

## Research Article

# Strengthening Transparency: A Review of the SBO Framework and AML Regulations in India

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### Article History

Received: 28.02.2026

Accepted: 22.03.2026

Published: 06.04.2026

**Abstract:** The paper is a critical review of the complex nexus relating to the Significant Beneficial Owner framework, as well as the anti-money laundering laws of India, and in particular, the Prevention of Money Laundering Act 2002. It discusses how the statutory provisions of the PMLA even after it has been amended multiple times have encountered interpretative issues which impact its effectiveness in fighting financial crimes as well as providing economic stability. Specifically, the paper investigates the judicial interpretations, notably those arising from cases like Vijay Madanlal Choudhary v. Union of India, that underscore the persistent complexities in defining beneficial ownership and applying anti-money laundering regulations. The present review also addresses the legal intent of the SBO framework being incorporated in the Indian legal framework, what opportunities the approach has in the context of making corporate organization more transparent and avoiding the risks of the opaque character of ownership. The discussion extends to how these judicial pronouncements, along with others such as Pankaj Bansal v. Union of India, necessitate a re-evaluation of the key provisions within the Prevention of Money Laundering Act. The paper also examines the impact of the postulations of the financial action task force on beneficial ownership transparency on the Indian regulatory system and specifically in the financial services sector.

**Keywords:** Money Laundering, Significant Beneficial Owner, PMLA, Corporate Transparency, Financial Crimes, India.

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## INTRODUCTION

The paper discusses the complex interdependence between the topic of Significant Beneficial Owner framework and the India anti-money laundering legal framework, and critically analyzes how they should be applied jointly towards fighting financial illicit practices. In particular, it looks into the issue of how the identification and disclosure of Significant Beneficial Owners will promote transparency and boost the Prevention of Money Laundering Act of 2002, which is one of the main pillars of preventing financial crimes in India. The Prevention of Money Laundering Act in spite of the good provisions against organized crime has been faced with a lot of interpretation challenges and statutory mercuriality using multiple amendments creating complexities in its punitive machineries. The complexity of this interaction requires a careful examination of the existing model so that its effectiveness in preventing illegal financial transactions and encouraging corporate responsibility can be checked. The efforts of the Indian government to address money laundering can also be addressed with references to the fact that it has been complying with international anti-money laundering standards and has been part of international efforts to curb the financial malpractices. This has been on the increase where legislative progress is being made on positive ownership disclosure to conform with the international tenets such as the G20 Principle 1. This will encompass enforcement of sound systems that target unearthing the real beneficiaries of the corporate systems, hence clamping openings to illegal financial transactions. Nonetheless, there is still an element of scrutiny as to the efficiency of the Prevention of Money Laundering Act in regulating money laundering activities and the effectiveness of its enforcement agencies irrespective of their efforts. The interesting feature of this examination is the way the judiciary has interpreted the Act especially in relation to the independency of money laundering as an offense in its own right independently of its predicate crimes and the consequent contradictory judicial views and interpretative disorder. A

combination of the intrinsic set of complexities that surround the establishment of the coverage and usage of the PMLA and the lacks of legal limits within which an investigation, attachment, and prosecution complaint should be established present serious concerns in regards to the establishment of both the basic rights and due process. Such ambiguities highlight the need to thoroughly examine the structure of the PMLA in order to determine how its provisions conform with constitutional jurisprudence with particular reference to providing safeguards against testimonial compulsion. In addition, the practical application of the PMLA has shown that it has some bottlenecks within the investigating agencies such as lack of appropriate understanding of money laundering crimes and the inability to conduct financial inquiries at an earlier stage which hinders the provision of evidence beneficial in proving predicate crimes in a court of law.

