Financial Action Task Force and Question of Legitimacy: A Constitutionalism-based analysis

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Abstract

This article will analytically evaluate legal status of Financial Action Task Force (FATF), designated to set international financial standards and works as watchdog on threats of Money laundering (AML), Terrorist financing (TF) and Proliferation financing (PF). Its recommendations have universal pertinence to safeguard the global financial systems; the article finds that recommendations patronized by FATF are adherent to the United Nations conventions, international instruments thus integral to Global Administrative Law (GAL). Though, its institutional legitimacy is frequently objected by the non-member states, siding with global constitutionalism or the national sovereignty, but whether the framework truly suffers from the legal deficit, sufficient to discredit its mandate or not? However, the article at minimum settles there lies legitimacy behind FATF's recommendation. Nonetheless, it is necessary to have in place a mechanism sequel to the global constitutionalism to thwart concerns of authoritarianism and undemocratic run to constitutionalize FATF.

1. Introduction:

Criminalizing the acts of Money Laundering (ML) through international cooperation was first agreed in the Vienna Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988), signed by and between the G-7 and EU countries under the auspices of the United Nations.[1] Pursuant to the agreement, Financial Action Task Force (FATF), an inter-governmental body was formed in

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[1] See generally United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988).

1989 to develop policies and respond threats of money laundering[2] posed to the financial institutions.

A term "Money laundering" refers to the process whereby money earned from a crime i.e. corruption, drug trafficking, fraud or tax evasion; is tried to be disguised as money earned through legitimate sources, causing losses to the banking system and the financial institutions[3].

To perform its functions, the Force was purported to examine the techniques and trends of money laundering, review of existing national and international reactions to such threats and then to come up with necessary measures to prevail over those threats[4]. Later, in April 1990, the Force issued forty (40) recommendations with extensive plan to sack the trends of money laundering i.e. money laundering as an offence, confiscation measures, record keeping, financial intelligence units and mutual legal assistance etc[5]. Later, in 2001, concerns of Terrorist Financing were also added to the mandate of Force. The term "Terrorist Financing" typically includes collection of funds and funding the acts of terror or the operations of terrorist organizations. It is different from money laundering in a way that fund for Terrorist Financing, most of times are collected from the legitimate sources i.e. funding, collection, or donations etc. The Force additionally issued eight (08) recommendations to counter issues of terrorist financing i.e. terrorist financing as offence and targeted financial sanctions etc.

Growing trends of the financial perils keeps the Force engaged in revising its standards to counter the challenging techniques. In Feb, 2012 a thorough review was conducted to monitor the vulnerability of

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[2] Chohan, Usman W. (2019)' *The FATF on the Global Financial Architecture: Challenges and Implications'* 'CASS working papers on Economics and National Affairs, *EC001UC*.

[3] Waseem Ahmad Qureshi (2017) '*An Overview of Money Laundering in Pakistan and worldwide: causes, methods and socioeconomic effects'* Articles & Essays: University of Bologna Law Review 2017/2.

[4] Leonardo S Borlini, (2015)'*The Financial Action Task Force: An Introduction'* 'U4 BRIEF' 2015/2

[5] See generally: https://www.fatf-gafi.org/media/fatf/documents/recommendations(accessed on May, 15 2020).

the recommendations, and thereafter a revised version[6] of recommendations qua the financial standards was published requiring further integrity of the financial institutions with the help of benchmark measures developed by the Force[7]. The revised version also included issue of Proliferation Financing to its mandate. In addition, the Force carries a unique and diversified approach to conduct its evaluation processes.

2. The Force and its method of evaluation

Appraisal through the means of 'mutual evaluation[8]' makes the entire monitoring activity significant and unprecedented. The process is twofold; in the first phase, it examines whether the questioned country had complied to the technical requirements of the recommendations and in the next, it determines whether the domestic framework is effective to address dangers of money laundering, terrorist financing and the proliferation financing. In the technical compliance, the Force investigates the legal and institutional framework in place, powers, and procedures of competent authorities. In such a way, the Force tries to detect the effectiveness of the system[9]. However, following is a stepwise evaluation process of the Force:

First, an assessment team[10] is formed to initiate process of evaluation of a country.

