, the illicit monies are embedded in a lawful asset, completing the integration stage of money laundering. The judiciary has consistently acknowledged⁸ the wider ramifications of such actions. Economic offences involving unexplained funds have been considered as systemic dangers to financial stability, rather than individual infractions. The continuation of cash-based transactions, despite rising digitisation, illustrates the deeply ingrained structure of the informal economy in the real estate sector.

⁸ State of Gujarat v Mohanlal Jitmalji Porwal (1987) 2 SCC 364

4. Benami Transactions (Third-Party Ownership Structure)

Benami transactions are one of the most prevalent types of money laundering in India. These arrangements involve the acquisition of property in the name of one person (the benamidar), with the consideration given by another, who retains the genuine or beneficial owner⁹. The basic goal of such arrangements is to disguise ownership while separating the true beneficiary from the asset. This not only complicates enforcement, but also allows people to avoid paying taxes and complying with regulations. The identification of benami transactions has relied heavily on judicial interpretation. Courts have constantly highlighted that the finding of such agreements is based on considerations such as the source of finances, property possession, and the parties' intentions. The emphasis on substance over form demonstrates that formal documentation may not fully capture the underlying reality. Despite statutory prohibitions under the Benami Transactions (Prohibition) Act, the practice continues, typically in more sophisticated forms involving family members, employees, or multiple corporate organisations. Benami transactions promote all three steps of money laundering (placement, layering, and integration), making them an especially effective instrument for concealing illicit income.

5. Shell Companies

Shell firms are entities that exist primarily on paper and do not engage in significant business activities. These businesses are frequently used as conduits for money laundering, notably in real estate deals. In this strategy, unlawful monies are routed through one or more shell corporations, and property is purchased in their names rather than individuals'. This establishes numerous layers between the unlawful money and the finished asset, making it difficult for authorities to identify the true owner. For example, a person may establish three separate businesses. The funds are transferred from one company to another before being used by the third to purchase property. On paper, everything appears genuine, but in reality, all entities are controlled by the same person. In *Rohit Tandon v. Directorate of Enforcement*¹⁰ the Supreme Court acknowledged the part shell corporations play in money laundering, especially when it comes to transferring undeclared funds. These businesses aid in hiding ownership and

⁹ Prohibition of Benami Property Transactions Act, No. 45 of 1988 (India).

¹⁰ *Rohit Tandon v. Directorate of Enforcement*, (2018) 11 SCC 46.

the source of funding when they are utilised in real estate.

6. Property Flipping and Layering through Multiple Transactions

Property flipping involves the rapid buying and selling of property, often between related parties or controlled entities, within a short period. Each transaction is recorded as a legitimate sale, but the cumulative effect is the creation of a complex chain that obscures the origin of funds. This strategy is very useful during the layering stage of money laundering. By introducing many transactions, the link between the initial unlawful funds and the end asset becomes more difficult to prove. Even if individual transactions appear to be lawful, the overall trend may point to suspect activities. In many situations, property flipping is paired with valuation manipulation, with each succeeding sale reflecting a value change, confounding the financial trail even more. This technique emphasises the adaptive character of money laundering strategies, in which legal processes are used to achieve illegal goals.

7. Use of Construction and Development Projects

Large-scale building and real estate development projects create an ideal environment for laundering illicit monies. These projects often include significant and ongoing financial flows, diverse stakeholders, and flexible cost structures, all of which can be managed to conceal the movement of funds. Developers may inflate building prices, fabricate false expenses, or redirect funds through contractor payments. Because many of these expenditures are difficult to independently verify, they are an excellent way to incorporate illicit monies into legitimate economic activity. Once the project is completed, the sale of units provides revenue that looks to be authorised, bringing the washing cycle to an end. The scale and complexity of such projects make identification exceedingly difficult, especially in the absence of stringent auditing and control procedures.

