CHARGING STANDARDS FOR TERRORISM FINANCING OFFENCES IN PAKISTAN
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Charging Standards for Terrorism Financing Offences in Pakistan: A publication by the Research Society of International Law, Pakistan, with support from the American Bar Association.

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To request a copy of this publication, please contact the Research Society of International law, Pakistan at: House 2A, Main Embassy Road, Sector G-6/4, Islamabad, Islamabad Capital Territory, +92 51 283 1033, or by fax: +92 51 873 9400, or by email at: info@rsilpak.org.

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1. Introduction

Terrorist financing (TF) enables terrorist groups and individuals to function, recruit and commit terrorist acts in Pakistan, regionally and globally. Countering TF is important in protecting national security and forms a key part of Pakistan’s Revised National Action Plan to choke TF and proscribed organisations. This will reduce the terrorist threat to Pakistan by depriving terrorists and violent extremists of the financial resources and systems required to conduct terrorist-related activity.

Under the Constitution of Pakistan, in determining “any criminal charge against him a person shall be entitled to a fair trial and due process.” The purpose of this document is to: (i) develop the methodology of investigators and prosecutors to ensure maximum effectiveness across the federation through a combined approach aimed at combating TF; and (ii) ensure that sufficient evidence is presented before the Anti-Terrorism Courts (ATCs) in a timely fashion to support well-framed charges - an integral part of fair trial and due process.

The standards contained in this document are designed to assist investigators and ATC prosecutors in making informed decisions before, during, and after the conclusion of a trial and, in particular, enable them to select the most appropriate charge(s) in TF cases under the Anti-Terrorism Act, 1997 (ATA).

These standards do not seek to override codes of conduct issued by the regional Prosecutors General, nor override the need for consideration to be given to every case on whether a charge is in the public interest. These standards should not be used for investigatory decisions, which is a matter for law enforcement agencies (LEAs). Nevertheless, investigating officers (IOs) should keep this guidance in mind while recommending charges, in addition to court judgments and other documents.²

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General Principles:

- Cooperation is required to proactively identify, investigate and prosecute those who fund terrorism;
- Early engagement between the LEAs of Pakistan and the relevant prosecution department is vital to ensure a coordinated approach to countering TF. In turn, this engagement and cooperation ensures that investigative resources are used appropriately and legally admissible evidence is secured from the outset;
- When reviewing police files or assisting the court in framing charges, prosecutors should make sure that the charges are supported by evidence;
- The decision whether or not to prosecute TF cases are serious and complex matters, and should be carried out with utmost care and responsibility;
- It is the responsibility of the prosecutor to ensure the right person is prosecuted for appropriate offences;
- The charge should reflect the seriousness and extent of the involvement of a suspect in the criminal activity to determine liability; and,
- Each case is to be considered on its own merits.

2. What is Terrorist Financing?

Terrorists need money to sustain themselves and to carry out terrorist acts. The ATA does not define TF and instead provides for various offences that fall under the umbrella of TF which are examined in detail below. While there is no universal definition of TF since various legal systems, government and international bodies have used different definitions, broadly speaking, TF is the financing of terrorist acts, and of terrorists and terrorist organisations through money or other property.\(^3\)

The primary goal of individuals or entities involved in TF is not necessarily to conceal the sources of the money but to conceal both the financing and the nature of the financed activity (i.e. the subsequent use of the money for terrorism).

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3. Guidelines for Police and Prosecutors before the Submission of Challan

IOs and prosecutors have different roles during the process of investigation before submission of challan. IOs collect evidence whereas prosecutors are not permitted to direct investigations and their role is more advisory in nature.

The IO must either specialise in financial investigations or engage experts from other LEAs to build a robust evidence-based TF case. Early engagement and cooperation with an ATC prosecutor can be crucial as they may provide investigative advice and support, suggest lines of inquiry, explain evidential requirements, and assist in any pre-charge proceedings throughout the investigative and prosecution process. To ensure effective early engagement and cooperation with the LEAs, prosecutors need to have sufficient understanding of the legal provisions, processes and strategies that IOs adopt in TF investigations. While this document addresses such factors, more details may be found in other documents.4

In any financial investigation, including TF investigations, it takes time to obtain bank and business records, especially if they are located in other jurisdictions. Sometimes, it can take a year or longer to obtain such evidence. Therefore it is imperative that discussions regarding obtaining overseas evidence be had with the relevant authorities as soon as possible.

Although banking and business records feature in most terrorist investigations, they rarely provide sufficient evidence on their own to justify a conviction. The evidence in TF investigations is primarily documentary in nature, which is to be corroborated by oral evidence. The IO has to use powers under Section 94 of the Criminal Procedure Code 18985 (CrPC) that enables investigators to obtain records from relevant statutory record keepers. The IO should know what is to be requested in an application under Section 94 CrPC filed before a Sessions court.

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As part of the IO’s TF case strategy, a work plan should be developed that considers the following:

- Surveillance requirements;
- Intelligence gathering with a view to developing evidential parallels;
- Any special investigative techniques required under Section 19C of the ATA;\(^\text{6}\)
- Procedures for managing documents;
- Desired evidence of criminal activity and proceeds;
- Digital evidence opportunities and capabilities;
- Witnesses to be contacted;
- Domestic and international financial records needed;
- Search warrants to be obtained; and,
- Arrest strategy.

The initial phases of the investigation should proceed as discreetly as possible:

- Surveillance of the subject and associates early in an investigation can provide valuable leads to evidence (e.g., identifying and securing CCTV at a regular bank or ATM at the time of a transfer or withdrawal);
- Early disclosure of an investigation can cause the subject and associates to take precautions that may make surveillance useless as well as lead to the destruction of evidence; and,
- Bank records should be obtained early and discreetly. One set of records usually leads the investigator to seek another set of banking records.

Surveillance and lifestyle intelligence will provide information that can be used to set the time of the arrest or search (after a delivery, after a meeting, during a meeting, and so on). In particular cases, it is good practice to interview suspects or witnesses at the time of the search warrant execution. The use of undercover operations, interception of

\(^6\) “Section 19C: Application of investigation techniques. (1) The investigating officer may with the permission of Court, within sixty days of such permission, use techniques including undercover operation, intercepting communications, accessing computer system and controlled delivery for investigation of financing of terrorism under the law in force. The aforementioned period of sixty days may be extended up to further period of sixty days by the Court on a request made to it in writing. The Court may grant extension, if it is satisfied, on the basis of situation or reasons given in the written request. The provisions of this sub-section shall be in addition to and not in derogation of any other law for the time being in force.”
communications or consensual telephone monitoring can also produce valuable evidence. Thus, under the various domestic laws, applications can be made which provide these powers including the ATA, the Anti-Money Laundering Act 2010 and the Investigation for Fair Trial Act 2013. Such applications should be made at the earliest opportunity to ensure the evidence is admissible.

The financial evidence gathered in a TF case should be similar to that gathered in a money laundering case. Important lines of inquiry include:

- Where was the money obtained from?
- Who gathered the money?
- Who deposited the money?
- Who carried the money across the border?
- Were there any electronic transfers?
- Were any banks, financial institutions or bankers involved?
- Were professionals such as attorneys or accountants involved?

