MODULE
Anti-Money Laundering and Countering the Financing of Terrorism

FOR JUDGES
MODULE

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Module for Judges:
Anti-Money Laundering and Countering the Financing of Terrorism
Anti-Money Laundering and Countering the Financing of Terrorism Training Module: A publication by the Research Society of International Law, Pakistan, with support from the American Bar Association.

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Module for Judges: Anti-Money Laundering and Countering the Financing of Terrorism
The Balochistan Judicial Academy has been striving hard to attain its aims and objectives by conducting different nature of professional development trainings, particularly for judicial officers and other actors of the justice sector in the Province. It has provided ample learning and training opportunities at the core group of trainees to improve their performance for better judicial service delivery. Currently, it manages training programs as per its own Annual Work Plan (AWP) and makes maximum efforts to incorporate training support from different stakeholders to achieve sustainable development.

Balochistan Judicial Academy has entered into a Memorandum of Understanding (MOU) with Research Society for International Law (RSIL) to facilitate research activities, development of knowledge products, training materials and conducting capacity development training programs for judicial officers in Balochistan especially on the theme of Anti-Money Laundering AML (AML) and Countering Financing of Terrorism (CFT).

RSIL has developed training modules on AML/CFT by incorporating feedback from the Balochistan Judicial Academy and has successfully conducted Training of Trainers (ToT) program in the province. The training module has been designed in a manner so as to equip judicial officers with the knowledge and skills to cope with AML/CFT cases effectively, as per the guidelines of Pakistan’s national legal framework and global standards.

The training module is very comprehensive and easy to understand, as well as practical in terms of the skills that can be applied at the court level. The module covers FATF standards, Pakistan’s compliance, elements of money laundering, collection of evidence, jurisdiction of courts, sentencing and mutual legal
assistance. The module also contains self-assessment questions, illustrations, and a simulation exercise to measure the learning of the trainees.

The collaboration between Balochistan Judicial Academy and RSIL will lead to quality training results and the Academy will also incorporate AML/CFT into other courses in the future. Furthermore, the Academy will also organize awareness and advocacy programs on AML/CFT for the sensitization of all justice stakeholders.

I am thankful to Mr. Jamal Aziz, Executive Director, RSIL Mr. Mohib Wazir, Communication & Outreach Associate, RSIL and other team members of RSIL for their valuable support, involvement and participation in the development of a capacity building training module on AML/CFT for Balochistan Judicial Academy. I would also like to appreciate all employees of the Academy and particularly Mr. Nazar Muhammad Kakar, Advisor, Focal Person AML/CFT for BJA.

I look forward for future coordination and support from RSIL and expect that the training modules, materials, toolkits and trained human resources will be adequately utilized for any capacity development programs of AML/CFT.
# TABLE OF CONTENTS

**List of Abbreviations** .................................................................................................................. 1  
**List of Legislation** ....................................................................................................................... 3  
**UNIT I: Module Descriptor** ......................................................................................................... 4  
 Introduction .................................................................................................................................. 5  
 Module Objectives ......................................................................................................................... 7  
 Learning Outcomes ....................................................................................................................... 8  
 Methodology .................................................................................................................................. 8  
 Essential Readings ......................................................................................................................... 9  
**UNIT II: Financial Action Task Force Standards and Pakistan’s Compliance** ......................... 10  
 2.1. About the Financial Action Task Force (FATF) .................................................................... 11  
 2.2. Pakistan’s Progress Against the FATF Action Plans .............................................................. 11  
 2.3. Compliance Efforts ................................................................................................................. 13  
 2.4. Summary ............................................................................................................................... 18  
 2.5. Self-Assessment Questions ...................................................................................................... 19  
**UNIT III: Elements of ML/TF Offences** ...................................................................................... 20  
 3.1. Introduction to Money Laundering and Terrorism Financing ................................................ 21  
 3.1.1. Money Laundering ............................................................................................................. 21  
 3.1.2. The Process ....................................................................................................................... 22  
 3.1.3. Common Methods used by Money Launderers ................................................................. 23  
 3.1.4. Terrorism Financing ......................................................................................................... 23  
 3.1.5. Sources of Terrorism Financing ....................................................................................... 26  
 3.2. Money Laundering and Terrorist Financing under Pakistani Law ......................................... 27  
 3.2.1. Offences under the Anti-Terrorism Act 1997 .................................................................. 28  
 3.2.2. Offences under the Anti-Money Laundering Act 2010 .................................................... 38  
 3.2.3. Additional Aspects to Consider ....................................................................................... 39  
 3.3. Summary ............................................................................................................................... 42  
 3.4. Self-Assessment Questions ...................................................................................................... 43  
**UNIT IV: TYPES AND SOURCES OF EVIDENCE** .................................................................... 44  
 4.1. Importance of the Types and Sources of Evidence for Prosecutors .................................... 45  
 4.1.1. Types of Evidence ............................................................................................................. 45  
 4.1.2. Sources of Evidence .......................................................................................................... 47  
 4.1.3. Methods of Collecting Initial Evidence .......................................................................... 59  
 4.2. Mandate for Evidence through Modern Devices .................................................................. 61  
 4.2.1. Types of Modern Devices and Potential Evidence ......................................................... 62  
 4.2.2. Forensic Evidence ............................................................................................................ 65  
 4.2.3. Electronic Records as Evidence ...................................................................................... 66  
 4.3. Evidence from Proscribed Organisations ............................................................................ 67  
 4.3.1. Evidentiary Value and Relevancy ................................................................................... 67  
 4.4. Summary ............................................................................................................................... 69  
 4.5. Self-Assessment Questions ...................................................................................................... 70  
**UNIT V: Jurisdiction of Courts** .................................................................................................... 71
UNIT VI: Sentencing

6.1. Sentences of Money Laundering and Terrorist Financing Offences

6.1.1. Remissions under the Anti-Terrorism Act 1997

6.2. Sentencing Guidelines

6.2.1. Code of Criminal Procedure, 1898

6.2.2. Lahore High Court Rules and Orders, Volume III, Chapter 19 (Sentences)

6.2.3. Bench Book for Sindh District Judiciary on Case Management

6.3. Summary

6.4. Self-Assessment Questions

UNIT VII: Mutual Legal Assistance

7.1. International Law

7.1.1. The UN Convention on Transnational Organized Crime (UNTOC)

7.1.2. UN Convention Against Corruption (UNCAC)

7.1.3. International Convention for the Suppression of the Financing of Terrorism (ICSFT)

7.2. Domestic Law

7.2.1. MLA under the Investigation for Fair Trial Act, (IFTA) 2013

7.2.2. Mutual Legal Assistance (Criminal Matters) Act 2020 (MLAA)

7.2.3. Ministry of Interior Internal Guidelines: International Cooperation

7.2.4. Standard Operating Procedures (SOPs) for International Cooperation by the Government of Khyber Pakhtunkhwa Rules

7.2.5. NACTA directives on International Cooperation in Terrorist Financing Matters

7.2.6. Extradition Act, 1972

7.3. Challenges to MLA

7.3.1. Procedural Challenges to drafting an MLA request

7.3.2. Admissibility Challenges of Evidence derived from Mutual Legal Assistance

7.3.3. Challenges associated with e-evidence

7.4. Case Studies

7.5. Summary

7.6. Self-Assessment Questions
**List of Abbreviations**

<table>
<thead>
<tr>
<th>1988 Convention</th>
<th>The United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988</th>
</tr>
</thead>
<tbody>
<tr>
<td>AML/CFT</td>
<td>Anti-Money Laundering/Combating the Financing of Terrorism</td>
</tr>
<tr>
<td>AMLA</td>
<td>Anti-Money Laundering Act 2010</td>
</tr>
<tr>
<td>ANF</td>
<td>Anti-Narcotics Force</td>
</tr>
<tr>
<td>ATA</td>
<td>Anti-Terrorism Act 1997</td>
</tr>
<tr>
<td>ATC</td>
<td>Anti-Terrorism Court</td>
</tr>
<tr>
<td>BJA</td>
<td>Balochistan Judicial Academy</td>
</tr>
<tr>
<td>CCTV</td>
<td>Closed Circuit Television</td>
</tr>
<tr>
<td>CDD</td>
<td>Customer Due Diligence</td>
</tr>
<tr>
<td>CDNS</td>
<td>Central Directorate of National Savings</td>
</tr>
<tr>
<td>CDR</td>
<td>Call Data Record</td>
</tr>
<tr>
<td>CNIC</td>
<td>Citizen National Identity Card Number</td>
</tr>
<tr>
<td>CPS</td>
<td>UK Crown Prosecution Service</td>
</tr>
<tr>
<td>CrPC</td>
<td>Code of Criminal Procedure 1898</td>
</tr>
<tr>
<td>CRVS</td>
<td>Criminal Record Verification System</td>
</tr>
<tr>
<td>CTD</td>
<td>Counter Terrorism Department</td>
</tr>
<tr>
<td>CTW-FIA</td>
<td>Counter-terrorism Wing – Federal Investigation Agency</td>
</tr>
<tr>
<td>DFIs</td>
<td>Development Finance Institutions</td>
</tr>
<tr>
<td>DNA</td>
<td>Deoxyribonucleic acid</td>
</tr>
<tr>
<td>DNFBP</td>
<td>Designated Non-Financial Business and Professions</td>
</tr>
<tr>
<td>FAQ</td>
<td>Frequently Asked Questions</td>
</tr>
<tr>
<td>FATF</td>
<td>Financial Action Task Force</td>
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<tr>
<td>FATF-ICRG</td>
<td>Financial Action Task Force International Co-operation Review Group</td>
</tr>
<tr>
<td>FBR</td>
<td>Federal Board of Revenue</td>
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<tr>
<td>FBR-IR</td>
<td>Federal Board of Revenue – Inland Revenue</td>
</tr>
<tr>
<td>FERA</td>
<td>Foreign Exchange Regulation Act 1947</td>
</tr>
<tr>
<td>FIA</td>
<td>Federal Investigation Agency</td>
</tr>
<tr>
<td>FIR</td>
<td>First Information Report</td>
</tr>
<tr>
<td>FIs</td>
<td>Financial Institutions</td>
</tr>
<tr>
<td>FMU</td>
<td>Financial Monitoring Unit</td>
</tr>
<tr>
<td>ICSFT</td>
<td>International Convention for the Suppression of the Financing of Terrorism</td>
</tr>
<tr>
<td>ID</td>
<td>Identification</td>
</tr>
<tr>
<td>IFTA</td>
<td>Investigation for Fair Trial Act 2010</td>
</tr>
<tr>
<td>IMPASS</td>
<td>Directorate General of Immigration and Passport</td>
</tr>
<tr>
<td>IO</td>
<td>Investigation Officer</td>
</tr>
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<td>IP</td>
<td>Internet Protocol</td>
</tr>
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<td>IPDR</td>
<td>Internet Protocol Detail Record</td>
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<td>ITO</td>
<td>Income Tax Ordinance</td>
</tr>
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<td>JIT</td>
<td>Joint Investigation Team</td>
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<td>LEAs</td>
<td>Law Enforcement Agencies</td>
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<td>LLCs</td>
<td>Limited Liability Companies</td>
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<tr>
<td>Abbreviation</td>
<td>Full Form</td>
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<tr>
<td>ML</td>
<td>Money Laundering</td>
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<td>ML/TF</td>
<td>Money Laundering/Terror Financing</td>
</tr>
<tr>
<td>MOI</td>
<td>Ministry of Interior</td>
</tr>
<tr>
<td>MSPs</td>
<td>Merchant Service Providers</td>
</tr>
<tr>
<td>MVTS</td>
<td>Money or Value Transfer Services</td>
</tr>
<tr>
<td>MLAA</td>
<td>Mutual Legal Assistance (Criminal Matters) Act 2020</td>
</tr>
<tr>
<td>NAB</td>
<td>National Accountability Bureau</td>
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<td>NACTA</td>
<td>National Counter Terrorism Authority</td>
</tr>
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<td>NADRA</td>
<td>National Database and Registration Authority</td>
</tr>
<tr>
<td>NAO</td>
<td>National Accountability Ordinance, 1999</td>
</tr>
<tr>
<td>NGOs</td>
<td>Non-Governmental Organizations</td>
</tr>
<tr>
<td>NRA</td>
<td>National Risk Assessment</td>
</tr>
<tr>
<td>NTN</td>
<td>National Tax Number</td>
</tr>
<tr>
<td>PPC</td>
<td>Pakistan Penal Code, 1860</td>
</tr>
<tr>
<td>PACRA</td>
<td>Pakistan Credit Rating Agency</td>
</tr>
<tr>
<td>PECA</td>
<td>Prevention of Electronic Crimes Act 2016</td>
</tr>
<tr>
<td>PI</td>
<td>Public Interest</td>
</tr>
<tr>
<td>POS</td>
<td>Point of Sale</td>
</tr>
<tr>
<td>QSO</td>
<td>Qanoon-e-Shahadat Order 1984</td>
</tr>
<tr>
<td>RAW</td>
<td>Research and Analysis Wing</td>
</tr>
<tr>
<td>RBA</td>
<td>Risk-Based Assessments</td>
</tr>
<tr>
<td>REs</td>
<td>Reporting Entities</td>
</tr>
<tr>
<td>SBP</td>
<td>State Bank Pakistan</td>
</tr>
<tr>
<td>SECP</td>
<td>Securities &amp; Exchange Commission of Pakistan</td>
</tr>
<tr>
<td>SIM</td>
<td>Subscriber Identity Module</td>
</tr>
<tr>
<td>SMS</td>
<td>Short Message Service</td>
</tr>
<tr>
<td>SOPs</td>
<td>Standard Operation Procedures</td>
</tr>
<tr>
<td>SRO</td>
<td>Statutory Regulatory Orders</td>
</tr>
<tr>
<td>STR</td>
<td>Suspicious Transaction Report</td>
</tr>
<tr>
<td>TF</td>
<td>Terror Financing</td>
</tr>
<tr>
<td>TFS</td>
<td>Targeted Financial Sanctions</td>
</tr>
<tr>
<td>UN 1988 Convention</td>
<td>United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988</td>
</tr>
<tr>
<td>UNSC</td>
<td>United Nations Security Council</td>
</tr>
<tr>
<td>UNSC Act</td>
<td>United Nations (Security Council) Act, 1948</td>
</tr>
<tr>
<td>UNSC Resolutions</td>
<td>United Nations Security Council’s Resolutions 1267 and 1373</td>
</tr>
<tr>
<td>UNCAC</td>
<td>United Nations Convention Against Corruption</td>
</tr>
<tr>
<td>UNODC</td>
<td>United Nations Office on Drugs and Crime</td>
</tr>
<tr>
<td>UNTLOC</td>
<td>United Nations Convention against Transnational Organized Crime</td>
</tr>
</tbody>
</table>
List of Legislation

- Anti-Money Laundering Act, 2010
- Anti-Narcotics Force Act, 1997
- Anti-Terrorism Act, 1997
- Benami Transactions (Prohibition) Rules, 2019
- Benami Transactions Ordinance, 2019
- Code of Criminal Procedure, 1898
- Constitution of the Islamic Republic of Pakistan, 1973
- Control of Narcotic Substances Act, 1997
- Customs Act, 1968
- Foreign Exchange Regulation Act (Amendment), 2020
- Income Tax Ordinance, 2001
- Investigation for Fair Trial Act, 2013
- Mutual Legal Assistance (Criminal Matters) Act, 2020
- National Counter Terrorism Authority (Amendment) Act, 2020
- NACTA SOPs for JITs, 2020
- National Accountability Ordinance, 1999
- Pakistan Penal Code, 1860
- Prevention of Electronic Crimes Act, 2016
- Punjab Forensic Science Agency Act, 2007
- Qanoon-e-Shahadat Order, 1984
- Sales Tax Act, 1990
- UK Terrorism Act, 2000
- United Nations (Security Council) Act, 1948
UNIT 01
Module Descriptor
**Introduction**

FATF has recommended that Pakistan improve investigation, prosecution and conviction in ML/TF cases after Pakistan was grey-listed by FATF in 2018. Effective investigation and prosecution assists the courts in appreciating the evidence that would have an impact on the eventual outcome of the trial, potentially leading to greater and more watertight convictions of the accused in ML/TF offences. Courts also have an important role to play in the pre-trial and trial stage regarding, amongst other things, attachment, forfeiture, retention, and seizure of property; exercise of powers of survey, search, and seizure by investigation officers; protection orders; bail and remand. Therefore, this module has been developed to provide guidance to judges on how to navigate through the adjudication process of ML/TF offences.

Judges should keep in mind the relevant FATF recommendations which provide context for the learning outcomes of this module:

- Countries should ensure that policymakers, the financial intelligence unit, law enforcement authorities, supervisors and other relevant competent authorities, at the policymaking and operational levels, have mechanisms which enable them to cooperate and coordinate. (Recommendation No. 2);
- Countries should apply the crime of money laundering to all serious offences, with a view to include the widest range of predicate offences (Recommendation No. 3);
- Countries should adopt measures similar to those set forth in the UN 1988 Convention, the Palermo Convention, and the Terrorist Financing Convention, including legislative measures, to enable their competent authorities to freeze or seize and confiscate the following, without prejudicing the rights of bona fide third parties:
  
  (a) Property laundered;
  (b) Proceeds from, or instrumentalities used in or intended for use in money laundering or predicate offences;
  (c) Property that is the proceeds of, or used in, or intended or allocated for use in, the financing of terrorism, terrorist acts or terrorist organisations; or
(d) Property of corresponding value.

Such measures should include the authority to:

(a) Identify, trace and evaluate property that is subject to confiscation;
(b) Carry out provisional measures, such as freezing and seizing, to prevent any dealing, transfer or disposal of such property;
(c) Take steps that will prevent or void actions that prejudice the country’s ability to freeze or seize or recover property that is subject to confiscation; and
(d) Take any appropriate investigative measures (Recommendation No. 4).

- Countries should ensure that designated law enforcement authorities have responsibility for money laundering and terrorist financing investigations within the framework of national AML/CFT policies (Recommendation No. 30);
- Competent authorities should be able to obtain access to all necessary documents and information for use in investigations and in prosecutions of money laundering, associated predicate offences and terrorist financing (Recommendation No. 31);
- Countries should provide the widest possible range of mutual legal assistance in relation to money laundering, associated predicate offences and terrorist financing investigations, prosecutions, and related proceedings (Recommendation No. 37);
- Countries should ensure that their competent authorities can provide the widest range of international cooperation in relation to money laundering, associated predicate offences and terrorist financing (Recommendation No.40).

It is also helpful for judges to be aware of how the FATF has recommended Pakistan to introduce changes in the legal system, especially with respect to the convictions of ML/TF offences. The following Action Plan items have been given weightage by the FATF in its evaluations:
Demonstrate the effectiveness of sanctions, including remedial actions, to curb terrorist financing in the country;
Demonstrate effective investigations by LEAs and convictions in ML/TF cases against banned outfits and proscribed persons;
Ensure international cooperation-based investigations and convictions against banned organisations and proscribed persons; and
Improve domestic cooperation between Financial Monitoring Unit (FMU) and LEAs in investigation of terror financing and money laundering.

Module Objectives

The role of judges is crucial in guaranteeing conviction in ML/TF offences. This module has been carefully drafted to provide specific guidance to judges adjudicating ML/TF offences. It is pertinent to note that there are two sets of laws that govern ML/TF offences in Pakistan, i.e. AMLA and ATA. The offences under each law are tried by the respective courts stipulated therein, hence, for effective adjudication, it is important to understand their respective legal frameworks.

Broadly, the module examines the following:

- Legislative Developments around ML/TF in Pakistan;
- The elements of ML/TF offences under AMLA and ATA;
- Various types of evidence including confessional statements, prosecution witness statements, financial record, expert analysis and findings, and additional evidence concerning relationship with proscribed organizations;
- Relevance and evidentiary value of each type of evidence;
- Pre-trial and trial powers available to the court under the law;
- Best practices for sentencing;
- Human rights concerns for defendants.
Learning Outcomes

By the end of this module, you should be able to understand:

- The recent legislative and administrative developments in Pakistan to meet the FATF standards;
- The elements of ML/TF offences under AMLA and ATA;
- The importance of charging standards;
- The nature of various types of evidence including confessional statements, prosecution witness statements, financial record, expert analysis and findings, and additional evidence concerning relationship with proscribed organizations;
- The relevance and evidentiary value of each type of evidence;
- The pre-trial and trial powers available to the court under the law, regarding, amongst other things, attachment, forfeiture, retention, and seizure of property; exercise of powers of survey, search, and seizure by investigation officers; protection orders; bail and remand;
- Best practices for sentencing;
- The rights of defendants that courts must protect.

Methodology

The chapters in this module have been drafted in a sequential manner. However, each chapter is also self-contained for ease of reference and revision purposes. The beginning of each chapter contains learning outcomes which must be kept in mind while going through the content. Each section also contains discussion questions and case studies. These are meant to reinforce the learning outcomes and aim to provide an understanding of how theory manifests itself into practice. At the end of each chapter, there are self-assessment questions which should be attempted by the participants after each section is completed to ensure they have fully grasped the content. Furthermore, at the end of the module, there is a practical exercise which will reinforce the skills required for effective adjudication of ML/TF cases.
Essential Readings

STATUTES:

- Anti-Terrorism Act 1997;
- Anti-Money Laundering Act 2010;
- Code of Criminal Procedure 1898;
- Qanoon-e-Shahadat Order 1984;
- Lahore High Court Rules and Orders;
- Bench Book for Sindh District Judiciary on Case Management;

INTERNATIONAL CONVENTIONS:

- United Nations Convention against Transnational Organized Crime;
- United Nations Convention Against Corruption;

OTHER:

- FATF Recommendations;
- Guide for the Effective Investigation and Prosecution of Money Laundering and Terrorist Financing in Pakistan by the Research Society of International Law, Pakistan;
- Toolkit on AML/CFT in Pakistan – Volume 1: Operational Guidelines for the Investigation and Prosecution of Money Laundering & Terrorism Financing Offences in Pakistan by the Research Society of International Law, Pakistan;
UNIT 02
Financial Action Task Force Standards and Pakistan’s Compliance

LEARNING OUTCOMES

- The sources of international standards on AML/CFT.
- The grounds for Pakistan’s grey-listing by FATF.
- The recent legislative and administrative developments in Pakistan to meet the FATF standards.
2.1. About the Financial Action Task Force (FATF)

The Financial Action Task Force (FATF) is an inter-governmental policy-making body focused on combatting ML/TF around the globe. It aims to identify legislative and administrative gaps around ML/TF so that ML/TF risks can be mitigated. It also focuses heavily on justice sector responses to ML/TF, by implementing standards on effective coordination, investigation and prosecution of ML/TF cases, resulting in convictions. FATF’s 40 Technical Recommendations and 11 Immediate Outcomes constitute the international standards on Anti Money Laundering and Countering the Financing of Terrorism. The FATF comprises of 39 entities (37 countries and two regional bodies – the European Union and the Gulf Cooperation Council).

The international framework is important to understand the FATF’s role in Pakistan’s AML/CFT reforms. The FATF determines whether a certain State qualifies as a ‘Jurisdiction under Increased Monitoring’ - also known as the ‘grey list’. Placing a State on the grey list has consequences on the ability to engage in business and financial transactions with said State. With decreased international currency inflows, the grey-listed State’s currency risks devaluation, and discourages foreign direct investment and international trade as well. It can also drive up the cost of doing business with the grey-listed country, therefore has economic repercussions as well. Thus, being placed on the grey list encourages the relevant State to develop AML/CFT capacity and, fix the flaws within its financial system that makes it vulnerable to ML/TF threats.

2.2. Pakistan’s Progress Against the FATF Action Plans

From June 2018 to October 2022, Pakistan had been placed on the FATF’s list of “Jurisdictions under Increased Monitoring” (or the ‘grey list’) owing to strategic deficiencies within its Anti-Money Laundering and Countering Financing of Terrorism (AML/CFT) frameworks. As part of the evaluation process, Pakistan was asked to implement a 27-Point Action Plan, and later a 7-Point Plan on Money Laundering in order to improve its compliance with the watchdog agency to exit the grey-list. Pakistan achieved progress on all 34 total points highlighted by the FATF, and was thus able to come off the grey-list in October 2022. However, Pakistan is still required to improve the effectiveness of its regimes by ensuring that all new laws/frameworks in place are producing the required results, measured through increased ML/TF convictions.

Key deliverables under the action plans included:
• Proper identification, assessment, and supervision of terrorism financing risks;
• The application of remedial actions and sanctions to cases of money laundering and financing of terrorism violations;
• Coordination between competent authorities to identify and take enforcement measures against illegal money or value transfer services;
• Identification of cash couriers by authorities and the enforcement of controls on illicit movement of currency and understanding the risk of cash couriers being used for financing of terrorism;
• The improvement of inter-agency coordination including between provincial and federal authorities on combating financing of terrorism risks;
• The identification and investigation of financing of terrorism, and prosecution of related designated persons and entities by law enforcement agencies;
• That prosecution of financing of terrorism results in applicable sanctions and enhancement of capacity and support for prosecutors and the judiciary;
• Effective implementation of targeted financial sanctions against all designated terrorists;
• Enforcement against financing of terrorism violations including administrative and criminal penalties and authorities cooperating on enforcement cases; and
• Deprivation of facilities, services, and other resources owned or controlled by designated persons.

