Critical Analysis of Anti-Money Laundering Ordinance 2007 of Pakistan in Comparison with International Initiatives, International Islamic University, Islamabad.

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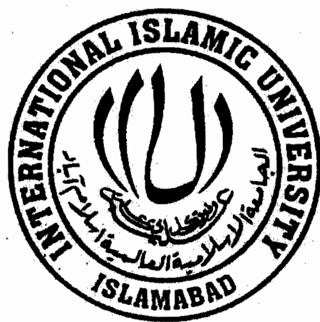

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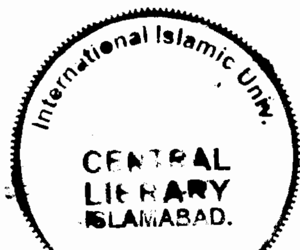

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بِسْمِ اللّٰهِ الرَّحْمٰنِ الرَّحِيْمِ

In the name of Allah (SWT) the most benificient and the most merciful.

APPROVAL SHEET

It is certified that I have read the dissertation report titled **"Critical Analysis of Anti-Money Laundering Ordinance 2007 of Pakistan in Comparison with International Instruments"**, submitted by ***Noreen Afzal*** Registration No. ***145-SL/LLMCL/F06***, which in my judgement, this dissertation is of sufficient standard to warrant its acceptance by the Interntional Islamic University, Islamabad, for the award of degree of Masters in Corporate Laws.

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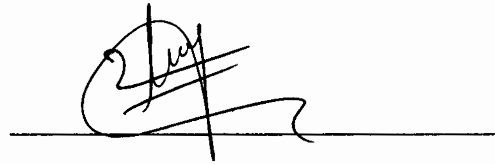

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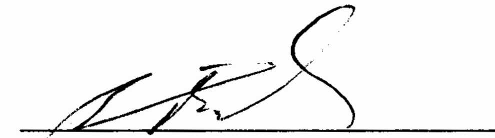

DEDICATION

I would like to dedicate this dissertation firstly to the

HOLIEST man Ever Born on Earth,

PROPHET MUHAMMAD (Peace Be Upon Him)

And Secondly

my Dearest **Father** ***and*** **Mother**

who are an embodiment of Diligence and Honesty,

without their Prayers and Support

this dream could have never come true.

Noreen Afzal
145-SL/LLMCL/F06

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ACKNOWLEDGEMENT

In the name of **ALLAH,** the passionate and merciful, whose blessings made it possible for me to complete this complex and hard task. Its completion is a matter of great enthusiasm and pleasure for me. It is all because of **ALMIGHTY ALLAH'S** guidance that made me so able.

Every mission and project has a brain behind that vivifies the theoretical raw ideas. I was fortunate enough that a masterful intellect, in the mind of **MADAM SAMINA BASHIR,** as supervisor was with me. My project would have been a complete fiasco in the absence of such a mastermind. I have no words to thank the laborious and tiring contributions of this extraordinary personality.

I am really thankful to my **mother Shameem Akhtar** whose prayers always contribute a lot in completing difficult tasks. She has always helped me during hard times, also during this project she bore my worried attitude and it is due to her unexplainable care and love that I am at this position today.

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I am also thankful to my respected bosses Nasir Dogar and Johar Parvez (CEO & MC IMAC) who always allowed me unlimited leaves from the Office for the completion of this dissertation and encouraged me to complete it as soon as possible.

Every work is bounded to flaws. I accept complete responsibility for all flaws in this project. I will be grateful for valuable suggestions and all positive criticism will be welcomed.

EXECUTIVE SUMMARY

1 Various reports produced by the international and regional bodies, (working for the prevention of money laundering practices) Financial Action Task Force and Asia Pacific Group over the last few years have made reference to the fact that existent anti money laundering regime of Pakistan is vulnerable and has much shortcomings and legislative gaps due to lack of political will and interaction among state actors, so criminal organizations may exploit these legislative gaps for laundering their illicitly obtained money. The general objective of this research is to develop more information on this issue and present a clearer picture of the flaws and shortcomings of anti money laundering laws particularly Anti-Money Laundering Ordinance 2007 (AMLO) that can be used for money laundering or terrorist financing.

2 The study aims to accomplish three primary goals: First, it presents the detailed information on national and international initiatives taken for the prevention of money laundering , secondly identifies flaws or weaknesses exist in AMLO and thirdly suggests some recommendations in the light of the international instruments (i-e conventions, recommendations, reports) for improvement of the 2007 Ordinance.

3 The dissertation is comprised of four chapters. The first chapter deals with the introduction of money laundering, its process and the techniques that are used by the launderers to commit this offence. The second chapter is about the global initiatives in the shape of UN Conventions and Guidelines, adopted to curtail money laundering activities. The third chapter contains the critical analysis of the anti money laundering regime in Pakistan with special reference of AMLO 2007 and pointed out flaws and weaknesses subsist in this. Recommendations for the removal of all these shortcomings and effective legislation are presented in chapter four.

Noreen Afzal
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CHAPTER 1

Introduction to Money Laundering

1.1 Origin of Money Laundering

1.2 Concept of Money Laundering

1.3 Channels of Money Laundering

1.3.1 Banking

1.3.2 Non-Banking Financial Institutions

1.3.3 Non-Financial Banking Institutions

1.4 Money Laundering and An organized crime

1.5 Magnitude of the money laundering around the World (IMF Survey)

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Chapter 01

Introduction to Money Laundering;

1.1 Origin of Money Laundering

1.2 Concept of Money Laundering

1.3 Channels of Money Laundering

1.3.1 Banking

1.3.2 Non-Banking Financial Institutions

1.3.3 Non-Financial Banking Institutions

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1.5 Magnitude of the money laundering around the World (IMF Survey):

1.1 "The Origin of Money Laundering":

About the derivation of term "money laundering", I would like to quote few theories of different legal expert/thinkers.

Theory 1:

As said by "Legend", it was an era of 1920s (also called "Prohibition epoch- the banning of alcoholic drinks) when a real expression of "money laundering" was constructed in the United States. At that time organized criminal organizations of America were engaged in a profitable business of "alcohol smuggling", from where they used to get huge profits, consequently, for concealment of true source (which is alcohol smuggling) of these profits, a number of methods including legal gambling were employed by them.[1]

The only objective of these American mobsters was to commingle their illegitimate profits with profits from legitimate businesses as major infuriation faced by them was that the entire finance was in money shape, i-e low value currency, hiding of which was not so easy. Matter could be inquired of, in case of depositing this currency into bank, so these mobsters accustomed to establish different industries, first slotting machines and second laundries— thus in this way, the term "money laundering" was invented.[2]

[1] "The Economist" June 23, 2001 about fighting dirty money as Governments claim progress in the war against money laundering.
[2] Ibid

Theory 2:

Another writer "Sterling Seagrave" writes in his book "Lords of the Rim", that over 2000 years ago, the term money laundering originated when well-off Chinese traders started to launder their illegal profits - (generated from bribery, extortion and black marketeering) after the banning of many forms of commercial trading by local governments. On the basis of prejudice and unfairness against the commerce of any shape, these traders were targeted and besieged by the government and their activities were also seen doubtful as they were voracious, brutal, unpredictable and lived by different rules.[3]

Seagraves describes numerous technique used by Chinese Launderers at that time, such as "converting money into readily movable assets, moving cash outside the jurisdiction to invest it in a business and trading at inflated prices to expatriates funds".[4]

[3] "Lords of the Rim," by Seagraves, Sterling, published in New York, 1995.
[4] Ibid

Theory 3:

Another famous writer "Robinson" stated that first time in 1973, term "money laundering" emerged with reference to "Watergate Scandal". The scandal describes a story of 'American President "Richard Nixon" s Committee to Re-elect President' which transferred illegitimate contributions (for election campaign) to Mexico and then fetched these funds back in Miami with the assistance of a money transfer company. This process was referred as "laundering" by a "British newspaper (Guardian)", so in this way; term "money laundering" was introduced.[5]

Theory 4:

Another view is that real zenith for money laundering came in the 1980s particularly with a drug trafficking perspective as it was the decade when cost of illicit drugs including cocaine and heroine became so much low that a wide range of users could access it which intended more cash transactions for vendors and a growing necessity to launder a large amount of money speedily and efficiently.[6]

The words of one U.S. customs official in 1986 were that, "We see narcotics organizations now being set up like major corporations, with an operational arm to move the drugs and a financial arm to move the money". Figures taken from the United Nations and the U.S. Department of Justice also corroborated that the era of 1980s was surely an epoch of unprecedented increase in the illicit drug business.[7]

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[5] "The Laundrymen" by Jeffery Robinson: "Money Laundering", World's Third-Largest Business," published in New York, 1996.

[6] Frank, Allen Dodds. "See No Evil. (Laundering Drug Money)." *Forbes*, October 6, 1986

[7] Comparative GDP statistics obtained from University of Groningen (Norway) Faculty of

Economics, Growth and Development Centre website. See http://www.eco.rug.nl/ggdc/index-dseries.html.

The number of drug arrests also became twofold in U.S. i-e from 580,900 in 1980 to 1,361,700 in 1989.[8] The worldwide trade in illegal drugs was estimated to be valued at $120 billion dollars in 1985, 16 or roughly the same size as the GDP that year of India.[9]

During this period some of the daring and comprehensive money laundering schemes were also designed. In this respect an example that may be considered is "the Ramon Milian-Rodriguez' scandal", who from 1979 to 1983 is supposed to have filtered a huge amount about to $1 billion in drug money for the Medellin drug cartel.[10]

Ramon formed an air cargo company through which millions of dollars were transferred in U.S. drug transactions from Florida to Panama, where banking secrecy laws were scandalously supportive for customers. In this process, he just used to put numerous deposits in Panamanian banks, layered these funds through transactions in the Netherlands Antilles, then integrated them in the United States in the for among many other things, loans to Latino small business owners in the Miami area.[11] That is how; term "money laundering" was invented.

[8] White House Office of National Drug Control Policy. "The National Drug Control Strategy 2000 Annual Report." Table 42, " Average Price and Purity of Cocaine and Heroin in the United States, 1981–98.

[9] Comparative GDP statistics obtained from University of Groningen (Norway) Faculty of Economics, Growth and Development Centre website. See http://www.eco.rug.nl/ggdc/index-dseries.html.

[10] U.S. v. Milian-Rodriguez, 759 F.2d 1558, 1560. Milian-Rodriguez also gave a more detailed account of his scheme to a Senate subcommittee in 1988. That testimony is sealed, but several summaries I found on the Internet confirmed the basic details included here.

[11] See "Guns, Drugs and the CIA" a PBSFrontline,http://www.pbs.org/wgbh/pages/frontline/shows/drugs/archive.

"Money laundering" is seemed as a set of actions taken for transfer of money generated form illicit transfers such as drug trafficking, terrorist activities and organized crime arrival at the transformation of origin, currency unit, beneficiaries or the final destination of the money.[12]

1.2 Concept of Money Laundering in view of several definitions:

"Money laundering" is that course of action through which criminals make effort to hide the nature, derivation, basis, ownership and title of the proceeds (generated from the criminal activities) into finances with an apparently legal source.

It is practice of cloaking financial earnings obtained from criminal activities such as "smuggling", "trafficking in humans", "drug trafficking", "tax-evasion", "prostitution rings", "embezzlement", "illegal labor and refugees", "bribery", "insider trading" as well as "computer hoax schemes" through their untraceable movement and investment in lawful businesses i.e. collaterals and bank deposits.

A crucial object of money laundering activity is, to smash pecuniary connection among offences and their doers while permitting them unrestrained and imperceptible enjoyment of those finances. Different multinational organizations and government agencies who are engaged in the warfare aligned with "money laundering" used to describe alike definitions, such as;

[12] Challenge of Money Laundery; By: Dr.Gholamhussein Davani

"Drug Control and Crime Prevention Office of United Nations" states; that

"Criminals who wish to benefit from the proceeds of large-scale crime have to disguise their illegal profits without compromising themselves. This process is known as money laundering."[13]

European Committee defined "money laundering" through article 1 of the "March 1990's Directive";-

"the conversion or transfer of property, knowing that such property is derived from serious crime, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in committing such an offence or offences to evade the legal consequences of his action".[14]

More concisely, the U.S. Custom Service Office pronounces that "money laundering is the legitimization of proceeds from any illegal activity." [15]

[13] See UN Office of Drug Control and Crihttp://www.undoc.org/odccp/money_laundering.htm
[14] Text directly taken from "European Communities Directive of March 1990".

[15] , http://www.customs.ustreas.gov/enforcem/enforcem.htm (U.S. Customs Service's web site)

"Section 3 of the "Anti Money Laundering Ordinance 2007" of Pakistan says that";

" Section 3 of the AMLO" provides that; "A person shall be guilty of offence of money laundering, if he acquires, converts, possesses or transfers property, knowing or having reason to believe that such property is proceeds of crime; or renders assistance to another person for the acquisition, conversion, possession or transfer of, or for concealing or disguising the true nature, origin, location, disposition, movement or ownership of property, knowing or having reason to believe that such property id proceeds of crime".[16]

"Article 6 of "UN Convention against Transnational Organized Crime" (UNTOC) defines "money laundering" in these words":

(i) " the conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action";

(ii) " the concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property knowing that such property is the proceeds of crime";

[16] Text directly taken from the "Anti Money Laundering Ordinance 2007 of Pakistan".

(iii) " the acquisition, possession or use of property, knowing, at the time of receipt, that such property is the proceeds of crime";

(iv) " participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counseling the commission of any of the offences established." [17]

Illustration;

In general, a huge bulk of money laundering processes absorbs three crucial footsteps, without following these paces; operation of money laundering can not be accomplished. For exemplification, assume that Waqas lives in Boston having enough quantity of cocaine with him which he sold against numerous thousands of dollars over there.

In the first pace, commonly recognized as the "Placement pace", he puts his filthy money, (the cash should be described as filthy since it is derived from criminal activity) into an account that he holds at a bank.

Thus, by putting these funds into an account, Waqas shifts onto the "Layering pace", where he transfers his polluted fund through a chain of arrangements intending to break and disunite the link between cocaine sale and the money. In this stage, movement of the funds takes place through any financial instrument presented by banks, from pensions to zero coupon bonds.

[17] Definition has been directly taken from text of "UN Convention against Transnational Organized Crime(UNTOC)"

In reality, creativity is the main point upon which Waqas has to focus as in this digital era, there are multiple techniques which can be used for layering of funds in dozens of countries through various accounts with help of few transactions as it is true that the more funds are layered, the less chances are remained for law enforcement agencies in order to detect and associate these funds with real drug sale, (sale of cocaine).

In the last pace, recognized as "Integration pace", Waqas merges the whole layered cash and moved it into the account of a lawful business where he preserves his share, for instance a hotel owned by his brother, Waqar. So, ultimately Waqas gets a full access to his dirty funds without any suspicion since it appears that instead of selling drugs, source of profit earning is the interest in Imran's restaurant.

Money laundering takes place by means of banking institutions, non-banking economic institutions ("retail businesses", "leasing corporations", "insurance groups") and non-financial banking institutions ("real estate companies", "multiple billing", "professional facilitators"). It rottenly victimizes the countries where a developed fiscal and legislative structure for detection as well as preclusion of money laundering has not been established yet.

Money-laundering has depressed effects upon financial system, government and communal welfare of a society. It collapses trade decisions, enhances threat of banking malfunctions, captures power or management of monetary policy from the hands of government, endangers integrity as well as sovereignty of the nations and exposes them to terrorist attacks, smuggling and drug-trafficking etc.

"Money laundering involves transactions intended to disguise the true source of funds and their ultimate disposition, evade income tax and eliminate an audit trail and make it appear as though the funds came through legitimate sources."

1.3 Channels of "Money Laundering":

"Money laundering" is name of a modus operandi through which the existence, source and application of illegal proceeds can be obscured and merged with a legal income, to make it appear legitimate.[18] With the purpose to circumvent anti-money laundering legislation, money launderers use various channels to commit the offence which can be classified into three portions: (i) banking, (ii) non-banking institutions, and (iii) non-banking financial businesses. I would like to explain all of them comprehensively in following points.

(1.3.1) Banking

(1.3.1.1) By large deposits and transfers – Placement
(1.3.1.2) Layering transactions
(1.3.1.3) Cash deposits and withdrawals –Integration
(1.3.1.4) Smurfing
(1.3.1.5) Loan back arrangements

[18] Lal 2003

1.3.1.1 Placement:

By employing this method, launderers deposit or introduce their criminal funds into the financial system i-e banks, either directly or indirectly. For instance, criminals put cash in the bank or any other reservoir alike this. It is the first phase where acquired illegitimate income is either deposited with financial institution, i-e bank or is smuggled in a foreign country.[19]

At this phase, main objectives of the launderers are firstly to eradicate the cash from its real source and secondly to convert it into other asset shapes i-e postal orders and cheques so that law enforcement authorities would be unable to detect the actual location of acquisition.[20]

1.3.1.2 Layering Transaction:

Through this method, launderers separate or disassociate illegal proceeds from the true source by making complex layers of financial transactions through "shell companies"[21], in order to put out from the auditor's sight and provide the cover of secrecy, for instance, via traveler's cheque (i-e by depositing it into various dissimilar accounts) or by any other means which is unobservable.

[19] Tehran, Jyoti, 'Crime and Money Laundering-The Indian perspective', pp-99
[20] Tehran, Jyoti, 'Crime and Money Laundering-The Indian perspective', pp-99

[21] Shell and front companies refer to "as little known or failing companies which have no significant assets ors or operations but through which a major company conduct business clandestinely. These companies are also "mailbox" companies

At this step, crucial point is that through the creation of these multifarious coatings of transactions, identity of the criminals is made harder to detect for the law enforcing agencies, so we can say that main focus of the criminals is upon the concealment of their own individuality or character.[22]

1.3.1.3 Cash deposits and withdrawals –Integration:

The integration scheme lays the filtered proceeds reverse into lawful money by various cash deposits and withdrawals, in such a manner that they seem to be normal and legitimate business income. This is the stage where the illegitimate economy is amalgamated or mixed with legitimately obtained money.[23]

1.3.1.4 Smurfing

It means breaking down of a larger amount into an amount less than the threshold of the particular country's reporting requirements (i-e in America, $10,000) by using bank accounts of dozen of front men. Basic objectives of using this method is to avoid the reporting requirements and justify non-reporting of transactions on the basis of smaller amounts than amount fixed for reporting by regulators.[24]

1.3.1.5 Loan back arrangements

By these arrangements, a criminal first places illegal or dirty money into a mailbox entity which is in his ownership and then lends these funds reverse to him as a loan. Crucial objective of the loan back transactions is to borrow one s own illicit proceeds back without making it able to be seen to the stranger. This is performed through a loan agreement making with a friendly relationship or family in a foreign country.

