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# Pakistan: Economy under Elites – Tax Amnesty Schemes, 2018

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## Abstract:

The purpose of the paper is to take an incisive glimpse into Pakistan's political economy through the lens of a tax policy abnorm i.e. the tax amnesty scheme, 2018. The paper is theoretically anchored in the elitist framework which arguably best explains structural composition of the economy. The paper refines the elitist framework, accentuates its significance, and innovates on it to induct the competing Freudian concepts of "pleasure principle" and "reality principle" to sharpen our understanding of Pakistan's political economy. It is argued that impending inflows of offshore bank and financial account information of Pakistan resident persons under the OECD's Multilateral Convention was the main dynamic of the amnestization initiative in which the Supreme Court of Pakistan played the role of the agent provocateur. The empirical results obtained help conclude that the amnestization initiatives have helped proliferate underground economy, and enhance the elitist economic status quo in Pakistan.

**Keywords:** elite capture, elitist economic order, Pakistan tax system, tax amnesty scheme

**DOI:** 10.1515/ajle-2019-0016

## 1 Introduction

The past century has seen an ever-increasing number of tax amnestization initiatives being launched across all continents. However, different countries have been found advancing different reasons for the tax amnestization programs – from an ambition to harvest quick bucks into the exchequer to an effort to have repatriated capital siphoned off and hid in offshore jurisdictions to the registration of new taxpayers. The divergence in objectives has helped states innovate on the ways tax amnestization initiatives have been modelled, designed, and implemented. The increasing tendency on part of all states – weak, strong, democratic, authoritarian, hybrid, developed or developing – to go ahead with repeated tax amnesties is rigidly holding in the face of an equally exploding skepticism as to the success or efficacy of such programs vis-à-vis their stated objectives. This may be because tax amnestization has not yet been extensively put to a rigorous analysis from all angles.<sup>1</sup> This is in spite of the fact that Pakistan has had a varied and rich experience in tax amnestization<sup>2</sup> – including the recent past.

Through two separate Presidential Ordinances i.e. the Voluntary Declaration of Domestic Assets Ordinance, 2018, and the Foreign Assets (Declaration and Repatriation) Ordinance, 2018, two separate tax amnesties were launched with much fanfare to cover both domestic and foreign undisclosed assets and incomes – for ease of reference, alluded to in the paper as, the domestic amnesty scheme (DAS), 2018, and foreign amnesty scheme (FAS), 2018, respectively. This paper is geared to appraise, analyze, and evaluate these amnesty schemes and their wider implications for the country. The research approach is to peg these politically charged tax policy initiatives in the overall theoretical elitist framework, which best explains Pakistan's economy. An effort is made to lay bare the dynamics of the amnestization, explicit and implicit positions taken by various societal groups on the issue, dissect the letter of the law rolled out to operationalize the amnesties, generate relevant empirics from the amnestization outcomes, and analyze them within the overall theoretical model to imply that those were necessarily elitist ploys intended to maintain and enhance the economic status quo in the country, and draw plausible policy implications.

The paper is divided into seven sections. Section 1 introduces the topic. Section 2 surveys relevant literature on the subject. Section 3 recapitulates the elitist model in Pakistan's context and plugs amnestization into the framework. Section 4 appraises the elitist astroturfing and shaping of the environment before the launch of the major amnestization initiative with particular reference to the role of the Supreme Court of Pakistan. Section 5 lays bare contours of the Domestic Amnesty Scheme, 2018 and analyses its outcomes. Section 6 puts the Foreign Amnesty Scheme, 2018 to a similar analysis, and tries to comprehend and unravel the offshore problem. Section 7 summarizes the debate, and draws conclusions.

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## 2 Literature Review

The emotive dynamic underlying amnestization is forgiveness, which in a most commonplace sense, has been a preferred social value in all societies and in all epochs – without perhaps being put to a rigorous semantic analysis. However, recent systematic scholarship in the field has tended to do that by differentiating forgiveness from “pardoning” – implying a legal connotation; “condoning” – implying a justification of a wrong done; “excusing” – implying wrong-doer had a reason to do the wrong; “forgetting” – implying that memory of the wrong stood washed off; “denying” – implying unwillingness to register the wrong done;<sup>3</sup> and “reconciliation” – implying the restoration of a relationship notwithstanding the wrong done.<sup>4</sup> Albeit, the agreement on what forgiveness is *not* does not necessarily mean an agreement on what forgiveness *is*,<sup>5</sup> yet forgiveness has been advocated by all social systems and promoted by all religions – though there is no evidence to suggest that qualitatively it was not considered a superior act even in heathen cultures.

The definitional consensus is elusive not only on forgiveness but also on amnestization – its operational façade – having been defined differently in different spatial, temporal, and economic contexts. Etymologically, “amnesty” derives from the Greek concept *amnestia* literally meaning the act of forgetting and implying amnesty equals amnesia. It has been argued that “amnesty” is an act, which erases “from legal memory some aspect of criminal conduct by an offender.”<sup>6</sup> In social science discourse “amnesty” as a concept clearly lacks a consensus as to its definition. In fact, amnestization can differ from situation to situation in that “amnesties can have a range of characteristics and consequently...can differ substantially between jurisdictions.”<sup>7</sup> Likewise, amnestization across spectrum of state functions would assume varying features, characteristics and properties. In the coercive domain, for instance, an amnesty is “granted to groups of people in respect of political offences, usually before conviction, and is wider than a pardon, which merely relieves an offender of punishment.”<sup>8</sup>

Definitional disagreement is not confined to amnestization in the coercive domain only; it does extend to amnestization in the extractive domain, too. To Andreoni, a tax amnesty is “government programs that forgive all or part of the penalties owed by tax cheaters if they voluntarily repay their delinquent taxes.”<sup>9</sup> Borgne & Baer define tax amnesty “as a limited time offer by the government to a specified group of taxpayers to pay a defined amount, in exchange for forgiveness of a tax liability (including interest and penalties), relating to previous tax periods, as well as freedom from legal prosecution.”<sup>10</sup> Malherbe conceives tax amnestization as “the possibility of paying taxes in exchange for the forgiveness of the amount of tax liability (including interest and penalties), the waiver of criminal tax prosecution and/or limitations to audit tax determinations for a period of time,” as well as that of “reporting undeclared assets (cash, money deposited in bank accounts, etc.), without specific reference to the taxes that may not have been paid in the past.”<sup>11</sup> It appears that in the absence of a consensus formulation, scholars have tended to devise operational definitions of amnestization to fit the need and the context. For the purposes of this study an amnestization means a tax amnestization initiative whether captioned as such or not but which comes with an identifiable legal instrumentality, clear design features like the (tax) rate applicable, persons covered, and to top all, – a definite date of closure.

Tax amnestization has been resorted to as a fiscal policy measure across the developed/ developing country divide for multiple purposes though the predominant purpose remains raising of additional revenues without having to bear excessive marginal costs.<sup>12</sup> Ibrahim et al., after analyzing data of tax amnesty schemes launched in 9 Asian countries i.e. Pakistan, Bangladesh, India, Indonesia, Kazakhstan, Malaysia, Philippines, Sri Lanka, and Thailand, aptly conclude that in order “to have an effective tax amnesty effect, the government should avoid the long-term duration and too frequent tax amnesty programs as it would have a detrimental effect on the taxpayer behavior.”<sup>13</sup> Alm and Beck, on the basis of extensive statistical analysis, argue that a rational actor would avail amnestization only “if enforcement, penalty or tax parameters are varied with the amnesty in a way that provides extra incentives to take part.”<sup>14</sup> In real world, it would be observed that citizens tend to accept amnestization if in, post-amnestization scenario, state recoil, tax rates, and disclosure requirements continue to stay at the same level.<sup>15</sup> Malik and Schwab make an attempt to peep into the psychological dilemma of availing or not availing an amnestization option on part of the citizenry and find that they are initially unsure about their risk preferences until an amnesty is announced fully.<sup>16</sup> Graetz and Wilde suggest a model where-under taxpayers find motivation to avail amnestization out of fear of detection of under- and non-filing in earlier periods.<sup>17</sup>

Alm et al posit that tax amnestization is a controversial revenue raising tool, and that “future tax revenues may increase only if the amnesty induces individuals or corporations not on the tax rolls to participate, and if the amnesty is accompanied by more extensive taxpayer services, better education on taxpayer responsibilities, and stricter post-amnesty penalties for evaders and greater expenditures for enforcement.”<sup>18</sup> Bose and Jetter, on the other hand, are of the view that “tax evaders can respond to a tax amnesty, even if enforcement activities do not change, if it is timed to coincide with liberalization and rising incomes.”<sup>19</sup> The analytical framework offers a theoretical justification of the connection between successful amnesties and economic liberalization and draws out factors that a policy maker ought to consider for the success of a future amnesty.<sup>20</sup> Bayer et al develop

theoretical scaffolding and mount statistical evidence to explain the recurrence of tax amnestization in given circumstances.<sup>21</sup> They treat amnesties as endogenous variables, resulting from a strategic game between many taxpayers discounting future payments from punishment and a government that balances costs and benefits of amnesty programs. They go on to derive hypotheses about the factors that might influence the occurrence and acceptance of tax amnesties.<sup>22</sup> While there is a lot of scholarship that has been created internationally, there is no “comprehensive information available” on tax amnestization in Pakistan,<sup>23</sup> and the paper is likely to fill some of this void.

