

**AN APPRAISAL OF ANTI-MONEY LAUNDERING
LEGAL REGIME OF PAKISTAN WITH GLOBAL
STANDARDS**

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ABSTRACT

For the last two decades Money Laundering (ML) has become a major concern of the international community. Therefore, the international forums and various governments around the globe are contributing to address this problem. Although it is very hard to find out ill-gotten money but various ways, methods and techniques are explored to make it fruitful and attuned with the existing laws of the country to stop ML. This article aims to evaluate the efficacy of Pakistan's Anti Money Laundering Regulatory Regime in the light of International Standards. While focusing on these issues, the article will further assess that whether Pakistani legislation is compatible with the International Standards and if not then a rational approach will be adopted to explore a way forward for Pakistan to fulfill its international obligations.

Key Words: Money Laundering, Pakistan, International standards, Financial Action Task Force, United Nations, economy.

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1.1 INTRODUCTION

Money Laundering (ML) is one of the major parts of various crimes including corruption, terrorism, drug trafficking, human trafficking, arms smuggling and many other illegal acts.¹ ML influences the economy adversely.² 'United Nations Office on Drugs and Crime' (UNODC) calculated approximate amount of money laundered every year as 2% - 5% of global GDP, in other words \$800 billion to \$2 trillion.³ These amounts are huge but still if we see the lower estimated amount it implies serious and notable economic impacts that governments must address.

ML is difficult to discover and it allows vast sums of ill-gotten money to move through the financial system without fear of retribution by the wrongdoers⁴. The techniques and methods employed for ML kept on changing with change of laws and policies. As soon as the countries implements the updated international standards as set by "Financial Action Task Force" (FATF) criminal find alternate channels to launder the illegal and illicit proceeds.⁵

Pakistan is a member of "Asia Pacific Group" (APG). The APG is a regionally focused international organization. It has membership of 40 while United Nations (UN), International Monetary Fund (IMF), FATF, Asian Development Bank (ADB) and World Bank (WB) are observer members. It works closely with FATF and pursues the same objectives in its region as FATF pursue in the world.⁶

Pakistan since last decade is making efforts and addressing the problem of money laundering positively by enacting laws, policies and reforming its institutional setup to prevent the abuse of its financial system. Pakistan has recently promulgated Anti money Laundering Act 2010⁷. Many efforts are also being made in the financial and non-financial sectors to improve the system of

¹ George, Barbara Crutchfield and Lacey, Kathleen, 'Crackdown on Money Laundering: A Comparative Analysis of the Feasibility and Effectiveness of Domestic and Multilateral Policy Reforms' (2003) accessed 15 October 2013

² Ibid

³ <<http://www.unodc.org/unodc/en/money-laundering/globalization.html>> accessed 15 October 2013

⁴ George, Barbara and Lacy (N1)

⁵ <<http://www.fatf-gafi.org/>> accessed 27 October 2013

⁶ <<http://www.apgml.org/>> accessed 28 October 2013

⁷ Anti Money Laundering Act 2010

AML. The significant improvement in Pakistan's legal regime has been welcomed by FATF by removing its name from the list of high-risk and non-cooperative jurisdiction⁸.

1.1.1 FATF and Pakistan's Anti Money Laundering Regime; an Overview

The FATF is an intergovernmental body having objectives to develop and promote national and international response to fight ML, terrorist financing (TF) and proliferation. Mandate of FATF has been extended till 2020.⁹ The FATF established in 1989 as a policy making body, it works to generate the will of governments to reform their legislation and institution in order to achieve its objectives.¹⁰ FATF has set International Standards by publishing 40 Recommendations and 9 special Recommendations.¹¹

The FATF consist of 36 members. It was established by G-7 summit. It works in close cooperation with the IMF, the World Bank, the United Nations, and FATF-style regional bodies (FSRS), and other international organizations¹². It is a multidisciplinary body as is essential in dealing with money laundering bringing together the policymaking power of legal, financial and law enforcement experts¹³.

Forty Recommendations and Nine Special Recommendations issued by FATF set out fundamental and basics of a legal and institutional framework required by a country to deal with the problem of ML.¹⁴ In 1988 United Nations issued a statement on the 10th anniversary of 1988 Convention, recognizing the significance of these recommendations and declared them as most complete articulation of the best practices in the AML area.¹⁵

⁸ <<http://www.fatf-gafi.org/topics/high-riskandnon-cooperativejurisdictions/documents/fatf-compliance-february-2015.html#Pakistan>>

⁹ 'Financial Action Task Force Mandate' (2012-2020), <<http://www.fatf-gafi.org/>> accessed 15 October 2013

¹⁰ Ibid

¹¹ Ibid

¹² Ibid

¹³ FATF (N 5)

¹⁴ Ibid

¹⁵ S. Terry, 'An Introduction to the Financial Action Task Force and Its 2008 Lawyer Guidance' [2010] The Pennsylvania State University the Dickinson School of Law, Legal Studies Research Paper No. 39-2010.

Pakistan began to participate effectively in anti-money laundering (AML) efforts in Asia Pacific region since 2000¹⁶. While several laws are already in force in Pakistan to address the issues, a standalone law on money laundering was first introduced in the country in September 2007 through the promulgation of AML Ordinance 2007. This Ordinance was highly technical in nature and as such suffered from various deficiencies in comparison with the international standards. The APG as well as FATF had noted Pakistan's efforts and provided useful comments with a view to bringing the law to come into close compliance with international standards. A new Ordinance along with major amendments was issued on November 26, 2009 by the President of Pakistan. A mutual evaluation report (MER) on Pakistan's AML regime was adopted in APG's general meeting in July 2009.¹⁷ This MER provided useful comments to improve the prevailing AML regime. On 26th March 2010 a bill was passed on AML and enacted as 'Anti Money Laundering Act (AMLA) 2010'.¹⁸ The act addresses the major concerns of FATF to bring the laws in close compliance with international standards.

