

Anti-Money Laundering Act 2010: A Critical Analysis

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Introduction

Money laundering is a fast-growing crime in the modern world and also a mammoth threat to the economics of the developing countries. In simple terms, money laundering can be defined as such a method whereby illegal funds are transferred from one place to another, in order to cover its tracks.¹ The Financial Action Task Force (FATF)² identifies it as the processing of criminal proceeds to disguise their illegal origin.³ Money laundering is stated to cause severe harm to a country's economy, along with impacting individuals from around the world.⁴ It is further reported that the total amount of money being laundered in the entire world is between US\$500 billion and US\$1 trillion.⁵ There are three steps involved in this illegal process – placement, layering, and integration. Firstly, the illegitimate funds are secretly introduced into the legitimate financial system. Then, the money is moved around to create confusion, sometimes by wiring or transferring through numerous fake accounts. Finally, it is integrated into the financial system through additional transactions, until the laundered money appears clean.⁶

Globally, the drive against money laundering started in the 1970s, when the Bank Secrecy Act 1970 was passed in the United States. In the case of Pakistan, the situation is different and the anti-money laundering measures were introduced in the 2000s. Several steps have been taken in an attempt to control money laundering. Nevertheless, money laundering is rampant in the country and this can be attributed to the weak enforcement of laws and loopholes in the current regime.⁷

In June 2018, Pakistan was included in the 'grey list' issued by the FATF, which can have a detrimental impact on the Pakistani market. Currency dealers are of the opinion that banks would be the first to suffer by this.⁸ Although, there are no penalties that are included by being in the 'grey list', it is stated that as a result of this, financial institutions would be reluctant to

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¹ 'Money Laundering' <https://www.law.cornell.edu/wex/money_laundering#> accessed 4 December 2018.

² The Financial Action Task Forces was established in 1989 with the main aim of combating money laundering and its related crimes. This is done by keeping a checking on its member countries, issuing recommendations, passing measures for dealing with money laundering and its ancillary crimes, etc. The FATF is an inter-governmental organization, currently comprising of 36 member states.

³ 'What is money laundering' <<http://www.fatf-gafi.org/faq/moneylaundering>> accessed 14 February 2018.

⁴ 'Basel AML Index 2018 Report' (*Basel Institute of Governance*, 2018) <https://index.baselgovernance.org/sites/collective.localhost/files/aml-index/basel_aml_index_10_09_2018.pdf> accessed 7 December 2018.

⁵ 'Annual Report 2017, Anti-Money Laundering' (*MONEYVAL Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism*, 2017) <<https://rm.coe.int/moneyval-annual-report-2017-eng/16808af3c2>> accessed 7 December 2018.

⁶ 'How is money laundered' <<http://www.fatf-gafi.org/faq/moneylaundering>> accessed 28 February 2018.

⁷ 'The menace of money-laundering' (*DAWN*, 18 March 2002) <<https://www.dawn.com/news/405681>> accessed 7 December 2018.

⁸ 'FATF greylist: How would it impact Pakistan economy adversely?' (*Times of Islamabad*, 2 July 2018) <<https://timesofislamabad.com/02-Jul-2018/fatf-greylist-how-would-it-impact-pakistan-economy-adversely>> accessed 6 December 2018.

conduct business with the Pakistani institutions.⁹ This, in turn, would impact trade and further increase Pakistan's current account deficit.¹⁰ Businesses are also severely affected by money laundering as it deters investors. Furthermore, it is also stated that international banks can pull their business out of Pakistan as a result of the inclusion in the 'grey list'.¹¹

If the situation worsens, the country can also be included in FATF's 'black list', further causing problems for overseas Pakistanis, financial institutions, and among others, investors as well.¹² In order to be excluded from the 'grey list', Pakistan is faced with the dire responsibility of identifying terrorist financing and bringing a stop to it.¹³

This legislative review critically analyses the current legal regime on money laundering in Pakistan. This is done by taking into account its major loopholes, which end up facilitating money laundering in the country. The critical analysis in this review is an attempt to show that the regime is not at par with international standards and does not fulfil its basic purpose. The review points out the basic structural and procedural flaws that exist in it. It also highlights the international status of Pakistan concerning money laundering. Herein, a comparison is made within the regional laws in order to assess the gaps in the current regime and to conclude that the flaws in the current regime seriously harm the fight against money laundering.

International Ranking of Pakistan

There are various reports of different international bodies with regards to the rampant increase in money laundering. Almost all the reports and indexes mentioned by the international organisations rank Pakistan as one of the worst countries, which has a poor Anti-Money Laundering/Combating Financing of Terrorism (AML/CFT) strategy. Furthermore, the reports also state that Pakistan has an inadequate implementation of relevant rules and regulations governing the system for fighting money laundering.

