

JIBAS (The International Journal of Islamic Business, Administration and Social Sciences) (Quarterly) Trilingual (Arabic, English, Urdu) ISSN: APPLIED FOR (P) & (E)

Home Page: <http://jibas.org>

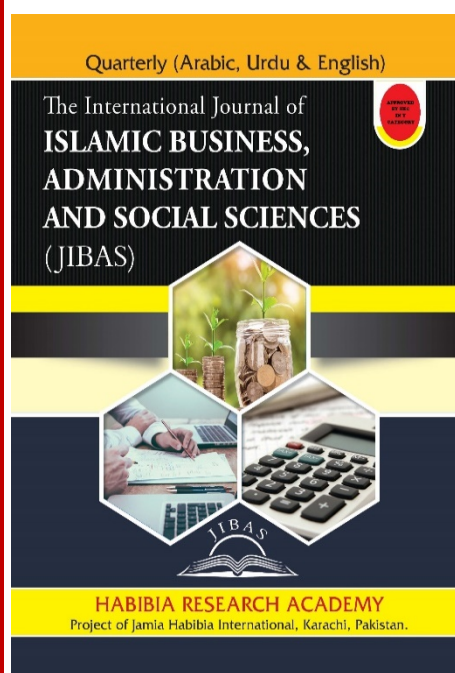
Approved by HEC in Y Category

Indexing: IRI (AIU), Australian Islamic Library, Euro pub.

PUBLISHER HABIBIA RESEARCH ACADEMY
Project of **JAMIA HABIBIA INTERNATIONAL**,
Reg. No: KAR No. 2287 Societies Registration
Act XXI of 1860 Govt. of Sindh, Pakistan.

Website: www.habibia.edu.pk,

This work is licensed under a [Creative Commons Attribution 4.0 International License](https://creativecommons.org/licenses/by/4.0/).



TOPIC:

MONEY LAUNDERING AND DUTIES OF CORPORATE DIRECTORS IN OVERALL SCENARIO

AUTHORS:

1. *Khalid Mehboob, PhD Research Scholar, School of Law, University of Karachi. Email ID: services3136@gmail.com Orcid ID: <https://orcid.org/0000-0001-5322-5631>*
2. *Dr. Fakhara Rizwan, PhD Scholar, Visiting Faculty Professor, Shaheed Zulfiqar Ali Bhutto Law University Karachi. Email ID: adv.fakhara@gmail.com Orcid ID: <https://orcid.org/0000-0001-6551-2275>*

How to Cite: Mehboob, Khalid, and Fakhara Rizwan. 2021. "ENGLISH 1 MONEY LAUNDERING AND DUTIES OF CORPORATE DIRECTORS: IN OVERALL SCENARIO". *International Journal of Islamic Business, Administration and Social Sciences (JIBAS)* 1 (4):1-14.

URL: <https://jibas.org/index.php/jibas/article/view/38>.

Vol. 1, No.4 || October –December2021 || P. 1-14

Published online: 2021-12-30

QR. Code



**MONEY LAUNDERING AND DUTIES OF CORPORATE DIRECTORS
IN OVERALL SCENARIO**

Khalid Mehboob, Fakhara Rizwan,

ABSTRACT:

In recent times, money laundering has emerged as a mucky crime that results in economical misbalance not only in a particular country but globally as well. It not only affects a country financially but politically and morally as well. To deal with this issue, several countries have established anti-money Laundering Laws. America is the first country that enacted these laws and later other states legislated those laws to curb the situation.

Financial Action Task Force (FATF) is responsible to implement and monitor anti-money laundering laws around the world, but within the financial institutions, it is the duty of its board of directors to keep a check on the compliance of these laws and regulations.

In Pakistan, anti-money laundering laws were installed in 2010. There are many institutions such as SEC, SBP, FIA, and NAB etc., to control the crime of money laundering but still, we need much effective legislation in this regard.

