

**FINANCIAL ACTION TASK FORCE, ANTI MONEY LAUNDERING LAWS AND
THEIR IMPACT ON LEGAL REGIME IN PAKISTAN: A CRITICAL STUDY IN THE
LIGHT OF LEGITIMACY THEORY**



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Dedicated to

My Parents

Abdul Razzaq

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Approval Sheet

This is to certify that we evaluated the thesis entitled “Financial Action Task Force, Anti Money Laundering Laws and their Impact on Legal Regime in Pakistan: A Critical Study in the light of legitimacy theory” submitted by Mr. Abdul Razzaq, Reg. No. 93-SF/PHDLAW/F16 in partial fulfillment of the award of the degree of PhD in Law. The thesis fulfills the requirements in its core and quality for the award of the degree.

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ACRONYMS

ADB	Asian Development Bank
ADI	Authorized deposit taking institute
AMC	Authorized Money changer
AMLA	Anti-Money Laundering Act
AML	Anti-Money Laundering
APG	Asia Pacific Group
APEC	Asia Pacific Economic cooperation
ARS	Alternate remittance system
ATA	Anti-Terrorism Act
ATM	Automated teller machine
BMP	Border Military Police
CDD	Customer Due Diligence
CDNS	Central Directorate of National Savings
CDS	Currency Declaration System
CFT/AML	Counter Financing of Terrorism Financing and Anti-Money Laundering
CNS	Control of Narcotic Substances
CPF	Countering Proliferation Financing
CRMC	Coordination, Reviewing and Monitoring Committee
CRPC	Code of Criminal Procedure
CSO	Civil Society Organizations
CTD	Counter Terrorism Department
CTR	Currency Transaction Report
DFI	Development Finance Institution
DNFBP	Designated Non-Financial Business and Professions
DPMS	Dealers in Precious Metals and Stones EC Exchange Companies
EC	Exchange Company
ESAAMLG	Eastern and southern Africa Anti-Money Laundering Group
EDD	Enhanced Due Diligence
FATF	Financial Action Task Force

FBR	Federal Board of Revenue
IR	Inland Revenue
FERA	Foreign Exchange Regulation Act, 1947
FI	Financial Institution
FIA	Federal Investigation Agency
FIU	Financial Intelligence Unit
FMU	Financial Monitoring Unit
FRC	Financial Regulatory Commission
FFT	Formal Fund Transfer
FSA	Financial Sector Assessment
FSRB	FATF-Style Regional Bodies
FTR	Financial Transactions Reporting
FUR	Follow - up Report
GC	General Committee
GOP	Government of Pakistan
GAFISUD	South American Financial Action Task Force
Hawala	informal Remittance system
Hundi	informal Remittance system
IBMS	Integrated Border Management System
ICAP	Institute of Chartered Accountants of Pakistan
ICMAP	Institute of Cost and Management Accountants of Pakistan
ICRG	International Cooperation Review Group
ICT	Islamabad Capital Territory
IMF	International Monetary Fund
IMFC	International Monetary and Financial Committee
JIT	Joint Investigation Team
KYC	Know-your-customer
LC	Largely Compliant
LEA	Law Enforcement Agency

MACMA	Mutual Assistance in Criminal Matters Act
ME	Mutual Evaluation
MER	Mutual Evaluation Report
MFB	Microfinance Banks
ML	Money Laundering
MLA	Mutual Legal Assistance
MLPC	Mizoram Liquor Prohibition and Control Act
MOFA	Ministry of Foreign Affairs
MOI	Ministry of Interior
MOU	Memorandum of Understanding
MTO	Money Transfer Operator
MVTS	Money or Value Transfer Services
NAB	National Accountability Bureau
NACTA	National Counter Terrorism Authority
NAO	National Accountability Bureau Ordinance
NBFI	Non-Banking Financial Institution
NBP	National Bank of Pakistan
NC	Non-Compliance
NCCT	Non-Cooperative Countries and Territories
NEC	National Executive Committee
NGO	Non-Governmental Organizations
NPO	Non-Profit Organizations
NRA	National Risk Assessment
OECD	Organization for Economic Co-operation and Development
PC	Partially Compliant
PEP	Politically Exposed Persons
PF	Proliferation Financing
POS	Point of Sale

PPOD	Pakistan Post Office Department
RBA	Risk Based Approach
RE	Regulated Entities
SBP	State Bank of Pakistan
SDD	Simplified Due Diligence
SECDIV	Strategic Export Control Division
SECP	Securities and Exchange Commission of Pakistan
SI	Statutory Instruments
SOP	Standard Operating Procedure
SRBs	Self-Regulatory Bodies
SRO	Statutory Regulatory Orders
STR	Suspicious Transaction Reports
TF	Terrorism Financing
TF/ML	Terrorist Financing and Money Laundering
TFRA	Terrorist Financing Risk Assessment
TFS	Targeted Financial Sanctions
TT	Telegraphic Transfer
UBO	Ultimate Beneficial Owner
UN	United Nations
UNCAC	United Nations Convention against Corruption
UNCC	United Nations Compensation Commission
UNCTC	United Nations Counter Terrorism Committee
UNODC	United Nations Office on Drugs and Crimes
UNSC	United Nations Security Council
UNSCR	United Nations Security Council Resolution

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THESIS STATEMENT

Continuous focus and attempts to combat money Laundering through FATF and other related mechanisms are deficient and flawed because FATF has an inherent problem of lack of legitimacy without addressing which and safeguard the rights guaranteed by the international and National legal regime these attempts cannot be succeeded in achieving the intended goals.

ABSTRACT

Money Laundering is a transnational crime, that has devastating effects on a Country's Economy. It can destabilize financial institutions and undermine economic systems. Besides this, money laundering fuels terrorism, organized crimes and threatens the stability of political governments. Although it was not widely recognized decades ago, that does not mean it did not exist. With globalization, the integration of financial markets, and particularly after the events of 9/11 the dynamics and consequences of money laundering drew the attention of international regulators, leading to review and expansion of the FATFs mandate beyond its original scope i.e from combating Money Laundering to counter Financing of terrorism.

In order to create an effective deterrence to this global menace collective active approach and well -coordinated measures are required to be adopted both at National and international level. This dissertation discusses Financial Action Task Force, its recommendations, and efforts made by Pakistan to comply with the recommendations, standards of FATF. Being strategically located Pakistan is also one of the victims of Money Laundering and Terrorist activities, therefore compliance of the international standards has not only international but also national significances. Pakistan has taken various legislative, Legal, administrative and Regulatory measures to comply with the Standards/recommendations of FATF.

Regarding the effectiveness of efforts to combat money laundering, counter financing of terrorism particularly through organizations like the Financial Action Task Force (FATF), the main criticism revolves around the perceived lack of legitimacy within FATF and non-observance the rights of States as guaranteed by the charter of United Nations (UN). Pakistan's engagement with the Financial Action Task Force (FATF) is constrained by the factors of commitments, obligations, and challenges. In addition to Pakistan's collaboration with the FATF on institutional measures, there is a pressing need to address operational measures, including the 27-point Action Plan mandated by the FATF for Pakistan. Given this context, comprehending the intricacies of combating Money Laundering and Terrorist Financing presents a formidable challenge for both Pakistan and the global community. This paper aims to delve into these issues while examining the objectives behind the establishment of the FATF. Furthermore, it thoroughly explores Pakistan's interactions with the FATF and its compliance with the stipulated requirements

The text suggests that FATF and similar mechanisms might be flawed being not adequately prioritize rights of States and may lack the necessary legitimacy to carry out their

mission effectively. This is an important point to consider how to improve efforts against Money Laundering and counter financing of terrorism, as it emphasizes the need to balance security concerns with the protection of rights, freedoms of States.

CHAPTER 1: INTRODUCTIN TO THE TOPIC

1.1 INTRODUCTION

In an increasingly interconnected global financial system, regulatory frame work aimed at combating money laundering and terrorist financing have become central instruments of international financial governance. The Financial Action Task Force (FATF), established in 1989 by the G7 Countries (Canada, US, UK, France, Italy, Japan, Germany) has emerged as a key intergovernmental body setting global standards to combat illicit financial flows. To stop the financing of terrorism and its proliferation has been the main goal of FATF since 2001.¹ While ostensibly technical and apolitical, FATF's mechanisms—including its grey and blacklisting of jurisdictions—have profound legal, economic, and political implications, particularly for developing states such as Pakistan.

In spite of the growing literature analyzing money laundering and the policies to fight it, the overall effectiveness of anti-money laundering (AML) policies is still unclear.² In 1986, when the right to development was adopted by nations, the key demands of developing counties were focused on the lack of democracy at the international level and the resulting concentration of economic and political power in the North, the rigged rules of the system that worked against developing countries, the precarious condition of self-determination in developing countries and the lack of effective sovereignty. In 1989, the Financial Action task Force (FATF) was created with the initial task of curbing illicit finance based on the regulatory dynamics inherent in the local environments of its founding fathers. However, the borderless nature of today's criminal activities prompted it to broaden its reach across all nations, irrespective of local socio-economic realities. The coercive mechanism of its soft law standards in curbing money laundering globally has become an issue, not only challenging its legitimacy but also the gruesome cost of complying with

¹ Thomas J. Biersteker and Sue E. Eckert ed., *Countering the Financing of Terrorism* (New York: Routledge, 2007).

² Gerbrand et al, The effect of anti-money laundering policies: an empirical network analysis," *EPJ Data Science*, Vol.11 No.1 (2022).

its standards. This is so because the adoption of the FATF regulatory standards is a question of “when” rather than “if” as there is no room for choice.³

The FATF has no legal personality and cannot issue binding regulations. It also does not purport to do so; however, its forty “Recommendations are anything but voluntarily”.⁴ According to recommendation 21, “Financial institutions should give special attention to business relationships and transactions with persons, including companies and financial institutions, from countries which do not or insufficiently apply the FATF Recommendations”. This single recommendation has been an exertion of the FATF’s coercive control over countries and financial institutions in a field as problematic as illicit finance.

Academic and practitioners alike grant the FATF blacklist a lot of significance in shaping the network’s influence and control.⁵ This goes to portray the fact that under international relations, there are hierarchical normative paradigms and the normative coercive paradigm of the FATF is focused on the distribution of economic power and not enshrined in the equality of nations under public international law (McNair,1927)⁶ (Ansong, 2016)⁷.

Despite its significance, we lack a satisfactory understanding of the dynamics that drive FATF and the AML regime. The simplest explanation for FATF’s influence-that it reflects the power distribution among states is sensitive to assumptions about what states preferences actually are. Drezner⁸ argues that the US and EU “were able to cajole, coerce, and enforce a global anti-money-laundering standards into existence”. Disagreement between the two led them to rely on

³ Goldbarsht, D. “Who’s the legislator anyway? How the Fatf’s global norms reshape Australian counter terrorist financing laws”, *Federal Law Review*, Vol.45 No.1 (2017): 127-151.

⁴ Duyne, V et al, *The Critical Handbook of Money Laundering*, (Berlin: Springer, 2018).

⁵ Nance, M. “The regime that FATF built: an introduction to the financial action task force,” *Crime, Law and Social Change*, Vol.69 No.2, (2017): 109-129.

⁶ McNair, A.D. “Equality in international Law,” *Michigan Law Review*, Vol.26 No.2, (1927): 131.

⁷ Ansong, A. “The concept of sovereign equality of states in international law”, *GIMPA Law Review*, Vol.2 No.1 (2016): 14-34.

⁸ Drezner, D.W. (2007). *All politics is global: Explaining international regulatory regime*. Princeton University Press.

more flexible “soft law” standards. The result is a powerful tool of global financial regulation that confirms states’ continued dominance in a globalizing economy. In contrast, Simmons⁹ assumes that the US is the regulatory hegemon, but is unwilling to pay the enforcement costs for imposing a binding standard. FATF therefore can rely only on peer pressure “to embarrass governments” and global compliance reflects a sphere of influence pattern.¹⁰ Jojarth¹¹ argues that FATF publicizes standards set by the United States. The soft law basis reflects uncertainty about the best policy, but that also limits enforcement and, therefore, convergence. These three materialist approaches generate very different final analyses based on assumptions-not empirical verifications-of realism-built around different assumptions of State’s interests, yields very different understandings of FATF.

The FATF, unlike United Nations Conventions, and resolutions, does not have an international convention-based status. It is a non-legally mandated body under international law. However, financial sectors in different countries must reposition themselves from a formal UN system to the soft yet coercive FATF regulations in an attempt at demystifying informal international regulations into effective domestic enforcement of law. The FATF’s lack of legal standing, limited membership and its formidable clout make it logical for questions to be raised about its legitimacy.¹²

Although the FATF regulatory standards and enforcement mechanism may be seen as an attractive tool for foreign policy, their legality raises concerns within the ambit of international

⁹ Simmons, B.A (2001). The international politics of harmonization: The case of capital market regulation. *International Organization*, 55(3), 589-620.

¹⁰ Ibid.

¹¹ Jojarth, C.(2009). *Crime, war and global trafficking: Designing international cooperation*. New York: Cambridge University Press.

¹² Harvey, J, et, al. (2021), “transnational criminal law: a case study of the international anti-money laundering framework as applied in Nigeria, a case of smoke and mirrors, global anti-corruption evidence project: hiding the beneficial owner and the proceeds of corruption working paper no.10 global integrity anti-corruption evidence program”.

law. Also, the lack of judicial scrutiny of the FATF regulatory measures makes it an arbitrary exercise of power while the regulatory measures may be an attractive tool of foreign policy, they have failed to pass the test of legal recruitment under international law and have ended up being a tool used by rich western nations to violate the extant rules of international law.¹³ It is important that checks and balances be observed in the adoption and enforcement of regulatory standards. The FATF restricted high-profile membership does not create room for checks and balance, which does not comply with the letter and spirit of the UN. Checks and balances must be observed while imposing, adopting and enforcing regulatory measures to comply with the letter and spirit of the UN charter. Although most non-UN economic sanctions serve to further foreign policy objectives, legal scrutiny of such economic sanctions is desirable.¹⁴

UN Charter

According to Article 2 of the UN Charter (UN,1945), all members states are deemed equal in sovereignty. This implies that they have absolute control over their executive, judiciary and legislature. The doctrine of state sovereignty imposes absolute control. This is, however, vitiated by the FATF black-and-grey list and its concomitant threat to resort to economic sanctions against nations that fail to adopt and implement the Forty Recommendations. The black list and grey list warn targeted states to:

- (1) Legislate in accordance with the directives of the FATF:
 - Each country should take such measures as may be necessary, including legislative ones, to enable it to criminalize money laundering as set forth in the Vienna Convention. Each country should extend the offence of drugs money laundering to one based on serious

¹³ Nance, M. (2017), "The regime that FATF built: an introduction to the financial action task force", *Crime, Law and Social Change*, Vol.69 No.2, pp. 109-129.

¹⁴ Akhtar, S., "Do Sanctions Violate International Law," *Economic and Political Weekly*, Vol.54 No.17 (2019): 27.

offences. Each country would determine which serious crimes would be designated as money laundering predicate offences.

- Countries should adopt measures similar to those set forth in the Vienna Convention, as may be necessary, including legislative ones, to enable their competent authorities to confiscate property laundered, proceeds from, instrumentalities used in or intended for use in the commission of any money laundering offences, or property of corresponding value, without prejudicing the rights of bona fide third parties.

(2) exercise their executive powers in commissioning regulatory bodies to implement the FATF's Forty Recommendation; and

(3) must use their judiciaries to carry out FATF aims".¹⁵

This thesis seeks to critically examine the impact of FATF's regulatory regime and Pakistan's corresponding anti-money laundering (AML) laws on the Country's legal regime and political structure. It does so through the lens of legitimacy theory, interrogating how international norms are internalized, contested, or imposed upon states under the guise of a liberal rules-based order. At the intersection of liberal institutionalism and *realpolitik*, FATF's operations often transcend purely legal considerations and function as tools of soft power, coercion, and global narrative control. From a realist perspective, FATF listings—particularly grey- and blacklisting—can serve the strategic interests of powerful states. Narrativization the construction of particular discourses around compliance, terrorism, and corruption—plays a significant role in justifying actions that place pressure on targeted states. The use of such narratives not only influences global perception but also compels domestic legal reforms that may not always align with local legal, social traditions or political contexts.

¹⁵ Legitimacy of power exercised by FATF under international law, at <http://www.emerald.com/insight/1359-0790.htm> (accessed: 23rd May, 2024).

Pakistan's inclusion on FATF's grey list in multiple instances firstly in 2008, secondly in 2012 and again in 2018 due to non-compliance of recommendations of FATF and non-compliance with UNSCR 1267 and 1373. Although, various measures were initiated by Pakistan which included ban on proscribed organizations¹⁶ and persons and promulgations of Anti money laundering laws, AMLO, 2007 and AML Act, 2010 but the said initiatives not acknowledged by FATF.

In 2016, acquisition of illegal money, both by the individuals and the companies, was horrendously exposed when the international consortium of investigation journalists (ICIJ) uncovered Panama Papers (PPs). The investigation was led by Bastian Obermayer and Frederick Obermaier of *Suddeutsche Zeitung*. It largely depended upon the data shared by someone working “on the inside” at Mossack Fonseca. According to ICIJ, the records show “a never –before-seen view inside the offshore world –providing a day-to-day, decade-by-decade look at how dark money flows through the global financial system, breeding crime and stripping national treasuries of Tax revenues”.¹⁷ The information identified the names of various heads of States and their close relatives. The Iceland premier relinquished his position within days of PPs publication. Particularly, when joined with the instances of illegal tax avoidance, including significant global banks (PNB Paribas, HSBC, JPMorgan chase, and Deutsche Bank). The Panama papers argue that unlawful money is intensely fierce for the international financial system. However, the news on international effort to take an action against illicit financing with the help of FATF, was dismal. While FATF is generally obscure for individual who do not work with it or study it, FATF and the Anti –Money Laundering (AML) rules have become essential elements of monetary and security arrangements of many States. While highlighting its importance the leaders of G-20 in the wake

¹⁶ <http://www.nacta.gov.pk> (accessed: 26th September, 2024)

¹⁷ Mark T. Nance,” The regime that FATF built: an introduction to the Financial Action Task Force,” *Crime, Law and Social Change* 69 (2018): p.109.

of 2008 worldwide financial crises included FAFT as a fundamental player in endeavors to fabricate “a new international financial regulatory architecture” together with the international Monetary fund (IMF) and the Organization for the Economic Co-operation and development (OECD). Yet, questions remain about the legitimacy, consistency, and geopolitical neutrality of the FATF process. Critics argue that the pressure exerted on Pakistan has been influenced by geopolitical rivalries and external narratives rather than purely objective benchmarks. This raises concerns about the sovereignty of states, the legitimacy of transnational legal processes, and the balance between global standards and domestic legal autonomy. This thesis therefore examines how legitimacy theory—both in its normative and sociological dimensions can provide a framework to understand Pakistan’s legal adjustments under FATF oversight. it assesses whether these changes represent genuine convergence with international norms or are better understood as coerced compliance. Through a critical lens, it explores how international organizations like FATF shape national legal regimes, mediate power asymmetries, and contribute to the global ordering of states through narratives of risk, compliance, and deviance.

1.2 REVIEW OF LITERATURE

Research work on different dimensions of money laundering and counter financing of terrorism is available in the literature. Similarly, there is enormous work on international anti-money laundering regimes but there is scarcity of study regarding impacts of the recommendations and policies of international anti-money laundering regimes on the legal regime of Pakistan in the light of legitimacy theory. Anti-money laundering and anti-terrorist financing have also been tackled on international level but no such research work has so far been carried out in the context of Pakistan. The United Nations Organization (UN), International Monetary Fund(IMF), World Bank, International Organization of Securities Commissions (IOSCO), International Association

of Insurance Supervisors (IAIS), Wolfs Berg Group, (WBG) International Police Organization (Interpol), Egmont group and Basel committee on banking supervision have carried out different research studies in addition to their implementation activities to combat money laundering.¹⁸ Typologies reports and annual reports on money laundering by Financial Action Task Force (FATF) and Financial Action Task Force Style Regional Bodies (FATFSRBS) include material on Money Laundering, its trends, techniques and methods.

Different documents of United Nations Organization provide basic and relevant material for money laundering. These documents provide necessary understanding of global anti-money laundering regime and its policies. These sources are helpful in comprehending legal and institutional anti-money laundering frameworks. The work undertaken by UN¹⁹ to facilitate the understanding of regulatory framework and to ensure the implementation of anti-money laundering mechanisms, is an important addition to the body of anti-money laundering literature. It contributes to the development of specific national and regional institutions. It also fosters the awareness in understanding and implementation of best practices for regional and global cooperation through different means including legal, banking and finance sector collaboration.

The UN drafted basic documents like United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (the Vienna Convention) of 1988.²⁰ This document reflects narcotics, drugs and psychotropic substances, which is a significant factor of money

¹⁸ The World Bank, *The World Bank in the Global Fight Against Money Laundering and Terrorist Financing*, USA, 2003, p-7; IMF, *Factsheet Progress in Strengthening the Architecture of the International Financial System* Washington D.C:IMF, 2000; UN, United Nations Organization, *Convention against Transnational Organized Crime*, New York: United Nations, 2000; United Nations Office on Drugs and Crimes; *UN Instruments and Other Relevant International Standards on Money-Laundering and Terrorist Financing*, <http://www.UNdc.org/UNdc/en/money-laundering/Instruments-Standards.html> (accessed: 5th July, 2024)

¹⁹ Ibid.

²⁰ UN, *United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances*, New York: United Nations, 1988.

laundering and poses an imminent risk to the health and wellbeing of humanity and negatively affects the politico-economic and socio-cultural foundation of human society. This document also highlights the obnoxious nexus between drug trafficking and other organized crimes, which endanger the lawful economies and a menace for the stable, independent and sovereign states of the World. This work emphasizes the fact that this global criminal act calls for an immediate international response to put an end to such a menace for the international peace and security. It also calls for international cooperation because such criminal gangs have the potential of penetration, contamination and corruption of government functionalities and structures as well as the legal and genuine businesses and commercial enterprises at different levels. In June 1998, the UN adopted the Political Declaration and Action Plan against Money Laundering seeking acceleration of international efforts for anti-money laundering (AML). Another important documentation was made in December 2000, when, the United Nations Convention against Transnational Organized Crime was adopted in Palermo, Italy. This convention is commonly known as Palermo Convention. This document contains articles that call on states to outlaw the most common offenses of money laundering. This document also contains provisions demanding closer international cooperation in extradition, mutual legal assistance, transfer of proceedings, and joint investigations. Palermo convention makes it obligatory for the ratifying state to establish regulatory regimes to deter and detect all forms of money laundering. In this regard the document also highlights guidelines to urge global support to combat money, laundering. This document enshrines a mechanism for establishing an all-inclusive national regulatory and overseeing regime for the financial sector of the member states vulnerable to money-laundering activities. In quest to

deter and detect various forms of money-laundering, each regime is required to fulfill the criterion of proper customer identity, maintenance of record and reporting of suspicious transactions.²¹

The United Nations Office on Drugs and Crime's Global Program Against Money Laundering has developed compendium of model laws and other technical guidelines for member states in the implementation of the UN conventions relevant to anti-money laundering and combating the financing of terrorism. The UN has also been in the forefront of efforts over many years to combat Predicate offence of Money Laundering, terrorism and Financing of Terrorism. Another important document is the United Nations Organization International Convention for the Suppression of the Financing of Terrorism, 1999.²² This primary document demands from the states to take steps to criminalize the financing of terrorists and terrorist acts. In addition, the UN Security Council documents are also relevant. The papers pertaining to Security Council's Resolution 1373, adopted in 2001 reaffirm its call to all states to sign, ratify, and implement the relevant international conventions criminalizing terrorism and financing of terrorism.²³

International Monetary Funds has contributed different studies on money laundering. A few of the documents of International Monetary Fund include (a) Fact sheets on the IMF and the Fight against Money Laundering and Financing of Terrorism, (b) Standards and Codes: The Role of the IMF, and (c) Fact sheet on Financial System Soundness. Similarly, Fact sheet on Progress in Strengthening the Architecture of the International Financial System, Annual Reports and IMF Working papers highlight the significance of money laundering and need for international efforts to maintain financial stability. IMF Working Paper, 2007 'A Theory of "Crying Wolf": The

²¹ United Nation Organization, *Convention Against Transnational Organized Crime*, New York: United Nations, 2000.

²² *Convention for the Suppression of the Financing of Terrorism*, New York: United Nations, 1999.

²³ United Nation Organization, *UN Security Council Resolution 1373*, New York: United Nations, 2001.

Economics of Money Laundering Enforcement by Elod Takats²⁴ signifies the problem of money laundering along with complication of suspicious transactions reporting. Likewise IMF Working Paper ‘The Impact of Terrorism on Financial Markets by R. Barry Johnston and Oana M. Nedelescu highlights economic consequences of terrorism and regulatory challenges. The writers propound that financial institutions could be involved in financial crimes as victim, as perpetrators, or as instrument of frauds or abuse.

Keeping in view global threat of Money Laundering and its implications on the financial sector, the Bank for International Settlement has published important documents dealing with the measures pertaining to anti-money laundering and anti-terrorist financing. In this regard, Principle on Prevention of Criminal Use of the Banking System for the Purpose of Money-Laundering 1988,²⁵ Core Principles for Effective Banking Supervision in 1997 and Customer Due Diligence for Banks in 2001²⁶ are significant. These documents provide comprehensive understanding of anti- money laundering measures for the financial sector.

*Globalization and Finance*²⁷ by Tony Porter discusses financial globalization. One can easily understand the implications of international anti-money laundering regimes for financial institutions of developing countries if they do not comply with the set standards of these regimes. Peter Reuter and Edwin M. Truman²⁸ in their book entitled *Chasing Dirty Money: The Fight against Money Laundering* explain the relationship of drug trafficking, financing of terrorism and other connected crimes with money-laundering.

²⁴ Elod Takats, “A Theory of ‘Crying Wolf’: The Economics of Money Laundering Enforcement”, *IMF Working Papers*, WP/07/81, Washington: IMF, 2007.

²⁵ Basel Committee on Banking Supervision, *Prevention of Criminal Use of the Banking System for the Purpose of Money Laundering*, 1988, Bank for International Settlement Press & Communication, Basel: Switzerland: 1988.

²⁶ Basel Committee on Banking Supervision, *Customer Due Diligence for Banks*, 2001, Bank for International Settlements Press & Communications Basel, Switzerland: 2001.

²⁷ Tony Porter, *Globalization and Finance*, Polity Press: Cambridge, 2005.

²⁸ Peter Reuter, and Edwin Truman, *Chasing Dirty Money: The Fight Against Money Laundering*, Institute for International Economics: Washington D.C: 2004.

Money Laundering: A Guide for Criminal Investigators by John Madinger highlights the importance of money laundering and different legal dimensions.²⁹

Official deliberations and anti-money laundering measures by the State Bank of Pakistan is the relevant material with regard to anti money laundering policy for the Banking sector of Pakistan. Circulars, Prudential Regulations and anti-money laundering manuals have also been consulted for analysis. Likewise regulatory measures of Securities and Exchange Commission of Pakistan have also been analyzed to see the implications on the securities market of Pakistan. With regard to legislative measures Anti-Money Laundering Ordinance 2007, Anti-Money Laundering Act (First amendment)2010, Anti Money Laundering Act(Second amendment)2020, Anti-Terrorism (Amendment) Act, Anti Money Laundering (Amendment) Act, 2020, Companies (Amendment) Act, 2017, Anti-Money Laundering (amendment)Act-2020, Companies Amendment Act 2020, Anti-Terrorism (Amendment) Act, 2020, Section 24-A the People Representation (Amendment), 2014, Anti Money Laundering and Countering Financing of Terrorism Regulations, 2018, Mutual Legal Assistance (Criminal Matters) Act, 2020 (xxii of 2020), Mutual Legal Assistance Internal Rules 2020, Anti-Terrorism (Amended) Act, 1997, The Electronic Transactions Ordinance's 2002, National Accountability Ordinance, 1999 and Prevention of Electronic Crimes Act, 2016 have been consulted to understand legal and legislative dynamics.

Further, various books and articles including following regarding the legitimacy theory, its application and implications on Authority or institution and legitimacy of power exercised by FATF under international law has also been consulted Psychological Perspectives on Legitimacy and Legitimation by Tom R. Tyler, Legitimacy of power exercised by FATF under international

²⁹ John Madinger, *Money Laundering: A Guide for Criminal Investigators*, New York: Taylor & Francis, 2006.

law by Lovina E. Otudor and Mahmood Bagheri, Legitimacy and Contestation in global governance: Revisiting the folk theory of international institutions by Iran Hurd, Re-thinking FATF: an experimentalist interpretation of the Financial Task Force by Mark T. Nance.

1.3 Money Laundering:

Money Laundering is an international problem which is being faced by all the Countries, it does not belong to a particular Country. Money Laundering is a method used for converting money obtained through clandestine means to or from a foreign land without paying taxes due on that amount.³⁰ Money laundering is the illegal process of concealing the origins of money obtained illegally by passing it through a complex sequence of banking transfer or commercial transactions. The overall scheme of this process returns the money to the launderers in an obscure and indirect way.³¹ It can also be defined as converting illicit monetary assets into legitimate possession. The Financial Action Task Force (FATF) identifies it as the processing of criminal proceeds to disguise their illegal origin. This process is of critical importance as it enables the criminals to enjoy these profit without jeopardizing their source.³² The United States Treasury Department has defined money laundering as financial transactions in which criminals, including terrorist's organizations, attempt to disguise the proceeds, sources of their illicit activities.³³ The U.S Money Laundering Control Act 1986 defines the Money Laundering as "involvement in any transaction or series of transactions that assist a criminal in keeping concealing or disposing of the proceeds derived from illegal activities".³⁴ The known illegitimate sources for Money Laundering are, Drugs trafficking,

³⁰ John Madinger, *Money Laundering: A Guide for Criminal Investigators* 3rd ed. (Routledge: CRC Press, 2016), 5.

³¹ Oxford English Dictionary (3rd ed).Oxford university Press. 2005.

³² www.fatf.gafi.org. (accessed: 9th March, 2023).

³³ U.S Treasury Department.

³⁴ Anti-Money Laundering Act, 1986 of USA.

sale of illegal arms and ammunition, smuggling, prostitution, Human trafficking, Trading, Fraud, bribery, corruption, fake schemes etc.

Under the Anti-Money laundering Act 2010 “A person shall be guilty of offence of money laundering, if the person,(a) Acquires, converts, possesses, uses or transfer of property, knowing or having reason to believe that such property is proceeds of crime or b) conceals or disguise the true nature, origin, location, disposition, movement, or ownership of property, knowing or having reason to believe that such property is proceed of crime or c) hold or possess on behalf of any other person any property knowing or having reason to believe that such property is proceed of crime or d) participates in, associates, conspires to commit, attempts to commit ,aids, abet , facilitates, or counsels the commission of the acts specified in clauses(a),(b), and(c).³⁵

Money laundering can be carried out through several kinds of financial and commercial activities, for instance digital money transfers, cash transactions, credit card payments, offshore property building, and wire transfers, Money laundering can be carried out through several kinds of financial and commercial activities, which include supposedly legal actions such as digital money transfers, cash transactions, credit card payments, offshore property building and wire transfers.³⁶ Money is also laundered through trading, drug trafficking, smuggling, etc., thus allowing Anti-Money Laundering (hereinafter A.M.L.) international financial and legal authorities to describe money laundering as an illegal activity.³⁷ The financing of terrorists and other criminal activities are also conducted through Money Laundering. The Main method of money Laundering includes underground/alternate Banking, shell companies, investment in business projects and so many others which help the money launderers to generate the sum. When the said illegally obtained

³⁵ Anti-Money Laundering Act 2010 (Act No Vii of 2010).

³⁶ IMF, Staff Country Reports, 19 (2009).

³⁷ Asian Development Bank, Manual on Countering Money Laundering and the Financing of Terrorism.

money enters in to the system it creates great consequences for the economy, society as a whole. Globally, the drive against money laundering started in the 1970s, when the Bank Secrecy Act 1970 was passed in the United States. In the case of Pakistan, the situation is different and the anti-money laundering measures were introduced in the 2000s. Several steps have been taken in an attempt to control money laundering. Nevertheless, money laundering is rampant in the country and this can be attributed to the weak enforcement of laws and loopholes in the current regime.³⁸

Being a member of the Asia/Pacific Group on Money Laundering (APG) since May 2000, it was mandatory for Pakistan to frame an anti-money laundering legislation based on international standards. The first specific law in this regard was the Anti-Money Laundering Ordinance (AMLO) promulgated in 2007, which suffered from various flaws. The scope of the AMLO was limited to account transactions and suspicious transaction reports (STRs) were restricted to only banking accounts. The offence of money laundering was made non-cognizable and a small number of predicate offences were included in the schedule of the AMLO.³⁹

STAGES OF MONEY LAUNDERING

Money laundering is a complicated phenomenon. This process is very complex and devilish maneuvering is applied to wash the dirty money. Money launderers make use of different financial and non-financial entities for their objective. According to Jonathan McNally⁴⁰ the process of money laundering involves three stages: the placement; the layering; and integration.

(1) Placement

Placement takes place when criminal cash first enters the non-cash economy. This may involve single or multiple transactions using one or more bank deposits or the purchase of easily

³⁸ The menace of money-laundering' (DAWN, 18 March 2002) (accessed: 7th December 2018).

³⁹ Anti-Money Laundering Ordinance, 2007.

⁴⁰ Jonathan McNally, 'UK Part-1: Money Laundering Methodology' in Toby Graham, *op.cit.*, p. 2.

negotiable investments (for example bonds or, shares). This can be a risky process for a money launderer since this is when cash may have to be presented in person to a financial institution. Once in the non-cash economy, the physical form of criminal cash is replaced by a paper, electronic, or digital record that can be conveyed, transported or negotiated for the ulterior motive. During this stage, the launderers continue to conceal the link of criminal proceeds with the criminal. However, for financial institutions, it is very important stage because if they fail to identify the criminal at this stage, then they may lose the track of the criminal proceeds.⁴¹

(2) Layering

Layering relies on the negotiation of paper, electronic, or digital records via a series of transactions, many of them lacking transparency and without any obvious underlying business rationale. Such transactions may appear unrelated or will be structured in a manner to frustrate the provenance (of the audit trail) to the original criminal cash. Transactions may, for example, be made within accounts of the same branch of a bank, or between accounts at different branches of the same bank, or even involve transfer to and from other banks in the same country or abroad. Lilley⁴² terms this stage sublimation or swamping or mixing, where “launderers start to cover traces of the real source of money by a multitude of transactions”. Criminals always look for the vulnerabilities in the system and get maximum benefits from the weak points. Money is transferred from local to international accounts of different organizations by making use of legal financial instruments in order to make it harder to follow its flow. In layering offshore companies are also used as a vehicle for fund transfer.

(3) Integration

⁴¹ Ibid.

⁴² See P. Lilley, *Dirty Dealing: The Untold Truth about Global Money Laundering*, London, 2000.

Integration follows successful layering. When a transaction can no longer be linked to criminal cash and anonymity of the source of funding is guaranteed, criminal cash in the legitimate economy appears to suggest that it originated from legitimate transactions or business activities. Moreover, this crucial stage reintegrates proceeds of crime into legal financial system and integrates the funds into legal use.⁴³ It may bring the laundered money into the mainstream economy through the financial institutions so that such money seems like the proceeds from a conventional business activity. In this regard real estate business, shell companies and bogus international trade transactions are also availed.⁴⁴ It is believed that about 2 to 5 percent of World GDP is laundered per annum. Most of the criminal argue that money laundering is like a normal business activity of multi-nationals as their sole objective is to maximize their proceeds.⁴⁵ Since money launderers are well knit and organized, they bring the laundered money in the world economy by using financial institutions. When this money comes to the world economy, all signs of its illicit origin are almost washed. So it should be kept in mind that this is a big industry which cannot be eliminated by simply making standards and codes but need proper implementation and monitoring collectively at national and global level. According to Lilley⁴⁶, the ultimate objective of such money transactions is maximum transfers of money to lay it into so many paper channels to confound any ongoing or potential tracking and to attain the goal of making their criminal proceeds as legitimate one. The whole process of money laundering is apparently a complex phenomenon.

⁴³ Jonathan, *op.cit.*, p.2.

⁴⁴ James Richards and R. Richards, *Transnational Criminal Organizations, Cyber Crime, and Money Laundering*, Florida: CRC Press, n.d., pp.59-61.

⁴⁵ For detail see J. Robinson, *The Sink: Crime Terror and Dirty Money in the Offshore World*, Toronto: McClelland and Stewart Ltd., 2003.

⁴⁶ See P. Lilley, *Dirty Dealing: The Untold Truth about Global Money Laundering*, London, 2000.

The Money laundering activities best describe from its three main stages i.e. (Placement, layering & integration) through which Money launderers diverted their black money generated from the illegitimate sources into the financial systems companies, Investment in Business Projects and many others, which helps the money launderer to generate the sums. When this illegally gotten money enters into the system it will create the great consequences for the economy, society as a whole. On continuous basis the world financial sector facing the problem in the shape of money laundering activities.⁴⁷

1.3 METHODS OF MONEY LAUNDERING

There are also several methods that smugglers and money launderers use to perform the crime of money laundering without bringing it to the attention of any A.M.L authorities. In third world countries or under developed countries underground / alternative delivery channel is very strong mainly in Asian countries namely china, Pakistan, India and Sri Lanka, these channels provide the vast variety to the customers from withdrawing to sending money from one channel or country to another without any formal documentation, peoples trust on these systems. This system may include “hawala” system in Pakistan & India and “fie chen” system in china.⁴⁸ The other methods of Money Laundering are through Shell companies, structuring of Money,⁴⁹ Smuggling⁵⁰ Laundering through trade,⁵¹ money Laundering through NGOs⁵², money laundering

⁴⁷ IJMRA international Journal of research and Technology <http://www.ijmra.us> (accessed: 12th April, 2024).

⁴⁸ Ibid.

⁴⁹ Pierre-laurent Chatain, et al., *Protecting Mobile Money against Financial Crimes: Global Policy Challenges and Solutions* (2011), 35.

⁵⁰ Margaret e. Beare, *Encyclopedia of Transnational Crime and Justice* 37 (2012)

⁵¹ Raymond w. Baker, capitalism's achilles heel: dirty money and how to renew the free/market system (2005), 25.

⁵² This aspect was identified by the Bank Secrecy Act of U.S (1970). For details, see fed. Fin. Institutions examination council, bank secrecy act/ anti-money laundering examination manual (2014), 311.

through Round trapping,⁵³ through Cash oriented Business;⁵⁴ money Laundering through Real Estate, Bank control,⁵⁵ Foreign exchange etc.

1.3.1 STRUCTURING OF MONEY

This method entails the division of large amounts of cash, which need to be laundered, into smaller amounts. Each divided amount is then transferred, through money orders, online transactions, cash deposits, etc., to foreign vigilance over cross-border trafficking. For instance, this practice is more common across the international borders of countries where the border area is either mountainous or too long to control and monitor strictly and continuously, e.g., across the Mexico–U.S. border or the Afghanistan– Pakistan border.

1.3.2 SMUGGLING

Despite global efforts to root out the evil of smuggling, considerable smuggling of contraband still takes place Smuggling varies from society to society but usually includes luxury good, electronic appliances, gold, weapons, and currency. The proceeds from smuggling are one of the major sources of black money and has negative effect on the socio-economic life of people.

This method involves taking bulk cash to a foreign country by deceiving the airport or border authorities of the actual amount of money being displaced. This amount is then deposited into a bank of that foreign country, where the money laundering laws might be weaker or not strictly enforced. This is considered to be the most common method of money laundering.

⁵³ Linda M. Ambrosie, *Sun & Sea Tourism: Fantasy and finance of the all-inclusive industry* (2015), 3.

⁵⁴ Jmes Banks. *Online Gambling and Crime: Causes, Controls and Controversies* (New York: Roultedge, 2016), 71.

⁵⁵ Lawrence m. Salinger, *Encyclopedia of White-collar & Corporate crime* (2005), 78.

1.3.3 LAUNDERING THROUGH TRADE

Money laundering through trade happens when invoices are either undervalued or overvalued, depending upon the cash inflow/outflow or costs, respectively. Traders often accomplish this by providing fake invoices and accounts.

1.3.4 N.G.OS.

Funding a Non-Government Organization (hereinafter N.G.O.) and registering it in another country and providing funds to it can lead to money laundering if the N.G.O. is not making use of the funds for a noble cause for the local public. Some businessmen create trust organizations and give their money to them as a charity payment so that the charitable amount is not taxed; this therefore avoids taxation. If such an N.G.O. or trust organization is working in another country and the funds are provided to it in the foreign land illegitimately, then it certainly constitutes money laundering. On the other hand, ironically, some N.G.Os. have also been reported to be linked with terrorist or anti-state elements, and the funds are generated to such elements through N.G.Os.

1.3.5 ROUND TRIPPING

Round tripping is used for money laundering as well as for tax evasion. This is a technique through which a company sells its assets to another company and then, at the same time, signs an agreement to buy some or all of the same assets at the same price. The selling and buying of assets liquefies the latter, facilitating their quick conversion into cash and vice versa. The cash can be moved abroad by labeling it as “foreign direct investment” (hereinafter F.D.I.) and is exempted from tax. For instance, an individual or a company might hire a foreign law firm or any other organization and pay it for their services; it then cancels the agreement exactly at the time when the money (fee) has been sent.

1.3.6 BANK CONTROL

In this method, money launderers become major shareholders of a bank in a foreign or local region where there is weak scrutiny related to money laundering. Hence, by making an investment in the bank and gaining some shares, the money launderers try to gain influence over the bank and perform money laundering through it without scrutiny as it becomes a major client of that bank. This kind of money laundering is very rarely identified because the financial regulatory authorities consider the movement of currencies from the bank as usual cash proceeds. Nonetheless, examples of investigating banks for money laundering cases exist in recent history; for instance, H.S.B.C. was fined \$1.9 billion after conviction for money laundering.

1.3.7 CASH-ORIENTED BUSINESSES

Some enterprise organizations are involved in cash-oriented businesses, i.e., they deal with large sums of cash and have multiple operations, some of which are also linked to illegal activities, for instance gambling bars, casinos, and clubs. Such businesses do not specifically show their income earned through illegal means, neither do they record the destination of their funds. They depict the “dirty money” as clean money that is included in their profit, and this constitutes money laundering.

1.3.8 MONEY LAUNDERING THROUGH REAL ESTATE

Some criminals buy property with cash earned through illegal means and then sell the property to reacquire the cash, so as to justify it as legitimate money. As the illegitimate money is converted into legitimate earnings, it is considered laundered money. It is also possible that the price of that property may be under represented to reduce the taxable amount. This hides the exact amount of Money spent on buying the property, and it is mainly done to evade tax.

1.3.9 FOREIGN EXCHANGE

Uncertified and unregulated foreign exchange companies also have a presence in different regions of several countries. These companies also collect remittances and then deliver the relevant amount of remittances to the families of the senders without notifying government authorities. These foreign exchange companies have multiple currencies with them and they usually transfer funds abroad upon the requests of the locals. Hence, the government is deprived of the collection of remittances, as well as the taxes that it can get from the cash that is sent abroad. As a result, this method of currency exchange or remittances, which is also related to *Hawala* or *Hundi*, is illegal in most countries.

1.3.10 NARCOTICS/DRUG TRAFFICKING

The world is confronted with a very serious drug abuse dilemma. Drug trafficking and its abuse along with its related problems continue to haunt the world at large.⁵⁶ This problem is inextricably linked with other criminal syndicates which put at peril the stable environment of human society and existence of sovereign states, because drugs producers and sellers flourish on the principle of pareto-optimal allocation of resources.⁵⁷ According to the UN estimates in 1987, the drug trafficking proceeds were in excess of US\$ 300 billion.⁵⁸ The drugs traffickers believe in inhuman philosophy and inflict inhuman miseries to innocent human life. This criminal business has a large domestic and international drug market, accruing significantly large profits to the drug peddlers and drug barons. The proceeds of drugs vary from region to region. “Drug Trafficking is frequently linked to other serious crimes such as human smuggling, organized prostitution and travel document counterfeiting. It is often cited as a means to finance the more violent and

⁵⁶ Interpol and Drug Trafficking, *Fact Sheet 2007*, Lyon, France: n.d. p.12.

⁵⁷ United Nations, *United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances*, op.cit., p.1.

⁵⁸ Rick Mc Donell, op.cit.

destructive activities of criminal and terrorist organizations”.⁵⁹ United Nations Office on Drugs and Crimes (UNDC) is actively engaged in getting rid of this menace. Illicit drugs trafficking brings about huge monetary proceeds which enables criminal gangs which results in the penetration into, contamination of and corruption of different state institutions at various levels.⁶⁰ This is a major source of illicit money for money launderers. Because of unimaginable gain, the business has become so strong that despite strict measures and policies by various states, it is uncontrollable and making its way through. This vicious activity needs to be curbed at all levels and it is only possible when masses at large are taken into confidence to cooperate with the states for elimination of this global evil.

⁵⁹ Interpol Drug and Trafficking Fact Sheet, op.cit.

⁶⁰ United Nations, *United Nations Convention Against Illicit Traffic in Narcotics and Psychotropic Substances*, op.cit.

Criminal Activities:

World is witnessing sophisticated manipulation of criminals. Organized crime is a major source of black economy. Bootlegging, gambling, loan-sharking, prostitution, drug trafficking, arms trafficking, smuggling, extortions/racketeering activities of all types, kidnapping for ransom, contract killing, trafficking in human beings (women, children, immigrants/ labor) and counterfeiting of goods and currency are the types of crimes in which organized-crime gangs generally indulge.⁶¹ This creates a vicious cycle of crimes. At international level, organized criminal groups play a vital role in promoting and strengthening this vicious activity. According to United Nations such organized criminal group means “a structured group of three or more persons, acting in concert with the aim of committing one or more serious crimes or offences to obtain, directly or indirectly, a financial or other material benefit.”⁶²

Corruption

Proceeds from corrupt practices, fraud or criminal misappropriation in the government/public, commercial, banking and corporate sectors also contribute to black economy. The United Nations Manual on Anti-Corruption, the Transparency International and the multilateral financial institutions like the World Bank and Asian Development Bank define corruption as to “abuse public office for private gains”.⁶³ Developing as well as developed world is victim of this malaise. A study by World Bank in 2004 estimated that US\$ 1 trillion is spent annually on bribes in developing and developed countries, not including embezzlement or other costs incurred.⁶⁴ Corruption is not only a national problem but an international one. Corruption causes breach in the social order and emerges as a potential threat to the prosperity, peace and stability of human

⁶¹ Trehon Jyoti, *Crime and Money Laundering*, New Delhi: Oxford University Press, 2004, p.17.

⁶² United Nations Organization, “Convention against Transnational Organized Crime”, 2000, *op.cit.*, Article 2 (a)

⁶³ National Accountability Bureau Pakistan, *Annual Report*, Islamabad: 2006, p.3.

⁶⁴ World Economic Forum, *The Global Competitiveness Report 2006-2007*, Geneva, Switzerland: 2006, p.95.

civilization across the globe. ⁶⁵ *The Global Corruption Report 2007* draws the conclusion that a dishonest and corrupt judicial system undermines the capacity and will of the global community to take effective action against criminals and fail to provide protection to individuals. ⁶⁶ corruption in the state institutions erodes the legitimacy of administrative, legal, financial and legislative institutions of the state. Thus, money laundering adversely affects all these institutions.

Terrorism

Terrorism has become the biggest threat to the international political and economic systems. “Terrorism poses a grave threat to individuals’ lives and national security around the world”. ⁶⁷ It also disrupts normal life, industries cease to function, trade and commerce shows a sharp decline, and the transportation of goods becomes minimal. ⁶⁸ Funding of terrorist organizations takes place in numerous ways. The most common form of funding to which terrorists’ resort are extortions, kidnappings for ransom and various types of the crimes which would result in large profits. ⁶⁹ Terrorism generates a lot of black money in the world. It has become the most destabilizing factor for societies. New and innovative means have been adopted by terrorists to threaten the states’ sovereignty and integrity.

1.4 MONEY LAUNDERING; ISSUES AND SCOPE

The effects of money laundering are socioeconomic in nature. Money laundering affects the nation’s economy, as well as giving rise to several social costs. On the one hand, it spoils the strength of the economy by causing a corrosive impact; on the other hand, it acts as a social evil.⁷⁰ Some of the major impacts of money laundering are discussed below.

⁶⁵ National Accountability Bureau Pakistan, *Annual Report, op.cit.*, p.4.

⁶⁶ For detail see Transparency International, *Global Corruption Report, 2007*.

⁶⁷ *Interpol Terrorism Fact Sheet, op.cit.*

⁶⁸ Trehan Jyoti, *op.cit.*, p-29.

⁶⁹ *Ibid*, p.30.

⁷⁰ Donato Masciandaro, global financial crime: terrorism, money laundering, and off shore centres, 63 (2004).

1.4.1 ECONOMIC IMPACTS

Money laundering reduces the control of government over economic policy. It also raises the risk of the potential failure of banks, businesses, and government to implement economic policies. Furthermore, due to globalization, the impacts reach international monetary systems and can adversely affect international currencies and economies, depending upon the volume of money laundering.⁷¹ Vulnerable Emerging Markets Money laundering also affects emerging markets in those regions where it is established. Emerging markets are more vulnerable to the impact of money laundering because financial regulatory authorities give more attention to well-established and strong markets than to emerging ones.

Money laundering is major challenge to the world. Annually 2 to 5 percentage of world GDP, 800 billion \$ to \$2 trillion money laundering occur in the world. Money laundering is occurred in all types, developed, developing and third world countries of countries. This crime is also existing in both Pakistan and India. In Basel Anti money laundering index, former country is secured 25th position and later 68th out of 129 countries.⁷² It is gain of money through illegal activities i.e. corruption, drug trafficking, tax evasion. There are three elements of Money laundering: placement, layering and integration. Criminals convert illegal money into legal ownership.⁷³ Money launderers use fake accounts, offshore companies, and channel in this crime. The black money is washed through offshore companies, amnesty scheme and again enter formal economy.⁷⁴ In Pakistan there are few laws against money laundering. In which Anti-Money Laundering Act 2010,⁷⁵ is prominent piece of legislation. In which money laundering is declared

⁷¹ John McDowell & Gary Novis, the Consequences of Money Laundering and Financial Crime, ECON. PERSP. May 2001, at 8.

⁷² Basel Anti Money Laundering Index 2018. Put URL here (accessed on: 21st January, 2024).

⁷³ G Ferguson, Global corruption law, theory and practice, 308.

⁷⁴ Michal Live Cardiff University and Peter Router Maryland University, money laundering crime and justice 1997.

⁷⁵ The Anti-Money Laundering Act, 2010 (Act No. VII of 2010).

as offence and imposed heavy fine up to ten million rupees⁷⁶ as compared to India 5 lack rupees. In India Prevention of Money Laundering Act, 2002 is basic legal instrument to control in money laundering in the country. It came into force in 2005.

1.4.2 FAILURE OF BANKS AND FINANCIAL INSTITUTIONS

Money laundering can cause the failure of banks and financial institutions. For instance, if a large sum of money is transferred to a bank and then, after a short duration, that money is transferred to another bank, it may cause a liquidity problem to the financial assets of that bank.⁷⁷ The bank can go bankrupt if a large number of people start approaching it to withdraw their money to withdraw their deposits upon knowing that a massive amount of money has been moved from that bank by money launderers.⁷⁸

1.4.3 SOCIAL IMPACTS

Money laundering gives birth to a number of social costs and dilemmas. It also affects the reputation of a country at the international level if it appears that the financial institutions of that country might be involved in money laundering.⁷⁹ Furthermore, it can expose or encourage the people of a country to smuggling, drug trafficking, etc. Money laundering can also contribute to other crimes, as criminals, drug lords, smugglers, black money owners, etc. have to hide their source of income; moreover, they have to employ money laundering techniques to conceal their black money under the cloak of legality or safety from law enforcement agencies.⁸⁰ Hence, money laundering gives a safe haven to criminals and terrorists to hide their illegally earned money and,

⁷⁶ Section 4 *ibid*.

⁷⁷ Beare, *Encyclopedia of Transnational Crime and Justice*, 37.

⁷⁸ The Law society, Chapter 11: Money Laundering warning signs, Lawsociety.org.uk (accessed, 22nd October, 2013).

⁷⁹ Novis & McDowell, *supra* note 27, at 8. See also Donato Masciandaro, global financial crime: terrorism, money laundering, and off shore centres 63 (2004).

⁸⁰ U.S. Dep.'tJust., *Drugs, Crime, and the Justice system* (.....1992), 8.

therefore, motivates others to enter the criminal world as they might consider any of the methods of money laundering to be a promoter and cover to their criminal activities.

1.5 MAGNITUDE OF THE PROBLEM

Several financial regulatory organizations have attempted to predict the overall scale of money laundering. Michel Camdessus, the former managing director of the I.M.F., predicted that the total volume of money being laundered has reached approximately 55% of the total gross domestic product of all the countries in the world.⁸¹ Nonetheless, it is almost impossible to give an exact estimate of the total magnitude of money that is being laundered owing to the furtiveness associated with each of the money laundering methods.⁸² The Financial Action Task Force confirms this: “Overall, it is absolutely impossible to produce a reliable estimate of the amount of money laundered.”⁸³ Similarly, researchers and scholars have also been unable to estimate the precise amount of money being laundered at the global level.⁸⁴ Nonetheless, rough estimates still suggest that the overall global volume of money laundering might be in the billions of U.S. dollars.

Money laundering (ML) can involve legal as well as illegal money, and is usually aimed at hiding illicit cradles of income. Money laundering can involve legal as well illegal money and is usually aimed at hiding illicit cradles of income. The case of the Bank of Credit and Commerce International (BCCI) is illustrative of the phenomena. Potts et al.⁸⁵ termed it a “scandal of nearly unimaginable proportions..” About the bank, Truell and Gurwin write.⁸⁶

...BCCI had outwardly seemed like a normal financial institution, with attractively designed branch offices, its own traveler’s check business, and a reputation for financing

⁸¹ Michel Camdessus, Managing Director of the International Monetary Fund at the Plenary Meeting of the Financial Action Task Force on Money Laundering: the Importance of International Countermeasures, (Feb10, 1998).

⁸² Marinella Marmo & Nerida Chazal, transnational crime and criminal justice, 121 (2016).

⁸³ www.fatf-gafi.org (accessed: 1st February, 2024).

⁸⁴ George walker & joseph Norton, *banks: fraud and crime* 203 (2013).

⁸⁵ See Mark potts, Nick Kochan, Robert Whittington and Nicholas kochan, *Dirty Money: BCCI, the inside story of the world’s sleaziest Bank* (Washington press Books, 1992).

⁸⁶ “False Profits” Newsweek, June 12, 1992, Available at <https://www.newsweek.com/false-profits-195514>, (accessed 14th March, 2020).

international trade. But behind this convincing façade, BCCI was a criminal enterprise that catered to some of the most notorious villains of the late twentieth century, including Saddam Hussein; leaders of the Medellín cartel, which controls the bulk of the world's cocaine trade; Khun Sa, the warlord who dominates heroin trafficking in Asia's Golden Triangle; Abu Nidal, the head of one of the world's leading terrorist organizations; and Manuel Antonio Noriega, the Dictator of Panama. Depicting a sense of ML regime worldwide, BCCI also had links with the then-president of the US George H. W. Bush and his successor, Bill Clinton. As some suggest that the term ML came from the use of Laundromats by criminals to hide their cash, it provides underlying difficulties in fighting ML as Laundromats covers the trail of money, making source of illicit money difficult to discover. Same is the case with ML in today's world wherein money transports quicker than those chasing it. Therefore, international cooperation is required in order to control the menace of ML. Another reason for the need of a collective action is the interconnectedness of the international financial system as "advances in information technology allow investors to send money around the world quickly, cheaply and easily." Thus, international community needs to cooperate drug-dealing former dictator of Panama." Depicting a sense of ML regime worldwide, BCCI also had links with the then-president of the US George H.W Bush and his successor, Bill Clinton. As some suggest that the term ML came from the use of Laundromats by criminals to hide their cash, it provides underlying difficulties in fighting ML as Laundromats covers the trail of money, making source of illicit money difficult to discover. Same is the case with ML in today's world wherein money transports quicker than those chasing it. Therefore, international cooperation is required in order to control the menace of ML. Another reason for the need of a collective action is the interconnectedness of the international financial system as "as advance in information technology allow investors to send money around the world quickly, cheaply and easily."⁸⁷

Thus, international community needs to cooperate.

1.6 Theoretical Frame Work

Legitimacy is one of the oldest problems in the intellectual history of the western civilization. The concept of legitimacy has played an extremely prominent role in social and political philosophy for well over 2000 years. Its history spans 24 centuries.⁸⁸

The dictionary definition of "legitimacy" is simply "in accordance with a rule" from the Latin "legis". But a broader definition is more useful, if for no other reason than the need to also

⁸⁷ Guy Stessens, "The FATF 'Black list' of Non-cooperative Countries or Territories", *Leiden Journal of International Law* 14 (2001), 144-207.

⁸⁸ Theories of Legitimacy by Morris Zelditch Jr. <https://psycnet.apa.org/record/2001-18767-001> (accessed: 7th March, 2024).

legitimate rules. The definition I will use is therefore that something is legitimate if it is in accordance with the norms, values, beliefs, practices, and procedures accepted by a group.⁸⁹

Per Andersen in his book *Introduction to Law and Legitimacy* inscribe that “If you look up the words ‘legitimate’ and ‘legitimacy’ in *The Danish Dictionary of Meanings*, they are explained by phrases stating that what has to be legitimate or have legitimacy must be in accordance with current legislation or current norms and morals so that it is justified or acceptable. Thus, the law has legitimacy when it is legal, lawful, fair or morally sound, i.e. when it is in accordance with current norms in a given society. Thereby, it is supported by society.”⁹⁰

Jean Marc-Coicaud and Veijo Heiskanen, in their Book “The legitimacy of international organizations” says, “Most of the intergovernmental organizations that are important today were created some fifty years ago in the aftermath of the Second World War. These include: the United Nations organization; the Bretton Woods organizations (the International Monetary Fund (IMF) and the World Bank); the General Agreement on Tariffs and Trade (GATT), which subsequently evolved into the World Trade Organization (WTO); and the many agencies of the United Nations family. The establishment of these organizations was the outcome of a particular political-historical bargaining process, rejecting the balance of political power as well as the political, social, and economic interests and concerns that prevailed at the time. But the purposes and functions of these organizations also embody a certain socio-philosophical and political-philosophical understanding of their legitimate role in the international system”.⁹¹

The Charter of the United Nations Article 1 read with article 2(1) declares as under,

⁸⁹ Ibid.

⁹⁰ Book *Introduction to Law and Legitimacy* by Per Andersen <https://samples.pubhub.dk/9788757498257.pdf> (accessed: 11th May, 2024).

⁹¹ The legitimacy of international organizations.