### 3 Theoretical Framework

In Pakistan’s context, tax amnestization makes a sharp departure from the standard identical phenomena elsewhere not only in the rate of recurrence but also in design, scope, level of amnestization, and the underlying dynamics. It is premised that amnestization in Pakistan can best be approached, comprehended and analyzed within the elitist analytical framework.

#### 3.1 Elitist Model

The paper posits that tax amnestization in Pakistan has, if not always, mostly been an elitist affair. Although, the elitist framework has long been applied to interpret Pakistan’s power and politico-economic structures,<sup>24</sup> yet Ahmed developed the convenient vehicle of Elites Ltd, crystallized the elitist model, and expanded its framework to systematically analyze the monopolization of Pakistan’s extractive function, and disaggregated it to comprehend various mutually reinforcing undercurrents and cross-cutting mechanics at work by way of an explanation of its historically embedded below par (and even perverse) performance.<sup>25</sup> The state’s political crust, he argues, is essentially underpinned by Elites Ltd which, in turn, is composed of six effective elite groups i.e. industrial elite, business elite, religious elite, feudal elite, military elite, and sundry (judicial, media, non-profits, and professional) elite; that while elites enter into zero-sum transactions on the political chessboard, they resort to non-zero-sum transactions in the economic realm; that elites face a rational actor dilemma in that they need a state to govern but they also need to maintain it at the least cost to themselves; that in order to get out of this dilemma, the elitist state takes to optimally extract from international sources; and that since an infinite international extraction is not possible, it descends down to undertake internal extraction through seven unwholesome and perverse modes by way of domestic resource-match, namely, withholdingization, deficit fiscalization, indirectization of the tax system, maximization on non-tax revenues, extortionization, mendicantization, and amnestization.<sup>26</sup> Through these modes, excessively elitized state resorts to ad-hoc measures to make short-term revenue gains at the expense of long term systemic losses – a process quite akin to brute pursuance of pleasure principle.

Ahmed reckons extraction as a critical variable of state-building, and in Pakistan’s context, unravels the level of criticality which various societal agents accord to it, and enquires into how elites, after effectively monopolizing the *infrastructure* i.e. means of production,<sup>27</sup> take to exploit the *superstructure* to numb and opiate the citizenry to conveniently rig the extractive policy formulation process and weaken the state’s extractive arm.<sup>28</sup> This position is based on the premise that only a weak extractive system can help elites wrest full control over their riches that they amass over time through monopolization and manipulation of the state infrastructure, and maintenance of the economic status quo. He further posits that in order to achieve their spurious agenda of maintaining and enhancing the economic status quo, at strategic level, Elites Ltd forms alliance with the generalist cadres of Pakistan civil services thereby producing an elites-generalist duopoly of sorts.<sup>29</sup> In theoretical terms, tax amnestization is also to be taken as an elitist shock to the system given to create certain amount of strategic space within which maneuvers are made to protect and promote economic goals. Thus, the paper not only expands Ahmed’s theoretical framework, but also amplifies it through its operationalization centered on tax amnestization unfurling its dynamics, and ramifications in a systematic and structured manner. The paper’s theoretical framework can be pictorially outlined as in Figure 1.

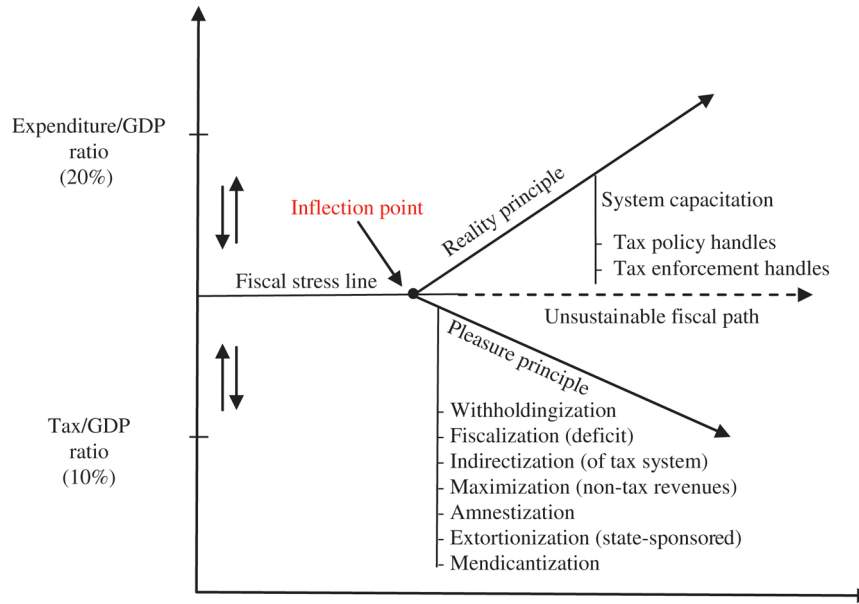


Figure 1: Theoretical Argument – Portrayal.

What the picture portrays is that at any given point in time, Pakistan is found operating under significant amount of fiscal stress, that is, its expenditures far exceeds its revenues. This means that Pakistani state every now and then finds itself at the inflection point – the crossroads – at which it has two choices i.e. either to capacitate the extractive system enough to undertake par taxation like all functional states, which is also good enough to meet its expenditure needs or to resort to the easier yet perverse extraction through the aforementioned domestic resource-match ploys. The paper inducts into the analysis the competing Freudian analytical concepts of *reality principle* and *pleasure principle* to amplify both the aforementioned attitudes, respectively. The paper looks to operationalize the above theoretical framework by juxtaposing amnestization therein and critically analyzing it from all essential perspectives.

### 3.2 Inflection Point

The trigger behind the impending amnestization, inter alia, appears to be the expected exchange of information of Pakistan tax-resident persons maintaining bank and financial accounts in foreign jurisdictions under the Organization for Economic Cooperation and Development (OECD) Multilateral Convention on Mutual Administrative Assistance in Tax Matters (MC).<sup>30</sup> The MC made available multiple means through which tax administrations could cooperate primarily to curb tax evasion. The most important mechanism of cooperation within the context of the MC was the exchange of bank and financial account information kept in offshore jurisdictions on an automatic basis. The MC reinforced the already available options under bilateral frameworks to exchange information on request and on spontaneous basis. The first automatic exchange of bank and financial account information was scheduled to take place on September 30, 2018. The expected exchange was exerting a lot of pressure on diverse elite groups making the state squeak under stress. This was an inflection point and the polity once again appeared to go down the pleasure principle path, in the process, appeasing the feudal, industrial and business elite who had amassed wealth not only in Pakistan but had also taken it out through dubious means<sup>31</sup> and parked it in offshore jurisdictions. It was reported that Pakistan Business Council had been pushing the demand for an amnesty scheme due to a tightening noose around tax evaders by the OECD, which was spearheading the “global campaign against tax evasion [that] will make it difficult to retain untaxed and hidden money abroad for a longer period.”<sup>32</sup>

The inflection point fortuitously coincided with internal political turmoil, but which also had its roots laid in the offshore asset creation. Towards the close of Pakistan Muslim League-Nawaz (PML-N)’s 3<sup>rd</sup> term in power, under Prime Minister Nawaz Sharif, which officially ended on May 31, 2018, the economic edifice that had been erected by artificially maintaining exchange rate, foreign exchange reserves, fiscal deficit, current account deficit, tax collection, and GDP growth at above par levels had started to unravel. The artificial management on part of PML-N government though kept the economy from going completely rudderless during F/Ys 2013–2018, yet understandably its performance in most areas was not only abysmal in an economic sense,<sup>33</sup> but also in a political sense.<sup>34</sup> There is no denying the fact that the government was constantly bullied on corruption charges and constrained in its decision-making, policy formulation and policy implementation by a super-aggressive opposition – contextually, Pakistan Tehreek-e-Insaf (PTI) led by Imran Khan. Surfacing of Panama

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Leaks scandal in April 2016 and the politico-judicial turmoil that it unleashed pulverized the PML-N, during the remainder of its term.