AMLA 2010 criminalizes the act of money laundering.¹⁹ The Act includes the predicate offence that helps to gather the evidence for the money laundering offences.²⁰ Pakistan also setup its Financial Monitoring Unit (FMU) under this Act.²¹ FMU identify trends and methods employed by the criminals with the help of Suspicious Transaction Reports (STRs).²² The implementation of Preventive measures for AML/CFT for Anti Money Laundering relies on the prudential power of regulators to regulate and implement. The Act also create rule making powers for FMU to make rules as required by AML Act.²³

¹⁶ Pakistan joined the APG in May 2000 <<http://www.apgml.org/members-and-observers/members/details.aspx?m=8fc0275d-5715-4c56-b06a-db4af266c11a>> accessed 15 October 013

¹⁷ <<http://www.apgml.org/members-and-observers/members/details.aspx?m=8fc0275d-5715-4c56-b06a-db4af266c11a>> accessed 18-October 2013

¹⁸ Anti Money Laundering Act 2010

¹⁹ Id Sec 3

²⁰ Id Sec 2(s)

²¹ Id Sec 6

²² Ibid

²³ Ibid

State Bank of Pakistan (SBP) introduced Prudential Regulations (PRs) in 1991 that covers the fundamentals of preventive measures.²⁴ SBP revised its Customer Due Diligence (CDD) regulations took place in March 2009, which addressed most of short coming prevailing before this revision.²⁵ The prudential regulations were further updated on January 31st 2011. The current CDD requirements improved the regime particularly in the banking sector.

The AMLA pays attention to the transactions that are unusual only when reporting STRs but the specific requirements are found in the SBP regulations. PRs provide in detail, examples of suspicious and unusual transactions.²⁶ The Act creates obligations on Financial Institutions (FIs) to submit STRs to FMU. SBP has defined requirements for FIs on internal control, audit, monitoring, supervision, and enforcement and compliance mechanism.

The SBP Act empowers Bank to do supervise and enforce effectively by conducting on side or off side inspections, review and to have access to the books and accounts maintained by the FIs under SBP. The SBP make sure that the persons who control the FIs should be fit and proper. It also has power to impose sanction on FIs in the form of penalties, restrictions suspension or removal of licenses. Criminal sanction can also be imposed on senior management. SBP has also taken initiative to bring alternate remittance service under a regulatory framework to creation of exchange companies and bringing the informal channels of value transfer into regulated environment remain the challenging task to the authority. The regulation issued by SBP establishes a good base to improve the protection of FIs against ML.

The study is aimed at evaluating the initiatives taken by the Pakistan's supervisory and regulatory authorities to combat money laundering. These initiatives are evaluated in the light of global standards as given by the FATF.

²⁴ 'Prudential Regulations for Corporate /Commercial Banking', (SBP, 2011) <http://www.sbp.org.pk/l_frame/index2.asp> accessed 15 October 2013

²⁵ Ibid

²⁶ Ibid

1.2 RATIONALE OF THE STUDY

Money Laundering (ML) is a global phenomenon and the concern of every country. It is hard to find and eradicate ML altogether. Better and improved controls and procedures contribute in mitigating the atrocious impacts of the problem only after it is (i.e. ML) comprehensively defined and incorporated in the legal system of a country. The rationale of the study is to seek whether the act of money laundering is comprehensively declared as offence by Pakistan? Since it is an international phenomenon, it is an essential that all the measures taken to stop and prevent ML must be in accordance to the standards set by the international community. The study investigates AML regime in Pakistan to explore whether the act of money laundering as defined under various laws and regulations, is effectively and comprehensively declared as an offence, when seen in the light of global standards to combat the problem of money laundering.

1.3 RESEARCH QUESTIONS

This research mainly revolves around the following questions:

- 1) What is “money laundering”?
- 2) What are the International standards for criminalization of the offence of money laundering?
- 3) Whether Pakistani legislation for criminalization of money laundering is compatible with the international obligations?

1.4 RESEARCH METHODS & METHODOLOGY

To investigate the compatibility and degree of compliance to international standards qualitative methodology is used. The methodology adopted for the research includes investigation of literature; learning in qualitative and descriptive methods to enlightened my understanding of practical and effective method for researching on the topic of Anti Money Laundering. Hence, the research methods is based upon a wide range of sources both primary as Anti money laundering act 2010, Control of narcotics Substance Act 1997, Anti-Terrorist Act 1997, Prudential regulations, Recommendations by FATF etc and secondary like books, articles, international standards, magazines, dictionaries, encyclopedias etc.

1.5 LITERATURE REVIEW

Combating Money Laundering and Terrorism Finance: Past and Current Challenges²⁷

By Navin Beekarry

This book addresses the broader legal, policy and regulatory issues confronting the international community in its search for effective methodologies to combat money laundering and terrorism financing. New regulatory and compliance approaches to deal with new threats. The book critically examines the 2012 revision of the Financial Action Task Force's revision of its recommendations. The author selected key papers that focused compliance perspectives in assessing the work including the shift from rule based to risk based approach.

Anti-Money Laundering: International Law and Practice²⁸

By: Wouter H. Miller, Christian H. Kalin, and John G. Goldsworth

Anti-Money Laundering is the definitive reference on money laundering and practice. The book provides an outline of the general approach taken by the Supra-national organizations like the United Nations and European council and further the approach taken by the international organizations and the initiatives taken on the basis of the supra national initiatives. A number of countries that are member of the Financial Action task Force (FATF) are described with regard to their specific legislative measures to prevent the Money Laundering. Finally an overview is given to make a comparison between the most important topics of money laundering and legislation in different countries.