Keywords: *Corporate Governance- Money laundering- Fiduciary duties- Financial Action Task Force- Bitcoins- Legislation-Board Oversight-Compliance-Whistleblowing-SECP-Prudential Regulations*

INTRODUCTION:

As a social animal, from the beginning of a civilized world, humans have been struggling to form a peaceful society within the rule bounded environment. After the publication of Viki leaks in 2006, the issue of Money laundering drew the world's attention. It is a very heinous crime and can have serious financial consequences. According to the United Nations, an estimated \$1.6 trillion was laundered worldwide in 2009, putting the social fabric and economic activities in danger (Roberto,2012). Money laundering is primarily the cover-up of illegal funds obtained through illegal means. There are different opinions on how the term "money laundering" was formed. One of which is that drug dealers/mafia would establish illegal outlets to clean up their illicit earnings (Yasin, 2012:296). The study outlines some of the regulations that have been put in place to fight money laundering globally and specifically in Pakistan. However, the secondary aim of this paper is to explore the Islamic injunctions on the issue of money laundering.

In the given context, the money laundering issue is emerging as a challenge for the global economy. Money laundering is also termed dirty money and it has an immediate effect in creating poverty, unstable economy. By not earning wealth in legal ways it widens the scope of tax evasion. In a nutshell, the money laundering act has a corrosive impact on the economy and society. Moreover, it promotes serious crimes like smuggling, drug trafficking, illegal trading of arms and ammunition, sex trafficking, and political corruption. According to some news reports more than 2 trillion dollars has been dragged through money laundering in the global economy.

Hollywood movies, networks and cable televisions have glorified these illegal activities for decades. Movies like “Bonnie & Clyde (1976)”, “the outlaw Josey Wells (1976)”, “Lord of War (2005)”, the Fox Television Series “Sons of Anarchy (2008-2014)” and AMC television series “Breaking Bad (2008-2013)” are all prime example of this veneration (Anderson & Anderson,2015)

So far as the method of money laundering is concerned, it is established that basically there are three stages involved in money laundering, which are Placement, Layering and Integration. By using such tactics, illegal money is laundered and parked into the financial system. There is no doubt that when money laundering becomes part of a financial system, it creates ruinous consequences not only in the economy but in society. As a result, crimes grows like a mushroom in all segment of life.

In Pakistan, investigation and prosecution agencies under the Anti-Money Laundering Act, 2010 (AMLA-2010) have been authorized to investigate and seize with marginal oversight by the courts. However, these authorities are subject to scrutiny in light of the constitutional guarantees of the fundamental rights of citizens under Article 23 (right in possession of private property) and Article 14 (Right to privacy) as enshrined in the Constitution of Pakistan. Investigative and prosecution agencies, including National Accountability Office (NAB), Federal Investigation Agency (FIA), and Anti-Narcotics Force (ANF) have been already mandated to inspect predicate offences, they have now the authority to charge high profile criminals under the Anti-Money Laundering Act-2010. (Putra, F.D.)”

Most popular and parallel economies in the Asian market like casinos, brokerages and parallel remittance systems (hawala, hundi) are equally considered reliable and parallel economies in Pakistan, India and China. These parallel economies greatly affect local and international economies as a whole in the form of reduced foreign exchange earnings through the banking sector.

As no law is perfect, changes take place continuously with the change in culture and values; similarly, money laundering is also a palpable crime that can shape itself to deceive the existing laws that go beyond the boundaries of the law. For example, the creation of “Silk Road” being part of “Dark website” which is used for drug trafficking, illegal supply of firearms and ammunition and by way of dealing in “Bitcoin”. The question is should Bitcoin be considered as currency and come under the money laundering act? It has been debatable for quite some time, as Mr. Warren Edward Buffett who is an American business and philanthropist says that Bitcoin cannot be considered as currency, but in 2015 the Federal Court of East Texas refused Mr. Warren Edward’s claim and declared that Bitcoin falls under the category of currency.

It is important to note that the Supreme court of India in the case Internet and Mobile Association of India v. Reserve Bank of India-2020 [115 taxmann.com 53(SC)] removed the restrictions on dealing in crypto currencies by quashing the Reserve bank of India’s circular dated 6th April 2018. The Reserve Bank in a circular on 6th April 2018 directed all regulated entities to neither deal in virtual currencies nor provide services to any person

or organization which was dealing with or settling virtual currencies. It also instructed the relevant authorities to exit the relationship with such person or entities if they were already providing services to them. The petitioner, in this case, was the Internet and Mobile Association of India (IMAT), a specialized industry. It argued that the Reserved Bank has banned dealing in crypto currencies on “moral grounds” without any proper study. Pakistan is not out of the orbit of the world, therefore the issue of Bit Coin in Pakistan is also hot. The Daily Dawn reported on 5th October, 2021 that the Sindh High Court summoned officials of the State Bank of Pakistan, Securities and Exchange Commission of Pakistan, Ministry of Finance and Federal Investigation Agency, asking them to come up with comments and suggestions as to hoe crypto currency can be allowed and regulated in Pakistan. The two judge bench headed by Justice Mohammad Karim Khan Agha was of the view that Pakistan should also move with times and regulate crypto currency.