Other than addressing cavities in the administrative sector, it was recommended that the investigation and prosecution of ML/TF cases be improved, with FATF requiring Pakistan to demonstrate progress by increasing the number of ML/TF investigations and convictions.

With the majority of cases leading to acquittal, it is clear that gaps in the justice system exist. Prior legislation also did not provide investigators or law enforcement agencies with the requisite powers to successfully investigate ML/TF
cases. Since 2018, Pakistan passed a number of laws and amendments, including foundational changes to its AML/CFT frameworks, to enhance the powers of investigators. Special powers are now also granted to investigators under the recent amendments to AMLA and ATA. It is important to understand the impact of the FATF grey-listing on Pakistan’s economy, foreign policy, and national security and thereby give due weightage to ML/TF cases under domestic law.

2.3. Compliance Efforts

Along with administrative improvements, Parliament introduced legislative amendments to further strengthen accountability in ML/TF offences. The following legislative amendments are important from an adjudicatory perspective:

The Foreign Exchange Regulation Act (Amendment) 2020:

FERA governs the movement of foreign currency and other forms of monetary instruments such as securities and bullion. The role of the Tribunal was strengthened by the addition of sub-section (3B) to Section 23 of FERA in that a Tribunal taking cognizance of any matter under sub-section (1) of Section 23 of FERA will conclude proceedings within 6 months, and extensions may be requested by writing.¹ The provision of a specific timeline is aimed at ensuring that cases are concluded in a timely manner, thereby streamlining the prosecution process.

¹ Section 23(3B), FERA.
The Anti-Money Laundering (Second Amendment) Act, 2020:

This Act introduced the concept of AML/CFT regulatory authorities\(^2\) and their oversight bodies.\(^3\) It imposes various obligations on reporting entities, including that of conducting customer due diligence,\(^4\) record keeping,\(^5\) risk understanding,\(^6\) implementation of compliance programmes,\(^7\) policies and procedures,\(^8\) and a prohibition against entering into business relationships with anonymous or fictitious persons.\(^9\) Failure to comply with such obligations would lead to imposition of sanctions.\(^10\) This amendment is a significant step towards inculcating a compliance culture regarding ML/TF risks.

In the adjudication context, the punishment for the offence of ML was enhanced, with fines increased from PKR 1 million to PKR 5 million, and prison sentences increased from two to ten years.\(^11\)

Furthermore, the court dealing with offences under AMLA has been empowered to grant permission for 60 days (and subsequent extension) to investigating officers to use various investigation techniques including undercover operations, intercepting communications, assessing computer system and controlled delivery for investigation of offences of ML, associated predicate offences, and TF.\(^12\) However, as rules have not yet been formulated for regulating the procedural aspects of such an investigation, the provisions concerning special investigative techniques remain dormant.

Offences under Section 21 of AMLA would now be considered “cognizable” offences as opposed to “non-cognizable” in line with the recommendations of the Financial Action Task Force (FATF). Finally, the officers of the Federal and Provincial Governments, local authorities, and reporting entities, are required to

\(^{2}\) Section 6A, AMLA.
\(^{3}\) Section 6C, AMLA.
\(^{4}\) Sections 7A, 7B, and 7D, AMLA.
\(^{5}\) Section 7C, AMLA.
\(^{6}\) Section 7F, AMLA.
\(^{7}\) Section 7G, AMLA.
\(^{8}\) Section 7H, AMLA.
\(^{9}\) Section 7E, AMLA.
\(^{10}\) Section 7I, AMLA.
\(^{11}\) Section 4, AMLA.
\(^{12}\) Section 9A, AMLA.
provide assistance to the investigating or prosecuting agency or FMU for the purposes of ML, predicate offences and TF proceedings and investigations.13

The Mutual Legal Assistance (Criminal Matters) Act 2020:

‘Mutual Legal Assistance’ is a tool used by States to exchange information/evidence to aid criminal investigations and proceedings. The MLAA provides the process through which Pakistan can request and provide legal assistance from foreign governments and vice versa. Pakistan would receive and act upon requests relating to a criminal offence either committed or suspected to have been committed in a foreign country when notified.14 However Pakistan may refuse the request of assistance to a foreign government if it jeopardizes its national security interests, if the request made is contrary to the laws of Pakistan, if it is prejudicial to an investigation or on-going proceedings, or if it violates international conventions on human rights.15

Specifically with regard to the role of the courts, any court in Pakistan that has jurisdiction to try an offence for which a request has been made under the MLAA has been granted powers to pass orders on various types of foreign requests regarding, amongst other things, evidence gathering orders or search warrants,16 freezing or seizure orders,17 enforcement of confiscation orders,18 enforcement of foreign fines,19 and production, search, and seizure of information systems.20

13 Section 25, AMLA.
14 Section 7, MLAA.
15 Section 17, MLAA.
16 Section 9, MLAA.
17 Section 13, MLAA.
18 Section 14, MLAA.
19 Section 15, MLAA.
20 Section 20, MLAA.
The Anti-Terrorism Amendment Act(s) of 2020:

The anti-terrorism law in Pakistan has been revised several times via legislation and the courts. Under the Anti-Terrorism (Amendment) Act 2020, fines were increased for a violation of seizing, freezing, and detention orders under Section 11O of the ATA. A new provision was added which enforces the decisions of UNSC Resolutions pertaining to counter-terrorism measures to check terrorism financing by making and enforcing such provisions in the domestic laws.\(^{21}\) Accordingly, any refusal or non-compliance with the orders of the Federal Government under Section 2 of the UNSC Act is a punishable offence, and the person shall be liable to imprisonment of ten years or a fine of PKR 25 million, or both.\(^{22}\) This not only strengthens sanctions and penalties against violations, but also entrenches compliance with the UNSC Act within the ATA framework.

The Anti-Terrorism (Second Amendment) Act 2020 prohibits the provision of loans or financial assistance to those associated with banned organizations and restricts all banks and financial institutions from issuing credit cards to individuals on the proscribed persons list. It further states that arms licenses already issued to such individuals would be revoked, and their weapons confiscated. It also made it an offence for a person to provide money, property or otherwise facilitate the travel of an individual for the purpose of perpetrating, participating in, assisting or preparing for a terrorist act or for providing or receiving training for terrorist activities.\(^{23}\)

Moreover, within 48 hours of any freeze or seizure or any action taken under Section 11O(1)(c), the person carrying out such freeze or seizure is to take steps to ensure that the seized property or assets will not be made available in any way to the proscribed person or organization, or other affiliates and that documentation will be kept to that effect.\(^{24}\) Money or other property acting on behalf of or at the discretion of proscribed persons or organizations could be frozen or seized without any prior notice and without delay.\(^{25}\) Finally, ATCs have been empowered, where such court is satisfied that property subject to forfeiture

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21 Section 11OOO, ATA.
22 Section 11OOO, ATA.
23 Section 11J(3), ATA.
24 Section 11O(1)(d), ATA.
25 Section 11O(1)(e), ATA.
under the said section cannot be forfeited, to order the forfeiture of any other property of the accused of an equivalent value to the property subject to forfeiture which stands identified or located in another jurisdiction.  

The Anti-Terrorism (Third Amendment) Act 2020 empowers ATCs to grant permission for 60 days (and to extend such permission) to investigating officers to use special investigation techniques including undercover operations, intercepting communications, accessing computer systems and controlled delivery for investigation of financing of terrorism.

The Benami Transactions (Prohibition) Act 2017 and the Benami Transactions (Prohibition) Rules 2019:

Benami is considered one of the simplest and easiest schemes to conceal proceeds of crimes. The Act coupled with the Rules makes it an offence to enter into any benami transaction, and provides for confiscation and prohibition on retransfer of benami property.

Other noteworthy changes include the following:

- FMU has issued quarterly newsletters on the steps it has taken to improve compliance with AML/CFT requirements, legislative and regulatory amendments/issuances, reporting trends, strategic analysis, typologies, and case studies. FMU also issues statistical reports, typology reports, strategic and sectoral analysis. FMU’s website also contains a series of in-depth and informative YouTube streams for various sectors. Judges can benefit from these resources since FMU’s quarterly reports provide an overview of legislative amendments in ML/TF law as well as provide relevant case studies which can help in the adjudication process.
- FBR amended the Income Tax Rules 2002 by adding Chapter VIIA on ‘Online Integration of Businesses,’ which was essentially designed to encourage the use of Point of Sale devices to limit cash couriers. The installation of an electronic fiscal device has been made mandatory for

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26 Section 11Q(6A), ATA.
27 Section 19C, ATA.
28 SRO No.779(I)/2020.
certain types of businesses to receive, record, analyze and store fiscal data to ensure misuse does not occur. Such data can be used by the prosecution as evidence against the accused in ML/TF cases and have an effect on the conviction rate.

- The Securities and Exchange Commission of Pakistan has issued guidelines on TFS obligations under UNSC Resolutions, FAQs on AML/CFT/PF, and Red Flags/Indicators for Identification of Persons or Entities Suspected to be Acting on Behalf of or at the Direction of Designated/Proscribed Individuals or Entities, delivered awareness sessions on TFS and TF, conducted compliance forums for senior management and issued letters to reporting entities regarding general feedback on STRs in light of the guidance received from FMU. This is particularly important in TF cases as it can help identify what counts as suspicious transaction/activity for investigation and prosecution purposes that would in turn help judges during the trial stage.

- Central Directorate of National Savings has issued Guidelines for Immediate Implementation of UNSC Resolutions and delivered awareness sessions on obligations, risks, red flags, reporting, and penalties.

- Owing to the amendments in AMLA, the DNFBP sector has a dedicated regulatory authority to monitor and encourage compliance with AML/CFT obligations. This helps inculcate a compliance culture that could benefit the prosecution at the time of evidence collection and the judges at the trial stage. A broken compliance system and loopholes in monitoring may affect the sanctity of evidence and its admissibility in court. These regulatory authorities can also have evidence regarding licensing and registration of DNFBPs that could help trace financial evidence for use in the courts.

2.4. Summary

- One of the key action plan deliverables required by FATF is that the prosecution of financing of terrorism results in applicable sanctions and enhancement of capacity and support for prosecutors and the judiciary.
The judiciary can help Pakistan achieve this by developing the skills to effectively adjudicate on ML/TF cases that could result in greater convictions and imposition of appropriate sanctions.

- Legislative amendments have been made to various laws that constitute the AML/CFT legal framework in Pakistan. These include, amongst other things, amendments to the ATA, AMLA and FERA, and the introduction of MLA Act 2020. These amendments have resulted in the following statutes:

  - The Anti-Money Laundering (Second Amendment) Act, 2020;
  - The Mutual Legal Assistance (Criminal Matters) Act, 2020;
  - The Anti-Terrorism (Amendment) Act, 2020;
  - The Anti-Terrorism (Second Amendment) Act, 2020;
  - The Anti-Terrorism (Third Amendment) Act, 2020

- Various government authorities such as the FMU, FBR, SECP, and CDNS have also assisted Pakistan in complying with its obligations under FATF.

### 2.5. Self-Assessment Questions

1. What role do you think the judiciary can play to help Pakistan comply with FATF’s requirements and get out of the grey list?
2. What are some of the key amendments that were critical in promoting alignment with the FATF’s standards? Please list three.
3. What sections in the ATA 1997 and AMLA 2010 allow courts to grant permission to investigating officers to use special investigation techniques in ML/TF cases?
4. How can the power to forfeit property be used effectively in ML/TF cases?
5. What is mutual legal assistance (MLA)? What powers do judges have in admitting evidence gathered in a foreign jurisdiction in an ML/TF case?
UNIT 03
Elements of ML/TF Offences

LEARNING OUTCOMES

• Money Laundering from an international law perspective.
• Common methods used by Money Launderers.
• Terrorism Financing from an international law perspective.
• Common sources of Terrorism Financing.
• The elements of the Money Laundering offence under AMLA.
• The elements of the Money Laundering and Terrorism Financing offences under ATA.
• What are proceeds of crime?
• What is a predicate offence?
3.1. Introduction to Money Laundering and Terrorism Financing

Before delving into the specific ML/TF offences under domestic law, it is important to understand the concepts of ML and TF, particularly in the context of international law.

3.1.1. Money Laundering

ML is the processing of assets generated by criminal activity with the intent to obscure the link between the funds and their illegal origins.

The UN Vienna Convention 1988 describes ML as, “The conversion or transfer of property, knowing that such property is derived from any offense(s), for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in such offense(s) to evade the legal consequences of his actions”.\(^{29}\)

Furthermore, the UN Convention Against Transnational Organized Crime identifies four actions that constitute money laundering:

- Conversion or transfer of crime proceeds for the purpose of concealing their illicit origin;
- Concealment or disguise of crime proceeds;
- Acquisition, possession, or use of crime proceeds; and
- Contributing indirectly to the commission of the offences outlined above, including participation in, conspiring, or attempting to commit the offences in question.\(^{30}\)

\(^{29}\) Article 3.1, UN Vienna Convention, 1988

\(^{30}\) Article 6, UNTOC.
3.1.2. The Process

For money laundering to comprise of an offence: a criminal act, or proceeds derived from criminal activity need to be identified. The diagram below shows the process of money laundering:

**Placement**

This is the initial stage where the offender inserts the monetary proceeds of his illegal activity into the financial system by purchasing cheques, money orders etc. to deposit abroad or by breaking up cash into small sums and depositing into banks in the same country.

**Layering**

The second stage involves the launderer moving around the black money to take it away from its illegal source so it is not traceable. Wiring the black money to offshore accounts is a common method of distancing the funds from its source. The money is then layered with more funds so as to not attract suspicion.

**Integration**

In this stage, the laundered aims to make his black money seem white to the authorities. Money is reinserted into the economy, this time to purchase luxury items etc. or even to show as a loan to the launderer himself.
3.1.3. Common Methods used by Money Launderers

- Layering and structuring payments to escape reporting restrictions;
- Changing currency denominations from small notes to larger notes;
- Expensive asset purchases, such as luxury goods, vehicles, property, precious metals, and stones including jewellery;
- Currency exchange and purchase of foreign currency;
- Hawala/hundi;
- Wire transfers or postal orders;
- Mobile banking applications such as Easypaisa, JazzCash, UPaisa, Omni UBL;
- Diverting profits from legitimate businesses;
- Donating to charities, madrassas, or other charitable causes which are fronts for terrorist groups.

3.1.4. Terrorism Financing

Terrorist groups need money to sustain themselves and to carry out terrorist acts.\(^{31}\) TF is the financing of terrorist acts, and of terrorists and terrorist organizations.\(^{32}\) In the absence of any universal definition of ‘terrorist acts,’ ‘terrorists,’ and ‘terrorist organizations,’ reference is made to the definitions provided in the FATF Recommendations – International Standards on

\(^{31}\) Various legal systems, government and international bodies have used different definitions of the term ‘terrorism’ or ‘terrorist acts,’ therefore, there is no universal definition.

Combatting Money Laundering and the Financing of Terrorism and Proliferation, which are as follows:

**Terrorist act**

(a) An act which constitutes as an offence within the scope of, and as defined in one of the following treaties:

(i) Convention for the Suppression of Unlawful Seizure of Aircraft (1970);
(ii) Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (1971);
(iii) Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents (1973);
(iv) International Convention against the Taking of Hostages (1979);
(v) Convention on the Physical Protection of Nuclear Material (1980);
(vii) Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (2005);
(viii) Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf (2005);
(ix) International Convention for the Suppression of Terrorist Bombings (1997); and
(x) International Convention for the Suppression of the Financing of Terrorism (1999);

(b) Any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict. The purpose of such an act, by its nature or context, is to intimidate a population, or to compel a government or an international organisation to do or to abstain from doing any act.
Terrorist

Any natural person who:

(i) Commits, or attempts to commit, terrorist acts by any means, directly or indirectly, unlawfully and wilfully;
(ii) Participates as an accomplice in terrorist acts;
(iii) Organizes or directs others to commit terrorist acts; or
(iv) Contributes to the commission of terrorist acts by a group of persons acting with a common purpose where the contribution is made intentionally and with the aim of furthering the terrorist act or with the knowledge of the intention of the group to commit a terrorist act.

Terrorist organization

Any group of terrorists that:

(i) Commits, or attempts to commit, terrorist acts by any means, directly or indirectly, unlawfully and wilfully;
(ii) Participates as an accomplice in terrorist acts;
(iii) Organizes or directs others to commit terrorist acts; or
(iv) Contributes to the commission of terrorist acts by a group of persons acting with a common purpose where the contribution is made intentionally and with the aim of furthering the terrorist act or with the knowledge of the intention of the group to commit a terrorist act.

The Anti-Terrorism Act 1997

The ATA defines the offence of terrorist financing as “a person commits an offence if he uses money or other property for the purposes of terrorism, or possesses money or other property; and intends that it should be used or has reasonable cause to suspect it may be used for the purposes of terrorism”.
3.1.5. Sources of Terrorism Financing

Financing of terrorist acts, terrorists, and terrorist organizations can be direct or indirect through organizations which claim to have charitable, social or cultural goals, but are also engaged in unlawful activities such as illicit arms trafficking, drug dealing and racketeering, including the exploitation of persons for purposes of funding terrorist activities.\(^3\) Below is a brief description of some common sources of TF:

**Charities/donations:**

Certain charities via NGOs or Madrassas are ‘fronts’ for collection of funds for terrorist organisations. With most of these charities, the donors are not aware of their true objectives and there is no transparency as to the utilisation of the funds.

**Self-financing (legitimate income):**

Individuals from the proscribed organisation may have other legitimate businesses under the same or different names that generate money legally. This legally generated money is then poured into the proscribed organisation to fund terrorist activities.

**Funding from supporters of a cause or membership payments:**

Various organisations propagate their agenda or cause as a humanitarian or a religious one. These organisations ask people to attend sessions, learn and interact with other supports and also financially assist the cause.

\(^3\) Paragraph 3(f), UN General Assembly Resolution 51/210 dated 16\(^{th}\) January 1997.
State/Intelligence Agency Sponsoring:

It is common for countries with heightened animosity to dismantle each other’s national security. Terrorist organisations are paid or even created by Intelligence Agencies to disrupt law and order i.e., RAW (India) sponsoring terrorist activities in Pakistan.

Criminal Activities – Drug Trafficking, Extortion, Robbery & Theft, Smuggling and Counterfeiting:

Money obtained illegally from these criminal offences is then used to purchase arms and recruit fighters, etc., to run the terrorist organisation.

Discussion

What has been the most common source of TF in your experience as a judge? In your opinion, what would be the reasoning for the prevalent source?

3.2. Money Laundering and Terrorist Financing under Pakistani Law

The various ML/TF offences under Pakistani Law are found in two separate legal regimes, i.e. AMLA and ATA, and the adjudicatory frameworks provided are separate for the offences in each respective law. Therefore, this Section of the Module has been structured accordingly. Each offence has been broken down into its actus reus and mens rea for a better understanding of the elements. The relevant evidence required to prove each element and the penalties associated with each offence have been discussed later in the Module in Chapters 4 and 6, respectively.

It is important to note that while ML and TF are separate offences, the former can sometimes lead to the latter. For example, proceeds from a criminal activity can be disguised through formal channels, and transferred to terrorist groups or
proscribed organizations. In this scenario, proceeds of crime are laundered to promote terrorist activities. However, it is important to note that terrorism financing can also occur without any money laundering. For example, a bystander could donate to a charity box outside a mosque, and the funds could then be used for terrorism purposes. It is important for judges to draw and understand the distinction between the two offences, as well as their interplay.

3.2.1. Offences under the Anti-Terrorism Act 1997

(a) **Fund Raising (Section 11H ATA)**

<table>
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<tr>
<th>Text of the Provision</th>
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<tbody>
<tr>
<td><strong>Section 11H. Fund Raising</strong></td>
</tr>
</tbody>
</table>
| (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 purpose of terrorism.  |
| (2) A person commits an offence if  
(a) He received 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 purpose of terrorism.  |
| (3) A person commits an offence if he,  
(a) Provides money or the property, and  
(b) Knows or has reasonable cause to suspect that it will or may be used for the purposes of terrorism.  |
| (4) In this section a reference to the provision of money or other property is a reference to its being given, lent or otherwise made available, whether or not for consideration. |
## Ingredients of the Offence

<table>
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<tr>
<th>INGREDIENTS</th>
<th>ACTUS REUS</th>
<th>MENS REA</th>
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</thead>
<tbody>
<tr>
<td>11H(1): Invitation to provide money or property for terrorism</td>
<td>Invitation (through any mode e.g. loudspeaker, public/crowd addressing, using cyberspace, writing request letters etc.) by a person to provide money or other property. Words used for invitation must contain asking/requesting for</td>
<td>With an intention that the money or other property should be used or has a reasonable cause to suspect that it may be used for the purposes of terrorism or by a terrorist or an organization concerned in terrorism.</td>
</tr>
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</table>

34 According to Section 2(pa) of ATA, “person” means any natural, legal person or body corporate.

35 According to Section 2(oa) of ATA, “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.

36 According to Section 2(paa) of ATA, “property” means property of every description, whether corporeal or incorporeal, movable or immovable, tangible or intangible and includes shares, securities, bonds and deeds and instruments evidencing title to, or an interest in, property of any kind and money.

37 The term “reasonable cause to suspect” has not been defined in the ATA. However, it has been explained by the Supreme Court of the United Kingdom in R v. Sally Lane and John Letts [2018 UKSC 36] that it is an objective assessment to be made based on the facts and circumstances of each case. The test is that a reasonable person in the accused’s position – based on the information he possesses – would have a reason to suspect that the money or other property would or may be used for the purpose of terrorism. The Supreme Court of the UK observed, “the requirement of an objectively assessed cause for suspicion focuses attention on what information the accused had. The requirement is satisfied when, on the information available to the accused, a reasonable person would suspect that the money might be used for terrorism.” Since this is an objective test, it is not necessary to prove that the accused actually suspected that the money or other property may be used for terrorism but rather that a reasonable person with the same knowledge would so suspect.

38 According to Section 2(x) of ATA, “terrorism” has the meaning as assigned to it in Section 6 of ATA.

39 According to Section 2(y) of ATA, “terrorist” has the meaning as assigned to it in Section 6(7) (sic) of ATA which provides that (a) any person who has committed an offence of terrorism under ATA, 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 ATA, concerned in the commission, preparation, facilitation, funding or instigation of acts of terrorism, shall also be included in the meaning given in clause (a).

40 According to Section 11A(1) of ATA, 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.

As per Section 11A(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

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<tbody>
<tr>
<td><strong>Module for Judges:</strong> Anti-Money Laundering and Countering the Financing of Terrorism</td>
<td>finances (moveable / immovable), description of purpose, and the name of the organization / NGO. (An activity for the generation of funds).</td>
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</tr>
<tr>
<td><strong>11H(2):- Receipt of money or other property for terrorism</strong></td>
<td>Receives money or other property (possesses property received as a result of invitation, issues receipts / acknowledgement, etc.)</td>
<td>With an intention that the money or other property should be used or has a reasonable cause to suspect that it may be used for the purposes of terrorism or by a terrorist or an organization concerned in terrorism.</td>
</tr>
<tr>
<td><strong>11H(3):- Provision of money or other property for terrorism</strong></td>
<td>Provides money or other property (the second hand of the transaction; the person who provides property to the inviter)</td>
<td>With knowledge or reasonable suspicion that it will or may be used for the purposes of terrorism or by a terrorist or an organization concerned in terrorism.</td>
</tr>
</tbody>
</table>

(b) Acts on behalf of, or at the direction of, a terrorist or an organization referred in sub-section (1).
(b) Use and Possession (Section 11I ATA)

**Text of the Provision**

Section 11I. Use and Possession

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.

**Ingredients of the Offence**

<table>
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<tr>
<th>INGREDIENTS</th>
<th>ACTUS REUS</th>
<th>MENS REA</th>
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<tbody>
<tr>
<td>11I(1):- Use of money or other property for terrorism</td>
<td>Use of money or other property.</td>
<td>For the purposes of terrorism.</td>
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<td>The uses of money can be terrorism / terrorist operations,</td>
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<td></td>
<td>propagation of ideology, recruitment, training, procurement, managing</td>
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<td>organizational infrastructure, social services to members, etc.</td>
<td></td>
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<tr>
<td>11I(2):- Possession of money or other property for terrorism</td>
<td>Possesses money or other property.</td>
<td>With an intention that the money or other property should be used, or has reasonable cause to suspect that it may be used for the purposes of terrorism.</td>
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<td></td>
<td>This includes management of funds in the form of bank accounts, real</td>
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<td>estate, cash in boxes, gems and minerals, jewelry, front businesses,</td>
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<td></td>
<td>front NPOs, etc.</td>
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</tbody>
</table>
(c) Funding Arrangements (Section 11J ATA)

Text of the Provision

Section 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 willfully 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 purposes of perpetrating, participating in, assisting or preparing for a terrorist act or for the purpose of providing or receiving training for terrorist related activities.

(4) The provisions of sub-section (2) shall also apply to-
(a) organizations owned or controlled, directly or indirectly, by proscribed organizations or proscribed persons; and
(b) persons or organizations acting on behalf of, or at the direction of, proscribed organizations or proscribed persons.

