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**"The Possibility of Anti-Money Laundering Laws
Convergence at the Global Level"**

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Signature: _____

Date: _____

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1. Introduction

a. *Background of the Study*

Well, forget convergence—the overwhelming feature of modern economic history is a massive divergence in per capita incomes between rich and poor countries, a gap which is continuing to grow today.¹

—Lant Pritchett, 1996

Money laundering is not a recent phenomenon and has occupied the minds of policymakers and regulators for many centuries as a result of the devastating effect it has on national economic growth which triggers up a boomerang effect internationally. The techniques could differ, but the illegal activities which pave the way for money laundering have always searched for processes to turn their “dirty money” into usable assets. The records from more than fifteen years of forensic accounting indicate that money laundering is responsible for producing corruption and victimising a number of financial institutions. Globalisation and advancement in technological development have also not helped the matter but have enhanced the speedy and efficient transportation of the proceeds of crime around the world to an extent of undermining national sovereignty. In an attempt to combat the negative impacts of money laundering, there have been several initiatives at both national and international level to combat money laundering, which have targeted jurisdictions

¹ Lant Pritchett, “Forget Convergence: Divergence Past, Present, and Future,” *Finance & Development*, June 1996, 40

offering limited financial regulation, bank confidentiality and low levels of taxation. The effectiveness of these initiatives leaves much to be desired as laundered money has been used successfully in terrorist financing which is a great threat to world peace and stability.

Furthermore, diversity in national economic levels and the problem of poverty in the developing countries have also hindered the possibility of global convergence of anti money laundering laws. Different state governments, inter-governments and several financial business organisations and institutions are acquiring integrated assistance from each other in order to detect the issues of money laundering and initiating battles against it. However, with regard to the control, this can be achieved in two ways; first, national governments should enhance legal perspectives against money laundering by improving the control of legal authorities and domain for identification of any illicit activity that can be the strong signal to money laundering. This check and balance should be equal in nature for all the individuals that may involve employees, managers, accountants and business owners for checking the compliance and operational audits for reporting any illegal activity of money laundering. The second strategy against money laundering is the international anti-money laundering regimes, which include Financial Action Task Force (FATF) and models of G-7, which are defined by the group of seven countries.

b. Impact of the Study

The most appropriate explanation of money laundering is the accumulation of funds under the aspect of funnelling which are generated through illicit activities and transported through financial institutions and business organisations. Money laundering is considered as a global business that takes place across local as well intercontinental borders with an overall cost spanning between \$500 billion to \$1.5 trillion. Furthermore, it has been estimated that from the past years, the threat of money laundering has increased and has become a great challenge for the security and controlling concerns of the anti-money laundering domains and authorities. The money laundering process consists of three specific functions namely; placement, layering and integration and thus, anti-money laundering activities should start from the initiation point that is placement.

At the placement level, transfer of funds takes place through the illegal activities of financial institutions and their system, which is most probably not detected by the government legal authorities. The next stage is the layering, which consists of numerous transactions including money orders and travellers cheques in order to skip from the audit trails. The third stage is the integration of the illicit funds into the economy of the country, which is further utilised for investments, lending, and illegal transactions through cross borders. On the other hand, the developed economies serve as the primary and the most effective tool for money launderers to forge ahead in their illegal operations. In addition to this, these economies are also serving as the most idealistic demanding states for illicit drugs. For instance,

Afghanistan serves as the primary source for supplying opium for the European and American target markets of drugs. Although, the functionalities such as placement, layering and integration are complex in nature, money launderers search for sophisticated markets for performing their tasks. Developing economies have also become important target markets and victims of money laundering since those involved in money laundering continuously target new markets for their illicit business. Regrettably, financial institutions and business organisations in developing economies have ineffective systems against money laundering thus providing more freedom and flexibility to money launderers in their illicit activities. Thus, from developing countries, money launderers try to approach the financial and business organisations of the developed countries in order to be able to integrate and use their illicit funds after the cleaning process has been completed. Furthermore, within the mainstream line of money laundering operations, people who are part of this business are mostly intelligent and updated criminals with the capabilities of changing and adopting the latest techniques against law, authorities and legal initiatives. In closing of the debate, money laundering is not only consisting of monetary tool that involve corrupt financial organisations but has diversified operations, which also involve non-monetary instruments and even non-financial organisations².

² Drezner Daniel W, 'Globalization, harmonization, and competition: the different pathways to policy convergence' (2005) 12 Journal of European Public Policy, no. 5, 841, 859



Fig 1.1 Overview of the Money Laundering Process

c. Thesis Statement of the Study

“Developing nations are facing significant threats of money laundering since, anti-money laundering strategies are expensive to implement and are designed for developed nations. Thus, current anti-money laundering laws and strategies should be united at the global platform for addressing the challenges of money laundering and subventions should be offered by developed countries to developing countries to encourage them stand up in the fight against money laundering as the cost of implementation is extremely high .”

d. Scope of the Study

The scope of the research is vast as it is exploring the accountability of legal domains against money laundering. There is a need to introduce robust strategies by way of convergence of national and international law and enforcement strategies which can improve the legal disclosures mechanism and enhance accountability and potential of financial organisations in the battle against money laundering. Previous studies and events have indicated in both the developing and developed countries, particularly in the areas of monetary and financial institutions, that improved legal initiatives can cut down the rate of criminalisation, decrease the economic burden of money laundering and increase the mobility of legal money in the markets. In addition to this, the current trend of terrorism and organised or translational crimes, drugs and human trafficking has also increased the concerns for addressing the issues of money laundering. It has been a fact that money laundering is a matured illicit technique under the perspectives of legal authorities and regulations. However, money launderers are always introducing innovative and new ways for feeding money laundering through the help of usable assets. On the other hand academic and empirical research which relates to money laundering is not available in an extensive magnitude. For these reason, I have utilised maximum resources for exploring the significant academic material available on the theme of money

laundering and the convergence of anti-money laundering laws at the global level for combating the threats and challenges of this illicit crime³.

e. Significance of the Study

The significance of this study lies in testing the efficacy of national money laundering initiatives in comparison with international initiatives and the possible convergence of anti-money laundering laws at the global level in an attempt to solve the riddle of implementation. It is my proposition that incentives should be given to developing and third world countries in order to spur them up in the fight against money laundering, since most of their economies are strengthened on the proceeds of these illegal funds. This research study is significant, as it will act as a blue print to test whether if incentives are provided for developing nations, the rate of money laundering that takes place globally would be reduced substantially. As long as there is disparity in the level of economic development among countries in the world then probably, the developed nations like the United States (US) and the United Kingdom (UK) may face the negative impact of money laundering and as such, these nations

³ Shehu, Abdullahi Y, 'International initiatives against corruption and money laundering: an overview'(2005) 12 Journal of Financial Crime no. 3, 221, 245

must provide funds and equipments for others to be motivated and join them in the robust war against money laundering⁴.

f. Research Objectives

The general objectives of this research study are as follows:

- To analyse the regulatory nature of anti-money laundering laws
- To highlight the dilemma of international nature of money laundering and diverse national perspectives on the nature and scope of anti-money laundering laws
- To proffer solutions to the diversity of national regulatory and criminal laws on this issue
- To analyse the role of public international law in harmonising the national initiatives or to offer globally acceptable legal norms.
- To provide a blue print for further research in this area.

g. Research Questions

The research objectives of the study are as follows:

⁴ Reuter, Peter, and Edwin M. Truman, *Chasing dirty money: The fight against money laundering*, (2004, Peterson Institute)

- Q. 1: What is the regulatory nature of anti-money laundering laws?
- Q. 2: What are the main reasons for the dilemma of international nature of money laundering and how diversified are the perspectives, scope and the nature of the national anti money laundering laws?
- Q. 3: What are the possible solutions to the diversity of the national regulatory and criminal laws with respect to the money laundering issues?
- Q. 4: How significant is public international law in relation to money laundering issues?

2. The regulatory nature of anti money laundry laws

There is no doubt with respect to the initiatives against money laundering but the concern is about the accountability and evaluation of such strategies in order to combat the crime. It has been reported that approximately amounts in trillions of dollars is laundered globally and this is an indication of the expanding network of money laundering, which has ultimately taken the status of the fastest growing industry of black money. This value of laundered money is a serious threat to national as well as international macro economy and the situation can become worse if effective legal initiatives are not urgently put in place.

The high cost of implementation with it resultant non implementation or ineffective implementation of the combating strategies against money laundering is now invading the sustainability and prosperity of nations and this fact has transformed the war in opposition to money laundering to a global war against money laundering.