Bitcoin was first introduced in 2009 by some individuals working under the name of Satoshi Nakamoto. Later on, Bitcoin was approved by a small group of enthusiasts. Nakamoto fell off the map when Bitcoin began to gain general attention. But the supporters of Bitcoin say that it doesn't matter. The currency is subject to its own interior logic. Transactions and accounts can be mapped out; however, the account holders are unknown. Interestingly, the investigators can track the proprietors as Bitcoin is transformed into a traditional currency. Bitcoins are basically lines of computer code that are digitally signed every time they move from one owner to another. Transactions can be conducted namelessly, making the currency popular in the general public, technology enthusiasts, speculators and criminals as well.

The role of the Financial Action task Force (FATF) is most important. The FATF is a world recognized regulatory body that gives recommendations and provides guidance to curb the issue of money laundering by taking civil society, the private sector and other relevant stakeholders into the loop. This body was formed by the Minister of G-7 in 1989. In order to redress the issue of money laundering and combating the Financing of Terrorism (CFT), FATF issued 40 recommendations in 1990 which were further modified for its ratification and implementation in

1996 2001 ,and 2003 respectively. In the year of 2003, FATF came with a new dimension and added IX more recommendations on account of terrorism which were welcomed and endorsed by

180 countries. Even though these recommendations have no legally binding on the signatory countries but their non-cooperation can put them on the “Black list” while those countries which have started to implement the suggested measures shall be moved to the “Gray list” till they satisfy the FATF monitoring body.

The FATF recommendations set out the essential measures that countries should have in place:

- (i) “Identify the risk and develop policies and domestic co-ordination”.

- (ii) “Pursue money laundering, terrorist financing and the financing of proliferation”.
- (ii) “Apply prevention measures for the financial sectors and other designated sectors”.
- (iii) “Establish power and responsibilities for the competent authorities e.g. investigative law enforcement and supervisory authorities and other institutional measures”.
- (v) “Facilitate International co-operation” (Force, F. A. T. 2012).

The World Bank which focuses on the development projects and alleviation of poverty in third world countries and the IMF which concerns with the economic stabilization of these countries also have endorsed and favoured 40+IX recommendations of FATF in 2002.

The basis for money laundering, inter alia Corporate Institutions, is provided by the local and international Banking organization including Foreign Exchange companies which provide the basic instrument of transfer of funds by using different negotiable instruments. This is an easy way to commit this crime because in several countries the banking institutions maintain the secrecy of the clients while remaining within the legal boundaries of those countries.

Besides financial institutions, foreign exchange companies and other corporate institutions, lawyers, accountants, trust and other company service providers are also involved in the money laundering process especially layering and integration. These professionals can help in creating an intricate web of companies in offshore heavens and have the knowledge to change financial accounts to alter the originality of the records. The main feature of this illegal facility is the concealment of proprietorship and arrangement of private sectors entities (Patel & Thakkar, 2012).

Legislation regarding money laundering was initiated with the introduction of “The Bank Secrecy Act” in 1970 in America. Though this law was not adequate to cover all the aspects to bracket the crime of money laundering. In other parts of the world like the U.K and Switzerland, also formed laws to control this white-collar crime.

Certainly, strict laws and rules play an important role to target the subject of crime. In case of non-compliance, fragile legal power or the existence of corrupt elements in law enforcing agencies, AML elements come on the surface work fearlessly. In this regard, two prime examples are quoted here, Firstly, in 2015, the Former Speaker of U.S Congress Mr. Dennis Haslet withdrew \$750,000 from the bank on different occasions (one transaction was \$ 50,000). As per “The Bank Secrecy Act of 1970”, he was required to report the transaction of more than \$ 10,000. As the case was taken up by the FBI, he lied that he drew the money for personal use whereas he was paid this money to someone else. So, in this case, he committed two violations of law, one was regarding noncompliance and the other was lying to the FBI. For both crimes, the total punishment is rigorous imprisonment of 10 years and a fine of \$ 400,000.

