

FORENSIC AUDITING IS HELPFUL TO IDENTIFY THE FINANCIAL CRIMES WITH REFERENCE TO MONEY LAUNDERING

Abstract

Public authorities are responsible to safeguard life, liberty and property of people. For economic growth and progress of a country, smooth economic condition is very necessary. Unrest among masses is the outcome of poor economic system. Presently, it is herculean task for every State to combat financial crimes. Developed countries of the world have powerful mechanism to counter financial crimes, while the dilemma of the developing countries is that they lack proper capacity to locate and identify such crimes. In this study, the importance of forensic auditing is highlighted with reference to money laundering.

Key words: Forensic auditing, Financial crimes, Money laundering

1. Introduction

1.1 Financial Crimes-Money Laundering Stages and Methods

The development of a country depends on economic and financial stability and dwindling financial resources may annihilate the economic condition of a country. Presently, the corporate sector crimes i.e., money laundering, E-fraud, tax evasion, financing for terrorism and manipulation in record of organization are difficult to detect due to complexity of crimes. With the passage of time, different methods have been developed to counter such issues and forensic analysis is one of them. Financial crimes are those crimes which involve corruption, bribery, tax evasion, money laundering and smuggling of money etc. Money laundering is a process through which culprits disguise the original source of money making in different layers by controlling it and to show that the money was obtained through legal sources.¹ There are different stages of money laundering;

(a) The accumulation of money: The collection of money may be from different sources such as by smuggling, corruption, bribery and tax evasion etc.

(b) Layering, placement and converting: To convert the money into small portions, depositing into different places or banks.

(c) Cleaning or washing: To convert the illegal money into white money, it is a method through which money launderer usually shows false investment in business or fake company.

(d) Integration: Returning of black money to its original owner or to any other person, this integrating method legitimates the black money and the receiver of that shows a false source of money.²

1.2 Forensic Science

With the passage of time, the criminals are trained to hide their criminal activities by using various advance techniques. Consequently, the responsibility of investigating agencies has increased in order to avoid any financial disorder at mass level. Use of different techniques by the criminals has forced the law enforcement agencies to enhance their capacity in detecting the crimes. Therefore, different methods have been adopted for investigation of white-collar crimes. Forensic auditing is one of most advanced techniques which is being used around the globe. The word forensic has been derived from Latin while forensic science resolves legal issues by

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¹ International Compliance Association, <<https://www.int-comp.org/careers/your-career-in-aml/whatis-money-laundering/>> accessed on 2nd September 2020

² <http://www.moneylaundering.ca/public/law/3_stages_ML.php> accessed on 2nd September 2020

applying scientific principles.³ It is clear that the forensic techniques are applied by forensic experts for collection of evidence which can be used in the court of law.

1.2.1. Historical Perspective of Forensic Science

In the mid of 19th century, use of natural science helped the court of law in administration of justice against the untrusted and hostile witnesses. Francis Galton, UK scientist, performed the systematic method for detection of finger prints and his book 'Fingerprints' was published in 1892 on uniqueness of fingerprints.⁴ The ballistic science method was developed by U.S Colonel and this experiment was proved helpful in comparison of empty bullets with arms to check whether the empty bullet was fired from specific arms or not. The book 'Questioned Documents' written by Albert Osborn is a primary source for scientific analysis of documents.⁵ The blood group classification work by Karl Landsteiner not only revolutionized the field of science but also helped in conducting criminal investigation.⁶

1.3 Literature Review

1.3.1 Forensic Auditing of Financial Crime

In 1960s to 1970s the crime rate increased dramatically and the criminal justice system emphasized on the use of forensic science. The scientific laboratories were established to investigate the crimes. The law enforcement assistance administration (LEAA) started a modern scientific crime investigation program.⁷ It became popular due to its advancement that helped in controlling the financial criminal activities. While in modern world the white-collar crimes are complicated in both public and private sectors. Additionally, the obliterate methods of investigation of such crimes have proved useless in accounting of financial crimes. Thus, the mites of money laundering are destroying the economic condition of developing countries.⁸ Money laundering is directly associated with corruption, terrorist activities and plundering of national economy. Many developing countries are suffering from this major issue as well as the failure of investigation agencies in identifying the financial crimes have raised a question mark. Thus, it can be deduced that new techniques should be adopted for proper investigation of financial corruption.