[22] Supra note 6
[23] ibid
[24] "Money Laundering", an article by Saman Malik

1.3.1.6 Back-to-Back Loan

A back-to-back loan means a loan against which security in the form of foreign bank balance or cash deposit of a sum of cash pre-exists for lender and if that collateral comprises of assets, obtained from any illegal activity, so there is money laundering. Difference between loan back arrangements and back-to-back loan is that in case of back to back loan, the lender is a sovereign third party whereas in loan back arrangements, both the lender and borrower are the same persons.

(1.3.2) Non-Banking Financial Institutions:

(1.3.2.1) Informal Value Transfer System ('hawala, hundi), usually known as Underground banking

(1.3.2.2) Insurance Sector

(1.3.2.3) Retail Businesses

(1.3.2.1) [illegible] ('hawala/ hundi etc);

[illegible] systems are being used in various regions for the movement of funds, both domestically and globally. The hawala/hundi system is one of these IVT systems that subsist in many states of the world under different names i-e hundi, chop shop etc.

Before moving forward, it is essential to point out a distinction between "hawala system and the hawala term". The hawala term means, "wire" or "transfer" while the hawala system refers to an informal or unofficial conduit for the transportation of finances from one location to other through the help of various service suppliers renowned as hawaladards, without considering the character of the business deal as well as the states engaged in it.[25]

The expression hawala has its origin in the Arabic language i-eحول, which means 'transformation' and 'change'.[26] Basically 'hawala' is referred as a promissory note[27] or a bill of exchange[28] whereas the word hundi has its basis in the Sanskrit lingo, the connotation of which is to collect. Most common meaning of hundi used in India is 'collection box' discovered in a Hindu shrine.[29]

[25] "The Hawala System" an article written by "Mohammed El-Qorchi" (Senior Economist, and Exchange Affairs Department of IMF).

[26] "The Hans Wehr Dictionary" of Modem Arabic, (Ithaca, New York: Spoken Language Service) s by Cowan, J. M. [editor] (1976) Arabic-English Dictionary.

[27]"According **to "Section** 4 of the Negotiable Instrument s Act, Pakistan"; a promissory note is an instrument in writing containing an unconditional undertaking signed by the maker, to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument".

[28] **"Section** 5 of the Negotiable instruments Act, Pakistan" provides that "a bill of exchange is an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to, or to the order of, a certain person or to the bearer of the instrument".

[29] "Bhargava's Standard Illustrated Dictionary Hindi-English" complied by Pathak, R. C. in 1995.

Besides, sometimes it is also known as a form of promissory notes but usually it is like bills of exchange in form and substance, trust and the substitute system of transfer of funds like hawala.[30]

(1.3.2.1.1) how does Hawala System run?

How people employ hawala system, it is a question, the answer of which is hidden in a single instance of hawala transaction.

Illustration:

Ali is a Pakistani who lives in London and drives a taxi over there. He got entry into the country on the basis of tourist visa that has been expired for a long period, however he has accumulated $5,000 from his job that he desires to send back to Ahmed ("elder brother") having residence in "Karachi, Pakistan".

Although Ali is well-known with the hawala transfer method, even then he likes to go to main bank firstly. At bank, he was instructed to do numerous things such as opening of an account in a bank, prior to doing business with it and secondly only certified official rate of a dollar i-e "80 Pakistani Rupees" will be offered to him without any extra commission and $ 40 will also be deducted as service charge to issue a draft.

[30] A book 'Mercantile Law', Extra Case Studies & Solution, 10th Edition, by M.C.Kuchhal.

It means that Ali will be able to send Rs 3, 68000 in addition of delivery charges of the draft that will be sent only through a rapid courier company as façade mail is not a trustworthy source especially when it encloses with something precious, it costs to the extent of $ 60 for Pakistan and takes at least a week to reach on destination. Keeping in mind the whole cumbersome procedure, Ali thinks that a better deal can be obtained through hawala. So he discusses the matter with Razzaq, who is also a taxi driver and a part-time hawaladar.

Razzaq's offers for Ali were 5% 'commission' for managing the transaction, Rs 90 for a dollar rather than 85 and delivery is also added in this. Through this deal, Ali will be able to send Rs 4, 32000 to Ahmed. Since we know that the delivery joint together with hawala arrangement is more rapid and trustworthy than bank transaction.

Ali was almost ready to make arrangements with Razzaq for doing business when a classified ad in a regional Indo-Pak daily paper passes before his eyes, which offers following:

Discounted tickets are available for Sri Lanka, India, Bangladesh, Dubai and Pakistan

Impressive rupee offers (only for Pakistan and India)

Videotape translations

Highlights of most recent Hollywood songs on Cassettes and CDs

Prepaid worldwide phone cards

(718) 888-333 ask for Nadia

Ali makes a call on the number given in advertisement and talks to Nadia, who tenders more beneficial deal i-e, a fee of only 1 rupee against the transfer of each dollar, price offered for a dollar is 92 Rs and delivery charges are also included in it. Under this deal, Ali is more satisfied as now he can send Ahmed Rs 4, 55000. So he makes a decision to do business with Nadia as her offer is best. Now hawala business deal proceeds as follows: Ali presented $5000 to Nadia, who establishes a contact with Omer living in Karachi and provides him the details, Omer assembles Rs 4, 55000 for delivery to Ahmed.

Although the given example is simple even then essential ingredients of hawala business deal can be derived from this, such as:

(i) **Trust based relationship;** primarily there exists a trust between Ali and Nadia as Nadia did not provide him an acknowledgement or any proof of payment in the shape of receipt and her recordkeeping is not aimed to keep record f individual transfer of funds but only to maintain pathway of how much money she takes as a debt from Omer. It means that Nadia can have some trust based relationship (i-e business partner) with Omer which guarantees her to make payment to Ahmed.

(ii) **Consideration of Time;** The transfer of funds through hawala deal always happens within only a day after making of initial payment whereas transaction through banking system takes more than a week, so in hawala arrangements time difference counts a lot. Another important thing is that payment through hawala is always made in person.

(iii) **Connections are important;** Connections in hawala business are of equal significance. So in the above example Nadia has to be attached with Omer in Karachi through any cannel of communication i-e phone number or email etc. similarly Nadia has to know somebody who can make arrangements for payment in India as she signifies her services in India as well through the advertisement. It implies that hawala occurs through connections and these are the connections which permit the formation of a network in order to carry out hawala transactions.

In the given example, both Nadia and Omer are part of this network and regarding their relationship several possibilities arise, for instance ,may be they are business partners or may be Omer owes money from Nadia and through this hawala transaction, he is repaying the debt taken from her.

(1.3.2.1.2) Motivations for using the hawala system:[31]

When "hawala system" is compared with other "traditional sources of transferring money" like receiving a cheque or instructing for a wire-movement, it appears to be more complicated as well perilous, then why people prefer to remit money by hawala rather than other traditional systems. In this respect an analysis of motivations for using the hawala system is being made here in following points:

[31] "Hawala-A Good Old Vehicle for the Movement of Bad Money", a book written by "Sandhu, Harjit Singh" in 1998 (Sydney, Australia).

- **Cost effectiveness----** low overhead and exchange rate speculation.
- **Efficiency-----** Another magnetism of "hawala system" is its efficiency as it is speedy, additionally convenient, extra trustable, more reliable, cheap and less technical than the formal financial segment as it takes only one or two days for an international money transfer while banks takes more time, i-e one or two weeks and sometimes delays are made by the banks due to weekends, time differences and holidays.
- **Reliability-----** In order to explain the point of reliability, I would like to refer above mentioned example, that "Ali is staying and working in London while his visa has been perished consequently he has no "social security no", so unable to open an account with the bank as without proper and sufficient credentials it would not be possible.
- In this situation, dealing with the bank would not be reliable for him as he doesn't have complete trust upon bank so his preferred choice will be "the use of hawala system" rather than banking.
- **Lack of paper trail-----** Non-keeping of record is much more consideration in illicit hawala transactions.
- **Tax evasion------**According to the "Interpol General Secretariat report 2000", in South Asia, the parallel economy is 30%-50% of the documented or "white" economy [32]and the reason behind this percentage is to avoid from the payment of tax, because if the people remit or transfer their money through official channels, tax authorities might investigate about the sources of finance and may impose applicable taxes while on the other hand "hawala" provides an investigation-free remittance channel.

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[32] "Hawala alternative remittance system and its role in money laundering" by "Patrick M.Jost and Hajrit Singh Sandhu" in January 2000 in "Layon", General Secretariate of Interpol.

(1.3.2.2) Insurance Sector

Generally insurance companies offer different types of insurance such as health, life, vehicle and property insurance. Through this technique, launderers invest in the costly insurance policies, make payment only some premiums and apply for precipitate imbursement of purchased policies on a cut-rate. So the payment or sum collected by insurer against these premature policies is seen as legitimate money and a risk of detection from the law enforcing institutions is eliminated.

(1.3.2.3) Retail Businesses

Retail businesses can be utilized as only frontages where most of the revealed sales transactions are fabricated and untrue as proprietors of these frontages exchange their illicitly acquired income with legal income by signifying these sales through retail business and making payment of the obligatory taxes as imposed.[33]

(1.3.3) Non-Financial Banking Institutions

(1.3.3.1) Professional Facilitators

(1.3.3.2) Real Estate Businesses

(1.3.3.3) Casinos

(1.3.3.4) Multiple Billing

[33] Tehran, Jyoti, 'Crime and Money Laundering-The Indian perspective', pp-99

(1.3.3.1) Professional Facilitators:

In order to help launderers for concealing the flow of dirty money, derived from illegal activity (i-e smuggling, drug trafficking, corruption etc) and to hide the record of the whole activity, certain professional services providers are also engaged.

These service providers may be companies or individuals, who offer their expertise to obscure the true source of criminal money by making some legal arrangements such as (i) lawyers for legal assistance (ii) financial service providers for advice in tax issues, bookkeeping and auditing the accounts of company and (iii) company service providers for formation and sale of legal entities, for acting as trustee, director or company secretary for ultimate beneficial owner.[34]

In certain transactions, services of professionals are legally required as the services of a notary for the completion of real state transaction however alternatively, there are available certain professionals who deliberately offer their services to offenders to assist them obscure the flow of criminal money.[35]

[34] Money Laundering Awareness Handbook for Tax Examiners and Tax Auditors 2009 48 © OECD 2009

[35] Ibid

(1.3.3.2) Real Estate Businesses

In order to conceal ill-gotten proceeds real estate business (through manipulation of property price) has long been the favorite option for launderers. Interests in using this technique can be first the comparatively high pecuniary value and secondly the probability of appreciation of the monetary rate or value of the property eventually. For instance, buying and selling of real estate property, against a price that is greatly higher than the actual market value creates a legitimate gain of finance apparently.

(1.3.3.3) Casinos

Another technique of laundering dirty money is the purchasing of casinos. Through this method, criminals take their illicit proceeds to the casinos and buy a lot of casino chips with which no gambling was made by them. Eventually, these casino chips are encashed by the launderers without any difficulty while disclosing them as real winnings.[36]

(1.3.3.4) Multiple Billing

Multiple invoicing or multiple billing is another tactic through which numerous bills are created for the same goods. Evasion from import duties or laundering the proceeds of an offence is the main objective of this technique.

[36] ibid

1.3.4 Miscellaneous

(1.3.4.1)Amnesty Schemes

Amnesty schemes are introduced or launched by the government with the intention of unveiling the hidden black money. With the help of these schemes, the government facilitates people to declare their illegally attained proceeds upon the payment of levied tax, makes an announcement that there will be no inquiry about the true origin of the funds and subsequent to tax payment it turns out to be legitimate money. Basic aim of amnesty schemes is twofold, one revenue collection and other is the exchange of black money with white (through deliberate declarations), that had accumulated formerly by an illegal activity of an individual or organization.[37]

1.4 Money Laundering and Organized Crime:

Money laundering is considered as an integral part of "Organized Crime", as it is a criminal activity of an organized criminal group. The Transnational Criminal Organizations have resorted to money laundering in different countries in an effort to legitimize the proceeds of crime.

[37] Money Laundering, an article by "Saman Malik"

"Chicago Crime Commission/IIT Research Institute gives the definition of an Organized Crime in following words";

"Organized crime consists of the participation of persons and groups of persons (organized either formally or informally) in transactions characterized by;

(a) "an intent to commit, or the actual commission of substantive crimes";
(b) "a conspiracy to execute these crimes";
(c) "a persistence of this conspiracy through time (at least one year) or the intent that this conspiracy should persist through time";
(d) "the acquisition of substantial power or money, and the seeking of a high degree political or economic security, as primary motivations".][38]

According to "UN Convention against Transnational Organized Crime"

Article 2(a) of "the United Nations Convention against Transnational Organized Crime" characterizes "organized criminal group"" as a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences , in order to obtain, directly or indirectly , a financial or other material benefit"

[38] Text has been directly taken from the IIT Research Institute/Chicago Crime Commission's definitions from Papers no 1971, 264), placed on its websites.

A comparative analysis of both definitions demonstrates that key elements/ features of a prearranged criminal activity (organized crime) are fairly present in money laundering activity, as;

- Money laundering is a practice which is long-standing and ongoing;
- It is an unlawful activity, performed by a group of criminals' i-e more than one.
- It is an activity of a transnational nature which is accomplished regardless of national borders and jurisdictions at large scale;
- It causes to generate proceeds, which are habitually made accessible for illegal purpose or illegitimate use.[39]

A famous writer "J.D.Agarwal", (Chairman, Indian institute of Finance & Professor of Finance) states that offenders who are engaged in money laundering practices, usually commit three types of crimes such as crimes of honor or obsession, crimes of destruction or violence and financial crimes or crime committed to attain money. [40]

1.5 Magnitude of the money laundering (IMF Survey):

Money laundering takes place outside the average range of fiscal statistics however, inferring from other dimensions of underground economic activity; rough estimates have been put forward to provide the problem some sense of level or scale.

[39]Text directly taken from" the United Nations Convention against Transnational Organized Crime.

[40] (J.D.Agarwal, Professor of Finance, Chairman, Indian Institute of Fianance, Delhi,India " Keynote Address on Money Laundering: New Forms of Crime Victim.

In accordance with "1996 IMF estimate report", aggregate size of worldwide money laundering amounts to 2-5% of world GDP per annum i-e between 800 billion and 2 trillion US dollars now a days.[41] In 2005 the United Nations cited the range of $500 billion to $1 trillion US dollars annually.[42]

[41] IMF survey report of money laundering 1996

[42] Directly taken from http://www.unodc.org/unodc/en/money_laundering.html, accessed June 2, 2005)

Chapter 02

Chapter 02

Initiatives Taken By International Community to Combat Money Laundering Problem.

2.1 Anti Money Laundering Efforts in a Global Perspective

2.2 International Conventions against Money Laundering

2.2.1 the 1988 Vienna Convention (against illicit Traffic in Narcotic Drugs and Psychotropic substances);

2.2.2 the 1990 Strasbourage Convention (towards the Council of Europe,s Convention on laundering);

2.2.3 the 1997 OECD Convention on Money Laundering

2.2.4 the 2000 UN Convention against Transnational Organized Crimes

2.3 Global and Regional Action Plans against Money Laundering

2.3.1 the 1989 G-7 Summit FATF 40 Recommendations;

2.3.2 Caribbean Financial Action Task Force

2.3.3 the Asia Pacific Group on Money Laundering (APGML)

2.4 Anti Money Laundering Legislation of Various States in co-operation with international Standard.

2.4.1 Canada

2.4.2 United Kingdom

2.4.3 America

2.4.4 India

2.1 Global Anti Money Laundering Regime

Although concealing or hiding of cash has been around most likely since money was invented, but the term money laundering is of moderately recent origin. So in their contemporary perspective, primarily, anti money laundering laws and regulations were planned only for the disposing of profits derived from the trade of narcotics and psychotropic substances In 1986, the United States was the only country in the world that recognized money laundering as an offence and criminalizes it accordingly but that was only interconnected to illicit drug- business. [43]

"The legal economy has gone global and the crime economy has gone global as well", these are the words of "Arnaud de Borchgrave" (Director of the global organized crime project at the Centre for Strategic and International Studies in Washington). It is observed that with the onset of globalization, increasing integration of the world's financial system, removal of barriers to the free movement of funds across the international border, growth in the last decades of organized crime and instant electronic money transfers, allowed money launderers to make use of this system to obscure and conceal their dirty gains. [44]

[43] Corporate Practices manual on Extortion and Bribery", by David Lyman, 1999,(written for the ICC,s Standing Committee on Extortion and Bribery.

[44] A paper on "Money laundering & Organized crime :an Overview" by Proximal Consulting Co

Now criminals are able to transfer their ill-gotten gains between national and international jurisdictions, making it complicated for the enforcement authorities to trace out and seize or take possession of these proceeds.[45]

Money laundering is said to be the world's third largest business by value, and it is still growing.[46]

No one has knowledge about the exact magnitude of the problem, however estimates arising from various calculations basis on deterioration lines and those of financial intelligent units indicate that globally money laundering amounts to more than U$$ 2 trillion to U$$ 2.5 trillion per annum (i-e. about 6-8% of World GDP 2006 [44.444 trillion)[47]

According to the latest "Global AML Survey, published in 2007, a staggering US$ 1 trillion per year is being laundered by financial offenders, drugs dealers and arms traffickers worldwide.[48]

With this much laundered money in the wrong hands, criminal syndicates are able to expand their operations, resulting in more violence, higher levels of addiction and a range of related socio-economic problems throughout the world.

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[45] " Supra note 1
[46] Robinson, Jeffrey. "The Laundrymen: Inside Money Laundering, the World's Third-Largest Business," pg 242. Arcade Publishing, New York,1996.

[47] Agarwal, J.D. and Aman Agarwal, (2004), "International Money Laundering in the Banking Sector"

[48] KPMG Global Anti Money Laundering Survey, published in 2007

Keeping in view the whole situation, international community realized the need for adoption of legislative measures to inhibit money laundering and suspicious financial transactions, to track and recover the illegitimate income and to prosecute launderers.