The second case was interesting in the sense that weak procedure and internal control allowed a drug cartel to launder the money through banking channels. In this incident, the “UN Ocean Bank based in Miami Florida failed to set up an effective system to prevent

and monitor money laundering activities. As a result of this failure, the Mexican drug cartel was able to launder millions of dollars from their illegal narcotics sales. The Government chose not to pursue criminal penalties but imposed a whopping \$ 10.9 million fine against the bank for the violation of the Bank Secrecy Act. In another historical case, Ng Lap Seng, the Chinese billionaire real estate developer from Macau was sentenced to four years in May 2018. He used two diplomats, including former President of the United Nations General Assembly, John William Ashe, to help him build a conference center in Macau for the United Nations Office for South-South Co-operation (UNOSSC) headed by Director Yiping Zhou.” This unique case proved to be the worst financial scandal for the United Nations since “the abuse of the Iraqi oil-for-food program, more than 20 years ago. 69 years old Ng Lap Seng was convicted in Federal District Court in Manhattan on two corruption charges. One was of violating the Foreign Corrupt Practice Act, and the second charge was related to bribery”.

It is a well-known fact that an individual or organization cannot commit a crime unless they are supported by an internal agent at the supervisory level i.e., the corporate directors and board of directors. This fact is also supported by the Doctrine of Common law which says that an entity is liable if its human agent is acting on behalf of that entity, the entity itself has no brain human brain serves as an agent for that entity. In the 18th century, during a court proceeding, an American judge remarked that “When Brain works: Institution works”

The boards of directors of financial and other institutions have a responsibility to guarantee that there is a strong compliance program within the company and exists a robust and effective regulator mechanism. The board of directors need to set a “tone from the above” to confirm that the company efficiently promotes a “culture of compliance. “The directors and all the responsible officers, including Chief Financial Officers as well as Company Secretaries have to control money laundering activities in their respective areas. They must collect the information about the clients and keep surveillance of those transactions where there is a doubt of money laundering from their clients. The directors as members of the Board of Directors are required to apply all due diligence, intelligence and skill necessary to curb this dirty business at all levels. The corporate directors are required to create a strong and foolproof mechanism to strengthen their internal control. It is also the primary duty of the directors to watch the compliance whatsoever provided in the law by the government regulatory and professional bodies. The directors must effectively monitor and control an organization, comprising its compliance activity, “the Core Delaware Court of Chancey case, Caremark Int'l Inc. Derivative Litigation, 698 A.2d 959 (Del.C.1996),” which states that corporate directors have a positive duty to establish and enforce proper oversight of any form of internal compliance activity. There should be a regular follow-up meeting of the directors by creating a committee for this purpose to strengthen the system. In this context, the executive directors are responsible to play an important role in supporting the board of directors in compliance for confirming actual information and not

only to confirm the board policy but to confirm the compliance of the regulatory bodies. (It is important to notice that the core duty of the board of directors is to have a close overview of the transactions to curb the money laundering issue.)

Needless to mention here that failure in compliance by directors is a breach of fiduciary duties and the directors are exposed to criminal liability and the law of tort. The thing which is very important from a reputation point of view is that if the chairman or the member of the board of directors are held responsible for serious negligence by the agency, regulatory body or if the matter proceeds in the court of law, they may lose their job and earn a bad name in the society. The officers at the executive level are responsible for all the compliance.

The following parameter may be set by the board members to avoid the risk of money laundering:

- To establish a committee of money laundering preferably headed by an independent director.
- Encourage the whistleblowing program directory reportable to the Chairman of the board or the head of the money laundering committee.
- Approved SOPs of approval of standard operating procedures on anti-money laundering initiatives within the reporting body, including risk assessment, mitigation, profiling, client deviation, record keeping, and continuous deviation, suspicious transaction reporting, and dealing with terrorists funding.
- Strict and comprehensive oversight of compliance of international bodies and local regulatory bodies with ethical aspects and hold management accountable for any type of serious negligence, strong oversight mechanism of client information and suspicious transactions (nexus with the terrorism and non-terrorism financing) especially keeping in view the Koko smurfing.
- Human Resources Committee of the Board of Directors make sure the deployment of honest and integrated people in the department concerning to AML and define their line of duties, segregation of duties and job description fairly and transparently.
- Adopt the mechanism of third party validation besides internal audit to have an independent report and views on the internal control and transaction information.
- Timely reporting management information system.
- Oversight by creating a mechanism to examine what led other companies to incur violations and how to prevent such violations from occurring in your organization (Ola M. T-R).