This requires global cooperation from the countries, legal authorities, banks and financial institutions and the most important are the convergence of anti-money laundering laws and the participation of societies. Although, some of the initiatives have already taken place in the developed nations but such schematic approach is showing ineffectiveness in terms of presenting loopholes in the legal control against money laundering. This notion has led the development of the global framework due to the fact that money laundering has become a global issues and it can be curtailed if not completely eroded when the developing and developed nations could join their aims for the controlling purpose of money laundering and its associated crimes. The difference and the success can only take place when the different countries, banks and financial institutions come together and develop concentrated efforts as the counterattacks for money laundering issues. It has been a fact that isolated efforts and attacks are not showing progressive strength of control as only the developed nations can go through this expensive and rigorous legal perspectives as it relates to money laundering. On the other hand, developing economies or depressive nations have fragile and weak legal framework that encourages the growth of money laundering which cannot be stopped unless the developed nations could intervene not just technically but also financially.

The reality is that along with the issues of weak legal frameworks in the developing economies, poverty has made some of these countries ideal financial markets for the growth of money laundering and its related activities especially in cases where there is disparity in economic development between developed and developing nations.

Also, although the legal domains of the developing states impose penalties for money laundering activities, these penalties are for the most part lenient in structure and do not produce enough impact on the economy especially as some of these states thrive on the illegal proceeds of money laundering. Also, the law enforcement agencies in these states are lacking in terms of infrastructures, tools, techniques and effective laws⁵.

According to Alford (1993)⁶ drug trafficking is considered as the most active source of money laundering and as such drug trafficking can be considered as the most appropriate strategy for transforming illegal money to legitimate money. Furthermore, capital which comes from money laundering is mostly utilised in illegal activities such as promoting the international market of drugs, proliferation corruption in the states, fraud and kidnapping. However, on the large scale such illicit money is used in terroristic activity along with organised crimes. Thus, this activity leads to the functionality of purchasing power as the capital that come from the business of money laundering is not use directly for the investment purposes. Similarly,

⁵ McDowell, John, and Gary Novis, 'The consequences of money laundering and financial crime', *Economic Perspectives* (2001), 6, no. 2, 6, 10.

⁶ Alford, Duncan E, 'Anti-money laundering regulations: a burden on financial institutions,'(1993) 19 *NCJ (International Legal and Commercial Registration)* 437

consumption and saving cannot be taking place in an effective manner⁷. The intercontinental and concentrated efforts with respect to money laundering is mostly concerned with the regulations of offshore finance as this may be the potential source for the financing of terrorists, which is the new category after the terroristic attacks in the United States and the United Kingdom. In the middle of 1990s, prominent multiple organisations such as Organisation for Economic Cooperation and Development (OECD) and the Financial Action Task Force (FATF) had taken the initiatives to restrain the taxes in offshore finance but this was not effective in some of the designated nations of OECD and the strategy failed against money laundering. However, this strategy if adhered could be used to develop considerable services⁸.

The internationalisation and globalisation of capital markets extraordinarily confuses the undertakings of national monetary controllers. It is coming to be in an every expanding degree troublesome, if not incomprehensible, to manage the exercises of saving money and securities firms and the expansive go of transactions in which they captivate on a national level. I have investigated the procedure of worldwide administrative harmonisation in capital markets, focusing particularly on the systems (political force, market force, and institutional game plans) that expedite

⁷ Masciandaro, Donato, 'Money laundering: the economics of regulation' (1999) 7 *European Journal of Law and Economics* no. 3, 225, 240

⁸ Maurer, Bill, 'Re-regulating offshore finance?' (2008) 2 *Geography Compass* no. 1, 155, 175

this process. It is my contention that the United States and the United Kingdom are overwhelming players in the capital business sector and that the variables generally important for comprehension harmonisation procedures are (1) whether different wards are motivated to imitate the administrative advancements of the prevailing monetary focuses, and (2) whether the predominant focus experience negative externalities all the while. These two elements shed respectable light on the outcome of harmonisation if prodded fundamentally by business drives or by legislative issues; they additionally infer the reasonableness of worldwide organizations current administrative harmonisation. The contention is outlined utilising four issue regions: capital ampleness prerequisites for banks, initiative against cash laundering management, bookkeeping guidelines, and data imparting around securities controllers⁹.

The first step towards anti money laundry was taken by the United Nations Conference for the Adoption of a Convention against Illicit Traffic in Narcotic Drugs (Vienna Convention) this was held in 1988. Article 3 of the Convention established that “each Party shall adopt such measures as may be necessary to establish as criminal offences under its domestic law” the use or possession of assets earned from drug crimes. Vienna Convention gives course of action for implementation of the framework for preventing money laundering, through law enforcement and

⁹ Simmons, Beth A, ‘The international politics of harmonization: The case of capital market regulation’(2001) 55 *International Organization* no. 03, 589, 620

control bodies, such as the Financial Action Task Force (FATF) and United Nations Office on Drugs and Crimes. The regulatory nature of anti money laundry laws aim to immobilize the criminals. This involves identifying, arresting, and imprisoning the criminals. The regulatory nature of the anti money laundry is based upon voluntary compliance or punishment¹⁰.

a. Local and national nature of regulatory laws

The authoritative skeleton for AML goes over to 1970 with the US sanctioning of the Bank Secrecy Act (BSA), which needed money related foundations to track money transactions and record reports itemizing any suspicious action. In 1986, the US Cash Laundering Control Act criminalised the demonstration of cash laundering. In furtherance of the initiatives against money laundering and in 1989, the Financial Action Task Force (FATF) was shaped at a G7 Summit as an intergovernmental figure to advance global benchmarks for AML regulation. Between 1991 and 2005, three different EU cash laundering directives were issued, classifying into the EU law extra against money laundering regulation dependent upon the FATF model. With the establishment of the USA Patriot Act in 2001, the purview of anti-money laundering regulation was fundamentally broadened to incorporate terrorist financing. In the years since 2001, a number of nations have utilised the USA Patriot Act as a model in framing their laws in relation to money laundering regulation, especially in

¹⁰ Sikka, Prem, 'The role of offshore financial centres in globalization'(2003) 27 *Accounting Forum* no. 4, 365, 399

the Middle East and Africa, which a while ago did not have much of method in form of hostile money laundering regulation¹¹.

The local and national nature of regulatory laws is based upon two factors, which have the high regard for sovereignty of the independent state and the difficulty in achieving harmony among different legal systems. The domestic nature of money laundering is no more viable due to the transnational nature of money laundering. This means that anti money laundering regulatory laws need to consider the transnational scope as well. In the developed world, law enforcement agencies and regulatory authority of these countries have been cooperating with each other in the fight against money laundering. This has expanded the scope of regulatory laws from local and national to international nature. This has led to international co-operation in terms of extradition, mutual legal help and the emergence of confiscation of the proceeds of crime. The Vienna Convention 1988 and Palermo Convention 2000 have attempted to deal with the issue of money laundering through the internationalisation of particular national laws. The regulatory laws in the UK relating to anti money laundering are formulated based on anti-money laundering strategy, which was published in 2004. The regulatory laws for anti money laundering were based on three key objectives. These objectives are firstly to deter such activities through strict laws and regulations. Secondly, it aims to identifying

¹¹ McNelley, Conroy J, 'Global anti-money laundering vendor evaluation: A reinvigorated market', (2011) report from Aite Group

and detecting the target criminals and terrorist financiers through financial intelligence. Finally, it aims to disrupting and dismantling the network through prosecutions and asset seizures¹².