So the primary requisite for inhibiting money laundering is to enact appropriate and adequate national laws, which have to be drafted in accordance with domestic circumstances or conditions and also taking into account the global nature of this menace.[49]

The 1988 Vienna Convention on Money Laundering was the first international treaty which recognized "money laundering" as an offence and penalized it accordingly. Scope of the "1988 Convention" was restricted only to drug related offences initially however it provided a legal framework to the countries which has been used as a basis for the creation and development of anti money laundering policy. Later on range of global standards and guidelines set by the Convention was expanded to all serious offences.[50]

In 1988, a committee called the "Basel Committee on Banking regulations and Supervisory Practices" was formed comprising of representatives of "central banks and decision-making bodies of G-10 group of developed nations.

[49] Supra note 5

[50] http://www.unodc.org/unodc/money_laundering_cycle.html

Targets of the committee were to improve banking administration and to make prudential regulations stronger in member as well as non-member states. On 12 December 1988, a "Statement of Principles" was issued by the committee, objective of which was to preclude an illegal use of banking system particularly for "money laundering".

It was a first momentous step towards "international preventive regulation of economic institutions on the subject of "money laundering", the role of which was to "encourage the banking sector to adopt guidelines regarding customer identification and to ensure that banks are not used to hide or launder funds acquired through criminal activities and, in particular, through drug trafficking."[51]

In 1990, "Forty recommendations" were adopted by Financial Action Task Force, which are considered as benchmark for actions required for fighting against "money laundering". Subsequent to 9/11 event, the FATF added eight special recommendations to address issues particularly linked with terrorist-financing.

In November 2000, UN General Assembly adopted a "Convention against Transnational Organized Crime" through its declaration no 55/25. The convention was built upon the standards established by "the 1988 Convention".

[51] *Op. cit.*, p. 6; see also Gilmore, "Money laundering".

During October 2001, the "Basel Committee on Banking Supervision" pronounced "Customer Due Diligence rules" designed for banking institutions in order to strengthen vigilant system related to the economic affairs of "politically exposed persons" (i-e "government leaders" and "public representatives") and to restrain corruption and exploitation of public finance.

In 2001, following the incident of September 11, a resolution 1373 (2003) was adopted by "Security Council".

In this resolution, the Council, decided to take two important measures, (1) to impose a liability on the State parties, for the curbing and suppressing terrorist financing activities and (2) to form a committee of "the Security Council" including all the members of Council for monitoring the enforcement of "resolution".

In 2002, "International Convention for the Suppression of Financing of Terrorism", (adopted by "UN General Assembly" in December 1999), was come into force on April 10 2002, which necessitates from each member state to take proper measures for identification, tracing out, detection, seizure and recovery of any funds used for commission of a terrorist activity (Art 8).

International community is paying attention to the money laundering issue and is serious to control and prevent money laundering practices that is why; various bilateral initiatives were taken for adoption of legislative and policy measures to be employed by the different States of the world. Various States have been involved in a series of self-evaluation practices and mutual assessments, agreed upon by regional bodies for curbing "laundering money" in accordance with guidelines of the FATF.

International institutions such as "International Monetary Fund", the "World Bank" and FATF have built up a "common methodology for appraisal", covering legal and institutional structure and preventive measures for the economic zone to assess the State, s compliance with international standards for responding to "money-laundering" and combating "financing of terrorism".

These included "European Union (EU)", the "Council of Europe", "Gulf Cooperation Council", "Organization of America (OAS)", "Caribbean Financial Action Task Force (CFATF)", "Asia/Pacific Group on Money Laundering (CSAP)" and OECD..

Intention of the states and territories within the framework of these regional and international bodies is to encourage and tighten up effective measures against "money laundering".

2.2 International Conventions against Money Laundering:

On 19 December, the "UN Convention" was taken up in Vienna and on 11 November 1990, it came into force. Till 1997, 136 countries had signed and ratified the Convention whereas 13 more had signed but not yet ratified it.[52] By November 2000, a total of 157 states and European Union had become parties to the Convention.

[52] Signatories to UN Narcotics Convention", Bureau for International Narcotics and Law Enforcement Affairs, *International Narcotics Control Strategy Report, 1997* (Washington, DC: U.S. Department of State, March 1998 INCSR

Article 2(1) of the Convention defines the purpose in following words;

Purpose of this Convention was to encourage collaboration among state parties in order to address various features of illegal trafficking in "narcotic drugs" and "psychotropic substances" with global dimension.[53]

The Convention as "Baldwin and Munro remark"[54] provided a foundation for putting global controls on "money laundering" while setting out standard for global "anti money laundering" endeavors to follow.[55]

It created obligations of recognizing "money laundering" as an offence, making co-ordination in "money laundering investigation" and concerned proceedings regarding extradition and to enact laws for assisting, detecting, confiscation and forfeiture of illegal proceeds.[56]

[53] UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, Preamble. 20 December 1988. See http://europa.eu.int/comm/justice_home/doc_centre/drugd/international/printer/doc_drugs_international_cooperation_en.htm.

[54] Renowned writers

[55] *Op. cit.*, p. 1; see also Gilmore, "Money laundering" pp. 3-5.

[56] Commentary on the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. New York, United Nation, 1998.

"Article 3 of the Convention (criminalization of money laundering)":

Under this article, Convention requires from signatory states to penalize money laundering as an offence, to pass laws for the confiscation of proceeds generated from crimes and to assist identification, tracing out, sealing up and capture of illegal proceeds and assets.[57]

Article "5 of the Convention" talks about "Empowerment of banks and competent authorities":

The state parties should empower the courts and competent authorities for checking and confiscating bank records and trade-secrecy of banks should not be employed as justification against non-compliance of this provision.

Banks and other economic institutions should also be well-informed that if a party having jurisdiction over an offence makes an application for confiscation and seizure , then the party receiving request is under an obligation to take necessary measures for identification, tracing out, and take hold of the property in question.[58]

[57] Supra note 10

[58] ibid

Article 7 of the Convention requires "mutual legal assistance":

In this article, 'State Parties' are required to afford each other "mutual legal assistance in terms of wide measures" relating to predicate offences. "Art. 7(2)(g) expressly states that "mutual legal assistance include co-operation in the areas of identification or tracing proceeds, property, instrumentalities or other things for evidentiary purposes and the provisions of certified copies of relevant documents including bank records".

Likewise banks are required to make sure that whether their "Anti Money Laundering (AML)" mechanisms comply with universal accepted standards irrespective of boundaries for their implementation.[59]

Article 9 of the Convention requires, Co-operation for suppression of offence):

Finally, Art 9 (1) of the Convention demands from state parties to make a close co-operation with the purpose of suppressing the offences sorted out under the Convention. Art. 9(1) (b) (ii) expressly imposes this duty to investigations concerning movement of funds or property acquired as an outcome of offences taken in hand under the Convention.[60]

[59] Supra note 10
[60] Ibid

2.2.2 "The 1990 Strasbourg Convention leading the Council of Europe's Convention on laundering":

In November 1990, "Strasbourg Convention" was adopted by the "Council of Europe". The convention was signed by 41 States, out of which 27 have ratified it till December 1999.[61] Basically, the "Council of Europe" is a regional body which was constituted with certain objectives, such as:

- strengthen democracy,
- human rights,
- rule of law in its member states by corresponding its guidelines and promoting adoption of universal practices and principles.

Like Vienna Convention, the Strasbourg Convention also requires from each jurisdiction (who signed and enforced it) to enact laws for banning "money laundering" generating through drug-trafficking. However, the point of distinction between the both treaties is that Vienna Convention limits the underlying predicate offence only to illicit drug- trade whereas the Strasbourg Convention does not do that and requires member states, for promulgation of laws penalizing "laundering of profits" derived from any "serious crime".

State parties are also called for adoption of legislative steps authorizing confiscation of income or property of heinous crimes along with instrumentalities of an offence or as an alternate cost of property in question.

2.2.3 The 1997 OECD Convention

The "1997 Convention against Transnational Bribery of the Organization for Economic Cooperation and Development (OECD)" was adopted for criminalization of bribery received by "foreign public officials" in multinational corporate dealings.

To handle supply side of paying-off (bribery) while paying special attention to a group of states which is accountable for most of the international exports and foreign venture or investment was another aspire of the "1997 OECD Convention"".[62]

Till December 2009, total 38 States joined the Convention, who entrusted for penalizing "foreign bribery" as well as an effective collaboration among states regarding mutual legal assistance and extradition issues. Member countries also gave undertaking for setting up a preventive system such as accounting and auditing procedures for business.

Duties imposed by "the Convention" on State Parties are classified into following groups, such as:

1. **"Criminalization":** Art 1 of "the convention" requires member countries to identify or establish "foreign paying-off (bribery)" as an offence under national law and to penalize actions of bribery in global business.[63]

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[61] Ian Carrington, (2000) Countering Abuses of the Banking Sustem-Online Available at http://www.undoc.org/palermo/carrington.doc

[62] OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions , directly taken from , http://www.oecd.org/department/en,html.

[63] http://www.worldpolicies.com/english/tb_oecdc_legal_persons.html

2. **[illegible]"**: Art 2 of "the convention" calls state parties for establishing legal responsibility of companies and prohibiting them from using such accounting practices which help out in the concealment of bribery of foreign officials. [64]

3. **"International cooperation":** As foreign bribery engages actors of various jurisdictions, so most of times, international financial channels are approached for the purpose of carrying on or hiding international bribery, "Art 9" of "the Convention" stipulates the requirement of "mutual legal assistance" and "exchange of information" among states. [65]

4. **"Money Laundering":** Member states are also required to "treat hiding of corruption proceeds" as "money laundering" crime with the exemption of few cases. [66]

5. **"Monitoring":** in order to promote and monitor full implementation of "the convention", Signatory Sates are entailed for mutual coordination in follow-up reviewing process under "Art 12".[67]

[64] Ibid
[65] Ibid
[66] Ibid

2.2.4 Un Convention against Transnational Organized Crime (the Palermo Convention)

The Convention was approved by resolution # A/RES/55/25 of 15 November 2000 at the fifty-fifth session of the General assembly of the United Nations and entered into force on 29 September 2003. Till April 2005, 107 out of 147 member states ratified the Palermo Convention, the Convention was signed by various member states at the "Palazzi di Giustizia" in Palermo, Italy, and therefore it is also known as Palermo Convention.[68]

Main points of the obligations imposed by the Convention;

Objective of the Convention is defined in the Article, which is "to promote cooperation to prevent and combat transnational organized crime more effectively".

Article 5 of the Convention, requires from signatory states, "to criminalize even intentional participation (i-e organizing, directing, aiding, abetting, facilitating or counseling the omission of serious crime) in an organized criminal group for the commission of serious crimes".[69]

Under article 6, the Convention provides an all-inclusive formulation for criminalization of the laundering of the proceeds of crime to state parties, so that they may criminalize or punish the laundering activities in the best way.

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[67] Ibid

[68] United Nation Convention against Transnational Organised crime, directly taken from text doc.A/55/383.

Another obligation imposed by the Convention is in the form of article 7 which calls for the state parties to take various measures (i-e administrative, legislative, regulatory and supervisory measures in order to detect and monitor the movement of cash and other negotiable instruments)) for the curbing of money laundering activities.[70]

Article 7 of the Convention necessitates to establish the liability of legal persons (corporations same like the natural) for participation of in serious crimes involving an organized criminal group and punish them accordingly.[71]

The procedure for confiscation and seizure of the proceeds derived from an illicit activity is given in the article 12 of the Convention, for the guidelines of the signatory states.

Article 13 of the Convention needs sufficient cooperation with other states for the identification, tracing and confiscation of the proceeds of crime, if situated in that other state.

Later on, further three protocols were added in the Convention which focuses upon certain specific aspects and symptoms of an organized crime, names of these "Protocols" are as follows;

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[69] Supra note 25

[70] Ibid

[71] Ibid

"the Protocol to Prevent, Suppress and Punish Trafficking in Persons especially Women and Children"; (ii) "the Protocol against the Smuggling of Migrants by Land, Sea and Air"; and (iii) "the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition".[72]

Before joining any of the "Protocol" as member state, countries are required to become parties to "the Convention". "The Convention" is seemed as a leading breakthrough in the prevention movement of "transnational prearranged crime", and also embodies upon state parties the seriousness and gravity of dilemmas created by "money laundering".

A gist of duties imposes by the Convention are such as:[73]

1. To define or identify all serious crimes as offences liable to be punished by utmost denial of liberty, i-e not less than four years in any case.[74]

2. To adopt all possible measures or initiatives in opposition to "transnational organized crime" by establishment of certain crimes as 'domestic criminal offences' such as "contribution in an "organized criminal group", "money laundering", "corruption" as well as "obstruction of justice". [75]

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[72] Names of the Protocols taken from the text of the Palermo Convention.
[73] ibid
[74] ibid
[75] ibid

3. to promote and enhance close international cooperation for dealing with laundering problems, first by taking up "modern and far-reaching mechanism for transportation of national criminals from one state to another through extradition treaties", "joint legal assistance" and second "law enforcement coordination" by "sponsoring various trainings", "methodological assistance workshops" for enhancement of building capacity of countrywide institutions".[76]

Protocols:

- On 25 December 2003, UN General Assembly taken up its first protocol called the "Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children" through declaration 55/25. The Protocol is viewed as first legally binding international instrument which provided an approved definition of "trafficking in persons" or "illegal trade of human beings". Primary object of the definition was to assist local jurisdiction for creation of trafficking in person as domestic offence that would encourage international collaboration for investigation and prosecution of "trafficking in person". To provide security and assistance to victims of "trafficking in persons" along with their fundamental human rights was another collateral goal of the Protocol.[77]

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[76] ibid

[77] "United Nations Convention against Transnational Organized Crime and its Protocols "available on, http//www.undoc.org/undoc/en/treaties/CTOC/CTOC-COP,html.

- On 28 January 2004, UN General Assembly adopted second protocol named as "Protocol against the Smuggling of Migrants by Land, Sea and Air".

  The protocol targeted those organized criminal groups who would have been found involving in "illegal-trade or smuggling of migrants" against a great threat to migrants and a huge profit for the criminals. A great success of the protocol was the development of internationally agreed definition of illegal-trade of migrants or refugees.

  Intention of the protocol was the prevention of migrants-smuggling by encouraging collaboration among member states. To protect the rights of victims and to stop the worst form of their exploitation, that is an essential part of smuggling process.[78]

- On 31 May 2001, UN General Assembly approved third protocol called the "Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition". It was come into operation on 3 July 2005. The protocol is considered as first legally binding mechanism on "small arms", adopted at international level. Focuses of the protocol was upon the promotion, assistance and strengthen of close collaboration among member states for the prevention and eradication of the "illicit manufacturing of and trafficking in firearms, their parts and components and ammunition".

[78]ibid

Obligations imposed upon the jurisdictions who ratified the protocol By ratifying the Protocol included firstly, the creation of criminal offences concerning "illegal manufacturing of, and trafficking in, firearms", secondly launching a system of licensing in order to guarantee valid manufacturing of, and trafficking in, firearms", and lastly "marking and detection of firearms".[79]

2.3 Global and Regional Action Plan against Money Laundering:

2.3.1 The 1989 G-7 Summit FATF 40 Recommendations:

Another important initiative against the evil of money laundering was the Financial Action Task Forum. The FATF, s forty-recommendations and superior cooperative aptitude superseded the Basle Statement. It does not indicate that "Basle committee" became immaterial to enlargement of global "anti-money laundering system" but its position or functioning is complementary to that of FATF, for development of decision-making standards and encouragement of international supportive regulations against "finance-launderings".

In 1989, at the Paris Economic Summit, the "Group of seven major developed countries" (Canada, Spain, Italy, Japan, Germany, the United Kingdom, and the United States) and the "President of European Communities Commission" set up an international forum for tackling "money laundering" issue that is called 'FATF.

[79] ibid

Later on during 1991 and 1992, "FATF" went to include 28 associate members[80], while 31 countries affiliated with this during 2000, number of member states was increased from 31 to 33 in 2003 and till 2007 to onwards 34 states joined it.

The FATF is a principal intercontinental body dealing with "money laundering issue" key target of which is to initiate certain standards or guidelines and prop up strategies at both nationwide and worldwide level for combating "money laundering" and "financing of terrorism". The position of "FATF" is like "policy making body", which is making efforts to achieve an indispensable political-will of governments in order to create national lawmaking and dogmatic restructuring in concerned areas.[81]

Primary jobs of the FATF are to (a) monitor members' progress in execution of required measures or actions (b) review "laundering" & "terrorist-funding" skills as well as responding measures and (c) promote approval and enforcement of appropriate steps at international level along with association of other global organizations concerned in prevention of "money-laundering" and "financing of terrorism".

[80] "Twenty-eight states which joined FATF during years of 1991-92 included "Australia", "Austria", "Belgium", "Canada", "Denmark", "Finland", "France", "Germany", "Greece", "Hong Kong", "Iceland", "Ireland", "Italy", "Japan", "Luxembourg", "Netherlands", "New Zealand", "Norway", "Portugal", "Singapore", "Spain", "Sweden", "Turkey", the "United Kingdom", the "United States" and the "Commission of the European Communities and the Gulf Co-operation Council"".

Forty-Recommendations are seemed as keystone of FTAF, firstly amplified in "1990" whereas revised during "1996". These recommendations lay down procedures for opposing and responding "money-laundering activities" while requiring from state parties the endorsement of "1988 Convention", recognition of "money laundering" as offence, punishing it accordingly, promotion international co-ordination among states and elimination of majority of banking-secrecy laws. In 1995 all countries were pushed for the enforcement of the "Forty-Recommendations" by "International Narcotics Control Board".

The first report (published in April, 1990) of FATF is considered most significant as it provides a shiny surface to subsequent reports. Achievements of the first report were analysis of nature and scale of money laundering, consideration for launching an action plans locally and globally for dealing with it, and arranged forty recommendations for collaborative global regime.[82]

Focus of current recommendations is upon three aspects, (a) to improve domestic legal framework of member states, (b) to expand the role of economic system and (c) to strength global collaboration among the state parties.

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[81] M.M.Malik, Secretary Institute of Banker Pakistan, (2002) Anti Money Laundering Measures-A Guide For Bankers, Karachi: Institute of Banker Pakistan

[82] "International efforts to combat money laundering"; "the Role of the Financial Action Task Force", by "Baldwin, Munro and Sherman Tom, in David Hume Institute.

The main focus of recommendations issued by FATF is on following issues.[83]

a. In order to deal with phenomenon of displacement, state parties should implement 'these proposals' equally to "banking and non-banking financial sector" within national boundaries. (Recommendations 1 to 3)

b. Financial institutions should be firstly, acquainted with the identity of their customers while performing transactions or creating relationship with them, secondly should not maintain unnamed or mysterious accounts, thirdly should maintain "customer identification" record and keep it safe for as a minimum five years subsequent the transaction date.