Article 1(2) to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of the people, and to take other appropriate measures to strengthen universal peace. Article 2(1) declares that the organization is based on the principle of the Sovereign equality of all its member.⁹²

The bare reading of the above articles reveals that under the United Nations Charter all the member states have been given equal Sovereignty. All the states have equal rights. But if we review the establishment of the FATF it was not an organization of the UNO, rather the same was formulated by G7 countries and afterwards issued 40 recommendations at the name of regulating the World Financial system. The countries across the world were asked to comply with the same. The countries who failed to comply with these recommendations have to face different kinds of scrutinizes and sanctions such as exclusion from international Market and inclusion in different kinds of lists such as grey list, Black list etc. The creation of the FATF is in not according to international, norms and charter of the UNO. The Legislation on the Anti- Money Laundering is the domestic affairs of a State and compelling the State of for a particular enactment in infringement of any clause of the Constitution, Laws of that State is amounts to intervention in the domestic affairs of a State and Sovereignty of the States which has been guaranteed by the charter of the United Nations.

According to The Great Danish Encyclopedia, the concept of “legitimacy” relates exactly to the lawfulness of a political government, a governance or a legislation, and the legitimacy is considered to be subject to the condition that the governed population recognizes the ruler and the

⁹² The Charter of the United Nations Article 1 &2.

exercise of authority as something that should be respected. The legitimacy of a government is thus measured by the acceptance of its subjects rather than the State's threat of coercion.⁹³

1.7 THEORY OF LEGITIMACY AND FATF

Behind the study of global governance in the liberal institutionalist tradition sits a kind of conventional wisdom that ties together three features - legitimacy, compliance, and governance - in a particular way. This is the intellectual apparatus that binds the contributions to this special issue. Its logic goes like this: because international organizations (IOs) do not have the tools to coerce governments into following their rules, they must instead cultivate a belief in their appropriateness among those they aspire to govern. This belief is called legitimacy and the process by which it is created is legitimation.⁹⁴ Legitimation leads actors to comply with the rules and decisions of the organization. When legitimacy is present, the subjects of an institution are inclined to respect or defer to it and by that respect they make choices which contribute to social order as defined by the organization. Delegitimation is the process or strategy of undermining this belief and leads to a decrease in support for the organization. It's both a crisis for the organization and a kind of release from the constraining effect of socialization upon beliefs about rightful authority.

The FATF, unlike United Nations Conventions, and resolutions, does not have an international convention-based status. It is a non-legally mandated body under international law. However, financial sectors in different countries must reposition themselves from a formal UN system to the soft yet coercive FATF regulations in an attempt at demystifying informal international regulations into effective domestic enforcement of law. The FATF's lack of legal

⁹³ Ibid.

⁹⁴ <http://doi.org/10.1007/s11558-018-9338-z> (accessed: 11th April, 2024).

standing, limited membership and its formidable clout make it logical for questions to be raised about its legitimacy.⁹⁵

Dominik Zaum in his book *Legitimizing the international organizations* opined that the legitimacy of international and regional organizations and their actions is frequently asserted and challenged by states and commentators alike. Their authorizations or conduct of military interventions, their structures of decision-making, and their involvement into what states deem to be domestic matters have all raised questions of legitimacy. As international organizations lack the coercive powers of states, legitimacy is also considered central to their ability to attain compliance with their decisions.

Despite the prominence of legitimacy talk around international organizations, little attention has been paid to the practices and processes through which such organizations and their member states justify the authority these organizations exercise - how they legitimize themselves both *vis-a-vis* their own members and external audiences. This book addresses this gap by comparing and evaluating the legitimization practices of a range of international and regional organizations. It examines the practices through which such organizations justify and communicate their legitimacy claims, and how these practices differ between organizations. In exploring the specific legitimization practices of international organizations, this book analyses the extent to which such practices are shaped by the structure of the different organizations, by the distinct normative environments within which they operate, and by the character of the audiences of their legitimacy claims. It also considers the implications of this analysis for global and regional governance.

⁹⁵ Harvey, J, et, al. (2021), “transnational criminal law: a case study of the international anti-money laundering framework as applied in Nigeria, a case of smoke and mirrors, global anti-corruption evidence project: hiding the beneficial owner and the proceeds of corruption working paper no.10 global integrity anti-corruption evidence program”.

It identifies three reasons why legitimization of international organizations merits further analysis: the recognition of the importance of hierarchy in international order, the growing involvement of international organizations in the domestic affairs of States, and the emergence of legitimacy gap as a result of rapid social change. It proceeds to unpack the concept of legitimacy and legitimation and to identify three conceptual challenges to examining the legitimation efforts of international organizations. First their Janus-faced character as both actors and frameworks for action, second the need of international organization to address different and diverse audience, and third, multi faced relationship between power and legitimation.⁹⁶ The FATF also needs to remove the issues of lack of legitimacy to improve its organizational structure.

John T. Jost and Brenda Major in their book” The Psychology of legitimacy, Emerging perspectives on ideology, justice and intergroup relations defines the Legitimacy as” The dictionary definition of Legitimacy is simply” in accordance with a rule from the Latin “Legis”. They further states that something is legitimate if it is in accordance with the norms, values, beliefs, practices and procedures adopted by a group.⁹⁷ Although the definition is good and cover almost all the aspects of the Legitimacy but the rights of the small groups has been ignored in the definition. Like FATF all the countries have to implement the recommendations of the FATF whether they are members of the FATF or not. The small countries have no say in the decision-making process of the FATF.

⁹⁶ Book titled Legitimizing the international Organizations by Dominik Zaum <https://global.oup.com/academic/product/legitimizing-international-organization-9780199672097?cc=us&lang=en> (accessed: 25th January, 2025).

⁹⁷ Book titled The Psychology of legitimacy ,Emerging perspectives on ideology, justice and intergroup relations by John T.Jost and Brenda Major.

LEGITIMACY OF INTERNATIONAL ORGANIZATIONS:

Lisa Maria Dellmuth, et al in their Research Article Institutional sources of legitimacy for international Organizations expresses as: Beyond procedure versus performance said that recent history has seen international Organizations (IOs) acquire substantially enlarged authority, on the premise that increased transnational policy challenges require expanded regional and global governance. However, whether these higher expectations of IOs translate into actual greater problem-solving depends in part on whether these organizations enjoy popular legitimacy. The more that citizens perceive an IO to be legitimate – i.e. to exercise its authority appropriately the more the institution may be able to obtain resources, take decisions, secure compliance, and, ultimately, mitigate problems. Conversely, an IO with less popular legitimacy can face greater difficulties to act and impact and indeed may struggle to maintain its role in competition with other sites of governance. The importance of popular legitimacy for IOs requires better understanding of its sources, that is, the conditions under which people view IOs as legitimate.⁹⁸

In the Book “The legitimacy of international organizations” Legitimacy defines as a complex phenomenon when it is applied to a national government. It is even more problematic when used in the context of international organizations. In the national context, it means various things. It signifies the acceptance of a government by the (majority of) citizens as being the “true” government of a territory. Legitimacy is thus a highly subjective concept. Some will regard a government as legitimate, while others will deny the legitimacy of the same government. For international organizations, the situation is even less obvious, because it is not immediately clear who forms the constituency that could regard international organizations as legitimate or

⁹⁸ Lisa Maria Dellmuth, et al, “Institutional sources of legitimacy for international Organizations”, *Review of International Studies* 45 (2019): 627–646.

illegitimate. Would this constituency consist of governments or individual citizens? For international organizations, the situation is still more complicated. They are created by governments, so their legitimacy depends to a large extent on how they perform in the eyes of those governments. But at the same time, different groups in the public at large also have an opinion about the legitimacy of intergovernmental organizations (IGOs) which, in the long run, will have an impact on government perceptions and actions. There is also, thus, a question of legitimacy in the eyes of the public at large. However, at the same time, such a policy alienates governments and the larger public in many developing countries that cannot identify with the procedures followed and the results achieved. If, on the other hand, the majority of developing countries push through decisions that are not welcome to the United States and other Western countries, it may boost the legitimacy of the organizations in the eyes of the majority of the world's national governments, but decisions will be difficult to implement and this lack of effectiveness will undermine the legitimacy of these organizations in the long run, even in the eyes of those governments who supported the controversial decisions.⁹⁹

Tom R. Tyler and Jonathan Jackson in their Article Psychology of Legitimacy says; throughout the history of social thought, it has been recognized that people can exercise influence over others by possessing power. Power is the ability to shape the gains and losses of others either by threatening or using coercion to deter undesired behavior or by promising rewards to promote desired behavior. A core aspect of social dynamics, therefore, is that power provides a means to shape behavior with the consequence that, as an early social theorist noted, “The strong do what they will, the weak endure what they must” or as a recent political leader, Mao Tse-Tung, opined, “Political power grows out of the barrel of a gun.” The argument that behavior in social settings is

⁹⁹ The legitimacy of international organizations by Jean Marc-Coicaud and Veijo Heiskanen <https://collections.unu.edu/eserv/UNU:2407/ebrary9280810537.pdf> (accessed: 14th April, 2024).

linked to the ability to reward and punish is not only central to psychological theories, but is also influential in political science, sociology, and economics as well as in law, public policy, and management. While accepting the realities of power in social life, early social theorists including Aristotle and Plato also recognized that seeking to gain influence over others based solely on the possession of power is costly and inefficient. The use of power, particularly coercive power, requires a large expenditure of resources to obtain modest and limited amounts of influence over others. It is therefore important that under some circumstances people are also influenced by others because they believe that the decisions made and rules enacted by others are in some way right or proper and ought to be followed in other words subordinates also “relate to the powerful as moral agents as well as self-interested actors; they are cooperative and obedient on grounds of legitimacy as well as reasons of prudence and advantage”.¹⁰⁰ Tyler further says, Legitimacy is a psychological property of an Authority, institution or social arrangement that leads those connected to it to believe that it is appropriate, proper and just.

The argument that behavior in social settings is linked to the ability to reward and punish is not only central to psychological theories, but is also influential in political science, sociology, and economics as well as in law, public policy, and management. While accepting the realities of power in social life, early social theorists including Aristotle and Plato also recognized that seeking to gain influence over others based solely on the possession of power is costly and inefficient. The use of power, particularly coercive power, requires a large expenditure of resources to obtain modest and limited amounts of influence over others. It is therefore important that under some circumstances people are also influenced by others because they believe that the decisions made and rules enacted by others are in some way right or proper and ought to be followed.

¹⁰⁰ Tyler, *Psychological Perspectives on Legitimacy and Legitimation*, 43.

Thus viewed the legal Legitimacy is the belief that the law and agents of the Law are rightful holders of authority that they have the right to dictate appropriate behavior and are entitled to be obeyed and that Laws should be obeyed ,simply because that is the right thing to do.¹⁰¹ The working and proceedings of the FATF are lack of the above terms like appropriate, proper and just as indicated by the Tyler. The decision making is in the hands of big countries and small countries have no share.

According to Weber, that a political regime is legitimate means that its participants have certain beliefs or faith in regard to it: “the basis of every system of authority, and correspondingly of every kind of willingness to obey, is a belief, a belief by virtue of which persons exercising authority are lent prestige”.

As is well known, Weber distinguishes among three main sources of legitimacy understood as the acceptance both of authority and of the need to obey its commands. People may have faith in a particular political or social order because it has been there for a long time (tradition), because they have faith in the rulers (charisma), or because they trust its legality specifically the rationality of the rule of law. Weber identifies legitimacy as an important explanatory category for social science, because faith in a particular social order produces social regularities that are more stable than those that result from the pursuit of self-interest or from habitual rule-following.¹⁰²

Jean Marco Coicaud in his book Legitimacy and politics, a contribution to the study of political right and political responsibility argued that “Legitimacy is the recognition of the right to govern. In this regard, it tries to offer a solution to a fundamental political problem, which consists in justifying simultaneously political power and obedience. To justify power and obedience

¹⁰¹ Ibid.

¹⁰² Article in Political Legitimacy First published Thu Apr 29, 2010; substantive revision Mon Apr 24, 2017.

simultaneously is the first issue involved in the question of Legitimacy. Upon this twofold demonstration depend both the right to govern and what result therefrom, political obligation. But in order for this operation to be successful, it has to fulfill at least three complementary conditions that have to do with the domain of consent, law, and norms, these being in reality indissociable. An examination of these three notions will allow one to see in what way they are constitutive of legitimacy.¹⁰³

Navin Beekarry in his article *The International Anti-Money Laundering and Combating the Financing of Terrorism Regulatory Strategy; A Critical Analysis of Compliance Determinants in International Law*, elucidates; “a law perceived as legitimate and fair is more likely to be observed than not.” Legitimacy as a factor influencing compliance is an idea developed by Franck, who advocated that in a community of organized rules, compliance is directly linked to a perception of legitimacy by those who are at the receiving end.

In secularized, democratic societies, the primary source of legitimacy lies in the involvement in the decision-making process of those impacted by its decision. The fundamental principle underpinning the concept of legitimacy in policy-making is the recognition that subjects of international norms should have an opportunity to participate and influence the development of those norms observance owes more to the recognition that the existing legal rules reflect the shared values and interests of the members of the international community and are, therefore, legitimate. Similarly, soft law is legitimized on the basis that “a rule . . . is legitimate if relevant audiences accept it as appropriate . . . [and] . . . can be difficult to enforce if it does not reflect a general consensus about its legitimacy”.¹⁰⁴

¹⁰³ Legitimacy and politics by Jean Marco Coicaud.

<http://assets.cambridge.org/97805217/82616/sample/9780521782616ws.pdf> (accessed: 12th April, 2024)

¹⁰⁴ Navin Beekarry, “The International Anti-Money Laundering and Combating the Financing of Terrorism Regulatory Strategy; A Critical Analysis of Compliance Determinants in International Law,”

To that extent, the FATF's norm-creation and diffusion process is weakened by a lack of accountability, which ensures transparent decision making, providing clear lines of authority between decision-makers and their subjects and by legitimacy, encouraging countries' ownership and influence in setting international standards. Consensus-building based on participation by interested parties in the standard-setting process, and the opportunity to influence the development of the norms, occur largely outside the FATF normal law-making process.

1.8 SIGNIFICANCE OF THE STUDY

The recommendations, measures introduced by FATF and international financial regime are of immense importance and significant for financial institutions of Pakistan. It is therefore necessary to have an in-depth study of these reforms to identify their strengths and implications for overall legal regime and financial system of Pakistan. So far no systematic study in this regard has been carried out. According to critics, the developed nations generally reap the profit of international financial system and not the developing ones.

This seems true to some extent but cannot be accepted in totality. Reforms do bring positive results but are not free of negative outcomes. As Joseph Stiglitz points out "small developing countries are like small boats. Rapid capital market liberalization, in the manner pushed by the IMF, amounted to setting them off on a voyage on a rough sea, before the holes in their hulls have been repaired, before the captain has received training, before life vests have been put on board. Even in the best of circumstances, there was a high likelihood that they were hit broadside by a big wave."¹⁰⁵ This critique can be taken other way round that small developing countries should be well prepared for launching the standards and guidelines given by the international financial

¹⁰⁵ Joseph E. Stiglitz, *Globalization and Its Discontents*, W.W. Norton & Company: New York: 2002,p.17.

actors. In case, these rules are not complied with, the developing countries are destined for nowhere as far as their financial institutions and financial stability are concerned.

The emergence of international economic players and (multinational corporations) have necessitated developing countries like Pakistan to adjust their institutional and regulatory frameworks corresponding to international standards. Stable, internationally compatible and responsive system is in the interest of domestic as well as international investors. As a result of the implications of the international anti-money laundering regimes' policies, cooperation between states and institutions is increasing. Even international integration requires a close collaboration between Central Banks and regulators to achieve the goal of global financial stability.¹⁰⁶ So the significance of the present study has its importance as far as Pakistan is concerned.

Anti-Money laundering and Anti-terrorism financing is one of the most important area of international financial institutions as the issue has global significance. As a matter of fact international fight against money laundering also signifies an evolution of the norm making process at international level.¹⁰⁷ Urgent action is also needed to address the weaknesses in anti-money laundering and consolidated international supervision because of financial globalization.¹⁰⁸ Money laundering is the cause and effect of national and international crimes. It causes tremendous loss to national as well as international financial sector.

Money laundering causes economic, social, political and administrative loss to the comity of nations. The significance of anti-money laundering can be analyzed from the fact that following international organizations are striving to combat this threat. Financial Action Task Force gave

¹⁰⁶ Bank for International Settlement, BIS Papers No 27 Past and future of central bank cooperation: policy panel discussion February 2006, Basel:BIS, 2006, p-12.

¹⁰⁷ Stessens Guy, *Money –Laundering: A new international Law Enforcement Model*, Cambridge: Cambridge University press,2000,pp 3-9.

¹⁰⁸ Marco Arnone, Salim M. Darbar, and Alessandro Gambini, *Banking Supervision: Quality and Governance*, International Monetary Fund Working paper WP/07/82 Washington D.C: IMF, 2007,p-10.

forty recommendations to combat money laundering. It also gave 9 special recommendations on financing of terrorism. Financial Action Task Force is considered international standard setter by UN, IMF and World Bank. These recommendations have to be implemented in the financial sector of all the countries of the world. IMF and World Bank made it binding for the states to ensure compliance to Anti-Money Laundering and Anti-Terrorist Financing measures. UN also made it mandatory for the member countries to implement Anti-Money Laundering and Anti-Terrorist Financing measures in the financial sector. Financial Action Task Force and International Anti-Money Laundering Regime are striving against money laundering and terrorist financing by technical and financial assistance.

United Nations Organization has also adopted Vienna, Palermo and international convention for the suppression of the financing of terrorism to combat money laundering and financing of terrorism. UN has made it binding for the member countries to take all necessary measures to combat this threat. UN has also endeavored to ensure international cooperation amongst its member countries. Financial sector specific international organization like International organization of Securities Commissions has adopted anti money laundering measures to be implemented by the member countries. These measures are very significant because of the financial globalization of equity markets and cross border movement of funds. International Association of Insurance Supervisors has also specified anti money laundering measures to be implemented by the members of this international organization.

FATF has significantly mentioned the role of legal regime and financial sector in money laundering which can be countered by taking appropriate counter measures. Given the global significance of these reforms supported by international anti-money laundering regimes and lack of credible and significant research also demands research endeavor to give a theoretical as well as practical explanation of these implications.

However, the FATF, unlike United Nations Conventions, and resolutions, does not have an international convention-based status. It is a non-legally mandated body under international law. However, financial sectors in different countries must reposition themselves from a formal UN system to the soft yet coercive FATF regulations in an attempt at demystifying informal international regulations into effective domestic enforcement of law. The FATF's lack of legal standing, limited membership and its formidable clout make it logical for questions to be raised about its legitimacy.¹⁰⁹ The absence of State consent (on the part of non-members of FATF) to be subject to the recommendations represents an issue of legitimacy because this nonbinding instrument has necessarily create legitimacy, but rather legitimacy extends “the perception of holding normative right to govern by those on whose behalf it seeks to govern”.¹¹⁰ Analytically, an institution is legitimate if so perceived. It has been argued that the concept inculcates input, throughput and output legitimacy.¹¹¹ This implies that within an institution such as the FATF, all countries (would be addresses of the standards) should have had a say in formulating standards – then it can be argued that such an institution is legitimate, When this is not the case, it can result in the forceful inculcation of standards that are unsuitable for most countries, particularly African states, leading to misguided compliance.¹¹²

This study assumes greater significance in the present era of rapid globalization where cross border and cross-national effects are converging into cross cutting themes attaching greater international relevance to such studies. Moreover, this study would also help the researchers and

¹⁰⁹ Harvey, J, et, al. (2021), “transnational criminal law: a case study of the international anti-money laundering framework as applied in Nigeria, a case of smoke and mirrors, global anti-corruption evidence project: hiding the beneficial owner and the proceeds of corruption working paper no.10 global integrity anti-corruption evidence program”.

¹¹⁰ Rose, C. (2015), *International anti-corruption norms: Their creation and influence on Domestic Legal Systems*, Oxford University Press.

¹¹¹ Risse, T. and Stollenwerk, E. (2018), “Legitimacy in areas of limited statehood”, *Annual Review of Political Science*, Vol.2 No.1, pp. 403-418.

¹¹² Ryder, N. (2015), *The Financial War on Terrorism: A Review of Counter-Terrorist Financing Strategies since 2001*, Routledge, Taylor and Francis Group, Abingdon, Oxon.

students to draw useful conclusions in the backdrop of the increasing role of international anti-money laundering regimes in shaping the economy of the world.

1.9 RESEARCH QUESTIONS

On the basis of above-mentioned discussion, the following research question is framed and will be examined in the present study.

How does the Financial Action Task Force's (FATF) framework influence global and National efforts to combat Money Laundering and Terrorist Financing? and what are the implications for state sovereignty, legal system and compliance with international and domestic laws, particularly in the context of Pakistan?

1.10 RESEARCH METHODOLOGY

While reading the legal system of the other jurisdictions the legislations and cases main principles will be derived and then applied to Pakistani legal system where there will be any lacuna or ambiguity in contemporaneous legislation than recommendation will be given accordingly.

Keeping in view the complex nature of the study, both primary and secondary sources have been consulted. A deductive – interpretive method has been used to substantiate the arguments. The methodology of this research will be based on multiple approaches of legal scholarship including a comparative law approach, case laws and many others disciplines. Moreover, major portion of this research will be based on library research that will be referred in the form of books, statutes, Articles, Reports and decided cases of the Superior courts including foreign courts and tribunals. Moreover, the documents of the government of Pakistan and reports by the World Bank, IMF, Financial Action Task Force, Bank for International Settlement, International Organization of Securities Commissions, Interpol, Wolfsberg Group etc, were also 24 reviewed to have a deep understanding of the subject under study. These studies helped me to reach reliable conclusions

about the designated role of the international anti-money laundering regimes for the economic stability and growth of the economies of the world in general and Pakistan in particular. Economic Surveys of Pakistan, newspapers reports and articles, financial assessments reports of IMF, World Bank and opinion of other independent analysts and observers have also been taken into consideration during the course of study. In addition, the memoranda of understanding of the government of Pakistan on accepting the technical assistance and financial support of the international financial institutions were also consulted. These documents are the basic sources for the determination of the objectives of the restructuring efforts of the financial sector of Pakistan and the course of action adopted by Government of Pakistan and its various institutions. Moreover, the annual reports of various financial institutions in Pakistan have been consulted and reviewed to reach a rational and logical analysis. Availability of above mentioned resources urged me to adopt descriptive-analytical and comparative approach in this research.

Besides above, different documents ,policy papers, research studies and annual reports of International Organization of Securities Commissions(IOSCO), International Association of Insurance Supervisors(IAIS), Financial Action Task Force (FATF), Financial Action Task Force Style Regional Bodies (FATFSRBS), Wolfs Berg Group, International police organization (Interpol), Egmont group and Basel committee on banking supervision have been consulted to understand their global role and their significance in the global financial system.

Chapter 2: FINANCIAL ACTION TASK FORCE, INTERNATIONAL ANTI-MONEY LAUNDERING REGIME AND PAKISTAN'S MEASURES TO GLOBAL EFFORTS

The enormity of the problem of money laundering poses a grave risk to the international financial system. Given the urgency and scope of this issue, international financial institutions and financial experts have come up with certain regimes and strategies to counter the problem of money laundering. As we proceed with the theoretical perspective of anti-money laundering regime, Kenroy Dowers and Sabine Palmreuther,¹¹³ have referred to two schools of thought having somewhat opposing approaches but unified objective of countering money laundering due to the destructive impact of money laundering on international financial systems and economic stability of various states. The money launderers accumulate and divert resources from healthy, productive and development friendly sectors to sterile investments, socially destructive and economically disruptive sectors, having national and international negative implications, through their evil machinations and corrupt practices.¹¹⁴ According to the other school of thought with regards to the issue of money laundering, certain economies or offshore centers provide safe heavens for money launderers by putting in place certain strict regimes and regulations to protect the secrecy and for the security of the money launderers. However, the money laundered is an offshoot rather than a deliberate attempt of the regulatory mechanisms of the offshore economies.

¹¹⁵ Both schools of thought have some different point of views regarding money laundering.

¹¹³ See Kenroy Dowers and Sabine Palmreuther, 'Developing and International Consensus to Combat Money laundering and Terrorism Financing', *IMF Review*, Vo. 9, No.1, March 2003.

¹¹⁴ Ibid.

¹¹⁵ Ibid.

According to Petrus C. van Duyne, ¹¹⁶ ‘one of the central questions in the whole laundering issue is the alleged infiltration of crime money into the healthy fabric of our trade and industry, corrupting and eroding the supposed integrity of our bankers, builders and jurists or whoever touches it.’ The process of money laundering is so complex that without adopting a fool proof mechanism on global basis, it is quite impossible to eradicate or reduce this menace. It has become a global problem by intensity, volume, impacts and geographical expansions. ¹¹⁷ Because of the increased globalization of the financial setup the crime of money laundering is adversely affecting all the states and societies of the international community. ¹¹⁸ Since money laundering and terrorist financing have surfaced as a critical issue for the international community, it is quite difficult for a single country to cope with them on individual basis. The money launderers and terrorist financiers move on cooperative basis being well knit, therefore international cooperation is a necessary component not only to decrease the vicious activities of both the money launderers and terrorist financiers but also to eliminate them from the roots. In order to combat these crimes, numerous efforts have been made on international front to set standards and codes. It is necessary for all member countries of the world community to comply with these standards to meet the challenges posed by money launderers and terrorist financiers. The success and effectiveness of anti-money laundering scheme on part of any country solely depends upon its compliance with the international standards to combat these activities. ¹¹⁹ So, cooperation on international front becomes essential, if we want to root out the problem of money laundering. The question arises as why terrorist financing and money laundering have become so destructive? The simple answer is

¹¹⁶ Petrus C. van Duyne, ‘Money Laundering: Pavlov’s Dog and Beyond’, *The Harvard Journal*, Vol.37, No. 37, 1998, p.363.

¹¹⁷ The World Bank, *The World Bank in the Global Fight against Money Laundering and Terrorist Financing*, USA: World Bank, 2003, p-7.

¹¹⁸ Reuter Peter; and Truman, Edwin, *Chasing Dirty Money*, Peterson Institute for International Economics, Washington DC: 2004.p-171.

¹¹⁹ *The World Bank in the Global Fight against Money Laundering and Terrorist Financing*, 7.

the fact that both are capable of ruining the economies on global basis. Once the financial institutions have been destabilized, so many other crimes take place in such societies which not only weaken them but also break the entire fabric of these societies. The heavy volume of international flow of capital and its significance for the economies and its resultant implications in the international money market has also highlighted the weakness of crisis ridden international financial system. No doubt that globalization brings so many advantages for all the member states but at the same time it has disadvantages as well. In order to overcome this problem, there emerged a dire need to strengthen the architecture of financial system by the active participation of the societies of global village. This is why; the international regulators have decided to introduce mechanisms to secure the international financial system.¹²⁰ The term ‘international regime or regimes’ indicate to those international organizations meant to control and eliminate the problem of terrorist financing and money laundering. At places, international actor/actors denote the same meaning. There are other international organizations too, which in addition to their original agenda and objectives have decided to include anti-money laundering and anti-terrorist financing as the points of priority. So, these regimes by one way or the other govern financial system by multiple techniques and methods. These regimes ensure standard practices, uniform rules and global code of conduct to control the problem of money laundering and terrorist financing. These regimes comprise two groups of international organizations. Type one was basically founded with multitude of functions and subsequently included anti money laundering e.g International Bank For Reconstruction and Development, United Nations Organization, International monetary fund, Interpol etc, while the second group of organizations and bodies have been established to attain the targeted function of controlling money laundering and terrorist financing e.g financial action

¹²⁰ IMF, *Fact sheet Progress in Strengthening the Architecture of the International Financial System*, Washington D.C:IMF, 2000.

task force, FATF style regional bodies, wolfsberg group of banks and Egmont group etc. In order to comply with the laid down standards and norms on the part of international actors, governments have entered into agreements with the international community which aim to make financial transactions more transparent and outlaw certain kinds of financial activities.¹²¹ Because of the intensity of the menace, the United Nation (UN) directed each member state “to develop and promote global, regional, sub regional and bilateral cooperation among judicial, law enforcement and financial regulatory authorities in order to combat money-laundering”.¹²² The directive of the UN is clear indicator to the fact that vicious activities of money laundering and terrorist financing can be controlled, reduced and even eliminated provided there is cooperation and efforts on individual as well as collective basis. In this age of globalization, the economies are so closely woven together and dependent upon each other that there is need of coordination and cooperation to pursue key policy objectives at some super national level.¹²³ The international regimes cannot achieve the desired objectives without having cooperation from other states and financial institutions. These state and non-state actors perform the functions of anti-money laundering and anti-terrorist financing at international level.

2.1. STRATEGIES TO COMBAT MONEY LAUNDERING

International anti-money laundering regimes have adopted multi-pronged strategies to combat money laundering. The international regimes are making efforts to make the financial transactions that transparent and safer that they serve the interest of stakeholders as well as the country concerned. To achieve these objectives, FATF, with the active support of IMF and other

¹²¹ Harvey W. Kushner, *Encyclopedia of Terrorism*, London: Sage Publications, 2003, p. 139.

¹²² UN, United Nations Organization, “Convention against Transnational Organized Crime”, 2000, Article 7(4)

¹²³ Miles Kohler, and David A. Lake, (ed.,) *Governance in a Global Economy*, Princeton: Princeton University Press, 2003. p.61.

international organizations developed mechanisms to stop and deter the crime of money laundering. In 1998 FATF persuaded all the countries to participate in anti money laundering drive otherwise money laundering would be flowing “quickly to the weakest point in the international system”.¹²⁴ The emphasis of FATF since 1989 is that there should be cooperation and coordination from international community if the vicious circle of money laundering is to be eliminated. The compliance with FATF recommendations can only be met with provided there is uniformity of laws in each country to combat money laundering. In case, there is weakness on the part of one state, its weak financial regulations can also be harmful for policies adopted by foreign banks and their role in money laundering.¹²⁵ This is two-way traffic and mutual cooperation, coordination and monitoring for all states becomes essential and mandatory if money laundering is to be rooted out. The strategy of international regimes to curb money laundering and financing of terrorism is designed to: (a) target and weaken the economic strength of criminals or terrorist organizations and individuals to make them weak enough so that they cannot benefit or abuse the illicit proceeds, and (b) prevent the obnoxious impacts of their illegitimate wealth on the legal economy.¹²⁶ It means that the bases of criminal and terrorist organizations are to be destroyed completely with a view to prevent them from benefiting the illegal money besides legal economy is saved from criminal’s proceeds. For this purpose, intensive cross border “cooperation and coordination are needed to thwart the efforts of criminals and terrorists”.¹²⁷ The international regimes wish to have

¹²⁴ International Monetary Fund , ‘Money laundering : the importance of International Countermeasures’ Address by Michel Camdessus, then Managing Director of the International Monetary Fund at the Plenary Meeting of the Financial Action Task Force on Money Laundering in Paris, Feb 10th, 1998.

¹²⁵ George Clarke and Others, “Foreign Bank Entry: Experience, Implications for developing Economies and Agenda for further Research”, *The World Bank Research Observer*, Volume 18 No.1, Spring 2003, Oxford University Press, pp. 40-42.

¹²⁶ United Nations Office on Drug and Crimes, *UN Instruments and Other Relevant International Standards on Money-Laundering and Terrorist Financing* in <http://www.UNdc.org/UNdc/en/money-laundering/Instruments-Standards.html> (accessed: 19th November, 2022).

¹²⁷ The World Bank, *Reference Guide to Anti-Money Laundering and Combating the Financing of Terrorism*, Washington DC, 2006, p.III-1.

two types of cooperation from the states i.e. direct and indirect.¹²⁸ The direct cooperation is attained by ensuring real time assistance from states and financial institution to detect and comprehend the criminal related to money laundering. Indirect cooperation relates to awareness, mutual interaction of financial and regulatory institutions in pursuit to global consensus on the issue of anti-money laundering and anti-terrorism financing. The aim of international regimes is to detect, deter and destroy the criminals involved in money laundering and terrorist financing. One can easily understand the letter and spirit of strategies adopted by international regimes through Global Program against Money Laundering (GPML) which assists the “governments in confronting criminals who launder the proceeds of crime through the international financial system. The GPML provides assistance to governments, law enforcement and financial intelligence units with anti-money-laundering schemes; advises on improved banking and financial policies and assists national financial investigation services. Strategies include granting technical assistance to developing countries, organizing training workshops, providing training materials and transferring expertise between jurisdictions”.¹²⁹ These strategies enable developing countries in particular to prepare them for fighting against money laundering activities. Anti-money laundering strategy also includes issuance of standards, publication of Non-Cooperative Countries and Territories (NCCT) list, and conducting research and analysis.¹³⁰ The compliance with standards set by international regimes, awareness of those states which are not cooperating to confront the challenge and research and analysis are those tools which help member states to overcome the problem of money laundering and terrorist financing. It is the fast-changing world and without research and analysis,

¹²⁸ Shah et al, ' Anti Money Laundering Mechanism of International Financial regime: an application of Principal – agent model for Pakistan', *International Journal of Human Development*, Azad Jammu and Kashmir, Muzaffarabad, Pakistan, Vol. 3, No.1, January-June 2007.

¹²⁹ United Nations Office on Drug and Crimes, *Programme against Money- Laundering (GPML) Technical Assistance and CapacityBuilding*, <http://www.UNdc.org/UNdc/en/money-aundering/technicalassistance>. (accessed: 3rd May, 2024).

¹³⁰ International organizations are collaborating in AML strategies.

it is difficult to eliminate those ills which are destined to ruin the economies of states. Gresham Law very rightly states that ‘bad money drives out good money’¹³¹ and demands comprehensive measures. This clearly indicates the devastating economic consequences of money laundering and terrorist financing. To counter this with full vigour have to be the topmost agenda of the international community as it can also facilitate the process of the liberalization policy.¹³² International regimes with the support of developed and developing countries are active for anti-money laundering measures. It may be noted that political actors of each country and particularly of developed economies are deeply interested in minimizing the crime of money laundering so that the criminal impact can be reduced inside their jurisdictions.¹³³ So, cooperation and understanding between various political actors is an essential element for successful implementation of the strategies and measures adopted by international regimes for combating money laundering.

2.2. COUNTER MEASURES

The strength of any financial system and institution heavily depends upon the mechanism and measures it adopts for transparent transactions and transfer of money within and outside the country. In case of weak mechanisms and measures, the criminals can have advantage of prevailing and attaining their objectives. Money laundering has become a reckonable threat to all the stakeholders of international system. This high level of threat lead towards collaborative efforts of all the national and international actors to meet this challenge of combating money laundering. International regime is enhancing its role by focusing on anti-money laundering measures. Various entities and organizational bodies playing their role in countering money laundering and terrorist

¹³¹ The New Encyclopedia Britannica, Vol. 24, Chicago: Encyclopedia Britannica, Inc, 2005, P-325.

¹³² Peter J. Quirk, “Money Laundering: Muddying the Macro Economy”, *Finance and Development*, Volume 34, Number 1 (March), 1997).

¹³³ Mariano-Florentino Cuéllar, ‘The Tenuous Relationship between the Fight against Money Laundering and the Disruption of Criminal Finance’ ,*The Journal of Criminal Law and Criminology*, Vol. 93, No. 2/3. (Winter - Spring, 2003), p439).

financing are financial action task force (FATF), International Monetary Fund (IMF), International Police Organization (Interpol), international organization of securities commissions (IOSCO), the United Nations International Drug Control Program (UNDCP), the World Bank, International Association of Insurance Supervisors (IAIS), the Egmont Group, and Wolfsberg Group. The joint efforts by all these giant organizations in fact indicate to a grave danger of money laundering. It means it is a complex problem and needs comprehensive measures to combat money laundering and its causative agents. The truth of the matter is that implementation of these mechanisms and measures along with strict vigilance and monitoring is necessary. All these organizations become meaningless, if coordinated efforts are not there to oversee the activities of criminals along with executing mechanism to curb and destroy their bases, activities as well as their movement from one corner to the other. In this regard, international regimes muster formal and informal cooperation of states and institutions through different convention, agreements and code of international practices to curb this menace. These contracts, conventions and codes cover financial aspect, regulatory mechanism, legal issues and monitoring and enforcement of anti-money laundering measures. On the basis of exchange of information and adoption of mutually agreed codes, member states ensure full cooperation and assistance with regard to legal assistance and its prosecution. All such activities create a strong network which facilitates and protects interests of all the stake holders. The important international organizations involved in anti-money laundering and anti-terrorist financing are discussed below.

2.3 FINANCIAL ACTION TASK FORCE

The Financial Action Task Force (FATF) is a multilateral global watchdog for combating terror financing and money laundering. It was founded in 1989 by the group of seven countries (G7) which included The United States, Germany, Canada, Italy, the United Kingdom, France,

and Japan. Its headquarters is in Paris, France. Presently. It is a global anti-money laundering and anti-terrorist financing body. The mandate of the FATF is to set standards and to promote effective implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing and the financing of proliferation, and other related threats to the integrity of the international financial system.¹³⁴ In collaboration with other international stakeholders, the FATF also works to identify national-level vulnerabilities with the aim of protecting the international financial system from misuse. The FATF Recommendations set out a comprehensive and consistent framework of measures which countries should implement in order to combat money laundering and terrorist financing, as well as the financing of proliferation of weapons of mass destruction. Countries have diverse legal.

Administrative and operational frameworks and different financial systems, and so cannot all take identical measures to counter these threats. The FATF Recommendations, therefore, set an international standard, which countries should implement through measures adapted to their particular circumstances.

2.4 HISTORICAL BACKGROUND

With the US government's sudden suspension of gold convertibility in 1971, Bretton Woods System not only faced existential governance crisis but also resulted in the emergence of informal minilateralism.¹³⁵ Subsequently, the first international agreement on ML was issued by the Council of Europe in 1980, with the principle of "know-your-customer" by the banking sector,

¹³⁴ <https://www.fatf-gafi.org/en/home.html> (accessed: 12th February, 2022).

¹³⁵ Orfeo Fioretos, "Minilateralism and Informality in International Monetary Cooperation," *Review of International Political Economy* (2019): 1-25; Moises Naim, "Minilateralism," *Foreign Policy*, No. 173 (July/August 2009): 135-136; Chris Brummer, *Minilateralism: How Trade Alliances, Soft Law, And Financial Engineering Are Redefining Economic Statecraft* (New York: Cambridge University Press, 2014).

which would be responsible for the identity of the beneficial owner of the funds together with the “tracking of banknotes across borders.”¹³⁶

Substances” or the “Vienna Convention.”¹³⁷ As per the Convention, state should “deprive persons engaged in illicit traffic of the proceeds of their criminal activities and thereby eliminate their main incentive for so doing.”¹³⁸ Nevertheless, many opposed the UN Convention against ML at the end of Vienna Convention negotiation on the premise that “the process was too complex, the preferences too divergent, and the outcome was too basic to be effective.”¹³⁹ Resultantly, a task force to catalogue the AML statutes was proposed by the US. After a year of resistance, the members of the G7 agreed to new Financial Action Task Force on ML¹⁴⁰. It was mostly in vain. Efforts to tackle ML rose in the late 1980s, when the United Nations for the first time defined ML in the “Convention against Illicit Traffic in Narcotic Drugs and Psychotropic. The key interest of the international community in the establishment of FATF was drug-trafficking: “The Heads of the State or Government of seven major industrial nations and the President of the Commission of the European Communities... stated that the drug problem has reached a devastating proportions, and stressed the urgent need for decisive actions, both on a national and international basis. Among other resolutions on drug issues, they convened a Financial Action Task Force (FATF)...”¹⁴¹

¹³⁶ József Padányi and György Vass, “Banknote Tracking as A Tool for Counter Terrorism Financing,” *Hadmérnök VIII*, No. 2 (2013): 33.

¹³⁷ David P. Stewart, “Internationalizing the War on Drugs: The UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances,” *Denver Journal of International Law & Policy* 18 (1989-1990): 387-404.

¹³⁸ Kristen E. Boon, Aziz Huq and Douglas Lovelace ed., *Terrorist Financing and Money Laundering* (New York: Oxford University Press, 2010), 379.

¹³⁹ Mark T. Nance, “The regime that FATF built: an introduction to the Financial Action Task Force,” *Crime, Law and Social Change* 69 (2018): 114.

¹⁴⁰ Mark Pieth, “International standards against money laundering,” In Mark Pieth and Gemma Aiolfi eds., *A comparative guide to anti-money laundering: A critical analysis of Systems in Singapore, Switzerland, the UK and the USA* (Northampton: Edward Elgar Mark Pieth and Gemma Aiolfi, 2004), 1–63.

¹⁴¹ “Financial Action Task Force on Money Laundering, Report 1990-1991,” Financial Action Task Force, May 13, 1991, p. 4, Available at <https://www.fatf-gafi.org/media/fatf/documents/reports/1990%201991%20ENG.pdf> (accessed: 21st June, 2025).

At the time of its foundation, FATF's sole purpose was to hinder the cash flow earned through narcotics business as well as the calculations regarding ML. In subsequent years, the scope of FATF widened with the additional focus on the transnational crimes, terrorism financing, Weapons of Mass Destruction (WMD) proliferation and financial exclusion.

The Financial Action Task Force (FATF) was established in response to the growing concern about international drug trafficking. Drug smuggling is projected to be worth \$300 billion dollars worldwide, according to the United Nations. By the late 1980s, the lucrative global drug trade had become a source of concern for communities and governments all around the world. Drugs and drug money flowed easily across borders, with national legislation and law enforcement helpless to stop it.

Today, the FATF's objectives are "to set standards and promote effective implementation of legal, regulatory and operational measures for combating money-laundering, terrorist financing and other related threats to the integrity of the international financial system." Moreover, the FATF's 40 Recommendation are also considered its basic norms, where it set standards for states to do legislation on their own instead of writing their legislation, which are also reviewed by the FATF members annually. The G7 ministers agreed that a worldwide approach was required to combat the international drug trade and prohibit the use of the banking sector and other financial institutions to launder drug money around the world. They established the FATF, which was entrusted with reaching an international agreement on methods to detect and apprehend terrorists. Main objective of establishment of FATF is developing worldwide consensus on prevention of money laundering, detect and confiscate proceeds of crime.¹⁴²

¹⁴² <https://www.fatf-gafi.org/en/the-fatf/history-of-the-fatf.html> (accessed: 14th July, 2024)

The Financial Action Task Force (FATF) is the world's leading anti-money-laundering and combating-the-funding-of-terrorism (AML/CFT) watchdog.

2.5 BACKGROUND OF FINANCIAL ACTION TASK FORCE

The establishment of the Financial Action Task Force (FATF) was a response to the growing concern regarding international drug trafficking. The United Nations estimates that the global drug smuggling industry is valued at a staggering \$300 billion. By the late 1980s, the rampant global drug trade had become a source of worry for communities and governments worldwide. Drugs and the illicit funds associated with them were flowing across borders effortlessly, rendering national legislation and law enforcement agencies powerless. Recognizing the need for a global approach to combat the international drug trade and the money laundering associated with it, the ministers of the G7 nations came together.

The G7 ministers agreed that it was imperative to establish an international body capable of addressing these issues. This led to the creation of the FATF, tasked with achieving an international consensus on methods to detect and apprehend terrorists and with a primary objective of preventing money laundering while identifying and seizing the proceeds of criminal activities.

In 1990, the FATF introduced a pivotal set of 40 Recommendations outlining the essential legal and regulatory measures countries should adopt to identify, prevent, and penalize money laundering within their financial systems. This marked a significant milestone in the fight against money laundering because, prior to this, many nations lacked the specific legal and regulatory frameworks needed to combat money laundering effectively. For the first time, countries were armed with robust tools and benefited from international consensus on how to combat the global issue of money laundering, particularly in connection with drug trafficking.

The FATF's effectiveness in establishing standards for anti-money laundering measures led to an important expansion of its role in 2001, following the terrorist attacks on the United States on September 11th. In response, the FATF swiftly set clear criteria to prevent the financing of terrorism and broadened its mandate to include combating terrorist financing. The introduction of the FATF's Special Recommendations provided countries with powerful tools to trace and intercept terrorist assets and pursue individuals or nations involved in funding terrorism.

In 2012, the FATF further expanded its focus due to the growing threat of the proliferation of weapons of mass destruction originating from certain countries. Money laundering was no longer the sole risk undermining the integrity of the international financial system. Financial institutions were increasingly being exploited to fund terrorism, facilitate the spread of weapons of mass destruction, and enable the movement of funds associated with corruption and other criminal activities. The FATF's established track record as a global standard-setter in the field of anti-money laundering measures prompted this expansion of its mandate to address these critical issues and new threats to the international community.¹⁴³

2.6 THE FATF SECRETARIAT

The FATF Secretariat is a highly motivated, multicultural and dedicated team of professional support staff and experts from all over the world. It brings together individuals from 15 countries, with 10 languages, and many years' experience and expertise from law enforcement and intelligence agencies, financial intelligence units, policy advisors and the legal profession.

¹⁴³ Repot published by FATF title “ Financial Action Task Force 30 Years “page 10.

The Secretariat supports the substantive work of the FATF membership and global network. The Secretariat is located at the OECD Headquarters in Paris. Career opportunities at the FATF Secretariat are advertised and filled in accordance with the OECD procedures.¹⁴⁴

The FATF Secretary has the responsibility to lead the FATF Secretariat into pooling together the collective skills and knowledge of governments worldwide in order to create a cohesive and effective global front against money laundering, terrorism financing, illicit behavior as well as the proliferation of weapons of mass destruction.

In short, as Mr. Lewis put it in a speech at the Barcelona AI and Block chain Summit in November 2019, it is to protect society against the harm of serious crime. The current FATF secretary has been open about the challenges he and his organization face. In this candid interview, Mr. Lewis talks in-depth about governments' reluctance to cooperate and the guile of criminals who often outsmart and outpace regulators at every corner.

2.6.1 DUTIES OF THE FATF SECRETARIAT

The FATF Secretariat performs four core duties:

MONITORING: how criminals, terrorists, and rogue states get and access funds and which methods they use to launder money.

DEVELOPMENT: of worldwide AML/CFT standards, practices and recommendations to help mitigate new risks

ASSESSMENT: of governments' actions to comply with AML/CFT guidance's

¹⁴⁴ <https://www.fatf-gafi.org/en/the-fatf/fatf-secretariat.html> (accessed: 30th May, 2025).

TRAINING: of officials from FATF's member countries and FATF Style Regional Bodies (FSRBs) to help them implement policies and respond to risks. Inside the FATF Secretariat Organization

The FATF Secretariat is a multicultural and multi-lingual professional organization that consists of 40 highly skilled employees, support staff and experts from 15 countries who speak over 10 languages and have a collective wealth of experience and knowledge on Anti-Money Laundering (AML) and Counter-Terrorism Financing (CFT).

Its staff members boast diverse backgrounds that include law enforcement, financial intelligence units (FIUs), intelligence agencies and the legal sector.¹⁴⁵

2.6.2 ORGANIZATIONAL STRUCTURE

There are following five different organizational working groups in FATF secretariate headed by the Secretary FATF.

The Evaluation & Compliance Team assesses and monitors FATF member countries' AML/CFT efforts and compliance via peer reviews and follow-up meetings.

The Policy Development Team develops and enhances the FATF Standards in accordance with its recommendations.

The Risk, Trends and Methods Team flags and analyzes money laundering and terrorism funding as well as any threat that could undermine global finance.

¹⁴⁵ <https://www.fatf-gafi.org/> (accessed on 12th April, 2024).

The International Cooperation and Review Group (ICRG) identifies and deals with countries on FATF’s high-risk and “non-cooperative countries and territories” (NCCT) list, also respectively known as the FATF gray list and blacklist.

The Global Network Coordination Team helps the FATF’s worldwide network of FSRBs and other global organizations understand and implement its frequently updated recommendations. Started in 2012, it raises issues of interest to both the FATF and FSRBs and helps share good practices between them.¹⁴⁶

The FATF Secretariat has a specific mandate to help support the FATF and ensure that its 40+9 Recommendations, such as 2019’s Recommendation 16 FATF Travel Rule, are disseminated to and implemented by its 200+ affiliated member countries and global network.

The FATF Secretariat is funded by the FATF and its members and is located in the Organization for Economic Co-operation and Development (OECD) headquarters in Paris, France. The FATF Secretariat is responsible for coordinating the organization's work and facilitating international cooperation in the fight against money laundering and terrorist financing.

2.7 FATF-STYLE REGIONAL BODIES (FSRBS):

These are regional organizations established to promote the implementation of the FATF's recommendations at the regional level. They conduct mutual evaluations, offer technical assistance, and facilitate cooperation among member countries. As of my last update, there were several FSRBs around the world. Some of them include:

- Asia/Pacific Group on Money Laundering (APG): Focused on the Asia-Pacific region.
- Caribbean Financial Action Task Force (CFATF): Covers the Caribbean region.

¹⁴⁶ <https://www.fatf-gafi.org/content/dam/fatf-gafi/FATF/FINAL%20FATF%20MANDATE%202012-2020.pdf.coredownload.pdf> (accessed: 12th April, 2024).

- Eurasian Group (EAG): Focuses on the Eurasian region.
- Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG): Concentrates on the eastern and southern African region.
- Inter-Governmental Action Group against Money Laundering in West Africa (GIABA): Concentrates on West Africa.
- Middle East and North Africa Financial Action Task Force (MENAFATF): Covers the Middle East and North Africa.
- Financial Action Task Force of Latin America (GAFILAT): Focuses on Latin America.

However, the FSRBS are independent organizations that do not fall under the direct control of the FATF. Instead, they work together by mutually evaluating AML/CFT deficiencies and conducting peer reviews. In 2012, the FATF Plenary helped to fortify this interdependent relationship by defining the rights and duties that apply to the task force and its regional bodies in the guidance titled “High-Level Principles and Objectives for FATF and FSRBs”¹⁴⁷

These principles, updated in 2016 and 2018, form the foundation for the FATF’s Global Network Coordination Group (GNCG), an internal working group that is chaired by both a FATF and FSRB member each. The FATF Recommendations set out the essential measures that countries should have in place to:-

- Identify the risks, and develop policies and domestic coordination; pursue money laundering, terrorist financing and the financing of proliferation;
- Apply preventive measures for the financial sector and other designated sectors; Establish powers and responsibilities for the competent authorities (e.g., investigative, law enforcement and supervisory authorities) and other institutional measures;
- Enhance the transparency and availability of beneficial ownership information of legal persons and arrangements; and facilitate international cooperation.
- Sets international standards to combat money laundering and terrorist financing.
- Assesses and monitors compliance with the FATF standards.

¹⁴⁷<https://www.fatf-gafi.org/content/dam/fatf-gafi/Global-Network/High> (accessed: 23rd March, 2025).

- Conducts typologies studies of money laundering and terrorist financing methods, trends and techniques.
- Responds to new and emerging threats, such as proliferation financing.
- FATF's Founding Document (40 Recommendations): In 1990, the FATF issued its first set of recommendations known as the "40 Recommendations." These recommendations provided a comprehensive framework for anti-money laundering (AML) efforts and established standards for member countries to follow.¹⁴⁸
- Expansion of Membership: Over the years, the FATF expanded its membership beyond the G7 countries, and it now includes a broader group of countries and jurisdictions. As of my last knowledge update in September 2021, the FATF had 39 member countries, including the European Commission and the Gulf Cooperation Council.
- Evolution and Expansion: The FATF's mandate expanded to include countering the financing of terrorism (CFT) after the events of September 11, 2001. It issued the "9 Special Recommendations" on CFT, which later became an integral part of its work.

2.8 THE ASIA PACIFIC GROUP (APG)

The APG was established in 1997 to provide a regional forum for mutual collaboration amongst member countries against money laundering and terrorist financing.¹⁴⁹ It helps in implementation of international standards in the legal, regulatory and financial sector.¹⁵⁰ APG's purpose and strategy to counter money laundering and terrorist financings based on multi-pronged efforts. It works closely with regional as well as global actors to implement anti money laundering standards developed by FATF.¹⁵¹ It contributes to the up gradation of international standards against money laundering and terrorist financing by considering different legal, law enforcement

¹⁴⁸ Fatf 40 Recommendations: <https://www.fatf-gafi.org/en/topics/fatf-recommendations.html> (accessed: 12th April, 2024).

¹⁴⁹ Asia Pacific Group on Money Laundering, *APG Annual Report 2004 – 2005*, Sydney: APG, 2005, p-iii.

¹⁵⁰ Ibid.

¹⁵¹ *The IMF and the Fight Against Money Laundering and Financing of Terrorism, Fact Sheet, op.cit.*

environment and financial system of the member countries.¹⁵² Moreover, it provides a platform for collaborative anti money laundering and anti-terrorist financing measures in the region.¹⁵³ It also provides a regional forum for problem diagnosis and solution suggestion; develops mechanism to counter money laundering and terrorist financing by studying different typological reports and methods adopted for money laundering and removes loopholes existing in the financial and non-financial sectors.¹⁵⁴ The illegal methods of criminals proceeds and issues pertaining to *Hawala/Hundi* in different countries are studied and effective money laundering counter measures are identified. In order to have an overall mechanism in place, the adoption of anti-money laundering standards is encouraged through education, research and analysis activities. The regional factors are also taken into account and jurisdictions are encouraged to implement anti-money laundering initiatives with autonomy. It extends support to the member countries through cooperation and coordination and also assesses members' compliance with global standards set by the international actors to combat money laundering and terrorist financing.¹⁵⁵

After having deliberated on the role of various international organizations and their strategies to fight money laundering and terrorist financing, it reveals the fact that these problems are the most dangerous and play havoc with financial institutions of the world in particular and economies in general. If these threats remain unchecked, there is likelihood of ruination of financial stability as well as integrity of the financial sector which includes banks and other institutions. The criminal activities create chaos and anarchy in the societies as a result of which

¹⁵² Asia Pacific Group on Money Laundering, *APG Annual Report 2004 – 2005*, p. 7.

¹⁵³ Rick Mc Donell, 'Money Laundering Methodologies and International and Regional Counter Measures' National Crime Authority, NSW Paper presented at the conference Gambling, Technology and Society: Regulatory Challenges for the 21st Century, convened by the Australian Institute of Criminology in conjunction with the Australian Institute for Gambling Research and held in Sydney, 7-8 May 1998, p-14.

¹⁵⁴ Asia Pacific Group on Money Laundering, *APG Yearly Typologies Report, 2004 – 2005*, Sydney: APG, 2005.

¹⁵⁵ Asia Pacific Group on Money Laundering, *APG Annual Report 2004 – 2005*, Sydney: APG, 2005, p.7.

the fruit of globalization cannot be reaped. The peace of the societies is endangered by these criminal activities and economic growth with rapid speed cannot take place. Global trade is also severely affected by money laundering and terrorist financing. Therefore, global financial regulators are right in considering the money laundering and terrorist financing a great threat. In the recent times, terrorist activities have almost endangered every society whether it exists in the developed or developing world. Both the money laundering and terrorist financing give birth to illegitimate businesses and activities like smuggling of various types, drug trafficking etc. at local and global level. Industrial growth, economic development and social order at regional and global level is also affected by this problem. Money laundering has also become a great challenge for international financial actors who are trying to fight this menace just to maintain their credibility as well as the protection of the interests of the international community. The failure of markets also erodes the credibility and legitimacy of international regimes for which various international financial actors have adopted global strategy not only to control money laundering but eliminate it from the scene. The success of international regimes solely depends upon cooperation and coordination at all levels. As already elaborated that this task cannot be achieved by any single organization as the forces of money laundering and terrorist financing are very forceful, sophisticated and resourceful, thus they need to be coped with greater force, vigor and commitment.

After having discussed the strategies of various international regimes with regard to combating money laundering and terrorist financing, it is pertinent to elaborate the measures taken by Pakistan to combat money laundering in response to global efforts.

2.9 FATF OBJECTIVES AND TASK

Major objectives of FATF are focused on the establishment of international standards to combat money laundering and terrorist financing; to encourage and monitor the implementation

process; to pin point and track the threat of money laundering and terrorist financing; and to ensure information sharing with all the international stakeholders.¹⁵⁶ One of its “functions is to review and report on money laundering trends, techniques and methods (also referred to as typologies)”.¹⁵⁷ To combat money laundering, the FATF works in close cooperation with other international, regional and national organizations.¹⁵⁸ It enables FATF to have consensus and global support to enforce its Anti-money laundering and anti-terrorist financing policies. The FATF is having close cooperation, deep understanding and sustained partnership with these organizations so that global approach can be adopted to eradicate this menace. With the objective to have global coverage in 2006, FATF has 8 FATF styles regional bodies to perform a leading role in relevant regions.¹⁵⁹ FATF is having a holistic approach towards fighting the threat of money laundering and terrorist financing. This approach includes developing recommendations, ensuring global networking, cooperation and association with all the important global actors, evaluation of anti-money laundering and anti-terrorist financing measures and publishing of non-conformist list.¹⁶⁰ In the light of recommendations, FATF is considered to be standards setter for anti-money laundering and anti-terrorist financing.

These recommendations are considered global standards by IMF, World Bank, UN, regional organizations, Egmont groups, Wolfsberg group and other countries.¹⁶¹ The FATF policies and principles enjoy the support and approval of 150 jurisdictions, the International Monetary Fund (IMF), the World Bank (WB) along with other international actors.¹⁶² The

¹⁵⁶ *FATF 40 Recommendations*, 2004, op.cit.

¹⁵⁷ The World Bank, *Reference Guide to Anti-Money Laundering and Combating the Financing of Terrorism*, op.cit., III-10.

¹⁵⁸ *FATF Annual Report 2005-2006*, Paris France: FATF, 2006.

¹⁵⁹ FATF, *FATF Annual Report 2006-2007*, FATF: Paris France: FATE, 2007,p-ii.

¹⁶⁰ Ibid.

¹⁶¹ The World Bank *The World Bank in the Global Fight against Money Laundering and Terrorist Financing*, op.cit., pp. 17-18.

¹⁶² *FATF Annual Report 2005-2006*,op.cit.

recommendations of FATF clearly indicate that the organization is committed to eliminate money laundering and terrorist financing. The objective can only be achieved through mutual cooperation and support of all the countries as well as financial institutions. It may, however, be added that cooperation of other international organizations is essential to attain the desired result.

Since money laundering and terrorist financing are global issues, both need to be tackled with international cooperation. FATF has backing of UN as the UN Security Council Resolution 1617 has emphatically urged all member countries “to implement the comprehensive, international standards embodied in the FATF Forty Recommendations on money laundering and the Nine Special Recommendations on terrorist financing”.¹⁶³

This approval of Security Council has increased the global significance of the FATF standards besides assurance of global cooperation¹⁶⁴. Vienna Convention 1988 and Palermo convention of UN 2000 also substantiate the global anti money laundering efforts of FATF.¹⁶⁵ The FATF and the international financial institutions are continuously making efforts to co-ordinate their activities closely so that anti-money laundering measures can be implemented and its evaluations and assessments can be ensured in true letter and spirit.¹⁶⁶ While looking at the serious efforts on part of all international organizations and financial institutions, it seems that money laundering and terrorist financing are much forceful forces having the capacity to destroy societies and communities. Without cooperation and coordination at all fronts, it seems quite impossible to reduce or eliminate these threatening problems. It is therefore necessary that efforts of FATF and such other organizations are not only provided cooperation but strengthened as well to combat

¹⁶³ Ibid.

¹⁶⁴ *FATF Annual Report 2005-2006*, op.cit.

¹⁶⁵ United Nations Organization, *United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances*, New York, United Nations, 1988. Also see United Nations Organization, *Convention against Transnational Organized Crime*, New York, United Nations, 2000.