Chasing Dirty Money: The Fight against Money Laundering²⁹

By: Peter Reuter, Edwin M. Truman

The book focused on the fight against money laundering as the efforts at national and international level were originally developed to reduce the drug trafficking and over years the efforts to stymie the money laundering have broadened and now covers a wide range of related crimes such as terrorism and proliferation of weapons. The efforts constitutes formidable regime that is applied to financial institutions and transactions throughout the world. Yet few assessment

²⁷ NavinBeekarry, 'Combating Money Laundering and Terrorism Finance: Past and Current Challenges' (Edward Elgar Publishing, 2013)

²⁸ Wouter H. Muller, Christian H. Kalin, John G. Goldsworth, 'Anti Money Laundering: International Law and Practice' (John Wiley & Sons, 2007)

²⁹ Peter Reuter, Edwin M. Truman, 'Chasing Dirty Money: The Fight against Money Laundering' (Peterson Institute, 2004)

of the effectiveness of this regime have been made, the authors (1) explore what is known about the scale and characteristics of money laundering, (2) describe the current anti money laundering regime, (3) develop a framework for assessing the effectiveness of the regime, (4) use that framework to assess how well the current system works and (5) make proposal for the improvement.

Money Laundering Compliance³⁰

By Tim Bennett

Money Laundering is one of the most potentially fraught areas for trustees, practitioners and their professional advisors. This Book examines crucially the changes in the UK regime with particular emphasis on the role, liabilities, and obligations of trustees within it, by examining a range of offences and the application of anti money laundering principles in a number of relevant UK jurisdictions. Money Laundering Compliance discuss key issues such as Know Your Customer (KYC), reporting procedures, and conflict between tipping off and disclosure. The book advises practitioners who find themselves involved in trusts under investigations, it has been fully revised to take account of EU Money laundering Directives that came into force in 2007.

Understanding and Preventing Money Laundering³¹

By Mulig, Elizabeth V. and Smith, Murphy

This Article addresses how internal auditors can help in preventing and combating money laundering. ML process is defined as a process by which illegal money is given an appearance of having originated from legitimate source. It explains the process of Money Laundering i.e. 'placement', 'layering', and 'integration'. It also describes that as many interested parties realize the need for global efforts to combat this very expensive crime, internal auditors have a unique opportunity, and obligation to take a proactive role in these efforts.

³⁰ Tim Bennett, '*Money Laundering Compliance*' Tottel Publishing, 2007

³¹ Mulig, Elizabeth V. and Smith, Murphy, '*Understanding and Preventing Money Laundering*' SSRN <<http://ssrn.com/abstract=1091011>> accessed 11 October 2013

The Meaning of “Laundering”³²**By Bradley, Craig**

The Supreme Court has agreed to raise the question that whether transporting illegal benefits to Mexico in a car's hidden compartment is equal to the transporting to hide violation of money laundering rule, 18U.S.C §1956. It is difficult to understand such rule given by Supreme Court. 'The elements of statute are that the government must show transportation or attempted transportation fund was across US border, the funds in question must be the proceeds of specified unlawful activity, the accused must know that the funds represent such proceeds, the transportation of the funds must have been designed in whole or in part to conceal or disguise the nature, location, source, ownership or control of the proceeds, the accused must know that such concealment was part of the transportation plan or design.'

Crack Down On Money Laundering: A Comparative Analysis of the Feasibility and Effectiveness of Domestic and Multilateral Policy Reforms³³**By George, Barbara Crutchfield and Lacey, Kathleen A.**

The paper explains the menacing role of ML in business and corruption involved in businesses and also identifies the risks and challenges associated with the eradication of this menace. The papers also outline the initiatives, adopted or proposed by the US, EU, COE. The paper reviews existing Money Laundering initiatives that resolve the challenges to eradicate Money Laundering. And recommend on loopholes of legislative framework while emphasizing on the scope and extent of money laundering.

Follow the Money³⁴**By Bravo, Karen E**

The aim of this paper is to discuss to global problems 1) money laundering, and 2) human trafficking. The paper compare and link both as human trafficking is an evil by its very nature

³² Bradley, Craig, 'The Meaning of 'Laundering'. (2007) Trial Magazine Indiana Legal Studies Research Paper No. 97

<<http://ssrn.com/abstract=1076623>>

³³ George, Barbara Crutchfield and Lacey, Kathleen A., 'Crackdown on Money Laundering: A Comparative Analysis of the Feasibility and Effectiveness of Domestic and Multilateral Policy Reforms' (2003) 2 Northwestern Journal of International Law & Business, <Available at SSRN: <http://ssrn.com/abstract=1431264>> accessed 20 September 2013

³⁴ Bravo, Karen E., 'Follow the Money: Does the International Fight Against Money Laundering Provide a Model for International Anti-Trafficking Efforts?' (2008) 2, University of St. Thomas Law Journal. accessed 17 September 2013

while money laundering is criminalized and disapproved because its harms to may occur. Paper discusses the linkage between both and also the preventive measures which are adopted for both of these problems. And the obstacles of political will that plays an important role in implementation of preventive measures.

Laundering the Public Sector Corruption³⁵

By Gordon, Richard K,

This report examine how FATF might be employed to deter, expose and prosecute corruption in public sector as it involves politically exposed persons (PEPs).the report proposes that heightened scrutiny by financial institutions and Government bodies is required. There must be some system of payment through which it could be identified and traces if any payment is received by PEPs out of the payment that is made to government contractors from government accounts.

Issues of International Criminal Regulation of Money Laundering In Context of Economic Globalization³⁶

By Borlini, Leonardo

The paper outlines serious risks created by the Money Laundering for the economic globalizations and also suggested the need of international response to such crime. Study suggests that the dynamic nature of economic globalization present numerous opportunities for the criminals and criminal organizations to fully capitalize on such opportunities, this paper call for an accurate legal answer to all such problems.

Effectiveness of China's Anti Money Laundering Policies³⁷

By Tang, Xu, Shi, Yongyan and Cao, Zuoyi

This article gives the recommendation on china's future AML works, i.e. to improve legislation and judicial interpretation of AML and terrorist financing regimes. Further to improve the AML internal control and customer identification system of financing institution. AML authorities

³⁵ Gordon, Richard K, 'Laundering the Proceeds of Public Sector Corruption' [2009] World Bank, Case Legal Studies Research 09-10.