## THE ANTI-MONEY LAUNDERING LANDSCAPE IN INDIA

The key element of this landscape is the Prevention of Money Laundering Act of 2002, which generally outlines and criminalizes the involvement in various things of legitimizing the illegally gained proceeds, and, thereby, in this case, the Enforcement Directorate has the ability to investigate and prosecute such cases. PMLA has received a severe criticism with some rulings, including those in the Vijay Madanlal Choudhary and the Pankaj Bansal cases, emphasizing the perceived flaws in its core provisions and the efforts of the enforcement agents. These judicial interventions highlight the persistent uncertainties in the interpretation concerning the PMLA that often create confusion over the punitive machine and also the concept of how money laundering offences and their predicate offences are interrelated. The Act itself is holistic in its provisions of prevention although frequent revisions are significant to cope with the changing techniques used in money laundering. The incessant changes of the regulatory system are symptoms of the dynamic character of financial crime and the need to adapt legislation to the quick development curves in preventing the complex criminal actions. As an example, the powers of attachment under Section 5 of the PMLA is conditional on a predicate crime and ends up mixed with the money laundering criminal trial, thus without incentive of its own. Furthermore, wide ranging mandates of the Directorate of Enforcement in terms of Section 50 of the PMLA especially the provision requiring summoned individuals to make truthful statements have also occasioned criticism in terms of compulsion in terms of testimonial ductus and the protection against self-incrimination. These arguments give rise to an enhanced analysis of the compliance measures of the PMLA with constitutional protection and natural justice norms. To compound this, the financial institutions and banks in India are required by the PMLA to ensure that all transactions are carefully logged and the information of the client identity in the state of India are equally detailed to facilitate the detection and prevention of money laundering operations in this country. The latter applies to regular verification of the client records, thus guaranteeing their continued compliance and helping enforcement officials to track the illegal funds. This powerful infrastructural arrangement of transaction reporting alongside customer due diligence is essential in producing the intelligence required in proactive prevention and detection of financial crime. The fact that the PMLA is subject to amendments every now and then has added to the operational environment already complicated by other interpretative complexities of the same, forcing the financial institutions to proceed with caution to avoid unwanted misinterpretations as well as avoidable liabilities. It must be a continuous process of being adaptive and this is reminiscent of the guidelines of the Financial Action Task Force and how it has evolved over time since the first AML directive of 1991 all the way up to the present Sixth Anti-Money Laundering directive. These issues are even more complicated by the sophistication of cybercrime and the emergence of synthetic identities, thus complicating the process of identifying illegal financial flows in the eyes of institutions. The complexity of these emerging threats leads to the need of further investigation of the efficiency of current regulatory systems and the possibility of implementing more complex analytic methods to improve the level of detection. The continued proliferation of predicate crimes to money laundering, as well as the ever-evolving regime of sanctions, in addition to the improved surveillance and implementation, only makes the task of fighting financial terrorism activities more difficult. To address these growing complexities an urgent necessity arose to examine the effectiveness of existing anti-money laundering measures and how more advanced technological interventions, like artificial intelligence and machine learning, could be strategically integrated in enhancing the integrity of financial systems facing more rampant illicit schemes.

## UNDERSTANDING THE SBO FRAMEWORK

At the core of this debate is the notion of ultimate beneficial ownership, which sees the natural person or persons, who own or otherwise exercise control over a legal person or arrangement, as a way to avert the blurring of the real person or persons who own a business or structure through use of a complicated corporate entity. This system specifically addresses as an overt strategy against money laundering, the most common money laundering method of hiding illegal money through channels of incorporation and trusts, and the real beneficial owners typically remain unknown. Nevertheless, the lack of clarity as to beneficial ownership tends to create discrepancies between the data that is captured by registers, diminishing their usefulness as an instrument in the fight against money laundering and provoking appeals to increase the level of harmonization of practical implementation across the jurisdictions. The development of the anti-money laundering instructions, especially in the European Union, has increasingly focused on beneficial ownership transparency, resulting in the introduction of centralized registers and enhanced strictness of customer checks. These are important steps on the background of the high prevalence of anonymous shell companies in the money laundering and terrorist funding plots, which makes the beneficial ownership legislation extremely important in the better of the financial system integrity and nation security. This is in line with the structuring and layering stages of money laundering where illegal money is usually