However, it is imperative to train the corporate directors on a regular basis after a certain interval to create the knowledge and orientations for the implementation of strategy about AML. For this purpose, advanced information technology and artificial intelligence support can help a lot to curb money laundering.

There must be a comprehensive mechanism of whistleblower which should be encouraged in the whole system to curb money laundering. It is the duty of the regulator and even the board of directors to encourage the policy of whistleblowing. This is an effective mechanism all over the world and it is free from all coercion; therefore, a whistleblower can play a very healthy role to unfold evil activities of money laundering.

The Danske Bank case is a prime example. This is the latest scandal that became international news in 2018 (\$ 229 billion) but the results are continued. This scam is the biggest scandal in Europe so far. To realize the severity of this scam, we have to go back to 2007, when Dansk Bank had started its first and only branch in Estonia. Dansk Bank was the largest bank in Denmark and had a good reputation in the international market. In 2007, Danske Bank acquired Sampo Bank and its branch in Estonian. It didn't take long for the problem to start; just a few months later, the bank came under fire from Estonia's finance minister and received warnings from the Russian central bank that the branch was used for large, suspicious transactions, but regardless of notices nothing changed.

In 2010, the Danske bank board of directors knew that a huge amount of deposits came from Russia, but they were relaxed with what was going on. The bank kept receiving huge payments from residents with little or no interference. In 2013, 99% of the bank's profit was received from non-residents and most of the credits were sent from Russia or ex-Soviet countries. In late 2013, a whistleblower informed a senior bank officer, but again, no serious action was taken against it. In 2016, the Danske Bank withheld transactions with non-residents and finally in 2017, the international community started to focus on this issue. Now, it was the time for Danske Bank to face the consequences.

The bank was enforced to cease its operations in Estonia, several senior officials were charged and the bank was charged the equivalent of \$ 2 million by the Danish authorities. Several international authorities are calculating the amount of the fine to be imposed on the Danske Bank. (Kruisbergen, Leukfeldt, Kleemans & Roks, 2019).

The scope of this research article would not be completed if the role of legislation is not be discussed here. In any country, the role of the legislature is of high importance any delay or any gap in understanding the repercussion of money laundering will result in economic and social disruption in the society. It is to be admitted that some countries, themselves, seem to be involved in money laundering games to run the government business. Since money laundering started with the Bank Secrecy Act in 1977 in America, the actual and productive measures have been taken as terrorism is considered a serious offence against the community and state.

In Pakistan, the issue of money laundering has been taken up as a resinous dirty crime and the relevant regulatory bodies including "Securities and Exchange Commission of Pakistan

(SECP), State Bank of Pakistan (SBP), Federal Board of Revenue (FBR) and other law enforcing agencies like National Accountability Bureau (NAB), Federal Investigation Agency (FIA), Anti- Corruption, Excise and Taxation Department etc." are actively

engaged to restraint the money laundering crime by devising the mechanisms and SOPs for the stakeholders. The SECP in 2002, took measures for NBFIs and Corporation for AML and Counterfeiting Finance Regulation 2018. According to a report published in December 2020, the SECP led a drive to ensure effective compliance for “Anti-Money laundering/Combating the Financing of Terrorism (AML/CFT)” and took unprecedented actions against non-compliant institutions and imposed dissuasive penalties amounting to Rs: 32.280 million regarding 76 orders. Similarly, the State Bank of Pakistan in 2003 (updated in 2016) made Prudential Regulations M1 to M5 to safeguard from money laundering acts. The FBR also unearthed the serious cases of money laundering by applying Sections 3, 4,

8,9 20 ,and 21 of the AML-2010 read with Section 111(1) and sections 192 and 192A which are predicated offences under the AML Act-2010.