Panama Leaks scandal was followed by Paradise Leaks, Dubai Leaks, and other one-off scandals of offshore assets pertaining to political elite of Pakistan, which had a rattling effect on the polity. The state institutions in their new-found vibrancy – judiciary and media, in particular – were shaking the very foundations of the political system.<sup>35</sup> After the three-time elected Prime Minister was sent to jail by the Supreme Court of Pakistan for amassing more off-shore assets than his ostensible sources could justify, Finance Minister Ishaq Dar – the mainsail of the economy – fled the country for similar charges in official plane of (the makeshift) Prime Minister Khaqan Abbasi. Miftah Ismail – the step-in Finance Minister – a typical elite mole – had hardly ever had a handle on the economy. It was increasingly becoming apparent that the nation had arrived at a point when the seams of its economy were being tested.<sup>36</sup> The tax administration was generating revenue at a reasonable pace but the numbers were hardly healthy being the product of withholdingization and indirectization of the tax system. Moreover, whatever numbers the tax administration was generating, those were being blighted by a cacophony of offshore assets amassed by Pakistanis reinforced by the tax administration's inability to go after them. However, instead of deciding to have a crackdown on offshore evaders and plug the well-known policy loopholes<sup>37</sup> that had been kept going by the PML-N government (in fact, by all governments since 1990), Prime Minister Abbasi, and Finance Minister Ismail started to give overt signals of launching of yet another tax amnesty scheme.

The polity was so badly impelled to go ahead with the amnestization initiative that it did not care for the opposition of the Financial Action Task Force (FATF)'s serious reservations on the matter.<sup>38</sup> Likewise, it was reported with reference to International Monetary Fund (IMF)'s Mission Chief in Pakistan that "Experience from Pakistan and other countries with repeated tax amnesties shows that these often fail to achieve their intended objectives while potentially undermining the perception of fairness of the tax system and future efforts to improve tax compliance."<sup>39</sup> The state's capitulation under elites' pressure was, therefore, clear: they had kept the system weak enough to take it for a ride at will, and when the occasion arose for a recoil under the international system, they were again there to have the law lowered below par to amnestize their past felonious conduct, and legitimize their riches kept offshore.

## 4 Elitist Astroturfing

In order for Elites Ltd to pursue its economic agenda it has to adopt the path of least resistance, deftly astroturf public landscape, and shape peoples' perception. "Astroturfing" has been defined to mean "the practice of artificially creating the impression of widespread public support for a policy, cause, organization, individual or product, where little or no support in fact exists."<sup>40</sup> In the modern day world of contestation, in order to garner widespread public support, the sponsors deploy multiple tools, tactics, and instruments, and tax amnestization was no exception.

### 4.1 Agent Provocateur

Although a general amnesty was in the air for a long time, it was for the Supreme Court of Pakistan to play the agent provocateur. The Court's entanglement with the matter began on February 1, 2018, when it assumed its jurisdiction under Article 184(3) of the Constitution of Pakistan via *Suo Moto* Case No. 2 of 2018. The case was entitled "*Suo Moto Action Regarding Maintaining of Foreign Accounts by Pakistani Citizens Without Disclosing the Same/Paying Taxes*" and was believed to have personalized motivation of Mian Saqib Nisar – the Chief Justice of Pakistan. The Bench hearing the case was headed by the Chief Justice himself and comprised Justice Umar Ata Bandial,<sup>41</sup> and Justice Ijal ul Ahsan. It is argued that the apex court had two sets of objectives in this particular case – the *stated objective* and the *pursued objective*. The stated objective drummed up for public consumption was to take stock of offshore assets, bank balances, and siphoning of foreign exchange by delinquent Pakistanis by aggregating diverse institutional view-points which, in routine, operated in silos and cylindrical fashion. The pursued objective, however, was to supply an escape-route to the elite who had amassed assets and bank balances in offshore jurisdictions and had now been effectively checkmated by the impending information inflows under the OECD-MC framework.<sup>42</sup> It would be seen that in its efforts to go after the pursued objective, the Court had to walk a real tight rope carefully promoting pursued objectives alongside the stated objectives. Since the Supreme Court had already emerged as an epicenter of all happenings in the country, and the media was getting most of its newsy content from Court Room No. 1,<sup>43</sup> it was logical that *Suo Moto* Notice No. 2 of 2018 suddenly grabbed the public attention.

Against the backdrop of Panama, Paradise, and UAE Leaks, and a cacophony of other offshore assets by Pakistani public figures, the Supreme Court's seizing of the matter amounted to practically re-setting of the national agenda. The professional elite rallied around Supreme Court playing a second fiddle and effectively articulating the demand of business elite and industrial elite for a comprehensive amnestization as a panacea to overcome the offshore evil, which the political actors started to resonate with full vigor in and outside the Parliament. Although, the countdown was already on as far as the government's five-year term was concerned, yet demand articulation came from across the political divide – barring a few dissident voices that were raised only for political point-scoring.

An impression was continuously being built, both implicitly and explicitly, that “before the launch of the scheme, Prime Minister Khaqan Abbasi had also taken the Chief Justice Saqib Nisar into confidence on this issue during their recent meeting.”<sup>44</sup> In the same vein, loaded media talk-shows, and op-ed articles were published in abundance to shape the public opinion implying Supreme Court's endorsement of the initiative.<sup>45</sup> It was also made out that the amnestization had been launched in response to some indirect instructions issued by the Supreme Court of Pakistan.<sup>46</sup> If all that was not enough, vociferous voices were raised to rope the Supreme Court into the black money marshes of Pakistan by pitching up demands to explicitly validate the amnestization lest it failed with unanticipated consequences for the nation.<sup>47</sup>

In parallel, the information domain was monopolized so completely and aggressively that all rational voices both in print and electronic media were either sidelined or crowded out as the amnestization was projected as the only option available to the country to get out of the fiscal quagmire. The Supreme Court's direct indulgence into the matter ousted not only the High Courts but all other forums below them as well. Even the success of the amnesty was predicated upon its endorsement by the Supreme Court, as it was “expected that the present amnesty scheme will become the most successful if the Supreme Court, also endorses it at a time when the country badly needs to improve its revenues and build its foreign exchange reserves.”<sup>48</sup>

## 4.2 Court Proceedings

In fact, by carefully looking at the sequence of Court proceedings, one could decode with only a little bit of effort, a muffled but persistent advancement of the stated objective, and being present in Court Room No. 1 during those high-voltage judicial drama was an absolute privilege, and an ultimate source of insight into how systematically elitism actually played out on the polity of Pakistan.<sup>49</sup>

(a) 01.02.2018

The Supreme Court “in exercise of powers under Article 184(3) of the Constitution of Pakistan, 1973,” assumes the jurisdiction of the case on the basis of following stipulations: -

It has been common knowledge for years that a large number of Pakistani citizens, who are residents of Pakistan and are maintaining accounts in foreign countries without disclosing the same to the authorities competent under the Laws of Pakistan or paying taxes on the same in accordance with law. Prima facie, it appears that such money is siphoned off without the payment of taxes through illegal channels and represents either ill-gotten gains or kickbacks from public contracts. Such money creates gross disproportion, inequality and disparity in the society, which warps economic activity and growth, and constitutes plunder and theft of national wealth....The society and economy of the country is being bled by illegal and surreptitious theft of national wealth, which is stashed in foreign countries, the same could otherwise be utilized for the welfare of the people in projects such as education, health and public welfare. Such delinquency constitutes violation of the fundamental rights of the citizens of Pakistan and is a matter of great public importance.<sup>50</sup>

In order for the assumption of jurisdiction to be operationalized, the Supreme Court issued various instructions to state institutions like Federal Board of Revenue (FBR), State Bank of Pakistan (SBP), Security and Exchange Commission of Pakistan (SECP), Ministry of Finance, and Ministry of Foreign Affairs to do benchmarking on the laws, rules and regulations governing the issue, list the “steps which have been taken” in this respect, and “identify the citizens who hold accounts in foreign jurisdictions.”<sup>51</sup>

(b) 15.02.2018

The Supreme Court constitutes a committee consisting of Chairman, FBR, Governor, SBP, and Secretary Finance “to prepare guidelines and evolve effective strategy to encourage the people to take out their money from foreign banks, bringing back to Pakistan and to participate in development and prosperity of the country.”<sup>52</sup> If the message was not loud enough, the Court went overboard to remind the government that in the past “FBR

granted amnesty to traders in taxes," and advised it "to develop a mechanism by offering some incentives to attract the people for bringing back their investment to Pakistan instead of using sticks for the purpose."<sup>53</sup> In order to rule out any doubts that might still be there, the Court exhorted to the members of the committee "you have to implement the laws, but also have to ensure that the money of the people is secure; introduce any such scheme; the court will back you on this."<sup>54</sup>

