MODULE

Anti-Money Laundering and Countering the Financing of Terrorism

FOR PROSECUTORS
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Module for Prosecutors: 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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Published by: Research Society of International Law, Islamabad, Pakistan.

First Edition
Printed in the Islamic Republic of Pakistan

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Module for Prosecutors: Anti-Money Laundering and Countering the Financing of Terrorism
Pakistan was placed on the Financial Action Task Force (FATF) grey-list since June 2018. The reason laid down by FATF was Pakistan’s structural deficiencies in Anti-Money Laundering (AML) and Combating Financing of Terrorism (CFT). As a result, FATF recommended reforms in the legal framework of AML/CFT regime in Pakistan. The Research Society of International Law (RSIL) has played an active role in improving the State’s capacity in AML/CFT through the development of training guides, policy briefs, legal memorandums and conducting dozens of trainings for prosecutors, investigators, judges and other stakeholders of the criminal justice system. I would like to express my gratitude to RSIL and prosecution team for developing a module on Anti-Money Laundering and Countering Financing of Terrorism for KP prosecutors.

The Prosecution Service is playing a very significant role in eliminating crimes from the society in collaboration with other stakeholders since its inception. The basic aim of the prosecution is to deliver justice to the victims and to ensure that the accused may not escape the clutches of law. The KP prosecution service will adopt guidelines from the module in upgrading its legal and regulatory regime on anti-money laundering/terrorism financing. Through this module, the KP Prosecution Service in collaboration with law enforcement agencies will adopt best mechanisms to identify ML/TF activities and in order to curb such activities, targeted financial sanctions shall be applied to designated entities and individuals so that the criminal justice system works effectively in enforcement of law and eradication of these offences.
In these modern times, the challenge for prosecution service is that criminal justice system is outdated and run by antiquated laws and procedures as well as a poor track record of investigation and prosecution. This module provides an insight into how special investigation techniques can be adopted to investigate ML/TF offences, as well as the probative value of forensic evidence which can be utilised to prosecute such cases effectively so that more reliance can be placed on utilisation of such evidence. Undoubtedly, the use of electronic evidence can be seen as a means of simplification, facilitation, acceleration and rationalization depending on circumstances.

I am confident that this Module will prove useful not only to the prosecution service and members of law enforcement agencies but also to other stakeholders of criminal justice system.
Over the past few years RSIL has been doing a commendable job in carrying out Public Sector Legal Reforms, capacity building projects and creating the basis for further research in areas vital to Pakistan’s future. In the period of crisis, when Pakistan was grey-listed by the Financial Action Task Force, RSIL played a vital role in the national cause by developing a guide on the “Effective Investigation and Prosecution of Money Laundering and Terrorism Financing”. It is a very proud moment for Khyber Pakhtunkhwa Prosecution Service (KPPS) that RSIL has drafted the first ever module on Anti-Money Laundering and Countering Financing of Terrorism for prosecutors which will enable the KPPS to achieve its desired goal and also streamline prosecutor decisions in ML/TF cases.

In order to safeguard and protect the rights of citizens in criminal litigation, the KPPS was established under Khyber Pakhtunkhwa Prosecution Service (Constitution, Function, Powers) Act 2005. Its main objective is to uphold rule of law and the delivery of inexpensive and expeditious justice.

The Module on Anti-Money laundering and Countering Financing of Terrorism for prosecutors will enable the KPPS to improve the prosecution and conviction rate in Money Laundering (ML) and Terror Financing (TF) offences. The module will assist prosecutors regarding effective scrutiny in ML/TF offences, prosecutorial assessment, understanding the types and sources of evidence, production of evidence and use of modern device evidence for ML/TF offences.
It will provide charging standards guidelines to prosecutors for ML/TF offences as an omission or inappropriate charging may lead to acquittal or inability of Court to award appropriate punishment. Moreover, the prosecutors have an effective role in the process of investigation as prosecutors are obligated to properly guide the investigation officers during the investigation process. The Module will provide guidance to prosecutors on method of investigations in ML/TF cases. Furthermore, the prosecution service is making considerable efforts to improve its coordination and co-operation with other stakeholders working in criminal justice system. Indeed, prosecution service needs to bring further improvement to eliminate the menace of these offences from the society by taking guidance from this module.

I would like to acknowledge the hard work and professionalism of RSIL research team who have developed this module to provide guidance to prosecutors on how to assist and facilitate Investigation Officers in identifying elements of ML/TF offences. I am confident that this module will prove helpful for prosecutors to be aware of FATF recommendations to Pakistan with respect to the prosecution and investigation of ML/TF offences. At the same time, it is hoped that such endeavours will also help dissolve misconceptions regarding Pakistan’s efforts to abide by its international obligations.
It has been a great honour and privilege to be a member of a working group for the drafting of the module on Anti-Money Laundering and Countering Financing of Terrorism for Khyber Pakhtunkhwa Prosecutors. Indeed, it was an excellent experience to work together with the team of Research Society of International Law (RSIL).

Terror financing and money laundering are two significant legal issues. Staying off the FATF grey-list for Pakistan depends upon the response of its institutions to numerous issues including terror financing and money laundering. In the context of Lego-economic milieu, the prosecution services must be responsive, adept with the changing laws and play its role in prosecuting terror financiers and money launderers efficiently and effectively. In this context, the module is very significant and will go a long way in building the capacity of prosecutors in a befitting manner.

Every training has specific objectives and so does a training module. The available literature establishes that each training module must have SMART objectives. A training goal or objective confirms the reason for learning and communicates the focus of the training module. The goal should specify the skills, knowledge, or benefits the learner will gain as a result of the training on a particular module. For a best result, experts suggest to think SMART and create a goal that is:
• **Specific** – the learner knows what they will learn or be able to do after finishing the training module;
• **Measurable** – learners will leverage this knowledge consistently for each report;
• **Achievable** – the learner will be able to perform the tasks listed in the training module;
• **Relevant** – the training module will focus on job essential knowledge and skills;
• **Timely** – the learner will be able to complete the training module in a timely manner.

A smart goal always motivates the trainees by showing them “what’s in it for me” in that training module.

I wish and pray for the bright future of KP Prosecution.
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The Financial Action Task Force (FATF) has recommended that Pakistan improve its prosecution and investigation in Money Laundering/Terrorism Financing (ML/TF) cases after Pakistan was grey listed by FATF in 2018. Therefore, this module has been developed to provide guidance to prosecutors on how to assist and facilitate investigation officers in identifying elements of ML/TF offences.

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

1. Countries should ensure that policymakers, the Financial Intelligence Unit (FIU), 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)

2. 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)

3. Competent authorities should be able to obtain access to all necessary documents and information for use in investigations and prosecutions of money laundering, associated predicate offences and terrorist financing. (Recommendation No. 31)

4. 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)
5. 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 helpful for prosecutors to be aware of how the FATF has recommended Pakistan to introduce changes in the legal system especially with respect to the prosecution and investigation of ML/TF offences. A prosecutor has an effective role during the process of investigation as an investigation officer may seek assistance from a prosecutor. Provinces have special laws to regulate services of prosecutors and by virtue of these laws, prosecutors are obligated to guide investigation officers during the investigation process. The following Action Plan items have been given weightage by the FATF in its evaluations:

1. Demonstrate the effectiveness of sanctions, including remedial actions, to curb terrorist financing in the country.
2. Demonstrate effective investigations by Law Enforcement Agencies (LEAs) and convictions in terrorism financing and money laundering cases against banned outfits and proscribed persons.
3. Ensure international cooperation-based investigations and convictions against banned organizations and proscribed persons.
4. Improve domestic cooperation between Financial Monitoring Unit (FMU) and LEAs in the investigation of terror financing and money laundering.

This module will assist prosecutors in determining the changes required in their scrutiny, court assessment, understanding of the nature and range of evidence, coordination with investigators, production of evidence in court and how to prepare closing statements/final arguments in Court.

Module Purpose and Overview

The role of prosecutors is crucial in guaranteeing conviction in ML/TF offenses. This module has been carefully drafted to provide specific guidance to prosecutors working in Anti-Terrorism Courts. For effective prosecution, it is important to understand the process of money laundering and its definitions under domestic law.
The module discusses the two offences of money laundering and terrorism financing under both the Anti-Money Laundering Act, 2010 (AMLA) and the Anti-Terrorism Act, 1997 (ATA) to highlight similarities and distinctions in the scope of the two legislations. Broadly, the module examines the following:

- Legislative Developments around ML/TF in Pakistan
- Elements of ML/TF offences
- Investigation techniques in ML/TF cases
- Powers of Investigators
- Identification of Types of Evidence Available to Prosecutors
- Sources of Financial Evidence
- Mutual Legal Assistance
- Confessional Statements, Prosecutorial Witnesses etc.
- Prosecutorial Scrutiny
- Human Rights’ concerns for Defendants

**Learning Outcomes**

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

- The recent legislative and administrative developments in Pakistan to meet the FATF standards;
- The elements of money laundering and terrorism financing offences under AMLA and ATA;
- The role and powers of investigators;
- The coordination required between prosecutors and investigators;
- The sources of evidence that can be explored in ML/TF offences;
- What is Mutual Legal Assistance and how it can be utilised in ML/TF offences;
- The three tests under prosecutorial scrutiny;
- The powers of prosecutors under the Punjab Criminal Prosecution Service (Constitution, Functions and Powers) Act, 2006 (PCPSA);
- How to record witness and confessional statements;
- The implications of the Punjab Witness Protection Act, 2018 (PWPA);
The importance of charging standards and the rights of defendants that prosecutors and investigators must protect.

**Essential Readings**

**STATUTES**

- The Khyber Pakhtunkhwa Criminal Prosecution Service (Constitution, Functions and Powers) Act, 2006
- Anti-Terrorism Act, 1997
- Anti-Money Laundering Act, 2010
- Code of Criminal Procedure, 1898
- Qanoon-e-Shahadat, 1984
- The Foreign Exchange Regulation (Amendment) Act, 2020
- NACTA (Amendment) Ordinance, 2020
- NACTA SOPs for JITs 2020
- Mutual Legal Assistance (Criminal Matters) Act, 2020

**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
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• Toolkit on AML/CFT in Pakistan – Volume 2: Guidelines on Obtaining and Analyzing Financial Evidence in Money Laundering and Terrorism Financing in Pakistan by the Research Society of International Law, Pakistan

**How to use this Module**

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 in 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 that they have fully grasped the content. Furthermore, at the end of the module, there is a practical exercise which will reinforce the prosecutorial skills required for effective ML/TF cases.
SECTION 01
FATF Standards and Pakistan’s Compliance

LEARNING OUTCOMES

- The sources of international standards on Anti Money Laundering and Countering Financing of Terrorism.
- The grounds for Pakistan’s grey-listing by FATF.
- The recent legislative and administrative developments in Pakistan to meet the FATF standards.
1.1. About the Financial Action Task Force (FATF)

The 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 and recommends improvements for an improved prosecution in money laundering and terrorism financing cases. The Task Force's 40 Recommendations on Money Laundering and 9 Special Recommendations on Terrorist Financing constitute the international standards on Anti Money Laundering and Countering Financing of Terrorism.

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. 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.

1.2. Pakistan’s FATF Status

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 successfully completed all 34 Action Plan points highlighted by the FATF, and was thus able to come off the grey-list in October 2022. Key deliverables under the action plans included:

1. Proper identification, assessment, and supervision of terrorism financing risks;
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2. The application of remedial actions and sanctions to cases of money laundering and financing of terrorism violations;

3. Coordination between competent authorities to identify and take enforcement measures against illegal money or value transfer services;

4. 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;

5. The improvement of inter-agency coordination including between provincial and federal authorities on combating financing of terrorism risks;

6. The identification and investigation of financing of terrorism, and prosecution of related designated persons and entities by law enforcement agencies;

7. That prosecution of financing of terrorism results in applicable sanctions and enhancement of capacity and support for prosecutors and the judiciary;

8. Effective implementation of targeted financial sanctions against all designated terrorists;

9. Enforcement against financing of terrorism violations including administrative and criminal penalties and authorities cooperating on enforcement cases; and

10. 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.

Before the legal reforms in the AML/CFT regime, most cases led to an acquittal, highlighting crucial gaps in the justice system. 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. For example, special powers are now also granted to investigators under the recent Anti-Money Laundering Act, 2010 (AMLA) and Anti-Terrorism Act, 1997 (ATA) amendments. 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.
1.3. Compliance Efforts

Along with administrative improvements, the Parliament introduced legislative amendments to further strengthen accountability in money laundering and terrorism financing offences. The following legislative amendments are important from a prosecutorial perspective:

**The Anti-Money Laundering (Amendment) Act, 2020**

The Second Amendment statute altered AMLA considerably. Most notably, it introduced the concept of AML/CFT regulatory authorities\(^1\) and their oversight bodies.\(^2\) It imposed various obligations on reporting entities, including conducting customer due diligence,\(^3\) record keeping,\(^4\) risk understanding,\(^5\) implementation of compliance programmes,\(^6\) policies and procedures,\(^7\) and a prohibition against entering into business relationships with anonymous or fictitious persons.\(^8\) Failure to comply with such obligations would lead to imposition of sanctions.\(^9\) 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, in that, fines were increased from PKR 1 million to PKR 5 million, and prison sentences were increased from two to ten years.\(^10\) 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 systems and controlled delivery for investigation of offences of ML, associated predicate offences and TF.\(^11\) Offences under Section 21 of AMLA would now be considered “cognizable” offences as opposed to “non-cognizable” in line with the recommendations of the FATF. Finally, the officers

\(^{1}\) Section 6A, AMLA.
\(^{2}\) Section 6C, AMLA.
\(^{3}\) Sections 7A, 7B, and 7D, AMLA.
\(^{4}\) Section 7C, AMLA.
\(^{5}\) Section 7F, AMLA.
\(^{6}\) Section 7G, AMLA.
\(^{7}\) Section 7H, AMLA.
\(^{8}\) Section 7E, AMLA.
\(^{9}\) Section 7I, AMLA.
\(^{10}\) Section 4, AMLA.
\(^{11}\) Section 9A, AMLA.
of the Federal and Provincial Governments, local authorities and reporting entities are required to provide assistance to the investigating or prosecuting agency or FMU for the purposes of ML, predicate offences and TF proceedings and investigations.\textsuperscript{12}

**Mutual Legal Assistance (Criminal Matters) Act, 2020**

Mutual Legal Assistance is an advanced tool used by States to exchange information/evidence to aid criminal investigations and proceedings. Prosecutors in ML/TF cases can widely benefit from MLA to collect information against the accused. The MLA Act 2020 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.\textsuperscript{13} 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 of human rights.\textsuperscript{14}

**The Anti-Terrorism (Amendment) Act, 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 basically 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.\textsuperscript{15} 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.\textsuperscript{16} This not only strengthens sanctions and penalties against

\textsuperscript{12} Section 25, AMLA.
\textsuperscript{13} Section 7, MLAA.
\textsuperscript{14} Section 17, MLAA.
\textsuperscript{15} Section 11O00, ATA.
\textsuperscript{16} Section 11O00, ATA.
violations, but also entrenches compliance with the UNSC Act within the ATA framework.