But the attention of the legislators’ in law-making is still weak and nonproductive in the subject area. Lawmaking is like a quenching of sword for which proper attention and skill is required at the same time. The Ministry of Law and Justice and its respected employees are required to assume great responsibility because our political system is not very strong. The main attention of the legislature is on other issues rather than lawmaking which is one of the core duties and responsibilities of parliamentarians. As a result of such negligence, it creates complexities in the existing laws and sometimes the interpretation go in a different direction and that creates an unclear pathway to reach at any reasonable conclusion. Due to such contradiction, the judiciary has to rely more on the precedents rather than the actual law.

Since the independence, the legislation has remained leisurely and uninterested in Pakistan. Owing to this reason the Indian Act 1935 has been a part of the Constitution of Pakistan for about nine years. We were able to develop our own conditions in 1956, 1962 and finally in 1973 after the gap of 9 years, 6 years and 11 years respectively. Although Pakistan came into being in

1947 we produced the first anti-money laundering law in 2010 after 67 years and perhaps this AML law was also formed due to the compulsive compliance of the “Financial Action Task Force” who has 40 + IX recommendations on business compliance and “combating the Financing of Terrorism (CFT).” The AML Act 2010 was promulgated on 27th March 2010 by the Federal

Government of Pakistan. AML Act 2010 declares a total of fifty-eight offences as a predicted offence from the other statutes i.e. “Pakistan Penal Code 1860, the Arms Act 1878, the Foreigners Act 1946,” the Copyright Ordinance 1962, the Pakistan Arms Ordinance 1965, Securities and Exchange Act 1969, the Emigration Ordinance 1979, the Control of Narcotics Substances Act

1997 ,the Anti-Terrorism Act 1997, National Accountability Ordinance 1999, the Registered Design Ordinance 2000, Sales Tax Act 1990 and Federal Excise Act 2005. Although, the legislature in Pakistan, has amended more than 3 dozen laws of anti-money

laundering, still there are some gaps that are creating hurdles in the compliance of the FATF and obstacles to come out from the FATF's grey list. For example, terrorism has its old history, we took about 50 years to define terrorism in our laws. The present definition of terrorism is also flawed and inappropriate due to the reason that it has a wide spectrum rather than narrow one. We are of the observation that even many offences which have their own law to handle, are tried under Terrorism Act, like the offence related to rape, brutal murder, even road accidents and street crimes. At the time of compilation of statistics of crime and offences under terrorism, it shows a negative image of our society to the international communities and forums.

Furthermore, there is a need to make amendments in the Constitution of the Islamic Republic of Pakistan on the issue of retrospective punishment. In this connection, it is pertinent to mention here that Article 12 of the Constitution offers guard against retroactive penance. Article

12 of the constitution establishes that no law allows punishing an individual for an act or omission that is not punishable by law at the time of the act or omission or for a crime with a penalty greater than that, or of another nature of penalty prescribed by law for the position at the time the crime was committed.

Interestingly the State Bank of Pakistan bill 2020 says that the National Accountability Bureau and Federal Investigating Agency cannot initiate any action or launch an investigation against the SBP. All the bank officers including the governor of SBP are exempted from any kind of responsibility. Even ex-governors and officers cannot be investigated or fixed the responsibility on any corruption charges which is against the constitution. These are the issues that must be addressed to avoid or reduce the gaps as no one is beyond the accountability by law. This bill is against all the norms, and laws, which demand equality, justice and out of the boundaries to the doctrine of law of Tort. However the bill is still under consideration un the Parliament to make it fair and equitable .

The law of Anti-Monetary also contravenes Articles 4, 5 and 9 of the Economic Reform Protection Act of 1992. Article 4 states that "all citizens of Pakistan, resident or non-resident, and all other persons have the right to bring, hold, sell, transfer and withdraw foreign currency into or out of Pakistan in any way." Similarly, Section 5 provides immunities for foreign currency accounts, and this section makes it clear that all Pakistani citizens residing within or outside Pakistan who have foreign currency accounts in Pakistan, and all other persons with these accounts will continue to enjoy protection against any investigation from the Income Tax Department or any other authority related to the source of financing of the accounts in foreign currency. Section

9 of the similar law allows the confidentiality of banking transactions, and "all financial obligations incurred, including obligations derived from any instrument, or any financial and contractual obligation assumed by the Government or on its behalf, will continue in force and will not be modified to the detriment of the beneficiaries".