(c) 20.03.2018

The Committee is expanded,<sup>55</sup> and empowered to coopt more experts, with the direction to meet the very next day and "prepare comprehensive terms of reference on the basis of which it will undertake deliberations and submit proposals...within three weeks from today in line with the terms of reference for consideration," by the Supreme Court.<sup>56</sup>

(d) 26.03.2018

The Committee is formalized and its terms of reference elaborately formulated. Two of the most important terms of reference read: –

- i. Examine existing legal regime and practices (especially related to foreign exchange and taxation) bilateral treaties and multilateral conventions that can be used to stem the unregulated outflow of foreign exchange from Pakistan, trace undeclared assets held abroad by Pakistani citizens and retrieve such assets especially the ones generated with proceeds of crime.
- ii. Suggest a suitable mechanism to incentivize Pakistani citizens to voluntarily declare their assets held abroad and bring them back to Pakistan or pay suitable amount of taxes if they intend to keep such assets abroad so that they could contribute to national exchequer.<sup>57</sup>

One would not need a de-constructivist to pinpoint that the former term of reference is an articulation of the stated objective while the latter is that of the pursued objective – the former being drummed up and the latter being promoted. In fact, not only that the Committee was constituted to legitimize the preconceived notions but also that it was expressly deputed to deliver such a proposal.

(e) 13.04.2018

The Committee submits its report to the Supreme Court duly proposing therein launching of a tax amnestization initiative. It was vehemently argued in the report that "Practical realities and constraints sometimes compel adoption of pragmatic policies and trade-offs," wherefore "all-out and uncompromising drive to retrieve the untaxed funds stashed abroad may create a panic and compromise the economic recovery."<sup>58</sup> Thus, such "a course becomes even more unattractive in view of the modest chances of success of such an initiative in the context of the limitation of the existing framework and the challenges of tracing and taxing the funds in offshore havens and other jurisdictions."<sup>59</sup> The amnestization was also justified as it might "(a) provide a way to collect revenues without incurring high administrative costs for detecting and prosecuting tax evaders; (b) provide taxpayers an opportunity to regularize their tax affairs and disclose their concealed incomes and assets and thus promoting taxpayers to become compliant; and (c) shift black money from informal sector into formal sector and increases revenues in the long run."<sup>60</sup> It had generally been believed that Supreme Court had been sucked into by Elites Ltd, directly or indirectly, legitimizing the amnestization. Dr. Ikramul Haq, a member of the Committee, was of the categorical view that Supreme Court was, in fact, in the driving seat instead as the very action of taking of notice on offshore assets were based on a wider hidden agenda methodically pursued.<sup>61</sup> The amnestization initiative was Elites Ltd's immaculate plan put into an even better execution.

### 4.3 Astroturfing Model

The astroturfing pattern adopted by the elitized polity to control the information domain was simple but systematic. Once a solid trigger had been supplied by the Supreme Court in terms of *Suo Moto* Case No. 2 of 2018, the interested media elite opened the space for professional elite to effectively utilize it and propagate the amnestization demand that was primarily needed by the business elite and the industrial elite. Soon when the public opinion had been shaped enough the political actors stepped in to deliver the requisite legislation. Planned efforts were made to neutralize possibilities of law enforcement in any plausible sense. It was vociferously propagated and demanded that the "law should receive constitutional approval and real estate holders should be assured protection from harassment by Police, FBR, NAB and FIA," and that for any "successful implementation of any amnesty scheme, State (not government) guarantee, immunity and confidentiality are the key requisites."<sup>62</sup> The amnestization astroturfing pattern adopted in Pakistan is pictorially depicted in Figure 2.

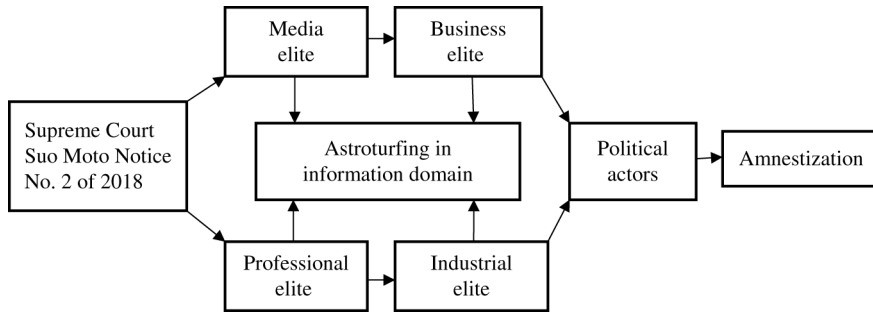


Figure 2: Amnestization – Astroturfing Pattern.

The culmination of whatever was articulated in Court Room No. 1 was optimized in the information domain, wherein media elite, business elite, professional elite, and industrial elite aggressively operated and indulged in demand articulation. This way a completely astroturfed public perception landscape was presented to the political actors to step in and actually aggregate Elite Ltd’s demands in the seat of the state wherefrom two separate laws were promulgated to launch two amnesty schemes to target both domestic and foreign assets. The amnesty laws were promulgated on April 8, 2018, and went into effect from April 10, 2018. It was intriguing to note that though a domestic amnestization had not figured out anywhere throughout the deliberations in Court Room No. 1 (and on media only sparsely) yet Elites Ltd was able to maximize on the opportunity and surreptitiously had a domestic tax amnestization initiative launched, too.

#### 4.4 Role of Political Actors

The amnestization initiative was demanded and defended along the entire political spectrum barring only a few exceptions. Raza Rabbani, Senator, castigated the government on technical grounds for having “taken such a major decision without approval from any constitutional forum, except the so-called Economic Advisory Council, which had no legal status as a majority of its members were not elected representatives of people.”<sup>63</sup> He also observed that “even the amnesty scheme had not been approved by the federal cabinet,” and wherefore, “it was a violation of the Article 77 of the Constitution” of Pakistan.<sup>64</sup> On April 23, 2018, when the amnestization was already in full swing, “the National Assembly Standing Committee on Finance unanimously rejected the amnesty bills for declaration of domestic and foreign assets.”<sup>65</sup> In a surprise move, however, the Senate Standing Committee on Finance approved the bills, though it was opposition-dominated.<sup>66</sup> In partial modification to “the government’s decision to open offshore assets cases as old as 18 years, the committee” agreed “to the extent of allowing only 10-year old cases.”<sup>67</sup> Asad Umar – PTI’s Finance Minister-designate opposed the amnestization stating that eventually “all dacoits, thieves and corrupt would avail themselves of this amnesty scheme.”<sup>68</sup>

The Supreme Court continued to stay tuned in the matter during and even after the amnestization persistently trying to justify their interference into the matter. Noting the Committee’s observation that during the financial year 2016–2017 a staggering amount of US\$ 15.253 billion, was transferred abroad by individual account holders in Pakistan through normal banking channels, the Supreme Court justified the amnesty by suggesting that “the experience of incentive schemes floated in other jurisdictions to encourage voluntary disclosure of foreign assets...in the recent past in Italy, India and Indonesia,” was highly successful particularly the one in Indonesia. The Court unilaterally hallowed the amnestization through issuance of a muffled warning to its potential challengers and the lower courts by stating that “in the absence of a concrete challenge, the Court is not inclined to unilaterally sit in academic judgment on the legality or propriety of the provisions of the scheme of voluntary disclosure of foreign assets under the Act, 2018.”<sup>69</sup> This way the Supreme Court played the most vital role in the conception, delivery, and implementation of the amnesty.