The main worldwide body dealing with AML/CFT is the FATF. The apex body of this organisation namely FATF Plenary ranked the lists of jurisdictions by the level of AML/CFT risk. There are two main lists maintained by FATF commonly known as a 'black list' and a 'grey list'. The term 'grey list' is used for the jurisdiction with strategic AML/CFT deficiency by virtue of which the countries framed an action plan with the FATF. The term 'black list' is used for the jurisdictions with strategic AML/CFT deficiencies to which a call for action applies. Pakistan was included in the 'grey list' of the FATF in 2012 and after three years of its inclusion

⁹ 'Pakistan could face economic pain from return to terrorist financing 'gray list' (*Reuters*, 16 February 2018) <<https://www.reuters.com/article/us-pakistan-militants-financing-economy/pakistan-could-face-economic-pain-from-return-to-terrorist-financing-gray-list-idUSKCN1G00PB>> accessed 6 December 2018.

¹⁰ Ibid.

¹¹ 'Pakistan economy to be hit by FATF terror finance list: Top 10 developments' (*Business Standard*, 26 February 2018) <https://www.business-standard.com/article/current-affairs/pakistan-on-fatf-terror-financing-grey-list-10-ways-its-economy-will-bleed-118021900078_1.html> accessed 7 December 2018.

¹² 'Pakistan improves its ranking in global anti-money laundering index but still has a long way to go' (*Samaa*, 10 October 2018) <<https://www.samaa.tv/news/2018/10/pakistan-improves-its-ranking-in-global-anti-money-laundering-index-but-still-has-a-long-way-to-go>> accessed 6 December 2018.

¹³ Ibid.

was removed in 2015. It has now again been included in the ‘grey list’ of FATF since June 2018.¹⁴

A Swiss Group, Basel Institute on Governance issues the Anti-Money Laundering Index, since 2012. This index remains the only index issued by an independent, non-profit organisation. As per its report of 2017, Pakistan ranked worst 46th country among 146 countries on money laundering.¹⁵

The Global Financial Integrity is a United States think-tank, which is a research and advisory organisation in nature, and provides worldwide analysis of illicit financial flows. According to its report, hundreds of billions of United States Dollars (US\$) are misplaced worldwide on an annual basis due to money laundering. These international reports not only rank Pakistan as one of the worst countries with respect to money laundering but also highlight the main flaws of the system which *inter alia* include the faulty laws, heavy flaws in whole formal and informal economic system, parallel informal economy, poor implementation of the laws, weak enforcement, and lack of proper planning and formulation of timely strategies.

National context

In Pakistan, money laundering was first discussed as an offence under the Anti-Terrorism Act 1997 (ATA).¹⁶ This Act is concerned with combating terrorism and terrorist financing through freezing, seizure, and forfeiture of such assets that are derived from these activities. Similarly, certain anti-money laundering measures were also introduced in the Control of Narcotics Substances Act 1997. These included freezing and forfeiture of acquired and possessed assets derived from narcotic drugs and psychotropic substances.¹⁷

In order to curb money laundering, the regulatory authorities of Pakistan also introduced anti-money laundering measures in the shape of regulations. In 2003, the State Bank of Pakistan (SBP) which is the regulator of monetary and credit system in Pakistan, issued its Prudential Regulations M1 to M5 to safeguard the banks/financial institutions from the threat of money laundering. These regulations were updated in 2016.¹⁸ In 2002, the regulator of the corporate sector and capital market, the Securities and Exchange Commission of Pakistan (‘SECP’) also issued various anti-money laundering measures to all non-bank financial institutions, in order to combat the money laundering practices in the corporate sector.

¹⁴ ‘Pakistan on FATF’s grey list: what, why, and why now?’ (*Dawn*, 6 July 2018) <<https://www.dawn.com/news/1418143>> accessed on 25 August 2018.

¹⁵ ‘Basel AML Index 2017 Report’ (*Basel Institute on Governance*, 16 August 2017) 3 <https://index.baselgovernance.org/sites/index/documents/Basel_AML_Index_Report_2017.pdf> accessed 31 August 2018.

¹⁶ The Anti-Terrorism Act 1997, s. 11K.

¹⁷ The Control of Narcotics Substances Act 1997, s. 67.