The Anti-Terrorism (Second Amendment) Act 2020

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.\(^{17}\)

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.\(^ {18}\) 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.\(^ {19}\) Finally, ATCs have been empowered, where such court is satisfied that property subject to forfeiture 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.\(^ {20}\)

The Anti-Terrorism (Third Amendment) Act 2020

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,

\(^{17}\) Section 11J(3), ATA.
\(^{18}\) Section 11O(1)(d), ATA.
\(^{19}\) Section 11O(1)(e), ATA.
\(^{20}\) Section 11Q(6A), ATA.
intercepting communications, accessing computer systems and controlled delivery for the investigation of financing of terrorism.\textsuperscript{21}

Other noteworthy changes include the following:

- 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 (POS) devices to limit cash couriers.\textsuperscript{22} The installation of an electronic fiscal device has been made mandatory for 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.

- Securities & Exchange Commission of Pakistan (SECP) has issued guidelines on Targeted Financial Sanctions (TFS) obligations, red flags on associates of proscribed entities, the (Risk-Based Assessments) RBA and FAQs (Frequently-asker Questions) on National Risk Assessment (NRA) 2019. In addition, SECP delivered awareness sessions on TFS and TF, conducted compliance forums for senior management and issued letters to REs regarding general feedback on STRs in light of guidance received from FMU. This is particularly important for prosecutors in terrorism financing cases as it can help identify what counts as suspicious transaction/activity for investigation and prosecution purposes.

- 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, typologies reports, strategic and sectoral analysis. FMU’s website also contains a series of in-depth and informative YouTube streams for various sectors. Prosecutors can benefit from these resources since FMU’s quarterly reports provide an overview of legislative amendments in ML/TF laws as well as provide relevant case studies which can help in developing prosecutorial strategies. Prosecutors can view these newsletters for a recap of the amendments and to observe possible overlaps in

\textsuperscript{21} Section 19C, ATA.
\textsuperscript{22} SRO No.779(I)/2020.
legislation. Such additional knowledge will aid their proceedings and add value to their court assessments.

- 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.

1.4. **Summary**

- It is recommended that investigation and prosecution of ML/TF cases be improved, FATF requires Pakistan to demonstrate progress by increasing the number of ML/TF investigations and convictions.
- Legislative amendments have been introduced by the Parliament to strengthen accountability in money laundering and terrorism financing offences. 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

- FBR, SECP, CDNS, and FMU have also assisted in complying with Pakistan’s obligations under FATF.
1.5. **Self-Assessment Questions**

2. In your opinion, how important is a prosecutor’s role in securing a conviction in ML/TF cases?

3. What kind of evidence can be gained from the FBR’s Point of Sale (POS) devices? How can it be used in TF/ML cases effectively?

4. What professions comprise the DNFBP sector?

5. Can you list any three laws aimed at strengthening accountability in ML/TF offences? Identify relevant provisions of these legislations helpful in conducting investigation and scrutiny of final report.
SECTION 02
Elements of ML/TF Offences

LEARNING OUTCOMES

- The definition of Money Laundering under UN Vienna 1988 Convention and (UNTOC)
- The definition of Terrorism Financing under ATA
- The elements of Money Laundering under AMLA and ATA
- The elements of Terrorism Financing under ATA
- The process of a money laundering offence
- What is a predicate offence?
- What are proceeds of crime?
- Common methods used by money launderers to commit the offence
- What is a terrorist activity and what are sources of terrorist financing?
2.1. Introduction to Money Laundering and Terrorism Financing

2.1.1. Definition of Money Laundering

Article 6 of the UN Convention Against Transnational Organized Crime (UNTOC) identifies four actions that constitute as 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, and conspiring or attempting to commit the offences in question.

2.1.2. Definition of Terrorism Financing

To understand the offence of terrorism financing, it is necessary to determine what constitutes as a terrorist activity and who is a “terrorist”.

According to the FATF Recommendations - International Standards on Combatting Money Laundering and the Financing of Terrorism and Proliferation, the term terrorist refers to:

Any natural person who: (i) commits, or attempts to commit, terrorist acts by any means, directly or indirectly, unlawfully and willfully; (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.

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23 FATF, 'International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation: The FATF Recommendations' (FATF, October 2018)
A terrorist organization is described in similar terms; however, in the place of natural person; the term "organization" is described i.e., as a "group of terrorists".

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”.

2.2. Money Laundering

For Money Laundering to comprise an offence, criminal act or proceeds derived from criminal activity are important to identify.

2.2.1. The Process

The money laundering process involves three main stages: placement, layering and integration.

1) 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 various banks in the same country.

2) Layering

The second stage involves the launderer moving around the black money to take it away from its illegal source so that 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 to not attract suspicion.
3) **Integration**

In this stage, the launderer aims to make his black money seem white to the authorities. Money is re-entered into the economy, this time to purchase luxury items, etc., or even to show as a loan to the launderer himself.

**Discussion**

What has been the most common manner of integration in your experience as a Prosecutor?

### 2.2.2. Money Laundering under AMLA

Under Section 3 of the AMLA a person commits an offence of money laundering if:

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

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

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

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

### 2.2.3. Money Laundering under ATA

The ATA briefly describes the offence of money laundering under section 11-K:

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:
• By concealment,
• By removal from the jurisdiction,
• By transfer of nominees, or
• In any other way.

2. It is a defence 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.

It is important to note that while money laundering and terrorism financing are separate offences, ML can sometimes lead to TF. For example, proceeds from a criminal activity can be disguised through formal channels, and could be 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 terrorism financing can also occur without any money laundering. For example, a bystander donates to a charity box outside a mosque, and the funds are then used for terrorism purposes. It is important for prosecutors to draw and understand the distinction between the two offences as well as their interplay.

Case Study
I.O disclosed the following facts and sought advice from the prosecutor

Adeel is a narcotics dealer in Lahore. He uses a jewellery business as his ‘front’. Adeel entered into an arrangement with Waqas, a jewellery exporter in Faisalabad, who would export overvalued jewellery to Dubai. Adeel utilised the services of banks, cash couriers & alternative remitters (hawala operators) for receiving and moving large sums of money derived from the sale of narcotics. Such amounts were transferred through a number of countries, with the cash being split up into smaller amounts (smurfing) and deposited in various bank accounts. Part of the proceeds of crime to his home in Lahore. Adeel subsequently made an arrangement with Waqas for the export of overvalued artificial handmade jewellery exports to Dubai. Adeel then opened a jewellery store in Dubai to receive the overpriced artificial jewellery exports and sold them through his store.

• Identify the placement, layering and integration by Adeel.
• Can Adeel be accused of money laundering? If so, suggest the AMLA sections that Adeel could be charged against?
• Can Waqas be charged as an accomplice? Specify the AMLA sections to charge Waqas.
2.2.4. Proceeds of Crime

Proceeds of crime as under Section 3(a) of the AMLA refers to any property obtained or derived directly or indirectly from the commission of a predicate offence, or a foreign serious offence\(^{24}\).

Retaining or controlling does not necessarily mean that the accused owns the property in question. It would be enough if the accused leased the property or owned part of a company through which monies from a predicate offence were transferred. The essential element for control is that the accused was able to manage or handle the property in a way that meant he or she could determine what happened to that property.

According to FATF Recommendation 3 on Money Laundering, "countries should criminalize money laundering based on the Vienna Convention and the Palermo Convention. Countries should apply the crime of money laundering to all serious offences, to include the widest range of predicate offences."

2.2.5. Common Methods Used by Money Launderers

- Layering and structuring payments to escape reporting restrictions.
- Changing currency denomination: – Changing small notes (PKR 500) into larger notes (PKR 5000)
- Expensive Asset Purchases – Luxury goods, vehicles, and property
- Currency Exchange – Purchase of foreign currency
- Hawala
- Wire Transfers or Postal orders
- Mobile banking apps – Easypaisa, Omni UBL
- Legitimate Business – Diverting profits by funding terrorist groups.
- Charities and Madrassas – funding terrorist activities by donating to madrassas or other charitable causes which are “fronts” for terrorist groups.

\(^{24}\) A ‘foreign serious offence’ means an offence against the law of a foreign State, which had it occurred in Pakistan would have been a predicate offence. Such offence must be confirmed in a certificate issued by the Government of that State.
Case Study

Sadiq owns and runs a successful car wash business. Most payments are made in cash. The FBR suspects Sadiq to be evading taxes, as his reported income is higher than the proceeds of sale from his business.

- Are these sufficient grounds to suspect Sadiq to be laundering money? If so, list the possible ways he could be laundering money.

Years after he has been running the car wash, the police found Sadiq to be involved in a group that carried out extortion around the neighbourhood. Sadiq has two houses in his wife’s name and one in the name of his elder son who opened a Kiryana Store a year back. The houses are worth Rs.15-20 million each.

- Could the car wash business and the extortion be linked? If so, how?
- What sections of the AMLA would be applicable on Sadiq? Please provide advice as a prosecutor to the I.O.

A worker at the car wash has revealed to the police that Sadiq has recently been talking with some men on the phone about cash deposits in Dubai. He overheard Sadiq asking about depositing Rs. 20,000,000 at a bank in Dubai. The worker also shared that the car wash has hardly made an annual revenue of Rs. 5,000,000 since 2018, when it started.

- What should the investigators’ course of action be?

2.2.6. Elements of Crime

To prove elements of crimes there is a need to have substantial evidence with prosecutor. Necessary documents which generally need to prove chain of evidence and thereafter should be produced in Court, are as under:

- All entries made in Rozmancha i.e., daily register.
- All communications including electronic communication and their responses such as letter, emails, messages.
- Sketches & Photographs.
- Electronically collected evidence/e-statements of witnesses.

In order to determine charges for ML/TF offences and to understand what each offence entails, it is beneficial to break it down into the Actus Reus and Mens Rea. The following table describes the two components of the money laundering offence.
Section 3 (a) AMLA states that:

Acquiring, converting, possessing, using or transferring property knowing or having reason to believe that it is the proceeds of crime.

<table>
<thead>
<tr>
<th>Elements of Crime</th>
<th>Purpose</th>
<th>Evidence Needed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Acquires, converts, possesses, uses or transfers property</td>
<td>Witnesses, confessions, contractual agreements, property/business address and registration details. If MVTS involved, then details from SBP of records transfer deed, social media pages purchase receipts of high-value goods, predicate crime witnesses express trusts deeds, foundations, NGOs other electronic evidence.</td>
<td></td>
</tr>
<tr>
<td>Conceals, disguises the true origin, location, movement</td>
<td>• Witnesses, confession, Benami or other bank account movement details (NTN and tax records) • Transfer of title of property documents, Transfer of shares, offshore companies • Gift deeds • Bank transfer records/statements, sale purchase agreement • Investment agreements, trade invoices shell companies' documents, employment records, asset worth etc. • Falsifying activities using fraudulent loans, false</td>
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<td>invoices, and misleading naming Conventions.</td>
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<td></td>
<td>• CCTV footage and other electronic evidence.</td>
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| Holds or possesses on behalf of any other person | Witnesses who are acting as intermediaries, asset divisions contracts, trust deeds appointing nominees, power of attorneys, nominee shareholder agreement, agreement with agent, distribution agreement, NT numbers, tax records other electronic evidence. |

| Participates in, associates, conspires to commit, attempts to commit, aids, abets, facilitates or counsels | Witnesses who are acting as intermediaries, asset divisions contracts, trust deeds appointing nominees, power of attorneys, nominee shareholder agreement with agent, distribution agreement, NT numbers, tax records other electronic evidence like CCTV footage and WhatsApp or text messages. |

| MENS REA | Knowing or having reason to believe | Knowledge or intent will be determined from the factual circumstances. Mere suspicion will not be enough. |
This chart summarises the investigation and prosecution process in a ML offence. Further guidance for prosecutors on early investigative advice can be found in Section 3.
2.3. Terrorism Financing

The ATA incorporates a set of unique offences relating to terrorism financing and money laundering.

- **Section 11 F(5)** relates to soliciting, collecting or raising money or other property for a proscribed organization, or arranging to do the same.
- **Section 11 (H) (1)** relates to the act of inviting another to provide money or other property.
- **Section 11 (H) (2)** criminalizes the offence of receiving money or other property.
- **Section 11 (H) (3)** criminalizes the offence of providing money or other property.
- **Section 11 (I)** criminalizes the use/intention to use/reasonable cause to suspect the use- of money or property for a terrorism offence.
- **Section 11 (J) (1)** criminalizes entering or being concerned in an arrangement as a result of which money/property is made available or is to make available to another whilst having reasonable cause to suspect that such money/property may be used for terrorism.
- **Section 11 (J) (2)** criminalizes the provision/availability of money (as a Pakistani national- local or abroad) for the benefit of a proscribed organization or person, knowingly or wilfully, directly, or indirectly, wholly, or jointly.
- **Section 11 (K)** criminalizes entering or being concerned in an arrangement facilitating retention/control by/on behalf of another person, of terrorist property by concealment, removal from jurisdiction, transfer to nominees or in any other way. (This Section allows for a defence if there was no reasonable cause to suspect).

2.3.1. Terrorist Activity

According to the FATF, a terrorist activity is:

1. **Any act, which constitutes an offense under [any of the stated ten international] treaties.**
2. **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, when the purpose of such act, by its nature or context, is
to intimidate a population, or to compel a government or an international
organization to do or to abstain from doing any act.<sup>25</sup>

Terrorism financing applies to all means of funding and is not limited to money.
Therefore, provision of any economic resources, shares, dividends, oil etc. may
also be considered as ‘financing’.

The mens rea is required to prove that the offence is not restricted to having the
specific knowledge of the terrorist organization/activity. The ATA broadens the
scope by deeming mens rea to be “reasonable cause to suspect”.

Reasonable cause to suspect may mean a scenario where objectively, a reasonable
person would have suspicion.

The tables below describe the actus reus, mens rea and evidence required to prove
the ATA sections listed above.

2.3.2. 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 same or different names that generate money legally. This
legally generated money is then poured into the proscribed organisation to fund
terrorist activities.

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<sup>25</sup> FATF, ‘International Standards on Combating Money Laundering and the Financing of
Terrorism & Proliferation: The FATF Recommendations’ (FATF, October 2018) <www.fatf-
gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%202012.pdf>
• **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.

• **State/ Intelligence Agency Sponsoring:**

It is common for countries with heightened animosity to dismantle one and 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 are then used to purchase arms, recruit fighters etc. to run the terrorist organisation.

<table>
<thead>
<tr>
<th>ACTUS REUS</th>
<th>Elements of Crime</th>
<th>Purpose</th>
<th>Evidence Needed</th>
</tr>
</thead>
</table>
| He invites someone else |         |         | • Witness testimony  
|               |         |         | • Confession  
|               |         |         | • SMS messages inviting another recovered from the phone  
|               |         |         | • WhatsApp messages  
|               |         |         | • Pamphlet  
|               |         |         | • Donation (Chanda) receipt  
|               |         |         | • Identity of who was invited is essential.  

Section 11-H (2) – A person commits an offence if he: -
he receives money or other property; and
| To provide money or other property | • Witnesses, confessions, messages would have to show that money, or some other property was requested in the invitation to the other (or was the result of the invitation).  
• Bank Records  
• Record from SBP if any foreign exchange is involved. Further details can be acquired from the exchange company  
• Record from FBR of NTN, Income Tax Returns and Wealth Statements.  
• Letter to concerning revenue or excise department for identification of any property associated with the individual or organization. |
| --- | --- |
| **MENS REA** | **For terrorism or by a terrorist or an organization concerned in terrorism**  
• Specific intent needs to be proven.  
• Specific intent that the money or other property will be used for terrorism or by a terrorist or terrorist organization.  
• Establishing links with a terrorist organization—through intelligence, witnesses' testimony, literature or written material at his house, place of work, frequently visited places, online browsing history, messages on the phone, email, known associates, etc. |
| Has reasonable cause to suspect that | **Objective assessment: Would a reasonable person in the individual's position have a reason to suspect that the money or other** |
property received would or may be used for terrorism or by a terrorist, etc.