#### 4.5 Amnestization Projections

For obvious reasons the amnestization was over-projected and over-sold. It was claimed that “the one-off tax amnesty scheme announced for undeclared local and foreign assets is likely to jack up revenue by 0.3 percent to one percent of GDP till June-end, which would give a relief to the country that faces fiscal and current account pressures.”<sup>70</sup> At tactical level, a scare was spread with reference to “top FBR source” that it had “obtained information of thousands of Pakistanis owning immovable properties in UK and that if they did not avail this amnesty scheme then FBR will use long arm of law and will undertake stern action against them after expiry of the amnesty scheme.”<sup>71</sup> Both during the run-up to and the currency of the amnestization initiative it was

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harangued by the Finance Minister that this was going to be one last amnesty and that the delinquents not availing it would be dealt with “iron hands.” However, the only so-called “stick” projected to have been implanted inside the amnestization plan had no legs to stand. The government’s warning that in case a real estate transaction was recorded and declared at significantly lower price, FBR would have the preemption right to pay 100 percent of the value declared and acquire the property, was fraught with serious legal lacunae. The “real estate was a provincial domain and the federal government didn’t have the right to acquire a property unless consented to by the sub-national governmental set-ups,” and that “due to this very “constitutional problem, the tax amnesty could be challenged in a court of law.”<sup>72</sup> The Federation probably also needed to take this matter to the Council of Common Interests, take the federating units on board, and evolve a consensus to amend the property transfer laws to make the “stick” wag and work.<sup>73</sup> The “stick” rolled out into the law was probably never meant to work, and it has not to-date.<sup>74</sup>

## 5 Domestic Amnesty Scheme, 2018

The domestic amnesty scheme, 2018 (DAS, 2018), which was primarily preambled on “a large scale non-reporting and under-reporting of assets held in Pakistan,” was conceived in broadest possible terms; it sought to override almost the entire pre-existing legal infrastructure of the state.<sup>75</sup> The design features that DAS, 2018 was blessed with were almost unparalleled in the history of tax amnestization not only in Pakistan but anywhere in the world.

### 5.1 Design Features

The provisions of the amnestization law were to “have effect notwithstanding anything to the contrary contained in any other law for the time in force.”<sup>76</sup> The DAS, 2018 could be availed by “every company, association of persons and all citizens of Pakistan wherever they may be, except holders of public office, their spouses and dependent children.”<sup>77</sup> It covered “undisclosed income and domestic assets<sup>78</sup> held by the persons” except (a) where proceedings were “pending in any court of law<sup>79</sup> in respect of the undisclosed income or domestic assets;”<sup>80</sup> and (b) the proceeds or assets that were “involved in or derived from the commission of a criminal offence.”<sup>81</sup> The time slot offered to claim the amnesty was between April 10, 2018 and June 30, 2018, which was later extended to July 31, 2018. The DAS, 2018, prescribed two separate tax rates of 5 and 2 percent. All assets were to be whitened at a flat rate of 5 percent except those specifically covered under the lower rate of 2 percent. The lower rate of 2 percent was applicable to foreign currency account balances in Pakistan as of March 31, 2018, which were either encashed into rupees or invested in Government securities for up to five years in US dollar bonds redeemable in rupees on maturity with a bi-annual profit payment plan in local currency at the annual rate of 3 percent.<sup>82</sup> The DAS, 2018 went overboard to even allow whitening of cash without having to disclose where it was lying or even if it was not in possession of the declarant at that particular point in time. In addition to cash, permission to declare and whiten undisclosed income, gold, precious stones and metals, other assets, and prize bonds also fell in the same category. While, on the one hand, there was practically nothing left out to be roped in, whitened and amnestized, on the other, the biggest loophole left was that becoming a tax-filer was not even a precondition to avail the amnesty.

### 5.2 Confidentiality

A brute confidentiality was ingrained in DAS, 2018 by not only overriding section 216 of Income Tax Ordinance, 2001, but also the Right of Access to Information Act, 2017 as well as “any other law for the time in force.” Moreover, the confidentiality clause incorporated into the law was intentionally kept open-ended. It reads: “Notwithstanding the provisions of sub-section (3) of section 216 of the Income Tax Ordinance, 2001..., the Right of Access to Information Act, 201...and any other law for the time being in force, particulars of any person making a declaration under this Act or any information received in any declaration made under this Act shall be confidential.”<sup>83</sup> The breach of confidentiality was made a punishable offence upon conviction with a minimum fine of Rs. 500,000 and a maximum of Rs. 1,000,000, or imprisonment for up to one year or both punishments being handed down simultaneously.<sup>84</sup> These punishments were on a higher side as compared with other similar offenses under the fiscal statutes. Likewise, through a specific rider the amnesty declarations were rendered inadmissible evidence in a case for imposition of penalty or prosecution under any law.<sup>85</sup> However, by way of a precaution it was stipulated that in case of a declaration being made by misrepresentation or suppression of facts, the declarations were to be considered void ab-initio and never to have been made under the law.<sup>86</sup>

But due to excessive upfront confidentiality, the determination of “misrepresentation” was as good as a non-starter. The tax administration was so paranoid on account of confidentiality that it went overboard to hold that due to “confidentiality clauses in the Acts, collection in Amnesty heads would not be visible to field offices for reporting.”<sup>87</sup> This was an absolutely bizarre illustration of amnestization in tax matters – possibly anywhere in the world.

Under normal conditions the confidentiality in the fiscal domain meant that the information divulged by citizens could only be accessed and utilized by the persons concerned with the assessment and collection of taxes.<sup>88</sup> However, at this particular time even the most relevant persons to access the information were left out even for purposes of correction, admissibility, and validity of the amnesty declarations, the very obligation which the tax administration was legally bound to discharge. It has been opined that in “the field of tax return confidentiality, the assurance of privacy may be an important incentive to voluntary compliance,”<sup>89</sup> but, of course, the confidentiality could not be in a vacuum particularly with reference to the very persons who are the end-owners – the tax administration. Presumably, when the tax administration tried to harvest a little more information than the legislature had permitted it via the amnesty declarations, Pakistan Tax Bar Association (PTBA) strongly protested and petitioned FBR “to take back changes it made into the tax amnesty declaration forms approved by the parliament.”<sup>90</sup> The Ministry of Law and Justice, in response to a reference made by FBR in this connection, authoritatively confirmed that “a perusal of the non obstante clauses...would reveal that the provisions of section 216(3) of the Income Tax Ordinance, 2001, the Right of Access to Information Act, 2017 and any other law for the time being in force have been overridden,”<sup>91</sup> meaning thereby that once a declaration containing facts and figures of whatever credentials was filed, it stood stonewalled in absolute terms.

### 5.3 DAS, 2018 – Outcomes

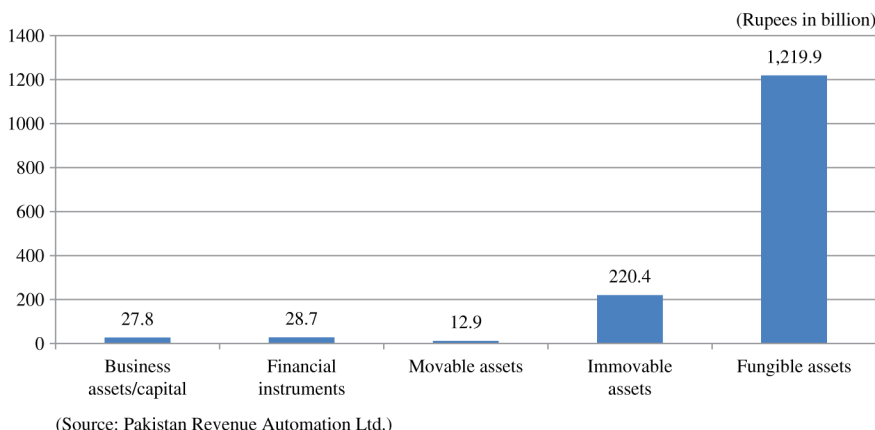
The DAS, 2018, classified undisclosed assets eligible for whitening broadly into 18 categories. The particulars of income and asset head, the number of cases filed under each, value of assets whitened, the tax rate applicable, and the tax paid along with aggregates is presented in Table 1.