¹⁸ ‘Anti-money laundering and combating the financing of terrorism (AML/CFT) Regulation for Bank & DFIs’ (*Banking Policy & Regulations Department, State Bank of Pakistan*, 2016) <http://www.sbp.org.pk/l_frame/Revised-AML-CFT-Regulations.pdf> accessed 12 March 2018.

Being a member of the Asia/Pacific Group on Money Laundering (APG) since May 2000, it was mandatory for Pakistan to frame an anti-money laundering legislation based on international standards.¹⁹ The first specific law in this regard was the Anti-Money Laundering Ordinance (AMLO) promulgated in 2007, which suffered from various flaws. The scope of the AMLO was limited to account transactions and suspicious transaction reports (STRs) were restricted to only banking accounts. The offence of money laundering was made non-cognisable and a small number of predicate offences were included in the schedule of the AMLO.²⁰

The AMLO was reframed via the Anti-Money Laundering Act 2010 (AMLA) and various changes were incorporated in it, including a well-built preamble and a thorough definition of money laundering.²¹ The feature of combating terrorist financing is also included in the preamble. In addition to this, details have been provided for the attachment and forfeiture of properties, either obtained from proceeds of crime or involved in money laundering.²² The Act also provides a definition, albeit a broad one, as to what constitutes as a financing institution.²³ Despite these several changes in the AMLA, the Act is laced with several loopholes and errors that need to be addressed.

One problem, which supplicates money laundering in the country is the existence of *hundi* and *hawala* businesses. Due to the operation of such businesses, it is still relatively easy to transfer illegal money out of the country. In addition to this, fake accounts throughout the country increase the crime of money laundering. Due to several loopholes in the current regime, these illegal businesses still continue to exist.²⁴

On the other hand, one of the main problems identified by the FATF was the proper identification of terrorist financing and application of stringent sanctions in the identified cases.²⁵ In addition to this, Pakistan has to show that its agencies are successfully prosecuting organisations, which have been identified in connection to terrorist financing. A time of six months has been given to Pakistan to demonstrate its implementation of the 27 point action plan given by the FATF.²⁶

¹⁹ The Asia/Pacific Group on Money Laundering consists of 41 member countries, including Pakistan. The main focus of the group is to ensure proper implementation of international standards set for curbing money laundering and other related crimes'

<<http://www.apgml.org/members-and-observers/members/details.aspx?m=8fc0275d-5715-4c56-b06a-db4af266c11a>> accessed 23 March 2018.

²⁰ The Anti-Money Laundering Ordinance 2007, s. 4 and s. 21.

²¹ The Anti-Money Laundering Act 2010, s. 3.

²² Ibid, s. 9, 10, and 11.

²³ Ibid, s. 2 (f).

²⁴ 'Anti-money laundering drive: Legal loopholes frustrate FIA' (*The Express Tribune*, 2 November 2018) <<https://tribune.com.pk/story/1838854/1-anti-money-laundering-drive-legal-loopholes-frustrate-fia/>> accessed 11 December 2018.

²⁵ 'Improving Global AML/CFT Compliance: On-going Process – 19 October 2018' <<http://www.fatf-gafi.org/countries/a-c/bahamas/documents/fatf-compliance-october-2018.html#Pakistan>> accessed 11 December 2018.

²⁶ 'Pakistan copes with legal gaps ahead of crucial FATF meeting' (*Pakistan Today*, 6 December 2018) <<https://www.pakistantoday.com.pk/2018/12/06/pakistan-copes-with-legal-gaps-ahead-of-crucial-fatf-meeting/>> accessed 11 December 2018.

Investigating and Prosecuting Agencies

Initially, three agencies, the National Accountability Bureau (NAB), the Federal Investigation Agency (FIA), and the Anti-Narcotics Force (ANF) were empowered to investigate and prosecute relevant parties under section 2 (j) of the AMLA. Afterwards, the Directorate General (Intelligence and Investigation Inland Revenue) Federal Board of Revenue (FBR) was also included as one well via a notification by Ministry of Finance and Revenue dated 24 August 2010.

The National Accountability Bureau, set up under the NAO, exercises jurisdiction all over Pakistan, both at the federal and provincial level.²⁷ However, one blatant flaw is that the Bureau has no power to investigate and prosecute cases concerning terrorist financing and this is because the schedule of the Ordinance fails to include it as an offence.

There are three main aims of the AMLA, provided in the introduction – prevention of money laundering, fighting terrorist financing, and forfeiture of the assets derived from such activities. The offences enlisted in the schedule of the AMLA also include offences enlisted under the ATA. However, NAB being an investigating and prosecuting agency has no authority to investigate and prosecute terrorist financing.

