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Panama Papers and the dilemma of global financial transparency

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Abstract: *The Panama Papers, or as they are commonly called the Panama Leaks, are around 12 million documents that contain vastly discrete financial and attorney–client information, dating back to early 1970s, of about 215,000 offshore corporations created by Mossack Fonseca, a Panama-based corporate law firm, for their various clients worldwide. The said documents were leaked by an unidentified source (John Doe) from inside the firm and are believed to contain incisive personal information regarding clandestine financial activities of several current and former head-of-states, wealthy aristocrats and high ranking officials of various governments which until now was unknown to the general public. The anonymous source inside Mossack Fonseca (John Doe) responsible for this information disclosure provided these documents to Bastian Obermayer, a German journalist working for Süddeutsche Zeitung (SZ). In a statement issued on May 6, 2015, he cited severe dangers to his life in wake of these startling revelations since they exposed corrupt activities of world’s most powerful people who could cross any limit to safeguard their vested interests. Additionally, he said that it was global income inequality and massive injustice portrayed in these documents which forced him to affect this iniquitous leak. He offered full support to the investigators/prosecutors subject to provision of immunity. After SZ confirmed that the said statement was indeed issued by the Panama Papers source; ICIJ put the complete document on its web portal. Owing to their resource inadequacy, to analyze this massive volume of information, SZ sought the help of International Consortium of Investigative Journalists (ICIJ) which comprising of journalists belonging from over 100 media organizations based in 80 countries worldwide who were tasked with investigating/analyzing the documents pertaining to the operations of Mossack Fonseca. On April 3, 2016, after investigation and analysis spanning over one year, the first news stories along with 150 original documents were published. While establishment of offshore companies is perfectly legal and permissible, investigations revealed that majority of offshore corporations created by Mossack Fonseca facilitated illegal activities e.g. financial fraud, money laundering, tax evasion and evasion of international embargos. As far as field of investigative journalism is concerned, this project symbolizes a significant landmark in the use of mobile collaboration and data journalism software tools.*

Key words: Panama papers; Mossack Fonseca; Süddeutsche Zeitung (SZ); International Consortium of Investigative Journalists (ICIJ); Mobile collaboration; Data journalism software tools

1. Introduction

The infamous Panama Papers or Panama Leaks are approximately 12 million documents, dating back to early 1970s, which details confidential and private financial information pertaining to around 215,000 offshore companies (ICIJ, 2016) (NY Times, 2016). In 2015, the said documents dating back to as early as 1970s, were leaked by an anonymous source from inside Mossack Fonseca, a Panama-based corporate law firm (NY Times, 2016) (The Guardian, 2016) and contained secretive information about financial activities of many present and former head-of-states, wealthy individuals and high ranked government bureaucrats which till now was kept secret from general masses (ICIJ, 2016) and were leaked by a anonymous whistleblower (John Doe) from inside Mossack Fonseca to a German media correspondent Bastian Obermayer (NY Times, 2016) (Quartz Media LLC, 2016) working for Süddeutsche Zeitung (SZ). The identity of the said source is still unknown to all stakeholders involved in the investigation due to imminent threats to his life (The Guardian, 2016). On May 6, 2015, John Doe issued a statement that he had enough insight and understanding to comprehend the contents of the documents. He also quoted that the primary motive behind this leak were the massive income inequality and injustice portrayed in these documents. He offered full help to the prosecutors conducting the investigations conditional to provision of immunity. After SZ confirmed the origination of said statement from panama papers source, International Consortium of Investigative Journalists (ICIJ) published the whole document on its website (BBC, 2016) (ICIJ, 2016).



Figure 1: A conversation between SZ reporter Bastian Obermayer and anonymous source (NY Times, 2016)

Due to massive data volume and the need for effective analysis of the documents, SZ sought the help of ICIJ. ICIJ is a platform for journalists from over 100 media organizations in 80 countries, who were tasked with the responsibility of analyzing the said documents explaining Mossack Fonseca functions and operations (The Guardian, 2016) which encircled a period of over one year. Finally on April 3, 2016, first news stories along with 150 original documents were published (Document Cloud, 2016). Regarding the investigative journalism, this project symbolizes a landmark achievement in use of mobile collaboration and data journalism software tools. The said documents were called Panama Papers since the firm Mossack Fonseca is based in Panama. Some media entities involved in the investigation used the name Mossack Fonseca papers (The Guardian, 2016) (The Irish Times, 2016) (Raidió Teilifís Éireann, 2016).

As a matter of fact establishing offshore/shell companies is not legally prohibited. However, the investigators at ICIJ found out that majority of shell companies established by Mossack Fonseca for their respective clients were meant for illegal rationales e.g. financial frauds; kleptocracy (A type of government involved in methodical corruption and larceny from its own citizens or has associations with organized crime syndicates/mafia. Said government's corrupt leaders use brute force and subjugation to exploit general public, carry out embezzlement of public funds and exploit country's national resources for their personal gain and empowerment); money laundering; tax evasion and avoiding international sanctions. Alongside making several other startling revelations, the panama papers also explained the modus-operand of various rich individuals, their associates, relatives and public officials to keep their financial affairs discrete and secret (The Guardian, 2016). The preliminary reports suggested that the firm was well connected with several present and former head-of-states, their associates/relatives, business tycoons, government bureaucrats and celebrities worldwide belonging from more than 40 countries (The Guardian, 2016) (ICIJ, 2016) (Fusion TV, 2016). Some prominent names of current head-of-states are: Ayad Allawi (Prime Minister, Iraq) (Forbes, 2016), Khalifa bin Zayed Al Nahyan (President, United Arab Emirates), Malcolm Turnbull (Prime Minister, Australia), Mauricio Macri (President, Argentina), Petro Poroshenko (President, Ukraine), Rafael Correa (President, Ecuador), Salman bin Abdul-Aziz Al-Saud (King, Saudi Arabia), Sigmundur Davíð Gunnlaugsson (Prime Minister, Iceland),

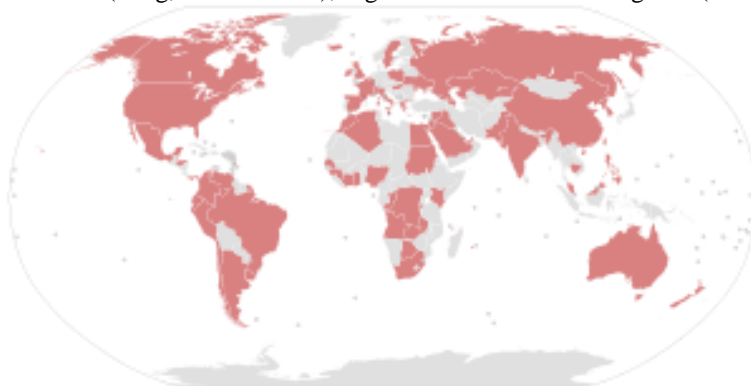


Figure 2: Countries having involvement in Panama Papers

Apart from the ones mentioned above, the papers also stated names of several former head-of-states: Ahmed al-Mirghani (President, Sudan from 1986-1989 died 2008) (Dabanga Sudan, 2016), Ali Abu Al-Ragheb (Prime