Considering the arrest phase after registration of the FIR is crucial to maximise the potential of evidence-gathering impact. The arrest phase strategy should be kept as discreet as possible to prevent information leakage. It is important to have sufficient resources on standby, including digital forensic experts and financial investigators, who can identify relevant financial information such as banking details, computer passwords and cryptocurrency wallet identifiers, etc.

4. Guidelines for Prosecutors for Scrutiny of Challan

Once prosecution of an offence has commenced and referred to the relevant prosecuting authority, the decision whether to continue the prosecution is made by the relevant prosecution department independently of those who are responsible for the investigation of criminality. The prosecutor must review every TF case that is received from the police. The prosecutor must scrutinise the case file to ensure that all pre-trial formalities have been completed so that the actual trial proceeds uninterrupted. As is the case with IOs, prosecutors should have a certain level of financial expertise. As they scrutinise the challan, the appointed prosecutor must ensure they have all the information they need to make an informed decision about the case.

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7 Section 19B of the ATA.
If, as encouraged, an allocated prosecutor has been involved at the early investigative advice stage, the same prosecutor should review the case and scrutinise the challan, and follow the usual reporting structure.

### 4.1. Decision to Prosecute - General Principles

Each TF case must be considered on its own facts and merit. There are general principles that apply to the way in which prosecutors must approach case, and these apply equally to TF cases:

- Prosecutors must be fair, independent and objective;
- Personal views about the ethnic or national origin, gender, disability, age, religion or belief, political views etc., must not influence the decision-making process;
- Prosecutors must not be influenced by improper or undue pressure from any source, and must, at all times, act in the interests of justice and not for the sole purpose of obtaining a conviction; and,
- Prosecutors must ensure that they do not allow a TF case to be prosecuted, or continue to be prosecuted, where to do so would be seen as oppressive or unfair by the Courts. The review process is a continuing one and prosecutors must take account of changing circumstances as the case develops. Prosecutors and police work closely together but the final responsibility for deciding whether the case should go ahead rests with the appropriate prosecution service or department.

To ensure that uniform decisions are made across the country on TF cases, every prosecutor must apply the evidential test and public interest test in determining whether to prosecute and to continue a prosecution.

### 4.2. The Evidential Test

The evidential test requires the prosecutor to ask whether there is a realistic prospect of conviction (is it more likely than not that the accused will be convicted). Where, in the opinion of the prosecutor, the evidential test is not met and the case cannot be strengthened based on available evidence, the case must not proceed. To do so in these circumstances is an abuse of authority on behalf of the prosecutor's office. This test ensures that those accused against whom there is insufficient evidence will not face criminal proceedings and will not be exposed to litigation. The presumption of innocence is guaranteed so is the right to due process and a fair trial.
The evidential test is an objective decision based on an assessment of the entire evidence. Determining whether the evidential test is met is never an easy task and requires experience and judgement.

It must be understood that the test of realistic prospect of conviction is different from the one applied by the ATC, which convicts only where it is sure that the accused is guilty of the offence charged (the criminal standard of proof, i.e., beyond reasonable doubt).

4.3. THE PUBLIC INTEREST TEST

Where there is a realistic prospect of conviction in a TF case, the public interest test requires the prosecutor to consider whether it is in accordance with the public interest to prosecute. All prosecutions are considered to be in the public interest unless factors indicate the contrary.

A TF prosecution will usually take place unless the prosecutor is sure that there are public interest factors against prosecution that outweigh those in favour of prosecution. Generally speaking, the more serious the offence or the offender’s record of criminal behaviour, the more likely it is that a prosecution will be required in the public interest. TF cases will almost certainly require a prosecution where the evidential criteria are met.

In considering public interest factors, it is not simply a matter of adding up the number of factors for and against prosecution. Each case must be considered on its own facts and merits. Prosecutors must assess the overall impact of the public interest factors on the decision and the case.

4.3.1. Public Interest Factors

The following are some common factors that must be applied while making prosecutorial decisions on TF cases. They are not exhaustive and each case must be considered on its own merits.

Public interest factors in support of prosecution for TF include:

- The offence is serious;
- The offence involves funds of a terrorist act or serious offending;
- The offence is planned or is the outcome of a concerted and coordinated activity;
• The offence is committed by a group;
• The accused has previous convictions of the same or serious nature;
• The accused has committed the offence while on bail or probation;
• The offence includes an element of corruption or misappropriation of public money;
• There is a likelihood of recurrence of offence; and,
• The offence involves breach of trust.

Public interest factors against prosecution include:

• The offence carries a small punishment and is not likely to be repeated;
• The accused is an elderly and infirm person;
• Before or during the trial, the accused is suffering from a serious mental or physical illness;
• The victims or the witnesses would be subjected to the risk of serious physical or mental trauma if the case is allowed to proceed;
• The loss or harm caused by the offence is slight and was a result of a single incident or it was caused by an error of judgement or genuine mistake;
• The loss or harm was caused by an error of judgement or genuine mistake;
• The offence is a result of a misunderstanding of the law;
• The offender has cooperated in the investigation and is ready to undo the effects of his action;
• The offence has been lawfully compounded or may be compounded; and,
• The offence is not of a serious nature and has occurred as a result of grave provocation.

The following factors are not to be taken into consideration in evaluating the public interest of a TF case:

• The possible political consequences of the exercise of discretion; and,
• The prosecutor’s personal feelings concerning the alleged offender or victim. If this is the case, the prosecutor should withdraw himself from the case.
4.4. SELECTING CHARGES

A prosecutor must keep in mind the following general principles while selecting TF charges:

- The charges should reflect the seriousness/gravity and extent of the accused’s offending, thereby allowing the courts to sentence appropriately;
- The choice of charges should enable the case to be prepared and presented in a clear and simple manner;
- There should be no overloading of charges by selecting more charges than necessary; and,
- There should be no overcharging by selecting a charge that is not supported by evidence to show resolve and/or seriousness in dealing with criminal conduct.

5. Guidelines for Prosecutors during Trial

The evidential and public interest tests should be constantly under review during the course of the trial proceedings.

If at any stage evidence is brought to the attention of the prosecutor which indicates that there is no longer a realistic prospect of conviction, then the matter should be reconsidered. Examples include actus rea evidence such as alibi, or mens rea evidence such as non-terrorist ideology.

6. Terrorist Financing Offences under the ATA

6.1. FUND RAISING (SECTION 11H)

11H. Fund Raising

(1) A person commits an offence if he:-

(a) invites another to provide money or other property; and
(b) intends that it should be used, or has reasonable cause to suspect that it may be used, for the purposes of terrorism or by a terrorist or organization concerned in terrorism.

(2) A person commits an offence if:-

(a) he receives money or other property; and
Section 11H of the ATA contains three distinct offences which are often closely linked. It aims to cover the entire process of fund raising including the invitation to another to provide money or other property, the receipt of money or other property, and the provision of money or other property.