The second agency declared as investigating and prosecuting agency under the AMLA is the FIA. As per the preamble of the FIA Act 1974, the scope of the FIA is only limited to the investigation of various crimes committed in connection with the matters related to the Federal Government. Thus, the FIA cannot operate at the provincial level and cannot deal with the offences committed solely by private persons. This is problematic as it hinders cooperation between the investigating agencies due to conflicting jurisdictions.

The ATA is available in the schedule of the FIA Act 1974, but the federal agency can only deal with those terrorist financing cases, which have an inter-provincial scope or are assigned by the Federal Government. This results in another impediment simply because the FIA has not been empowered enough to take necessary action. Such a contradiction should have been addressed before the FIA was made an investigating and prosecuting agency.

The ANF is another investigating and prosecuting agency for enforcement of the AMLA. However, the preamble of the Control of Narcotics Substances Act 1997, is confined to controlling narcotic drugs, psychotropic items, and their allied matters, therefore its entire role is regarding the control of narcotics. Its inclusion as an investigation agency is, therefore, pointless.

Another enforcement agency that is responsible for dealing with money laundering is Directorate General (Intelligence & Investigation Inland Revenue) FBR. This agency has the power to investigate and prosecute the cases under the AMLA wherever earnings of crimes are accumulated under the offences committed under the Customs Act 1969.

²⁷ National Accountability Ordinance 1999, s. 4.

One of the main issues that is affecting the practical implementation of the AMLA is the absence of a Joint Task Force. It further raises concerns regarding the approach the legislature has adopted in dealing with money laundering. The main problem is that all of the four agencies are working in their own sphere resulting in a complete lack of cooperation. This leads to a failure in curbing the offences of money laundering and terrorist financing. It is, therefore, recommended that, one specialised agency instead of four separate ones may serve better or a Joint Task Force of these agencies can also produce improved results.

FATF has formulated a wide range of recommendations for fighting the money laundering and terrorist financing. The guidelines of FATF are considered binding upon its member countries. Recommendation 27 urges member countries to empower and facilitate investigating authorities in combating money laundering as well as terrorist financing.²⁸

In contrast to the situation in Pakistan, in other countries, especially in the regional ones, there is only one specialised investigating and prosecuting agency empowered to conduct an investigation in matters of money laundering. In India, there is one specialised financial investigation agency named as the Directorate of Enforcement under the Department of Revenue, Ministry of Finance, Government of India. This agency is mandated for the application of two laws: Foreign Exchange Management Act 1999 and the Prevention of Money Laundering Act 2002 (PMLA). Moreover, the Financial Intelligence Unit (FIU) in India is also working under the Department of Revenue, Ministry of Finance. In the United Kingdom, the National Crime Agency, as an initiative to tackle money laundering crime, established the Joint Money Laundering Intelligence Taskforce, with help of the financial sector.²⁹ This task force developed a partnership with different stakeholders including the Government, British Bankers Association, Law Enforcement Agencies, and major banks of the UK. In its operations, all the relevant stakeholders are included, e.g., NCA, Her Majesty's Revenue and Customs, concerned local police, and financial institutions.

Although the four designated investigating and prosecuting agencies are working in their respective ambit under the AMLA, each agency is confined within a narrow scope of jurisdiction. By following the international standards set by other countries, it can be stated that the formation of a Joint Task Force or one specialised agency is indeed required in order to tackle these offences more effectively. This task force should consist of different stakeholders and regulatory authorities i.e., customs, FIU, investigating agency, or police is also helpful for fighting these crimes, as all are intrinsically linked to each other.

Predicate Offences

As per its section 2 (s) the offences enlisted in the schedule of the AMLA are called predicate offences. At present, there are 98 sections of Pakistan Penal Code 1860 ('PPC') and 19 special

²⁸ 'FATF 40 Recommendations'

<<http://www.fatf-gafi.org/media/fatf/documents/FATF%20Standards%20-%2040%20Recommendations%20rc.pdf>> accessed 25 April 2018.

²⁹ 'Joint Money Laundering Intelligence Taskforce (JMLIT)'

<<http://www.nationalcrimeagency.gov.uk/about-us/what-we-do/economic-crime/joint-money-laundering-intelligence-taskforce-jmlit>> accessed 14 May 2018.

laws that are considered as predicate offences under the AMLA. These offences, however, fall short of covering all the necessary offences. An example can be taken from the categories enlisted by the FATF under which a range of predicate offences can be covered.³⁰ As per the first recommendation of the FATF, it is advised that the member countries should include a comprehensive list of predicate offences in their anti-money laundering statutes.³¹ Some FATF approved predicate offences, i.e., piracy and sexual exploitation, including sexual exploitation of children, are not covered in the schedule of the AMLA.