Ingredients of the Offence

<table>
<thead>
<tr>
<th>INGREDIENTS</th>
<th>ACTUS REUS</th>
<th>MENS REA</th>
</tr>
</thead>
<tbody>
<tr>
<td>11J(1):- Entering into an arrangement for provision of money or other property for terrorism</td>
<td>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. This includes front businesses, NPOs, illegal MVTS, cash smuggling, bank accounts etc.</td>
<td>With a reasonable cause to suspect that money or other property will or may be used for terrorism.</td>
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<tr>
<td>Section</td>
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<td>Note</td>
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<tr>
<td>11J(2):</td>
<td>Assistance / provision of money or other property or services to proscribed persons or organizations, organizations owned or controlled directly or indirectly by proscribed persons and organizations, and persons or organizations acting on behalf of or at the direction of proscribed organizations or persons</td>
<td>Knowingly or willfully makes money or other property or services available, directly or indirectly, wholly or jointly, for the benefit of a proscribed organization or proscribed person. This includes associates, front-men, front NPOs.</td>
</tr>
<tr>
<td>11J(3):</td>
<td>Provision of money or other property or facilitation of travel for the purposes of terrorism</td>
<td>Knowingly or willfully pays for or provides money or other property or facilitates in any manner the travel of a person anywhere for the purposes of perpetrating, participating in, assisting or preparing for a terrorist act or for the purpose of providing or receiving training for terrorist related activities. (One of the uses of terrorist activity)</td>
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41 According to Section 2(q) of ATA, “proscribed organization” means any organization which is listed in the First Schedule under Section 11B of ATA.

42 According to Section 2(qa) of ATA, “proscribed person” means any individual who is listed in the Fourth Schedule under Section 11EE of ATA.
(d) Money Laundering (Section 11K ATA)

Text of the Provision

Section 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 defense for a person charged with an offence under sub-section (1) to prove that he did not know and had no reasonable cause to suspect that the arrangement related to terrorist property.

Ingredients of the Offence

<table>
<thead>
<tr>
<th>INGREDIENTS</th>
<th>ACTUS REUS</th>
<th>MENS REA</th>
</tr>
</thead>
<tbody>
<tr>
<td>11K: Money Laundering</td>
<td>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.</td>
<td>If the accused proves that he did not know, or had no reasonable cause to suspect that the arrangement related to terrorist property, that is a valid defense.</td>
</tr>
</tbody>
</table>

43 According to Section 2(aa) of ATA, “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 sub-section (i) above:
(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.
This includes front-men, front-businesses, front NPOs, DNFBPs, illegal MVTS, cash smuggling etc. The onus to prove this would lie with the accused.

(e) **Support to Proscribed Organizations (Section 11F(5) ATA)**

**Text of the Provision**

Section 11F(5). 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.

**Ingredients of the Offence**

<table>
<thead>
<tr>
<th>INGREDIENTS</th>
<th>ACTUS REUS</th>
<th>MENS REA</th>
</tr>
</thead>
<tbody>
<tr>
<td>11F(5):- Soliciting, Collecting or Raising Money or other Property for a Proscribed Organization.</td>
<td>Conducting the act of either soliciting or collecting or raising either money or property for a proscribed organization.</td>
<td>An accused can be held guilty of Section 11F(5) without having any mens rea for the offence. It is a strict liability offence, meaning that the prosecution is not required to establish mens rea on part of the accused. To secure a conviction, it will be enough for the prosecution to show that the accused committed the actus reus of the offence, regardless of whether he did so intentionally or unintentionally.</td>
</tr>
</tbody>
</table>
(f) Violation of UNSC Resolutions (Section 11000 ATA)

**Text of the Provision**

**Section 11000. Violation of UNSC Resolution.**

1. A person is guilty of an offence if he, in any way whatsoever, refuses or fails to comply with the orders of the Federal Government under section 2 of the United Nations (Security Council) Act, 1948 (XIV of 1948).

   ...  

4. Notwithstanding anything contained in sub-section (2), of section 11000, if any public servant is found negligent in complying with the provisions of sub-section (1), such public servant shall be proceeded again under respective service rules for administrative action.

**Ingredients of the Offence**

<table>
<thead>
<tr>
<th>INGREDIENTS</th>
<th>ACTUS REUS</th>
<th>MENS REA</th>
</tr>
</thead>
<tbody>
<tr>
<td>11000:- Refusing or failing to comply with the orders of the Federal Government under section 2 of the United Nations (Security Council) Act, 1948 (XIV of 1948).</td>
<td>A person either refusing or failing to comply with the orders of the Federal Government under Section 2 of the UNSC Act. These primarily relate to UNSC Resolutions on counter terrorism measures to be taken by the member states in order to check terrorism financing by making and enforcing such provisions in the domestic laws.</td>
<td>An accused person, legal person, or body corporate can be held guilty of Section 11000 without having any mens rea for the offence. To the extent of private persons (legal or otherwise), Section 11000 is a strict liability offence, meaning that the prosecution is not required to establish mens rea on part of the accused. To secure a conviction, it will be enough for the prosecution to show that the accused failed to comply with the orders of the Federal Government under Section 2 of the UNSC Act,</td>
</tr>
<tr>
<td>A legal person or body corporate either refusing or failing to comply with the orders of the Federal Government under Section 2 of the UNSC Act.</td>
<td>regardless of whether such failure was intentional or unintentional.</td>
<td></td>
</tr>
<tr>
<td>---</td>
<td>---</td>
<td></td>
</tr>
<tr>
<td>A public servant(^{44}) being negligent in complying with the orders of the Federal Government under Section 2 of the UNSC Act.</td>
<td>To the extent of public servants, Section 11000 can be committed by a public servant if he possesses the <em>mens rea</em> of negligence. The prosecution can establish negligence by showing that the accused public servant failed to observe the standards expected of a public servant in terms of complying with the orders of the Federal Government under Section 2 of the UNSC Act, or similar order.</td>
<td></td>
</tr>
</tbody>
</table>

\(^{44}\) According to Section 2(r) of ATA, “public servant” shall have the same meaning as in Section 21 of the Pakistan Penal Code, 1860, or in any other law for the time being in force.
3.2.2. Offences under the Anti-Money Laundering Act 2010

Money Laundering (Section 3 AMLA)

Text of the Provision

Section 3. Offence of Money Laundering.

A person shall be guilty of money laundering, if the person:-

(a) Acquires, converts, possesses, uses or transfers property, knowing or having reason to believe that such property is proceeds of crime;

(b) Conceals or disguises the true nature, origin, location, disposition, movement or ownership of property, knowing or having reason to believe that such property is proceeds of crime;

(c) Holds or possesses on behalf of any other person any property knowing or having reason to believe that such property is proceeds of crime; or

(d) Participates in, associates, conspires to commit, attempts to commit, aids, abets, facilitates or counsels the commission of the acts specified in clause (a), (b) and (c).

Explanation-I. The knowledge, intent or purpose required as an element of an offence set forth in this section may be inferred from factual circumstances in accordance with the Qanun-e-Shahadat Order, 1984.

Ingredients of the Offence

<table>
<thead>
<tr>
<th>INGREDIENTS</th>
<th>ACTUS REUS</th>
<th>MENS REA</th>
</tr>
</thead>
<tbody>
<tr>
<td>S. 3(a):- Acquisition, conversion, possession, use or transfer of property</td>
<td>Acquires, converts, possesses, uses or transfer property.45</td>
<td>With knowledge or having reason to believe that the property is proceeds of crime.46</td>
</tr>
</tbody>
</table>

45 According to Section 2(xxx) of AMLA, “property” means property or assets of any description, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and includes deeds and instruments evidencing title to, or interest in, such property or assets, including cash and monetary instruments, wherever located.

46 See the Section 3.2.3. of the Manual.
3.2.3. Additional Aspects to Consider

(a) **Proceeds of crime**

The phrase ‘proceeds of crime’ used in Section 3 of AMLA has been defined to mean any property derived or obtained directly or indirectly by any person from the commission of a predicate offence or a foreign serious offence. The word ‘property’ has the same meaning as mentioned in the immediately preceding paragraph.
‘Foreign serious offence’ has been defined as an offence:

(a) Against the law of a foreign state stated in a certificate issued by, or on behalf of, the government of that foreign state; and

(b) An offence, which, had it occurred in Pakistan, would have constituted a predicate offence.

Whereas ‘predicate office’ means an offence specified in Schedule-I to AMLA. Schedule-I to AMLA contains various offences under the following legislation:

(a) Pakistan Penal Code 1860;
(b) Arms Act 1878;
(c) Foreigners Act 1946;
(d) Prevention of Corruption Act 1947;
(e) Foreign Exchange Regulation Act 1947;
(f) Copyright Ordinance 1962;
(g) Pakistan Arms Ordinance 1965;
(h) Customs Act 1969;
(i) Securities Act 2015;
(j) Emigration Ordinance 1979;
(k) Sales Tax Act 1990;
(l) Control of Narcotic Substances Act 1997;
(m) Anti-Terrorism Act 1997;
(n) Pakistan Environmental Protection Act 1997;
(o) National Accountability Ordinance 1999;
(p) Registered Designs Ordinance 2000;
(q) Trade Marks Ordinance 2001;
(r) Income Tax Ordinance 2001;
(s) Prevention & Control of Human Trafficking Ordinance 2002;

(b) **Predicate offence**

A question that often arises in the prosecution and adjudication of ML/TF offences pertains to predicate offences. It is important to note that after an FIR is registered for any predicate offence, a second FIR should be registered for an
offence of ML under AMLA.\textsuperscript{47} However, both the predicate offence and the offence of ML under AMLA should be tried separately having no effect on each other's findings.\textsuperscript{48}

In order to prosecute the accused for money laundering, it is essential that the predicate offence be investigated. A predicate offence is any criminal conduct that facilitates a more serious offence. As mentioned above, the offences listed in the Schedule-I to AMLA have been declared as predicate offences. The proceeds from the predicate offence typically lead to ML offences. For instance, false identification is itself a crime. It may be a predicate offence to commit larceny, or fraud if the false identity is used to withdraw money from a bank.

By way of example, a businessman running a successful chain of restaurants evades taxes. He dishonestly reports his annual sales and understates profits. This offence is categorized as tax evasion. The profits that he does not show in his bank statements and tax returns are dumped in an offshore account in Switzerland. In this scenario, the offence of tax evasion is the predicate offence.

However, for the purposes of proving a ML offence under AMLA, the conviction of an accused for the respective predicate offence shall not be required.\textsuperscript{49} The prosecution only needs to show that the proceeds of crime have been derived from a criminal offence that is listed as a predicate offence in Schedule-I to AMLA, but it does not necessarily need to prove the elements of the predicate offence. In fact, an acquittal for the predicate offence should not be considered \textit{ipso facto} beneficial to the accused in the subsequent FIR and trial under AMLA.\textsuperscript{50}

According to AMLA, the Court of Sessions (within its territorial jurisdiction) can exercise jurisdiction to try and adjudicate the offences punishable under AMLA. However if the predicate offence was triable by any court other than the Court of Sessions, the offence of ML and all matters connected with it or incidental thereto would be tried by the Court trying the predicate offence.\textsuperscript{51} This means that, for example, if an accused is charged for the predicate offence of sale and purchase of

\textsuperscript{47} Muhammad Rafique v Director General, Federal Investigation Agency (W.P. No.1184/2021).
\textsuperscript{48} Ibid.
\textsuperscript{49} Explanation II, Section 3, AMLA.
\textsuperscript{50} Muhammad Rafique, n 47.
\textsuperscript{51} Section 20(1)(a), AMLA.
drugs under the Control of Narcotics Substances Act 1997, the offence of money laundering may also be triable by the Special Court established under such legislation.\(^{52}\) However, where the predicate offence is triable by any court inferior to the Court of Sessions, such predicate offence, the offence of ML, and all matters connected therewith or incidental thereto shall be tried by the Court of Sessions.\(^{53}\)

(c) **Burden of proof**

In ML/TF cases under the ATA,\(^{54}\) as is generally the case with most criminal matters, the burden rests upon the prosecution to prove the offence against the accused beyond reasonable doubt in order to secure a conviction and the benefit of any reasonable doubt would go to the accused.\(^{55}\)

The knowledge, intent, or purpose required as an element of the offence of ML under the AMLA may be inferred from factual circumstances in accordance with the QSO.\(^{56}\) Therefore, the burden rests upon the accused to prove that they are not guilty of the offence of ML under the AMLA.\(^{57}\)

### 3.3. Summary

- There are no universal definitions of ML and TF and therefore must be understood in the context of international law and domestic law.
- ML/TF offences in Pakistan fall under two separate legal regimes, i.e. ATA and AMLA.
- While ML and TF are separate offences, ML can sometimes lead to TF. However, it is important to note that TF can also occur without any ML.
- There are various methods of ML and various sources of TF, all of which must be kept in mind while adjudicating ML/TF cases.
- In order to determine the charges for ML/TF offences, the elements of each offence, i.e., *actus reus* and *mens rea* must be proved.

\(^{52}\) Muhammad Alam v. The State (2018 PCrLJ 837).

\(^{53}\) Section 20(1)(b), AMLA.

\(^{54}\) However, according to Section 27A ATA, any person having in possession any explosive substance with or without explosive devices without lawful justification or having been unlawfully concerned with such explosive substance and devices, shall be presumed, unless contrary is proved, that the explosive substance was for the purpose of terrorism.

\(^{55}\) Shahnawaz and another v. The State (2020 PCrLJN 134).

\(^{56}\) Explanation-I, Section 3, AMLA.

\(^{57}\) Muhammad Rafique, n 47.
• Under the AMLA, while the offence of ML is based upon a predicate offence, a conviction for the latter is not required for a conviction of the former.

3.4. **Self-Assessment Questions**

1. What are some common methods used by money launderers to conceal illicit funds?
2. Can you list down 4 sources of TF?
3. Can you describe the ML/TF legal regime in Pakistan?
4. How do you define ‘proceeds of crime’?
5. What is a predicate offence? Is a conviction of a predicate offence a prerequisite to convict an accused for the offence of ML under AMLA?
6. How does the burden of proof vary between the ATA and AMLA?
UNIT 04
Types and Sources of Evidence

LEARNING OUTCOMES

- The importance of the types and sources of evidence.
- What are the main sources of financial evidence.
- What tracing is.
- Utilizing Surveillance and Interrogation.
- Use of Modern device evidence for ML/TF offences.
- Use of Forensic Evidence for ML/TF offences.
- Types and sources of financial evidence.
- Proof of a proscribed organization, and the accused’s relationship with such an organization.
Module for Judges: Anti-Money Laundering and Countering the Financing of Terrorism

4.1. Importance of the Types and Sources of Evidence for Prosecutors

Given the complexity of Money Laundering and Terrorism Financing cases, the types of evidence that can be used to prosecute such offences as well as the various sources from this evidence can be obtained gain greater importance. Key sources of evidence will include government institutions which hold data, as well as financial institutions such as banks. There are legal requirements which must be met by the investigator to access this type of evidence stored within these entities. At times court orders will be required. In other situations, a senior police officer will be empowered to seek such information directly. In any case, it is important that judges are familiar with the various types of evidence and the sources from which they can be obtained so as to:

A) Better understand the origin of the evidence;
B) To be able to hear both the prosecution and defence side of the arguments and pronounce a judicious verdict.

4.1.1. Types of Evidence

In the toolkit Vol.1 (page 20) you will find various types of evidence which have been categorized for ease of reference into the following categories:

1. Confessional Statement
2. Prosecution Witness Statements
3. Financial Records
4. Personal Profiling record
5. Expert Analysis and Findings
6. Additional Evidence concerning Relationship with Proscribed Organizations.

While there are numerous other types of evidence as well, the aforementioned categories contain some of the most effective types of evidence in proving ML/TF offences.
These categories can contain the following types of evidence:

<table>
<thead>
<tr>
<th>Category</th>
<th>Types of Evidence</th>
</tr>
</thead>
<tbody>
<tr>
<td>Confessional Statement</td>
<td>• Confessions made to either the IO or a Magistrate (reliance on 21H of the ATA and Section 164 CrPC).</td>
</tr>
<tr>
<td>Prosecution Witness Statements</td>
<td>• Witness statements may be recorded by police officers under Section 161 CrPC, or by the Magistrate under Section 164 CrPC.</td>
</tr>
<tr>
<td>Financial Records</td>
<td>• Bank Record&lt;br&gt;• Bank Locker Record&lt;br&gt;• Income Tax Returns&lt;br&gt;• Wealth Statements&lt;br&gt;• Record of Immoveable Properties&lt;br&gt;• Branchless Banking Records&lt;br&gt;• Excise Department Records&lt;br&gt;• NPO Registration Authority Records&lt;br&gt;• DNFBPs Record&lt;br&gt;• National Savings etc.</td>
</tr>
<tr>
<td>Personal Profiling Record</td>
<td>• Verisys and Family Tree - NADRA,&lt;br&gt;• Passport Record - Directorate General of Immigration and Passports&lt;br&gt;• Ground Verification&lt;br&gt;• Travel History Record from FIA IBMS</td>
</tr>
<tr>
<td>Expert Analysis and Findings</td>
<td>• Interception and Surveillance&lt;br&gt;• Digital/Cyber Evidence&lt;br&gt;• Digital Equipment like Computer and Mobile Data&lt;br&gt;• Call Detail Record (CDR) and SIM Registration&lt;br&gt;• Record from Social Media Companies/Apps&lt;br&gt;• Audio Video Recording</td>
</tr>
</tbody>
</table>
4.1.2. Sources of Evidence

The Sources from which the aforementioned evidence is obtained is equally important to understand. Confessional Statements come from the accused and the Prosecution Witness Statement comes from various witnesses to the crime and therefore these categories do not require further explanation. Evidence that is sent for Expert Analysis or evidence concerning the relationship of an individual or entity with a proscribed organization can be obtained from numerous sources. Usually such evidence is in the possession of the accused and can therefore be directly traced to him/her. In ML/TF cases, a critical piece of evidence can often be the Financial Records of individuals or organizations. Financial records can be obtained from a finite number of entities (sources) in Pakistan or abroad. The following is a non-exhaustive list of sources and the types of evidence or information that they can retain or provide:

<table>
<thead>
<tr>
<th>SOURCE</th>
<th>INFORMATION AVAILABLE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Financial Monitoring Unit</td>
<td>• Currency Transaction reports&lt;br&gt;• Wire transfers&lt;br&gt;• Cross-border reports&lt;br&gt;• Suspicious Activity Reports.</td>
</tr>
<tr>
<td></td>
<td>(Information from the FMU is not typically a part of police database and therefore may offer valuable insight that may be hidden from the police)</td>
</tr>
</tbody>
</table>
| **Federal Board of Revenue (FBR)** | • Income Statements (see Figure A below)  
• Statement of Assets & Liabilities (Wealth Statements)  
• Taxes Paid (Returns)  
• Foreign Income & Assets  
• Sales Tax Returns |
| **Federal Investigation Agency (FIA)** | • Suspicious Transaction Report  
• Cash Transaction Report  
• International Request  
• Border Control Authority referrals  
• NCB and Interpol referrals  
• Federal Government referrals  
• Whistle-blowers |
| **Credit Reference Agencies (PACRA)** | • Hire/Purchase car agreements  
• Electoral roll data  
• Insurance information  
• Financial history etc |
| **Debriefing Prisoners** | • Debriefing the terrorist in custody may help understand the overall operation of the group  
• Cellmates of the terrorist may have information  
• Visitors of the terrorist in prison may have information |
| **Informants** | • Recruited by the police, these informants can be tasked with engaging with the terrorist organization to obtain financial information. |
| **Police Intelligence Reports** | • Initial line of enquiry  
• Connection with other illegal organizations.  
• Information from other intelligence agencies/stakeholders |
| **Arrest Report** | - Nature of the offence  
- Others arrested at the same time  
- Property in possession at the time of arrest |
|-------------------|------------------------------------------------|
| **National Database & Registration Authority (NADRA)** | - Information recorded for the purposes of an ID card  
- Family tree  
- Addresses and contact number |
| **Banks/Financial Institutions** | - With a court order, the bank can provide account information, monitor activity on the account, examine sources of income etc. |
| **Anti-Narcotics Force** | - A terrorist organization’s crossover with drug trafficking may be possible and hence liaison with the ANF may be helpful. |
| **Border Authorities** | - Information regarding movement of suspect and their property |
| **Merchant Service Providers (MSPs)** | - Bank account information of the suspect  
- Address and contact numbers  
- IP addresses |
| **Immigration** | - Passport number  
- Address  
- Family tree  
- Travel history |
Other Sources

- Facebook
- Twitter
- CCTV footage
Figure A: Sample of Income Statement

This is not a valid evidence of being a "filer" for the purposes of clauses (23A) and (35C) of sections 2 and 181A.
## Module for Judges: Anti-Money Laundering and Countering the Financing of Terrorism

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### 114(1) (Return of Income filed voluntarily for complete year)

**Name:** TAXPAYER  
**Address:** F-9, ISLAMABAD

**Registration:** 123456789  
**Tax Year:** 2018  
**Period:** 01 Jul 2017 - 30 Jun 2018  
**Medium:** Online  
**Doc Date:** 29 Nov 2018

**Document:** Date 20 Oct 2019

---

### Salary

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Total Amount</th>
<th>Amount Exempt from Tax / Subject to Fixed / Final Tax</th>
<th>Amount Subject to Normal Tax</th>
</tr>
</thead>
<tbody>
<tr>
<td>Income from Salary</td>
<td>1000</td>
<td>2,963,562</td>
<td>2,963,562</td>
<td>2,963,562</td>
</tr>
<tr>
<td>Pay, Wages or other remuneration (including arrears of salary)</td>
<td>1009</td>
<td>2,969,562</td>
<td>2,969,562</td>
<td>2,969,562</td>
</tr>
</tbody>
</table>

### Receipts / Deductions

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Total Amount</th>
<th>Amount Exempt from Tax / Subject to Fixed / Final Tax</th>
<th>Amount Subject to Normal Tax</th>
</tr>
</thead>
<tbody>
<tr>
<td>Income / (Loss) from Property</td>
<td>2000</td>
<td>253,877</td>
<td>253,877</td>
<td>0</td>
</tr>
<tr>
<td>Total Receipts from Property</td>
<td>2002</td>
<td>253,877</td>
<td>253,877</td>
<td>0</td>
</tr>
<tr>
<td>Rent Received or Receivable</td>
<td>2004</td>
<td>253,877</td>
<td>253,877</td>
<td>0</td>
</tr>
</tbody>
</table>

### Manufacturing / Trading Items

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Total Amount</th>
<th>Amount Exempt from Tax / Subject to Fixed / Final Tax</th>
<th>Amount Subject to Normal Tax</th>
</tr>
</thead>
<tbody>
<tr>
<td>Income / (Loss) from Business</td>
<td>3000</td>
<td>781,703</td>
<td>0</td>
<td>781,703</td>
</tr>
<tr>
<td>Net Revenue (excluding Sales Tax, Federal Excise, Brokerage, Commission, Discount, Freight Outward)</td>
<td>3002</td>
<td>2,497,918</td>
<td>0</td>
<td>2,497,918</td>
</tr>
<tr>
<td>Gross Revenue (excluding Sales Tax, Federal Excise)</td>
<td>3006</td>
<td>2,497,918</td>
<td>0</td>
<td>2,497,918</td>
</tr>
<tr>
<td>Cost of Sales / Services</td>
<td>3003</td>
<td>1,716,215</td>
<td>0</td>
<td>1,716,215</td>
</tr>
<tr>
<td>Salaries / Wages</td>
<td>3001</td>
<td>849,000</td>
<td>0</td>
<td>849,000</td>
</tr>
<tr>
<td>Repair / Maintenance</td>
<td>3007</td>
<td>98,315</td>
<td>0</td>
<td>98,315</td>
</tr>
<tr>
<td>Other Direct Expenses</td>
<td>3008</td>
<td>777,000</td>
<td>0</td>
<td>777,000</td>
</tr>
<tr>
<td>Gross Profit / (Loss)</td>
<td>3100</td>
<td>781,703</td>
<td>0</td>
<td>781,703</td>
</tr>
</tbody>
</table>

### Management, Administrative, Selling & Financial Expenses

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Total Amount</th>
<th>Amount Exempt from Tax / Subject to Fixed / Final Tax</th>
<th>Amount Subject to Normal Tax</th>
</tr>
</thead>
<tbody>
<tr>
<td>Accounting Profit / (Loss)</td>
<td>3200</td>
<td>781,703</td>
<td>0</td>
<td>781,703</td>
</tr>
</tbody>
</table>

---

**Print Date:** Fri, 29 Jan 2021 16:18:29  
**Page:** 2 of 5

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Module for Judges: Anti-Money Laundering and Countering the Financing of Terrorism

114(1) (Return of Income filed voluntarily for complete year)

Name: TAXPAYER
Address: F-9, ISLAMABAD

Registration: 123456789
Tax Year: 2018
Period: 01-Jul-2017 - 30-Jun-2018
Medium: Online
Due Date: 30-Nov-2018
Document: 29-Oct-2018