Second, Regulatory framework of the targeting country is procured to study.

Third, the team conducts analytical review of such regulatory framework.

[6] The Revised version also included issue of proliferation financing to the mandate of the Force.

[7] Gray W. Sutton (2012)' '*The New FATF Standards*' George Mason Journal of International Commercial Law, 4/1: 68-75.

[8] It is a mutual peer review system to determine the levels of compliance with the international anti-money laundering and anti-terrorist financing standards.

[9] See: Fatf guidance on the risk-based approach to combating money laundering and terrorist financing: High Level Principles and Procedures (2007).

[10] The team is comprised on a group of experts from the fields of law, finance, and regulations.

Fourth, the team determines level of country's technical compliance with recommendations.

Fifth, the team separates a focus area and seeks comments from the country.

Sixth, the team, then, proceeds to visit the targeting country, meet up with the private and public sector stakeholders to examine and record effectiveness of the financial system.

Seventh, the team writes down its findings, thereafter a draft "mutual evaluation report[11]" is prepared, to be reviewed by the assessed country and the independent viewers.

Eighth, the assessment team presents key issues and findings to the plenary, where a discussion is held and if the report is approved by plenary, it is sent for review to all the global members.

Ninth, A final report with analysis and findings is published on website of the Force[12].

After publication of report, the assessed country may be required to take necessary steps to address the shortcomings appeared through the technical compliance or after adjudging the effectiveness of the system so as to ameliorate the system and qualify to be compliant in the post monitoring process[13]. Consequently, role of the Force becomes of reconstructing the structure at national and international law to regulate, monitor, evaluate and post moni-

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[11] It is an assessment of a country's measures to combat money laundering and the financing of terrorism and proliferation of weapons of mass destruction. The report also includes assessment of country's actions to address the risks emanating from designated terrorists or terrorist organizations.

[12] Karl-Johan Karlsson (2017): The Financial Action Task Force (FATF) Mutual Evaluation Process https://www.youtube.com/watch?v=lrA9k3uZGRk (accessed on May, 11 2020).

[13] See generally, FATF (2013-2019), Methodology for Assessing Compliance with the FATF Recommendations and the Effectiveness of AML/CFT Systems, updated February 2019, FATF, Paris, France, http://www.fatf-gafi.org/publications/mutualevaluations/documents/fatf-methodology.html.

tor the menaces of international threats to financial systems[14]. Although, there are no enforcement tools with the Force to proceed against the non-compliant states but the fear of being placed on its grey or black list and the peer pressure by other states causes the assessed country revamp the financial system in line with the recommendations and prevent grave economic implications[15]. Of course, viewing the given reasons, mere questioning status of FATF and its recommendations as undemocratic and unconstitutional would not afford non-compliant states any occasion to escape.

3. Legitimacy of the Force and recommendations:

Determining legal status of the Force is indispensable prior to steering a discourse on its recommendations and adjudging their worth, credence and force. Originally, the Force is neither an international organization nor an UN-body rather it is merely an ad-hoc inter-governmental task force[16] with mandate to set financial standards to combat money laundering, terrorist financing and proliferation financing, still it is without any enforcement powers except exclusion of non-compliant member states or placing the non-compliant states on grey or black list. Since the Force is not an arm of the United Nations; it has no vested legitimacy; more so abrupt and arbitrarily changes in its requirements frequently create resentment amongst the states and given rise to hostilities on the legal status of the organization[17].

Be that as it may, there is no denying to the fact that the Force is bent upon to exterminate international threats to the financial systems occurring due to money laundering, terrorist financing and proliferation financing, common subjects of other international organizations i.e. International Monetary Fund (IMF), UN Security Council and the European Union. Therefore, such link between Force

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[14] Michael Pisa (2019), Center for Global Development, Policy Paper No. 143 of 2019, 'Does the Financial Action Task Force (FATF) Help or Hinder Financial Inclusion? A study of FATF Manual Evaluation Reports'.

[15] Chohan, *supra* note at 3.