6.1.1. Section 11H(1)

Points to prove:
- Date and location;
- Invitation to another;
- For money or other property;
- Intending that it should be used; or
- Having reasonable cause to suspect it may be used for the purpose of terrorism.

Section 11H(1)(a) - invites another to provide money or other property

(1) This offence should be charged when there is evidence of the suspect making an invitation to another.

(2) This offence does not require the invitation to be successful. For example, A makes an invitation for money to B. B ignores the invitation. A has still committed an offence, provided he has the requisite intention (see below).
(3) Only proof that an invitation was made needs to be shown. It is not required to demonstrate that a transaction took place. For example, if A made an invitation to B, it is not necessary to show that B gave money to A based on that invitation. The mere fact that A made an invitation fulfils the requirements of this offence.

(4) It is not necessary to demonstrate that the invitation is made to a specific individual. The invitation can be an open call for funds, donations, or other property not directed to any specific individual or legal person (company, organisation, etc.).

(5) The invitation can be made through any medium – orally, in writing, over the phone, through text message, WhatsApp/Telegram message, email, online, on a message board, etc.

(6) The invitation does not have to specify that the funds will be used for terrorism. It may be a fraudulent invitation to provide money for an innocent purpose (charity, etc.). The suspect will be culpable if he made any sort of invitation for money or other property with the intention that it be used for terrorism, by a terrorist or an organisation concerned in terrorism (see below).

(7) The invitation can be for money or other property.

‘Money’

a. ‘Money’ includes “coins or notes in any currency, postal orders, money orders, bank credits, bank accounts, letter of credit, travelers cheques, bank cheques, bankers draft, in any form, electronic digital or otherwise and such others kinds of monetary instruments or documents as the Federal Government may by order specify.”

‘Other property’

b. Property is a broad term and includes “property of every description, whether corporeal or incorporeal, movable or immovable, tangible or intangible and includes shares, securities, bonds and deeds, and instruments

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8 Section 2(oa) of the ATA.
evidencing title to, or an interest in, property of any kind and money.”

c. The invitation need not be for a donation, grant, or charity. It can also include an invitation for money or other property to be given, lent, or otherwise made available, whether or not for consideration. Therefore, an invitation for a loan or to allow a house or a plot of land to be used (even in exchange for rent) would also fulfill the requirements of Section 11H(1).

(8) During a charging decision, it is, therefore, important to know how broad this offence is and not to apply it narrowly.

(9) The invitation to another can be proved based on the following evidence (this list is non-exhaustive):

<table>
<thead>
<tr>
<th>Elements of Crime</th>
<th>Evidence able to prove element</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Actus Reus</strong></td>
<td></td>
</tr>
<tr>
<td>Invites someone else</td>
<td>• Witness testimony</td>
</tr>
<tr>
<td></td>
<td>• Confession</td>
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<tr>
<td></td>
<td>• Email / fax</td>
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<tr>
<td></td>
<td>• SMS / Social media message</td>
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<tr>
<td></td>
<td>• Audio message/recording</td>
</tr>
<tr>
<td></td>
<td>• Pamphlet / Poster / Placard</td>
</tr>
<tr>
<td></td>
<td>• Donation (chanda) receipt</td>
</tr>
<tr>
<td></td>
<td>• Photographs</td>
</tr>
<tr>
<td></td>
<td>• Video</td>
</tr>
<tr>
<td>To provide money or other property</td>
<td>• As above</td>
</tr>
<tr>
<td></td>
<td>Not necessary but may be helpful to prove the case:</td>
</tr>
<tr>
<td></td>
<td>• Money or other value changes hands</td>
</tr>
</tbody>
</table>

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9 Section 2(pa) of the ATA.
10 See Section 11H(4) of the ATA.
Section 11H(1)(b) - intends that it should be used, or has reasonable cause to suspect that it may be used, for the purpose of terrorism or by a terrorist or organization concerned in terrorism

(1) A decision to charge a suspect with the offence under Section 11H(1) must involve consideration of the *mens rea* of the suspect.

(2) A Section 11H(1) offence can only be committed where the suspect intended that the money or other property that would be received after an invitation to another would be used for terrorism or by a terrorist or organisation concerned in terrorism or had reasonable cause to suspect that it may be used for terrorism or by a terrorist or organisation concerned in terrorism.

(3) *Intends that it should be used for the purpose of terrorism or by a terrorist or organisation concerned in terrorism:* The Prosecutor must demonstrate that the person inviting has knowledge that the money or other property that he/she would be receiving will be used for terrorism, by a terrorist or an organisation concerned in terrorism.

‘Used for the purpose of terrorism’

a. Knowledge that the money or other property would be used for any of the actions specified in Section 6(2) of the ATA would fulfill the requirement that it is ‘used for terrorism.’ Additionally, any action in violation of an international convention specified in the Fifth Schedule of the ATA would also be an act of terrorism.\(^{11}\)

b. It is also important to note that “terrorism includes any act done for the benefit of a proscribed organization.”\(^{12}\)

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\(^{11}\) Section 6(3A) of the ATA.

\(^{12}\) Section 6(5) of the ATA.
c. Accordingly, any act which may benefit a proscribed organization would also be terrorism, and therefore knowledge that the funds would benefit such an organization or would go to someone who would use it for the benefit of such an organization would be sufficient to establish this offence.

‘By a terrorist’

a. The ATA defines ‘terrorist’ as:

(a) any person who has committed an offence of terrorism under this Act, and is or has been concerned in the commission, preparation, facilitation, funding, or instigation of acts of terrorism; or,

(b) any person who is or has been, whether before or after the coming into force of this Act, concerned in the commission, preparation, facilitation, funding, or instigation of acts of terrorism, shall also be included in the meaning given in clause (a) above.\(^\text{13}\)

b. Therefore, knowledge that the money or other property will go to a person who has committed an offence of terrorism or will commit such an offence or one who has been concerned in the commission, planning and preparation, facilitation, funding, or instigation of terrorism will be sufficient for the purposes of establishing this offence.

\(^\text{13}\) Section 6(7) of the ATA.
'An organization concerned in terrorism'

a. This term is defined under Section 11(A) of ATA as follows:

11A. Organizations concerned in terrorism:-

(1) For the purposes of this Act, an organization is concerned in terrorism if it:

(a) commits, facilitates or participates in acts of terrorism;
(b) prepares for terrorism;
(c) promotes or encourages terrorism;
(d) supports and assists any organization concerned with terrorism;
(e) patronizes and assists in the incitement of hatred and contempt on religious, sectarian or ethnic lines that stir up disorder;
(f) fails to expel from its ranks or ostracize those who commit acts of terrorism and presents them as heroic persons; or
(g) is otherwise concerned in terrorism.\(^\text{14}\)

(2) An organization shall fall within the meaning of sub-section (1) if it-

(a) is owned or controlled, directly or indirectly, by a terrorist or an organization referred in sub-section (1); or
(b) acts on behalf of, or at the direction of, a terrorist or an organization referred in sub-section (1).

b. Therefore, this term must be construed broadly and should include not only proscribed organisations but also, in line with Section 2(p) of ATA, “any group, combination or body of persons” who may be involved in actions set out in Section 11A of the ATA.