8. Cross Border Real Estate Transactions

Cross-border transactions are one of the most sophisticated types of real estate-related money laundering. These involve the transfer of funds across borders, usually via offshore firms, foreign direct investment (FDI) methods, or informal systems like hawala. In such circumstances, criminal cash earned domestically may be transported abroad and then reinvested as foreign investments in real estate developments. This

procedure not only obscures the source of cash, but also takes advantage of variances in regulatory frameworks between nations. The issues of cross-border laundering are enormous. Enforcement is frequently hampered by jurisdictional restrictions, a lack of international collaboration, and the use of tax havens. While legislative systems such as the PMLA have provisions for attachment and seizure, their success is highly reliant on cross-border cooperation.

Benami Transactions and the Cash Economy

The relationship between benami transactions and the cash economy lies at the heart of real estate-based money laundering in India. These practices are not isolated anomalies but deeply embedded features of the market. A benami transaction separates legal ownership from beneficial ownership, allowing persons to disguise their identities while maintaining control over the property. In *Binapani Paul v Pratima Ghosh*¹¹, the Supreme Court underlined the importance of determining the true nature of such transactions by investigating the source of funds and the parties' intentions.

In *Valliammal v Subramaniam*¹², the Court identified benami arrangements based on considerations such as source of consideration, property possession, and party relationships. These judicial principles emphasise the need of looking beyond formal paperwork to discover the underlying truth. The cash economy supports these behaviours by allowing for untraceable transactions. Despite legislative efforts to reduce cash transactions, the prevalence of such activities reflects broader socioeconomic reasons, such as high transaction costs and cultural acceptance of informal arrangements.

The Supreme Court's decisions in *CIT v Durga Prasad More*¹³ and *Sumati Dayal v CIT*¹⁴ emphasise the importance of considering human probabilities and surrounding circumstances while assessing transactions, rather than relying exclusively on formal records.

¹¹ *Binapani Paul v Pratima Ghosh* 2007 (6) SCC 100

¹² *Valliammal v Subramaniam* 2004 (7) SCC 233

¹³ *CIT v Durga Prasad More* AIR 1971 SUPREME COURT 2439

¹⁴ *Sumati Dayal v CIT* AIR 1995 SUPREME COURT 2109

Enforcement Challenges

Despite a robust legal framework, enforcement of anti-money laundering laws in the real estate sector remains fraught with challenges. Despite a robust legal framework, enforcement of anti-money laundering laws in the real estate sector remains fraught with challenges. One of the most challenging challenges is demonstrating a direct relationship between property and illicit finances, especially in cases involving several transactions and sources of revenue. The lack of a centralised beneficial ownership registry hampers the identification of the genuine owner.

- **Evidentiary burdens and tracing**

Even the most stringent formal statutes might fail if the evidence is insufficient. Real estate laundering cases may involve indirect evidence, such as circumstantial fund trails, market-value abnormalities, proxy ownership, tax irregularities, or rapid asset acquisitions that are disproportionate to legitimate income. Although the PMLA has presumption and burden-related rules¹⁵, tracing profits to immovable assets remains difficult when records are insufficient, contributors are stacked, or the acquisition is mixed with genuine monies.

- **Fragmented Institutional Records**

Fragmented institutional data include land registration documents, revenue records, corporate ownership records, tax filings, and bank trails, which are typically not integrated into a uniform beneficial ownership map. This fragmentation enables sophisticated actors to exploit informational gaps between agencies, even if each isolated document appears compliant. Effective anti-laundering enforcement in real estate depends not only on statutory powers, but also on cross-database coordination, timely information sharing, and functional cooperation across FIU-linked systems, registration authorities, tax authorities, and enforcement agencies.

- **Limited preventative compliance in the sector.**

The effectiveness of the PMLA's reporting-entity system is dependent on its execution. When, real estate intermediaries lack AML training, fail to identify beneficial owners, or approach compliance as a formality, suspicious trends go undetected, and transaction trails are lost at the entry point. FATF guideline emphasises that poor levels of client

¹⁵ Prevention of Money Laundering Act, 2002, §§ 3, 24.

due diligence and beneficial ownership verification are among the most significant impediments to effective risk-based regulation of the real estate sector.