   For the object of criminal inquiry and prosecution these records should be within the reach of courts and competent authorities. (Recommendation 5 to 12)

c. An extra-ordinary attention should be paid to all unusual and doubtful arrangements by economic institutions while legal measures for protection of these fiscal institutions and workers from civil and criminal accountability intended for violation of secrecy rules (in cases where "suspicious criminal activity reporting" is made to concerned authorities in good faith) should be adopted by legislative bodies.

[83] "The Recommendations are reprinted in David Hume Institute, and in Baldwin & Munro Vol, from most of the remainders of 1990's report".

d. Reporting of suspicious transactions by economic institutions (mandatory or voluntarily) should be in conformity with the guidelines provided by competent authorities and a compliance program should also be developed as necessary.
e. Special attention should be made to the arrangements connected, to countries (which do not make full or impartial implementation of these recommendations) as well as branches or subsidiaries situated in foreign.

f. State parties should study the probability of measures for monitoring cash movement across the borders while guaranteeing proper use of information and freedom of transfer of funds. A feasible system for movement of cash should also be introduced by the countries where fiscal institutions and mediators would report to a central body regarding the arrangements of a stipulated amount that would present maximum information about "money laundering" cases.

g. A transportation of capital except cash transfers through other methods like credit cards and cheques should be supported by the countries.

h. Courts and competent bodies of a country should make sure first the development of sufficient money laundering control action plan, second collaboration upon money laundering inquiries and third successful enforcement of this action plan in other occupations handling cash.

i. Competent bodies should prepare guidelines for support of financial institutions in order to comply with and form prevention of manipulation or capture of monetary institutions by criminal groups.[84]

2.3.2 "Caribbean Financial Action Task Force (CFATF)":

The "Caribbean Financial Action Task Force (CFATF)" was formed by thirty states of the "Caribbean Basin", which agreed for implementation of "common countermeasures" in order to tackle "money laundering issue".

Initially, in 1990, envoys of approximately twenty "Caribbean States" joined the organization of "Caribbean Financial Action Task Force (CFATF)". In November, 1992, during ministerial conference held in Kingston, Jamaica, a declaration was approved; name of "Kingston Declaration" was assigned to it. Inherently, the Declaration took up forty recommendations of FATF alongside few of others which focused on special circumstances peculiar to "Caribbean States".[85]

Except Cuba, all jurisdictions within the Caribbean have joined "CFATF". Major target of activities of this organization is to develop, utilize and execute mutual evaluation procedures and guidelines.[86]

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[84] Supra note 83

[85] "Caribbean Financial Action Task Force Annual Report" Release 95-4 (December 1995)

[86] http://www.cfatf.org

2.3.3 The Asia Pacific Group (APG):

"Asia/Pacific Group" (APG) on "money laundering" is an autonomous and joint global organization, which was created on the basis of "awareness raising" activities undertaken by FATF, in the early 1990s as part of its approach to promote adoption of money laundering counter actions all over the world.[87]

In February, 1997, the "APG" was officially established in "Thailand (Bangkok)" consisting of thirty-six state parties (including Pakistan) and several regional and global observers. The "FATF", "World Bank", "UNODC", "IMF", "ADB", "Egmont Group of Financial Intelligence Units" and "Asia Pacific Economic Council (APEC)" are several international bodies who partake with and encourage "APG" efforts in response of "money laundering".[88]
Basic commitment of member states and observer of "APG" is to diminish "serious crimes" such as "money laundering" and "funding for violence activities" in "Asia/Pacific zone" while taking in hand and successfully implementing internationally approved procedures in special context of FATF-Recommendations.[89]

"Asia Pacific Group" actually affords opportunities for sharing regional skills & information and development of preventive measures against "money laundering" keeping in sight framework provided by FATF.

[87] www.apgml.org
[88] ibid
[89] [illegible]

Key Roles of "APG" are:[90]

- Evaluation of "APG member states" conformity with internationally acknowledged standards by a forceful "mutual assessment" program.

- To facilitate compliance by "APG member states" with "global AML/CFT measures", the "group" will co-operate with donor agencies and states within "Asia/Pacific region" for technological support and trainings.

- Effective participation and cooperation with global AML networks, principally with FATF and other regional AML bodies.

- In order to make "APG members" well-aware about systematic threats and vulnerabilities of money laundering, the "group" will arrange research and study sessions upon "money laundering and terrorist-funding" for them.

- To make contribution into "global Policy development of anti money laundering and counter terrorism financing standards" by active Associate Membership status in the FATF.

[90] "FATF factsheet, "Anti Money Laundering efforts in the Asia/Pacific region"".

2.4 Anti Money Laundering Legislation of Various States in co-operation with international Standard.

International Response:

For preceding 15 years the international community has been making efforts to prevent "drug-trafficking", "organized crime" and terrorist activities. As an essential element of this strategy, main focus of the countries is upon the detection and tracing out funds which connect criminals to their offences. Countries are establishing laws for identification, forfeiture and confiscation of illegal proceeds- income generated from crimes.

2.4.1 "Canada":

Canada made a quick response in the enactment of legislation handling with the profits or outcomes of money laundering and other crimes.

In 1980s and 1990s the building blocks of Canada's approach against "laundering of proceeds" had been constructed.

- In 1989, "Criminal Code of Canada" established money laundering activities as criminal offence, conferred powers to restrain and seize the earnings of various offences and afforded protection to individuals who voluntarily gave information regarding "suspicious transactions" to the investigating bodies or police.

- In early 1990s, certain guiding principles and best performance rules were issued by "Office of the Superintendent of Financial Institutions" (OSFI). Another supplementary job of "OSFI" is to analyze and observe compliance with these principles as part of its supervisory strategy for fiscal institutions, which are controlled federally.
- In 1991, the "Proceeds of Crime (Money Laundering) Act" (first legislation) creates an obligation of launching a system of record keeping and identification of clients (involved in transactions of huge amount, for instance, larger than $ 10,000).
- In 1991, a major development was made by "Canadian" institution, "RCMP" by which three "Integrated Proceeds of Crime Units" were launched for investigation and indictment of "individual organized criminals" as well as major groups. Subsequently, in 1996, further ten units were constituted in the corners of "Canada".
- During 1993, another positive initiative was taken by "RCMP and Canadian Bankers Association" in the shape of "MOU" (memorandum of understanding) intending deliberate exposure of entire suspicious and unusual arrangements which may cause for "money laundering".[91]

[91] "Canada's Auditor General' Report of April 2003",www.oag-bvg.gc.ca

"Keeping pace with the international community";

Primarily strategy adopted by "Canada" was in full conformity of international norms, however with the passage of time changes were being incorporated in these standards thus "Canada" was condemned for remaining at the back. As a result, during the year of 2000, "Canada" replaced "the Proceeds of Crime (Money Laundering) Act" with a modern legislation carrying same title but wider range.[92]

Main points of new legislation were;

- Two important obligations were imposed by the new law, one, "reporting of distrustful transactions" and the other, transportation of huge amounts beyond national boundaries. Compulsion of record- keeping was extended to real estate companies, accountants, governmental authorities and other financial mediators from financial sector.[93]
- This legislation also set up the "Financial Transactions and Reports Analysis Centre of Canada", whose duty is to collect and review information supplied by economic institutions along with other businesses.
- Revised law furthermore authorized the "Centre" for monitoring of these business and financial institutions, whether they are fulfilling requirements of "record- keeping and reporting of certain transactions". [94]

[92] Ibid

- During 2001, "Anti-Terrorism Act" enlarged a range of "Proceeds of Crime (Money Laundering) Act" and power of "Financial Transactions and Reports Analysis Centre" while authorizing for detection as well as punishment for "financing-terrorism". A new name of the "Act" was "Proceeds of Crime (Money Laundering) and Terrorist Financing Act". [95]
- Scope of provisions ("Criminal Code") dealing with appliance of illegal earnings was too spread out to all crimes for which a person can be accused rather than only serious crimes.

- An important amendment was also incorporated in the "Immigration and Refugee Protection Act" that an individual who is a member of an "organized criminal group" which is observed to be participated in "money laundering" cane be disqualified for entrance in Canada.[96]

After incorporation of all these amendments, "Canada's policy" for fighting against "money laundering" was become compatible with global norms and best practices i-e, countries that have made an effective implementation of FATF guidelines on money laundering.

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[93] Canada's Strategy to Combat Money Laundering www.oag-bvg.gc.ca

[94] Ibid
[95] Ibid
[96] Supra note 93

2.4.2 United Kingdom:

United Kingdom accomplished its international commitments of recognizing "money laundering" as offence and penalizing it accordingly through various preliminary legislations, such as the "Criminal Justice Act 1988", the "Drug trafficking Act 1994" and "Terrorism Act 2000".

These legislations make it mandatory for the financial institutions to arrange a report of "suspicious transactions" and submit it with either law enforcement agencies or reporting officer for "money laundering" where employer of the working individuals has the said officer.

Moreover, two significant issued were handled by each of the above statutes first duty to form "suspicious activity reports" in the terms that a person must report about suspicious dealings if he knows or believes that he or his institution is on the brink of participation in money laundering.

Second, another offence "failure to report suspicious transactions" was created by the "Drug Trafficking Act" and the "Terrorism Act" which say that "where a person knows or believe or has reasonable grounds for knowing or believing that any other person is involved in "laundering either the earnings of drug-trafficking or violence-related assets" but does not report to law enforcement institutions about his suspicion, he is said to commit the offence of "failure to report""[97].

[97] "UK "Drug Trafficking Act 1994 and Terrorism Act 2000", available at www.osi.gov.uk.

"Anti Money laundering laws" of UK in "Sections 327 to 340" of the "Proceeds of Crime Act 2002" ("POCA") and all "Regulations of 2003 & 2007" comprehensively "cover custody, acquisition, transportation, use, conversion, concealment and removal of illegal and terrorist property".[98]

In UK, offence of "money laundering" may be committed even without involvement of either cash or laundering, as it may be related to some other corporeal or incorporeal assets and may be the evasion from any accountability liability. No lower limit of money has been fixed for reporting (i-e over $ 10,000) and a doubtful transaction of a single £5 may be called for reporting.[99]

Not only financial service providers and corporations but all persons were required to report even about the personal participation in offences and distrustful practices relating any type of cash or property. Thus "in UK", if a thief embezzles a single shirt from fabric store, he is said to commit "money laundering" because outcomes or profits generated from criminal activity were in his custody.

Technically, if he wants to escape from the prosecution on behalf of "money laundering", he has to inform law enforcement agencies and seeks approval for continued possession of vest.

Definition of money laundering offence in UK legislation also includes an arrangement by any person, for facilitation, acquisition, custody, exploitation, and control of criminal assets by another person.

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[98] "UK Proceeds of Crime Act 2002" available on "http//www.opsi.gov.uk/acts2002/20020029.html".

[99] Supra note 97

Since UK legislation is extensive and "UK FIU authority", i-e, "Serious Organized Crime Agency", collects great quantity of "suspicious activity reports" ("SARs"), for instance 200,000 'SARs' were received only in the year of 2005.

2.4.3 American Legislation:

The "United States" is seemed as a country that made quick and earliest responses to "money laundering issue".

In 1970s, three important statutes were passed. First, the "Bank Secrecy Act or BSA", required certain banks and other "financial & non-banking economic institutions to retain records and provide information of certain "financial arrangements" over $ 10,000. Structuring transaction to avoid the reporting requirements, and money laundering itself, were not criminal offences.[100]

Second, Congress passed the "Organized Crime Control Act", which incorporated both "civil as well as criminal" penalty provisions in it. Third, Congress directed its attention specifically at major drug trafficking organizations by passing the, continuing criminal Enterprise statute, as part of the controlled Crime Substance Act 1970.

The CSA also contained forfeiture provisions. However neither "Organized Crime Control Act", nor CCE for forfeitures were commonly used, due to some procedural defects, until the enactment of the Comprehensive crime control Act 1984. [101]

[100] http//www.fincen.gov/news_room//statutes_regs/bsa/bsa_timeline,html.

[101] Transnational Criminal Organizations, Cybercrime, and Money Laundering, by "James R.Richards.

In 1984, BSA, RICO and CCE statutes were amended by a comprehensive Crime Control Act of 1984. This new statutes cleaned up some procedural problems with forfeitures, and also added section 5323 to the BSA, to provide for rewards for informants in cases where the government recovered more than $ 50,000[102] by owners or controlling authority, (d) to be registered by an owner or controlling person of the MSB, (iv) upholding of a list of trades for which MSB allowed to act as an agent related to financial services tendered by it, and (e) establishment of non-registration of MSB as an offence.[103]

In 2001, "Uniting and Strengthening America by Providing Appropriate Tools to Restrict, Intercept and Obstruct Terrorism Act of 2001" (called "USA PATRIOT Act") was enacted.

Steps taken by this law included (i) criminalization of terrorist-financing (ii) expansion of existing BSA structure by making strong "customer identification procedures", (iii) banning of fiscal institutions from doing business with overseas shell banks, (iv) building up "due diligence" procedures by financial organizations (v) improvement in "information-sharing system" among "economic institutions and U.S. government" (vi) enlargement of "anti-money laundering" mechanism requisites for fiscal organizations, (vii) enhanced punishments (both civil and criminal) for "money laundering",

[102] Supra note 100

[103] ibid

(viii) empowerment of "Secretary of the Treasury" for enforcement of "special measures" on countries, organization, and transactions of "primary money laundering concern" and (ix) helping out in record accessibility while requiring banks to answer regulatory applications for information within 120 hours.[104]

In 2004, "Intelligence Reform & Terrorism Prevention Act of 2004" was passed which substituted "Bank Secrecy Act" and obliged "Secretary of the Treasury" to set down certain rules calling "economic institutions" for reporting of worldwide "electronic transfers of finance" if he considers such information "reasonably necessary" for assistance in struggle adjacent to "laundering- proceeds and terrorist-funding".[105]

2.4.4 India:

Money laundering' legislations in India are administered and regulated by "Prevention of Money Laundering Act, 2002(PMLA)", which was passed on 28 November 2002 by Indian parliament. "An Act to prevent money laundering and to provide for confiscation of property derived from, or involved in, money laundering and for matters connected therewith or incidental thereto".[106]

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[104] ibid

[105] "Intelligence Reforms and Terrorism Prevention Act 2004 of United **States**".

[106] "Commentaries on Prevention of Money Laundering Act, 2002" by Shah, T.S; available on page no-26.

"Anti-money laundering" measures adopted by international community provided a great assistance to "Indian law-making bodies" for enactment of a comprehensive legislative framework for restricting "money laundering" practices as there was a dire need of such preventive steps.[107]

"Section 3 of 'Prevention of Money Laundering Act', 2002" defines money laundering. Before go through definition of "money laundering", an understanding about "proceeds of crime" is more relevant and relatable. [108]

"Section 2 (u) of the PMLA 2000 of India defined "Proceeds of crime" as "any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property".[109]

"Offence of money laundering is defined in following terms";

"Section 3 of 'PMLA 2000 of India' says that "Whoever, (a) acquires, owns processes or transfers any proceeds of crime; or (b) enter into any transaction which is related to proceeds of crime either directly or indirectly; or (c) conceals or aids in concealment of the proceeds of crime, commits the offence of money laundering".[110]

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[107] ibid

[108] "Crime and Money Laundering, the Indian Perspective by Tehran Jyoti available on pp-58".

[109] Section 3, directly picked form "Prevention of Money Laundering Act 2002 of India "

[110] The Prevention of Money Laundering Act, 2002..

"Section 4 of "the Act" prescribes punishment for money laundering offence in following words";

"that "any person found guilty of money laundering shall be punishable with rigorous imprisonment for a term which shall not be less than three years and which may extend to seven years and shall also be liable to pay fine which may extend to Rs.5 lakhs". "In the case offences related to drugs, the maximum sentence is extended to ten years".[111]

Sections 5 to 10 offer guidance for attachment and settlement of property engrossed in "money laundering".

"Section 11 requires imposition of an obligation upon banking institutions, financial sector and intermediaries for record-keeping of all such transactions or chain of transactions, the nature and worth of which is stipulated by the "Central Government", another requisite for these institutions is the validation and preservation of identity record of all their customers for period of five years from the date of closing the transactions in prescribed form.

The institutions will also be called for details of these transactions to the "Director" selected within the prescribed time and the manner".[112]

"Section 15, 16 and 17 talk about the holding of surveys, investigations and seizure of the property involved in money laundering".[113]

[111] Supra note 110

"Section 19 comprises of the provisions relating to preservation of the property captured in detection and seizure proceedings whereas section 18 bestows a little independence upon specific authority for detention of any person (without obligation of producing him before a Judicial Magistrate within 24 hours) who is suspected by them, of having committed an offence under the Act".[114]

Presumption clause of "section 23 of 'the Act' stipulates that burden of proof (mens rea i-e guilty mind) is upon the prosecution. It means that the accused is supposed for culpability and guilty state of mind and it is he who has to provide evidence of his innocence or absence of guilty mind".[115]

"Section 70 speaks about the independence and reliability of the "Prevention of Money Laundering Act, 2002" that the Act is to have overruling effect on other legislations that are in force for the moment".[116]

[112] ibid
[113] ibid
[114] Shah, T.S., *'Commentaries on Prevention of Money Laundering Act,2002'*, Current Publications

[115] ibid
[116] ibid

Chapter 03

Chapter # 3

Critical Analysis of Anti Money laundering Regime of Pakistan With Special Reference of Anti Money Laundering Ordinance 2007, Paksitan in Comparison with International Initiatives

3.1 "Money Laundering" in Pakistan

3.1.1 Developments, which made Pakistan heaven for dirty money

3.1.2 The "sources and magnitude of money-laundering"

3.1.3 Major "Conduits employed for money laundering in Pakistan"

3.2 Pakistan's measures against "Money Laundering"

3.2.1 National Laws

3.2.2 International Laws

3.3 Role of various regulators to ensure effective regulation and compliance with the Anti-Money Laundering Provisions

3.3.1 Anti Narcotic Force (ANF)

3.3.2 Federal Investigation Agency (FIA)

3.3.3 National Accountability Bureau (NAB)

3.3.4 "State Bank of Pakistan" (SBP)

3.3.5 "Securities & Exchange Commission of Pakistan" (SECP)

3.4 Anti Money Laundering Ordinance 2007, an Overview

3.4.1 Background and Significance of the AMLO 2007

3.4.2 Salient Features of Anti-Money Laundering Ordinance 2007

3.5 Critical analysis of Anti Money Laundering Ordinance 2007: i.e. flaws and Loopholes if any, in comparison with international standards and best practices

3.5.1 Different Opinions regarding the AML Ordinance
3.5.2 Flaws and Weaknesses of the AML Ordinance 2007

3.6 Pakistan's compliance with FATF & APG recommendations

3.1 Money Laundering in Pakistan

Since its inception, Pakistan has been the worst victim of economic crimes associated with "illegal trade of narcotic", "terrorism", "insider trading", tax-avoidance, "smuggling" and corrupt practices such as fraud and bribe, so the case of money laundering is also not different from these financial crimes, here too the government has been playing the role of an accomplice.[117]

According to a renowned legal expert "Dr. Ikramul Haq", "the ugly face of black money emerges in the corridors of power, political as well as administrative."[118]

In fact, for preceding thirty years, "money laundering" has been remaining as significant dilemma of Pakistan and all consecutive governments' approach towards these illegal activities like drug-trade, tax-avoidance and corruption was enormously benevolent as well as dual.[119]

Because, at one side, government enacted legislations for responding "money laundering" activities while on the other various schemes for allowing washing of dirty money are launched. Several consecutive governments took this step of floating new schemes for declaration of illegal and black money. The only objective of using this trick by government is to "win political rivals, to please their allies and to strengthen their rule".