\(^{14}\) Section 11A(1) of the ATA.
‘Has reasonable cause to suspect that it may be used, for the purpose of terrorism or by a terrorist or organization concerned in terrorism’

a. When an individual has ‘reasonable cause to suspect’ that money or other property may be used for terrorism or by a terrorist or organisation concerned in terrorism depends on the circumstances of each case.

b. ‘Reasonable cause to suspect’ means there are sufficient grounds to make a rational person think that the money or other property is likely to be used for the purpose of terrorism or by a terrorist or organisation concerned in terrorism.

c. With respect to Section 11H of the ATA, the Lahore High Court has observed in Muhammad Ibrahimm v. The State,\textsuperscript{15} that “mere receiving and donating of money as donation for any proscribed organization with a likelihood that it may be used for terrorism has been made punishable.”

d. Reasonable cause to suspect is a standard below having knowledge that money or other property will be used for terrorism but higher than mere speculation that it may be used for terrorism. It requires grounds to base the suspicion on. Therefore, it is important to be able to prove that the suspect had some information or was in circumstances such that he/she should have assessed that the money or other property would likely be used in terrorism.

e. Intention or reasonable suspicion can be proved based on the following evidence (this list is non-exhaustive):

<table>
<thead>
<tr>
<th>Elements of Crime</th>
<th>Evidence able to prove element</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mens Rea Intends that it should be used</td>
<td>• Specific intent must be proved. Can be in many forms: witness</td>
</tr>
</tbody>
</table>

\begin{footnotesize}
\end{footnotesize}
(for the purpose of terrorism or by a terrorist or organization concerned in terrorism.)

<table>
<thead>
<tr>
<th>Has reasonable cause to suspect that it may be used</th>
<th>Objective assessment: would a reasonable person in the individual’s position have a reasonable cause to suspect the money or other property would or may be used for terrorism purposes?</th>
</tr>
</thead>
<tbody>
<tr>
<td>(for the purpose of terrorism or by a terrorist or organization concerned in terrorism.)</td>
<td>Warning from the state or law enforcement, anonymous social media platforms, bogus charities, masked cryptocurrency or other donations, money sent through intermediaries, money sent to war zones etc.</td>
</tr>
</tbody>
</table>

6.1.2. Section 11H(2)

Points to prove:
- Date and location;
- Receiving (money or other property);
- The money or other property;
- Intending that it should be used; or
- Having reasonable cause to suspect it may be used for the purpose of terrorism.

Section 11H(2)(a) – he receives money or other property

(1) This offence should be charged when there is evidence of the suspect receiving or taking into his own possession money or other property.
(2) This offence does not necessarily require there to first be an invitation against which money is received.

(3) The person receiving money or other property can be any person and does not have to be a person requesting or inviting another to provide money or other property.

(4) To establish that a person received money or other property may depend on the type of property in question. Certain property can be transferred such as money in a bank account, stocks or intangible assets or immovable property (land, etc.). Depending on the situation and type of property ‘receiving’ may mean having control over such money or property. Tangible assets such as cash, gold or jewellery would require physical possession and it would mean that a prosecutor has to show that such money or other property is on their person or in their control (present in their house, office, vehicle, luggage, etc.).

<table>
<thead>
<tr>
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<th>Evidence able to prove element</th>
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<tbody>
<tr>
<td><strong>Actus Reus</strong></td>
<td></td>
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<tr>
<td>He receives</td>
<td>• Witness testimony</td>
</tr>
<tr>
<td></td>
<td>• Confession</td>
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<td>• Email / fax</td>
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<td>• Donation (chanda) receipt</td>
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<td>• Photographs</td>
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<td>• Video</td>
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<tr>
<td>Money or other property</td>
<td>• As above</td>
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<td>• Money or other value changes hands</td>
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<td>• Bank or Money Service Bureau transfer</td>
</tr>
<tr>
<td></td>
<td>• Property transfer receipt</td>
</tr>
<tr>
<td></td>
<td>• CCTV showing money/property handover</td>
</tr>
</tbody>
</table>
Section 11H(2)(b) – intends that it should be used, or has reasonable cause to suspect that it may be used, for the purpose of terrorism or by a terrorist or organization concerned in terrorism.

(1) The mens rea requirements for this offence are similar to the offence in Section 11H(1) of the ATA. See above for more guidance.

6.1.3. Section 11H(3)

Points to prove:
- Date and location;
- Providing (money or other property);
- The money or other property;
- Knowingly; or
- Having reasonable cause to suspect it may or will be used for the purpose of terrorism.

Section 11H(3)(a) - provides money or other property

(1) This offence should be charged when there is evidence that an individual has provided or given money or other property.

(2) This offence does not need to be in response to an invitation to provide money or other property for the purposes of terrorism.

(3) The individual providing money or other property does not have to be a member of a proscribed entity and, therefore, can be any person.

(4) The provision of money or other property, like ‘receiving’ (above), can depend on the type of money or other property involved. Provision of money in the case money in a bank account can be fulfilled through a bank transfer, handing over of a cheque, or other such method. Bonds, stocks, etc. can be transferred as well. In situations of tangible assets such as cash, jewellery, a vehicle, or other items of value the actual handing over may be necessary.
### Section 11H(3)(b) - knows or has reasonable cause to suspect that it may or will be used for the purposes of terrorism or by a terrorist or organization concerned in terrorism

(1) The *mens rea* requirements are similar to those in the previous two offences even though the language differs slightly. ‘Knowingly’ means with intent or done deliberately, i.e., the individual providing the money or other property has information or understands that the money or other property will be used for terrorism.

(2) ‘Reasonable cause to suspect’ has been discussed in the previous sections (see above).

<table>
<thead>
<tr>
<th>Elements of Crime</th>
<th>Evidence able to prove element</th>
</tr>
</thead>
<tbody>
<tr>
<td>He provides</td>
<td>• Witness testimony&lt;br&gt;• Confession&lt;br&gt;• Email / fax&lt;br&gt;• SMS / Social media message&lt;br&gt;• Audio message/recording&lt;br&gt;• Pamphlet / Poster / Placard&lt;br&gt;• Donation (chanda) receipt&lt;br&gt;• Photographs&lt;br&gt;• Video</td>
</tr>
<tr>
<td>Money or other property</td>
<td>• As above&lt;br&gt;• Money or other value changes hands&lt;br&gt;• Bank or Money Service Bureau transfer&lt;br&gt;• Property transfer receipt&lt;br&gt;• CCTV showing money/property hand over</td>
</tr>
</tbody>
</table>
Examples of Section 11H offences (including ones which include the suspect making an invitation with reasonable cause to suspect that the funds will be used for terrorism)

Example 1: Iram left her family in Lahore and went to Kabul where she married a Taleban fighter. After two years she emailed her family from Torkham requesting them to send PKR 10,000 to a Farhad in a local Money Service Bureau (MSB) so she could collect it and buy medicine from the Taleban for her new-born baby who was sick. Iram is committing an offence under 11H(1) because she is inviting another to send money knowing it will go to the Taleban who are a proscribed organisation. Farhad is potentially committing an offence under 11H(2) if he knows or has reasonable cause to suspect that it will be for the Taleban and her family will commit an offence under 11H(3) if they send money to the MSB, as they know the money is going to the Taleban, even to pay for medicine for the sick child.