**Table 1:** DAS, 2018 – Assets/Incomes Whitened and Tax Paid.

#	Domestic income and assets	Declarations	Value of asset	(Rupees in million)	
				Rate	Tax paid
1	Undisclosed income	10,769	127,296,143	5%	6,364,807
2	Open plots and land	15,812	157,295,145	5%	7,864,757
3	Superstructure	6764	30,831,163	5%	1,541,558
4	Apartments and flats	5422	32,316,486	5%	1,615,824
5	Imported motor vehicle	721	2,201,086	5%	110,054
6	Motor vehicles purchased from a manufacturer, assembler or dealer in Pakistan	2508	5,572,271	5%	278,614
7	Used motor vehicles purchased locally	2284	4,197,697	5%	209,885
8	Securities and shares traded on stock exchange	567	5,853,352	5%	292,668
9	Securities and shares not traded on stock exchange	307	4,487,926	5%	224,396
10	National Saving Schemes, certificates, bonds, and instruments not traded on s. exchange	1289	14,889,529	5%	744,476
11	Gold	1298	6,611,582	5%	330,579
12	Other precious stones and metals	129	1,185,564	5%	59,278
13	Stock in trade	574	5,160,863	5%	258,043
14	Plant and machinery	543	3,987,840	5%	199,392
15	Accounts receivable	514	17,647,989	5%	882,399
16	Other assets	6822	80,829,636	5%	4,041,482
17	Cash, prize bonds, bank accounts and FCAs	69,559	1,002,955,265	5%	50,147,763
18	FCA encashed in Rupee/investment in \$ bonds	1020	2,490,551	2%	49,811
Total		76,952	1,505,747,699		75,212,669

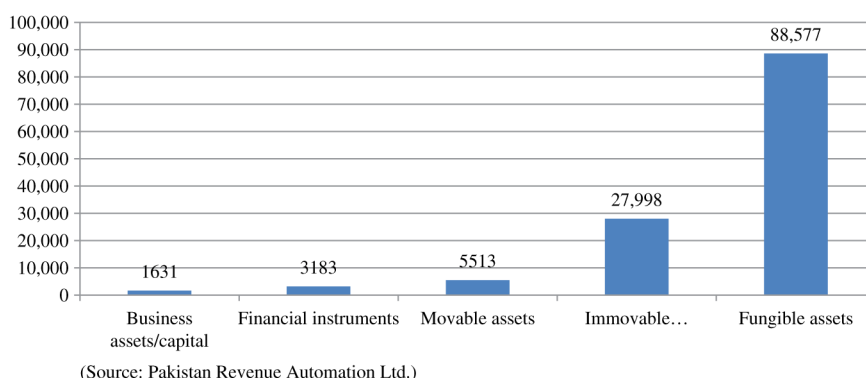
Source: Pakistan Revenue Automation Ltd.

It is noted that a total of 76,952 declarations were filed under DAS, 2018, whitening a total of Rs. 1,505.7 billion worth of assets yielding corresponding revenue of Rs. 75.7 billion. Given the nominal tax rate of 5% and 2%, complete confidentiality cover, and minimal disclosure requirements vis-à-vis the assets whitened, the outcomes were definitely on a lower side. When the assets whitened are classified into thematic clusters such as business capital, financial instruments, movable assets, immovable assets, and fungible assets as plotted in Figure 3, the general perceptions of Pakistan economy’s structural fault-lines tend to get galvanized.<sup>92</sup>



**Figure 3:** DAS, 2018 – Category-Wise Value of Assets Whitened.  
Source: Pakistan Revenue Automation Ltd.

It is seen that maximum tally of assets whitened is under fungible assets. In fact, out of total assets whitened under DAS, 2018 at Rs. 1,505,747,699 million, a sum of Rs. 1,218,878,190 million is in fungible assets. This apparently means that people whitened their past earnings, but in reality, it also included whitening of future earnings. What actually happened at a mass scale was that tax persons ended up whitening their future incomes at a nominal tax rate of 5 and 2 percent. This was achieved due to a flagrant elitist ploy whereby the evidence of “holding” of fungible assets in any concrete or substantive form was not a condition precedent under the scheme of amnestization. When the total number of assets amnestized under DAS, 2018 are classified into identical clustering as in Figure 4, interesting insights can be drawn.



**Figure 4:** DAS, 2018 – Category-Wise Number of Assets Whitened.  
Source: Pakistan Revenue Automation Ltd.

Intriguingly, under fungible assets a maximum of 88,577 assets were whitened, which is a staggering 90 percent of the total assets declared. This implies that Pakistan is predominantly a cash economy and economic agents prefer to operate in the underground economy. The number of people who whitened business related assets i.e. stock in trade, plant and machinery and accounts receivable was a meagre one at 1,631, which is indicative of the fact that untaxed incomes are hardly fed back into business, and that the whitened resources were also not likely to get capitalized or invested in business or industry. The same is true of financial instruments i.e. the financial resources kept in the documented economy. The number of declarations filed under this cluster at 3,183 is negligible in view of the fact that a total of 76,952 persons filed DAS, 2018. This is also true of the moveable assets as a meagre number of 5,513 declarations have been filed under this cluster. The analysis of the declarants also corroborates the well-known fact that Pakistan economy is given to real estate hedging as out of 76,952 declarants, a healthy number of 27,998 whitened real estate assets. The data of declarants reinforces the nexus between cash, underground economy and the real estate in Pakistan and the absence of adequate policy handles in this domain.

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## 5.4 Implications

The likely scenario that emerged out of permitting whitening of cash would be that since future tax credit earned was through fictitious numbers only, people would realize their future earnings in hard assets simultaneously diluting “cash” in their books of account and tax declarations. The impact of this particularly arrogant elitist stratagem was going to be massive in view of the fact that incorporated entities were also entitled to avail the amnesty. The cost to the exchequer of whitening fungible assets was approximately Rs. 259 billion to be claimed in tax declarations over a period of next couple of years.<sup>93</sup> Thus, in the process of harvesting quick bucks to the tune of Rs. 121 billion into the exchequer, the state squandered away an approximate amount of Rs. 259 billion in future revenues the implications of which were to be borne by the tax administration in eroded revenue capacity and the fiscal managers in reduced fiscal space in the years to come.<sup>94</sup>

## 6 Foreign Amnesty Scheme, 2018

It has already been pointed out that journey of the international community from secrecy to transparency that had started in early 2010s was attaining an effective culmination under the OECD-sponsored Common Reporting Standard (CRS) framework of exchange of bank and financial account information. This brought the polity to a critical crossroads – where it had the choice to take stock of the delinquent citizens who had plundered it and shifted the hard-earned foreign exchange overseas and bring them to the book or to capitulate under pressure of the delinquent elements once again and perpetuate the extractive woes of the state; it exercised the latter. Accordingly, the foreign amnesty scheme, 2018 (FAS, 2018) was launched to allow to any person to disclose and whiten previously undisclosed and untaxed foreign assets, along with some very generous design features.<sup>95</sup>

### 6.1 Design Features

The FAS, 2018, was preambled on the fact that there was “a large scale non-reporting and under-reporting of assets and income held outside Pakistan,” and that it was “expedient to provide for declaration and repatriation of assets and income held outside Pakistan.”<sup>96</sup> The provisions of the amnestization law were to “have effect notwithstanding anything to the contrary contained in any other law for the time in force.”<sup>97</sup> The amnesty could be availed by “all citizens of Pakistan wherever they may be, except office holders of public office, their spouses and dependent children,” and were to cover “all foreign assets held by the persons.”<sup>98</sup> The only exclusions were where proceedings were “pending in any court of law”<sup>99</sup> and that the proceeds or assets that were “involved in or derived from the commission of a criminal offence.”<sup>100</sup> The time window offered for claiming the amnesty was between April 10, 2018 and June 30, 2018, which was later extended to July 31, 2018. The FAS, 2018, prescribed three separate tax rates of 2, 3, and 5 percent. The lowest rate of 2 percent was applicable to liquid assets repatriated and invested in government securities, 3 percent to immovable assets held abroad, and the highest rate of 5 percent to liquid assets not repatriated.<sup>101</sup> A brute confidentiality was ingrained in FAS, 2018 by not only overriding section 216 of Income Tax Ordinance, 2001, but also the Right of Access to Information Act, 2017 as well as “any other law for the time in force.”<sup>102</sup>

### 6.2 FAS, 2018 – Outcomes

The FAS, 2018 produced outcomes that were far below the claimed, expected, and projected ones. It had been projected that under FAS, 2018 the funds siphoned off from Pakistan could be repatriated in excess of US\$ 4 billion. The outcomes of FAS, 2018 – declarations filed, value of assets whitened and total tax paid – are presented in Table 2.

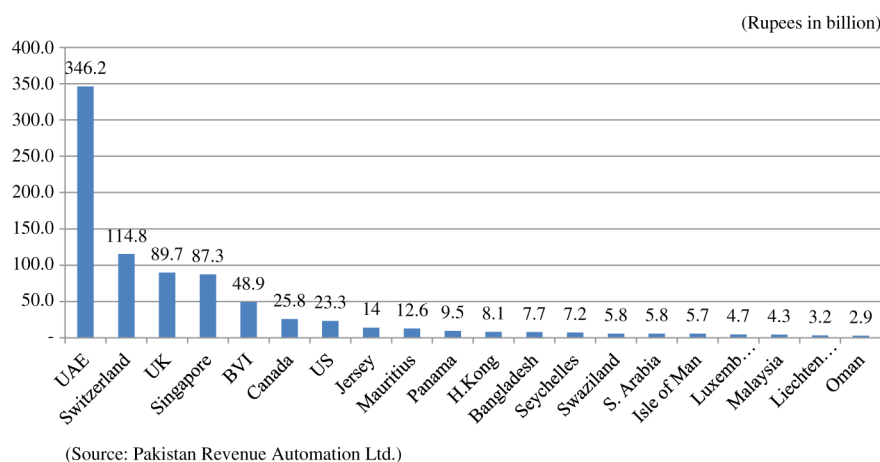
**Table 2:** FAS, 2018 – Assets Whitened and Tax Paid.