Inadmissible / Admissible Deductions

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Total Amount</th>
<th>Amount Exempt from Tax / Subject to Fixed / Final Tax</th>
<th>Amount Subject to Normal Tax</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tax Amortization for Current Year</td>
<td>3247</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Tax Depreciation / Initial Allowance for Current Year</td>
<td>3248</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>

Adjustments

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Total Amount</th>
<th>Amount Exempt from Tax / Subject to Fixed / Final Tax</th>
<th>Amount Subject to Normal Tax</th>
</tr>
</thead>
<tbody>
<tr>
<td>Income / (Loss) from Business before adjustment of Admissible Depreciation / Initial Allowance / Amortization for current / previous years</td>
<td>3270</td>
<td>0</td>
<td>0</td>
<td>761,703</td>
</tr>
</tbody>
</table>

Business Assets / Equity / Liabilities

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Assets</td>
<td>3349</td>
<td>0</td>
</tr>
<tr>
<td>Other Assets</td>
<td>3348</td>
<td>0</td>
</tr>
<tr>
<td>Total Equity / Liabilities</td>
<td>3399</td>
<td>0</td>
</tr>
<tr>
<td>Other Liabilities</td>
<td>3398</td>
<td>0</td>
</tr>
</tbody>
</table>

Tax Reductions

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Total Amount</th>
<th>Tax Chargeable</th>
<th>Tax Reduced</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tax Reductions</td>
<td>9309</td>
<td>0</td>
<td>0</td>
<td>141,364</td>
</tr>
<tr>
<td>Tax Reduction for Full Time Teacher / Researcher</td>
<td>9302</td>
<td>0</td>
<td>0</td>
<td>141,364</td>
</tr>
</tbody>
</table>

Tax Credits

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Eligible Amount</th>
<th>Ineligible Amount</th>
<th>Tax Credit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tax Credits</td>
<td>9329</td>
<td>0</td>
<td>0</td>
<td>47,198</td>
</tr>
<tr>
<td>Tax Credit for Investment in Shares, Sukukis and Life Insurance Premium u/s 62</td>
<td>0</td>
<td>450,000</td>
<td>0</td>
<td>47,198</td>
</tr>
</tbody>
</table>

Adjustable Tax

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Receipts / Value</th>
<th>Tax Collected / Deducted</th>
<th>Tax Changeable</th>
</tr>
</thead>
<tbody>
<tr>
<td>Adjustable Tax</td>
<td>640000</td>
<td>0</td>
<td>236,176</td>
<td>0</td>
</tr>
<tr>
<td>Salary of Other Employees u/s 149</td>
<td>84020004</td>
<td>0</td>
<td>212,044</td>
<td></td>
</tr>
</tbody>
</table>

Print Date: Fri, 29 Jan 2021 10:18:21
Module for Judges: Anti-Money Laundering and Countering the Financing of Terrorism

---

### Federal Board of Revenue

#### 114(1) (Return of Income filed voluntarily for complete year)

**Name:** TAXPAYER  
**Address:** F-9, ISLAMABAD  
**Contact No:**

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Receipts / Value</th>
<th>Tax Collected / Deducted</th>
<th>Tax Chargeable</th>
</tr>
</thead>
<tbody>
<tr>
<td>Private Vehicle Tax u/s 234</td>
<td>64138003</td>
<td>0</td>
<td>6,250</td>
<td>0</td>
</tr>
<tr>
<td>Private Vehicle Tax u/s 234 - ZA 652</td>
<td>64138003</td>
<td>0</td>
<td>6,250</td>
<td>0</td>
</tr>
<tr>
<td>Electricity Bill of Domestic Consumer u/s 235A</td>
<td>64140101</td>
<td>0</td>
<td>5,220</td>
<td>0</td>
</tr>
<tr>
<td>Electricity Bill of Domestic Consumer u/s 235A - 03390000-Ufone</td>
<td>64140101</td>
<td>0</td>
<td>5,296</td>
<td>0</td>
</tr>
<tr>
<td>Internet Bill u/s 236(1)(d)</td>
<td>64150005</td>
<td>0</td>
<td>6,595</td>
<td>0</td>
</tr>
<tr>
<td>Internet Bill u/s 236(1)(d) - 0533233333-Telenor</td>
<td>64150005</td>
<td>0</td>
<td>6,595</td>
<td>0</td>
</tr>
</tbody>
</table>

**Final / Fixed / Minimum / Average / Relevant / Reduced Tax**

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Receipts / Value</th>
<th>Tax Collected / Deducted</th>
<th>Tax Chargeable</th>
</tr>
</thead>
<tbody>
<tr>
<td>Final / Fixed / Minimum / Average / Relevant / Reduced Tax</td>
<td>640001</td>
<td>1,450,402</td>
<td>119,653</td>
<td>122,346</td>
</tr>
<tr>
<td>Payment for Services u/s 152(1)(d) @10%</td>
<td>64689170</td>
<td>194,763</td>
<td>34,077</td>
<td>94,076</td>
</tr>
<tr>
<td>Income from property u/s 15(6)</td>
<td>64689052</td>
<td>253,787</td>
<td>0</td>
<td>2,694</td>
</tr>
<tr>
<td>Profit on debi u/s 7B</td>
<td>64310056</td>
<td>255,762</td>
<td>25,576</td>
<td>25,576</td>
</tr>
<tr>
<td>Profit on debi u/s 7B - 42695</td>
<td>64310056</td>
<td>255,762</td>
<td>25,576</td>
<td>0</td>
</tr>
</tbody>
</table>

**Computations**

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Total Amount</th>
<th>Amount Exempt from Tax / Subject to Fixed / Final Tax</th>
<th>Amount Subject to Normal Tax</th>
</tr>
</thead>
<tbody>
<tr>
<td>Income from Salary</td>
<td>1000</td>
<td>2,969,562</td>
<td>0</td>
<td>2,969,562</td>
</tr>
<tr>
<td>Income (Loss) from Property</td>
<td>3000</td>
<td>253,787</td>
<td>253,787</td>
<td>0</td>
</tr>
<tr>
<td>Income (Loss) from Business</td>
<td>3000</td>
<td>761,700</td>
<td>0</td>
<td>761,700</td>
</tr>
<tr>
<td>Total Income</td>
<td>9000</td>
<td>0</td>
<td>3,751,265</td>
<td>3,751,265</td>
</tr>
<tr>
<td>Taxable Income</td>
<td>9100</td>
<td>0</td>
<td>0</td>
<td>441,426</td>
</tr>
<tr>
<td>Tax Chargeable</td>
<td>9200</td>
<td>0</td>
<td>0</td>
<td>534,616</td>
</tr>
<tr>
<td>Normal Income Tax</td>
<td>920000</td>
<td>0</td>
<td>0</td>
<td>28,270</td>
</tr>
<tr>
<td>Final / Fixed / Minimum / Average / Relevant / Reduced Income Tax</td>
<td>920100</td>
<td>0</td>
<td>0</td>
<td>141,564</td>
</tr>
<tr>
<td>Tax Reductions</td>
<td>9309</td>
<td>0</td>
<td>0</td>
<td>47,186</td>
</tr>
<tr>
<td>Tax Credits</td>
<td>9329</td>
<td>0</td>
<td>0</td>
<td>69,502</td>
</tr>
<tr>
<td>Difference of Minimum Tax Chargeable u/s 148(8) / 153(3)</td>
<td>923192</td>
<td>0</td>
<td>0</td>
<td>349,829</td>
</tr>
</tbody>
</table>

**Print Date:** Fri, 29 Jan 2021 16:18:21  
**Page:** 4 of 5
Please review pages 119-124 in the AML/CFT Toolkit Vol. II for more pictorial illustrations.
It is worth mentioning here that a financial investigation involves the collection, collation and analysis of all available information with a view towards assisting in the prosecution of crime. The major goal of a financial investigation is to identify and document the movement of money during the course of criminal activity. The link between the origins of the money, beneficiaries, when the money is received and where it is stored or deposited can provide information about proof of criminal activity. Tracing is conducted to identify the various financial or other similar assets of an accused. Tracing can be done for various different types of assets and can reveal important information and evidence useful to the investigation:

**Tracing:**

- **Bank accounts:** Personal bank accounts may contain information such as addresses, opening deposit, security data, etc. Business accounts typically have agreements attached to authorize drawers and therefore might be useful for tracing the source of income (Illustrated in Figure B)
- **Cancelled cheques:** The cheque normally shows the account number, concerned bank and the name of the payee.
- **Loan Records:** Loan application contains financial statements, summary of assets and bank statements. This may be helpful in identifying hidden assets.
- **Credit Card Records:** The level and nature of expenditure may be identifiable by monitoring the credit card usage (Illustrated in Figure C).
- **Calculating Net Worth:** This is an indirect method of tracing. It can be calculated by comparing the subject's net worth at the beginning and end of a period- shows the increase or decrease in net worth.
- **Locating Hidden Assets:** Money laundered may be hidden in someone else’s name, underneath pay down debt, transferred to tax havens or trusts or used on insurance products.
- **Assets Abroad:** Money laundered and dumped abroad may require Mutual Legal Assistance (MLA) between countries to request and provide assistance in law enforcement matters and enforce foreign orders and judgements.
Figure B: Sample of Bank Account Statement (Financial Records)

<table>
<thead>
<tr>
<th>Date</th>
<th>Value Date</th>
<th>Instrument/Check No.</th>
<th>Description</th>
<th>Debit</th>
<th>Credit</th>
<th>Balance</th>
</tr>
</thead>
<tbody>
<tr>
<td>22 APR 2021</td>
<td>22 APR 2021</td>
<td></td>
<td>Opening Balance</td>
<td>0.00</td>
<td>0.00</td>
<td>0.00</td>
</tr>
<tr>
<td>22 APR 2021</td>
<td>22 APR 2021</td>
<td></td>
<td>Online Cash Deposit</td>
<td>0.00</td>
<td>0.00</td>
<td>0.00</td>
</tr>
<tr>
<td>22 APR 2021</td>
<td>22 APR 2021</td>
<td></td>
<td>WHT Cash Withdrawal</td>
<td>-1,520.00</td>
<td>0.00</td>
<td>360,000.00</td>
</tr>
<tr>
<td>23 APR 2021</td>
<td>23 APR 2021</td>
<td></td>
<td>Cash Withdrawal</td>
<td>-20,000.00</td>
<td>0.00</td>
<td>177,000.00</td>
</tr>
<tr>
<td>23 APR 2021</td>
<td>23 APR 2021</td>
<td></td>
<td>Online Cash Deposit</td>
<td>0.00</td>
<td>0.00</td>
<td>97,000.00</td>
</tr>
<tr>
<td>07 MAY 2021</td>
<td>07 MAY 2021</td>
<td></td>
<td>Engagement of Banker’s Cheq.</td>
<td>0.00</td>
<td>0.00</td>
<td>177,000.00</td>
</tr>
<tr>
<td>10 MAY 2021</td>
<td>10 MAY 2021</td>
<td></td>
<td>Online Cash Deposit</td>
<td>0.00</td>
<td>0.00</td>
<td>294,000.00</td>
</tr>
<tr>
<td>10 MAY 2021</td>
<td>10 MAY 2021</td>
<td></td>
<td>Cash Withdrawal</td>
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<td>0.00</td>
<td>21,000.00</td>
</tr>
<tr>
<td>15 MAY 2021</td>
<td>15 MAY 2021</td>
<td></td>
<td>Cash Deposit</td>
<td>0.00</td>
<td>0.00</td>
<td>21,000.00</td>
</tr>
<tr>
<td>15 MAY 2021</td>
<td>15 MAY 2021</td>
<td></td>
<td>ATM Cash Withdrawal</td>
<td>-20,000.00</td>
<td>0.00</td>
<td>119,000.00</td>
</tr>
<tr>
<td>15 MAY 2021</td>
<td>15 MAY 2021</td>
<td></td>
<td>ATM Cash Withdrawal</td>
<td>-20,000.00</td>
<td>0.00</td>
<td>119,000.00</td>
</tr>
<tr>
<td>15 MAY 2021</td>
<td>15 MAY 2021</td>
<td></td>
<td>ATM Cash Withdrawal</td>
<td>-20,000.00</td>
<td>0.00</td>
<td>119,000.00</td>
</tr>
<tr>
<td>20 MAY 2021</td>
<td>20 MAY 2021</td>
<td></td>
<td>ATM Cash Withdrawal</td>
<td>-20,000.00</td>
<td>0.00</td>
<td>99,000.00</td>
</tr>
<tr>
<td>20 MAY 2021</td>
<td>20 MAY 2021</td>
<td></td>
<td>ATM Cash Withdrawal</td>
<td>-20,000.00</td>
<td>0.00</td>
<td>99,000.00</td>
</tr>
<tr>
<td>25 MAY 2021</td>
<td>25 MAY 2021</td>
<td></td>
<td>ATM Cash Withdrawal</td>
<td>-20,000.00</td>
<td>0.00</td>
<td>99,000.00</td>
</tr>
<tr>
<td>25 MAY 2021</td>
<td>25 MAY 2021</td>
<td></td>
<td>ATM Cash Withdrawal</td>
<td>-20,000.00</td>
<td>0.00</td>
<td>99,000.00</td>
</tr>
<tr>
<td>25 MAY 2021</td>
<td>25 MAY 2021</td>
<td></td>
<td>ATM Cash Withdrawal</td>
<td>-20,000.00</td>
<td>0.00</td>
<td>99,000.00</td>
</tr>
<tr>
<td>25 MAY 2021</td>
<td>25 MAY 2021</td>
<td></td>
<td>ATM Cash Withdrawal</td>
<td>-20,000.00</td>
<td>0.00</td>
<td>99,000.00</td>
</tr>
<tr>
<td>25 MAY 2021</td>
<td>25 MAY 2021</td>
<td></td>
<td>ATM Cash Withdrawal</td>
<td>-20,000.00</td>
<td>0.00</td>
<td>99,000.00</td>
</tr>
<tr>
<td>25 MAY 2021</td>
<td>25 MAY 2021</td>
<td></td>
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<td>0.00</td>
<td>99,000.00</td>
</tr>
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<td>27 MAY 2021</td>
<td>27 MAY 2021</td>
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<td>ATM Cash Withdrawal</td>
<td>-20,000.00</td>
<td>0.00</td>
<td>99,000.00</td>
</tr>
<tr>
<td>01 JUN 2021</td>
<td>01 JUN 2021</td>
<td></td>
<td>ATM Cash Withdrawal</td>
<td>-20,000.00</td>
<td>0.00</td>
<td>99,000.00</td>
</tr>
<tr>
<td>07 JUN 2021</td>
<td>07 JUN 2021</td>
<td></td>
<td>ATM Cash Withdrawal</td>
<td>-20,000.00</td>
<td>0.00</td>
<td>99,000.00</td>
</tr>
<tr>
<td>07 JUN 2021</td>
<td>07 JUN 2021</td>
<td></td>
<td>ATM Cash Withdrawal</td>
<td>-20,000.00</td>
<td>0.00</td>
<td>99,000.00</td>
</tr>
<tr>
<td>07 JUN 2021</td>
<td>07 JUN 2021</td>
<td></td>
<td>Online Cash Deposit</td>
<td>-20,000.00</td>
<td>0.00</td>
<td>99,000.00</td>
</tr>
<tr>
<td>07 JUN 2021</td>
<td>07 JUN 2021</td>
<td></td>
<td>Online Cash Deposit</td>
<td>-20,000.00</td>
<td>0.00</td>
<td>99,000.00</td>
</tr>
<tr>
<td>07 JUN 2021</td>
<td>07 JUN 2021</td>
<td></td>
<td>Online Cash Deposit</td>
<td>-20,000.00</td>
<td>0.00</td>
<td>99,000.00</td>
</tr>
<tr>
<td>07 JUN 2021</td>
<td>07 JUN 2021</td>
<td></td>
<td>Online Cash Deposit</td>
<td>-20,000.00</td>
<td>0.00</td>
<td>99,000.00</td>
</tr>
<tr>
<td>09 JUN 2021</td>
<td>09 JUN 2021</td>
<td></td>
<td>Online Cash Deposit</td>
<td>-20,000.00</td>
<td>0.00</td>
<td>99,000.00</td>
</tr>
<tr>
<td>09 JUN 2021</td>
<td>09 JUN 2021</td>
<td></td>
<td>Online Cash Deposit</td>
<td>-20,000.00</td>
<td>0.00</td>
<td>99,000.00</td>
</tr>
<tr>
<td>09 JUN 2021</td>
<td>09 JUN 2021</td>
<td></td>
<td>Online Cash Deposit</td>
<td>-20,000.00</td>
<td>0.00</td>
<td>99,000.00</td>
</tr>
<tr>
<td>10 JUN 2021</td>
<td>10 JUN 2021</td>
<td></td>
<td>Online Cash Deposit</td>
<td>-20,000.00</td>
<td>0.00</td>
<td>99,000.00</td>
</tr>
<tr>
<td>10 JUN 2021</td>
<td>10 JUN 2021</td>
<td></td>
<td>Online Cash Deposit</td>
<td>-20,000.00</td>
<td>0.00</td>
<td>99,000.00</td>
</tr>
<tr>
<td>10 JUN 2021</td>
<td>10 JUN 2021</td>
<td></td>
<td>Online Cash Deposit</td>
<td>-20,000.00</td>
<td>0.00</td>
<td>99,000.00</td>
</tr>
<tr>
<td>15 JUN 2021</td>
<td>15 JUN 2021</td>
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<td>Online Cash Deposit</td>
<td>-20,000.00</td>
<td>0.00</td>
<td>99,000.00</td>
</tr>
<tr>
<td>15 JUN 2021</td>
<td>15 JUN 2021</td>
<td></td>
<td>Online Cash Deposit</td>
<td>-20,000.00</td>
<td>0.00</td>
<td>99,000.00</td>
</tr>
<tr>
<td>28 JUN 2021</td>
<td>28 JUN 2021</td>
<td></td>
<td>ATM Cash Withdrawal</td>
<td>-20,000.00</td>
<td>0.00</td>
<td>99,000.00</td>
</tr>
<tr>
<td>28 JUN 2021</td>
<td>28 JUN 2021</td>
<td></td>
<td>ATM Cash Withdrawal</td>
<td>-20,000.00</td>
<td>0.00</td>
<td>99,000.00</td>
</tr>
<tr>
<td>28 JUN 2021</td>
<td>28 JUN 2021</td>
<td></td>
<td>ATM Cash Withdrawal</td>
<td>-20,000.00</td>
<td>0.00</td>
<td>99,000.00</td>
</tr>
<tr>
<td>29 JUN 2021</td>
<td>29 JUN 2021</td>
<td></td>
<td>Online Cash Deposit</td>
<td>-20,000.00</td>
<td>0.00</td>
<td>99,000.00</td>
</tr>
<tr>
<td>29 JUN 2021</td>
<td>29 JUN 2021</td>
<td></td>
<td>Online Cash Deposit</td>
<td>-20,000.00</td>
<td>0.00</td>
<td>99,000.00</td>
</tr>
<tr>
<td>29 JUN 2021</td>
<td>29 JUN 2021</td>
<td></td>
<td>Online Cash Deposit</td>
<td>-20,000.00</td>
<td>0.00</td>
<td>99,000.00</td>
</tr>
<tr>
<td>30 JUN 2021</td>
<td>30 JUN 2021</td>
<td></td>
<td>Online Cash Deposit</td>
<td>-20,000.00</td>
<td>0.00</td>
<td>99,000.00</td>
</tr>
</tbody>
</table>

Total Deposits 1,880,010.08
Total Withdrawals 1,462,620.00
Closing Balance 396,190.08

Please review pages 177-178 in the AML/CFT Toolkit Vol. II.
Figure C: Sample of a Credit Card Statement

Please review pages 174-176 in the AML/CFT Toolkit Vol. II.
4.1.3. Methods of Collecting Initial Evidence

It is important to understand the various methods of collective evidence. At an initial stage of investigation (as well as at more advanced stages), it may be important to be take steps without alerting the suspect being investigated. There are numerous reasons for this but the most important is that once alerted to the investigation, the suspect could attempt to destroy, move, or conceal valuable evidence. In such situation the investigating officer should utilize powers available to them which do not alert the suspect. These include:

1. **Interception and Surveillance:**

   ![Interception and Surveillance Image]

   **Interception:** includes e-mails, SMS, IPDR (internet protocol detail record) or CDR and any form of computer based or cell phone-based communication and voice analysis. It also includes any means of communication using wired or wireless or IP (internet protocol)-based media or gadgetry.

   **Surveillance:** includes data, information or material in any documented form, whether written, through audio visual device, CCTV, still photography, observation or any other mode of modem devices or techniques obtained under this Act. It can further include documents, papers, pamphlets, booklets.

   Ways of Surveillance:
   
   1. Intercepting the suspect’s phone calls.
   2. Time of phone calls may be monitored.
3. Tracking Devices to trace a suspect’s movement and whereabouts.
4. CCTV for tracing the suspect’s visits and interactions.

Section 19-C of the ATA [introduced through the ATA (Third Amendment) Act, 2020] empowers investigating officers to employ a myriad of techniques, including undercover operations, intercepting communications, assessing computer systems and controlled deliveries to tackle cases involving “financing of terrorism under the law in force.”

Similarly, Section 9-A of the AMLA [introduced by the AML (Second Amendment) Act, 2020] promotes the usage of the same to investigate money laundering, predicate offence and terrorism financing offences.

The evidence gathered during such investigations can be crucial in proving the elements of the crimes of TF/ML and other predicate offences, as relevant, resulting in higher chances of successful convictions as purported in the Action Plan.

The Investigation for Fair Trial Act 2013 (IFTA) allows authorized officers of the Services Intelligence Agencies and the police58 to file for a warrant of surveillance if the applicant believes that a person is engaged in any suspicious conduct that may result in a scheduled offence being committed.59

**Actions that may be taken under the warrant:**

The judge may authorize the officers to take the following measures against the suspects under the warrants, including but not limited to: interception and recording of telephonic conversations of the suspect with any person; video recording of persons, premises and events; interception of electronic transactions such as m-emails, SMS etc.; collection of evidence through any modern device; and use of human intelligence, covert surveillance and property interference. Taking over of electronic equipment that can be used in communication shall be

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58 Section 3(a) of the Investigation for Fair Trial Act, 2013 (IFTA)
59 Section 5 of the Investigation for Fair Trial Act, 2013 (IFTA)
allowed only when the authorized officer discloses a substantial threat or possibility of an attempt to commit the scheduled offence.60

Process to be followed once it is established that the scheduled offence was likely to be committed:

If the data collected via the warrant reveals any elements of any scheduled offence (under the PPC or ATA), the applicant may immediately proceed to register a FlR under Section 154 of CrPC and hand over all the obtained evidence to the Investigation Officer. If the data collected is insufficient to lodge an FlR, it will be kept in custody and shall not be used without the court's permission.61

The aforementioned provisions are much needed and vital for investigations, however, the rules have not yet been notified under this area.

2. Checking Assets without Notification to the Owner:

In some limited cases, i.e. those that fall within the ambit of the Prevention of Electronic Crimes Act, 2016 (PECA), the Court may issue an order to a law enforcement agency to search and seize (without the production of a warrant) any data that may reasonably be required for an investigation. For more information see Sections 30-33 of PECA.

4.2. Mandate for Evidence through Modern Devices

- Any evidence obtained from modern devices or techniques is admissible as per Art. 164 of the QSO.
- Section 27-B of the ATA allows convictions to be based on electronic evidence alone, provided that the Court is satisfied with its genuineness.
- Section 9-A of the AMLA allows for the usage of modern investigative techniques in the investigation of financing of terrorism.

Although evidence obtained through modern means is admissible under the law, investigative tools in Pakistan are not always up to date with scientific

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60 Section 16 of IFTA.
61 Section 22 of IFTA.
developments and investigators may lack the know-how to obtain or analyse such evidence.

In cases tried by the ATC under provisions of ATA, the “court may convict the accused on the basis of electronic or forensic evidence or such other evidence that may have become available because of Modern devices or techniques.”

The (QSO), Article 164 states that information may be extracted from modern devices if the court deems it appropriate. Along with audio-visual evidence, this provision extends to evidence from cellular devices, computers and various other modern techniques or devices that could be used for digital storage. Evidence samples of this sort are collectively referred to as digital evidence. Due to the importance of digital evidence in ATA cases, maintaining the chain of custody for evidence is crucial for an investigation and admissibility greatly depends on it. In this context, a consideration for the Court is whether or not there is evidence to support the fact that the digital evidence collected has been maintained and stored in safe custody.

4.2.1. Types of Modern Devices and Potential Evidence

Closed Circuit Television (CCTV)

With regard to (CCTV) footage, it has been held that, pursuant to the insertion of Article 164, the evidence collected through modern devices is admissible as valid. However, the mere production of CCTV footage as a piece of evidence in

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Sikandar Ali Lashari v. The State, 2016 YLR 62, [7]. Read with Section 27-B of the ATA.
Court is not sufficient for the Court to rely upon that evidence unless it is proved to be authentic. In order to prove the authenticity of such footage, it is incumbent upon the prosecution to examine the person who recorded or downloaded the footage.