³⁶ Borlini, Leonardo, 'Issues of the International Criminal Regulation of Money Laundering in the Context of Economic Globalization' [2008].

Paolo Baffi Centre Research Paper No. 2008-34.

³⁷ Tang, Xu, Shi, Yongyan and Cao, Zuoyi, 'The Effectiveness of China's Anti-Money Laundering Policies' [2010].

carry out AML risk assessment and guide financial institution to assess transaction on their own. Comprehensive evaluation system is to be built for the assessment of China's effectiveness and evaluation to be conducted every three years.

Anti-Money Laundering in Europe³⁸

By Barrachdi, Faysal

This research is related to money laundering directives in Europe, and what are the consequences for the effectiveness of the directive. The study suggests the role of private bank in rent seeking. Indeed rent seeking prevent private banks to actively and efficiently follow the third money laundering directive. It also requires both the regulators and banking sectors to create a tradeoff between the fight against ML and maintaining the integrity of European financial system.

In Rem Alternative to Extradition for Money Laundering³⁹

By Fisher, Keith R

Much of the intractability of money laundering to effective detection and deterrence is based not on a lack of law enforcement tools but on their relative lack of efficacy. Confiscation represents the clearest and best technique –depriving the malefactors of their ill-gotten gains. While both international and domestic frameworks have created to foster and facilitate law enforcement authorities' use of this tool, a number of practical political and legal problems diminish its potency. Potential legal solutions are fairly straightforward and some of these are suggested in article. All that is required is the political will of the international community to implement them. Emerging as a current problem worldwide, money laundering is posing a lot of hurdles for prevention, detection and prosecution of the process.⁴⁰ Money launderers are coming up with more sophisticated techniques day by day which are becoming a serious threat for FIs. ML is easy where there are complex transactions that involve intermediaries including financial advisors and analysts, accountants, shell corporations, and other kinds of service providers that

³⁸ Barrachdi, Faysal, 'Anti-Money Laundering in Europe: Banks as Rent-Seekers in the Enhancement of the Third Money Laundering Directive' [2008].

³⁹ Fisher, Keith R., 'In Rem Alternatives to Extradition for Money Laundering' (2003) Loyola of Los Angeles International and Comparative Law Review, Vol. 25, 409.

⁴⁰ Paul Allan Schott, 'Reference Guide to Anti-Money Laundering and Combating the Financing of Terrorism' (2nd edn 2006) I-1, ISBN: 0-8213-6513-4

use financial products and transfer them to, through or from different countries.⁴¹ ML is a simple concept when we describe or define it as;“it is a process by which proceeds from criminal activity are disguised to conceal their illicit origins”.⁴²

The illegal funds are transacted via lawful channels to hide the unlawful origins of these criminal proceeds.⁴³ Basically, rather than the property itself ML involves the proceeds of criminally derived property and displays transactional features, mostly having to do with concealment. Criminals obtain huge profits by ML as they hide the criminal act and disguise the origins of illegal money by investing the illicit money in lawful businesses and other ventures.⁴⁴

1.6 MONEY LAUNDERING- DEFINED

Money is laundered by movement of illicit funds through a number of transactions which are designed to hide the source of these funds and make them appear as legal and legitimate with no hint as to what the actual origin was.⁴⁵ Most countries and international organizations subscribe to the comprehensive definition adopted by the ‘Vienna Convention 1988’⁴⁶ and the ‘Palermo Convention 2000’⁴⁷.

- (a) (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;

⁴¹ George, Barbara and Lacy (N1)

⁴² PA Schott (N1)

⁴³ ibid

⁴⁴ Id I-2

⁴⁵ George, Barbara and Lacy (N1)

⁴⁶ United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988) <<http://www.incb.org/e/conv/1988/>> accessed 20 October 2013

⁴⁷ United Nations Convention Against Transnational Organized Crime (2000) <<http://www.undcp.org/adhoc/palermo/convmain.html>> accessed 20 October 2013

(b) Subject to the basic concepts of its legal system:

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

(ii) 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 in accordance with this article.⁴⁸

The FATF defines money laundering as; “the processing of (...) criminal proceeds to disguise their illegal origin in order to legitimize the ill-gotten gains of crime”.⁴⁹

1.7 MONEY-LAUNDERING: A WHITE COLLAR CRIME

ML is an activity that is tend to be secret and doesn't allow itself to be available for statistical analysis and for quiet obvious reasons the amount of profit and extent of operations is not publicized by launderers.⁵⁰ Moreover, as the money laundering is an international phenomenon and the tactics being employed by the money launderers involve various countries taking advantage of the differences among their legal systems, enforcement efforts and international cooperation.⁵¹ That is the reason there are no authentic estimates available regarding how much money is laundered every year. However, UNODC calculated approximate amount of money laundered every year as 2% - 5% of global GDP, in other words \$800 billion to \$2 trillion.⁵² As per IMF the estimated amount of Money Laundered per year ranges from two to five per cent of the world's GDP. Using 1996 statistics, these percentages approximate between US \$590 billion and US \$1.5 trillion.⁵³ Thus, by any estimate, the scale of the problem is very high and it needs attention of every country to deal with this white collar crime.