¹⁶⁶ *FATF Annual Report 2006-2007*, op.cit.

these problems. For this purpose, FATF since 1990s has initiated joint efforts to achieve the desired objectives. Although the world has become a global village by virtue of advancement of technology yet it is divided into different regions. The mechanisms and techniques adopted by money launderers are unique and vary from region to region. One region may not have full knowledge of the techniques and tools adopted by money launderers of the other region. In order to solve this problem, different FATF-style regional bodies after 1990 have been established to complement the efforts of FATF and to develop mutual understanding among various regions.¹⁶⁷ The benefit of these regional bodies is that they not only comply with set standards of FATF but also conduct mutual valuation of their member countries for implementation of measures and standards to curb money laundering.¹⁶⁸

Money laundering is a multifaceted problem and can be handled only if the techniques and methods adopted by money launderers and financiers of terrorism are properly identified and understood. This will enable the FATF and other FATF style regional bodies to come up with counter techniques and methods to cope with the activities of this organized crime. Annual Typologies Reports of FATF and FATF-style regional bodies are important step in this direction. These typologies reports, in fact, present together the methods and techniques to counter money laundering and terrorist financing.¹⁶⁹ Since the typology reports are prepared on the basis of research, analysis and mutual collaboration, it is easy to understand that what techniques should be adopted by a particular region to eliminate the problems of money laundering and terrorist financing. With the view to have a global approach for properly taking preventive measures, the

¹⁶⁷ The primary FATF partners are the 8 FSRBs, which play important leadership roles in their respective regions. The FSRBs group, on a regional basis, jurisdictions that have committed to implementing the *40+9 recommendations* and have agreed to undergo mutual evaluations of their AML/CFT systems. Four of these FSRBs are associate members of the FATF: the Asia/Pacific Group on money laundering (APG), the Council of Europe Committee of Experts on the Evaluation of Anti-Money Laundering Measures (Moneyval), the Grupo de Acción Financiera de Sudamérica (GAFISUD) and the Middle East and North Africa Financial Action Task Force (MENAFATF).

¹⁶⁸ *FATF Annual Report 2006-2007, op.cit.*

¹⁶⁹ *FATF Annual Typology Reports, 2004-2007*, France Paris.

FATF established a Working Group on Typologies (WGTYP) in 2004.¹⁷⁰ This has proved to be useful for all countries as typologies describe and explain the nature of the money laundering and terrorist financing threats for which appropriate methods and techniques can be prepared to maximize the global resistance to these activities and thereby increasing the likelihood of their detection through these techniques.¹⁷¹

In order to ensure that recommendations of FATF are complied with strictly by the member states. FATF, FATF-style regional bodies and World Bank not only monitor but also assess the effectiveness of the standards being followed. The Evaluation is based on a set of standardized questions and assessment made on the basis of answers given. To ascertain the realization of the intended results regarding money laundering by every member state, it has to undergo an impartial evaluation and assessment by other member countries.¹⁷² This monitoring and assessment process enables international regimes to know any loophole or deficiency in the enforcement of Anti Money Laundering (AML) measures. This is a useful exercise in the sense that deficiencies are removed and standards are revised where it is required.

2.10 FATF STRATEGY FOR NON- COMPLIANT STATES

Global compliance is necessary for ensuring complete compliance of anti- money laundering measures. The FATF adopted a mechanism by publishing the list of noncompliant countries since 2000¹⁷³ and the first list included names of significant jurisdictions.¹⁷⁴ This technique has worked well and identified non-compliant jurisdictions are being stigmatized “all 23 jurisdictions that were identified in 2000 and 2001 are no longer on the NCCT list “of 2006.”¹⁷⁵

¹⁷⁰ *United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, op.cit.,*

¹⁷¹ *FATF Annual Report 2006-2007, p.7.*

¹⁷² *Ibid.*

¹⁷³ Detail of non-compliance jurisdictions is available in NCCT list.

¹⁷⁴ *Ibid.*

¹⁷⁵ *FATF Annual Report 2006-2007,, p.10.*

This is an indicator of the keen interest on part of all jurisdictions that they have followed FATF suit to adopt anti-money laundering measures. Another indication to the fact is that money laundering is considered the most dangerous element to ruin financial institutions of states and as such every jurisdiction is extending its cooperation to FATF and other international regimes working on this agenda.

In addition to NCCT list, the FATF also followed a strategy of stressing upon financial institutions of non-compliant countries to pay special heed to their commercial and financial relationship with individual as well as companies. This, in fact was a two-pronged strategy that if some jurisdictions did not comply with the measures of FATF, at least financial institutions of those countries could be made alternative partners in combating the money laundering. This method worked to the satisfaction of FATF and other international regimes as every country is now cooperating with FATF and its measures to counter the menace of money laundering. There is no way out for any state to stay in isolation because the financial institutions of global village are dependent upon each other for which cooperation, coordination and collaboration are necessary elements.

2.11 UNO AS ANTI MONEY LAUNDERING REGIME

The United Nations with its international recognition adopted a leading role in combating ML on global basis.¹⁷⁶ The move was initiated because of increasing trend of drug trafficking and direct and indirect involvement of banking system in the process of laundering. It was estimated that during the last decade, banking losses rose to \$ 1 trillion¹⁷⁷ which in fact is substantial loss to

¹⁷⁶ *United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances*, op.cit.

¹⁷⁷ Mayes, David G., "Who Pays for Bank Insolvency in Transition and Emerging Economies", *Journal of Banking and Finance*, Vol. 29, Issue. 1, Amsterdam, January (2005): 161-162.

the world community. The United Nations in 1988 through Vienna convention called for criminalization of money laundering.¹⁷⁸ The political declaration and action plan against money laundering was adopted by United Nations in 1998 to accelerate global anti money laundering efforts and subsequently United Nations approved Palermo convention against transnational organized crime in 2000.¹⁷⁹ These conventions emphasized upon states to take effective measures against money laundering and muster global cooperation for the execution of collective investigations, assistance in prosecution and possible help in the extradition of criminals. It was also made obligatory for the ratifying state to “establish regulatory regimes to deter and detect all forms of money laundering, including customer identification, recordkeeping and reporting of suspicious transactions”.¹⁸⁰ In order to get global support, UN directed all states to “institute a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions”.¹⁸¹ The initiatives taken by the UN mustered support from the member countries for strengthening the role of international organizations for combating money laundering. In the light of UN decision to enforce anti-money laundering regime, it became mandatory for member countries to institute and forge international, Local and regional as well as mutual coordination and cooperation among their legal, prosecution, administrative and fiscal regulators.¹⁸²

Similarly model laws are developed and technical assistance is also provided by United Nations office on drugs and crime’s global program against money laundering.¹⁸³ It also assists them in the compliance of the UN conventions relevant to Anti-Money Laundering and Combating the Financing of Terrorism.¹⁸⁴ The UN has also played a leading role in the efforts over many

¹⁷⁸ *United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, op.cit.*

¹⁷⁹ United Nations Organization, *Convention against Transnational Organized Crime*, New York: United Nations, 2000.

¹⁸⁰ *Ibid.*

¹⁸¹ *Ibid.*, Article 7(1).

¹⁸² *Ibid.*, Article 7(4).

¹⁸³ [http:// www .imolin.org/imolin/gpml.html](http://www.imolin.org/imolin/gpml.html). (accessed on: 24th April, 2020)

¹⁸⁴ *Ibid.*

years to combat predicate offence of financing of terrorism along with money laundering. In this regard International Convention for the Suppression of the Financing of Terrorism, 1999¹⁸⁵ is the mile stone. The Convention necessitates upon member countries to initiate measures against money laundering and terrorist financing that “it is an offense if any person, by any means, directly or indirectly, unlawfully and willfully, provides or collects funds with the intention that they should be used or in the knowledge that they are to be used to carry out acts of terrorism”.¹⁸⁶ On 28 September 2001, the United Nations Security Council passed Resolution 1373, which reaffirmed its call to all states to become signatories and ratify the Resolution and ensure the compliance with the applicable international conventions by criminalizing terrorism and its financing.¹⁸⁷ This resolution also made it mandatory for the security Council to institute a Counter Terrorism Committee for close monitoring and compliance by member states with the resolution.¹⁸⁸ These measures are meant to ensure compliance with the standards laid down by the FATF.

2.12 UNO AND TECHNICAL ASSISTANCE

In order to make successful fight against money laundering and terrorist financing, UN has launched a ‘Global Program against Money Laundering’ (GPML). This program ensures technical assistance for member states to adopt measures and implement policies related to anti-money laundering.¹⁸⁹ Under this program, a variety of activities are undertaken. Members are provided technical and financial assistance for their anti-money laundering programmes. It also envisages a support for the drafting or reviewing of the institutional and legislative frameworks to combat

¹⁸⁵ See United Nations Organization, *International Convention for the Suppression of the Financing of Terrorism*, New York, United Nations, 1999).

¹⁸⁶ Ibid., Article 2.

¹⁸⁷ United Nations Organization, the UN Security Council Resolution 1373, New York: United Nations, 2001.

¹⁸⁸ Ibid.

¹⁸⁹ Peter Alldridge, *Money Laundering Law: Forfeiture, Confiscation, Civil Recovery, Criminal Laundering and Taxation of the Proceeds of Crime*, Oxford: Hart Publishing, 2003.

money laundering. The program also ensures a mutual assistance, global consensus and convergence of policies for the attainment of optimal results. It also strives for institutional development at national, regional and international levels. This program substantiates “the development of financial intelligence units (FIUs); fostering the awareness, understanding and implementation of best practices in the regulation of financial services”.¹⁹⁰

UN works towards the attainment of the set goals of this program by extending technical and financial help by conducting trainings and running awareness campaigns. The UN also engages the civil society and law enforcing agencies as well as the judicial institutions to combat this menace. UN being the custodian of international peace and cooperation also engages different institutions including financial and multinationals, provides training and allied support to ensure compliance with FATF standards. Keeping in view the role of other organizations “GPML is working in close cooperation with rest of the international bodies like the FATF, Interpol, OAS/CICAD, the Caribbean Financial Action Task Force, the Asia/Pacific Group, the Council of Europe, the World Bank and IMF etc. for ant- money laundering”.¹⁹¹

2.13 ROLE OF BANK FOR INTERNATIONAL SETTLEMENT

The Bank for International Settlements (BIS), promotes “cooperation among central banks and other agencies in pursuit of monetary and financial stability”.¹⁹² Promoting monetary and financial stability is a significant objective of the BIS. Initially, BIS has the mandate of the European organization, however, it has become a global organization with global backing and agenda.¹⁹³ BIS considers anti money laundering measures vital and important for developing and

¹⁹⁰ United Nations Office on Drugs and Crimes, *UNDC and Money- Laundering/Countering the Financing of terrorism* <http://www.UNdc.org/UNdc/en/money-laundering/index.html>. (accessed: 1st June, 2024).

¹⁹¹ United Nations Office on Drugs and Crimes, *International Money-Laundering Information Network (IMoLIN)/Anti-Money-Laundering International Database (AMLID)*, <http://www.UNdc.org/UNdc/en/money-laundering/imolin-amlid.html> (accessed: 11th June, 2024).

¹⁹² Bank for International Settlements at <http://www.BIS.org>. (accessed: 4th May, 2007).

¹⁹³ BIS Paper No 27 ‘Past and Future of Central Bank Cooperation: Policy Panel Discussion’, Switzerland: Bank for International Settlements Press & Communications Basel, 2006, p .8.

developed countries because vulnerabilities of a banking system of any single state has the potential to jeopardize regional and international financial stability.¹⁹⁴ The financial institutions world over are dependent upon each other for purpose of transactions and other financial matters and as such an increase in the banks at risk boosts failures of international banking system,¹⁹⁵ which as a matter of fact creates growing concern internationally.¹⁹⁶

The Basle Committee on Banking Supervision is meant to strengthen the international financial system through direct and indirect contacts with most of the banking supervisors and financial institutions in every part of the world. The standing committees located at the BIS are of three types namely: (a) the Basel Committee on Banking Supervision, (b) the Committee on the Global Financial System and (c) the Markets Committee. It is the BIS Committee on Banking Supervision which deals with the global threat of money laundering and its implications on the financial sector of the world. For this purpose Basel Committee on Banking Supervision directly deals with the measures pertaining to anti-money laundering and anti-terrorist financing. It has devised (a) principles on ‘Prevention of Criminal Use of the Banking System’, (b) core principles for Money Laundering, 1988, (c) core principles for effective banking Supervision, 1997¹⁹⁷, and (d) customer due diligence for Banks in 2001. The core principles for banking supervision were revised in 2006. “The Core Principles for Effective Banking Supervision have become the most important global standards for prudential regulations” at international level.¹⁹⁸ The standard

¹⁹⁴ Basel Committee on Banking Supervision, *Core Principles for Effective Banking Supervision*, Switzerland: Bank for International Settlements Press & Communications Basel, 1997, p.1.

¹⁹⁵ Mark Carlson, and Kris James Mitchener “Branch Banking, Bank Competition and Financial Stability”, in *Journal of Money, Credit and Banking*, Vol. 38, No.5, Ohio: Ohio University Press, August 2006, p.1319.

¹⁹⁶ *Core Principles for Effective Banking Supervision*, op.cit., p.1

¹⁹⁷ Ibid.

¹⁹⁸ Basel Committee on Banking Supervision, *Core Principles Methodology*, Basel Switzerland: Bank for International Settlements Press & Communications Basel, October 1999.

practices of Anti-money Laundering are considered helpful for banking soundness as it minimizes different risks for local and global financial institutions.¹⁹⁹

The core principles elaborate the significance of the customer identification standards, prudential regulations and risk management for prudent banking policies. These rules are considered to be an “integral element of bank’s ‘internal control’ mechanism for risk management”.²⁰⁰ Absence of anti-money laundering measures results in faulty KYC policy which causes potential for reputational damage and fraud.²⁰¹ The Basel Committee’s standards are meant for market integrity in order to avoid losses suffered by financial institutions owing to non-compliance and insufficient diligence. Had the banks followed KYC programs effectively, “these losses could have been avoided and damage to banks’ reputation significantly diminished”²⁰². In pursuit of comprehensive strategy on Anti Money Laundering, BCBS, IOSCO and IAIS presented anomalies and divergences in the application of standard AML measures pertaining to different sectors of economy.²⁰³

2.14 PRINCIPLES FOR THE PREVENTION OF CRIMINAL USE OF THE BANKING SYSTEM.

In order to save the banks and financial institution to be trapped in the vicious circle of money laundering, Basel Committee issued a directive in 1988 that banks’ managements should ensure that their institutions provide assistance in suppressing money laundering both domestically and internationally. There is a possibility that the banking and non-banking institutions could be

¹⁹⁹ Ibid.

²⁰⁰ Basel Committee on Banking Supervision, *Core Principles for Effective Banking Supervision*, 1997, *op.cit.*, Principles No.14 and 15.

²⁰¹ Ibid.

²⁰² *Basel Committee on Banking Supervision, Customer Due Diligence for Banks*, Switzerland: Bank for International Settlements Press & Communications Basel, 2001, Introduction.

²⁰³ Bank for International Settlements, Initiatives by the BCBS, IAIS and IOSCO to combat money laundering and the financing of terrorism, (<http://www.bis.org/publ/joint11.htm>) (accessed: 5th July, 2024).

misused by the launderers and criminals to clean their ill-gotten wealth.²⁰⁴ The financial sector is the important channel through which process of money laundering is completed for which Basel Committee attaches a great importance to the role of a vigilant and honest management to avoid their institutions from the malicious practices of the money launderers.²⁰⁵ Integrity, vigilance and proper internal control system are the best safeguards against the money launderers. So the Committee successfully diagnosed the basic weakness in financial sector and tried to strengthen the same through certain mechanisms. There is emphasis on customer's identification at all costs, in order to avoid the banking system becoming an instrument in the hands of money launderers to clean their illegitimate wealth.²⁰⁶ It may be noted that improper customer's identification may become cause of fraud or criminal activity in the banking sector for which financial institutions have to ensure compliance with the standards and regulations. Essentially it ensures that the funds deposited with them are being generated by legitimate businesses and lawful activities.²⁰⁷ This not only ensures credibility of financial institution but their stability as well. If standards are followed in true spirit, it minimizes the chances of criminal transactions affiliated with money launderer.²⁰⁸ Obviously this compliance would minimize the chances of cleaning dirty money through the banking channels. The principle of cooperation between law enforcement authorities emphasizes to prevent and comprehend ML. The banks and financial institutions can take appropriate measures as suggested when there is suspicion of criminal activities in transactions.²⁰⁹ Measures may include denial of assistance and severance of relationship with the customer and closure or freezing of accounts.²¹⁰ In fact all these measures suggested by the Basel Committee are meant to regulate

²⁰⁴ Basel Committee on Banking Supervision, *Prevention of Criminal Use of The Banking System For the Purpose of Money-Laundering*, Switzerland: Bank for International Settlements Press & Communications Basel, 1988, Preamble.

²⁰⁵ Ibid, Preamble, Paragraph.6.

²⁰⁶ Ibid, Customer Identification Principle II.

²⁰⁷ Ibid, Compliance with Laws Principle III.

²⁰⁸ Ibid.

²⁰⁹ Ibid., compliance with laws Principle IV.

²¹⁰ Ibid.

financial activities in clean and transparent manners to strengthen the financial system and discourage the activities of criminals for money laundering. So, adhering to the principles of customer's identification and maintaining record of transactions is essential for banks.²¹¹

2.14.1 CORE PRINCIPLES

In order to discourage and eliminate money laundering and such other financial criminal activities, effective banking supervision is the core principle. The core principles devised by Basel Committee in 1997 provide an all-inclusive plan to evolve an efficient banking administrative and overseeing structure to combat money laundering. It also emphasizes and mandates financial institutions to have sufficient banking policies and procedural mechanism to counter ML.²¹² Through these policies, code of conduct and standardized professional practices it is insured that banks are not being knowingly or unknowingly used by criminal groups.²¹³ The core principles were revised in 2006 for comprehensive application and are also being followed for the purpose of Financial Sector Assessment by the World Bank and the IMF.²¹⁴ This indicates the importance of these principles which are meant to stabilize and strengthen the financial sector of each country. By following these principles, anti-money laundering measures can prove effective as well as fruitful.

2.14.2 CUSTOMER'S DUE DILIGENCE

The financial institutions can be strengthened only if proper standards and set procedures are being followed by them. The banks are prone to numerous losses whenever there is breach of compliance with the set standards and procedures.²¹⁵ The losses are possibly avoidable if proper

²¹¹ Ibid., Adherence to the statement principle V.

²¹² Basel Committee on Banking Supervision, *Core Principles for Effective Banking Supervision*, 1997, op.cit., Principle No.15

²¹³ Ibid., Principle No.15.

²¹⁴ Basel Committee on Banking Supervision, *Core Principles for Effective Banking Supervision*, Switzerland: Bank for International Settlements Press & Communications Basel, 2006.

²¹⁵ *Customer Due Diligence for Banks*, 2001, op.cit., Introduction.

measures are adopted by the banks. This not only saves banks from losses but also enhances their integrity in the market. The Basel Committee's interest in customer's due diligence also enhances strength, trust and integrity of the financial system. Bank for International Settlement reinforces the efforts of FATF because KYC is a protective shield against money-laundering and other financial crimes, and also a priority for FATF.²¹⁶ The Basel Committee emphasizes for adoption of FATF recommendations for safety, soundness and dependability of the financial system. It is because of this phenomenon that the Basel Committee and the Offshore Group of Banking Supervisors extend all help for the application and compliance of FATF standards and emphasizes the convergence with that of FATF.²¹⁷ This is because of the 85 importance of the KYC that the FATF and other Global Institutions have worked on KYC parameters, which indicate that KYC standards can save banks and financial institutions from numerous risks, if applied in totality. The inappropriate application of KYC parameters by financial institutions may bring multiple risks like reputational, operational, legal and concentration.²¹⁸ The monitoring of accounts and transaction also help in minimizing ML activities. The recommendations of Basel Committee support the stance of FATF to combat money laundering.

2.15 INTERNATIONAL ASSOCIATION OF INSURANCE SUPERVISORS (IAIS)

It was founded in 1994 and like other international organizations also became active during the global problem of money laundering and terrorist financing.²¹⁹ It is a representative body of regulators of insurance and has the representation of above 130 countries²²⁰ in addition to more than 100 observers. Its strength and effectiveness is epitomized by the volume of its annual premiums that ranges between US\$ 2.4 to 2.6 trillion.²²¹ The IAIS is responsible to regulate and

²¹⁶ Ibid., Introduction para-3.

²¹⁷ Ibid.

²¹⁸ Ibid., Introduction Para-10.

²¹⁹ International Association of Insurance Supervisor, (www.iaisweb.org) (accessed: 4th March, 2025)

²²⁰ Ibid.

²²¹ FATF, *FATF Report on Money Laundering Typologies 2003-04*, Paris France 2004.

supervise the international insurance sector. It also ensures the efficiency, stability and reliability of the insurance market to provide reliable and secured environment for different stakeholders. It further adds to international financial stability.²²² The organization also plays a very important role by creating awareness about the dangers of money laundering through different means at international level. It furthers the interests of global insurance sector by imparting necessary education and trainings through workshops and seminars on variety of issues.²²³ IAIS is playing very important role in combating money laundering at global level, that is why; it enjoys the observer status in FATF.²²⁴ IAIS has also issued comprehensive guidance on anti- money laundering and anti-terrorist financing for implementation by the member countries with the following principles.

- To ensure compliance with FATF Standards regarding anti-money laundering,
- To implement customer identification standards,
- To ensure cooperation with prosecution and legal authorities, and
- Also ensure application of standard procedures through trainings.²²⁵

These principles are in conformity to FATF recommendations regarding anti money laundering and anti-terrorist financing. The IAIS has recognized the importance of KYC in order to protect insurance sector from being misused by the criminals. The significance of insurance sector in the fight against money laundering is very important because this sector “provides risk transfer, savings and investment products to a variety of consumers, from individuals to multi-national corporations and governments”.²²⁶ The insurance industry covers three important but

²²² International Association of Insurance Supervisors, *op.cit.*

²²³ Security and Exchange Commission of Pakistan, *Annual Report 2004*, Islamabad, 2004.

²²⁴ IAIS, *IAIS Annual Report 2005-06*, Basel, Switzerland, 2006.

²²⁵ The World Bank, *Reference Guide to Anti Money Laundering and Combating the Financing of Terrorism*, Washington DC: 2006.

²²⁶ FATF, *FATF Report on Money Laundering Typologies*, *op.cit.*

diverse areas including general, life and re-insurance. Like banking sector, insurance sector can also be exploited and abused by the money launderers and other criminal syndicates.²²⁷

2.16 INTERNATIONAL ORGANIZATION OF SECURITIES COMMISSIONERS (IOSCO)

The IOSCO is an International standard setter body for the securities regulators. It also works for combating money laundering in the securities markets. It is the world's important platform for global collaboration for the relevant regulatory agencies with the recognition of global standard setter.²²⁸ The objective of IOSCO is to promote and ensure fair, efficient and transparent markets, protection of investor's interest, minimizing risks and prevention of market crises.²²⁹ IOSCO works closely with other international organizations including the Financial Stability Forum, World Bank and the IMF in order to wage a fight against money laundering.²³⁰ The FSF, IMF and the World Bank are also interested in implementation of standards set by IOSCO. Presently, 105 regulators from as many countries are the members of this forum.²³¹ With regard to anti money laundering IOSCO's resolution stresses upon its members for gathering information with regard to identification of customer, maintenance of record and supervision by financial institutions as it works to augment the capacity of regulators to detect the cases of money laundering related transactions.²³² The appropriate procedures also prevent criminals to have the control of securities and future businesses at different levels through deterrence and detection of money laundering.²³³ The information is shared by IOSCO with members so that a collective strategy could be adopted. IOSCO has designed training materials on "Internal Control", "Anti-

²²⁷ Ibid.

²²⁸ IOSCO, *IOSCO Annual Report 2006*, Madrid, Spain: IOSCO, 2007.

²²⁹ IOSCO, *IOSCO Annual Report 2004*, Madrid, Spain: IOSCO, 2005

²³⁰ *IOSCO, IOSCO Annual Report 2006*, op.cit.

²³¹ International Organization of Securities Commissioners, *Membership List*, <http://www.iosco.org/iosco.html>. (accessed: 18th January, 2025).

²³² The World Bank, *Reference Guide to Anti Money Laundering and Combating the Financing of Terrorism*, op.cit.

²³³ Ibid.

Money Laundering Reviews”, and “Sales Practice Reviews” to have a close watch on the global financial markets. It emphasizes that regulators should adopt proper policies and procedures for securities market intermediaries in order to “minimize the risk of the use of an intermediary’s business as a vehicle for money laundering”.²³⁴ All these measures of IOSCO indicate a comprehensive strategy fully in line with FATF recommendations.

2.17 THE EGMONT GROUP OF FINANCIAL INTELLIGENCE UNITS (FIUS)

Realizing the international nature of money laundering and terrorist financing along with establishment of FIUs necessitated the need to have some organization for global cooperation amongst FIUs. Consequently, Egmont Group was created to ensure cooperation amongst FIUs so that the money laundering and related issues can be tackled skillfully at global level. The membership of Egmont Group has exceeded over 100 countries²³⁵ and close collaboration amongst FIUs at international level has increased utility and efficacy of this organization in respect of money laundering and terrorism financing.²³⁶ The mechanism “includes expanding and systematizing the exchange of financial intelligence information, improving expertise, fostering better communication among FIUs through technology, and helping to develop FIUs worldwide to make anti money laundering effective.”²³⁷ The role and importance of Egmont Group is also increasing because of its global cooperation. It also assists and advises FIUs of member countries and helps to enhance collaboration among the members for better results.²³⁸

²³⁴ IOSCO , *Final Report-Anti-Money Laundering Guidance for Collective Investment Schemes*, Madrid, Spain: IOSCO, 2003.

²³⁵ The Egmont Group of Financial Intelligence Units, www.fincen.gov/int_egmont.html (accessed: 7th May, 2024).

²³⁶ The Egmont Group of Financial Intelligence Units, *Statement of Purpose of the Egmont Group of Financial Intelligence Units*, Guernsey, 23rd, June 2004.

²³⁷ The World Bank, *Reference Guide to Anti Money Laundering and Combating the Financing of Terrorism*, op.cit.

²³⁸ *Statement of Purpose of the Egmont Group*, op.cit.

2.18 WOLFSBERG GROUP (WG)

Money laundering directly affects financial and reputational aspects of banking industries.²³⁹ Concerned by the dangerous implications of money laundering, the leading banks assembled at Château Wolfsberg in Switzerland and formed Wolfsberg Group of Banks comprising of twelve important global banks.²⁴⁰ The WG adopted anti money laundering and anti-terrorist financing strategy in line with the guidelines of FATF. This move by WG to fight money laundering and terrorist financing got momentum in the aftermath of 9/11 terrorists attacks. Consequently, the global financial markets had to face immense operational failures and losses due to communication disruptions, credibility problems and volatile environment.²⁴¹ The WG issued four sets of principles: (a) AML Principles for Private Banking; (b) Monitoring Screening and Searching; (c) declaration to suppress the financing of terrorism; and (d) AML standards for Correspondent Banking.

2.18.1 ANTI-MONEY LAUNDERING PRINCIPLES FOR THE PRIVATE BANKING

The Wolfsberg Group's AML principles for banking were issued in 2000.²⁴² These principles pertain to anti money laundering activities and were revisited in 2002 owing to the changing circumstances after 9/11. On the lines of other international organizations, the principles include: (i) general guideline for client acceptance; (ii) additional diligence for the acceptance of client in special circumstances; (iii) maintenance of up to date files; (iv) prudence required for identification of suspicious and unusual transactions; (v) monitoring of various activities; (vi)

²³⁹ Basel Committee on Banking Supervision, *Customer due diligence for Banks*, Bank for International Settlements Press & Communications Basel, Switzerland, 2001, Introduction.

²⁴⁰ The Wolfsberg Group consists of the following leading international financial institutions: ABN AMRO Bank N.V., Banco Santander Central Hispano S.A., Bank of Tokyo-Mitsubishi Ltd., Barclays Bank, Citigroup, Credit Suisse Group, Deutsche Bank AG, Goldman Sachs, HSBC, J. P. Morgan Chase, Société Générale, UBS AG.

²⁴¹ IMF Working Papers WP/05/60, The impact of terrorism on the international markets, R. Barry Johnston and Oana M. Nedelescu, March 2005.

²⁴² Wolfsberg Group of Banks, <http://www.wolfsberg-principles.com/privatbanking.html>. (accessed: 11th March, 2024).

responsibilities with regard to checks and control; (vii)reporting mechanism;(viii)information sharing and training; (ix) conditions for retention of record; (x)exceptions and deviations²⁴³. These principles are in line with the recommendations of FATF for proper countering the threat of money laundering and terrorist financing. The implementation, execution and monitoring are the responsibilities of concerned managements to ensure that no deviation is made from the set standards in order to avoid any risk or danger.

2.18.2 MONITORING, SCREENING AND SEARCHING

Monitoring, screening and searching play vital role in detecting incidents of money laundering and terrorist financing. WG published a statement on these principles in September 2003²⁴⁴ for attainment of the strategic objective pertaining to AML/CFT. Consequently, high risk transactions, fast screening and other identification measures have become necessary part of this strategy.²⁴⁵

2.18.3 SUPPRESSION OF THE FINANCING OF TERRORISM

This element became part of WG's strategy as some of its members had become victim of 9/11. This document saw the day light in January 2002.²⁴⁶ According to it, WG is mandated to work towards an effective fight against terrorism and persuade the financial institutions to prevent terrorism related transactions in global financial system.²⁴⁷ The responsibilities of the banking institutions are very sensitive in the war against terrorism, rights of the individuals and adherence to KYC.²⁴⁸ It highlights high risks sectors and activities, monitoring and reporting of suspicious transactions and need for enhanced global cooperation.²⁴⁹ The WG endorses the FATF special

²⁴³ Ibid.

²⁴⁴ Wolfsberg; Statement on Monitoring Screening and Searching, Switzerland: Wolfsberg, 2003.

²⁴⁵ Ibid.

²⁴⁶ Wolfsberg, *Statement on the Suppression of the Financing of Terrorism*, Switzerland: Wolfsberg, 2002, Preamble

²⁴⁷ Ibid.

²⁴⁸ Ibid, Principle No. 7.

²⁴⁹ Ibid.

recommendation to counter terrorist financing as well as the UN Convention for the suppression of financing of terrorism.²⁵⁰

2.18.4 PRINCIPLES FOR CORRESPONDENT BANKING

Correspondent Banking plays very important role in the fight against money laundering. Realizing the dynamics of correspondent banking and their role in money laundering, the WG published principles for correspondent banking in 2002.²⁵¹ In the present era of the financial globalization, correspondent banking customer is a customer of that institution who avails services of other institution by virtue of correspondent relationship. Correspondent banking relationship is existing in different shapes and form in various parts of the world.²⁵² So correspondent banking can play a vital and important role in combating money laundering, if WG's principles are followed in letter and spirit. The WG complied with the recommendation No. 7 of FATF which directs the financial institutions to take requisite measures with regard to international correspondent banking relations. It emphasized to (a) have reasonable information with regard to the status, repute, rating and regulatory compliance status of correspondent bank. Respectability of the institution and integrity of the management of the correspondent banking is also significant at the time of establishment of this relationship.²⁵³ Identical to this recommendation, WG outlined several other principles for correspondent banking.²⁵⁴ The compliance with these principles will aim at developing correspondent relationship only with those financial institutions who are fully compliant to global anti money laundering standards.

²⁵⁰ Ibid.

²⁵¹ *Wolfsberg Anti Money Laundering Principles for Correspondent Banking*, Switzerland, 2002.

²⁵² Ibid.

²⁵³ FATF, *FATF, 40 Recommendations*, op.cit., Recommendation No. 7.

²⁵⁴ *Wolfsberg, Anti-Money Laundering Principles for Correspondent Banking*, op.cit.

2.19 INTERNATIONAL POLICE ORGANIZATION (INTERPOL)

Interpol is the oldest organization which started campaign against all crimes and has contributed tremendously in the war against money laundering and terrorist financing. It is an effective organization having the membership of 186 states²⁵⁵. It has developed the Interpol Money Laundering Automated Search Service (IMLASS) to facilitate international anti-money laundering measures.²⁵⁶ This mechanism automatically compares suspected money laundering and terrorism financing-related queries from FIUs and anti-money laundering investigators against database records submitted by Interpol's member countries.²⁵⁷ This strategy of Interpol can be helpful particularly for developing countries like Pakistan to check predicate offenses of money laundering. Interpol also "facilitates cross-border police co-operation, and supports and assists all organizations, authorities and services whose mission is to prevent or combat international crime".²⁵⁸ For long term use and as a permanent preventive measure, the stored data base of IMLASS can help future enquiries on the basis of existing entries.²⁵⁹ This system enables detection of criminals and their activities through matching of identification of documents like names, addresses, passport and telephone numbers etc. In case of identification of a particular person(s), information is sent to all National Centre Bureaus (NCBs) of Interpol for necessary action. The Interpol has a communication system known as 'I-24/7' which connects the Interpol General Secretariat and other offices for creating a secured network for information sharing.²⁶⁰ This system facilitates the exchange of police information and provides member countries with mechanism to access to Interpol's databases and other services.²⁶¹ Interpol has also established the Fusion Task

²⁵⁵ *Interpol Annual Report 2006*, LYON, France: Interpol, 2006.

²⁵⁶ *Interpol Fact Sheet on Money Laundering 2006*, Lyon France: Interpol, 2006.

²⁵⁷ Ibid.

²⁵⁸ *Interpol Annual Report 2005*, Lyon, France: Interpol, 2005.

²⁵⁹ For detail see *Interpol Fact Sheet on Money Laundering 2006*, Lyon France: Interpol, 2006.

²⁶⁰ *Interpol Annual Report 2006*, op.cit.

²⁶¹ Ibid.

Force which is meant to assist countries in their terrorism related investigations.²⁶² The measures on part of Interpol have helped the states to attain global cooperation against money laundering.

2.20 THE BRETTON WOODS INSTITUTIONS

The IMF and the World Bank have played a significant role in supporting the efforts of FATF and the UN to fight money laundering and terrorist financing.²⁶³ After the destructions of the Second World War, the IMF and the World Bank were established in 1944. The IMF and World Bank resolved to enhance their role to global anti money laundering and anti-terrorist financing in 2001.²⁶⁴ These institutions work for the promotion of economic and financial cooperation among member countries. IMF and World Bank perform different functions at International level. The IMF is mainly dealing with macroeconomic issues, balance of payments and reduction of poverty²⁶⁵ while the World Bank deals with developmental programs, structural reforms, good governance, financial sector and privatization etc.²⁶⁶

2.21 INTERNATIONAL MONETARY FUND

Money laundering and terrorist Financing is a very important issue for IMF. The IMF increased its contributions to global anti-money laundering efforts in 2001.²⁶⁷ IMF has taken theoretical and practical steps to consolidate international financial system in order to safeguard the viability of international financial institutions.²⁶⁸ The activities of money launderers and terrorist financiers can be curtailed only by cutting off their resources and supply channels and

²⁶² Ibid.

²⁶³ *The World Bank in the Global Fight against Money Laundering and Terrorist Financing, op.cit.*

²⁶⁴ World Bank, *APEC ARS Working Group Report, Informal Funds Transfer Systems in the APEC Region*, Phuket Thailand: World Bank, 2003,

²⁶⁵ Ishrat Husain, "Remarks made by Dr. Ishrat Husain as a panelist at the Seminar on Conditionality and Ownership organized by the IMF, World Bank and Commonwealth Secretariat at London on 23-24 July 2001, "http://www.sbp.org.pk/ (accessed: 1st July, 2025).

²⁶⁶ Ibid.

²⁶⁷ *APEC ARS Working Group Report, Informal Funds Transfer Systems in the APEC Region, op.cit*

²⁶⁸ IMF, *The IMF and the Fight Against Money Laundering and Financing of Terrorism, Fact Sheet*, Washington D.C: IMF, April 2007

making difficult for criminals to make huge profit from their criminal activities. The money laundering is such a vicious menace that it results into many other crimes. The societies of global village are to be protected from negative impacts of ML and the IMF is making all efforts to save the member countries.²⁶⁹ Money laundering is dangerous and risky for the financial soundness and stability of these institutions because it increases the volatile flow of capital at global level²⁷⁰. The IMF has identified three main areas namely assessment, technical assistance and policy development to counter money laundering and terrorist financing. The assessment is a tool for feedback as strengths and weaknesses of financial sector are evaluated under Financial Sector Assessment Program and jurisdictions are indicated which are considered weak in combating the money laundering and terrorist financing. Such assessments conducted by the IMF are in compliance with 40+9 recommendations of FATF according to the agreed common methodology.²⁷¹ The IMF and the World Bank support through technical assistance for strengthening legal, financial and regulatory mechanism of the member countries.²⁷² For this purpose the member countries are given more funds in order to face the challenges posed by ML and terrorist financing. In 2001, the IMF and the World Bank resolved to enhance the funds' contributions to strengthen the global efforts to confront the challenge of money laundering. It was after 9/11 that both the organizations added fight against financing terrorism in their agenda. The economies are assessed by the Legal Department and the Special Financial Supervisory Issues Division of the Monetary and Financial Systems Department on the basis of which Technical Assistance to various states is provided to fight money laundering and terrorist financing.²⁷³ Through policy development process, anti- money laundering policy is developed on the basis of

²⁶⁹ Ibid.

²⁷⁰ Ibid.

²⁷¹ Ibid.

²⁷² Ibid.

²⁷³ *APEC ARS Working Group Report, Informal Funds Transfer Systems in the APEC Region*, op.cit.

comprehensive research. The IMF and the World Bank are playing active role in research and analysis of international best practices for better results.²⁷⁴ Moreover, policy advice and technical assistance is also based on compliance to the policy parameters. This is also used to provide policy advice and Technical Assistance to its member states. It may be noted that IMF and World Bank have coordinated their all activities with FATF and FSRBs to fight against money laundering and terrorist financing.²⁷⁵ The IMF and the World Bank unanimously decided that menace of money laundering and terrorist financing can only be fought by member countries subject to international, support in order to achieve the desired objective. With this objective, the IMF has established a closer relationship with the major AML organizations and groups. The IMF has contributed tremendously for the promotion of financial soundness of member states through surveillance, its supported Program and technical assistance. The IMF is making all these efforts keeping in view the consequences and dangerous results of money laundering and terrorist financing. The purpose is to save the societies' financial institutions and eliminate the money laundering and terrorist financing which ruin the humanity at large.

2.22 WORLD BANK

The anti-money laundering program has become a priority point for the World Bank because of its significant economic and social consequences. The strategy of the World Bank to counter money laundering and terrorist financing is based on multiple steps. It has devised its own methods of conducting assessment of AML/CFT of various member countries, surveillance, and complying with FATF 40 + 9 special recommendations.²⁷⁶ Like IMF, the World Bank also initiated Pilot Program for providing technical assistance to member countries for combating money

²⁷⁴ *The IMF and the fight against Money Laundering and financing of terrorism, Fact Sheet*, op.cit.

²⁷⁵ Ibid.

²⁷⁶ The World Bank, *The World Bank in the Global Fight against Money Laundering and Terrorist Financing*, USA: World Bank, 2003.

laundering and terrorist financing.²⁷⁷ Owing to its dynamic role in the international system new programs are being undertaken to control corruption, improve governance, improve financial management so that legal, supervisory and regulatory environment can be improved. The World Bank is involved in the reforms process so that effective steps can be taken against money laundering. Similarly institutional restructuring, reforms in justice system, introduction of corporate governance and transparency in accounting and management is being introduced by the World Bank which contribute towards anti-money laundering regime.²⁷⁸ In order to control misutilization of resources it also takes steps for purposeful utilization of its lending. This is done through public awareness, training workshops and other methods of communication. The World Bank also works in collaboration with Basel Committee on banking Supervision, IAIS, IOSCO, the Egmont Group, FATF-style regional bodies and Wolfberg Group for the implementation of policy pertaining to anti Money Laundering and anti-Terrorist Financing.²⁷⁹ The cooperation on part of all these financial organizations indicates that menace of money laundering and terrorist financing have strong footings and strength of both can be weakened and broken through cooperation and collaboration of the world Community. This task cannot be achieved by an individual organization or a single country.

2.22.1 JOINT INITIATIVES BY THE IMF AND THE WORLD BANK

In addition to individual efforts, the IMF and the World Bank has also initiated joint programs to curb money laundering. Both the organizations work on international standards and codes to ensure the stability of international financial institutions and manage the factors which resulted in the market crises of the 1990s.²⁸⁰ Both these organizations have introduced Financial

²⁷⁷ *The IMF and the Fight Against Money Laundering and Financing of Terrorism, Fact Sheet*, op.cit.

²⁷⁸ The World Bank, *The World Bank in the Global Fight against Money Laundering and Terrorist Financing*, USA: World Bank, 2003.

²⁷⁹ Ibid.

²⁸⁰ IMF, *Factsheet Standards and Codes: The Role of the IMF*, Washington D.C: IMF, 2006.

Sector Assessment Program (FASP) which is meant to have joint efforts to assess the financial sector of the member states.²⁸¹ The program has been established on sound basis so that the soundness of the financial system can be improved by overcoming weaknesses and improving strengths. Financial sector assessment program also monitors the observance of international standards and best practices by the members so that stability and soundness of the system can be ensured.²⁸² The level of these international activities is increasing because of the increasing importance of international standards for banking and non-banking financial institutions.

2.23 ASIAN DEVELOPMENT BANK (ADB)

Like other international anti-money laundering regimes, the ADB assists in the fight against money laundering by helping member states to reduce poverty, improve governance, fight corruption and consolidate financial institutions. Provision of requisite assistance has enabled member countries to adopt anti money laundering and anti-terrorist measures. In this regard ADB has taken initiatives: (a) to upgrade the legal and regulatory framework²⁸³ as it protects financial institutions from money laundering and financial crimes; (b) It extends developmental support to NBFIs and securities markets and their restructuring;²⁸⁴ (c) it builds the capacity of the Securities and Exchange Commissions in order to improve the regulatory and supervisory aspects of capital market, non-banking financial Institutions and insurance sector;²⁸⁵ and (d) it establishes sustainable mechanisms for skills development and training.²⁸⁶ Asian Development Bank also happens to be an observer of APG and helps in implementation of anti-money laundering and anti-terrorist financing measures.

²⁸¹ *The IMF and the fight against Money Laundering and financing of terrorism, Fact Sheet*, op.cit.

²⁸² *The World Bank in the Global Fight against Money Laundering and Terrorist Financing*, op.cit.

²⁸³ Securities and Exchange Commission of Pakistan, *Annual Report 2005*, Islamabad: SECP, 2005.

²⁸⁴ Ibid.

²⁸⁵ Securities and Exchange Commission of Pakistan, *Annual Report 2005*, Islamabad: SECP, 2005

²⁸⁶ Ibid.

The main fields are tackling the world drug problem, Combating organized crime, preventing corruption Countering terrorism, preventing crime and promoting criminal justice. UNODC cooperates with a wide range of stakeholders which includes governments, civil society organizations, academic and research institutions, the private sector, international and regional organizations and other UN entities.²⁸⁷

2.24 MECHANISM OF FATF

FATF's monitoring powers are among the farthest reaching at the international level. There are two key monitoring mechanisms. The most important mechanism is the mutual evaluation. Conducted originally about every three years but now much less frequently, the mutual evaluation entails an on-site visit by a team of experts from other FATF members or representing other international institutions. That team spends roughly a week interviewing relevant actors and making site visits. In the process, they fill out a very detailed, very extensive "common Methodology". Members discuss the results in a peer review in the Plenary. An unsatisfactory performance results in closer monitoring and the requirement to report again at the following Plenary on progress. Because that common methodology exists, these mutual evaluations are now generally conducted by regional FATF groupings, the International Financial Institutions, or some other international organization.²⁸⁸ As far as the monitoring process of the FATF is concerned, it is considerably a powerful international organization with two key monitoring processes. 'Mutual Evaluation' is the first and the most important mechanism, entailing on-site experts' visit to conduct evaluations. Second "typology exercises" are meant for monitoring and diagnostic role. In this exercise, plethora of experts on ML gather from around the globe in order to "exchange

²⁸⁷ <https://www.unodc.org/pakistan/> (accessed: 3rd February, 2023).

²⁸⁸ The most recent version is known as the Methodology for Assessing Compliance with the FATF 40 Recommendations and the FATF 9 Special Recommendations. It was created in 2004 and updated in 2005.

information on any on-going cases and operations, to identify and describe current trends in money laundering, and to identify and describe effective (and failed) countermeasures.”²⁸⁹

2.25 PLENARY MEETINGS

The FATF holds plenary meetings three times a year, usually in February, June, and October. During these meetings, representatives from member countries, observer organizations, and regional anti-money laundering bodies come together to discuss and make decisions on various issues. The plenary meetings are a crucial forum for setting global AML/CTF standards and reviewing the progress of member countries.

2.26 WORKING GROUP MEETINGS

The FATF has several working groups and subgroups that focus on specific areas such as mutual evaluations, risk assessment, and emerging threats. These working groups meet regularly to develop and refine AML/CTF policies and guidelines.

2.26.1 TYPOLOGIES EXERCISES

The FATF conducts typologies exercises, which involve analyzing real-world cases and trends in money laundering and terrorist financing. These exercises help identify new techniques and vulnerabilities that may be exploited by criminals and terrorists. The typology exercises also play a monitoring role, although they are not generally acknowledged as such. These exercises are both diagnostic and generative. The exercises bring together money laundering experts from around the world to discuss current issues in money laundering. They have three basic goals: to exchange information on any on-going cases and operations; to identify and describe current trends in money laundering; and to identify and describe any effective countermeasures, as well as any

²⁸⁹ Mark T. Nance, “Re-thinking FATF: an experimentalist interpretation of the Financial Action Task Force,” *Crime, Law and Social Change* 69 (2018): p. 139.

failed attempts. Since 1995 the results of those meetings have been published publicly. Over the years the typologies have become more focused, with working groups established that are designed to intensify the scrutiny given to a particular topic. As noted above, enforcement in FATF is a critical point of contention among scholars. The policy currently in place is a synthesis of previous versions and I discuss those changes in detail below. The process in place now, the International Cooperation Review Group (ICRG), began in 2007. In 2009, the G20 called on FATF to strengthen the ICRG procedures and publicly name countries with deficient AML systems. The enhanced procedure entails an initial mutual evaluation. If found to be insufficient, the country report is sent to the ICRG for an initial review, with comments from the target jurisdiction, should officials choose to provide them. If the ICRG finds the report insufficient, FATF conducts additional monitoring and expects the target to work with FATF members in order to develop a comprehensive reform plan with high-level political commitment. FATF now maintains a rolling list of jurisdictions that are seriously deficient and making no progress toward reform, as well as a list of those who have made the commitment but have not yet completed the required reforms. This basic outline of standard setting and governance in FATF closely reflects Sabel and Zeitlin's architecture of experimentalism. First, FATF members and relevant institutions set framework goals (the 40 Recommendations) and metrics for gauging progress toward those aims. The common methodology used for the mutual evaluation, as well as the process for evaluating those, define the metrics for evaluation. Second, lower-level units are obliged to implement policies aimed at meeting those standards, but are given the autonomy to implement the policies they deem most appropriate. The Recommendations are broad and focus on outcomes, requiring jurisdictions to write their own legislation and encouraging culturally more specific regulatory systems. Third, in return for that autonomy, they must report regularly on their performance, participate in a peer review of their policies comparing their performance to others. Monitoring is extensive in FATF

and peer review is a critical part of decision-making in FATF, dynamics bolstered by the systemic, peer-based monitoring of the typology exercises. Finally, the lessons learned from implementation and evaluation are taken into account as the goals, metrics, and procedures are periodically reviewed and revised by participants.²⁹⁰ Private Sector Consultative Forum: The FATF engages with the private sector through a Private Sector Consultative Forum (PSCF). This forum allows representatives from the financial industry, including banks, fintech companies, and other relevant sectors, to provide input and feedback on AML/CTF measures and policies. Regional and Global Outreach: The FATF also conducts regional outreach events and training programs to promote the effective implementation of AML/CTF measures at the national level. These events help member countries understand and address specific regional challenges. Reports and Recommendations: Following its meetings and discussions, the FATF issues reports and recommendations that provide guidance to member countries on how to strengthen their AML/CTF regimes. These reports also identify jurisdictions with deficiencies in their AML/CTF frameworks and may call for countermeasures against such jurisdictions.

2.27 AUTONOMY

FATF and FSRBs are free-standing organizations. There is no organizational hierarchy between FATF and the FSRBs, and an FSRB can otherwise exist for other purposes, even though recognition as an “FATF-style body” is the *conditio sine qua non* for being considered an FSRB. The FATF and FSRBs are unique, each brings different needs and experiences to the table that help to strengthen the overall AML/CFT effort. Sharing common objectives and working in partnership despite the autonomy of the FATF and individual FSRBs from one another, they share a common goal in combating money laundering and the financing of terrorism and proliferation,

²⁹⁰ Re-thinking FATF: an experimentalist interpretation of the Financial Action Task Force by Mark T. Nance page 139.

and in fostering effective AML/CFT systems. In concrete terms, they do this as assessor bodies through mutual evaluation processes and follow-up procedures. They also work toward a common goal in identifying and addressing threats to the financial system. The common objectives of the FATF and FSRBs make them part of a larger whole, thus the success or failure of one organization necessarily affects all of them.

2.28 RECIPROCITY

FATF and FSRBs operate on the basis of (mutual or joint or common) recognition of their work, which implies that FSRBs and FATF put in place similar mechanisms for effective participation and involvement in each other's activities. Since the FATF and FSRBs are part of a larger whole and the success or failure of one organization can have an effect on all organizations, protection of the FATF brand is therefore in the common interest of both the FATF and FSRBs. The FATF brand is not limited to FATF output, but also extends to any FSRB output based on the FATF Recommendations, assessment methodology, best practices and guidance papers, mutual evaluations and follow-up.

2.29 STANDARD SETTING

The FATF is the only standard-setting body and the guardian and arbiter of the application of its standard and should therefore, have the opportunity to identify, communicate and table consistency issues with the FATF Recommendations. In setting the standard however, FATF depends on input from the FSRBs as much as from its own members:

2.30 TECHNICAL ASSISTANCE

FSRBs can also play an essential role in identifying and addressing AML/CFT technical assistance needs for their individual members. In those FSRBs that carry out this co-ordination work, technical assistance necessarily complements mutual evaluation and follow-up processes by

helping jurisdictions to implement the FATF standards Common interest in protecting the FATF brand.²⁹¹

2.31 MIGRANTS AND REFUGEES

Over the last decade, regional conflict, political instability and repression, poverty, and the impact of climate change have led to increasing numbers of migrants and refugees seeking to move elsewhere. This has led to numerous crises associated with the illegal smuggling of migrants and resulting in thousands of deaths. Every year, millions of migrants in search of a better future put their lives in the hands of migrant smugglers who see them as an opportunity to make huge financial gains. While it is difficult to quantify the exact amount of the proceeds generated, recent increases in migration may mean proceeds currently exceed USD 10 billion per annum. This report aims to update the understanding of money laundering and terrorist financing (ML/TF) risks associated with migrant smuggling to help countries mitigate the risks, and disrupt and recover the proceeds – an important driver of this crime. It focuses on several relevant parameters associated with the ML/TF risks, in particular the geographical routes, structure of migrant smuggling organizations and networks and, to a lesser extent, the impact of COVID-19. The report also considers the mitigating measures in place. Migrant smuggling is a crime that has an often-significant consequence on the lives of millions of civilians, with criminals taking advantage of the sometimes-desperate plight of individuals seeking to escape nature disaster, conflict, persecution or poverty, or looking for economic opportunity. It is an issue that is high on the list of priorities for many governments and has been subject of a number of resolutions adopted by the United Nations Security Council. As with other major proceeds generating crimes, identifying pursuing and disrupting the proceeds and instrumentalities, and sanctioning those in laundering

²⁹¹ <https://www.fatf-gafi.org/content/dam/fatf-gafi/FATF/FINAL%20FATF%20MANDATE%202012-2020.pdf.coredownload.pdf> (accessed: 12th April, 2024).

them, can play a key role tackling the crime itself. Since the FATF last focused on migrant smuggling in 2014 there have been significant changes that have affected both migratory patterns, and the financial flows associated with the facilitation of irregular migration around the world. A number of factors has driven these changes, including the continuing advancement of globalization through the reach and influence of global communication tools such as social media; a series of economic crises and political events, affecting the employment opportunities of young people in particular; and the increasing presence of online market places that are facilitating the sale of, and payment for, smuggling services.²⁹² In accordance with the FATF Recommendations, all countries must apply the crime of money laundering to all serious offences including migrant smuggling. Article 6 of the above-mentioned Protocol against the Smuggling of Migrants provides a set of measures on the criminalization of smuggling with intent to generate a financial or other material benefit. It is also important to note that the offence of migrant smuggling has several distinct aspects that differ from other offences, and in particular human trafficking. Firstly, migrants have consented to be transported, whereas the victims of human trafficking have not; secondly, the smuggling ends with the arrival of the migrant in the destination, whereas human trafficking often involves ongoing exploitation in some other way; and thirdly, migrant smuggling is always transnational whereas human trafficking may not be. In addition, the routes and amounts of proceeds that are generated are often different. Nevertheless, there are some linkages between the two crime types, for example the same criminal networks may be involved in both migrant smuggling and human trafficking. For more information on ML and TF associated with human trafficking, see the FATF/APG report Financial Flows from Human Trafficking published in 2018.

²⁹²<https://www.fatf-gafi.org/content/dam/fatf-gafi/reports/ML-TF-Risks-Arising-from-Migrant-Smuggling.pdf.coredownload.inline.pdf> (accessed: 12th April, 2024).

2.32 UNITED NATIONS OFFICE ON DRUGS AND CRIME

UNODC is an office established under UN to provide technical assistance, research and support to Member States of United Nations to help them develop and implement comprehensive, evidence-based solutions to the threats that they face while dealing with drugs related and other crimes at the national, regional and global levels.

The main fields are tackling the world drug problem, Combating organized crime, preventing corruption Countering terrorism, preventing crime and promoting criminal justice. UNODC cooperates with a wide range of stakeholders which includes governments, civil society organizations, academic and research institutions, the private sector, international and regional organizations and other UN entities.²⁹³

2.33 ENFORCEMENT

Enforcement in FATF is a critical point of contention among scholars. The policy currently in place is a synthesis of previous versions and I discuss those changes in detail below. The process in place now, the International Cooperation Review Group (ICRG), began in 2007. In 2009, the G20 called on FATF to strengthen the ICRG procedures and publicly name countries with deficient AML systems. The enhanced procedure entails an initial mutual evaluation. If found to be insufficient, the country report is sent to the ICRG for an initial review, with comments from the target jurisdiction, should officials choose to provide them. If the ICRG finds the report insufficient, FATF conducts additional monitoring and expects the target to work with FATF members in order to develop a comprehensive reform plan with high-level political commitment.

FATF now maintains a rolling list of jurisdictions that are seriously deficient and making no progress toward reform, as well as a list of those who have made the commitment but have not

²⁹³ <https://www.unodc.org/pakistan/> (accessed: 11th June, 2023).

yet completed the required reforms. This basic outline of standard setting and governance in FATF closely reflects Sabel and Zeitlin's architecture of experimentalism. First, FATF members and relevant institutions set framework goals (the 40 Recommendations) and metrics for gauging progress toward those aims. The common methodology used for the mutual evaluation, as well as the process for evaluating those, define the metrics for evaluation.

Second, lower-level units are obliged to implement policies aimed at meeting those standards, but are given the autonomy to implement the policies they deem most appropriate. The Recommendations are broad and focus on outcomes, requiring jurisdictions to write their own legislation and encouraging culturally more specific regulatory systems.

Third, in return for that autonomy, they must report regularly on their performance, participate in a peer review of their policies comparing their performance to others. Monitoring is extensive in FATF and peer review is a critical part of decision-making in FATF, dynamics bolstered by the systemic, peer-based monitoring of the typologies exercises.

Finally, the lessons learned from implementation and evaluation are taken into account as the goals, metrics, and procedures are periodically reviewed and revised by participants.⁸ The most recent iteration represents the fourth version of the Recommendations. In between major revisions, FATF's use of interpretive notes serves to clarify the intention of the Recommendations. FATF also circulates best practices to serve as a guide. Figure 1 provides a rough flowchart of FATF decision making.²⁹⁴

The FATF identifies jurisdictions with weak measures to combat money laundering and terrorist financing (AML/CFT) in two FATF public documents that are issued three times a year.

²⁹⁴ Rethinking FATF: an experimentalist interpretation of the Financial Action Task Force by Mark T. Nance: <https://link.springer.com/article/10.1007/s10611-017-9748-5> (accessed: 6th May, 2025).

The FATF's process to publicly list countries with weak AML/CFT regimes has proved effective. As of June 2023, the FATF has reviewed over 125 countries and jurisdictions and publicly identified 98 of them. Of these 98, 72 have since made the necessary reforms to address their AML/CFT weaknesses and have been removed from the process. Those countries who fully follow the FATF recommendation are on white second, partially committed countries that have serious legal lacunas are on grey list. Now 23 countries²⁹⁵ are on grey list in which Pakistan is included. They are under strict observation of the organization. It can recommend certain measures to the member for compliance of FATF

2.34 JURISDICTION UNDER INCREASED MONITORING (GRAY LIST)

This statement is issued when countries committed to implement the FATF recommendations to address strategic deficiencies in their regimes to counter money laundering, terrorist financing, and proliferation financing. When the FATF places a jurisdiction under increased monitoring, it means the country has committed to resolve swiftly the identified strategic deficiencies within agreed timeframes and is subject to increased monitoring. Presently Albania, Barbados, Burkina Faso, Cameroon, Cayman Islands, Croatia, Democratic Republic of Congo, Gibraltar, Haiti, Jamaica, Jordan, Mali, Mozambique, Nigeria, Panama, Philippines, Senegal, South Africa, South Sudan, Syria, Tanzania, Türkiye, Uganda, United Arab Emirates, Vietnam and Yemen are included in this list.

2.34.1 HIGH-RISK JURISDICTIONS SUBJECT TO A CALL FOR ACTION (BLACK LIST)

Third is blacklist. They are non-complying countries. Presently three countries are blacklisted.²⁹⁶ The countries are:

²⁹⁵ <https://www.fatf-gafi.org/publications/high-risk-and-other-monitored-jurisdictions/documents/increased-monitoring-Oct-2022>, (accessed: 23rd March, 2024)

²⁹⁶ <https://www.fatf-gafi.org/en/countries/black-and-grey-lists.html> (accessed: 12th April, 2024).

- Iran
- North Korea.
- Myanmar

FATF grey and blacklisted countries are facing serious global political and economic consequences. International community hesitate to deal with listed countries.