#	Particulars of assets	Cases	Value of asset	(Rupees in billion)	
				Rate	Tax paid
1	Liquid assets not repatriated	5089	727.85	5%	36.39
2	Immovable assets	3988	322.56	3%	9.67

3	Liquid assets repatriated and invested in securities	143	3.34	2%	0.06
4	Liquid assets repatriated	322	6.42	2%	0.12
	Total	6195	1060.18		46.26
	Total Tax in US dollar	3829			0.285

Source: Pakistan Revenue Automation Ltd.

It is noteworthy that the value of total liquid assets that were not repatriated comes to Rs. 727.85 billion, immovable assets to Rs. 322.56 billion, liquid assets invested in government securities to Rs. 3.34 billion, and liquid assets that were repatriated to Rs. 6.42 billion. The total tax collection in US dollars comes to 285 million. The outcomes of FAS, 2018 would go down as highly disappointing keeping in view the quantum of amnestization i.e. negligible tax rate, no penalty, no default surcharge and no prosecution. Moreover, absolute confidentiality, the possibility to declare cash without having to disclose its particulars were unprecedented incentives that also failed to lure foreign asset holders into availing FAS, 2018 in hordes in spite of Pakistan's sizeable offshore problem. Figure 5 presents top 20 favorite most jurisdictions under FAS, 2018 where Pakistanis prefer to create and maintain their offshore assets.



**Figure 5:** FAS, 2018 – Assets Whitened – Top 20 Jurisdictions.

Source: Pakistan Revenue Automation Ltd.

The UAE with a tally of Rs. 346.2 billion turned out to be the favorite most destination with Pakistanis when it comes to parking funds offshore. Then comes Switzerland at Rs. 114.8 billion, UK at Rs. 89.7 billion, Singapore at Rs. 87.3 billion, British Virgin Islands at Rs. 48.9 billion, Canada at Rs. 25.8 billion, US at Rs. 23.3 billion, Jersey at Rs. 14 billion and Panama at Rs. 9.5 billion as the choicest ten jurisdictions with Pakistanis to maintain undisclosed bank accounts and assets. In fact, out of the top 10 jurisdictions except with UK, Singapore and Jersey, Pakistan is still facing legal or administrative hurdles in undertaking effective exchange of information.

### 6.3 OECD – Multilateral Convention

When it comes to Pakistan, the problem of siphoning of funds through dubious means has always been there particularly since the promulgation of the Protection of Economic Reforms Act, 1992, which liberalized the foreign exchange regime in Pakistan without proper thinking and due diligence. The problem, however, has historically been ignored for obvious reasons either through repeated tax amnestization initiatives or through muffled whitening schemes built into the law e.g. section 111(4) of the Income Tax Ordinance, 2001. The matter attained significance in early 2016 as a result of the Panama Leaks. The evidence to the fact that Pakistan's offshore problem is of a significant size comes from the data received under OECD Multilateral Convention. In view of the fact that the total value of Pakistanis' account balance as on December 31, 2017, was little under US\$ 8 billion and the number of total accounts little over 150,000, and only from 28 jurisdictions; this constituted a substantial revelation. The expected transmissions of EOI on automatic basis are presented in Table 3.

**Table 3:** OECD-MC EOI Highlights.

#	Particulars	(As of December 31, 2018)	Data
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1	Number of jurisdictions on OECD MC	104
2	Number of jurisdictions Pakistan ticked for EOI purposes	102
3	Number of jurisdictions that ticked Pakistan for EOI purposes	71
4	Number of jurisdictions that Pakistan undertook EOI with on 30-10-2018	42
5	Number of jurisdictions that undertook EOI with Pakistan on 30-10-2018	28
6	Number of jurisdictions that will undertake EOI with Pakistan on 30-10-2019	71

Source: Pakistan Revenue Automatic Ltd.

The size of Pakistan's offshore problem, and its expected exchanges in the years to come warranted a better effort than the launch of an amnestization initiative, but the polity had made a deliberate choice to go down the pleasure principle path.

## 6.4 Implications

In fact, about 95 percent of total amnesty declarants happened to be pre-existing taxpayers clearly demonstrating "that the real potential for increasing revenues lies with under-filers."<sup>103</sup> This realization warranted substantial investments in the system as well as policy fine-tuning. Most of the Pakistanis, whose substantial offshore bank and financial accounts had been reported, turned out to be in the export and import sectors, which meant that they were either under-invoicing exports or over-invoicing imports, and retaining the surplus foreign exchange outside Pakistan by circumventing relevant regulations. This insight should have provided a policy improvement prompt but it has not. The so called "stick" that was brought in to justify the carrots was that under the pre-existing regime, unexplained incomes and assets could be included in a person's income chargeable to tax in the year to which the incomes and assets related. This was changed to make the unexplained incomes and assets located in overseas jurisdictions chargeable to tax in the year in which those were discovered. Likewise, the operation of section 111(4), which allowed Pakistan-resident persons to round-trip as much untaxed incomes as they wanted into their account books, was restricted to Rs. 10 million. Similarly, a new disclosure requirement was introduced whereby every resident person being individual would be required to file foreign income and assets statement if he had foreign income of US\$ 10,000 and offshore assets worth more than US\$ 100,000, alongside his annual tax return. Some corresponding amendments were also made to the Protection of Economic Reforms Act, 1992.<sup>104</sup> But all this was evidently insufficient in view of the intensity of the elite capture and size of the offshore evasion.

## 7 Conclusion

The analysis of amnestization as an important cog in the wheel of Pakistan's fiscal system divulges interesting insights and enhances our holistic understanding of the economy. Tax amnestization seems fitting well in the theoretical framework of the elitist state which consistently shuns reality principle and chooses to walk down the pleasure principle pathway. The natural outcomes of this deliberate choice included embedded and endemic regulatory deficit, abnormal enrichment of individuals and entrepreneurs, and a fiscally impoverished and embittered state. Since in the wake of global information revolution it is increasingly being difficult for Elites Ltd to continue recklessly promoting and enhancing the economic status quo even in an as elitized a state as Pakistan, the shaping of the public perception becomes a condition precedent. It was achieved efficiently by using Supreme Court in the avant-garde role. In spite of the fact that the amnestization initiatives were extremely loaded – lowest possible tax rates, brute confidentiality, no penal and prosecutive actions to follow etc – the outcomes of both DAS, 2018 and FAS, 2018 were on a significantly lower side particularly when compared with the size of the non-reporting, under-reporting and the offshore evasion. The only explanation then is that the delinquent elements factored into their decision-making equation the state capacity, which is almost fully sapped. The argument thus runs full circle.

The paper leads us to draw a set of five irresistible conclusions. Firstly, the hold of the elites on the polity and the economy has strengthened and not weakened over time. The launch of super amnestization initiative goes to suggest a strong nexus between politics, business and the offshore problem. This trend has run in sharp contrast to some closely-circumstanced countries – India, Bangladesh, and Vietnam. Secondly, the way Supreme Court chose to run errands, the neo-Marxist instrumentalism implying that the state is a tool in the hands of ruling oligarchs that they exploit at will to advance their economic and political agenda, gets validated in Pakistan's context. Thirdly, all state institutions – not only the bureaucratic ones but also the constitutional ones – Parliament, media, and judiciary – appear beholden to Elites Ltd. The post-2008 judiciary exhibiting hyper-judicial activism (despite excesses in some respects) was the peoples' hope, which stood evaporated in near

totality. The amnestization was projected as a hallowed policy option and methodically sanctified to appear not only the only option available to but also the one without which the nation would be exposed to serious dangers, and the Supreme Court was lionized for saving the amnesty from running into trouble.<sup>105</sup> Fourthly, Pakistani elites have grown flagrant and reckless over the recent past in that they neither feel any qualms nor moral compunction while making ostensibly immoral demands – repeated demands for amnestization at negligible tax rates. Lastly, the polity appears to have learnt nothing from its past follies, and even if it has, it continues to suffer from selective amnesia as its structures continue to exhibit brute elitist control, which is not only deepening in intensity but also widening in scope and footprint.