**Call Data Record (CDR)**

According to Article 164 of the QSO, production of evidence through modern devices or techniques can be used as circumstantial evidence if the court deems it to be appropriate. In the case of *Abdul Razzaq vs. The State*, the Court held in this case that “petitioner/accused had every right to prove himself innocent by making use of the very same call data record”. In the case of *Arsalan v. the State*, the pivotal pieces of evidence obtained were SIMs and Call Data Records of the accused, which corroborated the accused’s statements.

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63 Asfandyar vs. Kamran, 2016 SCMR 2084.
64 Arsalan v. The State, 2018 MLD 894 Karachi.
### Figure D – Sample of Call Detail Record (CDR)

<table>
<thead>
<tr>
<th>CALLER ID</th>
<th>RECEIVER ID</th>
<th>START</th>
<th>DURATION</th>
<th>HANGUP CAUSE</th>
</tr>
</thead>
<tbody>
<tr>
<td>517600</td>
<td>0023 (SIM registered under CNIC: 42101–2254324–8–XYZ)</td>
<td>05/01/23 01:40:12</td>
<td>0:23:23</td>
<td>Normal Clearing</td>
</tr>
<tr>
<td>517600</td>
<td>0013</td>
<td>06/01/23 02:12:32</td>
<td>0:02:02</td>
<td>Normal Clearing</td>
</tr>
<tr>
<td>517600</td>
<td>0023 (SIM registered under CNIC: 42101–2254324–8–XYZ)</td>
<td>06/01/23 03:23:23</td>
<td>0:11:12</td>
<td>Normal Clearing</td>
</tr>
<tr>
<td>517600</td>
<td>0017</td>
<td>06/01/23 04:23:23</td>
<td>0:00:35</td>
<td>Connection Interruption</td>
</tr>
<tr>
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<td>0023 (SIM registered under CNIC: 42101–2254324–8–XYZ)</td>
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<td>0:29:43</td>
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</tr>
<tr>
<td>517600</td>
<td>0023</td>
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<td>0:01:45</td>
<td>Connection Interruption</td>
</tr>
<tr>
<td>517600</td>
<td>0098</td>
<td>09/01/23 08:09:12</td>
<td>0:00:14</td>
<td>Normal Clearing</td>
</tr>
</tbody>
</table>
Evidentiary Value of Calls/Text Messages from the Accused’s Phone

Jurisprudence of the superior judiciary highlights the issues relating to using CDR as evidence against the accused. Some cases also elaborate upon how the accused can utilize CDR to their benefit to discredit the case of the prosecution.

2018 YLR 1092 KHC (Salman Alias Lamba and Another vs. The State)

The evidence collected by the Investigating Officer included CDRs of the mobile phones of the accused, SIMs, and National Identity Cards. However, the evidence of police officials was deemed not trustworthy because no recovery memos were presented to satisfy that the recovered cell phone SIMs were kept in safe custody. Records also showed that there was no verification from the mobile companies as to the identities of those to whom such SIMs were issued. Furthermore, since the evidence did not have any corroborative value, it weakened the case of the prosecutor.

4.2.2. Forensic Evidence

Forensic evidence is a crucial form of evidence and constitutes a link in the chain of evidence that is used to prove the guilt of an accused beyond a shadow of doubt.\(^6^5\) Forensic evidence is evidence arrived at by scientific or technical means, such as ballistic or medical evidence. Forensic science deals predominantly with the recovery and analysis of latent evidence such as fingerprints, DNA analysis, autopsies, pathologies, etc.

Under domestic law, the only definition available for forensics is found in the Punjab Forensic Science Agency Act (2007), where forensic material is defined as a ‘document, material, equipment, impression or any other object connected with the commission of an offence, a civil cause or any other proceedings.’\(^6^6\)

One field of forensic science, forensic accounting, refers to the analysis of financial information, including all transactions, past records and tracing source

\(^6^6\) Punjab Forensic Science Agency Act 2007, Section 2(g).
of transfers, etc., of the accused individual or entities, to reveal important information that can aid in legal proceedings especially in cases of financial crimes. Forensic accounting is particularly useful for tracing TF activities and tracing back money trails to the original sources of income, such as donations made to terrorist organizations, or money made from drugs trafficking.

4.2.3. Electronic Records as Evidence

With the use of information technology, the police department has started storing information pertaining to investigation in computers. The computer stores criminal records conveniently and efficiently. One consequence is making it easier for police to collect and process information, eliminating the duplication of paper and electronic records and the multiple entries of same data.

For example, the Punjab Information Technology Board (PITB) has done massive revamping of the outdated criminal record management system (CRMS) of the Punjab Police. “Previously it was a lengthy and tedious process to retrieve records of the individual criminals based on name, father’s name, caste and address. It was almost impossible to identify criminals of each district because there was no comprehensive and integrated criminal record system.”

The PITB has developed the CRMS based on Citizen National Identity Card Number (CNIC). It is a digitized system that contains personal details such as CNIC, appearance, phones, etc. of criminals. The idea is to maintain a comprehensive database containing complete criminal profiles, including personal information, physical appearance, modus operandi, gang, criminal history, fingerprints and photographs that can be easily be retrieved via the biometric data. Moreover, the manual fingerprint record is successfully digitized and available in the CRMS database with a complete profile of individual criminals. A system like CRMS can be utilized in various ways to investigate a case. “If a victim of a mobile phone snatching incident reports in a police station and he remembers some details of the snatcher, an officer can apply all the known filters and search the criminal in his own district and the Punjab server.”

Additionally, the Criminal Record Identifier (CRI), an application in the CRMS,

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68 Ibid.
also utilizes the fingerprints to identify criminals by matching the fingerprints stored in the “Megamatcher Fingerprints Matching Library that has a matching speed of 20 million fingerprints per second.”69 Moreover, on average, 50 to 60 criminals are being identified per day from different stations across Punjab due to this application.

Electronic records maintained by banks, DFIs and other financial institutions can also be used to trace evidence related to terrorism financing. In fact, the FMU is obliged under the law to maintain electronic records of the STRs received by the financial institutions. After receiving an STR, if the FMU suspects that the act is related to terrorism, it may forward the case for further investigation to the CTW of the FIA. These investigations may, however, run parallel to the investigation run by the CTD of the Police if the police discover a financial trail to the terrorism act.

4.3. Evidence from Proscribed Organisations

There are certain pieces of evidence which can be used to link the accused to the proscribed organization and these include, but are not limited to:

- Pamphlets;
- Receipt books;
- Writing Instruments;
- Loudspeakers;
- Skin Hides etc. for the collection of donations.

4.3.1. Evidentiary Value and Relevancy

As per Section 2 (c) of the QSO, “evidence” includes all statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry; such statements are called oral evidence; and all documents produced for the inspection of the Court; such documents are called documentary evidence.

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69 Ibid.
• Pamphlets, receipt books, and writing instruments can be classified as documentary evidence under the domestic legal framework. Examples of documentary evidence can include photographs or, in a terrorism financing case, can also include the publications, literature or any other material being used by the proscribed entity/ individual to commit acts mentioned under Section 11F, H-J of the ATA 1997.

• Documentary evidence is required to be proved in accordance with the provisions of QSO. A document, unless proved and exhibited at the trial in accordance with law cannot be termed as evidence. The investigation officer has to take such evidence into possession for it to be used as prosecution evidence.

• Pertaining to the other evidence, which can help establish the relationship of the accused with a proscribed organization, such as physical evidence (objects), like loudspeakers, collection of skin hides etc. is classified as circumstantial evidence under the legal framework, which can be used to corroborate or support other direct evidence. All facts, except the contents of documents, may be proved by oral evidence. Therefore, such evidence must be exhibited and the testimony of witnesses can be used to admit such evidence.

• Article 164 read with Article 59 of the QSO allows modern forensic science to enter courts through the credible and valued scientific opinions of experts as evidence, in order to arrive at the truth. The testimony of a skilled witness is an important source of circumstantial evidence which is admissible under Article 59 of QSO. Furthermore, Section 510 Cr.P.C. allows reports of certain listed experts to be admitted into evidence.

• The knowledge, intent or purpose behind an offence if not proved through oral or documentary evidence may be proved through inference drawn from facts/circumstances of each case in accordance with rules regarding relevancy of facts provided in the Qanun-e-Shahadat Order, 1984.
Case Study

A prominent businessman’s daughter, Hiba has been arrested at the Lahore Airport with a bag full of cash worth USD 400,000. Hiba’s father, Mr. Abrar runs a construction business. Following the general elections, the new government has been probing Mr. Abrar for his money trail.

Upon arrest, Hira claimed that she was unaware of any limit on the amount of cash one can carry. She claims that the money is her own and not her father’s and that she intended to purchase a villa in Dubai with the money. Upon interrogation, she did not state which villa she intended to purchase or which locality she had in mind. She claimed that she had not made up her mind yet.

Two weeks ago, Hiba was seen at a jewellery store, where she sold jewellery worth USD 100,000. The store owner says that Hiba claimed the jewellery to be her wedding present from her ex-husband. Meanwhile, Mr. Abrar and his remaining children have fled from the country. His assistant has told the police that Mrs. Abrar has a serious heart surgery pending in the UK.

List down the possible evidence that will be required for a conviction in this case.

4.4. Summary

- Knowledge of the types and sources of evidence will allow Judges to adjudicate ML/TF cases with the requisite knowledge about the complexities of such cases.

- There are numerous types of evidence but the most important types are contained in the following categories:
  - Confessional Statement
  - Prosecution Witness Statements
  - Financial Records
  - Personal Profiling Record
  - Expert Analysis and Findings
  - Additional Evidence concerning Relationship with Proscribed Organizations.

- Tracing is the process of identifying the assets of a suspect.

- Methods of collecting initial evidence include:
  - Interception and surveillance
  - Checking assets without notification to the owner
• The QSO, Article 164 states that information may be extracted from modern devices if the court deems it appropriate.
• Forensic evidence is a crucial form of evidence and constitutes a link in the chain of evidence that is used to prove the guilt of an accused beyond a shadow of doubt.
• A financial investigation involves the collection, collation and analysis of all available information with a view towards assisting in the prosecution of crime.

4.5. **Self-Assessment Questions**

1. Identify 3 ways of conducting surveillance.
2. Is evidence obtained through Modern Devices admissible in Court? If so, under what provision is it admissible?
3. What are some types of modern devices?
4. List down evidence obtained through modern devices.
5. What are some forms of evidence that can link the accused to a proscribed organization? Illustrate potential evidence in this scenario.
UNIT 05

Jurisdiction of Courts

LEARNING OUTCOMES

• The jurisdiction of the courts under the ATA and AMLA.
• The powers available to an ATC pertaining to pre-trial detention, disposal of property, attachment of terrorist property, usage of certain investigative techniques, bail, remand, duration of impounding of passport, forfeiture of any money or other property, remission of sentence, and various types of extensions.
• The powers available to a judge under AMLA pertaining to attachment of property, usage of certain investigative techniques, entry into any place, search, seizure, retention of property or records, and various types of extensions.
5.1. Introduction

This Section of the Manual focuses on the powers available to judges regarding ML/TF offences under the ATA and AMLA. Their role in this regard primarily pertains to authorizing acts involving serious invasions of civil rights. For the ATCs this includes pre-trial detention, disposal of property, attachment of terrorist property, usage of certain investigative techniques, bail, remand, duration of impounding of passport, forfeiture of any money or other property, remission of sentence, and various types of extensions.

For judges under the AMLA this includes attachment of property, usage of certain investigative techniques, entry into any place, search, seizure, retention of property or records, and various types of extensions. Generally, such acts are lawful only upon prior written judicial authorization. The standard for issuance of such orders by the judges could vary depending on the particular provision of law.

5.2. Anti-Terrorism Act 1997

5.2.1. General

- ATCs have jurisdiction to try scheduled offences\(^\text{70}\) under the ATA, including ML/TF offences. The primary test for jurisdiction of any particular ATC is that of territorial jurisdiction, i.e., the ATC within the territorial limits in which the offence was committed.\(^\text{71}\)

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\(^{70}\) Section 2(t) and the Third Schedule ATA which defined “scheduled offence” as:
1. Any act of terrorism within the meaning of this Act including those offences which may be added or amended in accordance with the provisions of section 34 of this Act.
2. Any other offence punishable under this Act.
3. Any attempt to commit, or any aid or abetment of, or any conspiracy to commit, any of the aforesaid offences.
4. Without prejudice to the generality or the above paragraphs, the Antiterrorism Court to the exclusion of any other Court shall try the offences relating to the following, namely:
   (i) Abduction or kidnapping for ransom;
   (ii) use of firearms or explosives by any device, including bomb blast in a. mosque, imambargah, church, temple or any other place of worship, whether or not any hurt or damage is caused thereby; or
   (iii) firing or use of explosive by any device, including bomb blast in the court premises.

\(^{71}\) Sections 12 and 13, ATA.
• While trying any offence under the ATA, an ATC may also try any other offence with which an accused may be charged with at the same trial if the offence is connected with such other offence.\(^ {72}\)

• During any trial of any offence under the ATA, if it is found that the accused has committed any other offence under the ATA or any other law, the ATC may convict the accused for such other offence and pass any sentence authorized by the ATA or such other law.\(^ {73}\)

• The ATC does not have the power to withdraw any case pending within or outside its jurisdiction before a regular court working under the administrative control of High Court.\(^ {74}\)

• If after taking cognizance of an offence, an ATC is of the opinion that the offence is not a scheduled offence, notwithstanding that it has no jurisdiction to try such offence, it shall transfer the case for trial of such offence to any court having jurisdiction under the CrPC.\(^ {75}\)

• A trial under the ATA of an offence by an ATC, and the appearance of an accused before it, shall have precedence over the trial of any other case against the accused in any other court, except the High Court in its original jurisdiction.\(^ {76}\) The rationale behind this provision is to speed up the adjudication of cases.\(^ {77}\)

• If a case is transferred from one ATC to another ATC under Section 28 of the ATA, the ATC to which the case is transferred shall proceed with the case from the stage at which it was pending immediately before such transfer, and it shall not be bound to recall and rehear any witness who has given evidence, and may act on the evidence already recorded.

The ATA provides various powers to the judge of an ATC that are to be exercised during the pre-trial or inquiry/investigation, trial, and post-trial stages.

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\(^ {72}\) Sections 17 and 21M(1), ATA, Akhtar Muhammad v. The State (PLD 2017 Pesh 55).

\(^ {73}\) Section 21M(2), ATA.

\(^ {74}\) The State v. Muhammad Arif (PLD 2012 Kar 119).

\(^ {75}\) Section 23, ATA.

\(^ {76}\) Section 29, ATA.

\(^ {77}\) Kashif Riaz, Inspector Police, Rawalpindi v. The State (PLD 2015 Lah 63).
5.2.2. Pre-trial or Inquiry/Investigation Stage

Section 11EEEE: Preventive detention for inquiry

- A person against whom an order for preventative detention has been passed by the Government, armed forces, or civil armed forces under this provision is to be produced in-camera before the presiding officer of the ATC within 24 hours of his detention;
- Such person shall be produced before the presiding officer of the ATC when any extension in the period of detention is requested.
- The presiding officer of the ATC shall have the authority to inspect the detention centre where the detenu is kept ensuring that the custody is in accordance with the law for the time being in force.

Section 11EEEEEE: Prohibition on disposal of property

- Orders passed by the relevant officer not to remove, transfer or otherwise dispose of property which is the subject matter of the inquiry or investigation before an order of the appropriate authority for its seizure is obtained, shall be subject to any order made by the ATC having jurisdiction in the matter.

Section 11P: Application by investigating officer to Court

- The ATC may grant an order for attachment of terrorist property upon an application by an investigating officer.
- Such an order shall:
  - Provide for attachment of the terrorist property for a period specified in the order or pending completion of the investigation; and

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78 Or in his absence before the District and Sessions Judge or the Magistrate appointed under the Shariah Nizam-e-Adl Regulation, 2009.
79 Section 11EEEE(3), ATA.
80 Proviso to Section 11EEEEEE(4), ATA.
81 Ibid.
82 Section 11P(1), ATA.
83 See footnote 43 for the definition of “terrorist property.”
Module for Judges: Anti-Money Laundering and Countering the Financing of Terrorism

- Require notice to be given to the person from whom such property was attached and to any other person who is affected by and specified in the order.\(^{84}\)
- Any cash attached shall be held in a profit and loss account and the profit and loss so earned shall be added to it on its release or forfeiture.\(^ {85}\)

**Section 19C: Application of investigation techniques**\(^ {86}\)

- The ATC may grant permission to the investigation officer to use (within 60 days of such permission) techniques including undercover operation, intercepting communications, accessing computer system and controlled delivery for investigation of TF.
- If the ATC is satisfied on the basis of the situation or reasons given in the written request, it may extend the 60-day period for another 60 days upon a written request.

**Section 21D: Bail**

- Only an ATC, a High Court, or the Supreme Court of Pakistan shall have the power or jurisdiction to grant bail to, or otherwise release, an accused person in a case triable by an ATC.
- The ATC may admit a person to bail unless satisfied that there are substantial grounds for believing that if the person is released on bail (whether subject to conditions or not), he would:
  - Fail to surrender to custody;
  - Commit an offence while on bail;
  - Interfere with a witness; or otherwise obstruct or attempt to obstruct the course of justice, whether in relation to himself or another person; or
  - Fail to comply with the condition of release (if any).
- In exercising its powers in relation to a person seeking bail under the ATA, the ATC shall consider (among other relevant factors):
  - The nature and seriousness of the offence with which the person is

\(^{84}\) Section 11P(2), ATA.
\(^{85}\) Section 11P(3), ATA.
\(^{86}\) The Federal Government has not yet made rules under Section 19C(2) to regulate the procedure and for execution of an order under Section 19C AMLA.
charged;
  o The character, antecedents, associations and community ties of the person;
  o The time which the person has already spent in custody and the time which he is likely to spend in custody if he is not admitted to bail; and
  o The strength of the evidence of him having committed the offence.
• Without prejudice to any other power to impose conditions on admission to bail, the ATC may impose such conditions as it considers:
  o Likely to result in the person’s appearance at the time and place required including very high bail sureties; or
  o Necessary in the interests of justice or for the prevention of crime including surveillance of the person granted bail to monitor his activities and requiring him to report to the concerned police station at specified intervals.
• The ATC may, at any time, if it considers necessary, by special or general order, direct special arrangements to be made as to the place at which a person charged with an offence under the ATA is to be held in order to:
  o Prevent his escape; or
  o Ensure his safety or the safety of others.
• Bail is a discretionary matter. Such discretion is to be exercised with caution and in accordance with law.\textsuperscript{87}

\textsuperscript{87} Naveed Hayat Malik v. The State (PLD 2021 Islamabad 255).
Section 21E – Remand

- Where a person is detained for investigation, the investigating officer shall produce the accused before the ATC within 24 hours of the arrest (excluding the time necessary for the journey from the place of arrest to the ATC) and may apply for remand of the accused to police custody.
- The remand period will only be extended if the ATC feels that more evidence may be available and is satisfied that no bodily harm has been or will be caused to the accused.
- Certain guidance on remand to police custody contained in the *Lahore High Court Rules (Volume III, Chapter 11, Part B)*, albeit in the context of remand under the CrPC, may be useful in granting remand under the ATA. Such guidance may include:
  - Non-completion of police investigation does not justify detention by the police;
  - Remand to be granted in cases of real necessity;
  - The Magistrate should discourage tendency of the police to take remand to extort confession;
  - Remand cannot be granted for more than 15 days;
  - Accused must be produced before the judge who should satisfy himself about necessity for remand;
  - Reasons for grant of remand to be recorded;
  - Procedure when a remand for more than 15 days is required for completion of the case;
  - Right of accused to access to counsel and friends;
  - Principles to be applied in remand cases:
    - Under no circumstances should an accused person be remanded to police custody unless it is made clear that his presence is needed in order to serve some important and specific purpose connected with the completion of the inquiry. A general statement by the officer applying for the remand that the accused may be able to give further information should not be accepted;
    - When an accused person is remanded to police custody the period of the remand should be as short as possible;
In all ordinary cases in which time is required by the police to complete the inquiry, the accused person should be detained in magisterial custody;

Where the object of the remand is merely the verification of the prisoner’s statement, he should be remanded to magisterial custody;

An accused person who has made a confession before a judge should be sent to judicial lock-up and not police lock-up after the confession has been recorded. If the police subsequently require the accused person for the investigation, a written application should be made giving detailed reasons as to why he is required, along with an order obtained from the judge for his delivery to them for the specific purposes named in the application. If an accused person, who has been produced for the purpose of making a confession, has declined to make a confession, or has made a statement which is unsatisfactory from the point of view of the prosecution, he should not be remanded to police custody.

Regarding the list of cases fixed before the court, remanded cases take priority over all other cases except postponed cases, unless directed otherwise by the court.88

Section 28A: Impounding of passport of person charge-sheeted under the ATA

The ATC may determine as it deems fit, the period for which the passport of a person who is accused of an offence under the ATA, shall be impounded.

5.2.3. Trial Stage

Section 19: Procedure and Powers of the ATC

An ATC shall commence trial upon receiving the report under Section 173

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88 Paragraph 6, Part A, Chapter 3, Volume V, Lahore High Court Rules and Orders.
of the CrPC (either by the investigating officer of police or an investigating officer of police not below the rank of Inspector).

- However, if an ATC receives an interim report under Section 173 of the CrPC (by the investigating officer or the JIT through the Public Prosecutor), the ATC shall commence the trial based on the interim report, unless the Court decides that the trial may not so commence for reasons to be recorded.

- Any default on the part of an officer-in-charge of a police station, an investigating officer or any other person required by law to perform any functions in connection with the investigation, that results in, or has the effect of, delaying investigation or submission of the report under Section 173 of the CrPC, shall be deemed to be a willful disobedience of the orders of the ATC. The person committing the default shall be liable to be punished for contempt of court.

- The ATC may directly take cognizance of a case triable by such court without the case being sent to it under Section 190 of the CrPC.

- Where an accused has been released from police custody or the custody of any other investigating agency joined in an investigation under Section 169 of the CrPC, or has been remanded to judicial custody, the ATC may make an order for placing him in police custody or the custody of any other investigating agency joined in investigation for the purpose of further investigation in the case. This must be on good grounds being shown by a public prosecutor or a law officer of the Government, and reasons must be recorded in writing. An ATC shall be deemed to be a Magistrate for this purpose.

- The Court shall, on taking cognizance of a case, proceed with the trial on a day-to-day basis and shall decide the case within seven days. If they fail to do so, which the matter shall be brought to the notice of the Chief Justice of the High Court concerned for appropriate directions, keeping in view the facts and circumstances of the case. Noncompliance may render the presiding officer of the ATC liable to disciplinary action by the concerned High Court.

- An ATC shall not give more than two adjournments during the trial of the case and that also imposition of exemplary costs. If the defence counsel does not appear after two consecutive adjournments, the Court may appoint a State Counsel with at least seven years standing in criminal
matters for the defence of the accused. The State Counsel will be selected from a panel of advocates maintained by the Court for the purpose in consultation with the Government and shall proceed with the trial of the case.

- Notwithstanding anything contained in Section 7 of the Explosive Substances Act 1908, or any other law for the time being in force, if the necessary consent or sanction of the appropriate authority is not received within thirty days of the submission of challan in the ATC, it will be deemed to have been given or accorded and the ATC shall proceed with the trial.

### Section 21H – Conditional admissibility of confession

- An ATC may consider any confession made by the accused during investigation without being compelled before a police officer not below the rank of a District Superintendent of Police admissible in evidence against such accused. However, the evidence (which includes circumstantial and other evidence) produced raises the presumption that there is a reasonable probability that the accused has committed the offence.\(^{89}\)

### Section 27 – Punishment for defective investigation and reward for successful investigation

- If an ATC concludes that the investigating officer, or other concerned officers have failed to carry out the investigation properly or diligently or have failed to pursue the case properly and in breach of their duties, the ATC can, after conducting summary proceedings, punish the delinquent officers with:
  - Imprisonment which may extend to two years; or
  - Fine; or
  - Both.
- A symbolic punishment of PKR 10,000 was awarded to police officers for conducting improper and defective investigation in a criminal case of kidnapping for ransom.\(^{90}\)

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89 Nadeem Hussain, n 69.
5.2.4. Post-trial Stage

Section 11Q: Forfeiture

- Under Sections 11H to 11M of the ATA, the ATC may make a forfeiture order either during a trial or at the conclusion of proceedings.
- Where a person is convicted of an offence under Section 11H(1) or (2) or Section 11I of the ATA, the ATC may order the forfeiture of any money or other property which:
  - He had in his possession or under his control at the time of the offence; and
  - He intended that the money or the property should be used, or had reasonable cause to suspect might be used, for the purposes of terrorism.
- Where a person has been convicted of an offence under Section 11H(3) of the ATA, the ATC may order the forfeiture of any money or other property which:
  - He had in his possession or under his control at the time of the offence; and
  - He knew or had reasonable cause to suspect, at the time, any money or property would or might be used for the purposes of terrorism.
- Where a person is convicted of an offence under Section 11J of the ATA, the ATC may order the forfeiture of the money or other property:
  - To which the arrangement in question related; and
  - Which, at the time of the offence, he knew or had reasonable cause to suspect would or might be used for the purposes of terrorism.
- Where a person is convicted of Section 11K of the ATA, the ATC may order the forfeiture of the money or other property to which the arrangement in question related.
- Where a person is convicted of an offence under any of the Sections 11H to 11K, the ATC may order forfeiture of any money or other property which, either wholly or partly, and directly or indirectly, is received by any person as a payment or other reward in connection with the commission of the offence. However, in case of a jointly owned property, the shares of
a person in the said property who is not convicted shall not be subject to such order of forfeiture.