India, on the other hand, covers a wider range of predicate offences as compared to Pakistan; there are 27 special laws in the schedule of the PMLA. Under the schedule of the PMLA, only 60 sections of Indian Penal Code 1860 (IPC) are mandated.

The comparison of money laundering laws of Pakistan and India depicts many notable concerns. India has far better domestic laws in many areas than Pakistan. These include sexual exploitation, including those of children, environmental offences, and piracy laws. Moreover, these laws in India were passed long before those enacted in Pakistan. The predicate offences specified in the schedule of the AMLA are less in number as compared to India, have a limited scope, and are not up to the international standards set by the FATF.

Offence of Money Laundering

Section 4 of the AMLA provides punishment for money laundering offence as a rigorous imprisonment from one to ten years. Moreover, section 21 (a) of the AMLA states that each crime punished under it shall be non-cognisable. In a cognisable offence, the police or the designated officer of the investigating agency has the authority to arrest the accused without having obtained a warrant or permission of the court. Cognisable offences are serious and heinous in nature and have a minimum punishment of three years. Non cognisable offences, on the other hand, are not serious and heinous in nature as compared to cognisable offences and have a maximum punishment of less than three years.

This drawback of the AMLA has serious consequences. It renders the alleged offence of money laundering as a lenient one and the accused is given a benefit in this case. The investigating officer cannot arrest a culprit without the permission of the court. In Pakistan, the minimum punishment for the offence of money laundering is one year. However, in India, as per section 4 of the PMLA, the penalty for money laundering entails a rigorous imprisonment for a term not less than three years and up to seven years. In Bangladesh, the punishment provided for money laundering crime in section 4 of the Money Laundering Prevention Act 2012 (MLPA 2012) is a sentence of four to twelve years of rigorous imprisonment. In Sri Lanka, the punishment of money laundering is a rigorous imprisonment from five to twenty years, as established under section 3 (1) (b) of the Prevention of Money Laundering Act 2006 (PMLA 2006).

³⁰ 'Designated categories of offences' <<http://www.fatf-gafi.org/glossary/d-i/>> accessed 28 May 2018.

³¹ (n 36) 3.

The global standards set by the international community concerning the curbing of money laundering are also converse to the AMLA. The first two recommendations by the FATF deal with the extent of money laundering crime. These suggestions urge member countries to criminalise money laundering crime according to the international guidelines discussed in the various instruments of the United Nations.

If the aim is to achieve international standards, it may be safe to state that the nature and punishment of money laundering provided in the AMLA is not at par with the required global standards. Worldwide, the offences of money laundering and its underlying offences i.e., predicate offences, are considered as serious offences. However, in Pakistan, the predicate offence under the AMLA have stricter punishments than that of the offence of money laundering. In this sense, this crime is not considered as a serious offence as its punishment is not as severe as other offences. The threshold of punishment provided for serious and cognisable offences in Pakistan does not even match with the serious offence of money laundering under the AMLA.

There is also another way of analysing the entire situation. Financial, corporate, and fiscal offences in Pakistan include fraud, embezzlement, counterfeiting currency, illegal forex businesses, etc. These offences are dealt with by the relevant provisions of Pakistan Penal Code 1860. The punishments of above offences provided in these criminal instruments are although different yet quite similar in magnitude. The punishment of imprisonment of the money laundering offence under the AMLA is relatively lesser than the punishments provided for the serious financial, corporate, and fiscal offences under the relevant special laws of Pakistan. Most of these offences are cognisable in nature, which shows that their prevention is considered more gravely by increasing the magnitude and length of rigorous imprisonment for such offences. However, this has not been done in case of the AMLA, which not only halted the prevention of money laundering crime but also jeopardised enforcing this enactment as there are no powers of the investigating officers to arrest due to the offence being a non-cognisable one. Due to this defect, the feature of the AMLA that an offender can be punished in two offences, i.e., in money laundering as well as in predicate offence, bears minimal effect.³²

Management of Forfeited Properties

As per the AMLA, the Federal Government is responsible for appointing an administrator for receiving and managing the confiscated property. According to section 11 of the AMLA, the administrator also ensures the disposal of such property. Although some procedure is provided in section 11 of the AMLA for managing the forfeited properties but in practical terms, there is no central authority designated for the same. Due to this, the investigating and prosecuting agencies working under their respective jurisdiction have to deal and manage the forfeited properties in accordance with the law. This lacuna not only creates ambiguity but also raises a question with regards to the enforcement of the AMLA. The relevant recommendation of the FATF urges the establishment of a central authority to initiate speedy action with response to the joint legal requests of the other countries.