Minister, Jordan) (Newsweek, 2016), Benazir Bhutto (Prime Minister, Pakistan died 2007), Bidzina Ivanishvili (Prime Minister, Georgia) (OCCRP, 2016), Hamad bin Jasim Al-Thani (Prime Minister, Qatar) (The Independent, 2016), Hamad bin Khalifa Al-Thani (Emir, Qatar) (The Independent, 2016), Ion Sturza (Prime Minister of Moldova) (Pro TV Chisinau, 2016), Pavlo Ivanovych Lazarenko (Prime Minister, Ukraine) (ICIJ, 2016), Ronald Reagan (President, United States of America), Silvio Berlusconi (Prime Minister, Italy). The files also implicated numerous relatives and associates of several influential people from around the globe viz: Deng Jiagui, brother-in-law of Xi Jinping (President, China); son of Najib Razak (Prime Minister, Malaysia); Hassan Nawaz, Hussain Nawaz and Maryam Nawaz, children of Nawaz Sharif (Ex-Prime Minister, Pakistan); children of Ilham Aliyev (President, Azerbaijan) (ICIJ, 2016); Clive Khulubuse Zuma, nephew of Jacob Zuma (Ex-President, South Africa) (ICIJ, 2016); Nurali Aliyev, grandson of Nursultan Nazarbayev (President, Kazakhstan); Mounir Majidi, personal secretary of Mohammed-VI (King, Morocco); Kojo Annan, son of Kofi Annan (Ex-Secretary General, United Nations); (ICIJ, 2016); Mark Thatcher, son of Margaret Thatcher (Ex-Prime Minister, Great Britain) (Telegraph, 2016); Juan Armando Hinojosa, contractor having alleged links with Enrique Peña Nieto (President, Mexico). The files also listed several members of the Spanish Royal Family viz: Infanta Pilar (Duchess, Badajoz) her son Bruno Gómez-Acebes; Iñaki Urdangarín, brother-in-law of King Felipe-VI; Amalio de Marichalar (8th Count, Ripalda); Corinna Larsen, mistress of King Juan Carlos-I. Hollywood actor, Jackie Chan was also listed in the papers as shareholder of six (06) companies situated in British Virgin Island (El Siglo, 2016).

This topic is very diverse and multi dimensional with a wide range of anomalies and implications which are difficult to cover in the scope of this article. Hence, for the sake of simplicity the article would be divided into five sections. Section 1 gives a brief but compact introduction of the topic past and present background. Section 2 reviews the concerned literature and several associated topics. Section 3 discusses the aftermath and various actions taken/policies developed to prevent future likewise occurrences. Section 4 discusses the future implications and gives recommendations followed by conclusion in section 5.

2. Literature review

2.1 Panama – The country

Panama or Republic of Panama (official) is a country situated in the Central America (National Geographic, 2011) bordered by Caribbean Sea (North), Pacific Ocean (South), Columbia (South-East) and Costa Rica (West) with a population of approximately 4.1 million people. The country's capital and largest city is Panama City which is home to roughly 2 million people (DESA, United Nations, 2018).



Figure 3: Republic of Panama – The geographical (National Geographic, 2011)

Historically, prior to the arrival of Spanish settlers in the 16th century, Panama was inhabited by numerous aboriginal tribes. Later on, Panama remained under Spanish control for over 300 years before attaining independence in 1821 and subsequently joined Republic of Gran Colombia, a union of Ecuador, Nueva Granada and Venezuela. Panama and Nueva Granada remained together as Republic of Columbia, following the dissolution of Gran Colombia in 1831. In 1903, backed by United States, Panama seceded from the Republic which was followed by construction of the famous Panama Canal undertaken and completed by the U.S. Army Corps of Engineers in 1914. Furthermore, in 1977, the Torrijos–Carter Treaty was signed between the governments of Panama and U.S. for transferring canal control w.e.f. December 31st, 1999 after 85 years of U.S. control (CIA's World Fact book, 2010). The revenue proceeds from the canal contribute a major portion to the country's GDP. Additionally, its sophisticated service sector especially banking, commerce and tourism and trade has also seen tremendous growth in recent years. On the United Nations' Human development Index, Panama was ranked 60th in 2015 (UNDP, 2015). In 2010, Panama was adjudged Latin America's 2nd most competitive and progressive economy in the Global Competitiveness Index (World Economic Forum). Almost 40% of Panama's land area is covered by tropical forests which are home to a

wide variety of exotic animals and plants (BBC News, 2010).

There exists mutual collaboration between the governments of the United States and Panama at various levels for country's economic, political, security and social development alleviation through various U.S. and international organizations. Panama enjoys excellent bilateral cultural ties with the United States and Panamanians frequently travel to the U.S. for pursuing higher education and sophisticated training. As of 2012, Panama had a record low unemployment rate of 2.7% and surplus of food which highlights the successful economic of the country (CIA's World Fact book, 2010). More recently, Panama economy witnessed a substantial boom which saw the real GDP growth exceed 10.4%. Panama is envisaged to be Latin America's fastest growing economy matching Brazil's annual growth rate of 10%. The expansion of the Panama Canal which was completed in 2016 and the free trade agreement with the U.S further improved the economic situation of the country (Sullivan, 2011). Due to country's itself and Panama Canal's strategic geographical importance, in the time period subsequent to transfer of Panama Canal and associated military infrastructure, the region has seen a tremendous increase in number of mega construction projects/ventures. Additionally, the country also has numerous deposits of copper and gold which are being explored and developed by the foreign investors (Oancea, 2009)

As discussed above, the revenue proceeds generated from the canal are a country's major source of income and had enabled the Panamanian government to establish Central America's largest regional financial center (IFC) with combined assets almost three times of the Panamanian GDP (Park, Yoon, Essayad, 2012). The country's banking sector provides direct employment to over 24,000 people and ensuing financial intermediation accounts for 9.3% of the national GDP (Presidency of the Republic of Panama, 2016). The country had developed an environment highly conducive for business and economic activities thus guaranteeing financial sector stability hence drawing attention of both local and global investors. The country's banking system complies with core principles of Basel Accord for effective banking supervision. Due to being a regional financial center, Panama is also actively involved in export of banking services to Central and Latin America however still lags behind in reputation as compared with Hong Kong and Singapore, the two major Asian financial centers (IMF, 2007).