This statement, (previously called Public Statement), identifies countries or jurisdictions with serious strategic deficiencies to counter money laundering, terrorist financing, and financing of proliferation. For all countries identified as high-risk, the FATF calls on all members and urges all jurisdictions to apply enhanced due diligence, and in the most serious cases, countries are called upon to apply counter-measures to protect the international financial system from the ongoing money laundering, terrorist financing, and proliferation financing risks emanating from the country. This list is often externally referred to as the black list. High-Risk Jurisdictions Subject to an Action Call” is the label given to nations that have insufficient anti-money laundering and anti-terrorism funding legislation by the FATF on its blacklist. On this list, you will find a number of nations that have a lot of money laundering and terrorist funding, and the purpose of this list is to raise awareness of these countries. Nations that are members of the FATF and international organizations are likely to impose economic penalties and other restrictions on blacklisted countries. The FATF's blacklist is a living document that is displayed and updated on a regular basis in their official publications. An updated anti-money laundering and anti-terrorism funding regulatory structure is required for a country's inclusion or removal from the blacklist. 15 countries were on the FATF's inaugural list of member nations in 2000. As part of official FATF releases and reports, the lists have been published on a regular basis since then.

2.35 PAKISTAN AND FINANCIAL ACTION TASK FORCE

In Pakistan, money laundering was first discussed as an offence under the Anti-Terrorism Act 1997 (ATA).²⁹⁷ This Act is concerned with combating terrorism and terrorist financing through freezing, seizure, and forfeiture of such assets that are derived from these activities. Similarly, certain anti-money laundering measures were also introduced in the Control of Narcotics Substances Act 1997.²⁹⁸ These included freezing and forfeiture of acquired and possessed assets derived from narcotic drugs and psychotropic substances.²⁹⁹ In order to curb money laundering, the regulatory authorities of Pakistan also introduced anti-money laundering measures in the shape of regulations. In 2003, the State Bank of Pakistan (SBP) which is the regulator of monetary and credit system in Pakistan, issued its Prudential Regulations M1 to M5 to safeguard the banks/financial institutions from the threat of money laundering. These regulations were updated in 2016.³⁰⁰ In 2002, the regulator of the corporate sector and capital market, the Securities and Exchange Commission of Pakistan ('SECP') also issued various anti-money laundering measures to all non-bank financial institutions, in order to combat the money laundering practices in the corporate sector. Being a member of the Asia/Pacific Group on Money Laundering (APG) since May 2000, it was mandatory for Pakistan to frame an anti-money laundering legislation based on international standards.³⁰¹ The first specific law in this regard was the Anti-Money Laundering Ordinance (AMLO) promulgated in 2007, which suffered from various flaws. The scope of the AMLO was limited to account transactions and suspicious transaction reports (STRs) were restricted to only banking accounts. The offence of money laundering was made non-cognizable and a small number of predicate offences were included in

²⁹⁷ Anti-Terrorism Act, 1997 (xxvii of 1997).

²⁹⁸ Control of Narcotics Control Substance Act, 1997 (xxv of 1997).

²⁹⁹ Ibid.

³⁰⁰ Anti-money laundering and combating the financing of terrorism (AML/CFT) Regulation for Bank & DFIs' (Banking Policy & Regulations Department, State Bank of Pakistan, 2016).

³⁰¹ The Asia/Pacific Group on Money Laundering consists of 41 member countries, including Pakistan.

the schedule of the AMLO.³⁰² The AMLO was reframed via the Anti-Money Laundering Act 2010 (AMLA) and various changes were incorporated in it, including a well-built preamble and a thorough definition of money laundering. The feature of combating terrorist financing is also included in the preamble. In addition to this, details have been provided for the attachment and forfeiture of properties, either obtained from proceeds of crime or involved in money laundering. The Act also provides a definition, albeit a broad one, as to what constitutes as a financing institution.³⁰³ Despite these several changes in the AMLA, the Act is laced with several loopholes and errors that need to be addressed.

Pakistan was included in the ‘grey list’ of the FATF in 2012 and after three years of its inclusion was removed in 2015. It has now again been included in the ‘grey list’ of FATF since June 2018, which can have a detrimental impact on the Pakistani market. Currency dealers are of the opinion that banks would be the first to suffer by this.³⁰⁴

This is not the first time Pakistan has been put on FATF’s grey-list. It has been on FATF’s grey-list from 2012 to 2015 too. At that time, “Pakistan proficiently reversed to the specific list by taking specific measures.”³⁰⁵ However, Pakistan was again put on FATF’s grey-list at the FATF meeting in Paris on June 29, 2018, “due to non-compliance of International Standards especially against proscribed organizations.”³⁰⁶ In response, Pakistan had only one option: improve and reinforce its CFT legal framework. Pakistan was also required to remove insufficiencies in its CFT legal regime, if any, in response to its placing on the grey-list. As Pakistan is not a direct member

³⁰² The Anti-Money Laundering Ordinance 2007, s. 4 and s. 21.

³⁰³ The Anti-Money Laundering Act 2010, s. 3.

³⁰⁴ FATF greylist: How would it impact Pakistan economy adversely? (Times of Islamabad, 2 July 2018) accessed 6 December 2018.

³⁰⁵ Pakistan elevated from grey list to white by task force: Dar,” DAWN, February 28, 2015, Available at <https://www.dawn.com/news/1166482>.

³⁰⁶ Anwar Iqbal, “Pakistan Placed on FATF ‘grey list’ Despite Diplomatic Efforts to Avert Decision,” DAWN, June 28, 2018, Available at <https://www.dawn.com/news/1416630>.

of the FATF; it was therefore linked to one of FATF-Style Regional Bodies (FSRBs) – Asia Pacific Group (APG). In order to observe Pakistan's improvements in response to theft's Recommendations, APG delegation visited Pakistan in August 2018. Lack of supervisory controls in the financial sector, risk-based.

Addressing concerns within the FATF community, Pakistan has faced significant challenges related to preventing cash smuggling and investigating and prosecuting various forms of terrorist financing activities. According to observations from the APG, a lack of coordination among the Federation and Provinces, as well as a failure to initiate appropriate measures against individuals involved in terrorist financing, has been noted. Additionally, FATF has expressed serious reservations about Pakistan's performance and has called for the completion of the FATF Action Plan.

More specifically, FATF has urged Pakistan to tackle terrorism financing (TF) related risks, rectify deficiencies in its understanding of transnational TF risks, ensure the timely completion of the FATF Action Plan, and address TF risks originating from its jurisdiction.

In response to these concerns, Pakistan has pledged to revamp its Counter Financing of Terrorism (CFT) regime to address CFT-related deficiencies. Pakistan is set to follow an Action Plan approved or recommended by FATF to rectify these shortcomings. The key components of this plan include:

- Conducting assessments to identify anomalies related to terrorist financing for effective resolution.
- Requiring financial institutions that do not meet CFT Standards to implement necessary corrective measures.
- Ensuring that law enforcement agencies take decisive action against illegal fund transfers with unwavering commitment and in accordance with the law.

- Adopting strict measures against cash couriers involved in illegal cash transfers when found guilty.

In summary, Pakistan is taking steps to address the concerns raised by FATF and APG, aiming to strengthen its measures against terrorist financing and enhance its compliance with international standards.

Fifthly, there is an insufficient level of coordination between the federal and provincial governments, which needs improvement to address Counter Financing of Terrorism (CFT) deficiencies. Additionally, federal and provincial authorities should collaborate on legal actions related to cases involving Targeted Financial Sanctions (TFS).

Sixthly, individuals engaged in Money Laundering (ML) and Terrorism Financing (TF) activities must be identified and dealt with strictly in accordance with the law.

Seventhly, the prosecution of TF-related cases, including those involving militants listed under 1267 and 1373 designations, needs to be expedited and handled effectively, with their assets being frozen. Pakistan is well aware of the consequences of being placed on the grey-list. It recognized the importance of enforcing laws and regulations to combat ML/TF even before being grey-listed. In this context, Pakistan reviewed many of its laws to align them with international standards related to ML/TF.

Some significant legal measures taken by Pakistan to enhance its capabilities against ML/TF include the "Anti-Money Laundering Act-2010," "Investigation for Fair Trial Act, 2013," "Anti-Terrorism Amendment Act, 2013," "Anti-Terrorism (2nd Amendment) Act, 2013," "Protection of Pakistan Ordinance, 2013 (Lapsed)," "National Counter Terrorism Authority (NACTA) Act, 2013," "Anti-Money Laundering Regulations, 2015," "Prevention of Electronic Crimes Act, 2016," "AML/CFT Regulations for Banks and DFIs, 2017," "NACTA Act

(Amendment), 2017," and "Security and Exchange Commission of Pakistan (AML/CFT) Regulations, 2018."

Furthermore, Pakistan has also implemented the National Action Plan (NAP) to combat Terror Financing. To effectively combat TF, the NAP mandates relevant ministries to share information with other countries. In addition, there are concerns about sponsors of terrorist groups operating within Pakistan. The State Bank of Pakistan (SBP) has also issued a range of guidelines to bolster Pakistan's efforts against Money Laundering (ML) and Terrorism Financing (TF). According to SBP's guidelines, it is essential to align Counter Financing of Terrorism (CFT) regulations with the FATF action plan by introducing necessary amendments to the regulations governing fund transfers and the documentation required for opening new accounts.

To combat TF effectively, comprehensive guidelines have been promulgated for implementing the United Nations Security Council (UNSC) Act of 1948 and the Anti-Terrorism Act (ATA) of 1997, including its Subsidiary Rules and Notifications. Furthermore, it has been recommended to disqualify any individuals associated with banks who have connections with entities proscribed under the ATA or UNSC Resolution of 1997.

Various measures have been implemented, including the enhancement of Know Your Customer (KYC) standards, issuance of guidelines for the licensing of International Non-Governmental Organizations (INGOs) under the "Association with Charitable & Not for Profit Objects" regulation of 2018, and the introduction of CFT/AML Regulations in 2018 for financial institutions operating under the Securities and Exchange Commission of Pakistan (SECP). Additionally, there are CFT/AML Guidelines for Real Estate Agents in 2018, as well as guidelines for Business and Professions dealing with Designated Non-Financial Businesses and Professions

(DNFBPs) under the CFT regime. The Federal Board of Revenue (FBR) has also taken numerous initiatives to combat Money Laundering and Terrorism Financing.

FATF's 27-point Action Plan for Pakistan includes the first point, which focuses on the financial sector's understanding of risks associated with countering Financing of Terrorism (CFT):

1. Outreach sessions of Anti-Money Laundering (AML) and CFT for the financial institutions;
2. Developing an integrated database at airports;
3. Mechanism to publicize designated persons and entities;
4. Terror Financing (TF) specific units and analysis done by the Financial Monitoring Unit (FMU) and State Bank of Pakistan (SBP);
5. Audit of financial institutions by the SBP;
6. Dissemination of Suspicious Transactions Reports (STRs) and analysis done by FMU;
7. Terror financing risk assessment and its implementation;
8. Inter-coordination mechanism of federal and provincial departments;
9. Parallel investigations by Counter Terrorism Departments (CTDs);
10. Risk assessment of cash smuggling;
11. Implementation of domestic cooperation to counter cash smuggling;
12. Understanding of TF by the judiciary, and conducting awareness and training sessions;
13. Risk based outreach of Designated Non-Banking Financial Institutions (DNBFI) and Non-Profit Organizations (NPOs);
14. Pakistan will have to demonstrate the effectiveness of sanctions including remedial actions to curb terrorist financing in the country;
15. Pakistan will have to ensure improved effectiveness on countering terror financing by financial institutions with particular reference to banned outfits;
16. Pakistan will have to take actions against illegal Money or Value Transfer Service (MVTs) such as Hundi-Hawala; Regulation 2018, by Pakistan Post; bringing Designated Non-Financial . Pakistan will have to place sanction regime against cash couriers;
17. Pakistan will have to ensure a logical conclusion of ongoing terror financing investigation by law-enforcing agencies (LEAs) against banned outfits and proscribed persons;

18. Pakistani authorities will have to ensure international cooperation based on investigations and convictions against banned organizations and proscribed persons;
19. The country will have to place effective cooperation between FMU and LEAs in the investigation of TF at the domestic level as well;
20. Prosecution of the banned outfits and proscribed persons;
21. Demonstrate convictions from the court of law on banned outfits and proscribed persons;
22. Seizure of the properties of banned outfits and proscribed persons;
23. Conversion of madrassas to schools and health units into official formations;
24. To cut off funding of banned outfits and proscribed persons; and
25. Pakistan will have to place permanent mechanism for the management of properties and assets owned by the banned outfits and proscribed persons After October 2019 meeting, Pakistan was given time till February 2020, to fill in the gaps in its Compliance with the FATF Recommendations. On that occasion, the FATF President Xiangmin Liu (President, 2019) apprised media personnel regarding Pakistani compliance:

“Pakistan agreed to the National Action Plan to fix serious weaknesses in terrorist financing and money-laundering framework. Despite high-level commitment to fix these weaknesses, Pakistan has not made enough progress. Pakistan is required to take further measures but with fast pace. FATF is giving strong message that if by February 2020, Pakistan fail to make a significant progress, further actions would be considered due to non-compliance.

The new Resolution 2462 adopted by the United Nations (UN) in March 2019, urges “all states to implement FATF recommendations specially to evaluate the risks associated with terrorist financing.”³⁰⁷ For evaluation, the FATF follows the parameters of its “Assessment Methodology” in order to assess “the technical compliance about legal and institutional framework”³⁰⁸ and “the level to which the legal and institutional framework is giving the estimated effects.”

2.35.1 FATF’S RECOMMENDATIONS (1-2):

In its assessments, the FATF examines the policies designed to identify and assess money laundering and terrorist financing (ML/TF) risks. It also evaluates the coordination and allocation

³⁰⁷ “Resolution 2462, Adopted by the Security Council at its 8496th meeting, on 28 March 2019,” United Nations Security Council, March 28, 2019, Available at [https://undocs.org/S/RES/2462\(2019\)](https://undocs.org/S/RES/2462(2019)), Accessed on April 4, 2020.

³⁰⁸ “Methodology: For Assessing Compliance with the FATF Recommendations and the Effectiveness of AML/CFT Systems,” Financial Action Task Force, February 2013, Available at <https://www.fatf-gafi.org/media/fatf/content/images/FATF%20Methodology%2022%20Feb%202013%20.pdf> (accessed: 18th May, 2025).

of resources among relevant authorities to mitigate and counteract these risks. The Mutual Evaluation Report (MER) for 2019 highlighted significant shortcomings in Pakistan's National Risk Assessment (NRA) from 2017. These deficiencies encompassed an inadequate methodology and a lack of comprehension regarding key terrorist financing (TF) risks, particularly within the informal hawala / hundi sector.³⁰⁹

In 2020, Pakistan introduced substantial legislative and administrative changes aimed at enhancing coordination and the application of risk-based approaches. Notably, Pakistan amended the Anti-Money Laundering Act (AMLA) of 2010, incorporating essential additions like Section 7A, which mandates the use of risk-based approaches and the implementation of Customer Due Diligence (CDD) for all regulated and reporting entities.³¹⁰

2.35.2 REGARDING MONEY LAUNDERING AND CONFISCATION (RECOMMENDATIONS 3-4):

The FATF mandates that countries must encompass all offenses contributing to money laundering within their list of criminal offenses. Additionally, authorities should possess the authority to freeze and confiscate all assets or proceeds derived from criminal activities. This ensures that offenders do not have access to their ill-gotten gains while money laundering investigations are underway.

In 2020, changes introduced through the AMLA (Second Amendment) Act, 2020 established guidelines for the punishment of money laundering. This elevated money laundering to a cognizable offense (section 21), and sanctions were made more stringent in terms of both financial penalties and imprisonment terms (section 4). In our assessment, Pakistan has been re-rated as fully compliant with Recommendation 3, while it maintains its largely compliant rating for confiscation, with minor deficiencies still present.³¹¹

³⁰⁹ Mutual Evaluation report 2019 for Pakistan.

³¹⁰ Anti-Money Laundering Act (First amendment)2010.

³¹¹ Anti Money Laundering Act (Second amendment)2020.

2.35.3 TERRORISM FINANCING AND PROLIFERATION (RECOMMENDATIONS 5-8):

Similar to the Money Laundering offence, the FATF is also concerned with the provisions of the TF offence and its application within domestic law. Countries are required to criminalize terrorist financing on the basis of the Terrorist Financing Convention. Furthermore, authorities are required to criminalize financing of proscribed organizations/individuals even in the absence of a link to a specific terrorist act or acts. Targeted financial sanctions (TFS), in line with the requirements of the UNSC Resolutions 1267 and 1373 are to be applied to ensure that no funds are available to any proscribed terrorist individual or organization. Non-Profit Organizations (NPOs) are required to be regulated by authorities to ensure ML/TF risks are accounted for.³¹²

In 2020, the Anti-Terrorism Act (ATA), 1997 was amended three times to ensure compliance with the FATF regimes, including adding to the definition of persons under section 2 and further increasing fines and imprisonment terms for violations. The addition of Section 11-OOO strengthened sanctions and penalties, while entrenching compliance to the United Nations Security Council Resolutions within the ATA framework.³¹³ All regulators created new regulations with TFS obligations, including harsh penalties for violations. The strict requirements for due diligence also impacts the NPO sector, improving compliance with the FATF recommendations. In RSIL's assessment, Pakistan is re-rated to Compliant for TF offence, and Largely Compliant with the remaining indicators.

2.36 PREVENTIVE MEASURES (RECOMMENDATIONS 9 – 23):

Money laundering and terrorist financing have evolved into more complex practices, including the use of advanced methods like layering to hide illegal funds. Therefore, it is crucial

³¹² www.fatf-gafi.org (accessed: 12th April, 2024).

³¹³ Anti Terrorism (Amendment) Act

for the financial industry to implement preventative measures to detect and counter potential threats related to money laundering (ML) and terrorist financing (TF). Beyond the broader banking and insurance sectors, it's essential to also consider Designated Non-Financial Businesses and Professions (DNFBPs). DNFBPs encompass professionals such as lawyers, accountants, real estate agents, dealers in precious metals and stones, as well as trust and company service providers. Traditionally, these individuals have been viewed as key players in anti-money laundering (AML) efforts because those with illicit proceeds often seek their expertise in concealing or integrating such funds. Real estate agents and precious metals/stones dealers are particularly high-risk sectors for ML and TF activities. Regulating these professions and fostering a culture of adopting risk-based approaches within this domain is of utmost importance.

In 2020, significant strides were made to strengthen preventative measures, notably through the enactment of the AMLA (Second Amendment) Act, 2020, and subsequent regulatory frameworks³¹⁴. Regulators are now mandated to maintain records, conduct extensive due diligence, reduce reliance on third parties, and establish stringent internal controls when dealing with transactions or jurisdictions deemed high risk. Based on our evaluation, Pakistan has achieved compliance or substantial compliance with most of these indicators.

Noteworthy regulatory changes have been introduced within the DNFBP sector. Previously, certain segments of DNFBPs operated without regulatory oversight. However, new regulations have been implemented, with entities like the Federal Board of Revenue, the Securities and Exchange Commission of Pakistan (SECP), and the Ministry of Law and Justice now providing supervision. The Anti-Money Laundering Sanctions Rules, 2020,³¹⁵ stipulate severe penalties for failure to adhere to these laws and regulations. Recognizing these developments

³¹⁴ Anti Money Laundering (Amendment) Act, 2020.

³¹⁵ Anti Money Laundering Sanctions Rules, 2020.

should be upgraded Pakistan's rating for DNFBPs' implementation of due diligence measures to a level of substantial compliance. Nonetheless, there remain structural, institutional, and cultural obstacles to effectively enforcing DNFBP regulations. According to our assessment, further efforts will be required in this area in the upcoming years to foster a culture based on risk assessment. This is why Pakistan continues to maintain its rating of Partially Compliant under Recommendation 23.

2.36.1 TRANSPARENCY AND BENEFICIAL OWNERSHIP (RECOMMENDATIONS 24-25):

The FATF includes Beneficial Ownership (BO) in its recommendations. This requires countries to implement transparency mechanisms so that it is clear who retains effective control over a company and other legal arrangements. This is important in countering tax evasion, corruption, money laundering, and the financing of terrorism. In 2020, Pakistan enacted key changes to the Companies Act, 2017³¹⁶ and the Limited Liabilities Partnership Act, 2017³¹⁷ to align better with these recommendations, although minor deficiencies remain. In our assessment, Pakistan is re-rated upwards on each of these categories.

2.37 POWERS AND RESPONSIBILITIES OF COMPETENT AUTHORITIES AND OTHER INSTITUTIONAL MEASURES (RECOMMENDATIONS 26-35):

Regulators, supervisors, law enforcement agencies (LEAs) and other competent authorities are all required to work in tandem to effectively counter ML/TF threats. It is also important to ensure that authorities are empowered to coordinate effective action on-ground. Importantly, all authorities are required to have mechanisms to levy sanctions, including financial penalties, for non-compliance with AML/CFT rules. Where required, supervisors and regulators should be able

³¹⁶ Companies (Amendment) Act, 2017.

³¹⁷ Limited Liabilities Partnership Act, 2017.

to wield a range of disciplinary and financial sanctions in cases of non-compliance, commensurate with the degree of noncompliance.

Since Pakistan's grey-listing in 2018, the regulation and supervision of financial institutions has been considerably enhanced through multiple new rules, regulations, and policies. This effort has primarily been led by the State Bank of Pakistan (SBP), the Securities Exchange Commission of Pakistan (SECP) and the Financial Monitoring Unit (FMU). In 2020, extensive changes were made to the ATA/AMLA frameworks promoting the powers and responsibilities of LEAs and other investigative authorities.

The FMU's scope was laid out in detail in the AMLA (Second Amendment) Act, 2020, along with the scope and role of AML/CFT Regulatory Authorities and Self-Regulating Bodies (SRBs) in enforcing provisions therein. Special investigation techniques were legalized under both the ATA and AMLA, allowing for enhanced evidence collection for ML/TF cases. However, more progress is required in gathering, collecting and collation of data and statistics, and further consultative mechanisms need to be integrated for complete compliance. In light of these developments, the status of compliance with requirement of FATF required to be re-rated Pakistan on most of the indicators in this category.

2.38 INTERNATIONAL COOPERATION (RECOMMENDATIONS 36-40):

The transnational nature of ML/TF offences requires countries to have established and well-functioning mechanisms for approaching authorities abroad to exchange information and evidence in ML/ TF investigations. Multiple international conventions and legal instruments contain provisions recommending international cooperation between countries. Within this ambit, mutual legal assistance (MLA) refers to the concept of countries mutually agreeing to gather and exchange information in an effort to enforce public or criminal laws.

Traditionally, this has been a weak area for Pakistan. An MLA specific law did not exist to provide explicit legal cover with recourse being made to antiquated criminal justice procedures which were poorly understood and applied by justice sector actors. In 2020, the passage of the Mutual Legal Assistance (Criminal Matters) Act, 2020³¹⁸ along with the formulation of the Mutual Legal Assistance Internal Rules 2020³¹⁹ has been integral in upgrading Pakistan's MLA architecture and bolstering compliance under this category. This has paved the way for better MLA and it is believed that international cooperation has already improved under the new regime.

In 2020, the Anti-Terrorism Act (ATA), 1997 was amended three times to ensure compliance with the FATF regimes, including adding to the definition of persons under section 2 and further increasing fines and imprisonment terms for violations. The addition of Section 11-000 strengthened sanctions and penalties, while entrenching compliance to the United Nations Security Council Resolutions within the recommendation 3 to fully Compliant, while it retains its Largely Compliant rating in terms of confiscation as minor deficiencies remain.³²⁰

FATF's Mutual Evaluation of Pakistan – 2019, The FATF requires countries to ensure that crimes contributing to money laundering are all accounted for within the schedule of offences. Furthermore, authorities must have powers to freeze and confiscate all property or proceeds of crime. The aim is to ensure that money does not remain available to offenders while ML investigations are underway.³²¹

In 2020, changes introduced through the AMLA (Second Amendment) Act, 2020 establish guidelines for punishment for money laundering, rendering it a cognizable offence (section 21)

³¹⁸ Mutual Legal Assistance (Criminal Matters) Act, 2020 (xxii of 2020).

³¹⁹ Mutual Legal Assistance Internal Rules 2020.

³²⁰ Anti-Terrorism (Amended) Act, 1997.

³²¹ Mutual Evaluation Report – 2019 | www.fatf-gafi.org (accessed: 12th September, 2024)

and sanctions have been made further strict in terms of both financial penalties and imprisonment terms (section 4).

Pakistan was re-rated on Recommendation 3 to fully Compliant, while it retains its Largely Compliant rating in terms of confiscation as minor deficiencies remain. In October 2018, Pakistan was subject to a mutual evaluation by the Asia Pacific Group (APG), the largest FATF-style Regional Body (FSRB) with 41 member jurisdictions in the Asia Pacific region. In the resulting Mutual Evaluation Report for Pakistan (published October 2019), a significant number of deficiencies in the Pakistani AML/CFT framework were identified. Mutual Evaluation 2019 included the following:

The National Risk Assessment conducted by Pakistani authorities in 2017 was deficient. While Pakistan had established a multi-agency approach to implement its AML/CFT regime, it was not implementing a comprehensive and coordinated risk-based approach in combating Money Laundering (ML) and Terrorist Financing (TF).

While Pakistani Law Enforcement Agencies (LEAs) had measures to freeze, seize, and prevent dealing with property subject to confiscation, LEAs were seizing some assets in predicate offences cases, but not in ML cases.

While most Banks and larger exchange companies had an adequate understanding of their AML/CFT obligations and have conducted internal ML/TF risk assessments, there were no enforceable AML/CFT requirements for Designated Non-Financial Business and Professions (DNFBPs), as well as the Pakistan Post and Central Directorate of National Savings.

Pakistan had limited mitigating measures for legal persons and there was no supervisory oversight for AML/CFT purposes. There were no measures in place to address the ML/TF risks posed by trusts, including foreign trusts, and waqfs in Pakistan.

Pakistan did not have a formal framework for Mutual Legal Assistance (MLA) requests, but could execute MLAs on the basis of treaties, reciprocity and some legislative provisions.

These deficiencies were reflected in Pakistan's assessments scores against the FATF Recommendations. As of 2020, out of the 40 FATF Recommendations, Pakistan was assessed as "compliant" in one and largely compliant in nine. Pakistan received rating of partially compliant in twenty-six and non-compliant in four.

In response to these findings, the government of Pakistan agreed with the FATF and the APG an initial Action Plan of 27 distinct action items, coupled with a second action plan of seven action items, encompassing 34 action items in total. Considering the importance of the matter to the economy and society, the Government of Pakistan provided its firm commitment to the FATF/APG and carried out significant measures nation-wide to complete the action plans. Establishing a New National Architecture for AML and Implementing the Action Plan.

The reaction of the Government of Pakistan to the agreed Action Plan was swift and extensive, with a comprehensive national architecture put in place, including seven ministries of the government and 50 departments and organizations (such as the Securities and Exchange Commission of Pakistan, the oversight body for ICAP and ICMAP; and the Ministry of Law and Justice as the oversight body for the Pakistan Bar Council). The core of this architecture was the establishment of a dedicated secretariat by the government, the National FATF Secretariat. The main objective of this secretariat was to coordinate with all the stakeholders including the AML/CFT Regulators and LEAs and with the FATF/APG team.

After the development of this national architecture, detailed assessments were carried out. For this purpose, consultants were appointed to identify gaps in the AML/CFT framework and to consider how to best address the action items from the Action Plan. The consultants then worked with the AML/CFT Regulators and LEAs to consider the way forward.

As a result, a large number of new laws and regulations were introduced, and significant amendments were made to the existing laws and regulations. These included, among others:

- Amendments in Anti-Money Laundering Act, 2010.
- Amendments in Anti-Terrorism Act, 1997.
- Amendments in Foreign Exchange Regulations Act , 1947.
- Amendments in UNSC 1948 Act.
- Amendments in Limited Liabilities Act.
- Enactment of Mutual Legal Assistance Act.
- Enactment of Rules for CDNS Supervisory Board.

Enactment of AML/CFT Sanctions Rules, 2020 Enactment of Regulations of Oversight body for SRBs Enactments of Regulations for Accountants Enactments regarding Jewelers and Real Estate Of these, the most significant legislative step was the amendment of the Anti-Money Laundering Act of Pakistan (the AML Act, 2010). As a result of that amendment, several Authorities and Organizations were designated as AML/CFT Regulators of Pakistan pursuant to the Act. ICAP, as well as the Institute of Cost and Management Accountants of Pakistan (ICMAP), was designated as an AML/CFT Regulator under the Act. These designated AML/CFT regulators formed a core part of the emergent national architecture. In addition to the Secretariat mentioned above, the national architecture also included a new National Executive Committee of AML/CFT Regulators and LEAs, which was established to ensure continuity of the process and to have effective monitoring of the Action Plan. On an operational level, various other committees were formed by the Government, such as the Supervisory Coordination Committee, comprised of the AML/CFT Regulators. ICAP, in its new role as AML/CFT Regulator, became an active member of this important committee. Finally, in order to interact directly with FATF and APG and to address their queries, an AML Core Engagement Team was formed. ICAP was assigned the role of managing the engagement with the FATF and APG related to Accountants.

As a result of the intensive efforts across Pakistan to implement its Action Plan, the country saw significant improvement in its 2022 follow-up assessment, moving to compliant or largely compliant for 38 of the 40 FATF Recommendations. The Action Plan was deemed completed in June 2022. In September 2022, the FATF and APG conducted an onsite visit to Pakistan to confirm the completion of the Action Plan, which ultimately led to the removal of Pakistan from the FATF Grey List in October 2022.

2.39 MUTUAL EVALUATION REPORTS

Pakistan faces significant ML and TF risks. In the period under assessment a number of terrorist attacks occurred. A number of terrorists groups, including UN-listed groups, operate in Pakistan all of which raise funds through a variety of means including direct support, public fundraising, abuse of NPOs, and through criminal activities. Funds are moved through formal and informal (mainly hawala / hundi) channels. Pakistan's geographical landscape and porous borders increase its vulnerability to TF and heightens Pakistan's TF risks associated with cash smuggling. At the time of the ME onsite visit there were 66 organizations and approximately 7,600 individual proscribed under UNSCR 1373. Major ML predicate crimes include corruption, drug trafficking, fraud, tax evasion, smuggling, human trafficking and organized crime. Corruption is endemic across Pakistan's economy. Authorities acknowledge that corruption is connected with a range of other predicate offences. As with TF noted above, Pakistan's geography and porous borders increase its vulnerability to smuggling and narcotics trafficking.

Illicit funds from predicate crimes are generally laundered through domestic real estate precious gems/jewellery, and the financial sector. Criminal proceeds are also moved offshore via formal and informal channels.

2.40 OVERALL LEVEL OF EFFECTIVENESS AND TECHNICAL COMPLIANCE

Following the World Bank/APG mutual evaluation in 2019, Pakistan enacted and implemented a broad range of legislative and administrative reforms to implement AML and some CFT requirements. Key reforms included:

Amendments to the Anti-Money Laundering Act 2010 and Anti Terrorism Act 1997;

Sector-specific AML/CFT regulations;

Establishment of a high-level National Committee on AML/CFT and a General Committee on AML/CFT; and The approval of a National Strategy on AML/CFT.

In June 2018, Pakistan was identified as a jurisdiction with strategic AML/ CFT deficiencies.³²² Pakistan has made a high-level political commitment to work with FATF and APG to implement an action plan to strengthen its AML/ CFT regime and address the strategic counter-terrorist financing-related deficiencies by demonstrating that:³²³

Terrorism financing (TF) risks are properly identified and assessed, coordination on TF risks is improving, and law enforcement agencies (LEAs) are investigating the widest range of TF activity TF prosecutions result in effective, proportionate and dissuasive sanctions, and that the capacity and support for prosecutors and the judiciary has been enhanced; Remedial actions and sanctions are applied in cases of AML/ CFT violations; Enforcement action is being taken against illegal money or value transfer services (MVTs); authorities are identifying cash couriers and enforcing controls on illicit movement of currency; Targeted financial sanctions are being effectively implemented (including enforcement actions against violations); and Facilities and

³²² <http://www.fatf-gafi.org/countries/di/iraq/documents/fatf-compliance-june-2018.html> (accessed: 17th May, 2024)

³²³ <https://www.fatf-gafi.org/publications/high-riskandnoncooperativejurisdictions/documents/fatf-compliance-june2018.html> (16th July, 2024).

services owned or controlled by designated persons are deprived of their resources and the usage of the resources.

Pakistan is working to implement the action plan by September 2019 to negotiate an exit from the “grey list”. In the interim, the FATF’s International Cooperation Review Group (ICRG) and APG have been holding a series of meetings with Pakistani representatives to monitor Pakistan’s progress vis-à-vis the action plan.

Pakistan’s AML/CFT Regime Pakistani authorities give high importance to the effectiveness of AML/CFT regime. In this regard, SBP is taking initiatives, on regular basis, for strengthening the overall AML/CFT regime. SBP introduced AML/ CFT Policy Framework for its regulated institutions in 1990s and over the years, it has been strengthened in the light of emerging best practices.

The Anti-Money Laundering law in the country was promulgated in 2007, which defines the legal obligations in respect of money laundering and terrorist financing, and enjoins the roles and powers of different stakeholders and law enforcement agencies.³²⁴ To facilitate implementation of the law, a full-fledged Financial Monitoring Unit (a financial intelligence unit) receives suspicious transactions reports (STRs) and currency transactions reports (CTR) from different reporting entities and (after due analysis) refers the potential cases of money laundering and terrorist financing to the respective investigation agencies in the form financial intelligence for further examination/ investigation and prosecution.

While Pakistan’s legal and regulatory framework is quite comprehensive, the country is currently working on further enhancing the effectiveness of the AML/ CFT regime. The country has recently taken a number of significant measures and initiatives to further strengthen the AML/

³²⁴ Anti Money Laundering Act 2007.

CFT framework. In this regard, SBP has issued or strengthened the following set of guidelines and instructions:

2.41 INSTRUCTIONS ISSUED BY STATE BANK

To align AML/CFT Regulations with the Financial Action Task Force (FATF) recommendations, various provisions of the regulations have been amended to provide further clarity on requirements relating to customer due diligence (CDD), correspondent banking, wire transfers/ funds transfers and minimum documents required for opening accounts by customers.³²⁵

- For strict compliance of Statutory Regulatory Orders (SROs) and Notifications issued by the Government of Pakistan under the United Nations (Security Council) Act, 1948 and Antiterrorism Act (ATA), 1997, detailed guidelines for ECs have been issued on Targeted
- Financial Sanctions (TFS) for prevention of Terrorism Financing and Proliferation.
- Financing under UNSC Act, 1948 and ATA, 1997.³²⁶
- Banks have been advised that sponsor shareholders/beneficial owners, directors, Presidents and key executives (persons subject to FPT) will become disqualified if they are designated/proscribed or associated directly or indirectly with designated/proscribed entities/persons under United Nations Security Council Resolution or Anti-Terrorism Act 1997.³²⁷
- Enhanced the scope of Know Your Customer (KYC) standards and
- Documentation requirements for ECs.³²⁸

³²⁵ 140 BPRD Circular Letter No. 16 of 2018.

³²⁶ Financial Stability Review-2018.

³²⁷ BPRD Circular No. 09 of 2018.

³²⁸ EPD Circular Letter No. 08 of 2018.

2.42 SECURITY AND EXCHANGE COMMISSION OF PAKISTAN AND OTHER BODIES

The SECP and other bodies have issued the following set of instructions and guidelines for strengthening AML/CFT for entities in the non-bank financial sector and other corporate entities:

- Associations with Charitable and Not for Profit Objects Regulations, 2018 have been issued to specify procedures to grant licenses to associations with charitable and not for profit objectives, incorporation of association as a public limited company, fit and proper criteria, provision for revocation of license and winding up, and monthly reporting requirements.
- AML/CFT Regulations, 2018 have been issued to provide a consolidated set of regulations for financial institutions under the ambit of the SECP including Modarabas, Insurers, Non-Bank Financial Companies (NBFCs), etc. to harmonize the AML/ CFT regime. The Regulations have adopted a risk-based approach towards combating ML/TF, and are focused on high risk areas including politically exposed persons, legal persons, legal arrangements with complex ownership structures, etc.
- Anti-Money Laundering and Countering Financing of Terrorism Regulations, 2018 have been amended to bring further clarity on various aspects including beneficial ownership, legal persons, Counter-measures against high risk countries, etc.³²⁹
- AML & CFT Guidelines for Real Estate Agents 2018 have issued to bring the real estate agent into the regulatory ambit of AML/ CFT regime.

The guidelines recommend complying with AML laws/ regulations while reporting Suspicious Transactions and Cash Transactions, implementing CDD measures, keeping proper records, etc. Pakistan Post, being a saving bank and money transfer services provider to the general

³²⁹ Anti Money Laundering and Countering Financing of Terrorism Regulations, 2018

public, has issued AML/CFT Regulations in October 2018 to deter the risks of money laundering and financing of terrorism. Similarly, the designated non-financial business and professions (DNFBPs) such as real estate agents, charities, jewelers, etc. have been brought under the ambit of AML/CFT regime.

From the implementation perspective, regulatory bodies and other government entities are taking measures for effective enforcement of the AML/CFT related regulation. SBP is strictly enforcing its regulations and instructions and is taking penal actions against such regulated institutions, which have been found delinquent during the supervisory process. These institutions have also taken disciplinary actions against concerned employees including issuing reprimands, incremental stoppage etc.

2.43 FEDERAL BOARD OF REVENUE (FBR)

Federal Board of Revenue has taken following steps and extensive measures to counter illicit movement of currency.³³⁰ These measures include launch of an extensive risk mitigation strategy to curb cash smuggling, increased currency seizures, implementation of Currency Declaration Systems (CDS) at international entry/ exit points, etc. Overall, Pakistan's AML/ CFT regime has further improved during the period under review. Presently, adequate legal and technical infrastructure is in place and the government is highly committed to address any remaining deficiencies in the AML/CFT regime. It is hoped that these enabling factors coupled with ongoing efforts to enhance the capacities of relevant agencies as well as strengthen inter-agency cooperation will help to deliver on the action plan and address those strategic deficiencies. The FBR issued Anti Money Laundering and counter financing of terrorism, in respect of the Designated Non-Financial Businesses and Professions (DNFBPs). These regulations are called the

³³⁰ <https://fbr.gov.pk/pr/effective-steps-taken-by-fbrcustoms-operatio/132037> (accessed: 15th March, 2023)

Federal Board of Revenue Anti Money Laundering and Countering Financing of Terrorism Regulations for DNFBPs, 2020.³³¹

Furthermore, as of 2015, it allows observer member states, organizations, and institutions to participate in the body's operations, such as the United Nations, the International Monetary Fund, Saudi Arabia, and the World Bank.³³² The FATF provides criteria for evaluating a member country's anti-money laundering and counter-terrorist financing legal regime.³³³ In 1990, the organization issued forty (40) recommendations. Which are guiding principles for the members to curb Money Laundering and terror financing. The member is under obligation to legislate the laws according to FATF recommendations. The organization has established three list of compliance. One is whitelist second, grey list, third is blacklist. The organization categorize members into the lists according to compliance standard requirements. As terrorist sponsor states. UN imposed economic sanctions of the countries. Foreign countries avoid investing in the state. IMF, WB avoid providing loan to the countries. Financial transaction facing strict surveillance. Banking system strictly observe censorship. FATF enlisted countries are under political and economic stress.

The FATF's success as a standard-setting group for Anti-Money laundering led to a substantial shift in its mandate in 2001. Following the terrorist attacks in the United States on September 11, 2001, the FATF acted quickly and created clear criteria to prevent terrorist financing. The FATF's mandate was broadened to include the fight against terrorist financing. The FATF's new Special Recommendations gave countries powerful tools for tracing and intercepting

³³¹ S.R.0 924(1)/2020.— the Federal Board of Revenue Anti Money Laundering and Countering Financing of Terrorism Regulations for DNFBPs, 2020

³³² The official site for Financial Action Task Force, [http://www.fatf-gafi.org/about/ whatwedo](http://www.fatf-gafi.org/about/whatwedo)(last Accessed 23-06-20) (accessed: 11th January, 2022).

³³³ Sulaiman, S. K. (2009). “Modes and Strategies of Terrorist Financing in South Asia”

terrorist assets, as well as pursuing people or countries involved in terrorist financing. In 2012, the FATF increased its scope in response to the growing threat of weapons of mass destruction proliferation emerging from some countries.

Money laundering is no longer the sole risk that affects the international financial system's integrity. Banks and financial institutions are also used to fund terrorism and the spread of weapons of mass destruction, as well as to move monies related to corruption and revenues from other crimes. FATF's proven performance as a worldwide standard-setter on anti-money laundering measures led to the expansion of its mandate to address these critical issues as well as new dangers to the international community.³³⁴

2.43.1 PREVENTION MONEY LAUNDERING AND HUMAN SMUGGLING

Human smuggling is very profitable business in the world. The criminals smuggle human for work, sexual exploitation, and crimes. Money laundering and human trafficking are connected to each other. The criminals smuggle migrant through illegal method and received money. The illegal migrant became pray of terrorist organizations. They use the persons in terrorism. Therefore, proper control and monitoring of migrants can reduce terrorism.

Financial institutions are obligated to maintain and regularly update comprehensive records of both domestic and international business transactions. These essential documents must be securely preserved for a minimum of five years. The institutions bear the responsibility of ensuring the safety and transparency of these records. They are also required to cooperate with competent authorities in the prevention and investigation of predicate offenses. These records must be sufficient to allow for the reconstruction of individual transactions, including details such as the

³³⁴ Report published by FATF title “ Financial Action Task Force 30 Years “page 10

amounts and types of currency involved, if applicable. This is crucial to provide evidence for potential criminal prosecution before a court when deemed necessary.

Politically Exposed Persons (PEPs): In financial regulations, a politically exposed person (PEP) is a prominent public figure who holds a powerful position in the government. PEPs are highly susceptible to bribery and corruption due to their influential roles. They often employ various means to attain and hold onto power, which can sometimes involve patronizing money launderers and engaging with terrorists. Many PEPs misuse their authority and become involved in illegal activities for financial gain. In some instances, their family members and associates act as intermediaries, receiving bribes and kickbacks on their behalf. In response to these concerns, the FATF has formulated Recommendations 12 and 22 pertaining to PEPs.

These recommendations serve as guidelines for financial institutions, both domestic and foreign, when dealing with politically exposed persons, whether they are customers or beneficial owners. Financial institutions are required to establish robust risk-management systems to determine whether a customer or beneficial owner qualifies as a politically exposed person. Additionally, the sources of income of PEPs should be documented and registered with state finance departments. It is the primary responsibility of financial institutions to ensure that transactions involving PEPs are conducted with transparency and in compliance with the law.

2.43.2 TRANSPARENT BANKING TRANSACTIONS

In the realm of banking, it is imperative that both domestic and international financial institutions engage in transparent practices. This necessitates the comprehensive gathering of information concerning respondent institutions, including their area of operation, the nature of their business activities, their standing in the market, and the quality of their work. Furthermore,

the bank must ensure that the institution in question is subject to proper regulation by a competent authority and is duly registered with the government.

The bank must also evaluate the effectiveness of the respondent institution's Anti-Money Laundering/Countering the Financing of Terrorism (AML/CFT) controls and risk management procedures. Prior to establishing new correspondent relationships, approval from senior management should be sought, and the roles and responsibilities of all individuals involved should be clearly defined and understood.

With respect to "payable-through accounts," it is imperative that the respondent bank has conducted Customer Due Diligence (CDD) on customers who possess direct access to the correspondent bank's accounts and can furnish relevant CDD information. Failure to meet CDD obligations may result in penalties. Additionally, the government should take a proactive role in overseeing and regulating all money transfer service providers, requiring them to be officially registered and authorized to conduct money transfer transactions. These transactions should adhere to a standard of transparency."

The exchanger has screening system to verify the source of income of the client. There should be prevention of *Hawala*, *hundi* system. Countries should take steps to ensure that natural or legal persons who provide money or value transfer services (MVTs) are licenced or registered, and that they are subject to adequate monitoring and compliance mechanisms with the FATF Recommendations. Countries should take steps to identify and sanction natural or legal people who engage in MVTs without obtaining a licence or registration. Illegal and unregulated MVTs shall be banned and prosecuted as per law.³³⁵ Terrorist need weapons to commit terrorism. Many

³³⁵ M Subtain Raza, M Fayyaz, Haseeb Ijaz, "The Hawala System in Pakistan: A Catalyst for Money Laundering & Terrorist Financing", *Med Crave Forensic Research & Criminology International Journal*", 5 (November 2017):

war lords are manufacturer and supplier of the weapons and earn money. Illegitimate arms trafficking is offence of money laundering. The weapon is used for terrorism. It promotes terrorist activities and bloodshed in the society. The President is going to enhance monitoring of illegal arms smuggling.³³⁶

2.43.3 EMERGING TECHNOLOGIES

In the current age of technological advancement, it is imperative for the government to recognize and evaluate the risks of money laundering and terrorist financing linked to the evolution of emerging technologies. Each day witnesses the introduction of various innovations in the market, and there is a potential for these technologies to be exploited by individuals involved in illicit financial activities or terrorism.

Before introducing new products, technologies, business practices, or adopting evolving technological solutions, financial institutions should carry out a comprehensive risk assessment. They must proactively implement necessary measures to manage and mitigate these risks effectively.

2.43.4 RELIANCE ON OUTSIDE SOURCES

May permit State financial institutions to rely on third person to carry out Customer Due Diligence (CDD). It is a process which information about customer is collected and proceed to avoid risk of money laundering. The person must not involve in money laundering. Their earning should be lawful. Money laundering analyst analyzes the transaction and rank the person.

2.43.5 REGISTRATION OF DESIGNATED NON-FINANCIAL BUSINESS AND PROFESSION (DNFBPS)

Designated non-Financial Business and Profession are certain types of business have been identified more suspicious to money laundering. They are real estate, dealer of precious stone, law

³³⁶ Priorities for the financial action task force (FATF) under the German presidency objectives for 2020-2022.

firms, accounting firms, company services provider. Money launderers invest their black money in these business and re-injected into economy as white money. Sometime government also announce amnesties scheme in these areas of business for wealth generation. Law and accounting firms provide professional service to launderer how to evade tax. They help the person to establish offshore company in tax heaven. Therefore, country should regulate and monitor these businesses. Pakistan has introduced these Regulations.³³⁷

All specified non-financial firms and professions are subject to the standards set forth in Recommendations 18 to 21, subject to the following qualifications.

Lawyers, notaries, other independent legal professionals, and accountants should be compelled to disclose suspicious transactions when they participate in a financial transaction on behalf of or for a client in connection with the activities listed in Recommendation 22 paragraph (d). Countries are actively encouraged to expand the reporting requirement to include the rest of an accountant's professional activities, such as auditing.

When engaging in any cash transaction with a customer equal to or above the applicable designated level, precious metals and precious stone dealers should be compelled to report suspicious transactions.

2.43.6 LEGAL PERSON TRANSPARENCY AND BENEFICIAL OWNERSHIP

Companies and other legal entity should not be used for money laundering or terrorist financing. The countries should take steps to ensure transparency of ownership of companies. Countries should ensure that satisfactory, accurate, and timely information on the beneficial

³³⁷ “Federal Board of Revenue Anti-Money Laundering and Countering Financing of Terrorism Regulations for DNFBPs, 2020” [“the Regulations”] through SRO 924(1)2020 dated September 29, 2020, to regulate the above-mentioned DNFBPs.

ownership and control of legal persons is available to competent authorities in a timely manner. Issuance of bearer and shares must be transparent.³³⁸ They should issue for lawful purposes. Countries with legal persons that can issue bearer shares or bearer share warrants, or that allow nominee shareholders or nominee directors, in particular, should take effective measures to guarantee that they are not used to launder money or finance terrorism.

Companies and other legal entity should not be used for money laundering or terrorist financing. The countries should take steps to ensure transparency of ownership of companies. Countries should ensure that satisfactory, accurate, and timely information on the beneficial ownership and control of legal persons is available to competent authorities in a timely manner. Issuance of bearer and shares must be transparent. They should issue for lawful purposes. Countries with legal persons that can issue bearer shares or bearer share warrants, or that allow nominee shareholders or nominee directors, in particular, should take effective measures to guarantee that they are not used to launder money or finance terrorism.

2.43.7 FINANCIAL INTELLIGENCE UNIT

Establishment of a Financial Intelligence Unit (FIU) by countries is imperative. This unit's primary responsibility is to receive and meticulously analyze reports on suspicious transactions, along with any other data pertinent to money laundering, related predicate offenses, and the financing of terrorism. Furthermore, the FIU should efficiently disseminate the findings of its analysis. To ensure the effectiveness of its operations, the FIU should have the capacity to receive supplementary information from reporting businesses. It should also be granted prompt access to

³³⁸ Benami Transactions (Prohibition) Rules, Federal Board of Revenue (FBR) – March 2019 http://download1.fbr.gov.pk/SROs/2019311153296811SRO326-2019_BenamiTransactionsRules2019.pdf Last (accessed 22nd August, 2020).

the necessary financial, administrative, and law enforcement data required for the fulfillment of its duties.³³⁹

2.43.8 LAW ENFORCEMENT AND INVESTIGATIVE AUTHORITIES' RESPONSIBILITIES

Countries should have specialized investigation agency for money laundering and terror financing. Within the framework of national AML/CFT laws, countries should ensure that designated law enforcement authorities are in charge of money laundering and terrorism financing investigations. When pursuing money laundering, associated predicate offences, and terrorist financing, these designated law enforcement authorities should develop a proactive parallel financial investigation in at least all cases related to major proceeds-generating offences.³⁴⁰ During money laundering, associated offences, and terrorist financing investigations, relevant authorities shall be able to receive all essential documents and information for use in those investigations, as well as prosecutions and related actions. This includes the authority to use coercive methods to obtain records from financial institutions, DNFBPs, and other natural or legal persons, to search people and places, to take witness statements, and to seize and obtain evidence.³⁴¹

2.43.9 CASH COURIERS

The state should have procedures in place to control the physical transit of currency and bearer negotiable instruments across borders, such as a declaration and disclosure system. Countries should guarantee that their competent authorities have the legal ability to halt or restrict currency or bearer negotiable instruments suspected of being linked to terrorism funding, money

³³⁹ Jayasekara, S.D. “Administrative model of financial intelligence units: an analysis of effectiveness of the AML/CFT regime”, *Journal of Money Laundering Control*, 25 (2022): 511-525.

³⁴⁰ *Sheraz Khan v. State*, 2022 PCr.L J 203.

³⁴¹ “Mapping Pakistan's Legal Compliance with FATF's Recommendations,” Research Society of International Law, May 31, 2020, <https://rsilpak.org/2020/mapping-pakistans-legal-compliance-with-fatfs-recommendations>. (accessed 5th June, 2021)

laundering, other predicate crimes, or that have been improperly declared or revealed.³⁴² Statistics Countries should keep detailed statistics on the effectiveness and efficiency of their anti-money laundering and counter-terrorist financing systems. Statistics on STRs received and disseminated, money laundering and terrorist financing investigations, prosecutions, and convictions, property frozen, seized, and confiscated, and mutual legal aid or other international requests for cooperation should all be included.³⁴³

Competent authorities, supervisors, and SRBs should develop guidelines and provide feedback to assist financial institutions and designated non-financial businesses and professions in implementing national anti-money laundering and anti-terrorist financing measures, including detecting and reporting suspicious transactions.

2.43. 10 SANCTIONS

Sanction is legal restrictions on the prohibited organizations. Designated entities are subject to legal and economic sanctions. Both national and international bodies can impose sanction on terrorist organizations. Their assets, office, sources of financing and actions can be banned. Countries should ensure that a range of effective, appropriate, and dissuasive consequences, whether criminal, civil, or administrative, are available to deal with natural or legal persons who fail to comply with AML/CFT standards and are covered by Recommendations 6, 8, and 8 to 23. Sanctions should be applied on financial institutions and DNFBPs as well as their directors and senior management.

³⁴² “Post Office Cash Certificate (Amendment) Bill, 2020,” National Assembly of Pakistan (Government of Pakistan, January 31, 2020), http://na.gov.pk/uploads/documents/1580477709_263.pdf. (accessed: 17th March, 2022)

³⁴³ Zafar Iqbal and Abdus Satter, The Contribution of Workers’ Remittances to Economic Growth in Pakistan, report no. 187 (Islamabad: Pakistan Institute of Development Economics, 2005), <https://www.pide.org.pk/Research/Report187.pdf> (accessed: 22nd May, 2023)

State should guarantee that they have the authority to respond quickly to requests from other countries to identify, freeze, seize, and confiscate property laundered; proceeds from money laundering, predicate offences, and terrorist financing. The authority should include the ability to respond to requests made on the basis of non-conviction-based confiscation proceedings and similar provisional measures. Countries should also establish adequate processes for managing such property, instruments, or property of comparable value, as well as provisions for coordinating seizure and confiscation proceedings, including the sharing of information. Pakistan has complied with the said recommendation and made various changes in Anti-terrorism (first & second) Amendment Act 1997. Various Proscribed organizations has banned.³⁴⁴

2.43.11 CONVENTIONS OF INTERNATIONAL COOPERATION

Countries should adopt and implement international instruments of cooperation. This takes prompt efforts to join the Vienna Convention of 1988, the Palermo Convention of 2000, the United Nations Convention against Corruption of 2003, and the Terrorist Financing Convention of 1999, and fully execute them. Countries are also encouraged to ratify and execute other relevant international conventions, such as the Council of Europe Convention on Cybercrime (2001); the Inter-American Convention on Cybercrime (2001); and the United Nations Convention on Cybercrime 2001; the Inter-American Convention against Terrorism, 2002; and the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism, 2005.³⁴⁵

³⁴⁴ (proscribed organizations: Tehrik-e-Taliban Pakistan, Lashkar-e-Balochistan, Shia Tulaba Action Committee, Gilgit, Ansar-ul-Hussain, Al Rehman, Welfare Trust Organization, Jammatt-ul-Daw'wa, Falah-e-Insaniat Foundation, Pak Turk International CAG Education Foundation, Hizb-ul-Ahrar, Balochistan Rajji Ajoin-R-Sangar, Jeay Sindh Quami Mahaz-Aresar Group, Sindhu Desh Revolutionary Army, Sindhu Desh Liberation Army, Ghazi Force, Zainbiyoun Brigade, Majeed Brigade, Hafiz Gul Bahdar Group).

³⁴⁵ Address by Michel Camdessus, Managing Director of the International Monetary Fund at the Plenary Meeting of the Financial Action Task Force on Money Laundering: the Importance of International Countermeasures, (February 10, 1998).

2.43. 12 EXTRADITION

Extradition is exchange of prisoners among the states. It is cooperative legal procedure for transfer of accused from one jurisdiction to other. The countries should have extradition treaties with each other for exchange of prisoners. The state should expedite extradition requests related to money laundering and terrorist funding in a constructive and effective manner. Countries should also take all necessary steps to ensure that persons charged with financing terrorism, terrorist acts, or terrorist organizations do not have haven.

2.43. 13 *Hawala*

Under the Foreign Exchange Regulation Act 1947, Pakistan is taking various enforcement proceedings against *Hawala*. Money laundering is being combated by the FIA. Many criminals have been apprehended and imprisoned. Millions of dollars in tented funds have been retrieved. Due to a lack of specific information from Pakistani authorities, it's unclear how well breaches are identified, and the effectiveness of sanctions hasn't been determined.

2.43.14 MODES OF MONEY LAUNDERING IN PAKISTAN

Money laundering in Pakistan occurs through cash transfer, tax evasion, investing in non-regulating profession. It is made up of a set of transactions. Dirty money passes through multiple stages and converted into white money. Money laundering can be done in three ways. Initially, corrupt elements extort the money from national exchequer through illegal transaction. To hide illegitimate source of earning the person passes the monesy from multiple commercial transactions. Mostly it invests in property, gems, stock market or purchase price bond. At the end the amount injected in economy as legitimate earning.³⁴⁶

The first step in money laundering is placement. It is the physical transfer of ill-gotten money by a launderer in an illegitimate manner. Corrupt people looted the money through

³⁴⁶John Madinger, *Money Laundering: A Guide for Criminal Investigators*, 3rd ed. (Routledge: CRC Press 2016), 5.

corruption, bribery, theft, extortion etc. At this point, most of the black money is transferred in cash. The proceeds are then injected into the retail industry.

Layering is the second stage of money laundering. Through a complex series of financial transactions, the proceeds of crime are separated from the corrupt source. To make the source of proceeds more complicated, the money is moved through a series of false transactions. Its goal is to keep black money hidden from audit and legal scrutiny.³⁴⁷

Induction is the third stage in money laundering. The money has filtered through layering at this point. As a result, it seems to be white money. As a result, illegal funds are turned into ostensibly legal earnings through respectable companies.³⁴⁸ The real estate industry is the most frequent type of company. Because the authority does not question the developer's source of income. As a result, black money is turned into legal assets through these three processes.³⁴⁹

³⁴⁷ International journal of marketing and technology <http://www.ijmra.us/page> 248

³⁴⁸ Roberto Durrieu, *Rethinking money laundering & financing of terrorism in international law: towards a new global legal order*, 36–38 (474 ed. 2013).

³⁴⁹ Money-laundering and its fall-out published by the associated chambers of commerce and industry of India on 20th April 2013, 12.

CHAPTER 3: FINANCIAL ACTION TASK FORCE AND QUESTION OF LEGITIMACY

Whether international institutions are seen as legitimate or not is important to whether they are able to exercise authority. An institution that is seen as legitimate finds it easier to gain acquiescence with its rules and decisions and so relies less on outright coercion. From the point of view of the organization therefore legitimacy is a useful property worth cultivating, defending, and deploying. Most studies of legitimacy in International Relations take the perspective of the ruling institution.

International organizations (IOs) are ubiquitous in international politics, in roles ranging from setting rules for governments and defining rights for individuals, to acting as settings for inter-state negotiations, to supplying some of the discursive concepts and resources taken up by governments and activists in domestic and international society. From landmines to bankruptcy law and beyond, there is compelling evidence of the practical influence of international institutions over the conditions of life for many people (on power politics see Lipsky 2017; on markets see Block-Lieb and Halliday 2017; more widely see Halliday and Shaffer 2015). International organizations sometimes exercise political authority over their subjects and as such they deserve the same kind of attention as is given to other governing institutions in society. Questions that one might ask about a government - is it transparent? it is accountable? to what ends does it deploy its authority? what follows from its governance and for whom? - are now increasingly also asked about IOs.

A FOLK THEORY OF LEGITIMACY

Behind the study of global governance in the liberal institutionalist tradition sits a kind of conventional wisdom that ties together three features - legitimacy, compliance, and governance - in a particular way. This is the intellectual apparatus that binds the contributions to this special

issue. Its logic goes like this: because IOs do not have the tools to coerce governments into following their rules, they must instead cultivate a belief in their appropriateness among those they aspire to govern. This belief is called legitimacy and the process by which it is created is legitimation (see also Chayes and Chayes 1996; Henkin 1979; Franck 1990; Hurd 2007; Coleman 2007; Ikenberry 2011). Legitimation leads actors to comply with the rules and decisions of the organization. When legitimacy is present, the subjects of an institution are inclined to respect or defer to it and by that respect they make choices which contribute to social order as defined by the organization. Delegation is the process or strategy of undermining this belief and leads to a decrease in support for the organization. It's both a crisis for the organization and a kind of release from the constraining effect of socialization upon beliefs about rightful authority.

The causal relationship is widely assumed to be true and many scholars find it useful in making sense of empirical patterns as well as anomalies but the unobservable nature of the core concept is a central topic of discussion among legitimacy scholars from Max Weber through to now.