[Note: Application of the 'Public Interest Test' to Iram and her Family may be needed. While they have committed an offence, it may not be in the public interest to prosecute them because a new-born baby was sick for which the money was sent.]

Example 2: Fawaz was standing outside a mosque holding a placard in support of Tehreek-e-Taliban-e-Pakistan (TTP), handing out pamphlets in support of the TTP, shaking a container to collect financial donations and loudly asking for tinned food to send to the fighters. The police took a video recording from a distance showing a number of people putting PKR 1,000 notes and coins into his collection box. Another person came back after 10 minutes and put tinned food and blankets in a box at his feet. Fawaz was arrested for committing an offence under section 11H(1). He has also received money from people and would be liable for section 11H(2). The people giving the money and tinned food (other property) would committing an offence under section 11H(3) for providing money for the purposes of terrorism.
Under Section 11N, the minimum sentence is five years and the maximum sentence is ten years imprisonment and a fine for offences committed under Section 11H.

6.2. USE AND POSSESSION (SECTION 11I)

11I. Use and possession Fund Raising—A person commits an offence if:-

(1) he uses money or other property for the purposes of terrorism; or
(2) he:-
   (a) possesses money or other property; and
   (b) intends that it should be used, or has reasonable cause to suspect that it may be used, for the purposes of terrorism.

Section 11I of the ATA contains two distinct offences which are closely linked. It aims to cover both the use and possession of money and other property for the purposes of terrorism.

6.2.1. Section 11I(1)

Points to prove:
- Date and location;
- Used;
- Money/other property;
- For the purpose of terrorism.

(1) Section 11I(1) deals with the use of money or other property for the purposes of terrorism. This offence should be charged when there is evidence of the suspect using money or other property for the purposes of terrorism.

(2) There needs to be a clear intention or knowledge of the funds being used for terrorism.

(3) This offence requires money or other property to be used for the purposes of terrorism, as defined in Section 6 of the ATA, irrespective of the eventual result.
Example: A uses money to purchase an AK-47, intending to use it in a religious congregation. He then reaches the location and before he can open fire at the congregation, a police officer arrests him. A is to be charged under Section 11I(1) of the ATA for the purchase of the AK-47.

(4) Money can be ‘used’ through any medium – giving money directly, purchasing property or items, bank transfers, electronic transfers, hawala, cheques, through text message donations, online or message board links, social media links, cryptocurrency, etc.

(5) Terrorists use money to pay for their material needs and activities, ranging from organisational needs such as food, water, logistics, and salaries to preparing terrorist attacks. The use of funds by terrorists is widespread and extremely varied, and dependent on what their objectives are.

(6) The use can relate to money or other property. These terms are defined under Sections 2(oa) and 2(pa) of the ATA respectively, and have been discussed above under Section 11H(1).

(7) During a charging decision it is important to remember how broad this offence is and not to apply it narrowly.

Example: A is a member of a proscribed organization, and uses money to purchase food to feed the members of the proscribed organization. A is to be charged under Section 11I(1) of the ATA.¹⁶

¹⁶ Note: Under Section 6(5) of the ATA, an act done to benefit a proscribed organisation is considered terrorism.
The use of money or other property can be proved based on the following evidence (this list is non-exhaustive):

<table>
<thead>
<tr>
<th>Elements of Crime</th>
<th>Evidence able to prove element</th>
</tr>
</thead>
</table>
| Actus Reus Uses money or other property | - Witness testimony  
- Confession  
- Cash transactions  
- Bank transfers  
- Financial records  
- Personal profiling records  
- Hawala/Hundi records  
- Email / fax information  
- SMS / Social media message  
- Audio message/recording  
- Pamphlet / Poster / Placard  
- Donation (chanda) receipt  
- Photographs / video surveillance  
- Land Registry  
- Vehicle Licensing  
- Property in possession  
- As above  
- Bank or Money Service Bureau transfer  
- Property transfer receipt  
- CCTV showing money/property hand over |

For the purposes of terrorism

- Specific intent needs to be shown.  
- This can include for the purposes of a proscribed organisation. The identity of the individual / organisation who is benefitting from the arrangements is of crucial significance.
6.2.2. Section 11I(2)

Points to prove:
- Date and location;
- Possessed;
- The money or other property;
- Intending/having reasonable cause to suspect it may be used for the purposes of terrorism.

Section 11I(2)(a) - he possesses money or other property

(1) This offence should be charged when there is evidence of the suspect possessing money or other property.

(2) The terms ‘money’ and ‘property’ have been discussed earlier under Section 11H(1) of the ATA (see above). Tangible assets such as cash, gold or jewellery would require physical possession and it would mean that a prosecutor has to show that such money or other property is on their person or in their control (present in their house, office, vehicle, luggage, etc.).

(3) The possession of money or other property can be proved based on the following evidence (this list is non-exhaustive):

<table>
<thead>
<tr>
<th>Elements of Crime</th>
<th>Evidence able to prove element</th>
</tr>
</thead>
<tbody>
<tr>
<td>Actus Reus</td>
<td>Money or other property</td>
</tr>
<tr>
<td></td>
<td>● Witness testimony</td>
</tr>
<tr>
<td></td>
<td>● Confession</td>
</tr>
<tr>
<td></td>
<td>● Email / fax</td>
</tr>
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<td></td>
<td>● SMS / Social media message</td>
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<tr>
<td></td>
<td>● Audio message/recording</td>
</tr>
<tr>
<td></td>
<td>● Pamphlet / Poster / Placard</td>
</tr>
<tr>
<td></td>
<td>● Donation (chanda) receipt</td>
</tr>
<tr>
<td></td>
<td>● Photographs</td>
</tr>
<tr>
<td></td>
<td>● Video</td>
</tr>
<tr>
<td></td>
<td>● Money or other value changes hands</td>
</tr>
</tbody>
</table>
Section 11I(2)(b) - intends that it should be used, or has reasonable cause to suspect that it may be used, for the purpose of terrorism

(1) A decision to charge a suspect with the offence under Section 11I(2) must involve consideration of the *mens rea* of the suspect.

(2) A Section 11I(2) offence can only be committed where the suspect possesses money or other property and (a) intended that the money or other property that would be used for terrorism or (b) had reasonable cause to suspect that it may be used for terrorism.

Intends that it should be used for the purpose of terrorism

a. The prosecution must prove that the person possessing the money or other property has knowledge that the money or other property that he/she possesses would be used for terrorism.