concealed in the multiplicity of intricate far-flung transactions and payments such that ascertaining their presence becomes exceptionally difficult to the national authorities. It is the strategic combination of a solid SBO framework, then, that becomes crucial in getting into such opaque structures by dictating the disclosure of the natural persons that end up in control or beneficiary to legal arrangements despite jurisdictional convolutions. Nevertheless, the practical implementation of SBO identification faces major issues because of the sophisticated rules of law that is not homogenous in all jurisdictions and because of the unstructured character of data on beneficial owners. This is even complicated in the case of multi-layered ownership structures, as the ultimate beneficial owner may be found by tracing through numerous legal persons and structures. Such frameworks frequently do not work because there are no standard international practices on advantageous ownership disclosure, and criminals can take advantage of differences between domestic laws. In particular, the fact that some jurisdictions do not have a universal rate of disclosure of beneficial ownership, which is the case in most jurisdictions, leaves the system with a major weakness, whereby people can, with ease, reorganize their ownership interests to avoid disclosure and the accompanying record keeping. Furthermore, problems of inaccurate beneficial ownership information and inadequate verification systems also undermine usefulness of such registers and intensify the need to regulate them strictly and find technological solutions to data integrity. It is precisely in light of these discrepancies that a globally harmonized approach to beneficial ownership reporting is urgently needed in order to ensure that all jurisdictions apply the highest standards of disclosure to ensure that regulatory arbitrage is not taken advantage of by rogue players. As a result, the Financial Action Task Force has pointed out some important loopholes in current legal frameworks, especially in the United States, that hinder prompt access to correct beneficial ownership data, by seeking federal-level requirements. This international push to be increasingly transparent is also complicated by principles of linking data gathering and verifying since, with the privatization sectoral bodies of interest in many instances, might lack the expertise and equipment to examine complex, cross-jurisdictional shareholding configurations.

## **INTERSECTIONS OF SBO FRAMEWORK AND INDIAN AML LAWS**

The section will critically examine the integration and operationalization of the SBO framework as incorporated into the anti-money laundering legislations of India, which is mainly the Prevention of Money Laundering Act in combating financial illicit activities. This will involve the consideration of the provisions of the Indian legal environment that require disclosure of beneficial ownership, their comparability to international standards, and any gaps or difficulties in implementation. Special emphasis will be placed on the effectiveness of the existing regulatory framework in combating the complex, multi-layered ownership and cross-border transactions that commonly abuse the differences in jurisdiction to cover up underlying benefactors. The given analysis will also assess the effectiveness of the enforcement mechanisms and the penalties that are stipulated according to the Indian legislation in case a party distinguishes SBO disclosure requirements, to compare them with the global standards of best practices and their dissuasive power. The implications of the recent international cases studies will also be discussed including such as the Panama and Pandora Papers which have made the weaknesses in beneficial ownership laws recognized across the globe and have led to regulatory shifts, especially in nations such as the UK and the US, which can offer helpful information in the current undertaking by India to enhance its SBO system. Moreover, the success of SBO system in India closely depends on the strong information-sharing practices between the domestic regulatory authorities and those on the international level that is impeded by the absence of a standardized reporting procedures. All these issues highlight the fact that India needs to implement more intensive checking procedures and implement more high-tech solutions, including blockchain-based registries, to improve the quality of data, as well as the ability to exchange information in real-time. Circulars on the same have also been issued by the Reserve Bank of India specifying how financial institutions are to identify beneficial owners, and these duties have been extended to professional-managed accounts falling under the secrecy provisions. Nevertheless, notwithstanding these mandates, there remain issues in the wholesome enforcement of these laws, especially with regard to the problem of the beneficial owners of complex trust set ups, as well as nominee configuration. The regulatory landscape in India also increases such difficulties because of the disjointed regulatory agency over a range of sectors and the federal state of India causing differences in compliance and enforcement across states and industries. Therefore, the fact that regulatory technology is evolving and that centralized supportive ownership registers, which have been adopted in other jurisdictions, may become a possibility in India, may provide an opportunity to simplify compliance and create higher access to valuable ownership data in the hands of competent authorities. This strategic direction is in line with other global trends towards increased transparency as shown by the new FATF Recommendation 24 which pushes the increased use of central registers of beneficial ownership information fomenting the identification of complex ownership arrangements. The changing global requirements indicate that India is required to keep on improving its SBO framework, to make sure that it can respond positively to new financial crimes, and that its orientation towards global anti-money laundering measures. Specifically, the usefulness of a central fraud registry and the use of automated analysis instruments, which is offered by RBI, might contribute to a significant improvement in the effectiveness of the Indian SBO system, as more suspects are noticed faster and the beneficial discrepancy in ownership. Additionally, in the comprehensive adoption of the distributed ledger technology, transparency and inalterability of useful ownership registry would strengthen the integrity of the Indian AML system against advanced evasion strategies. Nevertheless, the full potential of such technological progress has imposed a similar development of a set of laws that address the data privacy issue and inter-agencies data sharing policies, keeping the level of transparency and personal rights in balance. The complexity of the interaction between the technological

responses and the regulatory adjustment is only enhanced by the anonymity associated with the digital transactions, particularly those using cryptocurrencies, which have been used by the criminals to cover illicit money transactions.