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[117] "International Narcotics Control Strategy Report-2006, made public by Bureau for International Narcotics and Law Enforcement Affairs".

[118] An Article "Money laundering facilitated by tax laws, by Dr Ikram-ul-Haq, published in the 'News International Lahore" on February 8, 2004".

[119] Ibid

Another reason of proposing these amnesty schemes, which grant a trouble-free way for legitimacy of illegitimate income, is the truth that many individuals belonging to the ruling party would have accumulated enough dirty income that need to be cleanliness (whitening).[120]

Federal Board of Revenue (FBR, an authorized body for tax-collection) also affords a free hand to the launders as it never worried about the discovery of laundered funds, but always strengthens its relationships with tax escapers and launderers by offering them incomparable concessional plans for washing ill-gotten proceeds. [121]

To prove the above stement, Dr. Ikramul-Haq cited two evidences in this regard,:

(i) Firstly, "a letter no. F4 (34)/ITP/2002 dated 29-02-2002", in which an endorsement was made by FBR that "the Department would adhere to its policy of not probing the foreign remittance" brought in Pakistan by any citizen.

[120] "Legal Control of Corruption and Money Laundering in Pakistan", by Ijaz Hussain and "Corruption in South Asia"; India, Pakistan and Sri Lanka," Edited by K. M. de Silva, G. H. Peiris and, International Centre for Ethnic Studies, Colombo 'A. Samarasinghe' (http://payson.tulane.edu/ices/Default.htm)".

[121] "Federal Tax Ombudsman; role and challenges" by Dr.Ikram-ul-Haq, released by the News International Lahore on November, 24 2003"

Secondly, "a particular provision of section 111(4)" that has been added in "the Income Tax Ordinance 2001" (passed on the directions of IMF on 13 September, 2001), which afford an adequate liberty to launderers that if they dispatch their illegal funds (put abroad) in Pakistan via banking institution submit these foreign funds to State bank of Pakistan and acquire Pakistani currency as encashment, no question will be asked from them regarding ill-gotten proceeds.[122]

Generally, the governments announce these schemes on the proposals of FBR for so-called improvements in tax collection.[123]

3.1.1 Developments, which made Pakistan paradise for dirty money:

In its early days, Pakistan was not deemed as a constructive hub for money-laundering. But "certain developments in the recent past have made the environment encouraging for money laundering, for instance:

- Firstly, In the 1970s, the presence of a large emigrant community exceeding one million, chiefly in the Middle East, who were dependent upon non-formal banking facilities, i-e hawala/hundi, to transfer their foreign wages to Pakistan.[124]

[122] Supra note 123

[123] Ibid

[124] ibid

- Second development, according to Ijaz Hussain[125], is 'the rapid increasing of drug addiction, which was a minor problem in late 1970s, but later on it appeared as a major one with alarming figures of 3.1 million drug addicts out of which 1.5 million were heroin abusers.[126]

- Thirdly, introduction of amnesty schemes by governments, which present chances and abilities to whiten ill-gotten money without any upheaval. [127]

- Lastly, the promulgation of the Economic Reforms Ordinance 1992 which aimed at magnetizing overseas/foreign income into Pakistani banks and through which government offered tax enticement for legalizing foreign exchange available black money. So in this way, Pakistan turned into a paradise for money launderers.[128]

3.1.2 The sources and magnitude of "money-laundering":

Black money[129]'s core root is the underground economy, which comprises of unlawful business and monetary activities such as "bribery", "illegal trade of human body parts", fraud", "insider trading", "organized crime", "embezzlement", "computer fraud schemes" and "extortion by force".[130]

[125] An eminent legal expert and tax advisor of Pakistan
[126] ibid
[127] ibid
[128] ibid

[129] The black money is, in fact, the illegal money dominated by drug-trade, drug cartels, smuggling black marketing etc.

[130] "Black Economy; "Different Approaches to the Estimation of its Size", Economic Review, by Samina Khalil in 1994".

Banking sector, non-banking financial organizations, insurance corporations, currency exchange companies, money-transfer firms, real estate businesses and investment corporations" are all considered as targets of laundering money as these channels prop up laundering activities by introducing different methods, for exchange of cash into other financial instruments, for conversion of one state's coinage into the other and for movement of funds to other economic institutions.[131]

Most recent development in "money laundering process" is the substitution of precious stones that is used as another device of laundering funds. According to assertion of "Western intelligence community", currently, few very influential terrorist organizations are involved in the storage and replacement of diamonds, precious stones, tanzanite etc and launder funds for cross-border violence activities.[132]

According to "US Drug Enforcement Administration March 2002 Brief", "Pakistan is not considered a major center for international money laundering activity. However, Pakistan-based traffickers are extensively involved in the production and transportation of opiates and hashish. This suggests that drug proceeds are laundered within the country."[133]

131 "Observations of the Chairman, SECP quoted by Dr. Ikramul Haq"

132 The News International Lahore Edition June 26, 2004]

133 http://www.usdoj.gov/dea/index.htm]

In line with the approximate calculations of "International Monetary Fund (IMF)" cash that is laundered per annum is equal to 2-5% of world gross domestic production (between 800 billion and 2 trillions of U.S.dollars).[134]

The "UNDCP" report of 1994 described that local heroine industry in Pakistan is about to Rs.35 billion annually and revenue generated from this market is 5% of the gross domestic production of 1992-93, which is 20-25% of the entire predicted economy.[135]

The report also depicted that in 1980s, majority of the foreign exchanges of "analogous" cash industry was used to trade in alien goods and for departure of funds. Informal trade of foreign goods or smuggled commodities is about to 10 % of the formal or legal imports. Profits derived from illicit drug-trade were calculated as $ 1.5 billion for the year of 1992.[136]

These rough calculations show real volume of funds laundered in Pakistan.

[134] "Money Laundering in a Changed World, by Sam Vaknin,", an Indian author.

[135] UNDCP report of 1994, quoted by Ijaz Hussain in the article, "Legal control of corruption and money laundering in Pakistan"

[136] Ibid

3.1.3 Major Conduits used for "money laundering" in Pakistan:

Basically, money-laundering is a process of separation the proceeds (acquired through criminal activities) from their true origin. In this process, initial step is " Placement", where launderers introduce their funds to financial structure (banks) second step is "Layering", where launderers arrange a chain of transactions for movement of funds in order to disassociate from the root and final step is 'Integration,' where ill-gotten funds are amalgamated into the legal economy.[137]

The other primary means employed for "money-laundering in Pakistan" are as follows:[138]

i) "Hawala/Hundi": That is generally utilized by emigrant community for dispatching cash into Pakistan. It is considered as uncomplicated and undetectable conduit for transferring of illegal money, i-e finance is submitted at one place in form of any currency and delivery is made at other place anywhere in the universe. In this process, business is performed without any mark out and footprint.[139]

ii) "Bearer Investment Schemes": For preceding two decades these schemes are in existence and afford exceptional chances to launderers for commission of offence.

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[137] "Money Laundering in a Changed World, by Sam Vaknin,", an Indian author.

[138] "Legal Control of Corruption and Money Laundering in Pakistan", by Ijaz Hussain Hussain.

[139]" The hawala alternative remittance system and its role in money laundering"by Patrick M. Jost and Harjit Singh Sandhu

iii) "Other methods": miscellaneous techniques for laundering proceeds in Pakistan include "over/under invoicing of imports and exports", fake transactions of import and export", "double bills" "smuggling of coinage", "declaration of money as agricultural income" (as revenue generated from agriculture is exempted from tax), "poultry" and banking credit means.[140]

3.2 Anti Money Laundering regime of Pakistan, an Overview:

3.2.1 National Laws:

From very beginning, Pakistan has been contaminated with disease of dishonest and crooked practices. For this reason, enactment of legislation was made to address these unfair activities. However case of money laundering is different as till 2007, Pakistan did not have any specific, inclusive and wide-ranging "anti money laundering legislation" which directly deals with this evil, nevertheless a draft of anti money laundering law was prepared in 2007 which remained pending in parliament for debate and approval.[141]

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[140] Ibid

[141] "International Narcotics Control Strategy Report-2006, made public by ' Bureau for International Narcotics and Law Enforcement Affairs"

Some other laws which deal with "money laundering issue" partially and indirectly include "National Accountability Ordinance 1999 (NAB Ordinance)", "Control of Narcotic Substances Act 1997 (CNSA)", "Anti-Terrorism Act 1997 (ATA)", "Prudential Regulations by State Bank of Pakistan (SBP)". Law enforcement agencies which supervise "anti money laundering efforts" of Pakistan are "National Accountability Bureau (NAB)", "Anti-Narcotics Force (ANF)" "Federal Investigative Agency (FIA)", and "Customs authorities". A little success has been got by these authorities in investigation and impeachment of drug-trade, corruption and terror campaign.[142]

Major laws in these areas are:

(i) "The Control of Narcotic Substances Act, 1997" (CNSA)
(ii) "National Accountability Bureau Ordinance, 1999" (NAB)
(iii)"Anti Terrorism Act 1997"

Though all these laws do not address "money laundering" threat directly and specifically, nonetheless, they consists of some provisions, which can be invoked for sealing up and forfeiture of criminal property attained from illegal practices such as narcotics-trade, corruption and smuggling etc.[143]

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[142] ibid"

[143] Ibid

(i) "Anti Terrorism Act 1997":

This Act covers three main aspects of laundering and terrorism problem, as it provides definition of both, "money laundering" and "terrorist-financing", jurisdiction and sentence or punishment. This law consisted of provisions regarding fund raising and money laundering for terrorist financing. Relevant sections are quoted here.[144]

"Section 11(H) of "the Act" is about fund raising and terrorist financing, it provides; that "a person commits an offence if he involves in fund raising, use and possession of property, or is involved in a funding arrangement intending that such money or other property will be used, or has reasonable cause to suspect that they may be used, for the purpose of terrorism".[145]

"Section 11-k of "the Act" criminalizes the retention or control of a person or terrorist property by concealment, by removal from jurisdiction, by transfer to nominee, or by any other way". [146]

"Section 11-O of "the Act" is about "Seizure and Detention", of assets held by terrorists' individuals or entities, where an authorized officer has reasonable grounds for suspicion, that assets are intended to be used for the purpose of terrorism".[147]

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[144] Anti-Terrorism Act 1997 of Pakistan

[145] Section, directly copied from Anti-Terrorism Act 1997, Pakistan

[146] ibid

[147] Ibid

(ii) "Control of Narcotic Substances Act, 1997":

The "Control of Narcotic Substance Act 1997" necessitates coverage of "suspicious transactions" to the "Anti Narcotic Force" (ANF). This law consisted of procedures for sealing up and seizure of possessions connected with "narcotics-trade and established separate courts for dealing with the offences involving illegal trade of narcotics.

Relevant provisions in this respect are section 67 and 31 of the "Act":

Section 67 imposes an obligation of reporting "suspicious transactions" upon financial institutions, it provides that;

"Section 67 (1) of the CNSA states that all banks and financial institutions shall pay special attention to all unusual patterns of transactions which have no apparent economic or lawful purposes and upon suspicion that such transaction could constitute or be related to illicit narcotic activities, the manager or director of such financial institution shall report suspicious transactions to the Director-General".[148]

[148] Directly quoted from section 67 of the "Control of Narcotics Substance Act 1997", of Pakistan.

"Sub-section (2) provides that "whoever fails to supply information in accordance with sub-section (1) shall be punishable with rigorous punishment which may extend to 3 years and fine or with both".[149]

Another important section is 31 which authorize an investigation officer to call for information, in following words;

"Section 31 of the CNSA provides that "an officer authorized under section 21 (power of entry, search, seizure and arrest without warrant) may, during the course of an inquiry in connection with contravention of any of the provision of this Act"[150]

(a) "Calls for information from any person for the purpose of satisfying himself whether there has been any contravention of the provisions of this Act or any rule or order made there under";
(b) "Required any person to produce or deliver any document or thing used or relevant to the inquiry";
(c) "Examine any person acquainted with the facts and circumstances of the case"; and
(d) "Require any bank or financial institution, to provide any information whatsoever".[151]

[149] ibid
[150] Direct wording of Section 31 of the "Control of Narcotics Substances Act 1997" of Pakistan

[151] Supra note 150

CNSA deals with numerous provisions which grant powers to different authorities for freezing of proceeds about which they have even suspicion or doubt that income is the outcome of an illegal trade of narcotics and courts are also set up for forfeiture of such income or proceeds.

Though these comprehensive powers can not prevent "money laundering" completely, but they support the authorities in effective prosecution for narcotics-trade.[152]

(iii)"The National Accountability Ordinance of 1999" (NAB Ordinance):

This Ordinance also obliges financial organizations to making report of "suspicious dealings" to NAB and creates special courts for accountability.

"Section 20 of the NAB Ordinance provides that "the managers and directors of banks and financial institutions are to take notice of unusual or a large transaction, which have no apparent or lawful purpose and shall be referred to Chairman, NAB and failure to do so is punishable with imprisonment which may extend to five years or with fine or both".[153]

"Under same section 20 it is provided that "onus of proof will be shifted upon suspect or accused in order to prove his blamelessness".[154]

[152] ibid
[153] Directly picked from "the National Accountibility Ordinance, 1999 of Pakistan".

[154] Ibid

(iv) "Prudential Regulations - State Bank of Pakistan, 2002":

Recently, in order to protect the banking zone from the threat of "money laundering" and other illegal practices (corruption etc), "Prudential Regulations XII and XII" were issued by "State Bank of Pakistan (SBP)". Focus of these regulations was to explain the significance of a well-known principle of corporate law "know Your Customer" while demanding from banking institutions to adopt all the desired measures for real identification of their clients and to provide and vigilantly keep checking on "suspicious transaction" against suspicious transactions.[155]

3.2.2 International Laws:

As Pakistan is a dynamic member of "Asia Pacific Group", working for the prevention of money laundering that is why a supportive policy for accomplishment of FATF (Principal) objectives was formed.

With the purpose of stoppage and preclusion of money laundering practices various administrative, legislative and policy measures were adopted by Pakistan. In order to handle money laundering issue aptly, determination of Pakistan is to take up and implement international standards and finest anti money laundering-practices.[156]

[155] SBP, Prudential regulations, 2002 of Pakistan

[156] Shah S. Azhar Hussain, Shah S. Akhtar Hussain & Sajawal Khan (2006), "Governance of Money Laundering (M.L): An application of Principal-Agent Model", Paper presented in 22nd AGM Pakistan Society of Development Economists at Lahore.

In this process, following conventions have been endorsed by Pakistan and for the implementation of these obligations an undertaking has been given by it under international law:

(i) "UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988":

The Convention is considered as first international instrument which addressed "narcotic-drug" issue; it was also called "Single Convention on Narcotics Drugs-1961". In 1972, the convention was modified through a "Protocol". Subsequently, it was converted into "UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988". Through "Declaration 39/141 (14 December 1984) of the UN General Assembly, the convention was taken up. In 1991, Pakistan connected with this convention by signing it. Up till now, approximately 65 states have endorsed the convention.

(ii) "UN Convention on Transnational Organized Crime";

This convention, though not in force currently, but has been signed by Pakistan. Pakistan also participated in all the proceedings.

(iii) "Asia Pacific Group (APG)"

In 1997, "APG" was formed by an "Australian based informal group". Key target of this organization was to look for the execution of "FATF- Recommendations" in affiliated states while underlining pessimistic propositions and recommending certain guiding principles for tackle "money laundering" problem. Since July, 2000, Pakistan has been a vigorous associate of "the APG", so frequently files annual reports to it.

Nonetheless, due to nonexistence of an approved "anti-money laundering law" the recommendations and guidelines made by "the APG" cannot be fully implemented.[157]

3.3 Role of various regulators for effective regulations and ensure compliance with anti-money laundering provisions:

After a glory incident of September 11, 2001, Pakistan has especially been focused in respect of Money Laundering and Terror Financing Activities.

To overcome this type of situation, finally AML Ordinance was promulgated in 2007; however this law has many deficiencies in the view of legal expert and cannot be implemented or enforced without proper amendments and changes in it. Nevertheless, following institutions have been given the task to counter "money laundering" and "financing terrorism".

[157] "Asia-Pacific Group on Money Laundering (APG) accessible at http://www.apgml.org".

- "Anti Narcotic Force (ANF)"
- "National Accountability Bureau (NAB)"
- "Federal Investigation Agency (FIA)"
- "Securities and Exchange Commission of Pakistan (SECP)"
- "State bank of Pakistan (SBP)"

All these institutions are paying special attention to the formation and enforcement of laws & by-laws and investigation of "suspicious transactions" to curb the laundering of money.

3.3.1 Anti Narcotic Force (ANF):

ANF is a premier Law Enforcement Agency of Pakistan in the area of narcotic control. It was established in 1965 by merging Pakistan Narcotics Control Board (PNCB) and Anti Narcotic Task Force (ANTF).

During eighties, when Pakistan was severely, hit by destructive consequences of drug menace and drug-money, the Dangerous drug Act of 1930 was amended in 1987 to provide for mandatory confiscation of drug assets. During 1994, for the first time in Pakistan, the Anti Narcotic task force initiated its first case against a major drug trafficker for forfeiture of his assets. In 1995 Control of Narcotic substance Ordinance was promulgated which now has been replaced by the Control of narcotic Substance Act 1997. [158]

[158] Anti-Narcoric Force available at http://www.anf.gov.pk.