○ **Litigation and Delay**

Notice, provisional attachment, adjudication, appeals, and, in the case of the PMLA, a connection to criminal proceedings before a Special Court are all part of Benami and PMLA processes. Due process requires this multi-layered process, but it can also lead to drawn-out litigation, delayed conclusion, and practical challenges in maintaining possession or value while the case is pending.

○ **Normative evaluation**

From a legal-policy standpoint, the current framework is strong on confiscatory authority but inconsistent on preventative transparency. The statutes contain broad definitions of property, proceeds, beneficial ownership, attachment, adjudication, and confiscation, which empower the State to interfere even if nominal title does not represent economic reality. However, correct beneficial ownership disclosure, strong gatekeeper compliance, and the ability to rebuild financial realities behind nominally legitimate property records remain critical to this framework's success. As section 3 and its explanation do not limit money laundering to the first act of acquisition, the PMLA is especially useful in addressing the ongoing enjoyment of tainted real estate. Although familial exceptions, mixed-source funding, and intricate relational transactions may still result in challenging borderline cases, the Benami Act is particularly effective in combating name-lending and fake ownership structures. Stronger beneficial ownership verification at the time of property intermediation and registration, stricter oversight of real estate agents and other gatekeepers as reporting entities, better integration of land, tax, and corporate records, and more doctrinal clarity regarding the overlap and sequencing of PMLA and Benami proceedings in relation to the same asset are all necessary for a cogent regulatory response.

The fundamental issue with real estate transactions that facilitate money laundering is not only that buildings and land can hold illicit value, but also that the industry makes it possible for criminal wealth to be passed off as legitimate ownership through proxies, opacity, fragmented records, informal consideration structures, and socially acceptable family or entity-based arrangements. These traits make real estate an ideal vehicle for transforming criminal funds

into long-term, appreciating, and seemingly lawful assets.

Indian law reacts with two complementary statutes.

The PMLA targets the unlawful derivation, possession, acquisition, use, projection, and seizure of property related to listed offences, whereas the Benami Act fights sham and disguised ownership patterns that typically assist such laundering. Together, they comprise a powerful legal framework, but their true effectiveness depends on preventive compliance, beneficial ownership transparency, inter-agency coordination, and ongoing evidentiary capacity in the enforcement system.

Policy Implications and The Way Forward

While India's legal structure grants considerable powers for attachment and confiscation of property, its effectiveness is limited by deficiencies in preventive mechanisms. Addressing real estate-related money laundering necessitates a transition from reactive to proactive regulation. Key reforms required include the establishment of a centralised beneficial ownership registry, the integration of land and financial databases, and more stringent regulation of intermediaries as reporting organisations. Technological technologies, like as data analytics and artificial intelligence, can help discover suspicious transaction trends.

Comparative nations, such as the United Kingdom and the United States, highlight the value of transparency and coordinated regulatory supervision in reducing risks.¹⁶

CONCLUSION

The use of real estate as a tool for money laundering in India reflects deeper structural and behavioural tendencies in the economy. Benami transactions and cash-based trades are not only illegal, but also reflect systemic inefficiencies and socioeconomic realities.

Although legislative and judicial changes have reinforced the legal environment, there are still substantial obstacles in enforcement and transparency. Addressing these vulnerabilities requires a comprehensive approach that includes law reform, technical innovation, and institutional collaboration. Ultimately, protecting the integrity of the real estate industry is

¹⁶ Economic Crime (Transparency and Enforcement) Act 2022 (United Kingdom). FinCEN, Real Estate Geographic Targeting Orders (United States).

crucial not only for preventing money laundering, but also for preserving fairness, transparency, and trust in the overall financial system.