‘Used for the purpose of terrorism’

a. Knowledge that the money or other property would be used for actions specified in Section 6(2) of the ATA would fulfil the requirement that it is ‘used for the purpose of terrorism.’ Additionally, any action in violation of an international convention specified in the Fifth Schedule of the ATA would also be deemed as use for terrorism.\(^{17}\)

b. It is also important to note that under Section 6(5) of the ATA, “terrorism includes any act done for the benefit of a proscribed organization.”

c. Therefore, similar to Section 11H, any act of using money or other property which may benefit a proscribed

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\(^{17}\) Section 6(3A) of the ATA.
organisation would be terrorism and therefore possessing property with the knowledge that the money or other property would go to benefit such an organisation or would go to someone who would use it for the benefit of such an organisation would be sufficient to establish this offence.

Has reasonable cause to suspect that it may be used, for the purpose of terrorism.

a. When an individual has ‘reasonable cause to suspect’ that money or other property may be used for terrorism depends on the circumstances of each case.

b. ‘Reasonable cause to suspect’ means there are sufficient grounds to make a rational person draw the assumption that the money or other property is being used for the cause of terrorism.

c. Reasonable cause to suspect is a standard below having knowledge that money or other property will be used for terrorism but higher than mere speculation that it may be used for terrorism. It requires grounds to base the suspicion on. Therefore, it is important to be able to prove that the suspect had some information or was in the circumstances such that he/she should have assessed that the money or other property would likely be used in terrorism.

d. Intention or reasonable suspicion can be proved based on the following evidence (this list is non-exhaustive):

<table>
<thead>
<tr>
<th>Elements of Crime</th>
<th>Evidence able to prove element</th>
</tr>
</thead>
</table>
| Men's Rea Intends that it should be used (for the purpose of terrorism or by a terrorist or | • Specific intent must be proved.  
• Can be in many forms: witness statements to the effect, written instructions to or from known terrorists or proscribed organisations, possession of terrorist material, series of donations to the same recipient, |
### Examples of Section 11I Offences

**Example 1:** Babur sold his motorbike for PKR 30,000 and used some of it to buy explosives and cooking pots to make Improvised Explosives Devices for a proscribed organisation. He gave the rest of the money to his brother, Azhar with a note saying it was to be given to the leader of the terrorist group. Babur is committing an offence under Section 11I(1) by selling his motorbike for the purpose of buying explosives. He is also committing a further offence under Section 11I(1) by using the money from the motorbike sale to buy explosives and cooking pots, in addition to committing an offence when making the IEDs. If Azhar does not hand the money to the police upon receiving it and reading the note, he is potentially committing an offence under Section 11I(2) by keeping it. If he passes the money to the leader of the terrorist group he is committing an offence under Section 11I(1).

**Example 2:** Over the course of six months, Abdul Rahman sent regular amounts of money through the Clifton branch of Western Union in Karachi to his friend in Quetta to buy explosives, night vision goggles and wire cutters to blow up organisation concerned in terrorism.)

<table>
<thead>
<tr>
<th>Has reasonable cause to suspect that it may be used (for the purpose of terrorism or by a terrorist or organisation concerned in terrorism.)</th>
<th>Surveillance or spy information, computer search history, SMS messages, social media chat, emails, etc.</th>
</tr>
</thead>
</table>

- **Objective assessment** – would a reasonable person in the individual’s position have a reasonable cause to suspect the money or other property would or may be used for terrorism purposes? Warning from the state or law enforcement, anonymous social media platforms, bogus charities, masked cryptocurrency or other donations, money sent through intermediaries, money sent to war zones,

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**Examples of Section 11I offences**

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**Example 2:** Over the course of six months, Abdul Rahman sent regular amounts of money through the Clifton branch of Western Union in Karachi to his friend in Quetta to buy explosives, night vision goggles and wire cutters to blow up organisation concerned in terrorism.)
border posts and cut down the border fence at night between Pakistan and Afghanistan so that the Afghan Taliban could cross freely to go about their proscribed organisation business. He also sent cryptocurrency to www.noorwalimehsud.co.pk by using a QR code. He had WhatsApp messages on his mobile instructing his friend in Quetta to make the purchases for the cause and saying he was also doing holy work in sending Bitcoin to the leader of the TPP. For the Quetta offences he has committed an offence under Section 11I(1) by using money for the purposes of terrorism. Without further investigation and evidence to support actual knowledge, the sending of cryptocurrency is an offence under Section 11I(2) as Abdul Rahman has reasonable cause to suspect that the Bitcoin (property) may be used for the purposes of terrorism.

Under Section 11N, the minimum sentence is five years and the maximum sentence is ten years imprisonment and a fine for the offences committed under Section 11I.

11J. Funding Arrangements.

(1) A person commits an offence if he-

(a) enters into or become concerned in an arrangement as a result of which money or other property is made available or is to be made available to another; and

(b) has reasonable cause to suspect that it will or may be used for the purposes of terrorism.

(2) Any person in Pakistan or a Pakistani national outside Pakistan shall commit an offence under this Act, if he knowingly or wilfully makes money or other property or services available, directly or indirectly, wholly or jointly, for the benefit of a proscribed organization or proscribed person.

(3) A person commits an offence if he knowingly or willfully pays for or provides money or other property or facilitate in any manner the travel of a person anywhere for the purpose of perpetrating, participating in, assisting or preparing for a terrorist act or for the
6.3. FUNDING ARRANGEMENTS (SECTION 11J)

6.3.1. Section 11J(1)

Points to prove:
- Date and location;
- Entered into/became concerned in the arrangement;
- Whereby money/other property was/was to be made available to another person knowing/having reasonable cause to suspect it would/might be used;
- For the purposes of terrorism.

Section 11J(1)(a) - enters into or become concerned in an arrangement as a result of which money or other property is made available or is to be made available to another

(1) This offence should be charged when there is evidence of the suspect making funding arrangements with another.

(2) The funding arrangement can be for money or other property.

(3) This offence does not require the arrangement to be successfully transacted, just that the money or other property is made available. If A makes an arrangement for money to B, B ignores the arrangement. A has still committed an offence, provided he has the requisite intention (see below).

(4) Only proof that an arrangement was made will have to be shown. It is not required to demonstrate that an act of terrorism has taken place.
The funding arrangement must be for terrorism or that the person had reasonable cause to suspect that it may be used for terrorism.

It is not necessary to demonstrate that the arrangement is made to a specific individual.

It can be carried out directly, indirectly, wholly or jointly.

The arrangement can be a single transaction, an open request call for funds, provision of donations, or other property not directed to any specific individual or legal person (company, organisation, etc.).

The arrangement can also be simple or complex mechanisms to make funds available for the purposes of terrorism such as setting up a Trust or a Charity to seek donations that would be made available to another for the purposes of terrorism e.g. by a terrorist organization.

The arrangement could involve a scheme to take money from a legitimate business or organization secretly and make that money available to terrorists or a proscribed organization.

The arrangement can be made through any medium – orally, in writing, over the telephone, through text message, WhatsApp message, email, online, on a message board, or any financial transaction, etc.

The arrangement does not have to specify that the funds will be used for terrorism. It may be a fraudulent invitation to provide money for an innocent purpose (charity, etc.). The suspect will be culpable if he made any sort of arrangement for money or other property with the intention that it be used for terrorism.