2.2 Panama Canal

The Panama Canal is a 77 km long artificial waterway, cutting across the Isthmus of Panama, which serves as a major maritime conduit for facilitating trade between Atlantic and Pacific Ocean. The canal construction work was initially started by France in 1881 but had to be stopped in 1894 due to complex engineering tribulations and high workers' death rate. Later on, the project was undertaken by US Army Corps of Engineers in 1904 and was completed in 1914 followed by commencement of canal operation on August 15, 1914. Since the construction of the Suez Canal in 1869, Panama Canal is deemed as one of the biggest and most challenging engineering projects ever undertaken. It had drastically reduced the transit time for cargo ships to traverse between the Atlantic and the Pacific (approx. 12 hours) and simultaneously allowing them to evade the protracted and perilous route of Cape Horn which runs along the South America's southernmost tip route passing through the Strait of Magellan/Drake Passage. Earlier, it had two sets of locks (34 m wide) located at both canal ends utilized to haul cargo ships 26m above sea level into the Gatun Lake (an artificial lake designed to minimize the canal's excavation work) and lower them at the other end. The Canal is of vital importance to the country since the canal toll revenue makes a substantial contribution to national economy and generates massive employment as well. Hence in 2006, to increase the operational capacity of the canal, the government announced a canal expansion project to construct a third set of locks, with an estimated cost of US \$5.25 billion, which was completed in 2016 followed by initiation of the commercial operation (AP News, 2016). It was cited among the seven wonders of the modern world by the American Society of Civil Engineers (ASCE, 2010).



Figure 4: Satellite imaging of the Panama Canal

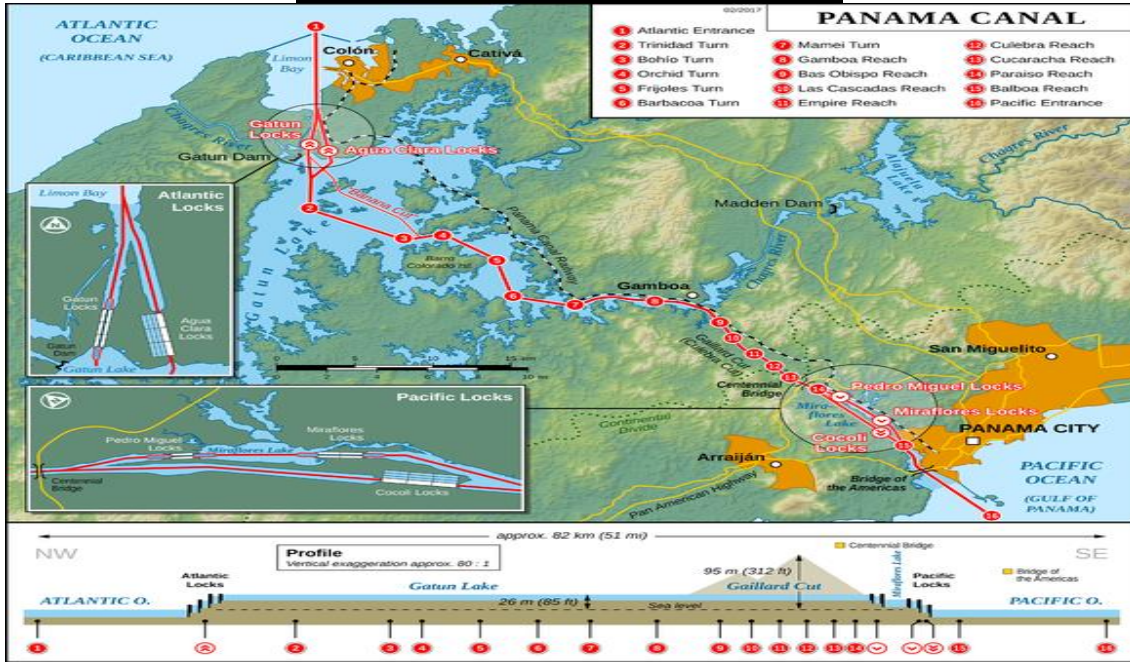


Figure 5: Map of the Panama Canal

During the canal construction phase, the area around canal remained under the control of Colombia, France, and United States respectively. After almost 85 years of control by the United States, the control of canal and the associated military infrastructure, following the signing of Torrijos–Carter Treaties in 1977, was handed over to Panamanian authorities in 1999 and is now managed and controlled by Panama Canal Authority. When the canal commenced operation in 1914, the transient traffic was 1000 ships per annum which till 2008 had increased manifold to approx. 15,000 vessels annually bearing 333 million tons of cargo passing through the canal. Till date almost 1,000,000 vessels have passed through the canal (Panama Canal Authority, 2011).

2.3 Mossack Fonseca & Co.

Mossack Fonseca & Co. was founded in 1977 by a German lawyer, Jürgen Mossack. In 1986 Panamanian novelist and lawyer, Ramón Fonseca also joined the firm followed by addition of a Swiss lawyer, Christoph Zollinger as the 3rd third director. Its headquarters are based in Panama City, Panama (The Atlantic, 2016).



Jürgen Mossack

Ramón Fonseca

Christoph Zollinger

Headquarters of Mossack Fonseca & Co. (Panama City)

Figure 6: Mossack Fonseca & Co.

Before it announced to shut down its operations in March 2018, Mossack Fonseca & Co. was ranked 4th among the world’s major offshore financial service providers (SumaRSE, 2015) (The Legal 500, 2016). In 2013, the said firm was listed among the seven major companies which represented about 50% of the offshore corporations established

in Panama (La Estrella de Panamá, 2013). Several of the offshore companies established by the firm for its various clients are also situated inside its offices (El Confidencial, 2013). Since its establishment in 1977 until the disclosure of the infamous Panama Papers in 2016, it enjoyed a privileged position in the international offshore services industry and maintained absolute secrecy (tight-lipped) regarding its clients' financial affairs (The Economist, 2012). In 1987, the firm expanded its operations into British Virgin Islands where it setup over 100,000 shell corporations for its various clients (ICIJ, 2016) (The Guardian, 2016). The country of Niue also approached the firm for consultation with the desire to become an offshore financial center, whose affairs were managed by the firm through its Panama headquarters (Findley, Nielson, Sharman, 2014) which was terminated in 2005, owing to severe pressure from the US Treasury and imposition of embargos by the American banks prohibiting bank transfers to Niue (ICIJ, 2016). The firm's founder maintained that the firm's share in the international financial services industry is approx. 5%. However Economist claimed that the firm's market share ranges between 5-10% (Economist, 2016). Later on, in 2015, an anonymous inside source (John Doe) leaked a vast volume of documents, ranging between 1970 and 2015, to the international media. Furthermore, in April 2016, the firm was brought into limelight after the journalists at ICIJ published highly confidential information with regard to the obnoxious and dubious financial activities of the firm for its various clients (Al-Jazeera, 2016). In the aftermath of Panama Papers, Mossack Fonseca announced that the disclosure of firm's involvement in this massive global scandal had badly blemished its reputation and economics and hence will terminate operations effective March 14, 2018 (the Guardian, 2018).