1.8 MONEY-LAUNDERING: MECHANISM AND TECHNIQUES

It is considered that initially money laundering started with its ties to drug trafficking as the illegal money generated from drug trafficking was deposited in bank accounts in small

⁴⁸ See Vienna Convention, articles 3(b) and (c)(i); and Palermo Convention, article 6(i)

⁴⁹ <<http://www.fatf-gafi.org/pages/faq/moneylaundering/>> accessed 15 October 2013

⁵⁰ PA Schott (n 1) 1-6

⁵¹ FATF (n 10)

⁵² <<http://www.unodc.org/unodc/en/money-laundering/globalization.html>> accessed 15 October 2013

⁵³ Vito Tanzi, 'Money Laundering and the International Finance System' (IMF 1996) Working Paper No. 96/55, 3-4

denominations to arouse no suspicion, financial instruments or other assets were purchased to hide the original source of illegal money.⁵⁴ Today, illegal and illicit gains have spread over a number of crimes that include corruption, human trafficking, drug trafficking and arms smuggling.⁵⁵ The money or gains from all such activities can simply be used simply as it is to complex schemes that involve net of international business transactions and investment activities.⁵⁶ The process and mechanism of money laundering remains the same regardless of the crime. Money launderers do placement, layering and integration to convert their illicit gains into legal gains.⁵⁷

Money laundering is an international problem, different stages of money laundering may occur in different parts of the world i.e. placement, layering and integration each may occur in different country.⁵⁸ Money launderers choose countries that have lax system and ineffective or corrupt institutions, as well as with complex financial systems because complex transactions are easy to abuse and supportive to laundering money.⁵⁹ But however, it can and does happen in almost all parts of the world; no country is exempt.

There are number of methods and techniques that criminals use to launder money, these are usually referred as Methods and trends.⁶⁰ These methods and trends are in constant evolution and kept on changing as the countries adopt anti money laundering measures for one method, criminal find other ways to launder money.⁶¹ The methods to launder money vary from country to country as the countries differ in characteristics which include economy, financial markets, anti-money laundering regime, enforcement mechanism and international cooperation. Wrong doers employ numerous methods to launder money when the overseers detect one they find another. It is therefore not possible to accurately describe the methods that criminals use to

⁵⁴ PA Schott (n 1) I-7

⁵⁵ Ibid

⁵⁶ Doug Hopton, 'Money Laundering: A Concise Guide For All Business' (Gower Publishing 2006) 2

⁵⁷ PA Schott (n 1) I-7

⁵⁸ Ibid

⁵⁹ Ibid

⁶⁰ Ibid

⁶¹ <<http://www.fatf-gafi.org/topics/methodsandtrends/>> accessed 24 October 2013

launder money. Thus these methods are in constant evolution and range from cash deposits of small amounts in number of different banks to the buying of luxurious items.⁶²

Yet, international response to this problem produced excellent works on ML techniques and methods. FATF has published the typology reports and provides reference material in the techniques and methods used. In addition to FATF, the FATF-style regional bodies (FSRBs) also provide updated information on these methods and trends.⁶³

1.9 GLOBAL IMPACTS

Today the financial systems facilitate legitimate trade and commerce but also permit the criminals to transfer illegal proceeds of crime instantly. As the money laundering is dependent upon the existing financial system, the choice of method and technique is also dependent upon the existing financial system and the criminal's creativity within the same system. Therefore, ML takes place through FOREX Companies and other currency exchanges, stocks brokerages, gold and other value able Gems dealers, casinos, automobile dealerships, insurance companies, and trading companies, private banking facilities, offshore banking, shell corporations, free trade zones, wire systems, and trade financing."⁶⁴ The global impacts of money laundering have notable impacts on the economy and the society of countries that usually have weak financial system and easily exposed to such influences and disruptions.⁶⁵ ML ultimately destructs the economy, society and security of the country which is used for ML. To quantify the adverse implications of ML is a difficult task and never possible to precisely estimate its impact at global level. It affects the global economy as it erodes financial institutions and weakens the role of FIs in the economic growth of a country making investment rate to decrease and depressing the productive investment that ultimately erodes economic growth, increase the rate of corruption and crimes and compromises the development of the country. It can also increase the risk of

⁶² PA Schott (n 1) I-10

⁶³ See for example [Trade-based money laundering typologies](http://www.fatf-gafi.org/topics/methodsandtrends/)<APGhttp://www.fatf-gafi.org/topics/methodsandtrends/>accessed 24 October 2013

⁶⁴ John McDowand Gary Novisl, 'The Consequences Of Money Laundering And Financial Crime' (2001) EP Vol. 6 No. 2

⁶⁵ PA Schott (n 1) II-2

macroeconomic instability, Facilitates illicit capital flight, depress and discourage foreign investment, and distorting prices and content.⁶⁶

To investigate the compatibility and degree of compliance to international standards qualitative methodology is used. AML Act 2010 and prudential regulations (corporate and commercial banking) are studied and analyzed with regard to international standards as contained in FATF's Recommendations.

2.0 CRIMINALIZATION OF THE ACT OF MONEY-LAUNDERING

2.0.1 International Standards Set By FATF

Criminalization of the act of Money laundering is discussed under the recommendation 3 and its interpretive notes that provide the comprehensive international standards as provided by the FATF. FATF's Recommendations 10 and 15, Special Recommendation VII, and the Interpretative Notes to Recommendation 10 lays down in detailed the criteria for a comprehensive Customer due diligence system. Recommendation 13 of FATF recommendations provides the framework for CR with other banks.

Recommendation 15 of FATF provides that;FIs should make policies and such measures to prevent the abuse of technological progress in ML schemes. Recommendation 11 and its Interpretative Note provide the relevant legal framework for the record keeping requirements as follows; FIs are required to keep and maintain the record of transactions whether national or international, for a term not less than 5 years, after transaction's finishing point.

Recommendation 11 and its Interpretative Note provide that FIs whenever find some transactions of unusual patterns, complex, unusually large, and with no economic or legal value, must special attention. Such finding must remain available for the competent authorities and law enforcement agencies for a term not less than 5 years.Recommendation 15 describes that institutions must establish a comprehensive system of internal control in order to prevent the ML risks. These internal controls must cover policies, procedures, and controls. Following are the given standards;FIs should establish and keep the appropriate internal polices and related implementing

⁶⁶ Brent L. Bartlett, 'The Negative Effects Of Money Laundering On Economic Development' (2002)ADB Regional Technical Assistance Project No.5967

procedures to tackle ML. Recommendation 26, 27, 28 and 34 lays down in detail the regulatory and supervisory requirements as under: FIs must be subject to appropriate and adequate AML regulations and measures and must effectively apply and implement the FATF Recommendations.”