FATF AML (against cash laundering) and CFT (Combating the Financing of Terrorism) system has enhanced into a noteworthy widespread managerial organisation. It has influenced countries' consistence with its benchmarks. The nature of its standardising structure, its vibrant institutional skeleton has helped in upholding its validity among nations and thusly-made impressive amenability drive. These intensity of their drive against money laundering has progressed through the years resulting in the consistence execution by countries who are capable to bear the financial cross on implementation and have achieved an astonishing number of countries accepting or making obligations to gain, AML and CFT schemes and subject them to the FATF evaluation. The AML and CFT organisation could in any case win benefit from further upgrades in areas relating to respectability of its guidelines and structures, updating, consistence assessment, ensuring more reasonability is upheld by a sustained authorisations process, fortified general support, and co-ordination around worldwide organisations¹³. Regardless, of the way

¹² Arnone, Marco, and Leonardo Borlini, 'International anti-money laundering programs: Empirical assessment and issues in criminal regulation, *Journal of Money Laundering Control* (2010), 13, no. 3, 226, 271

¹³ Beekarry, Navin, 'International anti-money laundering and combating the financing of terrorism regulatory strategy: A critical analysis of compliance determinants in international law'(2011) 31 *Northwestern Journal of International Law & Business* 137

that the all-inclusive AML and CFT measures have updated into a careful worldwide framework generating more fantastic congeniality cause along with its measures, the most stunning test remains if it has been auspicious in managing money laundering and the financing of terrorism. This is a matter for further study¹⁴.

b. The divergence of national normative systems which underpins anti-money laundry laws

In the Central and Eastern Europe, substantial distinction between the worth of the appropriated and measured supports for sanctioning fiscal sources earning from illicit business is watched. It is an impact of enduring lawful incidents and it makes issues with evaluating cash recouped by governments. The usurped stores do not enhance social welfare and the expense of following, reporting, and researching money laundering is higher than money originating from appropriating. Disregarding the execution of directive follows up on the anticipation of the money laundering and terrorist financing; the lawful regulations make it troublesome to examine the specified issue. The examination of money laundering action lessens social expense yet increases money related finding because of privately owned businesses. There is divergence in the national normative systems of countries, which underpins anti-money laundering laws. These divergences are in terms of the local and national regulations. The different legislative acts and regulations on anti-

¹⁴ Levi, Michael, 'Money laundering and its regulation'(2002) 582 *Annals of the American Academy of Political and Social Science* no. 1, 181, 194

money laundering lead towards divergences rather than convergences. The issue of money laundering is not confined to one area or country; it is a criminal act, which is becoming a menace on the global level. Money laundering activities by both nationals and expatriates pose a serious threat to the governments. The legislation into the format of supervising technocracy is utilising the apparatus of law to cover up un-democratic issues. Rather than such unbending and stark standards, it requires a comprehension of law as autonomous, unbiased and self-standing. Inside a state under the standard of law, law is the measure that empowers legislative issues – the German term ‘Rechtsstaat’ is at times deciphered to free government under the law. All things considered law clears a space for legislative issues as a consistent transform as opposed to the state of an efficient however un-opinionated technocracy. Positively this request to strengthen governmental issues on a worldwide level may not be defined, as opposed to worldwide regulatory law, as a guide after which one can euphorically say ‘it is carried out’. It will not be conceivable to change that thought into a reasonable arrangement, in spite of the fact that we wish for such a simple result. Rather the methodology again implies a scenario of consideration and exchange and the consistent battle for a more law based framework – however this is the thing that legislative issues is about – on a worldwide as well as on a national level. By striving for a utopian state, governmental issues verges on its points – popular government could be the best confirmation of

that. In addition, universal and existing law must furnish the actions against money laundering¹⁵.

All the more for the most part, the time is now, time that administrations pushing the extension of the AML administration through the FATF methodology show that the existing controls have created profits similar to the immediate and circuitous costs that it encroaches on numerous parties. Reviewers contend that the administration has done minimal more than energy cash launderers to change their strategies have. Criminals' lives are more convoluted also a couple of additional are gotten, yet there is minimal change in the degree and character of either money laundering or of the underlying wrongdoings. The analysts might well be correct and There is small in the record of feelings for cash laundering to recommend that the expanded worldwide AML administration that has been built over the previous decade. In addition, a half has demonstrated convenient in more than an entrepreneurial form in battling it is possible that money laundering or the underlying unlawful acts of concern. In a time where execution appraisal is a normal request encroached on government organs around the planet, a watchful appraisal of the accomplishments of the existing administration ought to be needed before it is extended further. Funds for terrorism does not sufficiently identify with money laundering, despite the fact that there may be shallow specialised similitude between

¹⁵ Tsingou, Eleni, 'Global governance and transnational financial crime opportunities and tensions in the global anti-money laundering regime', (2010)47 International Politics no 6,617-637

the systems of cross-fringe developments of trusts, in both cases. The worldwide homogeneity of the systems and structures of the FATF are overall suited to counteract terrorist actions, however the discussion of hostility to cash laundering is definitely not satisfactory for such purposes. On the discussion of the risk-based approaches, the US and the FATF have tremendously enlarged the extent of the global anti-money laundering scheme, with accentuation on homogenisation. The part of the FATF and OECD appear to be slanted against the development of fortune on certain bases, from developed nations to advancing nations, on the fore of hostile ways of money laundering, regulating fear fund and acting against focused and destructive duty strategies of different wards; all of which are the outcome of money related globalisation. The essential groundwork to realise these targets, however have not been to address predicate offences, domesticated duty issues, or corporate flexibility locally, however to coercively externalise the expenses of wrongdoing from wealthier countries to the improving scene incorporating offshore regions, in parallel to War on Drugs model. Boycotting and the prompting and so forth is for the most part insufficient for the reasons of offshore regions and appear to be basically to have the motivation behind homogenising money laundering laws in improving locales to FATF norms and standards¹⁶.

¹⁶ Ur-Rehman, Haseeb, 'The convergence of anti-money laundering laws: legitimacy and effects on offshore centres', (2010) PhD dissertation, Institute of Advanced Legal Studies, School of Advanced Study

c. The place of off shore jurisdiction in international economy and regulatory competition

Another prominent point of view about the globalisation is the availability of flexible movement of money, which further attracts money launderers to involve in the movement of black money and thus, lock the sustainability of societies. The present era is the age of globalising money, which has increased the conception of offshore finances in which multinational banks and even the governments are involved. On the other hand, this offshore financing in terms of money laundering is creating competitive advantage, which is actually far from the societal approach and thus, it is kept on disturbing the social atmosphere and construction of the world¹⁷.

It has been reported by the economists that stock wealth of offshore is calculated as US\$6 trillion. This is so since, most of the small islands and their economies are the key financial hubs and they are dependent on the business of money laundering, as it is the major source of high-level finances. Even some of the governments are sharing 90% of the revenues from the business of money laundering. In addition to this, in the year 1998, several initiatives were introduced by applying tax payments in order to reduce the illicit activities of money launderers. However, weak legislations and penalties have become inadequate regulation against money laundering and corruption. For that reason, the small islands of

¹⁷ Hudson, Alan C, 'Placing trust, trusting place: on the social construction of offshore financial centres'(1998)

17 Political Geography no. 8, 915, 937

economies are developing day by day with fewer barriers for offshore finances and disturb the completely political situations within the globe¹⁸.

The offshore regions are wards that draw in and supervise an awry level of non-inhabitant monetary activity, with their fiscal areas representing an over the top part of their economy. They might speak to advancing nations or rising economies; portrayed as 'low limit' nations by the FATF, which only by benefits of their administrative fitness try to draw in remote ventures. Advanced locales, for example Luxembourg or the City of London additionally display seaward qualities. The base of offshore regions for the most part incorporates mogul motivations, for example low charges, no light and adaptable fuse, remiss permitting and supervisory administrations, adaptable utilisation of trusts and large amounts of secrecy¹⁹. The offshore regions commonly do not offer such motivators to provincial speculators or occupants with a perspective to pull in remote investment, and require a level of fiscal skeleton and in addition access to coastal fiscal markets. The conventional offshore regions represent between 3% and 4% of the World's GDP and supervise

¹⁸ Hampton, Mark P., and John Christensen, 'Offshore pariahs? Small island economies, tax havens, and the re-configuration of global finance'(2002) 30 World Development no. 9, 1657, 1673

¹⁹ Jackson, Howell E., and Eric J. Pan, 'Regulatory competition in international securities markets: evidence from Europe in 1999'—part I(2001) Business Lawyer 653, 695

up to a quarter of the World's assets²⁰. The Offshore financial centres are accused of facilitating money-laundering activities. These jurisdictions play a major role in the international economy and international legal system, which is not recognised fully in law.