This owes a lot - though perhaps not quite enough, as I discuss below - to Max Weber on authority, Talcott Parsons on the problem of social order,[^] and Tom Tyler on the psychology of rule-following (Weber 1978; Parsons 1939; Tyler 1990). It builds a bridge between classical liberal social contract theory, which asked how social order is possible given the Beastial aspects of the state of nature[^] (Ng 2012 referring to Thomas Hobbes) and contemporary state-centric global governance, which wonders how self-interested states manage the costs and dangers of their international interdependence. It has become a popular way for scholars of international relations and international law to chart a course through problems of international interdependence: it offers what looks like a consensual and cooperative path to the goal of global social order. It has a natural

affinity with studies of courts, legal systems, and bureaucracies which are also confronted with the question of how to get subjects to comply with rules for which there is little chance of enforcement.³⁵⁰

3.1 DEFINITION AND HISTORY OF LEGITIMACY

Legitimacy is one of the oldest problem in the intellectual history of the western civilization. The concept of legitimacy has played an extremely prominent role in social and political philosophy for well over 2000 years. Its history spans 24 centuries.³⁵¹

The dictionary definition of “legitimacy” is simply “in accordance with a rule” from the Latin “legis”. But a broader definition is more useful, if for no other reason than the need to also legitimate rules. The definition I will use is therefore that something is legitimate if it is in accordance with the norms, values, beliefs, practices, and procedures accepted by a group.³⁵²

Per Andersen in his book *Introduction to Law and Legitimacy* states that “If you look up the words ‘legitimate’ and ‘legitimacy’ in *The Danish Dictionary of Meanings*, they are explained by phrases stating that what has to be legitimate or have legitimacy must be in accordance with current legislation or current norms and morals so that it is justified or acceptable. Thus, the law has legitimacy when it is legal, lawful, and fair or morally sound, i.e. when it is in accordance with current norms in a given society. Thereby, it is supported by society.”³⁵³ When evaluating the legitimacy of the FATF and its recommendations, it's essential to consider whether they align with current legislation, norms, and morals in the countries they impact. Legitimacy in this context

³⁵⁰ On legitimacy and international courts see Alter et al. 2018. On bureaucracy see Johnson and Urpelainen 2014. On legal orders in a diverse perspective see Halliday and Shaffer 2015.

³⁵¹ Theories of Legitimacy by Morris Zelditch Jr. <https://psycnet.apa.org/record/2001-18767-001> (accessed: 19th February, 2022).

³⁵² Ibid.

³⁵³ Book *Introduction to Law and Legitimacy* by Per Andersen <https://samples.pubhub.dk/9788757498257.pdf> (accessed: 17th June, 2022).

implies that the FATF's actions and recommendations should be seen as justified and acceptable by the international community. Here's how this perspective can be applied:

3.1.1 ALIGNMENT WITH INTERNATIONAL NORMS

The FATF's recommendations and actions should be in accordance with internationally accepted norms and standards related to anti-money laundering and counter-terrorism financing. If they align with widely recognized global norms, they are more likely to be considered legitimate by member countries.

3.1.2 LEGAL AND REGULATORY COMPLIANCE

The recommendations should not contradict existing national and international laws. Legitimacy is often tied to compliance with legal frameworks, so FATF's actions must not be in conflict with established legal structures.

3.1.3 FAIRNESS AND MORALITY

Legitimacy also involves fairness and moral soundness. FATF's recommendations should be perceived as fair and ethical by the international community. They should not be seen as overly punitive or discriminatory, as this could undermine their legitimacy.

3.1.4 PUBLIC SUPPORT

Legitimacy is closely related to public support. FATF's recommendations should be supported by its member countries, as well as the broader financial and regulatory community. Public buy-in is crucial for the legitimacy of its actions.

3.1.5 ADAPTATION TO CHANGING NORMS

As societal norms and morals evolve, the FATF should adapt its recommendations to remain aligned with these changes. What is considered legitimate today may differ from what was accepted a decade ago, so flexibility and responsiveness to shifting norms are vital.

In summary, for the FATF to maintain legitimacy, it must ensure that its recommendations and actions are not only legally sound but also in tune with the prevailing international norms, fair, morally justifiable, and garner support from its member countries. This perspective underscores the importance of staying attuned to evolving global norms and maintaining a consensus-based approach to its work.

According to The Great Danish Encyclopedia, the concept of ‘legitimacy’ relates exactly to the lawfulness of a political government, a governance or a legislation, and the legitimacy is considered to be subject to the condition that the governed population recognizes the ruler and the exercise of authority as something that should be respected. The legitimacy of a government is thus measured by the acceptance of its subjects rather than the State’s threat of coercion.³⁵⁴

Dominik Zaum in his book *Legitimizing the international organizations* opined that, it identifies three reasons why legitimization of international organizations merits further analysis: the recognition of the importance of hierarchy in international order, the growing involvement of international organizations in the domestic affairs of States, and the emergence of legitimacy gap as a result of rapid social change. It proceeds to unpack the concept of legitimacy and legitimation and to identify three conceptual challenges to examining the legitimization efforts of international organizations. First their Janus-faced character as both actors and frameworks for action, second

³⁵⁴ Ibid.

the need of international organization to address different and diverse audience, and third, multi faced relationship between power and legitimation.

3.2 HIERARCHY IN INTERNATIONAL ORDER

The recognition of hierarchy in international order emphasizes that international organizations like the FATF play a significant role in shaping global governance. Understanding how they gain legitimacy is crucial because their actions and decisions can have far-reaching implications for member states and the broader international community. As entities positioned within this hierarchy, they need to be perceived as legitimate actors.

3.3 INVOLVEMENT IN DOMESTIC AFFAIRS

International organizations, including the FATF, increasingly intervene in the domestic affairs of states. Their recommendations and assessments often influence national policies and regulations. Examining their legitimation becomes essential because their actions can impact the sovereignty of states and the rights of individuals within those states.

3.4 LEGITIMACY GAP AND RAPID SOCIAL CHANGE

Rapid social change can create a legitimacy gap, where established norms and practices may no longer align with evolving societal values and expectations. International organizations must adapt to these changes to maintain their legitimacy, as their actions and standards should resonate with contemporary global sensibilities.

3.5 CONCEPTUAL CHALLENGES

- a. Janus-Faced Character: International organizations like the FATF have a dual role – they are both actors in their own right and frameworks for action by member states. Analyzing

their legitimization efforts requires understanding how they balance these roles and how their actions contribute to their legitimacy.

- b. **Diverse Audiences:** International organizations interact with various stakeholders, including member states, civil society, and the global public. Tailoring their legitimization efforts to address the diverse expectations and concerns of these audiences is a complex challenge. Legitimacy must be built across these varied constituencies.
- c. **Power and Legitimation:** The relationship between power and legitimation is intricate. International organizations often wield power in their decision-making processes, and how they exercise this power can influence their legitimacy. Striking the right balance between power and the perception of legitimacy is a delicate task.

In the context of the FATF, these challenges are particularly pertinent. The organization operates in a realm where financial regulations and anti-money laundering measures affect both national sovereignty and international financial stability. Its legitimization efforts are critical in ensuring that its actions are seen as just, fair, and in line with the evolving global landscape. By addressing these challenges, international organizations can better navigate the complexities of legitimization and fulfill their roles effectively in an ever-changing world.

John T. Jost and Brenda Major in their book "The Psychology of legitimacy, Emerging perspectives on ideology, justice and intergroup relations" defines the Legitimacy as "The dictionary definition of Legitimacy is simply 'in accordance with a rule from the Latin 'legis'". They further states that something is legitimate if it is in accordance with the norms, values, beliefs, practices and procedures adopted by a group.³⁵⁵ Although the definition is good and cover almost all the aspects of the Legitimacy but the rights of the small groups has been ignored in the definition. Like FATF all the countries have to implement the recommendations of the FATF

³⁵⁵ The Psychology of legitimacy, Emerging perspectives on ideology, justice and inter group relations by John T. Jost and Brenda Major.

whether they are members of the FATF or not. The small countries have no say in the decision making process of the FATF.

3.6 LEGITIMACY IN INTERNATIONAL ORGANIZATIONS

Lisa Maria Dellmuth, Jan Aart Scholte and Jonas Tallberg in their Research Article Institutional sources of legitimacy for international Organizations expresses as: Beyond procedure versus performance said that Recent history has seen international Organizations (IOs) acquire substantially enlarged authority, on the premise that increased transnational policy challenges require expanded regional and global governance. However, whether these higher expectations of IOs translate into actual greater problem-solving depends in part on whether these organizations enjoy popular legitimacy. The more that citizens perceive and to be legitimate – i.e. to exercise its authority appropriately the more the institution may be able to obtain resources, take decisions, secure compliance, and, ultimately, mitigate problems. Conversely, an IO with less popular legitimacy can face greater difficulties to act and impact and indeed may struggle to maintain its role in competition with other sites of governance. The importance of popular legitimacy for IOs requires better understanding of its sources, that is, the conditions under which people view IOs as legitimate.³⁵⁶

It discusses how the perceived legitimacy of these organizations plays a crucial role in their ability to address transnational policy challenges effectively. Here's a closer look at the key points and their relevance to the FATF:

Increased Authority of International Organizations (Ios): The text rightly notes that IOs have gained significantly increased authority due to the growing complexity of global issues. For

³⁵⁶ Review of International Studies (2019) <https://cambridge.org/journals/review-of-international-studies/issue/0094955FF0F089FFB4468E2D9C04BD9B> (accessed: 7th February, 2024).

the FATF, this is evident in its role in setting international standards for combating money laundering and terrorism financing. Understanding how this increased authority aligns with popular legitimacy is essential because it impacts the organization's effectiveness.

The Link Between Legitimacy and Problem-Solving: Legitimacy is not just a matter of perception; it has practical implications. For the FATF, having a high level of legitimacy means it can more effectively obtain the necessary resources, make decisions that are accepted by member countries, secure compliance with its recommendations, and ultimately contribute to solving problems related to financial crimes.

Competition with Other Sites of Governance: In today's interconnected world, IOs like the FATF operate alongside various other actors, including national governments, NGOs, and private sector entities. Maintaining a strong role and impact in this competitive landscape depends on its perceived legitimacy. A lack of legitimacy could hinder its ability to influence global financial governance.

Understanding the Sources of Legitimacy: To maintain and enhance popular legitimacy, it is crucial to understand what factors contribute to people viewing IOs like the FATF as legitimate. This could include transparency in decision-making, accountability mechanisms, fair representation, and responsiveness to the concerns of diverse stakeholders.

In the case of the FATF, its legitimacy is closely tied to its ability to strike a balance between setting robust global standards for combating financial crimes and ensuring that these standards are perceived as just and fair by its member countries and the global financial community. Transparency, inclusivity, and adaptability are key elements in maintaining and

strengthening its popular legitimacy, which, in turn, can enhance its effectiveness in addressing transnational financial challenges.

In the Book “The legitimacy of international organizations” Jean Marc-Coicaud and Veijo Heiskanen³⁵⁷ defines that Legitimacy is a complex phenomenon when it is applied to a national government. It is even more problematic when used in the context of international organizations. In the national context, it means various things. It signifies the acceptance of a government by the (majority of) citizens as being the “true” government of a territory. Legitimacy is thus a highly subjective concept. Some will regard a government as legitimate, while others will deny the legitimacy of the same government. For international organizations, the situation is even less obvious, because it is not immediately clear who forms the constituency that could regard international organizations as legitimate or illegitimate. Would this constituency consist of governments or individual citizens? For international organizations, the situation is still more complicated. They are created by governments, so their legitimacy depends to a large extent on how they perform in the eyes of those governments. But at the same time, different groups in the public at large also have an opinion about the legitimacy of intergovernmental organizations (IGOs) which, in the long run, will have an impact on government perceptions and actions.

There is also, thus, a question of legitimacy in the eyes of the public at large. However, at the same time, such a policy alienates governments and the larger public in many developing countries that cannot identify with the procedures followed and the results achieved. If, on the other hand, the majority of developing countries push through decisions that are not welcome to the United States and other Western countries, it may boost the legitimacy of the organizations in

³⁵⁷ The legitimacy of international organizations by Jean Marc-Coicaud and Veijo Heiskanen <https://collections.unu.edu/eserv/UNU:2407/ebrary9280810537.pdf> (accessed: 10th March, 2024)

the eyes of the majority of the world's national governments, but decisions will be difficult to implement and this lack of effectiveness will undermine the legitimacy of these organizations in the long run, even in the eyes of those governments who supported the controversial decisions.³⁵⁸

T.R Tyler in his Article Psychology of Legitimacy says; throughout the history of social thought, it has been recognized that people can exercise influence over others by possessing power. Power is the ability to shape the gains and losses of others either by threatening or using coercion to deter undesired behavior or by promising rewards to promote desired behavior. A core aspect of social dynamics, therefore, is that power provides a means to shape behavior with the consequence that, as an early social theorist noted, “The strong do what they will, the weak endure what they must” or as a recent political leader, Mao Tse-Tung, opined, “Political power grows out of the barrel of a gun.” The argument that behavior in social settings is linked to the ability to reward and punish is not only central to psychological theories, but is also influential in political science, sociology, and economics as well as in law, public policy, and management. While accepting the realities of power in social life, early social theorists including Aristotle and Plato also recognized that seeking to gain influence over others based solely on the possession of power is costly and inefficient. The use of power, particularly coercive power, requires a large expenditure of resources to obtain modest and limited amounts of influence over others. It is therefore important that under some circumstances people are also influenced by others because they believe that the decisions made and rules enacted by others are in some way right or proper and ought to be followed in other words subordinates also “relate to the powerful as moral agents as well as self-interested actors; they are cooperative and obedient on grounds of legitimacy as

³⁵⁸ The legitimacy of international organizations by Jean Marc-Coicaud and Veijo Heiskanen
<https://collections.unu.edu/eserv/UNU:2407/ebrary9280810537.pdf> (accessed: 15th August, 2023)

well as reasons of prudence and advantage”.³⁵⁹ Tyler further says, Legitimacy is a psychological property of an Authority, institution or social arrangement that leads those connected to it to believe that it is appropriate, proper and just.

Although Tylor provides a concise definition of legitimacy as a psychological property associated with an authority, institution, or social arrangement. It suggests that legitimacy is rooted in the perception of appropriateness, propriety, and justice by those who are connected to it. This definition can be applied to the Financial Action Task Force (FATF) in the following ways:

3.6.1 PERCEIVED APPROPRIATENESS

Legitimacy, in the context of the FATF, would mean that those connected to this international organization, including member states, financial institutions, and the broader public, view its actions and recommendations as appropriate. This implies that the measures and standards set by the FATF to combat money laundering and terrorism financing are seen as fitting responses to the global challenges posed by financial crimes.

3.6.2 PERCEIVED PROPRIETY

For the FATF to be considered legitimate, it must be perceived as acting in a manner consistent with ethical principles and international norms. Its processes and decisions should align with widely accepted notions of propriety in the realm of international financial governance.

3.6.3 PERCEIVED JUSTICE

Justice is a critical component of legitimacy. In the case of the FATF, its actions and standards should be seen as just and fair, both in terms of the burdens they place on member states and the benefits they bring in terms of global financial stability and security.

³⁵⁹ Psychological Perspectives on Legitimacy and Legitimation by Tom R. Tyler

3.6.4 CONNECTION TO STAKEHOLDERS

Legitimacy is closely linked to the perceptions of stakeholders connected to the organization. This includes member countries, financial institutions, and the public. The FATF's legitimacy depends on how well it engages with these stakeholders and addresses their concerns and expectations.

3.6.5 ADAPTATION TO EVOLVING NORMS

As norms and societal values change over time, organizations like the FATF must adapt to remain legitimate. What is perceived as appropriate, proper, and just may evolve, and the FATF should be responsive to these changes to maintain its legitimacy.

In essence, this definition of legitimacy highlights the importance of perception and belief in determining an international organization's credibility and effectiveness. For the FATF, its legitimacy plays a pivotal role in its ability to set and enforce global financial standards, as well as in gaining the cooperation and compliance of member countries and the financial sector in combating financial crimes. Jean Marco Coicaud in his book *Legitimacy and politics*, A contribution to the study of political right and political responsibility argued that:³⁶⁰

Legitimacy is the recognition of the right to govern. In this regard, it tries to offer a solution to a fundamental political problem, which consists in justifying simultaneously political power and obedience. To justify power and obedience simultaneously is the first issue involved in the question of Legitimacy. Upon this twofold demonstration depend both the right to govern and what result therefrom, political obligation. But in order for this operation to be successful, it has to fulfill at least three complementary conditions that have to do with the domain of consent, law, and

³⁶⁰ Jeans Marco Coicaud, <http://www.cambridge.org>, <http://doi.org/10.1017/CBO9780811490200> (accessed: 4th February, 2024).

norms, these being in reality in dissociable. An examination of these three notions will allow one to see in what way they are constitutive of legitimacy.

This definition delves into the concept of legitimacy and its role in addressing the fundamental political issue of justifying both political power and obedience. This perspective can be applied to the Financial Action Task Force (FATF) in the following manner:

3.6.6 RECOGNITION OF THE RIGHT TO GOVERN

Legitimacy is indeed about recognizing the right to govern. In the case of the FATF, it operates as an international body that sets standards and guidelines for combating money laundering and terrorism financing. Its legitimacy rests on the acknowledgment that it has the authority to create and enforce these standards at the global level.

3.6.7 JUSTIFYING POLITICAL POWER AND OBEDIENCE

The challenge of justifying both political power (in this context, the authority of the FATF) and obedience (the compliance of member states and financial institutions with its recommendations) is a crucial issue. For the FATF to be effective, it must be seen as having the legitimate authority to exert influence on its member countries and the financial sector.

3.6.8 CONDITIONS OF LEGITIMACY

The text suggests that legitimacy depends on three complementary conditions: consent, law, and norms. In the case of the FATF.

Consent: The FATF's legitimacy relies on the consent of its member countries to abide by its standards and recommendations. Member states voluntarily agree to adhere to its guidelines and work together to combat financial crimes.

Law: Legitimacy is also linked to adherence to international legal frameworks. The FATF operates within the framework of international law, and its standards should align with these legal principles to maintain legitimacy.

Norms: The FATF's legitimacy is further established by adhering to globally accepted norms related to financial integrity and security. These norms shape the expectations and behavior of member states and financial institutions in the international community.

In conclusion, this concept provides a valuable framework for understanding the concept of legitimacy and its relevance to international organizations like the FATF. Legitimacy is not just about having the power to govern but also about justifying that power and securing obedience through the consent of member states, adherence to law, and alignment with accepted norms. For the FATF, maintaining and enhancing its legitimacy is crucial to fulfilling its mission of combating financial crimes on a global scale.

3.7 LEGITIMACY AND GLOBAL GOVERNANCE:

In Article legitimacy and contestation in global governance, re-visiting the folk theory of international institutions.³⁶¹ The concept of legitimacy has discussed as under: -

Whether international institutions are seen as legitimate or not is important to whether they are able to exercise authority. An institution that is seen as legitimate finds it easier to gain acquiescence with its rules and decisions and so relies less on outright coercion. From the point of view of the organization therefore legitimacy is a useful property worth cultivating, defending, and deploying. Most studies of legitimacy in International Relations take the perspective of the ruling institution. In this article turn the tables and consider global legitimacy with an eye on political controversy and opposition: how do legitimacy studies look if we begin by assuming a gap between what the people want and what rulers want? International organizations (IOs) are ubiquitous in

³⁶¹ The Review of International Organizations (2019) Springer Science + Business media, LLC, Springer Nature 14:717–729 <https://doi.org/10.1007/s11558-018-9338-z>

international politics, in roles ranging from setting rules for governments and defining rights for individuals, to acting as settings for inter-state negotiations, to supplying some of the discursive concepts and resources taken up by governments and activists in domestic and international society. From landmines to bankruptcy law and beyond, there is compelling evidence of the practical influence of international institutions over the conditions of life for many people (on power politics see Lipsky 2017;³⁶² on markets see Block-Lieb and Halliday 2017; more widely see Halliday and Shaffer 2015).³⁶³ International organizations sometimes exercise political authority over their subjects and as such they deserve the same kind of attention as is given to other governing institutions in society. Questions that one might ask about a government - is it transparent? It is accountable? To what ends does it deploy its authority? What follows from its governance and for whom? - are now increasingly also asked about international organizations.

The questions raise an important point about the significance of legitimacy for international institutions, such as the Financial Action Task Force (FATF), in their ability to exercise authority effectively.

Legitimacy plays a crucial role in determining whether these organizations can garner support for their rules and decisions without resorting to coercion. The Financial Action Task Force (FATF) is a prime example of an international institution that relies on legitimacy. It is a global standard-setting body for anti-money laundering and combating the financing of terrorism (AML/CFT), and its recommendations have significant implications for the financial systems of countries worldwide. FATF's legitimacy is essential because its rules and assessments can affect not only governments but also individuals and businesses.

From the perspective of the FATF, legitimacy is indeed a valuable asset. If the FATF is perceived as legitimate, countries are more likely to comply willingly with its AML/CFT standards

³⁶² Lipsky, P. Y. (2017). *Renegotiating world order: Institutional change and international relations*. Cambridge: Cambridge University Press.

³⁶³ Halliday, T. C., & Shaffer, G. (Eds.). (2015). *Transnational legal orders*. Cambridge: Cambridge University Press.

and recommendations. Compliance becomes a matter of cooperation rather than coercion, making the international financial system more secure and transparent.

The question also brings up an interesting twist by suggesting a focus on global legitimacy from the standpoint of political controversy and opposition. This approach raises questions about whether international institutions like FATF align with the desires of the people they affect or primarily serve the interests of the ruling institutions.

In the context of FATF, this perspective highlights the importance of democratic accountability and transparency. Critics may argue that FATF's decisions and recommendations sometimes lack input from the public and may disproportionately favor powerful countries or financial interests. Therefore, studying legitimacy from this angle prompts us to question whether these institutions adequately represent the interests and desires of all stakeholders, especially those in less influential nations.

In conclusion, the text emphasizes the critical role of legitimacy in the effectiveness of international institutions like the FATF. The legitimacy of such organizations is essential for gaining voluntary compliance and ensuring their decisions benefit all parties involved. Additionally, the text encourages a broader examination of global legitimacy, including perspectives of political controversy and opposition, which is relevant for assessing the credibility and democratic accountability of institutions like the FATF in international relations. It is common for legitimacy scholars to note that institutions work better when they are seen as legitimate. It is also common for studies of global governance to begin with the premise that contemporary global problems can only be addressed with collective efforts through international institutions. These two positions, independently but even more powerfully when put together, give global governance studies reason to see enhancing IO legitimacy as an important goal of IO scholarship. If global

governance is the best hope the world currently has regarding our existential transnational challenges then it is politically imperative to strengthen global cooperation.³⁶⁴ This casts those who disagree with an institution or its effects or decisions as obstacles to good governance. It is worth remembering that legitimation is a tool of social control. It is used by those in power to solidify their governance. The politics of legitimation look different from above and from below: to the governor, legitimation is a helpful device to lower the costs of governing; to the governed, it means acquiescing to rules that force you to do something you don't want to do.

This is the intellectual apparatus that binds the contributions to this special issue. Its logic goes like this: because IOs do not have the tools to coerce governments into following their rules, they must instead cultivate a belief in their appropriateness among those they aspire to govern. This belief is called legitimacy and the process by which it is created is legitimation (see also Chayes and Chayes 1996; Henkin 1979; Franck 1990; Hurd 2007; Coleman 2007;³⁶⁵ Ikenberry 2011).³⁶⁶ Legitimation leads actors to comply with the rules and decisions of the organization. When legitimacy is present, the subjects of an institution are inclined to respect or defer to it and by that respect they make choices which contribute to social order as defined by the organization. DE legitimation is the process or strategy of undermining this belief and leads to a decrease in support for the organization. It's both a crisis for the organization and a kind of release from the constraining effect of socialization upon beliefs on rightful authority.

Tallberg and Zürn (2019)³⁶⁷ neatly summarize this logic as they set out the premise of the research program. They join a long tradition of sociological research on legitimacy and

³⁶⁴ Tharoor, S. (2003) United Nations: It May Not Be Perfect, but It's the Best Hope the World Currently Has. *The Independent*, March 6.

³⁶⁵ Coleman, K. P. (2007). *International organizations and peace enforcement: The politics of international legitimacy*. Cambridge: Cambridge University Press.

³⁶⁶ Ikenberry, G. J. (2011). *Liberal leviathan: The origins, crisis, and transformation of American world order*. Princeton: Princeton University Press.

³⁶⁷ Tallberg, J., & Zürn M. (2019). *The legitimacy and legitimation of international organizations: Introduction*

legitimation in both domestic social theory and in international relations, from Weber on to today. The legitimacy model that they set out explains an outcome (i.e. acquiescence or support for an institution) with a causal variable (legitimacy) that generates the outcome but is itself unobservable.

This set of ideas is a paradigm in the Kuhnian sense among global-governance scholars (Kuhn 1996).³⁶⁸ It sets out concepts and priors that define a field of study and that generate anomalies and questions that are the subject of research. The legitimacy paradigm accepts that there may be some rare occasions where IOs have the leverage to coerce governments into doing what they want but it suggests that it is far more common that IOs cannot gain compliance through threats or side-payments and so they must rely on something else. IO scholars in this paradigm aim to explain the apparent anomaly of self-motivated compliance by self-interested sovereign actors. Legitimacy is an explanatory concept for observers and scholars as well as a practical resource for the organizations themselves. Legitimation changes the relation between individuals and the organization, from opposition to support, by affecting people's beliefs about authority. The substantive payoffs in the relation need not change; the only thing that needs to change are subjects' beliefs about whether the institution deserves their support or not.

This owes a lot - though perhaps not quite enough, as I discuss below - to Max Weber on authority, Talcott Parsons on the problem of social order, and Tom Tyler on the psychology of rule-following (Weber 1978³⁶⁹; Parsons 1939; Tyler 1990).³⁷⁰ It builds a bridge between classical

and framework. Review of International Organizations [this volume].

³⁶⁸ Kuhn, T. S. (1996). *The Structure of Scientific Revolutions* (3rd. ed.). Chicago: University of Chicago Press.
Lindblom, C. E., & Cohen, D. K. (1979). *Usable knowledge: Social science and social problem solving*. New Haven: Yale University Press.

³⁶⁹ Weber, M. *Economy and society: An outline of interpretive Sociology* (Vol. 2 vols). (Berkeley: University of California Press, 1978).

³⁷⁰ Tyler, T. *Why people obey the law* (Princeton University Press, 1990).

Vinjamuri, L. "The international criminal court and the paradox of authority," *Law and Contemporary Problems*, 79 (2016): 275–287

liberal social contract theory, which asked how social order is possible given the Bestial aspects of the state of nature (Ng 2012 referring to Thomas Hobbes) and contemporary state-centric global governance, which wonders how self-interested states manage the costs and dangers of their international interdependence. It has become a popular way for scholars of international relations and international law to chart a course through problems of international interdependence: it offers what looks like a consensual and cooperative path to the goal of global social order. It has a natural affinity with studies of courts, legal systems, and bureaucracies which are also confronted with the question of how to get subjects to comply with rules for which there is little chance of enforcement.

The empirical essays take this starting point and use it to motivate their examination of the legitimization potential of particular entities or practices. Anderson, Bernauer, and Kachi adapt Tallberg and Zürn's approach to formulate tests for when people think that deferring to an organization is the appropriate course of action (2019). That deference, manifest as self-motivated compliance, is crucial to global governance because it makes it possible for IOs to exercise power without coercion.

Rocabert and co-authors say that IOs elicit higher compliance if they are perceived as legitimate by the participants and policy addressees³⁷¹. Schmidtke makes this clear when he notes that legitimization underpins Belites' support... [That] is important for the effectiveness of IOs.

It is particularly influential in places where governments are weak and international intervention is more likely. The exercise of governance always imposes costs on some and gives benefits to others and legitimization reinforces that distribution. Legitimation takes away some opposition to the authority and makes governing cheaper, along the lines that Steven Lukes'

³⁷¹ Rocabert, J., et al. "The Rise of International Parliamentary Institutions: Purpose and Legitimation," *Review of International Organizations* (2019).

described as the third face of power. When global governance scholars aspire to enhance the legitimacy of international institutions, they become partisans on one side of a political struggle between individuals and authority. For this to be justifiable, one would want to know a great deal more about the actual impact of international organizations on people's lives in order to conclude that they deserve to be even more empowered over people than they are at present. Legitimacy is therefore one answer to the question of 'how to get subjects to go along with public authorities.' It is of interest to authorities because it promises to increase compliance and decrease opposition without having to make recourse to direct coercion or violence. When legitimation is successful, there is no sign of resistance to the authority because subjects have internalized its rightful status and see compliance as in their own interest. Rocabert et al. note that legitimation strategies are designed to make institutional authority more acceptable to its audience. As legitimacy goes up, opposition and resistance go down.

Tallberg and Zürn³⁷² say that legitimacy contributes to IOs' ability to secure compliance with international rules. Anderson, Bernauer, and Kachi see value in legitimacy for the global governance regime on climate change because it set the agenda in climate policy and inform[s] the initiatives launched at transnational, subnational and non-governmental levels (2019, p.9). It is widely held that legitimation facilitates governance by reducing opposition and encouraging compliance. In the field of global governance studies this is assumed to be a good outcome - 'good' morally, politically, and substantively. But a wider perspective on power relations reminds us that what looks good to those in authority may not seem so great from below. It is worth examining more closely the assumption that increasing subordinates' compliance necessarily counts as progress.

³⁷² Tallberg, J., "The legitimacy and legitimation of international organizations."

Any form of governance will redistribute gains and losses across society. Governance necessarily produces winners and losers. Global governance is no different in this respect from any model of domestic authority.³⁷³ The legitimacy dynamics around international organizations are no doubt in part attributable to IOs' internal structure, media strategies, channels of participation and voice, and other features. But they are also certainly connected to how they affect the distribution of resources, power, and opportunities for people. This is not meant as criticism of global governance. It is instead a reminder that global governance is not politically neutral and isn't inherently desirable – its political valence is generated through action as it shapes the world in favor of some interests rather than others. International authority is thus similar to authority in other settings in that it encodes certain interests and advances some at the expense of others.³⁷⁴

The examinations of the relationship between communities and legal authorities have emphasized the importance of public compliance with laws and the decisions of duly constituted legal Traditional authorities. This view is based upon a model of centralized authorities determining legal policies and practices using their training and expertise, i.e. a professionalized model for the administration of the police and the courts. Emphasis is on professionalism in legal authority that is “insular, homogenous, and largely autonomous” and “purposely distanced” from communities.³⁷⁵

Early efforts to motivate compliance focused upon the threat or use of punishment through strategies of deterrence, but more recent studies have suggested that the public is also more willing to comply with the law when they view law and legal authorities as legitimacy and hence feel an

³⁷³ Zürn, M. (2018). *A theory of global governance: Authority, legitimacy, and contestation*. Oxford University Press.

³⁷⁴ Legitimacy and contestation in global governance: Revisiting the folk theory of international institutions.

Ian Hurd: <https://link.springer.com/article/10.1007/s11558-018-9338-z>. (accessed: 5th October, 2023).

³⁷⁵ Sklansky, D.A. *The persistent pull of police professionalism*. Cambridge: Program in Criminal Justice Policy and Management, Harvard Kennedy School (2011).

obligation to obey (Tyler, 2006a³⁷⁶, 2006b³⁷⁷). Legitimacy leads to a respect for legal guidelines for action that dictates appropriate and personally binding behavior.

These guidelines may not be perfectly aligned with everyone's moral system; one does not always agree with the moral force of each and every law; but legitimacy involves the public recognition that the social order needs a system of laws that generate compliance and respect above and beyond individual preferences. When people believe it is morally just to obey the law, so long as they know that a particular act is illegal, then its immorality becomes a given – a different sort of morality has 'kicked in', one that focuses on the morality of the law in a general, not specific sense.

Legal authorities value legitimacy because it motivates compliance with command and control generated decisions. This hierarchical and professionalized approach to the exercise of legal authority has led to advances in the objective quality of the exercise of legal authority.³⁷⁸ For example, the combined efforts of the courts, the police and correctional authorities in conjunction with other factors have helped to produce notable declines in violent crime.³⁷⁹

Similarly, innovations in the delivery of legal services such as the development of court based forums for alternative dispute resolution, as well as a variety of specialized courts like drug courts and effective systems of police response to calls have increased the ability of the legal system to solve problems and manage conflicts in a timely and affordable manner.

On the other hand, in spite of objective gains, this professionalized approach has not increased the popular legitimacy of legal authorities – something that has remained at best constant

³⁷⁶ Tyler, T.R. "Psychological perspectives on legitimacy and legitimation," *Annual Review of Psychology* 57 (2006): 375–400

³⁷⁷ Tyler, T.R. (2006b). *Why people obey the law*. Princeton: Princeton University Press

³⁷⁸ Skogan, W., and Frydl, K. (2004). *Fairness and effectiveness in policing*. NAS

³⁷⁹ Zimring, F.E. (2007). *The great American crime decline*. Oxford.

across recent decades, nor has it diminished the long-standing racial gap in the legitimacy of the police and courts. As the goals of the legal system have broadened to include cooperation and engagement, these intermediate levels of legitimacy have been of increasing concern since studies consistently find that legitimacy is especially relevant to more voluntary actions.

3.8 COOPERATION WITH LEGAL AUTHORITIES

Legal authorities recognize the value of active voluntary public cooperation with the police and the courts. Cooperation includes willing acceptance of legal authority, deference to the decisions made by judges and police officers, everyday rule adherence, and willingness to aid the police in identifying crime and criminals and the judicial system in prosecuting it by serving as a witness or a juror. Studies have demonstrated that legitimacy is an important antecedent of all of these forms of cooperation, shaping the willingness to accept legal authority, deference, everyday rule adherence, and aiding the police and criminal courts.³⁸⁰ Hence the importance of legitimacy becomes even more central to the degree that cooperation is the goal of the legal system.

Studies of legitimacy support the argument that traditional conceptions of legitimacy as reflecting the obligation to obey and trust and confidence captures an important element of its influence upon cooperation.³⁸¹ But they also point to the potential value of expanding the framework of legitimacy. Moral alignment – the belief that police officers operate within an appropriate ethical and normative framework, in the sense that they seem to share the moral values and sense of justice of citizens – has been found to be distinctly related to cooperation.³⁸²

³⁸⁰ Sunshine, J., and Tyler, T.R. (2003). The role of procedural justice and legitimacy in shaping public support for policing. *Law and Society Review*, 37, 513-548; Tyler, T.R. and Fagan, J. (2008). Legitimacy and cooperation: Why do people help the police fight crime in their communities? *Ohio State Journal of Criminal Law* 6(1): 231–75.

³⁸¹ Ibid.

³⁸² Bradford, B., Jackson, J., and Hough, M. Police legitimacy in action: Lessons for theory and practice, in Reisig, M., and Kane, R. (eds.) *The Oxford Handbook of Police and Policing*. (Oxford: Oxford University Press, 2013).

Legitimacy has also been linked to people's normative beliefs about the acceptability of violence to achieve social control (as a substitute for the police, for self-protection and the resolution of disputes) and social change (through violent protests and acts to achieve political goals). Weber spoke of the state's monopoly on the legitimate use of violence; a legitimate police force is by its very nature representative of this monopoly, and members of the community who see the police as legitimate are unlikely to consider violence if they want to achieve social change or solve issues that confront them. They cede the legitimate use of force to the police (and the state more generally) and explore non-violent avenues.

As understood in US communities, procedural justice is defined in terms of four issues. First, people want to have an opportunity to explain their situation or tell their side of the story in a conflict. This opportunity to make arguments and present evidence should occur before the police make decisions about what to do. They are interested in having a forum in which they can tell their story, i.e. they want to have a voice. Second, people react to evidence that the authorities with whom they are dealing are neutral. This involves making decisions based upon consistently applied legal principles and the facts of the case, not officer's personal opinions and biases. Transparency or openness about how decisions are being made facilitates the belief that decision making procedures are neutral when it reveals that decisions are being made in rule based and unbiased ways.

Third, people are sensitive to whether they are treated with dignity and politeness, and to whether their rights as citizens are respected. The issue of interpersonal treatment consistently emerges as a key factor in reactions to dealings with legal authorities. People believe that they are entitled to treatment with respect and react very negatively to dismissive or demeaning interpersonal treatment. Finally, people focus on cues that communicate information about the intentions and character of the legal authorities with whom they are dealing ("their

trustworthiness”). People react favorably to the judgment that the authorities with whom they are interacting are benevolent and caring, and are sincerely trying to do what is best for the people with whom they are dealing.

Authorities communicate this type of concern when they listen to people’s accounts and explain or justify their actions in ways that show an awareness of and sensitivity to people’s needs and concerns. The key point about procedural justice is that being treated fairly communicates value and respect within a group which fosters compliance with group rules, promotes cooperation and leads to identification and engagement with the group. Hence, procedural justice promotes legitimacy and advances each of the three goals outlined: compliance, cooperation and engagement.³⁸³

Navin Beekarry³⁸⁴ in his article the International Anti-Money Laundering elucidates; “a law perceived as legitimate and fair is more likely to be observed than not.” Legitimacy as a factor influencing compliance is an idea developed by Franck, who advocated that in a community of organized rules, compliance is directly linked to a perception of legitimacy by those who are at the receiving end.

In secularized, democratic societies, the primary source of legitimacy lies in the involvement in the decision-making process of those impacted by its decision. The fundamental principle underpinning the concept of legitimacy in policy-making is the recognition that subjects of international norms should have an opportunity to participate and influence the development of those norms observance owes more to the recognition that the existing legal rules reflect the shared

³⁸³ Popular Legitimacy and the Exercise of Legal Authority: Motivating Compliance, Cooperation and Engagement Tom R. Tyler, Yale Law School Jonathan Jackson, Methodology Institute and Mannheim Centre for Criminology, LSE.

³⁸⁴ Navin Beekarry, “The International Anti-Money Laundering and Combating the Financing of Terrorism Regulatory Strategy; A Critical Analysis of Compliance Determinants in International Law,” Journal Name, Volume (Year: ..): pages.

values and interests of the members of the international community and are, therefore, legitimate. Similarly, soft law is legitimized on the basis that “a rule is legitimate if relevant audiences accept it as appropriate [and] can be difficult to enforce if it does not reflect a general consensus about its legitimacy.”³⁸⁵

Beekarry has highlighted the importance of legitimacy as a key factor influencing compliance with laws and regulations. It refers to the idea developed by Franck that in a community governed by rules, people are more likely to comply with those rules if they perceive them as legitimate and fair. This concept is particularly relevant when discussing the role of the Financial Action Task Force (FATF) and its efforts to combat money laundering and terrorist financing.

The FATF is an intergovernmental organization that sets international standards and promotes measures to combat money laundering and the financing of terrorism. Its effectiveness in achieving its goals depends, to a significant extent, on the legitimacy of its standards and the willingness of member countries to comply with them.

He has further emphasizes that in secularized, democratic societies, legitimacy is often derived from the involvement of those who are affected by the decisions in the decision-making process. This principle aligns with democratic values, where citizens have a say in the creation of laws and regulations that affect them. In the context of the FATF, member countries should feel that they have had an opportunity to participate in the development of international norms related to anti-money laundering and counter-terrorism financing measures. This participation can enhance the perceived legitimacy of the FATF's standards and increase compliance.

³⁸⁵ The International Anti-Money Laundering and Combating the Financing of Terrorism Regulatory Strategy: A Critical Analysis of Compliance Determinants in International Law by Navin Beekarry.

Furthermore, the text mentions that compliance with international legal rules is more likely when those rules are perceived to reflect the shared values and interests of the international community. This concept underscores the importance of consensus and cooperation among nations in shaping global financial regulations. The FATF's standards are more likely to be effective if they are seen as legitimate because they reflect the collective values and interests of its member countries.

Lastly, the text touches upon the idea that even "soft law" can be legitimized if relevant audiences accept it as appropriate. Soft law refers to non-binding agreements and principles that can still influence behavior when they are widely accepted and respected. In the context of the FATF, soft law instruments, such as its guidance and recommendations, can be effective in shaping global financial practices if they are perceived as legitimate by the financial industry and relevant stakeholders.

In conclusion, the Beekarry highlights the importance of legitimacy in shaping compliance with international financial regulations, including those set by the Financial Action Task Force. Legitimacy is closely tied to perceptions of fairness, involvement in the decision-making process, shared values, and consensus among the international community. Ensuring the legitimacy of the FATF's standards is crucial for their effectiveness in combating money laundering and terrorist financing.

3.9 ECONOMIC AGGRESSION

The Article 2(4) of the Charter of the United Nation declares that:- All members shall in their international relations from the threat or use of force against the territorial integrity or political independence of any State ,or in any other manner inconsistent with the purpose of the United

Nations.³⁸⁶ The wording of Article 2(4) of the UN Charter does not specify whether the term “Force” includes only military force or all type of forces, regardless of whether it is military or nonmilitary in nature. The uncertainty of the scope of term “Force” cause two camps to emerge. One camp holds the view that the term only includes military force, whereas the other considers it as encompassing all types of force, irrespective of whether it is military or not. Article 2(4) of the United Nations Charter,³⁸⁷ deals with the prohibition of the threat or use of force against the territorial integrity or political independence of any state. The same relates to international relations, it does not directly reference the Financial Action Task Force (FATF), which is an intergovernmental organization focused on combating money laundering and terrorist financing. However, it is important to note that the FATF operates within the framework of international cooperation and compliance with international standards. Various writers have questioned the placement of the States in the Black list, Gray list as the State placed under this list have to face consequences in international financial dealings resulted adverse Economic impact on the States. The discussion around the interpretation of the term “force” in Article 2(4) of the UN Charter is relevant in the context of international law and the principles that guide the actions of states. It primarily pertains to issues of sovereignty, territorial integrity, and political independence of nations. The debate over whether "force" includes both military and non-military forms of coercion has implications for how states conduct their international relations and whether certain actions could be seen as violations of the Charter. According to the Declaration and Principles of international Law, States have the duty to refrain from military, political, economic or any other form of coercion aimed against the political independence or territorial integrity of any State.

³⁸⁶ Article 2(4) of the charter of United Nations.

³⁸⁷ Resolving the conundrums in Article 2(4) and 51 of the Charter of the United Nations, Article by Leung Fiona Nga Woon.

Article 1(1) of both the international covenant on Economic, social, and cultural Rights (ICESCR) and the international Covenant on Civil and political rights (ICCPR) states that:

“All peoples have the right to self-determination .By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.”³⁸⁸

Moreover Article 32 of the charter of Economic Rights and duties of States (CERDS) lays down the rule that:

“No State may use or encourage the use of economic, Political or any other type of measures to Coerce another State in order to obtain from it the subordination of the exercise of Sovereign rights.”³⁸⁹

Emphasizes fundamental principles related to self-determination, economic rights, and non-coercion among states. While these principles are foundational in international law and relations, they are not specific to the Financial Action Task Force (FATF) or its recommendations and regulations, which primarily focus on countering money laundering and terrorist financing.

Self-Determination: The concept of self-determination is a key principle in international law, asserting that all peoples have the right to freely determine their political status and pursue their economic, social, and cultural development. This principle is enshrined in various international agreements, including the United Nations Charter and is generally regarded as a fundamental human right.

Non-Coercion: Article 32 of the Charter of Economic Rights and Duties of States (CERDS) underscores the principle that states should not use economic, political, or any other measures to coerce other states into subordinating their sovereign rights. This reflects the idea of respecting the sovereignty and independence of nations in international relations. While these principles are important in the broader context of international law and relations, they do not directly pertain to

³⁸⁸ Article 1(1) of both the international covenant on Economic, social, and cultural Rights (ICESCR) and the international Covenant on Civil and political rights (ICCPR).

³⁸⁹ Economic Rights and duties of States (CERDS).

the specific mandate of the FATF. The FATF is primarily concerned with combating financial crimes, including money laundering and terrorist financing. Its recommendations and regulations provide guidance to member countries on how to strengthen their anti-money laundering and counter-terrorist financing regimes to mitigate these threats. However, it is essential to recognize that the FATF operates within the framework of international cooperation and compliance with international standards. Respect for the principles of self-determination and non-coercion is consistent with broader international norms and values, contributing to the overall stability and fairness of the international system. All these above articles reveal that the word of force includes other kinds of forces as well including Military force. Articles 2(4) and 51 of the Charter of the United Nations (UN Charter) have long been and are still the twin scourges of public international law. The prohibition on the threat or use of force and the right of self-defense are both “subject[s] of fundamental disagreement”. Such disagreement has been debated time and again in countless numbers of occasions, ranging from proceedings that take place before the International Court of Justice, the highest of all judicial organs, to moots in which law students are involved, such as the renowned Philip C Jessup International Law Moot Court Competition. In his authoritative commentary on the UN Charter, Bruno Simma identified the cause of the dispute over Article 2(4):

The prohibition of the [threat or] use of force in contemporary international law is burdened with uncertainties resulting from the, undoubtedly ambiguous, wording of the relevant provisions of the UN Charter, as well as from their unclear relations to one another.³⁹⁰

As for Article 51, Christine Gray pointed out that:

*“The divisions over the scope of the right of self-defence, especially as to whether anticipatory self-defence are lawful, are much discussed and date back to the creation of the United Nations.”*³⁹¹

³⁹⁰ Bruno Simma, *The Charter of United Nations. A commentary*. 2nd ed. (New York: Oxford University Press, 2002), 135.

³⁹¹ Christine Gray, *International Law and the Use of Force*. 3rd ed. (Oxford: Oxford University Press, 2008), 114.

Article 51 Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security.³⁹² Quite apart from the controversy arising from each of these provisions when they are considered individually, the disagreement extends to the situation where both provisions are considered together. The most noticeable difficulty that has to be surmounted is the relationship between the two provisions. As precisely indicated by Sir Ian Brownlie, all these problems “[present] some questions of interpretation”.³⁹³ The purpose of this paper is to critically analyze the significant problems that have arisen from Articles 2(4) and 51, starting with first an exposition of the rules of interpretation of treaties that are used in public international law, followed by a detailed discussion of Articles 2(4) and 51, both individually and collectively, and rounding off with a conclusion on the importance of interpretation to the process of solving problems in a treaty. The discussion will explore the notions underlying these two provisions, as well as the problems that are existent in them. Each problem will be closely examined in turn using a three-step approach.

- First, the problem will be identified.
- Second, the methods of interpretation that have been previously proposed by other scholars in this field of law to solve the problem, if there are any, will be set out.
- Third, the author’s views on the proper course to take in resolving the problem will be proffered.

The rules of interpretation of treaties under public international law as the problems that are found in Articles 2(4) and 51 of the UN Charter raise questions of interpretation, it is both crucial and convenient to lay down the most important rules of interpretation of treaties in the outset. They are listed in Section 3 of the Vienna Convention on the Law of Treaties (Vienna

³⁹² Article 51 of Charter of United Nations.

³⁹³ Ian Brownlie, *Principles of Public international Law*. 7th ed (Oxford: Oxford University Press, 2008).

Convention), which is entitled “Interpretation of Treaties”. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes:

- a. Any agreement relating to the treaty which was made between all the parties in connection with the conclusion of the treaty;
- b. As precisely indicated by Sir Ian Brownlie, all these problems “[present] some questions of interpretation”.
- c. Any instrument which was made by one or more parties in connection with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.

Article 2(4) of the UN Charter A. The notion of prohibition on the threat or use of force, Article 2(4) of the UN Charter provides that:

The Organization and its Members, in pursuit of the Purposes stated in Article 1, Shall act in accordance with the following Principles. Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.³⁹⁴

In order to better understand the purpose served by the prohibition on the threat or use of force, it is worthwhile to study its historical background. Before the 20th century, the *bellum iustum* principle was not recognized as law.³⁹⁵ As there was no prohibition whatsoever on the use of force, the freedom of states to go to war was absolute. It was only after this period did nations feel the need to restrict such arbitrary recourse to war. To state the obvious, such restriction was not first introduced by the UN Charter. Article 1 of the Hague Convention III relative to the Opening of Hostilities imposed the procedural requirement of giving a prior, express warning. Article 1 of the Hague Convention II respecting the Limitation of the Employment of Force for the Recovery of Contract Debts precluded the use of armed force in recovering contract debts. The importance of the prohibition on the threat or use of force is reflected by the immense volume of

³⁹⁴ Article 2(4) of Charter of United Nations.

³⁹⁵ Simma, *The charter of United Nations*, 114-115.

literature that has been dedicated to it, amongst which it has been described as “the corner stone of peace in the Charter, the heart of the United Nations. Charter or the basic rule of contemporary public international law”. More specifically, this is reflected by the status that this prohibition has acquired in public international law. Speaking of status, it is relevant at this point to mention Article 38 of the Statute of the International Court of Justice (ICJ Statute),³⁹⁶ which governs the sources of law. It states: The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply:

- a. International conventions, whether general or particular, establishing rules expressly recognized by the contesting states;
- b. International custom, as evidence of a general practice accepted as law;
- c. The general principles of law recognized by civilized nations;
- d. Subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.”³⁹⁷

The prohibition on the threat or use of force falls within paragraphs (a), (b) and (c) of Article 38(1) of the ICJ Statute. It is an international convention because it is contained in Article 2(4) of the UN Charter. It is an international custom, as affirmed by the International Court of Justice in *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America)* (Merits), in which the United States was held to have breached the obligation under customary international law to refrain from using force against another state. It is a general principle of law, as shown by the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations (Declaration on Principles of International Law), which, despite lacking legally binding

³⁹⁶ Statute of the international court of justice(adopted on 26 june1945 entered into force 24 Oct,1945(892 Unit 119.

³⁹⁷ ICJ Statute article 38.

effect, is considered as a vital tool of interpretation of the provisions in the UN Charter. To go even further than the sources of law provided by Article 38(1) of the ICJ Statute, it is recognized as *jus cogens* by the International Court of Justice and the International Law Commission.

The problems of Article 2(4) of the UN Charter: In recalling Bruno Simma's critique on Article 2(4) in his commentary, the problems lie in two areas, namely the vague wording of the provision and the baffling relationship between the clauses in the provision. The former points to the scope of the term "force", whereas the latter hints at the effect of the clause "against the territorial integrity or political independence of any state" on the prohibition on the threat or use of force.

3.10 THE SCOPE OF THE TERM "FORCE"

The problem: The wording of Article 2(4) of the UN Charter does not specify whether the term "force" includes only military force or all types of force, regardless of whether it is military or non-military in nature. For the purpose of illustrating the concept of non-military force, it is useful to take a brief look at Article 41 of the UN Charter:

The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.³⁹⁸

This provision contains a non-exhaustive list of non-military measures which can be used by the United Nations Security Council (UN Security Council) to enforce its decisions.³⁹⁹ Among all the items in the list, the "complete or partial interruption of economic relations" is by far the most important measure, of which arms embargoes form the greatest proportion. For instance, when Iraq invaded Kuwait in 1990, the UN Security Council imposed an arms embargo on the export of weapons and other military equipment to Iraq, with the aim of inducing the Iraqi

³⁹⁸ Article 41 of Charter of United Nations.

³⁹⁹ Simma, *The Charter of United Nations*, 135.

Government to immediately withdraw its military forces from the territory of Kuwait as required under the Security Council Resolution 662.

The existing methods of interpretation: The uncertainty of the scope of the term “force” causes two camps to emerge. One camp holds the view that the term only includes military force, whereas the other considers it as encompassing all types of force, irrespective of whether it is military or not. The former draws on support for its standpoint from the UN Charter itself. Paragraph 7 of the Preamble to the UN Charter indicates that it is essential:

*“to ensure, by the acceptance of principles and the institution of methods, that armed force shall not be used, save in the common interest”.*⁴⁰⁰

The UN Charter demonstrates that the prohibition on the threat or use of force is only directed to military force. In 1945, the Brazilian proposal to expand the scope of force to include economic force had been turned down at the United Nations Conference on International Organization held in San Francisco. Besides, Article 51 of the UN Charter, which will be further elaborated below, explicitly limits the exercise of the right of individual or collective self-defence to situations where an armed attack has occurred. Instead of focusing on the UN Charter, the latter relies on other legal instruments to substantiate its position. According to the Declaration on Principles of International Law, states have the: “duty to refrain from military, political, economic or any other form of coercion aimed against the political independence or territorial integrity of any state”.

Article 1(1) of both the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR) states that:

*“All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.”*⁴⁰¹

⁴⁰⁰Preamble to the United Nations charter.

⁴⁰¹ International Covenant on Economic, Social, and Cultural Rights (ICESCR) and the International Covenant on Civil and political rights (ICCPR).

Moreover, Article 32 of the Charter of Economic Rights and Duties of States (CERDS) lays down the rule that: “No State may use or encourage the use of economic, political or any other type of measures to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights.”⁴⁰² The above article underscores a fundamental principle of international law, which is the prohibition of one state using any form of coercion, be it economic or political, to force another state to surrender its sovereign rights. This principle aligns with the foundational principles of state sovereignty, non-interference in the internal affairs of other states, and the promotion of peaceful relations among nations.

In the context of the Financial Action Task Force (FATF), which sets international standards and recommendations for combating money laundering and terrorist financing, this principle has significance. **Respect for Sovereignty:** The FATF's recommendations and standards are designed to be implemented by member states voluntarily. While the FATF promotes strong anti-money laundering and counter-terrorist financing measures, it respects the sovereignty of individual nations in determining how to implement these standards within their legal and regulatory frameworks.

Non-Coercion: The principle of non-coercion, as mentioned in your text, is consistent with the idea that states should not use pressure or undue influence to force other states into adopting specific policies or measures. In the context of FATF recommendations, countries are encouraged to comply with international standards voluntarily and without external coercion.

International Cooperation: The FATF encourages international cooperation among member states to address global financial crime threats effectively. Cooperation should be based on mutual respect for sovereignty and shared interests in countering money laundering and terrorist financing.

⁴⁰² UNGA Res 3281(1974)GAOR 29th Session Article 32.

In summary, while the FATF's recommendations and standards are obligatory for member states, they are implemented voluntarily and with due consideration for each state's sovereignty. The principle against the use of coercion and the respect for sovereign rights are essential elements of the international legal framework within which the FATF operates. These principles promote a cooperative approach to addressing financial crime threats while respecting the autonomy of individual nations.

The contention that the term “force” covers all types of military and non-military force is unsustainable. Article 31(1) of the Vienna Convention requires a term to be interpreted in its context. The context in which the prohibition on the threat or use force comes into play is that of “international relations”. This can be distinguished from the contexts which are applicable to the Declaration on Principles of International Law, the ICESCR, the ICCPR and the CERDS. For the Declaration on Principles of International Law, the duty to refrain from “military, political, economic or any other form of coercion” is imposed in the context of “[non-intervention] in matters within the domestic jurisdiction of another State”. The freedom to pursue “economic, social and cultural development” under the ICESCR and the ICCPR is conferred in the context of self-determination. Last but not the least, the proscription of the use or the encouragement of the use of “economic, political or any other type of measures” of coercion under the CERDS is laid down in the context of preservation of sovereign equality. The line of reasoning limiting the scope of “force” to military force derives support from the Preamble, the travaux préparatoires and Article 51 of the UN Charter. References to the Preamble and the travaux préparatoires are permitted under Articles 31(2) and 32 of the Vienna Convention respectively.⁴⁰³ Article 51, being part of an international convention, is also a valid source of law under Article 38(1)(a) of the ICJ Statute. A further policy argument can be used to reinforce this line of reasoning:

were this provision [Article 2(4) of the UN Charter] to extend to other forms of force, States would be left with no means of exerting pressure on other States that violate international law. That consequence would be unacceptable at the present stage of development of international law, where compliance with the law is not effectively ensured through international organs.⁴⁰³

⁴⁰³ Simma, *The Charter of United Nations*, 118.

CHAPTER 4: PAKISTAN ATTEMPTS TO COMBAT MONEY LAUNDERING AND TERRORIST FINANCING

INTRODUCTION

Pakistan faces significant ML and TF risks. In the period under assessment a number of terrorist attacks occurred. A number of terrorists groups, including UN-listed groups, operate in Pakistan all of which raise funds through a variety of means including direct support, public fundraising, abuse of NPOs, and through criminal activities. Funds are moved through formal and informal (mainly hawala / hundi) channels. Pakistan's geographical landscape and porous borders increase its vulnerability to TF and heightens Pakistan's TF risks associated with cash smuggling. At the time of the ME onsite visit there were 66 organizations and approximately 7,600 individual proscribed under UNSCR 1373. Major ML predicate crimes include corruption, drug trafficking, fraud, tax evasion, smuggling, human trafficking and organized crime. Corruption is endemic across Pakistan's economy. Authorities acknowledge that corruption is connected with a range of other predicate offences. As with TF noted above, Pakistan's geography and porous borders increase its vulnerability to smuggling and narcotics trafficking.

4.1 FINANCIAL ACTION TASK FORCE AND EFFORTS BY PAKISTAN

The Financial Action Task Force (FATF) serves as a global multilateral watchdog, dedicated to combatting the funding of terrorism and the laundering of illicit money. In 1989, it was established by a consortium of seven influential nations known as the Group of Seven (G7), comprising the United States, Germany, Canada, Italy, the United Kingdom, France, and Japan.

The FATF's headquarters is situated in Paris, France, and it is currently led by T. Raja Kumar. The organization conducts its affairs in both English and French.

Originally formed with the primary goal of preventing money laundering worldwide, the FATF's mission expanded after the tragic terrorist attack on the World Trade Center in New York, USA, on September 11, 2001. The FATF now holds jurisdiction over the prevention of terrorist financing. It boasts a total of thirty-nine (39) members, consisting of 37 independent nations and two organizations. Among the eight associates are the Asia/Pacific Group on Money Laundering (APG) and the Caribbean Financial Action Task Force (CFATF).

Notably, since 2015, the FATF has permitted observer member states, organizations, and institutions such as the United Nations, the International Monetary Fund, Saudi Arabia, and the World Bank to engage in its operations.

One of the key functions of the FATF is to establish criteria for evaluating the legal framework of member countries concerning anti-money laundering and counter-terrorist financing. In 1990, the organization issued a set of forty (40) recommendations, which serve as guiding principles for its members in combating money laundering and terrorist financing. Member nations are obliged to legislate their laws in accordance with these FATF recommendations.

Furthermore, the FATF has established three categories of compliance: the whitelist, the grey list, and the blacklist. These lists categorize member countries based on their adherence to compliance standards. Those nations that fully adhere to FATF recommendations find themselves on the whitelist, while partially committed countries with significant legal gaps are placed on the

grey list. 23 countries⁴⁰⁴ are on grey list in which Pakistan is included. They are under strict observation of the organization. It can recommend certain measures to the member for compliance of FATF requirements. Third is blacklist. They are non-complying countries. Presently three countries are blacklisted. These includes Iran, Myanmar and North Korea

FATF grey and blacklisted countries are facing serious global political and economic consequences. International community hesitate to deal with listed countries. They consider them as terrorist sponsor states. UN imposed economic sanctions of the countries. Foreign countries avoid investing in the state. IMF, WB avoid providing loan to the countries. Financial transaction facing strict surveillance. Banking system strictly observe censorship. FATF enlisted countries are under political and economic stress.