Forensic auditing or accounting is a method of investigation through which financial frauds i.e., tax evasion, money laundering, securities and insolvency etc., are probed. It is applying of accounting method to a legal problem and the report which is issued by forensic accountant is admissible before the court of law.⁹ It is a special method of accounting of financial record. A financial crime means collection of money in a secret manner by deceiving the government in a public or private sector. The receiver of property may be an individual or a group of persons which may consist of organization. In modern world forensic accounting became integral part of corporate sector fraud, also it is helpful in auditing and accounting of financial crimes. The forensic auditing purpose is not only a statutory auditing of accounts but also to detect chain and prevent it. Forensic accounting has its own particular method of investigation that work for accuracy, attestation and to produce evidence which is acceptable before the court.¹⁰ To investigate money laundering is a difficult task. However, it can only be thoroughly probed by forensic auditing.¹¹ Pakistan has also suffered from the menace of money laundering. In Pakistan, Article 59 of The Qanun-e-Shahadat Order 1984 deals with expert evidence and on the other hand article 164 makes all the evidence admissible produced by modern devices and techniques.¹² Furthermore, section 510 of the Criminal Procedure Code describes the procedure regarding production of

³ Hall Dillon, 'Forensic A Career In' [1999] <[https://www.google.com/search?q=\(Hall+Dillon+%2C+Bureau+of+Labor+Statistics\)&oq=\(Hall+Dillon+%2C+Bureau+of+Labor+Statistics\)&q&chrome..69i57.2047j0j8&sourceid=chrome&ie=UTF-8](https://www.google.com/search?q=(Hall+Dillon+%2C+Bureau+of+Labor+Statistics)&oq=(Hall+Dillon+%2C+Bureau+of+Labor+Statistics)&q&chrome..69i57.2047j0j8&sourceid=chrome&ie=UTF-8)> accessed on 3rd September 2020

⁴ <https://galton.org/fingerprinter.html> accessed on 3rd September 2020

⁵ <https://www.nist.gov/system/files/documents/oles/Forensic-Handwriting-Examinations-Osborn.pdf> accessed on 5th September 2020

⁶ <https://www.healio.com/news/hematology-oncology/20120325/karl-landsteiner-discovered-the-four-blood-groups> accessed on 5th September 2020

⁷ <<https://www.sciencedirect.com/science/article/abs/pii/S00472335283900077>> accessed on 6th September 2020

⁸ EBERE, CHUKWUMA CHRISTOPHER, 'Money Laundering and Forensic Accounting Skills in Nigerian Banks' (2016) 7 RJFA 149

⁹ Dhar, Pranam, Sarkar, Anirban, 'FORENSIC ACCOUNTING : AN ACCOUNTANT'S VISION' <<http://inet.vidyasagar.ac.in:8080/jspui/handle/123456789/996>> (2010)15 VUJC

¹⁰ Skousen, Christopher J, Wright, Charlotte J., 'Contemporaneous Risk Factors and the Prediction of Financial Statement Fraud' (2006)<<https://ssrn.com/abstract=938736> or <http://dx.doi.org/10.2139/ssrn.938736>>

¹¹ Dr. A.O. Enofe et, 'The Role of Forensic Accounting In Combating Financial Crimes' (2015) 6 RJFA 191

¹² The Qanun-e-Shahadat Order 1984

forensic evidence in the court.¹³ Forensic science has important role in criminal justice system however, it has been neglected for a long period of time in Pakistan. Whereas, the executive committee of national economic council of Pakistan declared an autonomous body named as Pakistan National Forensic Science Agency. In addition, the forensic agency was established in Punjab in 2012. While, in other provinces, no structure of forensic agencies is available till now. The forensic based evidence is proving to be helpful and the courts are giving verdicts on the basis of forensic reports, it is a mere fact that without using the modern techniques, offence cannot be proved in present time.¹⁴

1.4 Research Questions

- i.** How much forensic auditing is helpful in tackling with financial crimes?
- ii.** Can money laundering be curbed by using forensic auditing?