2.0.2 Pakistan’s AML Legal Regime

Pakistan has criminalized money laundering under its legal system. Definition adopted by the AML act 2010 comprises of the constituent elements as required by the Palermo and Vienna conventions. Control of Narcotics Substances Act, 1997 and Anti Terrorist Act, 1997 also include the constituent elements of the act of Money Laundering. Prior to the promulgation of AML act 2010 these statutes criminalized the act of ML. Table 1 shows a comparison of definition as provided by these statutes.

Table 1

<p>AML ACT 2010</p>	<p><i>-Acquires converts. possesses, uses or transfers property, knowing or having reason to believe that such property is proceeds of crime</i></p> <p><i>-Conceals or disguises the true nature, origin location, disposition, movement or ownership of property, knowing or, having reason to believe that such property is proceeds of crime.</i></p> <p><i>-Holds or possesses on behalf of any other person any property knowing or having reason to believe that such property is proceeds of crime or.</i></p> <p><i>-Participates in associates, conspires to commit, attempts to commit aid; facilitates or counsels the commission of acts specified.</i></p>
<p>CNSA, 1997</p>	<p><i>Possession, Acquisition, Use, Conversion, Assigning, Transfer, Holding or possessing on behalf of another, Concealing or disguising the true nature, source, location, disposition, movement, title, or ownership of the proceeds by</i></p>

	<i>making false declaration in relation to the proceeds.</i>
ATA, 1997	<i>Entering into or being concerned with any arrangement which facilitates retention or control by or on behalf another of terrorist property: by concealment, by removal from the jurisdiction, by transfer to nominees, or in any other way.</i>

The 'Anti-Money Laundering Act' 2010 is a special act promulgated to tackle the offence of ML and establishes a system to effectively implement provisions of the act. The 'Control of Narcotics Substance Act' 1997 was enacted to control the drug trafficking and related crimes and it deals with the seizing, forfeiture and confiscation of the proceeds from the crimes related to narcotic trafficking. The 'Anti-Terrorism Act' 1997 deals mainly with terrorism and financing for terrorism and it defines the act to terrorism as well as provides mechanism to control financing for terrorism. It implements the UN convention related to seizing freezing and confiscating the property and forfeiting property that is related or involved in an act of terrorism. The definitions of these crimes are provided above.

PREDICATE OFFENCE AS PER FATF DESIGNATED CATEGORY	PREDICATE OFFENCES UNDER AML ACT 2010 RELEVANT SECTION AND STATUTE
Participation in an organized criminal group	Criminal conspiracy under s. 120B of the PPC.
Terrorism	All offences under the Anti-Terrorism Act
Corruption and Bribery	Ss. 161-165A of the Pakistan Penal Code 1860 (PPC).
Corruption and Corrupt Practices	S. 9 of the National Accountability Ordinance 1997 (NAO).
Murder	Sections 300 and 316 of PPC
Kidnapping, illegal restraint and hostage taking	Sections 363-366 367-367A, 268-369 and 496 of PPC. On illegal restraint: 337K, 343-348.
Human Trafficking	366B, 369, 370 and 371 of PPC Ss.3, 4, 5 of the Prevention & Control of Human

	Trafficking Ordinance 2002. ss. 17-19 and s. 22 of the Emigration Ordinance (1979)
Sexual exploitation including of children	366A, 367A, 371A, 371B,
Theft or Robbery	ss. 379, 380, 381, 381A, 382, 392, 395, and 402 of the PPC.
Extortion	384 and 385 of PPC
Illicit trafficking in stolen goods.	s. 411-414 of PPC.
Fraud	s. 417, 421, 422, 423, and 424 of PPC.
Forgery	s. 465, 467, 468, 471, 472, 473, 474, 475, 476, 477, 477A of PPC.
Counterfeiting of Currency	ss. 489A-E of PPC.
Counterfeiting and Piracy of Products	s. 482, 483, 484, 485, 486, 487 and 488 of PPC ss. 66-70 of the Copy Right Ordinance, 1962. ss.27-29 of the Registered Design Ordinance (2000) ss. 99, 101 and 107 of the Trade Marks Ordinance (2001).
Illicit Trafficking in Narcotic	Drugs ss. 5,9,11,13,15,41 and 42 of the Control of Narcotic Substances Act, 1997.
Illicit arms trafficking	s. 122 of PPC. ss.19 &20 of the Arms Act 1878 s. 13 of The Pakistan Arms Ordinance (1965).
Environmental crime	Sections 17, 18 of Pakistan Environmental Protections Act, 1997
Insider trading and market manipulation	s. 24 of the Securities and Exchange Ordinance 1969 on market manipulation.
Smuggling	Sections 156 [Items 9,14,14A of the Table]

Ancillary offences are subsidiary and additional offences attached to commission of the offence of ML. The Table 1 provides the definition of offence of ML and includes its ancillary offences. AMLA 2010 criminalized aiding, abetting, association, conspiracy, punishable under the Act.⁶⁷ ATA criminalizes the ancillary acts and provides punishments same as of provided for the offence committed.⁶⁸ CNSA also prohibits and declare acts as mentioned in Table 1 to be ancillary and provides punishment according the act or as awarded by the Court.⁶⁹ Other than these special Acts the Pakistan Penal Code provides a wide range of offences to be considered ancillary to the offence of ML.⁷⁰

AMLA makes the natural persons liable when it defines the offence of money laundering and ancillary offences and covers natural persons who involve in the act of money laundering knowingly that the property they are using, possessing, acquiring or converting is a proceed of crime.⁷¹ The QSO 1984 presumes the intention to commit crime from the factual circumstances, to hold a person liable of the crime.⁷² Legal person is held criminally liable where contravention of the provisions of AMLA is committed by such person. Or any other law made under the authority of this Act which may be rules, regulations, direction etc. when the violation of the provision of this act is committed while conducting the business of company, the legal person is to be held liable to violate the provision of the Act and to be punished accordingly and every person responsible for commission of such violation shall also be punished with imprisonment up to 10 years.⁷³ There is also imposition of fine of up to 1 million rupee, and property can also be forfeited subject to involvement in ML.⁷⁴