4.2 RECOMMENDATIONS OF FINANCIAL ACTION TASK FORCE

Financial Action Task Force has forty recommendations. These are guidelines for enforcement of FATF mandate. They mainly focus on prevention of money laundering and terror financing. Initially in 1990, the recommendations were drafted for prevention of money through narcotics. The recommendations restrict financial institution to verify their transactions.⁴⁰⁵

Later, in 1996 mandate of recommendation were expanded and reorganized. In which included prevention of terror financing in October 2001. Subsequently took the significant step of establishing the Eight (later increased to Nine) Special Recommendations on Terrorist Financing. In 2003, the FATF Recommendations were updated for the second time. these along with the Special Recommendations, have been accepted by over 180 nations and are universally recognized

⁴⁰⁴ <https://www.fatf-gafi.org/publications/high-risk-and-other-monitored-jurisdictions/documents/increased-monitoring-Oct-2022>. (accessed: 23rd March, 2022)

⁴⁰⁵ The Financial Action Task Force (F.A.T.F.) is an international organization combating money laundering activities. to know more about F.A.T.F. OECD, the financial war on terrorism: a guide by the financial action task force (2004)

as the international standard for anti-money laundering and counter-terrorist financing (AML/CFT).⁴⁰⁶

As of October 2022, Pakistan has successfully exited the FATF's grey list. However, Pakistan has a history of being on this list. In June 2018, it was placed on the grey list for the third time, with the first instance dating back to 2008. Subsequently, it remained on the grey list from 2012 to 2015. These actions were taken due to Pakistan's failure to comply with United Nations Security Council Resolutions (UNSCR) 1267 and 1373.

UNSCR 1267, established in October 1999, received overwhelming support from the United Nations Security Council. This resolution designated Osama Bin Laden and his associates as terrorists and criticized the Taliban administration in Afghanistan. Member states were obligated to close down terrorist camps and training centers on their territories and ensure that their lands were not exploited for such purposes. UNSCR 1267 also required all member states to freeze assets and financial resources linked to the Taliban and encouraged cooperative anti-Osama Bin Laden and anti-terrorism efforts.

Despite Pakistan's efforts, including military operations in former FATA (Federally Administered Tribal Areas) that significantly damaged terrorist infrastructure, the United States continued to exert pressure on Pakistan to “Do More.” This was due to dissatisfaction with Pakistan's policy initiatives during the Bush and Obama administrations.

Pakistan's placement in the FATF grey list in 2012 resulted from its non-compliance with UNSCR 1267, which mandated a travel ban, asset freeze, and arms embargo on militant groups affiliated with Al-Qaeda. Notable groups and individuals on this list included Tehreek-i-Taliban Pakistan (TTP), Lashkar-e-Tyba, Falah-e-Insaniat Foundation (FIF), Lashkar-e-Jhangvi (LeJ), Al Rashid Trust, Harkat ul Jihad Islami (HUJI), and figures like TTP's Mullah Fazlullah, Hafiz Saeed,

⁴⁰⁶ The official site for financial action task force, [http://www.fatf-gafi.org/about/ whatwedo](http://www.fatf-gafi.org/about/whatwedo). (accessed 23rd April, 2023).

and Haqqani. From 2012 to 2015, Pakistan remained on the FATF's grey list, with the FATF publicly stating that Pakistan had not taken sufficient actions to address deficiencies in its anti-money laundering and counter-financing terrorism strategies. This was primarily attributed to the absence of a committed action plan. However, there was a turning point when the PPP government amended the “ATA Act” in 2013, enabling the Anti-Terrorism Act to seize the assets of affiliated groups and prosecute financiers of terrorist activities within the country.

In 2015, Pakistan’s removal from the grey list was facilitated by significant progress in enhancing its anti-money laundering efforts. The nation developed a comprehensive Countering Finance Terrorism plan and established a robust legal framework. This plan encompassed both domestic jurisdiction and alignment with FATF recommendations. Pakistan was placed on the FATF's grey list again in 2018, this time for a lack of “Strategic Deficiencies” in combating corruption, tax evasion, and terrorism financing, according to FATF's declared causes. One of the grounds for inclusion that the US increasing pressure on Pakistan to act against US-designated terrorist organizations, while Pakistan pursuing its own policy to avoid collateral damage. The United States has great influence in the organization. He is the FATF's greatest financier, and the task force's president is also the US Treasury Department's treasury secretary, who also oversees the office of Terrorist Financing and Financial Crimes. With a strong voice in the task force, the US has a good opportunity to remind Pakistan about their “Do More” policy by voting in favor of putting Pakistan on the list.

In June 2018, the FATF recommended twenty-seven points for consistency. Following that, in June 2021, seven more points for consistency were recommended.⁴⁰⁷

⁴⁰⁷ Adeel Mukhtar, “Money Laundering, Terror Financing and FATF: Implications for Pakistan”, *Journal of International Affairs*, Vol.3 No.1(2018):31 <http://www.ipripak.org/wp-content/uploads/2018/10/Article-2-2-Oct-2018-EDSSA.pdf>(accessed: 12th August, 2022).

4.2.1 NON COMPLIANCE WITH UNSCR 1267 AND 1373

UNSCR 1267 was adopted on 15 October 1999 in response to Al-Qaida activities in Afghanistan. The Council sanctioned Osama Bin Ladin and his associates. In response to the resolution Pakistan has banned 66 entities and approximately 7,600 individuals under the Anti-terrorism Act. Most banks and larger ECs have online screening systems for all customers and transactions and have frozen some funds pursuant to UNSCR 1267. Screening of these proscribed organizations is not satisfactory.

UNSCR 1373 was adopted on 28 Sep 2001, after declaration of war on terror.⁴⁰⁸ It is a counter terrorism resolution in response to the 9/11 attack on the US World Trade Center. In the resolution, the act of terrorism was highly condemned. Terrorists were declared killers of humanity. The world shall do the best effort to control terrorism. Any kind of funding, financing for terrorist organizations were banned. The state must deal with the terror element with iron hands. Pakistan took various steps in this regard and banned various proscribed organizations such as Lashkar-e-Jhangvi (LEJ), Sipah-i-Muhammad Pakistan (SMP), Lashkar-e-Taiba (LET), Al-Qaida, Jameet-ul-Ansar & Tehreek-e-Taliban Pakistan & many other organizations.

4.2.2 ACTION AGAINST PROSCRIBED ORGANIZATIONS

Pakistan has a weak financial transaction risk management system regarding proscribed organizations. It should identify, assess and understand its ML/TF risks including transnational risks and risks associated with proscribed terrorist groups operating in Pakistan such as Da'esh, AQ, JuD, FiF, LeT, JeM, HQN.⁴⁰⁹ The country should implement a comprehensive and coordinated risk-based approach to combating ML and TF. The banned organization shall be prosecuted as per law.⁴¹⁰

⁴⁰⁸ Mutual Evaluation of Pakistan, Pakistan's Progress in Strengthening measures to Tackle Money Laundering and Terrorist Financing, FATF, Website, <http://www.fatfgafi.org/publications/mutualevaluations/documents/fur-pakistan-2020.html> (accessed: 20th October, 2022).

⁴⁰⁹ Iftikhar A Khan, "May 12, 2019: 11 Groups Banned for Having Links with JuD, Others," Dawn ePaper (Dawn Group of Newspapers, May 12, 2019), https://epaper.dawn.com/DetailImage.php?StoryImage=12_05_2019_001_005.

⁴¹⁰ *The State v. Hafiz Muhammad Saeed and Malik Zafar Iqbal*, Case FIR No. 32/2019 dated 01.7.2019 PS CTD Gujranwala, Court of Arshad Hussain Bhutta, Judge Anti-Terrorism Court No. 1, Lahore

4.2.3 PROSECUTION OF UNSC-DESIGNATED TERRORIST ORGANIZATIONS ON A CASE-BY-CASE BASIS

Jamaat-ud-Dawa and the Falah-e-Insaniyat Foundation, both led by Hafiz Saeed, are among them. The organization's assets must be frozen, and the culprit must face legal consequences.⁴¹¹

Ensure that the anti-money laundering regime is strengthened. The Anti-Money Laundering Act (VII) of 2010 needs to be amended. The law should enhance punishment can be impose a heavy charge on money launderers.

Financial Monitoring Units (FMU) and the Counter Terrorism Department do not share information (CTD) Financial intelligence is used in Pakistan to combat money laundering, terrorist financing, and predicate crimes, as well as to trace property for confiscation reasons, but only to a limited level. CTD is the provincial agency in charge of terrorism financing investigations. Critically, there is a lack of information sharing between the Department of Immediate Action Against Terrorists and the Department of Homeland Security.

4.2.4 MONEY LAUNDERING AND TERROR FINANCING A LOW CONVICTION RATE

In Pakistan, there have been 2,420 investigations related to money laundering (ML), resulting in 354 prosecutions and the conviction of one individual for self-laundering associated with corruption. Additionally, 228 cases related to terror financing (TF) have been registered, with 58 convictions. However, due to a lack of information, it has been challenging to assess the proportionality and deterrence value of sanctions against natural persons. Furthermore, the investigative agencies lack the necessary equipment for evidence collection, rendering Pakistan's anti-money laundering efforts inadequate in addressing the prevailing threats.

4.2.5 INEFFECTIVENESS IN ASSET FREEZING DUE TO MONEY LAUNDERING

Pakistan has ineffective procedures for freezing, confiscating, and prohibiting the sale of confiscated assets. While some assets are seized by Law Enforcement Agencies (LEAs) in predicate offenses cases, this is not the case in money laundering (ML) cases. The risk assessment method for terrorist financing (TF) is also ineffective. Although these bodies have requirements

⁴¹¹ Rana Bilal, "Hafiz Saeed Convicted in another terror financing case," DAWN News, November 19, 2020 <https://www.dawn.com/news/1591261> (Accessed: 23rd June, 2022).

for recordkeeping and risk-based Customer Due Diligence (CDD) procedures, they fall short in effectively identifying beneficial owners, which is a significant deficiency. They do employ Enhanced Due Diligence (EDD) measures and have internal controls for Anti-Money Laundering (AML) and Countering the Financing of Terrorism (CFT).

4.2.6 LACK OF SUPERVISORY AUTHORITY

In Pakistan, there are limited avenues for legal entities to seek redress, and there is an absence of diligent AML/CFT oversight. The country lacks institutions to address ML and TF concerns related to trusts, especially foreign trusts and waqfs. Reporting entities are required to ascertain beneficial ownership before entering into a business connection.

4.2.7 INSUFFICIENT INTERNATIONAL COOPERATION

Pakistan does not have a dedicated institutional framework for Mutual Legal Assistance (MLA), but it relies on treaties, conventions, reciprocity, and some statutory measures to facilitate such cooperation. Pakistan generally cooperates with MLA and extradition requests. The country has submitted over 140 outgoing MLA requests, although the number of ML- and TF-related outgoing MLA and extradition requests is relatively low requests does not match Pakistan's risk profile.⁴¹² As a result, she has a terrible record of cooperating with foreign governments in the fight against money laundering.

4.2.8 HAWALA

Under the Foreign Exchange Regulation Act 1947, Pakistan is taking various enforcement proceedings against *Hawala*. Money laundering is being combated by the FIA. Many criminals have been apprehended and imprisoned. Millions of dollars in tented funds have been retrieved.⁴¹³

⁴¹² Ahmed, S.A. (2017), “Practical application of anti-money laundering requirements in Bangladesh: an insight into the disparity between anti-money laundering methods and their effectiveness based on resources and infrastructure”, *Journal of Money Laundering Control*, Vol. 20 No. 4, pp. 428-450.

⁴¹³ *Slackness in the Progress of Pending Enquiries Relating to Fake Bank Accounts, etc: In the Matter of.*, 2019 SCMR 332.

Due to a lack of specific information from Pakistani authorities, it's unclear how well breaches are identified, and the effectiveness of sanctions hasn't been determined.⁴¹⁴

4.3 CAUSES OF PAKISTAN BEING ON GREY LIST OF FINANCIAL ACTION TASK FORCE (FATF), US- PAKISTAN STRESS RELATIONSHIP

US Pakistan relationship have linked with reference to FATF grey list. Whenever the countries have strain relationship it puts on grey list. On 2 May 2011, Al Qaida most wanted leader, Osama bin Ladin was killed by US armed forces in Abbottabad.⁴¹⁵ The operation was turning point of Pakistan US relation in the year. US has confirmed its assertion that Pakistan is not serious to deal with Taliban.⁴¹⁶ She plays double game. One side she receives hug amount from US and other hand she house bore terrorist in the country. As result relationship of both countries became strain. Consequently, first time Pakistan was put on FATF grey list in 2008 and second time from 2012 to 2015. Moreover, Trump administration, 2016-2021, almost remain hostile to Pakistan. He consistently blamed Pakistan for playing double game in war on terror. He demanded 'do more' to curb terrorism. He wanted cruel treatment for US designated terrorist. He tweeted that Pakistan deceived and cheated. Did nothing for US but received 33-billion-dollar aid during last 15 years.⁴¹⁷ She provides safe heavens to terrorists.

Pakistan reacted to the tweet and reminded her sacrifices. She said the country provided logistics and intelligence support to foreign troops. She has cooperated with international

⁴¹⁴ Monitoring Report, Pakistan Passes 26 point Action Plan to Comply with FATF, Pakistan Today ,June 27,2018 <https://www.pakistantoday.com.pk/2018/06/27/pakistan-passes-26-point-action-plan-to-comply-with-fatf/> (Accessed 11th June, 2023).

⁴¹⁵ The daily Dawn 3 May 2011.

⁴¹⁶ Gerard Chaliand and Arnaud Blin. *The History of Terrorism from Antiquity to Al Qaeda* (London: University of California, 2007).

⁴¹⁷ <https://www.bbc.com/news/world-us-canada-42536209>. Trump attacks Pakistan 'deceit' in first tweet of the year Published,1 January 2018 (accessed: 07th May, 2021)

community as non-NATO country. But disappointed by vexatious attitude of US administration.⁴¹⁸ Such hot response added fuel in fire. Consequently, third time she placed on FATF grey list in June 2018.

4.3.1 PRESENCE OF PROSCRIBED ORGANIZATIONS

In Pakistan UN designated organizations, Jamaat-ud-Dawa and Falah-e-Insaniyat Foundation, headed by Hafiz Saeed, are present. They can collect fund and do normal activities without restrictions.⁴¹⁹ There is no stick prosecution of the organizations.⁴²⁰ Therefore, it is conflict between international and domestic legal regime. The country is not cooperating to punish sanctioned entities.

4.3.2 INDIAN PERCEPTION OF TERROR FINANCING IN KASHMIR

India has accused Pakistan of financing terrorism in the Kashmir region. Since October 27, 1947, Kashmiri freedom fighters have been striving for independence from India. India took control of Kashmir through a contentious treaty of accession, making it a party to the ongoing conflict. The Kashmir issue remains a major point of contention between Pakistan and India and is internationally recognized as a conflict between these two nations. They have engaged in three wars over this issue. Tensions escalated significantly on August 5, 2019, when India unilaterally revoked Indian constitutional articles 35-A and 370. In response to India's actions, Pakistan expressed strong concerns about the illegal revocation of these articles and reiterated its commitment to providing political, diplomatic, and moral support to Kashmiri fighters. However, India has interpreted Pakistan's assistance to the Kashmiri people as support for terrorism and has accused Pakistan of financing terrorism in Kashmir. India, as the world's largest democracy with

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⁴¹⁹ Roche, Elizabeth. 2018. "Pakistan Back on Terror Funding Watchlist, Pressure on Economy Likely." <https://www.livemint.com/>. (accessed: 23rd May, 2020)

⁴²⁰ Aamir Khan. 2017. "Hafiz Saeed Released on Court Orders Due to lack of Evidence" The Express Tribune. November 29, 2017.

the second-largest population, wields considerable influence on the international stage, which it has used to convince organizations like the FATF to place Pakistan on the grey list.

4.3.3 PAKISTAN'S WEAK LEGAL REGIME

Pakistan's anti-money laundering and terror financing laws lack effectiveness in punishing wrongdoers. The judicial system is burdened and inefficient, with a ranking of 118 out of 128 countries in the Civil Justice Index 2020. Weak laws in these areas allow money launderers to benefit without facing penalties, resulting in a very low rate of prosecution and conviction. Pakistan has undertaken 2,420 money laundering investigations, resulting in 354 prosecutions and the conviction of one individual for self-laundering related to corruption. In light of these challenges, it is imperative to reform the legal system to enhance its vibrancy and efficiency.

4.4 Pakistan's Response to FATF Recommendations

Pakistan is a responsible nation that respects international concerns and strives to improve its compliance with international standards. The country's first mutual evaluation report (MER) was released in October 2019, highlighting deficiencies in its anti-money laundering and counter-terrorist financing regimes. However, as of July 2021, Pakistan has made significant progress in addressing these issues. Pakistan is subject to close monitoring and will continue to report to the Asia/Pacific Group on Money Laundering (APG) on its efforts to strengthen anti-money laundering and counter-terrorist financing measures. Additionally, Pakistan has amended various anti-money laundering and anti-terrorist financing laws in response to these recommendations.⁴²¹

⁴²¹ Mutual Evaluation Report for Pakistan – Financial Action Task Force (FATF) – 2019 <https://www.fatf-gafi.org/media/fatf/documents/reports/mer-fsrb/APG-Mutual-Evaluation-Report-PakistanOctober%202019>.

4.4.1 PHASE I (FEBRUARY TO JULY 2020)

Foreign Exchange Regulations (Amendment) Act, 2020, Anti-Money Laundering (Amendment) Act, 2020, NACTA (Amendment) Act, 2020, Anti-Terrorism (Amendment) Act, 2020⁴²², Mutual Legal Assistance (Criminal Matters) Act, 2020.

4.4.2 PHASE II: (JULY - AUGUST 2020)

UN Security Council (Amendment) Act, 2020, Anti-Terrorism (Second Amendment) Act, 2020, Companies (Amendment) Bill, 2020, Limited Liability Partnership (Amendment) Act, 2020, Islamabad Capital Territory Trust Act, 2020, Control of Narcotics Substance (Amendment) Act, 2020.

4.4.3 PHASE III (SEPTEMBER 2020)

Anti-Money Laundering (Second Amendment) Act, 2020, The Modaraba Companies (Floatation and Control) (Amendment) Bill, 2020, Cooperative Housing Society Bill, 2020.⁴²³ In response of 27 FATF recommendation, she has compliance with 26 FATF recommendation until June 2021.⁴²⁴ One, non-compliance recommendations in targeted prosecution of UN designated terrorist and proscribed organization. The FATF President has recognized substantial progress of Pakistan. It shows high level of Pakistan commitment toward FATF recommendation. She has achieved the points efficiently. The remaining point needs some time to compliance. Because investigation and prosecution of the person is time taking job. Criminal justice system of Pakistan is slow. Decision of a case take years to finalize. But the country has promised to punish money launderer and terrorist through prompt justice.

⁴²² The Anti-Terrorism Amendment Act 2020 – National Assembly Pakistan http://www.na.gov.pk/uploads/documents/1580477563_927.pdf(Last accessed 03-28-22)

⁴²³ Mutual Evaluation Report for Pakistan – Financial Action Task Force (FATF) – 2019 <https://www.fatf-gafi.org/media/fatf/documents/reports/mer-fsrb/APG-Mutual-Evaluation-Report-PakistanOctober%202019.pdf>(accessed 22nd March, 2022)

⁴²⁴ FATF keeps Pakistan grey The News, June 26, 2021.

The FATF, on the other hand, has given Pakistan six more points for compliance.

- The newly recommended points included developing of international cooperation by modifying the Mutual Legal Assistance (MLA) law;
- Representing and cooperation that foreign countries are being sought for assistance in implementing UNSCR 1373 designations;
- Demonstrating that supervisors are conducting both on-site and off-site supervision commensurate with specific risks;
- Registration of Designated Non-Financial Businesses and Professions (DNFBPs), including applying appropriate safeguards.
- Demonstrating that ML investigations and prosecutions have increased, and that proceeds of crime are still being restrained and confiscated in accordance with Pakistan's risk profile, including working with foreign counterparts to trace, freeze, and confiscate assets; and
- Demonstrating that DNFBPs are being monitored for compliance with proliferation financing requirements and that sanctions are being imposed for noncompliance.⁴²⁵

These six new proposals are mostly focused on money laundering prevention. As a result, they are simple to achieve. Within a year, she will achieve her goal.

⁴²⁵ Amin, M., Khan, M., & Naseer, R. (2020). Pakistan in the FATF grey-list: challenges, remedies and international response. *Margalla Papers* (1), 31-43. <https://ndu.edu.pk/margallapapers/Margalla-Papers-2020/03-Pakistan-in-the-FATF.pdf>(accessed: 08th July, 2021).

4.5 FINANCIAL ACTION TASK FORCE (FATF) SUMMIT, JUNE 2022, REGARDING PAKISTAN

During 14-17 June 2022, Financial Action Task Force (FATF) meeting was held in Berlin, Germany. The meeting was presided by FATF President Mr. Marcus Player. Delegates from 200 jurisdictions of Global Network participated. Pakistan was represented by Minister Foreign Affairs, Hina Rabani Khar, in the summit. Initiatives of Pakistan were appreciated. She has substantially completed 34 points of two FATF action plans. Implementation of AML/CTF reforms is in process. More political commitment is necessary to expedite the enforcement of the plan. Team of the organization will visit the country in near future to verify the reforms. There is hope Pakistan will exit from grey list within next 7-8 months. She needs 12 votes out of 39 to exit from the list.

4.6 FINANCIAL ACTION TASK FORCE (FATF) SUMMIT, OCTOBER 2022, REGARDING PAKISTAN

Finally, in October 2022, Pakistan exits from grey list of Financial Action Task Force. The country has successfully completed thirty-four points programs of FATF related to Money-Laundering and terror financing. The organization has appreciated performance of Pakistan for substantial improvement in Money laundering and terror financing regime. The country civil and military institutions have performed very well to legislate the latest Anti-Money laundering and terror financing laws. The parliament has legislated and amended more sixteen laws. The criminal justice system has performed good. Proscribed persons are arrested, interrogated, and prosecuted as per law.

This exclusion of Pakistan from grey list of FATF is provisional not a permanent. The county should continue to work with Asia Pacific Group to further strengthen the Anti-money laundering and terror financing regime. The country should control new waves of terrorism. Because it is documented that some terrorist groups especially, Tereeq-e-Taliban Pakistan, are present in Ex-FATF. They are involved in different terrorist attacks. Their presence and terrorist activities are very dangerous to Pakistan. They may be attack in foreign country and defame

Pakistan at international level for harboring terrorist groups. Terror Financing and logistics support of these groups should be curbed.

Pakistan should continue to active diplomacy in the World. Foreign office should strengthen relationships with other countries, especially FATF members. In 2018, Pakistan was grey listed because of nomination by some strong members of FATF. In which include US, UK, India. At that time these countries have strain relationship with Pakistan. Due to failure of Pakistan at diplomatic front the countries successfully convinced other members to put it on grey list. Despite long and effective struggle of Pakistan it needed twelve votes to come out from the list. It has become possible through vibrant diplomacy. Therefore, diplomacy play important role on listing and delisting of the country. ⁴²⁶

Illicit funds from predicate crimes are generally laundered through domestic real estate precious gems/jewelry, and the financial sector. Criminal proceeds are also moved offshore via formal and informal channels. Overall, Pakistan has made some progress in addressing the technical compliance deficiencies identified in its MER and has been re-rated on one Recommendation. On the basis of progress made by Pakistan, Recommendation 29 has been re-rated to C. While progress has been made on Recommendation 1, it is not yet sufficient to justify a re-rating. The analysis and rating for Recommendation 6 are subject to a major disagreement and consistent with the APG Mutual Evaluation procedures, consideration of this Recommendation has been referred for in-session discussion at the next APG Plenary meeting and is not considered in this report. With respect to the other Recommendations which have been amended after the

⁴²⁶ Liberal Arts and Social Sciences International Journal (LASSIJ) eISSN: 2664-8148 (Online) DOI: <https://doi.org/10.47264/idea.lassij/4.2.32> Vol. 4, No. 2, (July-December 2020): 413-426 Research Article URL: <https://www.ideapublishers.org/index.php/lassij> Pakistan and the FATF: Exploring the Role of Diplomacy in Getting off the Grey List Muhammad Idrees¹, Manzoor Ahmad Naazer*¹ & Hashmat Ullah Khan² 1. Department of Politics & International Relations, International Islamic University, Islamabad, Pakistan. 2. School of International and Public Affairs, Jilin University, Changchun, Jilin, China. Received: September 5, 2020 Published: December 31, 2020 (accessed: 15th February, 2023).

MER was adopted, Pakistan has retained its ratings for Recommendations 2 and 15.⁴²⁷ Overall, in light of the progress made since the MER was adopted, Pakistan's technical compliance with the FATF Recommendations as follows as of the reporting date (February 2020):

R 1	R 2	R 3	R 4	R 5	R 6	R 7	R 8	R 9	R 10
PC	LC	LC	LC	LC	PC	PC	PC	C	PC
R 11	R 12	R 13	R 14	R 15	R 16	R 17	R 18	R 19	R 20
LC	PC	LC	PC	PC	LC	PC	PC	PC	PC
R 21	R 22	R 23	R 24	R 25	R 26	R 27	R 28	R 29	R 30
PC	NC	PC	PC	NC	PC	PC	NC	(PC) C	PC
R 31	R 32	R 33	R 34	R 35	R 36	R 37	R 38	R 39	R 40
PC	PC	PC	PC	PC	LC	PC	NC	LC	PC

Pakistan has made good progress in addressing the technical compliance deficiencies identified in its MER and has been re-rated on R.10, R.18, R.26 and R.34. Recommendation 10 has been re-rated to Compliant, and R.18, R.26 and R.34 to Largely Compliant. Overall, in light of the progress made by Pakistan since its MER was adopted, its technical compliance with the FATF Recommendations as follows as of the reporting date February 2021.⁴²⁸

14 R.	Rating	R.	Rating
1	PC (MER 2019) □ LC (FUR Oct 2020)	21	PC (MER 2019) □ C (FUR Oct 2020)
2	LC (MER 2019)	22	NC (MER 2019) □ LC (FUR Oct 2020)
3	LC (MER 2019)	23	PC (MER 2019) □ LC (FUR Oct 2020)
4	LC (MER 2019)	24	PC (MER 2019) □ LC (FUR Oct 2020)
5	LC (MER 2019)	25	NC (MER 2019) □ LC (FUR Oct 2020)
6	PC (MER 2019) □ LC (FUR Oct 2020)	26	PC (MER 2019) □ LC (FUR Feb 2021)
7	PC (MER 2019) □ LC (FUR Oct 2020)	27	PC (MER 2019) □ C (FUR Oct 2020)
8	PC (MER 2019) □ LC (FUR Oct 2020)	28	NC (MER 2019) □ PC (FUR Oct 2020)
9	C (MER 2019)	29	PC (MER 2019) □ C (FUR Feb 2020)
10	PC (MER 2019) □ C (FUR Feb 2021)	30	PC (MER 2019) □ LC (FUR Oct 2020)
11	LC (MER 2019)	31	PC (MER 2019) □ LC (FUR Oct 2020)
12	PC (MER 2019) □ LC (FUR Oct 2020)	32	PC (MER 2019) □ LC (FUR Oct 2020)
13	LC (MER 2019)	33	PC (MER 2019)

⁴²⁷ 1st Follow-Up Report Mutual Evaluation of Pakistan 2020.

⁴²⁸ 3rd Follow-Up Report Mutual Evaluation of Pakistan 2021.

14	PC (MER 2019) □ C (FUR Oct 2020)	34	<i>PC (MER 2019) □ LC (FUR Feb 2021)</i>
15	PC (MER 2019)	35	PC (MER 2019) □ LC (FUR Oct 2020)
16	LC (MER 2019)	36	LC (MER 2019)
17	PC (MER 2019) □ LC (FUR Oct 2020)	37	PC (MER 2019) □ NC (FUR 2020 Oct)
18	<i>PC (MER 2019) □ LC (FUR Feb 2021)</i>	38	NC (MER 2019)
19	PC (MER 2019) □ C (FUR Oct 2020)	39	LC (MER 2019)
20	PC (MER 2019) □ C (FUR Oct 2020)	40	PC (MER 2019) □ LC (FUR Oct 2020)

Overall, Pakistan has made good progress in addressing the technical compliance deficiencies identified in its MER and has been re-rated on Compliant with R.33, Largely Compliant with R.28 and R.37 and Partially Compliant with R.38. A summary table setting out the underlying deficiencies for each of the recommendations assessed in this report is included at Annex A. In light of the progress made by Pakistan since its MER was adopted, its technical compliance with the FATF Recommendations is as follows as of February 2022.⁴²⁹ Pakistan has 38 Recommendations rated C/LC. Pakistan will remain in enhanced follow-up. Pakistan's next progress report is due 1 February 2023.

4.7 CONTROL OF NARCOTICS SUBSTANCE ACT, 1997

In Pakistan, money laundering was first discussed as an offence under the Anti-Terrorism Act 1997 (ATA).⁴³⁰ This Act is concerned with combating terrorism and terrorist financing through freezing, seizure, and forfeiture of such assets that are derived from these activities.

The Section 11-K of the Act deals with Money Laundering” (1) A person commits an offence if he enters into or becomes concerned in any arrangement which facilitate the retention or control by or on behalf of another person, of terrorist property- (a) by concealment (b) by removal from the jurisdiction (c) by transfer to nominee (d) in any other way (2) it is a defence

⁴²⁹ **4th Follow-Up Report** Mutual Evaluation of Pakistan 2022.

⁴³⁰ The Anti-Terrorism Act 1997 Section 11K.

for a person charged with an offence under sub section (1) to prove that he did not know and had no reasonable cause to suspect that the arrangement related to terrorist property. Similarly, certain anti-money laundering measures were also introduced in the Control of Narcotics Substances Act 1997. These included freezing and forfeiture of acquired and possessed assets derived from narcotic drugs and psychotropic substances. Section 12 of the Control of Narcotics Substance Act 1997 deals with the same “ Prohibition of Acquisition and possession of assets derived from Narcotic offences- No one shall knowingly – (a) possess, acquire, use , convert, assign, or transfer any assets which have been derived , generated or obtained, directly or indirectly either in his own name or in the name of his associates, relative or any other person through an act or omission relating to Narcotic substance which constitute an offence punishable under this Act, the customs Act 1969(IV of 1969), the prohibition(Enforcement of Hadd) order 1979,(P.O. No.4 of 1979), or under any Law for the time being in force or constituted an offence under any law repealed by this Act: the Control of Narcotics Substance Ordinance 1996(XCIV of 1996) or any other law repealed by this Act: (b) hold or possess on behalf of any other person any assets referred to in clause (a): and (c) conceal or disguise the true nature, source, location, disposition, movement, title, or ownership of such assets by making such assets by making false declaration in relation thereto.

In 2003, the State Bank of Pakistan (SBP) which is the regulator of monetary and credit system in Pakistan, issued its Prudential Regulations M1 to M5 to safeguard the banks/financial institutions from the threat of money laundering. These regulations were updated in 2016. In 2002, the regulator of the corporate sector and capital market, the Securities and Exchange Commission of Pakistan (‘SECP’) also issued various anti-money laundering measures to all non-bank financial institutions, in order to combat the money laundering practices in the corporate sector. Being a member of the Asia/Pacific Group on May 2000, it was mandatory for Pakistan to frame an anti-

money laundering legislation based on international standards.⁴³¹ The first specific law in this regard was the Anti-Money Laundering Ordinance (AMLO) promulgated in 2007, which suffered from various flaws. The scope of the AMLO was limited to account transactions and suspicious transaction reports (STRs) were restricted to only banking accounts. The offence of money laundering was made non-cognizable and a small number of predicate offences were included in the schedule of the AMLO.⁴³² The AMLO was reframed via the Anti-Money Laundering Act 2010 (AMLA) and various changes were incorporated in it, including a well-built preamble and a thorough definition of money laundering. The feature of combating terrorist financing is also included in the preamble. In addition to this, details have been provided for the attachment and forfeiture of properties, either obtained from proceeds of crime or involved in money laundering. The Act also provides a definition, albeit a broad one, as to what constitutes as a financing institution. Despite these several changes in the AMLA, Act is lacked with several loopholes and errors that need to be addressed. In an article published in The NEWS relating to the current legislation the writer has narrated the version of the opposition about the said FATF recommended legislations as following:

The opposition political parties want at least four amendments in the Anti Money Laundering Bill that they have conveyed to the Government .The first amendment relates to deletion of the National Accountability Bureau from the schedule of the bill, removal of the NAB chairman from General committee under it, and exclusion of the NAB from section 2(xviii), meaning thereby the Anti-graft agency should not be one of the prosecuting or investigation agency under the proposed law. One of the senior opposition leader told that NAB is already being consistently used as a tool to oppress the opposition.

It is not what we are saying its Human right watch, council of Islamic ideology, Supreme court and European commission which have held this view. The second amendment proposed by

⁴³¹ The Asia/Pacific Group on Money Laundering consists of 41 member countries, including Pakistan.

⁴³² The Anti-Money laundering Ordinance 2007, s. 4 and s. 21.

the opposition parties said that the NAB law is exceptional which puts onus of proof on the defendant. This is against the natural principles of justice and has been declared against Sharia by the council of Islamic ideology. The third amendment says that the Government has made certain offences cognizable by the AML bill.

We want to omit this because it will mean that for arrest, the investigation officer will no longer be required to give in writing the reason for detention and get the approval of magistrate/competent court . This will again allow arbitrary arrest which is against the spirit of Natural justice and the Constitution. The fourth point was pertained to ease of doing business. The bill puts further pressure on the business in term of reporting and regulation and the Economy which is already in shambles will completely crumble.

In the Article published in Dawn with the subject disturbing trends in Legislation the writer has criticized the recent legislation as following:

The trend which one can discern from the two examples is that a number of legislative initiatives are prompted by international entities like APG/FATF and IMF. It is not precisely known how many laws will eventually be required to be passed by the Parliament to satisfy their requirement but so far at least 11 FATF related laws have been passed by the Parliament .These laws may be legitimately required for the good of the country but why should Pakistan wait for a nudge from these international entities to spring into action ,and why can't the executive and legislature safeguard national self-respect to initiate legislation on their own rather than use the name of these agencies to steamroll legislation at the last minute .Lastly, but critically, the perception of coercion perpetrated on legislators in passing certain Laws is extremely dangerous. During the recent headcount for passing a bill in the joint sitting of parliament on Sept 16, the opposition lost by 10 votes despite the fact it had a numerical superiority of around the same number. The Parliamentarian's attendance that day indicates the absence of around 40 members

of the opposition during the critical vote count. Many opposition members complained of receiving threatening telephone calls to either vote for the legislation or abstain.”⁴³³

4.8 THE ANTI MONEY LAUNDERING (SECOND AMENDMENT) ACT 2020

Promulgated and various amendments have been made in the Anti-money Laundering Act 2010. The punishment of the offence of Money Laundering has been enhanced and whoever commits the offence of Money Laundering shall be punished rigorous imprisonment for a term which shall not be less than one year but may extend to ten years. Various definitions have been substituted and included in the definition clause. The designated non-financial businesses and professions like, real estate agents including builders and real estate developers, dealers in precious metals and stones, including jewelers and gem dealers when performing the prescribed activities in the prescribed circumstances and manners. The Lawyers, notaries, accountants and other professionals who carry out monetary transactions for their clients in concerning the activities mentioned in the Act. In the list of investigating and prosecuting agencies National Accountability has been included. General committee has been constituted under Section 5(5) and AML, CFT Regulatory authorities have also been constituted. The offence of money Laundering has been substituted from non-cognizable to cognizable. Similarly other amendments have also been made in the said legislation. The Anti Money Laundering (Second amendment) Act 2020 has been promulgated and various amendments have been made in the Anti money Laundering Act 2010.⁴³⁴ The punishment of the offence of Money Laundering has been enhanced and whoever commits the offence of Money Laundering shall be punished rigorous imprisonment for a term which shall not be less than one year but may extend to ten years. Various definitions have been substituted and included in the definition clause. The designated non-financial businesses and professions like,

⁴³³ <https://www.dawn.com/news/1581864/disturbing-trends-in-legislation>. (accessed. 2nd July, 2023).

⁴³⁴ Anti-Money Laundering (amendment) Act-2020.

real estate agents including builders and real estate developers, dealers in precious metals and stones, including jewelers and gem dealers when performing the prescribed activities in the prescribed circumstances and manners. The Lawyers, notaries, accountants and other professionals who carry out monetary transactions for their clients in concerning the activities mentioned in the Act.

4.9 FOREIGN EXCHANGE REGULATION AMENDMENT ACT 2020

Foreign exchange policy and operations in Pakistan are governed under the provisions of Foreign Exchange Regulation Act, 1947 (FERA, 1947), which empowers the State Bank of Pakistan to regulate flows of foreign exchange into and out of the country. However, the State Bank of Pakistan does not have explicit powers under FERA, 1947 to issue any, regulation / instruction relating to the inland movement of foreign currencies. The State Bank has been authorized in this respect vide said amendment. Furthermore, punishment for the offence has also been enhanced in order to enable the State. Bank of Pakistan to regulate the foreign exchange regime in Pakistan more comprehensively as well as to strengthen the effectiveness of the Act.

4.10 COMPANIES AMENDMENT ACT-2020

Vide Companies amendment Act-2020, various amendments has been made in Companies Act-2017.⁴³⁵ The Companies Act 2017 was promulgated in May 31,2017. The Security and Exchange commission of Pakistan in consultation with all Major stake holders and in line with international best practices proposed various amendments in Companies Act which mainly relates to Minority investors, Ease of doing business in Pakistan ,introducing an enabling regulatory framework to facilitate Startups” for the promotion of Business relating to innovation and Technology

⁴³⁵ Companies Amendment Act 2020.

and to improve overall Business climate in the country and to remove other anomalies and ambiguities in the Companies Act.

4.11 ANTI-TERRORISM, (FIRST, SECOND, THIRD AMENDMENT) ACT 2020

The Anti-terrorism Act has been amended and various amendments has been made in the definition clause and other relevant provisions in order to make it in compliant of UNSCRs 1267 and 1373. The UNSCRs 1267 and 1373 were adopted under article 41 of the United Nation charter making them obligatory for all member states.⁴³⁶ In order to implement the UNSCRs the member States are required implement the sanction measures of asset freeze, arms embargo on the entities and individuals who are designated on the sanction list. UNSCR 1373 requires member states to implement terrorism measures especially countering the terrorism financing through their domestic laws. For the purpose of carrying out the mandate of the said act with respect to Cooperation, and information sharing at all level especially for countering the financing of terrorism the definition of the term “Person” has been incorporated in the said amendment. By third amendment the use investigation techniques including undercover operation, intercepting communications, accessing computer system and controlled delivery for investigation of financing of terrorism were allowed under the law in force.

4.12 PUBLIC FINANCE MANAGEMENT ACT-2019

As envisaged in Articles 78 to 88, and 160 to 171 of the Constitution and to guide budgetary management process, financial and fiscal control of cash and banking arrangements, and financial over sight of public entities and in order to give elaborate mechanism of public finance management Public Finance Management Act has been passed by the Parliament.⁴³⁷ The Protection of Economic Reforms Act 1993 (PERA) is creating a hefty impediment for the AMLA.

⁴³⁶ Anti-Terrorism (Amendment) Act, 2020.

⁴³⁷ Public Finance Management Act 2019.

⁴³⁸The objective of the AMLA to prevent money laundering is clearly defeated with the existing provisions of the PERA contained in sections 4, 5 and 9 of the PERA. Section 4 of this Act authorizes the citizens of Pakistan with regards to the free flow of foreign currency. Hence, this section left it free for all Pakistani citizens and non-nationals to move and pull-out foreign exchange inside or outside Pakistan in whatever form, without making a foreign currency declaration. Section 5 provides immunities in shape of exemption from any inquiry, levy of taxes, restrictions to foreign currency accounts to foreign currency accounts holder besides a guarantee for its complete secrecy. Section 9 of the PERA ensures the secrecy of banking transactions which is a legal obstruction for controlling money laundering.

4.13 THE FOREIGN CURRENCY ACCOUNTS (PROTECTION) ORDINANCE 2001

The Foreign Currency Accounts (Protection) Ordinance 2001 also safeguards the foreign currency accounts holders in shape of transferring foreign currency freely in or outside Pakistan, thereby opening a clear channel for money laundering. Section 3 of this Ordinance specifies the protection of foreign currency accounts and a safeguard is provided to the foreign currency accounts holders to pull out the foreign currency inside or outside the country, thereby promoting money laundering. Another law working against the AMLA is the Income Tax Ordinance 2001 (ITO) Section 111 (4) of ITO allows the inward flow of any suspicious money to the country. This provision of the ITO paves the way for money launderers to bring any amount of their unexplained assets or income, in shape of foreign exchange forwarded from an outside country via the usual banking channels. The Anti-Money Laundering Act of 2010 is an important piece of legislation in Pakistan that addresses Money Laundering. Its main goals are to prevent money laundering, curb terror financing, and seize assets obtained through ill-gotten gains. It contains 46 sections and four schedules. The act of money laundering has been recognized an offence. Money Laundering is

⁴³⁸ The Protection of Economic Reforms Act 1993 (PERA).

punishable. It carries a sentence of one to ten years in prison and a fine of up to twenty-five million rupees.⁴³⁹

The national executive committee is formed. Representatives from all major ministries are part of it. Finance, interior, foreign, and defense ministries are all included. The members are bankers, accountants, auditors, investigators, and lawyers who have prominent positions.⁴⁴⁰ The committee's main goal is to make recommendations to the federal government for money laundering and terror financing policy formulation, rulemaking, and implementation of FATF recommendations, as well as to provide guidance, approve and review national strategies, solicit reports from competent authorities, and discuss issues related to money laundering and terror financing at the national level. As a result, it is the country's money laundering advisory and supervisory authority.⁴⁴¹

The Federal government has set up a Financial Monitoring Unit (FMU). It is supervised by the State Bank of Pakistan. It is a self-governing entity that makes its own decisions about jurisdiction. Director General is in charge of the unit. His primary duty is administration of the unit. It collects, analyses, disseminates, and keeps track of Currency Transaction Report and Suspicious Transaction Report. It also collaborates with the international community to prevent money laundering and terrorist financing. It represents the Pakistan abroad. It reveals the financial details of criminals involved in money laundering and terror financing. Its primary goal is to monitor and examine suspicious transaction reports.⁴⁴²

Pakistan has specialist anti-money laundering and anti-terrorist financing authorities. The National Accountability Bureau, the Federal Investigation Agency, the Anti-Narcotics Force,

⁴³⁹ Section 3 and 4 of Anti-Money Laundering Act, 2010.

⁴⁴⁰ *Govind Ram v. The Federation of Pakistan through Secretary Finance*, 2022 PTD 634.

⁴⁴¹ Section 5 of Anti-Money Laundering Act, 2010.

⁴⁴² Section 6 Ibid.

Pakistan Customs, and the Counter Terrorism Department are the principal money-laundering and terror-financing investigating and prosecution agencies. They are supervised by the federal government. First and foremost, the NAB is an independent entity reporting directly to Pakistan's President. It functions in accordance with the NAB law of 1999. It has the authority to investigate and prosecute cases involving black money. Second, the Federal Investigation Agency is part of the Ministry of the Interior. The FIA Act (VIII) of 1974 is a departmental special law. The FIA has the ability to investigate money laundering under this law. Third, the Anti-Narcotics Force works to discourage drug use and the money that comes from it. Customs activity in Pakistan is governed by the Customs Act (IV) of 1969. Its primary concerns are tax evasion and smuggling. Under the Anti-Terrorism Act (XXVII) of 1997, the CTD has the jurisdiction to investigate terror financing. As a result, the FIA NAB, ANF Customs, and CTD investigate and prosecute money laundering.

Money laundering and terrorism cases are prosecuted by special courts presided over by a country's session judge. Under the Code Criminal Procedure Act (V) of 1898, the court has sole jurisdiction over the cases.⁴⁴³ The court has the authority to impose punishments up to death penalty, but it must be confirmed by the concerned High Court. The Act is criminal procedural law. Investigation, trial, judgment, appeal etc. is govern by the Act. Therefore, it is applicable to all proceeding of the trial.

The Federal government has the authority to engage into agreements with foreign countries for the transfer of criminals, the prosecution of criminals, and the sharing of information. For the

⁴⁴³ *Muhammad Alam v. State*, 2018 PCrLJ 837.

acquisition of evidence, the exchange of accused, and the transfer of criminal proceeds, the government can request assistance from a foreign country.⁴⁴⁴

4.14 HISTORICAL CONTEXT

Corruption and money laundering have long been enduring issues in Pakistan's history. These problems were inherited on August 14, 1947, when the country gained independence from British colonial rule, as corrupt practices and bribery persisted. The leaders of the time engaged in the unlawful extraction of funds, ranging from India to the UK. Pakistan's founding father, Quaid-e-Azam, expressed deep concern about this dire situation. During his speech to the 1st Constituent Assembly on August 11, 1947, shortly after the nation's independence, he remarked, "Bribery and corruption are two of the most detrimental afflictions confronting India. While I don't suggest that other nations are entirely immune, our circumstances appear to be exceptionally severe. This corruption is truly venomous, and we must take decisive action to combat it. crush it with an iron fist, and I hope you will take appropriate steps as soon as this assembly is able to do so."⁴⁴⁵ According to him, the biggest problem in the new state is corruption. Controlling corruption and ensuring responsibility was essential for the growth of the new state.

4.14.1 PAKISTAN PENAL CODE OF 1860

Pakistan Penal Code, 1860 (PPC) is substantive piece of legislation. It defines crimes and its punishments. Before the partition of sub-continent, the Act control financial crimes. Sections 161-171 of the PPC contain a unique chapter dealing with offences committed by or in relation to public servants. Bribery and unrequited gifts have been defined as criminal offences, punishable. Sections 171A-171-J of the PPC concern election-related offences. As a result, bribery to compel the exercise of an electoral right, undue influence or personation during elections, and illegal payment

⁴⁴⁴ Section 26 of Anti-Money Laundering Act, 2010.

⁴⁴⁵ Jinnah's speech to Pakistan's first Constituent Assembly on August 11, 1947.

in connection with an election have all been characterized as actionable wrongs punishable by both jail and fine.

4.14.2 THE PREVENTION OF CORRUPTION ACT (II) OF 1947

The Act protects public officials from corruption. The Act is a foundational element of anti-corruption law. The Act declared bribery and corruption by public servant as offense. A government servant who receives any gift, gratification, monetary, benefits or attempt to do so without reasonable consideration is crime. The person dishonestly or fraudulently misappropriates or convert public property into personal assets is punishable under the Act. Despite its strictness, the law allows for an adverse presumption against a public official if it can be demonstrated that the public servant accepted or got any gratification or valuable thing, or that it was delivered or offered to them.⁴⁴⁶ The offending public official faces a sentence of up to seven years in prison as well as a monetary fine.⁴⁴⁷

4.14.3 PUBLIC REPRESENTATIVE OFFICE (DISQUALIFICATION) ACT (II) 1949 (PRODA)

People found guilty of wrongdoing might be barred from holding public office or functioning as a representative for up to ten years. This law applies to everyone who holds a federation / provincial office, post, or position, including membership in any elective body (federal / provincial parliament or local government institutions), as well as those who participate in federation/activities. The Act defines misbehavior in the province as all of the PRODA offences, as well as subversive activities, any doctrine, or engaging in any act that contributes to political instability; power abuse; and any attempt, act, or abetment of such misconduct. The President or governor must file the referral, and the case will be determined by a tribunal comprised of three

⁴⁴⁶ Section 4 the Prevention of Corruption Act, 1947.

⁴⁴⁷ Section 5 Ibid.

members nominated by the President or governor, as applicable. The punishment prescribed is disqualification from having membership in an elective body for a term of seven years.

4.14.4 HOLDERS OF REPRESENTATIVE OFFICE (PREVENTION OF MISCONDUCT) ACT (IV) 1976

This law, which deals with the prevention of misconduct among people who hold representational offices such as cabinet and lawmaker, exempts the Prime Minister and key ministers. Receiving or obtaining any unlawful gifts, gratification, valuable property, or dishonestly and fraudulently misappropriating public property through corrupt, dishonest, or illegal means; obtaining any valuable thing or financial advantage; and holding valuable resources or property beyond the mean of the person is misconduct. The option to join or be chosen as a member will be denied to the guilty. These offences are exclusively prosecuted by a two-judge High Court bench. Before the references may be filed, the Prime Minister must approve them. Those convicted will be unable to run for or be elected to the legislature until the next general election.

4.14.5 PARLIAMENT AND PROVINCIAL ASSEMBLIES (DISQUALIFICATION FOR MEMBERSHIP) ACT (V) 1976

This Act makes it possible to disqualify someone who holds a public office or a constitutional position, such as cabinet, parliamentarian, parliamentary secretary, attorney general, or advocate general. All of the previous laws' definitions of "misconduct" are included in the term "misconduct." The cases are decided by a division bench of the High Court, which consists of at least two judges. With the Prime Minister's prior agreement, the Prime Minister or Chief Minister files references for this purpose. Persons convicted of the crime are prohibited from running for or being elected to the legislature/provincial assembly until the next general election.

4.14.6 THE REPRESENTATION OF PEOPLE ACT (LXXXV) OF 1976

This Act governs the conduct of parliamentary elections. The focus is on conducting elections in a fair and impartial way with use of unlawful or corrupt techniques prohibited. Persons either written off any loan or failed in the payment of a loan, taxes, or utility fees such as telephone, electricity, gas, or water payments are barred from running for office under the legislation. A successful candidate must provide an asset and liability declaration of their spouse, and any dependent family members. A statement provided by another candidate can be inspected by any contender for the election. Every year, all members of parliament and provincial assemblies must provide a statement of their assets and liabilities.⁴⁴⁸

Currently, Federal government is introducing Electronic Voting Machine at polling stations. Object of the development is effective use of modern technology to expatiate election process. Therefore, the Representative of People (Amendments) Act, 2014 is passed by the Parliament of Pakistan. The amendment provide legal cover to the latest technological development. Electrometer is introduced in election to count voting.⁴⁴⁹ A candidate who re-elected to an assembly must present a disclosure of expenses related to their election campaign. For national assembly elections, a limit of one million rupees has been set, and for provincial assembly elections, a limit of six lac rupees (six hundred thousand). Candidates who are discovered to have spent more than the prescribed amount are disqualified for five years.⁴⁵⁰

4.14.7 HOLDERS OF REPRESENTATIVE OFFICES (PUNISHMENT FOR MISCONDUCT) ORDER, 1977

⁴⁴⁸ Section 42-A of the Representation of People Act, 1976 (Act No. LXXXV of 1976).

⁴⁴⁹ Section 24-A the People Representation (Amendment), 2014.

⁴⁵⁰ Section 49 of Ibid.

The Act,⁴⁵¹ which was adopted in 1977 during the Zia ul Haq Martial Law, enforced severe punishments. All members of the executive branch was affected, including the president, governor, Prime minister, chief ministers, ministers, advisers, parliamentary secretary, parliamentarian, attorney general, and advocate general. It defines misbehavior in the same way as before. Offenses are heard in Special Courts presided over by a High Court judge, with the potential of appealing to the Supreme Court. The penalty is a seven-year ban on being elected to parliament or the provincial legislature. Persons guilty of any of the offences listed in the schedule, such as violations of the Income Tax Laws, Foreign Exchange Regulations, Official Secrets Act, Customs Act, Pakistan Arms Ordinance, and others, will be disqualified from standing for office for seven years.

4.14.8 PARLIAMENT AND PROVINCIAL ASSEMBLIES (DISQUALIFICATION FOR MEMBERSHIP) ORDER 1977

The people and behavior listed in the previous statutes are covered by this Act.⁴⁵² Offenses are heard in Special Courts presided over by a High Court judge, with the potential of appealing to the Supreme Court. The complaint is filed by the president or governor, and the punishment is a seven-year ban on being elected to parliament or the provincial assembly. The jurisdiction of the other courts is limited.

4.14.9 MARTIAL LAW REGULATION NO. 21, 1977

Martial Law Regulation (MLR No)⁴⁵³ refers to members of the national assembly, senate, or a provincial legislature during PM Zulfikar Bhutto's tenure, which lasted from December 1971 to July 1977. The Martial Law Administration required such members to provide detailed financial statements. It was decided if the property or assets were gained legitimacy or illegality after an

⁴⁵¹ Holders of Representative Offices (Punishment for Misconduct) Order, 1977 (PPO 16 of 1977).

⁴⁵² Parliament and Provincial Assemblies (Disqualification for Membership) Order, 1977 (PPO 17 of 1977).

⁴⁵³ Martial Law Regulation, 1977 (No. 21 of 1977).

investigation into the accuracy of the claims. False or inaccurate information can result in a sentence of up to seven years in prison, as well as fines and the loss of all or part of one's property and assets. Members have the option of voluntarily relinquishing illegally acquired assets, in which case no further action would be taken. Failure to submit such assets could result in a fourteen-year prison sentence, a fine, and the confiscation of all or part of the property. A person disqualified from running for parliament or the provincial legislature if their assets were deemed to be disproportionate to their known sources of income.

This notorious norm promoted corruption in politics. They were purchaser of Basic Democrat members. Because they were electoral of parliamentarians.⁴⁵⁴

4.14.10 THE PROTECTION OF ECONOMIC REFORMS ACT, 1992

Money laundering was promoted by the Protection of Economic Reform Act of 1992. The Act was passed to promote trade liberalization and capital mobility. The Act permitted foreign currency to be held and transferred freely. Anyone can have a unlimited quantity of cash. The foreign currency account had no tax liability. No one is allowed to inquire about a person's source of income.⁴⁵⁵ Banks are required to maintain the confidentiality of these individuals. It was a fantastic opportunity for money launderers to clean up their messes. Through this conduit, they transported billions of rupees to Middle Eastern and Western countries. It's also known as lawful money laundering.⁴⁵⁶ However, certain amendments to the Act were made in 2018. Currency position restrictions have been applied. The use of a foreign currency account brings you within the tax net.

⁴⁵⁴ General Muhammad Zia Ul Haq and Non Party Politics in Pakistan: An Analysis by Pakistan Social Sciences Review (PSSR) June, 2017 Volume 1, Issue 1.

⁴⁵⁵ The Express Tribune, Dated August, 05, 2022.

⁴⁵⁶ *The Express Tribune*, May 22nd, 2016.

4.14.11 EHTESAB ACT (IX) OF 1997

The passage of the Ehtesab Act, 1997, which aimed to improve the administration of criminal justice and combat corruption, was a watershed moment in Pakistan's legal history. The people's desire for accountability grew greater as scandals and stories of public representatives and officials stealing national resources were revealed by the media. As it was constantly articulated by political parties, fiercely emphasized by pressure groups, and by the general public, the demand for accountability became increasingly evident. Its goal was to hold public leaders, government employees, and others accountable. It created a special committee of parliament to send references against corrupt people to court, where a two-member High Court bench would decide. A sentence of up to seven years in prison and fine were part of the penalty. Such individuals are also forbidden from running for or being elected to the legislature or provincial assembly for a period of five years.⁴⁵⁷ The law proposed the creation of an Ehtesab (Accountability) Commission to investigate and settle cases of wrongdoing, with a Supreme Court serving judge as chairman and two serving or retired Supreme Court or High Court judges as members.

4.14.12 NATIONAL ACCOUNTABILITY BUREAU ORDINANCE 1999

In October, 1999, Military government established National Accountability Bureau to curb corruption and money laundering the country. It was one point out of seven points of ex-President Musharraf government. That was 'accountability' of corrupt persons. The bureau is established under slogan of one Anti-corruption law for the whole county. The NAB Ordinance 1999, came into enforced in 1999.⁴⁵⁸ It has over riding effects on other Anti-Money laundering Acts of the county. NAB has jurisdiction to try corruption cases at all levels which include Federal, provincial, and local government⁴⁵⁹. NAB is included in the Schedule of Anti-Money Laundering Act (VII)

⁴⁵⁷ Section 4 of the Ehtesab Act, 1997 (Act No. IX of 1997).

⁴⁵⁸ Section 1 of the National Accountability Ordinance, 1999.

⁴⁵⁹ Section 22 Ibid.

of 2010 2010. It can investigate and prosecute offence of money laundering. After latest Amendments (2023) in NAB Ordinance 1999, all cases of tax evasion will be transfer to relevant Tribunal and authorities.⁴⁶⁰ The National Accountability Bureau (NAB) has recovered RS864 billions from corrupt persons since inception. The cases are trialed by special courts. NAB has high conviction rate that is 66 percent. NAB has received totally 405768 complains. Out of which 405212 complaints were investigated and concluded as per law.⁴⁶¹ So, 556 complaints are under investigation.

⁴⁶⁰ Section 4 Ibid.

⁴⁶¹ NAB recovers Rs864bn from corrupt elements since inception, the Daily Times May, 23 2022.

4.14.13 ANTI-MONEY LAUNDERING ORDINANCE, 2007

Anti-Money laundering Ordinance, 2007 is primary piece of legislation that deal with money laundering and terror financing. Main objective of the ordinance is prevention of money laundering and forfeiture of property derived from black money. It came into enforced in 2007. Under the ordinance Financial Monetary Unit is established. The unit is responsible for enforcement of financial laws. such as Federal investigation Agency Act 1974, National Accountability Ordinance 1999, Anti-Narcotics Act 1997, Anti-terrorism Act 1997, the Custom Act 1969. In which offence of money laundering is declared an offence. The legislation mostly regulated suspicious banking transactions, money laundering, smuggling, human trafficking, corruption, narcotics, and terrorism and custom duties respectively.

4.14.14 ANTI-MONEY LAUNDERING ACT, 2010

The Anti- Money Laundering Act 2010 is the latest piece of legislation to combat money laundering and terror financing. The offence was made non cognizable. The act of Money-Laundering is declared as offence. Which redefine the offence of money laundering. Element of combating money laundering is included in preamble of the Act. Four agencies were declared as prosecuting departments. In which include NAB, ANF, FIA, and FBR land and revenue department. The Act is amended according with latest requirement of Financial Action Task Force FATF. Regulation and monitoring of financial traction strengthen. Investigation and Prosecution for terrorist and money launderer is expatiating. Punishment for offence of money laundering is ten year with ten million fine or both.

4.15 SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN AND ANTI MONEY LAUNDERING FRAMEWORK

The SECP came into existence as a result of the Securities and Exchange Commission of Pakistan Act, 1997 and started its operation from 1999.⁴⁶² SECP is a regulator of capital market, NBFC sector, Modarbas, pensions, insurance, financial market for the professional services providers and corporate sector.⁴⁶³ The money launderers prefer to use less regulated financial sector for their convenience and promptness. In this regard they can abuse insurance companies, stock exchanges and fund management companies in order to clean the dirty and illicit money. The launderers can easily use security trading and insurance companies for the purpose of cleaning the dirty money as indicated by FATF.⁴⁶⁴ So it is pertinent that non-banking financial institutions and professional intermediaries must also be regulated like banks and DFIs. The Basel Committee believes that like banking sector, there is need of guidance to be provided to these institutions as well.⁴⁶⁵ The FATF ensures submission of reports on the role of international securities and their response to international anti money laundering measures. Securities and exchange Commission of Pakistan introduced substantial steps to fight money laundering, so that transparency and smoothness of financial market can be ensured. Realizing the global sensitivity on combating money laundering activities, The SECP with the help of World Bank assistance, has set up an Anti Money Laundering Unit.⁴⁶⁶ Anti money laundering measures are technically and financially supported by the World bank.⁴⁶⁷ The Anti Money laundering (AML) Cell was established at the commission with the technical assistance of the World Bank for reformation of the financial sector.⁴⁶⁸ This cell monitors anti money laundering measures and enhances capacity of securities and

⁴⁶² Government of Pakistan, *Year-Book for Financial Year 2005-06*, Islamabad, 2006.