1.5 Research Methodology

The research in hand is being primarily conducted on literature books, statutes and secondary sources such as articles, journals, books, online websites, case laws of apex courts. All the relevant issues have been highlighted and suggestions have been given on the basis of research to solve the problem of financial crimes. The methodology adopted for this research is qualitative, historical and analytical.

2. Money Laundering, the Use of Forensic Auditing in Financial Crimes, and analytical analysis of Existing Laws in Pakistan

2.1 Money Laundering

Money laundering is often described by three processes namely layering, placing and integration however, more methods could be used for it. That depends on the nature of crime. Money laundering is a global phenomenon and with the technology advancement, new plans are devised to commit it. This study discusses the source, techniques, purposes and impact of money laundering and the role of forensic auditing in investigation of financial crimes. An overview of existing laws of financial crimes is given in reference with forensic auditing.

2.1.1. Source/Techniques of Collecting of Dirty Money

It has been found that numerous dirty techniques are being adopted for financial corruption. For instance, the nonprofit or registered organizations (NGOs) which raise funding for miserable areas are sometimes involved in money laundering. These organizations can transfer a huge amount out of border in the crisis area. In addition, sometimes an informal way is also used through direct transfer of money into the accounts of their agents who are working in crisis affected areas.¹⁵ Similarly, the terrorist banned outfits also work under the disguise of charity for collection of money and then use such collected money for extremist activities.¹⁶ A financial crime can be committed in the garb of laundering of illegal money. The international trade systems i.e., import and export are vulnerable as overpricing and undervalued pricing techniques are sometimes used in money laundering. However, it has become complex and difficult to filter out the black money.¹⁷ The investments by the culprits in purchasing of bonds etc. are also one of the methods of whitening the black money. The corruption by taking bribe or by committing theft of government or private resources and by laundering it through different mechanisms allow the culprits to enjoy the illegal money.¹⁸ The investment in real estate by the criminals is also another method of collecting money. The society has been plagued with the menace of collecting illegal money and then laundering it for converting it into white money.

¹³ The Code of Criminal Procedure 1898

¹⁴ Mateen et al, 'Forensic Science in Pakistan; Present and Future'(2018) EJFSE <<https://link.springer.com/article/10.1186/s41935-018-0077-3>>

¹⁵ Bricknell, Samantha, 'Misuse of The Non-Profit Sector for Money Laundering and Terrorism Financing'(2011):

<<https://search.informit.com.au/documentSummary;dn=655944729407425;res=IELAPA>> accessed on 10th September 2020

¹⁶ Abbas Zaidi et al, 'Understanding The Appeal of the Taliban In Pakistan'(2010) 3,JSS 1-14

¹⁷ Financial Action Task Force, 'Trade Base Money Laundering'(2006) <<https://www.fatf-gafi.org/publications/methodsandtrends/documents/tradebasedmoneylaundering.htm>> accessed on 12th September 2020

¹⁸ Financial Action Task Force, <<https://www.oecd.org/cleangovbiz/toolkit/moneylaundering.htm>> accessed on 13th September 2020

2.2 Modes of Transferring an Illegal Money

In this modern age, the criminals are more skilled in committing financial crimes and have adopted different methods of whitening the black money. The alternate system of remittance known as Hawala was firstly introduced in India and the basic element involved in Hawala is trust; use of reference of family relationship or business. It can be explained as if someone wants to send money out of country secretly, he will go to hawala's agent in his own country and will deposit the said amount to him, the agent after receiving the said money will contact his partner in that foreign country who will pay the said amount to the sender or any other person on his behalf.¹⁹ The main feature of hawala is that the identification of sender and receiver of money is not necessary.²⁰ Another mode of financial corruption is underground banking process that transmitting the black money which is parallel to existing legal banking. This system is also known as value or informal money transfer system. The fake bank accounts method is also being used for transfer of money. In Pakistan, recently former rulers' families are under trial for corruption and money laundering.²¹ The launderers, in the past, used to control the banks and were involved in money orientation due to weak surveillance on behalf of government. The money in cash is also smuggled by people and is invested in foreign countries.²²