Anti-Terrorist Act made the offence of money laundering a terrorist property⁷⁵ and provides punishment in form of imprisonment from 6 months to 5 years and court has discretion to impose

⁶⁷ AMLA(N 10) Sec 3

⁶⁸ ATA Sec 21-I

⁶⁹ CSNA Sec 12

⁷⁰ PPC Sec 109-119, 120 (A) (B), 511

⁷¹ AMLAct 2010, (n 10)

⁷² The Qanun-e-Shahadat Order 1984, Sec 27

⁷³ AMLA 2010, (n 10) Sec 37

⁷⁴ Id Sec 4

⁷⁵ ATA 1997 Sec 11(K)

any fine.⁷⁶ The CNSA provides harsh punishment for the acts of ML and ancillary offences as imprisonment of 5-14 years, fine not less than present value of the asset, and it also include the forfeiture of property that is compulsory in nature.⁷⁷ The assets include a broad range of properties that are directly or indirectly related to the accused.⁷⁸

CDD is not discussed under AMLA, but the act empowers the supervisory and regulatory authorities to make laws as to regulate the institutions working under them. SBP and SECP being regulatory and supervisory bodies have issued their regulations concerning CDD that work as guideline for the institutions working under them. SBP has laid down the procedure for CDD in 'Prudential Regulations for Corporate and Commercial Banking' in Para M1 discuss in detail the measures to conduct the Customer due diligence in banking sector of Pakistan.

CONCLUSION

The Money laundering is a global phenomenon with serious social and economic implications. It's hard to estimate the amount of money laundered every year but even if the lowest estimated amount is considered it is so huge that it has become a major concern for world economy to address on priority basis. Countries on their own and with mutual cooperation with other countries and also with international groups, regional bodies and international organizations are working on continuous basis to respond effectively to this problem that has caused so much turbulence in the world economy.

Financial action task force is an Inter-governmental body established to fight this menace it works in close collaboration with the countries and other international groups so as to create a uniform set of rules and practices to make the world a safer certain and more reliable environment. Forty Recommendations and Nine Special Recommendations issued by FATF set out fundamental and basics of a legal and institutional framework required by a country to deal with the problem of ML.

⁷⁶ Id Sec. 2(h)

⁷⁷ CNSA 1997 Sec 12

⁷⁸ Ibid

Pakistan being part of international community is also contributing towards a better and safer environment by positively legislating and establishing institutional framework to prevent the abuse of financial system. In 2010, Pakistan enacted the AML Act to reform its legal and institutional framework. ML is criminalized under the AMLA while the ancillary and related offences such as drug trafficking and terrorism financing are dealt under CNSA and ATA. Drug trafficking and other related offences are within dealt by ANF while corruption, banking scams, and other financial money laundering frauds are criminalized and prosecuted by NAB under the NAO.

The aim of this study was to seek that, whether the offence of money laundering has been comprehensively been criminalized under the money laundering legal regime of Pakistan? The study showed that the offence of money laundering has been criminalized and it is to a greater extent in conformity with the global standards as set by FATF. But still there is need of ongoing improvement and effective implementation of the provisions to tackle this problem.

Besides we have reached to the conclusion that the Anti-Money Laundering Act 2010 is an appreciable piece of legislation that criminalizes the act of money laundering according to the Vienna and Palermo Conventions. The Act has widens the range of predicate offences and also covers a range of ancillary offences relating to Money Laundering activities. The act of money laundering is criminalized under provisions of various statutes and there is a multi-agency approach to deal with the prosecution of the offence that creates shadow of doubts as to which agency is to prosecute the offence.

FATF is continuously improving the approaches and its recommendations to deal with this menace therefore Pakistan also needs to keep an ongoing typology program running to determine the methods which are used for money laundering and to provide mechanism by way of legislation to tackle this problem. To conclude, the study shows that the Anti-Money Laundering regime of Pakistan is largely compatible with the International Standards. However, there are two big problems that needs immediate attention of the stakeholders i.e. on the one hand global attention and cooperation is required outside the boundaries of the country whereas on the other hand a strict implementation at domestic level must be ensured as only availability of good laws is not sufficient. In addition, an update of laws with the changing environment of International

AMLs is very much necessary (Such as, the FATF has shifted its recommendation from rule based measures to risk based measures.).

REFERENCES

- 1) Barrachdi, Faysal, *Anti-Money Laundering in Europe: Banks as Rent-Seekers in the Enhancement of the Third Money Laundering Directive*, (2008)
- 2) Borlini, Leonardo, *'Issues of the International Criminal Regulation of Money Laundering in the Context of Economic Globalization'* (2008). Paolo Baffi Centre Research Paper No. 2008-34.
- 3) Bradley, Craig, *'The Meaning of 'Laundering'.* *Trial Magazine*, (2007) Indiana Legal Studies Research Paper No. 97
- 4) Bravo, Karen E, *Follow the Money?: Does the International Fight Against Money Laundering Provide a Model for International Anti-Trafficking Efforts?* (2008) University of St. Thomas Law Journal, Vol. 6, 2008
- 5) Brent L. Bartlett, *'The Negative Effects of Money Laundering On Economic Development'* (2002) ADB Regional Technical Assistance Project No.5967
- 6) Costa, Stefano, *Implementing the New Anti-Money Laundering Directive in Europe: Legal and Enforcement Issues - The Italian Case* (2008). Paolo Baffi Centre Research Paper No. 2008-13
- 7) Doug Hopton, *'Money Laundering: A Concise Guide for All Business'* Gower Publishing, 2006
- 8) Field, Brian J. and Guiora, Amos N., *Using and Abusing the Financial Markets: Money laundering as the Achilles 'heel of Terrorism* (2010) University of Pennsylvania Journal of International Economic Law, Vol. 29, No. 1,
- 9) Fisher, Keith R., *'In Rem Alternatives to Extradition for Money Laundering'* (2003) Loyola of Los Angeles International and Comparative Law Review, Vol. 25,
- 10) George, Barbara Crutchfield and Lacey, Kathleen A., *'Crackdown on Money Laundering: A Comparative Analysis of the Feasibility and Effectiveness of Domestic and Multilateral Policy Reforms'* (2003) Northwestern Journal of International Law & Business, Vol. 23, No. 2,