⁴⁶³ Security and Exchange Commission of Pakistan, *Annual Report, 2006*, Islamabad: SECP, 2006.

⁴⁶⁴ FATF, Financial Action Task Force on Money Laundering. (2005), *Report on Money Laundering Typologies 2004-2005*". Paris: FATF, 2005.

⁴⁶⁵ Basel Committee on, Banking Supervision, *Customer due Diligence for Banks*, op.cit.

⁴⁶⁶ SECP, *Anti-Money Laundering Unit- Securities and Exchange Commission of Pakistan Brief Series No.1*, Vol.1, Islamabad: SECP, 2003.

⁴⁶⁷ . SECP, *Security and Exchange commission of Pakistan Annual Report 2005*, Islamabad: SECP, 2005.

⁴⁶⁸ SECP, *Anti-Money Laundering Unit- Securities and Exchange Commission of Pakistan Brief*, op.cit., 162.

exchange commission of Pakistan. It works on standardization of legal and regulatory provisions. It also proactively harmonize anti money laundering measures with international standards.⁴⁶⁹ The SECP as a first step implemented some initial steps which included: (i) ‘Know-Your Customer’(KYC) account opening forms, (ii) Payments and receipts above Rs 50,000/- to be made through cheques, and (iii) Designation of compliance officers.⁴⁷⁰ The designation of compliance officer is an important aspect as he/she has to safeguard the institutions against money laundering. Both the SECP and SBP have emphasized the appointment of compliance officer. In order to reduce *hawala /hundi* related transaction, SECP has also formulated various policies to curb the unregulated transactions. The use of *hundi* for transactions is being discouraged as it is considered a primary conduit for laundering funds.⁴⁷¹ SECP is also member of International Organization of Security Commissions (IOSC) and has made number of efforts to implement anti money laundering measures⁴⁷². The commitment of the SECP for the implementation of AML measures is evident from the corporate sector vision, which states that a progressively growing and robust corporate sector that adequately protects the rights of stakeholders, provides information in a transparent manner based on international standards, and propels economic growth.⁴⁷³ Similarly the capital market plays a significant role for the growth of economy as it is a meaningful alternative for fund raising and attracting investors. The following of core principles of securities regulations set out by the IOSCO, provides protection to investors, improves risk management and governance and engenders confidence of capital market participants for the integrity of the

⁴⁶⁹ Government of Pakistan, *Security and Exchange Commission of Pakistan, Annual Report 2004*, Islamabad: SECP, 2005 p.30.

⁴⁷⁰ SECP, *Anti-Money Laundering Unit- Securities and Exchange Commission of Pakistan Brief Series* No.1, Vol.1, op.cit.

⁴⁷¹ SECP, *Anti-Money Laundering Cell Securities and Exchange Commission of Pakistan Brief Series*, No.1, Vol.3, December 2003, Islamabad: SECP, 2003.

⁴⁷² Government of Pakistan, *Year Book for Financial Year 2005-06*, Islamabad: Ministry of Finance, 2006, p.85.

⁴⁷³ *Security and Exchange Commission of Pakistan Annual Report, 2005*, Islamabad: SECP, 2005, p.3 *Security and Exchange Commission of Pakistan Annual Report, 2005*, Islamabad: SECP, 2005, p.3.

market.⁴⁷⁴ The SECP also encourages the development of a single 146 and well capitalized Clearing House in accordance with the laid down standards and principles of IOSCO.⁴⁷⁵ The SECP has also made it binding for market intermediaries and issuances of licenses that they would have to comply with IOSCO's principles of regulation with respect to inspections and enforcement.⁴⁷⁶ The SECP regularly participates as active member of IOSCO in pursuance of international standards for developing efficient and vibrant markets. SECP is also actively working with various groups of IOSCO and as the Chair of the Working Group 3 (WG3), it has prepared a draft in-line with WG3's mandate on 'Guidance to Emerging Market Regulators regarding Capital Adequacy requirements for Financial Intermediaries', and shared the same with all members of the Emerging Market Committee for their input.⁴⁷⁷ The exchange of views with various international groups and committees broadens the vision and helps in formulating better standards. SECP has also taken steps for reviewing and harmonizing the documentation and reporting of transactions in order to strengthen the capacity of SECP for combating money laundering. Proper know your customer policy and customer due diligence mechanism is being implemented by the SECP for all the members of stock exchanges. The SECP has also taken measures in the light of various international obligations imposed by the United Nations resolutions, Asia Pacific Group (AGP) and IOSCO on money laundering.⁴⁷⁸ The SECP has also taken certain measures for good governance and transparency, which are discussed briefly as under:-

4.15.1 GOOD GOVERNANCE AND TRANSPARENCY MEASURES

⁴⁷⁴ Ibid, 5.

⁴⁷⁵ Ibid, 8.

⁴⁷⁶ Ibid.

⁴⁷⁷ Government of Pakistan, *Year Book for Financial Year 2005-06*, op.cit., p.85.

⁴⁷⁸ SECP, *Security and Exchange commission of Pakistan Annual Report, 2004*, Islamabad: SECP, 2004, p.31.

Corporate governance results in fair business practices and is considered a shield against money laundering and terrorist financing. Good governance is important for every country because it has the ability ‘to tackle crimes of today effectively’ and it is considered to be a sine qua non.⁴⁷⁹ It is important for Pakistan because most of the economic ills of Pakistan during 1990s are the result of bad governance and decaying financial institutions, as brinkmanship, cronyism, misappropriation of banks funds, corruption and bankruptcy frauds marred the economy. During this period, corruption, patronage, cronyism and nepotism by and large characterized economic decisions making.⁴⁸⁰ SECP is committed to ensure corporate governance which is essential to strengthen governance, enhance transparency, and reduce conflict of interest.⁴⁸¹ Good governance not only makes the institution of a country stable but also brings transparency. There is a growing awareness of importance of corporate governance as it has brought numerous reforms in almost all the countries.⁴⁸² The corporate governance is very important because ROSC Program lead by World Bank also includes principles of corporate governance.⁴⁸³ A UNDP sponsored project on corporate governance has already been implemented by Pakistan.⁴⁸⁴ Keeping in view the importance of corporate governance, the SECP introduced code of corporate governance to improve the governance of listed companies in Pakistan in 2002.⁴⁸⁵ Corporate Corporate governance plays a very significant role on the performance of capital markets and other financial institutions of an economy by increasing management skills and accountability, operational efficiency protects investor confidence and develops conducive environment for all the

⁴⁷⁹ Trehan Jyoti, *Crime and Money Laundering*, New Delhi: Oxford University Press, 2004, p.7.

⁴⁸⁰ *Leading Issues Facing Pakistan Economy*, op.cit., p.127.

⁴⁸¹ Government of Pakistan, Year Book For Financial Year 2005-2006, Islamabad: Finance Division, 2006, p-85.

⁴⁸² International Chamber of Commerce, “Report of ICC 4th Corporate Governance Roundtable ICC Commission on Financial Services and Insurance”, 18th April 2007, Prague: 2007.

⁴⁸³ Ibid.

⁴⁸⁴ SECP, *Securities and Exchange Commission of Pakistan Annual Report, 2005*, Islamabad: SECP, 2005, p-41.

⁴⁸⁵ SECP , *Security and Exchange commission of Pakistan, Manual of Corporate Governance*, Islamabad: SECP, nd,p-1.

stakeholders. Owing to this enhanced importance of the Corporate Governance, SECP has actively taken steps and introduced checks and regulations to comply with the international best practices of Corporate Governance.⁴⁸⁶ SECP has also taken strategic initiative for good corporate governance to be promoted in collaboration with Pakistan Institute of Corporate Governance.⁴⁸⁷ Besides risk management; these measures protect financial institutions from the threat of money laundering and terrorist financing. With this objective, SBP, SECP along with 13 other financial institutions has set up the desired institution in 2004.⁴⁸⁸

4.15.2 MONITORING AND ENFORCEMENT

In compliance to standards set by international anti-money laundering regimes, SECP also adopted the mechanism of monitoring different organizations. The SECP has initiated a process of legal action against exchange companies and illegal brokerage house. The SECP identified thirty-eight companies engaged in these businesses and filed petitions in the courts for winding up 15 companies. In addition, the cases of twenty-two unincorporated entities conducting such illegal business were referred to NAB.⁴⁸⁹ The SECP is taking penal action against unlawful businesses in order to create deterrence to discourage such unlawful and illegal companies.⁴⁹⁰ Such actions on the part of SECP have created a healthy environment for transactions and discouraged the acts of money laundering to a large extent. The monitoring and surveillance wing of the SECP is at the forefront of detecting matters relating to systemic risk and unfair market practices.⁴⁹¹ Internationally elimination of systemic risk and fair market practices are considered essential

⁴⁸⁶ Ibid p-12.

⁴⁸⁷ SECP, *Securities and Exchange Commission of Pakistan Annual Report, 2005*, op.cit. p-5.

⁴⁸⁸ Ibid. p-42. The members of the Group included: the SECP, SBP, Federation of Pakistan Chambers of commerce and industry, Overseas Investors Chambers of commerce and Industry, KSE, LSE, ISE, Institute of Business Administration, LUMS, IAP, Invest bank Association of Pakistan, Leasing association of Pakistan, Modaraba Association of Pakistan, Mutual Funds Association of Pakistan, Pakistan Bank's Association, ICAP, ICMAP, Institute of Corporate Secretaries of Pakistan; and Institute of Chartered secretaries and Managers.

⁴⁸⁹ SECP, *Securities and Exchange Commission of Pakistan Annual Report, 2005*, p-59.

⁴⁹⁰ Government of Pakistan, *Year Book For Financial Year 2005-2006*, p-92.163.

⁴⁹¹ SECP, *Securities and Exchange Commission of Pakistan Annual Report, 2005*, Islamabad: SECP, 2005, p-86.

safeguards against money laundering. To ensure market fairness, SECP has actively pursued and implemented measures pertinent to strengthening of the risk management framework. As a result of its surveillance and mechanism, numerous suspicious trading activities were detected through investigations and taking enforcement action against responsible participants.⁴⁹² Owing to SECP efforts, recently two separate investigations for insider trading and violation of listing regulations in the shares of Fauji Fertilizer Company Limited were initiated.⁴⁹³ These steps on the part of SECP would obviously eliminate the predicate offences of money laundering resulting in fair and stable financial market.

4.15.3 PROHIBITION OF UNDESIRABLE BUSINESS ACTIVITIES

Regulatory framework is *sin-qua-non* for ensuring smooth, disciplined and stable business environment. The undesirable business activities not only help money launderers but also destabilize the financial system of a country. In order to prohibit illegal fraudulent business activities and to curb financial crimes in the country, Undesirable Companies Bill, 2005 was finalized.⁴⁹⁴ It would enable SECP to proceed against undesirable companies involved in unscrupulous business activities.⁴⁹⁵ It may be noted that prior to 2005, there was no such Act or directive on the part of Government of Pakistan to discourage undesirable business activities. The SECP has taken the right initiative for elimination of undesirable business activities which create vicious web once established and can prove harmful for the financial stability of the society.

4.15.4 UNIVERSAL (CLIENT) IDENTIFICATION NUMBER

Proper identification of client/customer prevents financial market from money laundering.

⁴⁹⁶ In pursuance of SECP's objective to increase transparency within the market and to improve

⁴⁹² Ibid.

⁴⁹³ Ibid.

⁴⁹⁴ Ibid, 68.

⁴⁹⁵ Ibid.

⁴⁹⁶ Financial Action Task Force, "The Forty Recommendations on Money laundering", Paris France: 2004.

its market surveillance capacity, the implementation of a Universal (Client) Identification Number (UIN) at the stock exchanges is near completion.⁴⁹⁷

4.15.5 PAKISTAN'S LINKS WITH INTERNATIONAL CAPITAL MARKET

The more transparent and stable financial institutions of a country develop confidence building measures. It also reduces the chances of money laundering. The countries which adopt strict AML measures not only increase their reputation but also the stability of their financial institutions. It attracts foreign investments as well as facilitates aid and loans. This compliance can be helpful in generating requisite financial assistance and needed funds from the international markets as well as other agencies. Pakistan being a developing and resource deficient country needs a lot of external borrowings.⁴⁹⁸ In order to strengthen the economy, Pakistan needs funds for which it has planned to get the benefit of the global financial markets by issuing sovereign paper and shares in the international market. Besides borrowing, the compliance with international financial standards brings investment opportunities for Pakistan.⁴⁹⁹ Pakistan became member of International Organization of Pension Supervisors (IOPS) in 2005. Keeping in view the importance of risk based approach towards supervision Pakistan along with Australia, Germany, Netherlands, UK and the World Bank, are working for its implementation. The agreed program “includes work on standards and good practices in pension supervision, information gathering and analytical projects, and international cooperation”.⁵⁰⁰ In case of non-compliance to the standards set by international regimes, foreign investors would always shy away from our domestic market. In this regard, it is pertinent to mention that the leading banks for Euro Bond were Deutsche Bank, JP Morgan and ABN Amro,⁵⁰¹ having the membership of Wolfs Berg Group. Pakistan could only

⁴⁹⁷ Government of Pakistan, *Year Book For Financial Year 2005-2006*, op.cit., p-84.

⁴⁹⁸ Government of Pakistan, *Economic Survey 2006-07*, Islamabad: Finance Division, 2007, p-158

⁴⁹⁹ Ibid, 158.

⁵⁰⁰ SECP, *Securities and Exchange Commission of Pakistan Annual Report, 2005*, op.cit., p-115.

⁵⁰¹ Dr. Ashfaq H. Khan, “Pakistan’s Euro Bond: A Resounding Success”, in *Dawn*, March 15, 2004.

utilize the services of member of this group because of its compliance with international standards. As these banks are the members of Wolfsberg Group which has the policy to extend cooperation to only those countries that have complied with standards for combating the menace of money laundering.

4.15.6 RULES FOR HOUSING AND REAL ESTATE DEVELOPMENT SECTOR

The housing and real estate sectors are the important agents of generating huge amount of money. Both the sectors have enough capabilities to play with laundered money and as such can be a great threat for financial institutions of the country. In order to monitor housing and real sector activities for observing their role in money laundering, SECP has decided to provide a comprehensive regulatory framework to monitor the activities of both these sectors by their registration and providing post-incorporation compliance and legal requirements.⁵⁰²

4.15.7 INVESTOR'S COMPLAINTS

Protection of investors from financial fraud is also part and parcel of anti money laundering framework. With a view to protect investors from financial fraud, the SECP works in close coordination with stock exchanges to investigate illegal practices of market intermediaries.

⁵⁰³ These steps are important to counter money laundering and financial exploitation.

4.15.8 INSPECTION

Proper inspection is a part of anti money laundering measures. The Stock Exchange Members Inspection Rules, 2001 empower the SECP to inspect the books and records of members of the exchanges with the objective to improve transparency and ensure fair dealings and compliance with the securities laws.⁵⁰⁴ This step is in compliance to FATF recommendations that

⁵⁰² SECP, *Securities and Exchange Commission of Pakistan Annual Report, 2005*, op.cit. p-86.

⁵⁰³ Ibid,p-87.

⁵⁰⁴ Ibid, p-88

requires critical monitoring and inspections with authority to take stern action against the non compliant entities.⁵⁰⁵ This has enabled SECP to detect violation and take actions against those institutions who were found non compliant to the laid down standards.

4.15.9 ENFORCEMENT ACTIONS AGAINST MARKET ABUSES

The capital market plays an important role in money laundering and terrorist financing as pointed out by FATF in its forty recommendations. In order to ensure investors' protection and market integrity, the monitoring capacity of SECP was considerably strengthened.⁵⁰⁶ This provided an opportunity to SECP to impose penalties and fines on companies which were found guilty of market abuse. It is natural that actions against those who commit market abuse, discourage others to follow the suit. Consequently, it leads towards greater market transparency, improved governance and accountability as well as enhances investors' confidence.⁵⁰⁷

4.15.10 INSIDER TRADING

One of the sources of dirty money is insider trading for which AML measures demand strict action against perpetrators of insider trading.⁵⁰⁸ In the first proven case of insider trading in the history of capital markets in Pakistan, the SECP imposed a fine of Rs. 535,000 on Pakistan Kuwait Investment Company Limited for involvement in insider trading in the shares of Fauji Fertilizer Company Limited.⁵⁰⁹ These practices if not properly controlled can lead towards corporate corruptions and damage the institutional reputation. Illegal convergence of interest has encouraged insider trading which causes frustration and setback to the genuine investors.⁵¹⁰

4.15.11 Amendments of Non-Banking Financial Companies Rules (NBFCs)

⁵⁰⁵ FATF, the Forty Recommendations on Money Laundering, op.cit., Recommendation No.29.

⁵⁰⁶ SECP, *Securities and Exchange Commission of Pakistan Annual Report, 2005*, op.cit. P-88.

⁵⁰⁷ Ibid.

⁵⁰⁸ FATF, the Forty Recommendations on Money Laundering, Glossary, op.cit.

⁵⁰⁹ . SECP, *Securities and Exchange Commission of Pakistan Annual Report, 2005*, op.cit., p-88.

⁵¹⁰ National Accountability Bureau Pakistan, *Annual Report, 2005*, Islamabad:NAB, 2006,p -5.

NBFCs are very critical in the financial sector of any country. These institutions can become victim, perpetrator or an instrument of channel for money laundering and terrorist financing.⁵¹¹ FATF finds these institutions vulnerable to money laundering.⁵¹² Therefore, SECP has taken considerable measures to ensure that these institutions should not be used by criminals. The SECP reviewed the rules being followed by NBFCs with a view to suggest amendments that would result in strengthening the regulatory regime for NBFCs and to make the legislation concurrent with international best practices.⁵¹³ SECP has also issued prudential regulations for NBFCs and *Modarabas* so that these institutions can work according to the international practices and standards. It is also important that NBFCs relate to those financial institutions for which stringent rules are must to regulate their activities. SECP has also established the Non-banking Finance Companies Department (NBFCDD) to monitor the activities of those companies which fall within the purview of NBFCDD.

4.15.12 ISSUANCE OF ANTI-MONEY LAUNDERING MEASURES FOR NBFCs AND MODARABAS

The SECP has implemented anti money laundering measures for NBFCs and Modarabas inconsonance with the recommendations of FATF of 2004. The NBFCs and *Modarabas* are obliged to follow the standards laid down for their protection from the criminal. The measures for NBFCs and *Modarabas* include: (a) to accept deposits from an investor after having proper account opening form; (b) to ensure proper customer identification; (c) to ensure payment through

⁵¹¹ Johnston and Nedelescu, “The Impact of Terrorism on Financial Markets”, New York: IMF Working Paper WP/05/60, March 2005, p-3.

⁵¹² See FATF, Financial Action Task Force on Money Laundering, *Report on Money Laundering and Terrorist Financing Typologies 2002-2003*, Paris, FATF, 2003.

⁵¹³ SECP, *Securities and Exchange Commission of Pakistan Annual Report, 2005*, op.cit., p-116.

cheque in excess of fifty thousand Rupees.⁵¹⁴ The above mentioned measures are meant to protect these institutions from the intrusion of criminals and launderers.

4.15.13 ASSISTING THE FRAUD INVESTIGATING UNIT (FIU)

Detection of fraud helps in identifying money laundering activity in the financial institutions. This mechanism is prevailing in SECP for the preemption and prevention of white-collar financial crimes. Identification of such crimes is largely a function of the enforcement department which reviews the financial reports of companies and identifies areas of further inquiry. Close coordination with FIU and synergic development in these areas would be a key second-generation reform area for the Enforcement Department.⁵¹⁵ FIU along with newly created FMU would result in effective strategy to counter money laundering.⁵¹⁶ By virtue of financial globalization and collaboration of SECP with organizations like IOSCO and IAIS, the prudential and corporate governance has improved significantly. There are sufficient legal and regulatory developments to meet with the changing capital market requirements and international best practices.⁵¹⁷ In its strategic initiative SECP has also introduced prudential regulations requiring foreign intermediaries in Pakistan and offshore branches or subsidiaries or Pakistan intermediaries to meet either the home or host standards on AML.⁵¹⁸ Although, Pakistan's compliance with international standards is appreciable, yet some organizations are suspected of undesirable activity for which technical assistance is being provided to enhance its capacity.⁵¹⁹

⁵¹⁴ Securities and Exchange Commission of Pakistan Circular No.23 of 2004, Islamabad: SECP, 2004, part-IV(a, b, c, d and e) Also see Circular No. 4 of 2004, 'Prudential Regulations for *Modarabas*', part-IV(a, b, c, d, and e).

⁵¹⁵ SECP, *Securities and Exchange Commission of Pakistan Annual Report 2005*, op.cit., p-69.

⁵¹⁶ FMU has been established by Anti Money Laundering Ordinance 2007.

⁵¹⁷ SECP, *Securities and Exchange Commission of Pakistan Annual Report, 2005*, op.cit., p.6.164.

⁵¹⁸ Ibid, p.13.

⁵¹⁹ [usinfo.state.gov](http://usinfo.state.gov/xarchives/display.htmlp=washfileenglish&y=2005&m=July&x=20050714143941cpataruK0.7001154), State's Wayne Reviews Efforts to Combat Terrorist Financing, 14 July 2005, <http://usinfo.state.gov/xarchives/display.htmlp=washfileenglish&y=2005&m=July&x=20050714143941cpataruK0.7001154> (accessed: 4th September, 2023).

4.15 LIST OF RULES, REGULATIONS, GUIDELINES

- Circular: Red Flag Indicators for Proliferation Financing Directive on Investigating Wide Range of TF Activities (Narco-Trafficking and Proceeds of Smuggling)
- Guidelines on UNSC Targeted Financial Sanctions/Proliferation Financing (TFS/PF) by the CRMC, 2020
- Institute of Chartered Accountants of Pakistan AML/CFT Regulations for Chartered accountants, 2020
- Institute of Cost and Management Accountants of Pakistan AML/CFT Regulations, 2020
- Internal Guidelines for Mutual Legal Assistance, 2020
- Pakistan Post (Targeted Financial Sanctions) Guidelines, 2020
- SRO 1263: Amendments to the Companies (Distribution of Dividends) Regulations, 2017
- SRO 1318: Amendments to SRO 115
- SRO 1319: DNFBPs (Regulatory Powers and Functions) Regulations, 2020
- SRO 1341: Amendment to the Income Tax Rules, 2002
- SRO 1368: Draft Assets Declaration Rules
- SRO 795: Prohibited Dealing in Virtual Currencies/Tokens
- SRO 881: Directive - Including Red flags for Regulated Entities
- SRO 920: Securities and Exchange Commission Pakistan (SECP) Directive: Reporting requirements for regulated entities
- SRO 921: SECP AML/CFT Regulations 2020
- SRO 924: FBR AML/CFT Regulations for DNFBPs, 2020
- SRO 925: Amendment to Limited Liability Regulations, 2018
- SRO 926: Amendments to the Foreign Companies Regulations, 2018
- SRO 927: Amendments to the Companies (Incorporation) Regulations, 2017
- SRO 928: Amendments to the Companies Regulations, 2018
- SRO 948: Pakistan Post AML/CFT Supervisory Board Rules 2020
- SRO 949: Pakistan Post AML/CFT Regulations
- SRO 950: AML/CFT Sanctions Rules 2020
- SRO 951: Counter-Measures for High-Risk Jurisdiction Rules, 2020
- SRO 952: Oversight Bodies for SRBs.
- SRO 954: National Savings AML and CFT Supervisory Board (Powers and Functions) Rules, 2020.

- SRO 956: National Savings AML and CFT Regulations, 2020.
- Securities and Exchange Commission of Pakistan (SECP) AML/CFT Regulations for Regulated Entities, 2020.
- State Bank of Pakistan AML/CFT/CPF Regulations for Regulated Entities, 2020.
- Securities and exchange commission of Pakistan (Anti Money Laundering and countering
- Financing of Terrorism Regulation, 2018.

CHAPTER 5: IMPACTS OF THE LEGISLATION

LEGAL IMPACTS:

5.1 RELEVANCY OF LAWS AND RULES WITH COMPETITIVENESS

Laws and regulations are government levers that support well-being and economic growth. They affect all areas of life, impacting citizens, business, and the environment, and as such, their design is instrumental. When not designed appropriately, however, laws and regulations may not achieve their objectives. Not only does this render them potentially impotent or detrimental to society, it also raises concerns about trust in governments to help manage societal problems. The OECD Recommendation of the Council on Regulatory Policy and Governance (2012[1]) provides governments with an overarching framework to help ensure that regulation¹ meet public policy objectives and at the same time improve societal well-being. Regulatory policy is a critical dimension of an enabling environment for investment and thus for economic growth and innovation (2012[1]). A central facet of regulatory policy is to consider the broad impacts on those affected by rule-making. Greater quality of government interventions can be ensured through the use of regulatory impact assessment (RIA). RIA is a flexible analytical approach defined in the Regulatory Policy Outlook (2018[2]) as a: “Systematic process of identification and quantification of benefits and costs likely to flow from regulatory and non-regulatory options for a policy under consideration”⁵²⁰

⁵²⁰ OECD REGULATORY POLICY WORKING PAPERS: How do Laws and Regulations Affect Competitiveness: The Role for Regulatory Impact Assessment <https://www.oecd-ilibrary.org/docserver/7c11f5d5-en.pdf?expires=1695486048&id=id&accname=guest&checksum=5CC181D2F595FACDD6F5FAAB7C4E5261>. (accessed: 28th January, 2024).

The said research highlights the crucial role that laws and regulations play in government functions and their impact on various aspects of society, including citizens, businesses, and the environment. It emphasizes the importance of designing these laws and regulations effectively to achieve their intended objectives and promote societal well-being and economic growth.

One key point made in the said research paper is that poorly designed laws and regulations can be ineffective or even harmful, which can erode trust in government's ability to address societal issues. To address this challenge, the paper references the OECD Recommendation of the Council on Regulatory Policy and Governance (2012) as a framework to guide governments in creating regulations that align with public policy objectives and improve overall well-being.

Furthermore, the said research paper underscores the connection between regulatory policy and economic growth and innovation, emphasizing that an enabling environment for investment is crucial for these purposes. It also introduces the concept of Regulatory Impact Assessment (RIA) as a valuable tool in the regulatory policy-making process. RIA involves systematically identifying and quantifying the benefits and costs associated with regulatory and non-regulatory options for a given policy, thereby helping to inform decision-makers and improve the quality of government interventions.

AMENDEMENT IN AML & WAQF LAWS:

The recent legislation made by Pakistan on the recommendations of FATF has been criticized by various corners including opposition parties. In an article published in The NEWS relating to the current legislation the writer has narrated the version of the opposition about the said FATF recommended legislations as following:

The opposition political parties want at least four amendments in the Anti Money Laundering Bill that they have conveyed to the Government .The first amendment relates to deletion of the National Accountability Bureau from the schedule of the bill, removal of

the NAB chairman from General committee under it, and exclusion of the NAB from section 2(xviii), meaning thereby the Anti-graft agency should not be one of the prosecuting or investigation agency under the proposed law. One of the senior opposition leader told that NAB is already being consistently used as a tool to oppress the opposition.

It is not what we are saying its Human right watch, council of Islamic ideology, Supreme Court and European commission which have held this view. The second amendment proposed by the opposition parties said that the NAB law is exceptional which puts onus of proof on the defendant. This is against the natural principles of justice and has been declared against Sharia by the council of Islamic ideology. The third amendment says that the Government has made certain offences cognizable by the AML bill.

we want to omit this because it will mean that for arrest ,the investigation officer will no longer be required to give in writing the reason for detention and get the approval of magistrate/competent court. This will again allow arbitrary arrest which is against the spirit of Natural justice and the Constitution. The fourth point was pertained to ease of doing business. The bill puts further pressure on the business in term of reporting and regulation and the Economy which is already in shambles will completely crumble.⁵²¹

In another Article published in Dawn with the subject disturbing trends in Legislation the writer has criticized the recent legislation as following:

The trend which one can discern from the two examples is that a number of legislative initiatives are prompted by international entities like APG/FATF and IMF. It is not precisely known how many laws will eventually be required to be passed by the Parliament to satisfy their requirement but so far at least 11 FATF related laws have been passed by the Parliament .These laws may be legitimately required for the good of the country but why should Pakistan wait for a nudge from these international entities to spring into action, and why can't the executive and legislature safeguard national self-respect to initiate legislation on their own rather than use the name of these agencies to steamroll legislation at the last minute .Lastly, but critically, the

⁵²¹ <http://www.thenews.com.pk/print/708142-amendments-conveyed-to-govt-opp-wants-4changes-in-anti-money-laundering-bill> dated September 01, 2020 (accessed: 16th July, 2024).

perception of coercion perpetrated on legislators in passing certain Laws is extremely dangerous. During the recent headcount for passing a bill in the joint sitting of parliament on Sept 16, the opposition lost by 10 votes despite the fact it had a numerical superiority of around the same number. The Parliamentarian's attendance that day indicates the absence of around 40 members of the opposition during the critical vote count. Many opposition members complained of receiving threatening telephone calls to either vote for the legislation or abstain."

The AMLA is a special Act which has an overriding effect over any conflicting law. Even though this Act has an overruling effect, it is also inconsistent with many other special laws, which also happen to have a superseding effect. These special laws are not repealed and are still intact.

The Protection of Economic Reforms Act 1993 (PERA)⁵²² is creating a hefty impediment for the AMLA. The objective of the AMLA to prevent money laundering is clearly defeated with the existing provisions of the PERA contained in sections 4, 5 and 9 of the PERA. Section 4 of this Act authorizes the citizens of Pakistan with regards to the free flow of foreign currency. Hence, this section left it free for all Pakistani citizens and non-nationals to move and pull out foreign exchange inside or outside Pakistan in whatever form, without making a foreign currency declaration. Section 5 provides immunities in shape of exemption from any inquiry, levy of taxes, restrictions to foreign currency accounts to foreign currency accounts holder besides a guarantee for its complete secrecy. Section 9 of the PERA ensures the secrecy of banking transactions which is a legal obstruction for controlling money laundering.

The Foreign Currency Accounts (Protection) Ordinance 2001⁵²³ also safeguards the foreign currency accounts holders in shape of transferring foreign currency freely in or outside

⁵²² <https://www.sbp.org.pk/epd/2019/FECL7-Annex-A.pdf> (accessed: 19th May, 2022).

⁵²³ <https://www.sbp.org.pk/press/2020/Pr-11-Oct-20.pdf> (accessed: 18th October, 2023).

Pakistan, thereby opening a clear channel for money laundering. Section 3 of this Ordinance specifies the protection of foreign currency accounts and a safeguard is provided to the foreign currency accounts holders to pull out the foreign currency inside or outside the country, thereby promoting money laundering. Another law working against the AMLA is the Income Tax Ordinance 2001 (ITO) Section 111 (4) of ITO allows the inward flow of any suspicious money to the country. This provision of the ITO paves the way for money launderers to bring any amount of their unexplained assets or income, in shape of foreign exchange forwarded from an outside country via the usual banking channels.

5.4 LEGAL EFFECTS OF THE LEGISLATION

The recent legislation regarding money laundering and counter financing of terrorism made by Pakistan on the recommendation of FATF has various effects on the legal regime in Pakistan. The Islamabad Capital Territory Waqf Properties Act 2020⁵²⁴ and The Anti-Money Laundering (Second amendment) Act 2020 various drastic changes have been made in the Anti-Money Laundering Act 2010 and Auqaf (Federal Control) Act 1976. Various sections of the Islamabad capital Territory Waqf properties Act 2020, has been obtained from the Land reforms Act 1977 and Land reform Regulation 1972 whereas most of the Sections of these Acts has been declared as repugnant to the injunctions of Islam and declared as void by the Supreme court of Pakistan in the case reported as Qazalbash Waqf properties vs Chief Land Commissioner Punjab Lahore and others PLD 1990 Supreme court 99.

Section 8 of the Islamabad capital Territory Waqf properties Act 2020, declares as under:-

Notwithstanding anything to be contrary contained in section 22 of Religious Endowment Act 1863 or any other Law for the time being in force or in any custom or usage or in any decree, judgment or order or any court or any other authority or in any other proceeding pending before any court or any other authority the Chief Administrator may, by notification take over and assume the Administration ,control ,management ,and maintenance of waqf property.

⁵²⁴ The Islamabad Capital Territory Waqf Properties Act 2020.

The explanation of the said section further declares that for the purpose of this section “Control” and “management” shall include control over the performance and management of religious ,spiritual ,cultural and other services and ceremonies or rasoomat at or in waqf property .Section 11 of the said Act is regarding termination of the tenancy of the Waqf property .The section 13 and 14 have imposed restriction on judiciary regarding non issuance of the temporary injunction or order restraining the chief Administrator from taking over or assuming the administration ,control ,management ,and maintenance of property in respect of which a Notification has been issued. The Section 16 is about the scheme for administration of Waqf property and section 17 is about sale process of the Waqf property whereas section 18 is about use of waqf property and application of income there from. In the Land reform Regulation 1972 under which various regulations were introduced to impose limitation on individual holdings, Section 2 clause(7) of the regulation includes Islamic waqf, the Section 13 regarding vesting in Government of excess land, Sections 17 as it relates to waqf and all other institutions which validly fall within the definition of Islamic waqf, application of the said regulations on Religious ,charitable and educational societies ,institutions, and trusts and impose limitation on individual holdings and Section 21 of the regulations which relates to utilization of Land resumed from religious, charitable, and educational societies has already been declared as Repugnant to the injunctions of Islam by the Supreme Court Shariat Appellate Bench in case reported as Qazalbash Waqf case.⁵²⁵

The Section 25(1) of the regulation also, in so far as it does not give sanctity to the grounds of ejectment available in a valid contract between the Landlord and the Tenant, entered into in accordance with the injunctions of Islam .In the above said judgment of Supreme Court the

⁵²⁵ *Qazalbash Waqf v. Chief Land Commissioner Punjab Lahore*, PLD1990 SC 99.

Sections 3,4,5,6,7(5),8,9,10 and section 11 to 17 of Land reforms Act 1977 also declares to be repugnant to the injunctions of Islam.⁵²⁶

In the Islamabad Capital Territory waqf properties Act 2020 Section 8, Section regarding take over waqf property, Section 11 regarding termination of Tenancy, Section 16 relates to scheme for administration of waqf property, Section 17 about sale of waqf property and Section 18 use of waqf property and application of income there from has been included mutatis mutandis as were in Land reform Regulation 1972 and Land reform Act 1977. In the list of investigating and prosecuting agencies National Accountability has been included. General committee has been constituted under Section 5(5) and AML, CFT Regulatory authorities have also been constituted. The offence of money Laundering has been substituted from non-cognizable to cognizable. Similarly other amendments have also been made in the said legislation. The above laws are enacted without proper deliberation and comprehensive understanding of the issue in focus. In Islamabad Waqf Property Act, 2020⁵²⁷, some new laws have been enacted by amending the previous laws. The said Waqf Property Act has been criticized from Ulama, the political parties and general public. It is said that the Act is not only against the Islamic law but it also against the judgment of superior courts as well as constitution of Pakistan.

Qazalbash Waqf v. Chief Land Commissioner Punjab Lahore case: In the said judgment of supreme court of Pakistan the Supreme court had declared the provisions of Sections 3,4,5,6,7(5),8,9,10 and section 11 to 17 of Land reforms Act 1977 also declares to be repugnant to the injunctions of Islam. The above-mentioned Sections of the Land reform Act 1977 has again

⁵²⁶ Ibid.

⁵²⁷ The Islamabad Capital Territory Waqf Properties Act 2020.

been included in Islamabad waqf properties Act 2020. The reasoning of the Judgment are reproduced below:-

According to teachings of Islam, the primary duty to discharge the obligations created by the covenant with Allah is individual to every Muslim (Q. 5. 105). They may freely aid each other in his enterprise (Q. 5.2), but no one's personal duties can be wholly passed on to another, or both same taken up by another (Q.17.15).

In other words, the State or to be more exact, the Ruling Agencies may act in aid of an individual, but cannot replace him. Doing good through bureaucracy hired as a general service cannot meet all the requirements of the complete Quranic approach to welfare. The family unit, and the blood relations have priority in the welfare that any person provides (Q. 8.75). Even the manner in which these services be provided is prescribed.⁵²⁸ (Q. 2.262). One of the most devastating side effects of State provide welfare is the general indifference it produces in the members of the community towards the fact of human suffering. A very large part of the useless old people are so, not merely because they are old but because they are discarded, and suffer from utter loneliness. A kind word say Quran is better than a generous deed followed by harsh words (Q. 2.263). State provided welfare can never be an adequate substitute for family (0.4.1). By insisting on State providing welfare we deprive the needy of the most sought for quality of human kindness and sympathy on the one hand, and for those who can give, the opportunity to lift themselves spiritually by giving away voluntarily. The problems do not end here. Inadequate performance in the field of welfare brings in many problems in trail. First people become reluctant in paying taxes. The Governments press hard for collecting that which is due in law. People hide their wealth, or spend it on high living before the tax-collector reaches them."

Health, Education and Welfare are, the experience in the West has shown, bottomless pits so far as requirements. In terms of funds are concerned. Once a government starts on this path the pressure, for more and more funds is ever mounting. The democratic process adds fuel to fire. Votes are obtained on the promise of ever-improving and more widespread

⁵²⁸ Al-Quran: 2: 262.

welfare. This resulting tensions and problems are common knowledge, Building up of an Islamic economy require a different more broad-based approach.

Regarding enforcement of good deeds in other spheres of life through legislation when they also relate to corresponding rights, say in the spheres of law and order, traffic communications, education and other similar fields, laws can be enacted to compel compliance. Similarly in matters of defence oriented State necessities, Taxation laws and other laws can be made. In short Islamic need for legislation would have to be determined and established, before non-crouching upon the fields of freedoms guaranteed by Islam, case to case. The so called Welfare Legislation already commented upon has failed in all well-known prevalent systems Marxist, Socialist and Capitalist with varying degrees, to achieve the desired results. This has been discovered after experimentation for not decades but more than half a century-- and at what cost? The reverse thinking has already started in these systems on the questions of welfare. However, the evaluation of the experiment is still continuing around the world. Some scholars even hold the view that besides failure in its objectives such legislation has proved anis proving counter-productive. They also have a strong lobby indeed and new alternatives are being studied. The Islamic principles of economics have not so far been experimented. At least deeper study for practical application, is the need of the day.

Labor Legislation, which admittedly in this part of the world only looks after vocal an fortunate sector of society the Urban labor (which is also a strong political element) has, by and large, so far ignored more than 70 per cent of the rural population. It mostly consists of the poor, self-employed, and the small peasant proprietors. This unfortunate rural sector in cludin women folk are living a life of toil mixed with poverty and lots of misery; both, social and economic. The comment on prevalent labor legislation; therefore, would not be different from what has been stated about general welfare legislation. The inevitable vast industrialization with rosy picture for labor gets blurred by the very fast pace of automation-- both in agriculture and industry.

Automation by the end of the century, is going to level down the urban favorites also to the state of their rural brethren. In the United States the agricultural sector supplying the needs of the country as well as of some parts of the outside world, it is state absorbs only 3.5 per cent of the total available force. It is due to modern methods and management together with automation. Be that as it may, another industrial revolution reducing the labor class to the minimum percentage can be seen not in the very distant future turn of the century may also be the turning point in this behalf. Therefore, the conditions of the poor would be still worse than they were in the beginning of this century! Which brought about violent and other revolutions during the century. Hence, unless a silent revolution is brought about on the basis of Islamic economic principles at least in our lands, we might face a counterproductive revolution (even if not violent) engineered by force of mixed values and motives. These principles, it seems, shall have to be put to experimentation in the coming century whether we do it or not. But we must ask ourselves a question here. Is it not our duty to do so as a mandate? The answer is source in the affirmative. Very well planned legislation in this field of Islamic political economy would be needed to educate, create general consciousness and guide people towards universal change in the life style of everybody with a view to: Bringing uthe ?have nots? Towards the level of 'have s' without infringing an of the basic right guaranteed by Islam. Right to earn, acquire and hold wealth and the rights to social justice human dignity-- in. body, soul and mind, amongst other rights have all been guaranteed in Islam (See case on Security Laws P L D 1988 Supreme Court 645 -- Shariat A.B.). And above all is thright so guaranteed of obtaining justice. (See the case on legislation regarding Ahmadi Practices P.L.D. 1987 Supreme Court 167 - Sh. A.B.). When all these rights are to be adjusted interest in the socio economic. Field two absolutely unavoidable' results 'would emerge:

1. Mandatory leveling up with no leveling down and
2. Equality, not in poverty and misery but in total well-being and happiness.

True this system of 'FALAH' in Islam requires vigorous spiritual involvement as one of its essential elements; with regard to which it is sometime said that the State cannot enforce religious virtues by legislation. However, we also call and treat Islam as a (DEEN), contain in amongst others mundane rules of State craft.⁵²⁹ In Haji Nizam's case, regarding the interpretation of the word religion used in our Constitution .Hence, to introduce a dynamic new system and to sustain it for some time legislation even if necessary evil, would have to be restored to; but after habit formation and change to Islamic ethos on these issues this type of legislation, it is hoped, would wither away. We have successfully entered upon this stage (of withering away) in some subjects, Islamization including that of Inheritance- indeed a vast one. It is admitted. Position that there is no legislation on the substantive law of Inheritance except Section 4 of the Family Law Ordinance, 1961⁵³⁰ which also. Remains under constant scrutiny. And thus, this very wide an important field of law falls within the field unoccupied by statutory legislation, except of course the procedural one and that relating to transition from customary to Islamic law of Inheritance .It is not a small thing that people in Pakistan follow the substantive law of inheritance voluntarily and the Courts are needed to aid, only in a low percentage of disputes in this field .Accordingly, if legislation is resorted to for introducing the Islamic economic system, by Passage of time its substantive part is likely to wither away as unnecessary and the procedure alone might continue to help the people through aid of the Courts. Thus the answer to this question (No. 6) is in a qualified affirmative.

As Per Dr.Nasim Hassen Shah: As rightly pointed out by my learned brother, the fundamental question involved in these appeals is to ascertain what is the concept of wealth (including property) in Islam, namely whether under Islam any individual can be considered to be its absolute owner of a property or whether his rights over it are limited in any way. This question

⁵²⁹ **Haji Nizam's case (PLD1976 Lah. 930.....**

⁵³⁰ <https://pakistancode.gov.pk/english/UY2FqaJw1-apaUY2Fqa-apaUY2Npa5po-sg-jjjjjjjjjjjj> (accessed: 19th August, 2024).

has been considered by Maulana Mufti Muhammad Shafi in a Paper presented by him before the International Islamic Conference at Rawalpindi held on February 13, 1968. Hiaddress was in Urdu but a translation thereof by Mr. Muhammad Hasan Askari Karrar Hussain is available which has been published by Begum Aisha Bawany Wakf. The learned Mufti Sahib has explained the real nature of Wealth and Property in the following words:

“The other fundamental principle which has a great importance with regard to the problem other distribution of wealth is that, according to the elucidation of the Holy Quran itself, “wealth in all its possible forms is a thing created by Allah, and is, in principle, His “property”. The right of property over a thing which accrues to man is delegated to him by Allah. The Holy Quran explicitly says:-

"Give to them from the property of Allah which He has bestowed upon you". (24:33)

Why this should be so I has also been explained by the Holy Quran in another place. All that man can do is to invest his labour into this endeavor to be fruitful and actually productive Man can do no more than sow the seed in the soil, but to bring out a seedling from the seed can make the seeding grow into a tree is the work of someone other than man. The Holy Quran says-

"Have you considered what you till? Is it you yourselves who make it grow, or is it we who make it grow?" (56:63,64)

Have they not seen that, among the things made by Our own hands, We have created cattle for them and thus they acquired the right of property over them". (36:71) All these verses throw ample light on the fundamental point that "wealth", no matter what its form, is in principle "the property" of Allah, and it is He who has bestowed upon man the right to exploit it. So, Allah has the right to demand that man should subordinate his exploitation of this wealth to the commandments of Allah.

Thus, man has the “right of property” over the things he exploits, but this right is not absolute or arbitrary or boundless it carries along with it certain limitations and restrictions which have been imposed by the real owner of the "wealth". The above extract clearly brings out the real nature of wealth. There can be no doubt that according to Islam, all wealth belongs to Allah.

"Unto Allah belong th whatsoever is in the heavens and whatsoever is in the earth. He forgive the whom He will, and punish the whom He will, Allah is forgiving, Merciful". (3:129)

Thus absolute ownership of all wealth possessed by man is Allah's and that man is only trustee of whatever he possesses and is not its absolute owner."

The other fundamental principle of Islam, which must be borne in mind is that it seeks to ushering a society based on Al-Adl Wal Ehsan.

"Al-Adl" in the context of this discussion means social balance or equilibrium, in social and economic relations. Keeping the above two principles in view, it follows that while absolute ownership of all wealth is that of Allah, man is only a trustee of whatever he has and is not its absolute owner and secondly that his rights over his property must be exercised in a way so as to bring about a equilibrium in social and economic relations. In other words, in Islam individual freedom is subordinated to the social responsibilities cast on man, by the ethical principles enunciated in the Holy Quran.

A logical consequence of the concept of trusteeship is that the right to own private property though recognized, gets severely limited because in the Islamic perspective man's freedom to own property is only relative to the needs of the society. "Believe in Allah and His messenger, and spend of that whereof He hath made you trustees; and such of you as believe and spend (aright), theirs will be a great reward. (57:7) it must also not be forgotten that man by nature, as a general rule is greedy and selfish. If left on himself he would not do much for others in the society. The Holy Quran attests to this aspect of man's nature. "Say (unto them): If ye possessed the treasures of the mercy of my Lord, ye would surely hold them back for fear of spending, for man was ever grudging. (17:100)

However, Allah's 'intention' is that everybody should be provided with a minimum sustenance:

"And there is not a creature in the earth but the sustenance thereof dependeth on Allah. He knoweth its habitation and is its repository. All is in a clear record." (11:6) the existence of hunger and abject poverty in society is entirely on account of the doings and actions of man. This is clearly recognized by the Holy Quran. And if the people of the townships had believed and kept away from evil, surely we would have opened for them blessings from the sky and from the earth. But (unto every messenger) they gave the lie, and so we seized them on account of what they used to earn." (7:96). Hence the necessity for taking steps for rectifying this social imbalance brought about by the doings of some people. The need for remedial action in certain situations is also emphasized in Verse 5 of surah 4 of the Holy Quran which reads: "Give not unto the foolish (what is in) your (keeping to their) wealth, which Allah hath given you to maintain; but feed and clothe them from it and speak kindly unto them." (Surah 4- Verse 5)

Maulana Abul Ala Mududi in his commentaries on the Holy Quran explains this Verse as follows: "And of them is he who made a covenant with Allah (Saying): If He give us of His bounty we will give alms and become of the righteous. (9:75)

The above verse shows that Islam emphasizes the act of 'giving' as the essence of a just socioeconomic system and reflective of Allah's intention. Hence, any method devised as a means of checking individual greed and laying out a framework wherein all members of society get minimum of sustenance is in accord with the injunctions of the Holy Quran and the Sunnah. Although it is true that Islam assigns the big importance to man's altruistic behavior, where the act of giving is guided solely by the desire to gain Allah's pleasure.

But at the same time man's innate selfishness and greed are also recognized, though not justified. Thus, the need for taking remedial measures to correct the imbalance which man's selfish and greedy behavior gives birth to. From the above discussion it is manifest that in Islam the full exercise by the owner of his rights in his property has been appropriately subordinated to his social responsibility. Furthermore, once the Islamic State enters upon the task of restoring the "rights" of the "deprived" and the "oppressed" with a view to realizing the ethical principles enunciated in the Holy Quran the 'distance between the rich and the poor will be reduced. The view taken that his disabuse can be corrected through the strict enforcement of the system of Zakat, Usher and proper adherence to the system of inheritance prescribed by Islam is true only to a point. In society like

Pakistan, which has been raised on feudalistic capitalistic principles for centuries to reduce the gulf between the rich and the poor and restore the social balance it would be essential for the State to intervene to discharge its responsibilities and amongst its responsibilities it has to ensure that the society's demand for such basic requirements a health, education livelihood, and housing are satisfied. For enforcing the system of *Al-Ada Wal Ehsan* and to ensure a social equilibrium in the society the ideal social behavior is no egoistic self-glorification but a commitment to ameliorating the lot of the least-privileged in the society. Accordingly, in the situation as it presents itself today in Pakistan even large scale State intervention to restrain individual greed so that social welfare is maximized cannot be declared to be against the injunctions of the Holy Quran. Accordingly, an Islamic State is not prohibited from adopting such legal measures as contained in Martial Law Regulation 115 of 1972 and Act 2 of 1977 in order to bring about *Adl* (social equilibrium in the society).

It is unanimously held that the Federal Shariat Court and the Shariat Appellate Bench of the Supreme Court have the jurisdiction and the power under Chapter 3-A of Part VII of the Constitution, to examine the Land Reforms Regulation, 1972 (hereinafter referred to as the Regulation) and the Land Reforms Act, 1977 (hereinafter referred to as the Act) and to decide whether or not provisions thereof are repugnant to injunctions of Islam.

- In accordance with the opinion of the majority of the Judges separately recorded, it is held that the following provisions of the Regulation, the Act and the Punjab Tenancy Act, 1887 to the extent indicated against each, are repugnant to the Injunctions of Islam:--
- Para. 2, clause (7) of the Regulation in so far as it includes Islamic Wakf for the purpose of other paras of the Regulation which are being held wholly or partly repugnant to injunction of Islam.
- The whole of Paragraphs 7, 8, 9, 10, 13 and 14 and consequentially paragraph 18 of the Regulation.

- Paragraphs 15, 16, 19 and 20 in so far as they ignore the rights and obligations, the term and conditions of the grant license or lease, as the case may be, in resuming the stud an livestock farms, Shikargahs and Orchards and dealing further with them under Paragraphs 1 and 20 thereof.
- Paragraph 17 of the Regulation in so far as it relates to Wakf and all other institution which can validly fall within the definition of Islamic Wakf, and consequential to that extent paragraph 21 also.
- Paragraph 25 (1) of the Regulation in so far as it does not give sanctity to the grounds of ejectment available in a valid contract between the landlord and the tenant, entered into in accordance with the injunctions of Islam,
- Paragraph 25 (3)(d) of the Regulation has already been declared to be repugnant to the injunctions of Islam in Said Kamal's case (PLD 1986 S C 360). .
- The whole of Sections 3, 4, 5, 6, 7(5), 8, 9, 10 and consequentially the whole of sections 1 to 17 of the Act.
- The whole of section 60-A of the Punjab Tenancy Act, 1887 in so far as it makes non occupancy tenancy heritable irrespective of the terms of the contract.
- The question of repugnancy or otherwise of Paragraphs 22, 23, 24 of the Regulation is left undermined in these proceedings as the Court feels that proper and full assistance has not been received.
- In accordance with the opinion of the majority of the Judges it is held that the provisions of Paragraph 25(3), clauses (a),(b) and (c) of the Regulation are not repugnant to the injunctions of Islam.

5.5 COMPARISON OF ANTI-MONEY REGIME OF PAKISTAN AND INDIA

5.5.1 PAKISTAN ANTI- MONEY LAUNDERING REGIME

In Pakistan, the first Money law on Money laundering was AML Ordinance, 2001 which have now been in Pakistan Anti-Money laundering Act, 2010 is main piece of legislation that deal with Money laundering. The Act is enacted in 2010 and amended up to Sep 2020. However, in India the prevention of money laundering Act, 2002 is deal with control of money laundering. The Act is outdated than PMLA 2010.

5.5.2 NATURE OF OFFENCE OF MONEY-LAUNDERING

Money laundering is well-defined as an offence. Section 3 of the Anti-Money Laundering Act, 2010 describes definition of the offense. According to the Act Money laundering is an act of a person acquire or obtain or receive or possess property that is proceed of crime.⁵³¹ The property is generated from illegal sources.⁵³²

5.5.3 PUNISHMENT

The offense of Money laundering is punishable. The person can be imprisoned up to ten years and a fine of up to one hundred million rupees under the AMLA 2010.⁵³³ Money laundering is punishable in India by a ten-year prison sentence and a fine of up to five lakh rupees. Money laundering is thus a less penalized infraction under the PMLA 2002.⁵³⁴

5.5.4 POLICY MAKING BODY IS NATIONAL EXECUTIVE COMMITTEE

Under AMLA 2010, National Executive committee is policy making body of Money laundering. The body assist and make recommendation Federal government on policy matters related to proceed of crime. It is made up of the individuals listed in Schedule II of this Act. The National Executive Committee shall hold two meeting in a year. The Committee has following important functions. It makes recommendations to the Central government for formulation of rules to enforce the Act. The Committee assist in formulation of National policy to combat Money laundering and terrorism financing; make suggestions to the Federal Government for the formulation of rules for the determination of offences existing in Pakistan that may be referred to the International Criminal Court; and make recommendations to the Federal Government for the formulation of rules for the determination of offences ; make references and guidelines for the creation of rules and regulations under this Act; approve, review, and supervise the implementation

⁵³¹Lawrence Salinger, *Encyclopedia of White-Collar & Corporate Crime* (London: Sage Publications, 2005), 78.

⁵³² *Govind Ram v. Federation of Pakistan*, 2022 PTD 634.

⁵³³ Section 4 of the Anti-Money Laundering Act, 2010.

⁵³⁴ Section 4 of the Prevention of Money-Laundering Act, 2002.

of a national strategy to combat money laundering and terrorism financing; request reports from competent authorities as needed, including an annual report containing an overall analysis of the STRs and CTRs, statistics on investigations and prosecutions related to money laundering and terrorism financing in Pakistan, and statistics on supervisory actions taken by the STRs and CTRs. In this regard, the Secretary of the National Executive Committee may request periodic reports from the AML/CFT regulatory authorities, the SRB Oversight Body, and investigating and prosecuting agencies in any manner that the Secretary of the National Executive Committee deems appropriate. Debate on any other issue of national interests relating to Money laundering and financing of terrorism; and carry out and perform any other functions related to money laundering and terrorism funding that the Federal Government may delegate to it. The National Executive Committee may organize one or more sub-committees to carry out any responsibilities it deems necessary.⁵³⁵ The General Committee or a subcommittee may be delegated authority by the National Executive Committee. The Federal Government shall establish a committee to be known as the General Committee, which shall be comprised of the members listed in Schedule-III of this Act, by announcement in the Official Gazette. For the purposes of this Act, the General Committee will assist the National Executive Committee. The General Committee has the authority to invite anyone to attend the meeting if it deems it necessary.

5.5.5 FUNCTION OF THE GENERAL COMMITTEE

The function of the general committee is to develop a national plan to control money laundering and terrorist financing. Provide necessary guidelines to investigating or prosecuting agencies, AML/CFT regulatory authorities, FMU, and any other Federal Government-appointed

⁵³⁵ Section 5 of the Anti-Money Laundering Act, 2010.

authority involved in the execution and administration of this Act, including measures for development and performance review of such agencies and authorities;

- a. Develop a national plan to combat money laundering and terrorist financing;
- b. The Secretary of the committee may request reports from relevant authorities as needed, including an annual performance report containing an overall analysis of the STRs and CTRs. Detail statistics on investigations and prosecutions related to money laundering and terrorism financing in Pakistan. Detail of supervisory actions taken by the AML/CFT regulatory authorities in accordance with the Act.
- c. Support the National Executive Committee in carrying out the Act's actions and obligations;
- d. Investigate any additional national security issues, such as money laundering and terrorist financing; and
- e. Carry out and conduct any other obligations assigned or delegated by the National Executive Committee. The General Committee has the authority to form one or more sub-committees to carry out any functions it deems necessary.

In PMLA 2002, there is no such thing as a specialized policy-making body for Money laundering. In the Federal government, Policy making is a routine matter.

5.5.6 INSTITUTIONS IN CHARGE OF REGULATION

The major regulators of banking, financial institutions, the stock market, and the corporate sector in Pakistan are the State Bank of Pakistan SBP and the Security and Exchange Commission of Pakistan (SECP).⁵³⁶ The organization oversees all financial and business operations. Anti-money laundering rules and regulations apply to all transactions. The establishment is dedicated to preventing money laundering in the country.⁵³⁷

5.5.7 MONITORING INSTITUTIONS

⁵³⁶ “Concrete Steps Taken to Combat Money Laundering, Terrorism Financing: SECP.” 2018. Daily Pakistan Observer -. October 23, 2018. <https://pakobserver.net/concrete-steps-taken-to-combat-money-laundering-terrorism-financing-secp/>(accessed: 30th March, 2022)

⁵³⁷ Abbas, G. (2019, April 14). SECP Issues Fresh Guidelines on Anti-Money Laundering, Terror Financing,” Profit. Pakistan Today (<https://profit.pakistantoday.com.pk/2019/04/14/secpissues-fresh-guidelines-on-anti-money-laundering-terror-financing/>)(accessed: 4th February, 2021)

Pakistan's Financial Monitoring Unit is the country's main anti-money laundering authority. In daily affairs coming within its purview of responsibility, the FMU will be autonomous and have an independent decision-making body. The Federal Government, in collaboration with the SBP, will designate a Director General to lead FMU who is a financial industry expert. Under the administrative supervision of the General Committee, he will exercise all of the FMU's rights and functions.⁵³⁸

Key powers and functions of the Financial Monitoring Unit in Pakistan include: Suspicious Transaction Reporting (STR):

The FMU receives reports of suspicious transactions from various financial institutions, designated non-financial businesses and professions (DNFBPs), and other entities. These reports are known as STRs, and they are analyzed to identify potential money laundering or terrorist financing activities.

5.5.8 FINANCIAL INTELLIGENCE ANALYSIS

The FMU conducts thorough analysis and assessment of the reported suspicious transactions and financial activities to generate financial intelligence. This intelligence helps in identifying patterns, trends, and potential links to criminal or terrorist activities.⁵³⁹

5.5.9 SHARING OF INFORMATION

The FMU collaborates with law enforcement agencies, intelligence agencies, and other relevant authorities to share financial intelligence and assist in investigations related to money laundering and terrorist financing.

⁵³⁸ Section 6 of the Anti-Money Laundering Act, 2010.

⁵³⁹ Sultan, N. and Mohamed, N. "Financial intelligence unit of Pakistan: an evaluation of its performance and role in combating money laundering and terrorist financing", *Journal of Money Laundering Control*, Vol. 26 (2023): 862-876.

5.5.10 INTERNATIONAL COOPERATION

The FMU also cooperates with foreign financial intelligence units and international organizations to exchange information and combat cross-border financial crimes.

5.5.11 CAPACITY BUILDING AND TRAINING

The FMU plays a role in enhancing the understanding of Anti-Money laundering (AML) and countering the financing of terrorism (CFT) measures among reporting entities and relevant stakeholders. This includes conducting workshops, training sessions, and awareness programs.

5.5.12 RECOMMENDATIONS AND POLICY DEVELOPMENT

Based on the analysis of financial intelligence, the FMU may provide recommendations to the government for the development of policies and regulations related to AML and CFT.