- Prosecutors can prove that the offender was aware of a substantial risk that the funds would be used for terrorist purposes. (recklessness); this requires that the suspect “consciously accepts the substantial chance" that funds will serve to offer financial support.

Section 11 (H) 2 (b) intends that it should be used or has reasonable cause to suspect that it may be used, for terrorism [or by a terrorist or organization concerned in terrorism].

<table>
<thead>
<tr>
<th>Elements of Crime</th>
<th>Purpose</th>
<th>Evidence Needed</th>
</tr>
</thead>
</table>
| **ACTUS REUS**    | He receives money or other property | • Witness testimony  
                   |                     | • Confession  
                   |                     | • SMS messages recovered from the phone of the receiver or the sender  
                   |                     | • WhatsApp messages  
                   |                     | • Bank statements or records that are reflecting receipt of money  
                   |                     | • Property details that can include shareholder agreement, bond receipt, property deed. (A Letter to the concerned revenue or excise department for identification of any property associated with |
### MENS REA

**Intends that it should be used, or**

For terrorism or by a terrorist or organization concerned in terrorism

- Specific intent needs to be proven by objective factual circumstances.
- Specific intent that the money or other property will be used for terrorism or by a terrorist or terrorist organization.
- Establishing links with a terrorist organization—through intelligence, witnesses' testimony, literature or written material at his house, place of work, frequently visited places, online browsing history, messages on the phone, email, known associates, etc.

- Objective assessment: Would a reasonable person in the individual's position

### Evidence

- the individual or organization must be sent
  - Cheque
  - Cash
  - Record from FBR of NTN Income Tax Returns and Wealth Statements
  - Contracts that are testifying the receipt of other economic resources such as oil, dividends or other natural resources
  - Receipt/contracts of profits or interest/benefit accrued from the property.
have a reason to suspect that the money or other property received would or may be used for terrorism or by a terrorist, etc.

- Prosecutors can prove that the offender was aware of a substantial risk that the funds would be used for terrorist purposes. (recklessness) This requires that the suspect “consciously accepts the substantial chance” that funds will serve to offer financial support.

Section 11-H (3) – A person commits an offence if he:

- a) he provides money or other property; and
- b) knows or has reasonable cause to suspect that it will or may be used, for terrorism [or by a terrorist or organization concerned in terrorism]

<table>
<thead>
<tr>
<th>Elements of Crime</th>
<th>Purpose</th>
<th>Evidence Needed</th>
</tr>
</thead>
</table>
| ACTUS REUS | Provides money or other property | • Witnesses, Confessions  
• Messages would have to reflect the tacit approval of the offender in providing money or some other property.  
• Bank Records or financial statements that are reflecting the transfer of money  
• Record from SBP if any foreign exchange is involved. Further details |
<table>
<thead>
<tr>
<th>MENS REA</th>
<th>Intends that it should be used, or For terrorism or by a terrorist or organization concerned in terrorism</th>
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<tbody>
<tr>
<td></td>
<td>• Specific intent needs to be proven. • Specific intent that the money or other property will be used for terrorism or by a terrorist or terrorist organization. • Establishing links with a terrorist organization—through intelligence, witnesses' testimony, literature or written material at his house, place of work, frequently visited places, online browsing history, messages on the phone, email, known associates, etc.</td>
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</tbody>
</table>

|          | can be acquired from the exchange company • Record from FBR of NTN Income Tax Returns and Wealth Statements • Letter to concerning revenue or excise department for identification of any property associated with the individual or organization if a property is involved. In this case, the title documents of the property would have to be traced. • Cheque books. • Contracts that are testifying the provision of other economic resources such as oil, dividends or other natural resources. |

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|          | |</p>
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<tr>
<th>Has reasonable cause to suspect that it may be used</th>
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- **Objective assessment:** Would a reasonable person in the individual's position have a reason to suspect that the money or other property received would or may be used for terrorism or by a terrorist, etc.
- **Since this is an objective test, it is not necessary to prove that the accused suspected that the money or other property might be used for terrorism but rather that a reasonable person with the same knowledge would so suspect.** *R v. Sally Lane and John Letts [2018 – UK Supreme Court].*
- **Prosecutors can prove that the offender was aware of a substantial risk that the funds would be used for terrorist purposes.** (recklessness)
Section 11-F (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.

<table>
<thead>
<tr>
<th>Elements of Crime</th>
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<th>Evidence Needed</th>
</tr>
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<tbody>
<tr>
<td><strong>ACTUS REUS</strong></td>
<td>Conducts the act of either soliciting or collecting or raising either money or property for a proscribed organization</td>
<td></td>
</tr>
<tr>
<td><strong>MENS REA</strong></td>
<td>An accused can be held guilty of Section 11F (5) without or having any mens rea for the proscribed 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 intentionally or unintentionally.</td>
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</table>
Section 11: A person commits an offence if-
1) he uses money or other property for terrorism; or
2) 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 terrorism

<table>
<thead>
<tr>
<th>Elements of Crime</th>
<th>Purpose</th>
<th>Evidence Needed</th>
</tr>
</thead>
</table>
| **ACTUS REUS**             | Uses money or other property                                           | • Witness testimony  
                            |                                                           | • Confession                                          |
|                            |                                                                        | • SMS messages recovered from the phone                                                                  |
|                            |                                                                        | • WhatsApp messages                                                                                      |
|                            |                                                                        | • Bank statements/financial statements                                                                  |
|                            |                                                                        | • Transfer receipts.                                                                                      |
|                            |                                                                        | • Contracts                                                                                              |
|                            |                                                                        | • Purchase receipts                                                                                      |
| Possesses money or other   |                                                                        | • Witnesses, Confessions, Messages would have to show that money or some other property was used.        |
| property                   |                                                                        | • Bank Records                                                                                           |
|                            |                                                                        | • Record from SBP if any foreign exchange is involved. Further details can be acquired from the exchange company |
|                            |                                                                        | • Record from FBR of NTN Income Tax Returns and Wealth Statements                                        |
|                            |                                                                        | • Letter to concerning revenue or excise department for identification of any                            |
| MENS REA | Intends that it should be used, or | For terrorism | property associated with the individual or organization.  
• Cheque books,  
• Transfer of title documents.  
• Social media accounts  

• Specific intent needs to be proven.  
• Specific intent that the money or other property will be used for terrorism or by a terrorist or terrorist organization.  
• Establishing links with a terrorist organization—through intelligence, witnesses' testimony, literature or written material at his house, place of work, frequently visited places, online browsing history, messages on the phone, email, known associates, etc.  

• Objective assessment: Would a reasonable person in the individual's position have a reason to suspect that the money or other property received would or may be used for terrorism or by a terrorist, etc.  
• Prosecutors can prove that the offender was aware of a substantial risk that the funds would be used for terrorist purposes.  

Has reasonable cause to suspect that it may be used |
(recklessness) This requires that the suspect “consciously accepts the substantial chance” that funds will serve to offer financial support.

Section 11J. (1)- A person commits an offence if he-
   a) enters or becomes concerned in an arrangement as a result of which money or other property is made available or is to make available to another; and
   b) has reasonable cause to suspect that it will or may be used for terrorism.

<table>
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<tr>
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</thead>
</table>
| ACTUS REUS                        | Enters or becomes concerned in an arrangement | • Witnesses, intelligence, confession,  
                                         • Trust deeds,  
                                         • Transfer of title to an NGO,  
                                         • Donation cheques,  
                                         • Beneficial ownership certification of legal entities  
                                         • Details through NADRA verisys  
                                         • Title of property or contract testifying to transfer of interest/ profit accruing from a property  
                                         • Call Data Record, text messages. |
| To make money or property available |         | • Witnesses, Confessions,  
                                         • Bank Records reflecting benefit accrued. |


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

<table>
<thead>
<tr>
<th>MENS REA</th>
<th>For terrorism</th>
<th>Evidence Needed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Has reasonable cause to suspect that it may be used,</td>
<td></td>
<td>• Record from FBR of NTN Income Tax Returns and Wealth Statements</td>
</tr>
<tr>
<td>For terrorism</td>
<td></td>
<td>• Objective assessment: Would a reasonable person in the individual's position have a reason to suspect that the money or other property arranged for would or may be used for terrorism.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Prosecutors can prove that the offender was aware of a substantial risk that the arrangement would be used for terrorist purposes. (recklessness) This requires that the suspect “consciously accepts the substantial chance” that arrangement will serve to offer support that may be used for terrorism</td>
</tr>
</tbody>
</table>

Section 11J. (2): Any person in Pakistan or a Pakistani national outside Pakistan shall commit an offence under this Act, if he knowingly or wilfully makes money or other property or services available, directly or indirectly, wholly or jointly, for the benefit of a proscribed organization or proscribed person.]

<table>
<thead>
<tr>
<th>Elements of Crime</th>
<th>Purpose</th>
<th>Evidence Needed</th>
</tr>
</thead>
<tbody>
<tr>
<td>ACTUS REUS</td>
<td>A citizen or national</td>
<td>• CNIC, Information from NADRA verisy,</td>
</tr>
</tbody>
</table>
| outside Pakistan | • Travel tickets/ history  
• Information received from Immigration and Passports Department (MOI) or passport office (IMPASS)  
• Intelligence received from outside Pakistan |
|---|---|
| To make money or property or services available (Directly or indirectly) (wholly or jointly) | • Witnesses of middleman/trader  
• Confessions.  
• Messages would have to reflect the tacit approval of the offender in providing money or some other property or the middleman’s communication with the leading financier of the funds.  
• Bank Records or financial statements that are reflecting the transfer of money.  
• Record from SBP if any foreign exchange is involved.  
• Record from FBR of NTN Income Tax Returns and Wealth Statements  
• Letter to concerning revenue or excise department for identification of any property associated with the individual or organization if a property is involved.  
• donations cheques/ gift deeds (wholly) |
<table>
<thead>
<tr>
<th>MENS REA</th>
<th>Knowingly, wilfully, for the benefit of a proscribed organization/individual</th>
</tr>
</thead>
</table>

- contracts that are testifying the provision of other economic resources such as oil, dividends or other natural resources
- Online media activity: Facebook pages being run for the propagation of ideology or recruitment, or business pages being used as a vehicle to secure and send funds to finance food, medical supplies or ammunition
- Literature available (online or hard copies)
- Financial documents Partnership deeds/Contracts
- Other electronic evidence

- Specific intent needs to be proven by objective factual circumstances.
- Specific intent that a proscribed organization or individual will use the money or other property or services. (the proscribed individual or organization needs to be listed on the 4th or first schedule of the ATA).
- Establishing links with the proscribed organization—through intelligence, witnesses' testimony, literature or written material at his house, place of work, frequently visited places,
Section 11K. A person commits an offence
(1) if he **enters 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.
It is a defence for a person charged with an offence under subsection (1) to
prove that he did not know and **had no reasonable cause to suspect** that the
arrangement related to terrorist property.

<table>
<thead>
<tr>
<th>Elements of Crime</th>
<th>Purpose</th>
<th>Evidence Needed</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>ACTUS REUS</strong></td>
<td>Enters an arrangement</td>
<td>Facilitates retention or control of a terrorist property</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Witnesses, confessions</td>
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<tr>
<td></td>
<td></td>
<td>• Contractual agreements,</td>
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<td></td>
<td></td>
<td>• Property/business address</td>
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<td></td>
<td></td>
<td>and registration details</td>
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<td></td>
<td></td>
<td>• If MVTS involved, then</td>
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<td></td>
<td>details from SBP of records</td>
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<td></td>
<td></td>
<td>• Social media pages</td>
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<tr>
<td></td>
<td></td>
<td>• Purchase receipts of high-</td>
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<tr>
<td></td>
<td></td>
<td>value goods,</td>
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<tr>
<td></td>
<td></td>
<td>• Predicate crime witnesses</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Express trusts deeds,</td>
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<tr>
<td></td>
<td></td>
<td>foundations, NGOs</td>
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<tr>
<td></td>
<td></td>
<td>• Other electronic evidence</td>
</tr>
</tbody>
</table>

Concealment

|         |         | Witnesses, confession |
| Removal from jurisdiction | • Benami or other bank account details  
• NTN and tax records  
• Transfer of title of property documents,  
• Transfer of shares, Gift deeds.  
• Bank transfer records/statements,  
• Sale purchase agreement, Investment agreements, trade invoices  
• shell companies’ docs, employment records, asset worth etc.  
• Falsifying activities using fraudulent loans, false invoices, and misleading naming conventions.  
• CCTV footage and other electronic evidence |
| --- | --- |
| Transfer to nominees | • Witnesses (brokers/ Hawala Hundi operators)  
• Shipment invoices and resale receipts of goods  
• Distribution agreement, bank transfer details and statements  
• Remittance statements  
• International NGO registration certificates  
• MLA request letter for further investigation.  
• Travel history. |
<p>|  | • Witnesses who are acting as intermediaries. |</p>
<table>
<thead>
<tr>
<th>MENS REA</th>
<th>Reasonable cause to suspect</th>
</tr>
</thead>
</table>
|   | • Partnership deeds that 
disguise beneficial 
ownership especially of 
LLCs  
• Asset divisions contracts, 
trust deeds appointing 
nominees, power of 
attorneys, nominee 
shareholder agreement  
• Other electronic evidence |

In **Treasurer v. Mohammad Jabbar Ahmad** and others, it is noted that the offences included in the UK Terrorism Act 2000 about “terrorist property” and using said property for terrorism, are all defined in terms which require *mens rea*, interpreted as “intention, knowledge or reasonable suspicion that money or other property will be used for terrorist purposes.”
Case Study

A young couple has been arrested for possession of cocaine and heroin in the small town of Sibi, Balochistan. Two other men have also been arrested for the regular purchase of these drugs from the couple. According to the couple, the drugs are purchased from a seller in Kabul and then sold at a triple price in Pakistan. All sale and purchase is done in cash. When asked about cash earned from the sale of drugs, the couple informed that they were robbed a month ago.

- As a prosecutor, how would you want the investigation to be carried out? Can a money laundering case be formed? If so, list three scenarios in this case that could lead the investigator into suspecting money laundering. List out type of evidence expected to be collected in each scenario.

After thorough investigation, the police have linked the couple with a terrorist organisation in Kabul. The organisation seeks revenge on the "War on Terror", like many other proscribed organisations. It may be that the cash from the sale of drugs is sent back to Kabul to fund the organisation's terrorist activities.

- Which sections of the ATA, AMIA shall be applied in this case. What type of evidence may be collected by the I.O. in the above circumstances?

- Assist and guide I.O. in finding a link with other proscribed organisations, how should the investigator lead the investigation?

Case Study

The State v. Hafiz Muhammad Saeed, Zafar Iqbal, Abdul Ghaffar, Ameer Hamza, and Hafiz Masood, Case FIR No. 90/2019 dated 02.7.2019 PS CT'D Multan, Court of Ejaz Ahmad Buttar, Judge Anti-Terrorism Court No. III, Lahore
Summary

On April 07, an Anti-Terrorism Court in Lahore sentenced Hafiz Mohammad Saeed who was accused of raising funds to build a mosque and seminary for terrorism purposes, to sixteen and a half years in prison and fifteen and a half years in prison for financing terrorist operations. He was convicted under the Anti-Terrorism Act Sections 11-F (G) and 11-H, 11-I, 11-J (2) read with 11-(N).