[16] See generally https://www.tatf-gafi.org/publications/fatfgeneral/ (accessed on April, 11 2020).

[17] Koker, Louis (2011), '*Aligning anti-money laundering, combating of financing of terror and financial inclusion: Questions to consider when FATF standards are clarified*' 'Journal of Financial Crime' 18/4: 361-386.

and the Security Council is of no surprise as the Force helps the Council in identification of threats concerning money laundering and terrorist financing. Further, it closely works with the committee on Counter- terrorism and the sanctions committee of the Security Council to develop monitor and evaluate counter terrorism measures[18]. It is necessarily cited that no provision of any law restricts countries to form any consortium, force and formulate policy or issue the recommendations, in the common interest to counter and curb international financial threats.

It is purposely echoed that texts of forty-nine (49) recommendations set financial standards to impede threats of money laundering, terrorist financing and proliferation financing posed to financial systems. It is destined that the recommendations be incorporated in the domestic legal framework at national level by the states to deliver them through criminal administration of justice. The recommendations require from 180 states to implement international conventions, criminalize money launders, confiscate the proceeds, apply rules of customer's due diligence, establish a financial investigation unit to trace suspicious transactions, transparency, adopt preventive measures and promote international cooperation[19]. The recommendations not only target the primary perpetrators of threats but also cover the gatekeepers i.e. lawyers, accountants and real estate agents referred as "*designated non-financial businesses & professions*"[20].

For the maximum results, the Force is also in practice of issuing advisory papers and reports to help the stakeholders in application of risk-based approach (RBA) to anticipate consequences of threats to the financial systems. Although recommendations and other publications, issued by the Force time to time are referred to contain a "soft law[21]"; yet non-compliance by the states may risk them

[18] James Thuo Gathii (2010), *The Financial Action Taskforce and Global Administrative Law*, 'Legal Studies Research Paper Series, Albany Law School', 2010/10.

[19] See generally the text of recommendations.

[20] Laurel S. Terry (2010), '*An Introduction to the Financial Action Task Force and Its 2008 Lawyer Guidance*', Penn State Law: State University the Dickinson School of Law Legal Studies Research Paper 39'

[21] Andrew Guzman & Timothy Meyer (2014), '*Soft Law*', Research handbook on the Economics of Public International law 5

to dismember from the organization[22] and/ or being put on grey or blacklist. Incorporation of such soft law in the UN Security Council resolutions and IMF conditionality translates it into the hard law. In addition, there are series of transnational instruments, which postulate interlinks between the Force and international organizations on the joint endeavors to counter threats of money laundering and terrorist financing. However, to find out the legitimacy behind the Force's recommendations and its edicts, one may be guided from the following international events and instruments:

1. Pursuant to the Convention against illicit traffic in Narcotic Drugs and Psychotropic Substance (the Vienna convention) 1988; the inter-governmental body "Financial Action Task Force" was formed to address the menace of money laundering[23].

2. The United Nations commission on Narcotics Drugs[24] noted that 40 recommendations issued by the Force, duly concurred by heads of states, government of seven major countries and president of European commission on money laundering, be adopted.

3. Economic and Social Council (ECOSOC), a central platform of United Nations for the sustainable development urged member countries to boost up co-operation with UN bodies and the Force in developing guidelines for detection, investigation, and prosecution of money laundering[25].

4. The recommendations helped countries in implementing the UN instruments including United Nations Security Council Resolution 1373, United Nations Security Council Resolution 1267, the successor resolutions, and the international convention for the suppression of the financing of terrorism as

[22] Pavlidis, G (2020), '*Financial Action task force and the fight against money laundering and the financing of terrorism: Quo vadimus?*' 'Journal of Financial Crime' Volume 27

[23] See generally, Supra at 2.

[24] The UN commission endorsed the recommendations vide its resolution No. 5 of April 24, 1996.

[25] Such expression was recorded in resolution No. 1993/30 passed on July 27, 1993.

the provisions of all these instruments have been incorporated in the recommendations[26].