At ANF HQs level, there is a Special Directorate head by a Director to investigation, about the assets of drug barons and the related money laundering activities. There are five regional directorates of ANF i-e. at Rawalpindi, Lahore, Karachi, Peshawar and Quetta. At the regional level, Assets Investigation Branches are functioning for the similar purpose headed either by a Deputy Director or an Assistant director.[159]

The function of "Assets Investigation Directorate and its branches at regional level" is to keep watchful eye on the acquisition, possession, transfer and concealment of drug-related assets.

Authorized members of ANF are empowered to freeze such assets immediately without intervention of Court but later on it will be the subject to confirmation by the Court.[160]
An officer authorized, during the course of inquiry, can call for any information from any bank or financial institution regarding such assets.
In addition, the Managers or Directors of the banks and financial institutions are duty bound to report suspicious transactions to the DG ANF and in case of failure are liable to be punished u/s 67 of the CNSA 1997.[161]

The Officers of Assets Investigation Directorate and its branches are specially trained and equipped to meet the challenge of drug-money laundering.

[159] Ibid
[160]ibid
[161]CNS Act 1997 of Pakistan

3.3.2 National Accountability Bureau (NAB):

A top institution of Pakistan, working against corruption is the "National Accountability Bureau (NAB)" with its headquarters at Islamabad. It was established in pursuance of the "National Accountability Bureau Ordinance 1999" while carrying four zonal administrative centers at "provincial capitals" along with one more at federal area, "Rawalpindi".

Primary responsibility of the "NAB" is to eliminate corrupt and dishonest practices from the country while adopting righteous approach towards awareness-raising, enforcement and deterrence, (however institution has been exploited by political parties against each other). It also deals with money laundering practices relating to the assets acquired through corruption and corrupt practices.[162]

Financial Crime Investigation Wing (FCIW):

For dealing with ordinary financial crime cases including money laundering, there is a Financial Crime Investigation Wing (FCIW) at the Headquarter of NAB, which is headed by the DG. At the regional levels, (Lahore, Karachi, Peshawar, Quetta and Rawalpindi), there are similar FCIWs headed by Directors under whom there are Additional Directors, Dy. Directors, Assistant Directors and Investigation Officers.

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[162] National Accountability Bureau (NAB) available at http://www.nab.gov.pk/index.asp

The FCIW are mostly staffed by the experts taken from different banks and other financial institutions. In order to keep watchful eye on the suspicious financial transactions and corruption relating to money laundering, the financial experts of FCIW constantly remain in touch with the banks and financial institutions working in the country.[163]

Contributions of NAB in Anti-Money Laundering Efforts:

(a) **International Cooperation to Detect Money Laundering:** To improve international cooperation in "tracing out as well as indictment" of corruption and "money laundering". Overseas Operation Cell (OCC) of 'NAB' is charged with the duty to cooperate with other intercontinental organizations in respect of certain matters including "inquiries", "joint legal assistance", "recovery of unlawful proceeds", "extradition issues" and "execution of red warrants". Another additional responsibility of the cell is to detect global property of accused persons.[164]

(b) The Oversees Cell is also actively participating in international effort against corruption, money laundering and other relating organized crimes.

[163]ibid

[164] ibid

(c) **APG Mutual Evaluation of Pakistan in Collaboration with NAB:** The Mutual Evaluation of Pakistan was conducted in November-December 2004. The purpose of the evaluation was to access the AML/CFT measures adopted by Pakistan in the context of legal regime, law enforcement and Financial/Regulatory measures.[165]

(d) **Ratification of UN Convention against Corruption:** NAB has undertaken a detailed evaluation of the Convention for ratification by Pakistan. An inter-ministerial committee was formed which has completed its deliberations and prepared the recommendations. First conference of the states parties to the UNCAC was held in Jordan in December 2006 to discuss the mechanisms for the implementation and review of asset recovery and technical assistance, which was participated by the representatives of NAB and Ministry of foreign affairs.[166]

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165 Supra note 163

166 Ibid

3.3.3 Federal Investigation Agency (FIA):

FIA is one of the Prime Law Enforcing Agencies, established under the FIA Act 197, replacing the Pakistan special police establishment. FIA undertakes investigation of specialized and organized crimes including anti-human smuggling & trafficking, cyber crime, immigration offences and counter terrorism. As such it is committed to engage in a multi-pronged strategy to discourage criminal practices of nefarious elements in Pakistan and to make it a safer and law abiding society.[167]

Recently the spheres of activities of this agency have been extended to counter terrorist activities in the country and the Anti-Terrorism Act 1999 has been included in the schedule of the FIA Act. Hence FIA is dealing with terrorist financing aspect of money laundering excluding narcotic and anti-corruption proceeds.[168]

FIA deals with terrorist financing aspect of money laundering. A Special investigation Group (SIG), has been established in FIA. Dy. Commandant (Operation), being the in charge of "Terrorist Financing Detention Unit", is responsible for detection and investigation of terrorist financing cases.[169]

[167]Federal Investigative Agency (FIA) available at http://www.fia.gov.pk/
[168]Ibid

[169] ibid

There are also fields units for the similar purposes at Rawalpindi, Lahore, Karachi, Quetta and Peshawar, which are headed either by Dy. Directors or Assistant Directors or in some cases Inspectors.

Then there are specialists at the Headquarters in the field of banking, computer, explosives, intelligence and legal who provide guidance in their respective fields so the investigating officers. The investigation work of the IOs of field units is evaluated by the specialists at the Headquarters.[170]

3.3.4 "State Bank of Pakistan (SBP)";

In order to regulate financial zone of the country, a central bank called "State Bank of Pakistan" was instituted in 1948. The bank played a vital role before and after nationalization and privatization. Being regulator of banks, SBP is fully cognizant of its role in ensuring clean and transparent banking system in the country.

To this end, requirement of determining true identity of prospective account holders was imposed by State Bank way back in 1992.

[170] Supra note 168

The requirement was in addition to prudential regulations on "prevention of criminal use of banking channels in order to commit money laundering and further unlawful trade". Regulatory regime is being continuously strengthened in the beam of latest modifications and improvements in "fiscal market and world's top practices". During the process, State ban has taken various steps in this regard, such as Prudential Regulations.[171]

3.3.5 "Securities and Exchange Commission of Pakistan (SECP)":

In January 2003, the SECP being regulatory body of capital market constituted a separate unit (called Anti Money Laundering Unit) for handling "money laundering issue". The Unit was formed as a component of "World Bank's "methodological assistance program" for fighting against "money laundering" and "terrorist-funding".[172]

Though authority to enforce "banking zone's reforms assignment" is with the State Bank of Pakistan, however a special project on "Anti-Money Laundering" was assigned to SECP. Main targets of this project include, improving capability structure of the "Commission", advisory plans, setting of connections with other industries and research & journals.

[171] "State Bank of Pakistan (SBP) accessible at http://www.sbp.org.pk/".

[172] "Securities and Exchange Commission of Pakistan (SECP) can be reached at http://www.secp.gov.pk".

The primary goals of "Anti Money Laundering project" include;

(a) Analysis and harmonization of current laws & bylaws in order to guarantee better record-keeping and reporting of dealings,

(b) Fortification of the capacity of SECP for playing upbeat role in prevention of "money laundering practices",

(c) Authentication of capital flow within the economic system,

(d) Creation of awareness about an urgent need of effective framework against "money laundering" through counseling process.[173]

Additional aims of the project are to incorporate certain amendments in existing anti money laundering legislations, to implement these legislations through SECP, to harmonize them with global anti money laundering standards, i-e, customer identity, reporting of unusual doubtful arrangements, record-keeping principles and mutual legal assistance.[174]

[173] Supra note 173

[174] Ibid

Directives issued by SECP to test out Money Laundering:

In order to make stronger regulatory framework and diminish the likelihood of "money laundering" in non-banking financial structure, SECP taken adequate measures in hand.

On the basis of proposals made the "AML Unit", the Specialized Companies Division (SCD) of SECP formed various directives, which are summarized as under.[175]

(a) **Directives issued for NBFIs and Mudarabah**: In February 2003, these directives were arranged for all "non-bank financial institutions" (NBFIs) and Mudarabah Companies.[176]
    Under these directives, all "NBFIs and Mudarbahs" were required to ensure about the identity of investor (through Account Opening Form) before acceptance of his deposit. Additionally by July 1, 2003, all "NBFIs and Mudarbahs" were called for collecting or making payment over Rs 50,000 only through cross cheques.[177]

[175] "SECP,(2007), Directives issued by SECP to check 'Money Laundering' (Online) reachable at http://www.secp.gov.pk".

[176] "A type of partnership where one partner gives money to another for investing a commercial enterprise, an investment comes from the first partner who is called Rab-ul-Maal, while the management and work is an exclusive responsibility of the other-who is called Mudarib and the profits generated are shared in a prefixed ratio".

[177] Supra note 176

(b) **Directives issued for Brokers**: The SECP has also enforced rules for brokers to support its endeavors for strengthening institutional structure and diminishing probability of money laundering within capital market.[178]

(c) **Directives regarding "roles and responsibilities of compliance officers":** Additionally, the "Specialized Companies Division of SECP" drafted "Terms of Reference" in order to appoint a "compliance officer" within the Division. As per "Terms of Reference", the Compliance Officer is required to coordinate in building up and enforcement of "compliance plan", to constitute a and chair a "compliance committee", to create and uphold codes of conduct, strategies, rules and regulations.[179]

[178] Ibid

[179] supra note 176

3.4 Anti Money laundering Ordinance 2007 of Pakistan, an Overview

3.4.1 Background and Significance of the AMLO 2007:

During a special meeting of "UN General Assembly arranged in June (8 to 10)1998", a political declaration was approved which imposed obligations of taking on extraordinary measures against 'laundering of finances connecting drug-trade and intensifying global, regional as well as sub-regional coordination. United Nations invited the states (that did not move forward still) for adoption of legislations against "money laundering" by 2003.

"FATF-Recommendations" also require from all states to enact such legislation. Furthermore Pakistan has been supporting all "anti money laundering proposals" presented during negotiations relating to "United Nations Convention against Transnational Organized crime (UNTOC) and United Nations Convention against Corruption (UNCAC)". Therefore, with all these instruments creating clear binding obligation on Pakistan to enact the statute, Pakistan shall be viewed as a non-compliance state, if it does not enact this statute.[180]

[180] "Legislative Brief on "Anti Money Laundering Bill 2007", by PILDAT.

3.4.2 Salient Features of Anti-Money Laundering Ordinance 2007:

The "Anti-Money Laundering -2007",(hereinafter called "the Ordinance") Ordinance Number XLV of 2007, spread over 33 pages consisting of 45 sections, a Schedule and Statement of Objects and Reasons focuses on curbing the menace of money laundering.[181]

(1) **Identification of "Money Laundering" as an Offence:** "Section 3 of the "Ordinance" provides that "a person shall be guilty of the offence of money laundering, if he acquires, converts, posses, or transfers property, knowing or having knowledge or having reason to believe that such property is proceeds of crime or renders assistance to another person for acquisition, conversion, possession or transfer of, or for concealing or disguising the true nature, origin, location, disposition, movement or ownership of property, knowing or having reason to believe that such property is proceed of crime".[182]

(2) **Punishment for Money Laundering:** "Section 4 of the "Ordinance" prescribes rigorous imprisonment of one to ten years for the person, convicted of money laundering, a fine of up to Rs 1 million, and forfeiture of the property involved in money laundering".[183]

[181] Anti-money Laundering Ordinance 2007 of Pakistan

[182] Section directly quoted from "Anti Money Laundering Ordinance 2007, Pakistan".

[183] ibid

(3) **Creation of FMU**: "Section 5 of the "Ordinance", a Financial Monitoring Unit (FMU) will be formed in the SBP or at any other place. It will have an independent authority to take decisions on day to day matters".[184]

(4) **Powers of the FMU:** The "Ordinance" lists 10 specific powers and functions of FMU. These cover a range of areas from receiving reports of suspicious transactions to maintaining data.[185] (Section 6)

(5) **Filing of STRs:** "Section 7 & 38 & 39 of the "Ordinance" provides that "every financial institution shall file "Suspicious Transaction Reports" to FMU within 7days after forming the suspicion and failure to comply with this requirement may lead to imprisonment up to five years or with fine up to 100,000 rupees or both". "The Financial Institutions convicted of this offence may have their license cancelled".[186]

(6) **Establishment of special Courts**: "Section 14 & 15 & 37 of the "Ordinance" states that "Federal Government is empowered to establish Special Courts" and "NAB, FIA, ANF or any other law enforcement agency, notified by the Federal Government will act as the "investigating or prosecuting agency" under the ordinance".[187]

[184] Supra note 183
[185] ibid
[186] Ibid

[187] ibid

- The 2008 "US.DoS Report" states that despite passage of "Anti-Money Laundering Ordinance 2007", there is a dire need for taking up extraordinary measures by Pakistan for complying with global mechanisms, particularly "the core FATF-Recommendations relating to criminalization of money laundering as well as doubtful transactions reporting".[190]

- International law expert and executive director of "Research Society of International Law (RSIL)", "Ahmer Bilal Soofi" is of opinion that AML Ordinance "travels far beyond the minimum requirements of compliance. During the workshop conducted by RSIL for briefing the Ordinance, he said that this law needs to be modified because it may create serious operational obstacles which will make "even the minimum compliance more difficult".[191]

[190] "International Narcotics Control Strategy Report 2008, published by Bureau for International Narcotics and Law Enforcement Affairs in March, 2008", also called, (U.S.DoS 2008).

[191] "A Workshop on Briefing of AMLO 2007 of Pakistan" by Research Society of International Law,(RSIL).

- In the opinion of "Huzaima Bukhari and Dr.Ikramul haq, (Law experts and tax advisors), the promulgation of "AML Ordinance" does not mean that government is serious in its implementation, rather the only reason behind enactment of this Ordinance , was to comply with "2007 deadline" stipulated by "EU along with other global organizations (working for elimination of laundering practices)". The government of Pakistan also admitted the fact that passing of "AML Ordinance" was come into action only to fulfill international obligations as if the ordinance would not have been endorsed till the fixed time-limit, banking scheme of the country could be dishonored at the end of year 2007.

- So, analyzing the whole situation, both experts say that "AML Ordinance is seen not merely a desultory and aimless effort but also paradoxical one, (government doesn't have desired political will to implement the ordinance in its real force)".[192]

[192] "The Anti-Money Laundering Ordinance 2007 was promulgated as a presidential ordinance without any debate in the parliament or the public, an article on this topic called –A Half-hearted Attemt written by Huzaima Bukhari and Dr Ikramul Haq, Tax Advisors".

3.5.2 Flaws and weaknesses of the Ordinance:

1. Firstly, given definition of "money laundering offence", in section 3 of the "AML Ordinance" is flawed as it does not separate the role of key offender from an accomplice or associate in crime from the viewpoint of financial penalties of both and it also does not pursue the formulation of accurate definition given in Article 6 of the UNTOC (Palermo Convention) wherein the elements of liability of chief offender are different from that of the partner in crime and which is also approved by FATF.[193]

Section 3 of the AMLO Ordinance 2007 says that " a person shall be guilty of offence of money laundering, if the person: acquires, converts, possesses or transfers property, knowing or having reason to believe that such property is proceeds of crime, or renders assistance to another person for the acquisition, conversion, possession or transfer of, or for concealing or disguising the true nature, origin, location, disposition, movement or ownership of property, knowing or having reason to believe that such property is proceeds of crime.

[193] "Ahmer Bilal Soofi s briefing" on Analysis of AMLO 2007 of Pakistan Seminar, author is an eminent lawyer and international law expert, he is also Executive Director of the Research Society of International Law (RSIL) .

2. Secondly, definition of money laundering recognizes only the "concealment and conversion of criminal proceeds" as offence and does not include the "transportation of legitimate money", to promote an unlawful activity included in predicate offences.[194] (As Section 3 has already been described.)

3. Thirdly, predicate offences listed in the AMLO 2007, do not cover all of "the FATF" nominated offences in the list, examples are "arms trafficking", "racketeering"[195], "human trafficking", "smuggling", "sexual exploitation" and "environmental crime".[196]

Schedule of the Ordinance 2007 includes; (1) Waging, or attempting to wage war, or abetting of was against Pakistan (section 121 PPC 1860), (2) Conspiracy to commit offence punishable by section 121 (section 121-A PPC 1860), (3) Collecting arms, etc with intention of waging war against Pakistan (section 122 PPC 1860), (4) Public servant taking gratification other than legal remuneration in respect of an official act (section 161 PPC 1860), (5) Taking gratification, in order by corrupt or illegal means, to influence ;public servant (section 162 PPC 1860), (6) Taking gratification, for exercise of personal influence with public servant (section 163 PPC 1860), (7) Punishment for abetment by public servant of offences defined in section 162 or 163 (section 164 PPC 1860),

[194] "FATF Annual Report 2007-2008 released in June 2008, accessible at Financial Action Task Force website".
[195] To carry on illegal business activities those involve crimes.

[196] Ibid

(8) Public servant obtaining valuable thing, without consideration from personal concerned in proceeding or business transacted by such public servant (section 165 PPC 1860), (9) Punishment for abetment of offences defined in section 161 (section 165-A), (10) Qatl-i-amd (section 300 PPC 1860), (11) Qatl Shibh-i-amd (section 315 PPC 1860), (12) Causing hurt to extort confession or to compel restoration of property (section 337-k), (13) Kidnapping (section 359 PPC 1860), (14) from Pakistan (section 360 PPC 1860) (15) Kidnapping or abducting for extorting property, valuable security etc (section 365-A PPC 1860), (16) Buying or depositing of any person as a slave (section 370 PPC 1860), (17) Theft (section 378 PPC 1860), (18) Theft in dwelling house, etc (section 380 PPC 1860), (19) Theft by clerk or servant of property in possession of master (section 381 PPC 1860), (20) Theft of a car or other vehicle (section 381-A), (21) Theft after preparation made for causing death, hurt or restraint, in order to the committing of the theft (section 382 PPC 1860), (22) Extortion (section 383 PPC 1860), (23) Putting person in fear of injury in order to commit extortion (section 385 PPC 1860), (24) Robbery, when theft is robbery, when extortion is robbery (section 390 PPC 1860), (25) Dacoity (section 391 PPC 1860), (26) Criminal breach of trust (section 405 PPC 1860), (27) Dishonestly receiving stolen property (411 PPC 1860), (28) Dishonestly receiving stolen property in the commission of a dacoity (section 412 PPC 1860), (29) Habitually dealing in stolen property (section 413 PPC 1860), (30) Cheating (section 415 PPC 1860), (31) Cheating by personation (section 416 PPC 1860).