Malik Zafar Iqbal who was previously convicted and awarded punishment of five and a half years in prison for financing terrorist operations by ATC Court No.1, Lahore (Case FIR No. 32/2019 dated 01.7.2019), was again convicted and awarded punishment of fifteen years and six-month in prison by ATC Court No. 3, Lahore (Case FIR No. 90/2019 dated 02.7.2019) for raising funds to build a mosque and seminary for terrorism purposes.

In the recent most judgment Zafar Iqbal, Abdul Ghaffat, Ameer Hamza and Hafiz Masood are convicted under the Anti-Terrorism Act Sections 11-F (2) (5) (6), 11-H (2), 11-1, and 11-N for obtaining property for the purpose of terrorism and achieving terrorism objectives by raising and distributing funds for the purpose of terrorism. Another accused, Ghulam Hassan who provided the property for terrorism purposes, to the above mentioned accused persons, had committed an offence under Sections 11-N and 11-H (3) (a) (b), but his charges were never invoked as he is dead.

The accused persons are members of the proscribed organisation Lashkat-e-T'ayba and trustees of Al-Dawat Ul Irshad another proscribed organisation of terrorists. They obtained a property of 01 Kanal and 09 Marlas of 522/36738 Muhaal Chak No.67/15-L Tehsil Mian Channu (called herein as 'said property) for terrorism purposes, and kept it under their possession to raise funds for terrorist activities.

During the trial, the court recorded the statements of 10 witnesses. The prosecution provided Fard Malkiat' of said property, certified records of registration of Al-Dawat Ul Irshad and the List of Office beaters to prove that accused persons belonged to a proscribed organisation that sponsored terrorist activities.
**Details of the Case:**

**Arrest and trial**

The case remained pending in the ATC Court No. I, Multan from 20 December 2019 to 27 July 2020 when finally, the case was sent to ATC Court No. III, Lahore accompanied by the order passed by the Honorable Chief Justice of the Lahore High Court in Malik Zafar Iqbal Vs. the State & others.

Hafiz Saeed, convicted in terrorism cases, was sentenced to fifteen years and six months of imprisonment in December 2020. ATC Judge Ijaz Ahmed Buttar also sentenced Hafiz Abdul Salam, Zafar Iqbal, Muhammad Ashraf and Yahya Mujahid to fifteen years and six-month imprisonment, whereas a six-month imprisonment was handed down to Hafiz Abdul Rehman Makki. The court ordered the confiscation of the above-mentioned property.

**Allegations:** It was alleged by Muhammad Yousaf ASI, while lodging the FIR that Al-Dawat-ul-Itshad is a subsidiary of Lashkar-e-Tayyaba and they both are involved in terrorist financing and the property obtained by them was being used to raise funds for financing terrorist. Hafiz Muhammad Saeed, Zafar Iqbal, and others were accused as trustees of Al-Dawat-ul-Itshad, a proscribed organisation.

**Evidence**

- **Proscription:** Certified copies of the notifications proscribing Al-Dawat-ul-Itshad, Lashkar-e-Tayyaba and Hafiz Saeed and other accused were produced.
- **Property ownership:** A record copy of 'Fard Malkiat' of the afore-stated property was also produced. A perusal of the documents showed that the property was provided to Dawat-ul-Itshad for Madrisa. The prosecution further established that the proscribed organisation was registered on the application of Hafiz Saeed.
- **Funding arrangements:** The detail of funding arrangements were produced via the bank account details of accused Zafar Iqbal, i.e. Bank Al Ealah Ltd. and Habib Bank.
- **Other evidence:** The attested list of Office bearers of Al-Dawat ul Irshad was provided. Also, the death registration certificate from the Union Council of Ghulam Hassan was produced.
Perusal of Evidence

The prosecution witnesses illustrate that their source disclosed to them that the above-mentioned property was obtained by Al-Dawat-ul-Irshad, which is a proscribed organisation from accused Ghulam Hassan (Late). Documentary evidence in the form of 'Fatd Malkiat was produced proving that the property was owned by the proscribed organisation, the testimonies of said witnesses to this extent are therefore not hearsay. The prosecution also established through documentary evidence that the accused were office bearers of the proscribed organisation. The prosecution also established that the accused belong to proscribed organisations.

Offences

• **Section 11-F (2):** The prosecution established that the accused were guilty under Section 11-F (2) of ATA, which criminalises belonging to a proscribed organisation and the guilty persons shall be liable of conviction to a term not exceeding six months imprisonment and a fine.

• **Section 11-F (5):** The prosecution further established that the accused were guilty under Section 11-F (5) of the ATA, which criminalises soliciting, collecting, or raising funds for a proscribed organisation.

• **Section 11-F (6):** The prosecution further established that the persons guilty of an offence under sub-sections (3), (4) and (5) of the ATA shall be liable of conviction to a term of imprisonment not less than one year and not more than five and a fine.

• **Section 11-H:** The prosecution proved the charge of Section 11-H that deals with fundraising for the purposes of terrorism.

• **Section 11-I:** The prosecution further established that the accused were guilty under Section 11-I of the ATA, which criminalises using or possessing money or property for the purposes of terrorism.

• **Section 11-L:** The prosecution proved the charge of Section 11-J that deals with funding arrangements.

• **Section 11-N:** The prosecution further established that the persons guilty of an offence under Sections 11-H to 11-K of the ATA shall be liable of conviction to a term of imprisonment for a term no less than six months and not exceeding five years and with fine.
Punishment

- Pursuant to punishment under Section 11-F (6), Hafiz Saeed was sentenced to imprisonment for one year and six months and a fine of Rs. 20,000, in default of which each convict shall further undergo ten days.

- Punishment under Section 11-N, the accused was sentenced to five years' imprisonment and a fine of Rs. 50,000, in default of which each convict shall undergo six further months.

- Punishment under Section 11-I read with Section 11-N, the accused was sentenced to five years' imprisonment and a fine of Rs. 50,000, in default of which each convict shall undergo six further months.

- Punishment under Section 11-J (2), the accused was sentenced to five years' imprisonment and a fine of Rs. 50,000, in default of which each convict shall undergo six further months.

- All sentences shall run concurrently and the benefit of Section 382-B Cr.P.C. (redution of period of sentence of imprisonment) would be extended in favour of the convict.
The chart below summarizes the investigation and prosecution process in a TF offence. Further guidance for prosecutors on early investigative advice can be found in Section 3.
2.3. **Summary**

- The process of money laundering includes the following stages: Placement, Layering and Integration.
- While money laundering and terrorism financing are separate offences, ML can sometimes lead to TF. However, it is important to note terrorism financing can also occur without any money laundering.
- Terrorism financing applies to all means of funding and is not limited to money. Therefore, provision of any economic resources, shares, dividends, oil etc. may also be considered as ‘financing’.
- In order to determine charges for ML/TF offences, elements of crime i.e., mens rea and actus reus must be proved.

2.4. **Self-Assessment Questions**

1. What are some common methods used by Money Launderers to conceal illicit funds?
2. What are the elements of a crime?
3. Can you list down some sources of TF?
4. Can you list down potential sources evidence to prove actus reus in ML/TF offences?
SECTION 03
Investigation

LEARNING OUTCOMES

• The role of Law Enforcement Agencies (LEAs) during Investigation
• Special Provisions to investigating officers under the AMLA
• Special Provisions to investigating officers under the ATA
• NACTA SOPs for the constitution of and investigation under a JIT
• Admissibility and recording of confessions
• The method for conducting an ITP
3.1. The Role of Investigation Officers and Prosecutors

This section provides important guidance to prosecutors, on the method of investigations in ML/TF cases. It merges both offences where it is required to avoid repetition but distinguishes between the two in areas where necessary.

The table below shows how Law Enforcement Agencies (LEAs) in Pakistan are interconnected for the investigation of ML/TF offences as determined under the ATA and the AMLA:

3.2. Initial Actions in Money Laundering Investigation

Designated (LEAs) may initiate investigation of an ML offence. All financial institutions, reporting entities, government functionaries, and authorities are required to render full assistance to an LEA for the purpose of an investigation for ML under section 25 of the AMLA. These LEAs include:

1. Federal Investigation Agency
2. National Accountability Bureau
3. Counter Terrorism Department
4. Anti-Narcotics Force
5. FBR – Income Tax
6. FBR – Customs Intelligence

3.3. First Information Report

Any of the LEAs listed above may file an FIR under section 154 of the Code of Criminal Procedure (“Cr.P.C”) after their initial investigation. Typically, these agencies monitor financial activities of suspicious accounts and on finding any evidence against the suspect, it forwards the information to the Police.

3.4. Role of the Investigating Officer

1. On the basis of the FIR and any initial evidence, the investigating officer follows a line of enquiry.

2. With an order from the Court, he may provisionally attach a property that he suspects is part of money laundering. This order typically expires after 180 days and may be extended at the discretion of the Court.\textsuperscript{26}

\textsuperscript{26} Section 8 (1), AMLA
3. The IO has to submit the court order to the investigation agency within 48 hours of the provision of the notice. This 48-hour update is required of the IO after any disclosure or change in the case. 27

4. The IO then serves a show-cause notice to the suspect to disclose in not less than 30 days the sources of income, earnings or assets or by which means he/she acquired the property and why the said property should not be forfeited to the Federal Government.

5. This allows the accused an opportunity to explain the money trail for the property and show any documents proving the legitimacy of his/her sources of income.

6. Following the hearing, the investigation continues, and the IO is required to submit monthly reports to the Court on the progress of the case.

7. It is ideal during this initial investigation that the investigating officer engages with the prosecutor for early advice. From a legal perspective and because he would understand the nature of evidence required for conviction, the prosecutor could guide the investigating officer. However, the prosecutor does not have the mandate to disrupt the investigating officer’s investigation or ‘order’ pursuing a line of enquiry.

In many cases, a prosecutor may have more knowledge regarding the sources of evidence and may be able to suggest improved or new lines of enquiry. For instance, in a TF case a prosecutor may suggest the utilisation of MLA in order to trace a proscribed organisation. During the investigation, the prosecutor may also suggest assistance from different LEAs. The evidence collection from these LEAs may be streamlined with the guidance of a prosecutor and the investigation process may run more smoothly due such cooperation.

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27 Section 8 (2), AMLA
3.4.1. AMLA Special Provisions to the IO

1. Power of Survey (Section 13, AMLA)

Within the limits of his jurisdiction and with permission from the Court, the IO may carry out inspections, gather and verify information that may be useful for the case. Post-survey, the IO must produce a report and submit to the head of the investigating agency within 48 hours.

2. Search and Seizure (Section 14, AMLA)

With the Court’s permission, the AMLA also allows the IO to enter and search any building, vehicle etc. via forced entry if required, and seize property if he has reason to believe that the accused is involved in the offence of money laundering and is in possession of documents/evidence that may prove his/her culpability. The IO may make an inventory of property as well. The IO then must produce a report and submit to the head of the investigating agency within 48 hours.

3. Search of Persons (Section 15, AMLA)

If the IO has reason to believe that the accused is concealing information relevant to the investigation, he may search the person, seize the item, and record what he has recovered. A report of this recovery and statement of those searched must be submitted to the head of the investigating agency within 48 hours.

3.5. Establishing a Predicate Offence

In order to prosecute the accused for money laundering, it is essential that any predicate offence be investigated. A predicate offence is any criminal conduct that facilitates a more serious offence. In money laundering cases, a predicate offence can often be corruption, bribery, fraud, forgery, counterfeiting, kidnapping and corporate or fiscal offences. The offences listed in the Schedule to the AMLA have been declared as predicate offences. The proceeds from the predicate offence typically leads to money laundering 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. The offences listed in the Schedule to the AMLA have been declared as predicate offences.
3.5.1. How the predicate offence works

The following examples help explain what constitutes as a predicate offence:

Scenario 1:

An exporter that exports pharmaceutical products to Afghanistan is transporting young women and children through his freight trucks, across the border for prostitution. These women and children are often kidnapped or promised a safe entry into Europe. This offence would be categorised as human trafficking that is punishable under section 3(2) of the Trafficking in Person Act, 2018. From the money gained by selling/transporting these women and children to the Afghani ring, the exporter purchases luxury yachts in Dubai.

In this scenario, the offence of selling young women and children to the crime ring is the “predicate offence.”

Scenario 2:

A businessman running a successful chain of restaurants evades taxes. He dishonestly reports his annual sales and understates profits. This offence is categorised 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”.

Scenario 3:

A businessman running a successful chain of showrooms and rent-a-car. He knowingly purchases stolen vehicles and uses them in the business of rent-a-car and sometimes manages forged documents to sell theft vehicles. He earns huge amount from this business and overstates his business income for which he pays tax and thereafter invests in land and construction business. He also imports vehicles from different countries and has set up his business offices in three countries. He also maintains bank accounts in foreign banks.

In this scenario, the offences under sections 381A, 411, 420, 468 and 471 PPC are made out which are “predicate offences”.

However, it is not always necessary to prove a predicate offence in a money laundering case. 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 the schedule to the AMLA, but the prosecution does not necessarily need to prove the elements of the predicate offence. Often LEAs conduct a parallel financial investigation to determine the predicate offence i.e., the proceeds of the crime which may be money laundering or terrorism financing.

According to the AMLA, the Sessions Court (within its territorial jurisdiction) can exercise jurisdiction to try and adjudicate the offences punishable under the AMLA. However, if the predicate offence was triable by any other court other than the Sessions Court, the offence of money laundering and all matters connected with it or incidental thereto would be tried by the Court trying the predicate offence. This means that, for example, if an accused is charged for the predicate offence of sale and purchase of drugs under the Control of Narcotics Substances Act, 1997, the offence of money laundering if proved shall also be triable by the Special Court established under the Control of Narcotics Substances Act, 1997.

The UK Crown Prosecution Service (CPS) provides guidance to its prosecutors for determining criminal origin of proceeds that may have become the basis for the offence of money laundering. For example:

- The prosecution must focus on proving the unlikelihood of the property being of legitimate origin. Where the prosecution proves that the accused has no legitimate explanation for possessing the property in question, the Court may be willing to draw an inference that it is proceeds of crime (for example if a large amount of cash is found in the home of someone with no visible means);
- Follow and investigate complex audit trails;
- Analyse business accounts or audit records to show excessive or unexplained transactions or profits;
- Circumstantial evidence. This could be social media entries demonstrating a lavish lifestyle which is not supported by legitimate income, or there could be messages and/or pictures stored on digital devices indicating the individual is in possession of high value items (e.g., cars) which are not supported by legitimate income;
- Accomplice evidence (for example evidence provided by criminal associates usually as part of an assisting offender agreement);
- Large amounts of cash concealed in property and vehicles.

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28 Anti-Money Laundering Act 2010, s 2(q)
29 Muhammad Alam Vs. State (2018 PCr.LJ 837 Balochistan)
30 (Money Laundering Offences | The Crown Prosecution Service, 2021)
3.6. Methods of Inquiry under Terrorism Financing

<table>
<thead>
<tr>
<th>Overt Methods</th>
<th>Covert Methods</th>
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<tbody>
<tr>
<td>1- <strong>Arrests under S. 11EEE and S. 11EEEE of ATA</strong></td>
<td>1- Undercover operations</td>
</tr>
<tr>
<td>2- <strong>Summoning records from financial institution</strong></td>
<td>2- Surveillance</td>
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<td></td>
<td>3- Intercepting</td>
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<td></td>
<td>4- Controlled Delivery</td>
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It is not common for investigating officers or LEAs to use covert methods in Pakistan. Scarce resources, lack of training and requisite SOPs make it almost impossible for the Police to carry out covert investigations using the aforementioned methods. The Police normally is tipped by an informant or via monitoring of the financial activities of suspects.