5. It is expounded that revised version of the recommendations had proposed criminalization of financing of terrorism in line with the UN convention for suppression of the terrorist financing by calling asset freeing, seizing and confiscation etc[27].

6. The Strasbourg convention of 1990 also adopted recommendations of the Force to prevent money laundering through the banking and financial systems[28].

7. It is reported that on April 13, 2001, the executive board of IMF recognized 40 recommendations on money laundering and incorporated them in IMF's methods[29].

8. On July 26, 2002, the executive board of IMF added 49 recommendations conditionally to their operational standards with the participation of World Bank and the Force[30].

9. International Monetary Fund, World Bank, African Development Bank, Asian Development Bank, United Nations office on drugs and crime, and United Nations counter terrorism committee are amongst the observer members of the Force.

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[26] See generally, at http://www.un.org/sc/etc/resources/database/recommended-international-practices-codes-and-standards/united-nations-security-council-resolution-1373-2001/ (accessed on May 22, 2020).

[27] See generally, International Standards on combating money laundering and the financing of terrorism & proliferation: the FATF recommendation at https://www.fatf-gafi.org/media/fatf/documents/recommendations/

[28] See generally: preamble of the treaty No. 141: Convention on laundering, search, seizure, and confiscation of the proceeds from crime.

[29] Nadim Kyriakos-Saad Cheong-Ann Png (2008), '*Recent Developments in international monetary fund involvement in Anti-money laundering and combating the financing of terrorism matters*' in 'Current Developments in monetary and financial law, Vol 4 (Washington: IMF): 527-536

[30] See generally: http://www.imf.org/en/News/Articles/2015/09/14/01/49/pr0252 (accessed on April 13, 2020).

10. That the United Nations General Assembly admired the recommendations[31] as under: -

> "to encourage states to implement the comprehensive international standards embodied in the forty recommendations on money laundering and nine special recommendations on terrorist financing of the financial action task force, recognizing that states may require assistance in implementing them:"

11. That United Nations Security Council endorsed[32] the recommendations in the following words:

> "Strongly urges all member states to implement the comprehensive, international standards embodied in the Financial Action Task force's (FATF) forty recommendations on Money Laundering and the FATF nine special recommendations on Terrorist Financing".

Given recognition of the recommendation by the international organizations is contemplated a major milestone towards effective transformation of its soft law shaping into the hard law. Setting financial standards by the Force is treated to have opened window to global administrative law[33] in which traditional means of framing international law through diplomatic process no longer exists[34]. Although, the recommendations are not required to be inserted in the domestic legislation as a binding means, yet the rating (normally denoted through grey and black list) of the jurisdictions after the mutual evaluation process and the policy of "name-and-shame" may affect the states at large scale. Thus, texts of such law, though non-binding in letter and spirit but are with potential to shift into harden

[31] Such appreciation was recorded vide general assembly resolution No. 60/288.

[32] Recommendations were endorsed vide Security Council resolution no. 1617 dated July 29, 2005.

[33] Jared Wessel in 'Financial Action Task Force: A study in balancing sovereignty and equality in Global Administrative Law' defined it as '*Global Administrative Law refers to a developing set of norms that govern the various transnational systems of regulation and regulatory cooperation designed to manage globalization*'.

[34] Ibid.

terms as the non-compliant states may be led to face inter alia economic implications: -

- More stringent conditions will become applicable for the remittances.
- International funding to the country will become difficult due to rigorous conditions.
- There will a considerable decline in the foreign direct investment.
- International trade may suffer as the international partners will not be ready to co-operate or doing business due to threats posed to the financial systems.
- There may be procurement of imports on heavy costs resulting inflation in the domestic market.

4. The Force, its recommendations, and the Global Constitutionalism:

With the emergence of globalization, need arose for a unified and cohesive regime to regulate the social and economic life of states, and also a necessity to develop means of global governance, thus it gave birth to the Global Administrative Law (GAL). The evolving law concedes the demand of globalized inter-dependence in the fields of trade, security, financial systems etc. through the transnational regulatory framework[35] in a consensual manner. However, a discourse to Global Constitutionalism, its fundamentals and the features is central to find out the legitimacy behind the institution of Force, its recommendations, and edicts.