During all these years of its operations, Mossack Fonseca has ostensibly facilitated citizens of various countries in evading the local tax laws of their respective domains (Globe & Mail, 2011) (Vice, 2014) and in most cases even the international sanctions (BBC News, 2016). However, on the contrary the firm's founders have maintained their stance they ensured that the client affairs are executed under strict privacy/confidentiality but simultaneously they were religiously adhering to the "know your customer (KYC)" regulations (Financial Times, 2016). Mossack Fonseca was allegedly involved in numerous instances of tax evasion, money laundering, most notorious of them are mentioned below:

- 1. Brink's-Mat robbery (1983):** In 1983, diamonds, gold bullion and cash amounting to £26 million (approximately £84 million today) were stolen from a warehouse belonging to Johnson Matthey Bankers Ltd. Mossack Fonseca was involved in laundering of the robbery proceeds through a company Febrion Inc along with several others companies incorporated inside jurisdictions of Panama. The proceeds were laundered through several banks in the Isle of Man, Jersey, Liechtenstein and Switzerland (BBC News, 2000).
- 2. Argentine money laundering (2014):** This controversy is commonly known as the route of K-Money and allegedly revolves around Argentinean Presidents, Nestor Kirchner, his wife Cristina de Kirchner, their business associate, Lázaro Báez and MF Corporate Services (subsidiary of Mossack Fonseca). In 2014, MF Corporate Services had established several offshore companies (123 to be exact) for purpose of transferring public infrastructure funds from the government to Lázaro Báez who further transferred these funds to several tax havens. Allegedly an amount of Euro €55 million was involved in the money laundering scandal. (Merco press, 2013).
- 3. Commerzbank (2015):** In 2015, the German government initiated an investigation into alleged illegal activities of the firm e.g. money laundering and tax evasion at Commerzbank (Handelsblatt, 2015)
- 4. Petrobras (2016):** This financial scam is also known as the Operation Car Wash and involves Dilma Rouseff and Luiz Inácio Lula da Silva (Ex-Presidents, Brazil); Petrobras, a Brazilian petroleum company, several high ranking members of the Brazilian government and legislature, including several senators and federal officials. In January 2016, the employees of Mossack Fonseca's Brazilian Office were implicated in the investigations of the infamous Petrobras corruption scandal and were accused of setting up offshore companies in order to facilitate money laundering up to an extent of US\$ 9.5 billion (La Prensa, 2016).
- 5. Panama Papers leak (2016):** These leaks are perhaps the most startling revelations made till date concerning global tax evasion and money laundering by some of the world's most powerful and influential people. In 2015, these 12 million (2.6 terabytes) confidential documents were released to Süddeutsche Zeitung (SZ), a German newspaper by an anonymous source, revealing financial activities of Mossack Fonseca which facilitated its clients by setting up offshore firms in various tax havens around the world (AP News, 2016). This data bank contained 2.6 terabytes of data dating back to as early as 1970 till 2015 (BBC News, 2016).

2.4 International Consortium of Investigative Journalists (ICIJ)

The ICIJ is a fully independent international network based in Washington D. C. and was launched by the Center of Public Integrity in 1997 (New York Times, 2016). As of 2017, US tax authorities awarded the non-profit status to

ICIJ. Furthermore, it is administered by three executive bodies viz: Board of Directors (with a fiduciary role); Advisory Committee (which comprises of its supporters); and Network Committee (ICIJ, 2015) and includes over 200 investigative journalists hailing from more than 70 countries worldwide (ICIJ, 2015) who collectively work on several issues of critical importance e.g. accountability of power, corruption and cross border crimes (ICIJ, 2016). Since its establishment, ICIJ has been involved in investigating and exposing some of the world’s most intricate and obscure issues e.g. smuggling and tax evasion by multinational tobacco companies, e.g. Phillip Morris, through organized criminal organizations (ICIJ, 2000); investigations regarding asbestos companies, private military cartels and climate change lobbyists (ICIJ, 2010). Another landmark achievement of ICIJ is that they investigated and exposed the details of war contracts awarded in Afghanistan and Iraq. Some of the reporting ventures undertaken by ICIJ are listed below:

1. Global tobacco industry (Freudenberg, Nicholas, 2014)
2. Offshore banking series (Spiegel Online, 2013)
 - i) Panama Papers (NY Times, 2016)
 - ii) Paradise Papers (ICIJ, 2017)

2.5 Offshore magic circle

Although it is relatively unknown to the general public, but the so called Offshore Magic Circle comprises of numerous big law firms which specialize and practice in the arena of offshore jurisdiction. There is uncertainty and ambiguity with regards to which firms constitute the offshore magic circle. However, an article published in Legal Business (Offshore Review, 2008) suggested that following nine firms might constitute the offshore magic circle (Table 1).

Firm/No of lawyers	Presence in	Based in
Maples (291)	British Virgin Islands, Cayman, Dublin	Cayman
Appleby (210)	Bermuda, British Virgin Islands, Cayman, Guernsey, Isle of Man, Jersey, Mauritius, Seychelles	Bermuda
Carey Olsen (188)	British Virgin Islands, Cayman, Guernsey, Jersey	Channel Islands
Mourant Ozannes (186)	British Virgin Islands, Cayman, Guernsey, Jersey	Channel Islands
Walkers (180)	Bermuda, British Virgin Islands, Cayman, Dublin, Guernsey, Jersey	Cayman Islands
Ogier (173)	British Virgin Islands, Cayman, Guernsey, Jersey, Luxembourg	Jersey
Harneys (139)	Bermuda, British Virgin Islands, Cayman, Cyprus, Mauritius	Virgin Islands (UK)
Conyers (128)	Anguilla, Bermuda, British Virgin Islands, Cayman, Mauritius	Bermuda
Bedell Cristin (84)	British Virgin Islands, Guernsey, Jersey, Singapore	Jersey

Table 1: Multi-jurisdiction offshore law firms

Since the name has been adopted from the original London Magic Circle of law firms (which comprises of five firms), hence it attracted considerable criticism from the legal community who termed it as somewhat arrogant and self-aggrandizing. The Offshore Magic Circle comprises of nine firms (including all major firms based in Channel Islands) which represent a major segment of the global offshore industry. Furthermore, the major offshore companies also refrain from using this terminology. In his article, Edward Fennell, a legal correspondent working for The Times had expressed slightly impudent views of law companies which delegate themselves as part of an offshore magic circle (The Times, 2016).



**Harney Westwood & Riegels,
British Virgin Islands**



**Maples and Calder,
Cayman Islands**



**Walkers,
Cayman Islands**

Figure 7: Some of the major offshore law firms

3. The aftermaths of Panama Papers

This section discusses the historical effects and consequences of this momentous dilemma.

3.1 Post Panama legislative developments

Soon after the ICIJ published the details regarding the operations and activities of Mossack Fonseca, facilitating their clients through establishment of offshore companies to hide their objectionable assets and evading taxes, the government of the United Kingdom instantaneously started taking initiatives to discourage and prevent occurrence of similar instances in future. In this respect, new laws, rules and regulations were developed to put stop to money laundering and tax evasion. It could be said that such legislations were developed due to revelations made by Panama leaks and resulting pressure on the administration of PM David Cameron, as discussed below:

1. Registration of Beneficial Ownership: As per David Cameron new initiatives, effective June 2016, all companies incorporated inside United Kingdom would have to declare and get their beneficial ownership registered with the concerned authorities.