2.3 Purpose of Money Laundering

The accumulation of money is not without purpose and the money launderers or accumulators of money have always certain targets to achieve. Although, money is collected from illegal source, it could be used for several legal purposes i.e., business and charity etc. In contrast majority cases of money laundering are used for illegal purposes. Following are the main purposes of money laundering;

2.3.1 Illegal Activities

It includes the funding for terror activities. As the terrorists always need money to perform their criminal duties thus, they use the method of money laundering to hide the source of money. It is found as the most terrified use of money laundering.²³

2.3.2 Personal Gain/Greed

Sometime, financial criminals commit the crimes for personal greed and try to launder the money. After accumulation of money, they invest it into trade and build business empires. The wealth collected from illegal sources will ultimately be used for illegal purposes such as political engineering to maneuver the governments.²⁴

2.4. Reasons of Use and Developing of Forensic Auditing

Room is always open to make the new arrangements for controlling and preventing the crimes, likewise concerned authorities has also adapted different methods to check the criminal's activities under the umbrella of forensic accounting. Few reasons emphasize the use of forensic methods to identify financial crimes and the menace of money laundering can be reasonably controlled. Which are as following;

(a) To Check Fake Accounts

It is found that fake bank accounts and record of different organizations damage the economic condition of a country. The process of money laundering is highly complexed in nature due to which sometimes it becomes difficult to trace the money trail.²⁵ However, the need of forensic method in identifying the crimes has increased for collection of authentic evidence against the culprits.

¹⁹ Patric M.Jost et al, 'The Hawala Alternative Remittance System And Its Role in Money Laundering'(2000) IGS 1-21

²⁰ Rob McCusker, 'Underground Banking: Legitimate Remittance or Money Laundering System?'(2005) AIC <<https://aic.gov.au/publications/tandi/tandi300>> accessed on 14th September 2020

²¹ *Inran Ahmed Khan Niazi v. Mian Muhammad Nawaz Sharif* [2017] PLD 265-692 SC

²² Waseem Ahmad Qureshi, 'An Overview of Money Laundering in Pakistan and World Wide: Causes, Methods, and Socioeconomic Effects'(2017) UBLR <<https://bolognalawreview.unibo.it/article/download/7816/7543>> accessed on 15th September 2020

²³ John S.Zdanowicz, 'Trade Base-Money Laundering and Terrorist Financing'(2009) https://www.researchgate.net/publication/46556338_TradeBased_Money_Laundering_and_Terrorist_Financing accessed on 16th September 2020

²⁴ Nasir Khan, 'Money Laundering is A Major Threat to Economy' Daily Times (Pakistan, 8 May,2019)

²⁵ *Slackness in The Progress of Pending Enquiries Relating to Fake Bank Accounts, etc Vs Chairman, National Accountability Bureau* [2019] SCMR 332 (SC)

(b) Fragile investigation system

To combat the financial crimes, a powerful legal system is needed, however in developing countries due to incapacity of law enforcement agencies and poor regulation system regarding banking and corporate sector, money laundering and tax evasion is rampant. The complex techniques used by criminals in money laundering, fraud, manipulation of financial record demand more comprehensive methods to investigate these crimes. Thus, immediate attention should be paid by law authorities regarding training and equipping of their officers with forensic techniques and its use.²⁶

(c) Lack of professional forensic auditing expert

In Pakistan, it is found that there is lack of professional experts in the field of forensic auditing and due to which accused persons take the benefit in the courts.²⁷ The present forensic science agency is also not fully equipped even to accurately identify the audio video related matters.