- 11) Gordon, Richard K., *'Laundering the Proceeds of Public Sector Corruption'* World Bank (2009); Case Legal Studies Research 09-10
- 12) John McDowe and Gary Novisl, *'The Consequences Of Money Laundering And Financial Crime'* (2001) EP Vol. 6 No. 2
- 13) Martin Dixon, *'Text book on International Law'* 4thEdn, Black stone press Ltd, 2000
- 14) Masciandaro, Donato, *Economics of Money Laundering: A Primer*. Paolo Baffi Centre Bocconi University Working Paper No. 171
- 15) Mulig, Elizabeth V. and Smith, Murphy, *Understanding and Preventing Money Laundering*
- 16) NavinBeekarry, *'Combating Money Laundering and Terrorism Finance: Past and Current Challenges'* Edward Elgar Publishing, 2013
- 17) Paul Allan Schott, *'Reference Guide to Anti-Money Laundering and Combating the Financing of Terrorism'* 2ndEdn, WB, 2006. I-1, ISBN: 0-8213-6513-4
- 18) Peter Reuter, Edwin M. Truman, *'Chasing Dirty Money: The Fight against Money Laundering'* Peterson Institute, 2004
- 19) S. Terry, *An Introduction to the Financial Action Task Force and Its 2008 Lawyer Guidance* (2010) The Pennsylvania State University the Dickinson School of Law, Legal Studies Research Paper No. 39-2010
- 20) Takats, Elod, *A Theory of 'Crying Wolf': The Economics of Money Laundering Enforcement*, IMF (2007)
- 21) Tang, Xu, Shi, Yongyan and Cao, Zuoyi, *The Effectiveness of China's Anti-Money Laundering Policies* (2010)
- 22) Tim Bennett, *'Money Laundering Compliance'* Tottel Publishing, 2007
- 23) Vito Tanzi, *'Money Laundering and the International Finance System'*, IMF (1996) Working Paper No. 96/55,
- 24) World Bank. "Anti-Money Laundering and Combating the Financing of Terrorism: Regional Videoconference Of Eastern and Southern Africa Region", World Bank, (2003)
- 25) World Bank. *Intensified Work on Anti-Money Laundering and Combating the Financing of Terrorism*. IMF/ World Bank, (2002)

- 26) Wouter H. Muller, Christian H. Kalin, John G. Goldsworth, 'Anti Money Laundering: International Law and Practice' John Wiley & Sons, 2007

STATUTES

- 1) Anti Money Laundering Act (2010)
- 2) Anti Narcotics Force Act (1997)
- 3) Anti Terrorism Act (1997)
- 4) Control of Narcotic Substances Act (1997)
- 5) Financial Investigation Agency Act (1974)
- 6) National Accountability Ordinance (1999)
- 7) Police Order (2002)
- 8) Pakistan Penal Code (1860)
- 9) The Qanun-e-Shahadat Order (1984)

INTERNATIONAL COVENTIONS

- 1) United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988)
- 2) United Nations Convention against Transnational Organized Crime (2000)
- 3) UN Single Convention on Narcotic Drugs' 1961 as amended by the 1972 Protocol
- 4) UN Convention on Psychotropic Substances' 1971
- 5) SAARC Convention on Narcotic Drugs & Psychotropic Substances 1990

ONLINE RESOURCES

About Egmont Group of Financial intelligence', <<http://www.egmontgroup.org/about>>

FATF Standards, <<http://www.unodc.org/unodc/en/money-laundering/Instruments-Standards.html?ref=menuside#UN-Global-Counter-Terrorism-Strategy>>

UN at a Glance <<http://www.un.org/en/aboutun/index.shtml>>

GPML Mandate, <<http://www.unodc.org/documents/money-laundering/GPML-Mandate.pdf>>

Objectives of the GPML <<http://www.unodc.org/unodc/en/money-laundering/programme-objectives.html>>

<<http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/0,,contentMDK:20120746~menuPK:51551~pagePK:41367~piPK:51533~theSitePK:40941,00.html>>
<<http://thecommonwealth.org/our-charter>>
<http://www.cicad.oas.org/main/default_eng.asp>
<http://www.oas.org/en/about/our_history.asp>
<http://www.cicad.oas.org/Main/Template.asp?File=/lavado_activos/default_eng.asp>
<<http://www.unodc.org/unodc/en/money-laundering/globalization.html>>
<<http://www.fatf-gafi.org/>>
<<http://www.apgml.org/>>
<http://eur-lex.europa.eu/LexUriServ/site/en/oj/2006/l_214/l_21420060804en00290034.pdf>
<<http://www.unodc.org/unodc/en/money-laundering/globalization.html>>
<<http://www.unodc.org/unodc/en/money-laundering/index.html?ref=menuside>>
<<http://www.unodc.org/unodc/en/treaties/CTOC/index.html>>
<https://www.cfatf-gafic.org/index.php?option=com_content&view=article&id=1540&lang=en>
< <https://http://www.finance.gov.pk/>>
< <https://http://www.mofa.gov.pk/>>
< <https://www.molaw.gov.pk>>
< <https://www.moswse.gov.pk>>
<<http://www.sbp.org.pk/about/index.asp>>
<<http://www.secp.gov.pk/>>
<<http://www.kse.com.pk/>>