3.7. Initiation of Action

Designated LEAs mandated under the AMLA and the ATA to conduct investigation of Terrorism Financing (TF) offences are:

1. Provincial Police Counter Terrorism Departments (CTDs)
2. Counter Terrorism Wing- FIA

The ATA provides the following significant powers to the investigator in TF offences.

1. **Restricting Movement (Section 11 EE, ATA)**

   In case of insufficient or no reasonable grounds for suspicion against the accused, and if the accused is proscribed on the Fourth Schedule List of the ATA, then the investigating officer may release him on the condition that he executes a bond. This means that the accused will not engage in any act of terrorism or act in a manner that advances the objectives of the organization proscribed. However, if the individual fails to execute the bond, the District Police Officer may detain the said individual and produce him within 24 hours before a magistrate. The magistrate shall then order his detention in prison until he executes a bond.
2. **Power of Seizure (Section 11O, ATA)**

During monitoring of suspicious activities, the investigating officer has the mandate to, on reasonable grounds, seize and detain any cash which he believes is intended to be used for the purposes of terrorism, and if it forms the whole or part of the resources of a prescribed organization.

3. **Enter, Search and forfeit (Sections 9 & 10, ATA):**

On the basis of reasonable grounds of suspicion, an investigating officer may enter and search a person and may seize material that could potentially be evidence of the offence. Section 10 of the ATA further gives the investigating officer the power to forfeit any material identified as part of this entry and search. The investigating officer however must put into writing his reasons for entering and conducting the search. This written statement has to be provided to the suspect upon entry.

4. **Power to Arrest and Detain (Section 11 EEE, ATA):**

The investigator may detain the suspect for up to 12 months, subject to approval of authority.

5. **Preventative Detention for Inquiry (Section 11 EEEE, ATA):**

An investigating officer not below the rank of superintendent or a JIT may detain a suspect for up to 3 months. The suspect however is to be produced before the court within 24 hours.

6. **Prohibition of Disposal of Property (Section 11 EEEEEE, ATA):**

An investigator not below the rank of superintendent or a JIT may serve notice for the purposes of investigation that a property is not be disposed, transferred or sold.

7. **Application of Investigation Technique (Section 19 C, ATA):**

With the permission of the Court and within 60 days of such permission, the investigating officer may use techniques such as undercover operations, intercepting communications, accessing computer systems and controlled delivery for investigation of financing of terrorism under the law in force.
8. **Application to Attach Property (Section 11 P, ATA):**

With the permission of the Court, the IO may attach a terrorist property and any cash retrieved will be added to a profit and loss account. In case the accused is acquitted, the complete amount will be paid back with interest.

9. **Remand (Section 21 E, ATA):**

The accused may be detained for 30 days if ordered by the Court and the remand may be extended to 90 days but the accused must be presented in Court within 24 hours of detention excluding travelling time.

10. **Power to Call Information (Section 21 EE, ATA):**

An officer of the rank of superintendent or a JIT may call for information/documents or a person for examination from a bank, an individual or other financial institutions.

### 3.8. Investigation via Joint Investigation Team (JIT)

In certain TF cases, the government may constitute a JIT. This could be when the case requires more than a single investigating officer, if the case has gotten excessive media coverage, etc. The JIT is constituted on the prerogative of the government and cannot be created by the investigating agency.

NACTA issued Standard Operation Procedures (SOPs) governing JITs in March 2020, explaining how a joint investigation may be carried out.

The Toolkit on AML/CFT Vol I (*Operational Guidelines for the Investigation & Prosecution of Money Laundering & Terrorism Financing Offences in Pakistan*) provides an overview of the investigation parameters of the JIT and its responsibilities under the SOPs.

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31 See page 41, Toolkit on AML/CFT Vol I
3.8.1. Key Takeaways for Prosecutors from the NACTA SOPs

For prosecutors, the issuance of these guidelines may not have a direct imposition of responsibility, but it is essential that prosecutors understand the impact of a JIT on their case. Since most of these JITs are created in high-profile cases, the prosecutors must keep track of the lines of investigation and sources of evidence used.

As suggested by the guidelines, the investigation team is required to use multiple sources and carry out investigation on a larger scale. The prosecutor should ideally trace the following:

1. How is the source of funding being traced? Is the investigation factoring in all possible sources?
2. Have all possible financiers been identified, and have they been linked to the funding?
3. Has the transnational funding aspect been considered?
4. Have the co-suspects been investigated?
5. Have premises been searched?
6. Does the evidence need forensic analysis?
7. Has a recovery memo been prepared?
8. Which sections from the relevant legislation are applicable in the case?
9. Who have been identified as the prosecution witnesses?
10. Does the case need analysis by financial experts?

Ideally, the questions above are the responsibility of the investigating officer. However, a prosecutor’s guidance in the initial stages of the case is likely to help during the course of trial. The early police-prosecution coordination has been discussed further in the Module as well.

3.9. Arrest & Detention

Under Section 5 of the ATA, the police, armed forces, and civil armed forces are empowered to arrest an individual without issuing a warrant of arrest. However, Section 5(2)(ii) limits this power by requiring the police to make an arrest on the basis of either “credible information” or “reasonable suspicion”\(^\text{32}\). Reasonable suspicion does not mean that a Police Officer can proceed on mere conjectures and surmises\(^\text{33}\). It means that there are some definite facts tending to throw suspicion on person arrested and not a vague inference. In the absence of a


\(^{33}\) Waris Ali Raza v. The State and 4 others, 2013 PCr.LJ 267
reasonable suspicion, arrest would be illegal\textsuperscript{34}. Unnecessary haste while making an arrest may also taint prosecution and affect the proceedings in Court.

The procedure of arrest in TF offences is derived from the Cr.P.C.:

- **Section 60**: the accused arrested without warrant must be presented before the magistrate without “unnecessary delay”.
- **Section 61**: In the absence of a special order from the magistrate, the accused cannot be detained for more than 24 hours by the investigating officer.

The Constitution of Pakistan, 1973 also protects the rights of an accused person during arrest under Article 10 (Safeguard as to arrest and warrant). The Article requires that first, any person who is arrested and detained has to be informed, as soon as may be, of the grounds of his arrest and detention and no person can be arrested and detained in custody without complying with this requirement. Second, that no person so arrested or detained can be denied the right to consult a legal practitioner of their choice for their defence\textsuperscript{35}.

**Case Study**

A suicide attack in a hotel in Quetta killed 50 people, including 5 foreigners. An organisation named “Lashker-e-Deen” claimed responsibility. The organization’s leader, Hafiz-ullah Ameen further sent police authorities a video recording of him “declaring war on all non-muslims”. The police are conducting a search of Hafiz-ullah’s premises. The police uncovered links with a hostile government’s intelligence agency – including call records and bank transfers. It is suspected that the organisation may be funded by the hostile state.

One of the organisation’s workers was captured a week after the attack. He has agreed to assist the police but has asked for anonymity.

- Given that Hafiz-ullah is arrested, how should the State pursue the case? Advice to I.O.
- Briefly explain the lines of enquiry, the local and international sources of evidence, the actions to be taken by the State and the ideal timeline for commencement of trial.
- Keeping in mind the already peculiar security situation in Pakistan, the government has decided to carry out the trial covertly. What measures, in your expertise, should the State take?

\textsuperscript{34} Rasool Bux v. The State, 2005 YLR 915
\textsuperscript{35} PLD 2017 Sindh 243, Shoaib Warsi and another v. Federation of Pakistan
3.10. Power of Investigation under Special Legislation

The following powers add to the mandate of the law enforcement agencies investigating ML/TF offences:

<table>
<thead>
<tr>
<th>Power</th>
<th>Granting Legislation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1- The investigating officer has the power to obtain and access records held by FIs, DNFBPs and other commercial entities.</td>
<td>Section 5 of the FIA Act 1974.</td>
</tr>
<tr>
<td>2- ANF officers (not below the rank of Inspector) may arrest, without warrant, any person who has committed, or against whom a reasonable suspicion exists that he has committed, any of the offences relating to Narcotics.</td>
<td>Section 6(3) of the ANFA</td>
</tr>
<tr>
<td>3- The investigating agency may require FBR-Customs to produce documents, provide information and give them power to examine persons, summon persons to give evidence and produce documents or things, and seize things liable to confiscation.</td>
<td>FBR-Customs: Sections 26, 165, 166 and 168 of the Customs Act, 1969</td>
</tr>
<tr>
<td>4- The National Accountability Bureau (NAB) may ask FBR to provide documents relating to ML/TF investigation.</td>
<td>Section 216(6) of Income Tax Ordinance, 2001 (ITO)</td>
</tr>
<tr>
<td>5- Disclosure of relevant documents for prosecution under the Pakistan Penal Code may be invoked under the exception clause of the ITO.</td>
<td>Despite the ITO having a non-obstante clause for disclosure, Section 216(3)(n) of ITO may be used to invoke the exception. Since this provision was never specifically extended to cover Anti-Terrorism Act offences, Sections 109 or 34 of the PPC</td>
</tr>
</tbody>
</table>
3.11. Confessions

The term confession is not defined in the QS. It has been interpreted by superior courts as an acknowledgment of liability of commission of offence with which a person is charged or is to be charged.

A statement that falls short of making an unconditional acknowledgement of commission of offence in question falls outside the definition of confession although an inference of guilt can be drawn from it.\(^{36}\)

It is necessary to prove that confessional statement was made during the investigation. The investigation normally commences on the registration of FIR and ends when the police report is submitted in court.

The confession made before the registration of FIR will be covered if investigation has started.\(^{37}\)

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\(^{36}\) Nazak Hussain Vs. State (PLD 1982 Lahore 180)

\(^{37}\) Nighat Parveen Vs. The State (2000 YLR 1428)
3.11.1. Admissibility

A confession made to a police officer or in his custody is inadmissible unless it is made to a Magistrate (Articles 38, & 39 of QS). In TF cases a confession made to a Police officer of the rank of Superintendent of Police is admissible subject to the satisfaction of the court.  

1. The evidence of a confession is inadmissible in the following circumstances:

   a. If obtained by inducement, threat or promise from a person in authority that causes the maker to believe that he will gain any advantage or avoid any evil (Article 37 QS). A confession should always be given by an accused of his own free will. The test of determining whether or not the inducement, threat or promise has caused the suspect to confess is an objective test. The court will consider whether a reasonable person in place of the maker would have made a confession in the circumstances.

   b. If made to a police officer it cannot be used against a person accused of any offence (Article 38 QS). Such a confession, on the principle of inculpation, is not only irrelevant but also inadmissible in evidence. It can therefore not be used against the person making it as the Articles of QS command.

   c. If made in the custody of a police officer unless in the immediate presence of a Magistrate, it cannot be proved against the maker (Article 39 QS). A confession made in this manner, in the absence of any strong corroborative piece of evidence, is of no legal value.

   d. If obtained in breach of the procedure for recording of confession. For instance, undue delay in the recording of a confession may adversely affect its credibility in court. Other examples of serious breaches of the confession procedure include:

38 Section 21 H of ATA  
39 M. Saeed Sehgal Vs. Kazi Khurshid Hassan (PLD 1964 SC 598)  
40 Nazra Vs. The State (PLD 1960 Lah 739)  
41 Muhammad Aslam v. The State (2011 YLR 543)  
42 Javed Sabir alias Pappu V. The State (2008 YLR 990)  
43 Muhammad Bukhsh Vs. The State (PLD 1956 SC 420)  
44 Akhtar Muhammad alias Ghani and others v. The State (2020 PCr.LJ 533)
Module for Prosecutors: Anti-Money Laundering and Countering the Financing of Terrorism

- Failure to inform the suspect of his rights before recording confession
- The test of existence of reasonable ground of belief that the confession is voluntary is not satisfied
- The confession is recorded on solemn oath contrary to the Oaths Act, 1873

2. Conditional Admissibility under Section 21-H of the ATA

Under the normal trial process, confessions made in front of the police are not admissible. However, these confessions have conditional admissibility under the ATA if the evidence produced raises the presumption that there is a reasonable probability that the accused has committed the offence.

The conditional admissibility of confessions made before police under the ATA will only apply to offences under the ATA itself, including Section 11-F (5), 11-H to 11-K of the ATA. A recent Supreme Court judgment, *Nadeem Hussain and others v. the State* held that the statements given by suspects to the police are excluded under section 21-H of the ATA in all cases of terrorism. The law limits the admissibility of such a confession before the police, stating that there must be additional evidence, including circumstantial evidence, which must adequately connect the accused individual with the claimed offence. Conditional admissibility of a confession before the police is contingent upon the availability of some other evidence linking the accused person with the alleged offence, but in the present case, all other pieces of evidence relied upon by the prosecution against the appellant had utterly failed to do so.

In *Muhammad Latif v. The State*, the Court held that since there was no hindrance in the chain of custody of circumstantial evidence and since the extra-judicial confession was credible, the extra-judicial confession corroborated the circumstantial evidence and consequently the plea by the accused was dismissed and the death penalty was upheld by the Supreme Court.

In this case, the evidence against the accused was deemed has sufficient to convict him and the Court held that “the extra-judicial confession made before those whom the accused considered to be valuable persons for his assistance could not be disbelieved. In fact, the disclosure by the accused had

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45 Nazeer alias Wazeer Vs. State (PLD 2007 SC 202)
46 Muhammad Latif v. The State (PLD 2008 DC 503)
led to other corroborate and cogent evidence proving the commission of offence.\textsuperscript{3}

This case is an important judgement for the purposes of admissibility of extra-judicial confession. Typically, Courts regard the same as suspicious evidence which could be procured at any time during the investigation whenever direct evidence was not available to prosecution\textsuperscript{47}. Extra judicial confession of an accused, arrested and in handcuffs, recorded by an IO does not have credibility in the eye of law\textsuperscript{48}. However, there is no legal bar to convict an accused based on an extra judicial confession if it meets the conditions of admissibility\textsuperscript{49}.

3. A Confession may be Considered Circumstantial Evidence against Co-Accused.

In \textit{Mobashar Ahmad vs. the State}, the Supreme Court held that in a joint trial, if a confession of one accused was proved under Article 43 of the QS, the same might be taken into consideration as circumstantial evidence against the co-accused. The conditions necessary for the application of Article 43 of QS are:

- the accused and co-accused must be jointly tried for the same offence.
- the joint trial must be permissible by law.
- both accused and co-accused must be affected by the confession.

However, before relying on the statement or confession of a co-accused, the court should corroborate it with other evidence available on record.

4. Conviction may rest solely on judicial confession:

Section 164 of the Cr.P.C. empowers a Magistrate to record any statement or a confession made to him in the course of the investigation. In \textit{Tanveer Ahmed vs. The State}, the High Court held that if a judicial confession is honest and is voluntary it can be made the sole basis for a conviction. Furthermore, such a confession does not lose its evidentiary value even if the

\textsuperscript{47} Sanwal V. The State (2022 YLRN 1 LHC)
\textsuperscript{48} Gul Muhammad v. The State (2021 SCMR 381)
same is retracted if it gets independent corroboration from a direct and indirect source of evidence.