## PRACTICAL IMPLICATIONS

This chapter will discuss some real-life example and its implications, showing the difficulties and accomplishments of applying SBO frameworks to the Indian context and comparing it with the lives of the other world. The effectiveness of different SBO identification and verification methodologies used worldwide including those outlined by the principles of Open Ownership will be assessed to determine whether they may be useful and how they can be a challenge on the Indian context with its unique socio-economic and regulatory characteristics.

### 5.1. Impact of SBO Information on AML Investigations

Access to reliable and current SBO information is vital in increasing the effectiveness of the Anti-Money laundering investigations as the law enforcement agencies can know the actual culprits behind the illegal financial transactions and therefore cease associating with shell companies and nominees. This allows the further targeting of enforcement activities and breaking down of intricate money laundering networks. In addition, predictive capacity could be greatly boosted through the combination of advanced analytical tools, including Artificial intelligence and Machine learning, and extensive databases of SBO information with the ability to identify the possible money laundering scheme and abnormal patterns of transactions. Such technological integrations do not just simplify the investigative process but also give a more holistic perspective of the financial crime settings and may, therefore, be intervened proactively, as opposed to responding to them. Nevertheless, the successful implementation of such AI/ML models depends on the ability to overcome the problem of data anonymization and secure the ability to provide interpretability of the algorithmic decision-making processes in a way that complies with the regulations. Ethical implication on data privacy and bias in the algorithm also create the need to create sound governance measures that would see the use of these sophisticated analytical devices in a responsible and accountable manner and within the bounds of the fundamental rights. These frameworks have to confront the issue of unraveling complicated shareholding structures, and finding ultimate beneficial ownership, particularly in multinational situations where small shareholdings still can produce high control.

### 5.2. Industry-Specific Challenges and Best Practices

Various industries have peculiarities in the implementation of various regulations of SBO, and they require specific solutions and new ideas. As an example, the banking industry has a great deal of difficulty in AML regulations because of the growing complexity of the money laundering methods and lack of efficiency in the older systems which require sophisticated AI-based systems to perform real-time KYC identification and better compliance. On the other hand, the property market is evolving with a lack of transparency in the ownership systems and also due to the use of cash deals, SBO detection and authentication can be a challenge. Likewise, the legal and accounting fields, being essential gatekeepers in the financial system, tend to experience ethical issues and practical challenges in determining the bountiful owners because of the client protection requirements and the complexistic corporate designs they assist in creating. These industry-specific nuances must be approached in a multi-faceted approach that includes further regulatory advice, a multi-sector approach to share data, and the reasonable use of RegTech which must be customized to each risk profile of the industry.

### 5.3. Technological Solutions for SBO Implementation

Adaptive AI and especially agentic AI development is a huge potential of strengthening SBO implementation in banking compliance due to the possibility of real-time KYC checking and constant control of beneficial ownerships changes. Such AI-based systems can work with large datasets to identify anomalies and warning beneficial ownership structures effectively by going beyond rule-based systems in order to detect emergent threats. Moreover, AI and ML models can help to promote better transparency and explainability of financial decisions, necessary to comply with regulation and promote trust on automated systems. To do so, however, one requires a powerful platform of regulatory supervision in order to ensure the ethical application and practitioners continuation of these high sophisticated algorithms. These financial compliance environments are promising areas of the deployment of AI, but contain challenging legal issues, especially in overlaying transparency and integrity of automated suspicious transaction monitoring, which when not properly steered may inhibit technological innovation. Besides, the introduction of blockchain technology into financial systems may further improve the irreversibility and auditability of SBO data, which will bolster the integrity of useful registries of beneficial ownership.

## CHALLENGES AND OPPORTUNITIES

Although blockchain provides in-built transparency and traceability of financial dealings, exposing routine transactional enemies to be detected, it has unique issues when incorporated in beneficial ownership registers, admitted of legal loopholes, privacy issues, and complexities on verification, which may defeat compliance initiatives.

### 6.1. Regulatory Gaps and Ambiguities

An example would be the deregulation of international regulatory frameworks and the varying national understanding of

beneficial ownership definitions will provide the loopholes to engage in regulatory arbitrage, which can be committed by other unscrupulous actors to mask ownership. The fragmentation also hinders smooth cross border data dissemination, which is an important ingredient in adequately pursuing intricate beneficial ownership pattern, which usually traversed into multiple jurisdictions. The lack of a globally standardized method of SBO identification and reporting contributes to these problems further by creating an environment that is conducive to regulatory circumvention and undermining successful cooperation in the area of fighting financial crime internationally. Besides, there exist uncertainties about the potential of blockchain technology to fully enhance anti-corruption and increase financial transparency due to the novice nature of the technology and its regulative framework.