- Where the ATC is satisfied that property subject to forfeiture cannot be forfeited, it may order the forfeiture of any other property of the accused of an equivalent value to the property subject to forfeiture which stands identified or located in another jurisdiction.

- A person, other than an accused, claiming ownership or interest in any property or assets suspected to be terrorist property, may within a period of fifteen days of freezing of the account or of taking into possession or control of such property or assets, as the case may be (or within such extended period as the ATC may, for reasons to be recorded, allow) file his claim before the ATC. The ATC shall decide such claim after giving notice to the prosecution and hearing the parties.

Section 11R: Evidentiary standard for forfeiture

- The ATC may pass an order for forfeiture under *Section 11Q of the ATA* upon conviction and only if satisfied on reasonable grounds that the money or other property is a terrorist property. The ATC must also give an opportunity to be heard to any person who:
  - Is not a party to the proceedings; and
  - Claims to be the owner of or otherwise interested in any of the money or other property which can be forfeited.

- An order may be made under *Section 11Q of the ATA*, whether or not proceedings are brought against all the persons for an offence with which the money or other property is connected.

Section 11T: Deposit of money or other property in a fund

- Any money or other property to which a forfeiture order under Section 11R of the ATA applies, along with any addition, return, profit, or loss accrued, shall be deposited into a special fund authorised by the Federal Government after the 30-day limitation period within which an appeal against the forfeiture order may be brought.
**Section 21F – Remissions**

- No remission in any sentence shall be granted to a person who is convicted and sentenced for any offence under the ATA. However, in case a child is convicted and sentences for an offence under this Act, on satisfaction of government, may be granted remission as deemed appropriate.
- The act of refusing remission to an accused does not amount to punishment for the same offence more than once.\(^9^1\)

**5.3. Anti-Money Laundering Act 2010**

**5.3.1. General**

- The Court of Sessions established under the CrPC shall, within its territorial jurisdiction, exercise jurisdiction to try and adjudicate the offences punishable under the AMLA. Where the predicate offence is triable by any court other than the Court of Session, the offence of ML and all matters connected therewith or incidental thereto shall be tried by the Court trying the predicate offence. However, where the predicate offence is triable by any court inferior to the Court of Session, such predicate offence, the offence of ML and all matters connected therewith or incidental thereto shall be tried by the Court of Session.\(^9^2\)

- No Court shall have jurisdiction to entertain any suit or proceedings in respect of any matter which the Court is empowered by or under the AMLA to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under AMLA.\(^9^3\)

The AMLA provides various powers to the judge that are to be exercised during the pre-trial or inquiry/investigation and trial stages.

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92 Section 20, AMLA. Also refer to ‘Predicate Offences’ discussed earlier in Section 3.2.3. of the Manual.
93 Section 35, AMLA.
5.3.2. Pre-trial Stage

Section 8: Attachment of Property involved in Money Laundering

- The court has the power to grant permission to the investigating officer to provisionally attach a property, which he reasonably believes to be the property involved in ML for a period not exceeding 180 days from the date of the order.
- The court may grant a further extension for a period of up to 180 days.
- The court is to be submitted monthly reports by the investigating officer who provisionally attaches the property.
- Mere passing of a provisional attachment order under Section 8 of AMLA does not in any manner prejudice the petitioner.94

Section 9: Investigation

- The Court can confirm the attachment of the property involved in ML or retention of property or record seized upon an application filed by the investigating officer.
- The Court may, pass an order confirming the attachment, retention, seizure, or, release of the property after giving an opportunity of hearing to the persons concerned with the property attached. The attachment, retention or seizure of the property shall:
  - Continue during the pendency of the proceedings relating to any predicate offence or ML before the Court; and
  - Become final if it is proved in Court that the property is the property involved in ML.
- Where the property seized is perishable in nature or subject to speedy and natural decay, or when the expense of keeping it in custody is likely to exceed its value, the Court may, on the application of the investigating officer, order immediate sale of the property in any manner deemed appropriate in the circumstances.
- Where the attachment of any property or retention or seizure of the property or record becomes final if it is proved in Court that the property

is the property involved in ML, the Court shall make an order for forfeiture of such property.

- After passing such order of forfeiture, the Court shall direct the release of all properties other than the properties involved in ML to the persons from whom such properties were seized.
- Where on conclusion of a trial for any predicate offence and ML the accused is acquitted, the attachment of the property or retention or seizure of the property or record and net income, if any, shall cease to have effect.

**Section 9A: Application of Investigation Techniques**

- The court may grant permission, lasting sixty days, to the investigating officer to use investigative techniques including undercover operations, intercepting communications, assessing computer system and controlled delivery for investigation of offences of ML, associated predicate offences and TF.
- The court may extend the initial period of sixty days for a further period of sixty days by on a written request. The court may grant such extension, if it is satisfied on the basis of the situation or reasons given in the written request.

**Section 13: Power of Survey**

- The Court may grant permission to the investigating officer to enter any place:
  - Within the limits of the area assigned to him; or
  - In respect of which he is authorized for the purposes of this section by such other authority who is assigned the area within which such place is situated;

at which any act constituting the commission of such offence is carried on, and may require any proprietor, employee or any other person who may at that time and place be attending in any manner to, or helping him in, such act so as to:

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95 The Federal Government has not yet made rules under Section 9A(2) to regulate the procedure and for execution of an order under Section 9A AMLA.
o Afford him the necessary facility to inspect such record as he may require and which may be available at such place;
o Afford him the necessary facility to check or verify the proceeds of crimes or any transaction related to proceeds of crimes which may be found therein; and
o Furnish such information as he may require as to any matter which may be useful for, or relevant to, any proceedings under AMLA.

Section 14: Search and Seizure

- Where the investigating officer, on the basis of information in his possession, has reason to believe that any person:
o Has committed any act which constitutes ML;
o Is in possession of any property involved in money laundering; or
o Is in possession of any record which may be useful for or relevant to proceedings under AMLA;
the Court may grant him (or any officer subordinate to him and authorize by him) permission to:
o Enter and search any building, place, vessel, vehicle or aircraft where the investigating officer has reason to suspect that such record or properties are kept;
o Break open the lock of any door, box locker, safe, almirah or other receptacles for exercising the powers conferred by the previous clause where the keys thereof are not available;
o Seize any such record or property found as a result of such search;
o Place marks of identification on such record or make, or cause to be made, extracts or copies therefrom;
o Make a note of any inventory of such record or property; or
o Examine any person, who is found to be in possession or control of any such record or property, in respect of all matters relevant for the purposes of any investigation under AMLA.
- However, the court’s permission need not be sought where immediate action is required, in which case prior permission of the senior officer of the concerned investigating or prosecuting agency not below the rank of an officer of BS-20 would be required.
Section 10: Vesting of property in Federal Government

- Where the Court is of the opinion that any encumbrance on the property or leasehold interest has been created in property attached under Section 8 or seized under Section 14 of AMLA with a view to defeat the provisions of AMLA, it may, by order, declare such encumbrance or leasehold interest to be void.
- The Court may pass such order after giving an opportunity of being heard to any other person interested in such property.
- After such order is passed, the property shall vest in the Federal Government free from such encumbrances or leasehold interest.

Section 17: Retention of Property

- Where the investigating officer thinks it expedient to retain property seized under Sections 14 or 15 of AMLA for the investigation under Section 9 of AMLA, he may do so for a maximum period of 90 days from the time such property was seized.
- In such a situation, the Court shall be informed by the investigating officer about any peculiar nature of the seized property and, where necessary, seek appropriate directions for its proper care during retention.
- The Court’s permission may be sought for retention beyond the initial 90 day period, provided it is satisfied that the property is prima facie property involved in ML and the property is required for the purposes of investigation under Section 9 of AMLA.

Section 18: Retention of Records

- Where the investigating officer decides to retain any record seized under Sections 14 or 15 of AMLA for the investigation under AMLA, he may do so for a maximum period of 90 days from the time the record was seized.
- The Court may authorize the retention of records beyond the initial 90-day period provided it is satisfied that the records were required for the purposes of investigation.
5.3.3. Trial Stage

**Section 21: Offences to be cognizable and non-bailable**

- The Court shall not take cognizance of any offence punishable under *Section 4 of AMLA* except upon a complaint in writing made by:
  - The investigating officer; or
  - Any officer of the Federal Government or a Provincial Government authorized in writing in this behalf by the Federal Government by a general or special order made in this behalf by that Government.

**Section 19: Presumption as to records or property in certain cases**

- The Courts may presume, that the signature and every other part of the record which purports to be in the handwriting of any particular person is in that person’s handwriting; and in the case of a record executed or attested, that it was executed or attested by the person by whom it purports to have so executed or attested.

**Section 29: Reciprocal arrangements for processes and assistance for transfer of accused persons**

- Where a Court, in relation to the offence of ML, desires that a:
  - Summons to an accused person;
  - Warrant for the arrest of an accused person;
  - Summons to any person requiring him to attend and produce a document or other thing or to produce it; or
  - Search warrant; issued by it shall be served or executed at any place in any contracting State, it shall send such summons or warrant in duplicate in such form, to such Court, judge, or magistrate through such authorities as the Federal Government may specify in this behalf and that Court, judge or magistrate, as the case may be, shall cause the same to be executed.

- Where a Court, in relation to an offence punishable under *Section 4 of AMLA* has received for service or execution a:
  - Summons to an accused person;
  - Warrant for the arrest of an accused person;
- Summons to any person requiring him to attend and produce a document or other thing, or to produce it; or
- Search warrant;

issued by a Court, judge or magistrate in a Contracting State, it shall cause the same to be served or executed as if it were a summons or warrant received by it from another court in the said territories for service or execution within its local jurisdiction.

- Where a warrant of arrest has been executed, the person arrested shall be dealt with in accordance with the procedure specified under Section 16 of AMLA (provided that this exercise of power is not, in any manner, likely to prejudice the sovereignty, security, national interest or public order).

- Where a search warrant has been executed, the material found in this search shall, so far as possible, be dealt with in accordance the procedure specified under Sections 14 and 15 of AMLA (provided that this exercise of power is not, in any manner, likely to prejudice the sovereignty, security, national interest or public order).

- Where the person transferred to Pakistan is a prisoner in a Contracting State, the Court in Pakistan shall ensure that the conditions subject to which the prisoner is transferred to Pakistan are complied with and such prisoner shall be kept in such custody subject to such conditions as the Federal Government may direct in writing.

Section 30: Attachment, seizure and forfeiture etc., of property in a contracting State or Pakistan

- If the property is suspected to be in a Contracting State, the Court on an application by the investigating officer, may issue a letter of request to a Court or an authority in the contracting state for execution of such order.

5.4. Summary

- ATCs have jurisdiction to try scheduled offences under the ATA, including ML/TF offences.
- While trying any offence under the ATA, an ATC may also try any other offence with which an accused may, under the CrPC be charged at the same trial if the offence is connected with such other offence.
• Certain powers are available to judges regarding ML/TF offences under the ATA and AMLA. Their role in this regard primarily pertains to authorizing acts involving serious invasions of civil rights.

• Generally, such acts are lawful only upon prior written judicial authorization. The standard for issuance of such orders by the judges could vary depending on the particular provision of law.

• The ATA provides various powers to the judge of an ATC that are to be exercised during the pre-trial or inquiry/investigation, trial, and post-trial stages. These pertain to pretrial detention, disposal of property, attachment of terrorist property, usage of certain investigative techniques, bail, remand, duration of impounding of passport, forfeiture of any money or other property, remission of sentence, and various types of extensions.

• The Court of Sessions established under the CrPC shall exercise jurisdiction to try and adjudicate the offences punishable under the AMLA.

• Where the predicate offence is triable by any court other than the Court of Session, the offence of ML and all matters connected therewith or incidental thereto shall be tried by the Court trying the predicate offence. However, where the predicate offence is triable by any court inferior to the Court of Session, such predicate offence, the offence of ML and all matters connected therewith or incidental thereto shall be tried by the Court of Session.

• The AMLA provides various powers to the judge that are to be exercised during the pre-trial or inquiry/investigation and trial stages. These pertain to attachment of property, usage of certain investigative techniques, entry into any place, search, seizure, retention of property or records, and various types of extensions.
5.5. **Self-Assessment Questions**

5.5.1. **ATC judges**

1. If after taking cognizance of an offence, you are of the opinion that the offence is not a scheduled offence, what would you do?
2. You have received an application from an investigating officer for the attachment of terrorist property. What should your order provide for?
3. What factors would you consider when deciding a claim filed by a person other than an accused, claiming ownership or interest in any property or assets suspected to be terrorist property that has been frozen or taken possession of?
4. Please fill the following table:

<table>
<thead>
<tr>
<th>Theme</th>
<th>Question</th>
<th>Response (provide multiple scenarios/examples)</th>
<th>Analysis (provide rationale for different responses based on different scenarios)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bail</td>
<td>What factors would you take into consideration when deciding a bail application? List at least 3 scenarios in which the bail varies.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
**Remand**

On what grounds can you extend the police remand period? List at least 3 scenarios.

**Use of Special Investigation Techniques (SITs)**

On what bases can you extend the 60-day period of using SITs under 19-C of ATA? On what bases will you refuse the 60-day extension of the same? Please outline scenarios in detail.

### 5.5.2. AMLA judges

1. What kind of order could you pass if you receive an application from an investigating officer for confirming the attachment of property involved in ML or retention of property or record seized? What would be your thought process?
2. What kind of order would you pass if you receive an application from an investigating officer for confirming the attachment of property involved in ML that is perishable?
3. When granting permission to the investigating officer to enter any place, what can your order provide for?
4. What directions could you issue regarding the proper care of seized property that the investigating officer wishes to retain?
5. What course of action would you adopt if you receive a warrant of arrest of an accused person issued by a court in a contracting State?

<table>
<thead>
<tr>
<th>Theme</th>
<th>Question</th>
<th>Response (provide multiple scenarios/examples)</th>
<th>Analysis (provide rationale for different responses based on different scenarios)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Issuing order of entering to investigators</td>
<td>What are some of the reasons for which you may grant permission to the investigating officer to enter any place? Please list scenarios in detail.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Remand</td>
<td>On what grounds can you extend the police remand period? List at least 3 scenarios.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Use of Special Investigation Techniques (SITs)</td>
<td>On what bases can you extend the 60-day period of using SITs under 19-C of ATA?</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
On what bases will you refuse the 60-day extension of the same? Please outline scenarios in detail.
UNIT 06

Sentencing

LEARNING OUTCOMES

- Sentences available under the various ML/TF offences.
- Sentencing guidelines available in various legal sources.
6.1. Sentences of Money Laundering and Terrorist Financing Offences

The sentences for the various ML/TF offences in the ATA and AMLA are described below.

<table>
<thead>
<tr>
<th>ML/TF OFFENCE</th>
<th>LAW</th>
<th>SENTENCE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fund Raising (Section 11H ATA)</td>
<td>Section 11N(2) and (3) ATA</td>
<td>The punishment for a person who commits any of these offences is:</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Imprisonment for a term not less than five years and not exceeding ten years; and</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Fine not exceeding PKR 25 million.</td>
</tr>
<tr>
<td>Use and Possession (Section 11I ATA)</td>
<td></td>
<td>The punishment for a legal person who commits any of these offences is a fine not exceeding PKR 50 million.</td>
</tr>
<tr>
<td>Funding Arrangements (Section 11J ATA)</td>
<td></td>
<td>The punishment for every director, officer or employee of such legal person found guilty is:</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Imprisonment for a term not less than five years and not exceeding ten years; and</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Fine not exceeding PKR 25 million (provided that the punishment of the director, officer or employee shall be effective and in due proportion to his role).</td>
</tr>
<tr>
<td>Money Laundering (Section 11-K ATA)</td>
<td></td>
<td>The punishment for a person who commits this offence is:</td>
</tr>
<tr>
<td></td>
<td>Section 11F(6) ATA</td>
<td>• Imprisonment for a term not less than one year and not more than five years; and</td>
</tr>
<tr>
<td>Organization (Section 11F(5) ATA)</td>
<td>• A fine (a pecuniary amount to be determined by the Court having regard to the facts and circumstances of the case).96</td>
<td></td>
</tr>
<tr>
<td>-----------------------------------</td>
<td>---------------------------------------------------------------------------------------------------------------</td>
<td></td>
</tr>
</tbody>
</table>
| Violation of UNSC Resolution (Section 11OOO(1) ATA) | Section 11OOO (2), (3) and (4) ATA  
The punishment for a person who commits this offence is:  
• Imprisonment for a term not exceeding ten years; or  
• Fine not exceeding PKR 25 million; or  
• Both.  
The punishment for a legal person or body corporate that commits this offence is a fine not exceeding PKR 50 million.  
The punishment for every director, officer or employee of such legal person found guilty is:  
• Imprisonment for a term not exceeding ten years; or  
• Fine not exceeding PKR 25 million; or  
• Both.  
If any public servant is found negligent in complying with the provisions of Section 11OOO(1) of ATA, such public servant shall be proceeded against under the respective service rules for administrative action in addition to the punishment he may receive under sub-section (2). |
| Offence of Money Laundering (Section 3 AMLA) | Section 4 AMLA  
The punishment for whoever commits this offence is:  
• Rigorous imprisonment for a term which shall not be less than one year but may extend up to ten years; and  
• Fine which may extend up to PKR 25 million rupees; and |

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96 Section 2(h) of ATA.
<table>
<thead>
<tr>
<th>Forfeiture of property involved in money laundering or property of corresponding value.</th>
</tr>
</thead>
</table>

The punishment for a legal person who commits this offence is a fine which may extend up to PKR 100 million.

The punishment for any director, officer or employee of such legal person who is also found guilty of this offence is:

- Rigorous imprisonment for a term which shall not be less than one year but may extend up to ten years; and
- Fine which may extend up to PKR 25 million rupees; and
- Forfeiture of property involved in money laundering or property of corresponding value.

6.1.1. Remissions under the Anti-Terrorism Act 1997

Notwithstanding anything contained in any law or prison rules for the time being in force, no remission in any sentence shall be allowed to a person who is convicted and sentenced for any offence under the ATA. However, a child convicted and sentenced for an offence under the ATA may be granted remission as deemed appropriate, upon the satisfaction of the Federal Government or, as the case may be, the Provincial Government.

6.2. Sentencing Guidelines

Pakistan lacks any definitive statute pertaining to sentencing. Similarly, there are no provisions that deal with pre-sentence hearing or highlight the procedures to obtain pre-sentencing reports. The lack of uniformity in these sentences is further exacerbated by the absence of any sentencing commission which consequently even leads to post-sentencing effects being left unmonitored. However, there are some sentencing guidelines that exist in various legal sources.

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97 Section 21F, ATA.
98 Proviso, Section 21F read with Section 2(i), ATA.
6.2.1. Code of Criminal Procedure, 1898

Under the ATA, subject to its provisions, the ATCs shall, for the purpose of trial of any offence, have all the powers of a Court of Sessions and shall try such offence as if it were a Court of Session as far as may be in accordance with the procedure prescribed in the CrPC for trial before a Court of Session.\(^99\) Under the AMLA, the Court of Sessions established under the CrPC shall, within its territorial jurisdiction, exercise jurisdiction to try and adjudicate the offences punishable thereunder and all matters provided in, related to, or arising from the AMLA.\(^100\) Furthermore, the provisions of the CrPC shall, in so far as they are not inconsistent with the provisions of AMLA, apply to arrest, bail, bonds, search, seizure, attachment, forfeiture, confiscation, investigation, prosecution and all other proceedings under AMLA.\(^101\) Accordingly, the provisions pertaining to sentencing contained in the CrPC would, apply to the proceedings under the ATA and AMLA subject to their respective provisions.

Some guidelines provided in the CrPC are as follows:

- A Sessions Judge or an Additional Sessions Judge may pass any sentence authorized by law. However, any sentence of death passed by any such Judge shall be subject to confirmation by the High Court;\(^102\)
- An Additional Sessions Judge may pass any sentence authorized by law, except a sentence of death or of imprisonment for a term exceeding seven years;\(^103\)
- When a person is convicted at one trial of two or more offences, the Court may, subject to the provisions of *Section 71 of the PPC*, sentence him for such offences, to the several punishments prescribed therefore which such Court is competent to inflict;\(^104\)
- Punishments for two or more offences that consist of imprisonment are to commence one after the expiration of the other in such order as the Court

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\(^99\) Section 19(14), ATA.
\(^100\) Section 20, AMLA.
\(^101\) Section 22, AMLA.
\(^102\) Section 31(1), CrPC.
\(^103\) Section 31(3), CrPC.
\(^104\) Section 35(1), CrPC.
may direct, unless the Court directs that such punishments shall run concurrently;\textsuperscript{105}

- In the case of consecutive sentences, it shall not be necessary for the Court to send the offender for trial before a higher Court, by reason only of the aggregate punishment for the several offences being in excess of the punishment which it is competent to inflict on conviction of a single offence, provided that in no case shall a person be sentenced to imprisonment for a longer period than 14 years;\textsuperscript{106}

- For the purpose of appeal, the aggregate of consecutive sentence passed under Section 35 of the CrPC in case of conviction for several offences at one trial shall be deemed to be a single sentence;\textsuperscript{107}

- In a case where, by reason of a previous conviction the accused has been charged under \textit{Section 221(7) of the CrPC}, the Court, after finding the accused guilty of the offence charged and recording a conviction, shall record the plea of the accused in relation to such part of the charge.\textsuperscript{108} If the accused admits that he has been previously convicted as alleged in the charge, the Court may pass a sentence upon him according to law, and if the accused does not admit that he has been previously convicted as alleged in the charge, the Court may take evidence in respect of the alleged previous conviction, and shall record a finding thereon, and then pass sentence upon him according to law;\textsuperscript{109}

- Where a Court decides to pass a sentence of imprisonment on an accused for an offence it shall take into consideration the period, if any, during which such accused was detained in custody for such offence;\textsuperscript{110}

- In passing a sentence on an accused for any offence, a Court may take into consideration any scandalous or false and frivolous plea taken by him or on his behalf.\textsuperscript{111}

\textsuperscript{105} Ibid.
\textsuperscript{106} Section 35(2), CrPC.
\textsuperscript{107} Section 35(3), CrPC.
\textsuperscript{108} Section 265-I(1), CrPC.
\textsuperscript{109} Section 265-I(2), CrPC.
\textsuperscript{110} Section 382-B, CrPC.
\textsuperscript{111} Section 382-C, CrPC.
6.2.2. Lahore High Court Rules and Orders, Volume III, Chapter 19 (Sentences)

Part A – General

- The determination of appropriate punishment after the conviction of an offender can be quite difficult and thus requires careful consideration;
- The law prescribes the nature and the limit of the punishment permissible for an offence, but the Court must determine in each case a sentence suited to the offence and the offender;
- The maximum punishment prescribed by the law for any offence is intended for the gravest of its kind and it is rarely necessary in practice to go up to the maximum;
- The measure of punishment in any instance depends upon a variety of considerations, such as:
  - The motive for the crime;
  - Its gravity;
  - The character of the offender;
  - His age;
  - Antecedents; and
  - Other extenuating or aggravating circumstances, such as:
    - Sudden temptation;
    - Previous convictions, etc.

Part B – Fine

- A fine is the lightest form of punishment which a Criminal Court can impose, but care should always be taken to see that the fine is not excessive with reference to the means of the offender;
- Indiscriminate imposition of fines without due regard to the capacity of the convict to pay it only results in waste of time of the Courts and the police in attempting to realise it, and causes harassment to the convicted and his dependants;
- Courts are empowered to impose imprisonment in default of payment of fine, but such imprisonment can only be awarded subject to the limitations prescribed in Sections 64 to 67 of the PPC.
**Part C – Imprisonment**

- Where given a choice by the law, the Court must choose simple or rigorous imprisonment in view of all the circumstances;
- In certain local and special laws, the kind of imprisonment which may be awarded has not been specified. Under *Section 3(26) of the General Clauses Act, 1897*, such imprisonment may be simple or rigorous;
- In the case of many offences under the PPC and other Acts, it is provided that the offender shall be punished with imprisonment up to a certain term and shall be liable to fine. The phrase “shall be liable to fine” has been construed to confer discretion on the Courts and do not make it incumbent on the Courts to impose a fine;\(^{112}\)
- Simple imprisonment is suitable where a fine will not suffice and a very short term of imprisonment has to be imposed. This ensures casual offenders are kept apart from the contamination of hardened criminals;
- Solitary conferment can be awarded in the case of offences under the PPC only and not in the case of offences under special or local laws.

6.2.3. *Bench Book for Sindh District Judiciary on Case Management*\(^{113}\)

**Sentencing Procedure (Section 7.9)**

**General**

- The quantum of punishment depends on various relevant factors relating to the nature of offence, the manner of its commission and the gravity of the same;
- The competing interests between
  - society and individual,
  - the victim and accused and
  - the aspiration of ‘object to be sought’ by the punishment and the limitations of law

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\(^{112}\) Shamroz Khan and another v Muhammad Amin and another (PLD 1978 SC 89).

require accurate analysis and harmonization of remedial, reformatory and preventive steps.