(It means the schedule does not include 'smuggling', "arms trafficking", "racketeering"[197], "human trafficking", "smuggling", "sexual exploitation" and "environmental crime" in the list of predicate offences)

4. Fourthly, intention and knowledge conditions required to establish the offence of "money laundering" is not compatible with principles set out in the "Vienna and Palermo conventions".[198]

5. Fifthly, according to "eminent legal experts", AMLO 2007 is ambiguous over whether a person can be tried for the crime of money laundering on standalone basis or should its link with the predicate offence be established beforehand and tried together with dual charge.[199]

[197] To carry on illegal business activities those involve crimes.

[198] Ibid

[199] "Ahmer Bilal Soofi said in 'Briefing Session on Money Laundering and Pakistan for parliamentarians and Business persons' arranged on 22 January, 2009".

6. Sixthly, the fine of "Rs one million" is seemed to be lesser or lower, in case of company or a body corporate.[200]

Section 4 of the AMLO 2007 prescribe the punishment for money laundering offence, it says that "whoever commits the offence of money laundering shall be punishable with rigorous imprisonment for a term which shall not be less than one year but may extend to ten years and shall also be liable to fine which may extend to one million rupees and shall also be liable to forfeiture of property involved in the money laundering".

6. Seventhly, "the definition of a suspicious transaction is inadequate as it is limited to 'suspicious transaction reporting' by financial institutions only and does not cover cases where an individual 'believes' or 'has reason to believe' that all the funds are outcome of an unlawful activity".[201]

Section 7 of the AMLO 2007 says that "every financial institution shall file with the FMU, to the extent and in the manner prescribed by the FMU, Suspicious Transaction Report conducted or attempted by, at or through that financial institution if the financial institution knows, suspects, or has reason to suspect that the transactions (or a pattern of transactions of which the transaction is a part):- involves funds derived from illegal activities or is intended or conducted in order to hide or disguise proceeds of crime, is designed to evade any requirements of this section,

[200] Ibid

[201] "International Narcotics Control Strategy Report 2008 published by Bureau for International Narcotics and Law Enforcement Affairs (US Department of State) in March 2008".

or has no apparent law full purpose after examining the available facts, including the background and possible purpose of the transaction".

7. Eightieth, the same (above mentioned) report cites that though AMLO 2007 requires the filing of money laundering suspicious transaction reports, however it does not require the filing of suspicious transaction reports relating to terrorist financing, (relevant section 7 has been quoted above) as the NAB Ordinance 1999 obliges "economic institutions for reporting of doubtful transactions involving corruption to NAB" and the CNSA of 1997 demands "narcotic-related suspicious arrangements' information".[202]

8. Ninthly, "the Asian development Bank" in its annual report of 2008 cites that "the Ordinance provides a bulky or cumbersome supervisory structure comprising of a national executive committee and a general committee, which may limit and undermine the independence of FMU.[203]

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[202] Supra note 201

[203] "2008 Accelerating Economic Transformation Program report, by the Asian Development Bank" p.13

9. Eleventh, AMLO 2007 gives extensive powers to Financial Monitoring Unit (FMU), which cover a range of spheres from collecting reports of doubtful transactions from financial institutions to the production of record and conducting investigation which is not required by FATF or any other instrument. These powers may create serious implications in future for 'banks along with other economic institutions in the country in terms of compliance and reporting requirements because "Investigative power" should only be the sphere of the prosecuting/investigating agency that has a functional link with the predicate offence.[204]

Section 6 of the AMLO 2007 describes wide powers of FMU, it says that;

(1) The Federal Government shall, by notification in the Official Gazette, establish a Financial Monitoring Unit which shall be housed in SBP or at any other place in Pakistan.
(2) The FMU shall have independent decision making authority on day-to-day matters coming within its areas of responsibility.
(3) A Director General who shall be a financial sector specialist who shall be appointed by the Federal Government in consultation with SBP to head FMU and exercise all powers and functions of the FMU subject to the supervision and control of the General Committee.

[204] "Analysis of AMLO 2007" an Article by taimur Malik, available at http://EzineArticles.com/?expert=Taimur_Malik

(4) The FMU shall exercise the following powers and perform the following functions, namely;-

(a) to receive STRs and CTRs from financial institutions and such non-financial businesses and professions as may be necessary to accomplish the objects of the Ordinance;

(b) to analyze the STRs and CTRs and in that respect the FMU may call for record and information from any agency in Pakistan (with exception of income tax information) concerning the person in question. All such agencies shall be required to promptly provide the requested information;

(c) to disseminate, after having considered the reports and having reasonable grounds to suspect, the STRs and any necessary information to the investigating agencies concerned and described in clause (k) of section 2;

(d) to create and maintain a data base of all STRs and CTRs, related information and such other materials as the Director General determines are relevant to the work of the FMU and in that respect, the FMU is authorized to establish necessary analytic software and computer equipment to effectively search the database, sort and retrieve information and perform real time linkages with database of other agencies both in and outside Pakistan as may be required from time to time;

(e) to co-operate with financial intelligence units and appropriate law enforcement authorities in other countries and to share and request information and documents;

(f) to represent Pakistan at all international and regional organizations and grouping of financial intelligences units and other international groups and forums which address the offence of money laundering and other related matters;

(g) to submit to the National Executive Committee an annual report containing recommendations based upon necessary information and statistics regarding countermeasures which can be taken to combat money laundering and such reports shall provide an overall analysis and evaluation of the STRs limited to details of the investigations and prosecutions that have been or are being conducted in relation to the offence of money laundering in Pakistan;

(h) to frame regulations in consultation with SBP and SECP for ensuring receipt of STRs and CTRs from the financial institutions and non-financial businesses and professions with the approval o the NEC;

(i) to engage a financial institution or an intermediary or such other non-financial business and professions or any of its officers as may be necessary for facilitating implementation of the provisions of this Ordinance, the rules or regulations made hereunder; and

(j) to perform all such functions and exercise all such powers as necessary for, or ancillary to, the attainment of the objects of this Ordinance.

(5) Subject to in this behalf, the Director-General may, if there appear to be reasonable grounds to believe that any property is involved in money laundering, order freezing of such property, for a maximum period of fifteen days, in any manner that he may deems fit in the circumstances.

10. Twelfth, the 2008 U.S. DoS report cites that "the forfeiture procedure" provided in AMLO 2007, are "cumbersome and may inhibit the successful seizure and confiscation of property involved in offenses."[205]

[205] ibid

11. Finally, AMLO 2007 contains a schedule that enlists offences that are termed as predicate offences. They are listed with reference to the sections of relevant laws. Currently, the schedule, though part of the "Ordinances, can be amended through the executive order of "Federal Government" instead of a legislative measure, which is not a proper way. So the. proposal is that the Schedule, like the rest of the Ordinance, should also be amended through legislative means rather than a notification by Federal Government

    Section 42 of AMLO 2007 says that "the Federal Government may, by notification in the official Gazette, amend the Schedule to this Ordinance so as to add any entry thereto or modify or omit any entry therein".

3.6 Pakistan's level of compliance with FATF & APG recommendations:

Regarding Pakistan's level of compliance with international standards and codes such as FATF and APG's Recommendations, "the International Narcotic Strategy Report of 2008", (U.S DoS Report), cites that Pakistan achieves overall low compliance with these international standards with a score of 35 out of 100 in the standards compliance index. Nevertheless, Pakistan is making progress in compliance with many of the standards and gives best performance, e.g. areas of "the supervision of banks and securities markets, convergence with international auditing & accounting standards and monetary transparency".

Report states that in "insurance supervision and in anti money laundering regime, Pakistan lags behind international standards and lacks comprehensive legislation to overcome these problems.[206]

The following diagram, given in the U.S.DoS report, shows the summary of observance of standards and codes and level of compliance with these standards.

"Institutional and Market Infrastructure"[207]

	[illegible]	[illegible]	[illegible]	[illegible]	"No Compliance"	"Insufficient information"
"Effective Insolvency and Creditor Rights Systems"						"X"
"International Financial Reporting Standards"				"X"		
"Principles of Corporate Governance"			"X"			
"International Standards on Auditing"			"X"			
"Anti-Money Laundering/Combatin g Terrorist Financing Standard"				"X"		
"Core Principles for Systemically Important Payment" Systems"						X"

[206] Best Practice Report Pakistan 2008 published by e-standardsforum, Financial StandardsFoundation.

[207] "Diagram, directly taken from the 'Countries Best Practice Report 2008'".

Above diagram shows the level of compliance in different spheres of institutional and market infrastructure, here the relevant area is of "Anti-MoneyLaundering/Combating Terrorist Financing standards".

AML/Combating terrorist financing: (Intent Declared)[208]

The "Best Practice Report of 2008 Pakistan" states that till August 2008, regarding Pakistan's compliance with "FATF's forty plus nine recommendations and other standards", there was not any inclusive evaluation report accessible publicly.[209]

However in 2007, "Article IV Consultation report", it was examined by "IMF", that Pakistani authorities had adopted greater measures towards implementation of strong legislative framework to curb "money laundering" and "terrorist funding activities", and an instance of these endeavors was promulgation of "AML Ordinance 2007", which over and above all other regulations for "anti-money laundering" and "combating financing of terrorism", criminalizes "money laundering".[210]

"U.S DoS Report 2008, states that 'Anti-terrorism Act 1999' of Pakistan, criminalizes the terrorist financing activities and also allows Pakistani authorities to freeze assets held by terrorists individuals and entities".[211]

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[208] ["Intent Declared means that the country has made a formal, public, and authoritative declaration that it will incorporate the principle of the relevant standards into laws or regulations and will adhered to the standard"].

[209] ibid

[210] 2007 Article IV Consultation Report by IMF

[211] ibid

The report observes that in spite of the passage of AML Ordinance, "Pakistan still has work ahead to meet international standards, especially the core FATF Recommendations concerning the criminalization of money laundering and suspicious transaction reporting". It also identifies various shortcomings, weaknesses and flaws, which have been discussed above (critical analysis of AML Ordinance).[212]

Chapter 04

[212] Ibid

Chapter 04

Current Status & Recommendations

4.1 Current status of Pakistan regarding Anti Money Laundering Legislation

4.2 Major reasons for failure to pass a well-thought and flawless AML law

4.2.1 Absence of legislation from the beginning of the offence

4.2.2 Lack of political will

4.2.3 Involvement of Elected Public Representatives Sitting in the Parliament

4.2.3.1 Swiss Cases against Benazir Bhutto and Asif Ali Zardari

4.2.3.2 Hudabbiya Paper Mills Case against "Sharif's" pending with the NAB

4.2.3.3 Khanani and Kalia Money Laundering Case

4.3 Recommendations

4.1 Current Status of Pakistan regarding Anti Money Laundering Legislation:

On 20th February 2010, the "Daily Times" (English newspaper), published news that Pakistan is facing risks economic sanctions and difficulties in the form of dishonoring of its Letter of Credits by the developed countries because of unnecessary delay in the parliamentary approval to anti-money laundering and combating terrorism financing bill.[213]

In this respect, National assembly Standing Committee on finance had already been informed by the State Bank of Pakistan (SBP) on October 27, 2009 that a final ultimatum of "before February 2010" had been issued to Pakistan for upgrading its existing anti-money laundering laws according to international standards and in case of breakdown/failure, it would be declared a high-risk country and will have to bear severe financial penalties from global organizations. So as a consequence of financial penalties, Pakistan's LC would not be honored abroad and there would be barriers for the country in international business or trade.[214]

In spite of all these warnings by the Asia Pacific Group on Money Laundering (APG i-e an associate member of FATF), the current government had not been able to upgrade and get parliamentary approval of its anti-money laundering bill from both houses either national assembly or senate of Pakistan before the meeting of FATF.[215]

[213] Daily Times; http///www.worldcall.com.pk, on 21st February,2010

[214]Ibid

So, when Government of Pakistan was required to submit up-graded Anti-Money laundering and Combating Terrorism Financing Act before the Financial Action Task Force in its meeting held at Abu Dhabi, which should have been formally approved from the parliament, Pakistan 's official delegation was unable to convince the FATF due to non-completion of parliamentary approval.[216]

As a result, the FATF "identified eight black listed countries including Pakistan that have strategic deficiencies in alleged money laundering & terrorism financing" and "have failed to upgrade and get formal parliamentary approval of their anti-money laundering legislation in accordance with United Nation's instruments".[217]

The countries that have been black listed by the FATF are "Angola, Ecuador, Ethiopia, Iran, North Korea, Pakistan, Sao Tome and Principe, and Turkmenistan.[218]

The existing Anti-Money Laundering Ordinance, 2007, which was passed by the National Assembly Standing Committee on Finance, expired on November 28 and President of Pakistan had to re-promulgate it for further 4 months so that its formal approval could be obtained from both houses of the parliament.

However, during the year 2009, Anti Money Laundering Bill was presented with certain amendments, which was approved by both houses i-e national assembly and senate in May, 2010 under the pressure of the FATF Report 2010, in which Pakistan was included in the blacklisted countries.[219]

[215] ibid
[216] ibid
[217] "The News" International, founded by Mir Khalil-ur-Rehman on 20th February 2010

[218] Supra note 219

4.2 Major reasons for failure to pass a well-thought and flawless AML law:

4.2.1 Absence of legislation from the beginning of the offence:

Money laundering is a burning issue for almost last 20 years, but unfortunately, Pakistan is one of the third world countries who are very sluggish and indolent to enact effective legislations to address this issue stringently.

Regarding current status of anti-money laundering legislation, the point is that, in 2007 the then President of Pakistan abruptly promulgated the AML Ordinance to meet the deadline i-e, December 2007, fixed by European Union, the Ordinance was presented to Parliament for the approval, during that international community and legal experts criticized the Ordinance and identified a number of weaknesses and flaws which make its implementation more difficult.

So in 2009, amendments were proposed by different international bodies like FATF, IMF, ADB and international law expert to improve the AML Ordinance more effective and in accordance with the core recommendations of FATF, however AMLO 2009 was pending with the parliament for last two year, which has got approval from the parliament in May 2010 and now is available, as AMLO 2010 but still is insufficient as various flaws have not been removed yet.

[219] ibid

4.2.2 Lack of Political will:

Another problem is lack of will on the part of the Government and law-making bodies to curb the money laundering practices by legislation of an effective and comprehensive anti-money laundering law. As in these practices, influential personalities are involved, the institutional system being not so strong in our country; the concerned departments deliberately avoid lying hand on such matters; so that they may not come in direct confrontation with the interests of any influential personality and fear to invite his wrath.

This attitude on the part of the concerned Government functionaries and the departments is a real problem to check money laundering practices, and if any institution (for instance today's independent judiciary), try to deal with the corruption and money laundering cases of these influential personalities i-e in the government, then representatives of the government make advice that each institution should work within their specific authority or jurisdiction.

For instance, Supreme Court declared NRO (National Reconciliation Ordinance) as black law and held it null and void i-e with no legal effect, but the government did not accept this decision and postponed its implementation through different tactics', one of which is the "available immunity to president under article 248 of the Constitution of Pakistan 1973".

4.2.3: Involvement of Elected Public Representatives Sitting in the Parliament:

Most of the elected governments in Pakistan were discharged on the charges of corruption, and various prime ministers and ministers have been and are being tried in the national courts and foreign courts as well.

4.2.3.1 Asif Ali Zardari's Case history:

The first case history is about "Asif Ali Zardari", the husband of Benazir Bhutto, former Prime Minister of Pakistan. In 1988, Ms. Bhutto was elected as Prime Minister of Pakistan whereas she was sent home in August 1990, by the then President of Pakistan. Her removal from prime-minister ship was based upon corruption charges and inability to maintain law and order situation of the country. Again in October 1993, B.B was chosen as Prime Minister, however was dismissed in November 1996, by he hen president (Farooq Laghari). During governing period of Miss Bhutto, Mr.Zardari was appointed as "Senator", "Environment Minister" and "Minister for Investment" for several times.

On the basis of corruption charges, Mr.Zardari was put into prison in 1990 and 1991, (between both terms of Bhutto government), eventually these allegations were withdrawn. In the second term of Bhutto administration, there were growing charges of corruption upon her government and key target of these allegations was Mr. Zardari. Through these charges, government of Pakistan asserted that both husband and wife embezzled more than $1 billion from country.

4.3.2.1.6 Review of Legal Proceedings:

In 1997, Zardari and Bhutto accounts were closed by Citibank. During the same year, in September 1997, orders for sealing up accounts of both husband and wife (at Citibank along with other Swiss banks) were made by Swiss government while acting upon the request of Pakistani governments.

Although in January 1997, Zardari accounts at Citibank were frozen out, but neither any step was taken in this matter nor any other effort was made to report about the accounts to U.S, concerned authorities till November 1997.[220]

Eventually, subsequent to an article published in "New York Times" (in January 1998 in which accusation of receiving kickbacks was made against Mr.Zardari) Citibank had to report about Zardari accounts to the Federal Reserve and OCC (Office of the Comptroller of the Currency, the banking supervision arm of the US Department of Treasury) in late November.[221]

In December 1997, the Citibank gave briefing to the OCC and Federal Reserves regarding the status of accounts and actions taken with respect to Zardari affair.

[220] Swiss Want Bhutto Indicted in Pakistan for Money Laundering , by Elizabeth Olson, published: Thursday, August 20, 1998

Actions taken by Citibank were, freezing of all the accounts passed on by Mr. Schlegelmilch (an agent) to private banks, cancellation of referral contracts, evaluation of accounts opened in the Dubai office, tightening up of account opening process in Dubai and creation of an obligation (for Dubai branch) of identification of real beneficiary for all the account would be opened in Dubai.[222]

Although major portion of "Zardari accounts activity" was performed in Switzerland but no modification or changes was prescribed for the Swiss office.[223]

In December 1997, a "Suspicious Activity Report" regarding Zardari accounts was prepared by Citibank and filed with the Financial Crimes Enforcement Network (FINCEN). Noteworthy point in this respect was that the bank submitted the report after a huge delay of fourteen months from the decision taken to close these accounts, thirteen months later than Zardari's detention was come into action in November 1996 and about two months later than the directions of Swiss government issued for sealing Zardari accounts.[224]

[221] *Story* http://news.bbc.co.uk/go/pr/fr/-/2/hi/south_asia//25277.stm, published: 2003/08/05. *from BBC NEWS:*

[222] ibid

[223] ibid

In June 1998, Mr. Schlegelmilch and two other Swiss traders were prosecuted for money laundering and kickbacks received from Swiss companies for grant of government contracts by Pakistan whereas in July 1998, Mr. Zardari was impeached for violation of Swiss "money laundering law" in respect of same event. In August 1998, a legal action was taken by Switzerland for the same offence.[225]

On 23 July 1998, the Swiss Government handed over documents of corruption allegations against both husband and wife to government of Pakistan, including an official charge of money laundering against Zardari, made by Swiss institutions.