2. Investigation of tax evasion by HM Revenue and Customs: Those individuals and firms which had created offshore companies and were at risk of being labeled as tax evaders would be offered a final solution to avoid such complications i.e. complete, accurate and prompt declaration of all such assets/companies to Her Majesty Revenue and Customs (HMRC) before HMRC themselves are alerted of any tax irregularity. In this regard, the very first step should be consulting a tax advisor/lawyer for professional advice on whether or not the subject actions come under the purview of tax avoidance. Furthermore, best course of action, subject to potential involvement of the individual/company in tax fraud, would be direct contact with the HMRC who would launch a fraud investigation using the Code of Practice (COP9). Moreover, in wake of COP9 invocation and subject to full and unconditional collaboration with the HMRC, the parties involved would be permitted to avail the *Contractual Disclosure Facility*. Additionally HMRC would not proceed to initiate a criminal investigation and the impending penalties would also be reduced to minimum possible threshold.

3. Failure to avert money laundering/tax evasion deemed as corporate criminal offence: Since 2015 HMRC was stressing on need for passing of legislation for taking criminal action against corporate entities which fail to prevent their employees from being implicated/involved in money laundering/tax evasion. HMRC also presented a proposal/working paper titled "Tackling offshore tax evasion: A new corporate criminal offence w.r.t. failure to prevent the facilitation of tax evasion" Later in 2016, owing to said proposal from the HMRC and the pressure exerted as a result of Panama Papers, Prime Minister David Cameron announced that his government would submit the draft for passing the said legislation in order to further obstruct activities facilitating money laundering and tax evasion. It was believed that the contents of prospective corporate criminal offence would be akin to an already existing Bribery Act Offence to prevent bribery. However, the corporations would be required to implement "reasonable procedures" to ensure preclusion of tax evasion instead of "adequate procedures" required under the Bribery Act. Here it is worth mentioning that the new corporate offence would have wide ranging implications since it would hold the corporation accountable for all criminal activities, whether undertaken by agents, employees or associates.

4. New legislative advancements: In 2016, the Department of Business, Innovation and Skills put forward a consultation document which stated "Real estate property could provide a opportune medium for obscuring the proceeds obtained as a result of criminal activity following which Prime Minister Teresa May declared drafting of new legislation in order to effectively combat suspected money laundering activities which are briefly explained as under:

i) Illicit enrichment offence: This offence could be launched against any public official whose assets are found to increase appreciably and subsequent failure to furnish an ample clarification.

ii) Unexplained wealth orders (UWO): The courts would be given authority to enforce UWOs and self-initiate forfeiture proceedings if the subject of a UWO fails to furnish an appropriate explanation which stipulates his wealth standards.

iii) Identification of a money laundering entity: A new executive rule to identify/designate an entity as predisposed towards money laundering. This law also requires accounting firms, banks, financial institutions and law firms to take extra special precautions/measures while dealing with suspecting entities.

iv) Suspicious activity reports (SARs): SARs are usually filed by banks and other regulated enterprises and are used by UK law enforcement agencies as effective tools to identify shady/corrupt assets. As per current proposal anyone having knowledge or suspicion of money laundering activity would be legally liable bound to file a SAR.

It could be concluded that following the implementation of new initiatives/laws discussed above, in near future all corporations and individuals would be required to be more transparent w.r.t. assets' ownership as well as establishing offshore entities for concealing true beneficial possession. Furthermore, as said earlier, individuals and companies

who have already established shell companies should approach HMRC. For those companies and individuals who have made use of offshore accounts and may now be in danger of being exposed as tax avoiders or evaders, they should consult legal advisors to consider their liability and then contact HMRC before HMRC are themselves alerted of any such irregularity (Mondaq Consulting, 2016).

3.2 Panama Papers and the consequent developmental actions

As a matter of fact, the Panama papers provide an insight into the manipulative tax practices and the ensuing damages they had caused to the developing economies and their domestic resources. The communal/societal organizations are seizing this opportunity to call upon the global benefactors/donors to renew commitment to protect the domestic resources of the developing countries from the threat of manipulative tax havens and offshore corporations. Around 210,000 shell companies were created by Mossack Fonseca for around 200 of their affluent clientele around half of which are situated in the British Virgin Islands. Due to this verity several organizations representing the international aid community are calling upon the government of the United Kingdom to take stringent action against the elements involved in tax evasion activities. According to Action Aid, an international NGO which focuses primarily on injustice and poverty worldwide, developing countries lose over \$200 billion annually in tax revenues due to tax evasion.

Furthermore United Kingdom is recognized as a universal leader against corruption by general public. In this respect, first and foremost greater responsibility falls upon its shoulders to ensure implementation of beneficial ownership registers inside its borders, overseas domains and crown dependencies e.g. British Virgin Islands, Isle of Man and Jersey, all of whom have been implicated in Panama Papers as quoted by Stephen Twigg, MP/Head of Parliament's International Development Committee. Later on, David Cameron, UK's Prime Minister announced hosting of a global conference on anti-corruption in London which hopefully would present an ideal prospect for frontal tackling of corruption inside UK. He further added that combating corruption is UK's first and foremost priority in lead up to global development.

As discussed in earlier parts of this papers, majority clients of Mossack Fonseca used offshore companies, based in various tax-havens across the globe for instance, Bahamas, Mauritius, the Seychelles etc, to obscure their identities and wealth. More recently, African Network of Centers for Investigative Reporting (ANCIR) had been investigating and compiling a detailed report containing probing evidence about the African countries exploited through Mossack Fonseca operations. Majority of these cases primarily focus on companies in African mining sector and track tax revenue lost by national governments to companies/individuals based in the West. A particular instance concerns Kofi Annan, former Secretary General (United Nations) whose family in 2014 reportedly evaded tax payments on bank mortgage on a London apartment valuing \$500,000 by channeling the transactions through Mossack Fonseca.