There is also inconsistency and irregularity in the “Foreign Currency Account Protection Ordinance of 2001 with the Anti-Money Laundering Law of 2010.” Article 3 of the relevant law establishes that “no person with an account in foreign currency shall be deprived of the right to own or operate such an account or be restricted in any way, temporary or permanent, from selling, withdrawing, transferring, suing as collateral or legally withdrawing foreign currency from within or outside of Pakistan”.

In another case related to the 2001 Income Tax Ordinance, if the transfers are made through unexplained sources, that is, they are not supported by adequate evidence or the evidence presented does not reconcile the transferred amount, if included in the category of unexplained income and concealment of assets under Section 111 of the Income Tax Act of 2001. This is the main ambiguity with the Anti-Money Laundering Act of 2010 that must be addressed by the Department of Law and Justice. The proposal should be forwarded to the legislature for amendment in accordance with the Anti-Money Laundering Act agreement to avoid any dispute that weakens precautions in such circumstances. Despite all the efforts, Pakistan is still on the grey list as announced by the FATF Committee. The main reason argued by the FATAF team is to improve the legislation, investigation and prosecution especially with reference to terrorism and other related money laundering aspects. No doubt Pakistan has been credited to doing a lot of work in terrorism and the financial sector to improve the investigation, prosecution and development of the SOPs.

Due to all this hard work, Pakistan could achieve 26 points of FATF. Although the FATF President Dr. Marcus Player appreciated the Pakistani efforts for the completion of 26 items out of 27, to keep Pakistan on the grey list just for noncompliance of only one point is highly unjust. In addition, the possibility of plying the dirty politics by the Diplomats of some countries cannot be ruled out. So, not only the Finance ministry but an effective strategy must be adopted in the Foreign Affairs department to utilize their best efforts in terms of diplomatic relations and lobbying to come out of hot waters.

Islamic Perspective on Money Laundering

According to the Islamic concept, money is simply a means of exchanging goods among people. Therefore, it cannot be used as a commodity in itself but it is just a tool to have a certain item. Even it does not really hold any intrinsic value in itself; we humans fix its base value by exchanging money against goods. In fact, in the modern world, everyone needs money to fulfill their demand. However, in theological context money can be a test of humans from God. In the Quran, the God says: “In fact, we will test you with something to fear, hunger and loss of souls and fruits” (Quran, 2: 155). However, the Quran identifies the illegal ways of consuming wealth or property, which is also a grave sin; God says: “And do not unjustly consume the wealth of others and do not approach the authorities with it, so that you can eat a part of the wealth of the people as sinfully while you know (Quran 2: 188).”

Something that human nature desires and can be put aside to be used in need. It includes transferrable and immovable property.” While al-Shatibi defines it as “on which property can be based and which can be exclusive to its owner without others when he acquires it in a right manner that suits him (1997: 17).” Therefore, although the meaning of money differs in the details, except that in modern practice these definitions may also be valid to modern money or currencies.

Illicit trade was banned in Islam more than 1400 years ago in an atmosphere where all kinds of trade were usual and everybody had their own customs, fair or not. There are many commercial activities barred by Islam in the era of Prophet Muhammad (peace and blessings of Allah be upon him) and which are classified in contemporary money laundering acts and businesses as unlawful activities and procedures such as faking, forging, fraud and financial actions that jeopardize society.

The basis of things in Islam is *ibahah* (acceptability), including wealth. However, there are resources by which actions and use of money become contaminated or unlawful. The use of such prohibited funds in Islamic teachings is similar to money laundering. Therefore, the Islamic view of money laundering is activities classified according to Islamic sources as illegal or haram that is strictly forbidden in Islam. Money laundering in its actual sense is quite similar to fraud which is highly prohibited in Islam like other haram and forbidden activities i.e. interest, bribery, alcohol, gambling etc. Similar to fraud, money laundering is also a type of deception. Allah says: “It is not for any Prophet to take illegally a part of the booty and whosoever deceives his companions as regards the booty, he shall bring forth on the Day of Resurrection that which he took (illegally). Then every person shall be paid in full what he has earned, - and they shall not be dealt with unjustly (Quran 3: 161)”.

Therefore, if such work is not acceptable as plunders of war, then surely any money or product obtained through these means can be considered haram (unlawful). Similarly, Allah says: “Woe to those that deal in fraud those who when they have to receive by measure from men, exact full measure, but when they have to give by measure or weight to men, give less than due. Do they not think that they will be called to account? (Quran, 83:1-4).” From the Sunnah, the Prophet (Peace be upon him) said “When you enter into a transaction, say: There should be no attempt to deceive (Muslim, 10/3663).(Hence, any form of deceiving, fraud, or money laundering to turn the dirty money into

white money by deceiving the state would be illegal in Islam.