**Case Study**

Sikander is the sole proprietor of Quality Productions, a fabric design business for both ladies and gents. For sales tax registration, Sikander provided the address of Plot 10, Saggiyan Road, as the place of business. The police was tipped off and a survey revealed that several power looms are installed and owned by different persons at the address and none is operated by Quality Productions. The workers in the area confirmed that they did not know Sikander and had never rented out their facilities to him.

It is alleged that Sikander imported fabric for Rs. 1,60,00,00 as a manufacturer for in-house consumption at the rate of zero percent as per SRO 1125(1)/2011. However, this fabric was sold to customers through Quality Productions. Thus, he has evaded taxes totalling Rs. 1,60,00,238/ and VAT of Rs. 44,23,000. It is also alleged that Sikander imported finished taxable goods and avoided paying tax of Rs. 40,00,000/-.

The police traced Sikander’s income and tax records to Munawar, Sikander’s tax consultant. Munawar admitted to the police that he has been getting monetary benefits from Sikander in exchange- a 10% of the tax invaded money has now filed a complaint alleging that he was a tax consultant for Sikander and helped him evade taxes. However, Sikander’s financial records do not show that Munawar had received these funds.

3.11.2. Recording

The procedure to record confessions is provided in sections 164, 364 of the Cr.P.C., High Court Rules Chapter XII Vol. III, 25.27, 25.29 and Appendix No. 25.27 of the Police Rules, 1934.

Broadly, the procedure suggests the following:

a. The IO should request the Magistrate to record the confession as soon as the suspect informs of his intention to confess (Rule 2 of Chapter XIII, Vol. III High Court Rules and Orders).

b. Magistrate should explain the process and the purpose of the confession procedure to the suspect(s) before starting it.

c. Every confession should be recorded separately.

d. The confession should be signed or thumb marked by the maker/suspect.
e. The officers investigating the case should not be allowed to attend the confession proceedings.
f. When the confession is not made or does not amount to admission of guilt, the remand in custody of the suspect should not be given to police.
g. The magistrate should proceed to record the confession if he is satisfied on reasonable grounds that the confession is voluntary.
h. A suspect who has made a confession should be kept separate from other prisoners in the judicial lock up.
i. A memorandum of confession should be prepared and signed by the Magistrate in accordance with the instructions in Rule 5 of the High Court Rules and Order Chapter XII, Vol. III. The confession should be signed or thumb marked by the maker/suspect.
j. Magistrate should inform the suspect that-
   • he is not bound to make a confession
   • the confession can be used as evidence against him
   • his custody will not be handed over to police

The prosecutor must carefully determine how to use the confession. In money laundering cases, and terrorism financing cases, a confession may reveal information about accomplices or whereabouts of the criminal ring.

According to Article 91 of QS, it will be presumed that the confession taken down was in accordance with law and all legal formalities have been complied with, the confessional statement is authentic and bears the genuine signatures of the suspect, the magistrate has held the enquiry and is satisfied that the confession is voluntary.

The court can rely on the evidence of confession even if it is subsequently retracted and can base the conviction on it and it is corroborated by independent evidence.\(^{50}\)

3.12. Identification Test Parade (ITP)

An ITP is relevant when an eyewitness(s) has observed the involvement of a person in a crime or in any other circumstances which can prove or disprove the involvement of a person in a crime.

\(^{50}\) Haq Nawaz Vs. State (2000 SCMR 785)
It is important that an eyewitness should attribute a role to this person at the time of commission of the offence to ensure the accused’s participation is clear. For example, an eye witness may have glanced at a co-worker concealing undeclared bank notes at their place of work, and during investigation when the police retrieve the currency notes, the eye witness could be used to identify the suspect.

To ensure that the eyewitness has the optimum chance to identify the person, the ITP should be carried out as soon as possible after the arrest of the suspect(s). The IO may coordinate with the prosecutor for guidelines on the parade. The prosecutor may suggest a few questions that the IO could ask the witness during the ITP. The prosecutor may suggest a few questions that the IO could ask the witness during the ITP. These could include:

- The description of the person(s) involved in the criminal act in as much detail as is possible, i.e. skin colour, height, clothing, style of walking, any distinct marks etc
- The time and duration of the observation including, distance, weather etc.

### 3.13. Summary

- Designated LEAs for investigation of a money laundering offence are: Federal Investigation Agency, National Accountability Bureau, Counter Terrorism Department, Anti-Narcotics Force, FBR – Income Tax, and FBR – Customs Intelligence.
- It is not always necessary to prove a predicate offence in a money laundering case. The prosecution only needs to show that the proceeds of crime have been derived from a criminal offence.
- Overt and Covert methods are used as tools of inquiry in investigation terrorism financing.
- A JIT is constituted on the prerogative of the government and cannot be created by the investigating agency.
- The Constitution of Pakistan provides safeguards as to arrest and warrant under Article 10.
- It is necessary to prove that confessional statement was made during the investigation. The prosecutor must carefully determine how to use the confession.
- An ID parade is relevant when an eyewitness(s) has observed the involvement of a person in a crime or in any other circumstances which can prove or disprove the involvement of a person in a crime.
3.14. Self-Assessment Questions

1. Do LEAs file an FIR after or before conducting initial investigation?
2. Can you elaborate on the role of an Investigating Officer?
3. What are some predicate offences linked to money laundering?
4. What are the two methods of inquiry in terrorism financing?
5. In what cases does the government constitute a JIT?
6. In what circumstances is evidence of a confession inadmissible?
SECTION 04
Sources of Evidence

LEARNING OUTCOMES

- Evidence sources during initial investigation and their evidentiary value
- Use of Modern device evidence for ML/TF offences
- Use of Forensic evidence for ML/TF offences
- Types and sources of financial evidence
4.1. Methods of Collecting Initial Evidence

1. Checking Assets without Notification to the Owner:

The Court may issue an order to a law enforcement agency under the Prevention of Electronic Crimes Act, 2016 (PECA) to search and seize (without the production of a warrant) any data that may reasonably be required for an investigation.

2. 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.
- **Cancelled cheques**: The cheque normally shows 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.
- **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. It is useful when assets or liabilities have changed-no financial records.
- **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 MLA between countries to request and provide assistance in law enforcement matters and enforcing foreign orders and judgments.

3. Interception and Surveillance:

**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 modern devices or techniques obtained under the PECA. It can further include documents, papers, pamphlets, booklets etc.

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 (Third Amendment) 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 (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 police\(^\text{51}\) 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.\(^\text{52}\)

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

\(^{51}\) Section 3(a)

\(^{52}\) Section 5
allowed only when the authorized officer discloses a substantial threat or possibility of an attempt to commit the scheduled offence.\textsuperscript{53}

Process to be followed once it’s 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 Cr PC 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.\textsuperscript{54}

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

\textbf{4.2. Mandate for Evidence through Modern Devices}

- Any evidence obtained from modern devices or techniques is admissible as per Article 164 of the QS.
- 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 up to date with scientific developments.

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.”\textsuperscript{55}

Article 164 of the QS 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

\textsuperscript{53} Section 16
\textsuperscript{54} Section 22

\textsuperscript{55} Sikandar Ali Lashari v. The State, (2016 YLR 62), [7]. Read with Section 27-B of the ATA.
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 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 QS, 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.

4.2.2. 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 and SIMs and National Identity Cards. However, the evidence of police officials was deemed not trustworthy because no recovery

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56 Asfandyar vs. Kamran (2016 SCMR 2084)
57 Arsalan v. The State, (2018 MLD 894 Karachi)
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.

**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. 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’.

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

**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 KP Police has done massive revamping of the outdated criminal record verification system (CRVS). It has developed the CRVS based on Citizen

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59 Punjab Forensic Science Agency Act 2007, Section 2(g).
National Identity Card Number (CNIC). It is a digitized system that contains personal details such as CNIC, appearance, phones, etc. of criminals. Record of proclaimed offenders is available on phone through an SIM service to all police stations, check posts and snap checking points. The police officials can directly verify the background of any person by clicking the mobile’s button.\(^6\)

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 QS, “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.

- Pamphlets, receipt books, 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.

\(^6\) https://defence.pk/pdf/threads/criminal-record-verification-system-digitised-in-kp.580460/
• Documentary evidence is required to be proved in accordance with the provisions of QS. 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 QS 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 QS. 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 QS.

4.4. Collection of Financial Evidence

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 and proof of criminal activity.

<table>
<thead>
<tr>
<th>Source</th>
<th>Information Available</th>
</tr>
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<tbody>
<tr>
<td>Financial Monitoring Unit</td>
<td>• Currency Transaction reports</td>
</tr>
<tr>
<td></td>
<td>• Wire transfers</td>
</tr>
<tr>
<td></td>
<td>• Cross-border reports</td>
</tr>
<tr>
<td></td>
<td>• Suspicious Activity Reports</td>
</tr>
</tbody>
</table>
(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)

| 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  

| NADRA | • Information recorded for the purposes of an ID card.  
|      | • Family tree  
|      | • Addresses and contact number  

<table>
<thead>
<tr>
<th><strong>Banks/Financial Institutions</strong></th>
<th>• With a court order, the bank can provide account information, monitor activity on the account, examine sources of income etc.</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Anti-Narcotics Force</strong></td>
<td>• A terrorist organization's crossover with drug trafficking may be possible and hence liaison with the ANF may be helpful.</td>
</tr>
<tr>
<td><strong>Border Authorities</strong></td>
<td>• Information regarding movement of suspect and their property.</td>
</tr>
</tbody>
</table>
| **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 |

**Case Study**

A prominent businessman’s daughter, Hiba has been arrested at the Peshawar 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.

I.O. has shared these facts and has sought advice

- List down the possible evidences that may be collected during enquiry and investigation

4.5. Summary

- Methods of collecting initial evidence include:
  - Checking assets without notification to the owner;
  - Tracing, and
  - Interception and Surveillance.

- The QS, 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.

4.6. Self-Assessment Questions

1. What are some potential forms of evidence extracted through modern devices?
2. What is the evidentiary value of call records and text messages found in accused’s phone?
3. What forms of evidence can be used to link the accused to a proscribed organization?
4. In your opinion, what is the main goal of a financial investigation?
SECTION 05
Mutual Legal Assistance

LEARNING OUTCOMES

• What is Mutual Legal Assistance (MLA)
• International legislation mandating/supporting MLA
5.1. Mutual Legal Assistance

For mutual legal assistance, the investigating agency must ensure:

1. Sufficiency of evidence;
2. Dual/double criminality (the offence or underlying criminality in question being criminalized in both States);
3. Restricting the information to the investigation, proceedings or prosecution at hand.

A Requested State may deny such a request based on:

1. National or public interest
2. Severity of punishment;
3. Political offences
4. Human rights considerations;
5. Double jeopardy;
6. The rights of suspects charged with criminal offences

Prior to the promulgation of the MLA, there was no uniform process whereby requests—both those originating in Pakistan and those from abroad—could be processed, and instead such requests were handled on an ad-hoc basis through multilateral treaties such as the United Nations Convention against Transnational Organized Crime (UNTOC).

5.1.1. UNTOC

The UNTOC is the broadest instrument for international cooperation that is applicable where there is not a bilateral agreement between States. Article 18(3) of the UNTOC allows for a wide array of cooperation, which includes the following:

- Taking evidence or statements from persons;
- Effecting service of judicial documents;
- Executing searches and seizures, and freezing;
- Examining objects and sites;
- Providing information, evidentiary items and expert evaluations;
- Providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records;

61 Manual on Mutual Legal Assistance and Extradition (UNODC)
g) Identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes;

h) Facilitating the voluntary appearance of persons in the Requested State Party;

i) Any other type of assistance that is not contrary to the domestic law of the Requested State Party.

5.1.2. United Nations Convention Against Corruption (UNCAC)

The UNCAC is capable of regulating MLA requests in the absence of a bilateral treaty amongst States as per Article 46.

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

In the absence of a bilateral framework, States party to the ICSFT convention, including Pakistan, may rely upon Article 12(5) of the Convention, which mandates the provision of assistance in criminal investigations in the absence of a bilateral framework or another multilateral framework.

5.1.4. MLA under the Mutual Legal Assistance (Criminal Matters) Act, 2020

The MLA Act 2020, formalizes the processes of requesting and providing legal assistance to and from foreign governments when investigating criminal conduct. Section 3 of the Act states that the manner of MLA may be provided on the basis of a reciprocal agreement or other arrangements, and if both do not exist, then the provisions of the MLA Act will prevail.

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

Section 31 of 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 a mutual legal assistance mechanism as is agreed upon between Pakistan and the relevant foreign state. Sections 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.
5.1.6. MLA under Section 19 C of the ATA, 1997 and Section 9A of the AMLA, 2010

Section 19C of the ATA and Section 9A of the AMLA provide for the creation of rules to regulate procedure and execution. These Sections however, do not contain provisions relating to execution of warrants outside of Pakistan.

5.1.7. MLA under National Counter Terrorism Authority (Amendment) Act, 2020 (NACTA)

For effective domestic cooperation, the National Counter Terrorism Authority (NACTA) Act was amended. The amendments mainly concerned changes in the hierarchy of governmental actors in order to streamline the process of coordination with various law enforcement actors.

5.1.8. Securities and Exchange Commission of Pakistan (SECP)

The SECP has issued revised guidelines to bolster the framework of international cooperation that is found under Section 42D of the SECP Act. Broadly, the guidelines contain the following:

1. A definition for public interest (earlier not a part of the guidelines): Public interest means the general welfare of the public that warrants recognition and protection, something in which the public as a whole has a stake especially an interest that justifies governmental regulation.

2. The provision of exchange of information or assistance should not be refused on the grounds that:

   a) the request is also considered to involve fiscal matters;
   b) laws require financial institutions to maintain secrecy or confidentiality;
   c) there is an inquiry, investigation or proceeding underway, unless the assistance would impede that inquiry, investigation or proceeding; and/or
   d) the nature or status (civil, administrative, law enforcement, etc.) of the requesting counterpart authority is different.
Module for Prosecutors: Anti-Money Laundering and Countering the Financing of Terrorism

Case Study

A local madrassa collected donations for the education and well-being of its students. Supporters gave donations by putting cash in a box placed outside the madrassa. Despite the donations, the children appear weak and sickly, suffering from malnutrition. A year later, the police were tipped that the madrassa is collecting money to fund a terrorist organization operating in Pakistan and Iran. The mufti of the madrassa, Ibadullah Khan took 2 trips in the past year to Iran and brought back Islamic texts in bulk for the students at the madrassa. An Iranian organisation, “Allied Mujahideen” provided Ibad with donation worth USD 300,000 allegedly for the well-being of the orphans at the madrassa. One of the mufti’s supporters, Abdullah was previously convicted on aiding a terrorist activity— a suicide attack in a local church. The Police were also tipped that Ibad keeps in touch with Abdullah through letters.

• As a prosecutor, what lines of enquiry would you suggest to the investigation agency / JIT/ police officer?
• Under Pakistan’s ATA and AMLA laws, what sections can be used to charge Ibad?
• List the types of evidence that may be collected by the Investigation Agency / JIT

5.2. Summary

• It is essential to look for potential avenues for international assistance when investigating and prosecuting an ML/TF offence.
• The UNTOC is the broadest instrument for international cooperation provided that there is not a bilateral agreement between States.
• The UNCAC is capable of regulating MLA requests in the absence of a bilateral treaty amongst States as per Article 46.
• In the absence of a bilateral framework, States party to the ICSFT convention, including Pakistan, may rely upon Article 12(5) of the Convention, which mandates the provision of assistance in criminal investigations in the absence of a bilateral framework or another multilateral framework.
• The MLA Act 2020, formalizes the processes of requesting and providing legal assistance to and from foreign governments when investigating criminal conduct.