Oli Pearce, head of tax policy at Oxfam International (Oxfam International leads Oxfam, an alliance of 20 independent altruistic organizations and focuses on global poverty alleviation) also stressed upon the critical need of effective reporting to ensure enhanced tax accountability. He said that even though all the financial transactions channeled through offshore companies might not be illicit but a major bulk would be beneficial to the world's ultra rich community and in turn would be hazardous to the economics of developing countries. He also stated that Oxfam International had been collaborating with several other charitable organizations to trace the missing tax revenues which have been mentioned in the Panama leaks, which is impossible to handle unless the secrecy of tax havens is dealt with. Here it is worth mentioning that despite of all the initiatives taken by the government of UK to ensure financial transparency, UK still administered the biggest number of tax treaties to facilitate provision of below threshold tax rates to UK's business ventures operating in developing countries (Devex, 2016)

3.3 Consequences of Panama Papers

This historical dilemma has copious consequences some of which would be discussed in this section. As mentioned earlier, an estimated 12 million documents, detailing the modus operandi of Mossack Fonseca, were leaked to *Süddeutsche Zeitung* (SZ). A thorough cross examination of these documentary files, by the investigative journalists of ICIJ, revealed that Mossack Fonseca had working relationship with approx. 14,000 banks, companies and legal firms to facilitated setting up of shell/offshore corporations in various tax havens. Its portfolio included some of the world most powerful head-of-states, high-worth individuals and top government officials. The ensuing investigations have had enormous global impacts. Soon after the initial news were published by ICIJ, Sigmundur Davíð Gunnlaugsson (Prime Minister, Iceland) was forced to step down, China instituted an abrupt censorship initiative and investigations were initiated against individuals implicated in the Panama papers.

Until now the Panama leaks has had five major consequences which are discussed below:

i) **Resignations of numerous world leaders:** As of now various head-of-states have already been forced to resign from their offices e.g. Sigmundur Davíð Gunnlaugsson (PM, Iceland); Nawaz Sharif (PM, Pakistan) and Mauricio Macri (President, Argentina). Additionally, David Cameron (PM, United Kingdom) was the first top official ever to declare his tax returns. Since the list of individuals implicated in the leaks contains various head-of-states too, it is

probable that as the investigations unravel a considerable number would be removed from their seats of power.

ii) Stringent legislation and policy development: Several developed countries e.g. Germany, United Kingdom have taken several stringent initiatives in order to curb legal but ethically dubious tax evading scheme which aim at facilitation of the rich. In addition to existing anti money laundering approaches, increased focus would be made on strengthening financial reporting standards, improved global information sharing, and increased cross-border coordination, verification and enforcement. In this respect, the US department of Treasury had already taken some initiatives and proposed “Customer due diligence (CDD) rules” which requires the financial institutions to report individuals holding a minimum 25% stake in any organization which owns a US bank. The basic purpose behind the introduction of CDD rules is to ensure that: **(i)** U.S. banking system has the capability to track the final beneficial owners of US accounts and **(ii)** circumvent secretive financial transactions similar to those revealed in Panama leaks.

iii) Mounting pressure on offshore financial centers to enhance due diligence and transparency: In the wake of Panama leaks, if Panama doesn't implement higher due diligence and transparency standards, the country's offshore companies could face immense difficulties and probably sanctions from other countries owing to inadequate availability of: **(i)** accounting records **(ii)** offshore firms' ownership information and **(iii)** non-responsiveness of Panamanian government towards other countries' requests w.r.t. furnishing of relevant tax exchange accords as highlighted by Organization for Economic Co-operation and Development (OECD).

iv) Extensive changes financial information exchange mechanism: France, Germany along with several other countries have been calling for putting the tax havens on a blacklist which would result in their prompt removal from the SWIFT (a global messaging network employed by financial institutions worldwide for secure information transmission), should they fail to ensure absolute transparency in their ownerships structures.

v) Skepticism and suspicion: Whilst the number of people who maintained offshore banking accounts is very diminutive, perhaps the most impelling impression given by Panama and other information leaks would be resultant skepticism and suspicion that a relatively large proportion of individuals keep their riches in secret bank accounts with the intention to evade tax payments. However, the fact is that majority of accounts implicated in the Panama leaks were regular tax payers (Jefferson Trust, 2016).

4. Future implications and recommendations

4.1 Future implications

The debate concerning uses and misuses of offshore accounts is a controversial one and has been going on for a substantial period of time. Several law firms (Table 1) have been known to conduct the business of setting up offshore accounts and shell companies for their various clients in various tax havens across the globe (Table 1) with prime objective of attaining financial confidentiality and avoiding taxes which is understandable and largely legal. However, majority of shell companies are associated with illegal activities e.g. financial fraud, money laundering, tax evasion and subversive economy. It was due to the Panama leaks that secret information spanning over four decades, regarding wealth and riches gathered by the world's political leaders through financial corruption and public exploitation along with further proof of their subsequent dealings, was revealed to the general public. The major revelation, however, is not that powerful people hoard billions in offshore banks, but rather the detail in the proof of their dealings. The enormity of this information is far greater than the combined magnitude of Wiki Leaks (2010) and Edward Snowden NSA leaks (2013) which would assist the investigators to comprehend the evolution of financial industry over time and the further underline the collaboration between powerful individuals and corporations to conceal their fortunes. This dilemma would have long lasting reverberations and implications some of which would be discussed hereunder:

1. Lost credibility

Panama leaks implicated several political leaders and companies from Africa, Asia, Europe and South America. Since then, investigations had been initiated in Australia, Belgium, France, Germany, Pakistan and United Kingdom along with several other countries. The situation is most critical in Europe where times are harsh and public demand for accountability is extreme. As discussed above, Sigmundur Davíð Gunnlaugsson (PM, Iceland) was accused of having conflict-of-interest concerning his banking negotiations and offshore activities and had since been removed from the office. UK's then Prime Minister, David Cameron, who greatly advocates financial transparency, was also facing criticism for the shares he held prior to taking office. This dilemma could also potentially affect Britain's bid to exit from the European Union (Brexit). Brazil, for instance has been facing a political turmoil due to implication of country's two ex-presidents Dilma Rousseff and Luiz Inácio Lula da Silva alongside several powerful government officials in Operation Car Wash and their associated impending impeachment trial. However, in countries under the rules of authoritarian governments, the accusations would be less detrimental. Furthermore, several individuals having close association with President Vladimir Putin were implicated in the leaks, but the whole situation is being quoted as *Putin-phobia* and hence disregarded. In China, Deng Jia Gui, brother-in-law of

President Xi Jinping was also associated with the leaks but a censorship drive has since been initiated to restrain any online discussion related to the said topic (Huffington Post, 2016).

2. Financial corruption in spotlight

The Panama Papers have led to the conclusions that (i) corruption is not the problem of a single nation or country but it is an international problem (ii) not only sovereign governments but individuals and companies are involved in ethically contentious activities. Here it's worth mentioning that annual Corruption Perceptions Index (CPI) reported severe alleged corruption in 70% of nations worldwide which is massive. Reportedly, African countries were ranked worst on CPI. A Ugandan company, Case and Point allegedly avoided \$400 million in taxes which is a substantial figure keeping in view that it exceeds the annual health budget of the country. Talking of the fact that how come Panama leaks hasn't implicated that many US individuals/corporations. Interestingly, Panama is not a tax haven for U.S. since the procedure to create a shell corporation inside the States is much pretty straightforward than Panama, due to weak rules/regulations and relaxed legislation coupled with accountants/lawyers aware of loop holes in the system, allow the influential people to easily evade the responsibilities otherwise binding on common citizens (Huffington Post, 2016).