The offshore financial centres (OFC) are often referred to as tax havens but it is allow-tax jurisdiction, which has specialised in corporate services to foreign offshore companies, and also for the investments of offshore funds and money. The attractions of offshore centres are greater privacy, lower or no taxation (tax havens), easy access to deposit with no regulations and protection against financial instability and risks. The offshore banks and financial centres act as conduit for international commerce and easier international capital flows. The offshore centres charge no tax on the transactions, which makes it more attractive for carrying out money laundering activities. There are several offshore financial centres in the world such as the Bermuda, Mauritius, British Virgin Islands, Cayman Islands, Luxembourg, New Zealand, Singapore, and Jersey. The UK is a part of the EU system where the EU regulates financial and monetary activities. The British Virgin Island has the highest list of offshore companies. The international cooperation and convergence in the anti money laundering laws are gaining importance through international asset

²⁰ Pan, Eric, and Howell Jackson, 'Regulatory competition in international securities markets: Evidence from Europe-Part II'(2008) Cardozo Legal Studies Research Paper 247, 207

sharing, minimizing banking secrecy, and domestic measures with an extra territorial reach but yet this is mainly possible in developed nations.

i. Off shore with no regulatory limits

In the era of globalisation and information technology, the internet is also considered as the major threat for the security of countries. The internet is also increasing national and the international strength of the governance, in terms of improving the regulation and increasing the decision-making of the countries. Furthermore, it also influences the global markets by strengthening the economic conditions and prosperity of the country and similarly, it enhances the financial interdependence²¹.

The development of money laundering in conjunction with the co-partnered improvement of offshore finance centres (OFCs) spotted in modest places, for example islands or microstates in the Caribbean and somewhere else. The amazing development of OFCs since the 1960s may be seen regarding the 'four spaces'. Three of these 'spaces-the concealment space (privacy); the administrative space; and the political space-could be utilised to casing a dissection of the development of seaward account and the rise of a suitable environment for worldwide cash laundering. The research then has explored at later strategy advancements concerning cash laundering and OFCs, for example the workings of the Financial

²¹ Maurer, Bill, 'Cyberspatial sovereignties: Offshore finance, digital cash, and the limits of liberalism', (1997) 5 International Journal of Global Legal Studies 493

Action Task Force (FATF), and the provincial Task Forces, for example the Caribbean Task Force. At long last, the article investigates the evolving way “offshore” seems to be built as exemplified by climbing inland force from the OECD, G7, the EU and, generally as of late, the UK government, with its developing concern showed by the 1998 uncommon Home Office and FCO surveys of both British Isles and Caribbean OFCS²².

An overwhelming tale about globalisation recounts moderately stable places and trying to pull in an every expanding degree of portable capital, being bolted into a procedure of intense deregulation. This paper contends that such a story is dependent upon an every expanding degree incorrect and unhelpful conceptualization of spot. According to Hudson (1998), thoughts of spot as socially, built nexus is introduced as an improved beginning stage for inspecting the position of spots inside a globalising economy. The social development of the Bahamas and Cayman as spots for seaward account is researched, considering the positions and parts of multinational banks and governments. Indeed, inside the circle of offshore support in which capital is exceedingly portable, the predominant story of spot rivalry and focused deregulation is a long way from influencing. Globalisation does not unavoidably prompt place rivalry since in adapting the positions, powers and scales of operation of the state and non-state on-screen characters which make places

²² Hampton, Mark P., and Michael Levi, ‘Fast spinning into oblivion? Recent developments in money-laundering policies and offshore finance centres’,(1999) 20 Third World Quarterly no. 3, 645, 656

what they are, globalisation truly changes the way of spots. Despite the fact that places are socially built and consequently powerful, the significances of spots are incidentally stabilised through techniques of scaling and the drawing of outskirts. For spots to be stabilised there must be trust around the different performers included in their social development. The need of trust discounts procedures of focused deregulation, which may disintegrate the precise social establishment of spots. This is especially so throughout a time of globalisation in which places are revamped and their outskirts redrawn by a wide assortment of neighbourhood and added nearby and local performers²³. Offshore with no regulatory limits are Cayman Islands. There are no taxes charged on profits, capital gains, and income of foreign investors. Cayman Island has no restrictions and allows foreign investors to pooling their money without any checks and controls. The easy access to the markets and no taxes makes it a tax haven for money launderers. This shows that Cayman Islands are tax haven for the foreign investors. In international markets, the offshore centres have given more ways to money launderers. The illicit activities have become easier with the lenient laws and regulations of offshore centres thus, money laundering is at the peak in this offshore where there are no regulations and limits²⁴.

²³ Hudson, Alan C, 'Placing trust, trusting place: on the social construction of offshore financial centres', (1998) 17 *Political Geography* no. 8, 915, 937

²⁴ Serio, Joseph D, 'Fueling global crime: the mechanics of money laundering' (2004) 18 *International Review of Law, Computers & Technology* no. 3, 435, 444

ii. Off shores with some regulatory limits

Money laundering has additionally been discovered inside an extensive variety of business organisations and the penchant for this may expand as hostile to laundering measures are accumulated into impact the monetary segment. Protection, products, securities and land merchants have all been discovered to be utilised for money laundering purposes. The utilisation of honest to goodness organisations for money laundering purposes has additionally been discovered to be far flung especially in connection to cheating and other monetary wrongdoing. Strategies utilised have incorporated false invoicing, blending of legitimate in addition to illicit money and capital, the utilisation of credit back courses of action (whereby the launderer exchanges returns to an alternate nation and utilises them as security for a bank advance which is sent again to the unique nation), and layers of transactions through offshore shell organisations. In addition to this, a noteworthy measure of illicit returns has been to put resources into land. Normally, layers are made by moving monies done and finished with various offshore bank records of bearer shell organisations through electronic trusts exchange (EFT). There are more than one million International Business Corporations (IBCS) as everywhere as possible, case in point, which expedites the development of money and capital. An alternate system for moving money to safeguard shelters is through journalist

accounts between banks. Numerous UK banks, for instance, have built journalist relationships with high-risk remote banks²⁵.

The remote banks are shell banks—offshore saves money with licenses restricted to working with persons exclusively placed outside the permitting ward alternately banks authorised by frail wards. In light of the fact that a considerable lot of these remote banks finish practically the sum of their transactions in several banks, the UK budgetary framework has turned into a portal to money laundering. Numerous UK banks depend on the way that a remote bank is “authorised” and are uninformed of the accurate status, absence of controls and exercises of the remote bank. UK counts on going against money laundering keeps an eye on their journalist records are ‘frequently feeble or inadequate’. Specifically, UK banks are not asking into what journalist offices are usually offered by immediate journalists in this way, in one illustration, an offshore bank was permitting at slightest six offshore shell banks to utilise its UK accounts. A solitary offshore haven might have several banks, all yet a couple of which are letter drop addresses. These ‘off the rack banks’ or ‘pocket banks’ serve as the individual monetary instrument of the launderer and in numerous locales such banks are not difficult to buy and generally inexpensive²⁶.

²⁵ Masciandaro, Donato, and Alessandro Portolano, ‘It takes two to tango: international financial regulation and offshore centres’ (2003) 6 *Journal of Money Laundering Control* no. 4, 311, 330

²⁶ McDonell, Rick, ‘Money laundering methodologies and international and regional counter-measures’ (1998) paper presented at conference convened by the Australian Institute of Criminology, Sydney 7, 8

Offshore with some regulatory limits are Switzerland and Singapore. Switzerland has been known for its bank secrecy since the Middle Ages. Swiss Financial Market Supervisory Authority is the regulatory authority of Switzerland, which facilitates people with investments and funds transfers. It is one of the most prominent and attractive offshore for money laundering activities as well. The Swiss bank privacy maintains maximum privacy of its clients, hence allowing greater money laundering and tax evasions by citizens of other countries. Several countries and international organizations have pressurised Switzerland to change its privacy policies. The EU (European Union) has been pressurising Switzerland to change its privacy policies in order to reduce the menace of money laundering which is a serious crime. Due to this, Switzerland has signed Schengen agreement and showed willingness to adjust the taxation of saving incomes. Another offshore with some regulatory limits is Singapore, which has attracted Swiss banks into the country. Credit Suisse is the second largest bank of Switzerland, which has opened its branch in Singapore. Tax evasion is an illegal act in Singapore but it has been reported that the authorities co-operate with other countries tax authorities when the case is about the Singaporean taxes. There are some regulatory limits but it does allow for tax evasions when it is required²⁷.