Constitutionalism is different from the constitution in a way that it refers to the basic ideology of a nation based on their way of life, values, beliefs and ideals whereby they could achieve the goals of parliamentary democracy, rule of law, fundamental right, separations

[35] Rajeshwar Tripathi (2011), '*Concept of Global Administrative Law: An overview*' India Quarterly: A Journal of International Affairs' 67/4: 355-372.

of powers and independence of judiciary[36]. Admittedly, there is no single document named as Global Constitution rather there are visions, ideologies, and principles, what a global constitutionalism must contain[37]. Theory of Global Constitutionalism claims that principles of rule of law, separation of powers, checks and balances, protection of fundamental rights and democracy, be respected by the transnational regulators in the spheres of global governance and sovereignty of no other state should be compromised in any manner whatsoever.

Now, to gauge the legitimacy of the institutional framework of Force and its recommendations on the scrutiny of constitutionalism, one is supposed to find out co-existence of its four dimensions i.e. social constitutionalism, institutional constitutionalism, normative constitutionalism, and analogical constitutionalism in the entire operations[38]. Before analyzing operations of Force and its recommendations from the standpoint of constitutionalism, it will be in the fitness of explanation to reiterate a brief narrative on the Force:

> "Concisely, FATF is an intergovernmental organization, which sets financial standards of universal application to combat money laundering, terrorist financing and proliferation financing. It also fosters effective implementation of legal, regulatory, and operational measures though peer reviews and the process of mutual evaluation, coupled with maintenance of black and grey list with post monitoring mechanism. Membership to the FATF is voluntary and presently, the organization has 39 full members (involved in the task of formulation of policy, framing of recommendations, conducting surveys, preparing evaluation reports and decision about placing the non-compliant states in black or grey list), 08 associate members, 30 observer members whereas more than 180 countries have been obliged to follow

[36] Anne Peter (2017) *Global Constitutionalism: the Social dimension*, available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3083578

[37] Christine E.J. Schwobel (2010), *'Situating the debate on global constitutionalism'* Oxford University Press', 8/3: 611-635.

[38] *See generally*, Christine E.J. (2010) *Organic Global Constitutionalism*, Jeffrey L. Dunoff and Joel P. trachtman '*A functional approach to international constitutionalization, and Ruling the world?* Constitutionalism, International law, and Global governance (2009).

the recommendations, which failure on their part may entail peer pressure from other states and also the financial implications."

The above depiction revealed that only full members of the Force are sitting in the regulatory body, and starting from the development of policy till post monitoring evaluation of the non-compliant states; non-members have no say or participation in the processes notwithstanding they are posed to financial implications in case of being non-compliant. Still, lets proceed to trace existence of fundaments of constitutionalism in the making of policies, setting recommendations, processes of mutual evaluation and reporting the results.

Social Constitutionalism necessitates the features of participation, contribution, influence, and horizontal accountability. In functions of the Force, all four essential components of social constitutionalism are missing; thus, it results in derogation from the notion of co-existence, refusal to constitutional democracy and letting the absolute power of the transnational regulator prevail. In the mechanics of the Force, non-member states have no participation in the making of policies or the recommendations, so neither there is any contribution from their side nor the influence[39]. Yet, they could be posed to similar sanctions and economic implications like the full members in cases of non-compliance; such aspect vividly frustrates their right to raise concerns on the validity of the evaluation or the decision.

From the facet of **Institutional Constitutionalism**, one is likely to gather the locus of power in the global governance and whether the same is duly approved by the stakeholders. Institutionalization of power is derived from the theory of conferment and the decision making, with the common object of general welfare. Allocation of power is always with certain limitations to exclude an overarching governmental authority or to hold the decision makers accountable

[39] Antonio Floridia (2013), *Participatory Democracy versus Deliberative Democracy: Elements for a Possible Theoretical Genealogy.* Two Histories, Some Intersections' 'Four Decades of Democratic Innovation Research: Revisiting Theories, Concepts and Methods: '7th ECPR General Conference, 19/147.

for the decisions[40]. Here, the force, is again deficient in terms of non-allocation of powers by the non-members states and the unrestricted use of powers by the force in passing of recommendations and deciding the fate of mutual evaluation results. There is, of course, neither a right of a non-compliant state to complain against the findings of the force nor any system in place for the checks and balances on their decisions. Thus, its institutional structure had disturbed substantially a global democratic order.