2.5 Analytical overview of existing laws of Pakistan dealing with Financial crimes and Incapacity of Investigating Agency Regarding Forensic Accounting

It was found that the forensic auditing of financial crimes is not included in Forensic Science Agency Act. The forensic science agency institution is a newly born baby and has shortage of experts regarding different fields.²⁸ As in Panama case, the forensic services were hired from foreign agencies for evidence analysis.²⁹ Further, it was explored that in fake bank accounts cases, joint investigation team was not fully equipped with required expertise.³⁰ In addition, The Punjab Forensic Science Agency Act 2007 does not define the qualification of experts and it only deals with the crimes relating with material things³¹. Following are some laws relating to financial crimes;

2.5.1 Anti-Terrorism Act 1997:

The Anti-Terrorism Act 1997 was introduced in Pakistan to tackle the money laundering in context with countering terrorism and terror financing activities by freezing, seizure, and forfeiture of assets that are derived from said activities.³²

2.5.2 Control of Narcotics Substances Act 1997:

To control financial crimes, anti-money laundering measures were incorporated in Control of Narcotics Substances Act 1997.³³ It consist of freezing and forfeiture of acquired assets derived from narcotic drugs and psychotropic substances. Additionally, it was found that the most of the officers who investigate the crimes related to narcotics have no training or knowledge about detection of illegal money or assets derived from illegal drugs dealings.

2.5.3 Anti-Money Laundering Act 2010

The first Anti-Money Laundering Ordinance (AMLO) promulgated in 2007, it was redundant due to its incomplete nature and has flaws in that. Therefore, the scope of AMLO was limited to account transactions and suspicious transaction reports were restricted to banking accounts only. The offence regarding money laundering was made non-cognizable and a small number of predicate offences were included in schedule of AMLO. After that AMLO was approved in 2010.³⁴

²⁶ *Syed Ather Hussain Vs Chairman, National Accountability Bureau* [2019] YLR788(KAR)

²⁷ *Slackness in The Progress of Pending Enquiries Relating to Fake Bank Accounts, etc* [2018] SCMR 1851(SC)

²⁸ The Punjab Forensic Science Agency Act 2007

²⁹ Above n,21

³⁰ Above n,27

³¹ Above n, 29

³² Anti-Terrorism Act 1997

³³ Control of Narcotics Substances Act 1997

³⁴ Anti-Money Laundering Act 2010

2.5.4 The Securities and Exchange Commission of Pakistan (SECP)

The regulator of the corporate sector and capital market, the Securities and Exchange Commission of Pakistan (SECP) also issued various anti-financial crimes measures in 2002. The agenda was to regulate the non-bank financial institutions in order to prevent the crimes in both i.e., corporate and capital sector.³⁵

2.5.5 The State Bank of Pakistan

The State Bank of Pakistan which is the regulator of monetary and credit system in Pakistan, issued its regulations in 2003 to safeguard the financial sector from money laundering, which were later updated in 2016.³⁶

2.5.6 Agencies to Investigate the Financial Crimes

Primarily, three agencies, the Federal Investigation Agency (FIA), the Anti-Narcotics Force (ANF) and the National Accountability Bureau (NAB) were established to inquire the information of the accused persons under section 2 (j) of the AMLA. FIA investigates at federal level and thus, the services of this agency cannot operate at the provincial level. Additionally, it cannot deal with the offences committed solely by private persons. At time it becomes problematic as it hinders cooperation between the investigating agencies due to conflicting jurisdictions.³⁷ Contrarily, NAB has jurisdiction all over the Pakistan, at both i.e., federal and provincial level. However, it is not empowered to prosecute certain cases that are particularly related to terror financing activities as it is not included in its schedule.³⁸ Similarly, Another enforcement agency which is dealing with money laundering is Directorate General (Intelligence & Investigation Inland Revenue) FBR. It only exercises its power in investigating and prosecuting the cases under the AMLA wherever earnings of crimes are accumulated under the Customs Act 1969. Whereas, the Anti-Narcotic Force investigating agency is restricted to cases which are related to narcotics as well as it has no role in investigating the illegal money derived from drug dealing.³⁹ Hence, it was found that regardless of the jurisdiction of investigation, no agency has been fully equipped with capacity of forensic accounting of financial crimes.

