

# Reading the FATF laws - Part I

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Presumption of innocence, access to fair trial, and protection of constitutional rights make up the Golden Thread that holds the multicultural population of Pakistan together; everything falls apart if you take any ingredient out of the equation.

As a legislator for almost a decade, and as a member of the legal fraternity for fifteen years, I firmly believe that the first responsibility incumbent upon any state is to protect the rights of its citizens. Unfortunately, the everyday reality around us is starkly different. The incumbent federal government is adamant on overreaching its constitutional bounds, and thereby shrinks the space for civil liberties and human rights.

My argument is to the bowing of the incumbent government, foregoing the civil liberties of its citizens, before the international pressures during negotiation regarding exclusion of Pakistan's name from the grey list. The present government's claim of its victory after completion of the Financial Action Task Force (FATF) legislation by parliament is actually a retrieval from the protected rights of our citizens provided in the constitution.

There has been a lot of hue and cry in parliament, electronic/print and social media regarding the legislation related to 40 recommendations made by the FATF. These recommendations were supposedly regarding the improvement of monitoring systems for Anti Money Laundering (AML) /Counter Finance Terrorism (CFT) measures in Pakistan's financial markets, regulatory bodies, and others ancillary thereto. These recommendations resulted in all together a new legal regime, increasing the powers of the executive, and thus infringements of the fundamental rights of the common citizenry. In the series of legislation, parliament has enacted/amended 11 laws. In the following paragraphs, I have given a summarized review of each law for the consumption of the general public, as an attempt to inform them of the recent legislative developments, and how it affects their lives.

The United Nations (Security Council) (Amendment) Act, 2020: The said amendment Act is aimed at delegating the power of the federal government, to implement the Security Council's resolutions. Under the pretext of aforementioned "objective", persons implementing the Act have been given complete immunity from all legal proceedings, to supposedly ensure proper execution of its orders, and to achieve the object of the legislation. Prima facie, the legislation sounds like foreign intervention via proper channels.

The Anti-Terrorism (Amendment) Act, 2020: Definition of the term "person" has been added in the Anti-Terrorism Act, 1997. The new definition includes 'natural, legal person or body corporate' in its ambit, resulting thereby in a dichotomy of punishments for natural person and legal person. Further, punishments have been made harsher, providing therefore for imprisonment up to ten years and fine up to Rs5 million for natural persons, and imprisonment not exceeding ten years and fine upto Rs50 millions for legal persons, found guilty of aiding and abetting proscriptive organizations. Further, under the new regime, civil servants shall be deemed to have aided and abetted proscribed organizations if they are negligent in complying with the provisions of the Act. In addition to this, liability has been imposed for the violation of the UN Security Council Resolution Act, 1948, punishment for which is introduced as ten years imprisonment and Rs25 million rupees fine or with both. Hence, we can conclude that unusually harsh punishments have been imposed in order to appease the international community at the cost of the common citizenry.

The Anti-Terrorism (Second Amendment) Act, 2020: The word 'terrorism' has been redefined through these amendments, whereof it shall now include 'any person, either natural or legal' instead of an individual, in its ambit. Furthermore, banks have been restricted from providing financial support to proscribed person(s), arms licences of proscribed persons are to be cancelled, and all weapons from such persons are to be confiscated as a result of such. Further, organization or front-organizations, perpetrating or assisting proscribed persons or organizations shall be funded and shall be punished accordingly.

Through these amendments, fine upto Rs25 million for natural person, and upto Rs50 million for legal person, has been fixed for offense of fund-raising and money-laundering for proscribed organizations. Seizure of property without notice of any person acting on the direction of a proscribed person is provided. Further, the joint investigation team formed under the Act has been empowered to co-opt any additional person from federal and provincial institutions for investigation. Further, punishment for contravention of an order to call for information has been increased through the amendments to three years imprisonment and fine of up upto one million and ten million in case of natural and legal persons respectively. Resultantly, there shall be an overreaching of authority and abuse of power by state authority, which is to result in infringement of the fundamental rights of citizens under the dubious excuse of 'accountability'.

The Control of Narcotic Substances (Amendment) Act, 2020: Through the said amendment the concept of 'guilty mind' has been removed from the parent Act, by inserting a generalizing phrase declaring "no-one shall conceal or disguise any assets by making false declaration or by employing any other means of concealment". Any other means is a very general phrase, and shall result in abuse of authority by the state.

The Mutual Legal Assistance (Criminal Matter) Act, 2020: This regularizes any treaty, agreement, memorandum of understanding, convention or other international arrangement containing provisions relating to mutual legal assistance in criminal matters to which Pakistan is a party. The supposed purpose of this Act is to curtail trans-national organized crimes and improve the effectiveness of legal instrument and coordination mechanism between countries combating crime across the borders by way of a central authority with powers exercised by an

executive committee – that is: secretary to the Ministry of Interior, federal government of Pakistan.

The executive committee is to regulate procedure for rendering and soliciting mutual legal assistance in criminal matters, including proceedings relating to investigation, prosecution, judicial proceedings, identification or tracing of proceeds or instrumentalities of crime, the determination as to whether a property is instrument of crime, money laundering or terrorist property, or corruption etc. The central authority is further empowered to transmit and receive information relating to criminal matters among nations without prior notice to the federal government.

Countries can also make transfer requests for persons serving imprisonment, and requests for temporary detention. This Act allows the central authority to issue freezing seizures or confiscation orders on a foreign request, if it deems it reasonable; it can also refuse mutual legal assistance where it deems appropriate. There are strong chances that the central authority will infringe on the fundamental rights of the common citizenry under excuses afforded by this Act, whereof a number of litigation might result from such too.

The Islamabad Capital Territory Trust Act, 2020: This law concerns the registration, administration and monitoring of trusts registered within the local limits of the Islamabad Capital Territory, in order to cater to the effective administration, financial monitoring, and evaluation of trusts. The director of the directorate of labour and industries Islamabad has been given the authority to keep a register of trusts that shall include all the information of trust, its trustees and beneficiaries etc. The duties and responsibilities of the trustee have been introduced in the Act, including execution of trust, collecting and holding of information, purchasing and selling, protection of title to trust property, careful dealing with property, prevention of waste and keeping of accounts etc.

Similarly the liabilities of trustee has been enunciated including right to reimbursement of expenses, indemnity, settlement of accounts, variation of investments, providing of receipts etc. Further the rights and liabilities of beneficiaries including rights to rent and profits, specific execution, right to inspect and transfer beneficial interest etc. The chief commissioner of Islamabad has been given the authority to make rules and exercise arbitrary power to clarify any confusion arising out of the interpretation of the Act.

To be continued