- A proper sentence is the amalgam of many factors which should be considered by the Court in deciding upon the appropriate sentence. These include:
  - The nature of offence;
  - Any extenuating or aggravating circumstances to the offence;
  - Any prior criminal of the offender;
  - The age of the offender;
  - The employment record of the offender;
  - The background of the offender with reference to education, home life, sobriety, and social adjustment;
  - The emotional and mental condition of the offender;
  - Prospects for rehabilitation of the offender;
  - The possibility of the return of the offender to normal life in the community;
  - The possibility of treatment or training of the offender;
  - The possibility that the sentence may serve as a deterrent to crime by the offender or by others and the current community need, if any, for such a deterrent in respect to particular type of offence;

- Before passing a sentence, the Court should always refer to the punishment provided by the statute for the particular offence. The sentence should strictly be in accordance with the limit of the legislative mandate and the jurisdiction vested in the Court;

- Legislation provides for sentences as follows:
  - Minimum or maximum;
  - Simple or rigorous imprisonment;
  - Fines; or
  - Both imprisonment and fine.

- Therefore, before any order of sentence, Court should bear in mind the relevant provisions of substantive and procedural law, along with relevant rules and the jurisprudence by the superior Courts.
Principles of Sentencing

- The four accepted principles of sentencing are:
  - Retribution;
  - Deterrence;
  - Prevention; and
  - Rehabilitation.
- When passing a sentence, the Court should consider these principles with reference to the following factors:
  - The nature of offence;
  - The circumstances of its commission;
  - The personal circumstances of the offender;
  - Legislative intent; and
  - The expectations and welfare of the victim as well as the society.
- While determining the quantum of sentence, the Court should not be influenced by its personal bias or strong dislikes towards particular category of offences or the class of offenders;
- Matters of flexibility and personal bias are equally important even when the penalty of fine is imposed. A disproportionate penalty of fine may compromise the purpose of the sought punishment;
- Judicial officers should achieve a pattern of consistency in sentencing. Consistency must not be confused or equated with uniformity. Consistency refers to the approach to sentencing, although the actual penalty imposed in each case on the same charge may be different.
- Consistency must always be observed in reference to the pattern of sentencing by other judicial officers.

The Sentencing Approach

- Ascertaining the appropriate sentence requires the analysis of the above-mentioned factors after the conviction of an accused.
- In some cases, the required information relating to relevant factors comes on record during the trial; however, in most cases, such information may not be reflected on the record, particularly when the accused is convicted by summary procedure or merely on the basis of his plea of guilt.
• The judge should not try to elicit information relevant to the adjustment of punishment prior to conviction as this could lead to judicial bias in terms of the conviction.
• The mitigating circumstances, as far as the offence is concerned, should always be taken from the record.

The Prevalence of the Offence

• Most of the time, it is desirable to raise the level of penalty for an offence more prevalent with an aim to deter the commission of it;
• This should be done only by those judicial officers who have sufficient experience and only after consultation with other senior officers because such notions of recurrence of particular offences may sometimes be misconceived.

Principles or Guidelines issued by the Superior Courts

• The Judge should always be aware about the decisions of the superior courts and their guidelines to determine the approach, quantum and kind of sentences to be imposed in particular offences.

Relevance of Previous Conviction

• Previous convictions act as an aggravating circumstance where the Court is satisfied of the pattern of its commission and anticipate its repetition. A previous conviction should not be considered merely to increase the penalty because it adds to the punishment of the current offence, a sentence for the previous offence which the accused has already served;
• A previous conviction must be relevant to the offence which is being dealt with. For example, an earlier conviction for arson would have no relevance to the offence of driving a vehicle without a driving license, and therefore, it should be completely ignored;
• As a rule of prudence, an offence committed by an accused many years ago should be disregarded or less weight should be given to it;
• If an accused has been in prison for the intervening years, the judge may be justified in paying some attention to his previous conviction;
Types of Sentences (Section 7.10)

Nature of Sentence

- Imprisonment may be simple or rigorous or partly simple and partly rigorous, depending upon the offence committed;\(^{114}\)
- When an accused is convicted for more than one offence, sentences provided are to run consecutively, i.e. one after the other, unless the Court orders them to run concurrently.\(^{115}\)

Fine

- Fines can be imposed either individually or along with a sentence of imprisonment.
- The amount charged should be commensurate with the nature of the offence and paying capacity of offender; it shall not be excessive.\(^{116}\) Certain statutory provisions may also impose upper limits on the amount that can be charged.

6.3. Summary

- The sentences for the various ML/TF offences in the ATA and AMLA are contained in the respective laws and include both imprisonment and imposition of fines.
- Pakistan lacks any definitive statute pertaining to sentencing. However, there are some sentencing guidelines that exist in various legal sources such as the CrPC, the Lahore High Court Rules and Orders, and the Bench Book for Sindh District Judiciary on Case Management.
- Passing the appropriate sentence involves the exercise of discretion by a judge and should therefore be governed, as far as possible, by sound principles of sentencing, legal provisions, and consistent patterns, based on

\(^{114}\) Section 60, PPC.
\(^{115}\) Section 35(1), CrPC.
\(^{116}\) Section 63, PPC.
the facts and circumstances of each case, and should not be exercised on personal whim.

6.4. **Self-Assessment Questions**

1. What are the four main principles of sentencing?
2. What are the factors which should be considered by the Court in deciding the appropriate sentence?
3. How important are previous convictions when passing a sentence?
4. How would you sentence a person who is convicted at one trial of two or more offences?
UNIT 07
Mutual Legal Assistance

LEARNING OUTCOMES

• What is MLA?
• The International framework regarding MLA.
• The role of the courts under the Mutual Legal Assistance (Criminal Matters) Act 2020.
Module for Judges: Anti-Money Laundering and Countering the Financing of Terrorism

7.1. **International Law**

Mutual legal assistance (MLA) is a tool used by States to exchange information and evidence to aid criminal investigations, prosecutions, and judicial proceedings. Courts have an important role in the MLA framework: they can issue evidence gathering orders or search warrants upon a formal MLA request from a foreign jurisdiction. Prior to the promulgation of the Mutual Legal Assistance (Criminal Matters) Act 2020 (MLAA), there was no uniform process whereby foreign requests could be processed by the courts in Pakistan. Instead, such requests were handled on an ad-hoc basis through multilateral treaties such as the UNTOC, UNCAC, and ICSFT, as well as bilateral treaties. Additionally, the National Accountability Ordinance (NAO) 1999 framework was also relied upon for requesting information pertaining to corruption-based investigations. The introduction of the MLA Act 2020 in Pakistan has now allowed for formalized channels for requesting MLA in a wide range of criminal matters.

7.1.1. **The UN Convention on Transnational Organized Crime (UNTOC)**

The UNTOC is the broadest instrument for international cooperation if there is no pre-existing bilateral agreement between States. MLA may be requested for any of the following purposes:

- (a) Taking evidence or statements from persons;
- (b) Effecting service of judicial documents;
- (c) Executing searches and seizures, and freezing;
- (d) Examining objects and sites;
- (e) Providing information, evidentiary items, and expert evaluations;
- (f) Providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate, or business records;
- (g) Identifying or tracing proceeds of crime, property, instrumentalities, or other material for evidentiary purposes;
- (h) Facilitating the voluntary appearance of persons in the Requested State Party;

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117 Clause 3, Article 18, UNTOC.
(i) Any other type of assistance that is not contrary to the domestic law of the Requested State Party.

7.1.2. UN Convention Against Corruption (UNCAC)

According to UNCAC, State Parties shall afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences covered by the UNCAC. The purposes for which MLA may be requested mirror those contained in Clause 3 of the UNTOC.\textsuperscript{118}

7.1.3. International Convention for the Suppression of the Financing of Terrorism (ICSFT)

ICSFT provides that States Parties shall afford one another the greatest measure of assistance in connection with criminal investigations or criminal or extradition proceedings in respect of the offences set forth in Article 2 of the ICSFT, including assistance in obtaining evidence in their possession necessary for the proceedings.\textsuperscript{119}

7.2. Domestic Law

7.2.1. MLA under the Investigation for Fair Trial Act, (IFTA) 2013:

Section 31 of the IFTA states that warrants obtained under the Act shall be executable in both Pakistan and foreign jurisdictions, either by direct approach to relevant service providers, or through an MLA mechanism agreed between Pakistan and the relevant foreign state. Section 31(2) and 32 indicate that warrants (both those initiated domestically and those received from foreign states) shall be processed for execution by the designated agency or body as set out in the Act.

\textsuperscript{118} Clause 1, Article 46, UNCAC.
\textsuperscript{119} Clause 1, Article 12, ICSFT.
7.2.2. Mutual Legal Assistance (Criminal Matters) Act 2020 (MLAA)

Prior to the passage of the MLA Act, the Code of Criminal Procedure (CrPC) and elements of the National Accountability Ordinance 1999 provided a basis for coordinating and issuing MLA requests – however this was wrought with bureaucratic and partisanship-based challenges. Previously, the CrPC would allow for the examination of witnesses abroad. The Extradition Act 1972, generally discussed in tandem with MLA, contained no provisions dealing with outgoing MLA requests. In corruption cases that fell within the jurisdiction of the National Accountability Bureau (NAB), the National Accountability Ordinance 1999 permitted the NAB Chairman to request MLA from a foreign state.\(^{120}\) Incoming MLA requests were executed by applying the NAO and the CrPC as necessary, even though the ambit of the CrPC applies to only local investigations. The NAO also empowered the NAB Chairman to provide MLA to foreign jurisdictions in corruption matters.\(^{121}\) All these factors point to the largely haphazard and uncoordinated methodology of addressing MLA requests in the absence of dedicated MLA legislation and a central authority. As a result, the scope of using MLA or other information gained from foreign jurisdictions to enhance local investigations remained minimal and restrictive. The MLA (Criminal Matters) Act of 2020 sought to remedy these failings.

On 11\(^{th}\) August 2020, the **Mutual Legal Assistance (Criminal Matters) Act 2020**\(^ {22}\) was approved by the Parliament. The Act extends international cooperation by providing legal assistance to requesting states by undertaking necessary actions for effective law enforcement.

**Section 9: Foreign request for an evidence gathering order or search warrant**

A court may issue a search warrant or an evidence-gathering order upon an application filed by the central authority upon a request of a foreign country for the following purposes:


\(^{121}\) Ibid.

\(^{22}\) Mutual Legal Assistance (Criminal Matters) Act 2020

• Taking of a statement or testimony from a person;
• Production of documentary or other evidence in Pakistan; or
• Identification of a person, property, or record.

The court may only issue such warrant or order if it is satisfied that there are reasonable grounds to believe that:

• An offence has been committed, or is suspected on reasonable grounds to have been committed, against the laws of the requesting country and which, if committed in Pakistan, would constitute an offence under the laws of Pakistan; or
• The person suspected of committing the offence or the witness is likely to be present in Pakistan.

An evidence-gathering order:

• Shall provide for the manner in which the statement or testimony is to be taken or the evidence is to be obtained or the person or thing to be identified in order to give proper effect to the request unless prohibited under the laws of Pakistan, and, in particular, may require any person named therein to:
  o Make a record from data or make a copy of record;
  o Attend court to give evidence on oath; or
  o Produce to the court or to any person, named by the court, anything including any article, record or copy thereof.
• May include such terms and conditions as the court considers expedient, including those relating to the interests of the person named therein or of the third party.

Where the evidence sought is a statement or testimony from a witness, an expert or defendant, the court may permit:

• Any person to whom the foreign investigation, prosecution or proceedings relate or that person’s legal representative to participate in the proceedings; and
• The legal representative of the country to participate in the proceedings and question the witness.

A person named in an evidence-gathering order may refuse to answer a question or to produce a record or thing, where such refusal is based on:

• A law in force in Pakistan;
• Privilege recognized by a law in force in the country that made the request; or
• A law in force in the country that made the request provides that the answering of that question or the production of that record or thing by that person in its own jurisdiction is, or shall be deemed to be, a criminal offence.

In which case the court shall refer the matter to the central authority which shall notify the requesting country accordingly and request it to provide a response on whether the person’s refusal is well-founded under the law of that country. Any response received by the central authority from the country in response to such a request shall be admissible in the evidence-gathering proceedings.

A court may issue a bailable warrant for the arrest of a person named in an evidence-gathering order where it is satisfied that the person was personally served with the order and he willfully did not attend or remain in attendance as required or is about to abscond. A person arrested shall be forthwith brought before the court, to ensure compliance with the evidence-gathering order and the court may pass an order that the person be detained in custody or released with or without production of sureties.

A search warrant:

• Shall be issued in accordance with the CrPC;
• Shall specify the time and date when the court will hear any representation from any person from whom a record or thing is seized pursuant to the warrant, before any order is made to send it to the country; and
• May include such terms and conditions as the court considers desirable including conditions relating to the time or manner of its execution.
At the hearing to consider the execution of search warrant, and after considering any representation made by the central authority, or any person from whom the record or thing was seized pursuant to the warrant, or any person who claims to have an interest in the record or thing, the court may order that the record or thing be:

- Returned to the person from whom it was seized or the person lawfully entitled to its possession and the warrant was not executed according to its terms and that it would be in the public interest to return it; or
- Sent to the country, and include in the order such terms and conditions as the court considers necessary:
  - To give effect to the request from that country; and
  - With respect to the preservation and return to Pakistan of any record or thing seized so as to respect the interest of a third party.

**Section 11: Foreign requests for assistance from persons serving imprisonment**

A court may pass an order to have a person serving a term of imprisonment in Pakistan, transferred to the requesting country for a fixed period to give evidence or assist in an investigation or proceedings in that country, upon an application filed by a central authority on the request of a country.

The court may make a transfer order where, after considering among other things any documents filed or information given in support of the application, it is satisfied that the person serving imprisonment has consented to the transfer.

The transfer order shall:

- Name of the person serving imprisonment and his place of confinement;
- Require the person who has custody of the person to deliver him into the custody of the person who is designated in the order or who is a member of the class of persons so designated;
- Require the person receiving the person into custody to take him to the requesting country and on return of the person to Pakistan, to return him to
the place of confinement where he was detained when the order was made, or to such other place of confinement as the central authority subsequently may notify;

- Specify the reasons for the transfer;
- Fix the period at, or before the expiration of, which the person must be returned to Pakistan;
- Have a written undertaking from the requesting country that the person will not be detained, prosecuted, extradited to a third country or punished for any offence against the law of the foreign country that is alleged to have committed, or that was committed, before their departure from Pakistan; and
- Have a written undertaking from the requesting country that the person shall not to be required to give evidence in any proceeding in the foreign country other than in respect of conduct which if occurred in Pakistan constitutes a criminal offence, to which the request relates.

It may also include such terms or conditions relating to the protection of the interest of the person as the court considers appropriate.

**Section 13: Foreign request to Pakistan for freezing or seizure order**

A court may issue a freezing or seizure order upon an application for such order filed by the central authority when it approves a request of a country under Section 10 of the MLAA to restrain dealings in any properties (some or all of which are located in Pakistan).

The court may pass such order after providing the person with the opportunity of being heard and where it is satisfied that there are reasonable grounds to believe that:

- An offence has been committed by a person under the laws of the requesting country which, if committed in Pakistan, also constitutes a criminal offence in Pakistan;
- An investigation or proceedings have commenced in the country relating to that offence;
- Properties derived by the person, by himself or any other person on his behalf, from the commission of the offence are located in Pakistan; and
An order has been made in the country having the effect of confiscating such properties.

A court may register a foreign freezing or seizure order (or any amendment thereof) passed by a competent court of a requesting country upon an application filed by the central authority. Such foreign order shall not be effective in Pakistan until it is registered.

The court may cancel the registration of a foreign freezing or seizure order upon an application filed by the central authority if it appears that the order has ceased to have effect in that country.

The court may register a foreign freezing or seizure order on the basis of a facsimile of a duly authenticated foreign order (or amendment therein) which shall be regarded as the duly authenticated foreign order. However, such registration shall cease to have effect at the end of 14 days from the date of registration, unless a duly authenticated original order has been registered by that time.

Section 14: Foreign confiscation order

A court may enforce a foreign confiscation order against property which is believed on reasonable ground to be located in Pakistan, upon an application by the central authority that has approved a request of a country for enforcement of such confiscation order.

The court shall issue adequate notice to all persons appearing to have an interest in the property against which the confiscation order may be executed.

Within 30 days of the receipt of such notice, any person with an interest in the property against which the application for execution of the confiscation order has been filed may file an application objecting to the confiscation.

The court may order to enforce the foreign confiscation order, where it is satisfied that there are reasonable grounds to believe that:
- An offence has been committed by a person under the laws of the requesting country which, if committed in Pakistan, also constitutes a criminal offence in Pakistan;
- The foreign confiscation order has been made in the country in relation to the offence referred to above;
- The foreign confiscation order is in force in the requesting country and is not subject to appeal;
- The properties specified in the confiscation order are located in Pakistan; and
- The person, whose property is the subject of the foreign confiscation order, had appeared or participated in the proceedings or intentionally refused to do so despite having notice of the proceedings which culminated into such confiscation order being passed.

Section 15: Request to recover foreign fines

A court may enforce a foreign order for payment of a fine\textsuperscript{123} in the manner as if the fine has been imposed by a court in Pakistan, upon an application filed by the central authority that has approved a request from a country to enforce payment of such fine.

The court may pass the order for enforcement of a fine, if it is satisfied that:
- The foreign order is in force in that country and is not subject to appeal; and
- Where the person, who is the subject of the foreign order, had appeared or participated in the proceedings or intentionally refused to do so despite having notice of the proceeding, which culminated into such confiscation order being passed.

\textsuperscript{123}Explanation to Section 15(1) MLAA provides that for the purpose of Section 15 MLAA, the expression “fine” shall include any pecuniary penalty determined by a foreign court to represent the value of any property, benefit, advantage, obtained or derived directly or indirectly as a result of the commission of an offence.
Section 18: Non-disclosure of confidential requests for assistance

A court may order the person providing a statement or testimony, or the custodian of evidence or information being provided under the MLAA, to keep confidential the fact of having such statement or testimony or having produced such evidence or information.

Failure in this respect would render such person liable to a sentence of imprisonment of six months, or with a fine not exceeding PKR 500,000, or with both.

Section 20: Production, search, and seizure of information system

Upon an application filed by the central authority upon the request of a country, a court may pass a production order for the following:

- Specified electronic data in the possession or control of a person which is stored in a computer system; and
- Electronic data in the possession or control of a service provider, where such data or information is relevant to the criminal matter in the requesting country.

The court may issue a search warrant or order authorizing a person designated by it to search or access any computer system or part thereof in which computer data may be stored.

The search warrant or order issued may also authorize the designated person, where necessary, to:

- Seize or secure an information system or part thereof;
- Make and retain a copy of the electronic data;
- Maintain the integrity of the relevant electronic data;
- Render inaccessible or remove the electronic data in the accessed information system.
7.2.3. Ministry of Interior Internal Guidelines: International Cooperation

The MLAA and UNSC resolution 1373 call upon all states to “find ways of intensifying and accelerating the exchange of operational information” and “exchange information in accordance with international and domestic laws”. In order to facilitate this, the MLAA permits the formulation of rules and regulations as to further furnish and implement the provisions of the Act.

Hence, the Ministry of Interior (MOI) passed the Mutual Legal Assistance Internal Guidelines. These Guidelines have been designed to assist foreign countries understand the steps to be followed when requesting international cooperation from Pakistan and the information which is required for a meaningful reply. These Guidelines also intend to raise awareness amongst the officials in all relevant ministries, departments, agencies, and organizations in Pakistan with respect to seeking international cooperation from other countries and providing in-time quality response on incoming requests from other countries. The process of executing incoming and outgoing MLA requests is detailed, including methods and details of assistance requested as well as the conditions for refusal of MLA request. The functions and powers of the central authority are also detailed, with the International Cooperation Wing of the MOI being set up to scrutinize and follow-up with all MLA requests. LEAs and other authorities will also be involved in international cooperation requests, and time-frames for such requests are also provided for. Prioritization of requests for international cooperation is also provided for, with requests for cooperation in TF/ML cases being top-priority for the MOI. The Guidelines also promote the usage of informal route – that is, agency-to-agency relations and MOUs – to gain information in places where the formal MLA requests face red tapeism or simply take too much time.

Section 1 of the Guidelines define the scope and applicability of MLA and its importance. The section further highlights the role and process of central authority which is of utmost significance when it comes to making a request on

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behalf of Pakistan and receiving requests from foreign states. Section 2 expands upon execution of outgoing MLA requests from Pakistan, breaking down the types of outgoing MLA requests and the format of incoming requests as well. Section 3 elaborates upon executing incoming MLA requests by explaining the types of incoming MLA and the format of outgoing requests. Section 4 explains the route to be adopted by the central authority in cases where it receives a request for evidence gathering or search warrants. It also explains the steps to be taken by the central authority when the person named in an evidence-gathering order refuses to answer a question. In such cases, the central authority is to notify the requesting country accordingly and request it to provide a response on whether the person’s refusal is well founded under the law of that country. The requesting country’s response in this matter shall be admissible in the evidence gathering proceedings in accordance with law.

Moreover, the mechanism for assistance from persons serving imprisonment is also addressed to minimize any ambiguity. In instances where a foreign jurisdiction requests the central authority that a person serving imprisonment be transferred for the purposes of giving testimony or otherwise providing evidence in aid of another investigation, then the central authority will move the court for a transfer order. Section 4.3 also explains the role of central authority in cases of freezing and seizure orders. In addition, the section also has provisions for assistance requests pertaining to the detention of a person in Pakistan as well as assistance for foreign confiscation orders and assistance with respect to requests asking for recovery of fines. Section 4.7 also expands upon the central authority’s role when extending assistance with requests pertaining to electronic data.

Section 5 discusses grounds upon which the central authority may refuse requests for international cooperation. Section 6 details the framework for seeking an informal request made by a counterpart agency, generally via telephone, facsimile or email. The Guidelines encourage LEAs to develop MOUs with other LEAs to govern the exchange of information between them. While these are not inter-governmental agreements, they are important official statements of the respective obligations each party agrees to undertake. The Guidelines also provide tips on how to structure informal requests as well as creating databases for cataloguing information or evidence in cases where the said information can be requested by a foreign jurisdiction at a later stage. Section 7 emphasizes non-disclosure of
confidential requests for assistance. Section 8 briefly discusses the expenses related to MLA requests.

7.2.4. Standard Operating Procedures (SOPs) for International Cooperation by the Government of Khyber Pakhtunkhwa Rules

In October 2020, the Government of Khyber Pakhtunkhwa issued Standard Operating Procedures (SOPs) for international cooperation and related matters in the province. These SOPs aim to highlight the steps which are to be followed in cases of outgoing MLA requests as well as incoming MLA requests. The Guidelines were issued to raise awareness among the officials in all relevant ministries, departments, agencies, and organizations with regards to mechanisms for seeking and extending international cooperation.

The Guidelines begin by highlighting instances when a formal mutual legal assistance request is made. The Guidelines also state that LEAs and concerned departments should initiate formal international cooperation requests based on information obtained via informal means as such requests have more chances to receive an immediate reply. The Guidelines also identify the central authority as well as the international cooperation cell for clarity. The Secretary of the Ministry of Interior, Government of Pakistan acts as the Central Authority for this purpose. Moreover, the International Cooperation Cell of Home & Tribal Affairs Department, Government of Khyber Pakhtunkhwa has notified vide notification No.SO (Judl)/HD/P-17/Vol-1.

The Guidelines also mention that the potential international aspects of terror financing and money laundering investigations must be considered in all domestic proceedings. In addition, the key focus surrounding cross border terrorism financing links should emphasize on key risk areas that include kidnapping, extortion, narcotics, proceeds from businesses, the use of illegal money and value transfer services (MVTS), cash couriers aimed for hawala/hundi, raising money in the name of charity to move outside the country and receiving funds from organizations out of Pakistan.

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126 Khyber Pakhtunkwa Guidelines on Mutual Legal Assistance (MLA) 2020
127 Ibid
7.2.5. NACTA directives on International Cooperation in Terrorist Financing Matters

The National Counter Terrorism Authority (NACTA) in March 2020 issued directives intended to strengthen international cooperation in matters pertaining to terrorist financing. The directives find their premise in Pakistan’s National Risk Assessment (NRA) 2019 that emphasize the globalized nature of terror financing threats. LEAs and other authorities must analyze international linkages for any terror financing threats and effectively curb them by seeking means of international cooperation, while also responding to incoming requests from foreign countries in a timely manner. The directives call upon authorities to adopt due procedures that are aligned with domestic law as well as international standards to enhance international cooperation.