²⁷ Alworth, Julian, and Donato Masciandaro, 'Public policy: offshore centres and tax competition: the harmful problem', in Donato Masciandaro *Global Financial Crime: Terrorism, Money Laundering, and Off Shore Centre* (Ashgate publishing 2004)

iii. Comprehensive offshore and off shores in terms of relaxed rules on money laundering

One of the greatest snags to looking after an adequate working universal money related framework is money laundering. A worldwide wonder and universal test, money laundering is a fiscal wrongdoing that regularly includes an intricate arrangement of transactions and various monetary organisations over numerous outside purviews. Because of these progressions, money laundering is not simply an issue for the globe's major monetary centres -or undoubtedly the gently managed offshore safe houses. No nation, which is combined into the global money related framework, is set to getaway the considerations of launderers. They concentrate on the characteristics of a few nations that make them less averse to offer money-laundering administrations, contending that these assessment havens are structurally not the same as different nations. They need critical assets for exchanging universally, which pushes them to create earnings through a careless supervisory administration, yet their modesty makes them less magnetic to criminal organisations. It takes a social methodology which concentrates on the trade between the focal point and its criminal clients, improving a supply and request timetable for money laundering regulation and an amusement structure (with maths) for the relationship between Offshore and Criminal. The investigations contend that in view of the perplexing and unreasonable aggressive components included, an unadulterated "name and disgrace" approach against money laundering strategy producers may be counterproductive. With the disassembling of trade controls and

the developing interpenetration of budgetary advertises access to one nation's budgetary foundation permits planet wide portability of capital. As more progressed budgetary focus nations tighten their controls, those states with improving monetary areas are more alluring, especially as their provincial coinage come to be convertible and old regulations and controls are lifted²⁸.

The major money laundering cases becoming visible lately impart a normal characteristic: criminal conglomerations are making wide utilisation of the chances offered by money related safe houses and offshore centres to launder criminal holdings, in this way making barricades to criminal examinations. Fiscal havens offer a far-reaching exhibit of offices to the outside speculator unwilling to uncover the root of his possessions, from the enrolment of International Business Corporations (IBCs) or shell organisations, to the administrations of various "offshore banks" which are not subject to control by administrative powers. The challenges for law requirement executors are intensified by the way that, in numerous cases, money related safe houses uphold exceptionally strict fiscal mystery, viably shielding outside speculators from examinations and arraignments from their home nation. While bank mystery and money related safe houses are dissimilar issues, they have in like manner both a true blue reason and a business defence. In the meantime, they can offer unrestricted insurance to crooks when they are misused with the end goal of "doing business at any cost". To grasp the universe of offshore keeping money and bank

²⁸ 'Financial havens, banking secrecy and money-laundering', (UN 1998)

mystery, it is critical to see it not just as a real part of the worldwide fiscal framework additionally as an arrangement of its own particular with different however corresponding and strengthening parts. Some of which are promptly amiable to control by crooks, if those occupied with misrepresentation or those concerned with moving or laundering the returns of pill trafficking, money related duplicity or different other criminal exercises. Not all locales, obviously, offer the same level of administrations that can promptly be abused by culprits. Overall, hoodlums and their master consultants looking to repatriate their money to their home bases, to move it out of the compass of law implementation, or to camouflage its roots and proprietorship find in the offshore money related shelters a set of aspects that in numerous regards appear to be tailor made for their reasons. In order to go after criminal money by method of abnormal amounts of bank mystery has been an enticing system for nations to draw in universally versatile stores. A model key methodology can expand national yield, specifically, if a nation takes first development authority in the rivalry diversion. Assuming that all nations attempt to do the same, there will be a race to the lowest part and a supranational power like the Financial Action Task Force (FATF) must mediate. Then again, there are additionally some inalienable obstructions to the potential system. Around others, criminal capital may swarm out lawful capital and money laundering may expand wrongdoing. It has been proposed that nations have made corners for money laundering. Minor nations can free ride for a spell, yet will finally confront outside approvals and inward wrongdoing issues and challenges. The acquittal, which permitted absolution for

offshore impose avoidance as an exchange for an one-opportunity instalment, reconfigured “expense minimisers” as honest and discerning monetary on-screen characters supporting against danger. Generally took the chance; they were conceded reprieve to repatriate their trusts, which created a noteworthy support in income for the United Kingdom, with social and typical suggestions and implications²⁹.

Most offshore financial centres have been linked to the underground economy and organized crime through tax evasions and money laundering. According to IMF, the annual amount of illicit money being laundered is between \$ 500 billion and \$ 1.5 trillion. The regulation of offshore banks and centres has allegedly been increased. The tightening of anti-money laundering regulations has been put in place in most of these centres but much is left to be desired and the enforcement mechanism is either weak or reluctant.. UK has introduced information and intelligence sharing between certain jurisdictions to enhance law enforcement and regulation in UK Offshore Islands. The offshore in terms of relaxed rules on money laundering are Barbuda, Bahamas, Barbados, Caicos Islands, Labuan Territory, Isle of Man, Bermuda, British Virgin Islands, Cayman Islands, Channel Islands, Cook Islands, Curacao, Belize, Cyprus, Malaysia, Liechtenstein, Monaco, Luxembourg, Macau,

²⁹ Chong, Alberto, and Florencio Lopez-de-Silanes, ‘Money laundering and its regulation’, (2007) Inter - American Development Bank Working Paper.

Mauritius, Montserrat, Malta, Panama, Nevis, Seychelles, Singapore and Dominica³⁰.

3. The dilemma of international nature of money laundering and diverse national perspective on the nature and scope of anti-money laundering laws

The accountability and credibility of anti-money laundering activities are not only dependent on the reduction of money laundering but is also associated with the diminution in the crimes, which are generating through the activities of money laundering. The World Bank and the FATF are continuously involved in the anti-money laundering regimes and this enforcement system is applicable in the major developed parts of the world. However, the most important aspects in this regard is to check the accountability of the current anti-money laundering (AML) efforts whether they are successful in their implementation by reducing money laundering. Money laundering and corruption are running simultaneously and are allowing luxury goods to perform illicit activities. For that reason, different laws, regulations and equipments which have already been developed are representing powerful tools for fighting against money laundering and combating alongside to corruption. On the other hand, the current system of anti-money laundering (AML) regimes is not proved effective with respect to the developing countries. These countries are showing unrealistic adopted approaches of anti-money laundering that even not

³⁰ Palan, Ronen, *The offshore world: sovereign markets, virtual places, and nomad millionaires*(Cornell University Press 2006)

sufficient for controlling the issues of corruption, terrorism, and drugs trafficking³¹. For instance, Afghanistan, Cuba, Lebanon, South Africa and Thailand have weak laws against money laundering and the banking institutions in these regions are not co-operating with the law enforcement agencies for putting extra efforts in conducting investigations against money laundering and corruption cases. Another limitation is the unwillingness of these countries to take account of the bank secrecy while Brazil is prominently standing out among the following developing nations in terms of participation in the investigation as the third party through sharing of the available banking records of transactions and financial records. Afghanistan has another important aspect besides money laundering and corruption, which is the narcotic economy of opium and heroin and the country, is responsible for generating the profit of more than 90% through drugs production. There is no doubt that the money laundering in Afghanistan is the financial source for the production and sustainability of this narco-economic state. The weak systems of anti-money laundering in developing countries are acting as the fuelling stations for this sort of crime and define the whole mechanics behind the procedure of money laundering³². There is a need that developed nations can participate in the creation of crime-

³¹ Sharman, Jason Campbell, and David Chaikin, 'corruption and anti-money-laundering systems: putting a luxury good to work'(2009) 22 *Governance* no. 1, 27, 45

³² Van Fossen, Anthony B, 'Money laundering, global financial instability, and tax havens in the Pacific Islands', (2003) 15 *Contemporary Pacific* no. 2, 237, 275

economic models for such states and improve the awareness of economic concerns due to money laundering so that wide range of issues and challenges of organised crimes could address and the components of money laundering can be identified. For instance, preliminary models were developed in Europe and in some of the states of North America, which were reported as a combating strategy against money laundering³³.

According to Shehu (2004), economic analyses with respect to the alternatives of remittance systems are involving the informal means of transfer of money through underground banks and thus, money laundering is not involved due to licensed structure. For instance, fei chi'en system in China and hundi system in India are growing with popularity and receiving efficiency due to cost effective and timeliness nature³⁴. The business of money laundering can be reduced through two effective measures, which were not taken seriously by the globe. Since, primarily the country should try to establish self-framework of institutions that can analyse and explain ways for the betterment of economic prosperity and in the meanwhile, the global combined efforts that can be capable for analysing the multivariate financing and evaluate the transparency of the international financial system through the

³³ Walker, John, 'How big is global money laundering?'(1999) 3 *Journal of Money Laundering Control* no. 1, 25, 37

³⁴ Shehu, Abdullahi Y, 'The Asian alternative remittance systems and money laundering'(2004) 7 *Journal of Money Laundering Control* no. 2, 175, 185

establishment of Financial Intelligence Units (FIUs)³⁵. Money laundering is the social and economic cost for the country and day-by-day increment is the indication that the external illicit forces are stronger than the legal structures. The smuggling of weapons and drugs through cross border and ongoing money laundering business is muddying the overall macroeconomic conditions, and thus require essential steps to fight against money laundering and should not compromise on it by considering the humiliation of freedom of the international financial markets. Regrettably, the anti-money laundering efforts have not been successful yet due to the limitation of convergence of laws and because of this, money laundering markets are promoting which are becoming the financial threats to the international financial hub. Since, deviation from the policies against money laundering in some of the countries and controlling in few of states cannot be effective strategies for controlling rather than supporting the money laundering³⁶.