5.3. Self-Assessment Questions

1. On what grounds may a requested state deny a mutual legal assistance request?
2. Which domestic statutes regulates the process of mutual legal assistance?
3. Under the SECP guidelines, what does “public interest” entail?
4. What can a state rely on for mutual legal assistance if no reciprocal agreement or other arrangement exists between the state in question?
SECTION 06
Prosecution

LEARNING OUTCOMES

- How to carry out prosecutorial scrutiny efficiently
- The role of Prosecution Guidelines for KP Prosecutors
- The importance and use of early police-prosecution coordination
- Witness Protection under the KPWPA 2022
- Charging standards for ML/TF offences
- Court Assessment to be submitted by the prosecutor in ML/TF cases
- The Prosecutorial Tests for Case Assessment
6.1. The Predicate Offence

6.1.1. International Best Practice

The Crown Prosecution Service maintains that the prosecution needs, as a minimum, to produce sufficient circumstantial evidence or other evidence from which an “irresistible inference” can be drawn, to the required criminal standard, that the property in question has a criminal origin. In other words, there could be no reason for the circumstances other than a criminal one.\(^{62}\)

This means that the prosecutor prosecuting a money laundering offence must carefully determine the criminal source. For black money in offshore accounts, the prosecutor must identify the source, the trail of the generation of money leading to the dumping in the offshore accounts.

6.2. Basic Guidelines for Prosecutors

The Director General of the Khyber Pakhtunkhwa Prosecution Service (KPPS) issued ‘Prosecution Guidelines’ (Guidelines) in 2014 to prosecutors in KP under Section 12 of the Khyber Pakhtunkhwa Prosecution Service (Constitution, Functions and Powers) Act, 2005 (the KPPS Act, 2005). The Guidelines provide broad guidance on matters such as the principles relating to the Prosecutors’ coordination with the police, general principles of prosecution, prosecutorial decisions, and the relevant tests to be considered by the Prosecutor etc.

6.2.1. Prosecutorial Scrutiny

The KPPS Act, 2005, determines the role of the prosecutor following an FIR and initial investigation. Section 4(b)(ii) of KPPS Act, 2005 imposes a statutory duty on the prosecutor i.e. that the prosecutor “shall, on receipt of the final report…withhold the same for want of proper evidence and return it to the Investigation Officer with written direction to resubmit the report after removal of the deficiencies so identified by him”.

Section 7(d) of the Act further explains the responsibility of the prosecutor “to scrutinize the case file and refer the shortcomings or faults in investigation to the Head of Investigation for removing or improving the same...”.

\(^{62}\)Money Laundering Offences | The Crown Prosecution Service, 2021
The Police-Prosecution SOPs designed for the KP Police and Prosecution suggest that the Prosecutor shall conduct the scrutiny of the challan within 3 days. It states that “the District Public Prosecutor, on receipt of interim or complete challan from Police, as the case may be, shall make prosecutorial decision, within three (03) days, either to submit the case to the Court which is complete in all respect or return the same to the Police for the rectification of shortcomings, if any.”

Following the scrutiny of the challan by the prosecutor, the IO would be required to rectify any defects identified by the prosecutor within 7 days of the prosecutorial scrutiny

During the process of scrutiny and while the IO is conducting investigation, it is beneficial for the prosecution of the case if the prosecutor guides the IO as to the lines of enquiry. In this regard, section 5(d) of the Act states that “a Public Prosecutor may, within his jurisdiction, issue general guidelines to police officers regarding' the state of their investigation and other matters necessary for the fulfilment of the purpose of effective prosecution”.

This means that while the prosecutor is responsible for scrutinising the police report and identifying defects in the investigation/evidence, it may also suggest additional lines of enquiry to the IO which are especially useful in a ML/TF case since sources of evidence and the integrity and nature of evidence vary.

For example, if a local NGO is accused of money laundering and using the NGO as a front for its criminal activities, the IO may have collected documentary evidence such as bank account details, account activity, expenditure, and license under the SECP. However, the prosecutor may direct the IO to request for mutual legal assistance and look for any assets/bank accounts abroad that are related to the accused. This would strengthen the prosecution’s case as it would now prove that the money laundered has been dumped and concealed by the accused.

It is important that the prosecutor views the 7(d) scrutiny as a time-sensitive issue and address it accordingly. With the KPPS Act allowing the prosecutor a time of 3 days, the prosecutor should view the final report submitted by the police officer under section 173 Cr.P.C., with an aim to point out defects that may have immediate solution and should not delay the prosecution process. This is important because during this crucial stage, the accused may find an opportunity to conceal incriminating evidence, abettors may find an escape and the case may be weakened as a result. Common defects in TF cases’ police reports are:

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63 Section 7(d), Khyber Pakhtunkhwa Prosecution Service (Constitution, Functions and Powers) Act 2005
1. Internal accounts’ record of the proscribed organization not attached.
2. Belated FIRs
3. Land record of the proscribed organization not attached.
4. Registration and history of the organization.

It is important to note here that for many proscribed organizations, retrieving financial records is a lengthy and painstaking process. Most organizations do not have financial records that can be traced via banks or other financial institutions. Prosecutors should ideally help investigating officers pursue alternate lines of enquiry and retrieve financial records from less formal sources.

The prosecutor may want to consider the following factors during his 7(d) scrutiny:

- Is the format of the final report under section 173 Cr.P.C. correct and has the necessary paperwork been completed?
- Has the evidence been gathered in the prescribed manner? Could it affect the admissibility of the evidence?
- Is the FIR written logically and chronologically?
- Have the police investigation decisions been duly authorised by police officers of the required rank? For example, Section 11 EEEE of the ATA requires that the investigating officer detaining a suspect for up to 3 months may not be below the rank of superintendent.
- In case of a confession, did the IO arrange it with a magistrate as prescribed under the QS?
- If an Identification Test Parade has been held, was the correct procedure followed and recorded?
- Does the suspect or any of the witnesses have previous convictions and what impact will that have on the strength of their account?
- Have the relevant lines of enquiry, as can be made out from the FIR, been followed?
- Does the FIR offer new lines of enquiry that have not been pursued?
- Have potential witnesses been identified out of the recorded S.161 statements? The witness statements could help trace other possible witnesses that should be pursued.
- In TF cases specifically, are internal accounts of the proscribed organization attached?
- Has the registration of the organization been traced?
- Is there evidence from other jurisdictions that needs to be gathered?
• Are there any accomplices that were arrested and then released on bail?
• Are there indications that other suspects were involved and if so, what has been done to locate and investigate them?

6.2.2. Early Advice/Cooperation with the Police

Ideally, a prosecutor may direct the Police:

a) To collect additional evidence
b) To follow a line of enquiry
c) To provide additional informational about the collection of evidence
d) To provide additional information about the circumstances of a witness
e) To explain why a key witness was not examined
f) To explain why testimony of a key witness was not recorded early on.

In order to maintain consistent coordination with the Police, the prosecutor can guide the IO as to the investigation strategy. Section 8(5) directs that, “on the request of Head of Investigation, the DPP shall tender such advice on matters pertaining to investigation, prosecution and any matter ancillary to these matters, as may be necessary for effective prosecution.” However, the absence of formal SOPs for coordination between the Police and Prosecution for TF offences has at times caused the two counterparts to develop their own SOPs to overcome the lack of sync between the two departments. In TF cases, prosecutors often guide the IO by providing them with a checklist of necessary evidence to be attached with the police report. In particular, they ask the IO to provide:

1. Revenue record
2. Beneficiary record
3. Bank record
4. Registration record

It is advised that prosecutors develop such informal checklists and SOPs to coordinate, until the Departments adopt formal rules for coordination. It is also recommended that prosecutors maintain their investigative advice in writing so as to come to it after defects have been removed by the investigating officer post-scrutiny.

Although not a common practice, preparing an action plan pertaining to the investigation of the case may be beneficial for the coordination between police and prosecutor. The officer may identify the key suspects, witnesses, and an informal order of the investigation. For instance, an action plan may draw a
timeline as to which law enforcement agency e.g., FIA or the State Bank would be contacted first for retrieving financial records as this would allow both the prosecutor and the police to streamline the prosecution of the case. The progress review of such action plan may be conducted via joint review meetings. Under the article 7, 9 and 12 of the QS, the consultation between Police and Prosecution is privileged/confidential information and is therefore protected from disclosure to court or any other authority. In TF/ML cases where the nature and type of evidence is diverse, it is helpful that both the police and prosecutor carry out consultations to discuss the need, complexity, and retrieval of the evidence. The minutes of these consultations/meetings should also be documented for the ease of both counterparts.

While much of this coordination is present in JITs by default, it is important to understand the significance of developing coordination between individual investigating officer and prosecutor where JITs are not created.

6.2.3. Witness Protection

It is essential in organized crimes that witnesses be protected by the law enforcement agencies. The criminal justice system of Pakistan places high reliance on witness testimony and therefore it is necessary for all criminal justice institutions to protect and assist witnesses who are at risk or have been threatened, intimidated, or discouraged from providing evidence.

Furthermore, in cases of organized crimes, witnesses often must endure through lengthy proceedings, discouraging them to appear in court or assist in an ongoing investigation. In TF/ML cases especially, where larger groups may be involved in the offence, some may have fled the country and others may want to report the group’s activities to the Police hoping for leniency. In such circumstances, the risk of the witness being threatened by the organization is high. Therefore, these situations would require anonymity and protection of the witnesses to be safeguarded for successful arrest and prosecution.

6.2.4. The Khyber Pakhtunkhwa Witness Protection Act, 2021 (KPWPA)

The Government of Khyber Pakhtunkhwa enacted the Khyber Pakhtunkhwa Witness Protection Act, 2021 to extend protection and assistance to witnesses in cases of terrorism and serious offences.
Broadly, the KPWPA mandates for a witness protection unit that will assess the level and nature of threat to the witness and provide appropriate safeguards that are classified as court and non-court measures. These include:

**Non-Court Measures:**

- **a)** Provision of close protection service;
- **b)** Lodging in a safe house;
- **c)** Temporary or permanent relocation at a safe place;
- **d)** Change of identity;
- **e)** Concealment of identity of the persons involved in the criminal proceedings; and
- **f)** Providing financial assistance to a protected person who is unable to undertake regular employment or when his freedom of movement is severely curtailed as a result of protection to him.

**Court Measures:**

- **a)** Screening a witness
- **b)** Video link
- **c)** Restricted entry to the court room
- **d)** Special Rules of cross-examination barring the accused from cross-examining the witness himself.
- **e)** Anonymity during proceedings
- **f)** Trial in jail

Further, amendment to section 21 of the ATA states that:

- **a)** Screens may be used during the trial to shield witnesses, Judges and Prosecutors from public view;
- **b)** Trial may be held in jail premises or through video link;
- **c)** Witness protection programmes may be established by the Government through law or rules\(^64\).

For witness protection to reach the concerned witness, it is necessary that the Police and Prosecutor work together in unison. The IO may seek written advice from the relevant prosecutor on the eligibility, nature and extent of measures that may be provided to a witness under the KPWPA and upon making an application for witness protection measures, the IO must inform the prosecutor and keep him in the loop through the process of the application.

\(^64\) Section 7, The Anti-terrorism (Amendment) Act, 2014
When identifying a witness who is in need of protection, the IO and prosecutor individually and otherwise, must consider if:

1. The witness is under the age of 16 years;
2. Is fearful or threatened;
3. Is intimidated by court proceedings; and
4. Is mentally or physically disabled.

A prosecutor receiving a report under Section 173 Cr.P.C must evaluate whether any victim or witness in a case of terrorism or serious offence requires protection or assistance under the KP Witness Protection Act, 2021. It is the duty of the prosecutor to apply to the Court for appropriate measures in case the witness protection unit recommends non court measures.

**Case Study**

The KP Police has been contacted by a Pakistani woman, who runs a jewellery business in Izmir, Turkey. She claims that a crime syndicate kidnapped her 5-year-old daughter and threatened to kill her if she did not carry funds amounting to 300,000 USD to Turkey. The woman hid the cash in her luggage and was able to smuggle it without incident. The syndicate further issued instructions to deposit the cash in her name/account in a local bank of Turkey. After having deposited the cash, the syndicate has still not returned her daughter and is forcing the mother to work with them if she wants her daughter to return home safe.

IO has approached the prosecutor, seeking assistance for collecting evidence from foreign jurisdiction.

- How should the IO move forward with the recording of statements of witnesses, ITP, and the collection of supporting evidence to complete the chain of evidence?
- What steps are to be taken by the IO to ascertain correctness of facts reported by the Pakistani woman? List out the documents that are to be collected by the IO for this purpose?
- How can the IO collaborate with the police authorities and other departments in Turkey to gather more evidence? What electronic evidence is needed in the circumstances and what should be the process of collecting such evidence?
- Draft letters for assisting the IO for gathering different type of e-evidence and explain to him the process that is to be observed for submitting request for e-evidence.
- What offences are made out which may be investigated here in Pakistan?
6.2.5. Charging Standards Guidelines

The charges in ML/TF cases should reflect the seriousness/gravity and extent of the accused’s offence, thereby allowing the courts to sentence appropriately. This requires a prosecutor to be aware of the full range of offences available and realisation that an omission or inappropriate charging may lead to acquittal or inability of the Court to award appropriate punishment.

Taking account of the different elements that the prosecution needs to prove for the various offences under consideration, prosecutors need to carefully assess the available admissible, credible evidence and decide which is the more appropriate charge(s).

Section 233 of the Cr.P.C. stipulates that for every distinct offence of which any person is accused there shall be a separate charge, and every such charge shall be tried separately. However, the Prosecution Guidelines suggest that there are general professional standards that apply broadly, these standards include fairness, impartiality, objectivity, and professional vigour.

These are significant considerations and should form the basis of scrutiny, and charging decisions, in appropriate cases.

Money Laundering:

Predicate offences sometimes are independent criminal offences and do not lead to the offence of money laundering. Laundering particularly refers to the concept and method of disguising or concealing ill-gotten funds – which constitutes a separate offence. Thus, predicate offences stand as independent offences in cases where proceeds from the offence have not yet been laundered. For example, an accused has extorted money, and thus has illegal monies, but he has not yet placed it through formal channels to disguise its source.

It is also necessary to carefully identify which subsection of Section 3 (AMLA) should be used to charge the accused. For example, if the accused has put in large sums of cash from carrying out organ trafficking into their beauty salon business (front), the correct charge for it should be Section 3 (b): “(b) concealment of or disguising the true origin, location, movement, ownership of the property knowing or having reason to believe that such property is proceeds of crime”, as he is “disguising the true origin which is organ trafficking and concealing it by mixing it with his beauty salon profits.”
At the same time, S. 3 (a) could also be used for charging the accused on a secondary level as the subsection requires “acquisition, conversion, possession, use or transfer of property which his proceeds of crime”. In this case, it could be argued by the prosecutor that the proceeds of organ trafficking were converted into salon proceeds to conceal the predicate offence.

**Terrorism Financing:**

It is possible that suspicious activity or movement of money may alarm the LEAs who would want to refer the case to the CTD indicating that the accused is part of a proscribed organisation or is aiding terrorism financing in any other way.