³² (n 21) s. 39 (2).

In India, section 10 of the PMLA relates to managing the properties confiscated in a money laundering offence. It provides for the appointment of a designated administrator for receiving, managing, and disposing of the confiscated property. Specific rules are also framed under the authority of the PMLA. In these rules, a mechanism is provided for maintaining the confiscated property. The administrator is designated for arranging and maintaining the property including cash as well as other items. There is also implementation of these provisions in India and the administrators are appointed accordingly.

In view of international standards as well as in comparison to India, the functioning of the investigating and prosecuting agencies in Pakistan is deeply impacted in the absence of a central authority for management of properties confiscated under the AMLA. Such a flaw also portrays the lack of implementation of the enacted law and framed rules.

Lack of Jurisdiction of Banking Court

There are many banking offences enlisted as predicate offences in the schedule of the AMLA. However, money laundering itself is not declared a scheduled offence in the schedule of Offences in respect of Banks (Special Courts) Ordinance 1984. Due to this reason, special banking courts cannot take cognisance of anti-money laundering cases. This serious impediment prevents the AMLA from achieving its basic purpose. Section 20 of the AMLA provides for the jurisdiction of the court and declares the Sessions Court as the competent court to have the authority with regards to cases under the AMLA. However, the scope of other courts in which banking predicate offences are to be tried, is ousted.

The Offences in Respect of Banks (Special Courts) Ordinance 1984 provides for the establishment of special courts dealing with banking offences. In respect of scheduled offences to be tried by the special banking court, the Offences in Respect of Banks (Special Courts) Ordinance 1984 provide that the scheduled offences must exclusively be tried through a special court. Section 2 (d) of the Offences in Respect of Banks (Special Courts) Ordinance 1984 defines the scheduled offence as specified in its first schedule. However, the AMLA is not specified as a scheduled offence in the first schedule of the Offences of the Respect of Banks (Special Courts) Ordinance 1984, therefore, banking courts have no jurisdiction in the AMLA cases.

On the other hand, under the PMLA in India, the special courts are constituted for prosecuting a money laundering offence. Section 43 of the PMLA constitutes courts of sessions as special courts for this offence.

The comparison shows that under the AMLA even though the designated sessions court exercises jurisdiction over money laundering crime as well as predicate offences thereto, but the banking court constituted under the Offences in Respect of Banks (Special Courts) Ordinance 1984 has no jurisdiction. This imperfection and legal lacuna so created has, nevertheless, badly affected the anti-money laundering drive in Pakistan.

Agreements with Foreign Countries

There are various ways for gathering of information in criminal investigations. The Interpol, world's largest international police organisation, is a source of informal cooperation between the police of one country with the police of another country primarily to follow the suspect. Formal mechanisms of cooperation include the Mutual Legal Assistance Treaty (MLAT). These treaties are beneficial for the exchange of information between two or more countries pertaining to criminal investigations.³³ Another formal system of cooperation is extradition, which again requires a reciprocal agreement between the two countries. The objective once again is to follow and apprehend the suspect or the accused.

Although a framework for international cooperation is provided within the AMLA, the ground realities portray quite a deplorable condition. Various sections of the AMLA deal with international cooperation, such as agreements on a mutual basis, asking for help from a contracting state, mutual shifting of accused persons, and other forms of cooperation. However, in reality, there is no separate domestic legislation relating to Mutual Legal Assistance in Pakistan and no MLAT with regards to anti-money laundering provisions with any country of the world till date. In such a scenario, cases are likely to suffer as no evidence in the shape of proceeds of crime or stolen assets can be collected or recovered from foreign jurisdictions. This drawback has serious consequences on the investigation of the cases, as it often requires collection of evidence from foreign countries.

Moreover, the offence of money laundering is not included in the schedule of the Extradition Act 1972, which means that no accused individual can be surrendered from abroad to Pakistan under this Act. The schedule attached to the Extradition Act 1972 provides placement of twenty-four serious and heinous offences with the exception of the offence of money laundering, an offence, which is recognised as serious and heinous offence worldwide.