## Notes

- 1 Some prominent works in this respect, include Andreoni 1991; Le Borgne 2006; Borgne and Baer 2008; James Alm and Wallace 2009; Malherbe 2011.
- 2 See, for instance, Haq 2000, 2017.
- 3 McCullough, Pargament, and Thoresen 2001, p. 8.
- 4 McCullough, Pargament, and Thoresen 2001, p. 8.
- 5 McCullough, Pargament, and Thoresen 2001, p. 8.
- 6 Vierzen 2011, p. 27.
- 7 Mallinder 2007.
- 8 Martin 2003, p. 25.
- 9 Andreoni 1991, p. 143.
- 10 Borgne and Baer 2008, p. 5.
- 11 Malherbe 2011, p. 2.
- 12 Ibrahim et al. 2017.
- 13 Ibrahim et al. 2017.
- 14 Alm and Beck 1991a, 1991b.
- 15 Alm and Beck 1991a, 1991b.
- 16 Malik and Schwab 1991.
- 17 Graetz and Wilde 1993.
- 18 Alm, Martinez-Vazquez, and Wallace 2009.
- 19 Bose and Jetter 2017.
- 20 Bose and Jetter 2017.
- 21 Bayer, Oberhofer, and Winner 2015.
- 22 Bayer, Oberhofer, and Winner 2015.
- 23 Ibrahim et al. 2017.
- 24 See, for instance, Alavi 1972; Husain 1999; Hussain 1976; Shafqat 1989.
- 25 Ahmed 2017.
- 26 See, in particular, section IV of Ahmed 2017.
- 27 See Husain 1999, p. 133 for a detailed analysis.
- 28 Ahmed 2016b.
- 29 Ahmed 2016a.
- 30 Pakistan had become a signatory to the Multilateral Convention on June 7, 2017.
- 31 Ahmed and Mangla 2019.
- 32 Kiani 2018.
- 33 Rana 2017.
- 34 See, for a detailed analysis, Khan 2018c.
- 35 Ahmed 2018.
- 36 Jabri 2018.
- 37 See, for a detailed analysis, Haq 2013a, 2013b; 2018; Zaidi 2017, 2018a; 2018b; 2018c; 2018d; 2018e.
- 38 Haider 2018a, 2018b, and 2018c.
- 39 Haider 2018a, 2018b, and 2018c.
- 40 Bailey and Samoilenko 2018.
- 41 Subsequently, Justice Faisal Arab replaced Justice Umar Ata Bandial on the Bench hearing this particular case.
- 42 This point has been dealt earlier in the paper as an inflection point for the polity.
- 43 Court Room No. 1 is where Chief Justice of Pakistan conducts hearing of cases.
- 44 Abbasi 2018b.
- 45 Khan 2018b.
- 46 Abbasi 2018a.
- 47 Shaukat Tareen, a banking industry tycoon and ex-Finance Minister made this demand in Khan 2018b Others included Shabbar Zaidi, FCA, Ashfaq Tola, FCA, Salman Shah, and ex-Finance Minister making this demand implicitly or explicitly.
- 48 Abbasi 2018b.
- 49 The author had the privilege of attending most of the case proceedings in the Supreme Court - particularly, during its later half.
- 50 Supreme Court's Order dated 01.02.2019 in Suo Moto Case No. 02 of 2018.
- 51 Supreme Court's Order dated 01.02.2019 in Suo Moto Case No. 02 of 2018.
- 52 Correspondent 2018.
- 53 Correspondent 2018.
- 54 Correspondent 2018.
- 55 The Committee consisted of (i) Khalid Anwer, expert; (ii) Mehmood Mandviwala, expert; (iii) Dr. Ikramul Haq, expert; (iv) Muhammad Waqas Rana, expert; (v) Tariq Bajwa, Governor, SBP; (vi) Arif Ahmed Khan, Finance Secretary; (vii) Tariq Pasha, Chairman, FBR; (viii) Syed

- Shabbar Zaidi, expert; (ix) Bashir Ahmed Memon, DG, FIA; (x) Tariq Paracha, Businessman; (xi) Atif Bajwa, Banker; (xii) Nisar Muhamamd Khan, expert; and any other member coopted by the Committee.
- 56 Supreme Court's Order dated 20.03.2018 in Suo Moto Case No. 02 of 2018.
- 57 Supreme Court's Order dated 26.03.2018 in Suo Moto Case No. 02 of 2018.
- 58 Supreme Court of Pakistan 2018.
- 59 Supreme Court of Pakistan 2018.
- 60 Supreme Court of Pakistan 2018.
- 61 Dr. Ikramul Haq, Advocate Supreme Court, and a member of the Committee which was constituted by the Chief Justice of Pakistan on the issue, expressed these views in personal communication with the author on January 21, 2019.
- 62 Hussain 2018.
- 63 Ghori 2018.
- 64 Ghori 2018.
- 65 Haider 2018a, 2018b, and 2018c.
- 66 Rana 2018.
- 67 Rana 2018.
- 68 Haider 2018a, 2018b, and 2018c.
- 69 Supreme Court's Order dated 12.06.2018 in Suo Moto Case No. 02 of 2018.
- 70 Saeedi 2018.
- 71 Haider 2018a, 2018b, and 2018c.
- 72 Ali 2018.
- 73 A constitutional forum created under Article 153 of the GOP 1973.
- 74 Section 230F was introduced into the Pakistan 2001.
- 75 This section substantially draws on Ahmed and Mangla 2019.
- 76 Section 3 of Pakistan 2018b.
- 77 Section 4(1)(a) of Pakistan 2018b.
- 78 The word "assets" was defined in the broadest possible terms, namely "Open plots and land," "Superstructure," "Apartments and flats," "Imported motor vehicles," "Motor vehicles purchased from a manufacturer or assembler or dealer in Pakistan," "Used motor vehicles purchased locally," "Securities and shares traded on stock exchange," "Securities and shares not traded on stock exchange," "National savings schemes, postal certificates, bonds, securities and other similar investments in capital instruments, not traded or quoted on stock exchange," "Gold," "Other precious stones," "Stock-in-trade," "Plant and machinery," "Accounts receivable," "Other assets," and "Prize bonds, cash and bank accounts including foreign currency accounts," with each having specific valuation method devised within the law.
- 79 Section 2(1)(b) of Pakistan 2018b specifically excluded first appellate forum, namely, appellate Commissioner from the definition of "court of law."
- 80 Section 4(1)(b) of Pakistan 2018b.
- 81 Section 4(2) of Pakistan 2018b.
- 82 Section 7 of Pakistan 2018b.
- 83 Section 11 of Pakistan 2018b.
- 84 Section 11 of Pakistan 2018b.
- 85 Section 12 of Pakistan 2018b.
- 86 Section 14 of Pakistan 2018b.
- 87 These decisions were made in a meeting convened by Member (SPR&S) on October 18, 2018, and attended by Member (IT), Member (IR-Policy), and Member (IR-Operations). FBR's letter No.1(9)/SS(DBT-IT)/2018/125802-R, dated October 18, 2108.
- 88 OECD 2012.
- 89 Toope and Young 1982.
- 90 Akhter 2018.
- 91 Ministry of Law & Justice's Office Memorandum No.609/2018-Law-I, dated December 31, 2018.
- 92 The classification of assets whitened consists of (i) Immovable assets: Open plots & land; Superstructure; Apartments & flats; (ii) Movable assets: Imported motor vehicles; Motor vehicles purchased from a manufacturer, assembler or dealer in Pakistan; Used motor vehicles purchased locally; (iii) Financial instruments: Securities & shares not traded on stock exchange; Securities & shares not traded on stock exchange; National saving schemes, postal certificates, bonds & other instruments not traded on stock exchange; FCA encashed in Rupee investment in US\$ bonds; (iv) Business assets/capital: Stock in trade; Plant & machinery; Accounts receivable; and (v) Fungible assets: Undisclosed income; Gold; Precious stones & metals; Other assets; Cash, prize bonds, bank accounts & FCAs.
- 93 Ahmed and Mangla 2019.
- 94 Given an abnormally high frequency of tax amnestization in Pakistan, being rational actors, the taxpayers who have accumulated futuristic tax credit, would like to incorporate all of it as soon as possible - maximum two years - so as to be able to benefit optimally from any future tax amnesties.
- 95 This section substantially draws on Ahmed and Mangla 2019.
- 96 Pakistan 2018a.
- 97 Section 3 of the Pakistan 2018a.
- 98 Section 4 of the Pakistan 2018a.
- 99 Section 2(1)(b) of the Pakistan 2018a.
- 100 Section 4(2) of the Pakistan 2018a.
- 101 Section 7 of the Pakistan 2018a.
- 102 Some other confidentiality features were identical to those critiqued in Section 4.2.
- 103 Haider 2019.
- 104 See, for details, Zaidi 2017.
- 105 Khan 2018a.

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