However, it is important for the prosecutor to carefully determine if there is any clear evidence for terrorism evidence. If not, the prosecutor should submit to Court that offence is not made out, and the case would then be transferred to the relevant LEAs for a money laundering investigation. In such circumstances, it is important that prosecutors do not charge the accused with TF offences primarily because the LEAs referred it as such. Understanding the elements of the TF offences, the prosecutors must logically attempt to place the concerned offence within the text of the provision.

*(Note for the Trainer: The following case study is part of the final assessment of the participants. The case study is divided into two parts and is intended as a group activity followed by a presentation of the activity to the trainer and discussion on each group’s presentation.)*

**Case Study: Part 1**

An organ trafficking ring has been identified by the police, that kidnaps refugee children and extracts their organs. The police sealed a warehouse in Okara where these illegal organ transplants were taking place.

The police also retrieved informal records of individuals receiving organs. Cash was retrieved worth 3.5 Crore (PKR).

The police further identified and arrested an individual whose daughter received a kidney from a kidnapped child by the ring. The father was identified via a nearby surveillance camera. He was seen carrying his daughter in the direction of the warehouse, visibly distressed.

The warehouse’s guard has been questioned by the Police who has revealed that bags of cash leave the warehouse every two weeks but he does not know where the bags go.
During investigation the IO collected and subsequently attached following documents with final report:

1. FIR registered on behalf of the state
2. Memo/Fard of site inspection (warehouse in Okara)
3. Memo/Fard of recovery (record of individuals receiving organs and cash Rs. 3.5 Crore)
4. Memo/Fard of arrest of an individual whose daughter received kidney and CCTV recording
5. Statement of witnesses and interrogation report of accused arrested during investigation

**Required:**

- With this information in a 173 report, list possible defects the prosecutor would identify in a scrutiny report.
- List out all necessary evidence may be important in the circumstances to prove the case against the accused.

### 6.2.6. Prosecutorial Assessment

Following the scrutiny of the police report, the Prosecutor is required to submit an assessment of the case to the Court. Section 4(b)(i) of the Act states that the prosecutor: *“The Prosecutor shall, on receipt of the final report, lodge the same before the competent court trial…”*

At this stage, the prosecutorial has to determine whether the case is fit for trial and has to submit his assessment to the court. This assessment will be based on the available evidence.

The prosecutor does not need to wait for every line of enquiry to be completed before writing his assessment. For instance, if certain financial records have not been retrieved and they are not essential to the prosecution, the prosecutor may move ahead with his assessment based on the evidence available. Of course, it would be the prosecutor’s judgement call as a lawyer to analyse which lines of enquiry are not central to the case.

The Guidelines provides guidance as to the two tests that are part of the prosecutor’s assessment:

1. Evidential test
2. Public interest test

Based on these tests, the prosecutor will make the assessment on whether the case is fit for trial.
6.2.7. Evidential Test

Paragraph 4.2 of the Guidelines explain the objective behind the application of the evidential test as: “that the test envisions that on an objective assessment of the police evidence and any information provided by the defence through the police, the Prosecutor comes to the conclusion that a court of law gearing the case is more likely than not to convict the accused of the offence on the proposed charges. The Evidential test for prosecution is, therefore, different from the test applied by the courts in determining the guilt of an accused, which is that the case has to be proved beyond a shadow of doubt.”

Paragraph 4.3 of the Guidelines sets out that the circumstances when the evidential test must be applied, which includes the following:

- When a prosecutor receives a police report for transmission to the Magistrate
- When the police seek the prosecutor’s advice on the sufficiency of evidence regarding the submission of a case in a court of law.

For a well-applied evidential test, the prosecutor has to ensure that it is an objective assessment. In other words, the Prosecutor’s decision has to be a rational and considered one, and not one based on a hunch or personal preferences. The magistrate or judge is required to give “due consideration” to the Prosecutor’s submissions. It must therefore be able to withstand the rigors of analysis by the judiciary. The Court may challenge the prosecution’s case in many ways. For example, the authenticity of an informant’s information where such information has become the basis of the investigation and prosecution. The prosecutor must keep in mind the level of effort and range of resources put into the investigation and that in certain circumstances, successful prosecution may be crucial for national security, especially in TF cases. Therefore, aiming for an impenetrable prosecution case, the prosecutor in such a case should always record the informant’s statement under S.164 (Cr.P.C.) and should immediately apply for witness protection.

It is also important to remember that the Prosecutor’s analysis is likely to form the basis of the Court’s perception of the Prosecutor, his command over his case and his legal skills. There is therefore a personal, as well as a professional reason for ensuring the assessment is robust and comprehensive.
The prosecutor must apply the evidential test to each suspect individually as evidence not essential to convicting one suspect may be instrumental in convicting his accomplice.

Factors to consider when applying the evidential test are provided in the Guidelines. Most importantly:

**Reliability of evidence**

For example, if an informant has tipped the LEA, and the prosecutor is given the evidence for it, the prosecutor must ideally assess if the informant’s information can be backed with evidence other than the one he provides. Corroborative evidence may be key in ML/TF cases.

**Sufficiency of evidence**

In ML/TF cases, the range and nature of evidence is vast. The prosecutor should be basing his assessment on a single piece of evidence. For a madrassa collecting funds under the name of donations, the prosecutor should look into internal accounts, formal or informal.

**Defence’s case**

Like any other criminal case, a smart prosecutor will prepare for his own and for the defence’s. This means that the prosecutor must keep in mind possible pleas, arguments, supposed exculpatory documents that the defence lawyer would be using. In TF cases especially, the prosecutor cannot afford to not prepare for the defence case as in certain cases the matter is of national security.

**Admissibility**

Even with reliable, strong evidence, prosecutors might not be able to obtain a conviction and often times this is due to the admissibility of the evidence. It is necessary that the prosecutor guides the IO about the sensitivities of certain evidence collection based on the QS. If the suspect’s confession is obtained under duress or is a result of police brutality, the Court will not accept the confession.

It is important to note that the evidential test is the most important test in a prosecutor’s assessment, the other two are of supplementary nature. Hence, if the prosecutor assesses that under the evidential test the case is not fit for trial, he may not submit an assessment on public interest as well.
6.2.8. The Public Interest (PI) Test

1. The Guidelines suggest that the PI test is: “a test of universal application to be applied to all cases being considered for prosecution, without any caveats and exceptions.

2. According to para 5.2 of the Guidelines, “The test requires that where in the assessment of the Prosecutor, the public interest factors against proceeding with a prosecution outweigh any public interest considerations in favour of proceeding with a prosecution, the prosecution ought not to proceed in accordance with law.”

3. The prosecutor must consider the following when applying the public interest test:

- The extent of harm or loss caused to a person
- The number of victims
- The offence involves an act of terrorism
- The offence is part of an organized crime
- If the offence is repeat offence and/or the offender also convicted in the past for a similar or more serious offence
- The likelihood of the offence continuing and offender repeating the offence if not prosecuted
- The offence targeted public officials, emergency services, health or social welfare officials, police officers etc.
- Offence of a nature that conviction likely to result in a significant sentence
- Prosecution would have a significant positive impact in terms of deterrence of crime and/or boosting the community’s confidence in rule of law

In ML/TF cases, the public interest test will generally be applied. Both offences are of serious nature and they both affect the community. ML affect the community as such offences hamper the economy’s progression and TF may lead to loss of innocent lives.
6.3. Types of Prosecution Witnesses in ML Cases

I. Approvers

In a money laundering scheme, especially ones launched by politically well-connected criminals seeking to launder large quantities of illicit funds, it is inevitable that a large number of accomplices, conspirators, and collaborators will be involved. Such a scheme cannot be adequately investigated unless the concerned LEA, IO, and prosecutor win over some of the accomplices to its side. Depending on the circumstances of the case, an accomplice can provide a valuable insider's view of the money laundering scheme. In certain cases, failing to win over an accomplice may make it virtually impossible to gather evidence to gain a conviction.

Definition

The formal definition of an accomplice is a person who participates in criminal activity but agrees to cooperate with the prosecution and testify against other defendants. In Pakistan, accomplices who are won over are referred to as “Approvers”.

In money laundering cases, approvers are usually individuals against whom a charge of abetment to the predicate offence and/or money laundering is made out. For example, they could be individuals who knowingly allowed the main defendants to register assets under their names as benamis, employees or associates who managed the front-business through which illicit funds were laundered, or professionals such as accountants, bankers, lawyers, and tax consultants who assisted in laundering the money. Additionally, an approver can even be a main defendant responsible for generating the proceeds of crime, but who agrees to provide evidence against the hired professionals responsible for carrying out the money laundering. Approvers mostly agree to give evidence for the prosecution in return for leniency in sentencing, immunity from prosecution, or some other benefit. Usually, such approvers are used as informants in long-term investigations. They are expected to appear as prosecution witnesses, give statements, and participate in any other legal proceeding.

Approver’s Evidence Must be Corroborated.

Pitfalls in the case because of overreliance on the evidence provided by an approver should be avoided at all costs. When relying on the evidence of an approver, a basic principle that must be observed: All evidence from an approver
must be corroborated. This is despite the existence of the provision under Article 16 QS which allows for an accused to be convicted based on an approver's uncorroborated testimony.

Nevertheless, an approver's credibility and the veracity of his evidence must be determined by corroborating it with the statements of other witnesses or through documentary evidence such as records of financial transactions, banking records, digital evidence, call records, emails, or messages.

II. Independent Witnesses

Most money laundering or terrorist financing operations maintain a certain level of interaction with independent third parties, such as bankers, accountants, property dealers, businesspeople, lawyers, and government functionaries. These third parties may not necessarily be aware that the organization they are dealing with is a criminal enterprise. They may engage in legitimate business with the money laundering or terrorist financing outfit, especially if it was being run through a front-company or masquerading as a charitable organization. For example, the independent third party may have rented business premises to the outfit, exchanged currency on their behalf, or conducted property deals for them.

Useful material from independent witnesses can be obtained, such as information regarding the persons actively involved in running the criminal enterprise and its employees, its financial or business transactions, documentary records, and other material can be obtained.

Independent witnesses can supply useful and authentic information regarding the criminal organization that can be used as evidence during trial. If they are not criminally associated with the enterprise, they will supply information in routine compliance with the LEA without any ulterior motive.

III. Informants

Most LEA's have informants in the criminal underworld who regularly supply useful and credible information in return for compensation or favours. LEA's maintain links with such informants for intelligence gathering only, not for gathering evidence to be used at trial. Since such informants are keenly interested in maintaining their anonymity, they will not give statements, appear as a witness, or participate in any legal proceedings. Moreover, they may hold back on any useful information that might reveal their identity as the source.
Case Study: Part 2

- Given the evidence provided in Part 1, what would be the prosecutor’s court assessment?
- Explain how you would apply the evidential and public interest test with the use of legislation and the Prosecution Guidelines.

6.4. Summary

- While the prosecutor is responsible for scrutinising the police report and identifying defects in the investigation/evidence, it may also suggest additional lines of enquiry to the IO.
- It is advised that prosecutors develop such informal checklists and SOPs to coordinate with Police and relevant departments, until the departments adopt formal rules for coordination.
- The charges in ML/TF cases should reflect the seriousness/gravity and extent of the accused’s offence, thereby allowing the courts to sentence appropriately.
- Predicate offences stand as independent offences in cases where proceeds from the offence have not yet been laundered.
- In order to maintain consistent coordination with the Police, the prosecutor can guide the IO as to the investigation strategy.

6.5. Self-Assessment Questions

1. In what ways can a prosecutor direct the Police during investigation?
2. Under the Khyber Pakhtunkhwa Witness Protection Act, (KPWPA) 2021, what are some non-Court measures used to safeguard witnesses?
3. What are some common defects in police reports of TF cases?
4. In your opinion, what are benefits of preparing an action plan?
SECTION 07

Human Rights’ Considerations

LEARNING OUTCOMES

• The rights of defendants for prosecutors and investigators to protect
7.1. Defendant Rights

Given that the ML/TF cases presented for trial are a priority for Pakistan under the FATF Action Plans, it is necessary to ensure that human rights considerations of the accused are taken into due consideration. Ignoring the rights of the accused violates the concept of due process, and disintegrates public faith in the justice system and rule of law.

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

1. Protection against arbitrary or unlawful arrest.\(^{65}\)
2. Protection against arbitrary or unlawful searches.\(^{66}\)
3. Protection against “double jeopardy”.\(^{67}\)
4. Protection against conviction or enhanced punishment under ex-past facto law.\(^{68}\)
5. Protection against arbitrary or illegal detention in custody.\(^{69}\)
6. Right to be informed of the grounds, immediately after the arrest.\(^{70}\)
7. Right of the arrested person not to be subjected to unnecessary restraint.\(^{71}\)
8. Right to consult a lawyer of his own choice.\(^{72}\)
9. Right to be produced before a Magistrate within 24 hours of his arrest.\(^{73}\)
10. Right to be released on bail, if arrested.\(^{74}\)

\(^{65}\) Article 9 of the Constitution
\(^{66}\) Sections 93, 94, 97, 100(4) to (8). And 165 of Cr.P.C.
\(^{67}\) Article 20(2) of the Constitution and Section 403 of Cr.PC
\(^{68}\) Article 20(1) of the Constitution
\(^{69}\) Article 22 of the Constitution
\(^{70}\) (Article 10(1) of the Constitution
\(^{71}\) Section 50 of Cr.P.C.
\(^{72}\) Article 10 of the Constitution
\(^{73}\) Section 167 of Cr. PC
\(^{74}\) Chapter XXXIX of Cr.PC
11. Right not to be a witness against himself\(^{75}\).

12. Right to get copies of the documents and statements of witnesses on which the prosecution relies\(^{76}\).

13. Right to have the benefit of the presumption of innocence till guilt is proved beyond reasonable doubt.

14. Right to insist that evidence be recorded in his presence except in some special circumstances\(^{77}\).

15. Right to have due notice of the charges\(^{78}\).

16. Right to test the evidence by cross-examination\(^{79}\).

17. Right to have an opportunity for explaining the circumstances appearing in evidence against him at the trial\(^{80}\).

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\(^{81}\).

19. Right to produce defence witnesses\(^{82}\).

20. Right to be tried by an independent and impartial Judge\(^{83}\).

21. Right to submit written arguments at conclusion of the trial in addition to oral submission\(^{84}\).

22. Right to be heard about the sentence upon conviction\(^{85}\).

23. Right to fair and speedy investigation and trial\(^{86}\).

\(^{75}\) Article 20(3) of the Constitution
\(^{76}\) Section 548 of Cr.PC
\(^{77}\) Section 364 of Cr.PC
\(^{78}\) Section 221 of Cr.PC
\(^{79}\) Section 164 of Cr.PC
\(^{80}\) Section 342 of Cr.PC.
\(^{81}\) Section 509 of Cr.PC.
\(^{82}\) Section 340 of Cr.PC
\(^{83}\) Article 10A of the Constitution
\(^{84}\) Section 265-F of Cr.PC
\(^{85}\) Section 366 of Cr.PC
\(^{86}\) Article 10A of the Constitution
24. Right to appeal in case of conviction

25. Right to restrain police from intrusion on his privacy

26. Right to release of a convicted person on bail pending appeal

27. Right to get copy of the judgment when sentenced to imprisonment

7.2. **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.
Module for Prosecutors: Anti-Money Laundering and Countering the Financing of Terrorism