3. Pressure to eradicate illegal activities

In the aftermath of Panama leaks, political leaders have pledged commitment and resolve in passing legislations ensuring future non-occurrence of similar instances; several countries have launched probing investigation into the matter; and public is largely livid with the situation. However, to put things in practical perspective, it would take much more than just words and commitments to effectively curb objectionable practices. In this regard, the authorities would have to undergo tax reforms, initiate crackdown against tax evasion and last but not the least, international cooperation and information exchange. Furthermore, Panama's President Juan Carlos Varela re-affirmed his pledge for financial transparency and said that the government would form a committee comprising of global financial experts which would give recommendations for increased transparency in offshore financial industry. Furthermore, these recommendations would also be shared with other nations in order to create a united front against corruption. However, the reality is that the probability of this pressure sparking a significant change is not so high which will further bring resentment among the masses towards the elite and powerful. Nonetheless, it must be said that the Panama leaks corroborates and intensifies the general public perception that the rules of game are different for elites and commons (Huffington Post, 2016).

4. Introduction of corporate tax repatriation schemes

It was reported that American companies have put away approx. \$ 2.1 trillion overseas in order to avoid national taxes (Bloomberg, 2015). In order to overcome this quandary, in 2016 US President Donald Trump announced a corporate tax repatriation initiative. As per this initiative the financial profits earned overseas, would be subjected to a lower profit tax rates which as long as they are invested inside the United States jurisdictions. Ideally, the corporate tax should be reduced to a more competitive scale at the same time removing loopholes in the tax infrastructure which will eliminate the rationale for overseas stashing of funds. However, in reality a tax repatriation scheme even at 10% would be far better than ever increasing offshore hoards of cash, trans-atlantic tax scuffles and abysmal infrastructure (Bruegel, 2016).

In 2003, in order to curb tax evasion, the European Union introduced the "savings directive" which directs the Swiss and other offshore banking institutions to deduct a withholding tax on interest payments of EU residents. However Gabriel Zucman highlighted that this condition could only be met if the said account was maintained in the name of an EU resident individual, and could easily be eschewed if the account was in the name of a shell company. He found negative correlation between fiduciary deposits maintained by EU residents and those assigned to tax havens. The savings directive became effective between 2004 and 2005 and drew a strong response from the EU depositors. Resultantly, the move saw a decline in EU Swiss fiduciary deposits (10%) and increase in deposits of tax havens (8%) which also confirms Zucman's theory. (Zucman, 2013)

5. The panama papers and the art market

Panama papers perfectly demonstrate how secrecy operates in the art market. In 2015 renowned economist Nouriel Roubini had stressed on need of regulating the art market due to several reasons: (i) subject to availability of insider information art market is highly vulnerable to regular trading; (ii) the auction prices could be manipulated subject to dealers' provision of guarantees on auctioned work; and (iii) tax evasion due to transfer of paintings inside the families. Additionally, he highlighted that main reasons behind flourishing of US art market (i) favorable/flexible tax treatment provided by the government; and (ii) standard insider information, which is considered illegal by other markets. Furthermore, he stated that art market was vulnerable to "booms, busts, fads, manias and passions" due to art works having no clear financial value and opaqueness of market (Financial Times, 2015) (NY Times, 2016).

6. The mechanics of the tax havens

In a paper published in 2013, Gabriel Zucman illustrated the approach adopted by offshore banks and shell

corporations to facilitate tax evasion. The principal role of the offshore financial centers is to provide assistance to foreigners who intend to invest outside of their respective domains, with the banks acting only as facilitation channel/conduit. It was found out that majority of foreigners maintaining accounts in Swiss banks hold fund/shares of Ireland, Luxembourg and U.S. In order to understand the functioning of tax havens, let's take an example of a French national investing in a Luxembourg-based fund using a Swiss account. Since, Luxembourg imposes no taxes on cross-border payments hence the subject investor would receive full dividend yield on his investment and would also manage to evade the French personal income tax since there exists no information exchange treaty between France and Swiss banks.

Swiss banks manage a very special type of deposit called the “**fiduciary deposits**”. These deposits are worthless for businesses/corporations since they can't be utilized as exchange conduit and are intended exclusively for domestic households. The funds placed in these deposits are invested, on behalf of clients, in foreign money/exchange markets and technically the interest income is paid directly to the depositors by the foreigners and the Swiss banks operate as fiduciaries only. These fiduciary deposits are exempted from payment of 35% advanced tax. However, the actual situation is quite the opposite. Zucman stated that majority of fiduciary deposits in Swiss National Bank are maintained in name of various shell corporations established in tax havens e.g. British Virgin Islands, Liechtenstein and Panama and belonging to various nationals of rich countries especially the Europeans (Zucman, 2013)