Distinct from the constitutional infirmities conversed in the contexts of Social Constitutionalism and the Institutional Constitutionalism; there is also a scholarship of **Normative Constitutionalism.** Certain norms and principles have global character and universal application; derived from the inherent ethical moral values of the society, which legitimacy cannot be questioned merely on the reasons of procedural disparities[41]. These fundamental norms are central to the international community and could be treated minimum standards of morality with underlying permissibility, stemmed from the humanitarian impulses, neither from the international organizations nor multilateral state governments[42]. *Jus cogens*[43] and *Erga omnes*[44] are the common examples of such norms. It is emphasized that at the core of Normative Constitutionalism; there lies universal acceptance of common interests of mankind, to which all the states impliedly agreed to submit.

In support of the validity of the higher norms, Ferrajoli stated:

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[40] James N. Rosenau, (1992) *'Governance without Government, order and Change in the world politics'* Cambridge studies in international relations 20, Cambridge University Press, New York.

[41] Mark S. Schwartz (2005), '*Universal Moral Values for Corporate Codes of Ethics*', 'Journal of Business Ethics', 59/2: 27-44

[42] James Darcy (1997), '*Human Rights and international legal standards: What do relief workers need to know?* 'Relief and Rehabilitation Network, Overseas Development Institute, London: 97/19

[43] Jus Cogens refer to those principles, which form the norms of international law that cannot be set aside i.e. prohibitions against crimes, against humanity, genocide, and human trafficking.

[44] Erga omnes are the rights or obligations, which are owed towards all. For instance, a property right, enforceable against anybody infringing that right.

> "though the framework may be missing the social and institutional guarantees but the norms of common interest sequel to the global constitutionalism have already been established in the UN Charter, declarations and the international conventions[45]."

He added that theory of idealism is central to the development of Normative Constitutionalism, so it promises a future good society. More so, he applauded the normative dimension of global constitutionalism in his essay "Beyond Sovereignty and Citizenship: A Global constitutionalism"[46]. However, the recommendations to combat international threats of money laundering, terrorist financing and proliferation financing are of normative character thus, warranted, legitimate and realistic for the fabric of Normative Constitutionalism.

To concede the legitimacy of the Force and its recommendations from the preview of **Analogical Constitutionalism**; one is required to come up with harmonizing features, common to the domestic as well as global constitutionalism. Concept of Analogical Constitutionalism entails an activity of blending the key features of several domestic ideologies and constitutions to generate harmonized and standardized global constitutionalism[47]. Mr. Christian Tomuschat is a proponent of this dimension as he proposed the idea of integrated international community expounded by the theory of systemization of law[48]. At some other place, global constitutionalism was termed as law of co-ordination than that of subordination.

To undertake the exercise of standardization; constitutional principles are drawn from the domestic constitutional orders and

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[45] Luigi Ferrajoli, '*Beyond Sovereignty and Citizenship: A Global Constitutionalism*' in Richard Bellamy, ed., Constitutionalism, Democracy and Sovereignty: American and European Perspective (Aldershot: Avebury 1996)

[46] *"The legal project at the basis of global constitutionalism is, in the long term, the only realistic alternative to war, destruction, the rise of a variety of fundamentalisms, ethnic conflicts, terrorism, an increase in famines and general misery."*

[47] Christine EJ Schwobel (2011), '*A Practical Approach to organic global constitutionalism*', Global Constitutionalism in International Legal perspective' Volume 4: 167-188

[48] See generally, Christian Tomuschat (2003), Human rights 'Between Idealism and Realism'

incorporated in the global constitutionalism to systematize, harmonize, and standardize the global constitutionalism[49]. However, the recommendations, since framed and issued without discussing and consulting domestic constitutions of states, the same may not be termed systematized or standardized globally regardless to any coherence.