The Financial Monitoring Unit (FMU) of the State Bank of Pakistan does not have membership in the Egmont Group of Financial Intelligence Units (FIUs).³⁴ This group is an informal network of the FIUs of member countries. The intelligence information in shape of STRs or unusual financial activity gathered by these FIUs is shared with the member countries whenever required by them. Globally and regionally as well, the FIUs of almost all important countries are the members of this group, including, India, Bangladesh, Sri Lanka, Nepal, and even the ongoing war-affected country Afghanistan. Due to lack of sharing of financial intelligence of STRs among members, FIUs in Egmont Group, proceeds of crime, financial trail, and uncovered assets in money laundering cannot be traced out by the investigating and prosecuting agencies of Pakistan.

Pakistan is also not a member of the Harare Scheme concerning the Mutual Legal Assistance relating to Criminal Matters among Commonwealth countries. This scheme provides

³³ 'International Narcotics Control Strategy Report, Volume II, Money Laundering and Financial Crimes' (*United States Department of State Bureau for International Narcotics and Law Enforcement Affairs*, 2012) 20 <<https://www.state.gov/documents/organization/185866.pdf>> accessed 22 June 2018.

³⁴ 'Financial Intelligence Units (FIUs)' <<https://egmontgroup.org/en/content/financial-intelligence-units-fius>> accessed 31 July 2018.

a productive as well as practical approach to joint collaboration in Commonwealth states to the widest possible extent. This drawback adds further obscurity to the anti-money laundering drive of Pakistan.

International standards set to fight money laundering mainly focus on cooperation between countries through MLTAs. The relevant recommendations of the forty recommendations of the FATF exclusively deal with the need for international cooperation to combat the offence of money laundering.

In the absence of international cooperation in practical terms, both formal and informal, Pakistan's role in fighting the money laundering menace is seriously hindered. Lack of MLTA's with other countries and the absence of a domestic law on mutual legal assistance negatively affects Pakistan's standing in the international community when it comes to curbing money laundering.

Conflict with Other Laws

The AMLA is a special Act, which has an overriding effect over any conflicting law.³⁵ Even though this Act has an overruling effect, it is also inconsistent with many other special laws, which also happen to have a superseding effect. These special laws are not repealed and are still intact.

The Protection of Economic Reforms Act 1992 (PERA) is creating a hefty impediment for the AMLA. The objective of the AMLA to prevent money laundering is clearly defeated with the existing provisions of the PERA contained in sections 4, 5, and 9 of the PERA. Section 4 of this Act authorises the citizens of Pakistan with regards to the free flow of foreign currency. Hence, this section left it free for all Pakistani citizens and non-nationals to move and pull out foreign exchange inside or outside Pakistan in whatever form, without making a foreign currency declaration. Section 5 provides immunities in shape of exemption from any inquiry, levy of taxes, restrictions to foreign currency accounts to foreign currency accounts holders besides a guarantee for its complete secrecy. Section 9 of the PERA ensures the secrecy of banking transactions, which is a legal obstruction for controlling money laundering.

The Foreign Currency Accounts (Protection) Ordinance 2001 also safeguards the foreign currency accounts holders in shape of transferring foreign currency freely in or outside Pakistan, thereby opening a clear channel for money laundering. Section 3 of this Ordinance specifies the protection of foreign currency accounts and a safeguard is provided to the foreign currency accounts holders to pull out the foreign currency inside or outside the country, thereby promoting money laundering. This Ordinance is opening a channel, which is quite a smooth one for money laundering crimes. It has also made it clear in its section 5 that the protection given to the foreign money account owners is in addition to that provided under the PERA.

Another law working against the AMLA is the Income Tax Ordinance 2001 (ITO). Section 111 (4) of ITO allows the inward flow of any suspicious money to the country. This

³⁵ (n 21) s. 39 (1).

provision of the ITO paves the way for money launderers to bring any amount of their unexplained assets or income, in shape of foreign exchange forwarded from an outside country via the usual banking channels.

These protective laws, i.e., the PERA, the Foreign Currency Accounts (Protection) Ordinance 2001 and the ITO are promoting money laundering in the country. In the presence of these protective laws, the AMLA actually becomes ineffective. Not only these laws stand on equal footings with the AMLA, but they also seriously jeopardise the scope and extent of the Act. These hefty impeding laws are consequently serving for the promotion, support, and manifold increase of money laundering in the country. The measures provided under these ambiguous laws were actually meant to boost the economy but in practical terms, they provided an open back door channel for money laundering.