### **6.2. Data Management and Accessibility Issues**

The proper application of the distributed ledger technologies on the beneficial ownership data will depend on the desire to develop a strong interoperability standard to ensure free web exchange of such data in various national and international environments. This involves correcting problems of data standardization and coming up with safe and authoritarian or permissioned access systems that respects the concerns of transparency and privacy. The fact that blockchain cannot be changed, although it contributes to the increase of security, also introduces some complex challenges associated with data protection and adherence to legal standards, including GDPR, in particular, the right to be forgotten. Moreover, the technical challenge of scaling blockchain networks and energy-intensive nature of particular consensus mechanisms constitute technical challenges that should be overcome to achieve widespread adoption in the management of large beneficial datasets of ownership. Also, the lack of standardization of blockchain development and openness of various blockchain systems leads to compatibility problems of data transfer and integration between organizations and institutions, which minimizes its usefulness in the fight against corruption.

### **6.3. Inter-Agency Coordination and Information Sharing**

Successful SBO implementation is based on strong inter-agency cooperation and a smooth transfer of vital financial intelligence that in many instances is stifled by the bureaucratic cogs and the differences in data policies in different jurisdictions. The only way to work around these hurdles is by coming up with standardized procedures and safe information-sharing systems, and being able to build capacity in order to make sure that all the concerned agencies have the technical and legal skills to engage in it. These measures are elementary in reinforcing anti-corruption initiatives and in terms of improving financial transparency, especially in the light of opaque ownership arrangements and unbroken global governance frameworks. The ideal issues of information circulation and compliance and the lack of standards and interoperability concerns among various blockchain networks complicate even more the development of a single and practical SBO framework. Harmonization of data structuring to enable the ingestion of valuable ownership information into integrated systems compounds these interoperability issues.

### **6.4. Capacity Building and Training Needs**

In order to use advanced technologies efficiently and cope with the complexities of SBO structures, it is crucial to make constant investments in training programs of the regulatory, financial, and enforcement organs. Such programs should also seek to capture the technicalities of blockchain and AI, as well as the legal grey areas, to promote an overall awareness of their use in fighting financial crime. These projects will be essential in the translation of global suggestions into national implementation and thus overcome the demerit of the current legislative frameworks to accommodate these revolutionary technologies. This will involve mastering the skills of data analytics and auditing blockchain transactions in a forensic way and of becoming familiar with the legal considerations of using AI-based insights to take enforcement measures. Moreover, lack of adequate resources and analytical skills in the financial intelligence units, as well as, poor international coordination, cripple their effectiveness in monitoring and suppressing the cross border financial crimes.

## **CONCLUSION**

To sum up, the combination of an SBO system and anti-money laundering regulations in India is a complex issue, which requires a complex strategy of overcoming the barriers of regulatory alignment, adoption of advanced technology, and collaboration among agencies. To solve these issues, a gradual transformation of regulation structures is required to suit new technological tools and make sure that the new rules meet international standards, including such standards as GDPR and Indian data protection laws. This involves nurturing public-private relationship and increasing the capabilities of regulatory authorities to perceive and practically use AI and blockchain technologies in performing AML compliance. Moreover, the availability of realistic and publicly accessible AML data is limited, which hinders the creation and testing of more sophisticated AI and machine learning models, thus requiring novel methods to create artificial data abundant in realistic images of financial crimes of various typologies. These challenges are critical toward the full implementation of the potential of AI-driven RegTech by augmenting the effectiveness of AML systems, especially since the past findings have shown that the current implementations yielded inconsequential outcomes. The development of AI in financial fraud detection, however, promising as it is, has to be focused on interpretability and respond to the ethical, regulatory, and organizational aspects to be effective in the context of AML. The implementation of AI in AML work also brings with it new regulatory challenges related to transparency of algorithms and their accountability and governance, which require a

very tough balance between encouraging innovation and protecting the consumer. Besides, algorithmic bias, privacy of information, and the transparency of AI systems are all the ethical issues which are rather critical and require thought to be considered in order to guarantee the fair and unbiased decision-making in AML-related settings.

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