5. Conclusion:

Globally, it is believed that threats of money laundering, terrorist financing and proliferation financing are universal dilemmas and an effective mechanism at national and international level to counter and curb these menaces is much needed. Further, creation of a transnational body as a force on the theory of inter-dependence and sequel to the global administrative law is, of course a significant move. However, controversy emerged, when few powerful states of the world hijacked the entire operations of the Force, starting from formulation of policy, setting financial standards, issuing recommendations, and structuring the evaluation methods, without resorting to other international partners. The resentment geared up when the non-participant community was urged to abide by the recommendations, failing which could occasion them to face severe economic implications. Model of Global Constitutionalism is an inclusive phenomenon; thus, it must require the Force to carry the characteristics of global constitutionalism i.e. democracy, checks and balances, fundamental individual rights and the accountability measures, otherwise, the Force would be exclusive, hence unconstitutional.

Testing the legitimacy of Force and its recommendations from the screening of global constitutionalism illustrates it a complex and multidimensional subject of research. A discourse to the various dimensions of the constitutionalism guided author to conclude that fundamental right of participation is unequivocally missing from the business model of the Force, which results exercise of unrestricted powers by the regulating body. Similarly, locus of power is also undemocratic as the conferment of powers and the accountability of the decision makers are also not unaccounted for.

[49] David S. Law and Mila Vesteeg (2011), '*The Evolution and ideology of Global Constitutionalism*', 'California Law Review' 99/5: 1163-1257

Conversely, recommendations of the Force to combat money laundering, terrorist financing and proliferation financing by means of preventive measures, risk based approach, promoting transparency, confiscation of proceeds and the international cooperation, are indubitably expedient to societal welfare with universal acceptability, and also coherent to the various international law conventions and the instruments. However, the model is deficient of analogical constitutionalism due to no representation of all the stakeholders in the entire functions and obliviousness from the characteristic of domestic constitutionalism. Hence, it is principally concluded that the institution of Financial Action Task Force (FATF) is unconstitutional and illegitimate body in terms of being undemocratic, devoid of accountability processes and short of standardized framework whereas mere existence of normative features in its recommendations may not help the Force to assume the status as constitutional and legitimate.

A Way Forward:

Having discussed the shortcomings of social, institutional, and analogical constitutionalism, occurring through the operations of the Force; lets advocate concept of inter-dependence through the transnational organization. Use of deliberative democracy, participative democracy, and the representative democracy, in wake of globalization, is becoming imperative as it still carried will of the people. Existence of normative constitutionalism behind the working model of the Force suggested the validity of the recommendations; yet there is an acute need to supplement the institution and processes of the Force through certain techniques so to add the components of social, institutional and analogical constitutionalism in the existing framework. Therefore, following measures are proposed: -

1. Although membership to the task force is voluntary but its policy and mutual evaluation results can have potential effects, even on the non-member states; therefore, it is recommended that any future policy, draft or the recommendations should have a prior review and input from all the stakeholder including the non-member states. Such input may be procured by means of deliberative, participative, or representa-

tive democracy.

2. To demonstrate existence of real democracy in the processes of the Force and to prevent any influence by the governing body; it is also proposed that certain weightage i.e. 50 or 60 % equivalent to the ratio of non-member states, be given to their opinion and feedback in the matters of formulation of policy, preparation of draft and issuing of future recommendations.

3. To keep the forty-nine (49) recommendations of the Force alive, the voting rights of non-compliant states could be withdrawn whenever needed.

4. In the process of mutual evaluation, the assessment team must comprise at least one nominee from the assessed/ targeting country to avoid chances of influence, erroneous reporting of facts on measures, and the effectiveness of the system.

5. It is urged that while composing the results of mutual evaluation, the decision- making body should include certain ratio of non-member state representatives to avoid chances of monopolizing the results on the behest of member states for ulterior motives.

6. The decision-making body should have considered the political conditions of the assessed country, financial difficulties posed to the governments before placing the questioned country on their targeted lists.