Section 11J(1)(b) - has reasonable cause to suspect that it will or may be used for the purposes of terrorism

See the discussion regarding ‘reasonable cause to suspect’ under Section 11H for the contours of this standard.

During a charging decision, it is important to know how broad this offence is and not to apply it narrowly.
## 6.3.2. Section 11J(2)

(1) Any person in Pakistan (so any nationality) or a Pakistan national outside Pakistan shall commit an offence under Section 11J(2) if he knowingly or wilfully makes money or other property or services available, directly or indirectly, for the benefit of a proscribed organisation or proscribed person.

(2) Much of the discussion on Section 11J(1) is applicable here with two primary differences: (i) the offence is tailored to money or other property being made available to a proscribed organisation (ii) with the mens rea of knowingly or wilfully (higher standard than the ‘reasonable cause to suspect’ for Section 11J(1)).

(3) It is important to note that ‘services’ have also been mentioned in this section. This can include the services of lawyers, accountants, bankers, counterfeit document makers, computer hackers, etc. who provide some benefit to a proscribed

<table>
<thead>
<tr>
<th>Element s of Crime</th>
<th>Actus Reus</th>
<th>Mens rea</th>
<th>Evidence able to prove element</th>
</tr>
</thead>
</table>
| Entering or becoming concerned in an arrangement as a result of which money or other property is made available or is to be made available to another. | Reasonable cause to suspect that it will or may be used for the purposes of terrorism. | • Confessional statement  
• Prosecution witness statements  
• Financial records  
• Personal profiling record  
• Expert analysis/findings  
• Prohibited material  
• Bank or Money Service Bureau transfer  
• Property transfer receipt  
• CCTV showing money/property handover |
organization or proscribed person. The services can be on any nature as long as they provide some benefit to the proscribed organization or person.

**Example:** A belongs to a proscribed organization. He approaches B, who is a lawyer and old friend, to set up a charitable organization so that A can obtain donations for charity. B knows A has been involved in terrorist activities. B prepares the legal paperwork and proceeds to register the charitable organization for A. B has committed an offence under section 11J(2) for providing services to a proscribed organization. 18

(4) Section 11J(2) also applies to: (i) organizations owned or controlled, directly or indirectly, by proscribed organizations or proscribed persons; and (ii) persons or organizations acting on behalf of, or at the direction of, proscribed organizations or proscribed persons.

<table>
<thead>
<tr>
<th>Actus Reus</th>
<th>Mens rea</th>
<th>Evidence able to prove element</th>
</tr>
</thead>
</table>
| A citizen or national outside Pakistan | • CNIC details  
• NADRA database  
• Travel history  
• Passport information  
• Geo-location evidence  
• Mutual legal assistance evidence from overseas jurisdiction |
### CHARGING STANDARDS FOR TERRORISM FINANCING OFFENCES IN PAKISTAN

| Makes money or other property or services available, directly or indirectly, | • Confessional statement  
• Prosecution witness statements  
• Financial records  
• Personal profiling record  
• Expert analysis/findings  
• Prohibited material  
• Bank or Money Service Bureau transfer  
• Property transfer receipt  
• CCTV showing money/property hand over |
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Knowingly, wilfully</td>
<td>• Specific intent needs to be proved by showing objective factual circumstances</td>
</tr>
</tbody>
</table>
| For the benefit of a proscribed organisation or proscribed person. | • Showing links to proscribed organisations  
• Witness statements  
• Possession of terrorist literature  
• Online history activity  
• Social media posts  
• Emails  
• Mobile telephone activity |
6.3.3. Section 11J(3)

Points to prove:

- Date and location;
- Pays for or provides (money or other property) or facilitates in any manner;
- Travel of a person anywhere;
- Knowingly or willfully;
- For the purpose of penetrating, participating in, assisting or preparing for a terrorist act/providing or receiving training for terrorist-related activities.

(1) This offence should be charged when there is evidence of the suspect paying for or providing money or other property or facilitating in any manner the travel of a person anywhere for the purpose of penetrating, participating in, assisting or preparing for a terrorist act/providing or receiving training for terrorist-related activities.

(2) A decision to charge a suspect with the offence under Section 11J(3) must involve consideration of the mens rea of the suspect.

(3) A Section 11J(3) offence can only be committed where the suspect (a) knowingly or wilfully pays for or provides money or other property or facilitates in any manner the travel of a person anywhere, (b) for the purpose of penetrating, participating in, assisting or preparing for a terrorist act or for the purpose of penetrating, participating in, assisting or preparing for a terrorist act/providing or receiving training for terrorist-related activities.

(4) Therefore, the prosecution must prove that the individual paying for or providing the money or other property or facilitating in any manner has information or understands that the money or other property or such facilitation for the travel of a person anywhere is for the purpose of penetrating, participating in, assisting or preparing for a terrorist act/providing or receiving training for terrorist-related activities.

(5) During a charging decision, it is important to know how broad this offence is and not to apply it narrowly.
<table>
<thead>
<tr>
<th>Actus Reus</th>
<th>Mens rea</th>
<th>Evidence able to prove element</th>
</tr>
</thead>
</table>
| Pays for or provides (money or other property) or facilitate s in any manner | | • Confessional statement  
• Prosecution witness statements  
• Financial records  
• Personal profiling record  
• Expert analysis/findings  
• Prohibited material  
• Bank or Money Service Bureau transfer  
• Property transfer receipt  
• CCTV showing money/property handover  
• Email / fax  
• SMS / Social media message  
• Audio message/recording  
• Pamphlet / Poster / Placard  
• Photographs  
• Video |
| Travel of a person anywhere | | • CNIC details  
• NADRA database  
• Travel history  
• Passport information  
• Geo-location evidence  
• Mutual legal assistance evidence from overseas jurisdiction |
| Knowingly, wilfully | | • Specific intent needs to be proved by showing objective factual circumstances |
| For the purpose of penetrating, participating in, | | • Showing links to proscribed organisations  
• Witness statements  
• Possession of terrorist literature  
• Online history activity |
CHARGING STANDARDS FOR TERRORISM FINANCING OFFENCES IN PAKISTAN

| assisting or preparing for a terrorist act/providing or receiving training for terrorist-related activities | • Social media posts  
• Emails  
• Mobile telephone activity |

**Example of a Section 11J offence**

Ismail, Abdul and Khaled provide PKR 100,000 through bank transfers to Tripoli and false passports to the Libyan Islamic Fighting Group (LIFG), an armed group plotting to overthrow the country's President, with force if necessary. The LIFG is a proscribed organization. Ismail is a Bangladeshi living in Lahore, with Abdul and Khalid who are both Pakistani.

When police searched their home they found numerous references to terrorist activity. On Khalid’s computer the forensic science agency discovered communiques from LIFG supporting an Islamic armed group in Algeria, Sheikh Abdul Rahman - convicted of plotting to blow up the World Trade Centre. The defendants were also found to have stills footage of Russian soldiers being hung, shot and having their throats cut by Afghan Mujahideen, and of hostages being beheaded. The material focused on an extremist ideology.