Conclusion:

Money laundering is a major crime committed by white-collar people internationally. Terrorists, drug traffickers, smugglers, owners of black money, etc., use various devices of money laundering to finance their activities. Usually, three steps are employed to carry out money laundering acts: placement, layering and consolidation of funds. Although government agencies all over the world have devised certain mechanisms, and policies to

combat money laundering, but these measures are not enough to deal with this issue because the size of laundered money reaches to billions of US dollars. Money laundering adversely affects the local and global economy by reducing the value of capital, dropping in the growth rate, and the consumer

price index. It causes inflation and discrediting financial institutions which lead to a decrease in local and foreign investment. However, money laundering activities provide a social cover to the politicians, drug traffickers, terrorists and other criminals who benefit from it. The underlying causes of the social costs of money laundering lie in the association of this crime with other serious crimes, such as tax evasion, smuggling, black money laundering, corruption, financing of terrorism, drug trafficking and weapons.

Therefore, law administration agencies should design active policies by increasing collaboration at the local and international levels to track actions directly or indirectly related to money laundering. The money launders and smugglers can be efficiently barred from delivering their illegal money from one place to another destination by putting effective security and checking measures at international borders and airports. In addition, by closely monitoring wire transfers and other currency transfers, financial institutions can also track laundered funds, as well as sources of funds. In addition, tax authorities must devise comprehensive and investigative audit strategies to track the transfer of a huge amount of money, so that tax avoidance through money laundering can be controlled. To do this, tax collection departments must also be independent and strong enough that no powerful elite bribe or influence them politically.

References:

- Alias, R. M. R., Yasin, N. M., Ibrahim, B. H., & Kepli, M. Y. Z. (2019). Combating Money Laundering and Terrorism Financing: Perspectives from Maqāsid al-Sharī'ah. In *Emerging Issues in Islamic Finance Law and Practice in Malaysia*. Emerald Publishing Limited.
- Al-Shatibi, Ibrahim ibn Musa. (1997). *Al-Muwafaqat fi Usul al-Shari'ah*, edited by Abu 'Ubaydah Mashhur ibn Hasan Al Sulayman. Riyadh: Dar Ibn 'Affan. Al-Sijistani, Abu Dawud
- Sulayman ibn al-Ash'ath. (n.d.). *Sunan Abu Dawud*. Beirut: Dar al-Kitab al-'Arabi.
- Anderson, M. J., & Anderson, T. A. (2015). Anti-money laundering: History and current developments. *J. INT'L BANKING L. & REG.*, 30, 521-523.
- Faisal Daoud Puta- AML Law in Pakistan and overview file:///C:/Users/Admin/Downloads/SSRN-id2368483.pdf
- Force, F. A. T. (2012). *International standards on combating money laundering and the financing of terrorism & proliferation: the FATF recommendations* (pp. 90-93). Paris: FATF/OECD.
- Ibn Abidin. (n.d.). *Hashiyyah Minhat al-Khaliq 'ala al-Bahr al-Ra'iq*.

Kruisbergen, E. W., Leukfeldt, E. R., Kleemans, E. R., & Roks, R. A. (2019). Money talks money laundering choices of organized crime offenders in a digital age. *Journal of Crime and Justice*, 42(5), 569-581.

Ola M. Tucker-Ruole. Understanding the Board of Directors role in effective AML Risk Oversight.

Patel, H., & Thakkar, B. S. (2012). Money laundering among globalized world. *Globalization-Approaches to Diversity*, 163-182.

Saviano, R. (2012). Where the Mob Keeps Its Money. *The New York Times*, 25.

Yasin, NM. (2012) Regulation of Islamic banks in relation to anti-money laundering and counter financing of terrorism (AML/CFT): the Malaysian scenario. In: *Islamic banking & finance: principles, instruments & operations*. The Malaysian Current Law Journal Sdn Bhd. Ampang, Selangor. Pp. 296-314.



This work is licensed under a [Creative Commons Attribution 4.0 International License](https://creativecommons.org/licenses/by/4.0/).