7.2.6. Extradition Act, 1972

The Extradition Act of 1972 is an important feature of international cooperation pertaining to extradition of fugitive offenders. The Act is applicable to persons returned from a treaty State or a foreign State not being a treaty State. Chapter I of the Act lays down protocols for preliminary determination for the purposes of invoking provisions of the Act; it determines scope, duties, and limitations of the Act. When identifying the purpose of the Act, the provisions state that any special intent or state of mind or special circumstances of aggravation which may be necessary to constitute that offence under the law shall be disregarded. Chapter II elaborates upon the surrender of fugitive offenders; this also pertains to an offence in respect to which the fugitive’s surrender is sought was committed before or after the commencement of this Act and whether a court in Pakistan has jurisdiction to try that offence. Section 5(2)(a) highlights circumstances where the fugitive offender is not to be surrendered. Section 6 states that a requisition for the surrender of a fugitive offender shall be made to the Federal Government via specified means that include:


129 NRA 2019


a. a diplomatic representative in Pakistan of the State asking for the surrender; or
b. by the Government of the State asking for the surrender through the diplomatic representative of Pakistan in that State; or
c. in such other manner as may have been settled by arrangement between the Federal Government and the Government of the State asking for the surrender.

Chapter III deals with surrender to Pakistan of persons accused of extradition offences. It highlights the way a requisition for the surrender to Pakistan of a person who, being accused or convicted of an extradition offence, is or is suspected to be in a treaty State may be made by the Federal Government. Chapter IV pertains to miscellaneous matters that may arise during the application of provisions of this Act.132

According to an Asian Development Bank/Organization for Economic Cooperation and Development (ADB-OECD) report on Anti-Corruption133, the Extradition Act, 1972 is not extensive in nature and scope, and does not espouse all the requirements compared to more recent extradition legislation in other jurisdictions. While dual criminality remains a mandatory requirement for incoming extradition, it needs to be conduct-based. This means that the facts of the case must constitute an offence in both States, no matter how those offences are qualified as per Article 43(1) of the UNCAC.134 However in Pakistan, the extradition regime was reliant on the Code of Criminal Procedure (CrPC) and other laws, such as the NAO, in place of dedicated legislation aimed at promoting mutual legal assistance.

133 Ibid.
7.3. Challenges to MLA

7.3.1 Procedural Challenges to drafting an MLA request

MLA Act 2020 contains provisions that have critical faults. Under Section 5 of the MLA Act, 2020, the subject of the MLA request is to be notified of the said request. This could prove costly in terms of effectiveness of domestic and foreign investigations and could also result in requests simply not being made by, or to, foreign jurisdictions for fear of compromising the investigation. There is also a key disparity in the MLA Act in terms of confidentiality. Section 18 of the MLA Act, 2020 requires confidentiality; however, this conflicts with the Section 5, which requires the subject of the request to be notified. The FATF termed this fallacy as “contrary to protecting the integrity of the investigation or inquiry,” and thereby severely compromising the effectiveness of the legislation.

Additionally, there were concerns raised against coordinating authorities. While the role of the central authority as per the MLAA includes coordinating MLA requests (Section 4), in practice the National Executive Committee (comprising representatives from the MOI; Law and Justice; MOFA and the Home Secretariats of all four provinces – set up by Section 5 of the AMLA Act 2020) essentially exercises the relevant powers. Pakistan responded to this concern by the APG by clarifying that in practice, the National Executive Committee acts as the Central Authority. This mechanism is unclear as decisions taken through these means would be riddled with bureaucratic delays and could impact prioritization.

Pakistan responded to these concerns by passing the Mutual Legal Assistance (Amendment) Act, 2021\(^\text{135}\) with the aim of streamlining MLA processes and requests as well as ensuring full compliance with the FATF’s requirements. Under Section 2 of this new amendment, the role of the central authority was redefined to being held by the Secretary of the Ministry of Interior, and section 4 further added to the role in question by ensuring that all MLA requests will be processed and decided by the central authority expeditiously. The FATF’s concerns regarding Section 5, were also adopted in the amendment in that now, no notifications of MLA requests will be made to the subject of the request.\(^\text{136}\)

\(^{135}\) Mutual Legal Assistance (Criminal Matters) Act 2021

\(^{136}\) Ibid.
The bilateral engagement between LEAs across borders constitutes the informal channel of MLA. Police-to-police cooperation is one such example, where an explicit MLA instrument is not required between States. The INTERPOL National Central Bureau is one such channel that is available for the exchange of police information and intelligence. A formal agreement, such as an MOU is sufficient for an informal MLA to operate. The data received through this can confirm the availability of any electronic evidence, directly aimed at answering an investigative inquiry, or simply serve as a supporting ground in an MLA request for a judicial order for disclosure of data from the service provider.

The limitations with police-to-police cooperation include the logistical challenges with disclosure or discovery obligations, such as it may require an MLA request to be produced at trial. Similarly, JITs may impede future investigations or prosecutions by revealing special investigation technique methodologies or sources due to the disclosure obligations in situations where States coordinate investigations and informally share information.\textsuperscript{137} The SOPs for International Cooperation Rules, 2020 by the Government of Khyber Pakhtunkhwa include guidelines on both formal and informal channels of MLA.\textsuperscript{138}

**Case Study**

When the militants of a banned organization claimed responsibility for an attack in Pakistan on Twitter, the Magistrate issued a judicial order to Twitter to disclose the BSI (Basic Subscriber Information) of the persons who published those tweets. The disclosure was not made voluntarily but subsequently an MLA request was transmitted and executed in the United States.

7.3.2 Admissibility Challenges of Evidence derived from Mutual Legal Assistance

There is a defined set of local procedure to collect e-evidence and the same is to be followed across the country to obtain e-evidence. E-evidence cannot be

\textsuperscript{137} See https://www.eurojust.europa.eu/sites/default/files/assets/joint_investigation_teams_practical_guide_2021_en.pdf

\textsuperscript{138} Ibid [5]
obtained without following the domestic procedural requirements set by the requesting State, as otherwise the evidence remains inadmissible in courts.\textsuperscript{139}

7.3.3. Challenges associated with e-evidence

There are several challenges associated with e-evidence under the MLA process. These challenges include inadequate technical knowledge of prosecutors and the judiciary regarding information communication technology, limited technology in Court to present e-evidence, and concerns surrounding who is authorized to produce the e-evidence before the Court if the evidence has been obtained from another country. Some key challenges include:

- **Encryption of Data:**

  End-to-end encryption allows only the communicating users to access the messages or conversation between them and no one other than them can read these messages. This is provided to protect the users from surveillance and tampering. Due to encryption, the messages cannot be provided by apps like WhatsApp that use this protection, in situations of emergency. Other than this, this protection has extended in the form of pin-locked devices that gives complete protection to individual’s personal data. Some apps like Wikr also delete messages after they are sent and have no retention policy too.

- **Issues Locating Suspects Relying on Cloud Computing**

  In Cloud-based systems, a user can save data from different locations. This means, due to the data being available in different locations at the same time, it gets difficult to figure out where the request for e-evidence has to be sent. A foreign service provider may be providing service in an area but that does not mean that the domestic legislation has the right to get the data disclosed by that service provider.

- **Use of Virtual Private Networks (VPNs) and Proxy Servers**

\textsuperscript{139} Ibid [2]
Virtual private networks, known as VPNs, provide an extra layer of security and privacy to the users of the Internet. Users actual IP address is replaced by that of the VPN provider. This means while living in Amsterdam, a user may appear to be located in Tokyo. VPN providers can track users and log data but some of them do retain connection logs and some have a zero-log policy too. This leaves collection of evidence difficult due to its non-existence.

A proxy service, often known as a proxy server, allows a user to change their IP address to another one. A proxy redirects a user’s internet surfing activities. The proxy hides a user’s real IP address from a firewall, allowing them to access banned websites. It is also another technique to keep a user’s IP address hidden.

- **Peer-to-peer networks**

Participants use peer-to-peer (P2P) instead of a central server to connect directly via instant messaging, voice calls, video calls, or file sharing. This dispersed concept makes monitoring communications more challenging. P2P also permits for anonymous communication and is widely used by child sexual abuse organizations to transfer material and terrorist organizations to share propaganda or attack instructions, making investigations more complex.

- **Online content and livestreaming moderation and takedowns**

There is a concern expressed by the Member States, the Security Council and General Assembly, as well as Intergovernmental Regional Organizations, that terrorists create distorted narratives to justify violence. This is further used to mobilize resources, recruit supporters and Foreign Terrorist Fighters (FTFs), and gain sympathy from sympathizers, particularly through the use of information and communication technologies, like the Internet and social media.

The Christchurch tragedy on March 15, 2019 is an evidence terrorist livestreaming acts that are designed to gain online traction is a concerning development. An alternative-right terrorist harbouring white supremacist tendencies, targeted worshippers in two mosques at Christchurch, New Zealand. He had published a manifesto online justifying hate crime and proceeded to broadcast shooting openly in a mosque live on his Facebook feed. The livestream
as well as the manifesto have been banned online by the governments of Australia and New Zealand, however the trend of using tools available in social media platforms to promote terrorism and broadcast other crimes remains an issue.

- **Non-cooperative service providers**

It is essential to cooperate with the service providers while contacting them. However, there can be several issues in this like the non-awareness of law enforcement guidelines by the providers making it difficult to preserve e-evidence, unwilling attitude of the service providers, and knowing who to approach to connect with a service provider representative about non-MLA needs.

- **Quasi-judicial role of the service providers**

Large Internet service providers are increasingly being requested to function as regulators, quasi-judicial decision makers, and human rights protectors have expressed their great concerns over this. The service providers are given considerable latitude in determining their data retention rules, user notice of data preservation or collection demands, and which nations' law enforcement agencies they will willingly cooperate with. These roles are inconsistent with the best human rights standards and service providers should not be given this much authority.

Electronic evidence obtained via MLA mechanisms poses challenges of admissibility at trial, in addition to complications associated with requesting e-evidence from States. Surmounting these challenges will require proactive investigations and a coordinated approach between law enforcement and those prosecuting transnational crimes in order to determine the appropriate and lawful route to adopt regarding these matters.

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7.4. Case Studies

Alamgir Khalid Chughtai v. The State PLD 2009 Lahore 254

In this case, the Lahore High Court acknowledged the developments in science and technology and the difficulty of bringing every record in the physical form. Therefore, the Court allowed documents prepared, generated, or produced through modern or electronic devices to be admissible as evidence in a trial.

Adnan Hafeez vs. The State\textsuperscript{141}

The Court ruled that after the seizure and examination of three laptops, a PTCL Evo Wingle, and a mobile phone by the FIA’s cybercrime wing, it confirmed that the accused used multiple Secure Sockets Layer (SSL)\textsuperscript{142} identities.

Supreme Court of Switzerland\textsuperscript{143}

If e-evidence requests call for a revelation of internet connection data of an unknown suspect, then the law enforcement agencies prior to sending such a request should ask for a judicial authorization. In this case, the Supreme Court of Switzerland ruled that the data obtained by the Swiss Police was inadmissible in court because it included identification and location information of unknown suspects. The court referred to the data as traffic data, that could not be introduced at trial because court authority had not been sought prior to sending the direct request to Google.

R v. Hamdan\textsuperscript{144}

In this case, the prosecutor submitted screenshots of 85 Facebook posts and Facebook timelines and profiles as e-evidence. The Supreme Court of British Columbia questioned the accuracy and authenticity of these screenshots. The screenshots were transferred to multiple devices, their format changed which

\textsuperscript{141} PLD 2016 Lahore 318
\textsuperscript{142} Secure Sockets Layer is a standard security technology for establishing an encrypted link between a web server and a browser.
\textsuperscript{143} Case no. 6B_656/2016
\textsuperscript{144} Case no, 2017 BCSC 626
indicated that there was a possibility of the files being corrupted or altered. Furthermore, the prosecution was unable to prove that the timelines seen by someone visiting Facebook profiles and pages were the same as those seen by someone accessing the profiles and pages. The prosecution was ordered by the court to take additional procedures to validate the screenshots, including making a direct request to Facebook for IP addresses.

7.5. **Summary**

- MLA is a tool used by States to exchange information and evidence to aid criminal investigations, prosecutions and judicial proceedings.
- Courts have an important role when it comes to MLA and that is usually to receive foreign requests to issue evidence gathering orders or search warrants, etc.
- Prior to the promulgation of the MLAA, there was no uniform process whereby foreign requests could be processed by the courts in Pakistan and instead such requests were handled on an ad-hoc basis through multilateral treaties such as the UNTOC, UNCAC and ICSFT.
- The MLAA provides the process through which Pakistan can request and provide legal assistance from foreign governments and vice versa in criminal matters.
- MLA may be provided based on a reciprocal agreement or arrangement, however in the absence thereof, the Federal Government may render the provisions of the MLAA applicable to such country with which MLA may be expedient.
- Under the MLAA, a court may issue the following based on foreign requests:
  - Search warrant or an evidence-gathering order;
  - Warrant for the arrest of a person named in an evidence-gathering order;
  - Transfer order of a person serving a term of imprisonment in Pakistan;
  - Freezing or seizure order;
  - Registration of a foreign freezing or seizure order (or any amendment thereof);
  - Enforcement of a foreign confiscation order;
Module for Judges: Anti-Money Laundering and Countering the Financing of Terrorism

- Enforcement of a foreign order for payment of a fine;
- Confidentiality order regarding a statement or testimony, or the custodian of evidence or information being provided under the MLAA; or
- Production order for electronic data.

7.6. Self-Assessment Questions

1. In what circumstances can a court issue a search warrant or an evidence-gathering order?
2. What can a court do if the person named in an evidence-gathering order refuses to answer a question or to produce a record or thing?
3. What should a court mention in a transfer order of a person serving a term of imprisonment in Pakistan?
4. In what circumstances can a court issue a freezing or seizure order?
5. Does the court require a duly authenticated original order to register a foreign freezing or seizure order?
6. In what circumstances can a court issue an order to enforce the foreign confiscation order?
7. In what circumstances can a court issue an order for enforcement of a fine?
8. What kind of order can a court pass if it receives an application for a search warrant or order authorizing a person designated by it to search or access any computer system in which computer data may be stored?
UNIT 08

Human Rights’ Considerations

LEARNING OUTCOMES

• The rights of defendants for judges to protect.
8.1. Defendant Rights

Given that ML/TF cases being brought to trial is a priority for Pakistan, under the FATF Action Plans, it is necessary to ensure human rights protections of the accused. Ignoring the rights of the accused violates the concept of due process, and also negatively affects public faith in the justice system and rule of law.

Judges must keep in mind the rights of the accused during and prior to trial and should also guide the prosecutors as to their fulfilment. The following are some important rights that must be protected to ensure due process:

1. Protection against arbitrary or unlawful arrest.\(^{145}\)
2. Protection against arbitrary or unlawful searches.\(^{146}\)
3. Protection against “double jeopardy”.\(^{147}\)
4. Protection against conviction or enhanced punishment under ex-past facto law.\(^{148}\)
5. Protection against arbitrary or illegal detention in custody.\(^{149}\)
6. Right to be informed of the grounds, immediately after the arrest.\(^{150}\)
7. Right of the arrested person not to be subjected to unnecessary restraint.\(^{151}\)
8. Right to consult a lawyer of his own choice.\(^{152}\)
9. Right to be produced before a Magistrate within 24 hours of his arrest.\(^{153}\)
10. Right to be released on bail, if arrested.\(^{154}\)
11. Right not to be a witness against himself.\(^{155}\)

\(^{145}\) Article 10, Constitution, Sections 55 and 151, CrPC.

\(^{146}\) Sections 97, 100, and 165, CrPC.

\(^{147}\) Article 13(1), Constitution and Section 403, CrPC.

\(^{148}\) Article 12, Constitution.

\(^{149}\) Article 10, Constitution, Sections 56, 57 and 76, CrPC.

\(^{150}\) Article 10(1), Constitution, Sections 50, 55 and 75, CrPC.

\(^{151}\) Section 50, CrPC.

\(^{152}\) Article 10(1), Constitution.

\(^{153}\) Article 10(2), Constitution, Section 61, CrPC.

\(^{154}\) Sections 496 to 498-A, CrPC.

\(^{155}\) Article 13(2) Constitution.
12. Right to get copies of the documents and statements of witnesses on which the prosecution relies.\textsuperscript{156}

13. Right to have the benefit of the presumption of innocence till guilt is proved beyond reasonable doubt.\textsuperscript{157}

14. Right to insist that evidence be recorded in his presence except in some special circumstances.\textsuperscript{158}

15. Right to have due notice of the charges.\textsuperscript{159}

16. Right to test the evidence by cross-examination.\textsuperscript{160}

17. Right to have an opportunity for explaining the circumstances appearing in evidence against him at the trial.\textsuperscript{161}

18. Right to have himself medically examined for evidence to disprove the commission of offence by him or for establishing commission of offence against his body by any other person.\textsuperscript{162}

19. Right to produce defence witnesses.\textsuperscript{163}

20. Right to be tried by an independent and impartial Judge.\textsuperscript{164}

21. Right to be heard about the sentence upon conviction.\textsuperscript{165}

22. Right to fair and speedy investigation and trial.\textsuperscript{166}

23. Right to appeal in case of conviction.\textsuperscript{167}

24. Right not to be imprisoned upon conviction in certain circumstances.\textsuperscript{168}

\textsuperscript{156}\textit{Sections} 189, 241-A, and 265-C, CrPC.
\textsuperscript{157}Naveed Asghar, etc. v. The State (PLD 2021 SC 600).
\textsuperscript{158}Section 353, CrPC.
\textsuperscript{159}Sections 122(2), CrPC.
\textsuperscript{160}Section 44, QSO.
\textsuperscript{161}Section 342, CrPC.
\textsuperscript{162}Section 53-A, CrPC.
\textsuperscript{163}Sections 265-F(6) and (7), CrPC.
\textsuperscript{164}The scheme of an independent and impartial judiciary as envisaged in the CrPC.
\textsuperscript{165}Sections 366 and 367, CrPC.
\textsuperscript{166}Article 10A, Constitution.
\textsuperscript{167}Section 408, 410, and 411A, CrPC.
\textsuperscript{168}Probation of Offenders Ordinance, 1960.
25. Right to restrain police from intrusion on his privacy.\textsuperscript{169}

26. Right to release of a convicted person on bail pending appeal.\textsuperscript{170}

27. Right to get copy of the judgment when sentenced to imprisonment.\textsuperscript{171}

\textbf{8.2. Summary}

- Ignoring the rights of the accused violates the concept of due process, and also disintegrates public faith in the justice system and rule of law.

\textsuperscript{169} Article 14, Constitution, Shahnaz Elahi, etc. v. I.G. Police, Punjab, etc. (PLD 2015 Lah 213).

\textsuperscript{170} Section 426, CrPC.

\textsuperscript{171} Section 371, CrPC.
UNIT 09
Simulation Exercise
9.1. Scenario Outline

1. Tanzeem e Qital (TeQ) is a terrorist organization, responsible for carrying out several terrorist attacks in Pakistan over the past 3 years. These have included suicide bombings as well as armed attacks on mosques and government offices in Balochistan, Khyber Pakhtunkhwa and Punjab.

2. On 12 January 2020, the Ministry of Interior notified Tanzeem e Qital (‘TeQ’) as a proscribed organization under the Anti-Terrorism Act, 1997 (‘ATA’).

3. During investigation into a bombing in Quetta claimed by TeQ which occurred on 5th February 2022, CDR of one of the suspected bombers reveals calls being made to one Asif Mushtaq. Police put Asif Mushtaq under surveillance.

4. Surveillance reveals that Asif Mushtaq, goes to ‘XYZ Bank’ at its Jail Road Branch in Quetta.

5. Police contact the Bank Manager and are able to access the CCTV footage of the inside of the bank. They determine that Asif Mushtaq went to Bank Teller No. 3 to withdraw cash. Upon questioning Bank Teller No. 3 in the presence of the Bank Manager, they learn that Asif Mushtaq has come to the bank several times in the past to withdraw money. Police also obtain a copy of the CNIC of Asif Mushtaq.

6. The Manager also shares a Bank Statement of the account (Account No. 775512345) for the past 1 year with the Police and tells them the account was opened on 24 June 2020. As per the Bank Statement the account title is in the name of Ms. Rukhsana Imtiaz and monthly transfers are made to this account from the account of a charitable organization by the name of ‘Insani Khidmat Foundation’ (‘IKF’).

7. According to the Bank Statement, for at least the past one year, Rs. 60,000/- have been deposited into the account every month through a bank transfer from an account operated by IKF. For the same time period Mr. Asif Mushtaq has been withdrawing Rs. 58,000/- every month through cheques signed by Ms. Rukhsana Imtiaz.
8. The investigation reveals that IKF is a non-profit organization registered under the Trust Act, 1882 and receives donations from all over Pakistan.

In 2021, it received a total of Rs. 10,324,423/- worth of donations. On its website, IKF states that it runs a school, a clinic, and provides direct cash support to deserving widows and orphans in Balochistan. As per record, in 2021 Rs. 10,324,423/- were distributed to a school, a clinic, and 1015 widows or orphans. Rukhsana, a widow gets Rs.60,000/- per month while all other widows and orphans get only 6,000 to 8,000/- per month each.

9. Police undertake a raid of Asif Mushtaq’s house to arrest him. He is found and arrested without struggle. Upon search of the premises Rs. 260,000/- is recovered from the house. Additionally, several pamphlets are recovered which promote TeQ and request people to provide funds to it. They also find a receipt booklet which has been used to provide receipts for donations to a madrassah in Quetta. The booklet shows donations worth Rs. 158,000/- have been received from various individuals. They also discover promotional material for IKF at Asif Mushtaq’s residence seeking donations for the charity.

10. During interrogation Asif Mushtaq states that Ms. Rukhsana Imtiaz is his wife’s friend and since she is old he makes withdrawals on her behalf and gives her the money.

11. Police arrest Ms. Rukhsana Imtiaz who is an elderly woman and interrogate her. She states that Asif Mushtaq opened an account for her approximately a year and half ago and promised to get her money for monthly expenses. She states Asif made her sign all the cheques as soon as the cheque book was issued, saying it would be easier than having her sign a cheque every month. Ms. Rukhsana said Asif was very helpful and that she is dependent on the Rs. 8,000/- that he provides her every month. Police release Rukhsana because they do not feel she is involved in the scheme.

12. Police confront Asif that Rukhsana is receiving only Rs. 8,000/- whereas he withdraws 58,000/- every month. Asif initially denies this
and claims he gives her the entire amount but after repeated questioning he admits that he keeps Rs. 50,000/-. Asif states that the 50,000/- from Rukhsana’s account as well as any money he raises through donations for the Madrassah is given to Javed Khan who is a Trustee of IKF. He doesn’t know what Javed does with the money. He was due to meet Javed the next day to give him Rs. 260,000/- that were in his possession. Police are able to match Javed Khan’s name with the Trustees named in the Trust Documents for IKF. His CNIC number is also identified.

13. Based on this information, the Police are able to arrest Javed Khan from the meeting point. They also find out from his CNIC that he lives nearby and search his home. During the search Police recover a laptop and two mobile phones.

14. Forensic analysis of one mobile phone reveals WhatsApp messages to one Rauf Malik.

15. Forensic analysis of the laptop reveals an untitled Microsoft Word document.

16. There are also 11 videos on his laptop. 3 videos show young men firing bullets and receiving weapons training. The other videos seem to be TeQ propaganda showing attacks and bombings done by TeQ in the past.

17. CDR of the Mobile Phone shows several calls to Asif Mushtaq over the past few weeks as well as calls to other numbers. The Mobile Phone also has a WhatsApp group called ‘Brothers’ wherein there are photos of the location of the 5th February Bombing in Quetta and surrounding areas dated 2nd February (before the blast took place). Asif Mushtaq is also a member of this Whatsapp Group.

18. The Police confront Javed Khan with this information. They accuse him of coordinating the 5th February bomb attack, of receiving funds for supporting TeQ’s terrorist activities, and for transferring funds for purchases and payments to terrorists. He denies these allegations. He states he is not a terrorist; he had just fallen on hard times and needed some money from IKF that is why he asked Asif Mushtaq to help him take funds from Rukhsana Imtiaz’s account. He says he has
an interest in bombings and explosions that is why the videos are on his laptop. When confronted about the pictures of the location of the bombing, he says he didn’t take the pictures himself and did not know why someone posted them in the WhatsApp group.

19. Police trace Rauf Malik’s cell phone number to Karachi. By coordinating with Sindh Police, Rauf Malik is arrested and interrogated. He states that he is a businessman and has no link to any terrorist organization. He says he is a philanthropist, and his money is used for various good causes across Pakistan including to support schools and hospitals.

20. Through his CNIC number, Police are able to track down his bank accounts in various banks. Upon examination of the Bank Statement of one account it is determined that Rauf Malik makes monthly donations to IKF in the sum of Rs. 60,000/-. He has also provided IKF larger donations of Rs. 1 million and Rs. 2.5 million in the past.

The Police submit the Challan to the Prosecutor to initiate a case in the Anti-Terrorism Court against Asif Mushtaq, Javed Khan, and Rauf Malik.

9.2. Assessment

In light of the above, please answer the following questions:

1. What offences should Asif Mushtaq and Javed Khan be charged with?
2. What are the key pieces of evidence in this case?
3. What further evidence do you feel the Police should have collected? (If you were doing scrutiny of the Challan what would you recommend to the Police)
4. Would you take this case to trial?
5. What would be your strategy at trial?

Bonus Question:

6. Do you think investigation should be started against IKF Charity and why?
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