Preamble: Combating Terrorist Financing

Nine special recommendations of the FATF deal with the measures prescribed for combating terrorist financing. Recommendation II deals with criminalising the terrorist financing and associated money laundering and holds that the member countries should criminalise the offences concerned with terrorism, such as terrorist financing, terrorist acts, as well as terrorist organisations.³⁶

Pakistan has criminalised terrorist financing, radical activities, as well as terrorist organisations under the ATA, nevertheless, the AMLA simultaneously also aims to combat terrorist financing. The AMLA has three main objects, which includes, fighting financing of terrorism. However, this core purpose is defeated when the ATA is applied by investigating and prosecuting agencies. This is because it is still the main law specifically dealing with terrorism. Though the investigating and prosecuting agency (only FIA according to its jurisdiction) can use both of these enactments for investigating money laundering and terrorist financing cases, this aspect illustrates that in practical terms, the AMLA has no concern with fighting the terrorist financing. The measures provided in the AMLA to fight the terrorist financing are covered in sections 5, 6, and 7.

Comparably, the money laundering statutes of other countries only provide for the prevention of money laundering and there is no mention of the feature of curbing terrorist financing. For example, the PMLA in India is only concerned with the prevention of money laundering in the country. This purpose-oriented approach leads to this Act being exclusive one dealing with the prevention of money laundering. Furthermore, in Bangladesh the preamble of the MLPA 2012 stresses on the prevention of money laundering and the same is mentioned under the PMLA 2006 of Sri Lanka.

Though measures are provided in the AMLA to fight the terrorist financing but it has no role in investigating and prosecuting the offence. Therefore, although the feature of combating

³⁶ 'IX Special Recommendations'
<<http://www.fatf-gafi.org/publications/fatfrecommendations/documents/ixspecialrecommendations.html>>
accessed 14 August 2018.

the terrorist financing of the AMLA enriched in its preamble, some of its sections bear no fruit in terms of its enforcement.

Based on the analysis and findings in this legislative review, there are some recommendations for improvement. It is proposed that the law has to be amended in such a way that renders it effective in preventing money laundering, and this includes implementation of the measures recommended by the FATF. The predicate offences in the schedule of the AMLA should be brought at par with the international standards. The punishment of money laundering in the AMLA should be increased to a minimum of three years long with making the offence cognisable.

For the effective enforcement of the AMLA, the investigating and prosecuting agencies should be given a complete mandate or for complete smooth running, there should be one specialised financial investigation agency. The MLATs should be made with other countries, in addition to seeking membership of FMU of SBP in Egmont Group of FIUs. Furthermore, domestic law on the MLA should be framed and the laws, which are in conflict with the AMLA should be repealed/amended.

Lastly, the procedural flaws in the AMLA that exist to the extent of lack of jurisdiction of banking courts and the operation of the AMLA to combat terrorist financing should be rectified immediately and a central authority should be established for the management of the forfeited properties under the AMLA.

Conclusion

The AMLA in practical terms is an ineffective law, falling short of international standards and requirements in curbing money laundering. In comparison with other regional countries, it has been observed that the current regime requires a drastic change.

The mandate provided to the investigating and prosecuting agencies is in itself faulty. The lack of a complete jurisdiction of these agencies, for combating money laundering, and financing of terrorism under the AMLA, is assisting the offence rather than preventing it. The predicate offences in the schedule of the AMLA fail to incorporate the complete predicate offences provided by the FATF. Globally and regionally as well, the punishment provided for the offence of money laundering does not match with the one prescribed under the AMLA. The non-cognizable nature of the offence of money laundering in the AMLA brings the investigating and prosecuting agencies on a back foot and provides a smooth way for the criminals to launder money.

Although AMLA provides for managing the forfeited properties yet in practice, there is no central authority designated for the same, causing hindrance to the investigating agencies. Special banking courts cannot take cognizance of anti-money laundering cases as it is not declared as a scheduled offence under the Offences in Respect of Banks (Special Courts) Ordinance 1984. The AMLA though presents a fine picture regarding international cooperation in the field of money laundering, in reality, having no international cooperation with any country in the field of anti-money laundering defeats this provision.

The inconsistent laws with the AMLA are also causing major impediments in its effectiveness. Consequently, in the presence of these shielding laws, the enforcement of the AMLA can be severely problematic. The inconsistent special laws to the AMLA are still intact and have not been repealed; therefore, in terms of their functioning, they are providing hurdles in the way of the AMLA. The feature of combating the terrorist financing, though present in the AMLA, but cannot be enforced practically because the Anti-Terrorism Act 1997 is being used for this purpose. This is severely problematic as the main concern of the FATF is the effective control of the terrorist financing and stringent measures to be put in place to put a stop to it. The international standing of Pakistan on money laundering portrays a true picture of the approach adopted by the country and its global ranking in the anti-money laundering drive depicts its poor efforts against this offence.