5.5.13 FREEZING OF ASSETS

In coordination with law enforcement agencies, the FMU can recommend the freezing of assets that are suspected to be linked to money laundering or terrorist financing activities.

5.5.14 MONITORING COMPLIANCE

The FMU monitors the compliance of financial institutions and DNFBPs with AML and CFT regulations, and if necessary, can take appropriate actions against entities failing to meet their obligations. It's important to note that the functions and powers of the Financial Monitoring Unit may evolve over time based on changes in legislation and the evolving financial crime landscape.

5.5.15 INVESTIGATING AND PROSECUTING AGENCIES

In Pakistan Money laundering and terror financing are heinous offence. Therefore, both Federal and Provincial institutions are authorized to investigate and prosecute the offence.⁵⁴⁰ At Federal level Federal Investigation Agency, National Accountability Bureau, Anti-Narcotics Force, Pakistan Custom, are main investigating and prosecuting agencies. At provincial level Counter Terrorism Department and Police under Anti-Terrorism Act, 1997, are conducting investigation and prosecution of terror financing. Investigation is conducted by well qualified and high-ranking officer. Under the Prevention of Money-Laundering Act 2002, the authorities are main investigating and prosecuting agencies. The Central government established the authorities. It consists up of director, Deputy Director and assistant director.⁵⁴¹ The authorities have power under their jurisdiction to perform the functions of investigation and prosecution in offense of Money laundering.⁵⁴²

5.6 ADJUDICATION OF MONEY LAUNDERING AND TERRORIST FINANCING

Special courts⁵⁴³ have been established in Pakistan to hear cases of Money laundering and terrorist financing. Money laundering is a crime that can be prosecuted in National Accountability and FIA tribunals. Anti-terrorism courts decide on the crime of terror financing. Within its territorial jurisdiction, the Court of Sessions created under the Code of Criminal Procedure, 1898 (V of 1898), shall have jurisdiction to trial and adjudicate the offences punished under this Act, as well as other matters provided in, linked to, or resulting from this Act.⁵⁴⁴ The court has the authority to act as a session judge. They have the authority to take cognizance of the offence if it occurs within their jurisdiction.

⁵⁴⁰ Jamshed, J. 2018. Criminal Justice System of Pakistan: An Overview. Available at SSRN 3152735... put here primary reference. Such as Acts and Ordinance etc.

⁵⁴¹ Section 48 the Prevention of Money-Laundering Act, 2002.

⁵⁴² Section 50 Ibid.

⁵⁴³ Special Courts constituted.

⁵⁴⁴ Section 12 of Anti-Terrorism Act, 1997.

Money laundering is illegal under the law. Criminal laws are used to investigate and prosecute the offence. As a result, the proceedings are governed by the Criminal Procedure Code of 1898. Insofar as they are not conflicting with the provisions of this Act, the provisions of the Code of Criminal Procedure, 1898 (Act V of 1898) apply to arrest, bail, bonds, search, seizure, attachment, forfeiture, confiscation, investigation, prosecution, and any other proceedings under this Act.⁵⁴⁵

Money laundering and terror financing are crimes that are both punishable and non-bailable. Without a warrant or the consent of a magistrate, the Police or an authorized officer can arrest the accused. Every offence punishable under this Act is cognizable and bailable. The person accused of an offence punishable under this Act can be release on bail by executing surety or on his own bond unless the Public Prosecutor has been given due notice; and where the Public Prosecutor contest the bail application, the Court is satisfied that there are reasonable grounds for believing he is not guilty of such offence and is not likely to commit any offence while on bail. The Court shall take cognizance of any offence punishable under section 4 on written complaint by Central government. The investigating officer or any officer of the Federal Government or a Provincial Government authorized in writing in this behalf by the Federal Government by a general or special order made in this behalf by that Government makes such complaint in writing. The prosecution of the charge follows a pattern similar to that of other offences in the country.

5.6.1 APPEAL

The special court's order/judgment is appealable. A person who has been dissatisfied by a final decision or order of the Court has sixty days from the date of communication of the decision or order to file an appeal with the High Court.⁵⁴⁶ The court can discuss any point of law or fact

⁵⁴⁵ Section 30 of Anti-Terrorism Act, 1997.

⁵⁴⁶ *Deputy Director, Anti-Money Laundering, Intelligence Investigation in Land revenue Lahore v. Special Judge Customs, Taxation and Anti-Suggling Lahore*, 2021 PCrLJ 946.

arising out of such decision or order.⁵⁴⁷ If satisfied that the appellant was prevented from filing the appeal within the time limit by sufficient cause, he can file appeal within an additional sixty-day term.

5.7 ADJUDICATION SYSTEM OF INDIA

For Money laundering offences, India has a framework that is nearly identical. A special court and officials are also in charge of deciding the fate of the accused. Under the Prevention of Money-Laundering Act (XV) 2002 of 2002, the Central government has the jurisdiction to establish adjudicating authorities for criminal cases. One Chairman and two members will make up the authorities. They must be knowledgeable in the fields of law, administration, and finance.⁵⁴⁸

5.7.1 ADJUDICATION

On receipt of complaint of commission of offense of money laundering by police or any other authorities' person the authority shall serve notice to the accused. Through the notice she asks to present source of earning and produce evidence in his favor before the authority. It will be heard both complainant and accused. On the proceeding Code Civil Procedure is applicable. The authority decides the case under light of evidence and law of land.⁵⁴⁹ Oder passed by the authority is appealable. The aggrieved person can challenge the impugned order before appellate tribunal.⁵⁵⁰ Time limitation for appeal of is forty-five days from date of which the order was passed. The authority is quasi judicial body. The authority is empowered to decide the case of proceed of crime. It works under central government but not under judiciary of India. On judicial set up there is special courts for trial of Money laundering under the Act.

5.7.2 SPECIAL COURTS

⁵⁴⁷ Section 25 of Anti-Terrorist Act, 1997.

⁵⁴⁸ Section 6 the Prevention of Money-Laundering Act, 2002.

⁵⁴⁹ Section 8 Ibid.

⁵⁵⁰ Section 26 Ibid.

The Indian central government has the authority to establish special tribunals for the prosecution of money laundering offences. Special courts will be established by the government, in consultation with the concerned Chief Justice of the High Court. The court has the authority to act as a Session judge. He could face charges under Section 4 of the Money Laundering Prevention Act 2002. The court will take cognizance of the offence based on a police or authority report. The trial is being held under the 1973 Code of Criminal Procedure. The offence punishable under this Act is cognizable and not bailable. No accused of an offence punishable under this Act more than three years in prison shall be released on bail or on his own bond unless the Public Prosecutor has been given due notice. The Pleader may contest the application, the Court is satisfied that there are reasonable grounds for believing he is not guilty of such offence and is not likely to commit any offence while on bail.

The Court will not take cognizance of any offence punishable under section 4 unless it receives a written complaint from: (a) the investigating officer; or (b) any Federal Government officer.⁵⁵¹

5.7.3 APPEAL

The judgment passed by special court under the Prevention of Money-Laundering Act 2002, is appealable. The aggrieved party has right to challenge the decree before concern High Court.⁵⁵² Procedure of appeal is described in chapter XXIX and XXX of Code Criminal Procedure 1973.

5.8 COMPARATIVE ANALYSIS

Adjudication system of both countries, Pakistan, and India is almost similar. Money laundering is offense under the laws. Trial of the offense is conducted by special courts. They have

⁵⁵¹ Section 45 the Prevention of Money-Laundering Act, 2002.

⁵⁵² Section 47 Ibid.

power of Session judge. The court is authorized to take cognizance of the offense if committed its territorial jurisdiction. The offense is cognizable and non-bailable. The police can arrest the accused without warrant and order of magistrate. No bail shall be granted to accused without service of written notice to Public Prosecutor and investigation officer. The trial is conducted under criminal procedure code of the countries. The countries follow similar procedure to decide case of money laundering.

5.8.1 CUSTOMER DUE DILIGENCE

Banks are required to do customer due diligence under the Anti-Money Laundering Act, 2010. It means that the bank must identify and verify the client's data. At a minimum, the following information must be gathered, validated, and recorded on a CDD form or account opening form for identity and due diligence purposes. Businesses need to identify and verify the identity of their customers using reliable and independent sources of information. This typically includes obtaining official government-issued identification documents such as passports, national ID cards, driver's licenses, etc. For entities, businesses must identify and verify the beneficial owners - the individuals who ultimately own or control the customer. This involves understanding the ownership structure and identifying the individuals with significant control or ownership interests. Understanding the nature of the customer's business and the purpose of the relationship is essential for assessing potential risks and identifying suspicious activities. In high-risk situations, businesses may need to inquire about the source of the customer's funds and wealth to ensure they are not linked to criminal activities. Conducting a risk assessment on each customer to determine the level of risk they pose in terms of money laundering or terrorist financing. CDD is not a one-time process; it requires ongoing monitoring of the customer's transactions and activities to identify any unusual or suspicious behavior. Screening customers against politically exposed persons (PEPs) lists and sanctions lists to identify individuals who may pose a higher risk due to their political

connections or involvement in sanctioned activities. Maintaining accurate and up-to-date records of all CDD measures and related documents for a specified period as required by regulations. If businesses identify any suspicious activities during the CDD process or ongoing monitoring, they are obligated to report such transactions to the relevant authorities. It is crucial for businesses to stay updated on the specific CDD requirements and regulations applicable in their jurisdiction and industry. These requirements may be subject to change, and compliance with the latest regulations is essential to prevent financial crime and maintain the integrity of the financial system. The bank shall ensure the client is not involve in money laundering. He will not use the account for the offense. For authenticity and confirmation of CDD the reporting entity can seek help from third party.⁵⁵³

5.8.2 REGISTRATION OF DESIGNATED NON-FINANCIAL BUSINESSES AND PROFESSIONS (DNFBPS)

To avoid Money laundering, the Anti-Money Laundering Act (VII) of 2010 makes it mandatory for designated non-financial businesses and professions, or DNFBPs, to register with the Federal Bureau of Revenue. ⁵⁵⁴ DNFBP refers to the following individuals: (a) property dealers, such as builders and real estate developers, when performing the prescribed activities in the prescribed circumstances and manner; (b) precious metals and precious stone dealers, such as jewelers and gem dealers, when performing the prescribed activities in the prescribed circumstances and manner; and (c) dealers in precious metals and precious stones, such as jewelers and gem dealers, when performing the prescribed activities in the prescribed circumstances and manner. (c) Lawyers, notaries, accountants, and other legal professionals who conduct financial transactions on behalf of their clients. When they conduct out monetary transactions or provide

⁵⁵³ Section 7B the Anti-Money Laundering Act, 2010.

⁵⁵⁴ FBR AML/CFT Guidelines for Dealers in Precious Metals and Stones (DPMS)Anti-Money Laundering and Counter Financing of Terrorism Guidelines for Dealers in Precious Metals and Stones, January 2021.

services for a client, trust and corporation service providers come into play. They are required to register with the FBR prior to beginning their business. There are no such provisions in Indian money laundering Act 2002.

5.8.3 SANCTION OF NON-COMPLIANCE ENTITIES AND SEIZURE OF PROPERTY

The individual who violates the provisions of the AMLA 2010 is subject to punishment. Any reporting organization or natural person who violates any of the provisions of sections 7(1), 7(3) to 7(6), and 7A to 7H may face consequences, as specified in clause (h) of section 6A of this Act and as may be prescribed. The Prevention of Money-Laundering Act, 2002 contains no such measures. During an investigation, an investigating officer may, based on the written report or order in his possession from the concerned investigating or prosecuting agency, provisionally attach a property, which he reasonably believes to be the property involved in money laundering, by order in writing, with the prior permission of the Court, for a period not exceeding one hundred and eighty days from the date of the order. The Court has the authority to issue another extension for up to 180 days.⁵⁵⁵ The investigating officer must submit a copy of the order in that sub-section to the head of the concerned investigative agency in a sealed envelope within 48 hours after attachment. Every order of attachment made under sub-section (1) will expire once the period provided in that sub-section has expired, or on the date of the finding made under section 9's sub-section (2), whichever comes first. Nothing in this section prevents a person who wishes to enjoy the immovable property attached pursuant to subsection (1) from doing so. The authorities but not below rank of deputy director can attach the property involved in money laundering.⁵⁵⁶ The United Nations has given Pakistan the authority to apply targeted economic and administrative

⁵⁵⁵ *Nighat Sultana v. DCO Lahore*, PLD 2016 Lahore 607.

⁵⁵⁶ Section 5 of the Prevention of Money-Laundering Act, 2002.

sanctions on banned entities.⁵⁵⁷ Targeted Financial Sanctions (TFS) refers to the freezing and restriction responsibilities imposed on the property of designated or proscribed entities under the United Nations (Security Council) Act 1948 or the Anti-terrorism Act of 1997, as well as any rules or regulations enacted thereunder. The Financial Monitoring Unit (FMU) has the authority to impose sanctions, such as fines and administrative penalties, on their respective reporting entity, including its directors, senior management, and officers, who violate any requirement in section 7(1), 7(3) to 7(6), 7A to 7H, and any rules or regulations made thereunder, or who fail to comply with TFS regulations. Any person who is harmed by the imposition of sanctions under this section may file an appeal with the appropriate authorities in the manner and timeframe stipulated. To exercise this power Pakistan has imposed suction on JeM, Jamaat u Dawah, TTP etc. Their assets and properties are freeze. They are prevented to carry out any activities and their leaders are sent to jail. The FMU must co-operate with their international counterparts and make reciprocal arrangements in writing to share, request, and receive information pertaining to the provisions of this Act and any regulations imposed thereunder under the Anti Money Laundering Act 2010.⁵⁵⁸

5.8.4 AGREEMENT WITH FOREIGN COUNTRIES

The Indian government will reach an agreement with foreign countries to enforce the Prevention of Money Laundering Act, 2002 and share information for money laundering investigations and prosecutions.

5.9 EFFECTS ON ECONOMY

Following are some of the major effects of money laundering:

- (i) It undermines the genuine private entrepreneurs.⁵⁵⁹ The criminal are prone to use their front men or front entities to confuse their criminal proceeds with legitimate funds. It

⁵⁵⁷ <http://mofa.gov.pk/wp-content/uploads/2020/04/Guidelines-for-Implementation-of-UNSC-1267-Sanctions.pdf> (accessed 25th April, 2022).

⁵⁵⁸ “Mutual Legal Assistance (Criminal Matters) Act, 2020,” Senate of Pakistan (Government of Pakistan, August 12, 2020), http://senate.gov.pk/uploads/documents/1597661983_546.pdf (accessed 05th July, 2021)

⁵⁵⁹ For detail see Kenroy Dowers and Sabine Palmreuther, op.cit., p.

- is pertinent that the front men or criminal gangs have the capacity to crowd out and undermine the genuine business entrepreneurs;
- (ii) (ii) There is a likelihood of the economic, monetary or financial policies of a country being undermined by such criminal activities.⁵⁶⁰
 - (iii) (iii) It brings about economic crisis coupled with political and economic instability⁵⁶¹ by channeling criminal funds to sterile investment;
 - (iv) (iv) this also results in the loss of revenue generation compelling the governments to over burden the legitimate businesses and marginalized individuals by overtaxing them;⁵⁶²

From the above, it can be easily inferred that money laundering destabilizes economy of the country, causes financial crises and encourages criminals. It increases corruption both at national and international levels and becomes a potential damage to the reputation of financial institutions and markets. It not only increases the flight of capital and international financial market instability but also discourages foreign investments, destabilizes financial markets, weakens financial institutions, creates volatility in the equity market, encourages tax evasion culture, and undermines the process of democratization in developing countries.⁵⁶³ From these causes, it can be easily inferred that money laundering destabilizes the entire fabric of society and gives birth to numerous crimes. Money laundering badly affects the financial institutions which are considered engine of economic growth. The sudden capital flight gives birth to liquidity problems. When the withdrawal becomes larger than the funds invested in the safe asset the financial institution would be driven towards liquidation.⁵⁶⁴ The penetration of money launderers into financial institutions undermines their credibility and capacity. The interests of all stake holders are damaged because of vulnerable financial institutions. In this regard Basel Committee

⁵⁶⁰ Ibid.

⁵⁶¹ Ibid.

⁵⁶² Ibid.

⁵⁶³ Rafael Repullo, 'Liquidity, Risk Taking and the LLR,' *International Journal Of Central Banking*, Vol. 1 No. 2. September, 2005, p-48.

⁵⁶⁴ Brent Barlett, *The Negative Effects of Money Laundering on Economic Development*, International Economics Group, Dewey Ballantine LLP for the Asian Development Bank, May 2002, p.91.

on Banking Supervision, has particularly mentioned about reputational, operational, legal and concentration risks.

(i) Reputational Risk

Reputational risk signifies the potential that damages a bank's reputation with regard to its business practices and associations. It is the integrity of a bank which attracts the customers with confidence. This confronts the financial institution with a potential threat as the confidence of depositors and creditors is shattered and the bank also earns a bad name in the marketplace. Money launderers pose a significant threat to a bank's reputation as they become easy victims of their malicious activities, which demand an extra vigilance of the banks to thwart such criminal activities.⁵⁶⁵ So the reputation of a financial institution plays a vital role for its growth and progress. This is why, the management experts have always attached great significance to the reputation of a financial institution which makes or mars its viability and soundness. A bad reputation erodes trust and confidence of all the stakeholders.⁵⁶⁶

Operational Risk A direct or indirect loss that may occur owing to insufficient and poor internal processes and controls is termed as Operational Risk. Therefore, operational risk is multiplied if the financial institution does not properly identify customers and ignore requisite diligence.⁵⁶⁷ So, it is necessary for financial institutions to make their operations under strict control and vigilance in order to avoid any mishap on part of money launderers. The operational risks can be overcome through an effective internal control devising various mechanisms and tools.

Legal Risk

⁵⁶⁵ Basel Committee on Banking Supervision, *Customer due Diligence for Banks*, Basel, Switzerland: Bank for International Settlements Press & Communications, 2001, Introduction Para-13, 14 and 15.

⁵⁶⁶ Brent Barlett, *The Negative Effects of Money Laundering on Economic Development*, *op.cit.*, p.92.

⁵⁶⁷ Basel Committee on Banking Supervision, *Customer due Diligence for Banks*, *op.cit.*

According to the Bank for International Settlement (BIS) Legal risk indicates to the likelihood of any litigation or resultant unfavorable judgments carrying adverse consequences for the different stakeholders of the bank. It may cause a huge loss of assets or viability of a bank. This often results owing to the poor application of KYC standards offering a room for penetration into banking operations to the money launderers and other criminals. “Indeed, a court case involving a bank may have far greater cost implications for its business than just the legal costs. Banks are unable to protect themselves effectively from such legal risks if they do not engage in due diligence in identifying their customers and understanding their business”.⁵⁶⁸ The increasing litigations and losses of the banks call for due vigilance and diligence by the banks managements to avoid access of criminal elements to use banks as vehicles to achieve nefarious designs. Given the present scenario of banking sector international and the national regulators are increasingly trying to ensure compliance with the KYC guidelines given by BIS. In case of Pakistan, the legal issues are on the rise because of the introduction of freedom of information, judicial activism, and rising awareness among the banking customers.

CONCENTRATION RISK

It is a situation wherein few clients of a financial institution have access to most of the assets or contribute significantly to the liability side of the balance sheet. In the present scenario of internationally prevalent money laundering syndicates, the potential risk of sudden huge withdrawals and flight of capital can play havoc with the soundness and viability of a financial institution. According to BIS, Concentration risk often relates to the assets as well as the liability sides of the balance sheet of a financial institution. The bank supervisors and regulators have prudential regulation so that banks should be restricted in terms of exposure to a single major borrower or a company. Banks only measure its concentration risk by exactly knowing its

⁵⁶⁸ Ibid.

customers and their relationship with the institution. The liability side of the balance sheet of a financial institution is equally important. The Management plans for investments and development of assets on the basis of its deposits i.e. liability of the bank. The management of concentration risk on the liabilities side requires that financial institutions should ensure proper identification of their clients, so that criminals may not have access to these institutions for their ulterior motives. It is relevant here to note that smaller financial institutions with weak balance sheets are particularly vulnerable to the whims and machinations of criminals who can cripple them by sudden huge withdrawals of funds or defaulting on huge borrowings. So, it is necessary for banks to have good understanding of their depositors' strengths and weaknesses. Thus, it necessitates for the liabilities managers in small financial institutions to have an in-depth knowledge of their clientele and a fostering of relationship on the guidelines of KYC.⁵⁶⁹ The concentration risk can be avoided by following prudent policies by the banks.⁵⁷⁰ The stability of financial institutions largely depends on these mechanisms because they overcome and avert risks. A wise anti money laundering strategy and compatible anti money laundering measures prevent a state and its institutions from basket of crises. Money laundering causes institutional failure and subsequently damages customer trust. This situation further creates problem of credibility and its legitimacy. Customer trust is *sin-qua-non* for the growth and stability of financial institutions and financial institutions are engine of economic growth. Keeping in view the dynamics of this issue it can be inferred that customer trust is social capital for the financial institution which is intelligently transformed into real asset for long term development.

5.10 OTHER NEGATIVE EXTERNALITIES

Economic development is adversely affected by the crime of money laundering and terrorist financing. Criminal culture is patronized by money launderers for their vested interests.

⁵⁶⁹ Ibid.

⁵⁷⁰ Brent Barlett, op.cit., p.93.

Criminals also gather strength and utilize financial and non financial resources according to their sweet will. The mafia creates monopolies in local enterprises, controls entry and maximizes revenue by extracting monopoly profits protection payments; discouraging new investment and old investment is driven out.⁵⁷¹ The provision of unlawful goods and services is normally undertaken by organized criminal activities e.g. gambling, loan sharking, narcotics, etc.⁵⁷² Criminal transfer resources from public priority sectors to non productive sectors. It has also been highlighted by Bartlett who viewed non financial institutions involvement in the process of money laundering and considered this investment sterile and non productive i.e investment in properties, antiques, art, unique paintings, precious stones, fashioned ornaments, and luxury goods because of its lower marginal economic productivity.⁵⁷³ In the present era of globalization every state wants to promote its geo-strategic and politico economic stakes. This state of affairs also lead towards increasing international interaction. In this regard Truman and Reuter have succinctly stated that “with the increased globalization of the financial system, money laundering has evolved into an activity affecting societies and financial systems everywhere in the world.”⁵⁷⁴ The existence or support of money laundering activities leads towards global annoyance by the comity of nations and regulators of international economy. In this regard if any country enters into the list of non cooperative countries or name and shame list then it has to suffer economic, political, social and institutional loss. This also leads towards loss of reputation and erodes customer confidence. Reaction of international community can isolate any state and may damage a country economy by flight of capital, hesitant foreign investment and trust deficit environment.⁵⁷⁵ All the countries are in pursuit of increasing and protecting their national interests therefore lack of proper

⁵⁷¹ Gianluca Fiorentini and Peltzman (ed.) *The Economic of Organized Crime*, Cambridge: University Press, 1997, p. 35.

⁵⁷² Ibid.

⁵⁷³ Brent Barlett, *op.cit.*, p. 99.

⁵⁷⁴ Reuter and Truman, *op.cit.*, p.171.

⁵⁷⁵ Ibid.

implementation of anti money laundering policies can result in severe reaction from international actors with global interests.

5.11 CONSTITUTION OF SPECIAL COURTS

Keeping in view the sensitivity and nefarious nature of the crime of terrorism, smuggling and money laundering, special course has established in Pakistan to expedite the cases of terrorism, anti-money laundering and narcotics. It was believed that this system would ensure speedy trials by the military courts rather than the normal judicial system. These courts were created to ensure speedy trials of the people involved in terrorism, money laundering and narcotics smuggling by bypassing the norms of normal judicial system. Owing to the complications involved in these cases, the Supreme Court of Pakistan ordered the establishment of anti-terrorists courts and transfer of the unexecuted cases to these courts according to the guidelines provided by the superior judiciary.⁵⁷⁶ However, to ensure a fair trial without any chances of law enforcement agencies excesses and habeas corpus cases, The Supreme Court made it mandatory for the law enforcing and investigating agencies to carry out fair and transparent investigation and held them accountable for their actions by introducing new guidelines according to the applicable law.⁵⁷⁷ There is a strong will and movement in Pakistan for the prevalence of the rule of law which is a cornerstone of a civilized and just society. By having the rule of the law in the country, we can head towards the goal of a crimeless and prosperous society, where there would be hardly any room for menaces like terrorism and money laundering. To be precise, a sound and effective judicial system is a sine qua non for countering terrorism in Pakistan. If we have a cursory look from 1999 to 2003, one can find very few terrorist activities during this period.⁵⁷⁸ The provisions of the Act would have brought more successes in order to achieve the desired objectives had the concerned agencies concentrated upon the execution and monitoring aspect forcefully.⁵⁷⁹ The unrest in North and

⁵⁷⁶ Malik Muhammad Saeed, *The All Pakistan Legal Decisions*, Vol. LI 1999, pp.SC 504, SC 505.

⁵⁷⁷ Ibid.

⁵⁷⁸ Interview with Muhammad Hanif, op.cit., 12th March 2006.

⁵⁷⁹ Interview with S.Arshad Shah Adl.Adv.Genral Supreme Court Ibid.

South Waziristan since 2006 has almost changed the whole scenario. The suicide attacks at prominent places like Islamabad, Rawalpindi, Peshawar, Lahore, Charsadda, Sargodha, Karachi⁵⁸⁰ and other cities of the country have created chaos and uncertainty among citizens. The killing of prominent politicians like Benazir Bhutto⁵⁸¹ on 27th December 2007 along with other persons was an alarming indicator for Pakistan's internal security. It may be noted that other than civilians, the target of suicide attackers has been the security forces of Pakistan which is again a clear cut signal to the fact that either the strategies to combat terrorism have not been clearly defined and followed, or the tactics and new techniques being used by terrorists remain unidentified. A suicide attack in Rawalpindi on 25th February 2008 killed more than 10 persons including a serving Lt. Gen. Mushtaq Baig,⁵⁸² is a big challenge for security forces to maintain law and order situation as well as provide security to the general public. This aspect of terrorism needs proper scrutiny on the part of policy makers as how to deal with this dangerous and innovative method of killing innocent people and creating unrest and insecurity in the country. If one looks at these suicide attacks, it reveals that attackers must have been paid handsome amount not only to kill themselves but ruin the lives of so many innocent people. One cannot rule out the involvement of laundered money paid to these attackers for fulfillment of dangerous designs of terrorists. A brief discussion on the issue provides alarming picture and detailed discussion does not fall within the purview of the present study. However, it can be concluded that introduction of Acts and other measures to curb terrorism have not worked according to the expectations of the Pakistan's government despite their tall claims. The matter needs serious attention as the internal security is linked with the

⁵⁸⁰ On 18th October 2007, the procession of Benazir Bhutto's was attacked. It was a suicide attack which killed many innocent lives but Benazir Bhutto luckily escaped. For detail see *The Daily Dawn* and other News Papers of 19th October 2007.

⁵⁸¹ *The Daily News* and *The Daily Dawn* dated 28th December 2007.

⁵⁸² The suicide attack took place on 25th February 2008. It was reported at the same time on all television channels i.e. Geo, Aaj, ARY etc. The matter was also reported in all the leading news papers on 26th February 2008.

external security and Pakistan cannot afford to put her internal security at stakes for which immediate and concrete measures are necessary. With the objective of eliminating money laundering, the Government of Pakistan took another measure by introducing National Accountability Ordinance, 1999.

5.12 ECONOMIC IMPACTS

Money laundering reduces the control of government over economic policy. It also raises the risk of the potential failure of banks, businesses, and government to implement economic policies. Furthermore, due to globalization, the impacts reach international monetary systems and can adversely affect international currencies and economies, depending upon the volume of money laundering.⁵⁸³ Vulnerable Emerging Markets Money laundering also affects emerging markets in those regions where it is established. Emerging markets are more vulnerable to the impact of money laundering because financial regulatory authorities give more attention to well-established and strong markets than to emerging ones.

Money laundering is major challenge to the world. Annually 2 to 5 percentage of world GDP, 800 billion \$ to \$2 trillion money laundering occur in the world. Money laundering is occurred in all types, developed, developing and third world countries of countries. This crime is also existing in both Pakistan and India. In Basel Anti money laundering index, former country is secured 25 position and later 68 out of 129 countries.⁵⁸⁴ It is gain of money through illegal activities i.e. corruption, drug trafficking, tax evasion. There are three elements of Money laundering: placement, layering and integration. Criminals convert illegal money into legal ownership.⁵⁸⁵ Money launderers use fake accounts, offshore companies, and channel in this crime.

⁵⁸³ John McDowell & Gary Novis, the Consequences of Money Laundering and Financial Crime, ECON. PERSP. May 2001, at 8.

⁵⁸⁴ Basel Anti Money Laundering index 2018.

⁵⁸⁵ G Ferguson, Global corruption law, theory and practice, 308.

The black money is washed through offshore companies, amnesty scheme and again enter formal economy.⁵⁸⁶ In Pakistan there are few laws against money laundering. In which Anti-Money Laundering Act 2010⁵⁸⁷, is prominent piece of legislation. In which money laundering is declared as offence and imposed heavy fine up to ten millions rupees⁵⁸⁸ as compared to India 5 lack rupees. In India Prevention of Money Laundering Act, 2002 is basic legal instrument to control in money laundering in the country. It came into force in 2005.

5.12.1 FAILURE OF BANKS AND FINANCIAL INSTITUTIONS

Money laundering can cause the failure of banks and financial institutions. For instance, if a large sum of money is transferred to a bank and then, after a short duration, that money is transferred to another bank, it may cause a liquidity problem to the financial assets of that bank⁵⁸⁹. The bank can go bankrupt if a large number of people start approaching it to withdraw their money to withdraw their deposits upon knowing that a massive amount of money has been moved from that bank by money launderers.⁵⁹⁰

5.13 SOCIAL IMPACTS

Money laundering gives birth to a number of social costs and dilemmas. It also affects the reputation of a country at the international level if it appears that the financial institutions of that country might be involved in money laundering.⁵⁹¹ Furthermore, it can expose or encourage the people of a country to smuggling, drug trafficking, etc. Money laundering can also contribute to other crimes, as criminals, drug lords, smugglers, black money owners, etc. have to hide their source of income; moreover, they have to employ money laundering techniques to conceal their

⁵⁸⁶ Michal Live Cardiff University and Peter Router Maryland University, money laundering crime and justice 1997.

⁵⁸⁷ The Anti-Money Laundering Act, 2010 (Act No VII of 2010).

⁵⁸⁸ Section 4 Ibid.

⁵⁸⁹ Beare, *Encyclopedia of Transnational crime and justice*, 37.

⁵⁹⁰ The Law society, Chapter 11: Money Laundering warning signs, Lawsociety.org.uk (accessed: 22nd October, 2013).

⁵⁹¹ Novis & McDowell, *supra* note 27, at 8. See also Donato Masciandaro, global financial crime: terrorism, money laundering, and off shore centres 63 (2004).

black money under the cloak of legality or safety from law enforcement agencies⁵⁹². Hence, money laundering gives a safe haven to criminals and terrorists to hide their illegally earned money and, therefore, motivates others to enter the criminal world as they might consider any of the methods of money laundering to be a promoter and cover to their criminal activities.

It discusses the multifaceted negative consequences of money laundering, a process through which illegally obtained funds are made to appear legal. It delves into various aspects of how money laundering generates social costs and dilemmas, tarnishes a country's reputation, and contributes to criminal activities:

5.14 SOCIAL COSTS AND DILEMMAS

Money laundering is associated with several social problems and challenges. When individuals or organizations launder money, it often means that these funds were obtained through illegal activities like drug trafficking, corruption, or organized crime. The process of laundering itself incurs costs, including hiring professionals to create complex financial transactions that obscure the money's origin. These costs can indirectly affect society as a whole.

5.14.1 INTERNATIONAL REPUTATION

Money laundering can damage a country's international reputation. If a nation's financial institutions are perceived to be involved in money laundering, it raises concerns among other countries and international organizations. This can lead to sanctions, restrictions on financial transactions, and a general loss of trust in the country's financial system.

5.14.2 CONNECTION TO OTHER CRIMES

Money laundering is often linked to other serious crimes, such as smuggling and drug trafficking. Criminals engage in money laundering to legitimize their ill-gotten gains and make it

⁵⁹² U.S. Department of Justice., Drugs, Crime, and the Justice system, 8 (1992).

harder for law enforcement agencies to trace the money back to its illegal source. In this way, money laundering contributes to the perpetuation of these criminal activities.

5.14.3 SAFE HAVEN FOR CRIMINALS AND TERRORISTS

Money laundering provides a "safe haven" for criminals, including drug lords, smugglers, and those with black money (undeclared, untaxed income). By laundering their money, they can hide the source of their income and avoid detection by law enforcement agencies. This financial concealment allows criminals to enjoy their illicit gains with a reduced risk of legal consequences.

5.14.4 ENCOURAGING CRIMINAL ACTIVITY

The text suggests that the existence of money laundering methods and networks can motivate individuals to enter the criminal world. Knowing that they can potentially use money laundering techniques to legitimize their illegal earnings, some individuals may be more inclined to engage in criminal activities, viewing money laundering as a means to evade the law.

In summary, money laundering has wide-ranging negative effects on society and the international community. It facilitates criminal activity, damages a country's reputation, and can lead to other illicit activities. Its existence can create a vicious cycle where criminals are encouraged to engage in illegal pursuits, knowing that money laundering can offer a way to shield their gains from law enforcement scrutiny.

CONCLUSION AND RECOMMENDATIONS

Conclusion:

“Success” remains an elusive concept, which may be viewed from many angles, and these prompt challenges questions about the efficacy of the international AML framework; the role of the FATF; the nature of the “law” being propagated; the techniques employed by the FATF; and the potential impact of their decision-making and actions on those falling within their reach⁵⁹³. In spite of the growing literature analysing money laundering and the politics to fight it, the overall effectiveness of anti-money laundering (AML) policies is still unclear⁵⁹⁴.

In present era the IOs international Organizations have gained significantly increased authority due to the growing complexity of global issues. For the FATF, this is evident in its role in setting international standards for combating money laundering and terrorism financing. Understanding how this increased authority aligns with popular legitimacy is essential because it impacts the organization's effectiveness. To maintain and enhance popular legitimacy, it is crucial to understand what factors contribute to people viewing IOs like the FATF as legitimate. This could include transparency in decision-making, accountability mechanisms, fair representation, and responsiveness to the concerns of diverse stakeholders. Legitimacy is not just a matter of perception; it has practical implications. Having a high level of legitimacy means FATF can more effectively obtain the necessary resources, make decisions that are accepted by member countries,

⁵⁹³ Harvey, J, et, al. (2021), “transnational criminal law: a case study of the international anti-money laundering framework as applied in Nigeria, a case of smoke and mirrors, global anti-corruption evidence project: hiding the beneficial owner and the proceeds of corruption working paper no.10 global integrity anti-corruption evidence programe”

⁵⁹⁴ Gerbrand et al, The effect of anti-money laundering policies: am empirical network analysis,” *EPJ Data Science*, Vol.11 No.1 (2022).

secure compliance with its recommendations, and ultimately contribute to solving problems related to financial crimes.

In the case of the FATF, its legitimacy is closely tied to its ability to strike a balance between setting robust global standards for combating financial crimes and ensuring that these standards are perceived as just and fair by its member countries and the global financial community. Transparency, inclusivity, and adaptability are key elements in maintaining and strengthening its popular legitimacy, which, in turn, can enhance its effectiveness in addressing transnational financial challenges. The FATF's legitimacy relies on the consent of its member countries to abide by its standards and recommendations. Whether Member states voluntarily agree to adhere to its guidelines and work together to combat financial crimes. Legitimacy is also linked to adherence to international legal frameworks. Whether the FATF operates within the framework of international law, and its standards should align with these legal principles to maintain legitimacy. The FATF's legitimacy is further established by adhering to globally accepted norms related to financial integrity and security. These norms shape the expectations and behavior of member states and financial institutions in the international community.

For the FATF to maintain legitimacy, it must ensure that its recommendations and actions are not only legally sound but also in tune with the prevailing international norms, fair, morally justifiable, and garner support from its member countries. This perspective underscores the importance of staying attuned to evolving global norms and maintaining a consensus-based approach to its work. As the recognition of hierarchy in international order emphasizes that international organizations like the FATF play a significant role in shaping global governance. Understanding how they gain legitimacy is crucial because their actions and decisions can have far-reaching implications for member states and the broader international community. As entities

positioned within this hierarchy, they need to be perceived as legitimate actors. Further the Major proceeds generating crimes, identifying pursuing and disrupting the proceeds and instrumentalities, and sanctioning those in laundering them, can play a key role tackling the crime itself. Since the FATF needs to be more focused on migrant smuggling, Drugs Trafficking, Border Smuggling, Money Laundering and other proceed generating crimes around the world. In today's interconnected world, IOs like the FATF operate alongside various other actors, including national governments, NGOs, and private sector entities. Maintaining a strong role and impact in this competitive landscape depends on its perceived legitimacy. A lack of legitimacy could hinder its ability to influence global financial governance.

In conclusion, this concept provides a valuable framework for understanding the concept of legitimacy and its relevance to international organizations like the FATF. Legitimacy is not just about having the power to govern but also about justifying that power and securing obedience through the consent of member states, adherence to law, and alignment with accepted norms. For the FATF, maintaining and enhancing its legitimacy is crucial to fulfilling its mission of combating financial crimes on a global scale. In essence, legitimacy highlights the importance of perception and belief in determining an international organization's credibility and effectiveness. For the FATF, its legitimacy plays a pivotal role in its ability to set and enforce global financial standards, as well as in gaining the cooperation and compliance of member countries and the financial sector in combating financial crimes. Legitimacy is indeed about recognizing the right to govern. In the case of the FATF, it operates as an international body that sets standards and guidelines for combating money laundering and terrorism financing. Its legitimacy rests on the acknowledgment that it has the authority to create and enforce these standards at the global level.

The challenge of justifying both political power (in this context, the authority of the FATF) and obedience (the compliance of member states and financial institutions with its

recommendations) is a crucial issue. For the FATF to be effective, it must be seen as having the legitimate authority to exert influence on its member countries and the financial sector. Another aspect of legitimacy is, legitimacy depends on three complementary conditions: consent, law, and norms.

The emerging trends of enhanced international cooperation for development and growth of the global community has further highlighted the need for a closer cooperation and coordination among all the countries of the World. This need for mutual global cooperation calls for integrated efforts at national, regional, sub-regional and international level. This also demands application of certain common and universally accepted standards, laws, principles and regulations. Global trends of more integrated international development have enhanced the role of international anti-money laundering regime as regulator of world economies. International interdependence of economies, international market contagion tendency and international crimes have exacerbated the international donor agencies ambitions for economic and institutional stability. In order to integrate the world economy globally, the need for global standards having international acceptability for strengthening the financial institutions has considerably been increased. The international financial and anti-money laundering institutions have emerged as the strongest actors in the field of economy as a result of which developing countries like Pakistan are left with no option but to toe the guidelines set by these international actors. Since the flow of funds as well as frauds have become borderless and as such cooperation at global level is required to stop the fraudulent acts and encourage legitimate flow of funds. Both the elements have the power to move from one country to the other and have positive as well as negative implications for the societies. Money has become a powerful tool and financial crises in one country can effect the whole region having its global implications. The international financial institutions and international anti-money laundering regimes have the objectives to save the financial markets from crises in order to bring stability in the financial institutions as well as smooth flow of funds from one country to the other. Keeping in view the structural theory, the international institutions like IMF and World Bank have their vested interests because a weak financial system in any country can result into business, legitimacy and credibility crises as well as loss of original amount of project aid/assistance. The international anti-money laundering institutions strengthened the financial system of member states through introducing various standards and guidelines. These institutions too, are working in

collaboration with international financial institutions just to safeguard their interests. Moreover, the global trade also demands established and stable institutional framework to ensure the safety and security of funds and earnings. The investors also wish that their investments do not go in waste and there is suitable and safe environment in the country where they are investing. It is, therefore, necessary to have a stable, internationally compatible and responsive system which is of domestic as well as international investors' interests. A country with reliable international ratings has more capacity to attract foreign direct investments and attain sustainable economic development. It also enables compliant states to receive foreign assistance from the international financial institutions. Realizing the situation, the economic managers in Pakistan realized the importance of stability, vitality and international standards of the financial sector for the overall economic development. For a developing country like Pakistan, it is difficult to live in isolation divorcing all international financial organizations and international anti-money laundering institutions. Pakistan cannot receive financial assistance and support without complying the guidelines of international financial actors because of their well knit integration and collaboration with each other.

Although there are numerous crimes taking place in various financial systems of the world, yet money laundering and terrorist financing have attracted the attention of international actors to make efforts to combat both the crimes. Money laundering in its reverse form gives birth to terrorist financing which cannot be afforded by any society. So if seen in this perspective, money laundering as well as underground economy are the most dangerous elements not only for the financial institutions but for societies as a whole. Money laundering gives birth to many other crimes in the society and results in anarchy, uncertainty, and insecurity. In view of these problems, international efforts were initiated with force, vigor, continuity and collaboration. The policies have both positive as well as negative impacts.

In view of developing a synergy, the UN also impressed upon the member countries to have a supervisory and regulatory mechanisms for anti-money laundering. International problem need international approach to address it. It has become more important in the present era of financial and political globalization where super state institutions are becoming important and effective. To quell the money laundering and terrorist financing, there are specific institutions like FATF, IMF and World Bank whose main focus is to prepare the states for fighting against this menace. The IMF and the World Bank are extending support to these institutions with the help of UN.

It is noteworthy that the impacts of international anti-money laundering regimes are different for various stakeholders i.e., international anti-money laundering institutions, International financial institutions, states and individuals. As far as international antimoney laundering institutions are concerned, their efforts are directed to make the global financial system quite transparent , westernized , free of crime and stable. This would in turn attract foreign investors as well as other traders for business in various societies of the world without any fear. Similarly, the interests of international financial institutions lie in the stability of financial institution of the states where they are aiding and assisting financially and in turn earning their good will as well as profit. The states are also important stakeholders in the sense that by following uniform policies and standards, they not only capitalize on the confidence of the international regime but also succeed in attracting international financial institutions as well as investors for financial assistance/aid and investment. The individuals are also important stake holders in the sense that they remit money to their respective states through various means which are convenient to them. They want to save themselves from unnecessary documentation, extra cost and inconvenience. So it is necessary that while formulating policies with regard to combating money laundering, their interests should also be taken into account. It is also of great importance for the states that their interaction with each other helps in accumulating social capital. It is further suggested that the accumulated social capital is used as a means to get returns in future. The states retain their reciprocal relations with each other by extending different form of cooperation and favors.

One cannot deny the fact that developing countries like Pakistan have to depend upon the financial support of international financial agencies. However, sustained reliance upon international financial agencies cannot be a permanent solution for boosting the economy of a particular state. Therefore realistic measures are needed to have sound economic policies depending upon indigenous sources so that reform process can bring a positive change in the society. For this purpose, some recommendations are being suggested to tackle the problems of money laundering and allied crimes to bring about financial stability and economic viability to the country.

Laws and regulations are government levers that support well-being and economic growth. They affect all areas of life, impacting citizens, business, and the environment, and as such, their design is instrumental. When not designed appropriately, however, laws and regulations may not achieve their objectives. Not only does this render them potentially impotent or detrimental to society, it also raises concerns about trust in governments to help manage societal problems. The OECD

Recommendation of the Council on Regulatory Policy and Governance (2012[1]) provides governments with an overarching framework to help ensure that regulation¹ meet public policy objectives and at the same time improve societal well-being. Regulatory policy is a critical dimension of an enabling environment for investment and thus for economic growth and innovation (2012[1]). A central facet of regulatory policy is to consider the broad impacts on those affected by rule-making. Greater quality of government interventions can be ensured through the use of regulatory impact assessment (RIA). RIA is a flexible analytical approach defined in the Regulatory Policy Outlook (2018[2]) as a: “Systematic process of identification and quantification of benefits and costs likely to flow from regulatory and non-regulatory options for a policy under consideration. The recent legislation promulgated by Pakistan which includes Islamabad Waqt Property Act 2020, amendment in Anti-money laundering act, amendment in NAB Laws. Similarly, 11 bills relating to amendment in different laws on the recommendation of FATF.

The recent legislation made by Pakistan on the recommendations of FATF has been criticized by various corners including opposition parties. In an article published in The NEWS relating to the current legislation the writer has narrated the version of the opposition about the said FATF recommended legislations as following:

The opposition political parties want at least four amendments in the Anti Money Laundering Bill that they have conveyed to the Government .The first amendment relates to deletion of the National Accountability Bureau from the schedule of the bill, removal of the NAB chairman from General committee under it, and exclusion of the NAB from section 2(xviii), meaning thereby the Anti-graft agency should not be one of the prosecuting or investigation agency under the proposed law. One of the senior opposition leader told that NAB is already being consistently used as a tool to oppress the opposition.

It is not what we are saying its Human right watch, council of Islamic ideology, Supreme Court and European commission which have held this view. The second amendment proposed by the opposition parties said that the NAB law is exceptional which puts onus of proof on the defendant. This is against the natural principles of justice and has been declared against Sharia by the council of Islamic ideology. The third amendment says that the Government has made certain offences cognizable by the AML bill.

we want to omit this because it will mean that for arrest ,the investigation officer will no longer be required to give in writing the reason for detention and get the approval of magistrate/competent court. This will again allow arbitrary arrest which is against the spirit of Natural justice and the Constitution. The fourth point was pertained to ease of doing business. The bill puts further pressure on the business in term of reporting and regulation and the Economy which is already in shambles will completely crumble.

In another Article published in Dawn with the subject disturbing trends in Legislation the writer has criticized the recent legislation as following:

The trend which one can discern from the two examples is that a number of legislative initiatives are prompted by international entities like APG/FATF and IMF. It is not precisely known how many laws will eventually be required to be passed by the Parliament to satisfy their requirement but so far at least 11 FATF related laws have been passed by the Parliament .These laws may be legitimately required for the good of the country but why should Pakistan wait for a nudge from these international entities to spring into action, and why can't the executive and legislature safeguard national self-respect to initiate legislation on their own rather than use the name of these agencies to steamroll legislation at the last minute .Lastly, but critically, the perception of coercion perpetrated on legislators in passing certain Laws is extremely dangerous. During the recent headcount for passing a bill in the joint sitting of parliament on Sept 16, the opposition lost by 10 votes despite the fact it had a numerical superiority of around the same number .The Parliamentarian's attendance that day indicates the absence of around 40 members of the opposition during the critical vote count Many opposition members complained of receiving threatening telephone calls to either vote for the legislation or abstain.

RECOMMENDATIONS:

In the contemporary era, the impartiality of the international community in global affairs has come under scrutiny by third-world countries. These nations feel that they are not given their rightful representation and influence in decision-making on global issues, leading to a perception of neo-colonialism. Developed countries often exploit international organizations in the guise of upholding international law for their own interests. A similar situation can be observed with the Financial Action Task Force (FATF).

Participation of all states in decision making process of FATF

The FATF should give due participation to the states which are affected by the decisions of FATF. According to Article 2 of UN charter, all members states are deemed equal in sovereignty. This implies that they have absolute control over their executive, judiciary and legislature. The implementation of decisions/recommendations upon non-member states are against the International Law and Norms. FATF should permit participation of all states in decision making processes in order to ensure transparency, justice and fairness.

Enhance Legitimacy

FATF should take measures to enhance legitimacy because the legitimacy of an organization or authority is closely tied to perceptions of fairness, involvement in decision making process, shared values and consensus among the International Community. Legitimacy is a key factor influencing compliance with Laws and regulations.

FATF serves as a global watchdog against money laundering and the financing of terrorism.⁵⁹⁵ According to its mandate, its primary mission is to prevent the flow of illicit funds and curb the financing of terrorist organizations while maintaining impartiality in its operations. However, in the cases of Pakistan and India, the organization's role does not appear to be impartial.

- The Financial Action Task Force should consistently treat all nations without regard to their economic, diplomatic, or political standing. International organizations should adhere to principles of fair play and treat every country equitably.⁵⁹⁶

⁵⁹⁵ Yousaf, K. (2019, April 12). Govt issues 'guidelines' to curb terror financing. The Express Tribune(<https://tribune.com.pk/story/1949119/fo-launches-guidelinesimplementationunsc-1267-sanction>). (accessed: 9th June, 2023).

⁵⁹⁶ Noor, s. (2019, 11 21). Pakistan's political and diplomatic challenges at the 2020 fatf plenary. South asian voices. <https://southasianvoices.org/pakistans-political-anddiplomatic-challenges-at-the-2020-fatf-plenary>. (accessed: 10th June, 2022).

The FATF is required to enhance its mechanism and internal working. To maintain and enhance popular legitimacy, it is crucial to understand what factors contribute to people viewing IOs like the FATF as legitimate. This could include transparency in decision-making, accountability mechanisms, fair representation, and responsiveness to the concerns of diverse stakeholders. Legitimacy is not just a matter of perception; it has practical implications. For the FATF, having a high level of legitimacy means it can more effectively obtain the necessary resources, make decisions that are accepted by member countries, secure compliance with its recommendations, and ultimately contribute to solving problems related to financial crimes.

- In Pakistan, it is imperative that all stakeholders actively engage in the accountability process. The National Accountability Bureau (NAB) should function autonomously and be fortified to prevent misuse by any government to target opposition candidates during elections.
- Institutional autonomy is crucial. Departments should endorse professional and merit-based approaches in their investigations, prosecutions, and adjudications. Discriminatory laws favoring a select elite group should be eliminated, and the passage of laws should have the support of all elected officials.⁵⁹⁷
- Judicial independence is vital for impartial decision-making in corruption cases. Judges must adhere to professional ethics, follow the nation's laws, and ensure that justice is served in line with the legislation.
- Efforts to minimize money laundering through drug trafficking are essential. A substantial amount of money is laundered by drug traffickers, often referred to as "black money" or "dirty money," which goes unchecked. Vigilant surveillance on drug traffickers is necessary.⁵⁹⁸
- Zero level corruption tolerance must be ensured. There is a need to keep a vigilant supervision on government servants, as well as on those who are working in such preventive departments and strengthen the institutions.⁵⁹⁹

⁵⁹⁷ U.S. Gov't accountability off., gao-03-813, combating money laundering opportunities exist to improve the national strategy 7 (2003).

⁵⁹⁸ Raymond w. Baker, capitalism's achilles heel: dirty money and how to renew the free/market system 25 (2005).

⁵⁹⁹ Ibid.

- Prevention of black money in property business. This helps them whiten their illicit funds and encourages the crime of money laundering.⁶⁰⁰ There should proper monitoring of investment in real state.
- Equitable taxation on taxpayer encourages them to fulfil national duty. Therefore, equitable taxation should be enforced in the country.
- In Pakistan hundi is a significant method of money laundering. Foreign nationals use this approach to transmit money to friends, family, and other loved ones.⁶⁰¹ Money exchange market should properly regularize and monitor to minimize hundi.
- Prevention of terror financing to cut down financial supply of terrorist. Terrorist organizations have been found to be involved in money laundering”.⁶⁰² Funding of terrorist organization should stop and proper monitoring of charity collection must be ensure.
- Restrictions on offshore companies is necessary to control money laundering. The companies provide safe heaven to the criminal. Therefore, FATF should make legal frame works to restrict money laundering through offshore companies.

From the foregoing study it is revealed that efforts of international anti-money laundering regimes are meant to stabilize the financial institutions on global level. The stability of financial institutions definitely help in boosting the economy of a given country. As far as Pakistan is concerned, the measures to combat money laundering need to be broadened on the following lines.

(a) Plugging the Sources of Dirty Money

It has been noted that money is laundered through different means and despite the fact that strict measures are taken by the governments, yet the money launderers succeed in their objectives by adopting certain undetectable methods. This is why, it is compulsory to plug the sources of dirty money to stop the money laundering activities in Pakistan. Money laundering takes place because of terrorism, corruption, drug trafficking, tax evasion, human smuggling, smuggling of goods and gold, financial frauds and other anti social and anti state activities. There is dire need to control all these activities otherwise illicit money can make its way where it wishes to flow. There is need to

⁶⁰⁰ Lawrence Salinger, encyclopedia of white-collar & corporate crime 78 (2005).

⁶⁰¹ 4 M Subtain Raza, M Fayyaz, Haseeb Ijaz, “The Hawala System in Pakistan: A Catalyst for Money Laundering & Terrorist Financing”, Med Crave “Forensic Research & Criminology International Journal”, Vol 5 Issue 4, November 10,2017, Retrieved November 13, 2018.

⁶⁰² Syed ali shah, arrested “raw agent” trained separatists to target Pakistani ports: security official, dawn.com (mar. 27, 2016), <http://www.dawn.com/news/1248254>. (accessed: 11th May, 2022).

strengthen institutions which can play their role in anti money laundering. One can cite the examples of Excise and Taxation Departments, Income Tax, Police, Customs, Revenue Department etc which are responsible for collecting taxes and generating revenue for the state. International community should also cooperate in installing and institutionalizing mechanism for elimination of predicate offenses of money laundering. Prevalence of large scale corruption and other social crimes can be targeted by the conditionality of international financial institutions and developed countries. These institutions along with developed countries have the capacity to influence governmental policies in the developing countries. Therefore, for the sake of long term global and humanitarian interest there is need to eliminate all those activities which generate illicit wealth. This would ultimately eliminate the threat of money laundering.

(b) Strengthening Institutions

There is need of macroeconomic stability for which strengthening of institutions is essential. Pakistan should not largely depend upon International Financial Institutions for assistance but should try to rely on its own indigenous resources to end its financial woes. Better tax collection, rational economic policies along with improved governance structure and transparency can go a long way in achieving the goal of self reliance. For this purpose, there is need of strong institutions to implement such policies. Therefore, it is recommended that all institutions like financial, judiciary, bureaucracy and army etc., should be professionally strengthened by performing their due roles within given paradigm. If these institutions stand on sound footings, they can certainly bring internal security as well as stability which in turn are key to macroeconomic stability. The elimination of corruption and other illicit practices from the society would definitely eliminate the activities of money laundering and strengthen the financial institutions of the country. This will also enhance the economy and there would be less reliance upon international actors for financial assistance.

(c) Good Governance

One can hardly think of economic stability, human development and a crime free society without good governance. Good governance means bringing a transparent, accountable, efficient, and just political, administrative and judicial system in the country. A stable, viable, legitimate, democratically elected and accountable to the people system of government is must to attain the goal of good governance. To augment and support the role of the government, an independent and

corruption free judiciary is a part and parcel of a political system which can boast of providing good governance to the masses. Such government has the trust and confidence of the people and can help and ensure a crime free society, which respects the law and the constitution. The transparency, freedom of information and accountability are the most basic ingredients of a political system which can work towards good governance paradigm. Once good governance is in place, the institutions would be working in the right direction within their jurisdiction resulting in stability of the financial institutions as well as reduction in the chances of money laundering. (d) Increasing Foreign Direct Investment The foreign direct investments can be increased by introducing strict monetary and fiscal measures so as to combat money laundering and ensuring safety of investment by foreign investors. To achieve the goal of attracting foreign investment in the country, a country has to ensure developed infrastructure, peaceful law and order environment, availability of trained and educated workforce, power and other amenities, along with a just and incorruptible political system.

(e) Public Awareness Campaign

It is necessary that full-fledged campaign should be launched for creating awareness among the populace regarding negative aspect of money laundering resulting into dangerous consequences like terrorism and insecurity in the country. It is a reality that most of people equate money laundering with only Hundi or Hawala. The awareness may enable the people to know the dangerous impacts of money laundering on all the sector of economy. In order to win the support of general masses and discourage Hundi/Hawala formal banking system should be facilitated.

(f) Creating win-win situation for all the stake holders

Despite concrete efforts at global level and national level, the threat of money laundering and terrorist financing is still looming large in the face of the national and international community. This may be due to various reasons like various stakeholders have not been taken into confidence particularly by the international regimes before introducing any move to combat money laundering. One can quote the example of those individuals who prefer to make transactions though Hundi/Hawala. If they are given enough incentives, they would definitely follow the right method of transactions instead of adopting short cut way out. Special care should be taken for the interests of developing countries, exchange of expertise, training of personnel, information technology development etc. The interest of commercial banks should also be protected by

involving them in policy making process. Like wise the interest of regulatory regime needs to be reconciled with the changing needs. The clients or end users of services are interested in safety, security, convenience and cost. Their interests also demand very special attention by service providers and regulators in order to win their cooperation. In this regard already given Principal-Agent model can bring desirable results.

(g)Replacement of Channels of Informal Remittance System

Informal remittance system is generally undocumented and poorly regulated as compared to that of formal system. This renders the system vulnerable to the abuse of money launderers. The formal system is well documented and regulated through a mechanism which the money launderers cannot easily break. So it is necessary that formal channels should be increased in order to attract more and more remittances. This would also provide confidence to the clients.

(h) Socio-Cultural Understanding of Different Societies

There are different attitudinal preferences for the people in different parts of the world. Likewise keeping of large amount of cash in the developed world is considered as suspicious. While in developing countries people keep large amount of cash because of various pull and push factors. In the tribal area of Pakistan many people maintain large cash because they either do not have banking facilities or religiously they don't consider banking system matching to their belief system. People use cash for charity purpose. They also use Cash for some social and religious occasions. A long with these factors the plastic money mechanism in the rural area is neither prevalent nor people trust it. Even the problem of load shedding and power breakdown is so common that ATM operations has become very difficult. While contrary to it people in the developed world have different facilities. They witness power breakdown once in a blue moon. Therefore, when the criteria of suspicious transactions are developed, heterogeneous socio-cultural norms and values need to be considered pragmatically. In developed world, a deshaped and dirty currency note may be suspected that it has passed from the hands of druggie but in hot and poor societies poverty and sweat mostly render currency notes undesirable. Likewise, many other socio-economic ground realities must be considered by the policymakers. In addition to above, it is recommended that:

- (i) banking facilities should be provided particularly in rural areas where no such facility exists;
- (ii) the system should be transparent and legitimate;
- (iii) establishment of the writ of the Government;
- (iv) provision of banking services without any disruption;
- (v) reduction in cost of banking;
- (vi) job opportunities for the poor;
- (vii) facilitating flow of funds and remittances by providing new and efficient channels;
- (viii) ensuring international cooperation in preventive and curative methodologies;
- (ix) inculcating ethical and humanitarian spirit in anti-money laundering activities;
- (x) respect for writ of judiciary
- (xi) proper training;
- (xii) political will and administrative acumen
- (xiii) social capital based cooperative countries must have multiple incentives.

The study concludes with the assumption that impact of international anti money laundering regime can bring magnificent results if the above mentioned recommendations are implemented in letter and spirit.

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- ¹ Liberal Arts and Social Sciences International Journal (LASSIJ) eISSN: 2664-8148 (Online) DOI: <https://doi.org/10.47264/idea.lassij/4.2.32> Vol. 4, No. 2, (July-December 2020): 413-426 Research Article URL: <https://www.ideapublishers.org/index.php/lassij> Pakistan and the FATF: Exploring the Role of Diplomacy in Getting off the Grey List Muhammad Idrees¹ , Manzoor Ahmad Naazer* ¹ & Hashmat Ullah Khan² ¹. Department of Politics & International Relations, International Islamic University, Islamabad, Pakistan. ². School of International and Public Affairs, Jilin University, Changchun, Jilin, China. Received: September 5, 2020 Published: December 31, 2020
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