The law enforcement agencies need to understand the diverse national perspectives on money laundering where investigations and prosecutions vary from one country to another. The jurisdiction and regulatory laws are different in different countries and hence lead towards divergences. The dilemma of international nature

³⁵ Veiga, L., Joaquim Andrade, and A. Rossi, 'Money laundering, corruption and growth: an empirical rationale for a global convergence on anti-money laundering regulation', (*The Proceedings of the 34th Brazilian Economics Meeting*, 2006, Cambridge University Press)

³⁶ Quirk, Peter J, 'Money laundering: muddying the macroeconomy'(1997) 34 *Finance and Development* 7, 9

of money laundering is that some countries have very high definition of money laundering whereas in some countries there are leniencies. The nature and scope of anti-money laundering law cannot become effective on the global level if there is no consensus. The consensus on one definition of anti-money laundering has not been achieved and hence led toward a dilemma. The attractiveness of offshore finance industry has created a shadow economy where money-laundering activities have increased drastically. The initiatives of Organisation for Economic Co-operation and Development, the International Monetary Fund and the Financial Action Task Force on Money Laundering have led towards the possibility of anti-money laundering laws convergence at the global level. Convergence occurs when there is alignment of interests and laws and regulation between two or more countries. The convergence in anti-money laundering laws can be achieved only through international organizations such as the UN. These international bodies can pressurise offshore to become less flexible as it is leading towards a global financial menace. The shadow economy has emerged after the US financial crisis in 2008 and has affected the entire global economy. The major driver behind this financial turmoil was the money laundering activities. The support of Swiss bank and offshore centers in money laundering on one side and the increasing concern to tighten anti-money laundering laws on other side has led towards divergence. In the global context, it has become highly crucial to pressurise the offshore to raise taxes in order to minimise tax havens for illicit money transfers and investments. The major offshore such as Switzerland, Singapore, British Virgin Islands and Cayman Islands support free trade

agreement with no tax and burdens on the foreign investors whereas this leads towards money laundering. The possibility of anti-money laundering laws convergence at the global level can only be possible when there is a harmony between national and international regulatory laws³⁷. It has been a fact that in the real world, not every bank can maintain the investigative history of every transaction. Therefore, it is not better to live in the ideal world and thus try to reduce the extent of money laundering rather than thinking about the complete elimination of it from the world's financial system³⁸.

4. Solutions to the diversity of national regulatory laws and criminal laws on this issue

The global aspects of money laundering is clear since, financial markets are becoming closer day by day that is allowing people to avail the facilities of free trade in terms of neglecting the regulation for money laundering across the borders. The international systems of money laundering is assisted with the help of technologies and other amenities which is allowing most of the criminals to move their money in a very secure manner as they are facing less regulations from different areas of the world. On the other hand, the international community and regulatory authorities are

³⁷ Lewisch, Peter, 'Money laundering laws as a political instrument: the social cost of arbitrary money laundering enforcement'(2008) 26 *European Journal of Law and Economics* no. 3, 405, 417

³⁸ Arnold, Patricia J, 'Global financial crisis: the challenge to accounting research'(2009)34v *Accounting, Organizations and Society* no. 6, 803, 809

engaging in combating strategies against money laundering as the recent framework and in the meanwhile, much more efforts will have to be done. In addition to this, convergence of national as well as other international regulatory efforts should be proven in order to reduce money laundering from the financial systems. It has been a fact that no part of the world can ignore the challenges of money laundering and for that reason; this is the prime responsibility of all the nations that they must join the global taskforce community for incorporating stability and system integrity in financial and economic systems that can ultimately lead to strong governments. The law enforcement agencies of the United Kingdom have adopted the convergence policies for money laundering in terms of providing training to the foreign counterparts in order to train them in handling sophisticated investigations of money laundering cases as financial crimes are considered as the growing threat to the stability of the national financial systems. Therefore, law enforcement agencies across the world should understand the concept and modern techniques behind such crimes. Solutions to the diversity of anti-money laundering laws indicates the mutual efforts by way of cooperation and collaboration between the Financial Action Task Force (FATF), the World Customs Organization (WCO) and the Council of Europe can jointly plan and make developments across the world in this fight. On the other hand, the new framework of Financial Intelligence Units (FIUs) is also capable of helping to increase the global nature and the scope of the combating strategies against money laundering crimes³⁹. It should however be noted that since

³⁹ Hart, Henry M, 'The relations between state and federal law'(1954)54 *Columbia Law Review* no. 4, 489, 542

money laundry is a global burden which has a greater impact on the developed economies of the world than the developing ones who are still trying to fight against poverty, diseases and insecurity, it will not be in the best interest of the developing nations to spend huge amounts of their meagre resources to assist in the combating of money laundering while the beneficiaries of these laws and actions the developed economies of the world. For these reasons, the developed economies have to compensate the developing economies for lost of business and cost of fighting money laundering that will be incurred by them in the course of standing up in the fight against money laundering.

a. Extra-territorial application of national laws of concerned states

Most countries are adapting and resorting to extra-territorial measures in order to regulate the sensitive areas of the society in terms of economy. However, the extraterritorial and the unilateral regulations of the United Kingdom are also imposing different compliance risks and challenges for the individuals as well as for the business firms. The effects of these have influenced the relationships between the country and the firms directly or sometimes indirectly. The extraterritorial jurisdiction is sometimes controversial as well since, most of the states are blocking the laws against extraterritorial laws of the United Kingdom, although they are facing many challenges in this respect due to the interconnections of the global financial systems of the world. In addition to this, the European Union law is offering a different and

alternative aspect, which is linking to the model type of cross-border surveillance and thus, indirectly enforcing the income tax laws of the European Union related states. With respect to the area of money laundering, the European Union is requiring that all the member states should introduce new countermeasures that can cover regime of financial institutions in terms of the customer due diligence. This concentrated effort is requiring the mutual feedback from the developing nations as well as from the members' states of the European Union. One of the issues is that due to the political pressures most of the states are trying to secure the institutions that are involving in the money laundering issues and thus, creating gaps and loopholes in the combating strategies. The main reason behind this is the wrong conception of the institutions as the facilitators for corporate affairs rather than involve in any illicit activities of money laundering. The concept of extraterritorial jurisdiction is founded on the protection of financial institutions and the public laws under the four bases namely extraterritorial, national, protective and finally the most important is the universal. The European Union extraterritorial jurisdiction is taking the advantage of making the policies by designing the effective tax regimes and enforcements so that other states can promote the international norms and the regulations for the

i. Advantages of extra territorial application

The extraterritorial jurisdiction has three significant areas of action, which include public policies, enforcement actions and regulations. The European Union approach of increasing the worth of national incomes by introducing transnational tax has

enable attain significant financial objectives and economic prosperity. On the other hand, the divergence form of the strategies among the other countries and the European Union is demanding a global convergence and coordination, which can be achieved by merging the national objectives of every country with respect to the money laundering issues. This strategy of the European Union introduction of transnational tax which is extraterritorial in nature has brought about some form of consistency in the tax system thereby enhance its effectiveness⁴⁰. If applied to money laundering in the form of a global convergence, this could go a long way to enhance enforcement and serve cost.

ii. Disadvantages of extra territorial jurisdiction

The assumption of extraterritorial jurisdiction makes a ridicule of the sovereignty of a state. A sovereign state is such that can manage its own affairs without unnecessary interference. Extra territorial jurisdiction is an encroachment on state sovereignty which makes it very controversial. However, technology has with its advantages and disadvantages has made the world a global village. It is only the assumption of extra territorial jurisdiction that could go a long way in curb the global menace of money laundering based on the premise that there is disparity in the level of economic development between the develop and developing nation.