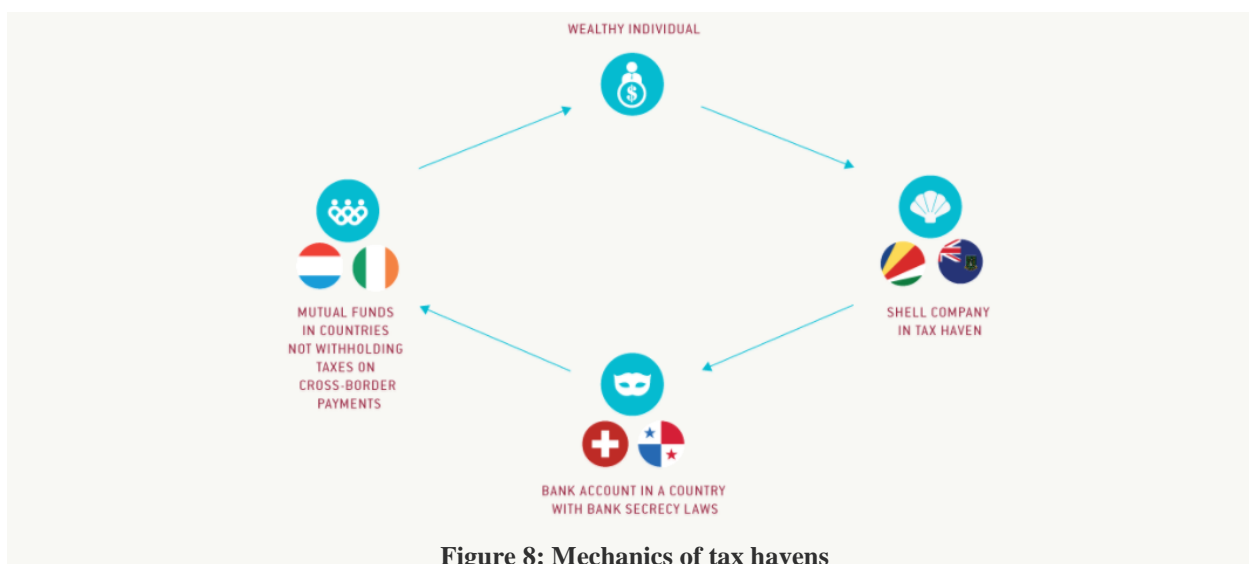


Figure 8: Mechanics of tax havens

6.5 Recommendations

As the repercussions of the panama leaks continue to unfold and debate about introduction of stringent tax reforms continues, perhaps the most important point-of-concern would be the discussion over the structure of meaningful tax reforms, given the fact that majority of financial activities reported were completely legitimate (Süddeutsche Zeitung, 2016). A journalist, Glenn Greenwald said that the Panama leaks had highlighted the ease of procedure to setup an offshore company and concurrently staying inside the legal boundaries (The Intercept, 2016). Hence it is a tricky situation since the operation itself and the reasons behind keeping wealth offshore are completely legitimate (CNN News, 2016). However, effective implementation of tax reforms is immensely dependent on publicizing the transactions. Gabriel Zucman, a professor of economics at University of California, said that tax revenue amounting to approx. \$200 billion is lost annually due to financial activities of tax havens, which has severe detrimental effects especially to economies of developing and underdeveloped nations. He further added that of gamut of tax evasion and related stratagem undoubtedly make these activities illicit. The dilemma is that one fails to report his income and taxes levied while filing his tax returns. Similarly, one tries to disassociate himself from his wealth by putting it in foundations, shell corporations and trusts which is another gray area of this commotion. As a matter of fact, instead of questioning the authenticity/legitimacy of said anomaly, system transparency should be the focal point of all this exercise which would make tax evasion more intricate and would bring the rich and wealthy into the tax payment net (Zucman, 2013).

Tax reforms would be most attractive to countries (US, Brazil, China, France, Germany, Japan, Russia, Spain and UK) which are losing a lot of tax revenue due to wealth offshoring (CXC Global, 2015). Presently, there is no global authority/body which could supervise this matter. However, in 2014 due to efforts of OECD, 51 countries signed an

agreement deemed to facilitate tax information sharing w.e.f. 2017 (OECD, 2014) which, according to some researchers, has not been so effective due to aforementioned hurdles: **(i)** limited information sharing resources of tax authorities; **(ii)** lack of power to act; and **(iii)** OECD's slow and bureaucratic information sharing mechanism (Washington Post, 2016). Experts proposed construction of a **global financial registry** which would not only keep the record of international assets in various countries, traceable by tax authorities, but would also impose sanctions upon non-compliant countries and financial institutions. This proposal initially originated from UK after the Panama papers (The Guardian, 2016). Another major difficulty in implementing tax reforms is that it would require international collective effort of all nations which logically/logistically speaking is extremely difficult. Furthermore, since the economies of tax havens heavily depend on capital invested by foreigners through local companies, hence it would be in their wider interest not to welcome and join any such coalition (The Atlantic, 2016).

7. Conclusion

The Panama leaks serve to confirm the suspicion of a systematic/sophisticated exploitation of schematics of offshore tax havens and shell companies in order to conceal assets and wealth. However, much more need to be done to expose the magnitude of these practices. It's time for the authorities to strictly take action based on evidence provided by the new stories exposed due to efforts of investigative journalists and researchers who untiringly strived to infiltrate these offshore entities. Resultantly, this would be possible and much easier since the Panama papers have removed the patina of authenticity from these offshore service providers. Conceivably, the offshore service providers' assertions of not having the proper procedural documentation and denial of any involvement in structuring and effecting illegal activities would generate some skepticism. The effective working of the justice and legal system is associated with people narrating the exact truth about the chain of events and activities. Hence, any offshore service provider will have to consider lying with impunity.

Perhaps it is the time to persist with the present impetus and take practical steps to abolish or at least limit the usage of opaque structures. In fact in United States, a motion for legislation has been proposed which would require the owners and actual beneficial owners of US-based corporate entities to register with the authorities. Furthermore, US is an ardent supporter of offshore financial transparency hence would draw a lot of criticism if same is not forced and implemented inside its own jurisdictions. One good thing that has been instigated from this dilemma is that "rule of law" could be employed in several offshore jurisdictions. Actually, several jurisdictions have adopted stern and strict confidentiality/privacy rules, but additionally there are also such rules which allow freezing of obnoxious assets and repatriation in comparison with rules and regulation in force in US.

Panamanian law firm, Mossack Fonseca has denied the accusations leveled upon it in the aftermath of Panama Leaks quoting that it was just safeguarding the interests and secrecy of its clients. However, the Justice Department of US along with other law enforcement agencies worldwide have been studying the data which is publicly available and at the same time trying to gain access to the offshore database for effective law enforcement. It was specified at an Offshore Alert Conference held in 2016, that the law enforcement agencies could be provided direct access to Mossack Fonseca documents and files just like the German newspaper. There exists a proper forum which would be helpful in exposing the apparently legal frontal entities which are used to launder dirty assets or mask assets from genuine creditors.

France and Germany have also devised aggressive strategies to combat tax evasion and fraud. Previously the finance ministers of both countries, Wolfgang Schäuble (Germany) and Micheal Sapin (France), have been vigorously involved in several international projects aimed at achieving financial transparency e.g. automatic information exchange between banks. Correspondingly they promptly availed the opportunity provided by Panama leaks to legislate and implement additional tax reforms in their respective countries (Financial Times, 2016).

Tim Harford (Financial Times) quoted that it is quite intimidating that the current debate has taken a name-and-shame, patch-and-mend twist, since a large majority of people involved in tax evasion had never availed the services of an offshore financial center (Financial Times, 2016). Actually, the taxing systems of most countries, whether developed or developing, are flawed and contain numerous loopholes due to failure of national authorities in standardizing the system. The need of the hour is to undertake augmentation, harmonizing and abridging the systems, which of course is a hard nut to crack and without alternatives (Financial Times, 2016).

Richard Ray (Financial Times) argues that majority of people benefit from the services of offshore financial centers and millions of them are on pensions and don't have enough awareness about their functioning mechanism. Many such financial centers are involved in activities related to economic growth, employment alleviation, investment, trade and maximizing the savings deposits rate of return. As per the peer reviews conducted by Financial Action Task Force (FATF) and Organization for Economic Cooperation and Development (OECD), the transparency standards of British offshore centers are robust and most standardized and their credibility lies in the steadfast British laws, courts and legal experts thus making them an ideal option for any international investor. In 2013, an exploratory study was conducted by Capital Economics which revealed that Jersey alone generates 140,000 jobs and

an annual tax revenue of £2.5 billion which almost equals the combined figure lost by UK due to tax evasion (onshore and offshore) (Financial Times, 2016).

As a matter of fact, to ensure that the lessons provided by Panama papers are heeded to and are put to good use is subject to full access to documentary files/evidence along with their proper use. The task undertaken and completed by ICIJ and other investigative reporters has been chronological, in a bid to expose the secret world of financial inequality and injustice. Furthermore Organizations like FATF, OECD and National Association of Federal Equity Receivers (NAFER) could make a massive difference by continually applying pressure through ensuing investigations and using organization's influence and steadfastness which would be highly beneficial in divulging illegal/objectionable financial dealings.

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