A comprehensive inquiry had been conducted by Pakistani government for explanation of more than $13.7 million sealed up by Swiss establishment in 1997 which were hidden in Swiss banks by Bhutto and her husband.

In order to capture the amount of $ 1.5 billion, (received by Bhutto and Zardari as kickbacks from different corporations) government of Pakistan filed criminal accusations against them.[226]

Mr. Zardari and Ms. Bhutto were prosecuted for receiving bribe from two Swiss firms companies for the award of a government contract in Pakistan, in October 1998.

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[224] How Citibank Laundered Money, an article written by English writer Teeth Maestro, 18 May 2008.
[225] ibid

[226] Supra note 223

In April 1999,(after one and half year's trial) conviction of Ms. Bhutto and Zardari was made by Lahore High Court of Pakistan for acceptance of kickbacks and punished them with five years physical imprisonment, $ 8.6 million fine and disqualification from holding any public office. Benazir Bhutto criticized and condemned the verdict from London.[227]

Mr. Zardari stayed in jail and extra criminal allegations were pending against the couple in Pakistani courts.

The record of the case sent by Swiss authorities disclosed that the money laundered by Zardari was open for Miss. Bhutto which was utilized for purchase of "diamond necklace" against over $175,000.

Reaction of Pakistan Peoples Party (PPP) on this issue was an absolute denial of all the charges against BB and Zardari, proposing that the government of Pakistan misled Swiss authorities while providing false evidences.[228]

Afterwards, charges of money laundering against of Miss. Bhutto and her husband were proved before Swiss magistrate on 6 August 2003. As a result they were sentenced with 6-months suspended imprisonment, fine of $ 50,000 for each and reimbursement of $ 11 million to government of Pakistan.

[227] ibid

[228] ibid

Conclusion of six years proceedings was that both Zardari and Bhutto placed $ 10 million in Swiss accounts, which had been collected from a Swiss company in consideration of a contract in Pakistan.

Pakistani investigators observed that in 1995, an account at Citibank in Geneva was opened by Mr. Zardari which was employed for passing on $ 40 million out of $ 100 million, acquired through payoffs made by alien companies for continuation of business in Pakistan.

Later on, in October 2007, Chief prosecutor of the canton of Geneva (Daniel Zappelli) told that evidence of money laundering against former Prime Minister of Pakistan Benazir Bhutto was received by him on October 29; however it was unclear to him whether any legal action against her would be taken in Switzerland or not.

4.3.2.1.7 Withdrawn of Swiss Cases:

In 2007, President Gen.Parvez Musharraf a military dictator promulgated a black law, the name of which was National Reconciliation Ordinance, through which all of the corruption charges against politicians of different political parties were withdrawn by the government, on the basis of rubbish justification i-e reconciliation for the sake of Pakistan.

The controversial NRO was seen by experts as a deal between Parvez Musharaf and Benazir Bhutto which allowed both of them i-e Zardari and Benazir, to return from self-exile without facing corruption charges. [229]

However, after the restoration of the judges of the Supreme Court in 2009, NRO was declared as unconstitutional and null &void by full bench Supreme Court. SC also ordered o revive and re-open cases of beneficiaries of the black ordinance. In the light of the apex court's decision, Swiss cases against Mr. Zardari will be opened again and the Court also directed to the government that it will have to write a letter to the Swiss government for the re-opening of all these cases.[230]

Till April 2010, government is ignoring the decision of the Supreme Court and taking all the steps which may postpone it, however the case is pending with the Supreme Court, where on every hearing, attorney-general of govt try to defend it though different justifications.

4.2.3.2: Hudabbiya Paper Mills Case against "Sharif's" pending with the NAB:

A renowned English newspaper the "Dawn News" published a report about money laundering reference against PML-N on 27 February 2010, which stated that during 2000, Musharaff government planned and filed a money laundering reference against both leaders "Mian Nawaz Sharif and Shehbaz Sharif of PML-N. Basis of this reference was made upon the confessional statement of Senator Ishaq Dar, which was presented before media as a court document on 11 November 2000.[231]

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[229] NRO declared Null and Void by Supreme Court of Pakistan, December 16th, 2009 by Hina Safdar,a writer.

[230] Ibid

[231] 'Sharif ,s used Hudabbiya Paper Mill to whiten money laundering , Friday, 13 Nov, 2009", by Azaz Syed

The statement was handwritten, comprised of 43 pages and recorded in the presence of district magistrate, (Lahore) in which allegation of "money laundering", was made against Mian brothers as Mr. Dar (a closest and trusted associate of Sharif family) revealed that Hudabbiya Paper Mills had been used by Mian brothers as cover or envelop for laundering money in 1990.

In December 2000, after banishment of Sharif brothers from Pakistan, a reference was withdrawn by the government as it was set up on the dictates of Musharraf, the then president of Pakistan.

Nevertheless, in 2007 when Mian Nawaz Sharif pronounced about his coming back to country Musharraf government made an effort to revive the reference again.[232]

Since the statement made by Dar was recorded in the presence of magistrate under section 164 of Criminal Procedure Code (Crpc), consequently it is considered as "unalterable or irrevocable statement" that has the status of permanent piece of evidence against Mian brothers in "Hudabbiya" case.[233]

According to NAB records, it seems that back in 2000 also, Mr. Dar voluntarily agreed to make written acknowledgment regarding the participation or involvement of 'Sharif brothers' in laundering activities of Hudabbiya Paper Mills case.

Main points of 43 pages statement in which Mr. Dar admitted his guiltiness are described in following points;

(Dawn News).

232 Supra note 223

233 ibid

- Firstly, Dar accepted the "opening of two foreign currency accounts in the bank of America" in the name of Talat Masood Qazi and Sikandar Masood Qazi, with the foreign cash supplied by Mian brothers and in line with the commands of "real depositors", Mian brothers, he signed all directions given to the bank in the name of these two persons.[234]

- Secondly he disclosed that under his instructions (based upon orders of Mian brothers), Naeem Mehmood (a close friend) opened foreign cash accounts in the name of Nuzhat Gohar and Kashif Masood Qazi in American bank and signed same as both these personalities.[235]

- Thirdly he admitted that besides above accounts, two other foreign currency accounts opened earlier in the name of Saeed Ahmed (former director of First Hajvari Modaraba Co) and Musa Ghani (nephew of Dar's wife) were also utilized for depositing huge foreign cash supplied by 'Sharif family' as security for acquiring different loans directly or indirectly.[236]

[234] ibid

[235] ibid

[236] ibid

- Fourthly Dar revealed the fact that the "Bank of America", "Citibank", "Atlas Investment Bank", "Al Barka Bank" and "Al Towfeeq Investment Bank" were exploited according to directions of Mian brothers. In this respect, he also accepted that he opened forged and bogus accounts in various international banks with the assistance of his two friends Kamal Qureshi and Naeem Mehmood.[237]

- Fifthly, he quoted the entire amounts which have been transferred into the accounts of Hudabbiya Paper Mills from different banks into such as $3.725 million from Emirates Bank, $ 8.539 million from Al Faysal Bank along with $2.622 million.

- Finally another important thing which Mr. Dar mentioned in his statement was that the responsibility of handling financial matters of 'Sharif family' was assigned to him, therefore according to his knowledge, Mian brothers were engaged in laundering of a huge amount of worth $ 14.889 million through different tactics.[238]

Later on a spokesman of PML-N "Siddiq ul Farooq" claimed that signed acknowledgement or statement was taken from Mr. Ishaq Dar under coercion and duress. Case is pending with the National Accountability Bureau.[239]

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[237] ibid

[238] Supra note 223

The "Hudabbiya Paper Mills" case was remained pending in the National Accountability Bureau (NAB) however recently; it has been discharged due to inadequateness of required evidences against Sharif family.[240]

4.2.3.3: Khanani and Kalia Money Laundering Case:

Earlier on November 7, 2008, Federal Investigative Agency (FIA) detained both directors of a leading foreign exchange company of Pakistan "Khanani and Kalia International (KKI)". Arrest was made on the allegations of "money laundering" and "illegal transportation of money amounts to 10 billion dollars."

A key charge against directors of KKI was that for preceding five years they were connected with "physical transfer" of foreign coinage from Pakistan and continued unlawful "Hawala/Hundi dealings or business.[241]

A renowned English newspaper "The News" stated that during April 2008, Special Investigation Group (SIG), Lahore arranged a report about the departure of dollars from the country.

In this report, SIG expressed that a threat of forex calamity is being perceived for Pakistan which would strike the country in a close future, consequently a strict and instantaneous action was advised against the persons carried on or occupied hundi/hawala business. [242]

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[239] ibid

[240] ibid

[241] "Court acquits Khanani and Kalia in Money Laundring Case" reported by Daily Times on Tuesday, April 06,2010

[242]ibid

Another law enforcement agency of Pakistan, FIA considered "Peshawar, Karachi, Lahore and Gujranwala" as heavens for "money launderers" where most of the money changers are involved in the hundi/hawala dealings and without verification, any amount could be transferred anywhere in the world.[243]

During preliminary proceedings of the case, license of KKI was hanged up by state ban of Pakistan with immediate effects for a period of one month. License was suspended due to infringement of SBP rules and guidelines.

As a result, the exchange company, it's headquarter, franchises, payment and currency exchange booths were prohibited from carrying on any type of business activity.[244]

However on Monday, South Judicial Magistrate Dr.Shabana Waheed acquitted Javed Khannai, Hanif Kalia and Munaf Kalia in a money laundering case due o lack of evidence. As the case was filed under the Prevention f Electronic Crimes (PEC) Ordinance and the accused had filed an application under section 249-A for their acquittal.[245]

The defense counsel stated in the application that former Pakistani president Musharraff had issued the PEC Ordinance on December 3, 2006 and it had expired on April, 2007.However, the FIA registered the case on November 2007.

[243] Supra note 243

[245] Ibid

The Court said the prosecution had been unable to present even single evidence against the accused, so the court pronounced its judgment in the presence of the prosecution and defense counsels after hearing the arguments[246].

4.3 Recommendations Purposed for AMLO 2007:

1. The definition of money laundering as an offence, given in section 3 of the AMLO should be perfect, reasonable and comprehensive in away that it may separate the role of key offender from an accomplice from the punishment viewpoint and it should follow the formulation of the accurate definition, provided in Article 6 of the UNTOC (the Palermo Convention) wherein elements of liability of chief offender are different from that of the partner/associate in crime and which is also approved by FATF.

2. List of predicate offence given in the AMLO 2007 should be expanded while covering all of "the FATF" nominated offences like "arms trafficking", "human-trafficking", "smuggling", "environmental crime" and "sexual exploitation".

[246] Ibid

3. The intention and knowledge conditions required to establish the offence of money laundering should be regulated in reference to standards set out by article 6 (f) of "UN Convention against Transnational Organized Crime", which states that the knowledge, intention or motive needed as an ingredient of "money laundering" offence may be deduced from the factual circumstances of the case.

4. "Anti Money Laundering Ordinance" (AMLO) should make the ambiguity clear regarding the trail of an accused of money laundering offence separately or jointly with the predicate offence as dual charge.

5. AMLO should also establish the autonomy of the money laundering offence from the predicate offence as successful prosecution for money laundering should not be contingent on prior conviction for the predicate offence.
6. The fine of Rs one million is lesser or lower, in case of company or a body corporate. So it should be increased.

7. AMLO requires only the filing of money laundering suspicious transaction reports from financial institutions, which is not enough as it should require the filing/reporting of suspicious transaction reports relating to terrorist financing as well.

8. The forfeiture procedure" provided in AMLO 2007, is "cumbersome and may inhibit the successful seizure and confiscation of property involved in offenses. The implementation of the existing regime for freezing should be revised according to the UNSCR 1267 with a view to ensuring that SROs are unambiguous in their commencement, comprehensive in scope, promptly complied with and appropriately enforceable.

9. AMLO contains a schedule that enlists offences that are termed as predicate offences with reference to the sections of the relevant laws. The schedule, though part of the "Ordinance", can be amended through the executive order instead of a legislative measure. It is recommended that the schedule, like the rest of the Ordinance, should also be amended through a legislative measure.

10. On the subject of ratification of international conventions and implementation of UN instruments, currently Pakistan is a party to the 1988 UN Drug Convention and the UN Convention against Corruption and has signed, however not ratified, the UN Convention against Transnational Crime.
11. Also, Pakistan is not signatory to the UN International Convention for the Suppression of the Financing of Terrorism so it is suggested that keeping in view the seriousness of money laundering and terrorist financing activities (already are being faced by the Pakistan) it should ratify above Convention t become a committed party to this.

12. AMLO 2007 gives extensive powers to Financial Monitoring Unit (FMU), which cover a range of spheres from collecting reports of doubtful transactions from financial institutions to the production of record and conducting investigation which is not required by FATF or any other instrument, so it is recommended that these powers should be limited or confined to the collection of doubtful transactions reports and production of record from financial institutions only and "Investigative power" should only be the sphere of the prosecuting/investigating agency that has a functional link with the predicate offence.

After March 2010:

Although Pakistan has made a progress to improve "Anti Money Laundering Ordinance 2007" by incorporating certain amendments into it however invasive corruption and lack of political will keep on to be the two main impediments to an effective AML/CFT regime in Pakistan.

Financial Action Task Force's latest report (published in June 2010) describes that "though Pakistan has demonstrated progress in improving its AML/CFT regime, including enacting a permanent AML law", however FATF determines that certain strategic AML/CFT deficiencies continue.

There is no doubt that finally, AML law of Pakistan got approval from the Parliament and certain proposed amendments were also incorporated into it has passed AMLA 2009 incorporated certain proposed recommendations in the new AMLA 2009, even then legislative deficiencies still continue, which should be taken in hand seriously. Few of them are given below:

a. **"Seizure and Forfeiture of assets":**

Section 4, 9 and 10 of the "Anti Money Laundering Act 2010" (AMLA) grant powers for the forfeiture of property/assets of any person convicted of money laundering. Section 9 gives powers for freezing the property connected with money laundering. Nevertheless, the capability or aptitude to freeze and forfeit assets under the AMLA is untested and may establish challenging to enforce in the courts.[247]

[247] **US State Department Money Laundering Report - March 2010.**

b. "Cooperation with foreign governments":

Mutual legal assistance regime of Pakistan is not so overarching; however there exists a crime-specific assistance under the "AMLA (money laundering)". Section 26 of the AMLA allows for mutual legal assistance relating to "money laundering inquiries, on condition that a prior contract with "contracting state" should have been established for this purpose. A deep study of these provisos implies that there are too much legislative hindrances for "the AMLA" to be an effectual instrument.[248]

c. "Operational autonomy of Financial Monitoring Unit":

"Operational independence and autonomy of Financial Monitoring Unit" is also an issue, particularly in respect of its ability to employ its budget and manage staffing necessities and requirements. In addition, there come out to be restrictive information sharing rules with alien counterparts which do not conform to international norms/standards for extra-judicial global collaboration.[249]

[248] Ibid

[249] Country by Country AML Reports Library FIU: http:///www.knowyourcountry.com/countries.html.

d. "criminalization of money laundering":

FATF mentioned in its report (Improving Global AML/CFT Compliance, On-Going Process) published on 25th June 2010 that Pakistan's AML Act does not criminalize money laundering and terrorist financing adequately.

So the country should demonstrate sufficient criminalization of both these illegal activities in accordance with "Recommendation 1 and Special Recommendation 2 of FATF".[250]

e. "Procedures to identify, freeze and confiscate terrorist assets":

Another deficiency pointed out in FATF's report is that the procedures described in AML Act of Pakistan for identification, freezing and confiscation of terrorist assets are also inadequate and cumbersome.

So the forfeiture procedure should be proper and sufficient according to "Recommendation 3 of FATF" and it should also include the forfeiture, freezing and confiscate the property of terrorist as well.[251]

[250] Improving Global AML/CFT Compliance, On-Going Process) by FATF-GAFI : 25th June 2010

[251] ibid

f. "Regulation of money service providers":

Pakistan's anti money laundering regime is weak in respect of successful and effective regulation of money service providers as it does not provide preventive measures and appropriate sanctions for these services.

So in order to meet with the requirements of "Special Recommendation 6 of FATF", Pakistan should effectively regulate money providing services while increasing the range of preventive measures for these services and including adequate punishments as well.[252]

g. "Effective controls for cross-border cash transactions":

Currently AML regime of Pakistan is feeble regarding controls for cross-border cash transactions; however FATF encourages Pakistan for improving and implementing its anti money laundering law in order to control cross-border cash transactions through which probability of laundering of proceeds or funds may increase.[253]

[252] ibid

[253] Ibid

Recommendations Proposed for a Strategic Action Plan against Money Laundering:

In order to remove all the shortcomings and deficiencies identified above, few more suggestions are given following, to address the issue of money laundering and terrorist finance more effectively, such as;

i. Financial Monitoring Unit (FMU) of Pakistan need to be more strengthened and rather than be subject to the control and supervision of the General Committee i-e consisted of political ministers, it should be bestowed with an operational autonomy.

ii. In order to assist core functions of collection, analysis and dissemination of data, FMU urgently needs a strong infrastructure of information technology.

iii. Strong preventive procedures for all "financial & non-financial" trades and occupations (both within formal financial sector or informal) should be incorporated in the new legislations and regulations.

iv. Reporting of "suspicious currency transactions" should be fully put into practice.

v. Approach of law enforcement authorities of Pakistan should be proactive in chasing "money laundering" and "financing of terrorism" in their field inquiries rather than be dependent on the reports to initiate investigations.

vi. Taking into consideration the role of private aid organizations, played in terrorist-funding, Pakistan should work speedily to arrange outreach control, supervision and monitoring of charitable organizations along with their actions and seal those who assist terrorist financing.

vii. Cross-border currency reporting requisites should be established and enforced by Pakistan immediately and it should also focus upon identification and detection of illicit cash-couriers. This job can be boost up by sharing declaration reports with FMU.

viii. Pakistan should also join the "UN Convention against Transnational Organized Crime" (UNTOC).

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