⁴⁰ Alldridge, Peter, 'Are tax evasion offences predicate offences for money-laundering offences?'(2001) 4 *Journal of Money Laundering Control* no. 4, 350, 359

Furthermore, globalising features – such as intercontinental buy and sell, travel and tour, overseas savings, and contemporary infrastructure, communications and technologies – have all to the highest degree amplified the prospective for overlap jurisdictional alleges⁴¹.

b. International Co-operation against Money Laundering among countries with Uneven level of developments

The fight against Money laundering needs intercontinental collaboration in view of the fact that, the quantity, diversity of international money laundering confronts countenanced by the examiners and prosecutors appear never-ending. At the same time as the Financial Action Task Force (FATF) and other global organisations have been successful in elevating consciousness and capability right through the planet to fight against money laundering and terrorist investment, the illicit and vibrant business of money laundry appear always to continue one-step further on. They will carry on exploiting innovative equipments and knowledge, frail AML/CFT authorities, monetary confidentiality jurisdictions (as of which it leftovers hard to get reciprocated authorised support), gluttonous and susceptible sufferers, and subversive value relocate schemes and structures. Collaboration amongst states, and surrounded by domestic law enforcement representatives surrounded by

⁴¹ Podgor, Ellen S, 'New dimension to the prosecution of white collar crime: Enforcing extraterritorial social harms' (2006) *American McGeorge Literature Review* 37, 83

every state, is, consequently, very important to stop the enormous and increasing surge of laundered organised offences and fraud proceeds. Intercontinental organisations such as the UNODC, the FATF, Moneyval, the Asian Pacific Group, the IMF, and the OAS must carry on to force down for associates fulfilment with global AML/CFT principles and obtain a well-built position in opposition to sustained non-compliance consequential from the deficiency of political and administrative willpower. The influential device of asset penalty should be used, as well, to assist in terms of providing finance for the struggle against transnational offences⁴².

Money laundering, financing for fanatic and the financing of the propagation of armaments of mass obliteration are severe fears to safety and the reliability of the monetary structure. The FATF principles have been amended to reinforce worldwide protections and additionally to defend the veracity of the monetary system by provided that administrations with stronger legal framework collaborate with those with weaker system in order to achieve a formidable action in opposition to monetary misdeed. All at once, these innovative principles will tackle new main concern areas such as tax crimes and corruption. The reconsideration of the suggestions intends at accomplishing a balance:

- On the one hand, the needs have been particularly reinforced in areas, which are facing the higher challenges that must have higher implantations strategies. In addition to this, these strategies, further expansion are also taking place in

⁴² Andreas, Peter, and Ethan Avram, *Policing the globe*, (New York: Oxford University Press, 2006)

order to deal with the new and forth coming threats of money laundering that are associating with the expansion and proliferation of mass destruction weapons so that the transparency of the financial institutions can be taking place by means of reducing corruption and other illicit crimes

- On the other, the strategies should also improve in such a way that they are more focussing on targets. In addition to this, there should be more flexibility in order to simplify the measures as well as the applications in order to apply in the low risks areas of money laundering as this risk-based strategy will consent to monetary institutions and other elected divisions to relate their possessions and capital to the advanced and danger areas.
- These FATF recommendations are the foundation on which all the nations should assemble the mutual purposes of undertaking money-laundering financing of the terrorist and the financing of their propagation and expansion. For that reason, the FATF appeal to all the countries to apply efficiently these methods in their nationwide structures⁴³.

Collaboration and convergence has been the key words in the fight against money laundering and the inputs of FATF as a clear leader in these fight as discussed will however remain a dream that may never come through as long as there is a huge between the level of economic development between the developed and developing

⁴³ Bagella, Michele, Leonardo Becchetti, and Massimo Lo Cicero, 'Regional externalities and direct effects of legislation against money laundering: a test on excess money balances in the five Andean countries'(2004) 6 *Journal of Money Laundering Control* no. 4, 347, 366

countries. If the developed world of the west actually want a collaboration, then they should intervene in the form of paying grant to the developing economies in order to assist them in cushioning the high cost effect of fighting against money laundering. If this is not done, there will always be tension between the developed and developing world because money laundering is good business for developing nations and as such fighting it without any alternative recourse to some other funds will never be realistic. It a matter of one man's meat being another mans poison.

c. Obstacles in the Convergence of National Law and Possible Solution

For the case of money laundering governance, security and developments are the main concerns since; money laundering is considered as the hub of illicit economy that lead to the degradation of partial states. The money laundering offences under the perspectives of national law is the indications of conversion and disguise procedures, acquisitions of possession by means of illicit activities, conspiracy in money handling such as betting and criminal facilitating along with the ways the money launderers define their act are genuine. Similarly, other obstructions include physical forcing to take wrong advantage, impediment in the duties of law enforcement agencies and officials by exerting pressure on them. Furthermore, corruption, poverty and informal economy are the other barriers in the path of anti-money laundering.

5. The role of public International law

The current system of public international law can be defined as the set of legal rules and principles that nest and coordinate coherently. These are intended to regulate the external relations between sovereign subjects, states, and other subjects of international law. The purpose is to harmonise relationships, building an ideal sense of justice that is mutually agreed by them, in a framework of certainty and security that allows their aims and objectives to be realistic.

According to Alldridge, (2003)⁴⁴, in the context of public international law, money laundering is an issue whose regulation apparently belongs exclusively to criminal law. The fact that money laundering is an offense under the international Criminal Code does not preclude other legal disciplines governing it from another perspective. The first major international initiative for anti money laundering regulations took place in Vienna, which achieved an agreement to which the Contracting States criminalize money laundering.

Among others, the Basel Declaration of Principles and the Organisation of American States through the Inter-American Drug Abuse Control established a drive against money laundering through which measures to combat money laundering and promote legislative reforms in national regulatory frameworks of the Member States

⁴⁴ Peter Alldridge, *Money laundering law: Forfeiture, confiscation, civil recovery, criminal laundering and taxation of the proceeds of crime*, (Hart Publishing, 2003)

were adopted. However, by their influence and by the rapid process by which they have reached a universal response, the focus of public international law has specifically been on the FATF. This is a set of legal rules with a structure especially suited to the recipients of the system and the needs of the anti money laundering initiatives. The structure of public international law is one of coordination, which unlike the structures of subordination of internal systems; the subjects are under the condition powers⁴⁵.

a. Would public international law consider money laundry as a universal crime?

Public international law has considered money laundering as one of the most prevalent universal crimes. The main measures in the development of international standards and laws include the work of the United Nations and the financial Action task force on Money laundering (FATF). Under the public international law, countries are required to put in place appropriate AML legal frameworks, procedures and the institutional regimes for implementing the AML regulations and supporting international cooperation. In order to achieve these goals, public international laws, has set the following requirements:

1. Recognising money laundering as a criminal offense

⁴⁵ Gallant, Mary Michelle, *Money laundering and the proceeds of crime: Economic crime and civil remedies*, (Edward Elgar Publishing, 2005)

2. Applying money laundering offences to predicate offenses and this involves corruption related offenses like obstruction of justice, embezzlement of property, bribery and abuse of functions.

3. Instituting a regulatory and supervisory regime for the non-banking and banking financial institutions. These regimes are needed for the due diligence, and regulatory capabilities to ensure compliance.

4. Enabling the seizure, and confiscation of the proceeds of crime related assets and this includes freezing without delay funds and entities which are assigned as persons or entities related with terrorism.

According to National Bureau of Economic Research (2003)⁴⁶ the regulation models within the international anti money laundering framework are imposed by the influential parties including the G7 and the US at a global level which are diffused horizontally by the central and the regional bodies like EC, FATF and IMF. The downloading actors are often the developing countries, newer members to EC, OFCs and the treaty based organisations.

In this initiative, members of the international community have adopted many other regulations. The United Nations Convention against Transnational Organised Crime, known as the Palermo Convention, is another mechanism to harmonize measures against money laundering and requires signatory countries to broaden the

⁴⁶ 'Economic and Financial Crises in Emerging Market Economies' (National Bureau of Economic Research, 2003) <<http://www.nber.org/chapters/c9778.pdf>> accessed August 17, 2013

scope of predicate offenses. It has been stated that criminal behaviour involves implementing multiple procedures, some of them very sophisticated which mainly uses organized crime, which has a huge economic power and ability to persuade or inspire fear, violence or threats particularly through the corruption of public officials and banking, or resorting to extortion, blackmail, bribery, and other immoral and illegal means. All this creates a great impact on society, the states, the region and the world. It is rightly said that the money laundering process dangerously affects the people and their democratic institutions, their economies, undermining financial and banking arrangements, corrupting and polluting the social, legal and judicial system, endangering the Rule of Law countries. Therefore, under public international law drug trafficking and money laundering has been declared as generating large financial profits and wealth enabling large transnational criminal organizations to penetrate, contaminate and corrupt the structures of government, legitimate financial activities and society at all levels. This is why the international community decided to deprive persons engaged in illicit traffic of drugs and related crimes ,the proceeds of their criminal activities and thereby eliminating their main incentive for so doing. Finally under, public international law, a statement was issued which was divided into a declaration of principles, a plan of action, legal actions, regulatory actions, and measures of enforcement⁴⁷

⁴⁷ Bassiouni, M. Cherif, ed. 'International Criminal Law: Multilateral and bilateral enforcement mechanisms',(vol. 2 Martinus Nijhoff Publishers / Brill Academic, 2008)

b. Would public international law accept or reject the extra territorial application of some countries anti-money laundry laws?