Also found at Abdul’s home was a false identity factory of inkpads, foreign government and immigration rubber stamps, passports, identity cards and driving licenses from 12 countries, many of which were blank.

*Under Section 11N the minimum sentence is five years and the maximum sentence is ten years imprisonment and a fine for offences committed under Section 11J.*
6.4. **Money Laundering (Section 11K)**

11K. Money Laundering.

(1) A person commits an offence if he enters into or becomes concerned in any arrangement which facilitates the retention or control, by or on behalf of another person, of terrorist property:

(a) By concealment;
(b) By removal from the jurisdiction;
(c) By transfer to nominees; or
(d) In any other way.

(2) It is a defence for a person charged with an offence under subsection (1) to prove that he did not know and had no reasonable cause to suspect that the arrangement related to terrorist property.

6.4.1. **Section 11K(1)**

(1) This offence of money laundering of a terrorist property is charged under Section 11K(1) read with Section 11N of the ATA.

(2) This offence should be charged when there is evidence of the suspect entering into arrangements to retain or control terrorist property or where the suspect becomes involved in the retention or control.

(3) Retention or control can be in the form of either concealment, removal from jurisdiction, transferring to nominees or layering the proceeds in any other way.

(4) Terrorist property under Section 2 (aa)\(^\text{19}\) means any money/property/resources or funds that are utilised for

\(^{19}\) Sec. 2 (z)(aa) “terrorist property” means:
(i) (a) money or other property which is used or is likely to be used for the purposes of terrorism including any resources of an organization concerned in terrorism or a terrorist;
(b) proceeds of the commission of acts of terrorism;
(c) proceeds of acts carried out for the purposes of terrorism; and
(ii) In subsection (i) above;
terrorism/benefit for a terrorist organisation/individual or are likely to be used in this way. Accordingly, this would encompass money and property as defined in Sections 2(oa) and (pa) respectively.

(5) The funds can include proceeds of the commission of an act of terrorism or the proceeds of the predicate crime (carried out for terrorism) such as kidnapping for ransom, drug trafficking or human smuggling, etc.

(6) Resources of a terrorist organisation may include movable or immovable assets, including but not limited to legal documents, written, electronic or digital and shares, securities, bonds, drafts and letters of credit.

(7) It is important to note that Section 11K relates to money laundering but is distinct from the offence of money laundering under Section 3 of the Anti-Money Laundering Act 2010.

a. The primary difference is that under Sec. 3 AMLA 2010, money laundering takes place of money or property that is the ‘proceeds of crime’.

Sec. 11K of the ATA refers to ‘terrorist property’ that can include proceeds of terrorism (e.g. Bhatta, kidnapping for ransom, etc.) but also includes money that is likely to be used for terrorism, etc. This includes money or other property from legitimate sources that would (at a later time) be used for terrorism.

b. Secondly, Sec. 11K is an aggravated offence of money laundering as it carries a minimum sentence of 5 years imprisonment up to 10 years whereas Sec. 3 of AMLA 2010 has a minimum sentence of 1 year up to 10 years of imprisonment.

(a) a reference to proceeds of an act, includes reference to any property which wholly or partly, and directly or indirectly represents the proceeds of the act (including payments of other rewards in connection with the commission); and

(b) the reference to an organization’s resources includes a reference to any money or other property which is applied or made available, or is to be applied or made available, for use by the organization and includes assets of any kind, whether tangible or intangible, movable or immovable, and legal documents or instruments in any form, whether written, electronic or digital, and shares, securities, bonds, drafts and letters of credit.
Actus Reus | Mens Rea | Possible evidence for both (non-exhaustive)
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Entering into or becoming concerned in an arrangement which facilitates the retention or control of terrorist property by concealment, removal from jurisdiction, transfer to nominees or in any other manner. This includes front-men, front-businesses, front Non-Profit Organisations, Designated Non-Financial Businesses and Professions, illegal Money or Value Transfer Services, cash smuggling etc. | If the accused proves that he did not know, or had no reasonable cause to suspect that the arrangement was related to terrorist property, that is a valid defence. The onus to prove this would lie with the accused. | • Witnesses • Confessions • Written agreements • Digital evidence and electronic documents • Hawala / Hundi Operators • Receipts / Invoices • Bank transfers

Example of a Section 11K(1) offence

Waris agreed to store a Toyota Corolla motor vehicle in his gated front garden for Shakeel, who was a known member of a proscribed organization. In the glove compartment of the vehicle was an envelope with PKR 50,000 inside. On the back seat was an empty pressure cooker and in the boot were large tubs of potassium chlorate, ammonium chlorate acid, detonating equipment. Waris was told by Shakeel that a man by the name of Fiaz would be collecting the vehicle in a week. After a month without the vehicle being collected Waris placed a plastic cover over the vehicle and
took the envelope of money inside his house placing it at the back of a kitchen cupboard.

Wakil agreed to store the motor vehicle for another, a known terrorist group member. This can be proved through a confession, witness statement, written evidence, driving records, surveillance, spy information, and electronic/telephone evidence. He may also be concealing it.

Wakil is ‘controlling’ the motor vehicle in his front garden. This can be proved through the on-site location, images of the vehicle in the front garden, possession of car keys, eye-witnesses, confession, tracking device, sat-nav, etc.

Wakil is concealing the envelope of money. This can be proved through a confession, finding, witness statement, written evidence, driving records, surveillance, spy information, and electronic/telephone evidence.

Under Section 11N the minimum sentence is five years and the maximum sentence is ten years imprisonment and a fine for an offence committed under Section 11K(1).

6.5. Soliciting, collecting or raising money or other property for a proscribed organisation (Section 11F(5))

11F. Membership, support and meetings relating to a Proscribed Organization.

[...]

(5) A person commits an offence if he solicits, collects or raises money or other property for a proscribed organization.

(1) This offence of soliciting or raising money or other property for a proscribed organisation is charged under Section 11F(5) read with Section 11F(6) of the ATA.
(2) This offence should be charged when there is evidence of soliciting, collecting, or raising of money or other terrorist property for a proscribed organization.

(3) The terms ‘money’ or ‘other property’ are to be construed broadly in line with definitions set out in Section 2(oa) and 2(pa) respectively.

**Example of a Section 11F(5) offence**

Mushtaq was in F-9 Markaz in Islamabad going from shop to shop asking the traders to give money to his charity. The tin he was collecting the money in had ‘TPP’ written on the side of it in thick letters. Upon arrest by the police he said he was “collecting blankets for the fighters.” PKR 750 was in his tin when counted by the Islamabad CTD.

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Under Section 11F(6) the minimum sentence for soliciting, collecting or raising money for a proscribed organisation is one year and the maximum sentence is five years imprisonment and a fine.

### 6.6. AIDING AND ABETTING (SECTION 21I)

**21I. Aid an abetment.** Whoever aids or abets any offences, under this Act shall be punishable with the maximum term of same imprisonment provided for the offence or the fine provided for such offence or with both.

(1) This offence should be charged when there is evidence of the suspect aiding or abetting any offence under the ATA.

(2) This provision allows a number of individuals or a group involved in aiding and abetting offences to be charged under the ATA.