2.6 Comparison of anti-financial crime system in Pakistan

It is found that there is one specialized investigating and prosecuting agency in other countries that is empowered to look into the money laundering matters. For instance, India has specialized financial investigation & prosecution agency, the Directorate of Enforcement (DOE). It works under the Department of Revenue, Ministry of Finance, and Government of India. Furthermore, this agency is being empowered under two laws; Foreign Exchange Management Act 1999 and the Prevention of Money Laundering Act 2002 (PMLA).⁴⁰ Additionally, another investigating unit in India is working under the Department of Revenue, Ministry of Finance named as the Financial Intelligence Unit. United Kingdom, likewise established a National Crime Agency (NCA) to control the crimes related to money laundering. Further, they initiated a joint money laundering intelligence taskforce with the help of financial services. This task force includes partnership with all the relevant stake holders i.e., British Bankers Association, Law Enforcement Agencies, UK Government, and few other banks of the country.⁴¹

3. Impact of Financial Crimes/money laundering

- Dangling economy: the economic condition of a country is plagued due to money laundering and financial crimes.
- The people of the country suffer a lot in shape of tax evasion due to unstable economy.
- The criminals involved in financial crimes or money laundering take the benefit of poor economy and blackmail the institutions accordingly.
- In Pakistan, money launderers generously loot the country that results in inflation and hike in price of commodities.
- The international repute of the country is damaged due to non-prevention of money laundering and financial crimes and no developed country is willing to provide loan to the suffered country.

³⁵ <https://www.secp.gov.pk> accessed on 20th September 2020

³⁶ <https://www.sbp.org.pk> accessed on 20th September 2020

³⁷ Federal Investigation Agency 1974

³⁸ National Accountability Bureau 1999

³⁹ Above n, 10

⁴⁰ <https://www.enforcementdirectorates.gov.in> accessed on 21st September 2020

⁴¹ <https://nationalcrimeagency.gov.uk/what-we-do/national-economic-crime-centre> assessed on 23rd September 2020

- Sometimes, money laundering is associated with terrorism and weak financial system is helpful for terrorists to launder the money for terrorist financing.
- The foreign investment is paused due to money laundering and lacunas in legislation regarding financial crimes.

3.1 Recommendations

- Forensic accounting subject should be included in training of auditor who conducts the audit or investigates the financial crimes.
- Professional training of all the experts whether related to private or government sector should be ensured.
- The periodical test-based system should be launched to check the competency and knowledge of forensic auditor.
- The public sector institutions should be well-trained for forensic auditing as it could help in minimizing internal as well as external threats related to financial crimes.
- The law enforcement agencies and officials should be trained in the field of forensic auditing.
- A separate forensic agency pertaining to financial crimes or tracing of money laundering should be established in each province of Pakistan.
- The value of currency note should not be more than one thousand as well as the major transactions must be made through banks.
- The laws dealing with financial crimes should be implemented in true letter and spirit.

3.2 Conclusion

The revolution in the field of technology has totally changed the lifestyle. However, the use of technology varies; some use it for their benefits while others use it for committing the crimes. Although, the traditional business system was simple that required no special auditing. However, with the passage of time and increased in worldwide complexities in business and banking system, some special skills are needed. The institution of forensic agency in Pakistan is a newly born baby and is not fully equipped with modern needs and experts. It is found that after every major incident, we seek for advanced forensic techniques. In every field of investigation, whether relating to financial crimes or to physical crimes, the utility of forensic investigation has increased. Moreover, it was observed that the government seems to be least interested in improvement of this agency and the glaring examples are the present forensic agencies. The financial crimes i.e. tax evasion, bribing, over or under invoicing, manipulation of record, money laundering and so on are the mites which are eating the very roots of a country and if such crimes are not prevented, the situation might be worst. It is also found that the criminals who commit financial crimes take advantage of incapacity of law enforcement agencies. In complex cases joint investigation team consisting of experts is constituted by authorities however, the fact is the joint venture of investigation also proven to be insufficient in collection of evidence due to lacking in proper knowledge and expertise. Hence, these issues demand attention at the earliest. Proper coherence and implementation of laws should also be ensured. A uniformed law and system are necessary to minimize the complexities so that the accused may not take any undue advantage. Further, it is found that evidence by modern devices could be accepted in court of law when we have modern forensic agencies.