The most successful anti money laundering efforts rely only on a non-treaty based coercive counter measures. Palan, (2002)⁴⁸ writes that public international law has not imposed any legislation on the freedom of states to develop the forms of extraterritorial criminal jurisdiction where they depend on international solidarity between the states in fighting against money laundering. There is a consensus among the agencies with the reform of law that there needs to be a departure from strict territorial based principles of jurisdiction. Maintaining this stance of hostility towards the extraterritorial jurisdiction, both the legislature and the courts within the common wealth have started exercising jurisdiction that has extraterritorial aspects. For example, the blocking statues are aimed at the use of antitrust extraterritoriality as they influence the litigation that took place overseas. In this regard, the antisuit injunctions, which were issued by the English courts against litigation in the United States, had the aim of monitoring and controlling the conduct outside the courts' jurisdiction.

⁴⁸ Palan, Ronen, 'Tax havens and the commercialization of state sovereignty'(2002) 56 *International Organization* no. 01, 151, 176

According to Helleiner, (2002)⁴⁹, in terms of the approval of extraterritorial application of money laundering law, there may be various challenges. For instance, the larger definition of money laundering remains a specific concern as much for the organisations operating within the regulated sector as for those outside it. Although lobbying exists in the financial service sector and the lawyers for the introduction of a “De minimis” threshold test or the limit to further the extra territorial scope of money laundering often see the international law as being largely resisting the narrowing down of the definition. The reasons can be that it does not wish to restrict the capability of the law enforcement agencies to pursue criminal property wherever it occurs. The extra territorial impact of the anti-money laundering regime can increase the issues for the firms, which operate on a global scale. One of the main issues for these firms is the use of facilitation payment which is mostly paid in some jurisdiction and not restricted by the local law but which relate to huge bribes or corrupt payments. This can be one reason that the internal public law will have to consider the acceptance or rejection of extra territorial application of some countries anti-money laundering laws taking into consideration of the larger good of their individually businesses⁵⁰.

⁴⁹ Helleiner, Eric (2002), “The Politics of Global Financial Regulation: Lessons from the Fight Against Money Laundering,” *International Capital Markets: Systems in Transition* (Oxford University Press 200)117

⁵⁰ Stiglitz, Joseph E, ‘Capital market liberalization, economic growth, and instability’ (2000) 28 *World Development* no. 6, 1075, 1086

c. Would public international law accept the sharing of cost of implementing ?

The cost of implementing anti money laundering laws is very expensive as launderers are very innovative and up to date in their attempt to hide the traces of 'black money'. Most developing nations are still fighting to alleviate poverty within their jurisdictions and cannot afford to spend a dime in a cause that will never be beneficial to them. The possible solutions out of these is sharing the cost of implementation within their jurisdictions with the developed nations. There is no legal obligation under public international law for cost sharing but this is actually inevitable if the developed nations actually want the developing nations to assist them in this fight.

The economies of scale must be changed by sharing the cost of implementation across various business units or cost centres. However, in terms of cost sharing, the public international law needs to consider various cost implications especially in terms of the level of development of each independent state. . According to Savona, (2000)⁵¹ the anti money laundering laws implementation costs are higher in the developing countries as compared to the developed ones because

⁵¹ Savona, Ernesto U., ed. 'Responding to money laundering: international perspectives', (Psychology Press, 2000)

there are deficiencies in the legal framework of the developing nations. For example, the level one bank, which was surveyed by KPMG international, reported an increase of more than 50% for the anti money laundering compliance cost between 2004 and 2007. More than three quarters of the regulated business that was survey in India in 2009 depicted an increase in their compliance cost.

The non cooperative and non compliance jurisdictions are not always countries that pose significant money laundering risks, however they are simply countries which do not implement FAT's guidance and recommendation to appropriate levels. For example, a country cannot argue that because its exposure to money laundering activities is so low and as such it does not need to adopt the criminalization of FATF's money laundering or establish a financial intelligence unit. Despite these limitations, it can be said that the regulations have preventive effects both in the developing and in the developed countries. However, while it is agreed under public international public law that the cost of implementation is substantial and may have a negative impact on developing economies if not subsidised, it may also have some uncertain positive effects as the effects these economies are not having today could be a nightmare tomorrow. It is a major challenge for the public international law to weight the costs and benefits of implementing anti money laundering laws on equal stand in both the developing and developed countries. It

appears to be a better strategy to establish an international system, the effects of which are measurable and less costly to implement.⁵²

6. Conclusion

a. Wrapping up

The negative impact of money laundering and competition in taxation is mostly felt in the developed World. The negative impact of such practices on the developing countries and OFCs are overstated, as developing countries and OFCs are merely responding to market demand for lower taxation, corporate flexibility and indeed venues to launder money. The economy of most developing states depend on the resources they derive from money laundering and related activities. The idea that rejecting illicit funds is an entrenchment against money laundering and banking integrity is currently of little or no consequence to the economy and banking infrastructure of developing countries but rather beneficial to the developed economies who have everything to lose if money laundering is not nipped. in the bud. Why then should the developing countries assist in the fight against money laundering when they actually gain from the proceeds? It's like telling a hungry man not to steal food when he has no other option. Something must spur them up to do these and mitigate the loses they would incur by embarking on this onerous task. This can only be provided for by the developed countries.

⁵² Abbott, Kenneth W., and Duncan Snidal, 'Why states act through formal international organizations' (1998) 42 *Journal of Conflict Resolution* no. 1, 3, 32

Convergence is also possible only in respect of sources of money laundering that are considered as universal crimes because values differ from country to country. What may be considered as a crime in a developed world may not necessarily be seen as such in a developing country. With respect to the international strategies and efforts made by the FATF, these cannot prove to be effective until the countries would determine the levels of legal actions against money laundering. Thus, mutual efforts should be the priority in this respect in order to determine the ratio of compliance and regulation of anti-money laundering laws and systems. Since, such approach can identify the blacklisted countries and further assessment through the FATF index, measures can explore the possible issues of corruption, and political problems that will be solved immediately after their rise put into serious considerations disparity in economic development and taking steps as already stated to breach the gap..

b. Recommendations

In recent years, several states have reformulated their laws and rules leading the fundamental banking operations, business-related banking, and overseas exchange with the aid of technological support from the (International Monetary Fund) IMF. It may perhaps be additionally appropriated to create and maintain individual and separate banking regulations and laws, which are included the reporting requirements designed for non-prudential rationale and reasons than to take account of such needs in the central part banking related regulations and laws.

The requirements used to cover the confidentiality of the bank and management of offshore banking systems, are predominantly appropriate and significant to the business of money laundering.

The international system of FATF has incorporated the anti-money laundering regimes, which are defines the standards for controlling and regulation of activities of money laundering. For this reason, it has set the standards for compliance but the most important aspect is the legal imperatives of each country should be structured in such a way that its financial institutions, banking system and the government should support the national and international rules and regulations for money laundering related criminal activities. Countries whether developed or in the developing phase should set their standards with respect to the two objectives that is the commitment for reducing money laundering related business and address the issues of terrorism linked funds. Accordingly, countries should set their order of compliance that may provide benefits to them as per the norms and systems they follow for execution. This sort of compliance framework can help the states to address the challenges of money laundering which have long been identified and aid in the be control of illegal capital that may use for funding terrorism-associated activities.

Finally poverty and economic divide is one of the greatest obstacles in the fight against money laundering. A hungry man will always launder money when the benefits from such is beneficial both to him and even sovereign states in the developing world. If the developed world who feel the brunt of money laundering

take a further step to provide subventions to developing countries like what is happening under WTO and TRIPS and even in environmental protection. This will go a long way to ensure that developing countries make a concerted effort in this fight. Therefore, the following aspect is considered as the future concern for the world, in an attempt to ensure that the global convergence of anti money laundering law if possible, is made a reality.

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