

Reading the FATF laws - Part II

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Anti-Terrorism (Third Amendment) Act, 2020: Terror financing is playing a degrading role against the development of the country and is a subject of major threat to the external peace of the country and of allies.

This Act enables law-enforcement authorities to use methods like undercover operations, controlled delivery, intercepting communications and accessing computer systems etc, whereby the detention period has been set at 60 days which may be extended to another 60 days. The opposition had filed an amendment for omission of this clause, since it is in violation of the fundamental right to privacy of an individual, but the amendment suggestion wasn't supported by the government.

Anti-Money Laundering (Amendment) Act, 2020: anti money-laundering laws have been aimed to be kept in line with international standards prescribed by the Financial Action task force (FATF). Exhaustive record-keeping requirements have been explained to meet FATF requirements, and dissuasive sanctions are also proposed in the Act. Punishment for money laundering has been set as imprisonment up to ten years, fine extendable to twenty-five million rupees, and forfeiture of property, when done by a natural person (directors, partners/employees). In case of a legal person, the fine may extend up to one hundred million rupees.

A National Executive Committee, consisting of minister of finance or adviser to the PM on finance, minister of foreign affairs and others mentioned in Schedule-II, has been constituted. The Committee is supposed to make recommendations to the federal government relating to effective implementation of the Act, determination of offences existing in Pakistan, application of countermeasures to combat money laundering etc. It may constitute one or more sub-committees and may delegate or assign its functions to the general committee or a sub-committee. The proposed aim is to fight money laundering and financing of terrorism, by issuing necessary directions to the investigating or prosecuting agencies, seeking reports from competent authorities etc.

A Financial Monitoring Unit has also been established, which is to be an independent decision-making authority, having a financial expert as its director general. Numerous business restrictions have been imposed, including restriction on conducting business with anonymous customers. Offices working under the Act have been provided protection from civil or criminal liabilities, which in effect will result in infringement of rights by those overly powerful officers. Fundamental rights are being sacrificed at the altar of 'accountability'.

Islamabad Capital Territory Waqf Property Act, 2020: this law pertains to management, administration and supervision of trusts registered within the local limits of the Islamabad Capital Territory. Its purpose is to cater to effective administration and financial monitoring and evaluation of waqf property and how it shall be created and who may create it. The chief commissioner is empowered to appoint the administrator and deputy administrators for waqf properties. These properties shall be registered with the chief administrator and the district collector shall furnish a consolidated annual report of all waqf properties recorded as waqf during the year, in respect of revenue limits of ICT to the chief administrator.

During the lifetime of a waqf, the chief administrator cannot take over and assume the administrative control, management and maintenance of such waqf property, except with the consent of such person or persons and the chief administrator. Through this Act, the chief commissioner is granted the power to sell the waqf property if needed and the procedure to sell has been discussed in the Act. He shall keep accounts of income and expenditure. Further, ouster clauses barring jurisdiction of civil and revenue courts are present too, which subsequently shall result in abuse of power by executive authority. The powers of the chief commissioner have been increased to the extent that there is now over bureaucratization of religious affairs under the purview of this Act.

Companies (Amendment) Act, 2020: a prohibition on issuance of bearer shares or bearer share warrants, etc has been imposed. Duty has been imposed on every company to maintain a register of its ultimate beneficial owners and record their accurate and updated particulars, while penalty for noncompliance with this is a fine up to one million rupees, or up to ten million rupees, for natural and legal persons respectively. This will result in over intervention of the state in the business sector, and might result in a decline in the growing economy.

Limited Liability Partnership (Amendment) Act, 2020: a responsibility on limited liability partnership to maintain and timely update particulars of the ultimate beneficial owner of any person who is a partner. If it fails to comply with these requirements, a fine up to one million rupees, if a natural person, and up to ten million rupees, if limited liability partnership. Excessive monitoring procedures might discourage businesses, and thereby cause loss to the economy.

So to conclude: from the very start, members of the opposition benches in parliament were of the opinion that these recent legislations will result in providing extreme power to governmental institutions, and had warned the other side that it will result in infringement of the common citizenry. It is also a matter of record that during negotiations with the government's legal team, members of the opposition had strongly opposed the introduction of numerous archaic and anti-people provisions, as a result of which almost 300 provisions in the said legislations were amended, or deleted. On the matter of infringement of 'right to privacy' and 'right to fair trial', both of which are constitutional guarantees granted to all persons in Pakistan, there was a stand-off between the opposition and the government, which ultimately resulted in a heated skirmish between members of both camps.

Already Pakistan is an over-legislated country; the problem we have is of implementation and not about legislation. We have opposed four bills outright in order to exclude our country's name from the grey list. However, time will tell whether these laws have been useful to comply with

our country's international commitments or whether they have only created more difficulties for the Pakistani business community in terms of abuse, unnecessary red tapes, over-bureaucratization, bottlenecks and further corruption.

The recent legislation has seriously undermined constitutional protections afforded to the citizens of Pakistan in terms of right to fair trial, right to privacy and right to fair investigation. The said legislation has only resulted in granting absolute powers to investigation agencies, thereby ousting the jurisdictions of the honourable courts of the land through various acts.

In its present form, allegations shall result in giving rise to constitutional petitions before the superior judiciary reclaiming the rights guaranteed by the constitution of Pakistan. It is also important to note that similar provisions to counter the aforementioned proscribed acts were already in the field, in the shape of legislations pertaining to the Securities & Exchange Commission, Federal Board of Revenue, as well as the State Bank of Pakistan – which were already complying with FATF recommendations. Therefore, the recent introductions of Acts will be nothing more than over-legislative acts in nature. As a result of the aforementioned, it would give rise to lots of confusion and conflict between various governmental institutions and also over the question as to which particular institution shall have legal jurisdiction to entertain these matters.

Concluded